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## **FORENSIC CRIMINOLOGY, RISK ASSESSMENTS AND THE PREVENTION OF RECIDIVISM**

### **An introduction to a genuine idiographic method (MIVEA)**

*The present paper gives insight to an innovative approach in Forensic Criminology, that applies criminological knowledge for risk and needs assessments aiming at preventing recidivism. Although risk assessments are mainly conducted by psychologists and psychiatrists that predominantly work with actuarial risk assessments, hence with standardized, statistical methods, this approach is idiographic and refrains from relying on the comparison with the “average” but focuses on the individual: the Method of Ideal-Typical-Comparative-Case-By-Case Analysis (in short: MIVEA). Thus, the issue under scrutiny is the application of specific criminological knowledge for risk assessments. As a result, the paper will provide knowledge about the role of Forensic Criminology in the field of risk assessments and will illustrate the importance of the application of genuine idiographic risk assessments methods. It largely draws on research conducted by the founders of the method in question and their successors (especially Bock (2019) *Angewandte Kriminologie*. 5<sup>th</sup> edn. München: Vahlen)*

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## 1. Introduction

*Why* do we punish criminal offenders and *whom* do we want to punish *how*? These questions have been discussed since ancient times. In contemporary academia we can basically find two main approaches that often pursue contradictory purposes. On the one hand there is the “absolute theory”, that conceives punishment as an equalizer, which is detached from social roles and responsibilities. According to this approach retaliation and punishment must be paramount. Immanuel Kant, for example, postulated that a murderer must be executed so that “he [the offender] experiences what his own deeds are worth” (Kant, 1797, according to Byrd, 1989: 151). On the other hand, the “relative” approach strives for the social responsibility of criminal justice. This theory’s focus lies on the prevention of recidivism (specific prevention) and the stabilization of norms in the eyes of the public (general prevention). The first theory targets the recidivism risk of the individual offender, which is why punishment must be made primarily to hinder the offender from offending again and to “educate” the offender to a future lawful conduct. The latter focuses on the educational effect of punishment on the public. To this end, the main goal of punishment is to threaten and to counteract the commission of criminal acts by others (not the individual offender) (Kienapfel et al., 2020). Nowadays scholars mostly agree on the rejection of the “absolute theory” with retaliation as the main purpose of punishment (Kienapfel et al., 2020; Roxin, 2006: AT I § 3 85-96). In this sense, in academia a so-called “preventive unification theory” is prevailing (Kienapfel et al., 2020: 8; Roxin, 2006: AT I § 3 85). Against this backdrop the idea of a preventative justice seems to supplant approaches that focus on retaliation and punishment. However, especially the theory of “specific prevention” and its application in criminal proceedings with respect to the validity, reliability, and objectivity of risk assessment instruments as well as approaches to accurate and proportionate (also alternative) interventions is under ongoing academic and political discussion.

## 2. Risk assessments and the prevention of recidivism in the Austrian Criminal (Procedure) Code – an overview

Taking Slobogin’s (Slobogin, 2011) four main sentencing approaches into account, the Austrian Criminal Justice System embodies no “determinate sentencing regime”, that solely punishes people proportionate to the nature of the crime and offender’s culpability. It follows a more indeterminate or (depending on the severeness of the crime) hybrid “limiting retributivism” approach, that imposes

sentencing but allows (actually even demands) risk assessments to define accurate interventions.

