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Penal exceptionalism in countries of Central Europe: Why is the region different?

Odrębność penalna krajów Europy Środkowej. Dlaczego ten region jest inny?

Abstract: The countries of Central Europe have for many years occupied a leading position in Europe when it comes to the level of incarceration. This begs the question of what lies behind this state of affairs. It may be connected with the history of the region, being under authoritarian rule for years. Another factor may be the penal populism that is present everywhere in the world, but has specific features in this region. One version of such explanations is the concept of “penal nationalism”. The research also indicates a relationship between social policy and egalitarianism, among other factors, and the size of the prison population. This raises the question of the extent to which the concepts relativizing punitiveness to categories of political economy apply to the region. Finally, there are other explanations that point to some prosaic factors of a “technical” nature that may have an undesirable influence on punitiveness. None of these concepts fully explain the unique situation of the region as a whole. However, they can be a starting point for building a more integrated concept.

Keywords: penal policies, punitiveness of criminal justice, penal exceptionalism, incarceration rates, penal climate

Abstrakt: Państwa Europy Środkowej od lat zajmują czołową pozycję w Europie, jeśli chodzi o wysokość współczynników prizonizacji. Rodzi to pytania o przyczyny takiego stanu rzeczy. Mogą one leżeć w historii regionu pozostającego przez lata pod rządami autorytarnymi. Innym czynnikiem może być populizm penalny obecny wszędzie na świecie, ale w regionie mający specyficzne cechy. Wersją takich wyjaśnień jest koncepcja „penalnego nacjonalizmu”. Wyniki badań wskazują także na zależność m.in. pomiędzy polityką socjalną i egalitaryzmem a rozmiarami populacji więziennej. Powstaje pytanie, na ile do regionu odnoszą się koncepcje relatywizujące punitivność do kategorii z zakresu ekonomii politycznej. Wreszcie wymienić można wyjaśnienia autorów wskazujących

na pewne prozaiczne czynniki „technicznej” natury mogące wywierać poniekąd niechciany wpływ na punitowność. Żadna z tych koncepcji nie wyjaśnia do końca specyfiki regionu. Mogą jednak stanowić punkt wyjścia do budowania koncepcji o bardziej zintegrowanym charakterze.

Słowa kluczowe: polityka karna, punitowność wymiaru sprawiedliwości, ekscepcjonalizm penalny/odrębność penalna, współczynniki prizonizacji, klimat penalny

Introduction

In recent decades the term exceptionalism has been used on several occasions to refer to certain particularities of penal policies implemented in various countries or regions. In general this term indicates that the policies in a given country or region differ somehow from the “average” that is observable in neighbouring countries or regions or around the world. The main criterion qualifying a country to be exceptional in regards to its penal policies is the punitiveness of those policies. This means that the penal policies in a given country may be more or less punitive than the average. The very term *punitiveness* is not always absolutely clear, as the severity of penal policies, sentencing outcomes and other aspects of a state’s reaction to criminal behaviour may be assessed using various quantitative and qualitative criteria. Nevertheless, there is likely a set of such data which may give rise to a more or less adequate assessment of the issue. And the quantitative data most commonly used for international comparisons in that area are incarceration rates.

The term (penal) exceptionalism was probably used for the first time by John Pratt in his discussion of unique forms – not only globally, but also in Europe – of penal policies in Scandinavian countries: Denmark, Finland, Norway and Sweden (Pratt 2008a; Pratt 2008b). Those countries were, and despite all the changes in fact still are, well known for low incarceration rates and many other features of their criminal justice systems which make them somehow unique in their approach to crime control policies. It may be claimed that the repressiveness of their systems is visibly below average, not only worldwide, but also within Europe. In other words, the “penal climate” in those countries may be characterised as rather mild, or even sunny.¹ There were and still are other examples of such mild penal climates in Europe. For a long time the Netherlands constituted another one, especially during the 1970s and 1980s, enjoying the lowest imprisonment rates in Europe – even lower than those in Scandinavia (Downes, van Swaaningen 2007). Another example of such “below-average” exceptionalism during the last three decades is Slovenia, a country which substituted the Netherlands in the European ranking of countries with the smallest prison population (Meško, Fields, Smole 2011; Meško, Jare 2012; Aebi et al. 2016; Flander, Meško 2016). But the exceptional mildness of

¹ I use the term “penal climate” from Steenhuis, Tiggers and Essers (1983), who in their assessment of the Dutch penal policies juxtaposed two types of penal climate: sunny and cloudy. This may be substituted by the terms *mild* and *rough* penal climate.

a penal climate is only one type of penal exceptionalism. On the other end of this punitiveness continuum are countries characterised by the excessive harshness of their penal policies, distinctive in their extremely high incarceration rates and the very harsh practices of their criminal justice systems. The United States is the most conspicuous example in that respect: American penal exceptionalism – not only during the last 30–40 years – and its origins have been thoroughly analysed and discussed in the literature of recent decades (Whitman 2003; Garland 2020; Cullen 2022). However, visible traces of similar penal excesses are to be found in crime control policies across the Anglosphere, such as in the UK, Australia or New Zealand – with the exception of Canada (Tonry 2022).

From that point of view, it is interesting to note that for many decades penal climate on the European continent, although relatively mild – especially as compared with Anglosphere countries – has by no means been uniformly mild. European countries always implemented different crime control policies, bringing about different sentencing outcomes, incarceration rates and penal climates (Christie 2000; Dünkel 2017). It would not be easy to indicate the “European average” regarding punitiveness, including incarceration rate. However, there are certainly two regions distinguishing themselves in that respect, located on opposite poles of the European “penal continuum”. The first one is Scandinavia, as mentioned above. Even despite recent changes, this region is still the European leader in terms of the mildness of its penal climate and is one of the least punitive regions in the world. At the same time, there is no doubt that there is another region in Europe which bears clear traces of penal exceptionalism at the opposite extreme, marked by a rather cloudy, even rough penal climate: the formerly communist-governed countries of Central and Eastern Europe, which before 1989 were either members of the Warsaw Pact or Soviet republics. Still, there are also substantial differences between the penal policies of those countries, and they become even more visible when one includes the countries of former Yugoslavia, also once communist-governed but not dominated by Moscow. Nevertheless, it is true that in general most countries of the region have stood out for years because of incarceration rates higher or even much higher than the European average. This raises the question of why. What are the reasons for this Central and Eastern European penal exceptionalism against the Western European background?

As Michael Tonry indicated some time ago, “penal policies and imprisonment patterns result from policy decisions. What we don’t know is why particular policies emerge in particular places” (Tonry 2007a: VII). This of course also applies to reasons for the eventual penal exceptionalism of a given country. This essay is not intended to provide a definitive answer to the above questions; it is only an attempt to briefly present the nature of Central and Eastern European exceptionalism and a rather brief overview and evaluation of some explanations proposed so far to unravel that phenomenon. For the sake of simplicity this analysis will be at the same time limited in principle to countries that are currently Member States of the European Union, regardless of whether they were formerly members

of the Warsaw Pact or Yugoslav or Soviet republics. This means the analysis will concentrate on Bulgaria, Croatia, Czechia, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. In other words, EU Member States of Central Europe and the Balkans are included; other countries of the region, like Belarus, Moldova, Russia and Ukraine are left out of the analysis. Only Serbia, a former Yugoslav republic but not an EU Member State, will be included to supplement the picture of developments in former Yugoslavia. Despite having many common features with the group selected for analysis, countries of the region which are not EU Member States are – for various reasons – politically, economically or socially somewhat different cases. The main criterion for inclusion in the analysis therefore remains EU membership, a somewhat formal but clear and precise enough criterion. For the sake of simplicity those countries will be referred to as Central European countries, although in purely geographical terms this may be considered an unjustified extension of the notion of Central Europe.²

1. Central European exceptionalism compared to Europe overall

1.1. Incarceration rates in Central and Western Europe

There are many possible definitions of the notion of punitiveness (Green 2009). In general, this concept

refers to a wide variety of ‘actors’: to ‘popular’ attitudes towards punishing in the so-called ‘public opinion’ or in the media, to political discourse, to primary criminalization by legislators, to decisions taken by practitioners within the criminal justice system (police, prosecution, sentencing, implementation of sentences, release procedures, etc.), or to attitudes of revenge or forgiveness of victims of crime. (Snacken, Dumortier 2012b: 2)

This essay concentrates on one aspect of the above broad understanding of the term punitiveness, namely the punitiveness of the criminal justice system or penal policies. This aspect in itself is again a very complex issue, having quantitative and qualitative dimensions (Snacken, Dumortier 2012b: 2) which may be assessed using various indicators. The most commonly used quantitative indicators are those regarding sentencing outcomes, such as the frequency and structure of various types of sanctions, the average length of imprisonment or the severity of other sanctions. Another group of indicators is related to the implementation of sanctions, primarily incarceration and its various aspects. They may be static and include the so-called stock of prison population, or the number of persons

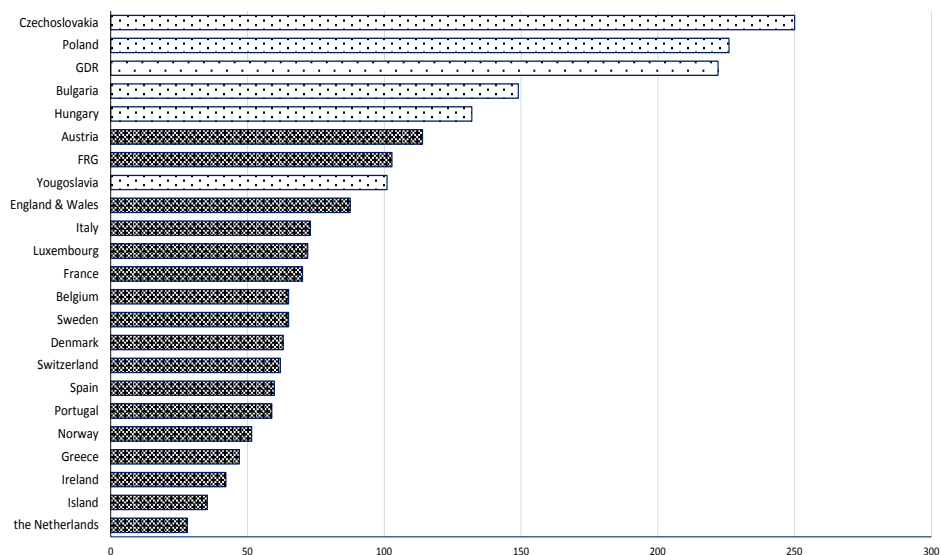
² For instance, in geographical terms some former Yugoslav republics, Bulgaria and Romania are hardly located in Central Europe.

incarcerated, the incarceration rate and indicators regarding prison overcrowding (all at a given moment). They may also indicate various dynamic aspects of imprisonment, the so-called flow of entries as well as the average time spent in prison, the proportion of inmates released on parole, etc. Among qualitative indicators it is possible to mention the use of capital punishment, the existence of mandatory minimum sentence laws and laws to increase sentence length, the use of pre-trial detention, the availability and use of prison alternatives, trying juveniles in adult courts and the weakening of procedural protections (Tonry 2007b: 7–13).

