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## Harmful Effects of Imprisonment, Overcrowding in Prisons – Facts, Reasons, and the Way Forward

- **ABSTRACT:** *High prison occupancy – regardless of the type of violation – is a serious problem and a significant obstacle to reformatory, reintegrational, and educational work. Neither the negative side effects of imprisonment, nor the harmful effect of overcrowding are uniquely Hungarian, but according to Eurostat data on the prison population between 2015 and 2017, the highest level of prison overcrowding was observed in Hungary. What could be the reason for this? Are there any peculiarities that could serve as an explanation and that make domestic conditions so different? Can repressive criminal policy really be the cause, or strict sentencing practices, or new rules in the Criminal Code, such as mid-scale sentencing? Or will the change in civic attitudes and the associated criminal policy affect professionals? Is it that public security is becoming a political issue? Maybe historical roots or other objective reasons (such as the nature of the buildings) lead us here? This study seeks answers to this situation.*
- **KEYWORDS:** harmful effects of imprisonment, overcrowding, risk factors, criminal policy, sentencing practice, mid-scale sentencing, good practice, diversion.

*‘...what the punishment is: the society must have a goal in its hands,  
that punishment must be the coercive power of reason.*

*There is no purpose in vengeance,  
for there is no reason in it, only pure temper.’<sup>2</sup>*

*‘In recognition of the key aspect that the protection of society is the aim for that the criminal law there shall stand, and for that treatment to be followed against criminals is defined: according to the views of the Committee it is not simply in harmony with this aim, but is a necessary requirement to make personal development of prisoners the main purpose of prison*

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2 Szemere, 1841, p. 40.



*discipline. And for this goal to be achieved: hope must be made a more powerful spring than fear, and for this reason we must awaken hope in the bosom of the prisoner by the prospect of a reward for good behaviour and diligence; this reward can be either the shortening of the sentenced imprisonment, a gain after work or in the gradual easing of restrictions on leave.*<sup>3</sup> The First International Congress on the Prevention and Repression of Crime held in London in 1872 clearly advocated the importance of nurture. In this regard, the importance of maintaining moral forces and reasons was emphasized in making the offender capable of understanding the unlawful and harmful nature against society by their acts, and that during the crime prevention process real results can be achieved only with their active involvement: *‘Therefore every prison system should be directed to contribute to the prisoners’ efforts; because disciplines can never really work for the better if the will of the prisoner is not won.’*

Nearly 150 years have passed since the recording of the ideas unanimously adopted by the representatives of the states participating in the Congress, and the successful realization of these has depended on the offender who stands in the central focus of the measures. Has the world of prisons quintessentially changed over a few generations: the behavioural attitudes, emotional reactions, self-image, operating mechanisms (e.g. neutralization techniques) or the interactions of those convicted who are deprived of their liberty and possibly choice? And if so, in this light, has the enforcement of the detention become more effective, and has there been a decrease in the recidivism rate?

*‘So we can see’* – writes Péter Ruzsonyi – *‘that prison is axiomatically harmful for the detainees, but we must strive to reduce these effects as much as possible’*. In light of the questions above, this statement may seem less encouraging. *‘... it should be noted that the harmful effects of imprisonment – precisely because of the total nature of prison – cannot be completely eliminated and make the reintegration process significantly more difficult.’*<sup>4</sup>

Fact: Inevitably, offenders have been excluded from normal life experiences (possibly school, integration, peer group problems, failures, or victim experiences) before they reach the age of criminal responsibility, and thus cannot be blamed for their mental health, psychological and social disadvantages, psychosomatic symptoms, or neurotic reactions to situations. At the same time, they already fall within the influence of the criminal justice system, and thus there is a greater chance of eliminating those prison offences that can be managed by expanding the horizons of prison staff and developing their competencies.

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3 Tobiás Löw cites a unanimously adopted report by an executive committee of members of the nations represented at the Congress in London in 1872 in support of the progressive system: *A magyar büntetőtörvénykönyv a büntettekéről és vétségekről* (1878:5. tcz.) és teljes anyaggyűjteménye. Első kötet. Pesti könyvnyomda-részvény-társaság, Budapest, 1880. pp. 54–55.

For more information on the Congress, see Wines, 1873, pp. 185–187.

4 Ruzsonyi, 2015. p. 33.

## 1. Facts

Neither the negative side effects, nor the harmful effect of overcrowding are uniquely Hungarian. Nevertheless, special attention should be paid in the case of Hungary as, due to its nature, it directly or indirectly multiplies the other negative impacts of imprisonment, while at the same time its treatment seems to be a less complex issue.

In 2017<sup>5</sup> there was one prisoner per 865 EU citizens. This was the lowest ratio since the turn of the twenty-first century (116 detainees per 100,000 inhabitants). However, individual countries showed significant differences. For example, while in Scandinavia this ratio was around 50 – in Denmark 59, Sweden 57, and Finland 56 per 100,000 citizens – the ex-socialist member states also in the north were four times higher: in Lithuania 232, Estonia 207, and Latvia 193 detainees per 100,000 inhabitants. Hungary was at seventh place in this ranking, with a ratio of 177 detainees per 100,000 citizens. By 2020, the domestic situation has further improved: at this time the incarceration rate<sup>6</sup> was 167 detainees per 100,000 inhabitants. The inmate ratio per 100,000 inhabitants in OECD countries confirms the experiences so far; the Czech Republic, Poland, Slovakia, and Estonia are ahead of Hungary which is currently in eleventh place.

The inmate rate per 100,000 inhabitants is not the same as the occupancy rate of prison places. The latter case provides a more accurate picture of the conditions in which detainees live, as services (e.g. number of psychologists, sports facilities) are planned on a per-seat basis.

According to the Eurostat data on the prison population<sup>7</sup> between 2015 and 2017, the highest prison overcrowding was observed in Hungary (127.9), France (115.3), Cyprus (114.1), Italy (110.7), and Portugal and Belgium (110.5). Eighteen countries had some extra capacity or ‘empty cells’. It is important, however, to also point out that the domestic average rates also conceal any significant national differences; for example overcrowding is 152% in the Budapest Prison Service and 155% in Sátorajújhely high and medium security prisons.<sup>8</sup> Prison overcrowding varies – partly by institutions and partly by levels of criminal enforcement. In the year under review, for example a total of 7,253 detainees were being held in the five largest institutions – the Szeged High- and Medium Security Prisons, the Budapest-Capital Prison Service, the Budapest High- and Medium Security Prisons, the Szombathely National Prison Service and the Pálhalma National Prison Service. In 2017 these five institutions held more than 40% of the total prison population of around forty institutions in Hungary. However, a high number of inmates itself does not mean a high overcrowding rate.

