

# The Impact of the Covid-19 Pandemic on the Hungarian Penitentiary System and Its Transformation Processes

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Orsolya CZENCZER<sup>1</sup> 

*The Covid-19 epidemic has put significant pressure on national penitentiary services all over the world to control the impacts that the pandemic has on closed prison environments. The prison services of the member states of the Council of Europe have responded with incredible speed and effectiveness with preventive and administrative measures to prevent the spread of the virus. The objective of the Council of Europe, EuroPris and other international organisations, was to support the member states' responses to the situation in prisons by facilitating the exchange of information and best practices. The present study examines the statements and recommendations of the most important bodies and committees of the Council of Europe, in parallel with measures and solutions implemented in Hungary, in the light of international recommendations. The paper is based on a descriptive analysis of the Council of Europe expectations and recommendations and their applicability in the Hungarian prison system. Hungary has successfully processed and incorporated mostly all of the expectation of the international parties, in fact, he took further steps to make the pandemic's outreached contacts of prisoners and relatives more colourful and active. Prevention and control measures adopted in timely manner were effective also in Hungary, as well in other Council of Europe member state. This study highlights the critical importance of fast and reasonable actions of international control bodies and the open and cooperative response of the national prison services.*

**Keywords:** pandemic, Council of Europe, prison, detention, epidemiological measures

## Introduction

On the 30<sup>th</sup> of January 2020, following the recommendations of the Emergency Committee,<sup>2</sup> the World Health Organisation (WHO) Director General declared that the SARS-CoV-2 coronavirus disease constitutes a Public Health Emergency of

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<sup>1</sup> PhD, Corr. Lieutenant Colonel, Associate Professor, University of Public Service, Faculty of Law Enforcement, Department of Corrections, e-mail: [czenczer.orsolya@uni-nke.hu](mailto:czenczer.orsolya@uni-nke.hu)

<sup>2</sup> International Health Regulations.

International Concern. Soon, on the 11<sup>th</sup> of March 2020, due to the rapid increase in the number of cases outside of China, the WHO Director General announced that the outbreak should be considered a global pandemic. This day brought on significant changes in everyday life both in the free society and in our prison facilities.<sup>3</sup>

The Covid-19 epidemic also put serious pressure on national penitentiary institutions that endeavoured to control the impacts of the outbreak within closed prison environments. The penal organisations in the member states of the Council of Europe (EC) responded incredibly fast to block the spread of the virus by implementing both preventive and administrative measures. Various international participants, protecting the rights of people in detainment and those deprived of their liberty, also presented immediate responses to the news of the pandemic. The objective of the Council of Europe and its cooperative organisations was to support the reactions that endeavoured to deal with the situations within prisons by facilitating the exchange of information and best practices. The practice that is still in operation, was that the organisations of the EC: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the EC Commissioner for Human Rights, as well as the Working Group of European Prison Cooperation Committee (PC-CP WG) issued declarations and statements as advocates of human rights that are also fundamental during a pandemic. Furthermore, several partner organisations: the directives of Innovative Prison Systems (IPS) the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)<sup>4</sup> the information platform of the Association for the Prevention of Torture (APT)<sup>5</sup>, the regular publications of Penal Reform International, the temporary guidelines of the European Regional Office of WHO, just as the network of European non-government organisations, and the interactive pandemic chart of the information network created by the European Prison Observatory (EPO) as well as its reports all contributed to the efforts of the penitentiary organisations in the member states of the EC to be able to handle detained communities during the pandemic in a most effective and humanistic manner. The objective of this present study – due to size limitations, in a non-exhaustive manner – is to introduce the directives of the penitentiary committees of the EC and their supervisory bodies, as well as the manifestos, statements and conclusions of their international joint organisations concerning the Covid pandemic.

The penitentiary committees as well as the experts of the Council of Europe (EC) – immediately lined up in the frontlines following the announcement of pandemic situation on the 11<sup>th</sup> of March, and started to formulate their helping and supportive Statements and Recommendations.

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<sup>3</sup> LIPPAI-KACZVINSZKI 2021: 93–104.

<sup>4</sup> Subcommittee on Prevention of Torture.

