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The legal treatment of juvenile detainees and its safeguards in different places of detention

Statements, arguments and conclusions of the PhD thesis

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BUDAPEST
2024

*" (...) and not to allow any to fall into or remain on the path of sin, but to make a double effort to restrain, to guide to the right path, to keep on it those unfortunate children and juveniles who, because of their situation or their tendency to evil, would certainly go astray without special care and would increase the already large number of delinquents."*¹

Ferenc Finkey

¹ Ferenc FINKEY: *The role of the juvenile probation service and the duties of its members*. Third revised edition. Budapest 1942, 9.

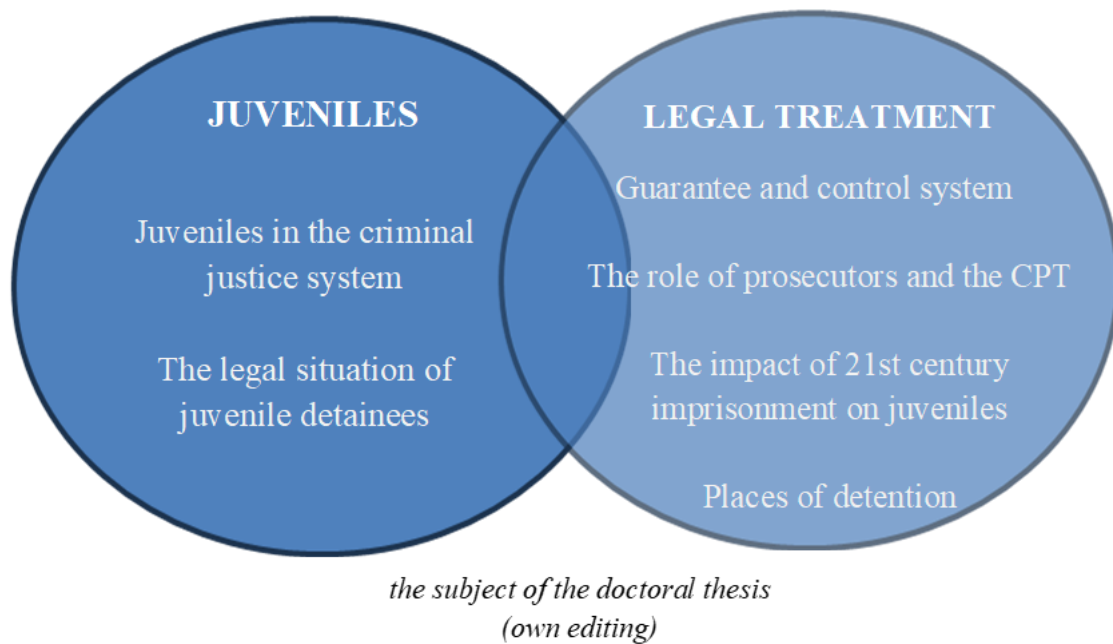
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I. THE SUBJECT OF THE DOCTORAL THESIS

1.1. Subject of the doctoral thesis and reasons for the choice of the topic

The doctoral thesis focuses on one of the cardinal areas of penitentiary law, the legal treatment of juvenile prisoners. It also deals with the specific rules for the implementation of custodial sanctions and coercive measures involving deprivation of liberty in criminal proceedings, as well as with the system of safeguards for the lawful treatment of juveniles in the light of international standards. Among the elements of the system of guarantees and controls designed to ensure the application of the law, the focus will be on the monitoring of the legality by the prosecution service and the visits of the Council of Europe's Committee against Torture (CPT) to Hungary.



The subject of the doctoral thesis consists of two sub-topics that can be studied independently. On the one hand, it examines juvenile offenders, including the place of juveniles in the criminal justice system and the legal situation of juvenile detainees as a special group of detainees. On the other hand, it presents the conceptual elements of the legal treatment of juveniles, the system of guarantees and controls surrounding the prison system, the challenges facing the prison system in the 21st century and their impact on juveniles. The thesis also attempts to provide a possible definition of the concept of modern corrections.

The speciality of the thesis is to present the specific legal provisions and international standards applicable to juveniles in the field of juvenile detention, in relation to the different places of detention that may be encountered in the context of a criminal proceeding against a juvenile, from the investigation (pre-trial detention, police detention) to the execution of the sentence (prison, IMEI, reformatory).

