

2. RECIDIVISM OF PEOPLE WITH RESPECT TO WHOM PROCEEDINGS WERE TERMINATED FOR REASONS OF EXPEDIENCY

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The principle of legality in criminal proceedings means this that the court has to decide on the guilt of all people suspected of criminal offences, thus all criminal matters should reach the court. However, a possibility has been introduced to modern criminal proceedings not to decide on the matter of guilt and terminate proceedings due to reasons of expediency (under the so-called principle of opportunity). On one hand this saves time and money in criminal proceedings, on the other hand, it will provide a possibility to spare people who have committed less serious criminal offences from judicial proceedings and the negative stigma associated with criminal punishment.

The effective Code of Criminal Procedure (CCP) prescribes the bases of termination due to reasons of expediency in §§ 201-205. Among those the most common bases for termination is termination of criminal proceedings due to lack of public interest (Code of Criminal Procedure, § 202).

This analysis shows what is the recidivism of those people with respect to whom proceedings have been terminated termination due to reasons of expediency. Presumably, the recidivism rate of these people should be lower compared to the people who have reached the court. First, the termination due to lack of public interest is used with respect to people who have committed less serious criminal offences for the first time. The bases prescribed in § 201 of the Code of Criminal Procedure with which a minor who has committed the act is referred to juvenile committee is used just like the name says in case of minors who have not been able due to their young age to repeatedly commit criminal offences and whose criminal offences are of less serious nature. Probably these people are somewhat more recidivistic with respect to whom proceedings have been terminated due to lack of proportionality of punishment (Code of Criminal Procedure, § 203), as in their case proceedings are terminated namely because of the reason that the person has committed also other criminal offence, i.e. it may be assumed that the act committed by the person was not accidental. Main purpose of using this basis for termination is to save procedural resources.

2.1. Database

The sample of terminated proceedings was made up from proceedings which have been terminated by a prosecutor. The court can also terminate proceed-

ings due to reasons of expediency; however, this possibility is used considerably less frequently in court than in Prosecutor's Offices. Besides, the courts information system database on the termination of proceedings is of inferior quality.

The analysis database was formed with the help of inquiries made from the E-file system. First, the people were found with respect to whom the proceedings had been terminated and after that the equivalents were searched from the database on interrogations which had occurred after the termination of proceedings, that is, in this analysis a repeat criminal offender is a person who was interrogated as a suspect once again after the termination of proceedings. A separate inquiry gave an answer on whether the interrogation conducted with the person concerned a criminal offence with the same legal assessment in which proceedings against the person had already been terminated. Consequently, this database enables to analyze the recidivism also in case of criminal offences of the same type.

As the extent of criminal offences to be terminated with opportunity is limited⁵⁴, the termination database does not enable to analyze the recidivism by types of criminal offences, for example, in case of sex crimes and serious criminal offences against the person, however, it is possible to analyze recidivism in case of most common crimes of violence and thefts. A smaller scale database exists on frauds as well.

The database includes people with respect to whom the proceedings were terminated in 2005–2008. Data on people with respect to whom the proceedings were terminated are indicated in Table 2.

⁵⁴ *In case of lack of public interest, a prosecutor can terminate proceedings only in case of certain criminal offences in the second degree.*

Table 2. The number of people in the database by type of criminal offence and basis for termination

2005	Total	CCP § 201	CCP § 202	CCP § 203
Total	3918	806	2893	238
Violence	1110	213	881	16
Theft	1360	338	927	102
Fraud	47	6	39	3
2006	Total	CCP § 201	CCP § 202	CCP § 203
Total	4797	812	3641	367
Violence	1583	220	1318	49
Theft	1577	354	1048	184
Fraud	115	8	94	14
2007	Total	CCP § 201	CCP § 202	CCP § 203
Total	4529	769	3472	310
Violence	1923	272	1582	73
Theft	887	194	602	93
Fraud	89	7	75	7
2008	Total	CCP § 201	CCP § 202	CCP § 203
Total	4310	636	3307	380
Violence	1946	264	1552	132
Theft	769	154	522	98
Fraud	102	12	88	2

The database was cleaned from repeated records. If proceedings had been repeatedly terminated with respect to the person within a year, then only the termination data on the last ruling were left in each sub-data. This means that if proceedings against a person were terminated in March pursuant to § 201 of the Code of Criminal Procedure and in May pursuant to § 202 of the Code of Criminal Procedure then in March the termination appears in the data of § 201 of the Code of Criminal Procedure and in May the termination appears in the data of § 202 of the Code of Criminal Procedure, however in the total database only termination pursuant to § 202 of the Code of Criminal Procedure appears. With respect to crimes of violence these people appear in the database who were suspected of the commission of criminal offences specified in §§ 121 and 263 of the Code of Criminal Procedure; thefts mean violations specified in § 199 of the Code of Criminal Procedure and frauds mean criminal offences referred to in §§ 209 to 213 of the Code of Criminal Procedure.

