



Prisoners' Rehabilitation in Hungary: Struggling Ideals, Lacking Resources

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Purpose:

This paper examines the development of ideal prisoner rehabilitation in a historical and legal point of view. The concept of rehabilitation is not only examined in legal texts and official documents. Furthermore the activity of the prison administration is also examined and the paper presents practical examples.

Design/Methodology/Approach:

The analysis mainly takes into account the primary and the secondary legislation although in order to illustrate different points, statistical figures, research reports and interviews with members of staff and experts are also used. The article starts with legislation from the 19th century and examines all prison legislation up to the present, focusing particularly on prisoner rehabilitation. The analysis covers the examination of the struggling ideals in prison policy.

Findings:

The article concludes that after 20 years of democracy there is no steady and predictable prison policy. The principles of the reforms are not clear, the struggling ideals and lack of resources prevent the prison system from fundamental reforms. Although a lot of progress has been made, there is still space for improvement in the field of rehabilitation.

Research limitations/implications:

The prison system is measured mostly by quantitative methods and the data is sometimes not available publicly. This 'restricted access' to information and the discrepancy between the 'law in practice' and the 'written law' on which a great part of the examination is based may lead to a slightly different picture of reality. This was eased with 'soft' research methods as consultations with experts.

Practical implications:

The main policy recommendations are that there is a need for a steady and predictable prison policy but not necessarily by more funding, rather the concentration of resources for convicted offenders whose liberty has to be deprived necessarily. This could be reached by a decrease in the prison population and the use of alternative sanctions.

Originality/Value:

Prisoner rehabilitation is scrutinized from the historical perspective and the related information is compared to the written law.

UDC: 343.8(439)





Keywords: prisoner, rehabilitation, prison policy, prison system, Hungary

1 HISTORICAL DEVELOPMENT OF IMPRISONMENT

Deprivation of liberty in a written act was first mentioned as a punishment in the acts of King Stephen (1000-1038). 'Any person eating meat on Friday shall be locked in a closed place for a week' – as the law said. It is more likely that the purpose of this regulation was to provide 'appropriate' circumstances for fasting and not the deprivation of liberty as a punishment (Lukács, 1987; Vókó, 2009). In spite of these early developments, there was no prison with a national competence until the end of the 18th century, and the appearance of the territorial prisons was rather medieval with rusty underground cells without daylight (Mezey, 2006).¹

The draft penal code of 1843 was an important step towards adopting modern legal provisions and to establish a modern system of law enforcement, although it was not signed by the king and therefore never became into force. In 1852 after the Austrian penal regulations were introduced in Hungary there was an urgent demand for prisons with a national competence as there were no institutions to enforce the 'new' penalties in. Between 1854 and 1857 six penal institutions were established by transforming previous castles or nunneries (Mezey, 2006). Consequently, the previous architecture determined the reformatory function. Prison sentences were based on moral conviction, but there was no appropriate space to fulfil its requirements: the solitary confinement known in the separate system had no chance to spread.

By the time the Penal Code of 1878 was adopted the progressive system was prevalent in prison science. This act introduced more types of imprisonment and more types of institutions (national institution, local institution, prison by the court). Meanwhile a separate prison administration was established independent from the government as a part of the judiciary. In the 1880s some definitely modern new penal institutions were built. By 1900 a national prison hospital and an institute for the mentally-ill were also parts of the prison system. In the 1870s and 1880s patronage associations were established and since 1892 a part of the imposed penalties and fines should be expended for their purpose.

The first step for treatment-focused corrections through education in a closed institution was the so-called 'reformatory education' for juveniles. This reformatory was not a penitentiary institution, but rather an elementary school with mostly pedagogical instruments. The rules of the institutions described educational instruments such as ethical education and education in school, educating order and discipline and training to work. These tools were much improved by approving the act on the amendments of the penal code in 1908. As a result of the changes –mainly influenced by the 'Marburg Program' of Franz von Liszt and the concept of the reformatory in the US - the main aim of the punishment shifted from retribution to correction: that is to influence the convicts' behaviour after conviction. However, according to Lőrincz (2006) this positive trend did not last long. Less than 10 % of

¹ Without an exception of the 'Domus Correctoria' in Szempe between 1773 and 1823.





the convicted juveniles were sentenced to this correctional-educational treatment in a closed institution, which is less than expected. On the other hand the enforcement of prison sentences for juveniles was also unsuccessful in two ways. First, the courts imposed shorter sentences than expected for the educational plan and the prison staff was not prepared for the challenges of the juvenile prison. Secondly, the First World War also blocked the otherwise positive trends, while after the war law enforcement had lost its importance within the field of justice.

In the fifties, detailed prison regulations were not issued publicly. The Regulation of 1955 prohibited corporal punishment during the treatment of prisoners and mentions the educational treatment of prisoners as an aim of the enforcement, but it withheld any further provisions or rules. Since contact with the outside world depended on the so-called 'productivity' of the work, individual planning of treatment was not necessary. The first legal regulation on prisons after the war was issued in 1966 and it made educational training the most important objective of the enforcement and the treatment of prisoners – though under the influence of the conditions of society (Lőrincz, 2006).