The questions examined have hardly been dealt with on the basis of the criteria indicated, so the thesis was written to fill a gap. While academic works have been and are still being written on the implementation of certain sanctions or coercive measures, in particular on the specific provisions applicable to juveniles, I have not come across any comprehensive academic work on the legal treatment of juveniles from the perspective of the individual places of detention, including the system of guarantees and controls provided for the prison system.

The research for this thesis started in 2015 and was motivated by personal as well as professional factors. Personal motivations include my interest in the workings of the Aszódi Correctional Institute and my commitment to the profession of a prison prosecutor. From a professional point of view, I was particularly motivated by the fact that juvenile offenders are a perennial topical issue for academic research, both nationally and internationally. The fact that juveniles and juvenile delinquency are frequently examined in all areas of criminal justice research, including empirical and normative criminal justice, can be attributed to a number of circumstances. In this context, although juvenile delinquency does not represent a significant proportion of total crime, there seems to be a constant change in the number and quality of the crimes committed by juveniles, often reflected in an escalation of violence. A scientific approach and assessment of these dynamic changes can be an important source of information to enable legislation to respond to these changes at an appropriate pace and in an appropriate manner.

In addition, juvenile delinquency is seen as a precursor to adult delinquency, which foreshadows the most important task and goal to be achieved with regard to juveniles, which is the importance of prevention. The judiciary, and in particular the criminal justice system, has a special responsibility in fulfilling this task and achieving this goal. Juvenile offenders are often 'innocent of guilt', since their deviant behaviour is often the result of deprivations that are independent of them: in particular, inadequate upbringing, disadvantaged family and social circumstances and a moral framework that has been expanded as a result of negative

influences. However, a complex approach to these children, which requires the use of pedagogical and psychological tools in addition to a legal approach, i.e. sanctions that reflect their educational nature, can be effective, since their biological, social, emotional and intellectual development is not complete due to their age. The result is that juveniles can still be shaped and educated in comparison with adult offenders. The correct development and reintegration of juvenile offenders into society is essential because juveniles, both offenders and those without a criminal record, are the basis and the hope of the society of the future.

Among juvenile offenders, the most specific situation is also that of juveniles deprived of their personal liberty, who need to be removed from their previous environment in order that the specific punishment objectives set for them could be achieved. Juveniles are a special category of prisoners who have special needs and unrestricted rights as children compared to ordinary prisoners and therefore require different treatment in the prison system.

The legal treatment of juveniles measures the success of reintegration, since a juvenile detainee who is confronted with an abuse of power cannot be expected to reintegrate into the social mainstream as a law-abiding citizen.

In the light of the above, professional and personal factors together have shaped the framework of the research and the approach of the thesis.

1.2. Hypotheses and aim of the doctoral thesis

The thesis focuses on three main hypotheses:

1. HYPOTHESIS: The main hypothesis of the doctoral thesis is that juveniles, just like in substantive and procedural criminal law, are subject to special provisions of juvenile law in the places of detention under examination, which not only aim to meet the specific purpose of juvenile detention, but also comply with international requirements.

HYPOTHESIS 2: With regard to the Public Prosecutor's Office, I have started from the hypothesis that the Public Prosecutor's Office is the main guarantee of the lawful treatment of prisoners, which is enabled by its role in the administration of justice, its constitutional functions and the means provided by law. It also fulfils its prominent role in cooperation with other control actors.

HYPOTHESIS 3: I have formulated two main hypotheses with regard to the CPT: firstly, that the CPT's visits to places of detention in Hungary have had and continue to have an impact on both the legislation and the application of the law in Hungary, and that in this respect the CPT's activities play an important role in the system of guarantees and controls provided for the penitentiary system.

Secondly, I have assumed that this effect was also due to the fact that during the 11 visits of the Commission over the last almost 30 years, members of the Commission have visited all places of detention, which has given them a good insight into the domestic prison system and the situation. Last but not least, I have raised the question to what extent our country takes into account the CPT's non-binding recommendations and comments.

The aim of the doctoral thesis is to examine the extent to which the domestic legislation on enforcement meets international standards, and on the basis of the analysis I also aim to formulate proposals for codification and strengthening good practice.

1.3. Research methodology and sources

In recent years, I have been applying both theory- and practice-oriented research methods. In the theoretical part of the research, I have made as extensive a study as possible of the domestic literature, with reference in several cases to international literature, as well as of the relevant legislation, international conventions and other international soft law documents and the expectations contained therein, with particular regard to the reports and domestic responses to the CPT's visits to Hungary.