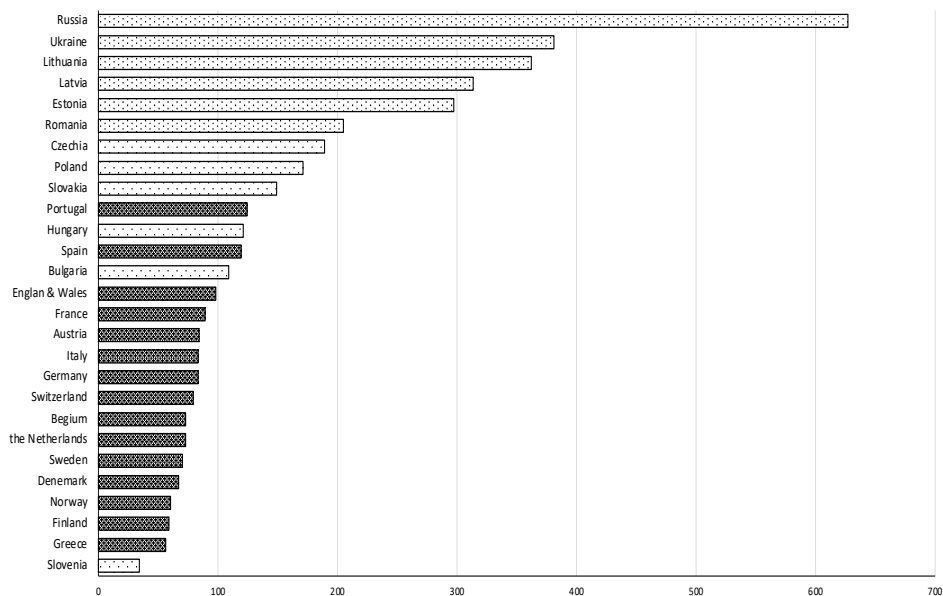
The indicator of punitiveness most commonly used in comparisons is incarceration rate. This is due to the fact that imprisonment, or deprivation of liberty, is nowadays the harshest penal sanction available (apart from those countries which still use the death penalty). Therefore, it is reasonable to assume that a large prison population in a given country indicates frequent use of imprisonment and repressive penal policies. In other words, the higher incarceration rate in a given country, the more repressive its sentencing policy. Of course this may be considered a serious simplification, an approach that reduces a very complex issue to a single indicator, but there are good reasons for such an approach. One of the main such reasons is the relative availability of reliable data on incarceration rates, not only cross-sectional, but also longitudinal. Such data from the last 40–50 years are available for most countries, but it is especially true for developed countries in Europe and North America, as well as Australia, New Zealand, Japan and a few others. The availability of other, more complex indicators of punitiveness sometimes poses problems even in regions with highly developed systems for collecting statistical data on criminal justice systems, like Europe. Such data are in most cases collected according to different national standards and in a way often either making international comparisons very difficult or simply impossible. Moreover, some data are just not collected at all, or are available only with enormous difficulty. Therefore, taking into account all the problems posed by comparisons using only data on the prison population, the analysis of Central European exceptionalism in this essay will be based primarily on the data regarding incarceration rates.

The first set of comparative data is presented in Figures 1–4. Each of those figures provides a ranking of European countries regarding the imprisonment rate for the years 1983, 1995, 2006 and 2018, respectively,³ with bright bars representing countries of Central Europe and dark ones countries of Western Europe.

³ The data for the years 1995 and 2006 are taken from respective editions of the *European Sourcebook of Crime and Criminal Justice Statistics*, while the data for the year 2018 are from the 2022 edition of the SPACE I prison population statistics of the Council of Europe. The data on Bulgaria, Czechoslovakia, the GDR, Hungary and Poland for the year 1983 are taken from Jasiński (1984). At that time, data on imprisonment rates were officially available only in Hungary and Poland, but not in other countries of the Warsaw Pact. Jerzy Jasiński obtained the data for a few other countries through private contacts.

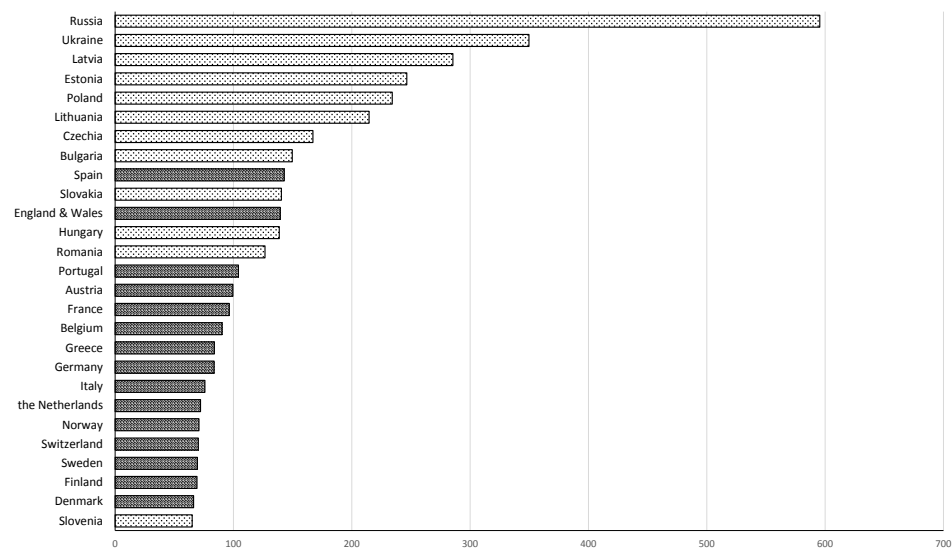
Figure 1. Incarceration rates in European countries (1983)

Source: Own elaboration.

Figure 2. Incarceration rates in European countries (1995)

Source: Own elaboration.

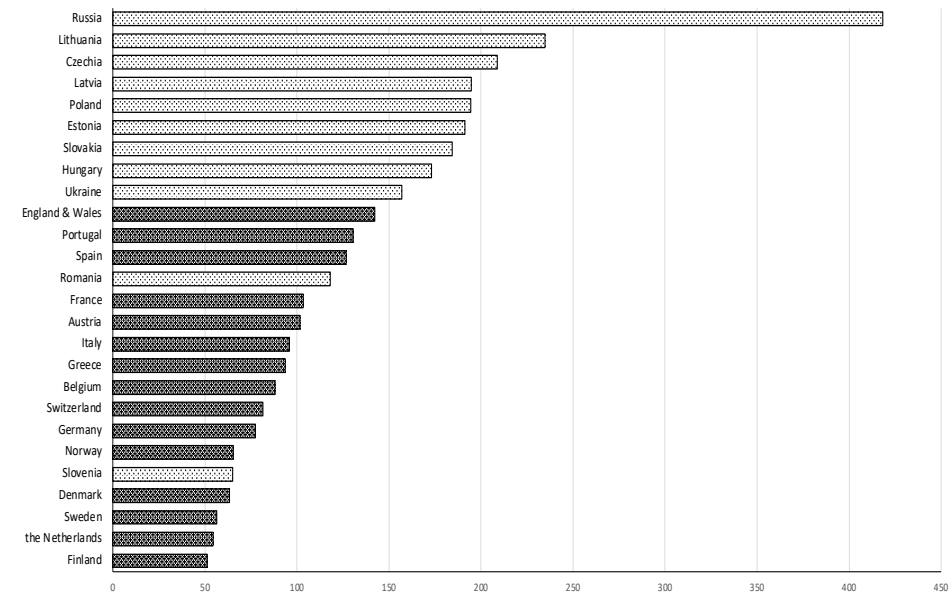
Figure 3. Incarceration rates in European countries (2006)



Source: Own elaboration.

There is one striking feature of ranking orders for those four selected years, en-

Figure 4. Incarceration rates in European countries (2018)



Source: Own elaboration.

compassing a span of more than 35 years: the consistently leading position of Central European countries in national incarceration rates. Of course, there were some changes in the positions of some countries, although in most instances they were not fundamental changes.⁴ Also, the emergence of newly independent countries in Central Europe and former Yugoslavia contributed to some changes in those rankings. It is also true that around the turn of the century incarceration rates in many European countries tended to grow, while during the last few years they started to decrease somewhat (see below). However, regardless of all those changes one element remained practically constant: some sort of “penal divide” between the Western part of the continent and its Central (not to mention Eastern) part, with the latter retaining substantially higher incarceration rates throughout the entire period. This is true despite the noticeable differences in incarceration rates between the countries of Western Europe, as well as between those located in the central and eastern parts of the continent.

There is one crucial aspect to that phenomenon: the above pattern remained unchanged despite the political, economic and social transformation initiated in Central Europe in 1989–1990. Since 1948, the European continent had been divided in political, military, economic and social terms by the so-called Iron Curtain. Although it disappeared in 1989, it seems that there were curtains or divides of another nature, one of them being a “penal divide” resulting in substantial differences in the punitiveness of the criminal justice systems (Krajewski 2014). Any systematic analysis of incarceration rates in Warsaw Pact countries, especially of trends thereof, was impossible because any data regarding incarceration rates in those countries (except for Hungary and Poland) were very difficult or impossible to obtain.⁵ Nevertheless, the unique analyses by Jerzy Jasiński (Jasiński 1973; 1976; 1984) show clearly that during the 1970s and 1980s, countries of the Warsaw Pact were notorious for extremely high incarceration rates: exceeding in most cases 200 per 100,000 population, and sometimes even 300. This was unusually high by the standards prevailing at the time in liberal democracies in Western Europe. Moreover, incarceration rates in Central Europe were higher than in most US states at that time. Nothing in this assessment is changed by the fact that those rates in Central Europe were most likely lower than in the Soviet Union. Only Yugoslavia, also a communist-governed country but to a large extent politically independent of direct interference from Moscow and its orthodoxy, had at that time somewhat lower incarceration rates, comparable with Western European leaders of incarceration.

This phenomenon is not difficult to explain: countries of the region at that time were in political terms single-party autocracies. Although the outright terror of the Stalinist era generally ended after 1956, communist regimes in countries of the so-called “real socialism” retained their repressive character (even if there

⁴ Examples of exceptions to this are the Netherlands in Western Europe, because of a substantial increase in the incarceration rate between 1998 and 2008, and Slovenia because of a substantial drop (compared with the average for Yugoslavia before 1990).

⁵ Not to mention interventions by the state censors when publishing studies on such issues, especially if they were critical. This was the case at least with some such studies in Poland.

were differences in the level of political repression between countries like Romania, Czechoslovakia or Poland). This applied not only to political repression, but also – or even primarily – to the approach to “ordinary” crime control. Therefore, penal law and criminal justice systems in those countries had all the features of authoritarian systems and were extremely punitive (Pomorski 1981). Under the circumstances, it is no wonder that sentencing outcomes there were as they were and that countries of the “socialist brotherhood” were leaders of incarceration not only in Europe but also worldwide. Astonishingly, after the fall of communist regimes in the region and the ascent of political systems aspiring to be called liberal democracies, after practically all countries of the region (with the exception of Belarus) became members of the Council of Europe, and after a majority of them became Member States of the European Union, the patterns of imprisonment remained fairly unchanged. It is true that during the 1990s incarceration rates in Central European countries usually dropped somewhat, while in Western Europe, primarily during the 1990s and 2000s, they tended to grow. It is also true that for the last 10–15 years those rates in most European countries have tended to fall (Aebi et al. 2016). But despite all those changes mentioned earlier, the “penal divide” between Western and Central Europe remained visible and fairly unchanged for the last 30 years. Did so much need to change in Central and Eastern Europe since 1990 for imprisonment patterns there to remain the same? As mentioned earlier, before 1989–1990 Central European penal exceptionalism in comparison with Western Europe could be easily explained by the undemocratic, authoritarian nature of the communist regimes in power there. Unfortunately, getting rid of those regimes and becoming liberal democracies which integrate European values and standards in general, and the criminal justice system in particular, obviously had no profound impact on sentencing outcomes and punishment patterns throughout the region, or at least the impact was much less visible than could be expected.

