

Prison problems in Hungary and Poland

Introduction

Both Poland and Hungary have a high prison population rate, in Poland there are 194 and in Hungary 180 individuals in prisons per 100.000 people. At first glance, they might be seen as not large numbers, but when we compare them with those of other European countries, we will see that these rates are at the forefront.

Country	Prison population rate (per 100.000 of national population)
Turkey	374
Russian Federation	323
Poland	194
Slovakia	186
Hungary	180
Czech Republic	178
Estonia	162
United Kingdom	132
Portugal	116
Spain	116
Italy	93
Austria	92
Belgium	90
Germany	71

Netherlands	66
Norway	58
Finland	43
Monaco	34
Lichtenstein	31
San Marino	26

Table 1
Prison population rate in some European countries¹

Imprisonment is the most severe punishment; however, as seen in both countries, it is often imposed on the perpetrators of crimes. It is obvious that if the state punishes using this penalty, it must provide the convict with the basic conditions for serving it.²

However, practice is not always perfect...

Imprisonment must always comply with the requirements of respect for human dignity and treatment of a sentenced person as a human.³ The legal status of an inmate must always be regulated because it is a way to show

¹ World Prison Brief

Source: https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=14

Accessed: 04.05.2022;

See also: <https://www.prisonstudies.org/country/poland>

Accessed: 04.05.2022

² Pallo, J.: A szabadságvesztés célja, alapelvei. [The purpose and principles of imprisonment] In: Koósné Mohácsi B. (ed.): Büntetés-végrehajtási jog. ELTE Eötvös Kiadó. Budapest, 2017. 47-48

³ Vókó, Gy.: Fogvatartotti jogokról emberi jogi követelmények tükrében. [On prisoners' rights in the light of human rights requirements] In: Deák, F. – Palo, J. (eds.): Börtönügyi Kaleidoszkóp. Ünnepi Kötet Dr. Lőrincz József 70. születésnapja tiszteletére. Büntetés-végrehajtás Tudományos Tanácsa. 2014. 232-233

him human respect.^{4 56} This status consists of two basic elements: the status at a particular prison and the status of the convict as a party in enforcement proceedings. Each of them is characterized by certain rights and obligations of a prisoner, and one of them is the right to living space.⁷ The fact is, overcrowding is also related to security problems, violence and the pathologizing of the goals of imprisonment⁸, moreover, it is one of the obstacles to progressive development because it is harder to organize adequate cultural or educational activities for prisoners.⁹

Expectations versus reality of the prisons' situation in Poland

According to the European Committee for the Prevention of Torture (CPT) the minimum standard for one person in prison is 6 m² for a single room and 4 m² per person in multi-occupancy cells.¹⁰ Moreover, the sanitary annex (excluded from the total place for one prisoner) should be added.¹¹

⁴ Hołda, Z. (): Ochrona godności ludzkiej skazanego na karę pozbawienia wolności. Pałestra 1988/7. 110-112

⁵ Nawój-Śleszyński, A.: Przeludnienie więzień w Polsce – przyczyny, następstwa i możliwości przeciwdziałania, Łódź: Wydawnictwo Uniwersytetu Łódzkiego. 2013. 46

⁶ The same statements can be found in the judicature, see e.g. Judgement of the Supreme Court: of 17 March 2010, II CSK 486/09; of 28 February 2007, V CSK 431/06

⁷ Nawój-Śleszyński, A. (2013) Ibid., 47

⁸ Nawój-Śleszyński, A. (2019): 'Rozmiary i zróżnicowanie populacji więziennej w Polsce w okresie obowiązywania ustawodawstwa karno-wykonawczego z 1997 roku', In Kaliszka, T. – Kwiecinskigo, A. (eds.): Nowa Kodyfikacja Prawa Karnego Tomus 54. 140

⁹ Zybert, E. B. (2011): Prison Libraries in Poland: Partners in Rehabilitation, Culture, and Education, Library Trends, vol. 59, no. 3, 424

¹⁰ Raffaelli, R. (2017): Prison conditions in the Member States selected European standards and best practices, 3

Source: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583113/IPOL_BRI-\(2017\)583113_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583113/IPOL_BRI-(2017)583113_EN.pdf)

Accessed: 15.07.2022

¹¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Living space per prisoner in prison establishments: CPT standards. 2015. 3-4.

