Last Among Equals

The equality before the law of vulnerable groups in the criminal justice system

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I. Introduction

Miscarriages of justice are an inevitable phenomenon in any justice system. It occurs from time to time that persons, whose innocence is subsequently proven, are charged and often convicted on the basis of weak evidence or due to the authorities' failure to take into account facts that ought to have raised strong doubts about the defendant's guilt from the very beginning.

If we take a look at the list of those Hungarian miscarriages of justice that have become widely known in recent years, we can conclude that – with the exception of the bank robbery of Mór resulting in the death of eight persons and the murder of Irma Balla – we only find cases in which the subsequently acquitted defendant was of Roma origin.

In the **Pusoma case** (which started in 1994) an 86-year-old woman was killed. Based on a mentally disabled person's testimony (which was later declared to be inadmissible as evidence), the authorities started to suspect a young Roma man suffering from psychiatric and mental disorders. He was heard on a number of occasions as a witness, and he consistently denied that he had killed the victim, however, after he testified that he had once seen in his dreams the victim covered in blood, charges were pressed against him. During his pre-trial detention a letter was found on him under dubious circumstance, in which he confessed to the crime. The county court sentenced Mr Pusoma to six years' imprisonment in March 1995. Since neither Mr Pusoma, nor his ex officio appointed legal aid lawyer appealed, the verdict became final and binding. Mr Pusoma went to jail. However, later on – based on a DNA-test – the police identified the real perpetrator when arresting a gang for robbery, and Mr Pusoma was released in May 1996 and declared innocent in December of the same

year. Following his release Mr Pusoma was unable to find employment or to resume a normal life, and committed suicide in August 1997. [1]

The **Gán brothers** were in pre-trial detention for over 15 months upon the charge of homicide for gain, before they were acquitted in 2002. The accusation was based on the highly contradictory statements of a protected witness and a former suspect. The evidence was so weak that the prosecution withdrew its appeal against the acquittal. The case received wide public attention, when the brothers sued for compensation, and the court of first instance granted them damages lower than usual based on their "primitive" personality.[2]

The judgment in the case of **Ferenc Burka and Ferenc Burka junior**, who spent close to 6 years in pre-trial detention in a murder case, became final and binding in April 2006. The father and son were at first convicted at first instance, however, after the court of second instance ordered a retrial, they were acquitted. According to available information, the case against them was based on two witness testimonies (the first was the bartender's statement, according to which the two Romani men had seen a large amount of money in the possession of the victim on the day of the crime, the second was the testimony of a villager who reportedly saw the two Romani men walking in the direction of the victims house, where the murder took place), while the authorities fully disregarded the fact that the police had found a red hair in the victim's hand, although both of the Burkas have black hair.[3]

In the summer of 2006, the court of first instance sentenced two Roma men, **Ernő Setét** and **László Adu** to four years in prison. They were charged with attacking three persons in August 2005, between 3 and 4 o'clock a.m. near Keleti railway station together with a third – unidentified – person and two children, and taking the valuables of one of the victims after battering him.

Ernő Setét, a musician (who was arrested in September 2005 with his co-accused, since during an identity check a police officer believed to have recognized him based on the arrest warrant) was performing at a festival in Szabolcs-Szatmár-

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1 See: http://hetek.hu/riport/200104/on_ele_tarom_a_papirlapot and Kosztolányi, Gusztáv: Blind Justice. Crime and police corruption in Hungary. In: *Central Europe Review,* Vol 1, No 5, 26 July 1999, http://www.ce-review.org/99/5/csardas5.html.

2 See: http://magyarnarancs.hu/belpol/a_gan_fiverek_vesszofutasa_hivatalbol_uldozendok-62266.

3 See: http://www.errc.org/popup-article-view.php?article_id=2590. We have to emphasise that – irrespective of its outcome – the procedure reopened recently does not concern in any way the fact that the evidence available at the time of the acquittal was insufficient for finding the two accused guilty, and that the authorities failed to take into account those proofs that did not substantiate the two men's guilt.

Bereg County in the evening preceding the criminal act, and only set off to Budapest late at night, so he was not in capital at the time of the offence. He wanted to prove this with the cell-information of his mobile, the statements of numerous members of the audience and the persons with whom he travelled back to Budapest and the testimony of the petrol station attendant, who served him coffee during his return trip, but his evidence was disregarded by the authorities. The court declined the motion for hearing the attendant, and also refused to hear a woman who was attacked near Keleti railway station by a group similar to the group mugging the victims in the Setét case, and testified that she was positive that she had not been attacked by Mr Setét and Mr Adu, unlike the victims in the Setét case, who claimed to have recognized the two co-defendants (based on a photo panel containing – according to the new sources – three blurred, dark-toned pictures and one clear photo – that of the suspects).

The court of second instance quashed the first first instance decision, and obliged the court of first instance to conduct a new procedure, in which the two accused were acquitted. The two defendants spent 16 months in pre-trial detention, which was compensated with HUF 5,000,000 in 2009.[4]

What is common in these cases – beside the Roma origin of the defendants – is that based on failing evidence (and with the defendants kept in pre-trial detention for lengthy period) they got as far as indictment, and in three cases to first instance verdicts finding the accused guilty. Even though it is somewhat comforting that the second instance courts corrected the defects of the procedures (except for the Pusoma-case, where due to the lack of an appeal the first instance verdict became final and binding), the "overrepresentation" of the Roma among the accused of such cases implies that it is worth examining if the principle of equality before the law irrespective of the defendants' ethnic origin is respected in all phases of the procedure.

However, as it was stated in the article summarizing the results of the first case file research in 2000 dealing with the equality of the Roma accused before the law (see below), it is not possible to draw far reaching general conclusions based on such individual cases, "we can only progress in the cognition of reality, if we try to prove or refute the two hypotheses – namely that during the criminal procedure racial discrimination plays/does not play a role – with some impersonal, objective

4 See: http://magyarnarancs.hu/belpol/szemernyi_ketseg_-_setet_erno_es_adu_laszlo_a_birosag_elott-65732 and http://www.origo.hu/itthon/20091112-allami-karterites-setet-erno-zenesz-szamara.html.

method".[5] The researches described below (and providing the basis of the present study) attempted to develop and apply such an objective method.

RESEARCH INTO THE ROMA DEFENDANTS' EQUALITY BEFORE THE LAW

The **pilot-study carried out in 2000** and lead by the Hungarian Helsinki Committee regarded those acts as violations of equality before the law, "in the course of which the proceeding authority on the basis of the concerned person's Roma origin applies with regard to him/her legal consequences that are more serious that the possible, average legal consequence which could be expected on the basis of the applicable legal norms, or makes a differentiation that is disadvantageous to this person".[6] The study's aim was develop, find and try out the indicators and instruments which could help to demonstrate potential unequal treatment through the analysis of court files.

The research analysed 146 closed cases of the misdemeanour and felony of theft and the felony of robbery. The case files were provided by lawyers from Budapest and Miskolc, and – due to the fact that in discrimination cases it is the perception of the discriminator and not the self-identification of the discriminated person that play the primary role – the researchers relied on the lawyers' judgment as to which defendants shall be regarded as a Roma. The defendants of 69 cases were Roma, as opposed to 77 non-Roma defendants.

The pilot-research revealed numerous, significant differences between the procedures conducted against Roma and not Roma defendants. For example:

- 50% of Roma defendants were taken into pre-trial detention as opposed to 40.8% of non-Roma defendants;
- The average length of pre-trial detention was 385 days for Roma defendants as opposed to 232 days in the case of non-Roma;
- The average of imposed imprisonment was 185 days longer for the Roma defendants. With regard to those who were convicted for robbery the average

5 Csorba, József – Farkas, Lilla – Loss, Sándor – Lőrincz, Veronika: A törvény előtti egyenlőség elve a büntetőeljárásban. *[The principle of equality before the law in criminal procedures.]* In: *Fundamentum*, 1/2002 (hereafter: Csorba et al.), p. 125. (Available at: http://www.fundamentum.hu/sites/default/files/02-1-11.pdf.)

6 Ibid., p. 127.

imprisonment was 343 days – i.e. almost a year – longer in the case of the Roma defendants.

The pilot-research also showed that close to 60% of the files of those cases where the defendant was of Roma origin contained some reference to the defendant's ethnicity. Considering this fact and that case selection by the lawyers raises methodological problems, the **grand study of 2002** (also lead by the Hungarian Helsinki Committee) decided the question of which defendants are to be regarded as Roma on the basis of references to ethnic origin in the files and other socio-demographic features (specific Roma names, residence in neighbourhoods habited mainly by Roma). This research categorised the defendants into five groups: certainly Roma, probably Roma, cannot be decided, probably non-Roma and certainly non-Roma.

The research of 2002 processed 1,147 case-files (also initiated due to the misdemeanour and felony of theft and the felony of robbery) from 18 courts. Originally 37 courts were to be involved, however, it distorted the results, that 19 court did not allow the researchers access the case-files, and what is more, "whether access was allowed strongly correlated with the rate of the Roma [in the given area], while the average rate of the Roma population in the areas of competence of the courts declining access or not replying was 11.3%, the same rate for courts allowing the research was only 4,5%. In Borsod-Abaúj-Zemplén and Szabolcs-Szatmár Bereg County there was only one court out of ten which allowed access to the files. [In those counties,] where the ratio of the Roma within the total population was less than 6%, only 26% of the requests for access was rejected, whereas in areas with a Roma population exceeding 6%, the rate of rejection was 78%."[7]

The research revealed differences based on ethnicity in a few aspects of the procedure.

One of these differences concerned the time that passed between the closing of the investigation and the first trial day: in the robbery cases the Roma defendants had to wait 77 days more for their first trial on average than the non-Roma, while in theft cases the waiting time for non-Roma defendants was 45 days longer. At the same time, the research report pointed out that since there are fewer people in

7 Farkas, Lilla – Kézdi, Gábor – Loss, Sándor – Zádori, Zsolt: A rendőrség etnikai profilalkotásának mai gyakorlata. *[The recent practice of racial profiling by the police.]* In: *Belügyi Szemle*, 2004/2-3. (hereafter: Farkas et al.), p. 36.

pre-trial detention for theft, in such cases the violation caused by the longer waiting time is less severe.

Another difference was revealed in the sentencing practice: in the three crime-categories studied, adult Roma defendants were 15% more likely to be sentenced to imprisonment. The research report emphasised though that "this summary statement is naturally refined by various factors, which entails that in itself this difference may not be regarded as significant. However, if we examine two variables in conjunction we detect a significant difference between the treatment of Roma and non-Roma defendants. Not only within our sample, but in Hungary in general, courts of larger towns are 11% more likely to impose imprisonment in the cases of Roma defendants." Another conclusion relevant from the point of view of the present study is that the research has "found the most significant difference in the case of the least serious crime, low value theft, where every sixth non-Roma defendant is sentenced to imprisonment as opposed to every third Roma defendant – even if in some cases the imprisonment is suspended."

The study of 2002 found the clearest difference between Roma and non-Roma defendants in how they become suspects. It could be established from the case files that the non-Roma are much more likely to become suspects through being caught in the act, while in the case of identity checks, this "trend was reversed. […] Only 17% of non-Roma […] and 29% of Roma suspects were detected by the authorities through identity checks. (19% more frequently were undoubtedly Roma perpetrators detected by the authorities through identity checks.)"[8] The conclusion of the 2002 research in this regard was that "if the non-Roma perpetrator is not caught in the act, he/she is more likely to avoid accountability".

The study in this context looked into the success rates of the police in relation to investigations against unknown offenders, and – comparing the success rates of the police headquarters in the six counties with the largest and smallest Roma populations – found that the average success rate for five years (1996–2000) "in Borsod-Abaúj-Zemplén, Nógrád and Szabolcs-Szatmár-Bereg Counties (Roma population 10.5%) was 51.32%, while in Csongrád, Fejér and Győr-Moson-Sopron Counties (Roma population 1.6%) it was 40.24%. So while the percentage of the Roma population is 6.5 time smaller in these counties, the success rate of the police working here is 20–25% lower than that of police headquarters in counties densely

8 Ibid., p. 39.

populated by Roma",[9] although according to criminal statistics, "in the counties with the smallest Roma population, cca. 30% more criminal offences are committed compared to the number of inhabitants". [10]

The research report concluded: "it is obviously in the interest of the public to identify and arrest [...] perpetrators. Nevertheless, the disadvantageous treatment of the Roma and the distinguished attention paid to them [by the police] are problematic for two reasons. On the one hand, it violates equality before the law, as guaranteed by the Constitution, and also the recently adopted act on equal treatment if one specified (ethnic) minority is subjected to greater police control than the majority – just because a person is (due to the colour of his/her skin or clothing) visibly, or (based on his/her residence, social background or family relations) probably belongs to the concerned minority. On the other hand, and this is the practical side of the matter, if the police […] pays excessive attention to controlling minority communities, then it lures away forces from other potentially not so successful areas of crime investigation."[11]

This conclusion motivated the Hungarian Helsinki Committee to look into the police practice of identity checks in its next research. The research conducted between 2007 and 2008 (**STEPSS research**) in three locations (Budapest 6th district, Szeged and Kaposvár) lasted for 6 months. During the data collection phase, police officers recorded the data of over 20,000 identity checks by filling out anonymous forms containing information about the reasons for the check; whether any actual measure followed the check, and also the ethnic origin of the identified person as perceived by the police officer. Based on the collected data, the research examined the efficiency and the ethnic aspects of the identity checks.

The results of the STEPSS research reveal that a Roma person has disproportionately high chance to be identity checked, i.e. the percentage of Roma among ID checked persons significantly exceeds their rate within the total population. While the percentage of Roma in the Hungarian population is estimated to be around 7–8%,[12] the research results showed that 22% of the persons checked were of Roma

9 Ibid., p. 48.

10 Ibid., p. 49.

11 Ibid., p. 50.

12 See for example: Hablicsek, László: Kísérleti számítások a roma lakosság területi jellemzőinek alakulására és 2021-ig történő előrebecslésére. *[Pilot calculations concerning the trends and assessment until 2021 of the geographical distribution of the Roma population.]* In: *Demográfia* 1/2007., p. 41. (Available at: http://www.demografia.hu/letoltes/kiadvanyok/Demografia/2007_1/Hablicsek4.pdf.)

origin, which means that a Roma person is three times more likely to be ID checked. The disproportionality is even greater in the case of Roma youth: their rate among 14–16 year-old persons subjected to an ID check was 32%, the same result for the 17–18 age range was 28%.

The most often provided explanation for the more frequent ID checking of Roma persons is that certain types of offences are more likely to be committed by the Roma, therefore checking Roma persons is an effective tool to filter and prevent such offences. Therefore, the research studied the effectiveness of ID checks, but found that the checks carried out vis a vis the Roma did not yield more results than the measures taken in relation to the non-Roma. Based on the aggregated results from the three locations, it could be concluded that 22% of the checks carried out on Roma persons were successful, meaning that they were followed by some further police measure, while this number was 21% among the non-Roma. So there was no difference between the two groups in relation to the efficiency of the ID checks. The highest degree of disproportionality was measured in Budapest, where 80% of Roma indentify checks were not followed by any police action, as opposed to 59% of identity checks carried out on non-Roma persons.

There was also a significant disproportionality between the Roma and the non-Roma in relation to the identity checks conducted by the police because of the suspicion of a criminal offence. The success rate of such checks was 63% in the case of the Roma, and 75% in the case of the non-Roma, which means that it turned out in relation to proportionally more Roma than non-Roma persons that no further police action was necessary in their case.[13]

ABOUT THE PRESENT RESEARCH

More than a decade has passed since the research of 2002, and – according to a number of reliable sociological studies – this decade has brought along an increase in the prejudices against the Roma population in Hungary.

13 Source of the research report: http://helsinki.hu/wp-content/uploads/STEPSS_magyarorszagon_hatteranyag.pdf. For details see: Kádár, András Kristóf – Körner, Júlia – Moldova, Zsófia – Tóth, Balázs: *Control(led) Group – Final report on the Strategies for Effective Stop and Search (STEPSS) Project*. Hungarian Helsinki Committee, Budapest, 2008. (Available at: http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf.)

In a 2011 research, 49% of the respondents claimed that they would not accept a Roma person as either a member of their family, or a neighbour, or a co-worker. An additional 14% claimed that they would only accept a Roma person as a co-worker, and only 19% replied that they would have no objections against accepting a Roma person into their family.[14]

In a 2013 research, the respondents were asked to what extent they identified with 6 statements out of which 3 were very negative and 3 positive about the Roma. 30% of the respondents identified with all the three negative statements, 57% identified with some of the negative statements, and only 13% of the respondents disagreed with all three. For instance, 60% of the respondents agreed with the following sentence: "Crime is in the blood of the Roma."[15] The research also showed that the ratio of those who agreed with all the negative statements had risen compared to 2008.

Due to these trends and also to the miscarriages of justice concerning Roma defendants which have become known to the public after 2002, it seemed justified to launch a new research – applying a somewhat different methodology, but building mainly on the previous attempts – into whether in its present form the Hungarian justice system guarantees the equality before the law of Roma and non-Roma defendants. Contrary to the previous research projects, we also wanted to collect information on whether this principle applies in the last, but equally important phase of the criminal procedure, namely the execution of the sentences. The research was funded by the Open Society Foundations.

In the first phase of the research we interviewed approximately 400 convicted inmates about their criminal case and their experiences in prison. In addition, we assessed their penitentiary documentation on the basis of a previously set list of criteria. In the next phase we selected 90 inmates on the basis of criteria described in detail below, and processed their criminal case files on the basis of a standardised questionnaire to assess whether any difference based on ethnicity may be demonstrated in how they and their case had

14 Simonovits, Bori: Bevándorlók diszkriminációja – kisebbségi és többségi szemmel. *[Discrimination against Immigrants – from a Majority and Minority Perspective.]* In: *Bevándorlás és integráció, Magyarországi adatok, európai indikátorok*. Ed.: Kováts, András. MTA Társadalomtudományi Kutatóközpont, Kisebbségkutató Intézet, Budapest, 2013, p. 162.

15 See: http://www.tarki.hu/hu/news/2013/kitekint/20130305_trip_osszes.pdf.

been treated. (Due to the logic of the sampling, the present research report is structured as how the research was carried out, thus results pertaining to criminal procedure are discussed in the last chapter.)

As a next step, on 26 March 2014 we discussed the first draft of the present material at a conference (hereafter: Conference), where the representatives of all stakeholders had the chance to express their views on the research results and the conclusions we have drawn from them. This material was finalised on the basis of the comments made by the participants of the Conference.

In certain prisons we also carried out focus-group discussions with – the anonymous and voluntary participation of – penitentiary staff members. Not only did we have the chance to discuss concrete decisions made by the personnel, but we also asked the participants about their attitudes regarding certain groups of detainees. The material also contains the results of these discussions. (We did not have the chance to discuss the results of the focus group exercises at the Conference, as the discussions took place after the Conference.)

II. Equality in the penitentiary system?

1. RESEARCH METHODOLOGY

1.1. Research question and research methodology

Similarly to the case file research at courts, the two research questions of the research regarding the execution of punishments were the following:

1. Does the defendant's Roma origin have any significance regarding the decisions delivered by the criminal justice authorities?
2. Are the decisions of the criminal justice authorities favourable or disadvantageous if the defendant is of Roma origin?

Thus, initially this part of the research would have also focused mainly on Roma defendants, but later on it was extended to other socio-demographic characteristics. Accordingly, the first research question was reformulated as whether the defendants' certain socio-demographic characteristics, including their origin, sex, age, educational background or their employment status before they entered the penitentiary have any significance regarding the decisions delivered by the criminal justice authorities, and, more specifically, regarding the decisions of the penitentiary system. (The questions related to the definition of "Roma" are discussed in detail under subchapter 1.3. of the present chapter.)

In the case of the execution of punishments, the research was not restricted to the criminal justice "authorities": it also covered decisions which, although brought by the staff members of the penitentiaries, are less formalised, such as decisions on

moving the defendants from one cell to another. Accordingly, in the context of the research the term "decision" meant any decision of penitentiary staff members with an obligatory effect on the defendants, irrespective of the decisions' form.

In the research phase concerning penitentiary institutions, data collection was carried out via two methods, taking into consideration that using different methods for data gathering diminishes subjectivity. Accordingly, at first interviews were recorded with nearly 400 detainees serving their sentences, based on a questionnaire containing mainly closed questions.

Using such questionnaires was favoured because it allowed the collection of data that could be analysed using statistical methods. Thus, one part of the interview resembled a questionnaire recorded by a surveyor; while the other part of the interview permitted researchers to explore the defendants' subjective impressions regarding certain issues or problems. Defendants participated in the interviews voluntarily, and it was stressed that they may indicate also in the course of the interview that they do not want to answer a given question. At the interviews only the detainee and the interviewer were present; interviews were conducted in altogether 11 penitentiary institutions by the lawyers of the Hungarian Helsinki Committee, and other persons who had experience in social science research.

After the interviews, with the written permission of the detainees concerned, researchers also examined the penitentiary case files of the detainees in all of the penitentiaries concerned (the case files containing both administrative data and information on the inmates' "education", the latter covering the defendants' schooling, disciplinary cases, rewards, personal development, etc.). The advantage of case file research in prisons is the relative reliability of the data gathered, since the data gathering is not influenced by the situation of the interviewer, and is less influenced by the personality of the respondent than in the case of an interview. Thus, the aim of the case file research on the one hand was to examine and substantiate the "facts" related to the information given by the defendants, while on the other hand it was also an aim to collect further data on the situation of detainees in the penitentiary system. While analysing the data, the following method was used: in the case of "quantifiable" questions, where "control data" could have been acquired from the case files (e.g. number of disciplinary cases, disciplinary punishment applied, number of rewards, etc.) always the data included in the case file was used. The answers of the detainees provided in the course of the interview were used with regard to issues in relation to which no data was included in the case files or when providing us the

information in question would have meant additional burden for the penitentiary institutions involved, and in relation to issues where the reliability of the information provided in the course of the interviews was high (e.g. the frequency of cell-shifts and the number of cellmates). Furthermore, the interviews of course played an important role in allowing researchers to get to know the detainee's subjective impressions and opinion.

1.2. Sampling, representativity and the generalizability of results

Proper detection and quantification of perceived discrimination is possible only if the court condemns the defendants involved in the research for criminal offences of similar weight. Since according to some former research results,[16] the Roma are overrepresented among perpetrators of criminal offences against the property, such as robbery, our presumption was that if the research targets defendants committing robbery, than it may be assumed that it will cover an adequate number of defendants identifying themselves as Roma or perceived as Roma. A defendant was considered as a person who "committed" robbery if it was established by a final and binding court decision that he/she committed the criminal offences included in Article 321 of Act IV of 1978 on the Criminal Code (still in force at the beginning of the research). The aim was to exclude from the sampling those serving an accumulated prison sentence, and to conduct interviews with first-time offenders who were condemned for committing a single offence. Since it was not possible to exclude from the sampling defendants with a former criminal record, in the course of the research and in the present research report the term "first-time offender" refers to defendants who were sentenced to imprisonment for robbery not as a recidivist, or as a special or multiple recidivist, thus it is not identical with the term "first-time offender" as used in criminology.

The sampling frame for the research was a list provided by the National Penitentiary Headquarters, containing information on 1,026 detainees, including their date of birth, sex, location and type (security degree) of incarceration, current date of release and prison identification number. From the original list, 400 participants were chosen, using the method of stratified sampling. In order to properly

16 Huszár, László: Roma fogvatartottak a büntetés-végrehajtásban. *[Roma defendants in the penitentiary system.]* In: *Belügyi Szemle,* 1999/7-8., pp. 124–133.

represent the Hungarian prison population in our sample, the base population had to be mapped according to relevant variables, i.e. variables considered as important in the context of the research.

In the context of the research, the base population consisted of those who were serving a prison sentence in the year 2012 for committing robbery – they were the ones included in the list of the National Penitentiary Headquarters, consisting of 1,026 persons. Since the focus of the research was to assess whether there are any differences between the situation of Roma and non-Roma defendants in penitentiaries, the most important variable of the analysis would have been Roma ethnicity, or the related perception. However, no such data was available in advance, before the construction of the sampling design. Therefore, we concentrated on finding other dimensions instead of ethnicity which could be the base of an appropriate comparison between Roma and non-Roma prison population in light of the research questions.

As a sampling method, a stratified sampling technique was chosen because of its certain advantages compared to simple random sampling: for instance – instead of picking interviewees from all the penitentiary institutions – it allowed the selection of penitentiary institutions by previously set aspects of stratification, saving considerable time and resources in terms of traveling and research management. Since 1,026 cases matched the criteria of the research, the original list was used as a sampling frame to select 400 interviewees, which gave an exceptionally high selection rate of 39%. During stratification two basic variables of the penitentiary institutions (location and type of incarceration) were used, then convicts were grouped by sex and age, and then, finally, a random sample was drawn from them. Thus, the variables taken into account in the sampling were the following:

1. the type (security degree) of the incarceration in the penitentiary institution (high, medium and low security prison, medium and low security prison for juveniles);
2. territorial arrangement of penitentiary institutions (the seven regions of Hungary were contracted into the following four: Central Hungary, Northern Hungary, Transdanubia and Great Plain);
3. sex of the convicts (male or female); and the
4. age group of the convicts (under 18, between 18 and 24 years, between 25 and 31 years, older than 31 years).

The results from the analysis represent the prison population by these features. While selecting the penitentiary institutions, attention was paid to include in the sample institutions which detain women and juveniles as well. Based on the above considerations, interviews were recorded and penitentiary cases were examined in the penitentiary institutions included in Table 1.

Table 1

Institutions included in the sample and the number of planned and accomplished interviews

	Planned	Accomplished
Balassagyarmat High and Medium Security Prison	37	37
Central-Transdanubian National Penitentiary Institution	22	26
Budapest High and Medium Security Prison	51	53
Kalocsa High and Medium Security Prison	36	36
Márianosztra High and Medium Security Prison	26	26
Pálhalma National Penitentiary Institution	33	32
National Penitentiary Institution for Juveniles (Tököl)	60	62
Sopronkőhida High and Medium Security Prison	30	30
Szeged High and Medium Security Prison	35	22
Szombathely National Penitentiary Institution	35	37
Tiszalök National Penitentiary Institution	35	37
Total	**400**	**398**

It has to be mentioned that it turned out after the research began, i.e. in the course of conducting the interviews, that the list provided by the National Penitentiary Headquarters – and, as a result, also the research sample – contained also defendants who were sentenced for robbery as a recidivist, and also such defendants who were sentenced not just for robbery but also other offences accumulated with it, or were sentenced for committing more than one robbery. As to the part of the research covering penitentiaries, it was not possible to remedy the above situation in the course of the research due to practical reasons. In addition, we believed that the criteria requesting that defendants participating in the research shall be sentenced to imprisonment for offences similar in weight was still fulfilled. In certain cases, when it seemed necessary with regard to a given hypothesis, the defendants involved in the research were assessed in two separate groups, set up on the basis whether, according to the final decision of the court, the robbery committed by them was accumulated with a criminal offence against life or physical integrity, or not.

In addition, of course it also occurred that at the time of conducting the interviews in a certain institution, the defendant included in the list was not present in the given penitentiary institution any more – either because he/she had been released or transferred to another institution –, and, although very rarely, it also occurred that the defendant included in the sample did not wish to give an interview. In order to handle the problems arising from the latter circumstances, in addition to the list containing 400 defendants, a "supplementary list" was established with regard to all of the penitentiary institutions, listing further defendants who may also be involved in the research. Penitentiary institutions were also provided with the latter supplementary list. In this way it became possible to carry out the planned number of interviews in most of the penitentiaries. A few times it happened that, due to various reasons, researchers did not succeed in carrying out the planned number of interviews in a given penitentiary. In these cases, we tried to make up for the missing interviews in other penitentiary institutions, of course from the circle of defendants included in the sample and in the supplementary list. When presenting research results, the number of cases is indicated every time, since this number may be less than the total number of accomplished interviews due to the lack of answers to a given question.