In the Austrian Criminal Justice System punishment is mainly seen as a means of influencing the inner disposition of the offender towards social values and norms (“specific prevention”) and as a means of influencing the disposition of the public (“general prevention”) (Kienapfel et al., 2020). Against this backdrop the Austrian Criminal Code follows a pluralistic approach as it does not give concrete answers about the ideology of punishment, but explicitly prescribes the two principles of prevention within various provisions. Some essential provisions are sections 32, 37, 43, 43a, 46 in the Austrian Criminal Code (StGB) and section 191 para 1 Z 2 as well as section 198 para 1 in the Austrian Criminal Procedure Code (StPO). Within these provisions the court (or in specific cases also the public prosecution, e.g. “Diversion” sections 198 et seqq. StPO) has to determine what kind of “punishment” (monetary penalty, imprisonment, or alternative measures such as probation, “diversion” and alternative directives like community work or anti-violence trainings) is accurate and proportionate to prevent the individual offender from offending again (special prevention) and/or to prevent the general public from committing criminal offences (negative general prevention) and/or to maintain or strengthen their compliance with the law as well as their trust in the persistence and enforcement power of the criminal justice system (positive general prevention) (Schöch, 1990). These provisions are complemented by provisions that focus on the potential dangerousness of very specific groups of offenders and preventive measures, e.g., § 21 StGB Detention in a mental health facility, § 22 StGB detention in a facility for the treatment of addiction or § 23 StGB Detention in a facility for dangerous repeat offenders. The court must apply preventative oriented provisions not only when sentencing the individual in the first place, but also when deciding whether the individual can be released on parole (e.g., §§ 46, 47 StGB). It must be noted that as a consequence of the legality principle a person can only be subject to such “risk assessments” before a criminal court if the person has committed a crime. Thus, the Austrian Criminal Justice system does not allow preventive detention without a previous criminal conduct (see for example Ratz, 2011: n. 4.)

Section 43 Austrian Criminal Code (see below) shows the necessity of both special and general preventive considerations and highlights the legal requirement of case-by-case assessments with a focus on the offender as an individual.

Section 43 StGB (Austrian Criminal Code, translated by Schloenhardt, Höpfel, Strafgesetzbuch, Austrian Criminal Code 2021; with minor modifications)

- (1) When a person has been sentenced to a period of imprisonment not exceeding two years, the court has to conditionally suspend the sentence for a minimum period of one year and a maximum of three years, if it can be presumed that the mere prospect of the enforcement of the sentence, by itself or in combination with other measures, will suffice to prevent the person committing other offences, and that the enforcement of the sentence is not needed to thwart the commission of offences by others. In this context particular consideration has to be given to the nature of the offence, the character of the person, the degree of the person's culpability, the person's prior way of life, and the person's behavior after the offence.

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However, a detailed discussion of section 43 StGB (Austrian Criminal Code) and its implementation would go beyond the scope of this paper. Nevertheless, it can be said that this particular provision would allow a broad discussion, especially since the decision-making practice is primarily intuitive and based on an overall assessment by the court (Jerabek, Ropper, 2020: n: 19). This inevitably leads to inconsistencies. For example, decision-making practices diverge significantly between the east and west of Austria (Grafl, Haider 2018; Grafl, 2018; Schmoller, 2015).

### **3. Forensic Criminology, risk assessments and the prevention of recidivism**

In recent years an enormous amount of research in the field of risk assessments and recidivism rates has been conducted and various methods to assess recidivism risks have been developed. In a nutshell, these methods can be classified into three main categories, that follow different methodological approaches: 1. The intuitive risk assessment, 2. The statistical risk assessment 3. The idiographic risk assessment (see also Rettenberger, 2018 and Stempkowski, 2018 with detailed explanations and further classifications). The research and practice in the field is nowadays mainly conducted by psychologists and psychiatrists that predominantly work with standardized, statistical methods, like PCL-R, VRAG, HCR-20 or ILRV (see for example Rettenberger, 2016: 9; Rettenberger, 2018, Stempkowski, 2018).

Although these instruments show high indices of validity (Rettenberger, 2016: 10; Rettenberger 2018), one must not forget that not only every single false negative might cause great harm, but also every single “false positive offender”

experiences a severe encroachment of his/her liberty. The crucial thing though is that risk assessments can always “just” reflect statements of probabilities and never of certainties. However, we must aim to reduce the number of false positives as well as the number of false negatives to the best of our capabilities. With fundamental rights to life, liberty, and property as well as the ultimate goal of prevention in mind, the ideal sentence has to impose the least-intrusive risk-reducing intervention (see also Slobogin’s seven principles: Slobogin, 2011).