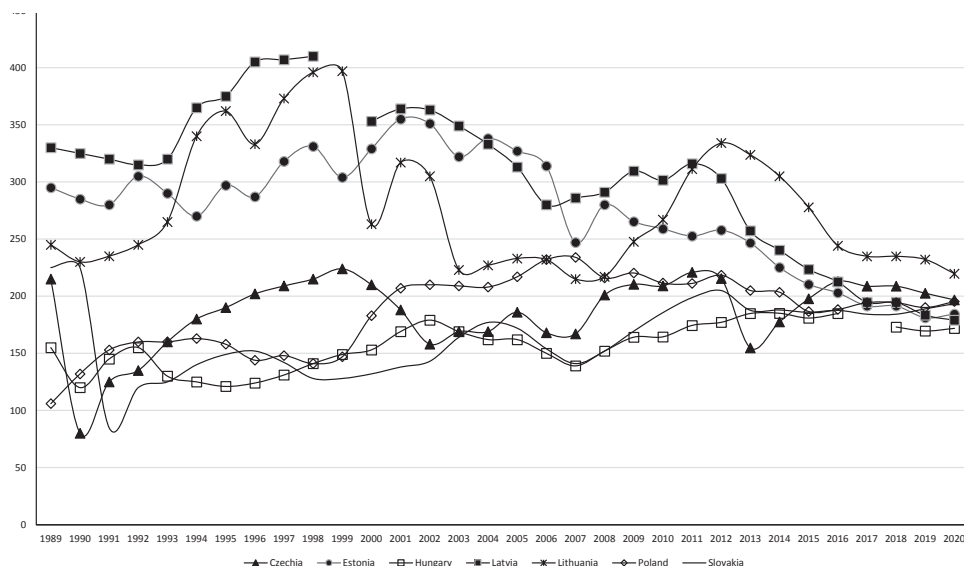
1.2. Trends of incarceration rates in Central and Western Europe

The differences described above regarding the punitiveness of sentencing outcomes between Central Europe and other parts of the continent are to a large extent confirmed if one uses longitudinal data for the selected years instead of cross-sectional data to compare trends in incarceration rates (see also Aebi et al. 2016). Data regarding such trends are presented in Figures 5–9. There are usually no fundamental problems accessing the data, as during the 1990s all Member States of the Council of Europe started to provide such data for the purpose of compiling the SPACE I annual prison population statistics. An additional source was the consecutive editions (since 1999) of the “European Sourcebook of Crime and Criminal Justice Statistics”. Although the data for some countries and some years may be missing, those two sources provide reliable data on trends in incarceration in Europe since 1990 (notwithstanding general reservations regarding the use of official statistical data to measure crime and crime-related phenomena).

For the sake of clarity, the graphic presentation of the situation on the European continent has been split into five regions: the countries of Central Europe (Czechia, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia), the Balkan countries (Bulgaria, Croatia, Romania, Serbia and Slovenia), countries of Western Europe (Austria, Belgium, France, Germany, the Netherlands, Switzerland and the UK [represented by England and Wales]), countries of southern Europe (Greece, Italy, Portugal and Spain) and Scandinavian countries (Denmark, Finland, Norway and Sweden). The regions have been distinguished primarily using geographical criteria, although they overlap to a large extent with regional differences in imprisonment rates (punitiveness or “penal climate”).⁶

Even a cursory look at the diagrams seems to confirm that in certain of those regions there are fairly similar trends in incarceration rates. Starting with Central Europe (Fig. 5), it is easy to discern two regional patterns of development, as developments in the Baltic states seem to differ from the other countries assigned to that region. Throughout the entirety of the last 30 years, Estonia, Latvia and Lithuania had the highest incarceration rates in Europe (in some cases exceeding 400, and typically well above 300). As a matter of fact, for many years they had comparable rates to other former Soviet republics like Russia itself, Belarus or Ukraine. However, since about the year 2000 those rates started to decrease, and around 2020 they

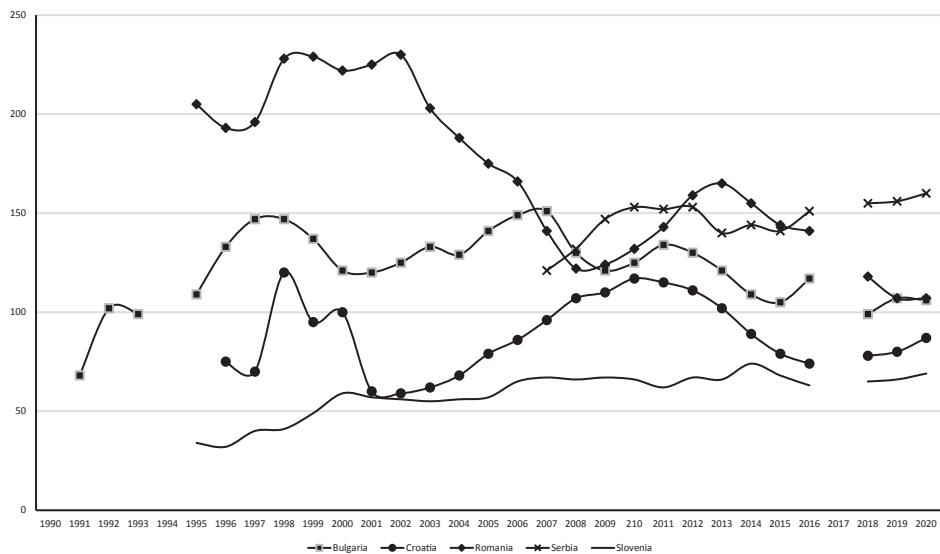
Figure 5. Trends in incarceration rates in Central European countries (1989–2020)



Source: Own elaboration.

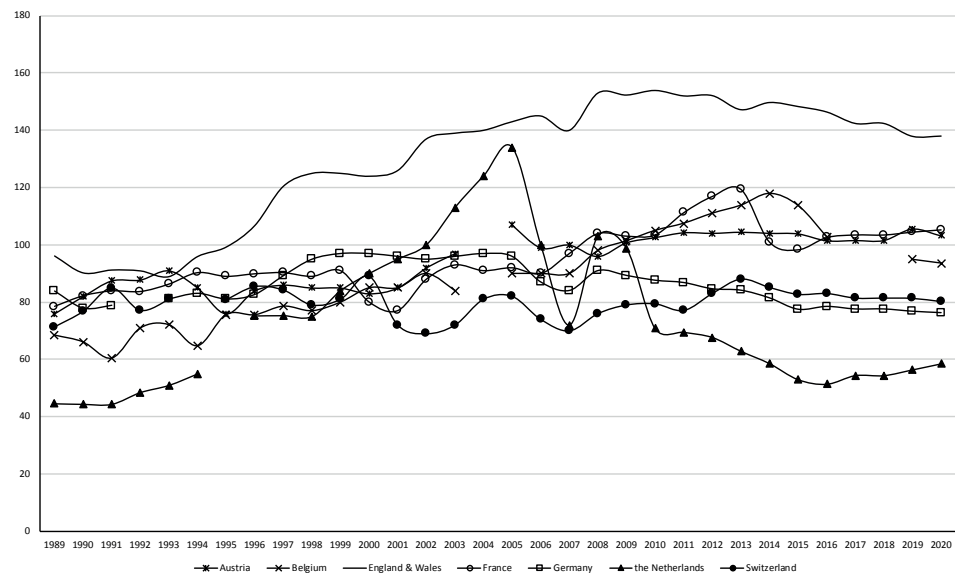
⁶ Similar regions were delineated by Tapio Lappi-Seppälä (2008: 318). The only difference in his categorisation is the fact that there is no separate region of Southern Europe, whose countries he included in Western Europe.

Figure 6. Trends in incarceration rates in Balkan countries (1989–2020)



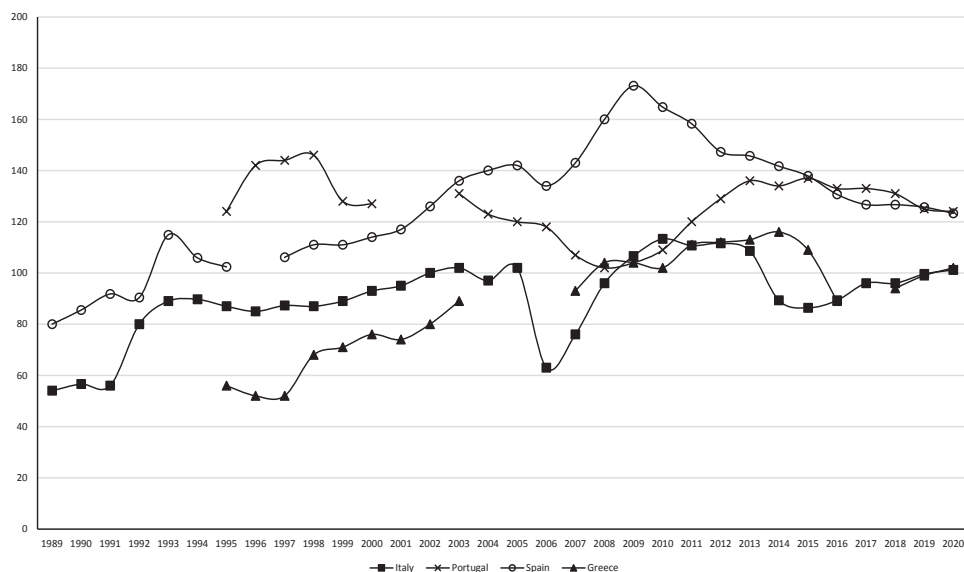
Source: Own elaboration.

Figure 7. Trends in incarceration rates in Western European countries (1989–2020)



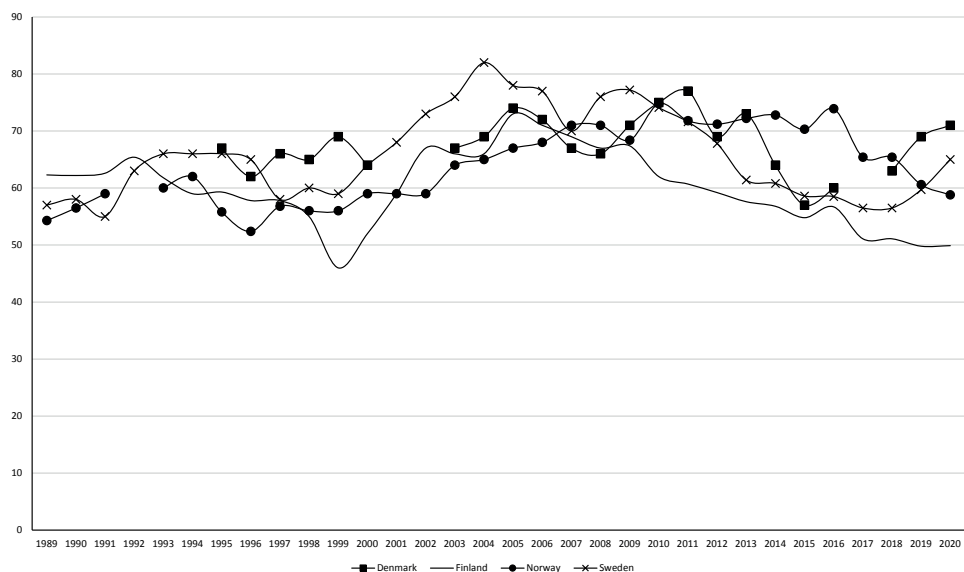
Source: Own elaboration.

Figure 8. Trends in incarceration rates in Southern European countries (1989–2020)



Source: Own elaboration.