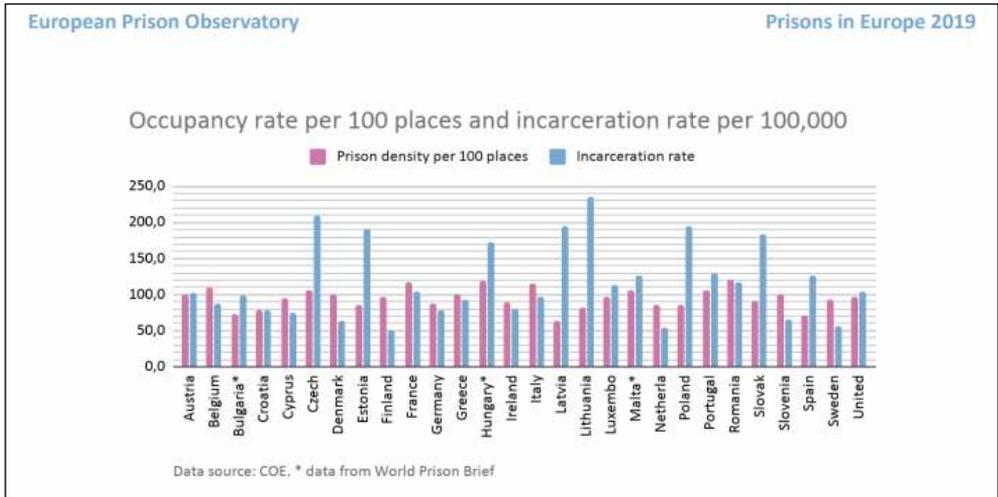
5 Prisoners by 100,000 inhabitants, 2017 (10/05/2020) Online: [https://ec.europa.eu/eurostat/statistics-explained/index.php?Title=File:Prisoners\\_by\\_100\\_000\\_inhabitants\\_2017\\_.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?Title=File:Prisoners_by_100_000_inhabitants_2017_.png)

6 Incarceration rates in OECD countries as of May 2020. In: statista (10/05/2020) Online: <https://www.statista.com/statistics/300986/incarceration-rates-in-oecd-countries/>

7 Eurostat. Statistics Explained . (01/05/2020) Online: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Prison\\_occupancy\\_rate,\\_average\\_2015-2017.png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Prison_occupancy_rate,_average_2015-2017.png)

8 Data referenced by Forgács, 2018, p. 230.

Hungary is one of the countries with the highest prison occupancy rate, and despite the decline in the number of inmates and other introduced measures, it is still at the forefront in Europe.



**Figure 1.** Prison capacity utilization rate

Source: *European Prison Observatory: Prisons in Europe. 2019 report on European prisons and penitentiary systems. p.8.*

It is worth noting that of the countries with the highest number of inmates per 100,000 inhabitants, only Italian and French institutions are among those with the highest overpopulation of prisons – although Belgium is not far behind the first group in this respect.

The utilization rate of prison places, as the previous example shows, does not automatically mean an actual breach of the relevant international treaties. This happens if the deprivation of liberty is in conflict with the provision of Article 3 of Chapter I (Rights and Freedoms) of the European Convention on Human Rights, which prohibits torture,<sup>9</sup> according to which, no one shall be subjected to torture or to inhumane or degrading treatment or punishment.

High prison occupancy – regardless of the violation – is a serious problem and a significant obstacle to reformatory work. Overcrowding affects everyone in the institution – whether they are connected to the system as a prisoner or as a professional. Such is the effect of dehumanization or depersonalization, which can occur on both sides and is a serious problem in reintegration activities based on individualization.

<sup>9</sup> Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4 November 1950.

Prison overcrowding not only increases the risk of psychological stress and psychosomatic, mental, and physical illnesses but is also a serious risk factor for interpersonal communication difficulties and, therefore, the proliferation of conflict situations which, if not managed properly, can lead to anxiety, frustration, aggression, deviant behaviour, and even violent behaviour against a person.

The risk of violence between detainees increases both directly and indirectly if they do not have sufficient private space. The findings of a domestic study suggest that ‘overcrowding is a significant problem in criminal enforcement area, which in itself creates a significant conflict-generating prisoner life situation.’<sup>10</sup> However, prolonged placement in a single cell also carries the risk of affecting the convicted person’s mental health.

A high overpopulation rate further means an objective security risk, which is increased further by psychological and physical increases in staff workload and a deterioration in their working conditions. This is a serious inhibitory factor to counter prison violence, while in these communities, latency<sup>11</sup> is particularly high anyway.

These negative impacts are strengthened by the extremely heterogeneous nature of the national prison population. This is reflected in the difference between the situations of those convicted and those deprived of their liberty due to other legal provisions, in the varying proportions of prisoners living in each of the prison levels, as well as in the specifics of the acts committed.<sup>12</sup>

In 2017 for example, 27.16% of inmates served their sentences in a maximum security prison, 42.24% in a medium security prison, and 4.42% in a minimum security prison. This ratio is similar to previous years and by 2018 had hardly changed (28.99%, 43.26%, 4.45%).

Typically, 80% of convicted persons are incarcerated in prison, while the proportion of community service, conversion of fines to imprisonment, confinement or criminal confinement, and placing in a psychiatric institution lags behind the number of (pre-) detainees.

The heterogeneity of convicted persons can also be described according to the different levels of threat against society, expressed in the varying durations of imprisonment. The proportion of those serving a relatively short period of imprisonment, that

10 This issue was partially addressed by the National Prison Service in examination No. 30500/5242/2017 about ‘Description of the mediation procedures used and possibly to be applied within the organization’. Described by Nagy and Dobos, 2019, p. 305.

11 There is a lack of trust in the institution; prisoners do not believe that they have access to real protection from the power of the others with an extensive system of relationships. At the same time, there is strong coercion to join a gang. All in all, this leads to a high degree of latency in intra-cell attacks. Thus, for example, in 2018, only 113 counts of serious bodily harm, 56 of coercion, and 29 of extortion were reported. In: Várkonyi, 2018, p. 17.

12 Thus, according to Péter Ruzsonyi, it is a constant threat that, for example, on 25 June 2015, the number of people sentenced to life imprisonment was 305, the number of people sentenced to life imprisonment without the possibility of parole was 49, and the number of ‘serial killers’ was 20; otherwise, those affected by imprisonment on 31 December 2014 have committed a total of 1,340 killings. See: Ruzsonyi, 2015. p. 28.

is, between one and three years, is 34%, while 17% serve between three and five years, and 25.6% five to ten years.<sup>13</sup>

## 2. Reasons

Domestic enforcement statistics have confirmed the high overcrowding rate for decades, but even international documents have shown that Hungary is among the leading member states in this respect; that is, there is no other country with such a high prison overpopulation rate in the European Union. This is true despite the fact that several countries are ahead of Hungary in terms of the number of prisoners per 100,000 inhabitants.