Thus, especially the use of intuitive methods (e.g., see Rettenberger, 2018 with reference to numerous, especially Anglo-American studies) is criticized by the research community but also the use of standardized, statistical methods is not uncontroversial. The core of the discussion about the use of statistics lies in the controversy whether an actuarial risk estimate derived at the group level can be applied to any individual (Bock, 2017: 206; Bock, 2019: 144 – 149; Scurich, Monahan, 2012). This raises concern on a moral, logical, mathematical, and legal level. Concerning the latter one could question if the application of assessments based on statistics fulfil the legal requirements e.g., under § 43 StGB, that directs the court to consider the individual, his/her character, previous life, and behavior to ultimately assess his/her risk and not the estimated risk of a group he/she might belong to. What’s more, algorithmic risk assessment tools are up and coming (see e.g., Cholahs-Wood, 2020). Especially in the United States such “risk assessment instruments (RAI)” (Cholahs-Wood, 2020), like COMPAS (Correctional Offender Management Profiling for Alternative Sanctions tool; see e.g., New York State Division of Justice Services, 2012) are on the rise. RAIs might promise consistency, accuracy, and transparency, but involve one common misunderstanding: contrary to widespread expectations data-based tools are not always neutral and objective just because they are based on data and not human, (more or less) subjective presumptions. A report on Algorithmic Risk Assessment Tools (Partnership on AI, 2019) in the US concluded three challenges that come along with the application of RAI in judicial decisions: “1. Concerns about the validity, accuracy, and bias in the tools themselves; 2. Issues with the interface between the tools and the humans who interact with them; and 3. Questions of governance, transparency, and accountability”. However, one of the fundamental issues of using statistical data (no matter if AI based or not) is the applicability of group-level data on individual determinations about an individuals’ life and liberty. Thus, there are significant voices in academia, that plead for an increased usage of idiographic methods (e.g., Bock, 2019: 151; Rettenberger 2018, 35).

Thus, this paper takes the opposite direction to this modern approach of statistic and AI based assessments and pleads for idiographic assessments. It will now present the key features (no in-depth methodological analysis) of a genuine

idiographic method, that leaves no doubt about its sufficiency in individualization: The MIVEA - Method of Ideal-Typical-Comparative-Case-By-Case Analysis.

The method is criminological and belongs to a field of criminology called “Forensic Criminology” or “Applied Criminology”. For some time now, the linchpin of Forensic Criminology is the Center for Interdisciplinary Forensics at the Johannes Gutenberg University in Mainz, Germany (see <https://www.zif.uni-mainz.de/>). This approach differentiates itself widely from other criminological streams that focus more on the “big picture” of the criminal justice system (e.g., on crime trends) (Bock, 2017: 31). According to Bock other criminological streams are mainly reflexive and constructive with regard to delegitimization of criminalization or mainly theoretical and statistical with regard to crime policy (Bock, 2007, according to Bock, 2019: 20; Bock, 2017: 186). Thus, Bock pleaded for a clear distinction between research that is mainly targeting the design and structures of the criminal justice system, and research on the individual offender in an individual proceeding (Bock, 2017: 31). Regarding the positioning of the method in relation to other criminological concepts, it can be said that the method on the one hand converges with other criminological concepts in some areas (regarding basic assumptions of developmental criminological theories, biosocial findings and models, structural pathologies), but on the other hand diverges strongly methodologically, since the MIVEA does not strive for a comprehensive general theory but focuses on the individual case (see in more detail Bock, 2019: 132- 135).

#### **4. Method of Ideal-Typical-Comparative Case-By-Case Analysis (MIVEA) – An introduction**

Forensic Criminology works from a case-related and communicative framework, and intends to support the criminal justice system by providing individualized risk assessments and individually “tailored” interventions for the prevention of recidivism of individual subjects in individual proceedings. Therefore, individual offenders must be acknowledged and examined not based on some statistics but as an individual within his/her “own “social relations”. According to Bock (Bock, 2017: 30) research designs that incorporate comparative studies are crucial. Thus, the method in question, the Method of Ideal-Typical-Comparative-Case-By-Case Analysis (MIVEA), was developed on the basis of an extensive comparative study (with follow-up examinations): the “Tübinger-Jungtäter-Vergleichsuntersuchung” (short TJVU). The TJVU study itself was developed by Hans Göppinger, a German criminologist, in the late 80s (see Göp-