The act in force which incorporates the most important regulations on the enforcement of punishments was formally adopted in 1979 as a regulation of the government, resulting in some basic provisions and the legal situation of prisoners being formally regulated in a governmental decree. Its modifications have to be approved by parliament though.

2 LEGAL FRAMEWORK AND INFRASTRUCTURE

The Decree-Law 11 of 1979 is the regulation in force on the legal framework of the enforcement of the prison sentence. The Act 107 of 1995 on the administration of law enforcement is the only act regulating some fundamental issues on custody. The act incorporates regulations on the administration of the prison system, the right and duties of the state secretary, the National Prison Headquarters and rules on coercive measures in the prison system.

The Ministerial Decree 6 of 1996 on the rules of enforcement of imprisonment and pre-trial detention of 1996 is a detailed regulation on some major issues of prison life, e.g. admissions, discipline and order in the institutions, treatment of prisoners, contact with the outside world, work, accommodation and hygiene, clothing, etc.

The Constitution (Act 20 of 1949) covers some enforcement-related fundamental rights such as the prohibition of torture and other cruel or inhuman treatment or punishment, the right to a fair trial, the right for data protection, freedom of thought, conscience and religion, freedom of expression, the right for petition, and the right for education. Prisoners are excluded from the right to vote.

The Criminal Code (Act 4 of 1978) regulates one sentence of imprisonment which is prosecuted in three categories. Between the categories the types of confinement, the surveillance of prisoners, the disciplinary punishments and rewards, the daily routine and the participation in self-organisations among the prisoners may differ, just to mention the most important. The difference between





the possible earliest time for parole is of great importance. As the toughest type of imprisonment, *fegyház* is imposed in cases of life sentences, sentences longer than three years if they are imposed for serious crimes (e.g. murder, rape, terrorist attack) or if the sentence is longer than two years and the convict is a repeat-offender. *Börtön* is imposed for the commitment of intentional crimes for which more than two years imprisonment might be ordered as in the Criminal Code or if less and the convict is a re-offender. In other –less serious cases– *fogház* is imposed. Parole is possible in the *fegyház* category after the enforcement of 80 % of the sentence, in the *börtön* category after 75 % of the sentence, and in the *fogház* category after two-thirds of the sentence.

The prison administration is governed by the National Prison Service Headquarters (BVOP) supervised by the Ministry of Justice and Law Enforcement. BVOP governs 17 national and regional penitentiary institutions, 14 county penitentiary institutions and 5 other institutions (such as prison hospital, educational centre, etc.). The prisoners are held in the above-mentioned three categories of prisons, as ordered by the judge upon sentencing or upon a decision of parole judges during the enforcement. There are six institution for adult male prisoners in the *fegyház* and *börtön* categories, and six institutions for prisoners in all three categories. Women prisoners are accommodated in three separate institutions. Juveniles are accommodated in four separate institutions (Ministerial Decree 21 of 1994). Hungary does not run any boot camps. The other custodial measure juveniles may face is a placement in a reformatory school under the administration of the Ministry of Social and Employment Affairs, which is not comparable to a prison sentence.

3 WHO ARE THE INMATES?

The prison population was not steady in the previous decades; it was influenced by the changing political preferences. The steady decrease in the prison population at the beginning of the 1990s 'was partly owing to amnesties, partly to decriminalisation and partly to the abolition of certain sanctions (e.g. 'closed confinement')' (Kerecsi and Lévy, 2008). This trend had changed mainly at the end of the 1990s as a result of a harsher crime policy by the government between 1998 and 2002. The new symbolic legislation aimed to have an impact on trends in sentencing. From March 1999 onwards until as late as February 2003 the median term of the applicable prison punishment served as a sentencing guideline when imposing definite term imprisonment. The median term had to be calculated by adding half of the difference between the lowest and the highest measure of the item of punishment to the lowest measure thereof.

The prison population reached its peak in 2002, followed by a slight decrease in 2008 as a result of the changing crime policy. This easing tendency is about to change. As of the impact assessment of the latest approved three-strikes-like legislation in 2009 the prison population is expected to increase in the coming three years reaching a peak close to the numbers seen in 2002.



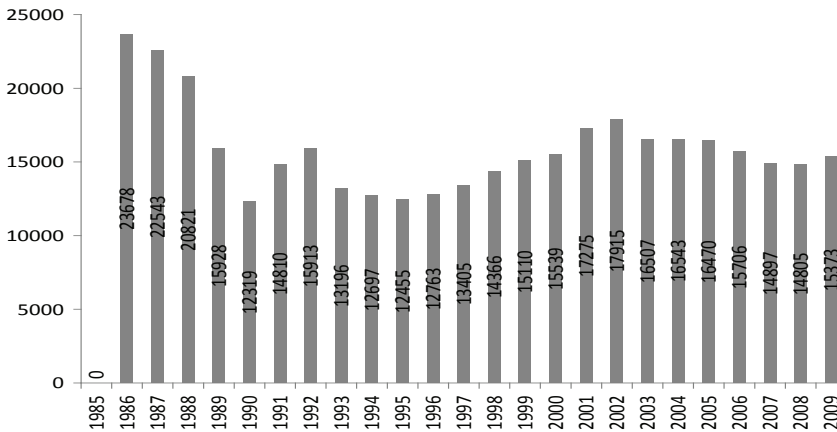


Chart 1: No. of prisoners 1986-2009 (Source: National Prison Headquarters)