Source: <https://rm.coe.int/16806cc449>

Accessed: 08.08.2022

This problem was noted by the CPT more than once in reports to the government, which indicated that despite its repeated previous recommendations, the official minimum standard of living space per prisoner remained unchanged.¹²

In Poland, regulations about living space in prisons have changed many times. Firstly, there were cubature standards in force until 1998, and the living quarters were to be provided, depending on the period of validity of the regulations, between 6 and 13 m³ for multi-person cells. This regulation, however, met with criticism because, firstly, it was not precise, and secondly, it often led to hiding poor conditions when the rooms in which the convicts were detained were very high.¹³ In addition, between 1989 and 1998, the conditions were distinguished depending on gender – as a standard, the area could not be smaller than 3 m² for men and 4 m² for women.¹⁴

Nowadays, according to Art. 102.1 of the Executive Criminal Code (ECC), a convicted person has the right to adequate food, clothing, living conditions, accommodation, health services and adequate hygiene conditions. There is also a special norm about the accommodation of prisoners in Art. 110 of the ECC, according to which the convicted person is placed in a multi-person or single-person cell, in which the area cannot be smaller than 3 m² per person, it should be equipped with a separate sleeping place for every convict, appropriate hygiene conditions, sufficient air supply, temperature and lighting for reading and work. This is the general rule.

However, in exceptional cases i.e. in the event of a war, epidemic, or threat to the safety of the prisoners or prison, the governor may place the convict in a cell where there is at least 2 m² per person, however, the period

¹² Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 31.

Source: <https://rm.coe.int/16808c7a91>

Accessed: 08.08.2022

¹³ Szymanowski, T.: Przeludnienie zakładów karnych, jego następstwa i metody ograniczenia tego zjawiska, *Czasopismo Prawa Karnego i Nauk Penalnych* 2007/11. 284-285

¹⁴ Nawój-Śleszyński, A. (2013) *Ibid.*, 53-55

of staying in such a small cell may not exceed 90 days. The second exception, when the governor may relocate the inmate into such a small cell, is the necessity related to overcrowding in a particular prison, where there are no vacancies, and simultaneously it is necessary to detain the most dangerous prisoners immediately. They include those sentenced to imprisonment for more than 2 years, recidivists, members of an organized crime group, those convicted of crimes against sexual freedom, and convicts who have previously escaped from a prison. However, in these cases, the period of staying in such a small cell may not exceed 14 days (or, if a penitentiary judge agrees, 28 days). The inmate may bring a complaint against each decision of relocation into such a small cell to the penitentiary court, which examines it within 7 days. However, the main question that arises as part of the analysis of this appeal is whether penitentiary courts have a real influence on this decision of the governor, whether they have means and possibilities to challenge such a restriction if the governor makes this decision only exceptionally. Placing an inmate in a cell of less than 3 m² is possible again after 180 days from the end of the previous limitation of his or her rights to a sufficient amount of area.

Recently, the problem with overcrowding has not been as large as it was a few years ago, now there are still places for sentenced people. According to Polish prison officers' data, the number of population in prisons is 87.46% of all the places established for them¹⁵. This number has been similar in the last 5 years, with a slight decrease.¹⁶ However, it is still visible

¹⁵ Data about population in Polish prisons from the day 29.04.2022.

Source: <https://www.sw.gov.pl/strona/statystyka--komunikat>

Accessed: 29.06.2022.

See also: Prisons and Prisoners in Europe 2021: key findings of the SPECE I report. 10.

