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Abstract

Prison population rates in many European countries have increased until the beginning of the 21st century. Prison overcrowding and questions around the 'New Punitiveness' have dominated the discourse. Recently a remarkable drop in prison population rates can be observed, in particular in Central and East European countries (for example, Russia, Belarus, Ukraine, the Baltic states), but also in West European jurisdictions (the Netherlands, Germany and, in the last few years, also Spain). Explanations are not always easy and in most cases this is not the result of a strategic policy but more likely of a sharp decrease in (serious) crime rates. The paper discusses the developments in a European comparative perspective and explores the potentials for a further reduction in prison population rates.

Keywords

Crime control, crime policy, European penology, prison population rates, reducing imprisonment rates, sentencing and human rights

Introduction: European penology and research on prison population rates

Research on prison population rates has a long tradition in European penology. The search for something better than imprisonment, alternative penalties or, in today's notion, 'community sanctions' have been on the agenda since the 19th-century reformer Franz von Liszt called for the rehabilitative ideal in punishing offenders. If I use the term 'European penology' one has to realize that Tom Daems, Sonja Snacken and Dirk van Zyl Smit have put a question mark to the title of their edited European penology book (Daems et al., 2013). Is there something that could be called 'European' penology? Michael Tonry has emphasized

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that European criminology is distinct from in particular US criminology because of its focus on human rights and normative issues (Tonry, 2015). This could also be a particular characteristic of European penology. Prison research in Europe is strongly related to human rights issues such as the Recommendations of the Council of Europe or the standards developed by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). A broader concept of penology is not so strongly focused on the (particularly German) tradition of prison research but can be defined as 'the study of the social processes of punishment and penal control' (Garland, 1997; cited in Snacken and van Zyl Smit, 2013: 4f); it thus has a much wider meaning than historical definitions used to have. One of the core questions is how imprisonment can be limited, maybe even abolished (as abolitionist writers dreamed in the 1970s and 1980s), and what different, hopefully more humane forms of penal control could be developed. The comparative look at prison population rates was always tempting and at least in Europe the ideal of reformers has been the Scandinavian countries and the Netherlands, which appear to cope with crime and its control in a moderate way, resulting in very low incarceration rates. Abolitionists already saw the prospect of a prison-free society when looking at the Netherlands' prison population rate of around 30 per 100,000 inhabitants in the early 1980s. What a shock when 13 years later the prison population rate had quadrupled to almost 130! The 'Scandinavian exceptionalism'¹ remained more stable, demonstrating that prison population rates are not fate, but made by human beings and certain policies.

The international consensus that imprisonment should be used as only a last resort has never been questioned in Europe, with few exceptions and periods of crime policy, whereas incapacitation and deterrence flourished in the USA from the mid-1970s until recently. Since the 1965 Council of Europe Resolution (65) 1 on suspended sentences, probation and other alternatives to imprisonment, the principle of imprisonment as a last resort and for the shortest possible period has repeatedly been emphasized in many international recommendations and resolutions.² Even in recommendations concerning so-called 'dangerous offenders' or lifers or other long-term prisoners we do not find any justification for incapacitation or deterrence, but instead the rehabilitative ideal.³ However, what does 'last resort' mean? Until recently, most politicians in the USA were convinced that the extremely high prison population in the USA of more than 700 per 100,000 inhabitants⁴ was absolutely 'necessary' to 'effectively' fight against crime. In addition, at that time, the similar prison population rates in Russia were not really questioned either.

With increased evidence of problems of poor prison conditions (often related to prison overcrowding) and a long history of European Court of Human Rights (ECtHR) jurisprudence (see, in summary, van Zyl Smit and Snacken, 2009) the aim of reducing prison populations became an urgent issue. The motor of a 'reductionist' policy was and is not always humanitarian considerations, but – as at present in the UK – just economic reasons of budgetary restraints.⁵

European developments in the use of imprisonment

Prison population rates in Europe – a divided continent

A first look at the European landscape shows that prison population rates vary considerably (see Figure 1). Europe seems to be a divided continent, with high prison population

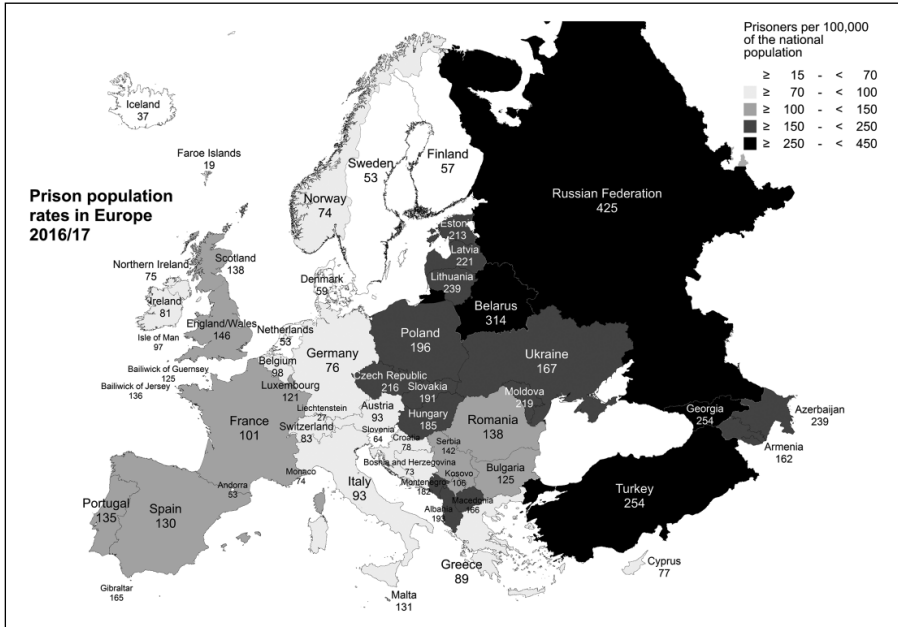


Figure 1. Prison population rates in Europe, 2016/17 (prisoners per 100,000 of the national population).

Source: Institute for Criminal Policy Research, World Prison Brief. URL (accessed 23 June 2017): <http://www.prisonstudies.org/info/worldbrief/>; for the Netherlands – www.dji.nl.

rates in Central and Eastern Europe, low rates in Scandinavia and some continental European countries (including Germany, Ireland and the Netherlands), and medium size rates in other West European jurisdictions. Before analysing the prison population rates and their development in more detail, one should be aware of some basic statistical issues concerning what prison population rates really mean.

Prison population rates as an indicator of punitiveness?

Prison population rates often are interpreted as an indicator of a more or less punitive crime policy, although it is clear that assessing punitiveness is more complicated than just comparing prison population rates (see Kury and Shea, 2011; Dünkel et al., 2010, with further references).⁶ Prison population rates are counted by the number of inmates on a given day per 100,000 inhabitants of the country. They are therefore a construct of the number of entries (‘flow of entries’) and the length of stay in prison.⁷ To give an example, the German prison population rate of 76 is composed of 117 entries per 100,000 inhabitants and an average stay of 8.4 months. The more than double as high rate in the Czech Republic (216) is based on fewer offenders sent to prison (87) compared with Germany, but a much longer stay of 21.5 months. A striking phenomenon is that in Sweden about four times as many offenders enter prisons (393), but owing to a very short average stay of only 1.8 months the prison population rate (53) is lower than that in

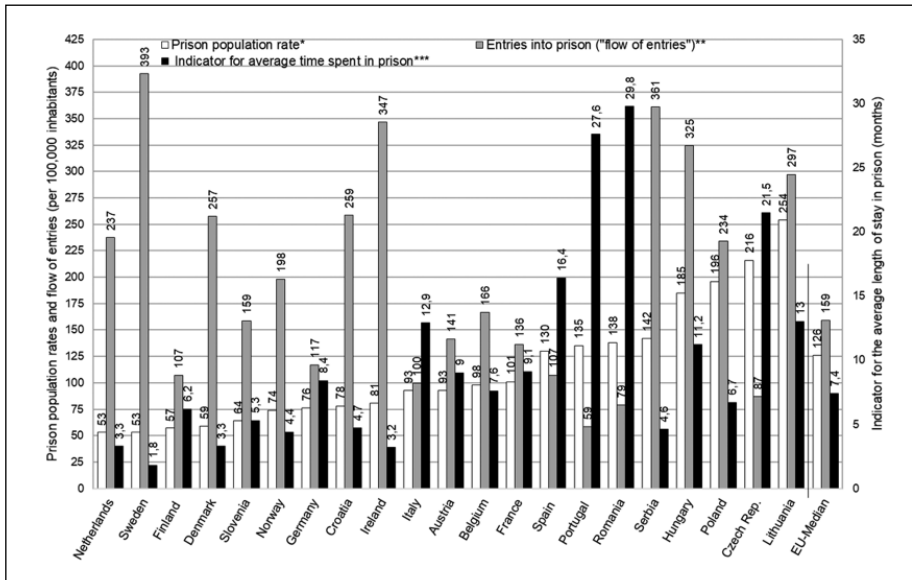


Figure 2. Prison population rates, 2016/17, entries into prison ('flow of entries') and average stay in prison, 2013.

