

Doctoral School of Law at ELTE University

Doctoral program of Criminology

**Theoretical background and empirical analysis of justice in the
„best interests” of the child, with special reference to detention in
correctional institutions**

Summary of Doctoral Thesis

Molnár Anna

Dr. Hack Péter Professor Ph.D Head of Department

Dr. Lévy Miklós Professor Emeritus

Budapest, 2025.

Objectives of the doctoral thesis

The legal institution of detention in correctional institutions has been in practice in Hungary since 1996, before which this coercive measure, then known as "pre-trial detention", was carried out in penal institutions.

In the literature review of this thesis, I will first present the broad principles contained in international documents on juvenile justice, and then I will present specific recommendations and guidelines on the arrest of juveniles. I will then turn to the criminological aspects of juvenile detention, first discussing the development of juvenile criminal policy from the emergence of the idea of 'correctability' to the present day, to late modern trends in criminal policy. I will then focus on the development of juvenile detention in correctional institutions, describing its genesis, the acute criminal morphology and the theoretical background of the legal institution. With regard to the latter, I will describe the penal objectives and the main claims of the science of correctional education, namely criminal pedagogy. At the end of the literature review, I will present the dilemmas surrounding the detention in correctional institutions, as formulated by practitioners.

Arrest represents a transitional period of uncertainty in the lives of young people accused of crimes, which can leave them with similar traumas to those of adult detention.¹ Many factors and circumstances relating to children and juveniles need to be taken into account when making an arrest. Among others, the reasonable suspicion or fact of the offence committed, the capacity of discernment, which may be affected by adolescent characteristics, substance abuse, mental disorders, psychosocial disabilities or intellectual disabilities.² And these characteristics are influenced at macro, meso and micro levels, for example by the economic situation of the country, the political system, the staffing of correctional institutions and generational differences between young people, gender differences, and even the geographical location of institutions and young people. The question arises as to how to respond to the delinquency of children and young people in a way that also gives due emphasis to their individual development and social integration. The implementation of arrests must meet both judicial and educational requirements, which are often in conflict.

¹ Schall v. Martin, 1984 467.

² Chitsabesan és mások, 2006 534-540; Bellavics, 2021 97-109.

The aim of this paper is to highlight the institutionalisation of judicial and educational perspectives on detention in correctional institutions and to show how the reality of detention is experienced by the staff and the young people detained. The study will also focus on how the principle of the best interests of the child is reflected and implemented in institutional practices. To this end, I have formulated three broad research questions.

I. How do contradictions and disproportions appear in the approach to justice and education, in the functioning of the institutional system?

The analysis of international documents, guidelines, recommendations and opinions on juvenile justice provides an answer to the question of the principles to be respected in the context of detention in juvenile detention centres.³ As such, detention in a juvenile correctional centre is not included in the international documents on juvenile justice presented in this thesis, as they set out general principles in relation to the coercive measure under discussion. Consequently, I will focus my analysis on the information on closed residential education, detention and arrest specifically. "Legislators around the world are mixing elements of the proportional and re-socialisation responsibility models to address juvenile delinquency, in order to find the right balance between the specificities of youth and the need to protect society."⁴ Does one approach predominate in documents or in practice? What efforts are being made to ensure that they do not just work side by side in practice, but rather in harmony with each other?

II. What factors shape the approach of professionals involved in correctional custody to justice and education and how are they reflected in practice?

Correctional staff - managers, educators, children's supervisors, health staff, pupil welfare officers, police officers - try to achieve the objectives of the legislation in an unconventional pedagogical environment, in which both approaches are present. This research question seeks to understand how the specificities of the reformatory system affect the attitudes and work of professionals and the expectations they have of young people. Along certain categories, what do they rate as an improvement? Is it the behaviour of the juvenile during the period of detention, progress in studies, career choice, stable future, family relationships or leaving behind criminal relationships? Overall, the research question therefore asks what

³ Treating children 'differently' from adults; putting the child's best interests first; responding to their needs; parenting; responsibility

⁴ Kerezsi 2007, 38.

characterises detention in a correctional institution from the perspective of those who work there.

III. How does the arrested juvenile adapt to these ambivalent opportunities and expectations?

A not insignificant aspect of the results is the perception of the subject of arrest, i.e. the detainee, of the period from the time of his/her entry into the institution until his/her departure. By asking him/her, we can find answers to the question of what are the turning points in the arrest process, with the combined presence of educational and judicial perspectives, which, from a pedagogical point of view, are positive or negative, and thus in some way influence the reality he/she experiences.

Research methods used for the doctoral thesis

The aim of the research for this dissertation is therefore to understand the reality of detention in correctional institutions and to present the authentic personal experiences of staff and students in correctional institutions. To achieve these objectives, qualitative research methods are best suited,⁵ namely the interview, including the semi-structured interview instrument.

