MĀORI AND ROMANI AND JUVENILE JUSTICE – APPROACHES AND RESPONSES FROM DIFFERENT JUSTICE SYSTEMS

Bence Takacs

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Faculty of Culture and Society
School of Social Sciences and Public Policy
Primary Supervisor: Dr John Buttle

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ABSTRACT

Discrimination and over-representation of certain ethnic groups in the criminal justice system is a substantial social problem throughout Europe and in New Zealand. The study concentrates on the challenge of Māori and Romani over-representation in the youth justice systems and on access to justice in Hungary and New Zealand. Criminological research on Romani is scarce in contemporary Hungarian science. This academic deficiency was an important motivation for the research.

The aim of the comparative analysis was to gain understandings of the social aspects of how and why crime rates vary, and how the agents, structures and processes of responding to crime operate in culturally grounded contexts. In addition, both countries' historical and current youth justice systems are presented and critically examined. The thesis encompassed the scrutiny of minority-majority relations; it focused on lessons that can be drawn from the respective social and criminal policy experiences through the lens of comparative criminology. This investigation has utilised a combination of grounded theory and critical ethnographic methodology, combining a number of in-depth (interviews, observations, documentary research) qualitative approaches. It is an interdisciplinary study (situated where criminal law, criminology, social history and political science meet), which applied an integrated critical and zemiologist approach. It explores systemic factors affecting attitudes towards alternatives to conventional criminal justice among policymakers, juvenile justice and ethnic minority stakeholders. By investigating both general and ethnic-specific community-based crime prevention and reintegration models, the research fills a gap left by previous research. However, it remains a significant issue that state players strenuously resist acknowledging the possibility of their own corruption by ethnicity-related factors.

The research output suggests that culture- and colour-conscious policies and community-based approaches and institutions can have a greater cultural understanding both within organisations and when working with the public, and that they can reduce discriminative attitudes and socioeconomic inequities through empowerment and dialogue. Moreover, they have the capability to be more efficient in responding to deviancy than the conventional, punitive approach. Crime prevention and juvenile justice programmes that incorporate specific aspects of cultural values and principles and the special needs of offenders are likely to be more efficient at changing offending behaviour than culturally neutral programmes.

Finally, the study finds that the current, inappropriate, usage of the youth justice system disproportionately affects underprivileged Romani and Māori communities and serves, to varying degrees, as an instrumental component of a systematic social exclusion.

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ATTESTATION OF AUTHORSHIP

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (expect where explicitly defined in the acknowledgements), nor material which to a substantial extend has been submitted for the award of any other degree or diploma of a university of other institution of higher learning.

Signed: 

Date: 22nd May, 2017

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CHAPTER ONE

Introduction

1. Introductory remarks

The development of criminal justice processes in some countries has seen the rise of community justice practices over the last two decades (Hopkins Burke, 2012; Karp & Clear, 2002; Lanni, 2005). In New Zealand, these developments have also been shaped by the indigenous people, the Māori (Tauri, 2011; Te Puni Kōkiri, 2010b; Workman, 2013). The development of Māori community justice practices as part of the country's criminal justice system [CJS] can be contrasted with other jurisdictions such as Hungary, where the Romani are an ethnic minority, who face a number of similar social challenges and criminal justice issues.

The subject of the thesis is comparing the potential of the juvenile and community justice practices for these two groups from a socio-cultural and socio-economic perspective, and is set within the context of Hungarian and New Zealand society. There are numerous differences between the two countries and their respective societies and ethnic minorities, from social and political histories to language and traditions. Still, current social characteristics and challenges in the field of justice for ethnic minorities make them an interesting comparison. Both countries are members of the Organisation for Economic Co-operation and Development [OECD] and are rated as developed nations. New Zealand was the world's fourth most peaceful country according to the 2015 Global Peace Index, whilst Hungary was ranked as number 22 (Institute for Economics and Peace, 2015). There are some inter-ethnic tensions in both countries; however, they do not represent any organised or sizeable ethnic conflicts (H. Balogh, 2009, 2011; Human Rights Commission [HRC], 2011, 2012; Kerezsi, Gosztonyi & Polák, 2014; Sibley et al., 2011). As of June 2014, the prison population rate is almost the same, 190 per 100,000 of national population in New Zealand, 187 in Hungary (Hungarian Prison Service [HPS], 2015; International Centre for Prison Studies [ICPS], 2015). In addition to their over-representation in the CJS, the strong Māori and Romani communal characteristics and their similar community-based justice institutions also constituted a