Figure 9. Trends in incarceration rates in Scandinavian countries (1989–2020)



Source: Own elaboration.

fell slightly below 200 (with the exception of Lithuania, where it remains slightly above that mark). It seems that those three countries during the last 20 years successfully undertook a serious effort to detach themselves from the Soviet penal inheritance and to reduce their prison populations, even if they remain among the highest in Europe.

However, the Baltic states are no longer clear European outliers regarding prison populations, as Czechia, Hungary, Poland and Slovakia have had very similar positions, with incarceration rates between 170 and 190 during the last few years. This may be considered a substantial improvement as compared with the previous decade, when in certain years the incarceration rate was well above 200 (>230 in Poland in 2007, >220 in Czechia in 2011 and >200 in Hungary in 2012; only Slovakia never crossed that mark, despite remaining close to it in recent years).⁷ Unfortunately, it is necessary to stress that the somewhat lower incarceration rates in the region in recent years are hardly a major success story: at the beginning of the 1990s, immediately after the fall of their communist regimes, all four countries had substantially lower rates. Subsequently, however, those rates started to grow and around 2000 returned – sometimes close to standards known from the communist times. Nevertheless, two things are clear. Firstly, despite differences between developments of imprisonment rates in the Baltics and in the remaining four countries, they share fairly similar patterns: drops in prison populations immediately after 1990, followed by substantial increases around the turn of the century, followed in turn by reductions since about 2015 (although those reductions never amounted to a return to the situation from the beginning of the 1990s). In consequence, the “penal divide” between the Baltics and the remaining countries, very visible in the period 1990–2015, practically disappeared in recent years. Secondly, while these developments may be considered a substantial success for the Baltic countries, they are hardly an achievement for the remaining ones. Despite reducing their imprisonment rates below the mark of 200, they still have the largest prison populations among EU Member States and other European countries.

A much more differentiated situation is observable in the Balkan countries, i.e. Bulgaria, Croatia, Romania, Serbia and Slovenia⁸ (Fig. 6). Romania is the only country where trends in incarceration rates bear some resemblance to Central Europe. Until 2002 the country had incarceration rates well above 200 (230 in 2002), but since that time the rate tended to fall (with some reverses in the period 2010–2015) to about 110 in 2020. Interestingly enough, neighbouring Bulgaria never reached such a high incarceration rate. During the entire period it remained at around 150, or well below that mark; in recent years the figures have been almost identical to Romania's. Serbia remains the only country of the region which still

⁷ For more details regarding developments in Hungary and Poland, see Kerezsi and Lévy (2008) and Krajewski (2004).

⁸ Slovenia is a clear outlier here, representing penal exceptionalism of a completely different kind to other countries of Central and Eastern Europe (Flander, Meško 2016).

has an incarceration rate around 150, while Croatia remains close to the European average, with 87 in 2020, and Slovenia remains within the Scandinavian average, with 69 in 2020 (although it no longer enjoys the status of a clear outlier as during the 1990s, when it had an incarceration rate below 50, the lowest on the European continent). To sum up, Romania seems to be closer to the countries of Central Europe, while former Yugoslav republics (Slovenia and Croatia, and to a lesser extent Serbia) seem to have much milder penal policies. In that way they seem to continue the Yugoslav exceptionalism of the communist era. The situation in Bulgaria is similar. In consequence Balkan countries keep closer to the European average than their counterparts in Central Europe. The exception is Slovenia, which to a large extent retains its exceptionalist position.

From that point of view it is clear that the countries of Central Europe, despite drops in incarceration rates in recent years, retained their special position as compared with countries of Western Europe (Fig. 7). The only exception there remains England and Wales, which since the beginning of the century have had the highest incarceration rate among Western European countries (above 140) – and have retained it despite drops in recent years. The only country with a comparable incarceration rate for some time is the Netherlands (134 in 2005). The Dutch growth of imprisonment in the period 1998–2008 seems to have been a rather brief episode, though, as in recent years incarceration rates there have fallen again below 60. Brief episodes of significant increases in incarceration rates in between 2010 and 2015 also occurred in Belgium and France, but since that time those rates dropped again, now remaining at around 100 (along with Austria). Germany and Switzerland, despite some fluctuations, have probably been the most stable European countries in regards to incarceration rate: at the moment they remain around 80. This shows that most countries of Western Europe, despite various changes during the last 30 years, recently experienced a decrease in their prison populations. Their incarceration rates, between 50 and 110, are practically half those of Central European countries (at the moment between 170 and 220). It seems that despite all the turbulence and changes in incarceration trends experienced on the continent in the past 30 years, the “penal divide” between Western Europe and Central Europe remains.

This conclusion holds true if one includes in the analysis the countries of Southern Europe (Greece, Italy, Portugal and Spain). Greece experienced a rise in incarceration until about 2013, but in recent years the rate went down to about 100. Italy, despite various fluctuations, remained fairly stable, and after a drop in recent years also remains at around 100. The countries of the Iberian peninsula are somewhat different cases. Portugal experienced some more significant fluctuations, but again went through a substantial decrease in the incarceration rate in recent years. Finally, since the beginning of 1990 Spain has experienced constant and substantial growth in the incarceration rate, in the year 2009 achieving a record level of 173, competing in Western Europe only with England and Wales. Since that time, however, the prison population went down significantly, and in recent

years remains – like Portugal’s – at around 120. This is rather high for European standards, but still substantially lower than 10 years ago.

In Scandinavia, despite various national fluctuations in Denmark, Finland, Norway and Sweden, the incarceration rates remain, as usual, the lowest in Europe (between 50 and 70), to be compared only with the current Dutch and Slovenian rates. This is the case despite some increases at the beginning of the century, which were reversed later on (even if substantial increases were experienced by Denmark and Sweden in the years 2019 and 2020).

To sum up, it seems that around the turn of the century most European countries experienced rising incarceration rates, sometimes – like in the case of the Netherlands, Spain and the UK – of substantial proportions. Those trends were paralleled by similar developments in Central Europe. In most cases these trends started slowly to reverse during the last decade. As a result, the comparative map of incarceration rates throughout Europe remains very similar to the one from 30 years ago. The numbers are sometimes different, but the proportions remain quite the same: the “penal divide” between Central Europe and Western Europe remains very visible (with Balkan countries and countries of Southern Europe retaining an intermediate position and Scandinavia [along with the Netherlands and Slovenia] retaining its clearly exceptional status). Despite some reductions in incarceration rates in Central Europe in recent years – which are especially visible in the Baltic states – and parallel reductions in most other European countries, the “penal divide” between the formerly communist-governed countries of Central Europe and countries of Western Europe did not shrink substantially, let alone disappear.

One more comment is necessary here. It may be even more important to explain differences in the patterns of punishment in Europe, especially between its central part and the rest, considering other characteristics of their penal policies apart from incarceration rates. In other words, it is not only high incarceration rates that makes penal policies in Central Europe different; most of them also show fairly similar sentencing patterns in terms of the penal sanctions they impose. It is not necessarily frequent use of long imprisonment sentences, however. As a matter of fact, imprisonment is not the most common sanction. In some countries it is just the opposite. Usually the penalty that is most often applied is the suspended sentence, amounting in some countries (like Poland) to even 50%–60% of all sanctions handed down by courts (Krajewski 2016). At the same time, most of those countries very infrequently impose fines, which are usually the dominant type of sanction in most Western countries. Also, the use of other alternatives to imprisonment, such as community service, is very “parsimonious” in the region. Therefore, it may be observed that the very high imprisonment rates in the region are accompanied by certain specific sentencing policies with many common features. In many respects, those policies are not necessarily very harsh per se, but at the same time the countries using them seem to have substantial problems finding appropriate alternatives to imprisonment (Krajewski 2013). At the same time, all this does not necessarily mean that in other respects the penal policies of the re-

gion are uniform. For instance, the flow of entries and the average length of stay in prison are quite different in Czechia, Hungary, Poland and Romania (Düinkel 2017: 632), although incarceration rates in those countries do not differ enormously. This suggests that similar figures for the prison population may be produced by different types of sentencing policies. This raises the question of “whether countries who incarcerate less people but for longer sentences are more or less punitive than countries incarcerating more people but for shorter sentences” (Snacken, Dumortier 2012b: 2; see also Steenhuis, Tiggers, Essers 1983). It is also well known that the welfarist Scandinavian penal policies resulting in low incarceration rates also have another side that involves various coercive measures, giving them a somewhat less mild, liberal character (Barker 2012). Therefore, caution should be advised when evaluating penal policies and sentencing policies exclusively with the use of incarceration rates. Nevertheless, there remains little doubt that there are substantial differences in the penal policies implemented in Central and Western European countries and that those differences, easily explainable before 1989–1990, persist till today, more than 30 years after the fall of the Iron Curtain. This raises the question of why things turned out the way they did. The scholarly literature dealing with this problem is by no means abundant. Nevertheless, an attempt is made below to review and discuss some of the concepts that try to explain this phenomenon. It constitutes a very brief and cursory analysis of selected concepts which either were directly intended to explain Central European exceptionalism or may be applicable in that particular context. Detailed analysis and criticism of those concepts would be beyond the scope of this essay.

2. Explanations of Central European penal exceptionalism

2.1. Shadows of the past or the impact of long-lasting authoritarian rule?

Central European penal exceptionalism may be considered a sort of puzzle. As Lynne Haney observed,

at least in the abstract, one might assume that Central Europeans would be suspicious of penal power, particularly given their experience under state socialism with how confinement can be used to quash political dissent and social conflict. ... [O]ne could imagine that the carceral world of state socialism would make Central Europeans less sympathetic to calls for renewed harshness. (Haney 2016: 347)

Obviously this assumption turned out to be wrong.

Interestingly, it seems that this assumption is also not necessarily true in the case of other countries sharing a similar experience. In other words, the end of an authoritarian regime does not always mean an end to punitiveness. Several

countries, not only in Europe, can provide examples, emerging in recent decades from shorter or longer periods of authoritarian rule or from various types of right-wing dictatorships typically installed by military coups: first of all, Argentina, Greece and Spain, but also South Africa or Brazil. All these countries went through sometimes long dictatorships, with an especially brutal character. Their criminal justice systems were not only punitive, but also often characterised by massive, widespread abuses of human rights. One could expect that the fall of those dictatorships and the return to or establishment of democratically elected governments based on the rule of law would have a profound impact on the repressiveness of their criminal justice system. The literature on the subject shows that the relationship between the type of government and its eventual change, on the one hand, and the punitiveness of the criminal justice system, on the other hand, is by no means obvious. The ascent of democracy does not automatically imply a liberalisation of penal policies. Therefore, the experience of Central Europe in that respect may not necessarily be unique. The first case is Argentina, where after the fall in 1983 of a particularly brutal military dictatorship a tendency towards penal moderation could initially be observed. However, as early as the 1990s, a visible “punitive turn” occurred (Sozzo 2016). Similar developments seem to have taken place in Brazil (Fonseca 2023). Finally, Greece represents a very similar case after the fall of their military dictatorship in 1974 (Cheliotis, Xenakis 2016). Also, the democratic transition in Spain after the death of Francisco Franco in 1975 did not necessarily result in clear-cut reductions in the criminal justice system’s punitiveness. According to Brandariz-Garcia (2018), Spanish penal policies in the post-Franco era were characterised by constant “penal expansionism” and growing incarceration rates. Finally, South Africa (Super 2016) seems to confirm the above pattern, as democratisation did not always go along with certain liberal values, including those regarding the criminal justice system. Therefore, the consequences of transitioning from dictatorship or authoritarian systems (regardless of whether they were right- or left-wing) to democracy are not always necessarily as one might expect. In other words, a transition from dictatorship or authoritarian system to liberal democracy does not automatically involve a radical reduction in punitiveness of the penal law and crime control policies. From that perspective, the specific experience of Central Europe does not seem to be unique.