The research is structured around six central concepts:

- Judicial approach: this includes the objectives, means and activities related to the success of criminal proceedings and the maintenance of the necessary security: ensuring the presence of the juvenile, preventing the obstruction or frustration of evidence, preventing the possibility of re-offending. A fundamentally criminal law approach, based on a system of proportional responsibility, with a focus on the need to protect society. It does not take into account the complex causal processes behind the crime.⁶
- Educational approach: ensuring social inclusion and preventing re-offending through reintegration activities. The focus is on the specificities of the young person's age. The aim is to re-socialise the young person, going beyond criminal law competence to intervene in cases of risk.⁷

⁵ Greene-Hill, 2005 xi; Pierre-Roulston 2006 in Davies-Francis 2018, 677.

⁶ Kerezsi 2007 38.

⁷ Kerezsi 2007 38.

- Ambivalence: refers to the difficulty of reconciling the educational and judicial approaches in practice. Juvenile specificities require different responses from the authorities, but the criminal law framework allows them to respond only to the offence, regardless of the underlying juvenile deviance ⁸
- Staff: professionals, persons who directly deal with the juvenile under arrest during the detention process in the juvenile detention centre, and who may influence his/her perception and behaviour throughout the process: educator, team leader, teacher, child supervisor, health professional, police officer.
- Opportunities: this concept refers to the opportunities available to staff members, and includes everything that is defined and allowed by the legislation in question in relation to their work and activities.
- Motivations, expectations: the discretion that a staff member has when making decisions or working with young people, beyond the legal framework.

Research methods

The paper is based on semi-structured interviews with different actors in the detention process in juvenile detention centres - staff and young people under detention. In two different correctional institutions, 12 correctional staff members and 11 young detainees were interviewed. Members of both populations require preparation and special attention in terms of interviewing, due to the specificity of their role or their age and situation. In addition to interviewing, I used observation and documentary analysis. The thesis does not only rely on empirical, qualitative research methods, but also uses legal-historical, dogmatic and comparative legal approaches in the theoretical grounding chapters. The formulation of the interview questions and later their analysis, focusing on judicial and educational perspectives, were carried out along the lines of the research questions.

⁸ Kerezsi 2007 41.

Main findings of the research

- (1) The results of the research show that detention in a correctional institution does not only mean confinement and forced presence for the juvenile detainees. In many cases, the structured environment of the institution, with a predictable daily schedule and the supportive professional presence of staff, provides a sense of security and temporary reassurance. The perceived stability and consistent feedback can bring about positive changes in their thinking and behaviour, especially if the young person has come to the institution from a dysfunctional family or institutional background.
- (2) One of the main findings of this dissertation is that the co-existence of the two approaches - judicial and educational - creates a constant tension not only at the theoretical level but also in practice. It emerged from the interviews that much can be done to harmonise these two approaches, but that this depends to a large extent on the rules of the institution, the attitude of the staff and the professional culture, but that the automatisms of criminal procedure and the measures taken to ensure security 'decide' the debate in favour of the judicial approach.
- (3) The two approaches are often at odds with each other in the context of detention in a correctional institution.
 - a. A predictable presence and a stable environment for the juveniles is essential for the effectiveness of the educational process of implementation, but the unpredictability of the duration of the detention – and the psychological burden that this entails – is a major obstacle.⁹
 - b. Due to the forced presence of the juveniles, there is limited opportunity for voluntary involvement and participation, which is confirmed by the interviews conducted with them. On the contrary, for an intervention to be effective, in this case a detention in a correctional institution aimed at both reintegration and prevention of re-offending, the active participation and volunteering of the juveniles is essential.
 - c. The legislative objectives include the prevention of re-offending, which requires a long-term, needs-based approach. However, the strict control and monitoring during arrest, the focus on compliance with the rules of the institution, and the

⁹ Although the maximum period of detention in a correctional institution is set by law, it is always possible for a student to leave the institution early.

reports from juvenile detainees and staff suggest that the primary concern is compliance with the rules of the correctional institution. The focus of the juveniles is on becoming "the best possible detainees", but the rules they learn, while having a positive impact on their personal development, are less adapted to their needs and rarely useful after their release. The 'desirable condition'¹⁰ for young people is therefore not suited to the needs of the juvenile detainee.