2.2. Overall recidivism

In case of terminating the proceedings the recidivism rate of people taking into consideration all criminal offences as new criminal offences is 18% per year, i.e. nearly one fifth of these people with respect to whom the Prosecutor's Office terminates the proceedings due to reasons of expediency commit a new criminal offence within a year.

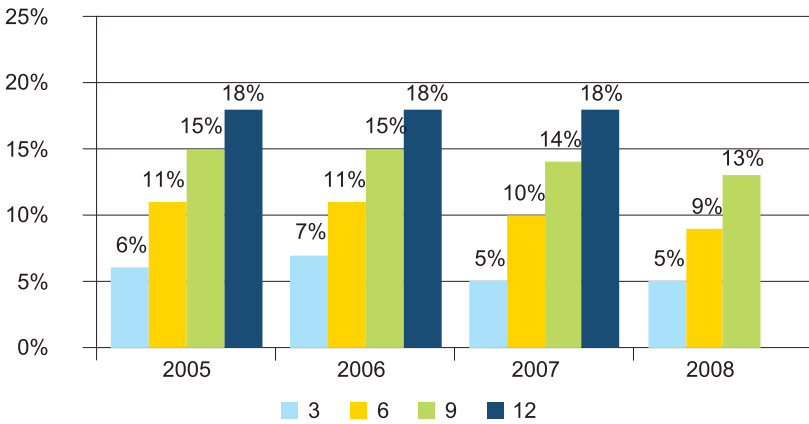


Figure 7. The proportion of people who committed criminal offences of any type within 3 to 12 months after proceedings against them had been terminated

In 2005 - 2007, the recidivism rate in case of terminated proceedings remained stable during a 12-month observation period. The recidivism rate for 18 months was 23% in 2006 and 2007; the recidivism rate for 24 months was 28% in 2005 and 2006. This means that out of 4797 people against whom proceedings were terminated in 2006, 1330 people committed a new criminal offence within two years.

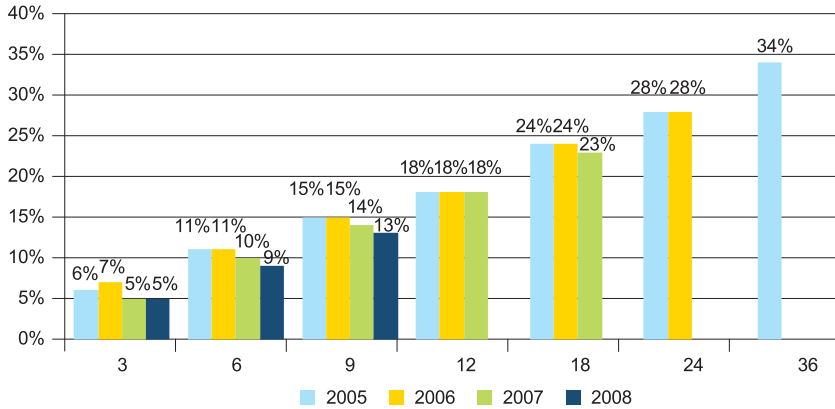


Figure 8. The proportion of people who committed criminal offences of any type within 3 to 36 months after proceedings against them had been terminated

The longest period based on which this database enabled to calculate the recidivism rate was 36 months on the basis of the 2005 termination data: within three years after the termination of proceedings, 34% committed a new criminal offence. Thus, the recidivism rate for people against whom proceedings were terminated in 2005 increased 18% during the first year, 10% during the second year and 6% during the third year.

2.3. Recidivism according to the type of criminal offence

By types of criminal offences in case of terminating the proceedings it is possible to observe recidivism in case of crimes of violence (Penal Code § 121 and § 263), thefts (Penal Code § 199 – larceny) and frauds (Penal Code §§ 209-213), although the database on fraud in comparison with thefts and crimes of violence is considerably smaller.