The fact that the punitiveness of the criminal justice system often persists after a democratic transition, or returns very soon afterwards to previous levels, may result from various factors. The first possible explanation for this phenomenon is the influence of the authoritarian past and the possibility that changes in punitiveness, of both the criminal justice system and public opinion towards offenders, may somehow lag behind changes in other areas. In other words, the source of the problem is shadows of the past or the long-lasting influence that punitiveness of authoritarian provenience has on a society, extending well beyond the life of the authoritarian regime itself. This may be especially true in the case of longer periods of authoritarian rule, which are able to reshape a society in more profound ways

and leave longer-lasting effects. This could be true for countries of Central Europe, where communist regimes dated back to the end of WWII, thereby ruling for 45 years (even longer for Baltic states, as they were occupied by the Soviet Union in 1940). But it may be equally true of Spain, where Franco's dictatorship lasted from 1936 till 1975–1977, i.e. for about 40 years, or Argentina, where six military coups d'état occurred between 1930 and 1983. Likewise, the policy of apartheid in South Africa became state policy at the end of the 1940s, although as an ideology it emerged before WWII. Long-lasting authoritarian rule may have a profound and lasting impact on society and its members, including their mentality, beliefs and attitudes. Perhaps authoritarian personality is not only a breeding ground for authoritarianism, of any kind, but can also be a product of long-lasting authoritarian influence. If punitiveness is a necessary element of any dictatorship, a society living for a longer time under an authoritarian regime may itself become punitive. The inheritance of the past in that case involves the creation of a punitive mentality, not only among political elites but also among the population at large, who do not know any approach to various social problems other than harsh punishment. Moreover, such a mentality may also deeply permeate the criminal justice system and its actors. Of special significance for Central Europe may be the ability of communist regimes to initiate social changes with profound and lasting consequences. Communist takeovers in Central Europe involved completely reshaping those societies, not only in political or economic terms but also in social terms – sometimes beyond recognition. Old social elites of “bourgeois” provenience were completely marginalised and in many cases physically annihilated. The structure of societies were radically changed by the massive social advancement of people from lower strata of the society. Those groups functioning within a punitive state framework could easily acquire punitive attitudes, and it is not easy to get rid of them under a democratic regime. As I wrote ten years ago,

countries of Central and Eastern Europe governed by communists and dominated by the Soviet Union were for several years effectively cut off from the mainstream of penological discourse of the post-war period, with significant consequences for their penal law and criminal justice systems. Even if certain modern penological ideas were known and discussed, and there were some attempts to implement them in practice, political realities were such that criminal justice systems in the region were governed primarily by punitive Soviet orthodoxy. Offenders were treated simply as bad people deserving harsh punishment. This was an approach equivalent to that underlying the contemporary ‘punitive turn’ and the phenomenon of the penal state. As a matter of fact, countries of ‘real socialism’, and particularly the Soviet Union with its Gulags, may be considered to be model ‘penal states’ based on widespread repression not only of political dissent, but also of ordinary crime. The collapse of the communist system created expectations that this would change. Unfortunately, such did not prove to be the case. (Krajewski 2013: 335–336)

In other words, the punitive mentality so characteristic of Soviet communism, although certainly not exclusively a communist property, could in the region outlive the communist system itself. The claim put forward by Maria Los that the post-communist transformation involved “an invisible process of informal reproduction of the communist power/knowledge complex” (Los 2002: 173) may be an overstatement,⁹ but the communist past exerted (and probably still exerts) a significant impact on what happened after communism disappeared. As Michael Tonry writes, “in Eastern and Central Europe, the lingering effects of Communist rule, in concert with longer-term features of the distinctive histories and traditional cultures of individual countries, are important backdrops to contemporary policies and practices” (Tonry 2012: XVIII).

It seems that Milena Tripkovic adopts a similar approach while explaining post-communist punitive tendencies in Serbia. According to her, despite the fact that

penal norms and policies have undergone a significant degree of democratization in that their outlook has tended not to be punitive, the judiciary (and, to some degree, other actors in the penal field) has been increasingly inclined towards punitive practices. ... [P]ockets of authoritarianism in the executive have survived the transition to democracy and have continued to exert pressure on the judiciary in ways that have tipped the balance of judicial decision-making towards punitiveness. What has thus emerged is what may be termed ‘authoritarian governance of crime within democracy’. (Tripkovic 2016: 370)

Her argument seems to be somewhat narrower, as it primarily regards the punitive mentality of governing elites and its impact on the judiciary. But the claim about the existence of “pockets of authoritarianism” resulting from cultural transmission within the criminal justice agencies of certain types of professional ideology under communism seems to be quite convincing. This may be confirmed by the example of the Polish public prosecution system’s years-long struggle for change and independence. Unfortunately, this struggle was not successful, and after 2015 the public prosecution system was quickly politically subordinated to the new government and started to function in a way that eerily resembled the old communist public prosecution system: as a rigid hierarchy with actors at each level almost totally subordinated in political terms, willingly fulfilling the wishes of their superiors. Unfortunately for many prosecutors, it was not a major problem to adjust to that situation. Older ones knew it from their own experience and transmitted this knowledge effectively to the younger ones (Krajewski 2012).

⁹ I do not wish to indulge in a discussion of the extent to which the fall of the communist system was somehow “prearranged” by communist secret services to preserve through privatisation their influence and power during the post-communist era (Los, Zybortowicz 2000), but the following is relevant to this essay. In Poland (but also in Hungary) political parties of the post-communist left usually represented a relatively moderate, less punitive approach to crime control policies. It was the staunchly anti-communist right which, while in power, indulged in all kinds of penal populism and implemented policies producing the highest imprisonment rates and reminiscent of a carceral state.

The argument of “pockets of authoritarianism” or “pockets of punitiveness” is supported by one interesting observation. As mentioned earlier, the criminal justice systems of many Central European countries were usually somewhat less punitive immediately after the collapse of communism. This may be easily observed in a drop in imprisonment rates in most countries of the region at the beginning of the 1990s. This lasted relatively longer in Poland, where the drop in incarceration rates persisted till about 1998–1999. Interestingly, this change (which resulted from a substantial drop in the use of incarceration, accompanied by a search for alternatives, as well as some other changes with obviously “liberalising” effects) took place without any radical changes to penal law, as the old communist penal code of 1969, very often responsible for the punitiveness of sentencing policies before 1990, remained in force till 1998 (Krajewski 2016: 199–206; Krajewski 2019: 64–68). This means those changes resulted exclusively from the changed political atmosphere in the country, a “liberal optimism” about not only the prospects for political reforms, but also for reforms of the criminal justice system, such as making it less punitive. Many actors within the criminal justice system obviously accepted all this and acted accordingly, but there is no doubt that “pockets of resistance” with a punitive, and very often authoritarian essence survived (Krajewski 2012: 89–93; Krajewski 2013: 334–336). With the ascent at the end of the 1990s of significant changes regarding the general political atmosphere in the country, those “pockets” started to exert growing influence on political decisions regarding penal policies, and were finally able after 2015 to get almost unlimited control.

In other words, the original reduction of punitiveness in Poland and other countries of the region was reversed, and the “liberal optimism” towards prospects for criminal justice reform started to fade. It resulted in a “punitive turn” in the region around the end of the century, a turn which to a large extent coincided with a similar, if somewhat earlier phenomenon in the West, primarily in Anglosphere countries. Therefore, it is legitimate to inquire about the reasons for those growing punitive tendencies in the countries of Central Europe at the end of the century. Was it just a return to the “old punitiveness”, with “pockets of authoritarianism and punitiveness” “hibernating” for some time and subsequently being revived and gaining advantage over the initial “liberal optimism”? Or was it rather the importation of a “new punitiveness” (Pratt et al. 2005) from the Anglosphere becoming very popular and influential among some of the political elites and criminal justice professionals (especially police officers and public prosecutors)? Writing ten years ago, I argued in favour of the first hypothesis, stressing the impact of the “old punitiveness”. The main argument was the observation that punitive tendencies were characteristic of all countries of the region, suggesting that a common past and common experience under communist dictatorships may contribute to similar, even parallel developments in crime control policies after the fall of those regimes. It seems that past experience under authoritarian regimes shaped a very specific type of authoritarian attitude among some of the political elite and large portions of the population. After 1990 this attitude was

subject to cultural transmission, and therefore remained influential even 30 years after the fall of the communist regimes. But at the same time, there is no way to deny that the persistence of the “old punitiveness” coincided with the emergence and importation of the “new punitiveness” giving new power to the old patterns. This “new punitiveness” became a very useful political tool for political parties representing populist tendencies. This raises the question of the impact of populism in general, and penal populism in particular, on specific developments in penal policies in Central Europe. It seems that during the 1990s the entire region was on the road to a less punitive approach to crime control. It was the emergence of the “new punitiveness” and penal populism which made possible the return to the “old punitiveness”. This coincidence completely changed the “penal climate” in Central Europe, thwarted efforts to reduce punitiveness and maintained the “penal divide” between Central and Western Europe.

2.2. Penal populism

This brings the review of the factors shaping Central European penal exceptionalism to the most frequently cited one, namely “penal populism”. Penal populism is part of a wider political populism. As John Pratt writes, “populism should be understood as a particular kind of political phenomenon where the tensions between the elite and grass roots loom large” (Pratt et al. 2005: 9). He goes on to say that “populism represents in various guises the moods, sentiments and voices of significant and distinct segments of the public which feel that they have been ignored by governments, unlike more favoured but less deserving groups” (Pratt et al. 2005: 9). Penal populism results from the same type of tension in the area of governing crime, crime control and penal policy. Again, according to John Pratt,

penal populism speaks to the way in which criminals and prisoners are thought to have been favoured at the expense of crime victims in particular and the law-abiding public in general. It feeds on expression of anger, disenchantment and disillusionment with the criminal justice establishment. It holds this responsible for what seems to have been the insidious inversion of commonsensical priorities: protecting the well-being and security of law-abiding ‘ordinary people’, punishing those whose crimes jeopardize this. (Pratt et al. 2005: 12)

Populism was always present in politics throughout the world, but it started to acquire a special significance during the 1980s and 1990s, originally in the Anglo-sphere and later spreading to other countries. It is certainly beyond the scope of this essay to discuss the causes which for the past 30 years have made populism and penal populism such a significant part of the political processes in many countries. Nevertheless, the emergence of penal populism may be considered a consequence of the growing fears and insecurities of post-modern, post-industrial societies (Baumann 2000), a response to those phenomena. The emergence of penal populism had profound consequences for crime control policies and penal policies throughout the

world, as it was one of the cornerstones for a “punitive turn”, “new punitiveness” or “culture of control” (Garland 2001) so characteristic of criminal justice systems in some countries for 30–40 years. The fears and insecurities widely felt in some segments of societies were instrumentalised by politicians, who started to enact harsh crime control policies to win votes rather than to promote real justice or reduce the crime rate. From that point of view penal populism represents a purely expressive, and not an instrumental approach to crime control and punishment.

Although contemporary populism, and especially penal populism, emerged in the Anglo-American world and had a particularly significant impact on the punitiveness of those criminal justice systems, it can now be found throughout the world. Therefore, the notion of penal populism is broadly used to explain various new tendencies in penal policies, considered to be responses to popular expectations and resulting in the growing punitiveness of the criminal justice systems throughout the world. At the same time, because of widespread penal populism in the platforms and actions of many political parties, who are often either ruling parties or parties with a significant impact on the government, there are opinions that the ability of this factor to explain certain tendencies in punishment policies is limited. The punitiveness of the criminal justice system differs throughout the world (as attested to by the differences between the USA and Europe, or those among European countries, as discussed above in more detail). Therefore, penal populism’s ubiquitousness is not a suitable explanation for those differences. Because of this, Tonry distinguishes between nonfactors, risk factors and protective factors in his discussion of determinants of penal policies, and he categorises penal populism as a nonfactor (Tonry 2007b: 16–17). As “every Western country experienced those developments, they cannot provide a basis for explaining widely divergent policy trends in different countries” (Tonry 2007b: 17).