Sources: Institute for Criminal Policy Research, World Prison Brief. URL (accessed 23 June 2017): <http://www.prisonstudies.org/info/worldbrief/>; Aebi, Tiago and Burkhardt (2015: Table 8, p. 101f; Table 11.A, p. 113).

Germany (see Figure 2). In general one can summarize that the low rates in Scandinavian countries (Sweden, Denmark) are the result of the use of very short sentences, whereas the relatively high rates in East European countries (for example, Romania, Czech Republic, Estonia, Lithuania) are based on a larger proportion of long-term imprisonment (Dünkel et al., 2016). So the question of punitiveness is difficult to judge: are Scandinavian countries maybe more punitive by incarcerating so many people, apparently for not very serious crimes such as traffic offences? In addition, one could view the East European sentencing policy in a different light, when realizing that imprisonment is used less often than in many West European countries.

Some scholars question the use of the term 'punitiveness' in the context of prison population rates by referring to rather punitive non-custodial sentences such as certain stigmatizing forms of community service in the Netherlands (van Swaaningen, 2013) or the expansion of GPS-based electronic monitoring in many countries, which considerably increases social control (Dünkel, 2017; Dünkel et al., 2017). Indeed, one should look critically at these new alternatives with regard to their punitive character. However, even if specific forms of non-custodial sanction come close to imprisonment, imprisonment remains the most intrusive form of social control and should be limited as far as possible.⁸ Aebi, Delgrande and Marguet (2015) have demonstrated that high prison populations often accompany high numbers of offenders under community supervision; that is, community sanctions *do not necessarily replace* imprisonment, but possibly increase penal social control (the problem of net-widening).

The development of prison population rates in Europe

Europe in the early 2000s was rather clearly divided in ‘good’ and ‘bad’ countries as regards the principle of using prisons (and imprisonment) as a real last resort. On the one hand, there were the Scandinavian countries with very low prison population rates and, on the other hand, East European countries of the former Soviet empire, amongst them in particular Russia, Ukraine, Belarus and the Baltic states. The Eastern ‘bad guys’ were competing with the world’s nation with the highest prison population rates, the USA, which had more than 700 prisoners per 100,000 inhabitants.⁹ It was easy to say that the former Soviet states maintained the old repressive Soviet style of crime and sentencing policy, but the USA developed a getting tough policy with the war on drugs, ‘three strikes and you’re out’ and finally the ‘truth in sentencing’ policy.¹⁰ Incapacitation and deterrence were the prevailing sentencing theory.

Russia and other East European countries had developed a similar harsh punishment strategy, in particular for repeat offenders (see below).

Until the early 2000s many European countries had experienced considerable increases in their prison population rates, which were reflected and explained in Dünkel et al.’s edited book (2010) on ‘Crime, crime policy, sentencing practice and prison population rates in a European comparison’ (in German). These increases were often understood as a proof of the ‘punitive turn’. England and Wales were seen as the prototype of the ‘neo-correctional model’ (Cavadino and Dignan, 2006). Indeed, the 1990s brought criminal law reforms that increased minimum sentences for violent and sex offenders almost everywhere, with the consequence that these groups of offenders represent a larger proportion of the prison population and contributed to the increase in prison populations and overcrowding in many European countries (see Dünkel et al., 2010, 2016). However, this general trend was not uniform. Snacken and Dumortier (2012) explained why several European, in particular continental European, countries with a strong human rights-oriented approach in sentencing and prison policies were able to ‘resist punitiveness’. Lappi-Seppälä (2007, 2010, 2011) confirmed a different political culture, explaining the moderate approach of ‘Scandinavian exceptionalism’ by evaluating political science, socioeconomic and other social indicators. Dünkel (2013) used the same indicators and found that the values scored were very similar in both Slovenian and German society.

Recently the picture has become increasingly blurred. The successor states of the former Yugoslavia are exceptions to the situation in former communist states – prison rates have traditionally been relatively low, and this tradition is preserved for example in Slovenia and Croatia (see Figure 3). In addition, some of the ‘bad guys’ developed more moderate sentencing practices (accompanied by a reduction in registered serious and violent crimes). Russia reveals a 42 percent reduction in its prison population from 730 in 1999 to 425 in 2017. Ukraine had a similar trend (from 443 in 2000 to 168 in 2016, or –62 percent).¹¹ Belarus experienced an even more extreme reduction in the daily prison population from 620 in 1998 to 239 in 2015 (–75 percent; even when considering the 2016 rate of 306, the total decline of 51 percent remains considerable), that is, the prison population is only one-quarter or one-half of that 7 years before.

The same general trend can be observed in the Baltic states, which tried to reduce their traditionally high prison population of more than 300–400 prisoners per 100,000, resulting

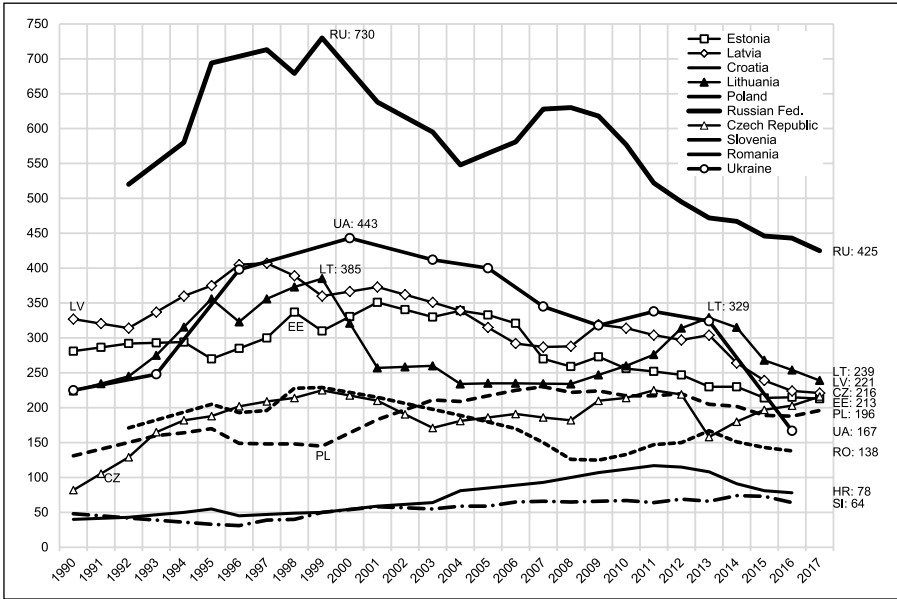


Figure 3. Prison population rates in Eastern Europe, 1990–2016/17 (prisoners per 100,000 of the national population).

Source: Institute for Criminal Policy Research, World Prison Brief. URL (accessed 26 June 2017): <http://www.prisonstudies.org/info/worldbrief/>.

in prison populations of 239 in Lithuania (–38 percent since 1999), 221 in Latvia (–45 percent since 1997) and 213 in Estonia (–37 percent since 2001) (see Figures 1 and 3). The total prison population rates are still about double the size of those in most West European countries, but far from those under the former Soviet-style incarceration policies.