<sup>5</sup> The Association for the Prevention of Torture created such an informational platform that summarises and organises the data related to imprisonment and Covid-19.

On the 7<sup>th</sup> of April 2020, the Secretary General of the Council of Europe issued its statement entitled *Respecting Democracy, Rule of Law and Human Rights in the Framework of the Covid-19 Sanitary Crisis* as “a toolkit for member states”. According to the Secretary General, “the virus is destroying many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies”. The toolkit was intended to guarantee that the measures, which the member states implemented during the epidemic would not be disproportionate with the hazardousness of the situation and could only last as long as it is necessary. The document focuses on four key areas: the interpretation of the derogations from the European Convention on Human Rights in time of emergency; respect for the rule of law and democratic principles in times of emergency, including the limitations concerning the sphere and duration of emergency measures; as well as the respect of human rights including freedom of speech, the right to privacy, data privacy and the prohibition of discrimination of disadvantaged groups and the right for education. Finally, the last key area is the protection from crime and the protection of victims of crime, with special focus on sexual and gender-based violence.

## **Statements of the Committee of the Prevention of Torture**

Meanwhile, the experts in the EC committees dealing with the rights of people deprived of their liberty tirelessly worked on the formulation of the recommendations concerning the situation of the group of people they represent. Thus, the first organisation to issue a statement of principles concerning the treatment of persons deprived of their liberty in the context of the global pandemic was the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). In their statement, besides recognising the necessity of effective measures against Covid-19, the CPT raised the awareness of the member states to the complete prohibition of torture and inhuman, or degrading treatment. According to the statement, protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty. According to this, the statement contains an appeal that WHO guidelines on fighting the pandemic as well as national health and clinical guidelines consistent with international standards must be respected and implemented fully in all places of detention. At the same time, staff availability should be reinforced, and the staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of detention.

Regarding the pandemic, the CPT also raised awareness that any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of Covid-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. It is of special importance that persons deprived of their liberty should receive comprehensive information, in a language

they understand, about any such measures. They also regulated the situation of detainees with special needs, highlighting that special attention will be required to the specific needs of detained persons with particular regard to vulnerable groups and/or at-risk groups, such as older persons and persons with pre-existing medical conditions. This includes, inter alia, screening for Covid-19 and pathways to intensive care as required.

According to the CPT statement, the persons deprived of their liberty should receive additional psychological support at this time. In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day.

The statement considers that although it is legitimate and reasonable to suspend nonessential activities, still, the fundamental rights of detained persons during the pandemic must be fully respected. This includes in particular the right to maintain adequate personal hygiene and the right of daily access to open air. Furthermore, any restriction on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication. The statement also contains recommendations regarding further areas of jurisdiction, namely that concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. According to the perspective of the CPT, such an approach is imperative, in particular, in situations of overcrowding. Still further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation. Fundamental safeguards against the ill-treatment of persons in custody must also be seamlessly provided. Similarly, monitoring by independent bodies remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places and persons that are kept under quarantine or other kind of isolation.

After the issue of the Statement on the 20<sup>th</sup> of March, on the 9<sup>th</sup> of July a follow-up statement was issued, in which the CPT particularly gave thanks for the constructive cooperation of member states in which they paid attention to each detail. According to their observations, the member states implemented particularly significant changes concerning the provisions that demanded deprivation of liberty, as several states used the diversionary or postponing arrangements recommended by the CPT. At the same time, the CPT welcomed the measurements introduced by the member states, which eased, facilitated and supported keeping contacts for the detained persons. The follow-up statement also highlights that several countries paid special attention for the improvement of sanitary measures and practices, not only in relation with the pandemic, but obviously inspired by it. The CPT raised the awareness of the member states that the pandemic provided excellent opportunities to implement several recommendations already suggested by the Committee. They particularly referred to their observations regarding the elimination of the reasons that cause

overcrowded conditions, but the review of certain legal institutions could also have actuality. Furthermore, they raised awareness that each limitation regarding the pandemic could only be valid until necessary. This was especially emphasised concerning the detainees' contact with the outside world and other activities that serve their reintegration.<sup>6</sup>

Besides recognising the necessity of the measures regarding the epidemic, both the original and the follow-up statement of the CPT attributed special importance to the absolute prohibition of torture, inhuman or degrading treatment. As both statements emphasise, no protection measure should result in the inhuman or degrading treatment of persons deprived of their liberty.

