Developing humane criminal justice systems in democratic societies: An update from Hungary

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Abstract This article examines the changes and development of penal policy and community sentencing in Hungary. As a new criminal justice system emerges, including the recently reformed probation service in Hungary, this article argues that democratic societies must hold a careful balance between controlling the behaviour of its citizens, whilst crucially also ensuring their freedom, dignity and human rights. From the position of someone who has been closely involved with these developments and transitions in Hungary, the author questions whether the balance that has been achieved in ‘advanced’ democracies, such as the USA, given the excessive use of imprisonment and punitive sentencing. She argues that an alternative model is in the best interests of all – one that stigmatizes the offence but not the offender.

Keywords Europe, Hungary, prison, probation, restorative justice, sentencing

The criminal justice transition

Twelve years after the major political and social changes in Hungary we had an opportunity to reform the probation service in accordance with the needs of a new democratic state and market-oriented society. This article traces our effort to reform the probation service and develop a coherent criminal justice policy based on a philosophy of restorative justice that promotes the human rights of the offender and the victim. We hoped the new Hungarian probation service, introduced in July 2003, would become a professionally independent body within the Ministry of Justice, and one that would be responsible for the management and supervision of a growing number of people subject to punishment in community, community service, probation and parole supervision. We knew that if the reform of probation service was to be successful, before it could be finalized, political consensus had to be reached on a few fundamental constitutional questions concerning criminal justice policy.
The first of these issues concerned the demarcation of the sensitive balance between the rule of law and public order. Whether or not we admit it, a concern for human rights is increasingly becoming a question of daily politics in criminal justice. Respect for, and protection of, human rights should be a primary aim of any modern democratic state, especially since 9/11. Governments are responsible for the protection of the constitution, developing legislation, and the running of law enforcement agencies; they must therefore safeguard and maintain the sensitive balance between public order and the rule of law. Mindful of these principles we came to the conclusion in Hungary that the protection of individual human rights must be ensured. This has a particular significance and importance in the young democracies of Central Europe.

In Hungary, the number of known criminal cases has increased nearly fourfold in the past 20 years. Confidence and trust in the institutions of criminal justice was shaken; the police, the prosecutors’ service, the courts and the prison service have gone through a crisis of values. Public order and the perception of safety and security deteriorated. In the new democracies the taxpayers voting decisions in parliamentary elections are largely based upon issues concerning public order, the rule of law, and a sense of personal security. But taxpayers are not prepared to make endless sacrifices to this end. They vigilantly monitor the fate of their painfully achieved individual human rights, and are very critical about how public money is spent. During and after the regime change civil liberties were improved in people’s value system, they became sensitive to any restriction thereof, and will protest against any excessive state power or the spread of unnecessary official control. They protect their private freedom and space. At the same time, they are getting used to the fact that they are now allowed to exercise control over public expenditure since its revenue arises from the taxes they pay. As a consequence the application of prison punishment to a very large group of offenders seems to them a very expensive sanction. Given that a significant proportion of those in prison are young first offenders convicted of minor offences, it seems a costly, and an excessively severe legal response, which is violating civil liberties and does not improve public safety.

Those of us who are responsible for implementing the reform have already learned from the international experiences of other countries, that the manner in which various nations respond to issues of crime and punishment is very much a reflection of political choices. After considering the different criminal policy trends prevailing in the USA and other democratic countries, we intend to follow the European model. We do not accept the principles of ‘zero tolerance’, ‘mandatory sentencing’ or ‘three-strikes and you are out’. We do not believe that the ‘prison works’ slogan leads to the creation of an acceptable public order and the rule of law in a modern democracy.