In addition, data for some West European countries indicate astonishing changes in prison population rates. The Netherlands, with traditionally low prison population rates in the 1980s, experienced a quadrupling prison population until 2006 and then within 10 years a decrease by 59 percent (from 128 to 53). Again, we have some knowledge about the period described as the ‘end of tolerance’, in particular for persistent offenders, which resulted in an increase in short-term as well as long-term sentences, ‘non-native’ offenders in prisons, etc. (Tak, 2008: 122, 140), but not so much about the recent dramatic decrease.¹² The Netherlands (53 prisoners per 100,000 inhabitants) and Germany (with a prison population rate of 76 after a decrease of 22 percent from the 2003 rate of 98) now belong to the group of countries that in the past were characterized as ‘exceptionalist’. Both countries experienced a major drop in registered (violent) crimes and both focus strongly on crime prevention programmes. Whereas their impact on crime rates is to some extent evident or at least plausible, the impact on the size of the prison population remains unclear.

One of the few European countries with – until recently – a still expanding prison population is Belgium, although since 2013 a decline in the prison population rate of almost 10 percent can be observed (see Figure 4). There are some ‘homemade’ problems with criminal law reforms that were not successful in reducing the prison population; on

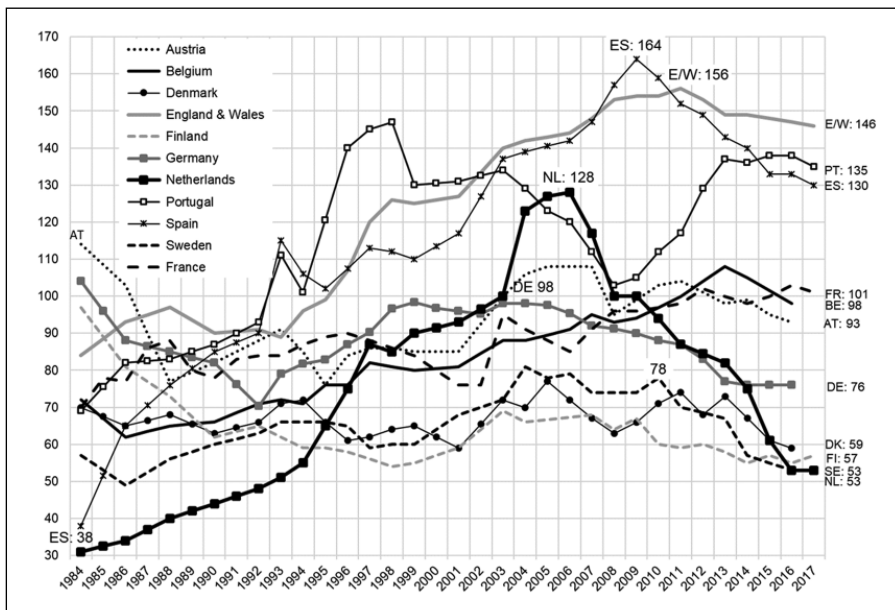


Figure 4. Prison population rates in Western Europe, 1984–2016/17 (prisoners per 100,000 inhabitants).

Source: Institute for Criminal Policy Research, World Prison Brief. URL (accessed 14 April 2017): <http://www.prisonstudies.org/info/worldbrief/>.

the other hand, the recent reverse trend noted by some scholars is attributed to the introduction and expansion of electronic monitoring (Beyens and Roosen in Dünkel et al., 2017: 165). Here, as in general, further research is needed to understand the driving forces for the decline in the prison population.

Although in some countries remand detention figures and the proportion of foreign prisoners are particularly high, their development does not always mirror the overall prison population trends (Morgenstern, 2013, 2017; van Kalmthout et al., 2007), this fact also contributes to the very complex picture.

Because of a still relatively high level of imprisonment rates, the problem of overcrowding is still dominant in some European countries, but far less than 10 years ago (see Figure 5). However, there is a dark figure as prison administrations can ‘hide’ overcrowding by simply ‘redefining’ cells for 2 or 3 people, which originally were dedicated for one person. The pressure of overcrowding is particularly strong in Western Europe in England & Wales, France, Italy and Portugal, and in Central and Eastern Europe in Hungary and the Czech Republic, all countries with still increasing or at least no significant reduction in prison population rates (in contrast to their neighbouring jurisdictions).

Explaining (the rise of) prison populations

There has been much research on explaining the differences between European countries and the rise in prison population rates in the last 25 years (see Coyle et al., 2016; Dünkel

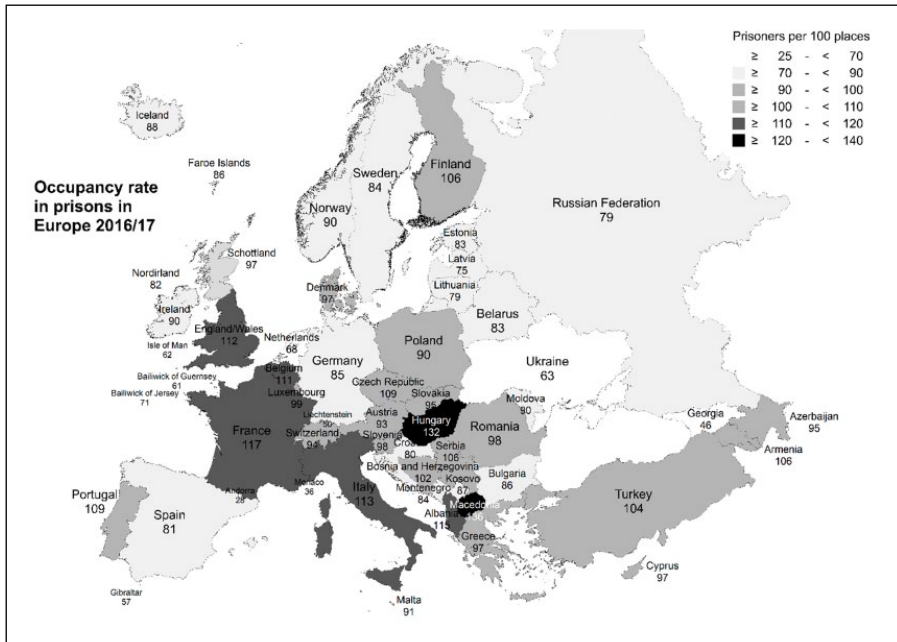


Figure 5. Occupancy rate in prisons in Europe, 2016/17 (prisoners per 100 places).
 Source: Institute for Criminal Policy Research, World Prison Brief. URL (accessed 23 June 2017): <http://www.prisonstudies.org/info/worldbrief/>.

et al., 2010; Lappi-Seppälä, 2007, 2010; Snacken and Durmortier, 2012). Therefore, this section just briefly summarizes some of the main results. One can differentiate between *internal factors* with regard to crime, crime policy and sentencing practices, *external factors* of conditions and changes in the general society such as structural changes and developments (socioeconomic factors, unemployment, poverty, racial discrimination, etc.) and *factors moderating both internal and external factors*, such as media debates, public opinion and general policy changes. In short, the following results and hypotheses have been discussed.

Crime rates (-/+)

Research results testing the hypothesis that prison population rates are higher or increase if crime rates, particularly for serious crimes (which usually attract a custodial sentence), are high or increase are mixed. In some countries a confirming development was found (for example, Germany); in others, however, there was actually evidence of an inverse correlation: an increase in crime rates and decrease in prison populations, or, as in the USA and England & Wales, an increase in prison population rates and a decrease in crime (see Lappi-Seppälä, 2007; Travis et al., 2015: 27).

In recent years Aebi, Linde and Delgrande (2015) have found a positive correlation between the development of (serious) crime and prison population rates for some West

European countries. Nevertheless, the correlations are rather weak and not always clear (Dünkel et al., 2016). There is, however, a stronger correlation between the fall in prison population rates and declining crime rates in some countries such as Germany and the Netherlands (see below).

