



# ARCHIWUM KRYMINOLOGII

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## ‘Let there be order!’: Rising criminal populism in Hungary

### „Niech zapanuje porządek!”: Rosnący populizm penalny na Węgrzech

**Abstract:** The article explains the birth and development of criminal populism in Hungary – a serious deficit of a young democracy since 2010. Ten years ago, the governing party Fidesz gained a two-thirds majority in the Parliament and immediately pushed penal policy reforms to the forefront of politics under the slogan ‘Order at last!’ The article describes the growing social and political tensions and the serious conflicts arising from the segregation of peripheries of society as a consequence of penal populism. Particular attention is paid to populist criminal policy regarding juveniles, which predominantly favours disciplinary measures. The scope of criminalised behaviour and punishable persons has been expanded; punishments are doled out and the prison population has increased considerably.

**Keywords:** criminology, criminal populism, Hungary, social and criminal segregation of juveniles, school guard, criminalised homelessness, increasing prison population

**Abstrakt:** Artykuł wyjaśnia narodziny i rozwój populizmu penalnego na Węgrzech, stanowiącego poważny deficyt młodej demokracji po 2010 roku. Dziesięć lat temu rządząca partia Fidesz uzyskała w parlamencie większość 2/3 głosów i natychmiast przeforsowała reformę polityki karnej pod hasłem „Nareszcie porządek!”. Artykuł opisuje narastające napięcia społeczne i polityczne oraz poważne konflikty wynikające z segregacji niektórych grup społecznych, będących konsekwencją populizmu penalnego. Szczególna uwaga została zwrócona na populistyczną politykę penalną wobec nieletnich, która w przeważającej mierze zakłada stosowanie środków dyscyplinarnych. Rozszerzono zakres zachowań przestępczych, a także zakres osób podlegających karze. Wymierzane kary przyczyniają się także do znacznego wzrostu populacji więziennej.

**Słowa kluczowe:** kryminologia, populizm penalny, Węgry, społeczna i kryminalna segregacja nieletnich, ochrona w szkołach, kryminalizacja bezdomności, wzrost populacji więziennej

## 1. Characteristics of criminal populism

Norbert Elias's research, and recently Steven Pinker's, prove that parallel to the development of civilisation, the use of force and the culture of everyday violence are steadily declining (Elias 1987; Pinker 2011). Statistics show that crime in long-standing democracies rose sharply between 1960 and 1980 and has then stagnated or even declined since the early 1990s. The number of homicides has remained relatively low over the past three decades. Yet it was exactly during this favourable turn that criminal populism emerged on the government agenda in several long-standing and new democracies. Its decisive influence was first explored in respect to the United States (Gönczöl 2014). According to some experts, commitment to stricter punishments and susceptibility to criminal populism are on the rise in cultures where belief in individual performance is strong, but acceptance of an institutionalised response to inequalities is weak (Green 2009).

Populism, proclaiming the primacy of popular will, refers to the people and the will of the people as the cornerstone of a fair and legitimate order. In countries where confidence in political and professional elites has permanently faltered, there may be a general loss of confidence. This may be the result, for example, of a serious, protracted economic crisis or of a relatively short-term political, economic turn that reconfigures the structure of society. The resulting disintegration of social cohesion may breed strong insecurity in a large part of the population, leading to the loss of a sense of security at the individual and societal levels, but it can also indicate a democracy deficit (Garland 2001; Gönczöl 2013).

In such circumstances and under public pressure, the ruling political elite may respond to complex social phenomena such as crime in a way that promises spectacular and rapid success, but delivers simplistic solutions – like 'Three Strikes' or 'zero tolerance', i.e. simple ideas and phrases which are easily understood by ordinary people – rather than policy devised by experts.