Throughout the analysis, generally a significance level of 0.07 was used instead of the conventional level of 0.05 due to the small number of cases.[17] Significant differences are typed in bold in the tables when necessary, except when a table contains significant results only.

1.3. Who is a Roma?

As far as empirical researches related to the Roma are concerned, it has been a matter of dispute since the 90s who should be considered as a Gypsy/Roma.[18] While at the end of the 90s the word "Gypsy" was used more often, later on the term "Roma" has become accepted, both in the literature and when phrasing questions for research questionnaires.

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17 The 0.07 level of significance means that the correspondence between variables is considered substantive if the probability of occurrence of such an event by chance is less than 7%.

18 See in detail: Ladányi, János – Szelényi, Iván: Ki a cigány? *[Who is a Gypsy?]* In: *Kritika*, 1997/12.; Sik, Endre: A longitudinális cigány. *[The longitudinal Gypsy.]* In: *Replika*, June 1995, pp. 17–18.; Szelényi, Iván: Szegénység, etnicitás és a szegénység „feminizációja" az átmeneti társadalmakban. *[Poverty, ethnicity and the "feminization" of poverty in transitional societies.]* In: *Szociológiai Szemle* 2001/4., pp. 5–12.

Roma origin may be established essentially in two ways in the course of an empirical research: respondents may be categorised either by the outside world, or by self-definition. In the course of the series of researches launched by István Kemény, categorisation by the outside world was used, and those persons were considered as Gypsy persons who were considered as such by the people living around them. The ethnic categorisation of those to be involved in the research was requested from persons who, "in the course of their daily life, had been in regular contact and had lived in the same community as Gypsy people (people considered by them as Gypsies)".[19] The other possibility in this regard is when the surveyor (or, in the case of an interview, the interviewer) is asked to categorise the respondent. The latter method was used by the Social Research Institute (TÁRKI) in its "Hungarian Household Panel" and "Household Monitor" researches. According to the data of TÁRKI's "Household Monitor" research, 5% of the respondents identified themselves as Roma – every third of them referring to Roma ethnicity as a first identity and two-thirds of them as a second identity –, while an additional approximately 3% was perceived as Roma by the surveyors, half of them for certain and half of them not for certain. Thus, according to the latest data, in total, 8% of the adult population of Hungary may be considered as Roma.[20]

The other possibility is self-categorisation, when respondents identify themselves as members of various ethnic or ethnic origin groups. Both methods entail the danger of distortion. The main argument against categorisation by the outside world is the exaggeration of the importance of racial features and the ethnicisation of social problems, and the fact that, presumably, this method overestimates the proportion of Roma, since the interviewer may also categorise non-Roma persons as Roma due to their life situation, behaviour, and place of residence. Furthermore, based on feedbacks from interviewers, there is a certain extent of uncertainty or eventuality present in the categorisation of interviewers. On the other hand, self-identification results in significant underestimation (see for example census results), since in many situations Roma respondents conceal their identity, or at least do not identify themselves openly as Roma. It is important to add that both types of categorisations depend

19 Kertesi, Gábor: Az empirikus cigánykutatások lehetőségéről. *[About the possibility of empirical researches on the Roma.]* In: *Replika*, 1998/29.

20 Ki a cigány? – Újratöltve. *[Who is a Gypsy? – Recharged.]* In: *TÁRKI Monitor jelentések. Egyenlőtlenség és polarizálódás a magyar társadalomban*. Eds: Tóth, István György – Szivós, Péter. TÁRKI, Budapest, 2013, pp. 122–128.

largely on the given situation, thus it depends on the situation the interview takes place in and on other circumstances how the respondent identifies himself/herself, and how the interviewer categorises him/her.[21]

Accordingly, the most expedient solution is to combine the two methods (i.e. self-identification and categorisation by the interviewer), and to allow respondents to have "multiple identities", thus allowing them to identify themselves for example as Hungarian in the first place and as Roma in the second place. Furthermore, it is important to choose a method for categorising ethnicity which is adequate for the research aim and the research question.

Based on the above considerations, in the course of the interviews carried out in penitentiary institutions, respondents were asked whether they feel affiliated with any of the national and ethnic minority groups in a way that they had to choose from a list containing all the 13 recognised minorities in Hungary, along with the option "none". Afterwards, respondents were also categorised by the researcher conducting the interview.

Since the main question of the present research was whether Roma defendants are in a disadvantageous situation in penitentiary institutions as compared to non-Roma defendants, and whether Roma ethnicity has any significance in penitentiary institutions, the categorisation by the researcher, i.e. by the "outside world" was taken into account in the course of the analysis, presuming that this kind of categorisation reflects the perception of the penitentiary staff and participants of the criminal procedure better. (Exceptions include the questions pertaining to biased attitude and discrimination experienced by defendants, since researchers asked the related questions only from those who identified themselves as Roma.)

From those in the sample, 190 detainees identified themselves as Roma, whereas researchers perceived 213 defendants in the sample as Roma. As shown by Table 2, the overlap between self-identification pertaining to ethnicity and the perception of ethnicity is very significant, 73%. It shall be added that the attitude of detainees towards their ethnicity varied significantly: there were detainees who made it clear for the researchers already in the course of the interview, thus before the respective question was asked, that they identify themselves as persons belonging to the Roma minority, whereas others responded to the question reluctantly or suspiciously – and

21 Consider the following simple situation: it would be less probable that the respondent is categorised as Roma by the interviewer in case of an interview taking place in the lobby of a university than if the interviewer meets the same respondent in a penitentiary institution.

rarely, somewhat indignantly. Furthermore, despite the efforts of researchers and stressing that data protection applies, it may have occurred that defendants who otherwise identify themselves as Roma chose to respond that they not belong to any minority only because their answers were recorded. (It shall be recalled at this point that in the opinion of experts e.g. census data on ethnicity may not be regarded as a trustworthy estimation either, due to exactly this reason.) Considering the above, it may be presumed that at least a part of the defendants who did not identify themselves as Roma but were perceived as Roma by the researchers identify or would identify themselves as Roma in other surroundings or in another situation.

Table 2

Ratio of Roma defendants, based on the perception of the researcher and the self-identification of the respondent (% and N)

		Perception of the researcher			
		Roma	Non-Roma	Not decidable	Total
Self-identification	Roma	40.2% (160)	5.5% (22)	2% (8)	47.7% (190)
	Non-Roma	13.1% (52)	32.7% (130)	4.5% (18)	50.3% (200)
	Not decidable	0.3% (1)	1.8% (7)	0% (0)	2.0% (8)
	Total	53.6% (213)	39.9% (159)	6.5% (26)	100% (398)

It is worth mentioning that a survey carried out in 1996 in six penitentiary institutions on a sample of 600 persons (hereafter referred to as: PI 600 survey) also chose to record the perception of the researchers/interviewers alongside the result of self-classification or self-identification. Thus, they asked not only whether the respondent identifies himself/herself as Roma but they also recorded the perception of the interviewer. As to the results: the deflection between the categorisation by the interviewers and the respondents was also relatively small.[22] Thus, both the PI 600 survey and the present research show that there is a very high chance in percentages that defendants identifying themselves as Roma are also perceived as Roma by the outside world, including the police, the prosecutor, the judge or the penitentiary staff members. Accordingly, it may be reasonably assumed that if the defendants'

22 Results presented by: Huszár, László: Roma fogvatartottak a büntetés-végrehajtásban. *[Roma defendants in penitentiary institutions.]* In: *Belügyi Szemle,* 1999/7-8., pp. 124-133.

Roma ethnicity has a negative effect as far as decisions delivered in the framework of the criminal justice system or the execution of punishments are concerned, then the latter effect would primarily concern defendants who also identify themselves as Roma.

2. CHARACTERISATION OF THE SAMPLE

2.1. Socio-demographic characterisation of the sample

Besides their origin or ethnicity, the following socio-demographic characteristics of the defendants included in the sample were recorded by the researchers: sex, date of birth, place of residence before they entered the penitentiary, educational background, size of household before entering the penitentiary, and the per capita monthly income in their family. Below, the socio-demographic characteristics of the sample are presented divided by the ethnic origin of the detainees.

The proportion of women is higher among Roma convicts than among non-Roma convicts (see Table 3).

Table 3

Roma and non-Roma defendants divided by sex (% and N)

	Male	Female	Total
Roma (N=211)	87.7	12.3	100
Non-Roma (N=157)	94.3	5.7	100
Total (N=368)	90.5	9.5	100

Significance of chi-squared test: 0.033

As shown by Table 4, the proportion of those belonging to the youngest age group, thus those between 17 and 22 years of age is much higher (30.1%) among the Roma than among the non-Roma (16%). (If we add to this the number of defendants in the case of whom no ethnic categorisation was provided by the researchers, than the numbers show that altogether 91 juveniles were included in the sample.) One-third of the non-Roma is older than 35 years old, while in case of the Roma this ratio is only 20%.

Table 4

Roma and non-Roma defendants divided by age (% and N)

	17–22 years old	23–26 years old	27–34 years old	35–67 years old	Total
Roma (N=209)	30.1	28.2	22.0	19.6	100
Non-Roma (N=156)	16.0	23.1	27.6	33.3	100
Total (N=365)	24.1	26.0	24.4	25.5	100

Significance of chi-squared test: 0.001

The division of respondents by their place of residence reflects the territorial arrangement of the total population somewhat better than their division by educational background (see below). The Roma and the non-Roma are different as far as their place of residence preceding the penitentiary is concerned: 18% of the Roma resided in the capital, while this ratio is higher (26%) in the case of the non-Roma; 37% of the Roma come from villages, while this ratio is 26% in case of the non-Roma (see Table 5).

Table 5

Roma and non-Roma defendants divided by place of residence (% and N)

	Capital	County seat	Town	Village	Total
Roma (N=206)	17.5	18.0	27.7	36.9	100
Non-Roma (N=155)	25.8	12.9	35.5	25.8	100
Total (N=361)	21.1	15.8	31.0	32.1	100

Significance of chi-squared test: 0,024

A significant part of the detainees included in the sample has a low level of education: more than 74% of the defendants did not complete more than eight grades of primary school, and 19% completed only vocational training (vocational secondary school or vocational technical school). As shown by Table 6, the qualification of Roma convicts is in general lower than that of the non-Roma: among the Roma, the ratio of those who completed as a maximum eight grades of the primary school is 85.4%, while this ratio is 60.3% among the non-Roma. Only 2.4% of the Roma have a high school or higher education diploma, while this ratio is 11.5% among the non-Roma. (The proportion of those having a higher education diploma was 1% in the entire sample.)

Table 6

Roma and non-Roma defendants divided by their educational background (% and N)

	Maximum eight grades of primary school	Vocational training	Minimum high school	Total
Roma (N=206)	85.4	12.1	2.4	100
Non-Roma (N=156)	60.3	28.2	11.5	100
Total (N=362)	74.6	19.1	6.4	100

Significance of chi-squared test: 0,000

These results correlate with the results of a research conducted in 1998 in all of the Hungarian penitentiary institutions on a research sample consisting of 1,000 persons. The latter research also showed that in terms of educational background the situation of the Roma is "much worse" even than that of the non-Roma prison population: "The ratio of those who completed eight or less grades of primary school is 82.3% among the Roma, while it is 43.8% in case of the non-Roma. Twice as many non-Roma than Roma prisoners have completed vocational training – which may probably be considered as a minimum in terms of succeeding in the labour market. The difference between the proportions of those who have a high school diploma or higher qualification is significant even in the generally undereducated prison population."[23]

The overwhelming majority of the detainees drawn into the research, i.e. 67.2% of the sample had a physical occupation before entering the penitentiary institution, 15.7% of them was a student, 13.4% was unemployed and only 3.7% had an intellectual occupation (see Table 7). There are differences between Roma and non-Roma defendants also in this regard: for example the proportion of students is higher among the Roma, which follows from the results already presented above, showing that the proportion of those falling in the youngest age group (from 17 to 22 years old) is much higher among Roma defendants covered by the research. The proportion of unemployed persons is also higher among Roma defendants than among the non-Roma, and the ratio of those who had an intellectual occupation is lower.

23 Results presented by: Huszár, László: Roma fogvatartottak a büntetés-végrehajtásban. *[Roma defendants in penitentiary institutions.]* In: *Belügyi Szemle,* 1999/7-8., pp. 124–133.

Table 7
Roma and non-Roma defendants divided by their occupation (% and N)

	Physical occupation	Intellectual occupation	Student	Unemployed	Total
Roma (N=197)	64.5	1.0	19.3	15.2	100
Non-Roma (N=154)	70.8	7.1	11.0	11.0	100
Total (N=351)	67.2	3.7	15.7	13.4	100

Significance of chi-squared test: 0,003

The vast majority of detainees covered by the research lived in a family before entering the penitentiary institution: only 6.5% of 387 responding interviewees lived alone before imprisonment. Besides the size of the household, the questionnaire also touched upon the monthly per capita income in the family before the detainee entered the penitentiary institution. As seen in Table 8, responses showed that the ratio of those in an extremely bad financial situation was much higher among the Roma than among the non-Roma. While in the case of 19% of the Roma the per capita family income was below HUF 20,000 and in the case of an additional 36% it was between HUF 21,000 and HUF 40,000, these ratios in the case of the non-Roma were 5% and 18%, respectively. Furthermore, while 44% of the non-Roma provided that they had a per capita family income of over HUF 81,000, this ratio was only 18% in case of the Roma.

Table 8
Roma and non-Roma defendants divided by per capita family income (% and N)

	Below HUF 20,000	HUF 22,000–40,000	HUF 41,000–60,000	HUF 61,000–80,000	Above HUF 80,000	Total
Roma (N=165)	18.8	36.4	15.8	11.5	17.6	100
Non-Roma (N=134)	4.5	17.9	17.9	15.7	44.0	100
Total (N=299)	12.4	28.1	16.7	13.4	29.4	100

Significance of chi-squared test: 0,000

On the whole, it may be stated that Roma defendants covered by the sample have lower qualifications, and their indicators in terms of both their income and employment situation are worse than that of the general population – similarly to the general situation of the Roma population. This is important to bear in mind also because of the fact that as research results to be presented show, the disadvantageous

social, economical and demographical situation often results in an inferior situation also in the penitentiary institution.

2.2. Characterisation of the sample in terms of criminal justice

Taking into consideration that – as it was mentioned earlier – there were detainees included in the sample who did not comply with the preliminary criteria, it seemed to be worth examining how detainees in the sample are divided as to their final judgments, and whether there are any significant differences in terms of their final judgments between Roma and non-Roma detainees included in the sample (see Table 9).

Table 9

Roma and non-Roma defendants divided by the various characteristics of their final judgment (%)

	Roma (N=204)	Non-Roma (N=156)	Total (N=360)	Significance (chi-squared test)
First-time offender	81.9	85.7	83.5	0.331
Recidivist	4.4	1.3	3.1	0.091
Special recidivist	3.9	1.9	3.1	0.284
Multiple recidivist	2.5	1.9	2.2	0.750
Robbery accumulated with another criminal offence	56.9	57.1	57.0	0.968
Robbery accumulated with a criminal offence against life or physical integrity	27.8	30.1	28.8	0.640
Multiple robberies	16.8	24.2	20.0	0.086
Attempt of robbery	**4.0**	**11.7**	**7.3**	**0.006**
Sentenced to suspended imprisonment due to robbery	2.5	3.9	3.1	0.438

Note: Significant results are typed in bold.

Roma and non-Roma detainees do not differ significantly as to whether they are first-time offenders or not, and whether they are recidivists, special recidivists, or multiple recidivists. (If we add those detainees in the case of whom researchers did not provide an answer concerning their perceived ethnicity, the number of first-time offenders in the total sample is 319.) There is also no difference between the Roma and the non-Roma in terms of whether the robbery they committed is accumulated with another criminal offence, or whether the robbery is accumulated with a crimi-

nal offence against life or physical integrity. The difference between the Roma and the non-Roma is not significant either in terms of whether they have committed multiple robberies, or whether they have been sentenced to suspended imprisonment, the execution of which was ordered later. These conclusions are important from the viewpoint of the research results also because they show that the forced deflection from the sample originally planned affected the Roma and the non-Roma to the same extent, and thus, the deflection distorts research results concerning the situation of Roma and non-Roma defendants to the same extent.

It shall be added that Roma and non-Roma defendants included in the sample differ significantly in one aspect examined: among the Roma, the ratio of those sentenced to imprisonment for an attempted robbery is lower (4%) than among the non-Roma (12%).

Since in the case of some of the issues examined it may be raised that the adaptation of detainees to prison conditions might also play a role (e.g. as far as the number of disciplinary cases or rewards is concerned), it was also assessed whether the detainees covered by the research had been detained in a penitentiary institution before their current imprisonment or not (either serving a prison sentence related to a former criminal case, or as pre-trial detainees).

Table 10

Roma and non-Roma defendants divided on the basis of how many times they were detained in a penitentiary institution (% and N)

	Not once	Once	More times	Total
Roma (N=210)	72.4	20.0	7.6	100
Non-Roma (N=156)	74.4	14.7	10.9	100
Total (N=366)	73.2	17.8	9	100

Significance of chi-squared test: 0.258

As it is shown by Table 10, the Roma do not differ from the non-Roma in terms of how many times they have been detained in a penitentiary institution during their life: in both groups, the proportion of those who have not been detained in a penitentiary institution before the imprisonment served at the time of the interview was over 72%.

It is worth mentioning that, based on the data gathered, the proportion of Roma detainees was higher within the sample in certain penitentiary institutions, this ratio being significant in the Balassagyarmat High and Medium Security Prison,

the Kalocsa High and Medium Security Prison, and the National Penitentiary Institution for Juveniles in Tököl. (As far as the research sample is concerned, the average Roma population in the penitentiary institutions was 57%, as based on the perception of researchers.)

Table 11

Proportion of Roma in the penitentiary institutions (mean, N, standard deviation)

Penitentiary institution	Mean	N	Standard deviation
Pálhalma National Penitentiary Institution	0.5455	22	0.50965
Márianosztra High and Medium Security Prison	0.4483	29	0.50612
Kalocsa High and Medium Security Prison	0.7576	33	0.43519
Central-Transdanubian National Penitentiary Institution	0.5238	21	0.51177
Budapest High and Medium Security Prison	0.566	53	0.50036
National Penitentiary Institution for Juveniles (Tököl)	0.6721	61	0.47333
Szombathely National Penitentiary Institution	0.4375	32	0.50402
Szeged High and Medium Security Prison	0.4545	22	0.50965
Sopronkőhida High and Medium Security Prison	0.4667	30	0.50742
Tiszalök National Penitentiary Institution	0.4483	29	0.50612
Balassagyarmat High and Medium Security Prison	0.7778	36	0.42164
Total	**0.5734**	**368**	**0.49526**

3. RESEARCH RESULTS

3.1. Placement conditions

The physical circumstances of detention, such as the number of cellmates and the physical state of the cell are crucial from the point of view of the living standard of convicts. Furthermore, it may be suggested that the size of the cell, the number of cellmates and the place of the cell within the penitentiary institution may be important "status indicators", meaning that detainees with a "higher status" have a higher chance to be placed in a cell which is "better" in some respect than the other cells – as far as this is possible within the overcrowded prison system of Hungary. At the same time, when assessing the issue of placement it should also be taken into consideration that the average size of the cells and, consequently, the number of cellmates depends largely on the architectural characteristics of the given institution. Accord-

ingly, the place of detention (i.e. the institution) was also included in our assessment as a variable. Furthermore, it was also examined whether the frequency of shifting inmates between cells, i.e. the number of times the inmate is moved to a new cell is influenced by any of the socio-demographic characteristics assessed. The frequency of moving inmates between cells (cell-shifts) was included in the research also because being moved to a new cell is an important "event" in the life of detainees, and may severely influence the inmates' quality of life within the penitentiary institution. The so-called "security risk group" the defendants participating in the research were placed in had to be also assessed, since the security risk group classification has a significant effect on the detainees' daily life.

Based on the considerations above, the interviews and the case file research covered the following issues in relation to the placement of detainees within the penitentiary institution:

- In how many institutions was the inmate detained in the last 12 months? In which institution was he/she detained for the longest period of time within the last 12 months?
- In how many cells was the inmate detained in the current penitentiary institution (including the present cell)?
- How many cellmates does the detainee currently have?
- How does the inmate assess the cell he/she is currently detained in? How does he/she assess the cells where he/she was detained in the last 12 months?
- Was the detainee placed in a special treatment group in the present institution within the last 12 months? Was he/she placed in a special treatment group in the penitentiary institution where he/she was detained for the longest period of time within the last 12 months?
- In which security risk group was the inmate placed for the first time in the present institution? Was the security risk group classification of the detainee altered in the present institution? What was the new security risk group he/she was placed in? In which security risk group was the inmate placed in the institution where he/she has was detained for the longest period of time within the last 12 months, and was his/her security risk group classification altered in that institution?
- When admitting the detainee to the penitentiary, did they notice any marks of injury on him/her?

However, when assessing the responses given to the questions above, several obstacles emerged. For example the reasons for transferring inmates from one penitentiary to another could not have been reconstructed on the basis of the case files, even though it is obvious that the transfer does not "qualify" the same way if its reason is to ensure that the detainee is present at a procedural action (e.g. interrogation) or if, possibly, it aims to facilitate visitation by family. It may be a reason for transferring an inmate if his/her judgment becomes final, and it may also occur that the detainee himself/herself requests a transfer to another penitentiary institution. Thus, the reasons for transfers may be quite diversified, and the frequency of transfers does not depend solely on the discretional decisions of the penitentiary system. Because of this, the number of transfers was analysed without considering the reasons for transfers, thus without any differentiation. The analysis showed that the number of transfers in the period of the 12 months assessed was not influenced by any of the characteristics that are relevant from a socio-demographic or criminal justice point of view. (The only, not particularly surprising correlation was that those who have been detained for a longer period of time were transferred less frequently.) At the same time, it was also raised at the Conference that the practice of transfers between institutions, involving also the reasons of transfers, may be a future research topic.

Furthermore, we chose not to assess the opinions of detainees regarding their cells, one of the reasons for this being that the responses given to the respective open question could not have been standardised, thus, the results could not have been turned into numbers. Finally, since the number of inmates involved in the research who had been placed in a special treatment group was insignificant, it was not possible to examine the characteristics influencing the placement of detainees in special treatment groups. Similarly, the number of those detainees in the case of whom any marks of injury was noticed when they were admitted to the penitentiary was also insignificant, thus there was no possibility in this case either to assess the potentially influencing factors.

Accordingly, below we analyse the data pertaining to the number of cell-shifts, to the number of cellmates, and to the security risk group classification of the detainees.

3.1.1. Frequency of cell-shifts; number of cellmates

Table 12 shows the number of cellmates of the detainees and the number of cells they have been detained in in their present institution up to the date of the interview, divided by certain characteristics of the inmates. (Apart from the age group they

belong to, those characteristics of the detainees which do not influence the number of cell-shifts and cellmates are not included in the table.)

Table 12

The number of cellmates and cells in the light of the basic demographical variables of the defendants, and in light of the length of their current detention (N, mean, standard deviation)

		Number of cellmates			Number of cells		
		N	Mean	Standard deviation	N	Mean	Standard deviation
Total		388	5.42	3.79	382	5.60	4.23
Origin	Roma	**204**	**5.72**	**3.59**	**201**	**5.21**	**3.85**
	Non-Roma	**157**	**4.86**	**3.80**	**154**	**6.30**	**4.74**
	Sign (F-test)		**0.029**			**0.018**	
Occupation before entering the penitentiary	Physical	250	5.30	3.90	**243**	**5.49**	**4.14**
	Intellectual	15	4.40	4.07	**15**	**7.53**	**5.76**
	Student	56	5.73	3.14	**58**	**6.50**	**5.20**
	Unemployed	51	6.43	3.63	**50**	**4.76**	**2.85**
	Sign (F-test)		not significant			**0.052**	
Sex	Male	**348**	**5.12**	**3.58**	**342**	**5.84**	**4.36**
	Female	**40**	**8.05**	**4.51**	**40**	**3.50**	**1.81**
	Sign (F-test)		**0.000**			**0.001**	
Age group	17–22 years old	93	5.22	3.04	93	5.71	4.99
	23–26 years old	95	5.94	5.95	95	6.22	4.32
	27–34 years old	92	5.35	4.22	92	5.49	3.94
	35–67 years old	99	5.23	3.85	99	4.99	3.58
	F-test		not significant			not significant	
Per capita income	Below HUF 40,000	**130**	**5.80**	**3.97**	**130**	**4.90**	**3.85**
	HUF 40,000–80,000	**97**	**5.46**	**4.06**	**94**	**5.31**	**3.83**
	Over HUF 80,000	**90**	**4.58**	**3.37**	**88**	**6.57**	**4.67**
	Sign (F-test)		**0.065**			**0.012**	
For how long has the inmate been detained?	0–24 months	**72**	**6.14**	**3.46**	**74**	**4.01**	**3.06**
	25–32 months	**66**	**5.69**	**3.41**	**66**	**5.39**	**3.60**
	33–56 months	**71**	**4.90**	**3.84**	**70**	**5.51**	**3.79**
	57 months or more	**68**	**4.49**	**3.69**	**63**	**7.26**	**4.68**
	Sign (F-test)		**0.031**			**0.000**	

Note: Significant results are typed in bold. Due to the small number of cases, a significance level of 0.07 was used instead of the usual level of significance (0.05).

Based on Table 12, the results are the following.

► In how many cells was the inmate detained in the institution where the interview took place?

- On average, inmates were detained in 5.6 cells in the institution where the interview took place.
- On average, the Roma were detained in fewer cells (5.2) than the non-Roma (6.3).
- Women were moved fewer times between cells than men: while on average women were detained only in 3.5 cells in the institution where the interview took place, men were detained in 5.8 cells on average.
- Occupation before entering the penitentiary influences the number of cells the detainee was placed in: those with an intellectual occupation were placed in the highest number of cells (7.53) and the unemployed in the lowest (4.76).
- Those who had a better financial situation before entering the penitentiary (i.e. the per capita income in their family was higher) were placed in more cells, and the number of cell-shifts changes parallel to the income.
- A further data not included in the table above shows that those who were sentenced for a robbery accumulated with a criminal offence against life or physical integrity were on average placed in more cells (6.3) than those in the case of whom there was no such accumulation (5.43).

► How many cellmates did the detainee have at the time of the interview?

- Detainees involved in the research had on average 5.4 cellmates at the time of the interview.
- The Roma had significantly more cellmates (on average, 5.72 cellmates) than the non-Roma (on average, 4.86 cellmates).
- Men were placed in cells with much fewer persons (on average, 5.12 cellmates), than women (8.05).
- Those having a per capita family income over HUF 81,000 had fewer cellmates (4.6) than those with a lower income.
- The longer someone was detained the fewer cellmates he/she had at the time of the interview.

Since it was hard to find a reasonable explanation to a significant part of the results above, the influence of the given penitentiary institutions was assessed in terms of the number of cellmates and the number of cell-shifts. It was of course presumed in advance that the average number of cellmates is influenced by the architectural characteristics of the institutions, but the analysis also showed that the penitentiary institutions examined differ significantly not only as far as the average number of cellmates is concerned, but also in terms of the number of the cells the detainee was placed in up to the date of the interview.