- d. The automatisms of the criminal procedure do not allow the needs of the juvenile detainees to be taken into account. If the period of detention expires, but the young person still has, let us say, 3 months to complete a given academic year or to obtain a vocational qualification, he cannot remain in the institution. If he or she is given the opportunity to continue his or her studies after release, there may be obstacles for several reasons - motivation, distance from the educational institution, financial difficulties.
 - e. The 'ultima ratio' nature of arrest in some cases is contrary to the best interests of the child. Arrest can never be an alternative to child protection measures, it cannot make up for shortcomings in the treatment system, but it is not an exceptional case when it does occur. According to staff reports, the young people placed with them may have come from circumstances where the options offered by detention in a reformatory were the last chance for a dignified life.
- (4) The principle of the best interests of the child is often not clear in practice. In many cases, it is not adapted to the real needs of the child, but is driven by the automatisms of justice or the need to maintain security.
- (5) The two approaches are disproportionately reflected in international documents and in detention in correctional facilities. The international documents on juvenile justice, while including the issue and importance of responsibility, focus mainly on an educational approach that focuses on the needs of young people. Studies have shown that the implementation of these requirements, guidelines and recommendations is often hampered by the implementing rules of the state concerned,¹¹ which is supported by the results of the present research.
- (6) The judicial approach, although there are some links with the educational approach, is fundamentally a priority in enforcement, as security measures to ensure the success of criminal proceedings are paramount. It is within this framework that education takes

¹⁰ Volentics, 1999 76.

¹¹ European Union Agency for Fundamental Rights, 2015

place, where the judicial approach also often predominates, particularly for boys in custody, where the risk approach predominates, and the needs-based approach is slightly more predominant for girls.

- (7) A fundamental review of the way the institutions operate is needed. The current "hybrid" state of the institutional system not only results in a lack of clarity of reintegration objectives, but also in inconsistency of professional work. Such a dual situation is neither conducive to the reintegration of young people nor to the effective working of staff, which ultimately undermines the basic functions of the reformatory.
- (8) In the absence of adequate training support, subjective perspectives - which lack an expert approach - may be allowed to prevail, which may result in violations of the rights of the students and of international and national professional principles related to detention in correctional institutions. During the interviews, views were repeatedly expressed which reflected non-professional opinions and which could be discriminatory towards the pupils.
- (9) The motivation behind a staff member's decision - whether it reflects the dominance of an educational or a judicial approach - depends not only on the principles of the justice system, but also on the circumstances of the students, the educational tools available and the individual position of the staff member.
- (10) The adaptation of detainees to the institutional environment and the ambivalent expectations of arrest depends on several factors and varies considerably between individuals. It depends on what the young people think of themselves and how they interpret the attitudes of their educators. Their adaptation is also influenced by their first encounter with the authorities, their level of awareness and their motivation during arrest, which can also be diverse. The coping strategies of the students can be classified into three types:
 - a. extrinsic motivation: compliance with educators, primary goal is to be released as soon as possible
 - b. intrinsic motivation: reflects a longer-term view of themselves, which requires self-reflection to consider and take advantage of the opportunities available to them at the institute, for example in relation to vocational training
 - c. resignation: when the young person's primary goal is to "survive" his or her arrest.
- (11) For the detainees, the daily routine of being detained in a correctional institution is full of uncertainty, as they do not know for sure when they will leave the institution.

Although the time limit of the detention is known to the young people, it is not possible to predict how long they will be in detention. Consequently, detention in juvenile detention centres has an indeterminate character as a reaction to offending, despite the fact that international documents recommend that sanctions against juveniles should be firm. The indefinite duration not only interrupts studies or the continuation of the educational work carried out up to that point, but also imposes a permanent psychological burden on the detainees.

Bibliography

- Bellavics, Mária Zsóka (2021): A fiatalok bünelkövetők körében leggyakrabban előforduló pszichiátriai kórképek. *Magyar Rendészet*, Vol. 2021, No. 2. 97-109 DOI: 10.32577/mr.2021.2.6. (Utolsó letöltés: 2025. január 25.)
- Chitsabesan, Prathiba – Kroll, Leo – Bailey, Sue – Kenning, Cassandra – Sneider, Stephanie – Macdonald, Wendy – Theodosiou, Louise (2018): Mental health needs of young offenders in custody and in the community *The British Journal of Psychiatry*, Vol. 188, No. 6, 534-540. <https://doi.org/10.1192/bjp.bp.105.010116> (Utolsó letöltés: 2025. január 6.)
- Davies, Pamela – Francis, Peter (2018): *Doing criminological research*. United Kingdom, SAGE Publications Ltd.
- FRA European Union Agency for Fundamental Rights (2015) Child-friendly justice. Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States. Luxembourg: Publications Office of the European Union, 2015
- Greene, Sheila – Hill, Malcolm (2005): Researching children's experience: methods and methodological issues. In: Greene, Sheila – Hogan, Diane. (szerk.): *Researching Children's Experience: Approaches and Methods*. London, Sage, 61–86.
- Kerezsi, Klára (2007): Büntetve gondozni? A javítóintézeti nevelés helye a fiatalok büntető igazságszolgáltatási rendszerében. *Esély*, No. 3, 36-54.
- Schall v. Martin, 467 U.S. 253. (1984)
- Volentics, Anna (1999): Gyermekvédelem és reszocializáció. Budapest, Nemzeti Tankönyvkiadó.