relevant starting point to the study. Historical experiences of marginalisation and the contemporary disadvantaged social circumstances of Māori and Romani peoples suggest that a considerable part of the hardships and complex challenges affecting them will almost certainly persist in the foreseeable future. By examining both the differences and the shared social circumstances, this comparison of Māori and Romani helps to illustrate the distinct and similar issues, philosophies, policies and theories in criminal justice responses for these ethnic communities.

1.1. Māori people and New Zealand state

The arrival of the first Māori groups on the previously uninhabited islands that are currently referred to as New Zealand, occurred around 1280 CE when the first groups migrated from Eastern Polynesia. Research into DNA sequencing and linguistics show that their origin is in Taiwan; the closest genetic match was found with indigenous Taiwanese groups (Harlow, 2007; Howe, 2003; Knapp et al., 2012; Soares et al., 2011). Before the arrival of Pākehā[1], no unified society or single Māori identity existed, however Māori developed their communities ranging from whānau[2] to hapū[3] and to iwi[4]. Shared ancestry and Polynesian heritage, a common basic language, similar mythologies, traditions, religious beliefs, intermarriage and trade assisted in maintaining relationships between Māori groups (Ballara, 1998; Belich, 1996). In the 19th century, British colonisation had major impacts and changes for Māori (Bull, 2001). In 1840, the Treaty of Waitangi was signed by representatives of the British Crown and various Māori chiefs. It effectively implemented the English legal system, inclusive of its criminal law (Pratt, 1992; Ward, 1995). A new settler state established a CJS based on British law. However, the Treaty was largely ignored during oppressive colonisation processes; the traditional basis of Māori communities and cultural identity was weakened and Māori aspirations for self-government were obstructed by colonial authorities (Orange, 2011; Sharp, 1997). Although some autonomy of Māori justice still existed for a while, the marginalisation of Māori communities practically wiped out their own system of law and

[1] Non-Māori, usually of European descent; sometimes used interchangeably with NZ European.

[2] The basic social unit in Māori society: an extended family unit spanning three to four generations.

[3] Sub-tribe. Extended kinship group, related whānau within an area; 200-300 people.

[4] Tribe, the largest social unit; made up of several related hapū descended from a common ancestor.

justice (Ward, 1995). It is a relevant development that the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] – adopted by New Zealand in 2010 – recognises Māori as indigenous people. Article 34 grants that *"Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs".*

In the 1950s and 1960s, the state encouraged an integration policy to move Māori from rural tribal areas into urban areas to work in the growing manufacturing sector (Walker, 2004). Working-class communities of Māori and other migrant groups from the Pacific Islands (predominantly in lower occupational classes, unskilled/semi-skilled labour) were established in the cities near industries (Fleras & Spoonley, 1999). As the economy went into decline from the 1970s, continued economic restructuring impacted heavily on Māori workers in those communities (Chapple, 2000; Fletcher, 1999). The process of Māori urbanisation brought increased and more frequent contact with Pākehā communities; consequently, the colonial legal system had been extensively made applicable to Māori (Hill, 2004; Ward, 1995). Once close-knit Māori communities have been fragmented as the wider whānau ties were replaced by the nuclear family structure, which represents a kind of new version of a core social support unit. Concurrently, the cohesion of the traditional moral community with its function for social control was seriously impaired (Liu, 2007).