The problem is that in fact penal populism may be present almost everywhere, but its intensity and its impact may differ from country to country. As an independent variable penal populism is certainly very difficult or even impossible to operationalise in a completely satisfactory way. However, Pratt and Miao rightly note that “the range and extent of the impact of penal populism varies considerably, ... from society to society. Some, for reasons stemming from their own history, seem to have built-in resistances to this phenomenon” (Pratt, Miao 2019: 16). There is no doubt that there is a huge difference in penal populism and its impact between countries like the UK, Germany and Hungary. As a matter of fact, the impact of penal populism may depend not only on its local characteristics and “potency”, but also on the ability of a given political and criminal justice system to resist the temptations of punitiveness (Snacken 2010; Snacken, Dumortier 2012a). In other words, it depends on the presence and effectiveness of protective factors. Therefore, penal populism or its special, particularly strong variants should not be completely abandoned as an explanans of penal exceptionalism in general, and in Central Europe in particular. For various reasons, countries of the region may be especially prone to the emergence of penal populism and its consequences being particularly acute.

The problem is that the emergence of penal populism in the region coincided with an unprecedented political, economic and social transformation. Life under “real socialism” before 1990 was certainly grey, dull and rather difficult, not to mention the lack of political liberty. But for many people it was a relatively safe and secure life. The disintegration of the centrally planned economy and very meagre but commonly available and stable “welfare state”, and its substitution with a market economy in many cases brought about dramatic consequences for large segments of the population: the decline of unproductive heavy industry, the collapse of large, ineffective state-owned farms, massive unemployment, expanding poverty and uncertainty about the future. Those were common experiences for many in Central Europe during the 1990s. Central European societies started to experience a growing gap between winners and losers of the transformation and started to be increasingly polarised in social terms, which also had political consequences. All this was accompanied by additional negative phenomena like rising crime, changing patterns of crime and growing perceptions of the state being unable to deal effectively with it (Lévay 2000; Los 2002; Lévay 2012b; Šelih 2012). There was also an impact of such phenomena as fear of crime. There are few sources of data for Central Europe during the 1990s, but the available data and scholarly literature suggest that fear of crime in the East was higher, even much higher than in the West. This is confirmed by ICVS data for Poland (Kury et al. 2002: 331–332) and data for Western and Eastern Germany (Kury 1993). Naturally, growth of crime and rising fear of it were also present in the West. However, it seems that liquid modernity in Central Europe could be particularly problematic, creating a particularly suitable breeding ground for penal populism. This could be reinforced by an additional factor: the lack of democratic traditions and of a system with established political parties made more or less rational public discourse (or deliberative democracy), especially difficult, sometimes simply impossible. This created unique opportunities for various “miracle workers”, offering various recipes in a given area, including crime control and punishment. In any case, it became quite common in the literature from the region to apply the term “penal populism” as a very important concept to explain the developments in Central Europe regarding the punitiveness of crime control policies (Krajewski 2013; Gönczöl 2022; Bencze 2022; Boda et al. 2022; Woźniakowska-Fajst, Witkowska-Rozpara 2022). The use of the notion of penal populism in the region is especially important considering one of the crucial problems in the region in recent years, namely disregard for the rule of law significantly contributing to growing punitiveness (Lévay 2012a; Lévay 2016).¹⁰ Therefore, being aware of the fact that penal populism is by no means unique to Central Europe, specific features of its manifestation in the region may justify its use in explaining at least certain features of the penal exceptionalism there.

¹⁰ One of the most conspicuous examples was the recent “reform” of the Polish penal code (entered into force on 1 October 2023), which is characterised not only by draconian increases of punitiveness, but also by many solutions unacceptable from the point of view of the rule of law, which may be clearly traced back to the communist penal code. It caused Polish penal law to regress to the times before 1990.

2.3. Penal nationalism

A somewhat different, although not completely different alternative to penal populism as an explanation for Central European penal exceptionalism was proposed by Lynne Haney (2016), who introduced the special notion of “penal nationalism”. She notes that “while overlapping with the penal populism we see in other national contexts, the East European version differs in key respects, particularly in the ways it appeals to the nation as it defines transgressions and equates punitiveness with national sovereignty and protection” (Haney 2016: 348). Therefore, penal nationalism may be considered a specific Central European version of penal populism that equates punitiveness with national sovereignty and protection of national interests. According to her, across Central Europe politicians and state actors used tough, law-and-order rhetoric to reimagine the post-socialist community. Secondly, like other forms of nationalism that have sprouted up across Central Europe, penal nationalism is intricately linked to the dilemmas of societal transformation in the region (Haney 2016: 348). One may say penal nationalism is a special device to manage that transformation during a legitimacy crisis, featuring because “actors who now operate on a political landscape in which much of their power has been taken over by transnational forces, while the populations that elect them harbour deep and persistent distrust of the state” (Haney 2016: 349). Discussing the nationalistic approach to crime and crime control, Haney observes that “penal nationalists’ punitiveness has become the basis of national sovereignty – it is as if being ‘soft’ on punishment will mean a loss of national independence and autonomy” (Haney 2016: 357). Further on, she writes:

this focus on criminal threats to the nation has frequently led penal nationalists to invoke metaphors of national essence and blood ties. On the one hand, they link the courage to resist criminals to ‘Polish strength’. Or they connect the will to be tough on crime to the ‘Czech spirit’. On the other hand, those thought to be a criminal threat are deemed internally different. Politicians from Poland’s Law and Justice Party are notorious for portraying criminals as both less than human in their evil essence and as superhuman in their violent prowess and abilities. In both cases, those who pose a criminal threat are represented as intrinsically other, as non-Polish. (Haney 2016: 357–358)

Haney provides examples of various statements by politicians from Czechia, Hungary and Poland which illustrate an approach where various punitive ideas, sometimes critically received by the EU, are defended using arguments about national identity and the state’s right to manage its own affairs in accordance with national interests, traditions, etc. One example is the problem of constitutionalising life imprisonment without parole in Hungary, usually discussed in the literature as an example of a purely populist penological exercise (Lévay 2016). Haney points out that Prime Minister Viktor Orbán and his government, facing a decision of the European Court of Human Rights in that matter, “refused to withdraw the sentence,

claiming it is their national prerogative to decide who and how to punish” (Haney 2016: 354). Another example may be Czechia’s row with European institutions, namely the European Committee for the Prevention of Torture (CPT), over the possibility of surgically castrating sex offenders. In its 2009 report, the CPT called such punishment “degrading and mutilating” and indicated that more than 50% of castrations are done to first-time, nonviolent sex offenders without informed consent. The Czech government’s response proclaimed that “it was their ‘right’ as a ‘sovereign nation’ to decide how to treat ‘men who can’t control their sexual instincts and are sexually aggressive’” (Haney 2016: 354). Finally, “in Poland, the Law and Justice Party campaigned throughout the 2000s almost exclusively on its promise to protect the nation from internal and external threats” (Haney 2016: 356). Moreover, “the Polish castration law was put into effect by the more moderate Tusk government after public outrage over and media obsession with a high-profile case of paedophilia” (Haney 2016: 355).¹¹ Additionally, she provides various quotes from Hungarian, Czech and Polish politicians, commentators and activists treating problems of crime control as a matters of national sovereignty, identity, etc. For Hungary she also provides examples of vigilantism by extreme-right groups to protect Hungarians against the supposed threat from the Roma community.

To assess Haney’s concept of penal nationalism, it is necessary to emphasise one point: there is certainly no lack of nationalism in Central Europe, and many right-wing political parties use nationalistic parables and appeals indiscriminately. In a region with a long history of foreign domination and occupation, and full of past and current ethnic conflicts, this may not be completely unusual. Moreover, nationalism and populism very often come together – not only in Central Europe – to create a very dangerous, explosive mix. In any case, European (and other) history teaches that it may be very useful politically to instrumentalise various national problems and nationalistic ideas. After 45 years of communist rule – which *ex definitione* stressed “proletarian internationalism” – a revival of traditional brands of nationalism may also be somewhat expected. However, one should be cautious about directly linking nationalism with punitiveness and crime control issues. It seems that nationalism and issues of sovereignty are overemphasised in Haney’s argument and sometimes based rather on anecdotal evidence. Drastic, extremist statements, events, etc. happen everywhere. The problem is identifying the extent to which they represent the political spectrum in the country. The nationalist

¹¹ Unfortunately, on this point she is incorrect, as in Poland it was never even officially considered to introduce surgical castration. It is true that after a high-profile case of sexual abuse in the year 2009, then Prime Minister Donald Tusk made some highly unfortunate public statements about the perpetrator (referred to in the media as “Polish Fritzl” in reference to the notorious Austrian case of a father sexually abusing his own daughter for years). Tusk denied the perpetrator’s humanity and called for the adoption of a castration law. However, journalists obviously misinterpreted his words, as he was not speaking about surgical castration, but “chemical castration”. The latter is a colloquial, not necessarily precise term used in the media for pharmacological therapy of sex drive disorders. The possibility of such therapy has in fact since been introduced within the framework of special, post-penal security measures for sexual offenders which had been part of the law for a few years. But it had nothing to do with surgical castration.

background of law-and-order campaigns may be true to a certain extent in the case of Hungary, as Viktor Orbán and his party, FIDESZ, having been in power for 13 years, have been in more or less open conflict with European institutions. “Scapegoating Brussels” for all ills befalling Hungary became standard procedure there, eventually also including crime control issues (especially in regard to migration). However, in Czechia and – surprisingly – in Poland, the applicability of those concepts and arguments requires a caveat. As indicated by Drápal, “it is rather unclear to what extent the presented development in Hungary can be generalized to the other countries in the region” (Drápal 2021: 3). In his opinion

methodologically, the argument [relating to Czechia] is based on examples from a single persona, omitting any analysis of the broad political spectrum, or even of the primary holders of legislative powers (political parties). In singling out Klaus’ views, Haney noticeably overlooks those of another defining figure of the 1990s and 2000s, Václav Havel (president in 1990–2003), who cannot be labelled a penal nationalist in any respect. Finally, other of Klaus’ statements and actions draw a rather different picture. He criticized overly wide criminalization and promoted alternative sanctions, while advocating strict punishments for violent offenders ... and enacted one of the largest amnesties ever. ... To label Václav Klaus’ punitiveness as a ‘main voice of nationalist’ appears at the very least to overlook the complexity of his views, at worst to mislabel him. (Drápal 2021: 7)

Interestingly enough, Drápal’s analysis of the political manifestos of Czech political parties shows that penal populism is neither widespread in that country nor does it play an enormous role in Czech politics. Moreover, he provides evidence that creating penal law and formulating penal policies in Czechia is still under the substantial influence and control of academia and the criminal justice establishment. Therefore, to speak about the enormous influence of penal populism, not to mention penal nationalism, is wrong in Czechia’s case.