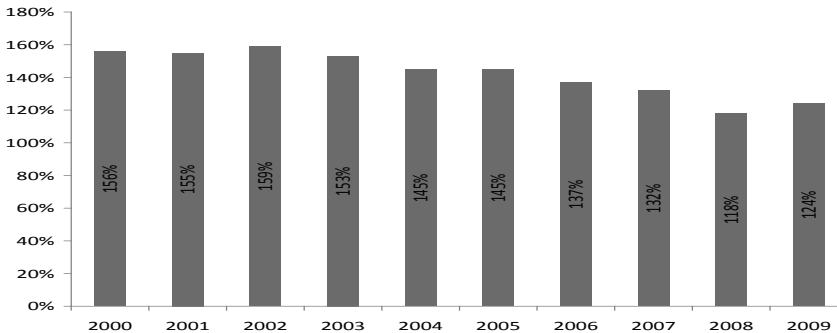


Chart 2: Prison density 2000-2009 (Source: National Prison Service Headquarters)

There were 12.556 places in the prison system for prisoners on 31. 12. 2008 and 12.042 on the last day of 2009 calculated on a basis of 3 m2 area for men prisoners and 3,5 m2 area for women and juvenile and 6 m3 air space for a prisoner. At the same day 14.748 were held in custody in 2008 and 15.431 in 2009. In 2008 some 10.380 sentenced prisoners and 4.356 prisoners in pre-trial detention were in custody, one year later 10.665 sentenced prisoners and 4.478 detainees. The average number of prisoners was 14.805 in 2008, and 15.373 in 2009. This is an improvement compared with the previous years: the average saturation was 132 % of capacity in 2007. In 2008 there was an increase of 14 % (534) in the number of pre-trial detainees and 1.304 new prison cells were built. Although the prison density increased to 128 % of capacity in 31. 12. 2009.²

The classification of prisoners happens in two aspects. On one hand the judge decides by the conviction in which of the above-mentioned categories is the prisoner is to be treated, which might be changed by a penitentiary judge

² Latest data is available on the homepage of the National Prison Service Headquarters <http://www.voop.hu/?mid=77&lang=hu>.





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during the enforcement. On the other hand upon beginning the enforcement every prisoner is classified into one of the 4 categories based purely on security issues. The prison administration is criticised by human rights organisations³ because approx. 70 %⁴ of the prisoners are held in the third category upon a decision that is not a subject of the control of the judiciary, which brings into question the ideal of this classification. It is very rare that a prisoner ends up in the first category. Unluckily this classification determines important issues of the treatment during the enforcement and the large number of prisoners in the third category may result in unnecessary concerns of automatic classification and an unnecessary deprivation of rights of the prisoners.

Hungary had an imprisonment rate of 154 prisoners per 100 000 inhabitants in 2009. According to the latest SPACE Report I. of the Council of Europe (Aebi and Delgrande, 2010), there were only 8 EU-countries with higher imprisonment rates, including only two from the EU-15-countries (UK and Spain) in 2008, when Hungary faced a lower level of imprisonment (151). This has mainly two grounds. First, imprisonment as a sentence is overused compared to other EU-countries and also the average length of a prison sentence is significantly longer. In 2008 the average length of imprisonment was 9,4 months, whilst the median of the comparison was 5,2 months. Hungarian courts imposed prison sentences shorter than one year in 16 % of the total prison sentences, while some 17 EU-countries impose it more often, and 80 % of sentences less than one year were however longer than 6 months. In 2008 47,7 % of prisoners were serving a sentence longer than three years, and 28,9 % a sentence of five years or more, in 2009 this rate was 26,5 %.

Long-term imprisonment is defined by the Recommendation Rec(2003)23 on the management by prison administrations of life sentences and other long-term prisoners (Council of Europe, 2003) as a sentence totalling five years or more. According to Hungarian law prisoners might be placed in a so-called special regime for long-term prisoners if their sentence is longer than fifteen years or life imprisonment. This discrepancy between the definitions reveals also the different attitudes of the prison systems.

In 2008 out of 8.5274 convicted offenders 31,45 % (26.820) were sentenced to imprisonment. In the last five years this rate was between 30 % and 31,5 %. Two-third of the offenders sentenced to prison, were sentenced to suspended imprisonment, whilst 33,91 % (9.094 offender) were sentenced to imprisonment to serve in custody. Imprisonment was imposed for the quarter of juvenile offenders, of which 26,5 % was not suspended, which is a slight increase compared to the previous years.⁵

6,2 % of the convicted prisoners –and 2,5 % of the juvenile offenders– were women in 2009. In the total prison population 6,6 % (996 persons) were woman in 2008 which is a higher rate then in most of the countries involved in the SPACE Report I (Aebi and Delgrande, 2010).

