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## Small-Scaling Imprisonment in the Balkans – The ‘Holy Grail’ of Resocialisation?

■ **ABSTRACT:** *This study investigates the potential of small-scaled detention and transition concepts in the domain of imprisonment as the potential ‘holy grail’ of resocialisation, with a focus on the Balkans and relevant neighbouring countries. Intuitively, all the penological knowledge we have gathered so far points towards ‘small-scaling of imprisonment’ as an extremely feasible ‘new’ concept in minimising ‘detention damage’ while maximising resocialisation, thereby ultimately reducing recidivism and the overall harm of crime. Now, however plausible said assumption might intuitively seem to the enlightened penologist, it nevertheless calls for a critical scrutiny and preliminary empirical investigation. To achieve this meaningfully, one first needs to address the relevant tendencies currently shaping the penal landscape throughout Europe, particularly in the Balkans. We summarise these tendencies under the umbrella term of ‘era of penal contradiction’, in which mutually exclusive penal policies coexist and effectively undermine actual advancements in resocialisation and recidivism reduction. Said conceptual and empirical contextualisation will enable us to better understand the challenges and opportunities criminal justice systems in the Balkans face in their attempts to catch up with the rest of Europe. It is against this backdrop that small-scaled detention and transition concepts must be investigated, particularly in view of the strong and explicit support these concepts have been recently receiving from the Council of the European Union. Based on such an analysis, we conduct a first assessment of the potential of reshaping imprisonment in the Balkans in a humane and evidence-based manner based on the concept of small-scaling detention facilities.*

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- **KEYWORDS:** *penology, recidivism, penal populism, small-scale detention houses*

## 1. Background and introduction

The impulse and necessity of conducting the analysis in this study emerged at the occasion of the ‘European Symposium on Detention Houses’ held on 21 March 2024 in Brussels,<sup>1</sup> considering that the currently ongoing European policy and legislation initiatives are strongly pushing for a ‘small-scaling’ of detention facilities.<sup>2</sup> Essentially, small-scaled detention facilities are simply small(er) in terms of scale when compared to conventional prison facilities; thus, they are differentiated when it comes to the individual needs of incarcerated persons and community integrated.<sup>3</sup> Clearly, such a conceptual (and practical) setup of small-scaled detention facilities is from its very onset far more likely to be in line with the ‘principle of normalisation’<sup>4</sup> – as foreseen in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)<sup>5</sup> and the European Prison Rules<sup>6</sup> – than the setup of large-scale conventional prisons might ever be. Penological research, case studies, and ‘good practice’ reports from all over the world, particularly from Europe and the Nordic countries, provide a solid

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1 Council of the European Union, 2024, p. 6:

The European Symposium on Detention Houses on 20 and 21 March 2024, organised by the RESCALED network under the auspices of the Belgian Presidency, focused on small-scale detention and detention houses. During the symposium, it was demonstrated that small-scale detention contributes to a better sense of community and better social integration and can lead to a lower recidivism rate. Such forms of detention therefore contribute to achievement of the objective of safer communities and lower criminality.

2 See Council of the European Union, 2024, and section 4.3 for more details.

3 Council of the European Union, 2024, p. 7:

Small-scale detention facilities are to be understood as structures with a smaller capacity compared to large-scale prisons. This smaller capacity can be beneficial in terms of living environment, dynamic security, social inclusions, and therefore a better atmosphere for reintegration. Detention houses – which are a form of small-scale detention – are to be understood as small-scale, differentiated, community-integrated facilities with suitable programmes focusing on social rehabilitation and reintegration, taking into account individual needs and with a focus on building autonomy and taking responsibility.

4 Penal Reform International and the Council of Europe, 2023, p. 12:

Normalisation principle: The principle of ‘normalisation’ maintains that life in prison should resemble as far as possible the positive aspects of ‘normal’ life in a free society (Rule 5). While prison life can never be exactly the same as the outside world, the prison authorities can take positive steps to create a culture and conditions which are as close to normal life as possible. On the normalisation principle, see also van de Rijt, van Ginneken and Boone, 2023.

5 United Nations Office on Drugs and Crime (UNODC), 2015.

6 For more details, see Penal Reform International and the Council of Europe, 2023.

empirical starting point to argue that ‘small-scaling’ is potentially the ‘holy grail’ of resocialisation, detention damage minimisation, and thus recidivism reduction (which are ultimate goals of enlightened criminal punishment) and that, subsequently, is a very promising approach to reducing the societal and individual harms of crime.<sup>7</sup>

Penological knowledge gathered thus far clearly shows that there is no empirical evidence in support of the assumption that incarceration reduces reoffending, whereby a considerable share of scientific evidence shows that incarceration may actually even contribute to reoffending.<sup>8</sup> Numerous European countries, especially those that utilise the benefits of evidence-based crime policy, have, in response to said penological knowledge, been continuously re-shaping and re-scaling their prisons from places of incarceration and treatment into detention and transition houses that are spaces of normalisation and resocialisation.<sup>9</sup>

The Balkans,<sup>10</sup> however, are reluctant to do so, although empirical data and prior research strongly indicate that this region of Europe provides, in many regards, solid conditions to utilise the benefits of re-scaling prisons, perhaps even more successfully than other parts of Europe. Looking at incarceration rates and

<sup>7</sup> See, for example, the resource collections provided by RESCALED [Online]. Available at: <https://www.rescaled.org/publications/> (Accessed: 6 August 2025) and Prison Insider [Online]. Available at: <https://www.prison-insider.com/en/articles/mapping-small-scale-detention-throughout-europe> (Accessed: 6 August 2025), as well as Ugelvik and Dullum, 2012, and Johnsen, Granheim and Helgesen, 2011.

<sup>8</sup> Petrich, Pratt, Jonson and Cullen, based on a large meta-analysis of 116 studies, found that custodial sanctions (imprisonment) have no effect on reoffending or have a weak criminogenic effect on reoffending when compared with noncustodial sanctions such as probation, whereby this effect is relatively robust across a wide variety of methodological moderators. See, for full details, Petrich, Pratt, Jonson and Cullen, 2020, as well as Villettaz, Gillieron and Killias, 2015, on their previously conducted meta-analysis that arrives at essentially the same conclusion.

<sup>9</sup> For examples of such small-scale detention facilities, see the mapping conducted by Prison Insider [Online]. Available at: <https://www.prison-insider.com/en/articles/mapping-small-scale-detention-throughout-europe> (Accessed: 6 August 2025).

<sup>10</sup> For the purpose of legal analysis, the definition of the Balkans is adopted from Getoš, Albrecht and Kilchling, 2014, chapter 1 (Sundhaussen). According to them, the Balkans and Southeastern Europe, while distinct in their geographical coverage, share numerous similarities. Both regions exhibit rich historical and cultural complexities, shaped by diverse ethnic and religious populations, geopolitical tensions, and economic disparities. The Balkans specifically represent a subset of Southeastern Europe, encompassing countries with historical ties to the Balkan Peninsula, including Bosnia and Herzegovina, Serbia (excluding Vojvodina) and Kosovo, Montenegro, Republic of Macedonia, Bulgaria, European part of Turkey (Eastern Thrace), Greece, and Albania. In contrast, Southeastern Europe extends beyond the Balkans, including countries such as Slovakia, Slovenia, Croatia, Vojvodina (North Serbia), Romania, Hungary, and Moldova. Despite these differences in scope, both regions share common challenges and historical legacies that contribute to their unique identities within the broader European context. Although Greece and the European part of Turkey are part of the Balkans, they are not included in the analysis due to lack of available accurate data online and of English translations of legal texts.

crime rates across Europe, one can observe data clustering into the Central and Eastern European (CEE) and Western European (WE) clusters, both differing substantially: Crime rates in WE countries are distinctly higher than those in CEE countries, while incarceration rates in WE are significantly lower than those in CEE countries.<sup>11</sup> The possible reasons for this are almost indefinite and certainly complex rather than monocausal; nevertheless, while acknowledging the current methodological challenges in comparing incarceration and crime data across time, space, and contexts, it appears that examining conventional crime in CEE and the Balkans,<sup>12</sup> compared to WE, might be a relatively smaller challenge. In view of this, it is extremely paradoxical to find higher incarceration rates, and it is justified, at least from an explorative point of view, to investigate whether small-scaling of detention facilities might provide for a more sensible approach to criminal punishment in the Balkans, where alternatives to conventional criminal punishment do not seem to have the same appeal as in WE. This has made it necessary to look for new alternatives to incarceration in large-scale prisons, such as small-scale detention facilities.

Basically, we pose the question of whether the Balkans, being a criminological space *sui generis*, represents a region in which the small-scale concept might be a particularly meaningful and justified new approach to punishment, and if so, why? To address this core question, we first contextualise our analysis by embedding it into what we termed as the 'era of penal contradiction', in which mutually exclusive penal policies coexist and effectively undermine actual advancements in resocialisation and recidivism reduction.

## 2. The 'Era of Penal Contradiction'

### ■ 2.1. *The 'Dark Ages' of punishment*

Understanding the history and purpose of punishment in the context of resocialisation is essential as it provides insights into societal attitudes towards rehabilitating offenders across different historical periods. By tracing the evolution of punishment, from punitive measures to rehabilitation efforts, we gain a deeper understanding of the changing priorities and values regarding the approach towards offenders. Furthermore, comprehending the underlying purposes of punishment throughout history allows us to discern the overarching societal goals that have shaped resocialisation strategies, whether they prioritise deterrence, retribution, or rehabilitation. By examining historical practices and their outcomes, we can better inform present strategies for effective resocialisation and address persisting challenges or biases inherited from the past.