The story of Poland is somewhat more complicated. Polish politics is certainly full of penal populism, especially since the new, supposedly unacceptably liberal new penal code came into effect in 1998. Political rhetoric in Poland was also always full of nationalistic overtones. But before 1998 there was relatively little public discourse on crime and crime control, and the drafting of the code was left to experts from academia and criminal justice professionals. The situation changed drastically when Lech Kaczyński, twin brother of Jarosław, leader of the populist, right-wing party Law and Justice (*Prawo i Sprawiedliwość* or PiS), became minister of justice in 2000–2001. He started to indulge in indiscriminate penal populism and to criticise the leniency of existing penal law and the liberal attitudes among the criminal justice establishment and academia. Since that time, penal populism has become a permanent feature of public discourse about crime in Poland. Moreover, Law and Justice for a long time remained a single-issue party, concentrating almost exclusively on law-and-order issues and repeating ad nauseam arguments about the leniency of penal law and of judges. However, at that time the Kaczyński twins

and their party did not indulge much in nationalistic arguments and certainly did not campaign “throughout the 2000s almost exclusively on ... [its] promise to protect the nation from internal and external threats”, as Haney writes. They campaigned on issues related to internal security, but never did so in the context of external threats. They were certainly extreme populists, but with relatively little nationalism. This remained the case during the period 2005–2007, when Law and Justice formed a government with Jarosław Kaczyński as prime minister for some time. They proposed various reforms of penal law, and Minister of Justice Zbigniew Ziobro, also serving as Chief Public Prosecutor, implemented extremely populist law enforcement policies. All this was strongly reminiscent of a pattern described by Jonathan Simon as “government through crime” with explicitly populist overtones (Simon 2007). Still, there was little nationalism in it. Between 2007 and 2015 the Law and Justice party was becoming increasingly populist and tough on crime, leaving the liberal government of Civic Platform (*Platforma Obywatelska* or PO) constantly on the defensive over penal policy. It was only after winning an absolute majority in 2015 that Law and Justice became visibly nationalist and sparked various conflicts with the European Union. However, interestingly enough, law-and-order issues have lost their importance for the party. Battles with the EU, in which Law and Justice constantly resort to national sovereignty arguments, are fought not over penal policies and punitiveness, but over general issues of the rule of law, the independence of the constitutional court and the National Judiciary Council and judicial independence. Moreover, in parallel with this tendency to use broad arguments of defending national sovereignty against the “evil schemes of Brussels”, Law and Justice (like Viktor Orbán’s government in Hungary) started to indulge in highly populist rhetoric directed against all kinds of elites, while direct recourse to issues of crime control, punishment, etc. visibly diminished. This suggests the developments described by Pratt as the path from the original, rather narrow penal populism to much broader rhetoric and populist policies (Pratt, Miao 2019; Pratt 2020).

2.4. Welfare, trust and political conflict

Tapio Lappi-Seppälä’s well-known research established clear-cut correlations between the punitiveness of a country’s criminal justice system, as measured by a dependent variable for incarceration rate and several independent variables characterising a country in terms of its political, social and economic characteristics (Lappi-Seppälä 2008, 2011). He indicates clearly that his

analyses do not aim to produce ‘the final causal model’ explaining differences in penal severity with the help of one or two overriding factors. Individual variations between countries make such efforts futile. The aim is less ambitious and more realistic: to examine how differences in penal severity relate to differences in a number of social, economic, and political factors. (Lappi-Seppälä 2008: 320)

It is important to note that his research is not limited to Central Europe, but includes most European countries and also some outside Europe. However, it provides a very inspiring analysis framework that enable several important conclusions regarding the specific position of Central European countries and their penal exceptionalism.

With regards to socioeconomic indicators, Tapio Lappi-Seppälä's research attempted to establish the relationship between the punitiveness of crime control policies and such characteristics as social solidarity, shared responsibility (as opposed to individualism), material prosperity and security. One of the crucial indicators for those variables was expenditure for social protection as a proportion of GDP per capita. It shows a clear pattern, as those countries that scored the highest in Europe on those indicators (Scandinavian countries) had the lowest imprisonment rates, while those scoring lowest (Central European countries) had the highest imprisonment rates. The correlation regarding the GINI index, intended to measure income, wealth and consumption inequality, was somewhat less clear. In this case, Central European countries did not represent a uniform pattern. Czechia, Hungary and Poland were less equal than Scandinavia and Western Europe, but more equal than Anglosphere and Mediterranean countries. All those countries were more equal than Baltic states, which were the most unequal countries in Europe. This last finding correlates highly with their very high incarceration rates (at least 20 years ago), while for the remaining countries the relationship is not clear. The relatively equal countries of Central Europe had higher incarceration rates than the much more unequal Anglosphere and Mediterranean countries. Therefore, it seems that the relationship between inequality and imprisonment rate is not as clear-cut as that between welfare and imprisonment rate. In general, this seems to confirm the thesis that there is some sort of relationship between welfare policies and the egalitarian nature of a society and the punitiveness of its criminal justice system (Downes 2012). It also seems to confirm Pratt's thesis that the main sources of Scandinavian penal exceptionalism are the region's uniquely generous welfare systems and their egalitarian character (Pratt 2008a, 2008b). From that point of view, it seems that the relatively high inequalities in Central Europe and the relatively low expenditures for social welfare may have something to do with the high imprisonment rates there.¹²

It is another matter to find the reasons for the region's poor performance (at least 20 years ago) of their social welfare systems, not only as compared with Scandinavia, but as compared with most other European countries. Some may indulge in that respect into "blaming neoliberalism" and its impact on the economic and social transformation in the region after the fall of communism. It is probably true that neoliberal economic concepts had a substantial impact on the way the centrally planned economies in those countries were transformed after

¹² It is important to emphasise that this applies to the data from the turn of the century. Since that time all those indicators and rankings of European countries could have changed. Therefore, it is by no means certain whether the relationships established in Lappi-Seppälä's research are still valid. It would be necessary to replicate his research using up-to-date data in order to confirm his conclusions, which is of course well beyond the scope of this essay.

1989. The notion of “wild capitalism” was often used during the 1990s and 2000s to describe what was going on in the region, especially regarding the privatisation of state-owned enterprises. At the same time, the impact of the neoliberal approach in various countries differed substantially. It was probably relatively significant in Poland (which in 1989 was practically bankrupt, with the economy in complete disarray), and much less influential in Czechia or Hungary (which emerged from communism with their economies in much better shape). Nonetheless, “blaming neoliberalism” for all possible ills probably goes too far. This topic is well beyond the scope of this essay, but Central European economies probably never deserved the label of neoliberal, especially as compared with Anglosphere countries. It is also legitimate to point out that the transformation to a market economy was a fairly chaotic process, entailing a huge number of negative side effects that were very difficult to predict and manage. This justifies the question of what may be blamed on “neoliberalism” and what is due to chaos and a lack of any precedents for a post-communist economic transformation.¹³ After all, some countries of the region which hardly indulged in any type of “full-scale” neoliberal market reforms – like some Balkan countries or Moldova, not to mention Belarus or Ukraine – did not perform much better, or sometimes fared much worse. This does not change the fact that transformations in Central and Eastern Europe produced relatively large groups of “losers” left without any state care or state welfare. This certainly became a huge social problem, creating an ideal breeding ground for penal populism. To what extent those groups started to fill prisons is another question.

As Tapio Lappi-Seppälä’s results indicate, the above-mentioned characteristics of Central European countries have been accompanied by remarkably low scores for the countries of the region on measures of trust and social capital. Practically all countries of the region scored low on such variables as trust in people, trust in the police and general trust in justice, with Scandinavian countries being located on the opposite end of the continuum. Low trust in people, low trust in police and low trust in justice in most cases were highly correlated with high imprisonment rates, with Scandinavia located again on the opposite end of the continuum (Lappi-Seppälä 2008: 363–364; Lappi-Seppälä 2011: 313–314).

It is interesting to ask to what extent this results from the specific historical experience of the region, with practically all its nations being deprived of their statehood during the 19th century and remaining under foreign rule? The brief interval between the two world wars was unable to bring substantial change, especially as practically all countries of the region (with the exception of Czech-

¹³ This may be the main difference to other countries emerging from authoritarian regimes at the end of the 20th century, like Argentina, Greece, South Africa or Spain. Those countries had to undergo first of all a political transformation. There was no need for a deep economic transformation as all of them had more or less established, functioning market economies, private ownership, etc. (even if the degree of development and the state of their economies varied). Central Europe had to not only reform politically, but also to turn a complete mess of centrally planned, dysfunctional – sometimes almost bankrupt – economies into functioning market economies. This was impossible to do without profound changes to the structures of ownership, which was a particularly difficult task.

oslovakia) at that time could hardly be described as exemplary democracies. Then came the disaster of WWII, followed by the Red Army's "liberation" and 45 years of Soviet-imposed communist, authoritarian dictatorships. This created an extremely complicated relationship between those societies and state authority. The latter was often at least deeply mistrusted, but in many cases treated as an alien, even hostile entity. At the same time, the societies of the region generated particular forms of social cohesiveness and social bonds necessary for survival under such circumstances (such as the special role of family bonds and staunch, very conservative Catholicism in Poland). All this goes along with the societies of the region scoring very high on measures of feeling unsafe and on various punitiveness measures (Krajewski 2009), as well as very low scores on the scale of social tolerance. All those measures correlate strongly with incarceration rates (Lappi-Seppälä 2011: 313–314).

Finally, it is necessary to mention that Tapio Lappi-Seppälä includes in his analysis yet another set of indicators potentially related to punitiveness and incarceration rates, namely the dominant political culture in a country. Two indexes were used here as measures of independent variables. The first one was the Lijphart index, containing indices for the extent and centralisation of interest group participation, the number of political parties, the balance of power between executives and parliaments and the type of electoral system. It illustrates differences between the two types of democratic systems and processes: conflictual and consensual. The former is represented by majoritarian democracies (like in most Anglo-American countries) governed according to the principle of "winner takes all", leaving said winner with relative freedom to implement any type of desired policy, without considering other opinions. The latter system characterises pluralistic democracies, where various coalitions are necessary to form a government and those coalitions require constant compromise. This tends to eliminate radical, extreme ideas and policies and to encourage moderation, in penal policies as well. The second index is the Luxembourg income study, using an 11-component neo-corporatism index to measure wage bargaining processes, the role of the unions and the degree of centralisation in interest group participation. Unfortunately, those indicators were not available for Central European countries. However, Scandinavian countries again scored high on consensus and low on neo-corporatism. This correlates closely with their low imprisonment rates, while Anglosphere countries, having high or very high imprisonment rates, scored high on conflict and neo-corporatism index. It would be most interesting to be able to locate the countries of Central Europe on those indices in order to confirm or disprove the above patterns.

Generally speaking, Tapio Lappi-Seppälä's analysis indicates a fairly consistent set of political, social and economic indicators that constitute a specific pattern for Scandinavian countries. It seems that this specific pattern may be very useful in explaining Scandinavian "penal exceptionalism". At the same time, it is most remarkable that the countries of Central Europe – representing completely different patterns of punitiveness, incarceration, etc. – are usually located on

the opposite end of the European continuum for the above-mentioned political, social and economic indicators. This is of course a preliminary statement requiring further research and verification. However, the patterns established in Tapio Lappi-Seppälä's research seem to be useful not only in explaining Scandinavian "penal exceptionalism", but perhaps also extremely helpful in explaining Central European "penal exceptionalism" of quite an opposite nature.