3 Consultations with the legal advisers of Hungarian Helsinki Committee.

4 As of the report of prison administration for the 31. 12. 2009.

5 Tájékoztató a bűnüldözésről (publication of the Prosecution Office)
<http://www.mklu.hu/cgi-bin/index.pl?lang=hu>.



Length of sentence	Persons	%
Under 1 month	25	0,2
1 to 6 months	609	5,7
6 to 12 months	1761	16,6
1 to 2 years	2085	19,7
2 to 3 years	1457	13,8
3 to 5 years	1852	17,5
5 to 10 years	1892	17,9
Above 10 years	683	6,4
Life sentence	210	2,1
Life without parole	16	0,1
All	10590	100%

**Chart 3:
Length of
imprisonment**
(31. 12. 2009)
(Source:
National
Prison Service
Headquarters)

Hungary is not a country with high rate of foreign citizens in the prison system: last year 3,8 % of the total prison population (582 persons) was foreign and two thirds of them were pre-trial detainees.

In 2008 45,9 % of sentenced prisoners had no previous criminal record, 30,3 % had one conviction⁶ and 23,8 % had been convicted more than once.

year	No previous ⁷	One conviction	More convictions	sum
2005	5233	3609	2627	11469
2008	4762	3149	2469	10380

**Chart 4:
Previous
conviction**
(Source:
National
Prison Service
Headquarters)

year	No previous	One conviction	More convictions
2005	119526	8301	5 794
2009	106006	6523	3 958
decrease	11 %	23 %	32 %

**Chart 5:
Registered
offenders
and previous
convictions**
(Source:
National
Crime Registry
Statistics)

Whilst the rate of offenders convicted more than once dropped⁸ from 4,3 % to 3,4 % amongst those convicted, and the rate of offenders with one previous conviction decreased by 0,3 % from 2005 to 2008, and the number of registered offenders dropped –by almost 32 % in the most serious category, it did not result in the transformation of the rate of those offenders sentenced to prison (Borbíró, 2008). Although the overall number of registered repeat-offenders decreased it had no impact on the number of those sentenced to prison.⁹

⁶ Which means within three years of the last conviction or leave from custody.

⁷ Which means within three years or if the conviction was before three years.

⁸ National Criminal Registry Statistics.

⁹ This trend might be observed to change in 2009 as the number of reoffenders has increased. Presumably as a result of the new definition of re-offenders in the Criminal Justice Act 2009 entering into force in July 2009.



4 'THE STAFFING CRISIS'

The overwhelming majority of the prison staff is employed as officers, however only about 12 % were public employees. This strengthens the military character of the prison service and this attitude complicates the application of the normalisation principle. The SPACE Report I. (Aebi and Delgrande, 2010) contains data on the prison staff for 2008. Only 2,8 % of staff (209) belong to the treatment and educational staff and 3,3 % of staff is responsible for workshops and vocational training, which gives a rate of 32,6 prisoner per non-custodial staff (treatment, educational and vocational). The rate of custodial staff in the whole administration was 43,7 % in 2008.

Since many years now there has been a crisis in prison staffing. Not only is the vacancy rate a problem, but also the astonishing rate of the fluctuation. In 2009 the prison staff of 8221 was lacking 435 members. This is slightly more than 5 % vacancy. Furthermore some 20 % of employees who leave the administration after a year left because of health issues (2009).

Another significant problem is the average age of the staff and the lack of the experienced staff in the administration. In 2002 16 % of the staff were 25 years old or younger, and the rate of officials older than 50 did not reach 7 %. The situation improved a bit in the forthcoming years,¹⁰ but the administration was not successful in keeping its more experienced staff members.

Besides these serious issues, the most important structural problem is the high rate of staff turnover which reached its peak in 2007, when the administration had to 'change' some 18 % of its staff, because 1.324 employees of the total 7.473 had left the administration (a vacancy level of 7,6 %).¹¹ The number of employees who left the prison administration had doubled in two years by 2007. Although the situation improved in 2008 with less than 800 staff members leaving, in 2009 the prison commanders still faced a staff turnover rate of approximately 8 %. This lack of appropriate staff contributes to an unfavourable disciplinary record, including an annual rate of 600-700 disciplinary and 200 criminal procedures against staff members.

There is no legal provision prescribing the number of treatment staff in the prison system. This is only regulated for the detention of juveniles but not for juvenile prisoners.¹² This type of legislation would be an important improvement in the supply of prison staff, because in practice there are institutions without full-time psychologists or doctors. It is otherwise highly recommended for the government to solve the problem of inadequate staffing, because the above-described staffing crisis is seriously harmful.

¹⁰ Latest available data is from 2006 Yearbook of the National Prison Service headquarters.

¹¹ Yearbook of the National Prison Service Headquarters for 2008.

¹² For example according to the Ministerial Decree 30 of 1997 in every detention house for juveniles there shall be one psychologist employed for every 40 juveniles.





5 PRISONERS TREATMENT

The Ministerial Decree contains detailed regulation on the treatment of prisoners. It defines the treatment involved into three main activities: 1) maintaining and improving the self-respect and sense of responsibility of prisoners, 2) developing a sense of social utility and 3) supporting their settlement in the society after release. This treatment program shall include the acquaintance with the personality of the prisoner, the appropriate activities and self-training for the prisoners, the organisation of rehabilitative and free time activities, and the support of relationships to family and society.