Source: https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_Prisons-and-Prisoners-in-Europe-2021_Key-Findings-SPACE-I_-220404.pdf.

Accessed: 8.08.2022).

¹⁶ Data from Eurostat.

Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Prison_statistics#Overcrowding_and_empty_cells.

Accessed: 25.06.2022

that there is a problem with too many people in prisons. Moreover, the living conditions of inmates, if they are transferred to cells smaller than 3 m², should be assessed as disastrous, since the standard of 3 m² per person is already one of the lowest in European countries. For example, in France¹⁷ the living space in cell per one prisoner is 4.7 to 9 m², 9 to 10 m² in Spain¹⁸ and 7 to 9 m² in Italy.¹⁹

The problem of overcrowding in Polish prisons has repeatedly been the subject of research by the European Court of Human Rights, which found that the conditions did not meet the European minimum, and therefore indicated a violation of Art. 3 of the European Convention on Human Rights. In individual cases, which were analysed by the ECtHR, the cells had an area of between 2 and 2.4 m², and the inmates stayed in them for several years.²⁰ This is not something to be proud of, because generally, the ECtHR indicates that until the finding of a violation of Art. 3 of the Convention, there must be an objective condition of inhuman treatment, so that ill-treatment reaches a certain level of severity. This should be assessed on the basis of the following conditions: living space, duration of degrading conditions, psycho-physical effects and personal conditions of the inmate (e.g. gender and health condition), the possibility of access to the toilet in conditions of respect for privacy, air supply, access to natural light, heating and

¹⁷ Cretenot, M. – Liaras, B. (2013): Prison conditions in France, European Prison Observatory. Detention conditions in the European Union. 10.

Source: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Prison-%20conditions%20in%20France.pdf>

Accessed: 15.07.2022

¹⁸ Aranda Ocaña, M. (2013): Prison conditions in Spain, European Prison Observatory. Detention conditions in the European Union. 10.

Source: <http://www.prisonobservatory.org/upload/PrisonconditionsinSpain.pdf>

Accessed: 15.07.2022

¹⁹ Marietti, S. (2013): Prison conditions in Italy, European Prison Observatory. Detention conditions in the European Union. 10.

Source: http://www.prisonobservatory.org/upload/Italy_Peniten.pdf

Accessed: 15.07.2022

²⁰ Wenerski v. Poland, No. 44369/02, 20 January 2009; Musiałek and Baczyński v. Poland, No. 32798/02, 26 July 2011.

proper hygiene conditions, as well as the attitude of the authorities, whether they have taken steps to improve living conditions.²¹

Solutions

The fight against overcrowding in prisons can take a variety of strategies. The first is building new prisons or expanding the existing ones, but it is a very difficult and expensive issue.²² Another possibility is a preventive action on society: supervision and control, activity, and cooperation with law enforcement agencies. The third issue is the criminal policy of the state and the judicial authorities, which may also punish offenders with non-custodial penalties such as fines or restriction of liberty. In specific circumstances it is also possible to suspend the execution of imprisonment²³ or release the convict after he has served at least half of the sentence²⁴ or under certain conditions the penitentiary court may allow the convict to serve a sentence of imprisonment in the electronic supervision system.

Moreover, in this regard, the Ordinance of 25 November 2009 on the procedure was issued to be followed by competent authorities if the number of inmates in prisons or pre-trial detention centres exceeds the total capacity of these establishments on a national scale. This ordinance does not

²¹ Sikorski v. Poland, No. 17599/05, 22 October 2009; Orchowski v. Poland, No. 17885/04, 22 October 2009.

²² Moreover, as long as building new prisons is the way to limit the overcrowding, it does not limit criminality. See: Hough, Allen and Solomon, (2008): Tackling prison overcrowding. Build more prisons? Sentence fewer offenders? Policy Press, Bristol. 25 and following.

²³ According to Art. 69 § 1 Criminal Code suspension of the execution of imprisonment is possible when (1) the punishment is under 1 year, (2) the perpetrator has not been sentenced before to the imprisonment and (3) this kind of punishment is sufficient to achieve the goals of punishment especially a return to crime.