11 Gruszczyńska and Gruszczyński, 2021, p. 1.

12 Getoš, Albrecht and Kilchling, 2014.

The origin of punishment is unclear, but it has been present in even the most primitive societies and early history.<sup>13</sup> While many theories exist, punishment is often defined as a societal act against a wrongdoer, and a widely supported theory suggests that punishment evolved from private vengeance.<sup>14</sup> However, governments intervene to prevent the escalation of retaliation beyond acceptable limits, aiming to maintain societal order and prevent chaos.<sup>15</sup> Punishment became more severe as societies progressed and formalised, especially during periods such as the classical civilisations and feudal times, driven by the need to consolidate power, enforce social order, and deter individuals from engaging in disruptive behaviour.<sup>16</sup> In the 18th century, amid challenges to monarchy, efforts to reform individual offenders emerged, transitioning from religious to educational approaches and laying the groundwork for modern rehabilitation.<sup>17</sup> At this time, Beccaria was influential for his ground-breaking ideas on criminal justice. His approach to punishment advocated for rational, necessary, and proportionate measures, arguing that any punishment exceeding absolute necessity is tyrannical and unjust.<sup>18</sup> By promoting the idea that excessive punishments are counterproductive, he called for more humane practices, thereby reducing the overall severity of punishments.<sup>19</sup>

Moreover, Bentham’s impact on punishment highlights practical measures such as reformation, disablement, and exemplary penalties, stressing deterrence through punitive actions.<sup>20</sup> Bentham’s theory prioritises understanding offenders’ motivations and assessing inflicted pain, aiming to achieve societal and individual benefits through opportunities for rehabilitation.<sup>21</sup> Following his ideas, Samuel Romilly emphasised preventive measures in the criminal justice system, advocating for reforms addressing the root causes of crime to prevent offences and reflecting a shift towards a more progressive and humane approach.<sup>22</sup>

Another name that stands out in the evolution of punishment is that of John Howard. His efforts to reform the prison system during the 18th century shed light on the deplorable state of prisons, and he advocated for significant changes, particularly in improving the living conditions and treatment of prisoners.<sup>23</sup> In the late 19<sup>th</sup> century, the study of individual offenders shifted from physical measurements to psychiatric analysis, giving rise to the case history system for diagnosing

13 Stearns, 1936, p. 219.

14 Stearns, 1936, p. 219.

15 Stearns, 1936, p. 230.

16 Stearns, 1936, p. 230.

17 Stearns, 1936, p. 230.

18 Beccaria, 1764, p. 12.

19 Beccaria, 1764, p. 12.

20 Draper, 2002, pp. 16–17.

21 Draper, 2002, pp. 16–17.

22 Gregory, 1902; Carmody, 1934, chap. 2.

23 Chapman, 2013.

and treating offenders.<sup>24</sup> Elizabeth Fry's pioneering efforts in 19th century prison reform, focussing on classification, inspection, labour, education, religion, and health, hold significance in the context of resocialisation.<sup>25</sup> Advocating against solitary confinement and harsh labour, her holistic approach significantly impacted penitentiary practices, setting a precedent for more humane treatment of inmates.<sup>26</sup>

This brief historical overview sheds light on the intricate relationship between the historical evolution of punishment and resocialisation. From primitive retribution to modern rehabilitation efforts, the trajectory of punishment reflects societal values, priorities, and attitudes towards offenders. Authorities such as Beccaria, Bentham, Samuel Romilly, John Howard, and Elizabeth Fry have left indelible marks on the criminal justice landscape, advocating for more rational, humane, and effective approaches to dealing with offenders. Their contributions underscore the importance of understanding the past in informing present strategies for resocialisation.

### ■ 2.2. *The 'Enlightenment' of resocialisation*

In the 20th century, the shift towards greater emphasis on resocialisation persisted. The period of peace following World War II enabled the establishment of international human rights frameworks, such as the Universal Declaration of Human Rights (1948).<sup>27</sup> These frameworks emphasised the dignity of the individual and the need for humane treatment, influencing penal policies globally. The trend of enlightenment and humane approaches to resocialisation is also evident in terminological frameworks. The context of resocialisation is expanding, and new terms such as rehabilitation and reintegration are being introduced. These concepts are increasingly intertwined and frequently mentioned in various international documents, resolutions, declarations, recommendations, and decisions of the European Court of Human Rights (ECtHR), as well as appear in the work of the United Nations and European institutions. The aim of this section is to untangle the terminological confusion surrounding these intertwined concepts and to present the development in the approach to resocialisation that has followed from the Enlightenment to the present day.

In the critical transition from incarceration to freedom, it is imperative that prisoners are afforded the opportunity to reintegrate into the society, an endeavour that hinges on the closely related concepts of rehabilitation, resocialisation, and reintegration. Rehabilitation – defined as 'the process of restoring a person who has offended to a crime-free life'<sup>28</sup> – is often referenced in scholarly, policy, and

24 Stearns, 1936, p. 230.

25 Cooper, 1981, pp. 681–690.

26 Cooper, 1981, pp. 681–690.

27 United Nations Department of Public Information, 1948.

28 Criminal Justice Alliance, no date.

legal contexts without a universally accepted delineation, leading to a terminological conundrum.<sup>29</sup> Complementary to this is resocialisation, or the ‘reintegration of convicted individuals into the society’,<sup>30</sup> which encapsulates the social dimension of the re-entry process. The term reintegration also surfaces in conjunction with these concepts, as referred to in the 2006 European Prison Rules.<sup>31</sup> Although these are distinct concepts for which there are often no unanimous definitions, their meanings are frequently conflated in scholarly texts. In the case of *Hirst v. United Kingdom*,<sup>32</sup> the term ‘resocialisation’ appears to be utilised interchangeably with ‘social rehabilitation’,<sup>33</sup> which illustrates the fluidity with which terminologies are deployed within the juridical domain, merging the distinctions between rehabilitative concepts. A possible reason for such incoherent use of terminology is that rehabilitation was a controversial concept in the past that gained its negative connotation in the context of human rights violations when it was used as a pretext for protracted periods of incarceration.<sup>34</sup>

Nowadays, European penal policy prioritises rehabilitation over punishment, as affirmed by the ECtHR, which mandates member states to emphasise rehabilitation in their penal policies, considering it a compulsory aspect.<sup>35</sup> This emphasis has been reinforced in cases such as *Murray v. The Netherlands*<sup>36</sup> and *Khoroshenko v. Russia*,<sup>37</sup> where the ECtHR underscored the obligation of states to ensure effective rehabilitation measures within their criminal justice systems. A judge’s appropriate sentencing should both affirm the community’s trust in the judicial system’s fairness and promote resocialisation of the offender, aligning with current trends where resocialisation is emphasised over punitive actions in European penal policy.<sup>38</sup> The idea of resocialisation is systematically developed through European legislation, which can be traced back to 1977 in the Standard

29 Meijer, 2017, p. 145; Forsberg and Douglas, 2022, p. 124.

30 Penal Reform International, 2019.

31 Council of Europe Committee of Ministers, 2006.

32 *Hirst v. United Kingdom* (2), ECtHR (app.74025/01), 2005.

33 Van Zyl Smit, 2018, p. 15.

34 Meijer, 2017, p. 146.

35 Meijer, 2017, p. 146.

36 *Murray v. The Netherlands*, ECtHR (app. 10511/10), 2016, paragraph 104.

37 *Khoroshenko v. Russia*, ECtHR (app. 41418/04), 2015, paragraph 121.

38 For example, the Spanish Constitution mandates that prison sentences should aim at the re-education and social rehabilitation of prisoners, as stated in Article 25, Paragraph 2; Italy’s Constitution articulates in Article 27 that the goal of punishment is transformation of the individual before their sentence concludes; the Federal Court of Germany has affirmed resocialisation as a fundamental component of the rights protected by the constitution. Arsoshvili, 2021, pp. 28–30.

Minimum Rules for the Treatment of Prisoners,<sup>39</sup> followed by other European documents such as the General Assembly Resolution 2200 A (XXI) on the International Covenant on Civil and Political Rights from 1996,<sup>40</sup> and Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.<sup>41</sup> Thus, the trend of resocialisation is systematically developed through the practice of the ECtHR, which imposes rehabilitation as a positive obligation of the state.<sup>42</sup>

European legislation does not precisely define or delineate the boundaries between resocialisation and rehabilitation; thus, this concept continues to be shaped and developed through the national laws of various countries. Consequently, a normative review must be conducted of the approaches to rehabilitation and reintegration in the legislation of Balkan and Southeastern European countries. This review aims to highlight how each country uniquely addresses the process of rehabilitating and reintegrating offenders into the society.

The Croatian legislator defines the right to rehabilitation as the offender's right to be considered, after a legally specified period, as a person who has not committed a criminal offence; at this time, the rights and freedoms of the criminal offender cannot differ from those of individuals who have not committed a criminal offense.<sup>43</sup> The detailed treatment of prisoners is regulated by the Execution of Prison Sentence Act, which does not use the term 'rehabilitation'; instead, it states that the purpose of executing a prison sentence is to prepare the offender for a life of freedom, in accordance with the law and social norms, thereby contributing to the protection of the community.<sup>44</sup> Furthermore, it emphasises the need for humane treatment and respect for the dignity of the person serving the prison sentence. The significance of resocialisation is also emphasised in the Croatian Criminal Code under Article 41, which states that the purpose of punishment is to express social condemnation for the committed criminal act, strengthen citizens' trust in the legal order based on the rule of law, influence both the offender

39 The so-called the Nelson Mandela Rules reference rehabilitation in 10 articles (Articles 25, 59, 88, 89, 90, 93, 96, 102, 107, and 122), covering a broad spectrum of rehabilitative aspects. These include allocating prisoners as close to their families as possible to achieve social resocialisation, safeguarding their safety and health, classifying prisoners appropriately, providing opportunity to work, ensuring time for education, and continuing to provide support even after their release from incarceration. UNDOC, 2015.

40 The International Covenant on Civil and Political Rights highlights that the primary goal of the penitentiary system should be the reformation and social rehabilitation of prisoners through appropriate treatment. General Assembly resolution 2200 A (XXI), 1996.