Table 13

The number of cell-shifts (the total number of cells the detainee was placed in within the given penitentiary) and the number of cellmates, divided by institution (N, mean, standard deviation)

	Number of cellmates			Number of cells		
	N	Mean	Standard deviation	N	Mean	Standard deviation
Total	388	5.42	3.79	382	5.60	4.23
Pálhalma National Penitentiary Institution	27	10.96	2.56	27	2.89	1.63
Márianosztra High and Medium Security Prison	30	7.47	2.81	28	6.11	4.02
Kalocsa High and Medium Security Prison	36	7.28	4.12	36	3.58	1.76
Central-Transdanubian National Penitentiary Institution	26	9.58	4.25	26	4.62	3.15
Budapest High and Medium Security Prison	50	5.82	2.96	50	8.24	6.09
National Penitentiary Institution for Juveniles (Tököl)	61	5.13	1.88	63	5.30	4.13
Szombathely National Penitentiary Institution	33	2.97	1.10	30	7.13	4.52
Szeged High and Medium Security Prison	22	6.64	2.74	21	3.76	2.30
Sopronkőhida High and Medium Security Prison	30	0.93	0.58	29	6.21	3.92
Tiszalök National Penitentiary Institution	36	1.06	0.71	34	7.00	4.16
Balassagyarmat High and Medium Security Prison	36	4.19	1.77	37	4.84	3.34
Sign (F-test)	0.000			0.000		

As Table 13 shows, penitentiary institutions themselves determine the number of cell-shifts, and, not surprisingly, the number of cellmates; and, furthermore, the differences are extremely large concerning both features. The average number of cellmates varies between 1.06 (Tiszalök National Penitentiary Institution) and 10.96 (Pálhalma National Penitentiary Institution). Detainees are moved between cells the least frequently in the Pálhalma National Penitentiary Institution (they were

on average placed in 2.89 cells), and detainees are moved the most frequently in the Budapest High and Medium Security Prison, where detainees were placed in 8.24 cells on average up to the date when the interview was recorded.

Both the representatives of the National Penitentiary Headquarters and of certain penitentiary institutions participating at the Conference, and the participants of the focus group discussions mentioned that along with complying with the various rules regarding the separation of certain groups of detainees, considerations related to the organisation of the work carried out by the detainees may also serve as a reason for moving detainees from one cell to another (e.g. it is more simple to gather detainees working at the same workplace and to take them there if they are detained in the same cell). Furthermore, smoking and not smoking detainees shall also be separated (which is made even more difficult by the fact that certain detainees alter their declaration regarding their smoking habits quite often).

It may be raised at the same time that the quite significantly different results, as shown by Table 13, are influenced not only by the characteristics of the institutions and by the "inevitable" cell-shifts, but also by the attitude – "institutional culture" – towards cell-shifts viewed as an instrument used in dealing with inmates (e.g. with the aim of solving conflicts, or, possibly, with a disciplinary aim). (The reasons for cell-shifts were not examined in the course of the research, taking into consideration also that there would have been no possibility within the framework of the research to assess all the variables involved. In addition, the reasons for moving detainees to another cell could not be reconstructed on the basis of the case files available for researchers.)

Furthermore, based on the focus group discussions, it can be concluded that too frequent cell-shifts, entailing also a change in the person of the detainee's educator[24] have a negative affect both on the detainees and the penitentiary staff members. Frequent cell-shifts do not allow staff members to get to know the detainees, which hinders personalised education and is an obstacle to solve problems in a way accustomed to the personality of the inmates, thus it makes the work of educators more difficult. Besides, the detainees have no possibility to get to know e.g. the criteria applied by a given educator, which may also influence their "prospects" regarding

24 In the Hungarian system, the "educator" is the penitentiary staff member responsible for facilitating the re-socialisation of detainees, including their personal development, schooling, occupation, maintaining their contacts with the outside world, etc.

disciplinary procedures and rewards. Thus, the situation and circumstances of the detainees may be influenced significantly by the fact whether they are placed in an institution where they have more chance to serve a large part of their sentence in a more or less stable cell community or in an institution where detainees are moved quite often between cells. (The related findings of the focus group discussions are presented under Chapter III.2. of the present research report.) Based on the above, the issue of moving detainees from one cell to another may also be the subject of further research.

The findings mentioned above have led us to the conclusion that it may be worth testing the correspondences found in the analysis presented so far by using multidimensional models. The advantage of applying such models is that it gives researchers the ability to detect which variables can *independently* affect the conditions experienced by the convicts in penitentiary institutions.

Tables 14 and 15 show the independent explanatory power of the explanatory variables included in the model. Significance levels of the t-tests show whether a certain independent variable is statistically significant or not, keeping the effects of other variables under control. The narrowed model of the first table *ignores* the penitentiary institutions while evaluating the effects of explanatory variables on the conditions of the detainees, while institutions are included in the second table's *extended model* as dummy variables.[25] Since the independent variables included in the models are, with the exception of age, categorical variables, it was deemed expedient to the purpose to include the age in the model divided by age groups.

25 According to the rules of linear regression analysis we transformed the categorical variable of the penitentiary institutions into binary variables, and omitted the Balassagyarmat High and Medium Security Prison from the model, since it was chosen as reference category. The cell conditions are substantially defined by the penitentiary institutions, indicating that the most appropriate method of analysis would have been multilevel modelling, but since the case number – with the exception of one institution – was below 50 in each penitentiary institution, we had to dismiss the idea of using this method. The regression model responds sensitively to multicollinearity, the approximately linear relationship among independent variables, which has to be taken into account in relation to the special sex and age composition of the penitentiary institutions. Since most of the institutions examined detain almost exclusively either only females or males, sex was excluded from the extended models. Following the same logic, we also excluded the National Penitentiary Institution for Juveniles in Tököl, as the average age of convicts in this institution is 23 contrary to the mean-age of 30 of the examined prison population. The multicollinearity of the remaining independent variables was tested and ruled out using tolerance indicators.

Table 14

"Narrowed model", the number of cells and cellmates in the institution where the detainee was held at the time of the interview (linear regression models; ordinary least squares estimation)

	Number of cell-shifts			Number of cellmates		
	Beta	t-test	Sign (t-test)	Beta	t-test	Sign (t-test)
Roma ethnicity as perceived by researcher (Roma=1, non-Roma=0)	-0.097	-1.786	0.075	0.070	1.332	0.184
Age group (17–22 years old)	0.037	0.548	0.584	0.073	1.120	0.264
Age group (23–26 years old)	0.072	1.086	0.278	0.155	2.419	**0.016**
Age group (27–34 years old)	0.105	1.641	0.102	0.054	0.871	0.384
Sex of the defendant (1=male, 0=female)	0.102	1.827	0.069	-0.223	-4.084	**0.000**
Accumulation with a criminal offence against life or physical integrity (1=yes, 0=no)	0.085	1.612	0.108	-0.065	-1.278	0.202
First-time offender (1=yes, 0=no)	0.093	1.650	0.100	-0.141	-2.561	**0.011**
Recidivist (1=yes, 0=no)	0.074	1.337	0.182	-0.074	-1.364	0.173
Constant		2.424	0.016		10.738	0.000
R squared of the model		0.055			0.098	

Note: Significant results (based on t-test) are typed in bold.

The most important result of the narrowed models may be summarised as follows:

- The explanatory power of the models is very low (R squared shows the explained variance of the dependant variable's heterogeneity), and this is especially true in the case of the number of cell-shifts. (The model as a whole is significant, but none of the independent variables seem to have an independent effect.)

The narrowed model shows partly what the analyses of the means (Table 12) also revealed:

- On average, women have more cellmates than men.
- Those between 23 and 26 years of age have significantly more cellmates than those aged 35 (the latter being the reference category).
- Being a first-time offender decreases the number of cells the inmate was detained in.

Since, according to the analyses of the means presented in Table 13, penitentiary institutions crucially affect not only the number of cellmates but also the number of cell-shifts, it was deemed to be worth examining the independent effect of the institutions. In the extended model shown in Table 15 below we investigated the effect of including penitentiary institutions in the model.

Table 15

"Extended model", the number of cells and cellmates in the institution where the detainee was held at the time of the interview (linear regression models; ordinary least squares estimation)

	Number of cell-shifts			Number of cellmates		
	Beta	t-test	Sign (t-test)	Beta	t-test	Sign (t-test)
Roma ethnicity as perceived by researcher	-0.082	-1.545	0.123	0.066	1.755	0.080
Age group (17–22 years old)	0.080	1.188	0.236	0.075	1.571	0.117
Age group (23–26 years old)	0.063	0.961	0.337	0.088	1.917	0.056
Age group (27–34 years old)	0.100	1.589	0.113	0.036	0.820	0.413
Accumulation with a criminal offence against life or physical integrity (1=yes, 0=no)	0.056	1.091	0.276	-0.001	-0.021	0.983
First-time offender (1=yes, 0=no)	0.023	0.396	0.693	0.023	0.572	0.568
Recidivist (1=yes, 0=no)	0.059	1.085	0.279	-0.011	-0.277	0.782
Penitentiary institution (ref: Balassagyarmat High and Medium Security Prison)						
Márianosztra High and Medium Security Prison	0.054	0.949	0.343	0.198	4.969	**0.000**
Kalocsa High and Medium Security Prison	-0.049	-0.821	0.412	0.211	4.989	**0.000**
Central-Transdanubian National Penitentiary Institution	-0.021	-0.361	0.719	0.323	7.791	**0.000**
Budapest High and Medium Security Prison	0.195	3.154	**0.002**	0.093	2.142	**0.033**
Szombathely National Penitentiary Institution	0.177	3.008	**0.003**	-0.123	-2.979	**0.003**
Szeged High and Medium Security Prison	-0.048	-0.859	0.391	0.126	3.225	**0.001**
Sopronkőhida High and Medium Security Prison	0.119	2.100	**0.036**	-0.268	-6.749	**0.000**
Tiszalök National Penitentiary Institution	0.095	1.613	0.108	-0.280	-6.752	**0.000**
Pálhalma National Penitentiary Institution	-0.103	-1.807	0.072	0.422	10.520	**0.000**
Constant		4.005	0.000		7.056	**0.000**
R squared of the model		0.135			0.573	

Note: *Significant results (based on t-test) are typed in bold; the reference category for penitentiary institutions is the Balassagyarmat High and Medium Security Prison, while the reference category for age groups is the group of those more than 35 years old.*

The most important result of comparing the narrowed and extended models is that in the case of both models, extending them multiplies the explanatory power (R squared), which means that in terms of cell conditions the effect of institutions is determining. Furthermore, the significant independent effect of all the explanatory variables which had independent explanatory power in the narrowed model disappeared as a result of including institutions. (The independent effect showing that those between 23 and 26 years of age have more cellmates was the only one which remained, if we do not interpret the 0.05 significance level rigidly.)

Thus, the most important finding of the extended linear regression models is that institutions have the strongest influence on the number of cellmates and the number of cell-shifts. So, independently neither Roma ethnicity, nor age, nor being a first-time offender, nor other explanatory variables included in the model affect how many times a detainee was moved to a new cell and how many cellmates he/she had in a given institution.

- Using the Balassagyarmat High and Medium Security Prison as a reference category, it may be concluded that detainees in the Budapest High and Medium Security Prison, in the Sopronkőhida High and Medium Security Prison, and in the Szombathely National Penitentiary Institution shifted cells more times than those detained in the facility in Balassagyarmat, controlled for the other factors included in the model.
- The number of cellmates differs significantly as compared to the Balassagyarnat High and Medium Security Prison. While in the Pálhalma National Penitentiary Institution, the Márianosztra and Kalocsa High and Medium Security Prisons, the Central-Transdanubian National Penitentiary Institution, the Budapest High and Medium Security Prison and the Szeged High and Medium Security Prison detainees had significantly more cellmates – irrespective of the further background variables examined –, in the Szombathely National Penitentiary Institution, the Sopronkőhida High and Medium Security Prison, and the Tiszalök National Penitentiary Institution convicts had significantly less cellmates than in the Balassagyarmat facility.

Thus, the most important result in terms of the original research question is that the defendant's Roma ethnicity in itself does not have a statistically significant effect on the number of cellmates and the number of cell-shifts within the institution. These conditions are fundamentally determined by the institution where the defendant is detained. This is also supported by the prominently high explained

variance in relation to the number of cellmates (57%, which is considered to be very high in case of social science researches).

3.1.2. Security risk group classification

As to the question pertaining to the first security risk group classification of the detainees in their present institution, two characteristics were statistically significant.

Table 16
Security risk group classification, according to the most important statistically significant characteristics of the detainees (N, mean, standard deviation)

		Security risk group		
		N	Mean	Standard deviation
Total		370	2.95	0.40
Occupation before entering the penitentiary	Physical	234	2.92	0.41
	Intellectual	15	2.80	0.41
	Student	57	2.98	0.35
	Unemployed	49	3.10	0.43
	Sign (F-test)	0.062		
Accumulation	Accumulated with a criminal offence against life or physical integrity	100	3.02	0.32
	Not accumulated with a criminal offence against life or physical integrity	259	2.92	0.43
	Sign (F-test)	0.042		

As shown by Table 16, those detainees who were convicted for committing a robbery accumulated with some kind of a criminal offence against life or physical integrity were on average placed in a higher security risk group (3.0) than those in the case of whom robbery was not accumulated with such a criminal offence (2.9). One of the reasons behind this phenomena may be that according to the respective legal provisions the criminal offence committed (its nature and circumstances) shall also be taken into consideration when deciding on the security risk group classification,[26] and this “predestines” those committing a criminal offence against life or physical integrity to be placed in a higher security risk group.

26 Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-Trial Detention, Article 42 (2) a)

The result showing that those who were unemployed before entering the penitentiary were on average placed in a higher security risk group when first entering the penitentiary institution where the interview took place (3.1.) than those who had a job or were students, is a correspondence which is harder to explain than the one presented above. Those who had an intellectual occupation before entering the penitentiary institution received the lowest security risk group classification when entering their current penitentiary (on average: 2.8).

It may be seen that results largely revolve around 3, which is consonant with the routine that defendants entering a given penitentiary institution for the first time are almost automatically placed in the "Grade 3" security risk group[27] – taking into consideration also the legal provision setting out that "if the data and information necessary for establishing the security risk group classification are incomplete, the convict shall be placed in the Grade 3 security risk group until such data and information is acquired".[28]

At the Conference, representatives of the penitentiary system stated that when establishing the security risk group classification, they have to take into account several aspects, but it is the risk assessment what lies in the centre – thus, as far as security risk group classification is concerned, there is no place for differentiation on the basis of aspects other than risk assessment.

3.2. Disciplinary cases and rewards

Disciplinary cases and punishments, along with rewards, have a profound effect on the daily life of detainees – speaking either of solitary confinement, the increasing or decreasing the amount which they may spend on their personal needs, or of rewards entailing short-term leave or absence from the penitentiary. Besides, it shall also be taken into account that the situation of detainees regarding their disciplinary punishments and rewards may not only influence their quality of life within the institution, but may also influence the date of their release: the penitentiary judge decides on

27 In the Hungarian system, detainees may be placed in four different security risk group, "Grade 1" meaning the lowest security risk group classification, while "Grade 4" meaning the highest one.

28 Decree 6/1996. (VII. 12.) of the Minister of Justice on the Rules of Executing Imprisonment and Pre-Trial Detention, Article 42 (4)

conditional release based on the submission of the penitentiary institution,[29] and the disciplinary and reward record of the detainee forms part of this submission. On the other hand, research experiences and the Hungarian Helsinki Committee's monitoring visits show that the objective gravity of actions resulting in a disciplinary procedure varies greatly, and it largely depends on the discretion of the penitentiary staff member proceeding in the case whether a disciplinary procedure is launched, and what kind of disciplinary sanction is imposed. Besides the latter subjective element, we have encountered practices in certain penitentiary institutions determining the highest number of rewards a detainee may or "should" receive within one month or an established number of months, and of course penitentiary staff members have a rather wide scope of action in terms of granting rewards and choosing the type of reward to be granted.

Considering that based on the aspects above, bias on behalf of certain staff members towards certain groups of detainees may easily have an effect in relation to disciplinary cases and rewards, the disciplinary and reward situation of the detainees concerned and related correspondences were also examined in the course of the research.

3.2.1. Disciplinary cases and punishments

From among the questions pertaining to disciplinary cases, finally the responses provided to the following ones were assessed:

- How many disciplinary cases did the detainee have altogether in the course of his/her current detention?
- How many disciplinary cases did he/she have in the last 12 months?
- How many days did he/she spend in solitary confinement in the last 12 months?
- What kind of disciplinary punishment was imposed in the detainee's three gravest disciplinary cases?
- Was it proven in the detainee's three gravest disciplinary cases unequivocally and beyond doubt that he/she was guilty in violating the penitentiary norms?

29 Law Decree 11 of 1979 on the Execution of Punishments and Measures, Article 8 (1)

(It shall be added that at the Conference, Ferenc Kőszeg, Founding President of the Hungarian Helsinki Committee, raised further possible research topics in this regard, such as the application of disciplinary segregation – i.e. quasi “pre-trial” detention in disciplinary procedures – and security confinement, and the question whether, if necessary, disciplinary cases are followed by reporting the offence to the police, or by a criminal procedure.)

Ethnic origin, age, the qualification the detainee had before entering the penitentiary, and whether the robbery committed was accumulated with a criminal offence against life or physical integrity have significant effect on the total number of the disciplinary cases inmates had in the course of their detention.

Table 17

The number of disciplinary cases in the course of the current detention, according to the characteristics having a significant effect in this regard (N, mean, standard deviation)

		N	Number of disciplinary cases (mean)	Standard deviation
Total		370	2.94	4.44
Origin	Roma	200	3.42	5.02
	Non-Roma	150	2.53	3.74
	Sign (F-test)	0.70		
Accumulation	Accumulated with a criminal offence against life or physical integrity	101	3.97	5.31
	Not accumulated with a criminal offence against life or physical integrity	259	2.49	2.49
	Sign (F-test)	0.004		
Educational background	Maximum eight grades of primary school	273	3.28	4.90
	Vocational training	69	2.13	2.59
	Minimum high school	25	1.44	2.20
	Sign (F-test)	0.034		
Age	17–22 years old	85	3.16	4.07
	23–26 years old	81	3.81	5.18
	27–34 years old	77	3.26	5.31
	35–67 years old	83	1.51	2.41
	Sign (F-test)	0.002		

As shown by Table 17, those between 23 and 26 years of age had on the average 3.81 disciplinary cases up to the date of the interview, while those more than 35 years old had only 1.51. The higher qualification someone has, he/she has the fewer disciplinary cases (those who completed eight grades of the primary school as a maximum had 3.28 cases, while those who had a high school diploma as a minimum had only 1.44 cases). The Roma had more disciplinary cases (3.42) than the non-Roma (2.53). Those who also committed a criminal offence against life or physical integrity had more disciplinary cases (3.97) than those who did not commit such an offence (2.42).

It shows a slightly different picture if we examine the number of disciplinary cases the detainees involved in the research had in the last 12 months preceding the interview (see Table 18).

Table 18

Number of disciplinary cases in the preceding 12 months, according to the most important statistically significant characteristics of the detainees (N, mean, standard deviation)

		Number of disciplinary cases (in the preceding 12 months)		
		N	Mean	Standard deviation
Total		328	0.90	1.51
Occupation before entering the penitentiary	Physical	204	0.75	1.22
	Intellectual	13	0.54	0.97
	Student	52	1.17	1.95
	Unemployed	46	1.26	2.07
	Sign (F-test)		0.069	
Age	17–22 years old	85	1.26	1.75
	23–26 years old	81	1.06	1.62
	27–34 years old	77	0.77	1.53
	35–67 years old	83	0.42	0.73
	Sign (F-test)		0.002	

Similarly to the number of cases throughout the detention, it is also a valid statement regarding the number of disciplinary cases in the 12 months preceding the interview that the younger someone is, the more disciplinary cases he/she has, thus as the age of detainees increases, the number of their disciplinary cases decreases: while the ones under 23 years had on average 1.26 cases in the 12 months preceding the

interview, those older than 35 years had only 0.42. The employment situation the detainee was in before entering the penitentiary also has an influence on the number of disciplinary cases: detainees being unemployed before entering the penitentiary had the most disciplinary cases on average (1.26) in the preceding 12 months, while detainees with an intellectual occupation had the lowest number of cases (0.54). The other characteristics examined (ethnicity, sex, educational background, income, length of the present detention, or whether the robbery is accumulated with a criminal offence against life or physical integrity) do not influence the number of disciplinary cases.

In the course of the interview and the case file research we covered the three gravest disciplinary cases of the detainees (i.e. the ones in which the gravest disciplinary punishments were imposed on them) and recorded the punishments imposed. The analysis of the respective data showed that the age of detainees has significance in terms of the type of punishment imposed: those between 17 and 22 years of age are punished primarily (in 54%) with solitary confinement, and incur a reprimand in the second place (in 29%), while the ratio of solitary confinement is only 19% in case of those over 34 years old (see Table 19).

Table 19

Types of disciplinary punishments, divided by age, % (N)

	Reprimand	Decreasing the amount which may be spent on personal needs	Solitary confinement	Other
17–22 years old	29 (18)	8 (5)	54 (34)	9 (6)
23–26 years old	21 (14)	28 (18)	45 (29)	6 (4)
27–34 years old	39 (22)	11 (6)	44 (25)	7 (4)
35–67 years old	46 (22)	19 (9)	19 (9)	17 (8)

Accordingly, it may be stated on the whole that young detainees have more disciplinary cases, and receive stricter and graver punishments for their disciplinary actions. It should be added to this that, according to Table 20, young detainees spent on average more days in solitary confinement in the last 12 months than the older detainees: in the time period assessed, detainees younger than 23 years old spent 3.2 days in solitary confinement, while those over 35 years old spent much less time, 0.12 days there.

The inferior disciplinary situation of young detainees was touched upon both by the participants of the Conference and the focus group discussions: many were of

the view that the juveniles – e.g. because of the features of their age group – usually commit graver disciplinary offences than adults, and they commit disciplinary offences more often. (It shall be noted in this regard that even though the types of the disciplinary offences were recorded by the researchers, in the end it was not possible to assess the "gravity" of disciplinary offences in the framework of the research. Taking into account e.g. that the list of disciplinary offences varies from institution to institution and that the scope of actions covered by the certain types of disciplinary offences is quite wide and may be of quite different gravity, it would not have been enough to examine the formal classification of the disciplinary offences. Instead, the "facts of the case" regarding each disciplinary offence should have been examined and categorised which exceeded the scope of the present research.)

Table 20

Number of days spent in solitary confinement in the preceding 12 months, according to the most important statistically significant characteristics of the detainees (N, mean, standard deviation)

		Number of days spent in solitary confinement (in the preceding 12 months)		
		N	Mean	Standard deviation
Total		326	1.44	4.55
Origin	Roma	174	1.99	5.51
	Non-Roma	133	0.65	2.36
	Sign (F-test)		0.009	
Occupation before entering the peniten-tiary	Physical	204	0.84	3.22
	Intellectual	13	0.38	1.38
	Student	53	3.55	7.02
	Unemployed	43	2.07	5.97
	Sign (F-test)		0.002	
Age	17–22 years old	86	3.22	6.64
	23–26 years old	78	1.15	3.94
	27–34 years old	79	1.03	3.93
	35–67 years old	81	0.12	1.11
	Sign (F-test)		0.000	

With regard to the main research question it is an important result that even though – as shown by Table 18 – ethnic origin is not significant in relation to the number of disciplinary cases the detainees had in the preceding 12 months, ethnicity

is significant as to the days spent in solitary confinement in the preceding 12 months, since the Roma spent significantly more days in solitary confinement than the non-Roma. Thus, while the chance of launching a disciplinary procedure against a Roma defendant is not significantly different from that chance in relation to a non-Roma defendant, the punishments imposed on Roma defendants appear to be graver.

As far as the defendants' employment situation preceding their detention is concerned, it can be seen that those with an intellectual occupation spent the fewest days in solitary confinement in the last 12 months, which corresponds with the result presented earlier showing that the same group had the fewest disciplinary cases in the preceding 12 months. Further variables examined did not influence the number of days spent in solitary confinement.

In relation to the three gravest disciplinary cases of the detainees (i.e. the ones they received the strictest punishments for) the questionnaire covered the issue of the degree of proof, asking whether researchers were of the opinion that it was proven unequivocally and beyond doubt that the detainee had been guilty of violating the penitentiary norms. According to Table 21, there is a significant connection between the degree of proof and the convict's sex: researchers were of the opinion that it was proven in the case of 71% of men that they had committed the given disciplinary offence, while this ratio was only 50% in the case of women. This is the first aspect in the case of which the variable of sex has a significant effect, but at the same time it may be raised that this may be the result of the penitentiary institutions' effect, since women in the sample were detained in a "concentrated" way, in two institutions. The degree of proof showed no significant difference in relation to defendants of Roma origin.

Table 21

Assessment of the degree of proof, divided by sex, % (N)

	Proven	Unproven	Not decidable	Total
Male	71 (152)	15 (32)	14 (30)	100
Female	50 (9)	44 (8)	6 (1)	100
Total	69 (161)	17 (40)	14 (31)	100

Having regard to the research results related to cell-shifts, the impressions of researchers and the experiences gathered in the course of the Hungarian Helsinki Committee's monitoring visits to penitentiary institutions, it seemed necessary to

examine whether there is a difference between penitentiary institutions involved in the research in terms of the number of disciplinary cases and the number of days detainees spent in solitary confinement in the last 12 months preceding the interview.

Table 22

Institutions according to the number of disciplinary cases (in the preceding 12 months) and the number of days spent (in the preceding 12 months) in solitary confinement (N, mean, standard deviation)

	Number of disciplinary cases (in the preceding 12 months)			Number of days spent in solitary confinement (in the preceding 12 months)		
	N	Mean	Standard deviation	N	Mean	Standard deviation
Total	328	0.90	1.51	326	1.44	4.56
Pálhalma National Penitentiary Institution	14	1.93	1.33	14	2.86	4.69
Márianosztra High and Medium Security Prison	27	0.81	1.47	25	1.76	5.51
Kalocsa High and Medium Security Prison	30	0.67	1.06	30	0.5	2.74
Central-Transdanubian National Penitentiary Institution	14	1.36	1.01	13	1.15	2.19
Budapest High and Medium Security Prison	40	0.43	0.75	40	1.13	4.31
National Penitentiary Institution for Juveniles (Tököl)	53	1.11	1.74	53	3.74	7.3
Szombathely National Penitentiary Institution	29	0.52	0.91	29	0.00	0.00
Szeged High and Medium Security Prison	22	0.55	0.86	21	0.48	2.18
Sopronkőhida High and Medium Security Prison	30	1.17	1.72	30	0.80	2.54
Tiszalök National Penitentiary Institution	32	0.50	0.88	34	1.62	5.60
Balassagyarmat High and Medium Security Prison	37	1.43	2.58	37	0.59	2.22
Sign (F-test)	0.006			0.003		

It may be seen that institutions are a significantly determining factor as to the number of disciplinary cases and days spent in solitary confinement, in the same way as in the case of issues examined earlier, and that differences between the institutions are substantial. The number of disciplinary cases is the highest in the Pálhalma National Penitentiary Institution (on average, 1.9 cases per detainee), and it is the lowest in the Budapest High and Medium Security Prison (0.4). Detainees spent the most days in solitary confinement in the National Penitentiary Institution

for Juveniles in Tököl (3.7 days), which corresponds to the above results pertaining to the disciplinary situation of juveniles, while defendants spent the least time in solitary confinement in the Szombathely National Penitentiary Institution, where there was not even one respondent whose case file indicated that he/she has been in solitary confinement in the preceding 12 months. It shall be noted in this regard that participants of the focus group discussions also stated unequivocally that there are differences between the institutions in terms of their approach towards the violation of rules, and that the determining influence of institutions is strong (see Chapter III.2. of the present research report).

3.2.2. Rewards

With regard to the research question, the most important result related to the issue of rewards is that the number of rewards received by the detainees in the last 12 months preceding the interview was influenced significantly by the Roma origin of convicts. As shown by Table 23, the Roma received a reward 2.7 times on average in the preceding 12 months, while the non-Roma received a reward 3.2 times.

Table 23
The average number of rewards, according to ethnicity (N, mean, standard deviation)

	N	Mean	Standard deviation
Roma	167	2.7	2.12
Non-Roma	137	3.2	2.9
Total	304	2.9	2.4
Sign (F-test)		0.024	

Age and rewards, and the average number of rewards also correlate: the older the detainee is, the more probable it is that he/she received a reward (78% of those between 17 and 22 years of age, while 93% of those more than 35 years old received a reward during the one-year period preceding the interview), and the average number of rewards increases with age (see Tables 24 and 25). If we contrast the above with the results pertaining to disciplinary cases and disciplinary punishments, we can see that the disciplinary and reward situation of young detainees is worse than that of older detainees.