Crime policy factors: legislation – for example, increasing penalties for sex, violent and drug offenders, liberalizing or restricting early release regulations (+)

Increasing penalties, for example minimum sanctions for violent, sex or drug offenders, had an impact in many West European countries during the 1990s and early 2000s. In Central and Eastern Europe that has traditionally been the case for repeat offenders if the law provided an increased minimum (for example, 30 percent or even 50 percent of the maximum sentence) in the case of statutory recidivism. This policy had about the same effect as ‘three strikes and you’re out’ legislation in the USA.

There are numerous examples that changing the policy on early and conditional release can influence the prison population considerably (for example, liberalization in Austria, restricting and again liberalizing in Spain, restrictions in Hungary; see Dünkel et al., 2010; Padfield et al., 2010).

Sentencing practice: the ‘punitive turn’ – harsher sentences for certain (violent and sex) offenders, using pre-trial detention extensively (+/-)

It is claimed that in some countries harsher sentencing practices (imposing longer sentences for the same crimes) contributed to increasing prison population rates. Although there is some evidence of this in England & Wales or France, other countries did not follow this inflation in sentencing. In Germany, it is well documented that – when controlling for the nature of crimes – sentencing practices did not really change (Dünkel, 2011; Heinz, 2011). On the other hand, pre-trial detention extensively imposed on foreigners and migrants in Germany and elsewhere has been a motor for increased prison population rates in certain periods (Morgenstern, 2013, 2017; van Kalmthout et al., 2007, 2009).

Socioeconomic factors: unemployment rates, poverty, racial discrimination, criminalization of foreigners and migrants (+/-)

Coming to external factors within the general society, there are mixed results concerning socioeconomic factors. Poverty and unemployment are not directly of major importance, but, if disadvantaged groups (ethnic minorities, long-term unemployed, migrants and other vulnerable groups) are stigmatized and a policy of exclusion prevails, these groups are more likely to be in prison (see Box, 1987).

Countries with low inequality indicators (such as the Gini Index) show lower prison population rates than countries with strong differences in income and wealth.

Political science indicators: the legitimacy of the political system, neo-liberal vs. conservative corporatist systems vs. the social democratic welfare approach (solidarity with minorities etc.) – the Scandinavian ‘exceptionalism’

Lappi-Seppälä (2007, 2010) has emphasized the influence of the general political climate and political system on the penal climate and prison population rates (see also Di Giorgio, 2012; Lacey, 2008), explaining amongst others the advantages of the social democratic welfare model over the neo-liberal or conservative corporatist systems (see, in particular, Cavadino and Dignan, 2006). Welfare, the legitimacy of and trust in judicial institutions and confidence in the political system are of importance in this respect. In addition, a political culture based on either consensus or conflict seems to determine crime policy. In a democratic system with coalition-based governments, policy will never sharply shift from one to the other extreme, as can be the case in jurisdictions such as England. Germany has always been governed by coalitions and one of the two governing parties keeping a rather stable and moderate orientation has moderated crime policy. Similar values on political science indicators characterizing the ‘Scandinavian exceptionalism’ can be found in Slovenia and Germany (see Dünkel, 2013).

External factors explain or at least make plausible *long-term developments* in Western societies and the impact of certain political models on crime policy and sentencing practices, for example for what has been summarized as ‘Scandinavian exceptionalism’. Moreover, until recently it was tempting to say that the Central and East European countries in general would fit into an authoritarian model of society, with a repressive penal culture resulting in high imprisonment rates more comparable to the US than to the European penal culture. The changes mentioned above, however, reveal new directions in the penal culture (maybe without a change in the general political culture).

Looking at short-term developments over the past 15 years one must focus on *internal factors* (crime, crime policy, sentencing practice) because they can change quickly, whereas socio-economic and other macro-level factors commonly do not change over such short periods (the exception being social changes such as the peaceful ‘revolution’ at the end of the 1980s in Eastern Europe). Therefore, the following case studies trying to explain the recent fall in prison population rates focus on crime developments, crime policy and sentencing practices.

Explaining the fall in prison population rates

Case studies in Central and Eastern Europe: Estonia, Lithuania, Russia, Ukraine, Belarus

One of the most remarkable and interesting changes in Europe took place in the member states of the former Soviet Union. After the collapse of the Eastern bloc at the end of the 1980s, the newly independent states such as the Baltic states tried to overcome the traditional repressive style of sentencing through major law reforms and expanding Western-style community sanctions. In addition, the sentencing rules were changed, which in particular lowered the former harsh sentences for recidivist offenders. One driving force was the application to join the European Union, which supported a Western-style criminal policy, in particular in the Baltic states.

In *Lithuania* the Criminal Law reform of 2003 was quite successful in introducing alternative sanctions and reducing the prison population (see Figure 3), a result that was overturned by a populist government strategy of harsher punishment and increased prison population rates during the period 2008–13. The recent new decline could be interpreted as a return to the attempts in the early 2000s to further the use of alternative sanctions (diversion) and decriminalize minor property offences.¹³ The decline in the prison population by 24 percent since 2013 is, however, mainly the result of declining (violent) crime rates. Other Baltic states too, such as *Estonia*, have tried to implement and expand alternative sanctions such as probation (including electronic monitoring) or early release schemes (including house arrest).¹⁴

The explanation for the *Russian*, *Belarusian* and *Ukrainian* developments is much more complex. It is unlikely that under Putin's leadership a more lenient sentencing policy was intended. On the other hand, the role of the ECtHR's jurisprudence has apparently had an impact because in hundreds of cases the ECtHR has convicted Russia of violating its own legislation on minimum standards, which provide for each prisoner to have at least 4 m² living space in a prison cell or dormitory. Russia has been convicted 130–140 times per year in the last few years for violating in particular Art. 3 of the European Convention on Human Rights with the prevailing inhumane living conditions. In many cases Russia had to pay around €6000 to individual prisoners. The policy of reducing the prison population rate was mainly driven by economic and not primarily by humanitarian reasons. It was a decisive prison policy decision to change the ancient camp prison system into a Western-style cell system in the early 2000s. A start was to be made with youth prisons (see Beresnatzki, 2013), where the number of inmates declined from more than 18,000 in 2001 to fewer than 1700 in 2015 (see Figure 6). It is certainly an advancement to give up Gulag-style large prisons with dormitories for 50 prisoners and more, but the rebirth of the panopticon in the new Russian style leaves doubts about the amount of progress.¹⁵ A new prison for 4000 inmates near St Petersburg, opened in July 2016, has four-bed cells.

For many East European countries, we have difficulties explaining recent developments. There are certainly a lot of elements that could be addressed by Garland's concept of a 'culture of control' (2001) but do not fit the reductionist facts. Maybe it is more the Italian style of a chaotic and not really well-functioning criminal justice system (see Nelken, 2010) that is in place. The indicators of political culture described by Lappi-Seppälä, (2007, 2010, 2011) for the Scandinavian countries and by Dünkel (2013) for Slovenia (see also Flander and Meško, 2016) would not really fit with the authoritarian democracies in some East European countries.

One major factor explaining part of the decline is the *change in sentencing rules* for recidivist offenders. The very harsh increased minimum sentences have been abolished or at least weakened (Russia, Ukraine, Lithuania). Another factor could be the increased use of alternative sanctions such as probation after Western-style probation services were established in the 1990s and 2000s (Estonia).