41 The recommendation, in its basic principles, emphasises that all forms of detention should be managed in a way that supports the reintegration of individuals who have been deprived of their liberty back into free society. Council of Europe Committee of Ministers, 2006.

42 Penal Reform International and the Council of Europe, 2023, p. 12.

43 Croatian Act on the Legal Consequences of Convictions, Criminal Records and Rehabilitation, 2022, Article 19.

44 Croatian Execution of Prison Sentence Act, 2021, Article 3.

and others to abstain from committing criminal acts, and enable the offender to reintegrate into society.<sup>45</sup>

The Hungarian legislator does not mention the resocialisation of the perpetrator as the purpose of punishment; instead, the legislator highlights the interest in protecting society and preventing the perpetrator or any other person from committing criminal acts.<sup>46</sup> The purpose of rehabilitation is mentioned only in the provisions on the conditional imposition of a sentence (Article 65) and in provisions regarding work performed in amends (Article 67). Furthermore, resocialisation is referred to only in basic provisions of the Act on the Implementation of Penalties, Measures, Certain Coercive Measures, and Detention for Violations, which emphasises that the goal of punishment is to promote social integration of the convicted person and the development of law-abiding behaviour.<sup>47</sup>

In the Serbian legal system, Article 4 of the criminal code specifies that criminal sanctions include various forms such as punishment, caution, security measures, and rehabilitation measures, and the purpose of imposing these sanctions is to prevent acts that violate or endanger the values protected by criminal legislation.<sup>48</sup> Under Article 97, the general concept of rehabilitation is defined as a process that erases the conviction and terminates all its legal effects, thereby reinstating the individual as someone without a criminal record. Furthermore, the Serbian Law on the Execution of Criminal Sanctions in Article 2 underlines that the sanctions are enforced to fulfil the general and specific objectives of their imposition, with the end goal of achieving successful social reintegration of the convicted individuals.<sup>49</sup>

Under Article 103 of the Slovenian Penal Code, statutory rehabilitation results in removal of the conviction from the criminal record, cessation of the conviction’s legal repercussions, and acknowledgment that the convicted person is to be regarded as never having been found guilty.<sup>50</sup> Furthermore, the Slovenian legislator outlines the state’s objectives in sentencing, which include protecting the core values and principles of the legal system, affirming the unacceptability of criminal actions to offenders and the public, and ensuring the effective re-entry of offenders into the society with respect for their dignity and personal rights through the levy of suitable penalties.<sup>51</sup>

45 Croatian Criminal Code, 2024, Article 41.

46 Hungarian Act on the Legal Consequences of Convictions, Criminal Records and Rehabilitation, 2022.

47 Act on the Implementation of Penalties, Measures, Certain Coercive Measures, and Detention for Violations, 2013.

48 Serbian Criminal Code, 2019.

49 Serbian Law on Execution of Criminal Sanctions, 2020.

50 Slovenian Penal Code and Law on Amendments and Supplements to the Criminal Code, 2023.

51 Meško, Tičar and Hacin, 2020, p. 10.

The Slovak legislator does not explicitly define rehabilitation, but Article 34 of the Penal Code, under the principles for the imposition of punishments, emphasises its importance, alongside prevention, by creating conditions for educating individuals to lead orderly lives.<sup>52</sup> Rehabilitation is mentioned again in the same article when determining the type and severity of the penalty, where the court is tasked with considering the individual's potential for rehabilitation.

The Romanian legislator defines two possible types of rehabilitation, statutory and judicial, in Articles 165 and 166.<sup>53</sup> Furthermore, Article 169 outlines the effects of rehabilitation as the removal of any loss of rights, prohibitions, or incapacities incurred as a result of the sentence. Rehabilitation is also considered in the context of conditions for waiving the enforcement of a penalty, where the court assesses the offender's likelihood of rehabilitation.<sup>54</sup> However, even though the term 'rehabilitation' is again used in this context, it may be more closely aligned with the concept of resocialisation.<sup>55</sup> Thus, during the probation period, the court must consider the offender's need for rehabilitation and set obligations that enhance the prospects for successful rehabilitation.<sup>56</sup>

The legislator of Bosnia and Herzegovina refers to rehabilitative goals in Article 7, which defines the purpose of criminal sanctions.<sup>57</sup> Besides protecting society through the preventive influence on others to respect the legal system and deter them from committing crimes as well as preventing the offender from committing new crimes, this study emphasises encouraging the offender's resocialisation, as well as protection and satisfaction of the victim of crime. Rehabilitation is specified in Article 121, which states that after the convicted persons have served the prison sentence, they have been pardoned, or the prison sentence has expired, these persons enjoy all the rights established by the constitution, law, and other regulations, and they can acquire all the rights except those limited by a security measure or the conviction's legal consequences.

While the Criminal Code of Montenegro<sup>58</sup> does not specify resocialisation of the offender as a general purpose of criminal sanctions in Article 4, the Act on the Execution of Prison Sentences, Fines, and Security Measures<sup>59</sup> does refer to the resocialisation and reintegration of convicted persons into the society as the purpose of executing sanctions in Article 3. Furthermore, Article 118 defines rehabilitation as something that effectively erases the conviction and terminates all its

52 Slovak Penal Code, 2019.

53 Romanian Criminal Code, 2012.

54 Romanian Criminal Code, 2012, Article 80.

55 This distinction is important because resocialisation focusses on reintegration of individuals into society and development of law-abiding behaviour, which may not fully encompass the legal definition of rehabilitation as intended in the statutory framework.

56 Romanian Criminal Code, 2012, Article 87.

57 Criminal Code of Bosnia and Herzegovina, 2023.

58 Criminal Code of Montenegro, 2018.

59 Act on Execution of Prison Sentences, Fines, and Security Measures in Montenegro, 2015.

legal consequences, treating the individual as if they have never been convicted; it also distinguishes between judicial and statutory rehabilitation.<sup>60</sup>

In the Criminal Code of Macedonia,<sup>61</sup> Article 32 defines the purpose of sentencing as preventing the offender from committing further crimes, which indirectly includes a resocialisation element through the emphasis on correction as one of its goals. Additionally, Article 39 regarding the general rules for meting out a sentence requires the court to particularly consider the overall impact of the sentence and its consequences for the offender’s personality and his need for resocialisation. Rehabilitation is defined in Article 103, which distinguishes between statutory and court rehabilitation, noting that a rehabilitated person is considered as never having been sentenced, with no disclosure of expunged sentence details to anyone.

Kosovo’s legal framework outlines the process of rehabilitating and re-integrating offenders into the society through various articles.<sup>62</sup> Article 38 of the criminal code emphasises the multifaceted purpose of punishment, aiming to prevent future criminal behaviour, rehabilitate the perpetrator, deter others from committing crimes, and provide compensation to victims or the community. Additionally, Article 96 addresses statutory rehabilitation, where a convicted person’s punishment is expunged from their record if they meet certain criteria, effectively erasing their status as convicted. Article 97 introduces judicial rehabilitation, allowing the court to expunge a punishment from the records and consider the person not convicted if specific conditions are met, including a clean record for a certain period and demonstration of positive conduct post-punishment. Furthermore, articles of this law, including Articles 54, 56, 58, 84, and 87, mention the term ‘rehabilitation’ in the context of addiction treatment.

In Bulgaria, the imposition of penalties serves three primary purposes: reforming the convicts to uphold laws and morals, preventing them from committing further crimes, and providing instructive and warning effects to the society.<sup>63</sup> It is explicitly stated that penalties should not involve physical suffering or humiliation of human dignity. Regarding rehabilitation, Article 85 stipulates that it results in the removal of the conviction and its future legal consequences, unless specified otherwise by law. Furthermore, Article 87 outlines the conditions for individual rehabilitation, where a convicted person can be rehabilitated by the court if they demonstrate good conduct and satisfy other legal conditions (not committed another crime within three years of completing their sentence, provided that they have also restored any damages caused by deliberate crimes). Additionally, Article 88 allows heirs to request rehabilitation for a deceased convicted individual if they meet the necessary criteria.

60 Criminal Code of Montenegro, 2018.

61 Republic of Macedonia Criminal Code, 2018.

62 Criminal Code of the Republic of Kosovo, 2019.

63 Penal Code of the Republic of Bulgaria, 2023, Article 36.

In Albania, the purpose of criminal penalties, as defined in Article 61 of the Criminal Code, serves multiple objectives.<sup>64</sup> First, it aims to punish the offender for their committed crime and isolate them for a period necessary to ensure public security. Additionally, the penalty seeks to facilitate the offender's reintegration into the society through their punishment; prevent further criminal acts; and provide compensation and protection to victims, minors, and other vulnerable individuals. Rehabilitation is specifically addressed in Chapter III, Section I of the Criminal Code, focussing on minors.<sup>65</sup> Rehabilitation is also mentioned in Section II, where Articles 101, 103, and 118 detail provisions for rehabilitation within the context of medical interventions and mandatory treatments for offenders. Finally, the concept of rehabilitation is outlined in Article 174, which states that individuals may be considered as having no criminal record under certain conditions. These conditions vary based on severity of the sentence imposed and the time elapsed without committing further criminal offenses following completion of the sentence.

In Moldova, the purpose of criminal punishment is to restore social equity, rehabilitate the convict, and prevent the commission of new crimes by both the convict and others, as stated in Article 61 of the Criminal Code.<sup>66</sup> The code explicitly states that punishment must not cause physical suffering or humiliate the convict's dignity. Rehabilitation, as a significant aspect of the criminal justice system, is mentioned in several contexts. Article 112 details judicial rehabilitation, allowing convicts to cancel their criminal history if they exhibit irreproachable behaviour and meet specific conditions. Rehabilitation is also crucial in specifying punishments and managing recidivism; Article 75 outlines that more severe punishments should only be applied when milder ones cannot achieve the rehabilitation goal. Furthermore, Article 82 considers rehabilitation in cases of recidivism, considering the convict's past behaviour and the effectiveness of previous punishments. Rehabilitation is also emphasised in the chapter on security measures, highlighting the elimination of danger and importance of rehabilitation as a preventative measure.