In other words, instead of mitigating or meaningfully dealing with serious social conflicts, it simply extends the scope of social control. It does so by expanding the scope of criminalised conduct and punishable persons, and by imposing sanctions that are unreasonably harsher than before. Meanwhile, it hails the reigning in of the *errant* as the single-most effective political solution (Garland 2001). Criminal populism can easily become a weapon in the hands of the incumbent political elite, since penal policy is one tool and technique for exercising power. It may also be the case that the ignorant public, with the active participation of the media, puts pressure on the judiciary, claiming and at the same time demonstrating an increased need for a more stringent treatment of offenders (Lee 1999; Pratt, Miao

2019). Incumbent populist governments then refer to direct democracy in order to maximise votes. Pretending to respond to emotions whipped up by the media, they say, 'Let there be order!', whilst putting aside the traditional values of penal policy and the rule of law. One of the main features of criminal populism is that it ignores professional expertise citing emotions and public pressure. 'Its true objective is to maximise votes, and not to find professional, meaningful solutions' (Gönczöl 2013). This is where it differs from a criminal policy that works for protection with a long-term perspective, is responsive to the reactions of an informed public, and operates on the basis of professional expertise. Along with the burgeoning of illiberal criminal populism, new penal paradigms are emerging.

A central concept of these paradigms is *control science*, which suggests that the socioeconomic damage caused by crime can be effectively managed and that crime risk may be controlled; it rests on the premise of public welfare combined with an investment in self-provision. Control science privatises the management of security deficit and crime risk. It tries to find a predictable solution to these issues, like insurance companies offering coverage for weather damage through insurance. As pointed out by Andrea Borbíró, alongside the police, it is the security industry and insurance industry players who are populating this new market. One side effect of the ever more dominant control science is that certain forms of control and the implementation of sanctions erstwhile considered to be state monopolies may be transferred to the competence of private security market participants. 'Meanwhile, together with the expansion of the expectation of self-provision, the threat of vigilantism grows' (Borbíró 2014). It indicates a weakness of the authority of the central state, in contrast to the growing authority of the populist leader, Viktor Orbán, who responds to 'the will of the people' rather than central state bureaucracies.

## 2. Democracy deficit following the regime change of 1989

In the period following the fundamental change of political regime, Hungarian social scientists Ferenc Pataki (2010), János Kornai (2010), and György Csepeli (2010) recognised the threat of populism gaining ground. Post-socialist countries saw the rapid emergence of a market economy, followed by mass mobility and the structural transformation of society. For a significant portion of society this transformation was not the sweet, lasting experience of the onset of freedom, but rather a disruptive, unsolicited gift. It is no coincidence that in Central Europe, public opinion attaches more importance to order than in traditional capitalist countries.

A quarter of a century after the regime change, the majority of citizens still do not live or think in terms of fundamental democratic values. They

conform to the pressures of globalisation and the expectations of a market society as subjects rather than self-conscious citizens. (Kornai 2010)

In transition countries like Hungary, security ‘granted from above’ is apparently received with nostalgia. Until 2010, this democracy deficit in Hungary had not yielded a predominance of criminal populism. Like other post-socialist countries, successive governments adjusted their penal policy reforms to the Western European model and EU expectations (Lévay 2006, 2009; Gönczöl 2010).

### **3. Populist criminal policy in Hungary: Juveniles and children**

However, in 2010, the Hungarian government acquired a two-thirds majority in Parliament and, citing direct democracy and public pressure, brandished the slogan ‘Let there be order!’, effectively pushing criminal policy to the top of the political agenda. Since that point in time, growing social and societal tensions – in particular, conflicts arising from social exclusion – were managed through the power/political tools of criminal populism. Today, the delicate balance between support and control has been upset: the government’s strategy and policy are dominated by the instruments of disciplining. Perhaps it is no coincidence that the policy of ‘Order at last!’ has hit disadvantaged children and juveniles the hardest. In what follows, I elaborate on the situation of this age group, referring to the examples mentioned above.