Table 24

Did the detainee receive a reward? – divided by age, % (N)

	Received a reward	Did not receive a reward
17–22 years old	78 (71)	22 (20)
23–26 years old	86.5 (83)	13.5 (13)
27–34 years old	91 (85)	9 (8)
35–67 years old	93 (91)	7 (7)
Total	87 (330)	13 (48)

Table 25

The average number of rewards according to age groups (N, mean, standard deviation)

	N	Mean	Standard deviation
Total	366	3.0	2.7
17–22 years old	94	2.0	1.9
23–26 years old	92	3.2	2.5
27–34 years old	88	3.5	3.1
35–67 years old	92	3.5	3.1
F-test		0.00	

In relation to rewards, the questionnaire featured the question whether the detainee received a reward entailing an absence or short-term leave. According to the results, these types of rewards were – not surprisingly – granted in a higher proportion to those inmates who had been detained for a longer period of time. Besides, numbers show that the more educated someone is, the higher his/her chance is to receive such a reward: 2% of those who completed eight grades of the primary school as a maximum, 5.5% of those who completed vocational secondary school, 10% of those who completed vocational technical school, 15.8% of those who completed high school, and 25% of those with a higher education diploma received a reward entailing a leave – see also Table 26.

Table 26

Rewards entailing a leave, divided by the time spent in the penitentiary system and the defendants' educational background, % (N)

	Received a reward entailing a leave	Did not receive a reward entailing a leave
Time spent in the penitentiary system		
0–24 months	5 (3)	95 (59)
25–32 months	2 (1)	98 (53)
33–56 months	0 (0)	100 (61)
57 months or more	11 (7)	89 (56)
Total	5 (11)	95 (229)
Educational background		
Maximum eight grades of primary school	2 (5)	98 (240)
Vocational training	6 (4)	94 (61)
Minimum high school	17 (4)	83 (19)
Total	6 (13)	94 (320)

3.2.3. The multidimensional modelling of disciplinary cases and rewards

Finally, similarly to the number of cell-shifts and cellmates, it was examined by using a multidimensional model whether the Roma origin of detainees has an effect on rewards and disciplinary procedures, i.e. on measures which are definitely not determined by the physical characteristics of and material conditions within the different institutions.

Since the respective questions pertaining to the number of rewards and disciplinary cases applied to the 12 months preceding the interview, only those defendants were examined who were held in the same institution in the 12 months preceding the interview, in order to compare responses in a fair way. (79% of the respondents were detained in the same institution in the 12 months preceding the research, which altogether means 311 persons.) The vast majority (81%) of those who in the relevant period were detained in the same institution received a reward, while every second of them (44%) had a disciplinary case.

The trends regarding the number of rewards and disciplinary cases were calculated using linear regression models (Table 27).

Below we summarize how the number of rewards and disciplinary cases is affected by the explanatory variables included in the model.

- With regard to the main research question the most important result produced by the model is that while the Roma origin significantly decreases the number of rewards, it does not substantively influence the number of disciplinary cases.
- Analysing the question by age groups, it may be stated that those between 17 and 22 years of age receive significantly less rewards than those in the oldest age group (over 35), and age decreases the number of disciplinary cases.
- Being a recidivist increases the number of disciplinary cases considerably, but neither being a first-time offender, nor accumulation (i.e. whether robbery is accumulated with a criminal offence against life or physical integrity) influences significantly the number of rewards and disciplinary cases.
- The effect of the institution is strong regarding both rewards and disciplinary cases, thus the "chances" of the detainees as to disciplinary procedures and rewards are influenced by the penitentiary institution they are detained in – which corresponds with the results of the focus group discussions. Choosing the Balassagyarmat High and Medium Security Prison as a reference category, it may be concluded that in the Márianosztra High and Medium Security Prison detainees may expect more rewards – irrespective of their age, sex, ethnic origin, and other variables pertaining to the criminal offence committed and included in the model –, while in the Kalocsa High and Medium Security Prison, the Budapest High and Medium Security Prison, the Sopronkőhida High and Medium Security Prison, the Tiszalök National Penitentiary Institution and the Pálhalma National Penitentiary Institution they have significantly less chance to receive a reward. The impact of the penitentiary institutions on disciplinary cases differs slightly less: as compared to the Balassagyarmat facility, convicts detained in the Budapest High and Medium Security Prison and in the Tiszalök National Penitentiary Institution had significantly less disciplinary cases during the 12 months preceding the interview.

Table 27

Number of rewards and disciplinary cases in the preceding 12 months (linear regression models; ordinary least squares estimation)

	Number of rewards (in the preceding 12 months)			Number of disciplinary cases (in the preceding 12 months)		
	Beta	t-test	Sign (t-test)	Beta	t-test	Sign (t-test)
Roma ethnicity as perceived by researcher (1=Roma, 0=non-Roma)	-0.137	-2.399	**0.017**	-0.034	-0.533	0.595
Age group (17–22 years old)	-0.228	-3.276	**0.001**	0.140	1.773	0.078
Age group (23–26 years old)	0.006	0.089	0.930	0.135	1.761	0.079
Age group (27–34 years old)	0.042	0.635	0.526	0.062	0.833	0.406
Accumulation with a criminal offence against life or physical integrity (1=yes, 0=no)	-0.071	-1.331	0.184	-0.068	-1.112	0.267
First-time offender (1=yes, 0=no)	0.051	0.858	0.392	0.069	1.030	0.304
Recidivist (1=yes, 0=no)	-0.026	-0.459	0.646	0.167	2.594	**0.010**
Penitentiary institution (ref: Balassagyarmat High and Medium Security Prison)						
Márianosztra High and Medium Security Prison	0.189	3.128	**0.002**	-0.060	-0.869	0.386
Kalocsa High and Medium Security Prison	-0.163	-2.631	**0.009**	-0.045	-0.642	0.522
Central-Transdanubian National Penitentiary Institution	0.103	1.756	0.080	0.049	0.731	0.465
Budapest High and Medium Security Prison	-0.294	-4.467	**0.000**	-0.162	-2.169	**0.031**
Szombathely National Penitentiary Institution	-0.062	-0.982	0.327	-0.126	-1.767	0.078
Szeged High and Medium Security Prison	-0.044	-0.749	0.455	-0.084	-1.254	0.211
Sopronkőhida High and Medium Security Prison	-0.140	-2.310	**0.022**	0.014	0.205	0.837
Tiszalök National Penitentiary Institution	-0.213	-3.494	**0.001**	-0.138	-1.988	**0.048**
Pálhalma National Penitentiary Institution	-0.146	-2.508	**0.013**	0.121	1.824	0.069
Constant		1.781	0.076	1.781	0.076	
R squared	0.265			0.135		

Note: Significant results (based on t-test) are typed in bold; the reference category for penitentiary institutions is the Balassagyarmat High and Medium Security Prison, while the reference category for age groups is the group of those more than 35 years old.

3.3. Relationship with cellmates and staff members

In the course of the interviews, detainees were asked to assess their relationship with their cellmates on a five-point scale, where 1 indicated a very bad relationship, and 5 marked that they have a very good one.

Defendants involved in the research evaluated their relationship with their cellmates at 4.1 points on average, their relationship being affected significantly by the detainees' age and their occupation before entering the penitentiary (see Table 28). The younger someone is, the better he/she perceives his/her relationship with the cellmates: those under 23 years characterised their relationship with their cellmates with 4.33 points on average, while this number was 3.95 in the case of those over 35 years. As to the occupation before entering the penitentiary: students and inmates with a former intellectual occupation have a better relationship with their cellmates (4.4 and 4.36 points, respectively) than those who had a physical occupation before entering the penitentiary (4.1 points) and than those who were unemployed (3.8 points).

Table 28

Relationship with cellmates, according to the most important statistically significant characteristics of the detainees (N, mean, standard deviation)

		Relationship with cellmates (on a scale from 1 to 5)		
		N	Mean	Standard deviation
Total		368	4.10	0.89
Age	17–22 years old	90	4.33	0.78
	23–26 years old	91	4.14	0.83
	27–34 years old	90	3.99	0.97
	35–67 years old	94	3.95	0.94
	Sign (F-test)		0.014	
Occupation before entering the penitentiary	Physical	235	4.08	0.91
	Intellectual	14	4.36	0.93
	Student	57	4.40	0.73
	Unemployed	47	3.83	0.94
	Sign (F-test)		0.007	

Further characteristics of the detainees examined (ethnic affiliation, sex, educational background, income before entering the penitentiary, length of detention, the number of occasions he/she was detained in a penitentiary institution before, and whether the robbery committed by the inmate is accumulated with a criminal offence

against life or physical integrity) do not influence the relationship with cellmates.

In the framework of the interviews, detainees were also asked about their relationship with staff members in the institution where the interview took place – similarly to the relationship with cellmates, by using a five-point scale. As Table 29 shows, the two lowest values ("very bad" and "bad") were chosen by the fewest inmates, and a significant part of the detainees involved in the research assessed their relationship with staff members as being either good or neutral.

Table 29

Relationship with the staff in the institution where the interview took place

	N	%
Total	257	100
Very bad	14	5.4
Bad	18	7.0
Neutral	81	31.5
Good	88	34.2
Very good	56	21.8

3.4. Reference to ethnicity in the penitentiary case files

As shown by the tables below, penitentiary case files refer much less frequently to the Roma origin of the defendants than the examined documents in the investigative or judicial phase of the procedure.

In the course of the case file research it was examined separately whether there was any reference to the detainee's Roma origin included in the documents related to disciplinary procedures; results are shown by Table 30.

Table 30

Reference to the detainee's Roma origin in the disciplinary case files (% and N)

Reference to Roma origin	No reference to Roma origin
1.4% (N=3)	98.6% (N=217)

In one of the cases concerned, solely witness testimonies provided by fellow inmates referred to the defendant's Roma origin, in the view of the researcher in a "reasonable, understandable, non-offensive and non-discriminatory way". In the

second case concerned the detainee himself was the one who referred to his Roma origin, and, based on the researcher's assessment, the related case files were "fair", and staff members did not refer to the defendant's Roma origin in the case files. In the third case, the following was included in the first instance disciplinary decision: "I deemed it an aggravating circumstance that (...), presumably, one of the reasons for the fight was the bashing of Gypsies". In the latter case the detainee perceived as Roma got into a fight with a cellmate, who asked him to enter his cell, and then told him that he is "Gypsy scum", a "rotten Gypsy", and that he should "rot away", and, subsequently, hit the defendant involved in the research. (Concurrently, one of the inmates stated the following in the witness testimony: "I heard that someone is bashing Gypsies.") Disciplinary punishments were imposed on both detainees involved in the fight; the citation above, pertaining to the aggravating circumstance, concerns of course the detainee provoking the fight.

Thus, as it may be seen, the number of references to Roma origin is very low in the case of disciplinary procedures, and it does not show bias in any of the cases.

Respective proportions are also low concerning the other documents emerging in the course of executing detention: as Table 31 shows, only in the case of 7% of detainees identified as Roma by the researchers did we find a reference to the detainee's Roma origin in these documents.

Table 31

Reference to the detainee's Roma origin in further documents, according to the detainee's sex and origin (% and N)

	Reference to Roma origin	No reference to Roma origin
Origin		
Roma	7% (12)	93% (154)
Non-Roma	2% (2)	98% (127)
Sex		
Male	3.5% (10)	96.5% (275)
Female	22% (4)	78% (14)

However, in these documents we may already find expressions suggesting bias. For example, in one of the institutions the following could be read in the document recording the results of the reception conversation with the defendant: "He was not convicted for a criminal offence before, but, in conformity with the tradition, he also started to form his career. (...) He worked as a pick and shovel man, of course illegally. (...) He

ended his studies after suffering through the 7th grade of primary school." In another case a note about a discussion with the defendant in the file on the detainee's education mentioned that even though the detainee's foster parents and foster family have a clean criminal record, his relatives by blood were condemned for criminal offences.

Both citations are good examples as to even though the Roma ethnicity of the detainee is not mentioned in the documents explicitly, they show it clearly that in the view of the person recording the information, committing criminal offences is a "tradition" among the Roma, and that "the tendency for committing crimes descends", i.e. the Roma have the crime "in their blood" – otherwise he/she would not have deemed it important to make a remark about the criminal record of the relatives by blood, who did not participate in the upbringing of the detainee.

The perceived Roma ethnicity had more concrete consequences in the case when a detainee with the family name Orsós (which is perceived as a typical Roma name in Hungary) wanted to attend his father's funeral, but the related police report (included in the penitentiary case file) found that the detainee's presence at the funeral is risky, stating the following: "The extensive kinsfolk of Orsós lives in Győr, and they practically support themselves by committing crimes. Family members were subject to various criminal procedures more times for violent and truculent actions. Due to the ethnic features, relatives show up at this kind of family events (funeral) in an extraordinarily large number. There is a risk of extreme fits of passion and emotional outbursts."

It may be mentioned as a curiosity that staff members of the Kalocsa High and Medium Security Prison were less "timid" in terms of referring to the ethnic affiliation in two older documents, dated 1984 and 1987, produced in connection with an earlier detention of an inmate involved in the present research. In one of the documents, the educator used the words "typical Gypsy moral" when characterising the detainee, while the other document (also a report by an educator) stated the following: "[the detainee's] moral value judgment is typical of the lumpen Gypsy population".

3.5. Bias and negative discrimination as experienced by detainees

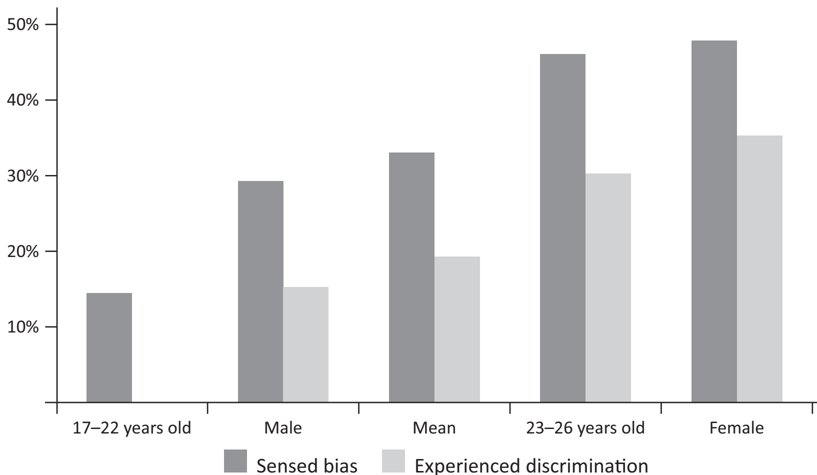
At the very end of the interview, after researchers asked detainees about their ethnicity, those who identified themselves as Roma/Gypsy were asked whether they had sensed bias from the authorities in the course of the criminal procedure or in the penitentiary system with regard to their affiliation with the Roma/Gypsy minority, and whether in their view they had been put at a disadvantage in the course of the

criminal procedure or in the penitentiary system because of their affiliation with the Roma/Gypsy minority. (When interpreting results with regard to the two questions above, it shall be taken into account that the numbers of cases are very low: approximately half of the respondents identifying themselves as Roma answered in merit to these two questions.)

Every third of those persons who identified themselves as Roma (33%) sensed bias from the authorities, and every fifth person (19%) experienced discrimination, with no relevant differences between penitentiary institutions: only convicts detained in the Kalocsa High and Medium Security Prison claimed to have experienced discrimination above the average (35%, as opposed to the average 19%). Examining those who experienced bias or discrimination as divided by their relevant social and demographical variables showed that a notable difference in the degree of bias and discrimination experienced could have been demonstrated only as far as the convicts' sex and age was concerned.

Figure 1

Ratio of bias and discrimination experienced in the course of the criminal procedure and in the penitentiary system, according to the convicts' certain age groups and sex (only from the sub-sample of those who identified themselves as Roma, among those who responded to the question in merit, N=95)



Women identifying themselves as Roma sensed bias (48%) and negative discrimination (35%) in a significantly higher proportion than men (29% and 15%, respectively). The correspondence between sex and the discrimination experienced is also statistically significant (Chi-square=0.046). While those in the youngest age group felt less than the average that authorities had been biased or had discriminated against them, this was above the average in the case of those between 23 and 26 years old, which was also a higher ratio than the bias and discrimination experienced by older detainees. The correspondence of age groups and the discrimination experienced is statistically significant (Chi-square=0.036): surprisingly, those in the youngest age group (those between 17 and 22 years old) did not experience discrimination at all, which in certain cases may also be traced back to the lack of information concerning the requirement of equal treatment and discrimination.

III. Focus group discussions with penitentiary staff members

As part of the research we held focus group discussions in three penitentiary institutions among penitentiary staff members.[30] The topics of the discussions and the three penitentiary institutions were chosen after the evaluation of the questionnaires.

1. METHODOLOGY OF THE FOCUS GROUP RESEARCH

1.1. Defining the topics of the focus groups

When determining the topics of discussion, the main objective was to widen the scope of information gained from the survey research: during the assessment we wanted to obtain insight into the personnel's views on the differences of treatment we noticed between the penitentiary institutions or between groups.

We wanted to know what the members of the staff think about the treatment of detainees. To what extent do they feel that the formal and informal tools that are currently available for handling conflicts are operable? What criteria do they consider when they use formal and informal tools? What do they think about the treatment of the different groups of detainees? What are the issues in relation to which they consider the role of the regulatory framework, the institutional culture or the attitude of the individual to be dominant? What kind of difficulties, problems do they face,

30 The development of the focus group methodology, as well as the moderation of the discussions and the assessment of the discussions were carried out by the associates of the Foresee Research Group.

and what are their proposals to address these? How do they see their own working conditions, the appreciation of their work and the indicators used for its assessment?

Hereinafter the results of the discussions will be presented on the basis of these questions, and conclusions will be drawn about which conditions support and which hinder the realisation of equal treatment in penitentiary institutions.

1.2. Selection of institutions

Based on the results of the survey, we can conclude that institutions have a significant influence on the issues researched. Therefore, in selecting the three penitentiary institutions that participated in this stage of the research, we tried to choose institutions which produced different results in respect of the main questions examined (the frequency and type of disciplinary punishments and rewards, and the circumstances of cell placement) in order to acquire information about the background of these various practices, the reasons behind the decisions, considerations and circumstances from the staff's point of view.

A further consideration was to choose institutions in which the ratio of Roma detainees was comparable according to the data from the research.[31] Since, on the basis of the assessment of the questionnaires, it turned out that other factors, such as age and sex influence the number of cellmates, cell-shifts and the trends in disciplinary sanctions and rewards, during the selection we paid attention to involve staff members who deal with juveniles, men and women. The goal was to get a picture of how the educators and the guards see the effects of age or sex on the questions examined. In addition, we also tried to select similar-sized institutions: the three institutions involved have the capacity of 800 to 1,200 inmates.

31 The survey employed a variety of measuring instruments to estimate the ratio of Roma detainees, however it considered the researchers' perception decisive in categorising respondents as Roma or non-Roma, and in determining the ratio of Roma detainees in the individual institutions.

1.3. The participants of the focus group

During the participant selection process we considered the following questions: which members of personnel serve on the blocks, who has daily contacts with the detainees and has relevant experience regarding the questions examined in the research, and who participates in and has influence on the processes and decisions concerning disciplinary actions, rewards, cell-shifts. We decided on the basis of these criteria to ask educators and guards to participate in the discussions.

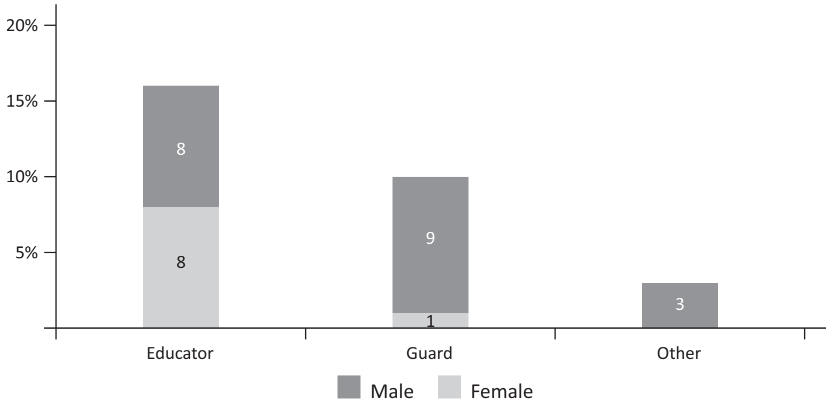
The advantage of a focus group discussion is that the interaction of opinions can be examined as well. This methodology allows us to compare the different opinions to one another. Besides the practical aspects (i.e. that we had the opportunity to organize one group in one institution), this is why we decided to talk to mixed groups of educators and guards – this way the opinions of the two groups (working together closely, but placing different emphasis on security and educational goals) could be formulated together. In the course of the analysis, when there is a clear disagreement or dispute between the two groups, we highlight whether the opinion described is that of the educators or the guards only.

In the anonymous and voluntary discussions carried out with the permission of the National Penitentiary Headquarters and the warden of the institutions, we asked about the age of the participants, the time they had spent in the prison service and the ranks. Figures 2 to 4 summarise the characteristics of the educators and guards participating in the groups according to these three aspects. From Figure 3 it can be seen that we talked to members of staff who were typically experienced, having spent at least five years in the prison service.

There was no audio recording of the discussions; we recorded in writing what was said at the premises. When presenting the results, we indicate exact quotations between quotation marks, while the parts *typed in cursive* also reflect what was said by the participants according to the hand-written records, but are not word-to-word quotations.

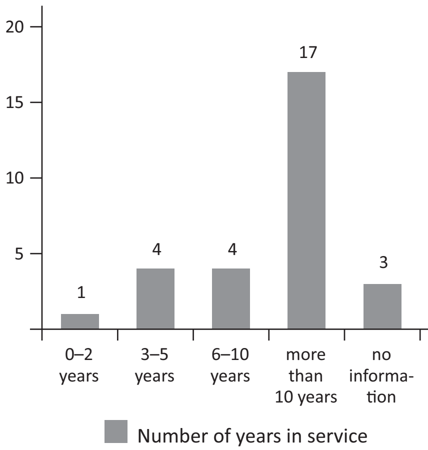
Figure 2

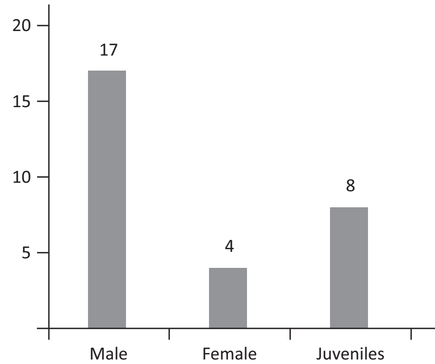
The composition of the focus group participants from a sex perspective[32]



Figures 3–4

Additional characteristics of the focus group participants





32 The "other" category includes the following: deputy head of department, assistant social worker, employee working in an administrative field.

2. THE RESULTS OF THE FOCUS GROUP DISCUSSIONS

2.1. The treatment of detainees

2.1.1. General opinions regarding the treatment of detainees

Participants tell us in relation to the characteristics of the detainee groups that an experienced educator can assess already at the reception what the detainee's attitude is toward the staff and where he/she is likely to end up in the prison hierarchy:

> *It can be known from the way the detainee walks in and from his posture if he/she has spent time somewhere else, or is a newcomer. For example, if he/she comes in with his head hung down or trying to disappear in the group. "You know within a couple of minutes who will become what in there."*

Due to the high number of detainees within the educational groups and the administrative burden that comes with it first impressions are significant. It is more and more difficult for educators to provide individualised treatment. They are forced to form a view of the inmate and make a decision about the cell placement based on their past experience, some circumstances and the basic impression:

> *There is no time to get to know the detainees, "there are routine conversations". If 30 detainees come per day, then there is no time to get acquainted with them.*
>
> *If the members of the staff had more time, they could get to know the detainees better, they would be able to help them more. If educators were responsible for 40-50 people, then they would able to do more.*

The staff members "*pigeonhole*" detainees during the discussions. From among the different types they call special attention to "victim-type" detainees *("God forbid, girlish-looking")*, who require extra attention during the cell placement. They also stress the *snitches,* who on the one hand are "*the most dangerous for the group*", but on the other hand, with their help the educators can gain insight into the cell communities, but the information given by them needs to be dealt with reservations. They mention the "professor-type" detainees who stand out among the inmates due to their education and intellect. Such prisoners often remain in the background, but help other inmates (e.g. by writing letters), in exchange for being left alone. Several

people share the opinion that the detainees can be divided into two fundamentally different groups based on their goals: those who build their career in prison and those whose goal is to get out. Many participants believe that lately the inmates have become more reserved and less predictable.

> *There used to be an "honour among thieves", "if the detainee was caught red handed" (i.e. got caught for a disciplinary offense), then he/she confessed. Now it does not happen any more, "the moral is different". They note that in the inmate hierarchy "those who stay in the background" are the ones who vindicate their interests the best.*
>
> *The one with the muscle is no longer the cool one. Anyone who plays the cool is actually not cool anymore; the real cool stays in the background nowadays. The level of education, the intellect, and the brain have become important.*

The lack of time for individual treatment may also have a role in the fact that both the educators and the guards evaluate the detainees' behaviour less predictable, and they feel that the attitude towards the personnel has changed among the inmates. Others argue that the detainees' mental state is worse than it used to be, and there is less time and fewer professional specialists for the inmates who are more and more difficult to treat:

> *4-500 detainees have psychiatric problems – it was not like that before. There are many psychiatric patients in the healing-treating department. This is becoming "the outpatient consulting hours of the Forensic and Observation Psychiatric Institute". There are 60 convicts like this per block, but there are such detainees among the pre-trial detainees and also among those who are awaiting their second instance decision.*
>
> *Something should be done to the psychiatric cases. There is neither monitoring, nor psychiatric follow-up.*

In their opinion, the fact that educators have to deal with inmates with mental and psychological problems is not only a characteristic of the special blocks. In addition, at this rate of overcrowding it is difficult to treat heterogeneity:

> *There are illiterate and university-educated inmates, and educators are supposed to hold group sessions for them.*

They note that those prisoners are easier to work with who have stronger external relations with their families: *"The family can pull back the detainee."* In other words it helps even *"inside"* if someone is waiting for them at home. Some of them highlight certain groups of detainees, who are more difficult to work with: these are the juveniles – who according to participants grow up among more and more difficult circumstances – and those *who have nothing to lose* – e.g. when the possibility of parole is excluded, or they are sentenced to actual life imprisonment.

In connection with the treatment of different groups, the general opinion is that in proper working conditions it does not matter if the detainee is easy or difficult to handle. It is a part of the educators' and guards' job to be able to handle all types of prisoners. However they note that the differences in the personal attitudes of the staff members play a role in the treatment and in the usage of different methods, yet their importance is secondary considering the systemic problems.

> *The detainees ask who is on duty, and if it is a certain educator than the reaction is: "I'll come tomorrow."*
>
> *"There are the manageable and the more manageable detainees."*
>
> *It doesn't depend on the detainee how he/she is treated.*

In connection with the general attitude toward the detainees, the staff members emphasise the following aspects: the educator and the guard should be consistent – this way the detainee will be able to trust them –, they should set an example, be humane, empathetic, and well-groomed. A lot of patience and composure is needed. Communication with the detainees and with the colleagues is considered important as well – if there is no communication between the colleagues then "*the whole thing goes to blazes*".