What could be the reason for this? Are there any peculiarities that could provide an explanation that make the domestic conditions in Hungary so different to other countries?

Can repressive criminal policy really be the cause? Perhaps there are strict sentencing practices, or new rules in the Criminal Code, such as mid-scale sentencing which are having an effect? Will the change in civic attitudes and the associated criminal policy affect professionals? Or is it that public security is becoming a political issue? Maybe historical roots or other objective reasons (such as the type of the buildings) lead us here?

Examples from other EU member states for any of these issues can be provided in the form of even more stringent solutions.

## 3. Repressive criminal policy, stricter penal policy?

The preventive or repressive nature of criminal policy approaches in themselves does not imply any value judgement, neither does it automatically generate overcrowding; in fact, it cannot really be identified with either the political right or left. While in the second half of the twentieth century the right wing shared mainly the findings of preventive criminal policy, this significantly transformed in the twenty-first century.

Preventive and repressive criminal policy cannot therefore be combined with any single political position, as all of these use the elements to varying degrees and over different periods. However 'neither is it true, that one is scientifically justified, appropriate for the ideals of constitutionalism and committed to humanism, and the other is proactive, denying the theory, populist, authoritarian and inhuman' – underlines Géza Finszter.<sup>14</sup>

Criminal policy consists of law enforcement, crime prevention, victim policy, and penal policy. Thus repressive criminal policy may be formed through a stricter

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13 Lévy, 2019, p. 111.

14 Finszter, 2003. p. 40.

penal policy. The justification of the current Criminal Code proposal places strong emphasis on policy tightening, citing the National Cooperation Program:<sup>15</sup> ‘the rigour of the law, the increase of sentences, the repeated use of life imprisonment, the protection of victims will curb criminals and make it clear to all members of society that Hungary is not a paradise for criminals (...) and consequently (...) strict laws are enacted that guarantee protection to all law-abiding citizens, but provide for effective and dissuasive punishment for offenders’.<sup>16</sup>

Is there consensus among experts on how strictly the practical implementation followed the (criminal) political messages? According to Mihály Tóth<sup>17</sup> the new code is ‘characterized not by a desire to innovate at all costs, not by a compulsion to break with previous principles and institutions’. Moreover, he speaks about ‘the moderate and inevitable correction of the former criminal code’. Miklós Hollán<sup>18</sup> refers to ‘reviewing the mitigations and restrictions it is not even certain that more criminal code provisions would be stricter than milder’. While Tamás Jávorszky<sup>19</sup> notes that ‘one of the most important requirements towards the new criminal code – in the light of the ministerial explanatory memorandum to the Act – is the rigour. Looking at some of the provisions of the General Part, we can see that this rigour applies indirectly and, in addition to the many changes that have resulted in more serious assessments, we find many provisions whose mitigating effect is indisputable. Examining each particular part of the state of affairs gives us a further nuanced picture’.

#### 4. Peculiarity of imprisonment – mid-scale sentencing and case law

It is often argued that the regulation of prison sentences is behind the high overpopulation data. The so-called mid-scale sentencing is neither unique nor unprecedented in the history of Hungarian criminal law.

The first Hungarian Criminal Code, Act No. 5 of 1878 states: ‘When imposing *penalties* both the aggravating and mitigating circumstances that have influence on the degree of guilt should be considered’. With regard to the provisions which may be regarded as a precedent of the model of mid-scale sentencing, Löw asserts that the Csemegi Code ‘may provide for a penalty for the offence between two to five or three to five years. As a result when imposing penalties, and in accordance with the instructions contained in Sections 88 and 89, the rule is that in general, if neither aggravating nor mitigating circumstances exist or are mutually balanced, the median between the maximum and the minimum is the time to be determined for the duration

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15 National Cooperation Program. work, home, family, health, order. Office of the National Assembly (document number: H/47) 22 May 2010 Online: <https://www.parlament.hu/irom39/00047/00047.pdf> (01/06/2020).

16 Hollán, 2017. p. 366.

17 Tóth, 2013, p. 534.

18 Hollán, 2017. p. 357.

19 Jávorszky, 2013, p. 64.

of the sentence. So if two to five years of punishment is determined by law, in this case three years and six months will be pronounced by the judge. This number may be increased for five years due to aggravating circumstances or for two years due to mitigating circumstances'.<sup>20</sup>

The provisions came back into criminal law from 1 March 1999, after the current governing party's election victory (known as the first Orbán government), as the explanatory memorandum to Act No. 87 of 1998<sup>21</sup> states that 'legislation on sentencing method means sharing competence between the legislature and the judiciary. The more legal constraints may allow for the development of a more coherent case law, greater legal certainty as to broadening the possibilities of judicial discretion. At the same time, undifferentiated judgement necessarily results in injustice while assessing life phenomena with large differences. There is a need to ensure judicial discretion and free operation, which the law keeps within certain limits, and the court is not completely without legal support for its activities within these limits'.

Accordingly, Section 83 of Act No. 4 of 1978, the Criminal Code in force at that time, declared that '(2) Where a sentence of imprisonment is delivered for a fixed term, the median of the prescribed scale of penalties shall be applicable. The median shall be set like half of the sum of the lowest and highest penalties to be imposed [and] shall be added to the minimum penalty threshold'.

The provision has neither made the penalty system absolutely definite, nor narrowed the margin of judicial discretion, or resulted in sentencing constraints. According to the authors, this provided more clues, a 'realistic basis of reference' for considering statutory rules and other mitigating and aggravating circumstances. That is, 'nothing precludes (nor will preclude in the future) the court from comparing and evaluating individual circumstances at its own discretion, since the circumstances will still not be exhaustively listed or weighted at the statutory level'. However, exhaustive reasoning was a condition; although this is a natural and legitimate expectation from the point of view of both those involved in the proceedings and society and also important as a guarantee, it indirectly not only helps to curb unjustified disparities in sentencing practices but also increases citizens' trust in criminal justice.

The explanation of the law also refers to the fact that nothing other than the principles connected to the imposition of penalties established at statutory level are supplemented with the aspects that already exist in the judicial practice.

Following the 2002 elections, the new socialist-liberal government (lead by Medgyessy and then Gyurcsány) amended the Criminal Code again. Act No. 2 of 2003 which amended the criminal legislation and certain related laws did not share the principal considerations on which Act No. 87 of 1998 was based regarding the

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<sup>20</sup> Löw, 1880, p. 71.