Looking at *Russia*, the decline cannot be explained by the use of more alternatives to custody because the proportion of unconditional prison sentences has remained fairly stable at around 30 percent since 2000 (29 percent in 2014). What is really striking is the huge decline in the number of convicted offenders in Russia, from 1.2 million in 2000 to

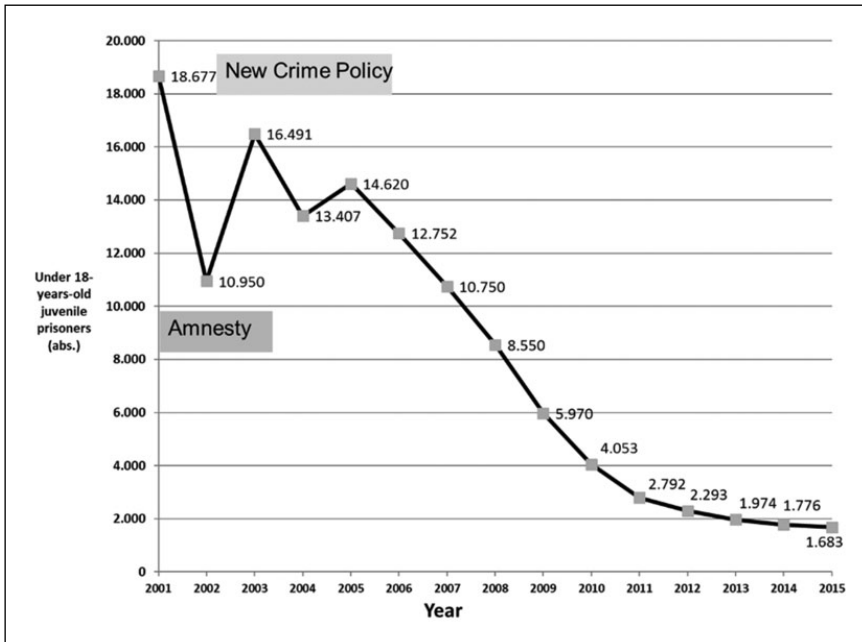


Figure 6. Reducing youth imprisonment in Russia: Announcement and implementation of a new crime policy.

Source: Federal Penitentiary Service of the Russian Federation. URL (accessed 16 September 2017): <http://www.fsin.su/structure/inspector/iao/statistika/Xar-ka%20v%20CK/>.

about 720,000 in 2014. The numbers of offenders convicted for homicide, serious bodily injury (since 2005), rape, robbery, burglary (since 2005) and theft in 2014 are only one-third to one-half of what they were in 2000 or 2005.¹⁶ Therefore, there is no real change in policy, but just a remarkable downward trend in registered crimes and convictions, which seems to explain the downward trend in the prison population in Russia. One other, perhaps cumulative, factor explaining the Russian development could be the militarization of the country at the time of the war with Ukraine and in general since the conflicts with the NATO. In 2015 the Russian army expanded to 350,000 soldiers and the budget increased by 33 percent to €43 billion (see *Die Welt*, 5 February 2015). Thus, many young males might just be prevented from ordinary crime by being conscripted into military service. Further explanations are the influence of the Council of Europe, the jurisprudence of the ECtHR and human rights standards in general, as mentioned above.

Similar explanations with regard to registered crimes seem to be true for *Belarus*. The only data we have are statistics on conviction rates and numbers of sentenced offenders. Again, one can observe a large decrease in convicted offenders, which is the result of a strong decline in registered crime rates.¹⁷ Other arguments such as the influence of the ECtHR or pressure from European organizations (the Council of Europe; the European Union) cannot be of importance because Belarus is not a member of the Council of Europe and therefore is not subject to visits from the CPT and to other European human

rights instruments. It is unlikely that an authoritarian leader such as Lukashenko in Belarus or Putin in Russia has contributed to moderating the criminal justice system, but we do not know enough about the driving forces for changes in these countries. At least it is certain that decriminalization of minor property offences is part of the declining conviction and imprisonment rates.

Ukraine has lost control over parts of its country and over some prisons in Crimea and the Donetsk/Lugansk region, but the decline in the prison population had already taken place before the war. In this case, too, declining conviction rates seem to be of major importance (see also Zaikina, 2012).

The unanswered question remains, however, why should crime rates decline in these countries?¹⁸ Poverty and inequality are still major problems, although an increasing proportion of young people are advancing to a middle-class level of income and economic wealth. There are also reports that alcohol consumption and drunkenness and also the crimes that are commonly connected with high alcohol consumption are increasingly disappearing from public life. As with Russia, there is the hypothesis of the commitment to military service, which might be plausible for Ukraine as well. In addition, pressure from the Council of Europe and the ECtHR has had a major impact (although not in Belarus).

Altogether, looking at the developments in Eastern Europe, there are more questions than answers to identify to what extent declining crime rates, the introduction of community sanctions (probation service), changing sentencing policies (lower minimum sentences for recidivists, using pre-trial detention only as a last resort, shortening prison sentences) and using early release schemes more extensively are of importance.

Case studies in West European countries: The Netherlands, Germany, France and Spain

Looking to West European countries, I will pick only a few cases – leaving out the amazing reduction of more than 30 percent in Sweden in the past five years, which made Sweden even more ‘exceptionalist’ among the countries with low prison population rates (discussed above).

One of the most striking examples of a fall in prison population rates is *the Netherlands*. One cannot say that this was the result of a planned ‘reductionist’ crime policy. Dutch academics were themselves astonished by the rapidity of this development. Moreover, although researchers always emphasize that the prison population does not have much to do with registered crime rates, it could be one explanation in the case of the Netherlands. As van Swaaningen (2013) points out, it is the decreasing seriousness of registered crimes (in particular violent and drug crimes) that may have had an impact. In addition, demographic changes to a more and more aged society with fewer young people may have contributed to this development. However, it is also true that violent crime amongst juveniles and young adults is on the decline as well, reinforcing this demographic process. In the Netherlands, some policy factors have had some impact. The reform law of 2006, with its expansion of the scope of suspended sentences, is only a possible and certainly not the only explanation, as is the recent expansion of electronic monitoring. In recent years, furthermore, the power of the prosecutors has been strengthened, in order to deal with a greater number of minor or medium crimes on the basis of the principle of

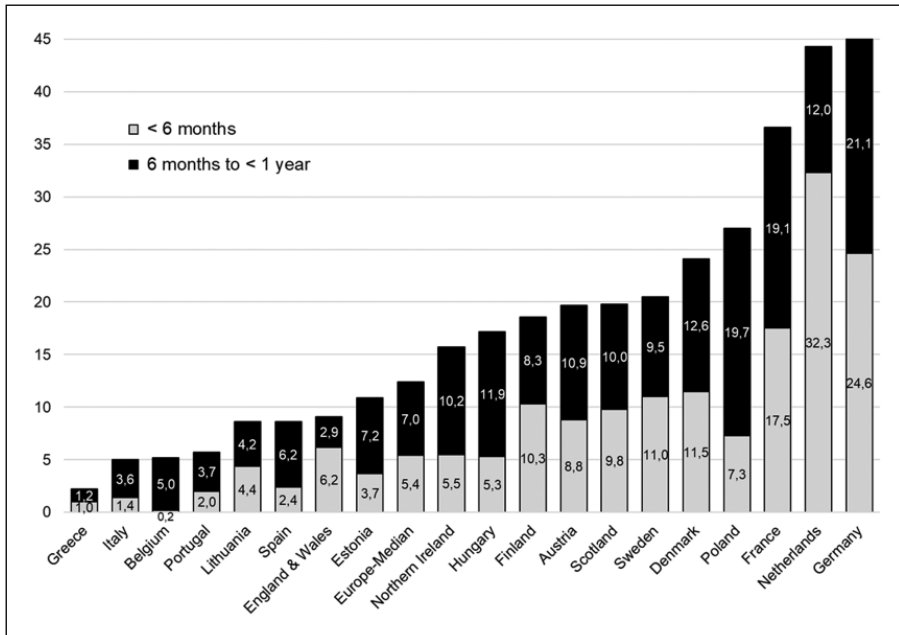


Figure 7. Short-term prisoners (sentences of up to one year) in a European comparison, 1 September 2014 (percent).

Source: Aebi, Tiago and Burkhardt (2015: Table 7.1, p. 96).

expediency (diversion). The prosecutor can impose only non-custodial sanctions. Courts, on the other hand, tend to impose unconditional prison sentences for property crimes less often and fewer offenders are remanded in custody (van Swaaningen, 2013: 351). Whether or not electronic monitoring has contributed significantly to the decline in the prison population remains disputable.¹⁹ Another important factor has been the practice of extraditing foreigners. In 2004, one in four prisoners was in detention as an asylum seeker who had to be extradited. Apparently, this problem has disappeared in recent years through the introduction of fast-track procedures.