### **Statements of the Council for Penological Co-operation of the Council of Europe (PC-CP)**

After the statements of CPT, the Commissioner of Human Rights and the Secretary General of the Council of Europe, the Council for Penological Co-operation of the Council of Europe (PC-CP)<sup>5</sup> also issued its statement. It is important to note that within the Council of Europe, the European Committee on Crime Problems (CDPC)<sup>6</sup> and the Council for Penological Cooperation of the Council of Europe are the responsible bodies for the principles the humanistic treatment of persons deprived of their liberty as well as for the representation of the role of personal staff and the effective and modern prison governmental methods. These two professional bodies create the opportunity for international cooperation and the necessary professional and technical background within the framework of the Statues of the Council of Europe and under the supervision of the Committee of Ministers. On the 17<sup>th</sup> of April 2020, and two later occasions, the PC-CP issued follow-up statements, in which they endeavoured to lay down guidelines concerning the physical and mental health of detained people and their keeping of contacts; raised awareness about the negative impacts of isolation while enlisting the tools for reducing these; and formulated practical recommendations in order to block virus outbreaks.

The first Statement was basically a shared resolution issued by the PC-CP, EuroPris (the European Organisation of Prison and Correctional Services) and CEP (Confederation of European Probation) together. In the framework of this, the three professional bodies raised awareness to the statements and recommendations of the Council of Europe, issued days earlier, as well as to the standards and practices, which could help the detention institutes and probation services in dealing with the coronavirus epidemic besides honouring the principles of the rule of law and human rights. The statement enlists the aspects that are to guide the detention institutes of the member states in the introduction of pandemic limitations, and in the

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<sup>6</sup> APÓSTOLO et al. 2020.

sustainment of these until necessary. On this level, such principles are formulated, as detention places need to provide the same quality medical and health services that the rest of the members of free society receive. Through this principle, specific recommendations are also formulated, for example, as a part of the admission procedure, each detainee has to go through medical examination – considering medical confidentiality – in order to *inter alia* discover any illness, including treatable contagious diseases too. However, the isolation of a detained person with contagious disease can only be considered justifiable, if this isolation would also be applied in the free society for sanitary reasons. The isolation or quarantine of healthy detainees could only be legitimate, if their own health status – especially in case of the weakness of the immune system – is threatened to a level, where isolation is unavoidable. Detainees with severe musculo-skeletal disorders, end-stage illnesses and elderly people require special treatment; in their case the options of amnesty for medical reasons as well as early release from custody has to be taken into consideration. Similarly, special attention has to be attributed to the detainees in disciplinary confinement; the provision of daily health checks by the staff and if necessary, immediate aid during the duration of isolation is obligatory. The statement emphasises that although visits and other contact forms could be limited due to the pandemic, a mandatory minimum still has to be secured; the prison staff has to make sure that the detainees have an appropriate level of contact with the outer world. Regarding contacts, in case the detained person gets injured, seriously ill, or required hospital care – unless the detainee declares in a written form that it is against his will – a contact person (spouse, partner, or closest relative) has to be notified. In case of discharge from detainment, the detained person has to go through medical examination, with special attention concerning any mental or physical illnesses that could require further treatment. In case of any contagious illnesses, the detainment facility gets in contact with an outside healthcare institution, in order to continue monitoring or isolation after release if necessary.

In the framework of their shared statement, the PC-CP, EuroPris and CEP raised the awareness of the member states that clear information has to be provided orally and, if possible, also in writing to all inmates and their family as well as to staff and all efforts are to be made to provide all necessary explanations in relation to the pandemic and the measures related to it. Publication of FAQs on prison service websites and/or establishing a helpline to answer questions of families of inmates was recommended.<sup>10</sup> It was also an emphasised issue that at admission and before release inmates should be accommodated in single cells. Obviously, accommodation in single cells was a general recommendation for every inmate and should be provided as possible. The transportation of inmates to other institutions can only be executed if strictly necessary for security or other well-founded reasons.