In the practical part of the research, I made several personal visits to the Aszodi Correctional Institute – once in the framework of the so-called Open Court programme –, the Rákospalota Girls' Correctional Institute and the Budapest Correctional Institute. During each visit I had the opportunity to get to know the profile of each correctional institution, to ask the questions that arose, and to have professional consultations with the former director of the Aszodi Correctional Institute, Attila Szarka, and the deputy director of the Rákospalota Girls' Correctional Institute, Dr. Erzsébet Hatvani.

Apart from the correctional institutions, I had the opportunity to visit the other detention facilities examined in the thesis, and I also spent an internship at the Department of Law Enforcement and Legal Protection of the Budapest Chief Prosecutor's Office. I conducted research at the Penitentiary Department of the Metropolitan Court and the National Command of the Penitentiary, as well as at the Archives of the Capital of Budapest, where I examined the documents of the President of the Royal Budapest Prosecutor's Office. In connection with the digitisation discussed in subsection 4.1 of this thesis, I contacted the developers of the Prison Cloud model, the Belgian IT company eBo-Enterprises, who helped me to learn about the system by sending me technical material.

The analysis and presentation of statistical data was also an important part of the research. In addition to publicly available statistical data, I received additional data from the Ministry of Justice, the Ministry of Human Resources, the National Office of the Judiciary and the National Police Headquarters. In addition, the Office of the Prosecutor General provided me with summary reports on the examination of the legality of the treatment of detainees for the years 2016-2021.

Finally, among the research methods, it is worth mentioning that I conducted a partial research on the challenges of implementing certain custodial sanctions and coercive

measures in the framework of the New National Excellence Programme's Doctoral Students, Doctoral Candidates Research Fellowship. In addition to identifying and characterising the challenges, I examined the domestic legal environment, international recommendations and expectations, and various examples of solutions abroad.

II. STRUCTURE OF THE DOCTORAL THESIS

The doctoral thesis consists of seven chapters, which are structured and divided into a 'quasi' general part and a specific part. The division of the thesis into general and special sections is due to the fact that the special penal provisions are examined on the basis of the general rules, which was taken into account in the method used while exploring the subject. Since the special provisions are in a way ancillary, it was possible to deal with the subject by including general approaches in the thesis, in addition to the special provisions on juveniles.

Chapters I-IV of the thesis form the general part:

Chapter I is entitled 'Introduction', which presents the framework of the thesis, including the subject of the thesis, the reasons for choosing the topic, the hypotheses and aims of the thesis, and the research methodology.

Chapter II, 'Juveniles in the criminal justice system', deals with the concept that juveniles are considered to be special subjects in criminal law, including age limits, and it specifically examines the age limits in substantive and prison law, as well as the concepts of criminal capacity and competency to stand trial, and the differences between the two. In addition, separate sections analyse the rights of the child and the legal situation of juvenile prisoners.

Chapter III focuses on "The concept and safeguards of legitimate expectations". An attempt is made to define the concept of legitimate treatment based on international documents and the Fundamental Law. In this context, it shows the criteria used by the various authors to give substance to the category of legal treatment. The thesis defines legal treatment as a complex and so-called umbrella concept. Furthermore, it places the concept of legal treatment in the context of modern penal education in a separate structural unit and considers legal treatment as a criterion of modern penal education.

It also takes into account other features of modern penitentiary systems, such as the material and staffing conditions, the need for a legal framework that meets international standards, the guarantee and control system and the importance of properly addressing new challenges in the field of penitentiary systems. Subsequently, Chapter III takes stock of and describes the safeguards for the legal treatment of prisoners, such as the new law: Act CX of 2016, which entered into force on 1 January 2017 and was significantly amended on 1 January 2021, the procedure for compensation for the violation of fundamental rights in

accommodation conditions. It also describes, among the safeguards, the elements of the system of guarantees and controls surrounding the penitentiary system and their importance.

The thesis is based on the classical division of the system of guarantees and controls. Among the elements of the external national branch of the system of guarantees and controls, the activity of the prosecution in the field of law enforcement in the penitentiary system is presented in detail, including a constitutional analysis of this activity, a historical overview of its activities, the criteria on which the prosecution bases its activities, and a reference to the role of the prosecution in the penitentiary system in other countries. In addition, the prosecution's oversight of the legality of the system is compared with the activities of the other elements of the system of guarantees and controls.