²⁴ According to Art. 77 § 1 CC early release is possible when the attitude and personal conditions of the sentenced person, his behavior after crime and in prison and all other circumstances indicate that this person will obey the legal order and will not commit the crime once again. If the person has previously served a sentence of imprisonment, it is possible after he has served at least two thirds; after 15 years when the sentence was 25 years; and after 25 years if the sentence was life imprisonment.

solve the problem. It is laconic, and it contains only one order for the authorities, saying that after receiving information about exceeding the capacity of the establishments on a national scale, authorities are to make efforts to organize additional cells, while the courts are supposed to verify whether it is possible to postpone the execution of the sentence for some of the convicts.

In my opinion, non-custodial penalties and the electronic supervision system are the best and most effective solutions. Last years' data shows that until 2015 courts sentenced offenders mostly to imprisonment, but the number of these punishments (and of all convicts) decreased every year. While from 2011 to 2015 imprisonment amounted to more than 64% of the punishments, in the last few years this kind of punishment constituted only 37%. Since 2016 explicit change has been seen, non-custodial penalties dominate and the number of them is still increasing. This phenomenon deserves a large approval.

Year	Percent- age of im- prison- ment	Imprison- ment	Non-custodial		
			All non- custodial	Restriction of liberty	Fines
2011	66%	280 023	143 182	49 611	93 571
2012	65%	265 876	142 026	50 730	91 296
2013	67%	235 032	118 046	41 287	76 759
2014	67%	199 167	96 087	33 009	63 078
2015	64%	167 028	92 557	31 096	61 461
2016	43%	125 368	160 496	61 720	98 776
2017	41%	99 346	138 575	53 854	84 721
2018	37%	103 814	168 663	78 172	90 491
2019	37%	105 841	178 835	84 992	93 843

Table 2

The number of penalties²⁵

According to the analysis and evaluation of the functioning of the electronic supervision system in Poland²⁶, the number of applications for this possibility has been slowly increasing, while in 2011 there were 11 979 applications, in 2012 there were as many as 29 262 and in 2019 there were 38 673. However, the request from the convict or his or her defence lawyer does not mean automatically that the system would be used; the penitentiary court is the only institution that may make this decision. As we can see in the table below, only about one third of the proposals were accepted each year.

²⁵ Data from the judicial system's statistic

Source: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>
Accessed: 01.07.2022

²⁶ Przesławski, T. – Stachowska, E.: Analysis and evaluation of the functioning of the electronic supervision system in Poland in 2018–2019. 2021. 49-50.

Source: https://iws.gov.pl/wp-content/uploads/2021/05/IWS_Przeslawski-T.-Stachowska-E._Analiza-i-oceny-funkcjonowania-systemu-dozoru-elektronicznego.pdf
Accessed: 02.07.2022

Year	Number of accepted applications	Number of submitted and examined applications	Percentage of accepted applications
2011	3 577	11 979	30%
2012	10 438	29 262	36%
2013	13 289	34 827	38%
2014	11 820	30 980	38%
2015	10 065	29 723	34%
2016	8 252	25 832	32%
2017	12 072	34 651	35%
2018	12 559	36 919	34%
2019	12 427	38 673	32%

Table 3

Number of accepted applications for penalty enforcement in the Electronic Supervision System²⁷

As we can see, despite of being desirable among those sentenced to imprisonment, the electronic supervision system is still not used as frequently as it could be. The percentage of accepted applications oscillate between 30% and 38%, which shows that only about one of three persons sentenced to imprisonment serve this sentence in the electronic supervision system (ESS). There is also an important fact that according to Art. 43la § 1 of the ECC the application of the electronic supervision system is possible only if there are some specific circumstances:

- the punishment is not stricter than one and a half years imprisonment and the convict is not recidivist;
- this punishment is enough for perpetrator to resocialize;
- the convict has a permanent residence and the flatmates have agreed to serving the sentence in the ESS in the place of living;

²⁷ Information collected from Przesławski, T. – Stachowska, E. (2021), Ibid.