Concerning the reintegration of the inmates, the PC-CP also formulated some specific recommendations. According to these, in prison facilities, where family visits are cancelled due to the pandemic, the prison services should provide free-

of-charge additional possibilities for phone or video calls or other means of contact and correspondence. In countries where inmates can no longer work and earn money, they should be paid a compensation for the loss of income. Where collective recreational or sports activities are cancelled, they are to be replaced by additional TV and other electronic entertainment options and additional out-of-cell activities while respecting social distancing. Concerning the education of detainees whose final exams are scheduled, or a special training is about to finish, educational courses should be offered through online media. This is especially important in the case of juvenile inmates.

According to the CEP, if probation offices are forced to cancel personal visits to the facility due to pandemic limitations, inside probation staff should take over their responsibilities in case of vulnerable inmates. In detention facilities, where specific forms of visits are allowed (visits of lawyers, probation services or family visits to juveniles), the required distance and other protective measures are to be respected. Further on, the statement goes on to specify the recommendations concerning probation staff. The statement in detail specifies that if there isn't any opportunity for screening within the facility, the inmates are to be escorted to outside medical units for Covid-19 tests in case of requests or indication of contamination. Disinfectants and other sanitary equipment are to be provided and the staff has to wear masks, gloves and sometimes other protective equipment as necessary. At this point, body temperature of inmates, visitors and staff is to be taken on a daily basis. In order to minimise the chance of outbreaks, the Statement also recommends that the staff should be divided in shifts/teams in a manner that the different teams/shifts do not come in contact with each other, and the duration of the shifts is to be shortened. Besides these, it strongly recommended to provide additional support by staff psychologists and counselling are offered to all staff in need. Finally, as a closing thought, it draws the attention of the stakeholders to the fact that a number of countries have introduced emergency measures aimed at decreasing prison numbers and reducing prison overcrowding, and that – in case of inmates who are deemed to be suitable for such – alternate ways of sanctioning were preferred in the course of the sentencing process.

In September 2020, in the framework of an online conference, the workgroup of the PC-CP analysed the impacts that the six months since the start of the pandemic had on the penitentiary system, as well as the observations made during the visits of the CPT and EuroPris. The conference concluded by the issue of a follow-up statement on the 28<sup>th</sup> of September, in which – seeing that the pandemic will be present in the life of the member states for a longer period of time – they formulated key principles and recommendations in order to deal with the long-term impacts of the pandemic.<sup>7</sup> The follow-up statement welcomed the efforts of the member states; that in spite of the serious pandemic situation they were able to provide early and

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<sup>7</sup> SIVADÓ 2014: 235–242.



proportionate reactions by trying to restore previous, good practices, and by offering new arrangements to the limitations caused by the novel situation.

The statement highlighted, that the pandemic revealed, how important it is to provide high quality healthcare conditions and provision in prisons, therefore maintaining these standards would also be valid after the pandemic. The training of sanitary staff, ensuring sufficient stocks of necessary hygienic items and keeping the general healthcare rules all require special attention. According to their standpoint, the introduction of new technologies in prisons and by the probation services is a positive trend, which needs to be further evaluated and supported.

The follow-up statement in detail enlists the advancements and the new best practices that were introduced in an incredibly fast and effective manner in the prisons of several countries. Such advancement is the compensation of prisoners with free-of-charge phone calls and other means of communication, which according to the PC-CP should remain as a complement to normal face-to-face contacts even after the pandemic. Further on, the follow-up statement refers to the recently revised and updated (on the 1<sup>st</sup> of July 2020) European Prison Rules with special focus on points 53 and 60.6, which recommend paying extra attention to the mental and physical health of inmates who are in solitary confinement for disciplinary or other sanitary or safety reasons, while recommending that any such confinement should be coupled with counterbalancing activities, such as increased number of free-of-charge phone calls, books and other reading material, TV and other media, in-cell educational, training and recreational activities and others. The PC-CP raised special awareness that such periods of solitary confinement should be ended immediately with the end of the reason for their imposition. As a general rule, the PC-CP wishes to underline that any such restriction on rights and freedoms of persons under the supervision of prison or probation services should be temporary only and should be proportionate to the severity of a crisis, as well as to its impact and time-span, and should be lifted as soon as the source for their introduction has ceased to exist.