To summarise, resocialisation in penal policies has evolved significantly from the Enlightenment to the present day, influenced by penological knowledge, international human rights frameworks, and the European legislation. This evolution reflects a broader understanding of rehabilitation, resocialisation, and reintegration as interconnected concepts essential for the humane treatment of

<sup>64</sup> Criminal Code of the Republic of Albania, 2023.

<sup>65</sup> The educational measures outlined in Article 92 are designed to foster the holistic development of minors who have committed offenses or pose a risk to themselves or others. Additionally, Article 98 introduces the option of placing minors in educational-corrective care institutions when necessary, providing long-term institutional treatment to support their education, reintegration, and rehabilitation.

<sup>66</sup> Penal Code of the Republic of Moldova, 2016.

offenders and their successful reintegration into society. Legal frameworks of several countries in the Balkans and Southeastern Europe, including Croatia, Hungary, Serbia, Slovenia, Slovakia, Romania, Bosnia and Herzegovina, Montenegro, Macedonia, Kosovo, Bulgaria, Albania, and Moldova, all recognise the significance of rehabilitation and resocialisation within their criminal justice systems. Despite variations in terminology and emphasis, these countries share the common goal of reintegrating offenders into society and preventing recidivism. Rehabilitation is often defined in legislative texts by specific criteria and procedures for expunging criminal records, enabling individuals to be recognised as not having committed a criminal offense. Additionally, the term is used to refer to the rehabilitation and reintegration processes for offenders (resocialisation). This overlap is not surprising, as terms such as resocialisation, rehabilitation, and reintegration are frequently used interchangeably in the European legislation. While some countries explicitly emphasise rehabilitation in their legal frameworks and sentencing principles, others may focus more on protection of society and prevention of future crimes. Overall, while there are similarities in recognising the importance of rehabilitation, there are also notable differences in how it is defined, implemented, and prioritised across these diverse legal systems. Each country takes a unique approach to addressing these goals, illustrating a common commitment to resocialisation as a cornerstone of modern penal policy.

### ■ 2.3. *The ‘Penal Populism Era’*

There is no doubt that we have come a long way from the ‘Dark Ages’ of punishment that focussed on retribution, all the way to the ‘Enlightenment’ that focusses on resocialisation and reintegration. A question arises as to whether and how this ‘enlightened’ focus of criminal punishment still accurately reflects the current penal landscape in the Balkans and Southeastern Europe, and even more so globally. Penal populism

... refers to the way in which criminals and prisoners are thought to have been favoured at the expense of crime victims, in particular, and the law-abiding public, in general. It feeds on expressions of anger, disenchantment and disillusionment with the criminal justice establishment. It holds this responsible for what seems to have been the insidious inversion of common-sensical priorities for much of the post-1945 era: protecting the well-being and security of law-abiding ‘ordinary people’, while punishing those whose crimes jeopardise this. ... penal populism is more directly tied into perceived public views about crime and punishment, as presented on their behalf by forces extraneous to government: the law and order lobbyists, victims’ rights groups and the like. Politicians have no monopoly of discourse on these matters and allow themselves to become hostages

to whatever fortune the alliance they have made with these forces then brings them.<sup>67</sup>

Essentially, penal populism can be defined ‘as the promotion and enactment of criminal justice policy that is more focused on appealing to public opinion and electoral advantage rather than attempting to reduce crime’.<sup>68</sup>

Throughout most of Europe, particularly Southeastern Europe and its Balkan subregion, penal populism has been steadily rising.<sup>69</sup> Harsher sentencing frameworks, broader criminalisation, and an increase in investigative detention are all evident penal policy trends (among others) that characterise penal populism.

In view of rising penal populism throughout the region of interest, while all countries still firmly (and at least formally) subscribe to the principle of resocialisation, reintegration, or rehabilitation as a core purpose of criminal punishment (see section 2.2), it is safe to conclude that we are living in an ‘era of penal contradiction’. On the one hand, we do not (and cannot due to the standards set by the ECtHR) give up on resocialisation as one of the core elements of criminal punishment; on the other hand, we have become far more punitive and risk-intolerant, hence inclined to approaching crime policy from not an evidence-based standpoint of reason and facts but an emotional and populist point of view. Without further assessing whether such penal populistic developments are meaningful and constructive or rather insensible and counterproductive, the fact remains that they are here and, on the rise, with little indication of their demise in the near future. Thus, the matter deserves our scientific attention, and if one assesses that there is little to be achieved by advocating for reason and enlightenment in penal policy, another approach may be needed.

Here, we turn to ‘new’ concepts such as small-scaled detention facilities, which might not be a solution to efficiently tackling penal populism but could be a cure to treat its symptoms. By making detention facilities more humane, small-scaling them, and allowing for individualisation and normalisation of life in detention, we could somewhat reconcile the contradicting effects of penal

<sup>67</sup> Pratt and Lee, 2024. According to Garland, the first one to raise the issue of ‘populist punitiveness’ was Tony Bottoms back in 1995, whereas Garland defines penal populism as ‘... a form of political discourse that, directly or by implication, denigrates the views of professional experts and liberal elites and claims instead the authority of ‘the people’ whose views about punishment it professes to express. ... Penal populism typically has a punitive, reactionary cast – which is why we often think of it as a synonym for ‘populist punitiveness’. Garland, 2022, p. 251. See also Pratt and Miao, 2022; Pratt, 2007; Garland, 2021; Pratt and Grzyb, 2023; and Grzyb, 2021, for a convincing analysis on ‘feminist penal populist discourse’ in Spain and Poland.

<sup>68</sup> Koning and Puddister, 2024, p. 225.

<sup>69</sup> See, for example, Boda and Bartha, 2022; Haney, 2016; Ignjatović, 2017; Nikoll, 2015; Šprem and Getoš Kalac, 2024; Getoš Kalac and Feuerbach, 2023.

populism on the one hand and the goal of resocialisation and reintegration on the other. If recidivism rates were to decline as a result while communities profit from the benefits of small-scale detention facilities, this could prove to be an actual solution to penal populism in the long run. Said assumption seems plausible but needs to be put in context of the relevant penological facts and figures, as analysed throughout section 3.

### **3. The Balkans: penologically relevant facts and figures**

Numerous factors can indicate the current state of prisons. These encompass various aspects, including the conditions of prison infrastructure, sanitation standards, training of prison personnel, security, fair treatment of inmates, access to healthcare services including medical and mental health support, availability of programming and rehabilitation services, demographic composition of the prison population, prevalence of violence and misconduct, and share of recidivism. Additionally, factors such as probation services, re-entry support, legal frameworks, and external oversight mechanisms all reflect the effectiveness, fairness, and humanity of the prison system. The number of cases brought before the ECtHR concerning violations of human rights in prisons also serves as a significant indicator of the state of correctional facilities and the extent to which they comply with international human rights standards. However, analysing all these factors comprehensively is beyond the scope of this study. Therefore, we limit our focus to three indicators: prison populations, probation populations, and recidivism. These factors provide insights into the state of prisons and the effectiveness of criminal justice systems in Balkan and Southern European countries.

#### **■ 3.1. Prison Populations**

The following analysis utilises Eurostat data on the prison population to illustrate trends in the imposition of prison sentences. These data provide a comprehensive and standardised measure of incarceration rates across Balkan and Southeastern European countries. The prison population rate per 100,000 inhabitants is a metric that quantifies the level of incarceration in a country, calculated by dividing the total number of people in prison, which encompasses inmates who are both sentenced and awaiting trial, by the country’s total population and then scaling the result to represent a proportion per 100,000 residents.<sup>70</sup>

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70 Eurostat, no date.

Figure 1: Prison Population Rates per 100,000 Inhabitants in Balkan and South-eastern European Countries (2012–2022)<sup>71</sup>

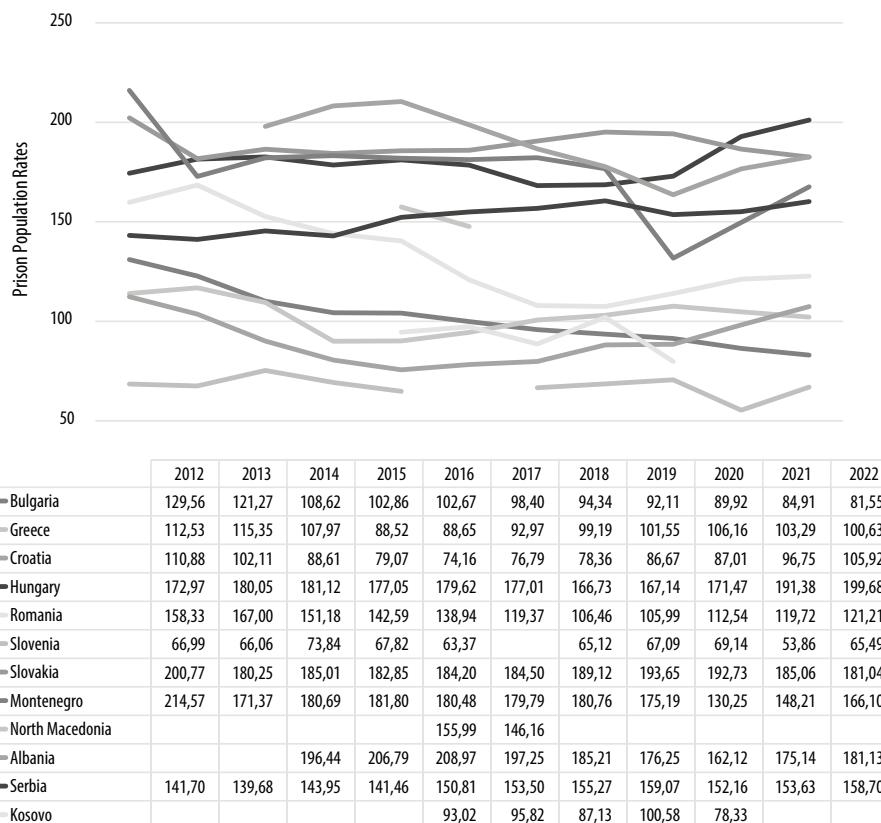


Figure 1 illustrates the prison population rates in Balkan and Southeastern European countries from 2012 to 2022 and reveals diverse trends and changes in imprisonment rates over this period. Several countries show a general decline in prison population rates. This trend is noticeable in Bulgaria, Romania, and Slovenia. For instance, Bulgaria's rate decreased from 129.56 in 2012 to 81.55 in 2022. Romania also follows this pattern, with its rate dropping from 158.33 in 2012 to 121.21 in 2022, marking a downward trend. Slovenia, which has one of the lowest and most stable rates, saw a slight decrease from 66.99 in 2012 to 65.49 in 2022. Conversely, some countries exhibit fluctuations rather than a clear trend (Greece, Hungary, and Croatia). Greece, for example, saw a decrease from 112.35 in 2012 to 97.92 in 2014, followed by slight fluctuations, ultimately ending at 100.63