- there are technical possibilities for the ESS that will work well in this place.

To conclude, it is also worth emphasizing that, according to the Follow-up Covid-19 related statement by the Council for Penological Co-operation Working Group, most countries coped with the coronavirus pandemic situation well.²⁸ In some of them, early release schemes, postponing the execution of prison sentences or replacing them with community sanctions or measures were used in order to stop the spread of the virus. As we see, this solution is possible in such a short time, it may be said that in the case of overcrowding in prisons in the future, we would have the best and known measures.

Hungarian legal regulation

The national legislation of Hungary declares that in prison facilities, the human dignity of persons must be respected. Cruel, inhuman, or degrading treatment or punishment may not be used. This is a general treatment clause.²⁹

With regard to overcrowding in prisons, the European Court of Human Rights (ECtHR) first addressed the decision of Varga and others of 10 March 2015³⁰, establishing that the Hungarian prisons' conditions violate Article 3 of the European Convention on Human Rights, namely the prohibition of torture. The decision of the ECtHR was given special weight to

²⁸ Follow-up Covid-19 related statement by the Council for Penological Co-operation Working Group. 2020.

Source: <https://rm.coe.int/pc-cp-2020-10-e-rev-follow-up-to-pc-cp-wg-statement-covid-19/16809ff484>

Accessed: 17.07.2022

²⁹ Nagy, A. – Dobos, Á. Gy.: Túlszűfoltóság a büntetés-végrehajtási intézetekben és a konfliktusok, [Overcrowding in prisons and conflicts] Publicationes Universitatis Miskolcensis Sectio Juridica et Politica 2019/1. 305-331.

³⁰ Varga and Others v. Hungary, Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 June 2015.

examine the conditions in Hungarian prisons according to a pilot procedure, which means that this is not an individual case, but the Hungarian regulation suffers from a systemic problem.

Inadequate movement, air space or hygiene in prisons caused the main problem. The Council of Europe, the Committee for the Prevention of Torture and Inhuman Treatment (CPT), based its position, on the fact that room for movement in many cases did not even reach 1 m². Inadequate hygienic conditions meant inadequate separation of the living space and the toilet, the lack of a sufficient number of washrooms, and the actual obstruction of open air flow for a certain period of time for the convicts.

In the meantime, however, the Constitutional Court was examining freedom and Decree 6/1996 of the Ministry of Justice (MOJ) (12. VII.) on the rules of the execution of pre-trial detention. Later, however, the legislator had to repeal the above-mentioned 6/1996 MOJ Decree with effect from 1 January 2015 and replace it with Decree 16/2014. (XII. 19.) MOJ, which entered into force. However, the impugned provisions, with the same content, were included in Section 121 of the MOJ Decree. According to it, the number of people that can be accommodated in a cell or in a living quarter should be determined in such a way that each convict has as much as 6 cubic meters of air space, with 3 m² for male convicts and 3.5 m² for women.

For the often-treated problem of the current prisons, we can establish that the current capacity of the Hungarian prisons is associated with the gradual overcrowding of prisons. The decrease in the total number of inmates in recent years is not so clear, but a slight decrease can be observed. While in 2017 the prison population consisted of 17,944 people, in 2018 there were 17,251 people, and 16,664 people in 2019. The expected trend for the next periods will also show a slight decrease.

Compensation procedure

The European Court of Human Rights ruled on 10 March 2015 that overcrowding meant a mass and structural problem with regard to the Hungarian penitentiary system. Therefore, it obliged Hungary to produce a plan within six months to reduce overcrowding significantly and permanently. The deadline for that expired on 10 December 2015.

Building new prisons is not a solution to the above problem. Not only because it is expensive, but also because international experiences show that increasing the system's capacity has been accompanied by the growth in the number of detainees.