ping, 1983). Within the study 400 men between the ages of 20 and 30 were examined. 200 of the probands were individuals that were incarcerated at the time of the study and who faced at least 6 months of unconditional imprisonment sentences. The other half of the probands (n=200) were men in the same age from the same area that were picked randomly. This sample represented no “comparison group” but the “average population”. Thus, within the group there were also men who have been previously convicted (23, 5%). The study itself did not intend to test particular hypotheses but was designed as an explorative study open for all possible outcomes (Bock, 2017: 32; Bock, 2019: 122).

It was an interdisciplinary study that aimed to examine the social behavior and the social surroundings of the respondents as precisely as possible. Therefore, the researchers applied a variety of research methods and gained an immense data volume through interviews, on-site inspections within the probands’ social environments, file analysis, psychiatric, medical, and psychological evaluations (Bock, 2017: 32; Bock, 2019: 122). Although the study resulted in the development of an idiographic method some methods used within the study had a nomothetic character, such as HAWIE (a German IQ-test) or even EEGs (Electroencephalography - measurement of electrical activity in the brain) (Bock, 2017: 32). However, the study was characterized by intensive narrative interviews that took place over many days (Bock, 2017: 32). Within these interviews the researchers collected extensive biographies of the individuals and an extensive data collection, not only on socioeconomic/sociodemographic facts, but data on the individual’s conduct under certain life circumstances. At the same time and in addition to these narrative interviews, files on the individual probands were examined (Bock, 2017: 32). The interesting part of the study was therefore not the analysis of the nomothetic methods, but of this extensive data collection covering the life course of the probands. What they did was to retrospectively create data entry forms based on items that were found in a large number of probands. These forms were retrospectively coded and analyzed in a quantitative manner. By doing so they found a variety of correlations but lost the individual proband in the process. Thus, they decided to examine the data in a more qualitative way (Bock, 2017: 35, Bock, 2019: 123) and what they found was exceptional.

They basically took the data left from these extensive interviews that could not have been used for the quantitative assessments as the information simply was not measurably in that way. The data however was the information that described the individual’s life and actions detached from such quantitative measurable facts, like broken home or class affiliations. Briefly said, they looked at the information that made the individual an actual individual. In doing so they examined infor-

mation on the individuals that contradicted expectations. For example, they examined individuals with a difficult family background who experienced all relevant burdensome factors that would expectedly lead to the commission of crime but did not act as one would have expected (Bock, 2017: 36). For example: Inconsistent parenting certainly correlates with future delinquency, but also a significant share of probands of the comparison group experienced a lack of parental control but did not commit crimes. The researchers therefore looked for facts that “made the specific difference”, in this case: the exploitation of this lack of control in a more or less strategic behavior (see the example given below, and for more detail see Bock, 2019: 123).

#### *4.1. Overview of MIVEA Case-Management*

Before getting into detail here is an overview of the work packages necessary for a MIVEA assessment (Bock, 2019: 157):

1. Exploration (interviews, files - biography)
2. Analyses (longitudinal and cross-sectional, strivings/values, comparison to ideal-typical criteria)
3. Diagnoses (longitudinal, cross-sectional, strivings/values, chances, restrictions)
4. Interventions (basic and individual; concrete interventions)

As a practical, criminological tool for intervention planning to reduce or eliminate the risk of recidivism, it can be applied at various stages by various practitioners with different backgrounds. Forensic criminology is relevant whenever decisions are (or should be) influenced by special prevention considerations. Therefore, it provides an instrument that could be used in the large number of decisions that court, correctional facilities or after-incarceration institutions (social worker, probation officers etc) have to make on a daily basis (Bock, 2019: 155, Bock, 2017: 99, 142).