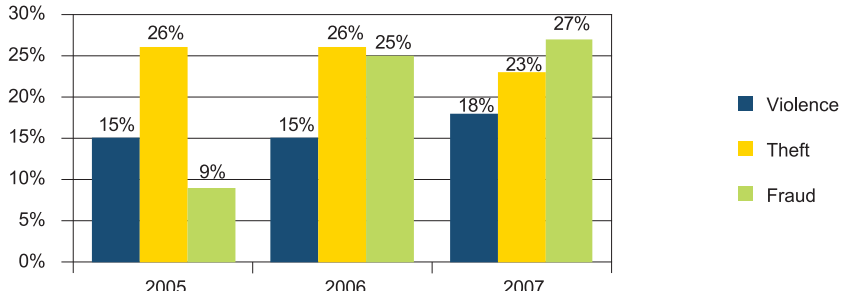


Figure 9. The proportion of people who committed criminal offences of any type within 12 months after proceedings against them had been terminated in selected types of criminal offences

The recidivism rate in case of crimes of violence is somewhat lower than in case of criminal offences against property pointed out here. The recidivism rate in case of crimes of violence for nine months was 13-14%; for twelve months, however, 15-18%. In 2005, the recidivism rate of two years for crimes of violence was 25%, the rate of three years was 32%. Thus, from the people against whom proceedings were terminated in 2005, one third committed a criminal offence of any type within three years.

Within a year, a new criminal offence of the same type was committed by 3-7% of people, within two years by 11% of people and within three years by 12% of people.

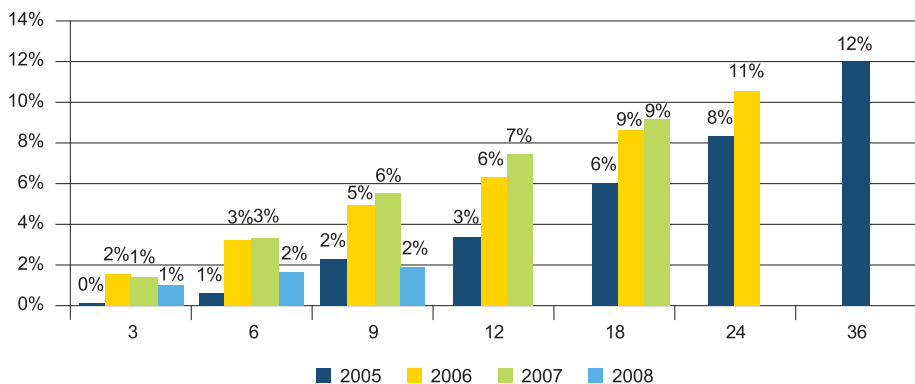


Figure 10. The proportion of people who committed a new criminal offence of the same type within 3 to 36 months after proceedings against them had been terminated in a crime of violence

The growth of recidivism rate in case of crimes of violence by years is probably connected to increased registration of crimes of violence during these years; for example, the number of registered cases of physical abuse increased from 3456 offences in 2005 to 5174 cases in 2008. The number of people against whom proceedings in crimes of violence were terminated increased during the same period nearly twice – from 1110 to 1946. The growth rate of recidivism rate and the recidivism rate itself is low in case of crimes of violence, therefore it can be concluded that in case of crimes of violence the prosecutors are terminating such proceedings in case of which the risk of committing a new crime of violence is rather low.

In case of thefts the recidivism rate for any new criminal offences during nine months stayed around 20% and during twelve months around 25%.

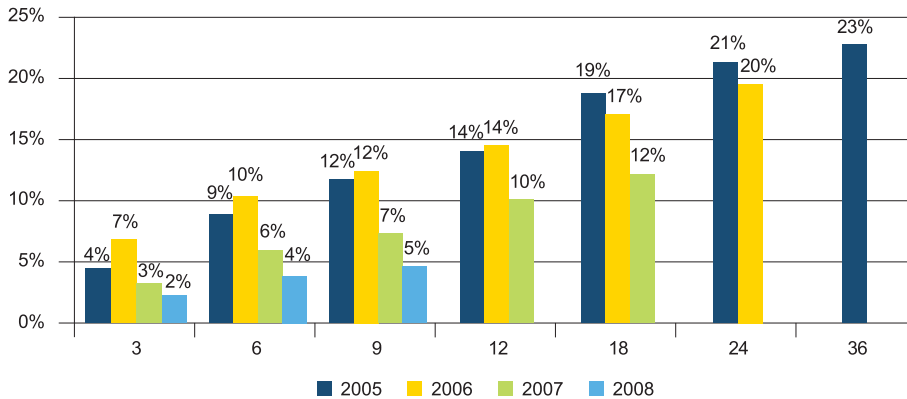


Figure 11. The proportion of people who committed a new criminal offence of the same type within 3 to 36 months after proceedings against them had been terminated in a theft