2.1.2. The impact of working conditions on the treatment of detainees

In relation to the treatment of detainees, they regard the human and material resources of the penitentiary institutions as the most dominant and problematic. In this context they highlight the growing number of detainees and the low number of staff members, as well as the increasing administrative responsibilities, which cannot always be fulfilled effectively *("they see more of the hourglass" on the computer than of the detainees* – as a reference to the new Phoenix computer system). They draw atten-

tion to the connection between the treatment and the systemic problems, the latter in their opinion influence the quality and the changes in the nature of educational work fundamentally: some educational tasks are performed by the guards, what used to be the social administrative worker's responsibility is now usually done by the educator. There is no way of getting to know the inmates and personalising the treatment:

> *The educator and the guard often "switch places". There is no one who would talk to the detainees, only the guards.*
>
> *"A good guard could be equal to an educator." He/she is the one who is on the block 12 hours a day. Inmates often prefer to turn to him/her for help.*
>
> *There is a problem with the number of personnel and the workload.*
>
> *"Nowadays the educator does not educate, but does the administrative work instead."*
>
> *The administrative burden is excessive. They have time only for the most necessary tasks, it is "a disastrous situation" in this regard, the work of the educator cannot be properly done this way.*

2.1.3. Treatment of different detainee groups

In general the participants consider it to be important to note with regard to detainee groups that are difficult to handle, that there are no differentiated means of solving the problems arising with regard to them. They are often required to perform tasks that would require special and professional expertise. In connection with this they feel that they are not provided with help either within the penitentiary institution or by the partner professions:

> *The members of the staff are not therapists; they were not trained for e.g. how to treat a detainee with personality disorder. How could the state think that the staff members are able to solve this task? There is a similar problem with the paedophiles and with the sexual offenders.*
>
> *Probation services should get involved.*

The result of the questionnaire survey is consistent with the fact that age is an aspect that is mentioned in connection with detainee treatment. Working with

juveniles is considered more difficult by the personnel of both adult and juvenile institutions. Those who work with adult detainees emphasise that young inmates are easier to manage in an adult environment than in a juvenile facility:

> *In the adult penitentiary institutions the detainee's usual strategies used among juveniles do not work anymore, e.g. because there are more experienced detainees. The detainees transferred to the adult institution couldn't get a grip on the older ones, and "they can totally chill out".*
>
> *Inmates are differentiated by age. The twenty-year-old, "who socialised in today's fast-paced-world", is harder to control than the older ones.*
>
> *Juveniles are very different, they cannot do anything with their energies, they reduce their tension on each other, and hierarchy between the detainees is very important to them. There are a lot of disciplinary cases in juvenile penitentiary institutions, and they also commit more offenses.*

In connection with the treatment of male and female detainees they argue that women are more sensitive and it is harder for them to tolerate prison and the separation from the family. They also require a more sensitive treatment accordingly: *for example "they will make a scene" if you tell them to get in line*. The advantage of this sensitivity is that they show their problems more often and more openly, so it turns out sooner if there is a conflict in the cell. *Men seem to be more introverted. They don't show as much, but then "the problem blows up".*

In connection with the detainees, the issue of Roma origin mostly turned up in an indirect way during the discussions, but in two conversations it was brought up directly. On the first occasion, after the participants raised the subject, we started to ask them about the work with the Roma prisoners directly, however, during the other two discussions we did not ask the participants openly about the topic. The reason behind this was that on the first occasion the open questions resulted largely in resistance and "panel answers". We were also interested whether and how the Roma issue appears organically in the discussions of educators and guards. The experiences of the conversations prove that if the issue is handled indirectly, the participants feel safer to talk. In our opinion, since the topic came up as a part of their own narrative and perspective, we could get a more objective picture about the educators' and the guards' interpretations formulated in relation to Roma detainees, and about how it may play a role in the daily work.

The results of the discussions demonstrate that the Roma issue is a sensitive and divisive topic among the educators and guards. There is a wide range of opinions about Roma detainees. At one end of the spectrum there are those who connect the social disadvantages, the environment of extreme poverty to the Roma – this is the most common opinion. They associate the other problems with the social environment connected to Roma ethnicity:

> *The detainee comes from a "society" where "there is no flush toilet; he doesn't know what that is".*
>
> *"He/she is excluded [from the community] because he/she works." The subsidy is the goal. They settle in to receive the support and they steal.*

Others emphasise the role of family patterns in relation to the Roma:

> *"The family traditions are hard to change. No need to discriminate, these are facts."*

In this context a number of the participants use phrases like "Gypsy culture" and "Gypsy mentality". Some of them link chaos and the lack of civilisation to these:

> *"I am getting dull in here. Only curse words and Gypsy words come to my mind at home.'*

In the more extreme phrasing of those who perceive the Roma as a culturally different group, criminal career is interpreted as a feature strongly connected to Gypsy socialisation:

> *"There is a family motivation, to put it mildly." Criminality is the norm, a career.*
>
> *In Roma families, prison is a family "expectation".*
>
> *Being in prison for them is what the military used to be: he becomes a man after he spent time in there. The family members write this down in letters, it is said during telephone conversations.*

However, there is no consensus about the latter, even a debate develops in this context during one of the discussions: one of the participants says that in Roma families it is an expectation to experience prison, while his colleague suggests that

this is not a specific Roma characteristic, it can be said about a non-Roma juvenile as well whose parents have never worked.

At the other end of the opinion scale stronger phrasings concerning Roma detainees appear. These appear when we ask about this issue directly, and they answer with a provocative response to the perceived provocation.

> *"I don't understand why we can't call them Gypsies."*
>
> *"If the detainee says to the guard that you fucking dog, then of course nothing happens, but if I call him a »dirty Gypsy«, then it will be a case."*

These extreme formulations, however, are not typical. It can be said – in line with the findings of the questionnaire survey – that much more emphasis is placed on the circumstances and the difficulties related to the detainees and the detention conditions, and these appear to have much more impact on the issue of equal treatment.

The finding that – compared to the detainees' self-definition and to the researchers' estimation – the participants highly overestimate the ratio of Roma detainees among the prison population coincides with the conclusions of László Huszár's earlier study. This serves in the participants' narratives as an indirect proof of equal treatment, in the sense that in their view with a such high proportion of Roma in the prison system, the question of discrimination does not even arise: "*we work with Gypsies in 90%"*.

Besides the attitude towards the Roma detainees the other sensitive topic of conversation was sexual orientation, homosexuality (*"I would say it, but I won't").* We experienced different attitudes from the members of the staff towards this question. Some people describe the LGBTQ detainees as a group that is difficult to treat, the members of which need to be protected and differentiated, since they are not always accepted by the prison society. Steps taken for the protection of LGBTQ detainees were mentioned, for example that it is considered at the time of cell placement, because they have to be placed with inmates who accept them. Then again some formulations suggest that the educators and the guards may not always relate to this group neutrally. The negative attitude can sometimes manifest in highly offensive phrasing. Several times LGBTQ detainees were mentioned together with paedophile prisoners. This may be due to the fact that both parties are seen as groups that need protection, however, this obligation to protect such groups was at times mentioned in a negative context:

The "problematic" criminals used to know their place. The paedophiles, the homosexuals used to lay low. Now "they use their crimes" – they calculate on being protected by the staff.

They justify this opinion by the fact that some detainees take advantage of the special treatment and the protection.

2.2. The handling of problems and conflicts

2.2.1. The detainees' formal and informal strategies for enforcing their interests

The general finding related to conflicts and disciplinary offences is that there are more conflicts and disciplinary actions in medium security prison blocks. One of the consequences of this situation is that there are detainees who do not aim to change the security grade of their sentence, they "like the high security prison" – the high security prison blocks are considered more manageable by the staff as well. In addition, among the non-workers there are much more conflicts – during work the detainees are less tense, or there is a way to "let out the steam" outside of the cell. Many participants think that creating new workplaces would solve a lot of problems with the detainees, and it would make the prison system much more bearable for the inmates:

It can happen that there is no problem in a cell with 16 working people, but a cell with 4 "bored" people is problematic.

The working and the non-working detainees are "as different as chalk and cheese".

It depends on the block: there is no problem among the working inmates, but among non-working detainees a conflict can break out if one of them says that "the other inmate's feet is smelly".

Many people share the opinion that juveniles are more likely to commit violent disciplinary offences – this is consistent with the result of this research, which shows that juveniles have more disciplinary cases, and it can explain why they spend more time in solitary confinement:

Juveniles don't think twice; they don't see the consequences of their actions. In their case, acts committed against each another are frequent.

There are inmates – typically educated imprisoned for certain types of crimes – who are considered to be better at asserting their interests, and who must be approached in another way:

For example, a white-collar criminal contemplates his/her moves, but they probably should pay even more attention to him/her, since he/she can manipulate the other detainees skilfully, and what is more, even the guard.

A wide range of detainees' strategies are mentioned. A mild form of enforcing their interests is that they try to act upon the educators' humanity, *"attempting to trigger sympathy*". Another method is the denial of work or other activities. It is considered to be important for detainees to have in-depth knowledge of the formal rules and protocols of the institutions, and to use them for their own interests. Causing damage and self-harming are also mentioned.

They say they are sick, they have diarrhoea; they damage their shoes so that they don't have to work, etc.

They say they want to change cells because of their rivals, while the real reason is that in the other cell they could obtain cigarettes.

"The detainee is mangy. But why is he/she mangy? Because he/she doesn't bathe."

Sometimes, if he sees that the guard's superior is there the detainee doesn't go through the detector gate to show that he isn't used to passing through the gate, so that he would get the guard in trouble out of revenge, because he didn't let him go to the other cell for a lighter.

"Am I the one who damages the sponge? Am I the one who pisses on the wall of the toilet?" Cutting one's wrist and swallowing different objects are also means to achieve certain aims.

These methods are well-known among the members of the staff, and in most cases they are able to handle them. They mention situations that are more difficult to handle, when the staff member knows that the real conflict is different from what is "officially seen". However they are bound to act in a formal way. In these situations

they feel inadequate and they think that these situations weaken their authority over the detainees:

> *Sometimes they "cut their wrists as a group" in order to get out to the Forensic and Observation Psychiatric Institute to get tobacco there. In these cases the staff of the prison can't consider not to move them there, even if the situation is clear.*
>
> *If they find a mobile phone and somebody takes responsibility for it – because that is the decision of the cell community or because he has nothing to lose – than he should be sanctioned. Even if the educator knows that the phone probably belongs to another detainee, he can't do anything.*

Other inmate strategies that are difficult to deal with are extortion and threats – these are considered the most extreme forms of enforcing interests. This also happens depending on how far the detainee thinks he/she can go.

Evaluating the detainees' assertive strategies participants state that they find the recent changes in the legal provisions fortunate for the detainees and unfavourable for the personnel: the rules (meaning the regulatory environment and instructions regarding the staff and the detainees) provide the detainees with a greater manoeuvring space for asserting their interests, which possibility is often misused according to the participants. They mention the false accusation of staff members as the most prominent tool which has recently appeared among the strategies of detainees. Even if they are acquitted of the charges, the sense of stigmatisation caused by going to the prosecutor's office remains, and the time and energy invested into the procedure is not repaid. They think this can be attributed to the changes in the legal environment (although few legislative amendments have actually taken place recently in connection with the issue). It may rather be a result of institutional regulatory changes, and the fact that these strategies (which have always been there) are now being used more often by the detainees.

In relation to such accusations, the participants experience mistrust from the judiciary, for instance. They feel that even the laws do not protect them: "*it is the legal system's fault*" that the guards have to prove that what the detainee says did not happen; "*presumption of innocence*" does not apply to them. In connection with this, they note that the interests of detainees are at least protected by civil society organisations. They illustrate the degree of abuse and the vulnerability of personnel

by referring to the fact that detainees with "better morals" protect the members of the staff and they are the ones who go to testify for them.

They mention one aspect of the assertion of detainees' interests that helps the educators' and guards' work: detainees solve the smaller conflicts among each other.

> *The educator often only notices the situation when the detainees cannot solve the matter within the cell.*
>
> *There is always a prisoner in the cell, who they acknowledge, from whom they accept a decision, because e.g. he is older or more experienced.*

2.2.2. The staff's formal means

With regard to the formal means (i.e. disciplinary sanctions, rewards) the general opinion is that they are not sufficient and they cannot be used properly to achieve the educational and safety goals. One reason for this is the growing number of detainees, the increasing rigidity and dysfunctional nature of administrative duties, which hinder the performance of the tasks and the effective use of the available means, while the personnel remain the same: the "*real work*" loses importance vis a vis administration. There is little time to spend on detainees and the administrative burden also encourages them to use the informal instruments when there is an opportunity for discretion.

2.2.2.1. Aspects of the disciplinary procedure

Regarding the initiation of disciplinary procedures, the participants of the focus group regard the legal norms as greatly decisive, and they feel they do not have much latitude in this regard:

> *There are cases when they have to initiate the disciplinary procedure. "We do not have much discretionary power." If someone refuses to work because of an illness, they do not have discretionary power. The medical examination will determine if he/she denied it for the right reason or he/she shall receive a punishment. It is also required to initiate a disciplinary procedure if damages are caused intentionally.*

Nevertheless there are many cases when the disciplinary procedure launched does not result in punishment. They also stress that the educators and the guards

usually only have discretion when they initiate the disciplinary procedure, they do not have great control over the sanction. In connection with the frequency of the procedures and the punishments they mention the role of the features of the given penitentiary institution (cell size, security degree of imprisonment, the openness of the regime, proportion of the working detainees, etc.) and the institutional culture – regarding the latter, they consider the warden's role decisive:

> *In this institution the cells hold a large number of people and the regime is open. In contrast, in a penitentiary, where there are 3-4 people in a cell, there are fewer conflicts – resulting in less punishment.*
>
> *"There are huge differences between the institutions." They can see that. This is determined by the warden.*
>
> *What triggers a disciplinary case in one institution, may not do so in another one.*

In their opinion, when an external intervention by the prosecution takes place in relation to issues concerning the education of inmates (education meaning the activities aimed at reintegration), the decisions usually do not enhance the educational purpose; they rather reduce the educator's manoeuvring space:

> *It happened that an educator had not issued a permit for using the gym to a detainee because he wanted to influence the detainee through that – the next day the prosecutor called upon him to issue the permit.*

Some of them stress that for certain detainee groups the available tools are not effective. These groups include those who are excluded from advantages, certain inmates sentenced for a long time, those who are sentenced for life imprisonment, addicts – such inmates can often not be motivated by the threat of punishment. According to the participants, these are the groups the members of which have "nothing to lose" – these are the cases in which the staff is the most powerless.

> *"Fullers" [who cannot be released into parole] are not affected by punishments and there are inmates who are happy to go to solitary confinement – with the present rate of overcrowding it is a chance to be alone. Sometimes it is not possible to impose solitary confinement on the detainee because of his/her mental state. Other prospects of discipline are not efficient either.*

If staff members are in the position to decide whether or not to start a disciplinary proceeding, they usually consider the aspects shown in Table 32 below.

Table 32

Aspects of starting a disciplinary procedure

Previous formal disciplinary record	*Did he/she have a disciplinary case before?*
Previous informal disciplinary record	*If no disciplinary punishment was imposed on him/her but he/she manipulates other inmates from the background and always escapes punishment by a thread, it is an aggravating condition.*
Circumstances of the disciplinary offence	*If the denial of instructions takes place in front of eyewitnesses, it is also an aggravating condition.*
The detainee's reaction to the disciplinary offence	*If the detainee confesses to the offence the punishment can be milder.*
External conditions that affected the detainee (e.g. family situation, events, news)	*If the detainee received a letter that made him upset, they take this fact into account.*

Individualised discretion is important in disciplinary proceedings. By this they mean the detainee's personality, his/her penitentiary history, actual situation and also the circumstances of the disciplinary act. Some mention that the personal attitude of the educator is decisive in the assessment of disciplinary offences. It is important to emphasise that this does not mean sympathy; personal sympathies should not play any role. If someone is rigorous then he/she is consistent.

The same violation may be sanctioned with 10 days of solitary confinement for one inmate and 30 days for another. "We are working with people, not with machines."

Everybody uses sanctions differently depending on their personality and the composition of the inmates.

A good educator uses the same principles, no matter where he/she is placed.

The exercise of disciplinary rights may not be a question of personal sympathies.

"Emotions cannot be involved." Personal sympathy and dislike have to be excluded.

Most of them think that the factors taken into consideration when a disciplinary decision is made are uniformed within the prison system and similar in every institution:

> *It works the same way in every institution, the problems and the reactions are similar. They know that, since they talk to each other, and they see it on the computer [i.e. in the unified electronic data base of the penitentiary system].*

This stance is in contradiction with the finding that opinions about what should be considered as a serious disciplinary offence can differ even within one institution. Some draw the line at abuse or coercion committed against a fellow inmate, but others find the denial of instructions already a serious disciplinary offence.

2.2.2.2. Aspects of granting rewards

Some say that the range of motivating tools as regulated by the relevant norms has become narrower. They think that earlier, certain tools could be used as motivating methods in the work with detainees, but these have become services that are to be provided to detainees: detainees *"now have the right to a number of things, which was earlier granted on a discretionary basis"*, e.g. pre-trial detainees may currently have visitors twice a month. It is stated that "*detainees barely have any obligations any more"* – the latter opinion might be based on changes in local norms (house rules) or "informal" protocols, as there are only a few issues regarding discipline and rewarding with regard to which there have been changes on statutory level recently.

In relation to decisions on rewards, a few radical remarks are made, such as *"rewarding was not included in my studies"* or that "*breakfast, lunch and dinner"* are the reward for detainees. However, in general, they consider rewards an important motivating factor, since on the one hand *"they should give detainees hope"*, and, on the other hand, rewards have an important role in facilitating the earlier release of detainees, which in the view of the educators is also in the interest of the penitentiary staff: *"if we do not grant them rewards, everybody will stay here"*. Discussions show that participants deem rewards a more differentiated means of having an impact on detainees than disciplinary punishments. In their view, the range of rewards which may be granted is wide enough. They regard it as a typical approach of detainees that they think that following the rules alone makes them eligible for a reward – which is a view staff members do not agree with. It is an important aspect in relation to reward decisions that the detainee should make efforts and strive to excel in order to get a reward.

Some emphasise that *"educators are at the end of the line"* when it comes to granting rewards, since they often only receive the proposal for granting a reward, because detainees acquire a lot of rewards at their workplace, at events and at programs. If

no special circumstance (e.g. an ongoing disciplinary procedure) prevails, educators approve the reward. Others are of the view that educators have an important discretionary power in deciding about rewards: the educator is the one who knows which type of a reward is really motivating for a given detainee. The educator is the one choosing the reward to be granted, in order that *"the reward is a real reward [for the detainee]"*. In rewarding, individualised decision-making is especially important: *it shall be decided on an individual basis which type of reward suits a given detainee.* There are certain, "privileged" types of rewards – such as deleting a disciplinary punishment from the detainee's record –, which are applied by some of the staff members only if they know the detainee very well. Regarding the latter, a local, informal protocol is applied in one of the institutions: they delete disciplinary punishments only if the detainee has been in the institution for at least one year.

With regard to the unequal chances in terms of getting rewards, the disadvantageous situation of non-working detainees is emphasised, who have disproportionately less chance to get a reward. Staff members try to counterbalance the above gap in the regulation by using tools available for educators, try to control rewards proposed by employers, and to grant rewards to non-working detainees for other kinds of activities (e.g. for taking up the task of being responsible for a given cell, or for cleaning up):

> *The employer proposed too many rewards. This put in a disadvantageous situation the detainees who were not working (not because of a fault of their own). So they told the employer that this is a stretch. They concluded an internal agreement with the employer that the latter submits proposals for rewards every three months.*

With regard to inequality in granting rewards, participants also highlight the differences between the various types of institutions: pre-trial detainees are not really able to acquire rewards since e.g. they are not allowed to work and may not participate in community programs. They deem it as an important responsibility to reach decisions after careful consideration and to equate the chances for a reward of disadvantaged groups. Their reason for the latter is that rewards are a determining factor with regard to judicial parole decisions. The penitentiary judge only sees the number of rewards received by the detainee when deciding on the parole, and does not see the underlying reasons. It also depends on the individual attitude of the judge how rewards are assessed:

> *There are judges who take into account only the number of rewards. This is why it is important for staff members to have internal constraints when granting rewards.*

Participants also mention the problems related to rewards entailing an absence or a short-term leave, which are on the top of the hierarchy of rewards. Even though educators may only make a proposal for granting such a reward – as deciding on this type of reward does not fall under the educator's competence –, they emphasise that if they do so, and the reward is not granted, it also comes down hard on them. It often happens that the report on the detainees' home environment (which is not prepared by the penitentiary staff) gives a negative picture of the detainee, and neither the parole officer involved, nor the warden of the penitentiary regards the leave of the detainee as secure:

> *"What comes back to us in the report on the home environment is often outrageous": e.g. the detainee provided a false address; there was only a ruined house under the address provided; those in his/her environment back home did not think at all that he/she should be allowed to go home; the leave was not supported by the police, but without any reasoning attached, etc.*

In these cases they feel that the detainee is responsible for the failure. They feel that it was the detainee who gave them a false impression or abused their goodwill: *"the whole thing is a mere scam by the detainee". They know if they are not welcome back home*. In order to support the latter statements they recall cases when a short-term leave was granted, but it was a failure (the detainee got drunk or beat up his wife). They believe that failures do not influence their positive approach towards other detainees:

> *The detainee who was allowed to go home may be used to set a good example for the others. "We wrap this kind of detainee in gold."*

The two other correspondences showed by the research results, i.e. the positive correspondence between age and rewards and the negative one between Roma origin and rewards do not appear in the discussions. However, critical remarks are made with regard to juvenile detainees, which may lead to the conclusion that younger detainees comply with the formal requirements for rewards or with the indirect

requirements of educators to a lesser extent; they participate less often in activities which would make them eligible for rewards, or strive less to receive a reward:

"They are not interested in the programs organised for them, they are lazy."

The "little devils" do not want to watch movies or play football after a while, "even though they did not even know back home what a cinema is".

2.2.2.3. The relationship between disciplinary sanctions and rewards

Participants link reward processes and decisions to disciplinary procedures only in the case of an ongoing disciplinary procedure. In general, they try to render these two tools independent and to deal with them separately. Even if a detainee commits a disciplinary offence, a reward may mean important motivation for him/her:

"The detainee may be a snide, but if he plays the guitar very well", then he will be rewarded by the educator for the latter.

The separation of granting rewards and imposing disciplinary sanctions also applies the other way round:

"Only because a detainee has many rewards, he/she should not be loved more" – it is possible that he/she will commit a disciplinary offence tomorrow, perhaps even because he/she wants to live up to the other detainees' expectations.

2.2.2.4. Institutional determination of disciplinary cases and rewards

In accordance with the research results, we experienced significant differences regarding both the disciplinary and the rewarding practices of the three institutions. Participants are of the view that the role of institutional features and circumstances and that of institutional culture is important in terms of applying formal tools. They explain differences between institutions as to the frequency of launching disciplinary cases with the following reasons, included in Table 33 (certain circumstances are related to each other).

Table 33

Circumstances affecting the frequency of disciplinary procedures

Composition of detainees institution for pre-trial detainees or for detainees serving a sentence institution for juveniles or for adults high or medium security prison	*The remand houses and serving prisons are different: "in pre-trial detention [inmates] think [about their situation] much more, they are more nervous", they do not know what they may expect.* *There are plenty of disciplinary cases in the institutions detaining juveniles, and they also commit more offences.*
The degree of differentiation within the penitentiary in terms of regimes – and in correlation with that the degree of differentiation in terms of detainees; closed or open regime	*There are more conflicts in institutions where cells accommodate a large number of detainees and the regime is open than in a high security prison with cells accommodating three-four persons.* *County penitentiaries [where pre-trial detainees are accommodated] select detainees whose judgment becomes final and are not problematic and provide them with work so they may remain in the given penitentiary, while other detainees, who are problematic and receive a final judgment are "sent" to Budapest immediately.* *In some of the institutions detainees may move freely between buildings, in a less controlled way. In these places there are more possibilities for a conflict.*
Size of cells	*There are more conflicts in the cells accommodating a larger number of detainees, especially under the current overcrowding rate.*
Size of educational groups (burdens of the staff)	*Where one staff member has to deal with 150-200 persons, there are more disciplinary cases.*
Proportion of working detainees	*There are fewer conflicts and more rewards are granted in institutions where the number of working inmates is high.* *An institution in the countryside, where two-thirds of the detainees work, and the usual length of imprisonment is 4-5 years is different from this institution, where most inmates serve 10-12 years.* *When leaving for the workplace and when coming back from work, a lot of detainees are moved around – this is a source of conflict; enemies are separated in vain since they run into each other anyway.*
The warden's attitude, and the related institutional culture	*Detainees receive different punishment for a given offence in different institutions.* *It may be a disciplinary offence if the inmate "said hello to somebody" or "wore a white shirt". It is possible that for this type of offence a detainee is not punished in one institution, while the same action is followed by a disciplinary punishment in the other.*

Staff members sense an even stronger institutional determination in the case of rewards than in relation to disciplinary punishments:

> *This is regulated at an institutional level. There are institutions where rewards may be granted once a month, and there are institutions where rewards may be granted twice a month. The latter is considered excessive by staff members in one of the institutions – they are of the view that while granting rewards twice a month is expected by the warden of the other penitentiary, the expectations are different in their own institution.*
>
> *In one of the institutions staff members state that there is a regulated method, a uniform system in this regard in their penitentiary: they shall decide on proposals for granting rewards after a set day of each month.*

Participants within the individual institutions usually agree on how frequently it is reasonable to grant rewards, but there are significant differences between the three institutions: in one of them, staff members deem it expedient to grant rewards every month, while in another rewards are granted every three months *("the detainee should work to deserve it").* Participants touch upon differences between institutions in two facilities out of the three. Both the large differences in practices mentioned in the course of the three discussions and the opinions of staff members with respect to these differences substantiate the strong institutional determination of decisions related to granting rewards. One of the reasons behind this may be the different circumstances in the different institutions (institution accommodating pre-trial detainees or those serving a sentence, proportion of working detainees, number of programs/trainings), the other the institutional culture determined (also) by the warden of the penitentiary. It is important to note that staff members do not consider strong institutional determination favourable. They propose that unified protocols pertaining to disciplinary punishments and rewards should be developed.

2.2.3. The staff's informal means

Participants were of the view in all of the three institutions that in case there is a conflict with the detainees, informal and indirect tools are more efficient and they are also used more often than official disciplinary tools. They explain this partly with positive reasons – the efficiency of informal educational practices –, and partly

with negative reasons: the administrative burden connected to the use of disciplinary tools also increases the working hours during which they do not deal with detainees directly:

> *Applying disciplinary measures entails a lot of administration.*
>
> *He could issue 20 disciplinary reports a day [in the view of the other participants, even more], but sometimes he rather "sends [the detainee] down to the yard to collect cigarette butts", which may be even worse for the detainee, since the others will "consider him/her a bat".*

In relation to the above, some participants note that even though informal means may be more useful in the work with detainees, but the demands of their superiors do not correspond with this, since superiors require them to use formal tools and their work is assessed on the basis of the latter. This raises the question whether tools available and included in the legal provisions are differentiated enough. In the course of the discussions, participants mention the informal tools included in Table 34.

Table 34

Types of informal ways of handling inmates, as mentioned in the course of the discussions

Types of informal tools mentioned with respect to the treatment of prisoners	Examples as to the use of tools
Tools of verbal influence Authority Consequentiality	*They know their rights very well. They have to be reminded of their obligations.* *It is good if they respect the member of the staff for some reason, since in this way the staff member will have much more tools, and it is possible that it will be enough for him/her to say a few words in order to solve a problem.* *"I keep jabbering."*
Tools connected to personal characteristics and human factors	*"Human vanity is also a tool." As a woman, one may appeal to that in case of men. For example the female educator says to the detainee that "it fits you better if you are not stubby"; and that is how she makes the detainee shave, not by issuing a disciplinary report.* *In the case of guards "male solidarity" may be a tool.* *In the case of female detainees for example appealing to motherhood is a tool: detainees start to talk about their children, and they forget that they had a problem.* *Young detainees may be "controlled" through the limitations of their contacts with the outside world.*

Cell-shifts as a tool	*The detainee committing a disciplinary offence is placed to another cell.*
Motivating and prohibitive tools related to material surroundings and activities	*The staff member takes the television from the cell or orders all the cellmates to clean up "as a punishment".* *They do not issue a permit to the detainee, allowing him to use the gym, in order to put pressure on him.*
Cooperation with other detainees in solving certain types of conflicts	*For example if one of the detainees does not want to take a shower, the staff can rely on "group dynamics".* *There are detainees who get two cigarettes from a cellmate, and then they are willing to take a shower.*
"Personalised" treatment tailor made to the problem	*One of the detainees held a blade against his eye, and said that he wanted to cut out "the camera" from behind his eye. While hurrying to the scene, the educator grabbed the remote control of a television, and when he reached the inmate, he "switched off the camera with the remote control" – as a result, the detainee calmed down and put down the blade.*

2.3. Aspects of the detainees' placement in cells

With regard to placing a detainee in a particular cell and moving inmates between cells, staff members emphasise that this is *"a very difficult thing"*, and they have to consider a lot of aspects. They list mainly the same aspects in all of the three institutions with regard to the reasons behind cell-shifts. Participants provide detailed information as to the aspects which may be behind a given decision on moving a detainee to another cell, but which are not included in the files, and also as to the reasons of significant differences between the institutions in terms of the number of cell-shifts.