<sup>21</sup> Explanatory memorandum to Section 1. In: T/25 számú törvényjavaslat A Büntető Törvénykönyvről szóló 1978. évi IV. törvény módosításáról. (Előterjesztők: Fidesz – Magyar Polgári Szövetség Képviselőcsoportja és a Kereszténydemokrata Néppárt Képviselőcsoportja) Budapest, 2010. május Online: <https://www.parlament.hu/irom39/00025/00025.pdf> (1/6/2020)

question of sentencing.<sup>22</sup> In particular, neither the view that crime is expected to reduce with more stringent penalties, nor the view that fundamentally seeks to reorganize the traditional proportions that have developed between legal regulation and judicial individualization in the recent history of Hungarian criminal law.

The Act repealed the provisions, with the exception of paragraph (1), concerning the imposition of penalties, including the provisions on the median of the prescribed scale of penalties [Section 83 paragraphs (2)–(3)]. The aim of these amendments – as explained in point I.5. – is to ensure the correct ratio between statutory definition of penalties and freedom of judicial discretion, as well as guarantee that prison sentences are only imposed by the courts in cases when the penalty goals set in Section 37 of the Criminal Code cannot be realized through other means. The problem of the high overpopulation of prisons has already appeared in the explanatory memorandum, as there was also a stronger emphasis on the ‘ultima ratio’ nature of custodial sentences.

In 2010, the conservative parties led by Viktor Orbán were returned to power and the second Orbán government (the ‘Government of National Cooperation’) passed Act No. 56 of 2010 amending Act No. 4 of 1978 of the Criminal Code, reintroducing the principle of mid-scale sentencing. ‘Section 83 paragraph (2) Where a sentence of imprisonment is delivered for a fixed term, the median of the prescribed scale of penalties shall be applicable. The median shall be set like half of the sum of the lowest and highest penalties to be imposed shall be added to the minimum penalty threshold’.

The general explanatory memorandum for the amendment stipulated that ‘(The) voters will manifested in the 2010 general elections clearly obliges the National Assembly that criminal policy measures drafted in the election programs and supported by the voters<sup>23</sup> should become law as soon as possible’. The political motivation of this conforms to what has previously been declared: ‘it gives legislative interpretation for the correct application of the penal system of the Criminal Code’.

Act No. 100 of 2012 (our Criminal Code currently in force) maintains the legal institution in connection with penalty imposition.<sup>24</sup> Section 80 states that ‘(2) Where a sentence of imprisonment is delivered for a fixed term, the median of the prescribed scale of penalties shall be applicable. The median constitutes half of the sum of the lowest and highest penalties to be imposed’.

In connection with the mid-scale sentencing pattern – in addition to the characteristic appearance of the opposing professional (political) conception – it is interesting

22 General explanatory memorandum to the draft amendments to Criminal Law and Certain Related Laws. I. Act No. 4 of 1978 on amending the Criminal Code, Item 5 In: T/1218. számú törvényjavaslat a büntető jogszabályok és a hozzájuk kapcsolódó egyes törvények módosításáról (Előadó: Dr. Bárándy Péter igazságügy-miniszter) Budapest, 2002. október Online: <https://www.parlament.hu/irom37/1218/1218.htm> (1/6/2020)

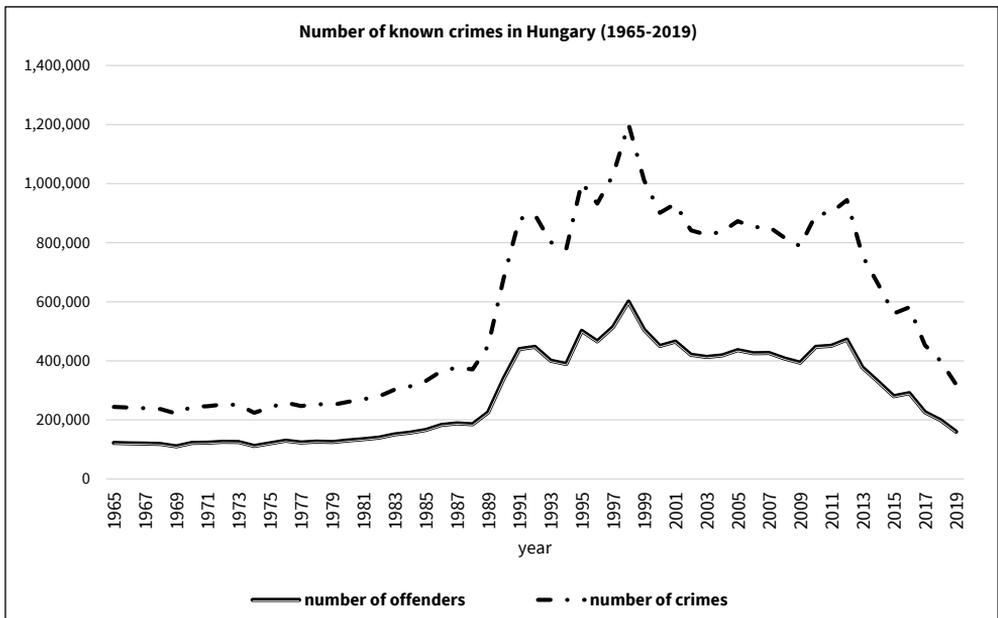
23 The ‘three strikes’ rule, already in force in several US member states and the EU member state Slovakia, has been introduced as an amendment backed by hundreds of thousands of citizens’ signatures. The legal institute means a significant increase in the punishment of repeating offenders who commit a series of violent crimes against a person, which in the most serious case could be life imprisonment.

24 The law is also related to the previous regulation (see Section 80 of the Criminal Code).

to explore to what extent this has affected the judicial practice; could the existence of the provision have led to overcrowding in prisons? It is worth referring here to the explanatory memorandum of Act No. 2 of 2003. According to the proposal for this law made by the Minister of Justice, Dr Péter Bányai stated:

‘[I]n our country the number of crimes [which] became known increased over the past two decades at an alarming rate, and also adverse changes have taken place in the structure of crime. The number of convicted persons increased, while the sentencing practice of the courts became restructured. In international comparison, crime data in Hungary regarding most of the offense-groups designate our place in the European [at] middle-rank. In the penitentiary practice of the courts, the reorganization was in favor of penalties not involving actual deprivation of liberty. At the same time, the number of detainees has been steadily increasing since 1995, reaching 17,275 in 2001. This means [there are] more than 170 detainees per 100,000 inhabitants and [this] is high in European comparison; the European Union average is around 80 per capita. The Hungarian prisons are overcrowded, the creation of new places in this field has not been able to bring about a fundamental change either. The degree of overcrowding has been described in the literature as “difficult” and “worrying”. This rating is given to countries with more than 150 convicts per 100 places.’

During that period – from 1994 to 1998 – the country was led by the socialist-liberal Horn government; that is, even without a change in criminal policy attitudes, the case law has become stricter regarding the enforcement of custodial sentences.