Following the political shift of 2010, the Act on Misdemeanours was amended. This made it possible to ‘detain juvenile offenders aged 14–18 for up to 60 days in case of a failure to pay a fine’ (Ombudsman’s Report 2012). Contrary to the Ombudsman’s petition requesting an *ex post* review of this amendment, the Constitutional Court did not consider the introduction of a custodial sentence for offending juveniles to be a violation of international obligations (Constitutional Court’s Decision 2013). The Court took into consideration two UN General Assembly resolutions on children’s rights in criminal justice, adopted in 1983 and 1985, when assessing the compatibility of the contested legislation with international legal norms (UN GA Resolution 1983, 1985). These resolutions stated that detention may only be applied as a last resort and only to the extent strictly necessary. Laws must also specify the minimum age below which such a sanction cannot be applied. Moreover, any custodial sentence may only be imposed after careful judicial consideration. The resolution emphasised the need to apply the broadest possible range of alternative sanctions. In the course of the execution of a custodial sentence, human rights must be observed, the development of a healthy personality and a sense of responsibility should be promoted, and an effort should be made to facilitate the integration of the juvenile offender into society. In the Constitutional Court’s view, taking into account these provisions governing the detention of juvenile offenders,

the contested norm did not violate the provisions of international conventions. Therefore, the Constitutional Court found that the new Act on Misdemeanours did not violate the obligations enshrined in the international treaty cited by the petitioner, and therefore it rejected the petition (Constitutional Court's Decision 2013). The Constitutional Court essentially followed the position of the Ministry for the Interior, which claimed that 70 per cent of property offences are committed by juveniles, and that courts have either failed to impose fines or these have proven to be irrecoverable. Thus, in the Court's view, it is prison that effectively solves the problem. However, as Justice Miklós Lévy explained in his dissenting opinion, 'the Constitutional Court should have found an unconstitutionality caused by the omission. The Parliament failed to fulfil its legislative obligation under the international treaty by failing to provide for the possibility of imposing alternative sanctions on juveniles instead of detention, which would allow juvenile offenders to pursue educational goals, abide by the law, and facilitate their reintegration' (Lévy 2013). Furthermore, the Constitutional Court failed to consider the findings of Hungarian research cited by the Ombudsman, although the expert opinion prepared by the National Institute of Criminology and the example presented in it clearly illustrate that a custodial sentence not only violates the rule of law, but is also an expensive and senseless legal institution. The Ombudsman described the situation with the following example:

In 2011, a 17-year-old juvenile was admitted to Tököl Penitentiary. He had stolen two bottles of cognac from a store, committing a crime against property. The damage caused amounted to 1,447 forints, which was immediately returned, since the young man was caught red-handed. He was detained for 20 days. Since he had committed the crime on a Friday, the young man spent the weekend in lockup, and then on Monday he was transferred to Tököl. Admission was speedy, but he could not be integrated into the penitentiary's school. Following the finalisation of the admission procedure, the procedure for the young man's release had to be started almost immediately, at which point it turned out that the juvenile had no money to travel home. If we were to add up how much money the state spent on this case, we would have to calculate the following amounts: daily board (20×8,000 forints), transportation of approx. 300 km (20,000 forints), and return travel costs (8,720 forints) – coming to a total of 188,720 forints. This adverse balance is further aggravated by the fact that during his 20-day confinement, the young man presumably learned some things that he should not have. Based on the rules in force that year, he was still required to attend school but did not, and we can only hope that the county clerk accepted the penitentiary's proof of absence. According to the available data, between 15 April and 31 December 2012, 24 juveniles served their sentences in a juvenile detention facility or, temporarily, in 'good company' in police lockup over the weekend. (Ombudsman's Report 2012)

A custodial sentence may only be imposed by a court. Juvenile offenders are still routinely fined, followed by warnings; community service is also applied broadly, while the incidence of detention is negligible. In 2019, detention was applied in less than 100 of the approximately 24,000 cases in Budapest (Elzárás 2020).

By 2011, the year of ‘child-friendly justice’ in Hungary, the criminal justice system addressed to juvenile offenders, which had operated on the basis of a criminal policy applied consistently since 1908, was abolished, including the juvenile court and the juvenile prosecutor’s office. What remains are the correctional facilities, juvenile detention facilities, and a semblance of the juvenile probation officers’ system. This deterioration took place despite the fact that the Council of Europe’s recommendation on child-friendly justice had set new requirements for member states (Council of Europe 1998). These requirements foresaw the establishment of a special judicial, procedural, and institutional system for minors coming into conflict with the law. The regulatory concept whose principles had been laid down between 2004 and 2006 by the then Ministry of Justice and Law Enforcement would have fully complied with these requirements. This concept was not carried further, falling victim to political indifference (Ligeti 2006). A special court for juveniles has still not been established. While certain provisions of the current Act on Criminal Procedure pay more attention to the specific needs of juveniles than the previous law, experts nevertheless claim that ‘compliance with the law does not suffice for achieving a child-friendly justice system without specific, complex training for juvenile investigators, prosecutors, and judges and where their criminal proceedings can drag out for years’ (Nagy 2018).