As far as the circumstances taken into consideration when placing a detainee in a particular cell are concerned, the fact whether detainees work or not and the nature of the work carried out is mentioned in the first place in all of the institutions as the most important aspect. Besides, the age of the detainee is also an important aspect, along with assessing whether he/she has contacts with the outside world or has acquaintances within the penitentiary (in order to prevent that accomplices are placed in the same cell), the detainee's state of health, his/her history within the penitentiary institution, whether he/she is a first-time offender, the degree of recidivism, the nature of his/her criminal offence, and whether he/she smokes or not:

> *Detainees should be regrouped after characterisation, and for that, they would need much smaller blocks.*

Homogenous cells should be established, e.g. based on age, the criminal offence committed, and on the basis of whether the detainee is of an impulsive or calm nature.

First-time offenders and recidivists should also be separated, otherwise the recidivist will "teach" the first-time offender.

In spite of the complex problem and the many aspects, under the current staffing and material conditions there is no possibility to differentiate adequately and to take into account all the aspects listed when deciding on placement. This may also be the reason why conflicts within the cell emerge more frequently right after a detainee is admitted to a given penitentiary and – because of the narrow scope of action in terms of placement decisions and the limits of differentiation – cell-shifts are also more frequent in this period. As far as the reception of detainees is concerned, the related formal protocol also entails cell-shifts: *right after admitted to a penitentiary, detainees pass through approximately five cells.*

There may be large differences between institutions in terms of cell-shifts, depending on the features of the institution. In this regard, participants primarily deem the following factors as determining: the size of the penitentiary institution and how differentiated it is (capacity of sub-units, the overcrowding rate of the institution, and types of regimes), work opportunities (whether there are detainees who work) and the work's nature (i.e. seasonal or continuous employment). In an institution where many detainees work and where employment is seasonal and changes often, cell-shifts are frequent:

In this institution, work is the fundamental aspect in terms of placement, since detainees shall be moved around and shall be taken to the workplace. [Working detainees] get up at a different time, and it is more practical to move them together. It occurs that only one cell works at one workplace.

It is not the detainees who request that they are disposed to a different workplace, the latter occurs rather because of the external circumstances. For example there are seasonal works which require that detainees are regrouped, thus cells shall be reorganised, and because of that detainees concerned may end up in a different cell.

If the capacity of a workplace increases and receives many purchase orders, then detainees shall be regrouped there and placed to another cell again.

2.3.1. Specialities concerning the placement of certain groups of detainees

2.3.1.1. The placement of juveniles

In the case of juveniles – maybe partly due after all to their unsettled family background – participants attribute a greater role to bonds other than family: the region where they come from, or the common past in a juvenile reformatory. Those who were detained in the Szőlő Street juvenile reformatory in Budapest or the one in Aszód, and the ones who come from Borsod County or from Budapest belong to different groups. The latter aspects may influence the placement of juveniles.

2.3.1.2. The placement of women

Women detainees are more sensitive as to their cellmates, and problems regarding placement are more common among women:

> *"For example women stigmatise those who are infected with lice or have scabies, and the detainee concerned cannot be placed back to the same environment."*

2.3.1.3. Detainees convicted for "sensitive" criminal offences

Participants of the discussions emphasise that there are certain types of criminal offences to which the prison community is especially sensitive. As to what these criminal offences are, opinions differ. As far as criminal offences committed against minors, rape and paedophilia are concerned, opinions coincide – these offences are vigorously sanctioned by the prison community. With regard to criminal offences committed against women, someone is of the view that the situation is similar to the offences listed above, while another participant thinks that this has changed: *"a criminal offence committed against a woman has not been considered problematic for a long time now"*. The placement of detainees who committed such crimes is an especially difficult task and has to be handled with great care.

2.3.1.4. The issue of sexual orientation with respect to placement

Furthermore, it is an important aspect with respect to placement if the detainee's *"identity differs from the usual"*. To the moderator's question on whether the participant means "gender identity", the response is the following: *"Yes, of course."* At the same time it seems that when referring to "identity", they mean sexual orientation. The placement of LGBTQ detainees often creates problems within cells. Typically,

these detainees are not accepted by their fellow inmates, especially if they establish a homosexual relationship within a cell. Cell-shifts also play a role in solving these kinds of problems:

> *It turned out about two detainees that "they would live as man and wife" within a cell accommodating ten persons, but staff members cannot allow this, also because of the interests of the other detainees, even though this was criticised by a foundation. They may not be placed in a two-person cell either, since that would also be discrimination. If a male inmate's wife is detained in Kalocsa [the Kalocsa High and Medium Security Prison, accommodating women], they are not moved to the same cell either.*

The sensitivity of cellmates with respect to homosexuality is underlined especially by participants working with female detainees:

> *The detainee says that she is an "honourable woman", and she is not willing to be in the same cell with a lesbian. In the case of lesbian detainees, staff members "have to look for an environment which accepts them".*

2.3.2. The opinion of staff members on cell-shifts

Frequent cell-shifts are considered by both the educators and the guards a "solution forced on them by necessity", and its negative effect on dealing with detainees is emphasised.

> *"It is absolutely contrary to the basic principles of education." "It is a utopia to follow a detainee throughout his/her detention."*
>
> *"The situation was completely different [in the past] than now, when detainees spin through your hands."*
>
> *"Detainees do not even have the time to get dried in a given block [i.e. to get used to it]."*

Participants think that as a result of forced cell-shifts educators cannot get to know the detainees, while detainees cannot get to know the standards of requirement applied by the educator. Under lower overcrowding rates there was time to figure out how a given detainee may be influenced. In the past, detainees – especially first-time

offenders – even bonded with the educator and it was also a good feeling for staff members when an inmate who they saw through his/her detention was released. Stable educational groups served the work of educators. Frequent cell-shifts also make the cooperation between educators and guards more difficult. In this regard it is important to note that the latter problem – in the view of the participants – applies only to certain types of penitentiary institutions.

Opinions differ regarding the question whether it is expedient or not to *"stir"* the prison population from time to time. Some are of the view that, from time to time, *"cells should be rearranged*", since in cell communities that are stable for a long period of time detainees may *"manoeuvre"* easier and it is harder to see through their behaviour. Others argue that in order to impede that hierarchies and roles become too stable, sometimes it makes sense to rearrange cell communities. Other participants are of a different view: in their opinion the established hierarchy of detainees is favourable for staff members – they in turn consider it a circumstance which makes their work more difficult if the hierarchy collapses. At the same time, everybody agrees that when a cell community becomes too closed, intervention is required:

> *It happens that cell communities get so closed, that detainees do not want to allow anyone new into the cell.*

They may also rearrange the cell community if minor disciplinary offences are frequent in a given cell, even if there is no further external circumstance (change in the workplace, change in the regime, state of health, etc.) that would require this. However, in this case reasons for the frequent disciplinary offences shall be revealed carefully, cell-shift being only one of the possible solutions. Participants of the discussions also deem it important to highlight that detainees often abuse the possibility of changing cells:

> *They would move to another cell constantly. They try to achieve in a manipulative way that they are placed in another cell. They say they want to change cells because of their rivals, while the real reason is that in the other cell they could obtain cigarettes.*

One of the participants states that he usually tries to "stall" or delay cell-shifts for a bit of time, and that usually works: in one third of the cases problems are sorted out, and the detainee changes his/her mind.

2.4. Cooperation between staff members

One block of questions covered the cooperation between staff members and between the different penitentiary institutions, as an issue which may influence the treatment of detainees.

Participants in general deem the daily exchange of information among educators and between educators and guards indispensable. The latter is also important because guards and educators monitor different parts of the detainees' daily life and they have different sources of information: e.g. guards listen to phone calls, since they supervise them, while educators read the correspondence of detainees.

Within the individual institutions, the opinion of participants is the same as to whether communication among educators and communication between educators and guards work well or not. Opinions however differ per institution: in one of the institutions they consider communication satisfactory, while in another institution they think that it is unsatisfactory, especially in terms of communication between staff members in different blocks. They report that only guards and educators working in the same block/on the same floor are able to communicate with each other. Sometimes they do not meet some of their colleagues for months. As far as cooperation within the penitentiary is concerned, problems regarding the number and composition of the staff are raised in all of the institutions: under the current conditions, there are fewer opportunities for exchanging information than there should be. In the penitentiary institutions where, because of the conditions described above, moving detainees from one cell to another is frequent, the exchange of information would be even more important (it is even more difficult for educators to handle groups consisting of 100-150 persons if the group's composition changes constantly).

Certain problems, related specifically to guards, make the cooperation between educators and guards and the handling of detainees even more difficult: the fluctuation among guards is high and in certain institutions there is a serious lack of staff. Vacant positions are not filled and the current personnel shall also do the work of the missing staff members. With the present overcrowding rates this constitutes a serious challenge for staff members and alters the traditional methods of coaching the new guards:

> *Colleagues who worked here for 17 years have left. "She does not even try to remember the names of the guards any more", she will ask their names only when they have been here for at least a year.*

> *There is no time to train the new staff members, even though this would be necessary: they should be taught the things one can only learn through practice.*
>
> *In the past, they could sit down together; they had more time to discuss matters, "this and that happened to me". This also had a role in the training of new staff members. They miss this. There is no possibility to do this any more.*

Furthermore, it is a problem that the lack of guards makes the exchange of information between educators and guards more difficult, even though this would be even more important because of the lack of experience on the part of some of the guards. Detainees *take advantage of gaps in the information flow*. Deficiencies result in situations where detainees make false statements to staff members as to what their colleagues have allowed.

An aspect of cooperation being related directly to the issue of equal treatment also comes up: "informal" communication mechanisms, which may not be included in the files, are important when it comes to moving detainees within the institution. *Informal exchanges of information* between educators are important when it comes to *"otherness"* (i.e. homosexuality) and information important from a security aspect (e.g. suicidal tendencies, disciplinary actions, past criminal procedures). Traumas suffered by detainees also constitute important information, especially if the latter are the reason for moving a detainee to another cell. According to the educators, these informal signals serve the protection of detainees. Exchange of information between educators also has a role regarding decisions on rewards of a higher level:

> *When there is a change in the person of the educator, and there is an ongoing procedure aimed at granting a higher level reward (e.g. if the educator requested a report on the home environment in order to grant a short-term leave), educators pass on to each other the related information: "they do not start everything again from scratch".*

If the formal status of the detainee changes (such as a change in the regime or placement in a special treatment group) staff members of course share the necessary information in a formal way.

As to the information flow between institutions: participants state that they do not receive informal information from other institutions, and they do not provide such information either. In these cases they have to put down the problem somehow in writing:

They cannot introduce everything into the electronic data base due to data protection. For example "otherness" may be circumscribed in a polished way, and if the latter is the reason behind the transfer, it has to be written down, but, again, in a polished way. However, they should be cautious, since "the detainee may even be disowned at home" if another detainee gets hold of that information and it comes to light.

2.5. Opinions on the assessment of the work of educators and guards

2.5.1. Tools used to assess the work of educators and guards

As to the assessment of their work, staff members express their view that existing tools applied to measure their professional performance are unsatisfactory and there is a lack of adequate measurement tools. In their opinion, the quality of the work of educators is assessed on the basis of the number of disciplinary reports issued, not taking into account either the use or efficiency of informal tools, or that working with different types of detainees entails different challenges and problems (referring to privileged groups and groups which are hard to handle, e.g. juveniles, non-working detainees, detainees placed in the healing-treating department). This raises the issue as to what questions the present research provides an answer to, and what those informal mechanisms used in the work of educators and guards are which may be investigated through different methods.

"Twenty problematic detainees equal to ninety non-problematic ones."

It is not good that professional performance is assessed on the basis of disciplinary reports, since the reason behind a higher number of reports may also be that a "problematic" detainee has been admitted to the block.

Under the present material and staffing conditions they think that there are no good measurement tools for evaluating the quality of their work thoroughly. This is in connection with the fact that in their view their tasks cannot be properly executed under such conditions: complying with formal requirements (primarily administrative requirements and those pertaining to the use of formal tools) goes at the expense of real educational work. The two goals contradict each other – this is why it is hard to develop good tools for assessing their performance.

"We either comply with the deadlines or carry out substantive work."

"The computer has to be fed" and that is "a misery, a torment". "The things that you do not write down did not happen" – their work is assessed on the basis of what is written down, while there is no possibility and time to put down in writing the significant part of the substantive work.

2.5.2. Perception by the penitentiary system and the partner organisations

Educators and guards tell their opinion on how their work is viewed by their different superiors, the wardens and the National Penitentiary Headquarters. Some sense distrust as to their work and approach, which in their view manifests itself both in the regulations and in the reactions they get in concrete situations. As to the regulation: colleagues working in certain positions may not have a mobile phone on them. In their view the latter shows distrust, and affects their personal disposition in a negative way:

It can happen that a member of staff cannot be reached from outside if his/her child is sick, since the telephone line of the institution is overburdened. Why do they think that the staff member will hand over his/her mobile phone to the detainees? "He/she will not be so stupid."

"If one member of the staff gets caught, they are treated as if every one of them had done the same things."

When mobile phones are found on detainees, various types of reactions may follow. It could be concluded that staff members carry out their work efficiently, since they find the mobile phones. However, according to the experiences of the participants, the most common reaction is the opposite: when mobile phones are found, it is presumed that the guards are corrupt and they are investigated also if phones could have been smuggled into the penitentiary institution in a way not involving the guards.

It may also be an example of distrust that staff members are from time to time "shuffled" within a given penitentiary (thus e.g. guards are placed to a different service post), which in the view of the participants hinders them in really getting to know the prison community at a given floor or block, and, furthermore, it is unreasonable: "*corrupt staff members will be corrupt everywhere*".

Many stress that they experience distrust and a lack of appreciation also from other actors of the justice system and law enforcement bodies:

It happened that an educator had not issued a permit for using the gym to a detainee because he wanted to influence the detainee through that – the next day the prosecutor called upon him to issue the permit.

"If the prisoner gives a slight cough, everybody has to be at his service immediately."

"The educator was called a bitch, but the police said that we had to put up with this [kind of language]."

2.5.3. Perception by the society

Participants in general think that society has a negative opinion about the work of educators and guards. They feel that the members of the society do not have a clear picture about the circumstances they work in, and, typically, they are not interested in it either. In their view, this approach does not reflect the societal responsibility and sacrifice that they undertake with their work. They see a difference between Budapest and the institutions in the countryside. They believe that prison service has a "tradition" in the countryside; the job is better known and more appreciated.

"I would like the public to return to us what we have sacrificed."

He would like people outside the prison walls to know that "for them to be able to sleep soundly, they need the 'guy in the prison' who may even have to shed his blood for them".

Only one small media organ had approached them in the preceding four years with the intention of "writing about guards".

They feel that the task of leading detainees back to society falls almost exclusively on the penitentiary staff. Social conditions of re-socialisation and the role undertaken by social support organisations are both considered unsatisfactory:

Currently, all the detainees get from society when they are released is "a tram ticket".

There are not enough halfway houses. Parole officers rarely visit the penitentiary.

In the discussions, participants reflect on the information acquired by external monitors and their role in shaping the opinion of the society. They regard external monitors important, since they are the ones who convey information about the penitentiaries to the society. That is why they would deem it important that, when investigating prison conditions monitors would acquire information not only from the management of the penitentiaries and the National Penitentiary Headquarters, but also from staff members being in contact with detainees on a daily basis. They feel that the latter is lacking and they express their willingness to cooperate. Participants believe that, regarding certain issues, staff members may provide a different kind of information on material and staffing conditions, or decisions concerning detainees. (For example: *"a certain inmate's sponge is in a bad state because he/she tears it apart";* or: "*the detainee has scabies because he/she is not taking showers"*.) In this way, the considerations lying behind the various measures, but not included in the formal decisions (regarding disciplinary cases, rewards or placement) may become known. In the view of the participants the latter would contribute to the society having a more realistic picture about the work of penitentiary staff members.

2.5.4. Staff members' opinion on their working conditions

With regard to their working conditions they mention understaffing as the most important negative factor which influences their work. Lack of staff also has an indirect effect on the treatment of detainees. Educators and guards are tense because they are not able to go to lunch on time or go out to smoke a cigarette, because no one can replace them for even such short periods of time. In relation to the latter they mention that *"we have thousands of hours of overtime which nobody cares about"*.

Among working conditions, health issues come up: they mention "*their uniform made of plastic"*, which is of bad quality and causes skin irritation to several of them. Staff members feel in many situations that they are unprotected against health problems and risks stemming from working with detainees. For non-smoking detainees a non-smoking cell is granted, while non-smoking educators are obliged to enter also the smoking cells. Bedbugs in the institution also endanger staff members and it even happens that they take bedbugs home in their clothes. In the past, hepatitis and HIV

tests were obligatory for detainees. According to the opinion of participants, making these tests obligatory again would enhance the staff members' sense of safety.

With the current number of detainees attributed to one educator and guard and under the current working conditions participants deem regular supervision essential (in most institutions there is no supervision at all or it is only available occasionally), along with recreational possibilities available for everyone and on a more regular basis. They mention in the relation to the latter that the penitentiary system performs poorly in preventing the fluctuation of staff. They believe that working in a penitentiary is attractive to less and less people, especially as far as the job of guards is concerned. Guards often look for another job, going abroad to work is frequent among them. The issue of the revocation of the early service pension[33] also comes up, and not only regarding the bad prospects of the participants themselves: they tell that several colleagues availed themselves of the possibility of early pension as long as they still could. As a result, they lost several experienced colleagues who had been working in the prison service for decades. This had an effect on the composition of the staff and created several problems for those who stayed in service. Participants feel that the conditions described above may only partly be explained by the lack of resources: it partly reflects the lack of appreciation towards their work.

> *This is a penitentiary institution, but "it is not the staff who should be punished".*
>
> *The staff should be appreciated more. Staff members should regain prestige and respect, both morally and financially.*

2.6. Conclusions from the aspect of equal treatment

Below, we aim to draw a few conclusions on the basis of the experiences of the discussions as to the conditions which support and the ones which hinder the realisation of equal treatment in the penitentiary system.

33 Legal provisions adopted in 2011 revoked the early pension scheme established for members of armed services (police officers, fire fighters, penitentiary workers, members of the military, etc.): their special pension has been degraded to a certain kind of "social aid", which is easier to reduce and revoke than pensions. Furthermore, the amount of their pension was decreased. The opinion of the Hungarian Helsinki Committee on curtailing service pensions in the above way, i.e. violating the rule of law and the right to property, is available in Hungarian here: http://helsinki.hu/a-szolgalati-nyugdij-nem-konyoradomany.

2.6.1. Equality in the use of formal and informal means

As far as equal treatment is concerned, it is a favourable circumstance that, according to the participants of the discussions, the treatment of detainees and the use of formal means are mostly influenced by the regulatory environment, even though it is also stated that certain formal tools operate in a dysfunctional way. This altogether increases the frequency of applying informal means, in the case of which it is more difficult both to respect the requirement of equal treatment and to examine whether it is complied with.

At the same time, the significant determining influence of institutions is also stressed with regard to disciplining, rewards and cell-shifts. Discussions confirm the lack of unified practices within the penitentiary system and point out significant differences between the various institutions with regard to the practices of disciplining and rewarding. As far as "principles" go, we encounter mainly the same considerations in terms of launching disciplinary procedures and placement in cells. Rewarding is the only formal tool in the case of which we experience significant differences between penitentiary institutions at the level of both "principles" and "practices".

As far as the frequency of disciplinary offences is concerned, participants of the discussions regard the characteristics of the various groups of detainees more important (e.g. in their view the ratio of disciplinary offences is higher among young and non-working detainees), and they do not emphasise so much the differences flowing from the institutional culture. With regard to disciplinary procedures, the role of the institutional culture and the determining role of the warden of the penitentiary only come up in terms of choosing the disciplinary sanctions. The dominant role of the institutional culture in rewarding and its influence on decisions pertaining to disciplinary punishments raise questions from the aspect of equal treatment: detainees may encounter large differences between penitentiary institutions, and these differences may also affect the decisions pertaining to changing the regime they are detained in, or their early release on parole.

As far as the aspects of placement in a cell are concerned, we see a unified approach on the part of the educators, which promotes equal treatment. Participants explain the differences between institutions in terms of the frequency of cell-shifts almost exclusively with material conditions and circumstances (e.g. if detainees are working and work-related circumstances, security degree of imprisonment, whether the regime is open or not, size of cells); differences stemming from the institutional culture or individual approaches do not come up at all in this regard. Educators

typically see frequent cell-shift as "a solution forced on them by necessity", which is unfavourable with regard to the relationship between the detainees and the educator, to following through with the educational plans, and to the manageability of the detainees. At the same time, the significant differences between penitentiary institutions in terms of "practices" raise the issue of equal treatment in themselves: the size of the detainee's cell, the stability of his/her cell community and his/her educational path may be highly different, depending on the institution he/she is placed in.

The participants of the discussions do not dispute the role of individual approach and habit in the work with detainees. It is a general opinion that being good at this profession means being consistent, i.e. proceeding in the same way wherever one is placed. It is part of the educators' and guards' job that they are able to handle all kinds of detainees. However, it is a precondition for the latter that they can work under adequate conditions: educators and guards are able to treat adequately both detainees who are easy to handle and those who are not, only if they are responsible for a manageable number of detainees. At the same time, under the current overcrowding and the excessive workload it is more difficult to keep in mind aspects of equal treatment. Participants remark that often it is their first impression about the detainee what counts and there is less and less room for individualised treatment. This may result in decreased ability to handle issues related to conflict solving or placement in a less differentiated or circumspect manner.

2.6.2. The treatment of certain groups of detainees

Educators and guards consider it their duty to protect disadvantaged groups or those who require special attention under prison conditions (women, juveniles, LGBTQ detainees, or those sentenced for certain types of criminal offences) – in our view, this is positive from the aspect of equal treatment. At the same time, we have also encountered biased approaches and negative attitudes with regard to Roma origin or homosexuality. As far as the Roma are concerned, the most predominant opinion which may influence the equality of treatment is that some staff members explicitly link social disadvantages and deep poverty to Gypsies, and often link the latter environment to the problems encountered in the penitentiary. Occasionally – similarly to the society as a whole – it also comes up as an opinion that committing criminal offences "is a family tradition for Gypsies".

We have also encountered negative attitudes by educators towards differential treatment based on homosexuality. In this context it is mentioned that detainees may also take advantage of the requirement of equal treatment. In the latter case participants argue that the reason behind their possibly negative approach towards differentiation is the attempt to avoid positive discrimination and ensure equal treatment with respect to other groups of detainees.

2.7. Areas to be developed, based on the opinion of staff members

Below, proposals formulated by educators and guards in the course of the discussions are summarised in a brief list of issues. Proposals are aimed at enhancing the situation of detainees, offering solutions regarding staff members' working conditions, and making the formal and informal tools applied in the course of their work with the detainees more efficient. The list of issues also reflects the conditions participants regard as necessary for an effective cooperation between those working within the penitentiary system and with partner organisations.

- Proposals for the uniform and efficient use of formal and informal methods and to reduce the number of conflicts and disciplinary actions
  - Creating workplaces for detainees
  - Increasing the number of educational programs available for detainees
  - A more differentiated legal regulation of the use of formal tools
  - Unified protocols regarding the use of disciplinary punishments and rewards in penitentiary institutions
  - Equal access to rewards for the various groups of detainees, accomplished through the respective regulation
  - Including informal educational methods in the protocols, thereby making their use legitimate, uniform and measurable
  - A more differentiated placement of detainees within a given institution
    - Establishing smaller blocks, if possible
    - Making it possible to create more homogeneous cells (according to age, being a first-time offender/recidivist, the type of the criminal offence, prison history, state of health, etc.)

- Proposals for increasing the efficiency of the staff's work
    - Solving problems related to understaffing
    - Differentiating tasks
        - Increasing the time that may be spent on achieving educational goals
        - Decreasing the administrative burdens of educators, e.g. by involving social administrative workers/assistant social workers
        - Relieving educators of tasks requiring special expertise (e.g. dealing with psychiatric and mental problems) → increasing the number of psychologists
        - Filling vacant guard statuses → incentives to make the job of guards more attractive
        - Creating a better balance between administrative tasks and "substantive work"
        - A more effective IT system
        - Enhancing the general working conditions and health safety of the staff
    - General supervision; increasing recreation possibilities
    - Establishing more efficient measurement tools for assessing the work of educators and guards (beyond the quantitative measurement of using formal tools)
    - Protecting and representing the interests of educators and guards more efficiently (e.g. before the organs of law enforcement and criminal justice)
    - Establishing a more efficient cooperation and exchange of information between the penitentiary system and partner organisations (law enforcement, prosecution, judiciary, parole officers)

IV. Roma and non-Roma defendants in the criminal procedure

1. SELECTION OF THE SAMPLE

As indicated above, our initial plan was that the sample should be composed of cases which involved a single defendant who was tried and convicted for a single crime as a first-time offender. The purpose behind this choice was to guarantee effective comparability of sentencing practices. However, during the research it turned out that cases could not be identified in the data base of the National Penitentiary Headquarters in such a detailed manner, therefore, the initial sample of 400 cases included individuals whose cases did not meet the previously defined criteria.

For instance, the data base does not distinguish those whose criminal record has been cleared due to the passing of time from those who are actually convicted for the first time, even though Opinion no. 56/2007 of the Criminal Law Section of the Supreme Court clearly provides that "if the perpetrator was convicted before the commission of the crime, he/she shall be qualified as a re-offender even if his/her criminal record has been cleared. Re-offending is, in general, an aggravating factor." It is, hence, obvious that a previous conviction may have an effect on sentencing also in those cases where the criminal record has been cleared. (This is why we used in the research of both the criminal procedure and the penitentiary issues the term "first-time offender" in a sense that is different from how it is applied in criminology.)

An additional obstacle was set by the fact that the offence of robbery is typically committed by more than one perpetrator, and therefore a sufficiently large sample of cases of robbery involving a single defendant could not be created within the temporal and financial barriers of the present research.

Therefore, we dropped two of the initially defined criteria and selected from the almost 400 detainees those who – based on their statements and their penitentiary files –

- do not qualify as recidivists,
- were not tried for plurality, or
- cumulative offences, and
- whose sentences were not merged.

The cases of some defendants – out of the 90 who were selected according to the foregoing criteria – could not be evaluated due to specific reasons. Certain cases turned out not to comply with the criteria (for instance, the affected defendant failed to mention during the interview or the penitentiary file did not include the fact that he/she was tried for plural offences). Others could not be analysed due to technical matters (e.g. due to the fact that certain documents relevant to the case were not to be found in the court file, since they had to be attached to the file of another case), or due to the lack of permission from the authorities.

In the end, 70 defendants remained within the sample. In the case of three of them, the researcher could not decide whether according to his/her perception the the interviewee was of Roma origin, therefore we finally conducted the quantitative analysis of the criminal files of 67 detainees.

The analysis of the files – similarly to the research done on the penitentiary issues – was conducted on the basis of a standardised questionnaire. We acquired access to the files with the approval of detainees involved in the research. The questionnaires were filled in by lawyers of the Hungarian Helsinki Committee and other persons having experience in social science research at the courts where the files of the cases were to be found.