On its last visit, the CPT announced that it would like confirmation that the minimum required accommodation area of 4 m² per prisoner in multi-seat cells (without toilet and sanitary facilities) has been achieved and the official prison capacities have been recalculated accordingly. Therefore, a compensation procedure was introduced for breach of CPT principles.³¹

Solutions

There are several ways to reduce the prison population effectively. The first is an effective and efficient system of alternative sentences and electronic monitoring, and conditional release. The procedure concerning reintegration surveillance is regulated by Art. 61/A. of the above-mentioned Code, according to which: “the correctional institution proposes to the court to command reintegrational surveillance.” Thus, reintegration surveillance is not implemented by the correctional institution, but the judge of the second instance criminal court. In such cases, the court decides on the basis of the submitted documents, but it may also hold a hearing on the basis of the request submitted by the convict or his defence lawyer.

³¹ Nagy, A.: A kártalanítási eljárás, [The compensation procedure]. Miskolci Jogi Szemle 2019/2. special edition. 221-232.

Reintegration surveillance³² may be initiated only once during the term of completing the punishment by the sentenced person or his defence lawyer. The request is brought by the correctional institution to the criminal court within fifteen days. The term “once” is important because the convict receives a significant change in his conditions and in his lifestyle and, therefore, this opportunity is only accessible to convicts who are less dangerous to society and who can reasonably be expected to be able to successfully reintegrate into civil society. Although convicts under reintegration surveillance may leave the prison before the punishment is actually completed, they must move to the house or apartment designated by the law enforcement judge and can only leave the designated property for strictly defined reasons, e.g. to ensure the ordinary needs of daily life, to conduct work, education and medical treatment.

Art. 187/A (1) of the above-mentioned Code regulates the conditions under which reintegration surveillance can be ordered. If the purpose of the deprivation of liberty can also be achieved in this way, the convict may be placed under reintegration surveillance before the estimated date of release from punishment. The agreement of the convict is needed and the conditions are as follows:

- he has been sentenced to imprisonment of the crime committed with negligence, or
- he has been sentenced to imprisonment for an intentional crime, then
- not convicted of an offence concerning violence against a person as defined in Art. 459 (1) 26. of the Criminal Code
- he has been convicted for the first time for a non-custodial sentence or he is a non-recidivist criminal, and
- he shall complete a maximum term of detention of five years.

³² Nagy, A. – Menyhért, E.: A reintegrációs őrizet egyes kérdései, [Certain issues of reintegration detention] Publicationes Universitatis Miskolcensis Sectio Juridica et Politica. 2018/2. 227-239.

The duration of reintegration surveillance is

- a) up to one year if the sentenced person is sentenced to imprisonment for negligent crime,
- b) for a maximum period of ten months in other situations.

Reintegration surveillance is also available to minors according to the Code, which lays down further specificities in the application of the above-mentioned reintegration surveillance. Thus, the conditions for the application of juvenile reintegration surveillance, in addition to the general rules are:

- a) attending family therapy or family counselling at least once during the period of deprivation of liberty,
- b) consent of the legal representative to the installation of the electronic monitoring equipment and the lodging of a declaration of accommodation with a statement to escort the detainee.

The Code also implements a multi-directional extension of the institution of reintegration surveillance in order to reduce the saturation of institutions.

On the one hand, it would allow a wider range of offenders to benefit from this institution, as the amendment would extend not only to those who are sentenced for the first time, but also to those who are convicted of negligent offenses and to re-offenders. On the other hand, it determines the length of time spent in reintegration surveillance, depending on the degree of guilt and over a longer period (10 months in the case of intentionality and one year in the case of negligence).

Another way of combating overcrowding in prisons is the effective legal regulation of conditional release from imprisonment and the so-called back-end type of home prison penalty. In Hungary it means that after serving two thirds of the imprisonment, a prisoner can be released according to the general rule of the Criminal Code of Hungary.