

OVERCROWDING IN PRISONS IN HUNGARY AND SLOVAK REPUBLIC *

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1. Introducing

The aim of this study is to point out on current problems in prison system related to prison overcrowding in Hungary and Slovak republic. Prison overcrowding is an essential problem that deserves attention. The study contains information and statistics about overcrowding of prison facilities. The authors also offer *de lege ferenda* ideas to resolve this alarming situation.

2. Imprisonment

Imprisonment in its unconditional form is undoubtedly one of the most significant interference by the status with the rights and protected interests of a natural person. Imprisonment in general can be considered as last mean of coercion as a necessary consequence of the commission of a criminal offense, which should reflect the aspect of both individual and general prevention. The gradual increase of criminality and the imposition of imprisonment is subsequently associated with an increase of the prison population in prison facilities, what causes many problems of a capacity, organizational or technical nature. Due to the fact that the legal regulation of imprisonment in the Slovak Republic is relatively rigorous and inflexible, we manage to fight the problems of imprisonment only partially.

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3. Basic principles of the Slovak Republic

The prison system of modern democratic state must also reflect social changes and technical progress, and its conditions must be improved.

The national legislation of the Slovak Republic declares that in prison facilities the human dignity of persons is respected and cruel, inhuman or degrading treatment or punishment may not be used. This is a general treatment clause. We find important material – technical, organizational, educational and other conditions. It is clear that the current modern concept of imprisonment not only prefers to isolate and restrict the personal freedom of a natural person, but it is assumed that this person will be worked on and this person should be integrated into the normal of life.

It is important in what conditions a prisoner restricted in his personal liberty finds himself and whether he has all the rights granted by legislation. All this has an impact on the subsequent integration of the person into everyday life and complex resocialization.

The execution of imprisonment is regulated by Act no. 475/2005 Coll. on the Execution of Imprisonment, as amended (hereinafter referred to as the “Act on the Execution of Imprisonment”). The sentence of imprisonment is carried out differently in institutions for the execution of imprisonment of a minimum, medium or maximum degree of guarding, respecting the so-called external differentiation of imprisonment.¹ In addition, imprisonment can be also served in a juvenile institution and as well as in a hospital for accused and sentenced persons.²

The execution of imprisonment in prison facilities currently faces several problems. The decisive factors are the current state of the prison population and insufficient capacities related to the constant increase of the prison population.

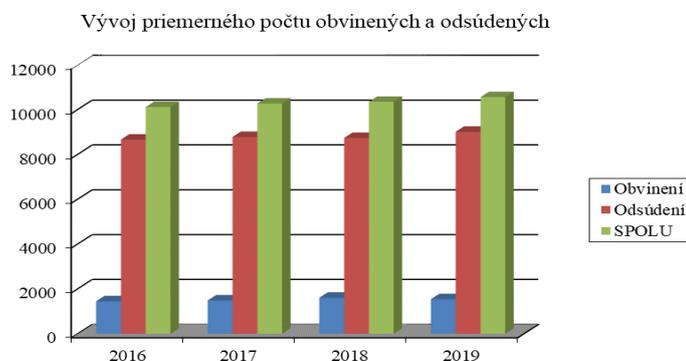
Undoubtedly, these problems are mainly due to economic causes, as prison facilities are of a public nature, they are state-owned and operated by the Prison and Judicial Guard Corps as a state body and their costs are mostly covered by limited public resources. This is also reflected in the current state of prison facilities.

For the often treated problem of the current prisons, it is possible to name the current capacity of the Slovak prisons associated with the gradual overcrowding of prisons. The increase in the total number of inmates in recent years is not so clear, but a slight increase can be observed. While in 2016 the prison population consisted of 10,116 people, in 2017 it was 10,270 people, in 2018 10,347 people and in 2019 10,558 people. The expected trend for the next periods is also a slight increase.³

¹ Provision of § 48 sec. 1 of Criminal Code.

² Provision of § 5 of Act on the Execution of Imprisonment.

³ Development of the average number of accused and sentenced (blue – accused, red – sentenced, green – all together).