Germany has experienced rather limited ups and downs with a 22 percent decrease in the last 13 years. One obvious factor is the strong decline in violent and sexual offences, in particular the more serious ones. Another major factor was the reduction in the use of pre-trial detention by about 50 percent from as early as 1994, in part reinforced by procedural law reforms (2010) and the obligatory adjudication of defence councils in pre-trial detention cases (see, in summary, Morgenstern, 2017).

In *Germany*, too, there is no planned reductionist policy. The judiciary – apart from legislative changes providing longer sentences for certain violent and sex offenders²⁰ – has maintained a restrained style of sentencing, leaving long-term imprisonment as the absolute exception (see Heinz, 2011, 2017, and Figure 8).²¹ This moderate sentencing structure has remained fairly stable. Electronic monitoring is not perceived to be a valuable alternative to the traditionally dominant fines (82 percent of all sentences) and probation in the form of suspended sentences (12 percent). Altogether, only 6 percent of all

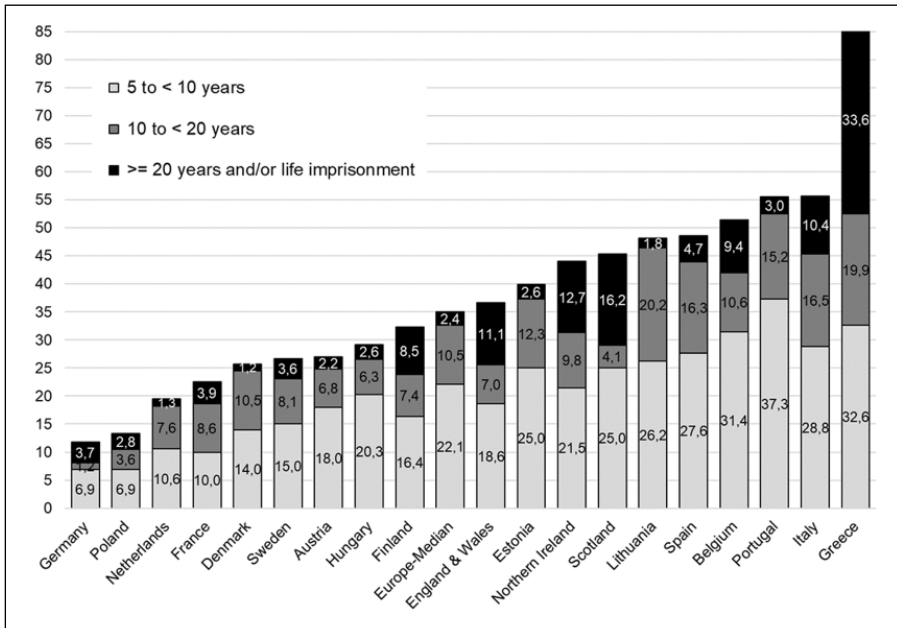


Figure 8. Long-term prisoners (sentence of five years or more) in a European comparison, 1 September 2014 (percent).
 Source: Aebi, Tiago and Burkhardt (2015: Table 7.1, p. 96).

sentenced offenders and 3 percent of all prosecuted offenders receive an unconditional prison sentence (see, in detail, Boers et al., 2017). In contrast to the East European countries discussed above, minor property offences have not been formally decriminalized, but the diversion practice of prosecutors has broadly been expanded. In the adult criminal justice system, 60 percent, under Juvenile Criminal law (for 14–21-year-old offenders) and 76 percent of all cases were dismissed (diversion) in 2015, an increase of about respectively 30 percent and 41 percent since the early 1980s (see Heinz, 2017: 90, 92).

France (like until recently Belgium, see above) is among the few countries that have not experienced decreases in prison population rates until recently. The introduction of a new community sanction, the *contrainte pénale*, in 2014, which allows for various forms of probation and intensive supervision for offenders sentenced to up to five years of imprisonment, has not had any major impact on the prison population, possibly because criminal policy has been overtaken by terrorist events and reactions to them. Overcrowding is (as in Belgium) still a major problem (see Figure 5).

Spain experienced a quadrupled prison population between 1984 and 2009 (see Figure 4). During the period up to 1994 a high admission rate was characteristic; since then admissions have declined, but the prison population still rose because of longer sentences were imposed and fewer early and conditional release were granted. The ‘good behaviour’ remission of sentences was abolished in 1996. The fall in admissions can be explained by the jurisprudence of the Spanish Constitutional Court further limiting pre-trial detention and in consequence reducing prison admissions. Owing to the loss of good behaviour remissions,

the length of sentence served was between one-third and one-half longer than under the remission scheme. The prison population therefore rose in spite of fewer admissions. The decline in the prison population from 166 in 2010 to 130 in 2016 (-22 percent) can be explained by two major law reforms: on the one hand the reduction in sentences for drug dealing and on the other the expansion of conditional release. The reorientation from a 'truth in sentencing' approach in the 1990s to a reductionist approach in recent years was reinforced by the financial crisis in 2008, and budgetary restraints worked in the same direction. In this context, humanitarian and human rights considerations have been helpful guidelines for the future crime policy (see, in detail, Cid and Andreu, 2017).

The role of penal policy and of the ECtHR

As mentioned above, one major factor in a reductionist approach is the explicit political will to change the traditional harsh crime policy against recidivist offenders (Russia, Lithuania), to expand community sanctions and to introduce a Western-style probation service (Estonia, Lithuania). As has been shown, the impact of human rights standards cannot be denied. Most Central and East European countries were oriented to implement the standards of the European Prison Rules when reforming their prison laws (for example, Lithuania; see Sakalauskas, 2006), and, being members of the Council of Europe, they experienced a lot of visits by the CPT, which very often were unfavourable and demanded reforms, thus also supporting reformers within these countries. Finally, the jurisprudence of the ECtHR had a major impact in Russia and elsewhere by judging overcrowding to be inhuman and degrading punishment (see the famous case of *Kalashnikov vs. Russia* in 2002). Russia has been repeatedly sentenced to pay compensation to prisoners who were accommodated in places with less than 4 m² per person. To get out of this vicious cycle, a reduction in the prison population was the only possible solution. Similar developments can be found in Poland and (to a lesser degree) Lithuania. This influence by ECtHR jurisprudence, however, is not limited to Eastern Europe but was also felt, for example, in Italy (with regard to pre-trial detention).

The migrant crisis as a challenge for the criminal justice system: Experiences in the development of crime and prison population rates in Germany

Germany experienced a strong immigration movement from the former Soviet states at the beginning of the 1990s with the so-called 'Russian-Germans'. Immigrants of German origin had and have the right to receive a German passport immediately. Nevertheless, integration was not very successful, because the infrastructure was not prepared for that kind of immigration. In the early 1990s pre-trial detention was extensively used against foreign nationals, but also against these immigrated 'Germans' (Dünkel, 1994). This phenomenon almost totally disappeared in the following decade and today the pre-trial detention rate is half that of the 1990s (see Dünkel et al., 2016: 195f; Morgenstern, 2017).

Having in mind this history, some scholars in Germany feared that a new 'wave' of foreigners could reach the criminal justice and prison system. However, the recent experiences with almost 1 million refugees in Germany revealed no increase in serious crime. On

the contrary, apart from petty offences such as shoplifting and similar offences, no increase in crime and also no extensive ‘criminalization’ of immigrants has so far taken place (see, in summary, Boers et al., 2017). Most offences by refugees are petty property offences. Sexual harassment and violent incidents remain the exception, although the media have pushed the picture of North African refugees as a dangerous group. The alleged migrants on New Year’s Eve 2015 in Cologne were not refugees but earlier immigrants. Refugees from Syria and Iraq are far less involved in crime than German nationals.