Another remarkable impact of the pandemic was the decrease in the number of detainees in the member states. This process was achieved by different early release schemes (releases on parole, custodies to help reintegration), release of the perpetrators of minor acts of crime, change of judicial practices, applying the legal institutions of postponement and interruption of prison sentences as well as more frequent community sanctions. Although according to the PC-CP, this trend should be welcomed and maintained in the future, it should also be noted that this has led in many countries to pressure on the caseload of the probation services. The PC-CP WG therefore urged the national authorities to evaluate the impact of such measures on the work of prison, probation and police services and to ensure sufficient staffing levels and other resources, as well as other necessary measures, in order to allow these services to deliver quality work in the interest of public safety and reduction of crime levels.



During the pandemic, the general rise in suicide, domestic violence, sexual assaults, as well as the crimes related to substance misuse and addiction could be observed. In several member states the increase in the numbers of these acts has also been quite marked among the population in prison and under probation supervision. The PC-CP WG therefore urged the prison and probation services to pay specific attention to dealing with these problems, by offering additional responses, including services for victims, as well as medical and psychological treatment, cognitive behaviour therapy, addiction therapy and other interventions as appropriate, for offenders.

And finally, in the follow-up statement, the PC-CP WG urged the national prison and probation services, in case they have not yet done so, to evaluate the experiences they have had so far in fighting this pandemic and to agree and adopt crisis management plans which would help them deal with similar crises in the future in a coherent manner in full respect of human rights and the rule of law. These plans should include specific training of staff, appointment of a reference member of staff responsible for dealing with such situations and decision-taking procedures. The working group also urged the development of a strategy dealing with the media, including appointing and training staff members responsible for public relations and for providing transparent and regularly updated information to offenders and their families on the crisis situation.

Soon after the publication of the follow-up statement, on the 14<sup>th</sup> of October 2020, the PC-CP issued a revised version. In this issue, one recommendation – No. 14 – was modified, which dealt with the practice of quarantining new arrivals in the course of the reception process, and the soon to be released detainees during the process of release; emphasising that this measure is only due to the pandemic, and should not last more than strictly necessary.

## **International recommendations, domestic implementations**

The outbreak of the coronavirus also brought the Hungarian penitentiary system into a situation of extreme challenges, as within a couple of weeks several such decisions had to be made and implemented, in which the Hungarian penitentiary system neither had any theoretic, nor practical experience. The Head Office of the National Prison Services continuously introduced preventive and limitation measures, which were adjusted to the spread and the characteristics of the epidemic, while, besides the protection of human life, they constantly focused on maintaining safe detention services and securing the rights of the detainees. Last, but not least, the organisation attributed special importance to the risk-mitigating measures that served the direct protection of the health of prison staff and the detained population. Since more than a year has passed, we can safely declare that the recommendations and measures included in the above introduced statements were outstandingly implemented

in domestic penitentiary circles during the management of the pandemic. Five action plans and their amendments were issued by the Operative Staff of the penitentiary system that pertained to the whole of penitentiary organisations, complemented by several letters that imposed certain tasks for specialised areas, as well as methodological guides and protocols that facilitated implementation, and information materials for the detainees and their contacts – that often (by date) preceded the statements of international professional bodies – endeavoured to cover the sensitive areas influenced by the pandemic, offering special solutions and arrangements in accord with international expectations.

For example, from the first appearances of Covid-19 in Hungary, the penitentiary system attributed special importance to provide information to detainees and their contacts, making use of up-to-date technical possibilities. Informal posters were created, video materials – created by the cooperation of detained participants – were aired through the closed prison video networks, and besides the national central homepage, every penal institute continuously raised awareness to the importance of prevention on their own homepages, while also providing information about the implemented safety measures. Furthermore, the penitentiary system created a so-called call centre, which provided authentic and up-to-date information on a daily basis for those who called, about the actual measures related to the pandemic situation.