<sup>71</sup> Moldova and Bosnia and Herzegovina are not included in this analysis due to unavailability of data for these countries.

in 2022. Hungary’s rates have varied significantly, starting at 172.97 in 2012, fluctuating over the years, and increasing to 199.68 in 2022. Similarly, Croatia’s rate remained relatively stable with minor fluctuations, starting at 110.88 in 2012 and ending at 105.92 in 2022. Slovakia and Montenegro demonstrate more stability. Slovakia experienced a decrease from 200.77 in 2012 to 181.04 in 2022, despite some intermediate fluctuations. Montenegro’s rates started high at 214.57 in 2012 and generally decreased to 155.10 in 2022. The absence of data on North Macedonia’s and Kosovo’s incarceration rates for certain years limits our understanding of the dynamics and hinders comparative assessments with other countries.

Seemingly, Albania, Montenegro, Slovakia, and Hungary have the highest rates throughout the period, while Slovenia consistently maintains the lowest rates. Overall, the tendency is towards lower incarceration rates, although attributing these changes to specific policies or events is complex without proper context. On a last note, it needs to be stressed that the period from 2016 to 2021 is marked by a decrease in prison population rates in not only Balkan and Southeastern European countries but also the vast majority of all European countries.<sup>72</sup>

### ■ 3.2. *Probation populations*

In addition to the prison population rate, we can monitor the trend of mitigation by analysing the probation population rate (Figure 2). Probation can be defined as a legal mechanism wherein a court suspends the imposition or execution of a sentence, allowing the offender to remain in the community under specific conditions instead of serving time in incarceration,<sup>73</sup> and probationers are defined as persons placed under the supervision of probation agencies.<sup>74</sup> The content of probation is more precisely defined by European documents, specifically Appendix I to the Council of Europe’s Recommendation CM/Rec (2010)1,<sup>75</sup> while the Council of Europe’s Recommendation Rec(2003)22<sup>76</sup> further extends the scope of probation and includes conditional release (parole).<sup>77</sup> Probation serves as a penalty that can enhance the efficiency of the justice system without straining its resources excessively.<sup>78</sup> Although probation rates vary significantly across Europe (partly due to the varied methods of probation agencies), the highest rates are found in Western

72 For more details and data, see Aebi et al., 2024, p. 289.

73 Diana, 1960, p. 190.

74 Aebi, Cocco and Hashimoto, 2023, p. 14.

75 According to the Recommendation CM/Rec (2010)1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, ‘Probation relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.’

76 Council of Europe Committee of Ministers Recommendation (2003)22 of the Committee of Ministers to Member States on Conditional Release (Parole), 2003.

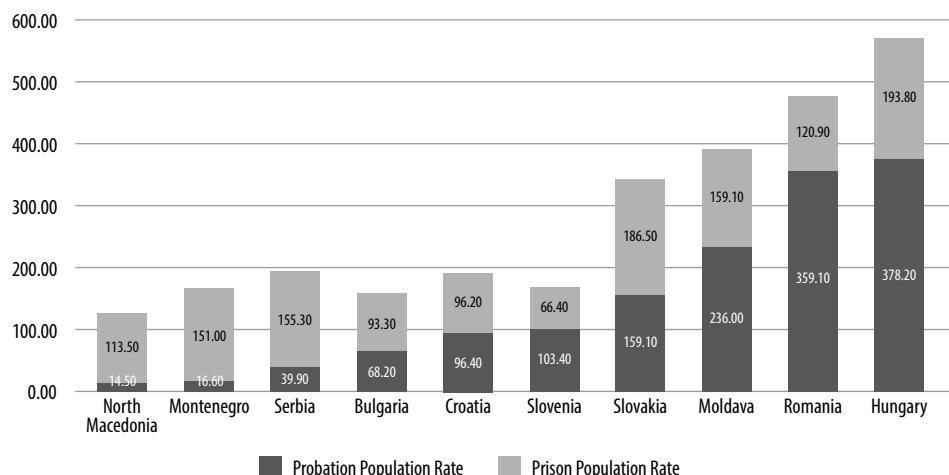
77 Aebi, Cocco and Hashimoto, 2023, p. 2.

78 Taxman and Maass, 2016, p. 188.

and Northern European countries.<sup>79</sup> Particularly notable are Poland, Lithuania, and Belgium, which display the highest probation population rates, while North Macedonia, Montenegro, and Serbia stand out with the lowest rates.<sup>80</sup>

For a comprehensive understanding of probation, the probation rate must be analysed in conjunction with the prison population rate. The focus of probation research is on Balkan and Southeastern European Countries.<sup>81</sup> The European median of 161 probationers per 100,000 inhabitants is employed to evaluate probation rates as high or low, based on data provided by probation agencies utilising a person as the unit for counting the stock of probationers.<sup>82</sup>

Figure 2. Probation Population Rates per 100,000 Inhabitants in Balkan and Southeastern European Countries in 2022<sup>83</sup>



<sup>79</sup> Aebi, Cocco and Hashimoto, 2023, p. 2.

<sup>80</sup> Aebi, Cocco and Hashimoto, 2023, p. 4.

<sup>81</sup> Albania, Bosnia and Herzegovina, Greece, and Kosovo are excluded from the analysis due to unavailability of data on the prison population and probation population rates, with Bosnia and Herzegovina and Kosovo lacking data on both and Albania and Greece lacking data on the probation population rate.

<sup>82</sup> Aebi, Cocco and Hashimoto, 2023, p. 2.

<sup>83</sup> Slight variations in reported prison population rates between SPACE statistics and EUROSTAT data can be attributed to differences in methodology. These discrepancies can arise from variations in data collection techniques, including criteria for defining and categorising prisoners, as well as differences in sources and frequency of data updates. SPACE statistics use stock data, which give a snapshot of the prison population at one moment (stock indicators on 31 January 2022). Furthermore, variations in the scope and coverage of data collection efforts, such as the inclusion or exclusion of specific types of facilities or individuals within the prison population, can contribute to the disparities.

According to the Council of Europe Annual Penal Statistics (or Statistiques Pénales Annuelles du Conseil de l’Europe [SPACE]), Croatia belongs to the group of countries with low probation rates and a low prison population rate; North Macedonia, Montenegro, and Serbia also have low probation rates but relatively high prison population rates; the Slovak Republic has a relatively high prison population rate but, at the same time, a relatively high probation population rate.<sup>84</sup> High probation population rates are particularly prominent in Romania, Hungary, and Moldova, which should be viewed in the context of relatively high prison population rates.<sup>85</sup> An explanation for the significantly lower probation rates observed in North Macedonia, Montenegro, and Serbia is that probation services in these countries lack a long history and were established relatively recently.<sup>86</sup> Additionally, it is interesting to note that the probation rate generally increased from 2021 to 2022, which is interpreted as the unintended consequences of the diminishing of measures introduced to reduce the pandemic spread.<sup>87</sup>

On a final note, it needs to be stressed that the probation rate itself is a simple ‘count’ that does not provide any insight on the quality of probation services actually provided, just as the prison population rate provides no insight into the quality of incarceration in terms of prison conditions, treatment, etc. Both rates are nevertheless indicative of the different countries’ focus on either imprisonment or their alternatives (e.g. probation) in responding to crime; throughout the region, these rates can be presumed as fairly low when compared to WE and not reflective of a ‘high-crime’ region.

### ■ 3.3. *Recidivism*

Recidivism is analysed using national official statistical data for the Balkan and Southeastern European countries (Figures 3, 4, and 5). The trend of recidivism is compared only at the normative level, considering that the data are methodologically collected differently and thus not compatible for actual comparisons.<sup>88</sup> Nevertheless, it is considered significant to highlight the legislative approach to the pervasive trend of recidivism, in view of the national definition of the same trend of movement.

<sup>84</sup> Aebi, Cocco and Molnar, 2023, p. 5.

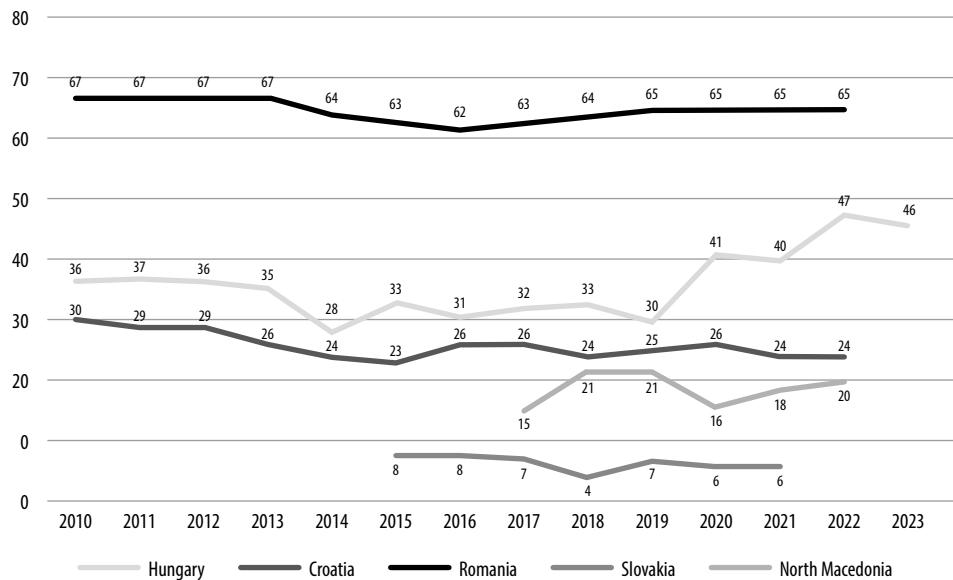
<sup>85</sup> Aebi, Cocco and Hashimoto, 2023, p. 5.