In order to increase the number of sentenced in the prison environment, it is necessary to reflect another factor, namely the overall capacity of prison facilities. According to statistics published on the website of the General Directorate of the Prison and Judicial Guard Corps, many institutes are showing an alarming situation. For example, facility Sabinov is filled to 103.52%, facility Želiezovce to 108.84%, facility Banská Bystrica – Kráľová to 104.25%, while other institutes are close to 100% as facility Levoča, facility Nitra – Chrenová, facility Prešov, facility Ružomberok, facility Sučany, facility Dubnica nad Váhom, facility Ilava, facility Košice and so on. Official statistics show that the total occupancy rate of these institutions in 2020 is 91.94%.

However, these numbers may not be entirely authoritative and realistic, as it is important what accommodation floor space (area) is included in the overall statistics, which has been criticized in the past by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”), which pointed out that there were also included areas into accommodation space that do not primarily serve to accommodate sentenced.

The current legislation declares that the accommodation floor space (area) for a sentenced man is 3.5 m² and for women and juveniles 4 m². The Act on the Execution of Imprisonment also allows certain exceptions from the area thus determined, related in particular to the excessive increase in the number of prisoners in the prison facility. The total occupancy of the prison facility can therefore be determined by the total capacity of the institution, the specified accommodation area and the number of sentenced persons. It can be stated that the current situation is alarming, as some institutions are capacity undersized and overcrowded. CPT on its last visit to the Slovak Republic, announced that it would like confirmation that a minimum accommodation area of 4 m² per prisoner in multi-seat cells (without counting toilet and sanitary) is complied with that and the official prison capacities have been recalculated accordingly.⁴

⁴ Report for the Government of the Slovak Republic on the visit of the Slovak Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 28 March 2018.

What CPT asks, in our opinion, is the minimum standard in terms of accommodation, which is officially reflected by the Slovak Republic in the Updated Concept of Prisons of the Slovak Republic No. 392/2013, where there is also accepted the task “to build accommodation capacities with the possibility of accommodation of convicts with an adequate minimum floor area of not less than 4 m²”, which is respected in the reconstructed institutions, but not in all.

4. Solutions

It should be noted that the Slovak Republic has been struggling for a long time with the growth of the prison population and the related overcrowding of prisons. In this context, in the Updated Concept of Prisons in the Slovak Republic for the period 2011–2020, adopted by the Government of the Slovak Republic, the increase in the prison population is identified as one of the biggest challenges for the prison system. There are several ways to effectively reduce the prison population.

The first is an effective and efficient system of alternative sentences and electronic monitoring, the expansion of which has recently been noticeable. It should be noted that alternative sentences have recently undergone a number of legislative changes guaranteeing an extension of the conditions for their imposition and competition against unconditional imprisonment, which we undoubtedly welcome. Together with effective electronic monitoring, this is the most effective way to combat prison overcrowding.

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, or the conversion of the rest of an imprisonment into a home prison penalty. It can be said that if the institute of conditional release enjoys popularity, the conversion of the rest of the sentence of imprisonment into a sentence of home prison penalty is not a required institute in the conditions of the Slovak Republic. The institute of conditional release has also undergone several legislative changes in the recent period, the most important is the possibility of conditional release of a person sentenced of a crime after half of the imprisonment, while obligatory imposition of control by technical means – electronic monitoring.⁵

The amnesty granted by the President of the Slovak Republic can undoubtedly be included among the ways of combating prison overcrowding. However, this is not a common act and rather a sporadic solution, which is confirmed by the fact that the last one was in Slovakia in 2013.

The problem of increasing prison population and capacity problems can also be solved by expanding existing capacities and building new facilities, but this is economically challenging. Therefore, the partial privatization of the prison system seems reasonable. In this context, it is undoubtedly necessary to mention the con-

⁵ Provision of § 66 sec. 1 letter. c) of Criminal Code.

struction of the Rimavská Sobota-Sabová prison facility in the form of a public-private partnership.⁶

5. Basic principles of Hungary

The national legislation of Hungary declares that in prison facilities the human dignity of persons is respected and cruel, inhuman or degrading treatment or punishment may not be used. This is a general treatment clause.⁷

With regard to overcrowding in prisons, the European Court of Human Rights (ECtHR) first addressed the decision of Varga and others of 10 March 2015⁸, establishing that Article 3 of the European Convention on Human Rights, namely the prohibition of torture the Hungarian prison conditions violate it. The decision of the ECtHR was given special weight to examine the conditions of the Hungarian prison according to a pilot procedure, which means that this is not an individual case, but the Hungarian regulation suffers from a systemic problem.