The new Criminal Code of 2012 reduced the age of criminal responsibility in respect of offenders in certain violent crimes to 12 years.<sup>1</sup> When the draft Criminal Code was made public, the Hungarian UNICEF Committee protested against lowering the age of criminal responsibility. According to the Committee, Hungary had seriously violated the UN Convention on the Rights of the Child, introducing rules that fly in the face of UN standards on juvenile criminal justice, and are clearly and demonstrably ineffective. In the Committee’s view, the Hungarian justice and penitentiary system or the training of experts are not prepared to provide adequate care to minors who have committed a crime. The biological, physical, mental development of a 12-year-old child is still in progress; their ability to make choices autonomously, overcome their instincts and emotions, delay satisfaction, and consider the consequences of their actions is imperfect. It is an undisputed medical fact that the human brain reaches its full development around the age of twenty. As such, a child’s behaviour merely reflects deeper symptoms, for childhood

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<sup>1</sup> ‘A person shall not be liable to punishment if he has not attained the age of fourteen years when committing a punishable act, except for homicide, homicide in the heat of passion, causing bodily harm, a terrorist act, robbery, or robbery of a vulnerable person, provided that the offender has attained the age of twelve years when committing the criminal offence, and he possessed the faculties required to recognise the consequences of the criminal offence at the time of commission’ (Section 16 of Act No. C of 2012 on the Criminal Code).



crime is more often than not rooted in family problems, abuse, and experience of violence (Az UNICEF 2020). Children are very often victims themselves, a situation to which the criminal justice system cannot adequately respond.

In countries where the age of criminal responsibility is lower than 14 years, legal consequences are geared towards protection of the child and family and the focus is not on punishment, but instead on rehabilitation or reintegration and assistance. The Ministry of Justice took the opposite stance. According to the Ministry, the age of criminal responsibility enshrined in the new Criminal Code is fully in line with the Convention on the Rights of the Child. Namely, the Convention does not lay down a specific age of criminal responsibility, but merely requires States Parties to set a minimum age below which the presumption that a child had committed a criminal offence cannot be applied. The Ministry emphasised that *the general rule regarding the minimum age of criminal responsibility had not changed: it remained 14 years*. It is in the case of exceptionally serious crimes that the new regulation lowers the age of criminal responsibility to 12 years. According to the new Criminal Code, those who are not yet 14 years of age at the time they commit a criminal offense can only be subject to measures and cannot be incarcerated or receive other forms of punishment. This line of argumentation, however, does not change the fact that the recent legislation extends the disciplinary, punitive force of criminal law, which should only be applied as a last resort to children. This power/political tool is clearly a kind of compensation, carried out instead of building professional capacities in family and child protection. I agree with Mihály Tóth that this major paradigm shift is much more a form of window dressing to satisfy proponents of a strong state than a well-thought-out, professionally mature position and that, as such, it is a product of criminal populism. Tóth wrote that

based on the similar or rather declining trend over the past years, it seems that the discretion necessary for ordering a penal measure will only be assessed in the case of about 60–70 children per annum, and since in the majority of cases the answer will be in the affirmative, this will affect about 40–70 children a year. It is highly doubtful that the amendment can be justified in the face of such a high figure (and that it is not merely a sham measure to satisfy proponents of the strong state). Especially if we take into account that to date, in serious cases, institutional placement (admission to care) of unpunishable children was available under the Act on the Protection of the Child. (Tóth 2012)

#### 4. School guard

In 2013, after ten years, the Parliament repealed the National Strategy for Social Crime Prevention and the government replaced it with the National Crime