#### *4.2. The longitudinal dimension*

What makes this method so special and exceptionally useful and valuable is the development of a scale of diametrical “ideal types”, which represent two opposite extremes. These scales set the boundaries for a spectrum of possibilities that secure the relation to the individual subject: K and R type. K ideal-typical conduct as an “extreme” incarnation of a conduct that “typically” fosters criminal conduct



and R ideal-typical conduct that “typically” hinders criminal conduct. This scale was developed based on the biographies provided by the probands and gives the unique opportunity not to simply categorize individuals to certain “good” or “bad” facts but to “rank” them in the range of the ideal-typical-scale (Bock, 2017: 38). By doing so they do not get pigeonholed because of certain facts or actions but can keep their individuality that is necessary for individualized risk assessments and individualized sentencing and interventions. It always focuses on the individual’s behavior in relation to his/her own background, talent, handicaps, life events etc. and about his/her behavior in his/her circle of life within the limits or chances of his/her life. In short, it is about the perpetrator as an “actor in his/her own environment” or “the perpetrator in his/her social relations” (Bock, 2017: 38).

The method covers the following areas, that must be evaluated during the exploration of the individual offender:

1. General social behavior: Focus on Childhood and Education (parental): handling of parental control/relationship to educators / handling of family duties and responsibilities

2. Area (local) of residing/spending time: locations, importance of the parental home, choices of locations and social inclusions at the locations, design of the living space

3. Performance in education and occupation (general interest, absenteeism, conduct, work performance, significance of the job, choices, attitude, conduct in case of job changes

4. Finances (manner of spending money, financial provision)

5. Recreational/Leisure Area (availability, structure)

6. Area of (social) contacts: family (attitude towards family and detachment), friends and other acquaintances (connection, choices, nature of the friendships/contacts), sexual contacts (choices of partner, use of contraceptives), partnership and “own” family (choices of partner, change of conduct, marriage etc.)

7. Delinquency (juvenile; occurrence, planning, participation, course of action/techniques, conduct after the crime).

When applied to an individual, these criteria necessarily vary in their individual shape. Thus, the criteria are constructed in a relational way and cannot be strictly operationalized. They must be applied in relation to the individual biographic context (e.g., single vs married family man). Therefore, a synopsis was developed, which describes the conduct in question in an abstract way so that it can be applied to all persons, in all conditions of life (individualization). (Bock, 2019: 125). In turn, this approach guarantees comparability, which is why it is irrelevant who the individual is or where he comes from (e.g., manager vs artist).

Below is an example (Bock, 2019: 192):

<b><i>K-ideal-typical</i></b> („K“= „Kriminivalent“ [german] – factors that encourage crime)	<b><i>R-idealtypical</i></b> („R“= „Kriminoresistent“ [german] - factors that resist/prevent crime)
Actively evades parental control	Accepts parental control
Or	Or
Exploits the lack of control in any possible way	Seeks connection to an orderly family (e.g., family of a friend) in the absence of an own orderly family
Deceives and cheats the educators or reinforces an inconsistent upbringing through clever tactics and by playing the educators (the educators cannot cope with that)	Is open to educators and does not take advantage of inconsistent upbringing
Consistently refuses to accept certain (age-appropriate) tasks and duties and evades responsibility	Voluntarily takes on age-appropriate tasks and duties or looks for an appropriate area of responsibility for which he feels responsible

### 4.3. *The cross-sectional dimension*

What they also found were “crime-relevant constellations” as a cumulation of factors found in distinct “areas of life” that indicate either a future lawful or unlawful conduct.

First, the constellation of crime relevant factors, that when occurring cumulatively, lead to criminal conduct: 1. Disregard of work and performance as well as family and other social obligations, 2. Lack of a proper money and property management, 3. Unstructured leisure behavior, 4. Lack of life planning. Second, the constellation of crime relevant factors, that when occurring simultaneously, prevent criminal conduct: 1. Fulfillment of social obligations 2. Adequate level of demand for one’s own life possibilities, 3. Attachment to an orderly home (and to family life), 4. Appropriate money and property management. (Bock, 2019: 125-126). The factors provided in this paper just reflect a framework. The method certainly provides a detailed description of these factors which is needed to decide whether and to what extent a factor can be determined (please see Bock for further details). This assessment is made within the cross-sectional dimension of the method. Therefore, a specific cross-sectional range must be formed that covers the period of time preceding the last criminal conduct. This interval can

reach from a couple of days to weeks or even months. Essentially, it depends on how long the individual's life pattern, from which the last offense occurred, has already lasted till the criminal conduct in question (Bock, 2019: 207). In this interval there should be no more changes in the living pattern. Thus, the cross-sectional-part of the assessment represents more a condition than a development, like the longitudinal part inheres.