The real problem is violence *against* refugees and in particular arson against refugees’ homes, which is still at a high level. Because serious crimes by the 1.27 million people registered as asylum seekers since early 2015 are the absolute exception, it is unlikely that the prison population will be influenced by the refugee problem. What could be more concerning and of impact is criminality against refugees. The Bavarian police reported having arrested more than 800 human traffickers at the end of 2015 (Bavaria is the state where most refugees arrived by the Balkan route).²²

Looking at the numbers of prisoners in Germany in 2016, the total prison population remained fairly stable (from 63,628 on 31 March 2015 it was 64,193 on 31 March 2017, with an increase in pre-trial detainees from 11,359 to 13,865; see Statistisches Bundesamt, 2017: 5). The increase in pre-trial detention could be the result of arresting human traffickers, but also of migrant offenders taken more easily to pre-trial detention after events such as the one mentioned above.

The overwhelming ‘welcome culture’ and wonderful examples of integration programmes counteracted the rhetoric of populist parties and even in the electoral campaigns the issue of crimes committed by immigrants or of terrorists coming in under cover as refugees were not the dominating issues (with the exception of the *Alternative für Deutschland* campaign, a right-wing populist party). On the other hand, governmental parties also recently passed law reforms that eased the faster expulsion/deportation of refugees to so-called ‘safe’ countries.

Looking at general politics in Europe, there is uncertainty about future developments. The refugee problem could lead to more incarcerations and the moderate crime policy development in some countries such as Germany could be reversed by terrorist acts and influence the penal climate, as occurred during the 1970s when the Red Army Faction was on the German political agenda. The new right-wing populist parties, although not yet part of the government, are demanding tough crime policies not only so that foreigners or migrants can be extradited more easily, but also for sentencing ‘ordinary’ offenders.

From the decline in prison populations to a strategic ‘reductionist’ policy in Europe: The role of short-term and long-term imprisonment

The fall in prison population rates often was not the result of a strategic policy decision but more a consequence of declining crime rates, demographic changes, and so on. Recent developments – although very welcome as well in countries with traditionally harsh sentencing styles – could be fragile and reversed when populist movements gain power by criminalizing immigrants and other vulnerable groups. Further efforts are needed to reduce prison populations. They should be based on international human rights

standards that restrict imprisonment, including pre-trial detention, to a last resort and for the minimum period possible to meet the objectives of sentencing (see note 2). The challenge will be how 'to make standards work' more effectively and in a more uniform manner.²³ Such further efforts are also needed in the East European countries, which have experienced big reductions in their prison population. The Russian prison population is still about five to eight times, and the Estonian three to four times, higher than German or Dutch prison populations.

Looking for the potential to further reduce prison populations one must consider the individual sentencing and inmate structure of each country. There is no room to go into details here (see Dünkel et al., 2010; Dünkel et al., 2016), but an example concerning the inmate structure and length of sentences may illustrate the directions in which crime policy could be further developed. In countries where *short-term sentences* (up to six months or a year) dominate the prison population (because of a high influx of entries) a reduction may be possible by expanding the possibilities for replacing such sentences with community service, suspended sentences, probation or fines (in some countries combined with electronic monitoring). Candidate states so far are Denmark, France, Germany and the Netherlands (see Figure 7), where more than 30 percent up to almost 45 percent of prisoners are serving sentences of up to one year.

Another strategy might be given priority if a larger proportion are serving *long-term sentences*, as is the case in Spain, Italy, Belgium and Portugal, where about 50 percent of prisoners serve sentences of five years and more (see Figure 8). In the extreme case of Greece, more than 80 percent of prisoners are serving five years and more, almost 30 percent are serving 20 years or more or a life sentence. In these countries, an earlier and regular conditional release might influence the size of the prison population more than expanding alternatives to custody at the sentencing level, which will cover only shorter sentences of up to two years, exceptionally up to five years.

There is a lot of variation in early release schemes (see Herzog-Evans, 2015; Padfield et al., 2010) and potential strategies could be a quasi-automatic or at least regularly provided early release, possibly at an earlier stage of the sentence (one-third, one-half). Again, one can find 'good practices' in a few countries (Finland, Sweden) and recent reforms that may have had a positive impact (Spain).

I would, however, not defend a policy of just releasing prisoners without the necessary support of the prison and probation services in an integrated model of transition management (some good examples exist in Germany; see Pruin, 2016). Money that can be saved by closing prisons should be reinvested in the probation services, which are often very understaffed.

Finally, one should think about further strategies of *decriminalization* of certain crimes. Russia and Lithuania provide good examples. Since June 2016, property offences of up to 5000 roubles (about €70) are not categorized as a criminal offence in Russia any more, a law that is even applied retrospectively. Lithuania, as mentioned before, went even further by decriminalizing property offences of up to €114 in 2014. Therefore, a further decline in the prison population because of fewer repeat offenders entering the system may be expected.

Further issues of decriminalization would be drug offenders. Drug offenders constitute between 6 percent and 30 percent of prison populations in Europe (see Aebi, Tiago

and Burkhardt, 2015: Table 6.1, p. 84f). Decriminalizing simple drug offences (possession) and cannabis products in general could have a major impact (see Portugal and Spain). Another annoyance is the criminal prosecution and sanctioning of travelling without a ticket (on buses or underground trains). In some countries, repeat offenders may go to prison (for example, Germany).

The core question always remains: who in certain circumstances should go to prison and who should never go to prison? We need a rethink about what should be the role of penal law, and to what extent civil law or administrative law (in German, *Ordnungswidrigkeitenrecht*) could offer less stigmatizing but equally adequate solutions to deviant behaviour.

Conclusion

As a conclusion, I would like to emphasize that we do not yet fully understand the recent downward trends in prison populations in Europe. In some countries it seems to happen unintentionally, in others it is the result of a ‘reductionist’ strategy, often just to curb overcrowding or because of economic restraints or, in case of the traditionally high prison populations in Eastern Europe, just the political will to leave the top 10 or 50 in the World Prison Brief ranking.²⁴ The ‘driving forces’ are not always easy to identify and the present paper raises maybe more research questions than it provides definitive answers. We have even less knowledge to understand developments on other continents. Why have prison population rates exploded in Latin American countries during the last 10 to 15 years? Why does the USA apparently have more problems in reducing its prison population compared with Russia, Belarus or Ukraine?

Very useful sources in this context are the SPACE statistics and the evaluations of the European Sourcebook (see Aebi et al., 2014), and in particular also the World Prison Brief data collection of the Institute for Criminal Policy Research, School of Law, Birkbeck, University of London (formerly the International Centre for Prison Research Studies). Some answers can be found there – for example that drug and gang legislation in Brazil and deficiencies in the criminal justice system avoiding pre-trial detention as well as racial disparities in prosecution and sentencing have contributed to the tripling of the prisoner population since 1980 (see Coyle et al., 2016: 48; see also Castro Morales and Dünkel, 2017). However, more in-depth research is needed.

Reducing prison population rates should be seen as a necessary tool not just because of budgetary restraints but as a *humanitarian task* in view of the poor and often inhumane living conditions of prisoners. Europe has successfully developed human rights standards and mechanisms to evaluate prison conditions, as can be demonstrated by the work of the ECtHR and the CPT of the Council of Europe. Further arguments for a reductionist policy come from the human development approach advocated by the United Nations. It is based on economic theories developed by Mahbub ul Haq and Amartya Sen and, in brief, is ‘concerned with developing the full potential of people so as to increase their access to opportunity and choice’ (Coyle et al., 2016: 129). It is clear that prisons are not the best place for that kind of positive development (although the Good Lives model in some reform prisons may go in the same direction). Reducing recourse to imprisonment and thus lower imprisonment rates is part of the United

Nations' Human Development goals. In 2015 one of the goals for the next 15 years was described as promoting 'peaceful and inclusive societies' and building 'effective, accountable and inclusive institutions at all levels' (Coyle et al., 2016: 130). This provides another good argument for using imprisonment as only a very last resort.

The European Society of Criminology has a strong working group and networks on prison research and many of our colleagues have contributed to better knowledge about the living conditions and suffering of those incarcerated and/or working inside prisons. We should continue with these efforts in order one day to have answers rather than creating new questions around prison issues in general and prison population rates in particular.