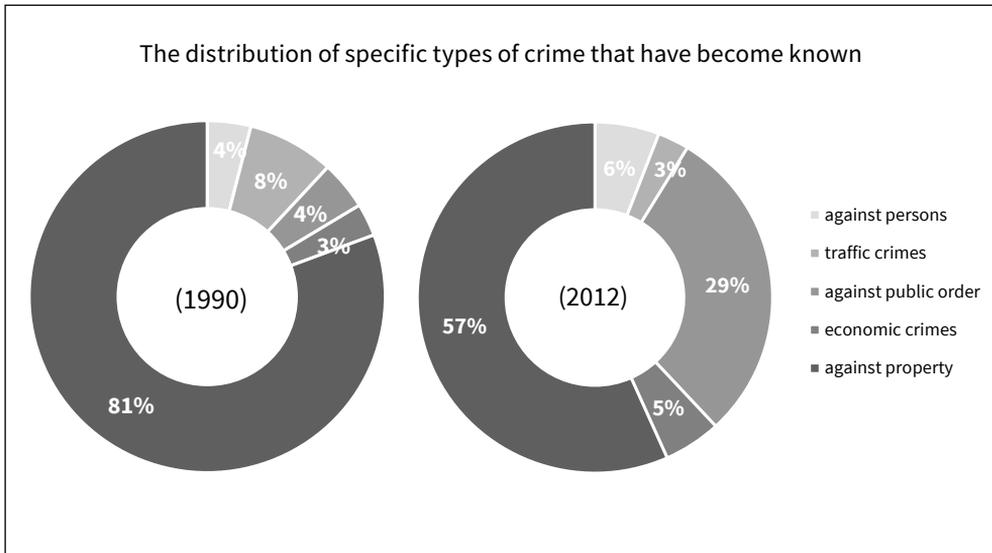


**Figure 2** Number of known crimes in Hungary (1965–2019) (Source: own editing)

Since the change of regime, that is, from 1989–90, the number of known crimes has increased significantly. The number of known cases in 1979 was 125,267, which had increased by 1985 to 165,816, in 1989 to 225,393, and in 1998 already 600,621 cases were reported. As the number of delicts against high-latency assets have risen in particular, this means the ‘tip of the iceberg’.

If the value measured in 1979 is considered to be 100%, the number of known infringements rose to 479.5 % by 1998. All this is accompanied by the fact that while the number of known delicts per 100,000 inhabitants was 174.8 in the last year before the change of regime, by 1998 it was already 592.6!

Not only has the absolute number and rate of crime increased, but so has criminal activity. ‘However, data on successfully detected cases show that in 1979 there were 122 crimes per 100 offenders, and in 1998 there were already 225 crimes’.<sup>25</sup>



**Figure 3** The distribution of specific crimes that have become known (Source: own editing)

There has also been a significant rearrangement in the structure of crime. The proportion of crimes against property (which means less danger to society) has been steadily declining, while the proportion of behaviour of a more dangerous nature or stricter social judgement has increased.

Thus, the proportion of attacks on a person, crimes causing a major social conflict, white-collar or economic crimes causing major damage or property damage, and crimes against public order that significantly undermine citizens’ sense of public security have solidly increased; the latter from the former 4% to 29%.

<sup>25</sup> Vavró, 2000, p. 24.

All these processes, even without the restrictions of criminal policy, affect case law for objective reasons. But can the growing number of custodial sentences being carried out in itself lead to overcrowding in prisons?

Based on ten years of court statistics, it can be stated that ‘the increase in the prison population cannot be explained by the supposedly increasing proportion of those sentenced to imprisonment’.<sup>26</sup> Within the total number of convictions, the proportion of those sentenced to imprisonment – albeit to a very small extent – has been increasing every year. This, however, is not commensurate with the growth rate, which can be observed in respect of the imprisoned. Compared to 2010–2016, this rate increase is 1.1%, while for those who actually serve prison sentences, it is 5.5%. This is possible if the duration of the imprisonment has increased.

Nevertheless, it is worth noting that domestic sentencing practices have often been criticized by professionals. Among others, László Fayer, condemns judges for long-term custodial sentences, stating that ‘The Hungarian Criminal Code is a strict code. The judicial practice, which is well established on the basis of this, is even stricter than the code itself. It is undoubtedly strict for Hungary, while it transferred the very mild, rather patriarchal justice that was typical before 1880 to be strict to the letter at once and without any transition. Our courts do not appreciate enough the harm of long-term custodial sentences’.<sup>27</sup> He considers such punishments to be dangerous, as

‘[...] most crimes stem from a lack of self-discipline and willpower. And there is no opportunity for strengthening in prisons. Where everything is done by command and direct means of power [to] ensure obedience, there is a constant weakening of character. The long-time imprisonment therefore utterly dulls and breaks the men and when released from captivity they are unable to cope with the difficulties of free life and withstand temptation. It follows that the judge must examine the question of punishment with the utmost care so as not to impose more than is absolutely necessary, for the state destroys its own foundations when it renders its citizens incapable of bearing the burden of social order. The courts miss this when they keep in mind neither the man, nor the states aim of punishment, but only the committed act, the forceful reaction and the text of the law’.

## 5. Change in attitude? Or the strengthening of civil criminal demand

Repressive criminal policy is also present in the European Union; although its prevalence in criminal law varies and, in European terms as a whole, it lags significantly behind the US, which serves as a classic model. Developments in European societies have led to citizens’ feelings of insecurity and a desire for order being more strongly

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<sup>26</sup> Tóth, 2018, p. 108.

<sup>27</sup> Fayer, 1889, pp. 12–13.

expressed, which is partly due to rising crime figures and partly to a loss of trust in public institutions, heavily and negatively influenced by the media.

Fear of crime may have been heightened not only by public security characteristics supported by actual statistics; as the fourth estate mainstream media has clearly had a distorting effect on perceptions of the criminal situation. The rise of the Internet, apostrophized as the fifth estate, has even further eroded the still existing order of values and norms in everyday life. As a direct consequence, there is a real need for protection against crime, which is articulated by citizens towards the state which it could not and did not want to assume.

The media has played a significant role in raising awareness of so-called enemy criminal law<sup>28</sup> in both the US and Europe. The essential difference from civil criminal law is that while a perpetrator who is the subject of criminal proceedings is entitled to the presumption of innocence and other procedural and human rights guarantees, enemy criminal law considers the perpetrator as a risk factor endangering society. Thus, the community's right to defence takes precedence over the perpetrator's rights. In this way, the subject of the proceedings becomes the object of it against whom – in view of the potential risk factor – there are no obstacles to taking action. States governed by the rule of law basically apply civil criminal law, but various events or causes can knock processes off balance. Such was 9/11, but several steps in this direction can be observed in other countries during the action taken against ISIS as a result of the terror attacks sweeping through Europe. Functioning as a security state requires stricter action, which also affects criminal law and sentencing practices.