Prevention Strategy (Parliamentary Decision 2003; Government Decision 2013; Parliamentary Decision 2013). With this, *parliamentary control over crime prevention was abolished*, replacing the concept of crime prevention as part of social policy with situational crime prevention, and in particular, police control. The launching of the so-called school police, in operation since 2013, was the first major indication of change. According to the concept and guidelines of the Minister for the Interior, school police officers work together with the teachers in high-risk schools. Based on police reports, starting with 2014, 100 police officers in nearly 200 educational institutions 'enriched' the schools educational programme, ensuring compliance with the disciplinary rules for more than 100,000 students (Tanévnnyitó 2014). However, this approach also failed to satisfactorily resolve school violence. Pro-government media regularly cover sensational stories about students insulting teachers, and fighting between pupils being very common in schools. Meanwhile, school psychologists trained in non-violent conflict resolution and social workers have almost completely disappeared from schools. There is also a grave shortage of special education teachers capable of dealing with problematic children.

In May 2020, the government presented a new 'proposal for a solution' and a draft bill. The bill, also containing an amendment to the constitution, was quickly passed by the Parliament (2020. évi LXXIV), with the aim of establishing a new school guard which pertains to the police and performs police tasks to maintain order in educational institutions. School guards are now employed by the police, with salaries exceeding those of the teachers. According to the law, family allowances will be withdrawn from the parents of violent children and the punishable age of offenders of school violence will be reduced to 12 years. With this, the scope of punishable persons was significantly expanded. School guards are to be deployed in problematic schools – an estimated 500 institutions – working as a new uniformed school guard and enjoying enhanced protection under criminal law, with the task of restraining violent students with physical force, batons, and handcuffs right until their colleagues in law enforcement arrive to take matters into their hands. This means that the pedagogical, psychological, special needs educator and social expertise which has had long-standing traditions in Hungary has been replaced by an openly populist approach, rooted in the omnipotence of control and a governing technique that responds to violence with force. The Hungarian model comes from the USA, from a country where the police assassination of George Floyd resulted in a national movement with a professional and political debate in 2020 about the abolition of the school police. 'In New York City last weekend, hundreds of teachers and students marched in a protest calling for the police to be removed from schools and replaced by a new crop of guidance counsellors and social workers' (Goldstein 2020).



## 5. Social exclusion of children and young people

As of 1 September 2012, primary school pupils will only be required to attend school until they reach the age of 16 instead of the previous 18 (2011. évi CXV: Art. 45, Para. 1). Since 2010, unemployment among unskilled, under-educated youth has presented a growing societal concern. Hungary is in the bottom third of EU and/or OECD countries in terms of the changing proportion of 'NEET' youths aged 14–24, taking 33rd place out of 41. The ratio of young people aged 15–24 who do not take part in education, employment, or training has increased between 2008 and 2013 by 4.4 percentage points, amounting to 15.4 per cent (Boros et al. 2014). This phenomenon plays an outstanding role in the process of crime reproduction.

Ever the pragmatic nation, recognising the detrimental consequences of globalisation, the British raised the compulsory school-leaving age to 18 in 2015.<sup>2</sup> British legislature justified the amendment with reference to, among other things, the fact that the longer young people were kept in school, the less likely social order would be disrupted, risking public safety (Boros et al. 2014: 14). According to this reasoning, even the worst school is a better place for a young person than a public space lacking control of any kind. An unskilled, out-of-work young person, on the fringes of society, poses a veritable social and public security risk. With basic education, the motivation to lead a law-abiding lifestyle is stronger anyway, and labour market opportunities also look more favourable. The Hungarian government – consistently shunning professional expertise – does not seem able to, or willing to recognise this very simple equation. With the active support of some teachers, Hungarian primary schools were adamant to rid themselves of problematic students who usually come from a segregated environment. These were students incapable of or struggling to adapt to school order and discipline, mainly due to the growing deficiencies of the public education infrastructure, and as such were an obstacle to the progress of other students. Until now, the bulk of these problematic students were placed into home tuition. And now, instead of developing a school model based on integration and conflict resolution, these schools can get rid of such students with the help of the law. This was made possible under the most conservative school programme ever, developed in 2011, providing for the re-nationalisation of schools (2011. évi CXV).