The 2013 census reported a growing Māori population; it is estimated that 599,000 Māori live in the country, representing 15% of the national population alongside 74% NZ European, 12% Asian ethnic groups and 7.4% Pacific peoples (Statistics NZ, 2013). Significant numbers of Māori tend to have poor educational attainment, high unemployment rates, low health status, inadequate housing, and they are subject to interpersonal and institutional discrimination, which leads to health, educational and labour market inequalities (Else, 1997; Eng et al., 2011; Marriott & Sim, 2014; Robson, 2004). These circumstances often result in a vicious and intergenerational cycle of poverty and exclusion (T. K. McIntosh & Radojkovic, 2012). The effects of their disadvantaged socio-economic position can be detected in criminal justice statistics (Tauri, 2011). Māori over-representation in the CJS has been generally recognised as an established fact for decades (C. Williams, 2001; HRC, 2012; Marie, 2010). 22% of Māori males born before 1975 had a sentence managed by the Department of Corrections [DoC] before the age of 20, and 44% had such a sentence by the age of 35 (Workman, 2013). Māori are six times more likely to be imprisoned, at a disturbing rate of 700 per 100,000, and 11

times more likely to be remanded in custody than non-Māori (Workman, 2012a). A response to this has been the development of Māori cultural practices in prevention and offender reintegration strategies at different stages of the criminal procedures over the last few decades (see, for example, DoC, 2007b, 2009; Makwana, 2007; McFarlane-Nathan, 1999; MoJ 2011, 2012; Oliver & Spee, 2000; Owen, 2001; Paulin, Kingi & Lash 2005).

1.2. Romani ethnic groups

There is a great deal of debate on the correct term to use to refer to this ethnic group in an unstigmatising way (Timmer, 2010). The United Nations [UN], the European Council, the European Union [EU], the U.S. Library of Congress and many international organisations use the Romani (often spelt as Romany) name as an adjective and a noun as well (Romanies plural). Roma, the plural of the word 'man' in the Romani language, is very common in many countries, especially as a noun, but also as an adjective. The name Gypsy is popular among non-Romanies, but often disapproved of by Romanies themselves. It is a name created by foreigners and is derived from the misconception that Romanies originated in Egypt. Similarly to alternative local names (such as Tsigane, Cigány, Gitane/Gitano, etc.), the name Gypsy brings negative associations and inaccurate perceptions of lifestyle (Kertesi & Kézdi, 2010) for most Romanies (e.g. the romantic image of travellers).

Unlike Māori, Romani people are not an indigenous population; their first groups migrated to Central Europe about 600-700 years ago, and their origin is in Northern India (Fraser, 1995). Alternative theories exist in the literature claiming that some Romanies have indigenous origins in Europe (Okely, 1983; Willems, 1997) but these claims are widely regarded as controversial and uncorroborated (Yuille, 2007). However, some Romanies had not evolved into a unique ethnic population before their arrival; in this context, they can be classified as native to Europe (Yuille, 2007). Romani people are quite heterogeneous linguistically. Some speak dialects of the Romani language; others embrace the language of their host country, or a special dialect of it (Kemény, 2002). The vast majority of Romanies had settled a long time ago, and their romantic image of being travellers is mostly fiction (Bárány, 2002). The 10-12 million Romani people represent Europe's largest ethnic minority (European Commission, 2014). They are extensively affected by racism, discrimination and social exclusion (EU Agency for Fundamental Rights [FRA], 2012). Romani constitute the most numerous and

most deprived ethnicity among all ethnic minority groups in contemporary Central and Eastern Europe (Csepeli & Simon, 2004).

The estimated proportion of Romanies in the total Hungarian population is approximately 6-8% (Hablicsek, 2007). However, their share in the most disadvantaged social stratum is over 50% (Babusik, 2005, 2008; Kemény & Janky, 2006; Revenga, Ringold & Tracy, 2002). Historical developments in the last two centuries had enormous impact on Romani communities (Babusik, 2002). Modernisation and labour market changes began to significantly increase the interaction between Romanies and mainstream society (Dupcsik, 2009). After WWII, Soviet troops occupied Hungary, and a communist satellite state was created. Assimilation policies of the communist era between 1947 and 1989 brought mandatory relocation and employment in mostly unskilled jobs in the state sector, and accelerated the disintegration of traditional Romani communities (Sághy, 2008; Stewart, 2001). The end of the communist era was followed by a transitional period including deep recession, large-scale privatisation and major changes in the labour market, where demand for unskilled labour collapsed. In addition to the disadvantages of having low skill levels, the often openly discriminatory attitude against Romani meant that they were among the first to be made redundant (Kertesi & Kézdi, 2010a). As well, Romani face more serious challenges to regain jobs than others. Consequently, the majority of them are trapped as an 'underclass' in a vicious circle of economic and social exclusion with poor educational skills, high unemployment and an alarming rate of over-representation in the CJS (Kertesi, 2005; Póczik, 2003; Rosta, 2014; Szelényi & Ladányi, 2006; Tauber, 2000). Estimates show that for Romani imprisonment levels are four to seven times higher than for other groups (Barabás, 2012; Huszár, 1999; Póczik, 2001).