<sup>86</sup> Aebi, Cocco and Hashimoto, 2023, p. 4.

<sup>87</sup> Aebi, Cocco and Hashimoto, 2023, pp. 6–8.

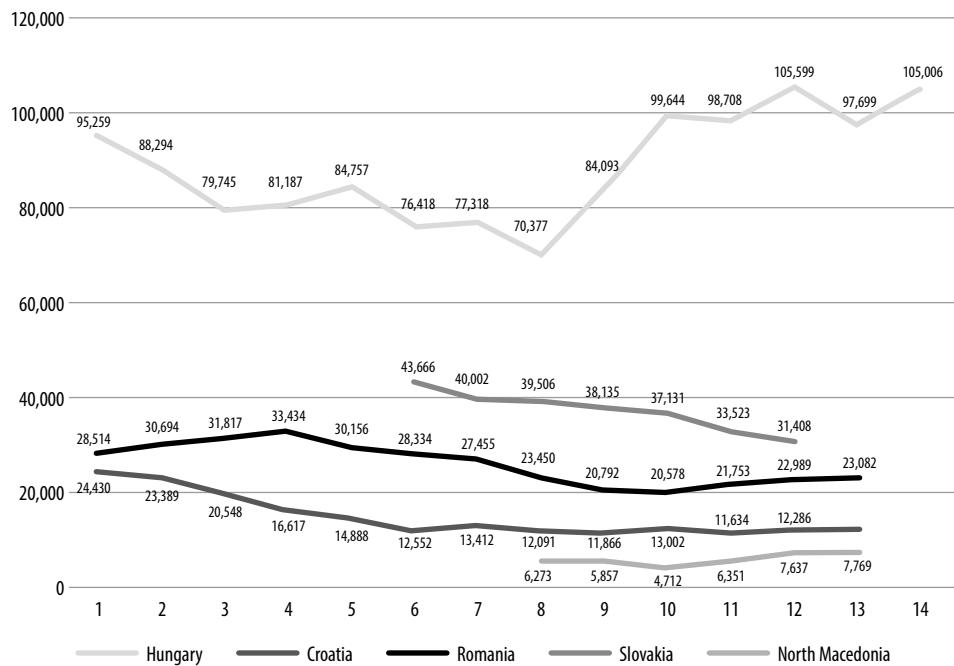
<sup>88</sup> For more details on the methodological and practical challenges of measuring and assessing recidivism, see Getoš Kalac and Feuerbach, 2024, and the referenced literature therein.

Figure 3: Share of Recidivists in Balkan and Southeastern European Countries (2010–2023)<sup>89</sup>



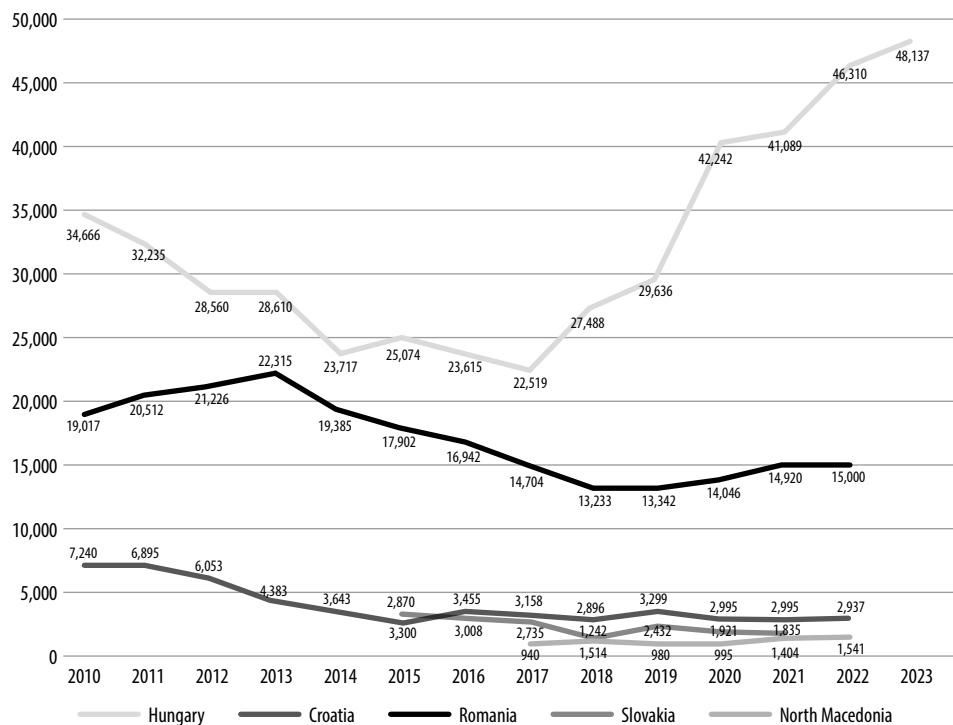
<sup>89</sup> Croatian Bureau of Statistics – Republic of Croatia, no date; Hungarian Central Statistical Office, no date; Republic of North Macedonia State Statistical Office, no date; Statistical Office of the SR, no date; Statistics Poland, no date; Ministerul Justiției, 2023.

Figure 4: Total Number of Adult Convicted Offenders in Balkan and Southeastern European Countries (2010–2023)<sup>90</sup>



<sup>90</sup> Croatian Bureau of Statistics – Republic of Croatia, no date; Hungarian Central Statistical Office, no date; Republic of North Macedonia State Statistical Office, no date; Statistical Office of the SR, no date; Statistics Poland, no date; Ministerul Justiției, 2023.

Figure 5: Total Number of Previously Convicted Offenders<sup>91</sup> in Balkan and Southeastern European Countries (2010–2023)<sup>92</sup>



In the Hungarian legislative framework, the term 'recidivist' is defined to identify individuals with varying degrees of reoffending behaviour; it distinguishes between a repeat offender, not yet classed as a recidivist, who has been released for over three years since their last wilful crime, and a habitual offender who consistently commits similar crimes. A recidivist, on the other hand, is someone who has reoffended wilfully within three years of their last sentence, signalling a higher risk and tendency towards criminal activity, with further categorisations for multiple repeat offenders and violent multiple repeat offenders based on the nature and frequency of their crimes, indicating a progressively serious view of

<sup>91</sup> In this comparative analysis, the term 'previously convicted offenders' encompasses various specific terms used across different countries, including recidivist, habitual recidivist, repeat offender, repeat offender with a history of violence, habitual offenders, and previously convicted perpetrators. These variations reflect differences in legal definitions and categorisations of reoffending behaviour.

<sup>92</sup> Croatian Bureau of Statistics – Republic of Croatia, no date; Hungarian Central Statistical Office, no date; Republic of North Macedonia State Statistical Office, no date; Statistical Office of the SR, no date; Statistics Poland, no date; Ministerul Justiției, 2023.

repeat offenses.<sup>93</sup> Reviewing the trend in the numbers and share of recidivists<sup>94</sup> in Hungary, it seems that while there are yearly variances, the overall trend does not indicate a significant decrease in the number of recidivists. This stable presence of recidivism suggests that a certain segment of the criminal population consistently returns to criminal behaviour post-release. When looking at the share of recidivists relative to those with a clean criminal record, the data suggest that despite efforts of deterrence, the system has yet to significantly reduce the tendency of previously convicted individuals to reoffend. This trend highlights the ongoing challenge of recidivism and the need for effective rehabilitation and reintegration strategies.

The trend of recidivism in Croatia from 2010 to 2022 presents an initial stability followed by a decline and then slight fluctuations. The proportion of recidivists – defined not directly by the legislator but by the Croatian Bureau of Statistics as previously convicted adult offenders facing criminal penalties, ranging from imprisonment to milder measures such as judicial admonition or no sentence at all – decreased from 29.64% in 2010 to 22.86% in 2015. Subsequently, the trend exhibited minor oscillations, with the share of recidivists increasing to 26.12% in 2016 and then slowly decreasing to 23.77% by 2022. These data suggest a nuanced approach to recidivism in Croatia, with a general trend towards slight reduction, albeit with periodic increases that warrant attention for continuous improvement in criminal justice policies.

In Romanian law, recidivism is defined as the commission of a new intentional crime after a person has already been sentenced to more than one year of imprisonment or to life imprisonment, and this crime occurs before rehabilitation or expiration of the rehabilitation term.<sup>95</sup> The legislation makes a distinction between post-conviction recidivism, where the subsequent crime is committed before serving or being deemed to have served the sentence, and post-execution recidivism, where the crime is committed after serving the sentence but before rehabilitation.<sup>96</sup> The recidivism trend in Romania from 2010 to 2022 shows a persistently high proportion of recidivists, with their share among total offenders increasing slightly over time, reaching 65% in 2022. Despite a general decline in the total number of offenders, the rise in the recidivist ratio suggests that while there may be fewer individuals entering the criminal justice system, those who

93 Major, Sánta and Várkonyi, 2020, p. 24.

94 The sum of individuals in categories indicating recidivism – ‘not recidivist’, ‘recidivist’, ‘habitual recidivist’, ‘repeat offender’, and ‘repeat offender with a history of violence’ – reflects the portion of the criminal population that has previously been involved in the justice system. In the sum of these individuals, we also included a category marked as ‘not recidivist’, because these are offenders who have previously been convicted and therefore most closely reflect the criminological concept of recidivism.

