

Final Research Report

Project NKFI K-125442 „The Impact of Punitive in Sentencing and its Fiscal Effects"

1. Research objectives and Research Design

The objective of the research project was to establish what factors have caused a detectable rise in prison population in Hungary after 2008 despite falling crime rates and offender numbers. Our initial hypothesis was that this is due to the cumulative effect of punitive, but incremental changes in sentencing laws. We also planned to develop an econometric tool with which sentencing practice and early release (and thus future prison population) can be modelled.

2. The Dataset

Our intended dataset was to come from the Hungarian Prison Service (BVOP). To this end, we had obtained a research permit prior to submitting our proposal from the then Commander of the prison service for this particular project for the particular dataset envisioned in the proposal. The authorization was submitted with the proposal. However, a change of leadership took place at the BVOP after submission of the proposal but before the commencement of the research project. The original research permit was not honoured by the current Chief. Instead, we were made to apply for a research permit again, which, after a protracted process that took almost a year, ended with our application being finally denied in July 2018 (the decision was likely not due to the merits of the current project but a general change in policy towards research activities within the prison service). This, at that point, as the methodological and scientific novelty of the project was the use of case-level sentencing data as opposed to aggregate data, endangered the viability of the project as a whole.

We, however, after another 9 months of negotiations, managed to gain access to the sentencing database of the office of the Judiciary (Országos Bírói Hivatal, OBH).

The new dataset, while it contains case-level data, has some limitations over the originally intended one. First and foremost, the judicial sentencing database does not contain data on early release, as it is based on the final judgement (so-called "Form C", a data sheet filled out

by the trial judge after the judgement). This means that we only had data on the time of imprisonment as per sentence, and not the time actually served. This rendered the budgetary forecasting part of the original project moot, as this could not have been reliably made without case-level data on early release.

To counteract this and in order to cover the FTEs reserved for this project we have decided to extend the research to the second most widely used sanction in Hungarian criminal law, the day fine.

Second, due to a change in the data collection and management system after the establishment of the National Office of the Judiciary (in 2012), we only had access to data from 2013. Data from earlier years is managed by the Hungarian Central Statistical Office, and the formats of the two databases are incompatible. Unifying the two would have required resources and time far beyond what was available for the current project. This means that the dataset does not contain all the data from the earliest identifiable time when punitive amendments with possible statistically significant effects entered into force (July 2010).

3. Analysis and Results

Imprisonment

The project, thus, used Hungarian nationwide case-level sentencing data from 2013 to 2018 to analyse the possible explanations for the increased punitivity in criminal sentencing. The core finding of our research is in line with our original hypothesis based on the analysis of aggregate data (Tóth, 2018b): the probability of a prison sentence has decreased in the investigated period (even after controlling for all relevant case characteristics), the length of imprisonment, however, increased. The lower probability, we concluded, is not significant enough to offset the effect of the longer imprisonment sentences on the prison population.

We have followed several avenues in an attempt to identify individual legal institutions which are mainly responsible for the longer imprisonment spells.

The key question we analysed is whether this shift towards longer prison sentences can be ascribed directly to changes brought about by the new criminal code (in effect from July 1st, 2013), or any other particular legal institution within it. To answer this question, we estimate nearest neighbour matching models where we also exactly match on some key variables such as gender, crime group, duration between committing the crime and the final judgement and

judgement year. We found no additional effect of the new criminal code once we take out the general time trend from the data in our full sample upon either convictions or sentencing, albeit we do detect some evidence of longer prison sentences in a subset of cases where the range of sanctions shifted to lengthier spells in prison.

Our results thus suggest that rising prison population despite falling crime rates is due to a general increase in punitivity in sentencing. The direct component under which judges would be more likely to convict or to sentence to longer prison spells simply as a consequence of the shift from the old criminal code to the new one cannot be statistically demonstrated.

We theorized that this general rise might be due to the introduction of mid-line sentencing (a rule that requires judges to orient the imprisonment sentence towards the mid-line of the sentencing range), a rule introduced in 2010. We analysed the ten most frequent crimes in the dataset and found that the average sentence for any particular offense continued to rise even after passing the the mid-line. While there are limitations due the nature of our dataset (as it does not cover all crimes committed with the mid-line sentencing rule is applicable, and also does not contain data from years prior its introduction), we theorize that the rising punitivity is a trend and not a correction driven by the introduction of the mid-line sentencing rule. This hypothesis will be the subject of our next research project, which is currently developed, and which will use experimental or qualitative methods, or the combination of both.

Day fine

Our analysis of the use of the sanction of day fine by the Hungarian courts produced the first thorough analysis of this topic based on case-level data. Beside producing detailed descriptive data, our main goal was to investigate the reasons why the courts do not use the day fine sanction to its full potential (the range of possible amount of the day fine sanction is very broad, but the average is the lowest quartal of the range; moreover, though it is applicable to serious economic crimes it is rarely applied as a sanction). We have developed many hypotheses (for example that the unwillingness to mete out significant day fines in serious cases of economic crime might be due to the judges viewing the widely used forfeiture as a pecuniary penalty – which it is not) but did not find significant correlations. The study concludes that the likely reason for the under-utilization of the institution of the day fine is

the conviction among judges that imprisonment is the only serious punishment – a hypothesis that also needs further investigation using qualitative or experimental methods.

4. Output

Before the commencement of the quantitative analysis, the PI outlined (in Hungarian), using aggregate data, the hypothesis of the research project in detail on the reasons behind the coexistence of the rising imprisonment rates and falling crime rates.

Tóth Mihály: A hazai börtönnépesség újabb kori alakulásának lehetséges okai és valószínű távlatai. Bűnügyi Szemle 2018. Issue Nr. 2.

This article can be accessed at:

<https://ujbtk.hu/dr-toth-mihaly-a-hazai-bortonnepesseg-ujabb-kori-alakulasanak-lehetseges-okai-es-valoszinu-tavlatai%C2%B9/>

We summarize our research findings in an article which we intend to submit to a leading quantitative criminology journal in the coming month. The up-to date draft can be accessed at this link:

http://www.budapestinstitute.eu/otka_krim_draft_uploaded_20200212.pdf

The other major output of our project concerns the day fine practice of Hungarian courts. This is currently forthcoming (slated for publication in May 2021) as a book chapter:

Csaba Győry: Day Fines in Hungary. in: Reznichenko/Faure (eds.) Day Fines in Europe Assessing Income-Based Sanctions in Criminal Justice Systems. Cambridge University Press, 2021.

The proof of the chapter can be accessed at this link:

http://www.budapestinstitute.eu/OTKA_Kriminal_Dayfines_Gyory.pdf

We are currently also preparing a Hungarian-language paper on the policy implications of our research project, which we would like to submit to Állam- és Jogtudomány by the end of April.

In the course of the project, we also presented our findings at international conferences. One concerned the theoretical frame of the project, the other the preliminary findings of the matching analysis:

1. The Impact of the Changes in Sentencing Rules on Prison Population - A Possible Predictive Statistical Model. International Correctional and Prison Association Annual Conference, Buenos Aires, Argentina. 27.10.2019.
2. Penal Populism, Illiberal Democracy and the Rule of Law. Reconceptualising Penal Populism in Eastern Europe. American Society of Criminology Annual Meeting, San Francisco, USA, 14.11.2019

We also plan to organize a small workshop at the Institute of Legal Studies where we will present both the findings of the empirical study as well as its policy implications. We will also hold a workshop presenting our conclusions at the National Office of the Judiciary, as per our data access agreement.

Budapest, February 12. 2021.

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