The main problem was caused by inadequate movement / air space or hygiene in prisons. The Council of Europe, the Committee for the Prevention of Torture and Inhuman Treatment (CPT), based its position, judgment per room for maneuver in many cases did not even reach 1 nm². Inadequate hygienic conditions meant inadequate separation of the living space and toilet, the lack of a sufficient number of washrooms, and the actual obstruction of the open air law for a certain period of time for the convicts.

In the meantime, however, the Constitutional Court is examining freedom and the 6/1996 on the rules for the execution of pre-trial detention. (VII. 12.) of the IM.

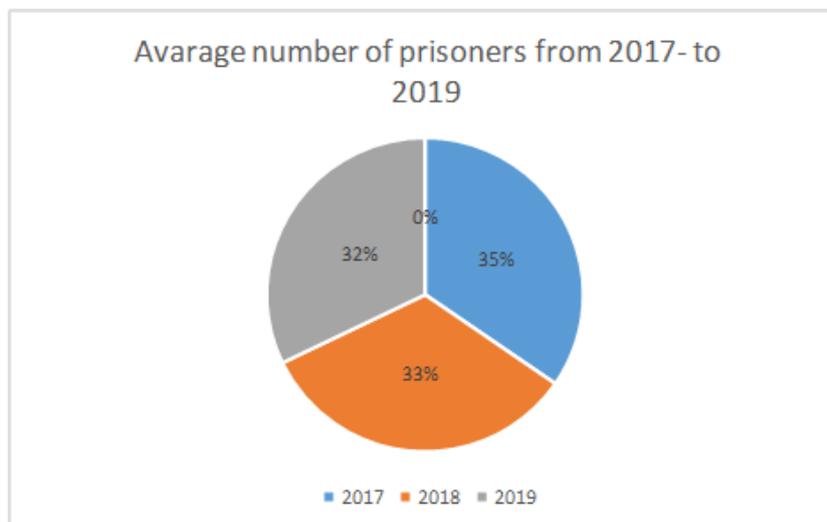
In the meantime, however, the legislator should repeal the above-mentioned 6/1996 IM Decree with effect from 1 January 2015 and replace it with Decree 16/2014 (XII. 19.) IM decree entered into force. However, the impugned provisions, with the same content, were included in Section 121 of the IM Decree. According to this: The number of persons that can be accommodated in a cell or in a living quarters should be determined in such a way that each convict has as much as six cubic meters of air space, with three square meters for male convicts and three and a half square meters for women.

For the often treated problem of the current prisons, it is possible to name the current capacity of the Hungarian prisons 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 it was 17,251 people, in 2019 16,664 people. The expected trend for the next periods is also a slight decrease.

⁶ Yearbook of the Prison and Judicial Guard Corps for 2019

⁷ Nagy Anita – Dobos Ádám György: Tűlsúfoltság a büntetés-végrehajtási intézetekben és a konfliktusok. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 37, 1, pp. 2019, 305–331, 27 p.

⁸ *Case of Varga v. Hungary* (Application no. 54589/15)ECtHR.



6. Compensation procedure

The European Court of Human Rights – ruled on 10 March 2015 that overcrowding means 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.

CPT on its last visit announced that it would like confirmation that a minimum accommodation area of 4 m² per prisoner in multi-seat cells (without counting toilet and sanitary) is complied with that and the official prison capacities have been recalculated accordingly. Therefore, a compensation procedure⁹ was introduced for breach of CPT principles. You can initiate compensation proceedings:

- the convicted person,
- his protector.