95 Ministerul Justiției, 2023, p. 23.

96 Ministerul Justiției, 2023, p. 33.

do are more likely to reoffend, highlighting a critical area for policy focus and intervention.

The data on recidivism in the Slovak Republic indicate a fluctuating trend in recidivism from 2015 to 2022. It is important to note that the Slovak Republic does not have a specific legal definition for a 'recidivist'. However, the country recognises the category of habitual offenders – individuals who have repeatedly committed the same criminal offense.<sup>97</sup> For the purpose of this analysis, habitual offenders are considered as recidivists. The total number of non-habitual adult offenders decreased steadily from 43,666 in 2015 to 32,203 in 2022, suggesting an overall reduction in offenses committed by new offenders. Conversely, habitual offenders peaked at 3,300 in 2015 and showed a significant drop to 1,514 in 2018, followed by a slight rise to 2,042 by 2022. The share of habitual offenders among the total fluctuated, being at a high of 7.6% in 2015, dipping to 4.0% in 2018, and rising again to 6.3% in 2022.

The North Macedonia State Statistical Office data describe the 2017 trend of recidivism in North Macedonia, which defines a previously convicted person as an adult recognised as responsible and against whom penal measures have been imposed.<sup>98</sup> These measures may include imprisonment, fines, educational measures, or a court reprimand, and they account for those convicted but without an imposed penal sentence.<sup>99</sup> The trend shows that after a rise in recidivism in 2018 to over 21%, there was a notable decrease in 2020, but the trend ascended again, reaching nearly 20% by 2022.

Recidivism trends across Hungary, Croatia, Romania, Slovakia, and North Macedonia reveal persistent challenges in reducing the share of repeat offenders. However, one should be careful in interpreting the data, as differences in legal definitions and categorisations significantly impact the results. For example, Slovakia has a relatively high number of convicted adult offenders compared to the other mentioned countries, but the share of recidivism is low. Without a deeper analysis of resocialisation programmes and legal regulations, we cannot draw definitive conclusions about recidivism. The low share of recidivists in Slovakia is clearly the consequence of a very narrow definition of habitual offenders, which includes only those who have repeatedly committed the same criminal offense. Contrastingly, Romania stands out with a high recidivism share despite having a lower total number of adult convicted offenders compared to Slovakia. Furthermore, in Hungary, the share of recidivists has remained stable. Croatia shows a general reduction in the recidivism share from 2010 to 2022, although periodic increases highlight the need for prevention policy improvement. North Macedonia

97 Statistical Office of the SR, no date.

98 For the purpose of this analysis, we consider this definition as indicative of recidivism, even though the specific term 'recidivist' may not be explicitly defined in North Macedonian law.

99 Republic of North Macedonia State Statistical Office, no date.

has seen fluctuating recidivism shares, with a notable decrease in 2020 followed by an increase to nearly 20% by 2022.

Although direct comparisons between these countries’ data are not possible due to differences in definitions and measurements, recidivism remains a permanent challenge in this region, underscoring the necessity for effective resocialisation and reintegration policies aimed at reducing a relapse into criminal behaviour. This is where the concept of small-scale detention facilities comes in, as it holds the promise of much more efficiently dealing with most of the (dynamic) factors that put offenders at risk of not reintegrating into the community and thus reoffending after release.<sup>100</sup>

## 4. ‘New’ concepts and future trends

### ■ 4.1. Small-scale detention facilities

The Council of the European Union recently (on 16 June 2024) adopted a set of conclusions on ‘Small-scale detention: focusing on social rehabilitation and reintegration in society’.<sup>101</sup> These conclusions, amongst other issues, state the following:

Extensive research and good practices already existing in various Member States have shown that small-scale detention facilities are a means to shape individual approaches for social rehabilitation,

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100 UNODC, 2018, p. 8–9:

Programmes based on desistance theory emphasize long-term change over short-term control, recognizing that progress is unlikely to be direct or continuous. The focus is on supporting offenders to see themselves in a new and more positive light, with hope for the future. The approach assumes that the successful social reintegration of an offender rests on a combination of motivation and human and social capital. ‘Human capital’ refers in part to the capacity of the individual to make changes and achieve goals. ‘Social capital’ includes factors such as employment and supportive family or other relationships. ... Preventing recidivism requires effective interventions based on an understanding of the factors that place offenders at risk and make it difficult for them to successfully reintegrate into society. Some risk factors are dynamic – meaning that they are amenable to change – whereas other (static) risk factors are not. Static risk factors do not change over time; they include aspects such as, *inter alia*, an offender’s gender, criminal history, age at the time of arrest or prior mental health problems. Dynamic risk factors, on the other hand, can be addressed through interventions within or outside the criminal justice system.

Even this brief overview of the key challenges in recidivism prevention demonstrates the complexity of reducing recidivism, let alone measuring the effectiveness of various intervention programmes; it also underlines the fact that certain risk factors (static) cannot be eliminated or even reduced, and thus recidivism in this sense is also not absolutely preventable, just as crime itself. Nevertheless, clearly small-scale setups of detention facilities, compared to conventional large prisons from the very onset, provide far better conditions in which dynamic risk factors are more likely to be more meaningfully addressed.

101 Council of the European Union, 2024.

build individual relationships and shape social interactions, and prioritise building responsibility and mutual involvement through integration in the local community. Small-scale detention facilities are to be understood as structures with a smaller capacity compared to large-scale prisons. This smaller capacity can be beneficial in terms of living environment, dynamic security, social inclusions, and therefore a better atmosphere for reintegration. Detention houses – which are a form of small-scale detention – are to be understood as small-scale, differentiated, community-integrated facilities with suitable programmes focusing on social rehabilitation and reintegration, taking into account individual needs and with a focus on building autonomy and taking responsibility.<sup>102</sup>

At this point, we do not want to detail what the adoption of said council conclusions mean for future trends (see section 4.3) but merely demonstrate what is currently common penological knowledge, so widely affirmed that it is thus explicitly accepted and strongly endorsed by the council. Although small-scale prisons/facilities have been around for decades throughout Europe, only more recently have they been (re)discovered and energetically pushed for as a ‘new’ concept, not only by scholars and practitioners but also especially by civil society actors and policymakers. Among these civil society actors, ‘Rescaled’<sup>103</sup> seems to play the most active and a unifying role, bringing together practitioners, other civil society actors, scholars, and people with lived experience (particularly, former prison convicts) to broaden the scope of small-scale application throughout Europe. They define (small-scale) ‘detention houses’ as any form of deprivation of liberty that replaces a large-scale prison.<sup>104</sup> The point is to replace large-scale prisons, not to broaden incapacitation capacities. In addition to these efforts – or better said, in line with these efforts – the movement pays particular attention to include in its activities individuals with lived experience, particularly former convicts, which brings us to the next topic of the analysis at hand – convict criminology (CC).

#### ■ 4.2. *Convict Criminology: The penological core of ‘Lived Experience’*

Lived experience refers to the personal knowledge and insights gained through first-hand involvement in particular life circumstances or events.<sup>105</sup> In the criminological context, it encompasses a wide range of individuals, including people with convictions who have gone through the legal and penal systems, victims of crime who have been directly affected by criminal activities, and family members

<sup>102</sup> Council of the European Union, 2024, p. 7.

<sup>103</sup> See [Online]. Available at: <https://www.rescaled.org/>.

<sup>104</sup> For full details, see WISH EU, 2023.

<sup>105</sup> Buck et al., 2020, p. 286.

of those who are incarcerated or have been impacted by crime.<sup>106</sup> It also includes community members from areas with high crime rates or significant interaction with the criminal justice system; criminal justice workers such as police officers, social workers, probation officers, and prison staff; and advocates and volunteers involved in criminal justice-focussed organisations. The lived-experience approach emerged from the belief that traditional scientific research was inadequate for understanding all aspects of human phenomena and had become disconnected from human experience.<sup>107</sup> By integrating the voices of those who have directly experienced the criminal justice system, CC challenges traditional perspectives and promotes more effective and humane policies and practices.

CC represents a controversial perspective within the realms of criminal justice practice and criminological study, which challenges conventional views typically held by scholars, policy formulators, and political figures, many of whom often lack direct experience with the penal system and those within it.<sup>108</sup> Advocating for a major shift, CC underscores the importance of integrating the experiences and insights of convicts into scholarly and policy discourse, emphasising that the perspectives and voices of those with lived experiences of incarceration have been systematically marginalised, if not outright ignored or misrepresented, in both academic analysis and policymaking processes addressing crime and criminal justice issues.<sup>109</sup> For a genuinely comprehensive understanding of the criminal justice system, scholars must consider not just the perspectives of its designers and implementers but also the lived experiences of those impacted by it, as such inclusive insights are essential for the formulation of truly effective policies.<sup>110</sup> Prisoners often lack the opportunity to speak about their lived experiences, a vital narrative that remains largely unheard.<sup>111</sup> CC emphasises that rather than speaking for prisoners or interpreting their words, we should enable a process where prisoners and former prisoners can express their own narratives and analytical viewpoints.<sup>112</sup> This approach not only empowers those within the criminal justice system but also has the potential to broaden the scope of social justice by bringing to light realities and insights that can reshape our understanding and response to crime and its consequences.

CC surfaced partly from the dissatisfaction academics with incarceration histories felt towards existing conceptions of crime and its management. These scholars – known as convict criminologists – scrutinise not only the definition

<sup>106</sup> Naser et al., 2006; Wahidin, 2006; Bertrand-Godfrey and Loewenthal, 2011; Andonov, 2013; Buck et al., 2020; Feuerbach, 2022; Lindström and Toikko, 2022; Onyeneke and Karam, 2022.

<sup>107</sup> Mapp, 2008, p. 309.