Excessive use of prison and human rights violations

In the USA there are over two million men, women and children in federal and state prisons and local jails. In 2001, it overtook Russia as the country with the greatest proportion of its citizens in confinement. The USA has just under 5 percent
of the world’s total population, but 25 percent of the world’s prisoners (Coyle et al., 2003: 217). I agree with Nicole Fontaine, the President of the European Parliament, who in 2000 said:

Within the EU Parliament, the voice of 370 million Europeans, a vast majority cannot understand why the United States is the only major democratic state in the world that carries out the death penalty. (Cited in Stern, 2002: 280)

To most Europeans, locking away so many people seems abnormal – the result of a mistaken social policy choice that invests in its prisons rather than health care, education and social services. It is a warning to other societies not to abandon their welfare state and allow them to be replaced with more police, more courts, and more prisons. No European political party on the left, centre-left or centre-right advocates the full adoption of the US policies of mass incarceration (Stern, 2002). It is worth remembering that the death penalty is no longer imposed in any of the European countries, including Hungary. Prison punishment remains the most severe form of punishment, which may be imposed only exceptionally. Our strong commitment to protect and respect individual human rights also acts as a restriction on the use of prison.

It is declared in the constitutions of most democratic countries (and embraced within the Constitution of the Republic of Hungary), that everyone has an inherent right to life and human dignity. No one shall be arbitrarily denied these rights. The criminal procedure, in response to the criminal act committed by the offender, may limit his/her human dignity but only to an extent that still respects the guarantees set within the Constitution, in the Act on Criminal Procedure and in the Criminal Code. The human dignity of the offender may not be restricted arbitrarily. Even prisoners must have the status of a citizen, and can only be deprived of the freedom of movement.

Equal treatment of offenders is traditionally prescribed by criminal law. But how can offenders be treated equally by the criminal justice system when they are not treated equally in the society they live in? This has been one of the main long-standing dilemmas of criminal policy. In the 1970s and 1980s, as a result of the technological revolution and globalization, social inequalities became very marked both at the top and at the bottom of modern civilizations. As David Garland has observed:

The neo-conservative policy brings about a widening of inequalities and a skewed structure of incentives that encouraged the rich to work by making them richer and compelled the poor to work by making them poorer. More and more controls are imposed on the poor, while fewer and fewer controls affect the market freedom of the rest. . . . In the USA today the prison system contains a massive population of working-age adults whose structural exclusion from the work force is routinely forgotten in economic analyses and unemployment statistics. (Garland, 2001: 178-9)

The prison-oriented criminal policy used for controlling male poverty and segregated ethnic minorities does indeed violate the requirement of equal treatment and human dignity. Poor and segregated people should not be sentenced to a
deprivation of liberty just because they have nothing to lose but their freedom. Prison is an *ultima ratio*, which should be used only in case of the most serious crimes and against the offenders thereof. It should not be a social institution against the ‘guilty poor’ or ‘unpleasant segregated strata of society’.

We should not forget that prison punishment has innocent victims. In a new book on ‘invisible punishment’, edited by Marc Maurer and Medy Chesney-Lind (2002), the authors imply that large-scale imprisonment also results in growing numbers of families and communities being impacted, creating a ripple effect of incarceration. Prisoners’ children, for example, are growing up with the stigma of having a parent in prison, along with the loss of practical, emotional and financial support. Unless social policy compensates this effect of the punishment, children’s rights and the right to social security become gravely impaired in this circle. These rights are the rights due to the citizens – especially children – of civilized countries.

**Restorative justice**

We have realized that it is not only in Hungary, but in other countries as well, that a great effort is being made to restore public confidence in criminal justice. In some countries criminal justice means the mechanical application of sentencing guidelines and mandatory sentences. Instead of this kind of rigid *distributive justice*, we believe the courts should provide justice for the offenders, victims, and the offended communities. This is a key principle of *restorative justice*. Consequently, in the reform of the probation service our aim was to apply the principles of restorative justice. Accordingly, offenders have to be confronted with the consequences of their criminal behaviour. It has to be made clear to them that they must ‘pay the bill’ for the crime they have committed. Criminal justice policy should offer possibilities for the offender to compensate the victim, and to be reconciled with the offended community. Inevitably, this offer may be rejected by the offender, the victim, or even the offended community. This kind of negative reaction would not violate the human rights of the above participants; on the contrary, it would help the courts to provide justice with the active participation of the persons involved in, and affected by, the criminal act. The engagement of the offenders and the victims by the court could be one of the mechanisms leading to the declaration and recognition of human dignity of all participants in the criminal procedure. We expect that this attitude in itself will also help restore public confidence in criminal justice.