In parallel with the institutional disciplining of Hungarian children and young people, child poverty has grown to an extent unseen in the modern age. Compared to other age groups affected by social exclusion, children are most at risk of poverty in Hungary. Following the turn of the millennium, almost 40 per cent of Hungarian children lived under such conditions (this figure is 31 per cent in

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<sup>2</sup> In England and Wales, school attendance has been compulsory between the ages of 5 and 16 ever since 1973. Scotland also adopted this standard in 1980. In Northern Ireland, compulsory education spans 12 years, from 4 to 16 years of age. It is after many decades that England has changed the school-leaving age, raising the upper limit in 2013 to the age of 17, and in 2015 to the age of 18. See Mártonfi (2015).

the entire population, 31.7 per cent for those aged 18–64, and 18 per cent for those over 65 years of age (A gazdasági 2011). According to a UNICEF survey conducted in 2014, when it comes to child poverty Hungary ranks 29th out of 41 developed countries. According to the report, the child poverty rate rose by 3 percentage points to 22.6 per cent between the years 2008 and 2012.<sup>3</sup> As a matter of fact, since the year 2008, two thirds of European countries have seen an increase in severe financial hardship. In absolute terms, Hungary is one of the three countries with the fastest and highest poverty growth in the four years examined in the report (A gazdasági 2011: 21). International analysts examined the government's efforts to combat this adverse phenomenon. The Hungarian government was condemned in this instance as well. According to the analysis, Hungarian public policy merely pays lip service to the problem of child poverty and exclusion; meanwhile, the real value of the majority of social benefits has decreased, and the conditions for access have become more stringent (A gazdasági 2011: 45). As a result, by 2017 child poverty in Hungary increased by a further 3 percentage points and the proportion of families struggling to make a living was 18.5 per cent, which is double the EU average (Csengel 2019). Cutting benefits to deprived children and families, restricting the conditions for access to these benefits, and finally, proliferating rules and controls have caused immeasurable damage to the majority of the population, amounting to a populist technique that can only be corrected in the very long term, with extremely serious professional work. With the 'right' communication, by whipping up emotions and adopting certain pieces of legislation, it is relatively easy to establish controls that result in total social exclusion, but serious efforts over multiple lifetimes will be needed to mitigate the grave damage that is caused.

## 6. Criminalised homelessness

By expanding the scope of punishable acts and persons, using power political techniques under the slogan 'Let there be order!', Hungarian criminal populism temporarily won the confidence of the majority of voters. In this vein, the Parliament *criminalised homelessness* (2012. évi II. törvény). As of 15 October 2013, being in a public space is punishable by a fine and, ultimately, by confinement. By the end of the year, 20 people had been locked up for failure to pay the fines. After the law came into force, the Constitutional Court declared the rules on the criminalisation of homelessness to be unconstitutional and annulled them (Constitutional Court's Decision 2012). However, bringing forth a new legislation proposal, resulting in the amendment to the constitution, the government with its two-thirds majority in Parliament achieved the nationwide criminalisation of

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<sup>3</sup> This amounts to an increase of around 33,000 people.

homelessness taking effect 15 October 2018.<sup>4</sup> Upon the motion of three judges presiding in such cases, the Constitutional Court was yet again asked to rule on the criminalisation of homelessness.<sup>5</sup> This time, however, the Court no longer considered the rule to be unconstitutional. Two former constitutional judges and three civil society organisations expressed an opposing view in an *amicus curiae* (Kiss, Lévy 2020).

It is clear from the text of the decisions “that the Court does not consider homelessness to be a situation of severe crisis, but rather as a breach of the obligation to cooperate with law enforcement.” It does not consider the sanction of confinement to be disproportionate either, arguing that it is merely a last resort, notwithstanding the case, that depending on the specific situation, this sanction may be imposed already after three warnings – even within the span of 10 minutes (Embertelen n.d.). I share the view of the NGOs also on the point that homelessness is a severe crisis that needs to be addressed, but not by the means of criminal law, but through social measures.