Upon admission the prisoner is placed in a so-called 'preparational department' for up to thirty days, if the sentence is more than one year imprisonment. In this department the prisoners undergo a medical, a pedagogical examination (obligatory) and are also examined to see if they are capable of working (also obligatory). If they agree, they undergo a psychological examination too. The pedagogical and psychological examination¹³ aims to discover the personality of the prisoners, their objections and expectations during the enforcement and after, and the methods and instruments suitable for their treatment. As a part of the 'preparation' to the prison sentence a member of the treatment staff shall obtain information on the personal, social, educational and family background of the prisoner and the circumstances of the offence. During this period the member of treatment staff shall draft an opinion on the prisoner and a proposal 1) in which regime the prisoner shall be placed and on their 2) activities and 3) treatment plan. The treatment plan shall be prepared in cooperation with the prisoner and if is necessary shall be modified.

As a part of the 'activities' mentioned above, the prison administration shall provide the possibility of primary education, initial vocational training, work, therapeutic activities, cultural, free-time and sporting activities and in addition opportunities to participate in activities of rehabilitation and development of their personality.

The prisoners are mainly employed in companies which are part of the prison administration. Due to the inappropriate structure of these companies less than 40 % of prisoners used to be involved in this activity and this rate decreased in the period of economical recession in the last year. About 20 % of sentenced prisoners may participate in other forms of employment.

About 20 % of prisoners participate in the three levels of education (2.064 persons in 2009). The number¹⁴ of inmates in primary education is rather stable in the previous years, whilst number of prisoners in secondary education has risen steadily and reached the level of the inmates in primary education. Unfortunately the numbers for vocational training have decreased significantly which may result in otherwise undereducated prisoners having no chance for future employment upon leaving prison. In 2008 the prison administration organised 48 short trainings

¹³ Prisoners serving a sentence shorter than one year also undergo this examination.

¹⁴ National Prison Service Headquarters.

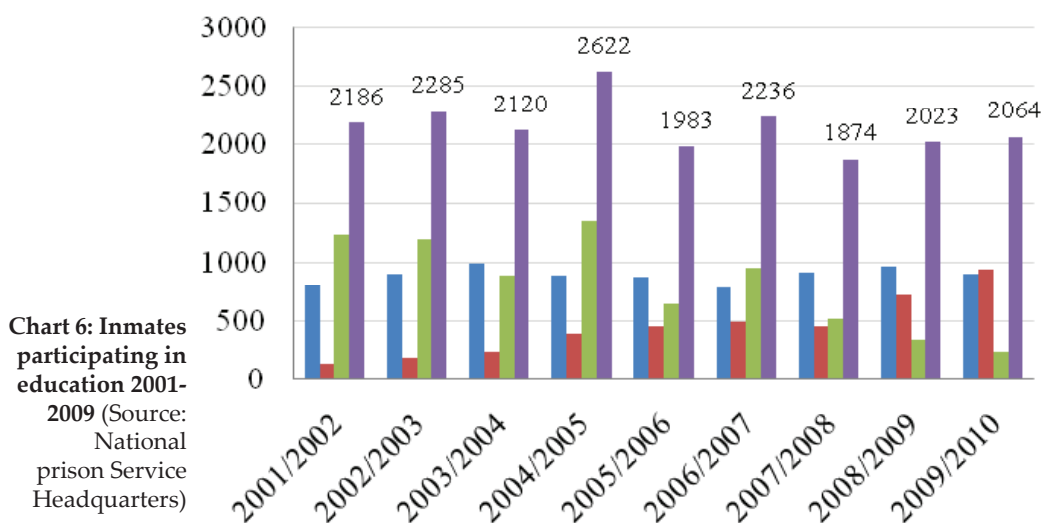




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with 955 participants.¹⁵ This is an increase from the previous year (36 trainings and 535 participants), and mainly resulted in successful tenders of the administration and the remuneration of prisoners (Róth, 2009: 25). The certificates given shall not indicate that this training has been gained in prison. There is not much information available which topics and skills were covered in the trainings and there is also no data on the quality assurance mechanisms and feedback of such programmes. There are also concerns that the skills taught do not significantly contribute to the future employment of the participants (Róth, 2009: 27).

Whilst the number of the prisoners participating in education has risen steadily (mainly because of those in secondary education) the prison system is not able to provide enough working activities for inmates. The number of prisoners participating in such activities has fallen and the rate of prisoners participating in those activities has decreased by 10 % in the previous decade.



The prison system operates with the three above-mentioned categories. In which category the prisoner is going to be treated is decided upon conviction, although it might be subject to change during the enforcement. However, this tradition in the legal system which dates back for more than 130 years, causes some difficulties in respect to the different types of treatment of prisoners, because the change of this regime category is decided by a penitentiary judge in a rather formalised procedure. In 2009 it happened in 33 cases that the prisoners category was changed to harsher one and in 1.735 cases the prisoner was placed in a more gentle category.