<sup>108</sup> Richards, Newbold and Ross, 2009, p. 356.

<sup>109</sup> Ross, 2017, p. 243.

<sup>110</sup> Richards, Newbold and Ross, 2009, pp. 360, 362.

<sup>111</sup> Ross and Vianello, 2020, p. 214.

<sup>112</sup> Brich, 2008.

and proposed solutions to the crime problem but also the profound consequences these measures have for individuals labelled as criminals.<sup>113</sup> Moreover, they are concerned with the unprecedented incarceration rates; overcrowding of prisons; scarcity of substantive programmes both inside and outside prisons; and structural barriers that perpetuate a cyclical pattern of re-offence and re-incarceration, thereby fuelling a revolving-door syndrome within the criminal justice system.<sup>114</sup> CC has endured a spectrum of criticisms from both within its community and the wider academic landscape. Critics have raised concerns about its perceived lack of objectivity; its tendency towards making broad generalisations; and doubts about the academic rigor and stature of its contributors, questioning their compatibility with the traditional benchmarks of scholarly excellence.<sup>115</sup> Although convict criminologists face criticism for their subjectivity, they do not claim to be 'objective'.<sup>116</sup> Acknowledging their subjective viewpoints, they leverage previous experiences and critical perspectives to enrich and sharpen their ethnographic methodologies, and they emphasise conducting face-to-face, open-ended interviews that empower prisoners to share their stories in their own voices, enabling their research to effectively challenge prevailing theories, policies, and practices and advocate for beneficial policy changes.<sup>117</sup>

Prison lived experience offers unique perspectives that are often inaccessible from a normative standpoint. This is illustrated by the case of Mr Andonov in Croatia, wherein a convict approach revealed systemic flaws not evident from legal texts alone.<sup>118</sup> By integrating first-hand experiences of those navigating the criminal justice system, the lived experience illuminates human dimensions and challenges often overlooked by pure normative legal analyses. These insights provide valuable understanding of the real-life impacts of laws and policies. Thus, Mr Andonov, after his release from prison, funded a non-governmental organisation called 'Angelus Custos'. This organisation has been active in supporting ex-convicts, and it has also been included in the Rescaled movement, with promising initiatives currently being discussed with the Croatian Prison Administration.<sup>119</sup>

The life experience of prisoners is also particularly important in the context of recidivism, because this group represents offenders for whom the penal system has evidently not fulfilled its function in terms of the resocialisation of offenders

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113 Jones et al., 2009, p. 152.

114 Jones et al., 2009, p. 152.

115 Ross, 2017, p. 245.

116 Jones et al., 2009, p. 158.

117 Jones et al., 2009, p. 158.

118 Mr Andonov is a former prisoner sentenced to a long prison term of 21 years. He graduated from the Law Faculty in Split while serving his prison sentence. Based on his own experience, he exposes the shortcomings of Croatian prisons. For more, see Andonov, 2013.

119 For more details, see Angelus Custos [Online]. Available at: <https://angelus-custos.hr/> (Accessed: 6 August 2025).

and protection of the community from repeated criminal acts. The United Nations Office on Drugs and Crime (UNODC) recognised this in their study, emphasising that understanding recidivism to facilitate evidence-based countermeasures is crucial for the criminal justice system, and this aligns with the United Nations system’s commitment to rehabilitation.<sup>120</sup> This understanding involves identifying factors that increase the likelihood of reoffending and recognising the challenges offenders face in rehabilitation and reintegration into the society, alongside developing effective, consistent, and comparable methods to measure these successes.

The research findings highlight the critical role of prisoners’ lived experiences in shaping evidence-based policies crucial for supporting rehabilitation efforts.<sup>121</sup> While consistent responses from prisoners suggest the feasibility of effective policy implementation, the majority reported minimal skill acquisition for successful reintegration into society, underscoring the urgent need for enhanced rehabilitation programmes.<sup>122</sup> Furthermore, the significance of quality over quantity in social and economic support is evident, as increased family contact and reduced association with antisocial influences emerge as key factors in reducing recidivism rates.<sup>123</sup> Additionally, prisoners expressed a pressing need for improved preparation and support during the transition from incarceration to community life, emphasising the imperative of strengthening these transitional processes for facilitating successful reintegration.<sup>124</sup> Lived experience provides a broad, practical understanding from various stakeholders, while CC focusses on integrating these experiences into academic and theoretical frameworks. Together, they complement each other in promoting a more comprehensive and empathetic approach to criminal justice reform. By incorporating the voices of individuals who have directly experienced the complexities of legal and penal systems, lived experience sheds light on human dimensions and challenges that may be invisible from a purely legal standpoint. Furthermore, recognising the significance of prisoners’ lived experiences is significant for addressing recidivism and supporting rehabilitation efforts, as understanding the factors contributing to reoffending and the challenges faced by offenders in reintegrating into society is essential for developing effective policies and programmes. This brings us to the last section of this study, in which we consider the most recent European Union (EU) policy initiatives and (prospective) legislation that might reflect not only the ‘lived-experience’ approach but also especially the growing trend towards small-scaling detention facilities and away from large-scale prisons.

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<sup>120</sup> UNODC, 2022, p. 8.

<sup>121</sup> UNODC, 2022, p. 33.

<sup>122</sup> UNODC, 2022, p. 4.

<sup>123</sup> UNODC, 2022, p. 5.

<sup>124</sup> UNODC, 2022, p. 5.

### ■ 4.3. EU policy and legislation

As mentioned in both sections 1 and 4.1, the Council of the European Union adopted its conclusions on ‘Small-scale detention: focusing on social rehabilitation and reintegration in society’ on 16 June 2024.<sup>125</sup> The conclusions were largely based on the European Symposium on Detention Houses, which was held on 20 and 21 March 2024, organised by the RESCALED network under the auspices of the Belgian Presidency and focussed on small-scale detention and detention houses:

During the symposium, it was demonstrated that small-scale detention contributes to a better sense of community and better social integration and can lead to a lower recidivism rate. Such forms of detention therefore contributes to achievement of the objective of safer communities and lower criminality.<sup>126</sup>

Besides endorsing the small-scale concept,

The Council invites the Commission and the Member States to: 29. Work closely with the Council of Europe and other relevant organisations, institutions and agencies to reflect on optimal cooperation and awareness-raising with regard to the possibility developing and using small-scale detention, including detention houses, as an alternative to large-scale detention.<sup>127</sup>

Perhaps even more interestingly (and predictive of future trends) is the section regarding the European Commission, in which the Council of the European Union appears to be setting the stage to make small-scale detention facilities a new focus of the existing and possible future EU funds. In this regard, one can anticipate that national prison administrations might become (even more) interested in implementing (or at least piloting) small-scale approaches, as might local communities, in view of the prospective benefits. This might also lead to increased interest in the civil society sector in regions of Europe where small-scale concepts are not (high) on the agenda, such as Southeastern Europe and its subregion, the Balkans. This might thus incentivise policymakers to provide for the necessary legal framework to implement small-scale detention concepts, as successfully done most recently in Belgium.<sup>128</sup>

Clearly, neither Croatia nor Serbia, Moldova, or Bulgaria are Belgium, and, in many respects, the (legal and penal) culture differs tremendously in this part of Europe. Nevertheless, the civil society sector plays a most important and growingly influential role in shaping penal policy in the Balkans; it should be

125 Council of the European Union, 2024.

126 Council of the European Union, 2024, p. 6.

127 Council of the European Union, 2024, p. 12.

128 For more details, see De Bie, 2024.

interesting to see whether and how a movement will develop here towards small-scale detention facilities. The necessary first building blocks have already been laid by the council conclusions.

## 5. Challenges and opportunities for the Balkans

In this study, we investigated whether the concept of small-scale detention facilities might be the ‘holy grail’ of resocialisation (and thus prison reform) in the Balkans. There is little doubt that, as a concept and also as a practice, ‘small-scale’ is superior to ‘large-scale’ when it comes to the principles of resocialisation and normalisation; research and best practices also highlight the advantages of said approach. Currently, when trying to analyse or even conduct basic assessments of the prospective and potential impacts of small-scaling in the Balkans, one faces lack of data and methodological pitfalls on every step of the way. Therefore, analysis of penologically relevant facts and figures is inevitably limited to a descriptive assessment of basic trends in convictions, prison populations, recidivism, and probation. Perhaps the most important finding is the most obvious and most basic one: The region, despite lower crime rates (compared to WE), has higher incarceration rates, justifying a focus on meaningful alternatives to large-scale prisons. This will counter not just crime and recidivism but perhaps even more the human suffering that comes with serving prison sentences in large-scale facilities throughout the Balkans, most of which (compared to WE) provide sub-optimal conditions, to say the least.

Thus, a preliminary analysis of the distribution and size of prisons/jails in Croatia, for example, shows that most of the existing prison capacities are already small in scale; the situation might be similar throughout Southeastern Europe, which is characterised by many small-population and small-sized countries. In that sense, the region potentially has the necessary setup already in place to allow at least the piloting of several small-scale detention facilities, ideally in several countries and applying comparable setups, while tracking their development and impact via continuous evaluation research. If combined with strategical partnerships with penal institutions and experts from other parts of Europe, where the small-scale concept has already been successfully implemented, the Balkans might potentially discover a ‘holy grail’ of resocialisation in the form of small-scale detention facilities. The future of prison reform in the Balkans indeed looks bright, whereby it will eventually be determined by political will and courage, particularly in view of rising penal populism. If, through this study, we have managed to provoke a few constructive thoughts – and perhaps opened up a discussion that might be of interest to scholars, practitioners, policymakers, civil society actors, and all those involved in creating penal policy in Southeastern Europe, particularly the Balkans – then we have fulfilled the goal of our work. However,

even if we managed to achieve none of the aforementioned, we hope to have at least spread the news about concepts and developments that have thus far been largely neglected in scholarly publications in the Balkans, while defining the basic terms and highlighting most recent EU policy and normative developments.

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