Due to the low number of the relevant cases, we did not conduct the significance analysis usually applied in statistical research, hence our conclusions do not apply to procedures in general, only to the analysed cases. In other words, general statements cannot be based on the hereby published results. They solely raise specific issues which should be addressed by further research.

Table 35
Ethnicity of the defendant according to his/her self-identification and the perception of the researcher (% and N)*

	According to the respondent's self-identification		Total
	Roma	Non-Roma	
Roma according to the perception of researcher	39	15	55.5 (N=36)
Non-Roma according to the perception of researcher	8	38	45.5 (N=30)
Total	47 (N=31)	53 (N=35)	100 (N=66)

* One interviewee did not answer the relevant question, therefore, in the present table only 66 elements are indicated.

As shown by Table 35, the opinion of the interviewee and the researcher about the ethnicity of the defendant was identical in 77% of the cases. 15% of those who considered themselves as non-Roma were deemed by the researchers as Roma, and 8% of interviewees considering themselves as Roma were perceived by the researchers as non-Roma. In the cases, where the perception did not coincide with the self-identification, we based the analysis on the researcher's perception, since in discrimination research, the perception of those persons is of significance whose attitude needs to be evaluated concerning the requirement of equal treatment. Therefore, we listed 36 persons as Roma and 31 persons as non-Roma in our sample based on the perception of researchers.

2. SOCIO-DEMOGRAPHIC COMPOSITION OF THE DEFENDANTS IN THE SAMPLE

First, we present the fundamental socio-demographic characteristics of the defendants constituting the sample of the research. First of all, it is noteworthy (see Table 36) that four fifths of the analysed files related to male and only one fifth to female defendants. Male dominance was even higher (87%) in the case of the non-Roma.

Table 36
Sex broken down by ethnicity (% and N)

	Male	Female	Total
Roma	75	25	100 (N=36)
Non-Roma	87	13	100 (N=31)
Total	81	19	100 (N=67)

The level of the education of the perpetrators is extremely low. In the case of two thirds of the files, we found that the perpetrator had accomplished no more than eight grades of primary school. While 83% of Roma defendants accomplished no more than eight grades of primary school, in the case of non-Roma this ratio was 48%. (See Table 37.)

Table 37
Education of Roma and non-Roma defendants (% and N)

	Max. eight grades of primary school	Vocational technical school	Vocational secondary school	High school	Degree in higher education	Other	Total
Roma	83	6	6	6	0	0	100 (N=35)
Non-Roma	48	26	7	7	10	3	100 (N=31)
Total	67	15	6	6	5	2	100 (N=66)

According to Table 38, the average income of the defendants is very low: only 11% of Roma and 22% of non-Roma defendants included in the case file research had a monthly per capita income of over HUF 81,000. In total, the income of three fourths of Roma interviewees did not exceed the amount of HUF 61,000. (In the case of the non-Roma, the scale of those having an income of less than HUF 61,000 was 63%.)

Table 38
Income of Roma and non-Roma defendants (% and N)

	Below HUF 20,000	HUF 20,000–40,000	HUF 41,000–60,000	HUF 61,000–80,000	Above 81,000 HUF	Total
Roma	11	43	21	14	11	100 (N=28)
Non-Roma	11	19	33	15	22	100 (N=27)
Total	11	31	27	15	16	100 (N=55)

As regards the type of the location of residence, the most noteworthy difference was (see Table 39) that the ratio of those Roma defendants who live in county seat towns and villages is relatively higher, while most non-Roma defendants in the sample live in Budapest and other towns.

Table 39
Place of residence of Roma and non-Roma defendants (% and N)

	Capital	County seat	Town	Village	Total
Roma	12	35	21	32	100 (N=34)
Non-Roma	23	19	39	19	100 (N=31)
Total	17	28	29	26	100 (N=65)

3. RESEARCH RESULTS

3.1. References to Roma origin in the files

The case file research of 2000 found that there was some kind of reference to the Roma ethnicity of the defendants in 62% of the "Roma files". According to the preliminary research report, "this rate is significant, since the [authorities'] preliminary knowledge gained from the files might be a determining factor in the procedure. If the ethnicity of the defendant is known by the proceeding authorities already from the files, this knowledge might influence their decision-making even without meeting the defendant in person or checking who the person whose case they will decide upon is."[34]

In the present research, the ratio was even higher: the investigation files included references to the defendants' Roma origin in the case of 83% of those defendants who were perceived by the researchers as Roma. This rate was 17% in the case of documents prepared during the judicial phase of the proceeding.

These references appeared mostly in the records of witness testimonies and concerned the description of the perpetrator. In certain cases these descriptions manifested strong prejudices, and as such, were capable of influencing the attitude of the persons preparing their stance based on the files.

34 Csorba et al., p. 129.

An example for this phenomenon is the case in which the person triggering the procedure reported that "a bad-looking Gipsy man is flailing with a knife".

In another case the police officer, while conducting the investigation, expressly posed a question related to the complexion of the perpetrator:

In one of the cases, at the trial there was a debate about the statement given in the investigation phase by one of the witnesses who identified three "Gypsies, men with brown complexion" as perpetrators. When the first accused pointed out that this did not substantiate his responsibility since his skin was not darker than that of the witness, the witness told that it was the police officer conducting the investigation who had addressed questions to him about the complexion of the perpetrator.

Our most worrisome observation is that even in documents which do *not* record statements of persons participating in the procedure – and therefore shall not include any reference to the ethnicity of anyone – the authorities sometimes refer to the Roma origin of the – assumed – perpetrators.

In one of the cases, there were seven references to the Roma origin of the suspects in a one and a half page long police report, and in another case, the police motion for the defendant's pre-trial detention included two references to the fact that the suspect is "a Gypsy woman".

In this regard, we fully share the stance expressed by the second instance decision delivered in the so-called Cozma-case,[35] according to which "using the terminology of the code of criminal procedure, the persons participating in the criminal procedure shall be referred to as defendant, injured party, other interested party; referring to other qualities [of these persons] is only justified if they are relevant from the point of view of the legal or factual assessment of the case. […] In the reasons attached to the decision, the county court referred to the defendants on numerous

35 In February 2009, a group of persons with criminal past – with a number of Roma among them – went to a local disco in Veszprém (Western Hungary), where they provoked a fight with the guests, including the players of the local handball team. In the fight, Marian Cozma, one of the most popular players of the team was stabbed to death, and two other players were injured very severely. While not all the perpetrators were of Roma origin, the case triggered very strong anti-Roma sentiments in the country.

occasions – mainly when summarising the statements of the witnesses – as a group of Gypsies or Roma, and to the injured parties as sportsmen, handball players or team mates [...]. One of the criteria set for a court is that it is not sufficient to be unbiased, even the appearance of bias shall be avoided. The county court's references to the defendants' ethnic origin [...] are unnecessary, as this is not relevant from the point of view of the factual and legal assessment of the case. Therefore, the use of the said references is inappropriate, because it can create the appearance that the court was not impartial and adjudicated the case in a biased manner."

Finally, in order to demonstrate how deep-rooted the problem of the situation of the Roma in the criminal procedure is, we refer to the defence counsel who tried to convince the court by pleading that *"in spite of the Roma origin and environment of the family, and the lifestyle that usually accompanies it, the family strongly tries to get integrated into normal social conditions".*

3.2. How the perpetrator was detected by the authorities?

As we mentioned in the introduction of the present study, all previous research has found that the issue of how the authorities detect the perpetrator, largely depends on his/her ethnicity.

According to the research of 2000, "there were no significant differences between the Roma and non-Roma with regard to identification done by a witness or co-defendant. The ratio of non-Roma perpetrators caught in the act is higher by one third within the sample […]. Close to half of the non-Roma perpetrators were detected by the authorities through being caught in the act, while twice as many Roma as non-Roma perpetrators were detected by the police through identity checks. It seems that investigative authorities can identify more Roma perpetrators even without catching them red handed."[36]

The conclusion drawn by the research of 2002 was similar: "While 23% of non-Roma defendants were caught in the act, only 13% of Roma defendants got involved in the proceeding in this way. The difference caused by this discrepancy was evened out by the fact that the Roma defendants could be identified based on the perception of the person who reported the incident to the authorities or in some

36 Csorba et al., p. 130.

other way. […] The difference within the sample is even larger if we compare the group of undoubtedly Roma and non-Roma defendants […]. Only 21% of the undoubtedly Roma defendants and 38% of the undoubtedly non-Roma persons were detected by the authorities through being caught in the act. […] Therefore, in case the non-Roma perpetrator is not caught in the act, he/she is more likely to avoid accountability. […] In the case of identity checks, […] this trend was reversed. […] Only 17% of non-Roma […] and 29% of Roma suspects were detected by the authorities through identity checks. (19% more frequently were undoubtedly Roma perpetrators detected by the authorities through identity checks.) […] Differences between the ratios of perpetrators caught in the act and identified in the course of an ID check were smaller in the case of more serious crimes. [… However] even in the case of robbery, 9% more Roma perpetrators were found through identity checks."[37]

The outcome of previous research has been confirmed by the data of the present analysis. Within our sample, 8% of Roma and 16% of non-Roma were detected by the authorities through being caught in the act. Similar to the earlier results (although with some slight differences), the ratio was reverse in the case of identity checks. Within our sample, the proceeding was triggered by identity check in the case of 8% of Roma and 3% of non-Roma persons.

Apparently, the intensity of the police focus on the Roma has not decreased, although the STEPSS research of 2007 – which also demonstrated that the probability of identity checks is three times higher in the case of a Roma person than it would be reasonable based on the ratio of the Roma within the population – confirmed that in the case of identity checks performed on the basis of the suspicion of a crime, "a significantly higher percentage of Roma (37%) than non-Roma (25%) persons are subjected to unjustified measures, which convincingly rebuts the views about the higher efficiency of identity checks conducted on Roma people".[38]

The article presenting the results of the 2002 research cites some parts of an interview with the criminologist István Tauber in order to explain the above discussed intense attention: "Those belonging to a more impoverished social group get caught more easily […]. Especially if the person's complexion reflects this social situation. Central and Eastern Europe is a region loaded with prejudices, therefore,

37 Farkas et al., pp. 38–40.

38 Kádár, András Kristóf – Körner, Júlia – Moldova, Zsófia – Tóth, Balázs: *Control(led) Group – Final report on the Strategies for Effective Stop and Search (STEPSS) Project*. Hungarian Helsinki Committee, Budapest, 2008, p. 40.

the stereotype has evolved within the police that the Roma commit crimes more frequently. […] And at this point it has relevance that due to the characteristics of the ethnic group, note is taken of the Roma perpetrator, while all the others are forgotten. This largely contributes to the fact that prejudices have evolved not only within the police but also in general among legal practitioners."[39]

Although it is difficult to measuring this problem statistically, certain details of the cases included in the research indicate that these prejudices may also affect the way the investigation is conducted.

For instance, in one of the cases, the victim had to identify the Roma perpetrator (who pleaded not guilty throughout the entire proceeding) by selecting him from a set of photographs which only included the pictures of non-Roma persons except for that of the perpetrator. (This complaint of the defendant was confirmed by the researcher who arrived at the same conclusion, namely, that the perpetrator's image "lolled out" of the row of photos.)

3.3. Access to and activity of defence lawyers during the investigation, additional remarks related to the investigation

Taking the severe sanction attached to robbery into consideration, the efficient enforcement of the right to defence is obviously of utmost importance. This is an especially significant issue in the case of indigent defendants.

As an obvious consequence of the socio-demographic characteristics of the defendants in the sample – low education (82% accomplished vocational technical school at the most) and low income (the average income of 69% was not more than HUF 61,000) – it is obvious that efficient legal assistance is essential for the enforcement of their right to a fair trial, but it is equally obvious that the necessary funding is lacking for most of them.

It is therefore not surprising that only 1 of the 67 defendants was represented by a retained attorney from the very beginning of the procedure, and only 15 other defendants (22%) could replace his/her legal aid lawyer with a retained counsel, or retain his/her legal aid lawyer later on.

39 Amaro Drom, 8 May 1995. Cited by Farkas et al., p. 38.

It is a well-known fact that the first interrogation of the suspect is of utmost importance with regard to the outcome of the criminal procedure. Therefore, the outcome of the procedure is largely influenced by whether the suspect can consult the defence lawyer before the interrogation and whether the lawyer is present at it.

The functioning of the system and the quality of the work of ex officio appointed (i.e. legal aid) lawyers have been severely criticised by many. One of the most significant problems is exactly the fact that ex officio appointed lawyers tend to appear at the first interrogation less frequently than their retained colleagues (who are occasionally also not able to participate in this essential procedural act due to the police's failure to notify them in a timely manner).

The significance of the foregoing problem is underpinned by the decisions delivered by different forums of human rights protection. The European Court of Human Rights (hereinafter, ECtHR) held in the so-called Salduz case, as follows: "in order for the right to a fair trial to remain sufficiently »practical and effective« […], Article 6 § 1 [of the European Convention of Human Rights] requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 […]. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."[40]

The results of the present research fully confirmed the negative experiences previously gained concerning the counsels' presence at the first interrogation.

Defence lawyers were present at the first interrogation of the suspect in 16 out of the 59 cases where we found data on the counsel's participation in the file, which means only a bit more than one fourth of the cases. In the case of Roma suspects, lawyers are absent in a higher proportion of cases (77% as opposed to the 69% in the case of non-Roma suspects), which can be in connection with the authorities' failure to properly notify the defence lawyer.

The Constitutional Court held in its Decision no. 8/2013. (III. 1.) the following: "it is a constitutional requirement deriving from Article XXVIII (3) of

40 Salduz v. Turkey, Application no. 36391/02, § 55.

the Fundamental Law that during the application of Article 48 (1) of Act XIX of 1998 on the Criminal Procedure and for the sake of the defendant, the ex officio appointed defence lawyer shall be notified officially about the place and time of the interrogation in due course so that the defence lawyer is given the chance to exercise his/her procedural rights to participate in the interrogation of the defendant. In case such a notification is lacking, the statement given by the defendant shall not be used as evidence."

While drawing this conclusion, the Constitutional Court put a special emphasis on the fact that "the investigation is usually not public. […] One consequence of the lack of publicity is that whatever occurs at the interrogation is hard to review later on. The investigative authority usually conducts the interrogations in the designated premises […] of its seat. The interrogation is fully controlled by the detectives conducting the investigation, they are the ones entitled to define its place, time, the questions to be posed to the defendant and the order of the questions. The environment and conditions of the interrogations in themselves have a special psychological effect on the defendant. As a consequence of the unfamiliar and isolated environment of interrogations, the defendant becomes defenceless under the dominance of the investigative authority. […]

The foregoing circumstances explain why doubts arise more frequently with regard to the genuineness of the testimonies given by the defendant during the investigatory phase compared to the testimonies made before the court. If the due process guarantees – which provide the defendant with protection in such defenceless situations – are lacking, the genuineness of the statements given by the defendant can always be questioned. The genuineness of the statement can only be substantiated if the investigative authorities can prove that the due process guarantees have been ensured. […]

The enforcement of the due process guarantees is ensured by the presence of the defence lawyer at the interrogations. Therefore, the most significant function of the presence of the defence lawyer is to ensure the genuineness of the statement made by the defendant. […] The defence lawyer […] plays an essential role in criminal procedures which comply with the requirements of constitutionality. Therefore, the participation of the defence lawyer contributes to the possibility of using the defendant's statement later in the trial without any concerns. […]

A constitutionally acceptable restriction of the right to defence is that the absence of the lawyer is not an obstacle of the defendant's interrogation [in the

investigation phase]. Such an absence however can be regarded as complying with the right to defence only if the authority can prove that the necessary measures were taken in due course for the notification of the defence lawyer. Any other interpretation would mean that the possibility of the effective enforcement of the right to defence ceases to exist. It is hence not in accordance with the right to defence if the ex officio appointed defence lawyer is not informed about where and when the client will be interrogated. In such a case, the appointed lawyer does not even have the possibility to be present at the interrogation, to get familiar with the case, to get into contact with the client and accomplish the additional tasks defined by procedural law. […]

It also violates the right to defence if the defence lawyer is informed about the place and time of the interrogation at a time which makes it impossible for him/her to participate or to perform the duties defined by procedural laws. Interrogations conducted by the investigative authorities following such notifications are not in accordance with the requirement of the effective enforcement of the right to defence provided by Article XXVIII (3) of the Fundamental Law."

In the light of the Constitutional Court's reasoning it is especially worrying that in the cases included in our research defence lawyers were usually notified with only little time before the interrogation and in the case of two Roma defendants there was no trace of notification in the files.

Table 40

Notification of defence lawyer before the first interrogation – by ethnicity (% and N)

	Within 1 hour	1–5 hours	5+ hours	No notification	Total
Roma	65	18	6	12	100 (N=17)
Non-Roma	40	40	20	0	100 (N=10)
Total	56 (N=15)	26 (N=7)	11 (N=3)	7 (N=2)	100 (N=27)

As shown by Table 40, in the case of 65% of Roma and 40% of non-Roma defendants, the defence lawyer was notified less than one hour before the beginning of the interrogation, which (especially if notification is not done by phone but for example by fax) will probably not make it possible for the defence lawyer to be present and/or properly prepared. Both with regard to notifications performed more than one hour but less than 5 hours and more than 5 hours before the interrogation, non-Roma defendants were in a better situation.

It needs to be noted that within the group of notifications sent within less than 1 hour before the interrogation, there are some that cannot be de facto regarded as "notifications" due to the extremely short notice. This is shown by the examples quoted below (all of them concerning Roma defendants):

- time of notification: 7:53, beginning of interrogation: 8:10;
- time of notification: 14:25, beginning of interrogation: 14:29;
- time of notification: 12:00, beginning of interrogation: 12:03;
- time of notification: 1:49, beginning of interrogation: 2:20 (the beginning of the interrogation was originally set for 2:00);
- the time of notification via mobile coincided with the beginning of the interrogation (8:00).

The significance of the defence lawyer's presence is underpinned by the complaints which claim that the minutes of interrogations do not accurately reflect the statement that was given by the suspect.

In one of the cases, the first accused (who was included in the research) and the second accused were convicted for snatching the elderly victim's handbag and hitting her with the bag when she started shouting. The accused confessed to the crime during the investigation but made a different statement in the courtroom, namely that they stole the bag which was lying beside the victim, and that they had not hit her with it when escaping from the scene. The accused responded to the question posed to them related to the difference between the two statements that although the minutes recorded at the interrogation did not accurately reflect their statements, they signed them due to the fact that they were afraid of the police officers who were shouting at and threatening them, and also that they were under the influence of alcohol at the time of the interrogation. In this case, the court based its decision on the statements given during the investigation. This may have been a justified decision, however, without a doubt, the presence of a defence lawyer – and the audio or video recording of interrogations – would prevent the possibility of such pressure from the side of the police, but also of the defendants' unjustified claims of such pressure.

An illustrative example for the police's failure to pay due attention to the state of the defendant at the interrogations is provided by the case where the four

(two juvenile, one young adult and one middle-aged) defendants were convicted for taking HUF 3,000 from the victim who was drunk and walking home from a pub. The middle-aged defendant included in our research denied the charges throughout the procedure, she only admitted that she had been in the pub at the time of the incident and met the victim and the three other defendants there.

Both the victim and the witness who reported the case were interrogated early in the morning but they were both drunk at the time of the interrogation. According to the minutes of the interrogation, the victim was "floundering and mumbling". The same was recorded about the witness who stated that "three […] Gipsy girls were sitting on the windowsill and an approximately 42 year-old, also Gipsy woman, who lives at Y, Street X, was sitting in their company, facing them." The witness told that these girls had been the perpetrators.

Later on in the morning, the witness who reported the case was interrogated again, and stated that the he was sure that the crime had been committed by the same persons who had been sitting in the pub. However, on this occasion the witness was speaking consequently about "three young girls" and did not mention the defendant included in our sample.

Nevertheless, the defendant included in our sample was convicted based on the statements of the co-defendants, one of whom admitted during the trial that "we confessed to the crime in order not to be arrested". Another accused testified in the courtroom that she had been mad at the person included in our sample and that is why she had testified against her in the investigatory phase of the procedure and that "police officers were threatening me that I would be arrested, this is why I lied".

The victim pleaded at the court that he did not see who had pushed him off, "I guessed that they were these 2-3 young girls because I saw them in front of the restaurant". The witness who reported the incident also stated that he was just guessing when stating that the perpetrators were the same persons who were sitting in front of the pub. He did not recognize the defendants and testified that in his opinion the defendant included in our sample had not participated in the offence. Nevertheless, the court convicted all the four defendants.

The research results also confirmed the earlier experiences that ex officio appointed defence lawyers are not very active even if they are present at the interrogation. Besides the single retained defence lawyer only three lawyers raised comments, questions, motions or complaints during the first interrogations included in the sample. (It needs to be added that since the current regulations do not allow the defence to get access to the evidence during the investigatory phase, in certain cases the "silence" might be a justified defence strategy. Therefore, it does not necessarily indicate the insufficient quality of the defence lawyer's work if he/she does not exercise these rights provided by procedural laws.)

We also analysed the issue of how frequently the defendants included in our research did or denied to testify during the first interrogation, and how many of those giving a statement confessed to the crime.

Table 41

Did the defendant testify at the first interrogation? – by ethnicity (% and N)

	No	Partially	Yes	Total
Roma	9	3	89	100 (N=35)
Non-Roma	13	4	83	100 (N=30)
Total	11 (N=7)	3 (N=2)	86 (N=56)	100 (N=65)

As shown by Table 41, we found that the majority of suspects does not exercise their right to silence, 89% of them gave at least a partial statement. We did not find significant difference between Roma and non-Roma defendants with regard to the willingness to testify. (It is, however, noteworthy that one of the defendants who exercised the right to silence was the only defendant represented by a retained lawyer from the beginning of the procedure.)

The majority (67%) of those giving testimonies – entirely or at least partially – confessed to the crime. In this respect, ethnicity made a difference, since half of the Roma and four fifth of the non-Roma confessed to the crime at least partially (however, the number of cases analysed in this respect is very low).[41]

41 An interesting explanation for this phenomenon was raised by Klára Kerezsi, fellow of the National Institute of Criminology and associate professor of the Eötvös Loránd University, who raised at the Conference that the greater reluctance of persons belonging to an ethnic minority to confess in criminal proceedings is often motivated by the distrust they feel towards the criminal justice system operated by the majority.

Table 42
If the defendant testified during the first interrogation, did he/she confess to the crime if the defence lawyer was present? – by ethnicity (% and N)

	No	Partially	Yes	Total
Roma	50	0	50	100 (N=8)
Non-Roma	20	30	50	100 (N=10)
Total	33 (N=6)	17 (N=3)	50 (N=9)	100 (N=18)

In relation to the impact of the defence lawyer's presence, we have come to the conclusion that it does not seem to have any relevance with regard to the defendant's willingness to confess to the crime. In the cases where the defence lawyer was present the ratio of those – at least partially – confessing was 67% (see Table 42), which is identical with the ratio of confessing defendants in the complete sample.

While evaluating this result, we have to again take into account the criticism concerning the activity of ex officio appointed defence lawyers. The fact that the investigative authority appoints the lawyer might easily facilitate the selection of those lawyers who even if present at the interrogation would not interfere actively and in certain cases may even persuade the suspect to confess to the crime. Therefore, the fact that the defendants confessed to the crime in a high number of cases even if the defence lawyer was present (interpreted in conjunction with the data indicating the lack of questions, comments or motions made by defence lawyers) might indicate the insufficiency of the lawyers' performance. (At the same time, it is also possible that pleading guilty – which is a mitigating factor – was a legitimate defence strategy in certain cases and the suggestion of the lawyer can be deemed justified.)

An example for the problematic activity of defence lawyers is provided by the case of a lawyer who was appointed after the arrest of the defendant (a fact that is substantiated by the documents), but still, he was the one who signed the arrest order on behalf of the defendant who refused to sign the decision.

In another case, at the trial one of the defendants stated in relation to his testimony given during the investigation that "I would like to say that there are many words in my testimony which are those of the police officer and not mine. I gave that testimony at two o'clock in the morning, there was a defence lawyer, but he was sleeping."

3.4. Coercive measures and the length of the procedure

Out of the 67 defendants in the sample 46 were placed in pre-trial detention, which means 69%. The conclusion that the Hungarian judiciary did not – at least until the introduction of electronic tagging – regard alternative coercive measures as a real option (in other words, in all cases where the judge does not deem it possible to release the defendant, he/she applies pre-trial detention) is apparently confirmed by the fact that the possibility of the application of a less restrictive coercive measures was mentioned in only two decisions ordering pre-trial detention.

Differences based on the ethnicity of Roma and non-Roma defendants were not detectable as regards the ordering of pre-trial detention,[42] and the length of detention was also close to identical in the investigation phase of the procedures: in the case of Roma defendants it was on average 3.5, while in the case of non-Roma defendants 3.9 months.

However, if we consider the judicial phase, differences can be demonstrated between the two ethnic groups. The average length of pre-trial detention in the judicial phase was 9 months in the case of Roma and 6.9 months in the case of non-Roma defendants.

Looking at the whole procedure, it can be stated that Roma defendants were held in pre-trial detention on average for 12.5 months (approximately 375 days), in other words more than one year, while non-Roma defendants for 10.8 months (approximately 324 days).

In order to evaluate the reasons of the above differences, we have also considered the length of the procedures.

42 Supreme Court judge Zsolt Csák raised at the Conference that since robbery is the most severe offence against property, "there is a very slight chance that a person suspected of […] or charged with robbery would not be placed in pre-trial detention". In his view, an offence of lesser severity (e.g. theft) would have been a better choice for testing whether there are differences in the application of coercive measures vis a vis defendants from different groups of society.

Table 43

Average length of the investigation phase in days – by ethnicity (mean, standard deviation)

	Mean	Standard deviation	Total
Roma	140	108.38	100 (N=33)
Non-Roma	151	125.03	100 (N=29)
Total	146	115.62	100 (N=62)

Table 44

Length of first instance court procedure in days – by ethnicity (mean, standard deviation)

	Mean	Standard deviation	Total
Roma	225	187.57	100 (N=34)
Non-Roma	203	118.33	100 (N=30)
Total	215	317.47	100 (N=66)

Table 45

Length of second instance court procedure in days – by ethnicity (mean, standard deviation)

	Mean	Standard deviation	Total
Roma	183	84.01	100 (N=32)
Non-Roma	176	87.34	100 (N=23)
Total	180	84.69	100 (N=55)

As it is shown by Tables 43–45, there were not any significant differences related to the length of the investigatory or the judicial phase of the procedure in the cases included in our sample. In the cases of non-Roma defendants included in our research, a final and binding decision was delivered after 530 days on average, while in the cases of Roma defendants it took 548 days. Therefore, we have drawn the conclusion that the difference in the length of pre-trial detentions does not derive from the different length of procedures.

(However, we note that this would not be a justifiable reason either, since according to Act XIX of 1998 on the Criminal Procedure if the defendant is held in pre-trial detention, an expedited procedure shall be conducted so that the detention does not last longer than necessary. Therefore, longer procedures in the case of one

group could not be a justifiable reason for differences concerning the length of detention, since the protraction of the procedure in itself is problematic if the defendant is held in detention. At the same time, in accordance with the case-law of the ECtHR, after a certain lapse of time continued detention must be justified by more and more pressing needs of public interest. This rule would not be complied with if pre-trial detention was prolonged in linear proportion with the length of the procedure. After a certain lapse of time, coercive measures cannot be continued especially not based on the argument that the authorities are not capable of concluding the procedure in due course.)

We have found one more aspect of decisions on pre-trial detention with regard to which differences between the position of Roma and non-Roma defendants could be detected, namely, the degree to which decisions taken on pre-trial detention were individualised. (We assume that individualisation or its absence does have an impact on the excessive length of pre-trial detention, since adequate individualisation requires that the specific circumstances of the case are considered, and these circumstances are likely after a certain lapse of time to outweigh the abstract danger of absconding deriving solely from the gravity of the crime. In case this individual evaluation is lacking, it might take more time for the court to qualify the abstract danger as insufficient to justify the continuation of detention.)