2.5. Political economy and incarceration rate

Yet another explanation for the differences between countries in punitiveness and use of incarceration has been proposed by Michael Cavadino and James Dignan (2006). As the explanandum they use a categorisation of countries according to political/economic criteria which in their opinion impact incarceration rates. In other words, they argue that there is a relationship between certain distinctive features of various forms of capitalist societies and the punitiveness of crime control policies (Lacey 2008; Downes 2012). Their typology of political economies in contemporary capitalism includes four regime types: neoliberalism (exemplified by the USA, the UK, Australia, New Zealand and South Africa), conservative corporatism (exemplified by Germany, the Netherlands, France and Italy), social democratic corporatism (exemplified by Sweden and Finland) and oriental corporatism (exemplified by Japan). Those four categories are distinguished not only by specific features of their political and economic systems, but also by differences in incarceration rates. Neoliberal countries are characterised by high incarceration rates, conservative corporatist countries are characterised by moderate incarceration rates and social democratic and oriental corporatist states by low imprisonment rates (Cavadino, Dignan 2006: 22). Of crucial importance are two opposite models of contemporary capitalism, namely neoliberalism and social democratic corporatism, as they seem to bring completely opposite results regarding punitiveness and incarceration rate. Neoliberal states, because of certain characteristics of their political/economic systems, are exceptionally punitive, while social democratic corporatist states are exceptionally moderate in the punitiveness of their crime control policies. The socioeconomic and penal indices used to characterise these types of states are reproduced in the second and third columns of Table 1 (Cavadino, Dignan 2006: 15).

Table 1. Political economies and penal tendencies of neoliberalism, social democratic corporatism and postcommunism

	Neoliberal state	Social democratic corporatism	Post-communist countries of Central Europe
Economic and social policy organisation	Free market, minimalist or residual welfare state	Universalistic, generous welfare state	Free market ideology accompanied by a rather weak welfare state
Income differentials	Extreme	Relatively limited	Rather substantial, although probably not extreme
Status differentials	Formally egalitarian	Broadly egalitarian, only limited occupational status differentials	Predominantly formally egalitarian, but still with a population accustomed to egalitarianism
Citizen–state relationship	Individualised, atomised and limited social rights	Relatively unconditional and generous social rights	Rather individualised and atomised, but social rights – at least theoretically – are unconditional
Social inclusivity/exclusivity	Pronounced tendency towards social exclusion, ghetto formation, etc.	Very limited tendency towards social exclusion	Situation unclear: visible tendencies towards social exclusion of some groups, although rather without explicit ghetto formation, etc.
Political orientation	Right-wing	Left-wing	Rather right-wing, although not always
Dominant penal ideology	Law-and-order	Rights-based	Rather law-and-order
Mode of punishment	Exclusionary	Inclusionary	Increasingly exclusionary
Imprisonment rate	High	Low	High
Receptiveness to prison privatisation	High	Low	Low

Source: Adapted from Michael Cavadino and James Dignan (2006: 15).

Michael Cavadino's and James Dignan's analysis assumes a clear-cut relationship, or even a causal relationship, between the type of political economy and the punitiveness of crime control policies. Again, certain features of Scandinavian countries – first of all a generous welfare state and an egalitarian society – result in low incarceration rates. It may be said that a high level of social solidarity implies that there is no need for the broad use of repressive methods of crime control or high punitiveness. In other words, effective social policy makes unnecessary recourse to broad and intensive use of repression. Just the opposite is true in neoliberal countries: a lack of expanded welfare state and sometimes huge social

differences result in high incarceration rates. Individualisation, atomisation and a lack of social solidarity are connected with the broad use of repressive methods for crime control and high punitiveness. Or to put it in other words, ineffective or missing social policy is substituted with repressive penal policies.

Michael Cavadino and James Dignan apply their analytical tool to highly developed, wealthy capitalist countries with established market economies. Their explanation of national differences in punitiveness leaves out the countries of Central Europe or the Balkans undergoing post-communist transformation. It may be interesting to ask whether it is possible to fit countries with very high or high incarceration rates like Czechia, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia – or Bulgaria, Romania and Serbia – into their model. Certainly not directly. They represent neither social democratic corporatism known from Scandinavia, nor conservative corporatism known from Western Europe. But they are also hardly examples of full-blown neoliberalism, as discussed above. They have several distinctive features, including their past. They were never the heartland of capitalism, but were rather predominantly agrarian societies lagging behind Western Europe or North America in terms of industrialisation. For a long time during the 19th century, they were even not independent nations; in the 20th century they had relatively little democratic experience. Finally, and probably most importantly, for a substantial part of the 20th century they remained under the domination of Soviet communism, which interrupted their development and separated them from rest of the world for almost 50 years. Such features may make those countries unfit for Cavadino and Dignan's model. Despite this, the last column in Table 1 characterises them using their indices. The results are probably rather ambiguous. It seems that those countries may share some features with the neoliberal socioeconomic model, or at least are closer to it than to conservative corporatism, not to mention social democratic corporatism. At the same time, their neoliberalism seems to be limited to some extent by other elements and characteristics, also those regarding their past. On the one hand, it may be tempting to consider those countries predominantly neoliberal, which could well explain their punitiveness and their high incarceration rates. On the other hand, one should be cautious jumping to conclusions. As mentioned earlier, "blaming neoliberalism" may be an oversimplification. Further discussion on the specific model of capitalism represented by those countries (post-transformative capitalism?) may certainly be worth an attempt.

2.6. Punitive by negligence or other "technical" reasons?

The concepts discussed so far to directly explain Central European penal exceptionalism, or the application of broader concepts to explain differences in punitiveness between nations, are based on the assumption that in those countries there are factors at work contributing specifically to the high punitiveness and high incarceration rates. In other words, certain factors inherently push penal

policies in those countries in the general direction of punitive outcomes. However, this is not necessarily the case. A good example is Jakub Drápal's (2021) recent explanation of high imprisonment rates in Czechia, a country notorious for its very high imprisonment rate, competing with Poland in that respect throughout the last 20 years. However, the climate of "penal discourse" in the country does not seem to be excessively punitive – with some exceptions (such as the persistence in surgically castrating sex offenders, discussed earlier). There is relatively little penal populism in political discourse; no political party indulges in excessive penal populism; and the role of experts in shaping penal policies seems to be still relatively important. How then do sentencing outcomes produce one of the highest incarceration rates in Europe? According to Jakub Drápal, this seems to be the result of a purely technical legal problem which has long been neglected by legislators and ministries. Therefore, Czechia seems to be "punitive by negligence" or by default (and certainly not because of omnipresent penal nationalism). Without going into details, the problem is that current legislation, in force since independence was regained in 1918, requires that offenders convicted for multiple offences at various times have to serve their sentences consecutively. Such an accumulation of multiple convictions produces a relatively large group of convicts serving quite long sentences behind bars, contributing to a persistently high incarceration rate. For years, neither the ministry of justice nor legislators have been willing to deal with that problem. Of course, the situation may result from the belief that this approach to multiple convictions is not wrong. Therefore, the negligence may be grounded in the punitive attitudes of decision-makers. Still, it is different than constantly pushing for penal law reforms with harsher sentences and harsher sentencing rules. Jakub Drápal argues that this purely technical, legal issue combined with a reluctance or inability to deal with it has resulted in the persistently high incarceration rate in Czechia.

Interestingly enough, something of a similar nature has been diagnosed in the case of Poland. For years there was an intensive search for the causes behind the high incarceration rates, and various factors were blamed (punitiveness of penal law, punitiveness of the judiciary, populism of right-wing ministers of justice, reluctance of liberal ministers to resist punitiveness, pressure to abuse preliminary detention, pressure to curb liberal policies for granting parole, etc.). A closer analysis of certain statistical data regarding the composition of the prison population finally yielded interesting conclusions: the crucial factor contributing to the high imprisonment rate was the very generous use of alternatives to imprisonment, in particular the suspended sentence! How is this possible? It was always a puzzle that in Poland since 1990 the proportion of incarceration sentences was constantly decreasing (it remained for some time even below 10% of all convictions) and the average length of sentences was not increasing visibly, but the incarceration rate was very high. If about 90% of sentences handed down used non-custodial sanctions, how was this high incarceration rate possible? The problem was that the predominant alternative to imprisonment became the suspended sentence – in

some years it was applied in more than 60% of all convictions (Krajewski 2016). At the same time, a large proportion of convicts reoffended during their probation period, were convicted again and had their suspended sentences revoked. Moreover, if they had accumulated several such convictions with suspended sentences, all revoked sentences had to be served consecutively. Statistical analysis has shown that a substantial proportion of inmates serving sentences in Polish prisons are not incarcerated because they were originally sentenced to prison (Mycka, Kozłowski 2013; Krajewski 2016). Many of them originally received suspended sentences and had them subsequently revoked, thus finding themselves behind bars. This was a consequence of a very inefficient probation system, too few probation officers and a general model of probation services that stressed control of probationers rather than social work. Nevertheless, for years about 60% of the prison population in Poland comprised inmates who had originally been sentenced to non-custodial sanctions (Mycka, Kozłowski 2013). If one adds to this individuals sent to prison for not paying fines or for avoiding community service, the proportion of inmates originally sentenced to non-custodial sentences increases further – beyond 70% of the entire prison population.

Unlike in Czechia, the previous government decided to take action on this issue, and in 2015 a fundamental reform of the penal code was adopted with the intent of substantially curbing the use of suspended sentences, and encouraging the use of other alternatives to imprisonment, combined with various measures to prevent such convicted persons being sent easily to prison. Interestingly, the reform proved to be at least partially successful. The proportion of suspended sentences has dropped substantially since 2015. The number of revoked suspended sentences also started to drop, in turn lowering the incarceration rate below 200. That drop was not as significant as some expected, however, mainly due to the fact that – against the intent of the reform – the use of custodial sanctions increased somewhat (i.e. some suspended sentences were substituted with prison terms instead of with fines or community service). Nevertheless, the Czech and Polish cases illustrate that important factors contributing to high incarceration rates may be purely technical or legal, without any underlying specific punitive intent. Moreover, in some cases they may be relatively easy to deal with.

Concluding remarks

It seems that the analysis provided in this essay leaves no doubts about the existence of some sort of Central European exceptionalism in penal policies. At least in terms of their exceptionally high incarceration rates since 1989, most of them stand out from practically all other European countries. Moreover, the analysis of the longitudinal data shows certain characteristic patterns. While in Central Europe prison populations decreased – sometimes substantially – at the beginning of the

1990s, some other European countries began to have higher imprisonment rates. For a moment it appeared that some sort of convergence was approaching. Unfortunately, this never happened. The decreasing trend in Central Europe reversed at the end of the 1990s, and prison populations there started to grow. Since about 2010 imprisonment rates throughout Europe seem to have decreased somewhat again. However, as the starting point for Central European countries was much higher, and the decreases seem to have been largely parallel, the region so far has been unable to catch up with the rest of the continent in that respect. The only exception is the Baltic countries, who ceased to be clear European outliers and managed to catch up with their Central European neighbours (though not with other parts of Europe). More than 30 years after the fall of the Iron Curtain, the “penal divide” between Central (and Eastern) Europe and the rest of the continent persists.

This raises the most interesting question of why this is so. The overview of certain concepts and factors presented above does not provide a definitive answer to this question. However, this was not its purpose; it was intended to provide a summary of the discussion so far in order to stimulate further research and discussion on the topic. The reasons for Central European penal exceptionalism seem to be complex, and one should be cautious with single-factor explanations (as is probably true in the social sciences in general, and in criminology in particular). Some explanations seem to better fit certain countries, while not necessarily being convincing in other cases. This is reminiscent of false perceptions of the region before 1989. The Eastern bloc was often perceived in the West as a kind of monolith characterised by a complete uniformity imposed from Moscow. This was not necessarily the case (though in fact communist countries did tend to function according to very similar patterns). This may be also the case with the persistence of punitiveness in the region after 1989. It remains undoubtedly the most conspicuous common feature of crime control policies in the region. At the same time, attempts to find common causes to explain the phenomenon exclusively at the regional level may be futile. Closer analysis, in terms of national particularities, may be necessary to find different causes resulting in similar outcomes. This seems to be an important task for future research.

Declaration of Conflict Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author received no specific funding for this work.

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