Criminal sanctions do not solve the problem, instead, people being in public spaces are pushed out of the city and out of the sight of the social care system. This increases their social exclusion and vulnerability. Homelessness is not a sin but much rather a condition, the intent to commit cannot be discerned. Homeless people cannot be forced into the care system, whose institutions are often of low quality and lack sufficient accommodation. The new provisions of the Act on misdemeanours are in violation of fundamental rights. (Embertelen n.d.)

According to the data provided by the Ministry of the Interior, a total of 16 proceedings were initiated in 2018 on grounds of residing in a public place. Between October 2018 and the end of the year, the police issued almost 300 on-site warnings, but only five cases were brought to justice (Tessza 2019). Based on these data, as well as my personal experiences of encountering crowds of homeless people on the main city streets, it is clear that law enforcement bodies, i.e. the police and the courts, are making less and less of an effort to put into practice the exclusionary, populist provisions of the existing legislation.

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<sup>4</sup> Article XXII, Para. 3 of the Fundamental Law. Available online: <https://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> [06.08.2020]. ‘Following this amendment to the Fundamental Law, homelessness will be banned throughout the country. At the same time, the Fundamental Law does not oblige the state or the local government to provide decent housing, or even to provide accommodation.’ Available online: <https://tasz.hu/cikkek/hetedik-elemzesunk-az-alaptorveny-legujabb-modositasarol> [23.06.2020].

<sup>5</sup> Decision No. 19/2019. [VI. 18.] AB of the Constitutional Court on dismissing the judicial petition for the establishment of the unconstitutionality and annulment of Section 178/B of Act No. II of 2012 on misdemeanours, the misdemeanour procedure and the misdemeanour register system, and the establishment of a constitutional requirement regarding the application of the same.

## 7. Flourishing criminal populism in Hungary

In view of the above, perhaps it is no exaggeration to say that the Criminal Code codified under the current government is also a product of criminal populism. I agree with *Mihály Tóth's* comprehensive assessment, who claims that the new penal policy, premised on stringency, actually restricts the leeway available to law enforcement bodies.

When enacting mandatory provisions into law, the legislature often focusses on those circumstances inherent in the personality of the offender that allow for, or even foresee, a stricter liability. This is evidenced by the statutory lowering of the minimum age of criminal responsibility, a further aggravation of the consequences of recidivism, and the expansion of the scope of legal consequences associated with longer imprisonment or life imprisonment without the real possibility of parole. Contrary to European trends, the issue at stake here is no longer the possible substitution of the deprivation of liberty, but its extent. In this vein, hardened, professional criminals can be put behind bars for life, while first-time offenders are held for only a few days or weeks. The former will be committed to actual life imprisonment without the real possibility of parole, while the latter for a few days or weeks of confinement. In any case, the point is to put them away. (Tóth 2012)

A predictable outcome of this criminal policy paradigm was that the *prison population* in Hungary has increased significantly, which is today one of the highest in Europe (Nagy 2013). While the prison population per 100,000 inhabitants in Hungary was 180 in 2016, 179 in 2017, and 172 in 2018, to my knowledge it is now approaching 200 in the north-eastern region of the country. In 2018, 57 convicts were serving actual life sentences without any chance of parole (Rutkai, Sánta 2019).

Governments must tackle exclusion and the ensuing conflicts threatening the fundamental values of democracy with a long-term strategy that is grounded in European values, complies with the rule of law, and builds on available expertise. If they choose populist solutions, primarily ones centred on law enforcement and criminal control, in their aspiration to consolidate or maintain power, they must be aware that they themselves are contributing to the exacerbation of the crisis, jeopardising the functioning of basic democratic institutions and even democracy itself.<sup>6</sup>

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<sup>6</sup> This idea is reflected in a 1998 recommendation of the Council of Europe, according to which 'social exclusion not only offends human dignity and denies people their fundamental human rights, it also leads, in conjunction with social and economic instability and worsening inequality, to the phenomena of marginalisation, withdrawal, or violent reactions, thereby creating conditions which undermine the democratic foundations of our societies' (Council of Europe 1998). Available online: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16581&lang=en> [15.03.2014].

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