1.3. Focus and justification of the research

It is important to clarify that in the research literature the terms 'race' and 'ethnicity' are often used interchangeably, with the former being more widely used in literature from the United States and Canada, and the latter more commonly used in research from the United Kingdom, New Zealand and Australia (Morrison, 2009). The term 'ethnicity' is consistently used in connection with Māori and Romani peoples in this thesis.

In contemporary juvenile justice, it is widely acknowledged that comparative examination of polices can play a beneficial role in addressing some of the challenges faced by different

countries (Dolowitz & Marsh, 2000; T. Jones & Newburn, 2006; Muncie, 2001). Hazel (2008, p. 5) suggested that policy transfers were stimulated in part by international legal commitments, and in part by the appeal to *"policy diffusion"*, whereby countries can observe and relocate policies and practices of other nations. The study accordingly explores the underlying mechanisms of conventional and community-based justice models and concentrates on the challenge of the over-representation of Māori and Romani in CJSs. By investigating both general and ethnic-specific reintegration and crime control methods, the research intends to fill a gap left by previous research.

In comparison with the significant interest in Māori criminal justice research, criminological research on the Romani's state of affairs is scarce, especially in the face of the severe over-representation, over-policing and evidence of institutional discrimination (FRA, 2009, 2012; Farkas, Kézdi, Loss & Zádori, 2004; Kerezsi et al., 2014; Open Society Institute [OSI], 2007; Póczik, 2001, 2003a). For instance, there has been hardly any research investigating the experience of Romani during/after criminal procedures/incarceration. In the communist era, there was official research on Romani crime but the methods and findings of these investigations are obviously obsolete and, in many aspects, outrageous and unacceptable (Dupcsik, 2009; Szendrei, 2011). An emblematic example was a secretly conducted, countrywide research on the dermatoglyphic differences between Romanies and non-Romanies (Tauszik & Tóth, 1987). This academic deficiency in Romani studies was an important inspiration for this study while, for comparison, there has been some influence from Māori scholarship and research on criminal policy in New Zealand (Cleland & Quince, 2014; McElrea, 2011; N. Lynch, 2012a; Tauri, 1998, 1999). The way this influence unfolded is also a focus of the study.

Furthermore, it is relevant to explore whether the development of Romani criminology might be advisable. Although mainstream criminology and criminal justice, and their advocates, might have some liaison with and insight into Romani communities, they usually do not have much first-hand knowledge of the living conditions, culture and experiences within these communities. Phillips and Bowling (2003) proposed that it was unreasonable to envisage any minority perspectives in criminology, which are conservative in orientation, since such approaches customarily locate the causes of crime at individual or subcultural levels. Consequently, it might be worth considering in criminological research the development of Romani criminology, in a similar way that Māori criminology has evolved in recent times (Bull, 2001; M. Jackson 1988, 1995b; Tauri, 2011; Tauri & Webb, 2012; Webb, 2003a).

Romani perspectives in criminology might become core, or at least required, courses for criminal justice stakeholders, with education on the historical and structural context and training about a culturally more sensitive/appropriate attitude.

Finally, contrary to claims by some politicians and scholars that Romanies have already been 'over-studied' (Sólyom, 2009), there is an absence of research that looks specifically at the impact social and criminal policies and the CJS have on them (Kerezsi & Gosztonyi, 2014; Kerezsi et al., 2014). The current state of affairs leaves little doubt that society faces a long-term social and criminological challenge due to the growing, socially underprivileged Romani population. The situation was deteriorating gradually in the previous decades despite numerous costly programmes and interventions (Ringold, Orenstein & Wilkens, 2005; Rorke, Matache & Friedman, 2015; Rövid, 2011; State Audit Office, 2008). Without genuine and serious commitment of policymakers and society as a whole, the future does not bode well for harmonious inter-ethnic relations.