¹⁵ Yearbook of the National Prison Service Headquarters for 2008.





Year	Participation in work	%	Participation in primary education	Participation in secondary education	%
1998	7 367	51,28	594	31	6,14
1999	7 101	47,00	671	28	6,47
2000	6 926	44,57	737	33	6,87
2001	7 397	42,82	811	137	7,43
2002	8 057	45,17	824	135	7,23
2003	7 359	44,58	983	142	9,03
2004	7 509	45,39	882	254	9,33
2005	6 864	43,66	878	457	11,64
2006	6 666	45,01	793	530	12,27
2007	6 673	46,56	793	530	12,90
2008	6 188	41,99	968	715	16,21

Chart 7:
Participation
in working
activities and
education 1998-
2008 (Source:
National
prison Service
Headquarters)

In the 1990s a so-called ‘mitigation of the rules of the enforcement of prison sentences’ was introduced, which involved more contact with the outside world for the inmates and more opportunity to leave the institution for a shorter period (up to 24 or 48 hours and up to 4 times a month). At the end of the decade, after a serious misuse of this regulation where a prisoner killed one of his relatives, the EVSZ was only used in exceptional cases, (271 times in 2009). In 2009 a shorter leave for prisoners under milder enforcement regulations was allowed 2.917 times.

In regards to pre-release programmes the prison system faces serious deficiencies. Special pre-release placement is only available for prisoners serving a prison sentence longer than five years. Two years before their leave, they might be placed to this ‘group’ which does not necessarily mean separate placement. Before a few days of release, the prisoner is placed in a separate cell. There is no legal provision for a special pre-release program for the prisoners.

A rather important and purposeful activity is done by the Probation Service, whose officers may help prisoners, who apply voluntarily, with finding prospective housing and employment six month before they leave.

6 SPECIAL TREATMENT FOR VULNERABLE PRISONERS

There are some special legal provisions for vulnerable prisoners. As for women, the law prescribes, that they have the right to the special protection according to their special needs. Female prisoners shall not be placed together with male prisoners. The minimum walking area the law prescribes for women is slightly more than for men: 3,5 m², which is according to the CPT Standards (Council of Europe, 2009: 8) still does not reach the desirable area. The prisoners may bath in hot water once a week, but the female prisoners must have access to hot water (not necessarily in a form of bathing) during the whole week. On a normative level there is no difference in the treatment or programmes for female prisoners. As described in the literature, female prisoners have special needs and their ‘prisonstation’ is





often followed by depression resulting from a higher level of coffee and medicine (mainly Tranquillizer) consumption. Thus the prison staff in prisons where female inmates are treated focuses on this issue. Their main finding is that activities have outstanding effects on female prisoners and therefore the staff focuses on the purposeful activities of these women (Endródi, Fehér, Parti in Róth, 2009: 37).

Women with babies (up to 6 months or exceptionally up to one year) may stay together. There is a special institution in the Kecskemét prison with high standards to satisfy their need. Maximum 20 women can be placed in this institution.

The prison system has been faced with a growing number of drug-addict prisoners since the 1990s. The efforts taken resulted in a special treatment department for drug-addicted prisoners called the 'drug-prevention department,' introduced in 2002. Like in many other European countries the main objective of this department is to provide better placement conditions and other benefits for those prisoners applying voluntarily to this department and who are willing to undergo a drug test any time during the treatment.

It is of great importance that the inmates undergo a special treatment in this department. This is not only provided by the members of staff, but the high level participation of NGOs aiming to show the drug-addict prisoners the importance of a life without drugs and how to spend their free-time usefully.

Recently 23 institutes provided this kind of department, where more than 200 prisoners were treated (2004-2005) according to Balogh (in Róth, 2009), not on the highest capacity. This wasted and not concentrated capacity shows that these efforts could be made even more effective, although some senior prison staff working in medical treatment said that the departments are working effectively¹⁶. In spite of this there might be some concerns that these departments are used to benefit those prisoners cooperating with the administration.

7 CONTACT WITH THE OUTSIDE WORLD

The prisoners' contact with the outside world in some aspects differs upon the categorization between the three categories (fegyház, börtön, fogház) described above. In the first category the work outside the institution is exceptionally permissible and further the prisoner has to be appropriately segregated from the outside world. A 'börtön-category prisoner' may only exceptionally take part in work outside the institution. A prisoner in the fogház category may participate in the work outside the institution. Furthermore the classification into the security groups may reset this regulation, which is already not favouring the normalisation principle.

In other aspects the contact with the outside world might not differ on the basis of these categories. The rights of the prisoners are divided into categories as follows. The prisoners are deprived of their liberty, which means they have no right to personal freedom. The exercise of some other rights are paused or restricted during the enforcement. There are some other rights and obligations on the

¹⁶ Personal conversation with senior member of staff working in the medical department.





deprivation of liberty during the enforcement (a so-called special legal relationship between the prisoner and the state during the enforcement of prison sentence).