Although the explanatory memorandum for our current Criminal Code highlights certain groups of perpetrators (e.g. violent multiple recidivists) to whom it allows for strict action, both the Criminal Code and Act No. 90 of 2017 make provision for substantive and procedural law guarantees. Our Code of Criminal Procedure specifically mentions the fundamental right to a fair trial, an effective and reasonable time limit, and the obligation to ensure that the truth is established by the state exercising exclusive criminal power. Thus, it can be said that in Hungary, despite the stricter action against perpetrators who particularly pose a greater danger to society, enemy criminal law has not gained ground.

## **6. Raising the issue of public security on the political scene**

The changes were driven by the rise of public security as a political issue and, in part, by the perceived needs of citizens (potential voters). In this respect, Hungary is also a good example of the possible subordination of professional policy to current politics.

In her work, Klára Kerezi shows with numerous concrete facts that while criminal policy changed is emphasized by the change of governments as well as regimes,

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<sup>28</sup> See this in more details: Nagy, 2016. p. 16.

in the period between 2002–2010 the left-liberal government significantly altered its criminal political convictions as a result of the activities of opposition parties in this field and public interest.<sup>29</sup> (Tibor Draskovics, candidate for Minister of Justice and Law Enforcement: ‘if we stick to the slogan of “three-strikes”, then I think that in the current situation, not three, but at least thirteen strikes are needed’.<sup>30</sup>).

The advancement of the political approach is reflected in the National Cooperation Program (Nemzeti Együttműködés Programja – NEP), which was launched after the election victory of the second Orbán government in 2010. Although the number of criminal offences in 1998 had dropped by the second half of the 2000s, citizens’ sense of public security deteriorated significantly. In particular, a greater number of attacks were perpetrated in smaller towns (some by children and young people) within offence value or against property of lesser value, to which the state although responded by its own means, but were not visible or traceable to the society and did not improve the security situation, too. The media have consistently reported ‘intolerable’ situations, as well as violent behaviour against property (robbery, pillaging), or crimes mainly against single elderly people (driven by profit considerations or committed with particular cruelty). Naming the supposed or actual responsible people who escape conviction has stimulated intolerance, encouraging certain sections of the population to either take direct action or, in the absence thereof, to express sympathy with those who did so. This resulted in several political parties and other groups becoming involved in events.

In response to this situation, the new government promised a number of changes, ‘tidying up’, and strict action. Political messages concerning criminal policy included equality before the law, strong, respectable laws, the exclusive right and opportunity of the state to restore order, the right to protection for all, and laws to protect victims.

Many of the promises came about and the idea of austerity was disseminated so well that professional discussion about the current Criminal Code as the strictest in Europe ensued.<sup>31</sup>

At the same time, mitigation, which further served the implementation of the dual-track criminal policy, although not in the focus of interest can also be found in examples. It may seem that outlining this one-sided image could not have run

29 Thus 1990–1994 conservative government had a liberal criminal policy; 1994–1998 had a socialist-liberal government with a drifting criminal policy; 1998–2002 had center-right governance with hardline criminal policy; 2002–2006 saw a socialist-liberal governance with a dual track criminal policy; 2006–2010 had a socialistliberal governance, followed by social justice, THEN a tightening of policy (‘Light and Shadow’). See more on this: Kerezsi, Klára: Kriminálpolitikai törekvések és reformok In: A rendszerváltás húsz éve: állam, jog, társadalom. In: Jogtörténeti Szemle, 2010/2. pp. 57–60. The reason: the opposition at the time regularly spoke out about the poor public security situation, forcing the government to respond increasingly decisively. (This was because while the opposition proved the need to introduce the three strikes, Tibor Draskovics had already spoken of 13 strikes.)

30 Minutes of the meeting of the Parliamentary Committee on Defense and Law Enforcement held on Wednesday, 15 April 2009 at 9 am in the 93rd room of Parliament. HRB 6/2009. (HRB 1-89/2006–2010.) (6/5/2020) Online: <https://www.parlament.hu/biz38/bizjkw38/HOB/0904151.htm>. See also: Csemáné, 2012. pp. 2–3.

31 Weidinger, 2020.

counter to the will of the government either. As Miklós Hollán ironically remarks: the numerous mitigating amendments or new legal institutions<sup>32</sup> ‘... have not been given such a prominent role in the general explanatory memorandum, as it is not referred to in the NEP, and it can be much less... exchanged for political benefits’.<sup>33</sup> That is, the symbolic messages regarding austerity did not distort the Criminal Code, causing an outstanding level of imprisonment.

## 7. A common heritage – the specificities of the countries of Central-Eastern Europe

International criticism of prison overcrowding has often focused on Central-Eastern European countries. This, in turn, has also increasingly raised the issue of the execution of a custodial sentence. The data show that although the proportion of prison population is the highest in the successor states of the former Soviet Union, it is also high in former socialist countries, such as Poland, Slovakia, the Czech Republic, and Hungary, compared to Western European countries – however, the ‘number of people affected by custodial sentences in Europe now exceeds the number of people serving prison sentences’.<sup>34</sup>

In light of the number of convictions, the interesting question is whether there are any common roots among the former socialist countries? In fact, almost every state in the region has an extremely high prison population rate above the EU average. A common explanation for this is that these countries define suspended imprisonment often as an alternative to effective imprisonment, and in addition to this type of penalty, other legal consequences (e.g. fines or various community sanctions, restorative measures) play only a background role. This significant discrepancy, experts say, could be the result of a rapid increase in crime accompanied by political, economic, and social transformation. However, this fact alone cannot explain the deviation from Western European characteristics. In this, elements of the inheritance of professional ideologies and the former, particularly strict, crime control policy may play a more prominent role<sup>35</sup> and the fact that ‘the greater the degree of inequality that characterizes a society, the stronger its indicators of punitivity’.<sup>36</sup>

32 For example, in the case of the daily amount of a fine, a lowering of the minimum limit or an earlier determination of the earliest date of parole from a fixed-term custodial sentence. Overall, the latter may be a more favorable option for more perpetrators than the number of offenders who may encounter an increased qualified case-by-case penalty limit for certain specific facts (e.g. counterfeiting).

33 Hollán, 2017. p. 357.

34 Lévy, 2019, p. 119.

35 A detailed derivation of this through the Polish example is presented in the study by Krajewsky Krzysztof “Punishment in Poland: Attempts to Reduce Punitivity”, which is described by Miklós Lévy. In: Lévy, 2018, pp. 602–604.