1.4. Literature review

In crime control and crime prevention the limitations of the state's capability to regulate the sphere of social life have become manifest. Claiming control of functions and obligations that once pertained to civil society's institutions, the late modern state encounters its own impotence to accomplish the expected level and quality of control over criminality and criminal behaviour (Garland, 2001a). It is a remarkable development that new forms of governance have resulted in the transmission of some authority, which, during the modern era, has been monopolised by the state, to local communities and, in some cases, to ethnic minority groups. One example is the establishment of local and higher-level self-government systems for national and ethnic minorities, introduced in Hungary in 1993 (Kállai, 2005; National Democratic Institute, 2006; Ringold et al., 2005). Many Māori community-based programmes and models, including several community justice initiatives, have been developed or revived in recent decades (Byrne, 1999; Carruthers, 2011; DoC, 2008b; Ministry of Justice [MoJ], 1999; Oliver & Spee, 2000; Te Puni Kōkiri [TPK], 2005; Walker, Fisher & Gerring, 2008). In the context of this shift toward local communities, together with the growing relevance of local self-governance, even if with limited autonomy, they may acquire their share in the responsibility of maintaining the safety of their residents, controlling and preventing crime beyond the formal justice system. Within this scope, alternative, informal

dispute resolution practices that existed in the community judicial tradition can justify their viability (Balahur, 2007; Clear & Karp, 1999; Quince, 2007b).

The extent of state power in the jurisdiction of criminal justice and legal procedures may have hit a historical peak from which it is receding as less formal/state-controlled means of handling social problems and disputes take hold (C. Williams, 2001). In recent decades, the community has again become a central concept in the sphere of criminal justice (Crawford & Clear, 2001; Lanni, 2005). Community capacity and involvement in social cohesion and conflict resolution is identified as one of the key issues for contemporary societies (Bakó, 2006; Byrne, 1999; Chile, 2006; Quince, 2007b). Increased community involvement has the potential for reducing economic and social losses and enhancing community safety through empowerment and more efficient community-based conflict resolution programmes (Clear & Karp, 1999; Karp & Clear 2002; Kerezsi, 2012; Lanni, 2005). Additionally, community initiatives have particular relevance to Māori and Romani populations due to the strong communal characteristic of these cultures (Bárány, 2002; Barlow, 1991; Fraser, 1995; Hancock, 2002; M. Jackson, 1988, 1995b; Metge, 1995; MoJ, 2001; Stewart, 1994). International (including the UN, the EU, with recommendations, guidelines, project funds) and local stakeholders promote the replacement or supplement the duty of the state in community-level crime prevention, community policing, dispute resolution and various restorative justice models for ethnic minorities (HRC, 2011, 2012; Hungarian Helsinki Committee [HHC], 2014). Therefore, theoretical and practical issues of community-oriented justice and its prospects for disadvantaged ethnic minorities are reviewed in the thesis.

1.4.1. Disproportionate outcomes in criminal justice

The operation of CJSs is symbolised by the rule of law, by stable and respectable legal institutions like the court system and by legal safeguards, which are designed to ensure just, equal and unbiased procedures. At the same time, police and judicial discretion are central elements of any criminal justice procedures because each stage, from arrest to prosecution through to sentencing, includes a significant degree of in-built discretion in terms of decision-making (Johnston, 1991; Lea, 2000). Unwitting results or negative effects of discretion and irregularities of decision-making are often not monitored and/or adequately addressed (Latu & Lucas, 2008; Morrison, 2009). Some legal safeguards like legal representation (predominantly public defenders/legal aid schemes) or bail criteria fundamentally operate to the disadvantage of certain ethnic minorities (Kádár, Körner, Moldova & Tóth, 2009; Lynch, Patterson &

Childs, 2008; Tauber, 2000; Workman, 2012a). Most analyses of the effects and consequences of contemporary CJSs demonstrate that members of marginalised ethnic/racial minorities are disproportionally represented among offenders (Cayley, 1998; Christie, 2001; Gabbidon, 2010; M. J. Lynch et al., 2008). Furthermore, in many western jurisdictions (see, for example, Australia: Blagg, 2000, 2016; Cunneen, 2006; Canada: LaPrairie, 1997; Manzo & Bailey, 2005; Rudin, 2005; The United Kingdom: Bowling & Phillips, 2002, 2006, 2007; Home Office, 2011; Macpherson, 1999) over-policing and over-representation of certain (visible) ethnic minorities in CJSs were repeatedly observed.