At this stage the examiner should also reflect about potential internal and external aspects that might impose risks or chances in the life of the person. Internal aspects might be strengths/talents, graduation qualifications/certificates, drug abuse, mental or physical disorders/handicaps. External aspects might be seen in certain living conditions, contacts, work, debts (see 4.4. Strivings and value orientation). Also, if the individual was already incarcerated, the behaviour of the sentenced person while in custody might have prognostic value but must be considered differently as the method bases on factors that occur when living in freedom. Living in detention goes along with restrictions in behavioural options and completely different living conditions. The method can still be applied, but in a modified way (see therefore Bock, 2019: 253).

This cross-sectional assessment completes the longitudinal exploration of the individual and is the guarantor for the currency of the assessment and its results.

#### *4.4. Strivings and value orientation*

In order to define realistic interventions for the prevention of recidivism, the method requires assessment of particular intentions, strivings, relevancies and values that affect the individual's life and decisions. Strivings stand for those (personal, factual, local) factors, which are particularly important for the individual in his or her everyday life, which he/she cultivates most, which he/she neglects last and which he/she tries to maintain or obtain under all circumstances (e.g., drug addiction, family). Value orientation is about abstract principles and values (e.g., religion) that have hitherto determined the actions of the individual in everyday life situations (Bock, 2019: 213- 220). It is also described as a “personal coordinate system” (Bock, Schallert, 2021)

These strivings and values provide important information about potential chances and risks. The analysis of these chances and risks ensures that special aspects of the individual's case are considered when suggesting and planning interventions.

#### *4.5. Ideal-typical (progressive) forms – basic and individual prognosis*

Importantly, the method provides a tool to allocate the crime in the longitudinal life-course in order to provide a basic prognosis. Therefore, not only the longitudinal elicitation but also the strivings, values and the cross-sectional findings must be taken into account. Six ideal-typical (progressive) forms were developed. These forms are described in detail in the method's manual and are: 1. “Continuous development towards crime a) early-onset; b) late-onset; 2. Crime with social inconspicuousness; 3. Crime in temporal and sectoral social conspicuousness: a) Crime in the context of personality maturation b) Crime in crisis or 4. Continuous development towards crime resistance (Bock, 2019: 128). These forms provide the basis for risk assessments, as they give a (basic) indication of a positive or negative prognosis. An (basic) indication of a negative prognosis can be seen in form 1, a and b, whilst a positive prognosis can be seen in form 3a and to a maximum in form 4. Regarding form 3b, the prognosis is neither fully negative nor actually positive and regarding 2 there is no clear indication of a positive or negative direction. (Bock, 2019: 227-241).

In accordance with the idiographic method and the purpose of the ideal-typical (progressive) forms, the individual cannot “simply” be subsumed into one form. In fact, the method provides a framework that situates individuals in the range of this framework with rapprochements and differences to/from the ideal-typical forms. The individual recidivism risk can then be determined according to how close or far the person's life course is to one of the ideal-typical forms and what behavioral patterns, attitudes, or basic intentions this is due to. This provides vital indications for interventions.

### **5. CONCLUSION**

With respect to the right to personal freedom the ideal sentence should impose the least-intrusive risk-reducing intervention. As statistical, standardized methods for risk assessments raise a myriad of concerns, the author pleads for idiographic methods and presents an idiographic criminological method: MIVEA, the Method of Ideal-Typical-Case-by-Case-Analysis. This method represents empirically and legally viable assessments, that focus on the offender in his/her “social relations”. Through thorough explorations and ideal-typical scales that provide a range of individualization as well as longitudinal and cross-sectional analysis, the method offers vital indications for intervention-scenarios. MIVEA is a guarantor for completeness, currency, individualization and empiricism.

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