In addition to a general introduction to international external control, the main focus is on the Council of Europe's Committee against Torture (CPT), with a detailed description of the structure of the international organisation, its operating mechanisms and the principles that govern it, as well as the standards it has established in the course of its activities. Furthermore, it will provide a general overview of the Commission's visits to our country so far, including the impact of the CPT on domestic legislation and law enforcement. The special feature of this section is that it compares the CPT with two other protection mechanisms, the European Court of Human Rights, set up under the auspices of the Council of Europe, and the Subcommittee on Prevention, established under the auspices of ENSZ.

The last chapter of the general part of the thesis is *Chapter IV*, which examines the processes and effects that affect or may affect the prison service and thus the legal treatment of prisoners. Accordingly, the thesis deals with the issue of digitalisation, exceptional situations such as epidemics or war, overcrowding and the new classification system for prisoners. This chapter also looks at how these influences may affect the framework for the legal treatment of juvenile detainees.

Chapters V-VII of the thesis form the special part of the doctoral dissertation:

The specific part of the thesis begins with *Chapter V*, "Juvenile detainees in different places of detention", and this chapter also forms the backbone and the main part of the thesis. The chapter presents, in separate structural units, the specific enforcement rules applicable to juveniles in each place of detention (police pre-trial detention, police detention, prison, IMEI and reformatory), the legal grounds for detention, the guarantees of lawful treatment

provided by the prosecution, the impact of CPT visits, and finally the findings, observations and de lege ferenda recommendations relating to the place of detention. The summary reports issued each year by the Prosecutor General's Office were used to illustrate the activities of the Prosecutor General's Office in its capacity as a law enforcement officer, while the impact of the CPT's visits was examined through the reports issued by the CPT. The parts of the summary reports that were considered most relevant to the place of detention were highlighted, while the parts of the CPT reports concerning juveniles were used as part of the thesis.

Chapter VI contains separate de lege ferenda proposals on the prosecution's oversight of the legality of the prosecution and critical comments on the CPT's system of visits. In this chapter, the thesis has examined how the achievements of the technological revolution and the digital age can be used to improve the efficiency of the work of the prosecutor in the penitentiary system. The thesis proposes, de lege ferenda, that the right to electronic administration of prisoners, which is suspended under the current legislation, should be transferred to the limited rights that can be exercised with modified content, thus enabling the development of an electronic administration and complaints management system that takes into account data protection aspects, which would allow the prosecution service to deal with complaints, requests and notifications received more simply, easily and efficiently.

Based on the reports of the CPT's visits to Hungary and the Hungarian responses to them, a number of findings concerning the Commission and its functioning are presented in this chapter of the thesis. Some of the findings point to and emphasise the merits of the CPT, while others are more critical and relate to the future of the Commission, but it is worth emphasising that these are not suggestions questioning the relevance of the Commission, but subjective observations.

Chapter VII frames the doctoral thesis, which contains the summarizing reflections on the hypotheses and findings, and the de lege ferenda proposals and findings made separately for each place of detention are also summarized here.

III. RESULTS OF THE RESEARCH - DE LEGE FERENDA PROPOSALS, OBSERVATIONS

At the end of the research, all hypotheses were tested.

The **first hypothesis** was partially disproved, because for some places of detention (in particular IMEI and preparation rooms) it could be concluded that juvenile detainees are either not subject to specific rules or subject to less relevant specific rules, which may be justified to be reviewed, either through legislation or through the application of good practices. Of the places of detention examined, the implementing rules for juvenile detention are the most appropriate for the specific objectives and tasks of juvenile detention. As regards the legal regime for the execution of juvenile sentences, it is basically more lenient than that for adults, and despite the shortcomings and observations identified, it is able to meet international standards and Hungary's international commitments. It was also clearly confirmed that the requirement of lawful treatment of juvenile detainees is enforced in Hungary, the legal provisions ensuring this are generally implemented by the detention authorities, and their law enforcement practices typically comply with the expectations set out in international legal standards and recommendations.

The **second hypothesis** about the prosecution is clearly confirmed. As the constitutional body the Public Prosecutor's Office is the supreme guarantee of the rule of law, which is made possible by its role in the administration of justice, its constitutional functions and the means provided by law.