Available crime statistics show ethnic over-representation in the CJSs of many countries with significant indigenous or Romani populations (Gabbidon, 2010; M. J. Lynch et al., 2008; OSI, 2007). Levels of disproportionality vary between 1.5 times in Germany (Dünkel, 2006) and 48 times in Western Australia (M. Smith, 2010), where ethnic minorities are concerned. Research data indicate that levels of ethnic over-representation at various stages of the system are usually deteriorating (Blagg, Morgan, Cunneen & Ferrante, 2005; Cunneen; 2006, Gabbidon, 2010; K. Ligeti, 2008; Morrison, 2009; Office of the Correctional Investigator, 2012; Solt, Antal & Serfőző, 2011). These data suggest that many western states and legal systems are still unable to cope with the outcomes of structural inequalities embedded in CJSs and more broadly in social justice structures. It is arguable that in its outcomes the criminal justice process is neither just, nor blind (Gabbidon, 2010; Sawatsky, 2007). As Morrison (2009) noted, the current research literature urges that a detailed examination of the theories that acknowledge the contribution of the operations of the CJSs to the production and maintenance of disproportionate outcomes be carried out.

1.4.2. Historical and structural contextualisation

Experiences of minority communities and individuals within society and the CJS cannot be grasped without a historical and structural contextualisation of their situation (Sonn, 2004). Accordingly, an integration of a historical and structural perspective (Greenhill & Dix, 2008) was applied that assisted the understanding of causes and effects of victimisation and offending. It facilitated the examination of the performance of different prevention and reintegration strategies within and outside the formal CJS. A significant effort was made to analyse them through the lenses of Māori and Romani historical and contemporary experiences. Structural theories are viewed as adequate to construe why and how culturally, socially and economically marginalised ethnic minorities commonly found themselves in

'criminogenic' contexts (M. H. Durie, 2003; M. Jackson, 1988; Marie, Fergusson & Boden, 2009a; Marie, 2010). Criminological literature shows that incidences of deviancy among them are more often held as unacceptable and intolerable (Broadhurst, 2002; Cunneen, 2006; Gabbidon & Taylor Greene, 2015; Pratt, 2006; Tauber, 2000). This, in turn, triggers the action of law enforcement with all the detrimental consequences. Phillips and Bowling (2003, p. 278) observed *"processes of social and economic marginalisation not only have consequences for involvement in deviant behaviour among minority groups, but these are compounded by policing and criminal justice processes"*. It has long been established in criminological literature that deviancy among marginalised ethnic groups is much more likely to be labelled as criminal by the public and law enforcement. The typical consequences are formal sanctions and involvement in the CJS towards imprisonment (Garland, 2001a; Memmi, 1965, 1968; Phillips & Bowling, 2003).

The review of the criminological literature (see, for example, Bowling & Phillips, 2002; R. J. Brown, 2010; Gabbidon, 2010; Johnston, 1991; Kymlicka, 2010; M. J. Lynch et al., 2008; Morrison, 2009; Rowe, 2004) reinforces the notion that various ethnic/racial minorities attracted and continue to attract special and often unjustifiable attention. Direct racial profiling by the police was identified as the most serious and worrisome (Farkas et al., 2004; HRC, 2012; Kádár & Pap, 2009; Miller et al., 2008) and, at the same time, a largely ineffective (Harcourt, 2006; D. A. Harris, 2002; Rowe, 2004) and illegal practice with the most detrimental consequences (Buerger & Farrell, 2002; OSI, 2007). It nourishes distrust, suspicion and stereotypes while being inefficient for reducing crime (Jones & Singer, 2008). Yet, decades of research in many countries, including complex investigations, has been unsuccessful in producing efficacious policies for addressing ethnic disproportionalities (Morrison, 2009). Significant amounts of further research seem necessary in connection with the realisation why certain ethnic/racial minorities are in longstanding, underprivileged positions within their societies and in CJSs. Moreover, in New Zealand there is a dearth of research on ethnic profiling concerning stop and search practices (HRC, 2012; Workman, 2013).