International recommendations also imply that keeping track of the detainees' morale and their counselling became an accentuated issue. In Hungary, the pandemic situation and its joint measures had a negative impact on the inmates' morale, which required – simultaneously with dealing with the epidemic – immediate actions.<sup>8</sup> The area, in which the pandemic affected the inmates' life the most, was keeping contacts. The pertinent legal regulations – in case the existence of certain conditions – normally allow to keep contact between the inmates and their registered contacts in six different ways, which could even include leaving the penitentiary institution. The protection measures that were created due to the pandemic, terminated these, so – among others – finding a solution to bridge this issue became necessary. The Commander of the National Penitentiary Organisation ordered that in order to reduce the negative impacts of the limitations that arose due to the health crisis, the inmates are allowed to use every available electronic contact forms, regardless of their regime. The detainees are also allowed to initiate phone calls in a frequency and duration that excess the measures pertaining to the regime of their prison sentence; and if they do not possess the necessary financial deposit, upon request the penitentiary institute can take over the costs of the phone call as a unique decision; besides that, they can receive or send parcels on several occasions per month. The new measures provided bonuses for the inmates by the extension of making phone calls and sending parcels, and also by loosening the conditions of

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<sup>8</sup> SIVADÓ-LÉSZKÓ 2018: 313.

keeping contact through Skype – as the latter was only available for detainees with irreproachable conduct and performance as well as low security risk classification. Regarding contacting through Skype, we have to mention contacting with the advocates, as Skype facilitated the full compliance of procedural rights concerning the keeping of contacts with these advocates.<sup>9</sup>

Another important and regular point of international statements is the cooperation with partner organisations, and the creation of appropriate sanitary and hygienic conditions. In the course of their constant evaluating and analytical endeavours, the Hungarian penitentiary organisation attributed special importance to getting in contact with the competent judicial, defensive and other partner organisations, which shortly after the outbreak of the pandemic could be executed. Regarding sanitary aspects, several measures became immediately operative, such as the 14-day-long isolation of new arrivals; the mandatory wearing of masks outside prison cells; the isolated joint allocation of inmates who are above 65 years of age, pregnant, or vulnerable due to their sanitary or mental conditions; regular disinfections; and several other sanitary measures.

In the light of international recommendations, Hungarian judicial authorities also considered the execution of various alternative reduction measures. Thus, the *ex officio* investigation of the application of custody for reintegration in order to reduce the number of inmates and thus the chance of infection, and the delay of new arrivals all contributed to the reduction of possible sanitary and safety risks. Furthermore, in order to reduce the load on the endpoints of distant trials and to minimise the risks of the transportation of inmates to judicial trials and police interviews, meeting rooms were developed in several correctional facilities, while the existing ones were put into service.

Naturally, the field of probation services also could not remain untouched by new regulations. Electronic administration became a new, dominant form of contact, by which the probation staff was able to get in contact with competent professional bodies, organisations or institutions in order to fulfil their responsibilities.

## Closing thoughts

Early on in the pandemic, the potential risk of Covid-19 outbreaks occurring inside prisons was highlighted. Indeed, owing to overcrowding and structural issues people in detention (PiD) and prison officers (POs) were considered at higher risk of acquiring Covid-19 infection.<sup>10</sup>

The impacts of the coronavirus epidemic on the operation and the legal framework of European penitentiary organisations as well as on prison population will remain

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<sup>9</sup> Vókó 2010.

<sup>10</sup> Kovács 2021.

in the crosshairs of researchers, analytics and legislators for a long time. Since March 2020, the penitentiary organisations of the member states of the Council of Europe introduced several legal institutions while also making amendments for some existing ones. However, these amendments and innovations that were due to the pandemic, also led to new discoveries. Online contacting became widely used with success, extended e-learning possibilities became available in prisons, the sanitary support and toolkit of penitentiary facilities went through significant improvements, several alternative judicial arrangements were proven to offer effective and permanent solutions for overcrowding, and so on.<sup>11</sup>

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<sup>11</sup> TÓTH 2020: 127–145.

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