36 Borbíró, 2011, p. 80.

What is also of interest to professionals behind the higher prison population in Central-Eastern European countries is to what extent a punitive practice that appears to be stricter, but with a different focus has the support of the public, and to what extent can its attitude towards sentencing influence this fact? To what extent could the impact of the shock experienced during the period of regime change in the countries of the said region play a role in an increase in the demand for punishment? In addition to newly introduced negative phenomena affecting a significant part of society (e.g. unemployment, unstable working and living conditions) (or against them), there has been a spectacular enrichment of the few who do not follow the rules (or for whom they are flexible), ineffective operation by the police and the judiciary (with ethically and/or legally questionable privatizations and contracts, 'oil-bleaching' cheated government support, 'bankrupted' businesses) and a high level of disappointment resulting in total mistrust.

## 8. Not new and not unique?

Fact: Among the citizens of Central-Eastern European countries, Hungarians have experienced the worst regime change, and what is also true is that the turnaround has negatively affected the greater part of the population. However, this still does not provide an answer to the examined question: can there be any other reason for the exceptional Hungarian statistics?

'Our prisons housed 2,674 more individuals than the capacity to accommodate. Yet the average figures show the situation partly even more favorable than it was in reality at the time, as the number of detainees in the winter period far exceeds the full-year average. In such cases, the overcrowding of prisons is even clearer than it seems by the average number of prisoners per year'.<sup>37</sup> (Revealed by the head of the Royal Hungarian Statistical Office, József Jekelfalussy in his work titled, 'The State of our Prisons. 1872–1886'.) Examining the number and location of prisons, the institutes and their equipment, the amount of air cubic metres per prisoner, ventilation, lighting and heating, and the quality of drinking water, explain the impact of these factors on the health of prisoners. Significant investments have been made during the reviewed fifteen years, but as the number of prisoners has increased, no significant improvement could be identified.<sup>38</sup>

The 'overstuffing' of maximum, medium, and minimum security level prisons, which was considered a serious problem almost 150 years ago, has generated continuous criticism and professional debates in Hungary. 'There are 30% more individuals placed in our institutions than could reasonably be accommodated with the most primitive needs; that due to overcrowding, employment cannot be established in many places; that the age classification established expressly by Section 86 of the Criminal

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<sup>37</sup> Jekelfalussy, 1887.

<sup>38</sup> Kovacsicsné Nagy, 2006, p. 88.

Code, in most places it is impossible to think of; that even remand prisoners are mixed with convicts'.<sup>39</sup> László Fayer lists the problems. Thus, in addition to the general problems, overpopulation has so far hampered the implementation of the guarantee rules of criminal procedure.

The capacity of prisons and the degree of overcrowding also depends on the nature of the institution. From the exposition in the House of Representatives on 29 May 1889 by the Minister of Justice Dezső Szilágyi,<sup>40</sup> it transpires that institutes for enforcement of 'freedom-penalties' are different both in the sense of control, material conditions, and other characteristics. Institutions supervised by the Attorney General's Office were not characterized by overcrowding, while institutions subordinate to the ministry made it impossible to enforce statutory custodial provisions such as segregation.

Has this difference between the two groups of prison institutions persisted to this day? Although the organization is now unified, it is a fact that national and regional institutes ('serving houses') are more likely to house convicts, while county-level institutes are more likely to house detainees.

## 9. Objective reasons

There is also a difference in the objective characteristics of each institute. Most of today's institutes, especially at county level, were built mainly as a result of work initiated under the influence of the Csemegi Code, and their function was primarily to serve the work of the judiciary. Therefore, as the venues for court work were usually the generally imposing buildings of the cities in a central location, most of the institutes are located in the city centre. For example, in 1884 the Pécs Royal Detention House, in 1891 the Nyíregyháza Royal Detention House, and in 1904 the Kecskemét Tribunal Palace and the Tribunal Detention House were opened; then the Hungarian Royal Tribunal and the detention house in Szolnok were built around 1895, the Royal Tribunal Detention House with the Royal Judicial House around 1906–08, and the Sátoraljaújhely Royal Judicial House in 1905, although in Győr the institute also operated from 1886. After the great wave of institution building, examples from the 1930s, 1950s, etc. of buildings being handed over can also be found, but their number was significantly lower than before.

However, as pointed out by Péter Ruzsonyi, the disadvantage of the beautifully renovated, imposing buildings from the outside is that '[The] contemporary architectural philosophy reflects the penal philosophy of the time (typically large-space cells designed to isolate prisoners from each other). The transformations of the first hundred years were almost without exception aimed at increasing the number of people that

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<sup>39</sup> Fayer, 1889, p. 10.

<sup>40</sup> Szilágyi Dezső, Minister of Justice exposé made for the House of Representatives (29 May 1889) cited by Fayer, 1889, pp. 10–11.

could be accommodated; the improvement of hygienic conditions, ventilation and the creation of free space were only multifaceted aspects'.<sup>41</sup>

However, at the time of being built, they were modern and represented a major shift from previous conditions and circumstances. Jekelfalussy praised the legislature's break with the medieval conception of seeing prisons as 'places of horror, the graves of the living'.<sup>42</sup> It has defined as an important goal that they should be designed in both their structure and internal equipment so as not to be harmful to the physical and mental health of the prisoners in accordance with the Csemegi Code.<sup>43</sup>

The poor system of objective conditions and obstacles to further development affect the living conditions of the detainees, such as providing detachable water blocks or limited periods outdoors. The absence of these could easily justify a violation of Article 3 and the liability of the state.

## **10. Opportunities for progress – good practices, successful programmes, paradigm shift**

The Hungarian penitentiary system has long been committed to performing its task even more effectively. Thus, numerous good practices in both codification and other activities can be linked to the institutional system.

The largest and most complex crime prevention project in Hungary was launched in 2010 with the Ministry of Interior as project owner and in collaboration with its consortium partners (the University of Miskolc, the Judicial Service of the Ministry of Administration and Justice, the National Prison Service, and the Employment Services of government offices in Baranya County and Jász-Nagykun-Szolnok County). The 'TETT programme for the victims and the perpetrators', that is, 'The methodological basis for strengthening social cohesion through crime prevention and reintegration programs' is a prioritized project (Social Renewal Operational Program 5.6.2. 10/1-2010-0001) and was realized with the support of the European Union, co-financed by the European Social Fund.

The multi-module, mutually reinforcing, practice-oriented project involved all actors relevant to crime, thereby increasing social cohesion and supporting reintegration and crime prevention. The training module provided goal-oriented, multi-level output, presence and online training about community crime deterrence as well as the prevention of the victimization of offenders of children and young people, new directions for victim assistance and reintegration of offenders for both professionals and their supporters, facilitators, and representatives of relevant organizations or the

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41 Ruzsonyi, 2015. p. 27.