In line with the requirement of respecting human rights in the sentencing procedure, the courts should bear in mind the stigmatizing effect of the sentence. They should stigmatize the offence, the wrongdoing, but should, as much as possible, avoid stigmatizing the personality of the offender even if he/she is sentenced to imprisonment. This approach to sentencing should also incorporate a strong commitment to facilitate the reintegration of offenders during the term of punishment in the community or after they had served their prison sentence. We anticipate that by prohibiting the stigmatization of the offender’s personality we will exert a favourable influence on the community. It will check the forming of unjustified prejudices against punished offenders and the resultant segregation.
process. This, too, may help to reduce the chances of recidivism, improve social reintegration and promote public safety.

Returning to the question of fulfilling the task of providing justice, the courts have to follow the principle of relative proportionality. Specifically, they have to differentiate among individual offenders who have committed the very same kind of criminal act. To meet this requirement the courts need to rely on the social inquiry of pre-sentence reports prepared by the probation services and on the information provided by the defence council. The procedure should involve mediation between the offender and the victim, as well as the offended community.

It should be understood that the victim’s dignity is violated by the criminal act they have suffered; therefore, the victim should have access to the criminal procedure, and the right to active participation. In the course of the criminal procedure the victims should have the right to legal, psychological, and material assistance provided by legal guarantees. Compensation of the victim should be ensured by the court in the criminal procedure with the supportive information of the pre-sentence report. The authors of the report must realize that almost every crime is a real, dramatic event for both the offender and the victim. Crime is not only a criminal act but, at the same time, an emotionally overcharged moral event. If the sentencing procedure is unable to acknowledge this moral and emotional conflict, then the punishment will not fulfil its original social function. With the active professional participation of the probation service, this innovative element of the criminal procedure could be implemented especially through punishment in community.

**Conclusion**

So where are we now and where might we go? This is the question Weitekamp raises in the summary of his study on the theoretical foundations of restorative justice:

> It will certainly not rain every time after a rain dance, but it does already rain sometimes after a rain dance, and if we work hard and advance restorative justice further, it will rain more often after a rain dance. (Weitekamp and Kerner, 2002: 335)

For us in Europe, and hopefully in Hungary, too, the possibility of realizing the sensitive balance between the rule of law and public order lies in strengthening the elements of restorative justice. The protection and enforcement of human rights in criminal justice is a ritual similar to that of a rain dance. That is to say, humanity turned the rain dance into a ritual in the course of its struggle with the forces of nature, while the human rights-oriented criminal policy should become the ritual of a permanent struggle against the conservative preponderance of the state. This ultimately serves the rule of law and ensures the preservation of democracy. We should recognize that in Hungary we have a strong ally in this struggle, namely, the probation service. But we have to offer them good political support, and we have to increase their professional self-confidence.
We kept this in mind when we implemented the reform of the probation service. The reformed institution is now a year old. So far, it has fulfilled our expectations and has proved to be a good agent in attaining the aims outlined in this article. Moreover, it represents for us the new restorative justice model especially well. Courts are beginning to recognize the possibilities that the reformed organization offers. There is already an increase in the number of cases of punishment in the community: probation supervision, community service, suspended prison punishment, and parole. If the nature and extent of crime does not change and the number of serious criminal acts does not increase, then like Finland and other democratic societies, we hope to have a small prison population in Hungary.

References


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