The recidivism rate of thefts calculated on the basis of 2008 is considerably lower than the recidivism rate of previous years, the recidivism rate of 2007 is also lower in comparison with 2005 and 2006. In case of thefts it has to be taken into consideration that the number of terminated criminal matters in thefts considerably decreased in 2007 (the number of people against whom proceedings in thefts were terminated - 1360 in 2005, 1577 in 2006, 887 in 2007 and 769 in 2008). The decrease in the number of proceedings was probably connected to the decriminalizing of the so-called repeated petty theft in March 2007. In connection with this namely the number of thefts with smaller damage decreased among criminal offences the proceedings of which were probably terminated before in many cases. Consequently, it is not possible to compare the recidivism rate in case of thefts on equal bases by different years. In case of frauds the recidivism rate for people who had committed again a

violence of the same type was very low. For example, in 2005 proceedings in the suspicion of fraud were terminated with opportunity against 47 people, no-one of these people was interrogated in a new case of fraud during a year (recidivism rate 0%); in 2006, 7 people out of 115 were interrogated again during a year (recidivism rate 6%); and in 2007, 6 people out of 89 were interrogated (recidivism rate 8%).

2.4. Recidivism with respect to other factors

In 2007, the overall recidivism rate per one year was 18%. This year, proceedings were terminated with opportunity against 4529 people concerning the sample in question from whom over 800 were interrogated as suspects of new criminal offences.

Proceedings were terminated against 884 women and 3645 men, the proportion of women was 19,5% and of men 79,5%. Thus, compared to the general breakdown of criminal offenders, women are more represented with respect to termination of proceedings (women form 10,5% from all criminal offenders – Salla et al. p 21). This in its turn refers to the fact that women commit less serious criminal offences regarding which the authorities are prepared to terminate proceedings more easily.

With respect to terminated proceedings the recidivism rate of women proved to be two times lower than the recidivism rate of men – within a year after the termination of proceedings, a new criminal offence was committed by 10% of women and 20% of men.

By age groups the recidivism rate per year was the highest for 18-26 year olds; from them 21% committed a new criminal offence within a year after the termination of proceedings; the recidivism rate for people up to 18 years old was in the same range.

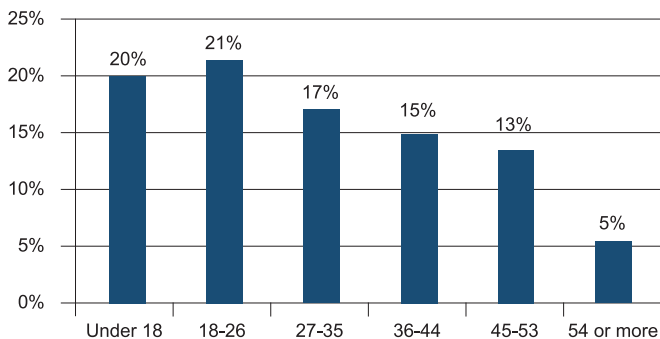


Figure 12. The proportion of people who committed a new criminal offence within 12 months after proceedings against them had been terminated in 2007 by age groups

After the 26th year of life, the recidivism rate fell; from 54 year old and older people 7% committed a new criminal offence within a year.

By age groups the recidivism of men and women manifested itself a bit differently. While the criminal activity of men mostly showed in the age group up to 26 years, in case of women the relatively highest number of criminal activities within a year was committed in the 27-35 year age group.

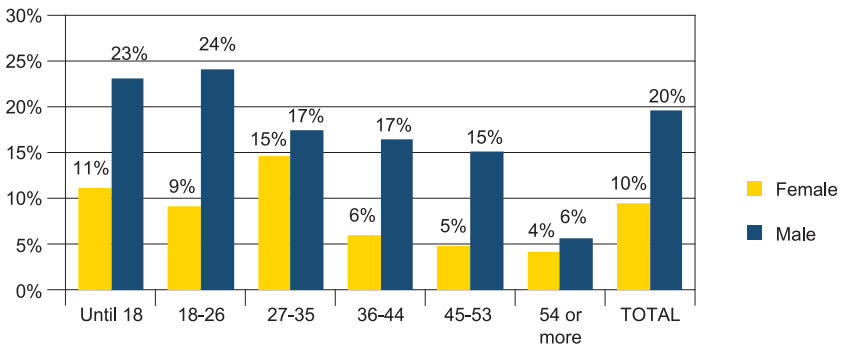


Figure 13. The proportion of people who committed a new criminal offence within 12 months after proceedings against them had been terminated in 2007 by age groups and sex

By the criminal offender's mother tongue the recidivism was the highest among the people speaking Russian as their mother tongue - while within a year after the termination of proceedings every fifth Estonian-speaking person (20%) committed a new crime, then among Russian-speaking people every fourth person did (26%).