Some rights which exercised represent some further obligations for the state compared to the rights of other citizens not deprived of their liberty, are therefore based on this 'special relationship'.¹⁷ Prisoners have the right to correspond by letter with their relatives and other persons authorized by the prison administration. The scope and frequency is not restricted. They have the right to receive visitors once a month. Prisoners have the right to receive visitors aiming to enlighten their re-settlement and their entry into employment (future employer, probation officer, representative of charitable organisations). Prisoners have the right to receive and send a package once a month. They might use a telephone if it is available in the penal institution.¹⁸

With the exception of the letters send to authorities and international organisations and the lawyer, the prison staff is allowed to control the letters with respect to the security of the institutions. The same applies to telephone calls and packages. The prisoner has to be informed of this in advance. In spite of this regulation, which in itself does not require any reasonable ground for suspecting control by staff, the written law might allow room an expanded interpretation. This may result in control without any respect to the security in order to collect data on the prisoner or its' relatives.

The prisoner may be awarded with short-time leave between five and fifteen days per annum. Its' maximum period differs in the three categories. The second type of leave up to 24 hours if awarded aims to maintain a prisoners contact with the family or to ensure workplace or housing after release. This type of leave might also be awarded for a group of prisoners. There are certain groups of prisoners excluded from this award by law.

Further and more detailed regulations are to be found in the Decree No. 6 of 1996 in the subsection regulating the treatment of prisoners. This subsection covers more detailed regulations on the transmission of letter by the staff and the security control of letters. The concrete time and length of the visits is determined by the prison commander, but it must not be shorter than 30 minutes. The number of visitors is also restricted: in the same time two adults and two people under 18 years might participate in the visit. Exceptionally the prisoners might be transported on their own costs to another institution more close to their homes in order to enlighten visits for relatives. The conversation by the visits are subject of inspection. In some cases (security of the institution) the prison commander may order that the visit is held in a closed booth. There are no legal provisions on the so-called "intimate family visits", a type of visit with no direct supervision of the prisoners in a private room.

Another form of correspondence is the so-called 'package'. This was used to so that the family of the prisoner complies the prison catering. Nowadays, it has lost its importance, because the prisoner may purchase different products in the prison

17 These are regulated by the Decree-Law 11 of 1979.

18 There is no information that the access to telephone would be restricted based on this legal provision which was adopted more then a decade ago to other technical and infrasturctural circumstances. The frequency might be restricted though.





store.¹⁹ The package also constitutes some risk to the prison security –as it might weigh up to five kilos- and some prisoners may try to use it to smuggle prohibited object into the institutions.

The government planned an overall conceptual reform of the types of correspondence in 2009 but it did not result more than a draft of this new legislation. As of the plans (Draft Act for Law Enforcement, 2009) some significant changes were planned, in favour of the normalisation principle –though the frequency of packages would decrease. The Committee responsible for the draft act planned to introduce the possibility to correspond via internet and e-mail and to use VoIP-based telephone techniques. The possibility of temporarily leave from the prison would significantly increase and highly differ in the three categories of imprisonment. In the most slightly category it would have been possible to allow the prisoners leave for more weeks a year.

8 INTERNAL AND EXTERNAL CONTROL OVER THE ENFORCEMENT

The control over the decisions of the members of prison staff is provided in two ways described as follows. In principle the decision related to the detention of the prisoner or the enforcement of their sentence is made by the responsible commander of the unit in which the prisoner is staying (first instance). In principle the prisoner may complain against this decision to the prison commander within fifteen days, if the commander decided at first instance, to the commander of the prison service (second instance). There is a time limit for the administration to deal with the complaints (30 + 30 days). This is the most important regulation of the so-called 'inner control' which happens inside the prison administration.

Some decisions which are in principle crucial in the life of the prisoner and are mentioned by law might be subject to appeal at the penitentiary judge who differs from the judge or the court where the prisoner was sentenced. But this appeal is only a part of the so-called 'outer control'. Unaffected by these rights to complaint, the prisoner additionally has the right to complain to the prosecutor, who according to Hungarian law, and unlike many other EU-countries, has the power for the overall control of the prison administration and its independence is guaranteed by the constitution. The third element is the control by the ombudsman who might deal with the complaint upon maladministration in the prison affecting the prisoners' fundamental rights.

In this section the work of the Hungarian Helsinki Committee has to be mentioned, because their prison monitoring program had an important impact on the development of the prison system towards the rule of law principle. This non-governmental organisation does independent prison monitoring for more than a decade on the basis of a special agreement with the National Prison Service

¹⁹ Which was found to be significantly more expensive compared to a shop outside the prison by the Hungarian Helsinki Committee.



Headquarters. The staff of the HHC is allowed to enter the prison institutions with a previous notice and has approximately the same power as the CPT staff has.²⁰

9 EFFECTIVENESS MEASURED: RECONVICTION DATA

The effectiveness of the prison system is not systematically measured publicly and there is not much public information available on a quality assurance system. A major and injurious tendency is that the media informs typically if a mistake occurs on behalf of the administration resulting in serious injuries, suicide or escape attempts which also undoubtedly has to be part of the public information available on the prison system. But on the other hand reports, for example on the latest music-competition amongst prisoners are refreshing exceptions.