If the elimination of a placement circumstance that violates the fundamental rights arising from the lack of the provision of living space prescribed by law, the given prison institute cannot be resolved within the prison institute, the commander of the institute transfer to an other prison institute. The legislator has set a 6-month limitation period for initiating compensation proceedings, which is to be calculated

⁹ Nagy Anita: A kártalanítási eljárás. *Miskolci Jogi Szemle: a Miskolci Egyetem Állam- és Jogtudományi Karának folyóirata*, 14, 2. különszám, 2. kötet, 2019, pp. 221–232., 12 p.

from the cessation of the circumstances on which the compensation is based.¹⁰ An application for compensation can only be made after a complaint has been lodged with a penitentiary institution by a detainee or his or her counsel for placement circumstances that violate his or her fundamental rights, with the exception of: “if the time spent in circumstances which infringe his fundamental rights does not exceed 30 days”.

The complaint must be dealt with by a decision of the commander of the penitentiary institution within 15 days, against which judicial review is warranted. Thereafter, the claim for compensation must be made in writing to the penitentiary institution where he or she is detained, The penitentiary institution shall then forward the application to the penal judge within 15 days, within a very short period of time, with an opinion and an extract containing information on the convicted person’s conditions of placement.

Subsequently, the penal judge

1. decide on the basis of the documents within 15 days, or
2. set a hearing within 15 days, or
3. schedule a trial within 30 days.

If the penal judge awards compensation to the convicted person, in his decision: Penal judge decides on the amount of the daily item of compensation (minimum HUF 1,200/day, maximum HUF 1,600/day). The decision commits the State to pay the amount of compensation within 60 days of service of the decision.

7. Solutions

There are several ways to effectively reduce the prison population. 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 in order to command reintegrational surveillance.” Thus, reintegration surveillance is not authorised by the correctional institution, but the judge of the second instance criminal court. In such cases, the judge decides on the basis of the submitted documents, but he may also hold a hearing on the basis of the request submitted by the sentenced or his defender.

Reintegration surveillance¹¹ may be initiated once during the term of completing the punishment by the sentenced person or his defender. The request is forwarded by

¹⁰ Nagy Anita – Forgács Judit: Jogérvényesítés a büntetés-végrehajtási jogviszony keretei között különös tekintettel kártalanítás jogintézményére. *Studia Iurisprudentiae Doctorandorum Miskolciensium – Miskolci Doktoranduszok Jogtudományi Tanulmányai*, 2017, pp. 17–25.

¹¹ Menyhért Enikő – Prof dr. Nagy Anita: A reintegrációs őrizet egyes kérdései. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 36, 2, 2018, pp. 227–240.

the correctional institute to the criminal court within fifteen days. “Once” is important because the sentenced receives a significant change in his conditions in his life-style and therefore it is only accessible to those sentenced who are less dangerous to society and who can reasonably be expected to be able to successfully reintegrate into civil society. Although sentenced under reintegration surveillance may leave the correctional institute before the punishment is actually completed, but only to the house or apartment designated by the law enforcement judge, and can only leave the designated property in strictly defined cases. Ensuring the ordinary needs of daily life, carrying out work, education and medical treatment are defined as such cases by the law.

Art. 187/A. (1) of the above mentioned Code regulates the conditions when reintegration surveillance can be ordered. If the purpose of the deprivation of liberty can also be achieved in this way, the sentenced person can be placed under reintegration surveillance – before the estimated date of release from punishment –, if he agrees with it and:

- he has been sentenced to custodial sentence for a crime committed with negligence, or
- he has been sentenced to custodial sentence 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 a non-recidivous criminal, and
- shall complete a maximum term of detention of five years.

The duration of the reintegrational 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, other than that specified in (a).

Reintegration surveillance is also available to minors according to the Code, by laying down further specificities in the application of the above-mentioned reintegration surveillance, so that the conditions for the application of juvenile reintegration surveillance, in addition to the general rules:

- (a) to attend family therapy or family counseling at least once during the period of deprivation of liberty,
- (b) the 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 2/3 of the imprisonment, can be released a prisoner according to the general rule of the Criminal Code of Hungary.

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