The analysis database enabled to assess recidivism also by law enforcement districts. In comparison with other districts, recidivism was the lowest in the Southern District where 16% of people related to the proceedings which were terminated in 2007 committed a new criminal offence; in the Northern District the relevant indicator was 17%, however, 19% in the Viru and Western District. To a certain extent these differences could have been caused by procedural practice pursuant to which the proportion of people against whom proceedings are terminated due to reasons of expediency is the highest in the Western District (29%) and the lowest in the Southern District (20%).

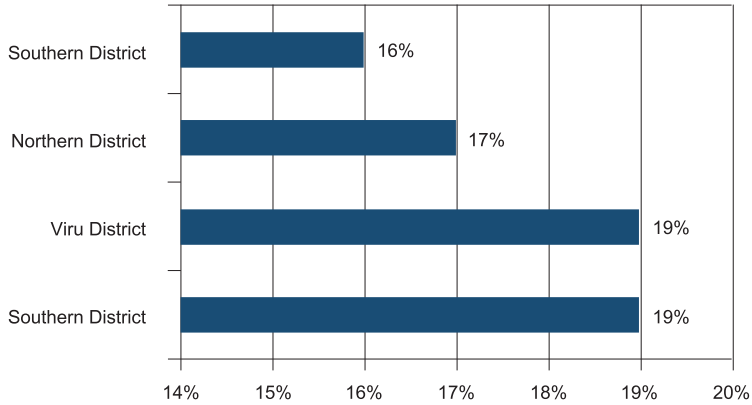


Figure 14. The proportion of people who committed a new criminal offence within 12 months after proceedings against them had been terminated in 2007 by districts

2.5. Recidivism according to the basis of termination

By bases for termination the recidivism rate is the lowest in case of people against whom proceedings were terminated due to lack of public interest in proceedings (§ 202 of the Code of Criminal Procedure), in case of proceedings terminated in 2005-2007 the nine month recidivism rate was 13% and 10% in 2008.

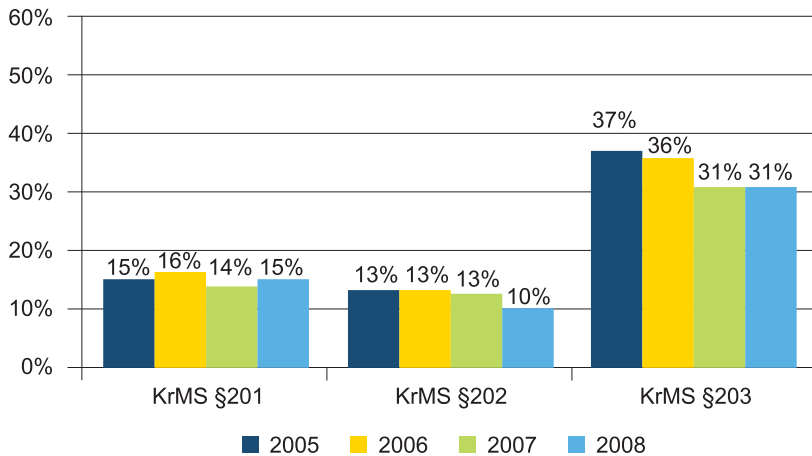


Figure 15. The proportion of people who committed a new criminal offence within 9 months after proceedings against them had been terminated – the data has been indicated pursuant to the basis for termination

The recidivism rate in case of young people referred to juvenile committee (Code of Criminal Procedure, § 201) was only slightly higher than in case of proceedings terminated due to lack of public interest in proceedings; from them 14-16% committed a new criminal offence within nine months.

The recidivism rate was the highest in case of people against whom proceedings were terminated due to lack of proportionality of punishment (Code of Criminal Procedure, § 203); from these people every third committed a new criminal offence already within nine months after the termination of proceedings. Higher recidivism rate than other bases for termination can probably be explained on one hand by this that often these people have committed more serious criminal offences and in their case the criminal offence in question has probably not been accidental. In case of this basis for termination there is also a bigger possibility that a situation will form when a person has been interrogated in another proceedings which have been commenced to investigate a previously committed criminal offence – thus, the recidivism rate for termination of proceedings pursuant to § 203 of the Code of Criminal Procedure may be slightly overestimated.