42 Kovacsicsné Nagy, 2006, p. 88.

43 This was not always the case and would have required a lot of money. However, the author dealt with this as a personally special issue, creating a detailed database of light and dark, dry and wet, and well-ventilated and non-ventilated prison rooms.

alarming system. The mixed groups provided an opportunity for professionals and volunteers with various qualifications related to crime, crime prevention, and victim assistance to become familiar with each other's work, and to establish living relationships between them, on which they could also rely during the course of their work.

A voluntary victim support network covering three regions has been set up as part of victim support services, including a 24-hour helpline with the support of volunteers for home help, or with the contribution of a psychologist. Victims are also given the opportunity to participate in various alternative conflict resolution procedures. Programmes for perpetrators have not been limited to vocational training and social inclusion programmes; for those convicted with conditions the Green House in Miskolc operates a Community Activity Room where programmes are organized with an aggression manager, team builder, etc. Group activities have been organized for convicts to enforce community service punishment in a more effective way (e.g. in wildlife parks, schools), primarily on a community compensation basis. As part of the social and labour market reintegration of prisoners, competence-building trainings are held in the same way as family group conferences or mediation meetings but, in addition, they also receive reintegration and aftercare support and attempts have been made to provide them with employment by the time of their release. All this complex work has been complemented by research and studies to explore quality assurance and performance indicators with follow up, as well as the supply of methodological guides, protocol descriptions, textbooks, information materials, methodological films, etc.

Among the numerous overlapping projects, we can highlight the project EFOP-1.3.3-16-2016-00001, Reintegration of Prisoners<sup>44</sup> which was launched jointly by the Ministry of Interior and the BvOP.<sup>45</sup> The aim of the HUF 4.2 billion EU-funded programme is to strengthen the social and labour market reintegration of convicts and pre-trial detainees, thereby reducing the risk of recidivism. Continuing the practices of the previous project, the aim is to prepare detainees for the labour market and social reintegration with support before their release.

Legislative amendments relating to the reintegration custody have also further expanded the work of probation officers in law enforcement.<sup>46</sup> The results are very positive: 82% of those currently under probation and aftercare are employed with the assistance of probation officers. (In 2017, there were 1,201 people involved in the public service, while in 2018, this number had reduced to only 566.)

A number of other tools have also been developed that directly and indirectly affect the prison population. During the development of the Predictive Measuring Tool (Prediktív MérőEszköz – PME),<sup>47</sup> an infrastructural background suitable for recording PME data was created, so in 2017 the data of 1,600 people were recorded

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44 Várkonyi, 2017, p. 24.

45 BvOP – National Prison Service.

46 Várkonyi, 2017, p. 26.

47 Várkonyi, 2017, p. 29.

(increased to 5,249 in 2018<sup>48</sup>), the analysis of which has resulted in the development of professional standards for detention risks and the ability to classify those concerned into risk groups. The Risk Analysis and Management System<sup>49</sup> was introduced to domestic practice by Act No. 240 of 2013. Its two main elements are the assessment of individual detention risks and the provision of risk management programmes that respond to them. In the affected prisons, 150 reintegration officers and social assistants have received training on drug prevention, aggression management and assertiveness (self-assertion) programmes. The involvement of convicts in programmes is ensured on an ongoing basis.

With the Secretariat of Prisoncursillo,<sup>50</sup> the cursillo course was launched in 2017 in five institutions with ninety-five inmates participating, with the aim of providing Christian-based support for their individual moral development, and the development and strengthening of family and social relationships, in addition to community building.

Equally important competence development programmes could be implemented by the National Crime Prevention Council.<sup>51</sup> For example, 370 art therapy programmes took place in 2017 involving 5,880 detainees, while a right brain drawing course was organized for both professionals and inmates. The success of this is evidenced by the fact that a total of 943 people attended the 828 courses. The third National Prison Theater Meeting in the summer of 2018 provided an opportunity for 150 members in sixteen institutional theatre companies.

These myriad activities that have permeated the penitentiary system for decades, with an ever-widening range of services, are increasingly present. Numerous good practices and solutions that have been successfully implemented or integrated into day-to-day operations prove this, even sometimes under objective reasons or impediments.

Attitudes towards the enforcement of deprivation of liberty are also much changed. Socially accepted attitudes ('skill') and teaching methodologies that require competency have replaced the former paternalistic teaching methods which focused on specific knowledge. Peer counselling and volunteer work is increasingly appearing in more and more institutions. Civilians (university students, formerly released), outsiders, and fellow prisoners can participate.

The Hungarian regulations have brought to life numerous values and good practices, but at the same time (especially with regard to the objective system of conditions for the enforcement of imprisonment) further changes are needed. The high overpopulation rate in addition to the non-prominent prison population, as showed by Professor Mihály Tóth, does not seem to be justified by the not necessarily strict Criminal Code or the 'increase in the proportion excluded from parole'. In his view, the emerging case

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48 Várkonyi, 2017, p. 29.

49 Várkonyi, 2018, p. 29.

50 Várkonyi, 2017, p. 29.

51 Várkonyi, 2018, p. 24.

law in the early 2010s (in the context of mid-scale sentencing) had a significant impact on the high prison population in the European context in 2010 as well and other factors such as stricter regulations on violent recidivism are present to a much lesser extent'.<sup>52</sup> Although prison overcrowding has long been part of domestic conditions, hampered by a number of factors ranging from the highly chaotic, sometimes earthquake-like political events of the past 100 years to the limitations of inherited architectural solutions, recent improvements shown by the data suggest a positive shift.

Enforcement of the aims declared in the Criminal Code and strict adherence to its substantive elements not only results in wider application of the already available palette of sanctions and legal institutions (through which a further reduction in the prison population may be triggered), but also ensures that the criminal law always guarantees the enforcement aspects as well as the offender's reintegration and the protection of victims and society.

In addition to the complex response to imprisonment as a key problem, it is an important substantive shift that in July 2020 a total of 2,750 new places were handed over in the new wings of ten Hungarian penitentiary institutions.<sup>53</sup> Minister of Justice Judit Varga stressed that the government's goal is to eliminate overcrowding in prisons by 30 September, 2020. She emphasized that 'a prison in the 21st century must already meet different expectations than in the time of St. Stephen. A "complex" site that speaks of both punishment and bringing the perpetrator back into society after the sentence has expired. Employment, education, participation in compensation programs all help'.

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52 Tóth, 2018, p. 114.

53 The government aims to end the overcrowding in prisons. Ministry of Justice. 13 July 2020 (14/7/2020) Online: <https://www.kormany.hu/hu/igazsagugyi-miniszterium/hirek/varga-judit-a-kormany-celja-hogy-megszuntesse-a-bortonokban-uralkodo-tulzsufoltsagot>

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