This 'selection' of information results that those indicators (suicide, escape, or other special events become indicators of the effectiveness of the correctional system –on the side of the public. Another impact might be that the public –seeing the effects of the extreme deprivation view deterrence as the only or most important aim of imprisonment. Thus the importance of prisoner rehabilitation and integration or the normalisation principle might be underestimated.

Recently the prison administration launched its development program for the years 2008-2010, measuring the effects by 2012. To measure the main goals in the field of reintegration indicators have been set (chart 8.)

goals	indicators	2007	Goals by 2012
Integration of the inmates	reconviction	54 %	45 %
	Inmates participating in programmes within the institutions	10 %	20 %
	Participation in post-release programmes	No data available	Goal is to be set by 2012
	Number of drug-prevention departments	19	30
Integrative and complex activity-settlement for prisoners	Participation in education	13 %	25 %
	Participation in work within the convicted prisoners ²¹	62 %	70 %

Chart 8: Goals and main indicators in the field of reintegration
(Source: Büntetés-végrehajtás Országos Parancsnoksága, 2008: 38)

Although it is more than welcome that the prison administration sets quantitative indicators to measure its activity and in this setting reconviction data is not the only indicator in the field of integration, the indicators set here are partially not ambitious enough (participation in programmes and post-release

²⁰ <http://helsinki.hu/index.php?PHPSESSID=be6ec70b064813f9ec6cb02096d7d299>

²¹ This is without the pre-trial detainees who are rarely participating in work



programmes) and not useful (no. of drug-prevention departments) to measure the values achieved.

The reconviction for 2007 was 54 % of the released prisoners, it is to be decreased by 9 % in five years.

The development program of the prison system has concrete aims and targets to develop, which might be a subject of inner-control by the Headquarters. But since the Program is not publicly available, it is difficult to communicate between the prison system and the society.

10 CONCLUSIONS: KEY CONCERNS, FUTURE DEVELOPMENTS

Today the Hungarian prison system fulfills the requirements that would have been set some decades ago. In many respect it also works properly and effectively, but not compared to many of the EU 15 countries. Having a professional tradition of more than a century, the prison administration should be capable of operating the prison system appropriately but –mainly- the lack of resources and the inappropriate legal framework prevent it from doing so.

The legal provisions in force were mostly renewed after 1989; the most important act was approved in 1993. As a result of some of the new legislation and the decisions of Constitutional Court the legal provisions mostly fulfill the requirements set by international standards.

On the other hand there are serious concerns. Formally, the most important legal provision for law enforcement is not an act but a decree. I am convinced that in many cases the provisions could be regulated in favour of the rule of law principle. For instance the rules of the institutions are not subject to external control, many decisions would deserve a formal order to allow the judiciary a wider control over enforcement, the rules on treatment, such as area, frequent baths with warm water, concrete and enforced rules on the compensations paid by the state if it does not provide those specific treatments and placement or the chronic problem of density.

The rather poor offer of treatment programmes is mostly a result of the lack of financial resources, the aged infrastructure and the inappropriate spaces in the institutions. Hungary –spending about 30 Euros per prisoner a day- is not generous with its prisoners. But I also believe that no further substantial expenditures have to be spent on the prison administration. This is not an antagonism: locking up fewer inmates may result in more concentrated and better treatment for those whose liberty has to be deprived as ultima ratio. If we view the number of inmates and their attributes, we may realise that there is an opportunity to decrease it.

As Klára Kerezsi argues the crime policy of Hungary was not stable in the previous twenty years (Kerezsi, 2010). The first free-elected government followed a so-called inclusive-liberal policy thus strengthening the rule of law in the field of law enforcement and made the work of decriminalisation. This was in some respect followed by the next government, but in some respects other tendencies have appeared. The conservative government between 1998 and 2002 imposed a rather exclusive crime policy with harsher punishments and more severe rhetoric.





The coalitional government formed by socialist and liberals imposed a 'two-track'-like approach after 2002 introducing instruments of diversion in criminal procedure and decriminalisation. This was followed by a crime policy in the name of 'social justice' – as Kerezszi described. This involved legislation on victims' rights and restorative justice.

The lecture on which the article of Kerezszi is based was held in 2008 when the lecturer observed some slight changes in the penal climate of the country, which have already occurred during the coalition-government. Today, we observe, that the 'weather-forecast' was not pessimistic enough. In 2009 a 'three-strikes-like' amendment of the Criminal Code was approved by the Parliament after the continuing demand of whole life sentences without the possibility of parole for serious recidivists by the opposition.

Meanwhile the Ministry of Justice and Law Enforcement drew up a Draft Act on Law Enforcement in 2009. This aimed to strengthen prisoners' rights, to strengthen the external control over enforcement, to enlighten the prisoners contact with the outside world and to introduce some other instruments in favour of the normalisation principle. The Act would have been the first norm to prescribe the minimum duration of programmes per prisoner per week and to promote the programmes as a part of treatment – but a Draft Act, which was not even approved by the government, is not an instrument to solve the problem of the lack of resources.

After the elections of 2010 the question remains: will Hungary follow a predictable prison policy which meets the international standards and provides a humane and appropriate treatment for prisoners and if yes, which role will the treatment of prisoners play in this policy?

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