The **third hypothesis**, which was defined in relation to CPT, was partly confirmed and partly refuted. Our country has cooperated with the Commission, and of the more than 300 recommendations made during its 11 visits, many have been taken on board and transposed, and have been incorporated into legislation or practice. It is clear, therefore, that the CPT has an impact on domestic legislation and law enforcement which makes it a major player in the external international arm of the guarantee and control system. However, it is a shortcoming that the CPT has not visited a domestic reformatory once in the last 30 years, despite the fact that it has set specific standards for juveniles. Moreover, the visits appear to be uniform and therefore less country-specific. The main focus is on police detention, although in our country there are systemic problems and challenges not in this respect but rather in the functioning of prisons.

There is a wealth of professional and scientific material available on juveniles. The aim of this doctoral thesis was to place juveniles in a new light, using a previously unexamined perspective, in the penal system, by examining the implementation of the requirement of legal treatment.

A summary of de lege ferenda proposals, main findings and observations by place of detention:

1. Police holding facilities

- The need for guarantees in police custody that ensure the principle of fair trial is upheld at the initial stage of the procedure is a fundamental requirement and consideration. For juveniles, in particular, the first contact with the criminal authorities can be a decisive moment which, regardless of whether or not they are found guilty, can have a long-term impact on their subsequent behaviour.
- Some of the provisions of national legislation can be traced back to an international requirement, but this cannot be considered a full adaptation. There is a need to rethink the regulation of both holding facilities and police detention centres and to create a much more complex, detailed legal environment for juveniles, with a wide range of guarantees. The current rules contain a number of specific provisions, which are generally not specific and do not always meet the specific needs of juveniles. For example, as is the case with the rules applicable to adults, minors are given access to food after the first 5 hours of the execution of the detention, which is considered too long and may also violate the requirement of humane treatment.
- It should be clarified in what context child offenders under the age of 14 can be produced, and a special place of execution should be designated for them, similar to the child hearing rooms used in criminal proceedings.
- The Regulation on the regime of police detention centres provides for a more detailed framework for enforcement, but there is a need to include a separate chapter on juveniles in the Regulation.
- It is to be welcomed that detention in police detention centres can only be carried out in exceptional cases, because, in addition to the CPT's findings, the condition and capacity of the detention centres would not allow for the detention of juvenile detainees for longer periods.

- The regulation on space for movement and living conditions meets international requirements, despite the fact that the provisions on police detention facilities do not follow the recommendations in terms of numbers, as the regulation does not allow overcrowding and the Hungarian rules are based on a calculation that is more favourable to the detainee.

2. Prisons and detention centres

- Arrest may be carried out in several places of detention, which are subject to different provisions, but these are not based on uniform principles. For example, the rules on living space are more favourable in the case of arrest in a reformatory than in the case of arrest in a penitentiary, which may give the impression that arrest for a more dangerous offence is punitive in nature, with less living space.
- As pointed out in the summary of the Case Law Analysis Group of the Criminal Chamber of the Curia, courts often fail to refer to the particular material gravity of the offence when justifying orders to order and maintain arrest. This raises concerns in several respects, firstly because the order does not formally comply with the legal requirements and secondly because it erodes the purpose of the prosecution of juveniles and may even lead to the imposition of the most serious coercive measure affecting personal liberty in cases where there is no reasonable suspicion that the juvenile offender has committed a serious offence.
- In order to preserve the progressive nature of discipline, the retention of solitary confinement as a disciplinary sanction is still justified. Removing the use of solitary confinement from the range of disciplinary measures would render the disciplinary authority powerless in the case of the most serious disciplinary offences. Moreover, the domestic legislation contains all the necessary safeguards to ensure legality, humanity and accountability.
- In order to minimise prison harm, custodial sentences should be carried out only in juvenile detention facilities and not in a designated section of a prison.
- In the application of sanctions to juveniles who have committed a first offence, priority should be given to the use of correctional education instead of imprisonment when deprivation of liberty is necessary. Statistical data show that the vast majority of all juveniles sentenced to imprisonment had no criminal record in the years under review.

- The detention replacing the fine is unenforceable against minors under the age of 14, the solution of which could be remedied by amending the Criminal Procedure Code accordingly and clarifying the relevant provisions. In general, the Act does not regulate who is liable to pay a fine in the event of a juvenile being fined, for example for breaching the rules of conduct of criminal supervision, and who bears the consequences of failure to pay. Failure to pay the fine is replaced by a detention order. If it is assumed that the consequences of the default are borne by the juvenile, the detention which replaces the fine will be enforced against him. The difficulty of interpretation arises in the case of minors under the age of 14, who would not be subject to detention and therefore would not be subject to the rules on the enforcement of detention. In addition, the rules applicable to minors under the age of 14 do not allow them to be detained in a penitentiary for any reason.