The assessment of the issue of individualisation is obviously somewhat subjective, however, we provided the colleagues conducting the research with instructions on how to evaluate the decisions. These were drafted taking into consideration the relevant case-law of the ECtHR and the Curia (Supreme Court).

The ECtHR held in the Letellier case that the danger of absconding "cannot be gauged solely on the basis of the gravity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial".[43]

Moreover, the Supreme Court held in its Decision no. BH2009 7. that when examining the grounds for pre-trial detention, the conclusion that there is a danger of absconding shall be based on concrete facts. The decision refers to the case-law of the ECtHR that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstand-

43 Letellier v. France, Application no. 12369/86, § 43.

ing the presumption of innocence, outweighs the rule of respect for individual liberty. Therefore, references to the danger of absconding shall be underpinned by specific facts related to the actual case. The ECtHR held in the above decision with regard to the specific case that gravity of the crime or prospective sentence (in the relevant case, imprisonment up to 15 years or life-imprisonment) is such a fact without a doubt. At the same time, this in itself is not a sufficient reason to justify continued pre-trial detention and to draw the conclusion that otherwise the presence of the defendant at the trial could not be ensured. This conclusion required the examination of additional circumstances, especially of those connected to the personality of the defendant.

Accordingly, the researchers were given the instruction that *"the decision is individualised if it indicates that the court weighed the personal circumstances of the defendant – such as family relations, income, criminal record of the defendant, etc. – and did not refer only to general reasons such as the gravity of the crime or the prospective length of imprisonment".*

Evaluating the cases from this perspective, the researchers drew the conclusion that the decisions on coercive measures were more frequently not or only partially individualised in the case of Roma defendants than in the case of the non-Roma. The research looked into this issue in relation to both the decisions ordering and prolonging the coercive measure. The rates were the following.

The decisions ordering pre-trial detention during the investigation were not or only partially individualised much more frequently in the case of Roma (67%) than non-Roma (41%) defendants. In the case of second instance decisions the difference was smaller: the decisions delivered on the appeal against the ordering of pre-trial detention were stereotyped in the case of both the Roma and the non-Roma defendants. The researchers found that second instance courts rejected the appeals of 85% of Roma and 75% of non-Roma defendants without a properly individualised reasoning.

With regard to the investigation phase, the researchers have concluded that both first and second instance decisions on the continuation of pre-trial detention were individualised more frequently in the case of non-Roma than Roma defendants. In the case of Roma defendants, 15% of the first instance decisions were regarded by the researchers as individualised (as opposed to 50% of decisions taken in the case of non-Roma defendants), while none of the second instance decisions were individualised (second instance decisions are not sufficiently individualised in the case of non-Roma defendants either, but still in a higher proportion, 14% of the cases, individual assessment is provided in them).

Researchers have drawn the same conclusion with regard to the decisions taken on coercive measures by the judges in the course of preparing the trial: in the case of 78% of Roma defendants the court did not individualise or only partially individualised the decision as opposed to the 39% of non-Roma defendants. According to the evaluation of researchers, this ratio was 83 and 50% respectively in the case of second instance decisions.

Results were similar with regard to the regular review of pre-trial detention. The first instance decisions were sufficiently individualised in the case of 20% of Roma and 39% of non-Roma defendants, while second instance decisions were qualified by the researchers as including a reasoning based on the individual circumstances of the defendant in 20 and 50% of the cases respectively.

An illustrative example for the lack of individualised reasoning is the case of a defendant whose pre-trial detention was ordered by the investigatory judge in a decision which included only the suspicion as communicated to the defendant and the criminal procedure code's legal provisions concerning pre-trial detention, but failed to refer to any fact which would have indicated that those legal provisions should be applied in the case of the specific defendant.

The continuation of the pre-trial detention of a man who – after his wife had left him and he had had to feed their four children from odd jobs for a number of months – robbed a bank by threatening the staff with a knife, was ordered based on a reasoning referring only to the relevant legal provisions and the lack of stable income.

In another case the defendant was placed in pre-trial detention in a decision that only mentioned his name in the operative part, since in the actual reasoning the court only referred to facts that were relevant to his co-defendants, and not even his name appeared in the part outlining the reasons for the detention.

In many cases, courts refer only to the gravity of the crime as the reason substantiating the danger of absconding. An example is provided by the case of a defendant raising three children and having a clean criminal record who confessed to the crime at the first interrogation, nevertheless, the decisions on his pre-trial detention delivered in the investigatory phase referred only to the gravity of crime and that additional investigatory measures were needed. Following the closure of investigation, the courts referred to the additional

time required for the preparation of the indictment. As opposed to this, after the pressing of charges, the court replaced the detention with a ban of leaving the administrative area of residence (geographical ban) referring exactly to the above presented individual circumstances (clean criminal records, caring for children) and to the principle that "the gravity of the crime in itself is not a sufficient ground substantiating the danger of absconding".

There are also differences based on ethnicity related to less restrictive coercive measures. As opposed to the investigatory phase, in the judicial phase alternative measures are applied, but still only in a low number of cases (see Tables 46–48).

Table 46
Was a geographical ban ordered in any phase of the procedure? – by ethnicity (% and N)

	Ordered	Not ordered	Total
Roma	3	97	100 (N=36)
Non-Roma	19	81	100 (N=31)
Total	10	90	100 (N=67)

Table 47
Was house arrest ordered in any phase of the procedure? – by ethnicity (% and N)

	Ordered	Not ordered	Total
Roma	3	97	100 (N=36)
Non-Roma	7	94	100 (N=31)
Total	5.5	95.5	100 (N=67)

Table 48
Was bail allowed in any phase of the procedure? – by ethnicity (% and N)

	Ordered	Not ordered	Total
Roma	0	100	100 (N=36)
Non-Roma	3	97	100 (N=31)
Total	1.5	98.5	100 (N=67)

The overall conclusion can be drawn that out of the 67 cases included in our research alternative coercive measures were used only in 9 cases: in the case of 7 non-Roma (22% of all the non-Roma defendants) and only 2 Roma defendants (5% of all the Roma defendants).

Our data confirm that the practical significance of bail is extremely low in the Hungarian criminal procedure: in only 1 out of the 67 cases was bail allowed – in favor of a non-Roma defendant.

At the Conference, Supreme Court judge Zsolt Csák drew attention to a factor that may play an important role in the more disadvantaged situation of Roma defendants in relation to alternative coercive measures. He said that when deciding on the coercive measure to be applied, the courts take into account the defendant's living conditions, because they believe that for house arrest – and to a smaller extent geographical ban – to be applicable, certain minimum conditions are required.

Emphasising that in this regard we disagree with the judicial practice (since we believe that the defendants' living conditions may only in very extreme cases play a role in the choice of the measure that is required for the successful conducting of the criminal procedure), we wish to point out that due to the socio-economic characteristics of the Roma population (which are worse than the already dire average of our total sample) this judicial approach may result in the under-representation of the Roma among defendants with regard to whom less restrictive coercive measures are applied.

3.5. Sentencing

The research of 2000 presented a significant difference between Roma and non-Roma defendants with regard to sentencing. "If we compare only the judgments imposing non-suspended imprisonment, the conclusion can be drawn that the sentence imposed on Roman defendants is 185 days longer on average. This means a difference of half a year!" After transforming fines into days of imprisonment for the sake of guaranteeing comparability, the research found that "there is a difference of 130 days between the sanctions imposed on Roma and non-Roma defendants. […] In the case of theft of smaller value, Roma perpetrators are sentenced to 2 months longer imprisonment on average. In the case of higher value theft, no significant differences were found in the length of the sentences. With regard to sanctioning, the most significant difference was observable in the case of the gravest crime included in the sample, namely the crime of robbery. Imprisonment imposed on Roma

perpetrators for the crime of robbery was 343 days longer on average, which means a difference of almost 1 year."[44]

The research of 2002 – which used a high number of cases but was based on a distorted sample due to the fact that many courts in the regions highly populated by Roma did not give permission for the research – detected significant differences in sentencing in cases of theft, but did not find differences in cases of robbery. ("Not only within our sample, but in Hungary in general, courts of larger towns are 11% more likely to impose imprisonment in the cases of Roma defendants. It is also surprising that we have found the most significant difference in the case of the least serious crime, low value theft, where every sixth non-Roma defendant is sentenced to imprisonment as opposed to every third Roma defendant – even if in some cases the imprisonment is suspended.")

The results of our research (which need to be handled cautiously due to the low number of cases) are closer to those of the 2002 research, since they do not indicate significant differences in the sanctioning practice of robbery.

The qualification of the offences included in our research is presented in Table 49.

Table 49

Number of defendants per specific qualification (final judgment)

	Total	Roma	Non-Roma	Not possible to decide	Juvenile	Adult
Art 321 of Criminal Code						
Par (1)	21	10	10	1	1	20
Par (2)	5	4	1	0	2	3
Par (3) a)	8	1	6	1	1	7
Par (3) b)	0	0	0	0	0	0
Par (3) c)	27	18	8	1	3	24
Par (3) d)	1	0	1	0	0	1
Par (4) a)	3	3	0	0	1	2
Par (4) b)	4	3	1	0	0	4
Par (4) c)	1	0	1	0	0	1
Par (4) d)	0	0	0	0	0	0
Par (5) a)	0	0	0	0	0	0
Par (5) b)	1	1	0	0	0	1
Not qualified as robbery	1	0	1	0	0	1

44 Csorba et al., pp. 133–134.

We can conclude that in most of the cases included in our sample the final judgment qualified the offence as basic form of robbery or robbery committed in a group. These two categories cover 72% of all cases.

Relatively large proportion of the cases were constituted by those where the criminal act was qualified as robbery due to the violence or threat applied by the thief with a view to keep the stolen object (5 cases, 7%), where the crime was committed while carrying a deadly weapon (8 cases, 12%), and where the value of the object of the crime was substantial or higher (4 cases, 6%), but due to the higher number of elements we have examined more thoroughly the sanctions applied in cases falling within the above mentioned two categories.

In this regard, we can conclude that no difference can be demonstrated between Roma and non-Roma defendants in the cases included in our sample.

Table 50

Frequency of gravity (N) and length (in months) of sentences imposed on Roma and non-Roma defendants – by qualification, by first instance decisions

1st instance	Roma				Non-Roma			
Art 321	Type of sentence			Average length	Type of sentence			Average length
	high security prison	medium security prison	low security prison		high security prison	medium security prison	low security prison	
Par (1)		11		34.9		9		35.1
Par (3) c)	7	11		45.8	3	5		45.8

Table 51

Frequency of gravity (N) and length (in months) of sentences imposed on Roma and non-Roma defendants – by qualification, by second instance decisions

2nd instance	Roma				Non-Roma			
Art 321	Type of sentence			Average length	Type of sentence			Average length
	high security prison	medium security prison	low security prison		high security prison	medium security prison	low security prison	
Par (1)		7		37.4	1	7		45.0
Par (3) c)	14	2	2	51.8	4	3		48.9

As it can be seen by Tables 50 and 51, the average length of sanctions imposed by the first instance judgments is identical, and although there are differences at the second instance, those cannot be said to indicate differentiation based on ethnicity,

as in relation to the basic form of robbery non-Roma defendants, whereas in the case of robbery committed in a group Roma defendants are sanctioned more strictly.

No significant difference could be found between the groups of Roma and non-Roma defendants with regard to the mitigating factors either (Table 52).

Table 52

Rate of cases where the prosecutor/first instance/second instance court did not refer to mitigating factors which did exist in the case according to the defence lawyer and/or the researcher – by ethnicity (% and N)

	Prosecutor	N	1st instance court	N	2nd instance court	N
Roma	70%	33	65%	31	55%	31
Non-Roma	75%	28	72%	25	68%	25
Total	72%	61	68%	56	61%	56

In the case of both Roma and non-Roma defendants, in more than two thirds (70 and 75%) of the cases we have found that the prosecutor did not refer to a mitigating factor which existed according to the defence lawyer or the researcher. The first instance courts did not refer to such mitigating factors in the case of 65% of Roma and 72% of non-Roma defendants. In second instance judgments, this ratio was 55% in the case of Roma and 68% in the case of non-Roma defendants.

Out of the aggravating factors, we have examined the references to the proliferation of robbery cases, a factor which does not depend on the individual characteristics of the case and the perpetrator.

Table 53

Rate of cases where the proliferation of robbery cases is referred to – by ethnicity (% and N)

	Prosecutor	N	1st instance court	N	2nd instance court	N
Roma	71%	35	51%	35	45%	31
Non-Roma	70%	30	63%	30	58%	24
Total	71%	65	57%	65	51%	55

We have found that the prosecutor refers to the proliferation of robbery cases as frequently in the case of Roma as in the case of non-Roma defendants, and that both the first and the second instance courts put more emphasis on this factor in the case of non-Roma defendants (Table 53).

A difference based on ethnicity seems to exist with regard to the issue of whether the defendant is convicted after pleading or not pleading guilty.

Table 54

Evidence considered by the court and underpinning liability of the defendant according to the evaluation of the court – by ethnicity (% and N)

	Guilty plea	Partial guilty plea	Denial of charges	Denial to testify	Total
Roma	33	33	33	0	100 (N=36)
Non-Roma	58	29	13	0	100 (N=31)
Total	45	32	24	0	100 (N=67)

Roma defendants are more frequently convicted (67%) while denying the charges or partially confessing to the crime than non-Roma defendants (42%). However, this is probably connected to the fact that in the cases included in our sample non-Roma defendants confessed to the crime in the investigatory phase in higher proportion (typically, already during the first interrogation). As we presented above, 44% of Roma and 58% of non-Roma defendants confessed fully to the crime already during the first act of the investigation.

This difference is probably the reason why the first instance judgment becomes legally binding more frequently in the case of non-Roma defendants (23% as opposed to 11% of Roma defendants.)

Apparently, no difference based on ethnicity can be demonstrated in the sentencing practice.

At the same time, while evaluating the individual cases included in the research, we have had – we must emphasise – the impression that there is one additional aspect of the criminal procedure which should be analysed in order to answer the question whether the procedural system as a whole (including the investigation) properly ensures the absolute equality before the law of Roma and non-Roma defendants.

This factor is the issue of whether and how the judicial phase corrects possible failures of the investigatory phase. In this regard, cases evaluated by the research seem to confirm the concerns raised mostly by defence lawyers that the investigation is a determining factor with regard to the final outcome of the criminal procedures in Hungary. If the case "goes astray" in this phase, there is a good chance that the failure cannot be corrected later on, since if the statement made during the investigation differs from the testimony given in the courtroom, the courts tend to take the former

into consideration even if the statement was given in the investigatory phase under circumstances which lacked due process guarantees (as it is referred to by the above cited decision of the Constitutional Court).

The problem is convincingly summarized by Endre Bócz who – after forty years of prosecution practice – gave the following account: "from the point of view of the judge […] the ideal situation is if the defendant tells everything at the hearing as it was recorded at the interrogation during the investigation. […] In case there is a discrepancy between the oral and written testimony, its reason shall be clarified. The typical question posed by the presiding judge provides an easy solution in favour of the statement given during the investigation: »Did you remember better back then?« The question implying the answer generally achieves its goal. If someone still insists on the truthfulness of the statement given at the court hearing, he/she has to be informed that this (at least implicitly) means that the police officer forged the minutes, and also the defendant has to be informed about the legal consequences of false accusation."[45]

That the above scenario is realistic is underpinned by the case included in the research, where the defendant stated at the hearing that he had been required to sign a more or less pre-drafted statement. His ex officio appointed defence lawyer requested a break after which the defendant changed his statement and declared that "it is more than probable" that he had said what was recorded in the minutes of the interrogation but he could not fully recall this because he had been under the influence of drugs.

A number of factors contribute to this "dominance" of the statements given during the investigation. Obviously, as a result of the protracting procedures the reliability of subsequent testimonies and their evidentiary value decrease – partly due to the lapse of time, and partly because witnesses might "integrate" into their testimonies information on events which they were previously not aware of but were informed about during the procedure (e.g. as during confrontations).

In addition, as it was pointed out by an experienced criminal judge, when the judge is preparing for the trial, he/she is essentially orientated by the contents of the file and the file is determining the direction of his/her thinking. The participation of

45 Bócz, Endre: *Büntetőeljárási jogunk kalandjai. Sikerek, zátonyok és vargabetűk.[Adventures of our law on criminal procedure. Successes, reefs and detours.]* Magyar Hivatalos Közlönykiadó, Budapest, 2006, p. 156.

defence lawyers in the investigatory phase is restricted in many respects. Due to the failures of notification (discussed above), the defence lawyer is frequently not present at the first interrogation. The ex officio appointed defence lawyers do not appear in many cases even if they are properly notified. Due to the restricted access to the case file, defence counsels (including retained lawyers) are typically less active in the investigatory phase – they tend to file motions and to present their arguments only in the judicial phase. This means that the case file "studied" by the judge does not or just partially includes statements of the witnesses of the defence and the defendant's arguments. Therefore, the judge (while he/she prepares a concept about the case and the strategy on the course of the procedure) is mostly influenced by the line of reasoning of the investigative authority. Hence, the judge can stick to his/her pre-prepared case strategy to the greatest possible extent if the testimony made at the court hearing is as close to the statement given during the investigation as possible.

This problem is demonstrated by the above discussed case where in the courtroom neither the victim who was interrogated in the investigatory phase while he was drunk, nor the witness who was also heard while being under the influence of alcohol testified against the middle-age defendant included in our sample. Even though the co-accused (referring to the pressure of police) had withdrawn her incriminating statement as well, the court convicted the defendant based on the statements given during the investigation.

> *Another case illustrating this point is where one of the victims stated that he had testified against the defendants due to pressure from the police officer: "Why I said something else there? Because the police officer was against them, […] we said that we did not want this case but the police officer told us that Gypsies deserve it. […] I heard he had been beaten up by inhabitants of the village X, and this is why he said that Gypsies deserved it. We did not want to report the case. The police officer said if we did not then G [acquaintance of one of the victims who was informed about the incident by the victim] would file a report. The defence lawyer referred to this testimony of the victim in his pleading but the first instance judgment did not reflect in any way on the statements relevant to the police officer, only held that the victims were afraid of the defendants and therefore accepted the incriminatory statements made in the investigatory phase.*

The minutes taken at the interrogations and the distortions of the statements as recorded in them[46] (especially if the interrogation is conducted during the night or early in the morning without the presence of a defence lawyer) are highly criticised – first of all but not exclusively by defence lawyers. We have found cases in the present research too where the doubt arises that the minutes do not exactly include what in fact was said.

For instance, there was a case where the defendant who was interrogated at dawn claimed that he had not exactly said what appeared in the minutes, and not only him, but also two witnesses stated in the courtroom that minutes did not accurately reflect what they had actually said: "Only their eyes could be seen behind the masque. I did not say that they had taken off the masque, this is sure, I did not say that. I did not tell either what stature they had had. This was added by the police officer. I did not say what clothes they had been wearing." Another witness also referred to the inaccuracy of the minutes: "When I was interrogated, they did it in a way that they asked me whether I had seen him then and there […], and whether I had seen him earlier in the village. I did not say such a thing that he had been loafing about and looking around there for 4 or 5 days, this is not my phrasing."

In relation to the consideration of testimonies made during the investigation, Supreme Court judge Zsolt Csák drew attention at the Conference to the fact that when the defendant challenges the testimony as recorded in the investigation phase, many judges summon the interrogating police officer to the court hearing and take his/her testimony as to the way the interrogation was conducted. However – rather obviously – officers never admit that they have distorted the records of statement or exerted pressure on the suspect. Therefore – unless other evidence substantiates the defendant's subsequent denial – the judge, who may not assume that the minutes have been falsified, must accept the testimony made during the investigation. (It needs to be noted that the participants of the Conference practically reached a consensus that the audio recording of investigatory acts would mean a significant step towards solving this problem.)

46 See for example, Pataky, Csaba: Ügyvéd a büntetőeljárásban. *[Defence lawyer in the criminal procedure.]* In: *Dolgozatok Erdei Tanár Úrnak*. Eds: Holé, Katalin – Kabódi, Csaba – Mohácsi, Barbara. ELTE Állam- és Jogtudományi Kara, Budapest, 2009, p. 377.

If, besides the absence of the ex officio appointed lawyer and the problems of recording the interrogation, we take into account those facts which indicate that the defendants might have to face disadvantages based on ethnicity during the investigation,[47] we have to conclude that failures might occur during the investigation which must be corrected in the judicial phase so that the procedure as a whole would ensure due process guarantees.

This is especially so, because sociological research into the attitude of police officers demonstrates that there are strong prejudices within the police. For instance, a 2005 research tested whether police officers tend to check the identity of members of certain social groups more frequently than others. This phenomenon was tested through a number of questions. "They first looked into what the police officer thinks about the other police officers: according to the answers, 47% of the interviewed 80 police officers think that there are police officers who tend to check the identity of members of certain groups more frequently. […] Almost half of the 80 interviewed police officers identified the groups that are more frequently ID checked by his/her colleagues. 26 out of the 37 police officers who answered this question mentioned the Roma, most of them even explained this assumption: […] »we need to keep a closer eye on Gypsies, there is a better chance for me to catch a wanted person if I check the identity of Gypsies«, »the Romani, because they are the ones committing most of the crimes«, […] »the Roma, because they are the ones committing 80% of the crimes«, »the Roma, because in their case the rates of criminality are higher« […].

Only half of those answering the previous question (altogether 18 interviewees) responded to the question whether they themselves are prone to check the identity of members of a certain group more frequently: […] »the Roma, because it is typical that they make a living by committing crimes and petty offences«, »the Roma, because they are the ones in the society who commit the most crimes«, […] »there is a greater criminality among ethnic people«. […]

79% of the interviewed police officers think about the Roma that they commit more crimes than ethnic Hungarians. In the view of 73%, the rate of Roma perpetrators is substantially higher than the proportion of incidents within other groups living under similar social conditions. […] The opinions significantly differed about the reasons for this (with two thirds of the interviewees responding to the question

47 See for instance the individual cases mentioned in the Introduction, or the above described recognition session, where all the photos shown along with the defendant's picture depicted persons who did not seem to be of Roma origin.

on the causes). One fifth of those who answered think that financial problems lead to criminality. Almost everyone mentioned bad social circumstances and the low living standards, but most of them connected these factors to reasons of socialisation, mental state, lifestyle and internal characteristics: »on the one hand, due to financial problems, on the other hand, others (a certain percentage) because it is in their blood«, »due to their financial disadvantages, but their financial situation is their own fault« […].”[48]

Without a doubt, this attitude can result in the distortion of the course of investigation in certain extreme cases. In case this happens, then even if the sentencing practice is balanced and even (in the sense that defendants charged with similar offences can expect similar sanctions no matter which ethnic group they belong to), other features of the procedure (e.g. the chances of ending up before the court, the facts which the indictment is based on) will be influenced by ethnicity due to the problems arising during the proceeding of the investigative authority. Therefore, the system as a whole can produce inequality even if the judicial practice is “colour-blind”.

Based on the results of the present research, we cannot conclude that this is the case in general, but certain factors revealed by the case file research indicate that this aspect of the criminal procedure – namely the issue of to what extent the investigation determines the entire procedure and its final outcome – needs to be looked into thoroughly by further research.

In relation to this problem, Zsolt Csák pointed out that the role and weight of the investigation in the procedure should be reviewed, and it ought to be reconsidered whether it is indeed necessary to conduct such an extensive evidentiary procedure as it presently happens. He thinks that it would be worth considering the concept (which was raised in the legislative process leading to the adoption of the present code of criminal procedure, but was finally put aside) according to which the investigation’s role should be restricted to the carrying out of the inevitably necessary procedural acts and the gathering of the evidence to be examined by the court, and then as soon as possible – “within the limits of human memory” – the court phase shall be started enabling the judge to hear the detailed testimonies and decide which

48 Pap, András László – Simonovits, Bori: Ahogy a lakosság, és ahogy a rendőr látja. Az igazoltatás gyakorlati tapasztalatai. *[As the public and as the police officer see it. Practical experiences of identity checking.]* In: *Fundamentum*, Vol 10 No 2, pp. 130–131.

ones he/she accepts or rejects to take into account. As opposed to this, in the present system it can happen that due to his/her statutory obligations the judge will be a kind of "notary public certifying the documents generated by the investigation".

Besides the difficulties of correcting the investigation's failures in the court phase, another issue worthy of further research was raised at the Conference. Mátyás Bencze – former penal judge, associate professor of the Debrecen University – called attention to the potential dangers posed by the pressure public opinion may exert on judges. To substantiate his point, he compared a February 2014 judgment delivered by the Vicinity of Budapest Tribunal with the sentence imposed in the Olaszliszka case.[49] In the former – the four defendants of which beat a homeless person to death with extreme cruelty under the influence of alcohol – the first instance (non-final) decision imposed 6 years of imprisonment on the two juvenile perpetrators and 8 years on the two adult defendants.[50]

According to Bencze, the two cases do not differ significantly from the point of view of those facts that are relevant with regard to their penal qualification: in both cases "numerous persons beat an innocent victim to death with their bare hands and in a way that caused more sever suffering than inevitably necessary for taking someone's life. In the Olaszliszka case there were also two juveniles (younger than 16), on whom the court imposed the most severe and lengthy sanction (10 years imprisonment in a juvenile prison). In the present [2014] case the court had to decide about two juvenile defendants, both older than 16, so in their case 15 years of imprisonment would have been the strictest sanctions (they were sentenced to 6 years of imprisonment). The juvenile defendants had a clear criminal record in both cases. […] with regard to the adult defendants the difference is even more significant. The defendant who had a clear criminal record and confessed to the case, was sentenced to 17 years of imprisonment, and those who had a criminal record were given a life sentence irrespective of whether they confessed or not (from the point of

49 On 15 October 2006 a teacher, Lajos Szögi and his two daughters were traveling through the village of Olaszliszka when a Roma child ran across the road and was swept off her feet by the car. Mr Szögi stopped to see whether the child needed help. Although as it turned out later, the child fell but otherwise was unharmed, the child's family (without knowing whether the child was injured) attacked the car, dragged Mr Szögi out of the driver's seat, and beat him to death in front his two daughters. The case triggered enormous public outcry and very strong anti-Roma sentiments.

50 For a detailed description of the arguments, see the article "*Bírói populizmus?" [Judicial populism?]* at http://szuveren.blog.hu/2014/02/27/biroi_populizmus. We rely greatly on this article in outlining the problem raised by Bencze.

criminal law, none of them were recidivists). By considering all these circumstances, it would be difficult to find legally relevant differences between the two crimes that would justify the outstanding discrepancy between the sanctions imposed in the two judgments."

According to Bencze, the difference is not based on ethnic origin, i.e. it may not be contributed to the fact that the defendants of the Olaszliszka case were of Roma origin, whereas in the other case, the perpetrators came from well-to-do families of non-Roma origin. In Bencze's view, the difference is caused by the fact that the Olaszliszka case was widely publicised, and the public opinion formulated clear expectations as to the judgment to be delivered, which expectation was actually fulfilled by the court. Bencze warns that – especially in a period of increasing political populism and political statements expressly defining what kind of judicial decisions the politicians would like to see – it poses a very severe danger if the judiciary cannot detach itself from social pressure. At the same time, he makes it clear that this phenomenon may not be regarded as widespread, and "many judges take very seriously their oath, which is not only valid in »peaceful times«, but also for instances when the decision they deliver in accordance with their professional conviction and good conscience may trigger a public outcry or even political attacks". (As positive examples Bencze mentions the Curia's decision in the case of those who took foreign currency based bank loans, and the judgment of the second instance court and the Curia in the Cozma case.)

Tamás Fazekas, staff attorney of the Hungarian Helsinki Committee, warned at the Conference that due to the strong anti-Roma sentiments within the Hungarian society, the phenomenon Bencze calls "judicial populism" can result in the violation of the Roma defendants' equality before the law, since if the popular pressure demanding more severe sanctions concerns a case where the defendants are of Roma origin, the judicial attitude giving in to this pressure will result in ethnic disproportionalities even if the judge himself/herself may not be regarded as biased.

This is another area which is worthy of further research (e.g. into how sanctions imposed in cases closely followed by the public compare to the general jurisprudence).