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Notes

1. Scandinavian scholars have criticized this terminology by demonstrating that not everything in Scandinavian crime control is 'soft' and 'humanitarian'. The 'welfare model' can have its pitfalls of authoritarian crime control as well, for example in forced treatment and transferring offenders to psychiatric or other welfare institutions with weak control mechanisms against human rights violations. See Ugelvik and Dullum (2012); see also Lappi-Seppälä (2016) on indeterminate sentencing for high-risk offenders in the Scandinavian countries.
2. The UN human rights standards in the same way declared prison sentences to be a last resort, to be imposed 'for the shortest possible period of time'; see, for example, Rules no. 1.5, 2.6 and 6.1 of the United Nations Standard Minimum Rules for Non-custodial Measures (the so-called 'Tokyo Rules') of 1990, or the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules') of 1985 (see Rules No. 13.1 and 17.1(c)); see also United Nations Office on Drugs and Crime (2007: 17ff, 25f), and finally United Nations Office on Drugs and Crime (2016), where the Economic and Social Council of the UN under E/CN.15/2015/L.6/Rev.1, No. 12, recommends 'that Member States continue to endeavour to reduce prison overcrowding and, where appropriate, resort to non-custodial measures as alternatives to pretrial detention, to promote increased access to justice and legal defence mechanisms, to reinforce alternatives to imprisonment and to support rehabilitation and social reintegration programmes, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)'.
3. See the Recommendations Rec. (82) 17 and (2014) 3 on dangerous offenders or (2003) 23 on life sentence and other long-term prisoners.
4. At the end of 2008 the US prison population rate was 755 per 100,000 inhabitants; the rate did, however, slightly decrease by the end of 2015 to 666 – URL (accessed 16 September 2017): <http://www.prisonstudies.org/country/united-states-america>.
5. The very low imprisonment rates in many African countries or in India are the expression not of a 'progressive' crime policy but rather of the poverty of these countries, which just cannot

- afford large numbers of prisoners, or of dysfunctional criminal justice systems and in some cases deficient statistics. See, for a worldwide comparison, Coyle et al. (2016).
6. The role of community sanctions in a European view is explained, for example, in Aebi, Delgrande and Marguet (2015). In a global perspective, low prison population rates can also be the result of serious economic problems and that a state cannot afford a large prison system.
 7. As indicated in the SPACE statistics of the Council of Europe. See, for example, Aebi, Tiago and Burkhardt, (2015); see also Aebi and Kuhn (2000).
 8. The criticism that imprisonment is an intrusive sanction must equally be extended to forms of intensive supervision in the community, in particular if combined with electronic monitoring (GPS or radio-frequency based electronic monitoring), because they are sometimes more intrusive than a stay in open prison facilities (for a critical approach to electronic monitoring, see Dünkel, 2017, and Dünkel et al., 2017); other examples of degrading non-custodial sanctions are stigmatizing forms of community service orders or disproportionately long (in some cases indeterminate) periods of supervision under a changing paradigm of surveillance agencies (probation agencies more oriented to control than to social work).
 9. For a comprehensive explanation of the increase in the US prison population, see Di Giorgio (2012), Travis et al. (2015); for the first period of the expanding the prison system, see Blumstein and Beck (1999), Caplow and Simon (1999) and Chambliss (1999).
 10. That is, a policy under which convicted offenders should serve at least 85 percent of their often extremely long prison sentences.
 11. One has to consider, however, that the number for 2016 does not include the population of Crimea, Sebastopol and the Donetsk/Lubansk region, which are not under the control of the Ukrainian government. Nevertheless, the estimated major part of the reduction is due to changes in sentencing (fewer pre-trial detainees, less use of increased sentences for repeat offenders, etc.).
 12. Possible explanations are given by van Swaaningen (2013); see also the sub-section on West European countries.
 13. Property offences up to damage valued at €114 in 2014 have been decriminalized; other recent law reforms concern the extension of diversionary measures (see Sakalauskas and Dünkel, 2017); however one cannot speak of a more lenient crime policy in Lithuania, because most reforms in recent years have increased penalties for certain crimes (see also Sakalauskas, 2015).
 14. It is always difficult to judge if the introduction or expansion of alternative sanctions has really had an impact on prison population rates or if it has instead contributed more to a net-widening by enlarging the scope of offenders under judicial control, as was the case in many European countries (see the differentiated statistical analyses of Aebi, Delgrande and Marguet, 2015).
 15. Some impressive pictures can be found in the MailOnline for 10 December 2015 – URL (accessed 16 September 2017): <http://www.dailymail.co.uk/news/article-3354124/From-gulags-five-star-jail-Inside-Putin-s-115million-detention-centre-largest-Europe-4-000-inmates-concert-hall-museum.html>. The headline: ‘From the gulags to a ‘five star jail’: Inside Putin’s £115million detention centre that is the largest in Europe with 4,000 inmates, a concert hall and even a museum.’
 16. The only exceptions are drug crimes and traffic offences resulting in lethal consequences of two and more persons. The data have been obtained from the Russian website of the Ministry of Justice; URL (accessed 12 August 2016): http://www.gks.ru/bgd/regl/b15_12/IssWWW.exe/stg/d01/12-02.htm.
 17. The reported crime rate per 100,000 inhabitants dropped from 1887 in 2003 to 978 in 2016, that is, by 48 percent – URL (accessed 16 September 2017): <http://www.belstat.gov.by/en/>

- ofitsialnaya-statistika/social-sector/crime/graphical-data-graphs-diagrams_3/crime-rate-in-the-republic-of-belarus/. Between 2007 and 2016 the number of homicides and cases of serious bodily injury dropped about by half, and rape by two-thirds. The most common registered crime, theft, also decreased by 66 percent, in part probably owing to a decriminalization policy comparable to the Lithuanian and Russian reforms already mentioned.
18. For some explanations in the Western world, see Tonry (2014).
 19. Boone, van der Kooij and Rap in Dünkel et al. (2017: 207ff) demonstrate that electronic monitoring in the Netherlands in most cases is used in combination with prison treatment programmes or prison leave only to a very minor extent as an alternative to pre-trial detention or as an alternative to a prison sentence (10 percent of the 2211 cases in 2015 concerned probation or early release). It is likely that the major part of electronic monitoring in the Netherlands represents a form of 'net-widening'. Since the average length of supervision is two to four months, the impact on the prison population rate can be only marginal (see Dünkel et al., 2017: 517).
 20. Including the expansion of preventive detention for 'dangerous' offenders, who have to serve an indefinite period after having fully served a determinate prison sentence (see §§ 66 ff of the German Criminal Code (Strafgesetzbuch)). During the early 2000s the numbers of detainees in preventive detention rose to over 550, but after decisions by the ECtHR in 2009 and the German Federal Constitutional Court in 2010 the numbers declined (to 524 on 31 March 2016).
 21. Although very short sentences of less than six months are legally 'banned' (see § 47 Criminal Law), the court practice sticks to imposing such sentences in 30 percent of all prison sentences. Relatively short sentences of between six months and two years make up 62 percent of prison sentences. Longer sentences of two years and more constitute 7 percent, sentences of five years and more only 1 percent; 70 percent of prison sentences of up to two years are suspended (probation) (see Dünkel, 2011).
 22. According to media reports based on an official statement by the Bavarian Ministry of Justice. In March 2016, however, this number was down to 157 – URL: <http://www.sueddeutsche.de/bayern/2.220/justiz-knast-nur-fuer-schleuser-entsteht-in-muehldorf-1.2918830> (accessed 16 September 2017); cited by Morgenstern (2017).
 23. The United Nations has developed toolkits in order to assess criminal justice systems from the perspective of human rights standards (see United Nations Office on Drugs and Crime, 2006). For some results from evaluations of the implementation of human rights standards concerning juvenile justice systems by the Council of Europe, see Dünkel (2014); for a comparative overview of juvenile justice systems in Europe under consideration of human rights standards and their impact on juvenile justice policy and sentencing practice, see Dünkel (2015, 2016).
 24. Coyle et al. (2016: 50) report that Kazakhstan, with a prison population rate of 676 in 1985, tried to reduce its prison population by several amnesties; finally, in 2013, the government released a programmatic paper formulating the explicit goal of get out of the World Prison Brief's 50 jurisdictions with the highest prison populations.

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