3. Correctional institutions

- The justification for correctional institutions is unquestionable. In addition to their specialised role and purpose, the various prison disciplines also speak for the importance of reform schools. Juveniles in correctional institutions can easily acquire undesirable behaviours in order to integrate into the prison environment and gain the respect of other inmates. The ultima ratio nature of the deprivation of liberty of juveniles, in particular the imposition of custodial sentences, is therefore also emphasised because the characteristics of juveniles which indicate a criminal lifestyle can in many cases be traced back to their contact with adult prisoners.
- Consideration should be given to shifting the jurisprudence in the direction of using correctional education in cases where a juvenile is required to be deprived of liberty for a period of 1-4 years (or the statutory period of detention), and imposing imprisonment in cases where a longer period of deprivation of liberty is required. A longer period may be necessary for the reintegration of juveniles, for which a custodial sentence of 1-2 years is not sufficient in correctional institutions, which are not specifically designed to achieve the specific tasks and objectives assigned to juveniles. This is further supported by the overcrowding and staff turnover in prisons.

- From the professional point of view of the penitentiary system, prisons and correctional institutions should be brought closer together. This would involve placing even greater emphasis on education in prisons, on the tasks of juvenile detainees, by creating a staffing structure similar to that in reformatories and by expanding reintegration activities similar to the reintegration programmes in reformatories. As regards reformatories, consideration should be given to installing a security and IT system (cameras, SAFE system, KIOSZK, etc.) similar to that in prisons, but not aimed at creating a prison environment, and to introducing a system of categories similar to that in prisons, in particular to reduce the number of escapes, reduce the administrative burden on staff and develop the digital literacy of juveniles.
- More correctional institutions should be set up, including through a public-private partnership. There are a number of reasons for the need for more correctional facilities, in particular overcrowding in prisons. In addition, the right to contact in correctional institutions may be compromised, as the geographical location of the five correctional institutions currently available does not allow all inmates to have access to personal contact.

4. Institute for Judicial Observation and Empowerment (IMEI)

- Compulsory medical treatment is a complex and, as a consequence, clear legal situation, which requires both respect for human dignity and guarantee rules. Particular emphasis should therefore be placed on implementing rules that ensure humanity and consistency, reinforced by the fact that both juveniles and persons undergoing compulsory treatment constitute a specific category of prisoners from the point of view of penitentiary law.
- When examining the rules for the implementation of compulsory treatment, it can be concluded that there are no specific provisions for juveniles with pathological mental disorders. It would be justified, in particular with regard to segregation. In particular, the obligation to separate juveniles with pathological mental disorders from adults should be explicitly stated, in addition to the reference rule in Article 325(1) of the Code, as already called for by the CPT.
- It would also be appropriate to develop more favourable rules on contact and adaptation leave for juveniles.

IV. LIST OF PUBLICATIONS

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In: Czine Ágnes (szerk.): 60 Studia in honorem Andrea Domokos. Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest 2024., 143-154 pp. ISBN 978-615-6637-23-9
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In: Miskolczi-Bodnár Péter (szerk.): XXIII. Jogász Doktoranduszok Országos Konferenciája. Jog és állam 42. szám. Károli Gáspár Református Egyetem Állam- és Jogtudományi Kara, Budapest 2022., 73-80. pp. ISBN 978-615-5961-86-1
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7. Havasi Sára: Börtön a börtönben? Gondolatok a fiatalkorúak magánelzárásáról. In: Miskolczi-Bodnár Péter (szerk.): XIX. Jogász Doktoranduszok Országos Konferenciája. Jog és állam 34. szám. Károli Gáspár Református Egyetem Állam- és Jogtudományi Kara, Budapest 2021., 67-76. pp. ISBN 978-615-5961-65-6
8. Domokos Andrea, Havasi Sára: A digitalizáció a büntetés-végrehajtás szolgálatában
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9. Havasi Sára: Koronavírus a börtönben a nemzeti megelőző mechanizmus látogatásai alapján. In: Miskolczi-Bodnár Péter (szerk.): Jog és Állam 32. szám. XVIII. Doktoranduszok Szakmai Találkozója Budapest, 2020. 81-88. pp. ISBN 978-615-5961-55-7
10. Havasi Sára: Az alapvető jogok biztosa és az ügyészség szerepe és kapcsolata a büntetés-végrehajtás garancia- és kontrollrendszerében. KRE-Dit 2020/2.
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