1.4.3. Criminal/juvenile justice and international law

Almost every country has ratified the International Convention on the Elimination of All Forms of Racial Discrimination [ICERD]. Signatories are bound to it by international law. For example, by signing and ratifying Article 2 of the ICERD, countries are obliged to *"undertake*

to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms". Article 5 elaborates the general obligation of Article 2 and imposes a specific duty to *"guarantee the right of everyone ... to equality before the law"* regardless of *"race, colour, or national or ethnic origin".* The very first in the list of the specific rights is "*the right to equal treatment before the tribunals and all other organs administering justice"*. However, New Zealand has not made an Article 14 declaration, which would permit those subjected to racial discrimination to communicate with the Committee on the Elimination of Racial Discrimination [CERD]. However, Māori do have the right to develop institutional structures and juridical systems in accordance with Article 34 of the UNDRIP (McMullan, 2011).

Both New Zealand and Hungary assumed further obligations and duties under international law, among the most significant in the context of this study being the UN Convention on the Rights of the Child 1989 [UNCRC]. This is the single most important legal instrument in relation to juvenile justice since it is legally binding.[5] There is the well-accepted international 'soft law' including The UN Minimum Rules for the Administration of Juvenile Justice (The 'Beijing Rules' 1985); The UN Guidelines on the Prevention of Juvenile Delinquency (The 'Riyadh Guidelines' 1990); The CERD General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice (2005); The UN Guidelines on the Administration of Juvenile Justice (The 'Vienna Guidelines' 1997); and The UN Standard Minimum Rules for Non-custodial Measures (The 'Tokyo Rules' 1990). The Tokyo Rules are particularly pertinent to this study since they are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders. The term 'soft law' applies to quasi-legal documents, which are without binding force, and include most resolutions and declarations of the UN General Assembly. To gain legally binding force, these 'soft-law' instruments must be incorporated into the domestic law, but still they are widely accepted as having an orienting role for state parties.

[5] The Convention is a binding document for those who ratified it. However, in contrast to domestic law, the 'problem' is the missing enforcement mechanism when state parties do not adhere to it. Moral obligation and public sensitivity to comply seem more compelling for many developed countries. However, for example, New Zealand still has not adjusted its youth justice system to apply it to children up to the age of 18.

1.4.4. Māori and Romani and CJSs

Decades of research endorses that indigenous and ethnic minority groups frequently hold underprivileged status compared with majority ethnic groups (Blagg, 2016; Gabbidon, 2010). In many respects, the experience of various underprivileged ethnic groups in their respective societies, although cultural and historical aspects are necessarily unique, seems theoretically similar in many ways (Morrison, 2009). Cain (1990, p. 129) suggested that it was feasible and expedient to "*prescind from the spate of dissimilarities without rebutting them, between various disadvantaged minorities, and to conciliate these dissimilarities with focussing on their immanent uniformity*." This study has embraced that a literature review with extensive research information from both countries concerning their different ethnic groups can accumulate valid and significant knowledge about the challenge of ethnic anomalies in CJSs. An important caveat, however, is that the roots, traits and magnitude of ethnic disparity regarding over-representation in the CJS are determined by historical, social, cultural, economic, political and other factors. Thus, measures designed to cope with disproportionality for one specific ethnic group in one country are not necessarily appropriate to manage that challenge in relation to other ethnic groups in different contexts (Morrison, 2009).

1.4.4.1. Over-representation in the CJS

In the case of Māori and Romani there is strong evidence that different forms of social injustice are a long-standing and pervasive issue (see, for example, Babusik, 2007; Bowen, Boyack & Calder-Watson, 2012; Bull, 2001; M. Jackson, 1988; K. Ligeti, 2008; Morrison, 2009; Solt & Virág., 2010; Tauri & Webb, 2012; UNDP 2002; Workman, 2011b). Māori and Romani (even more pronounced for youths) are over-represented at every stage of the criminal justice process (Barabás, 2012; DoC, 2007a, 2008; Doone, 2000; Morrison, 2009; Póczik, 2001, 2003b; TPK, 2000; Workman, 2011b, 2012a; C. Williams, 2001). For example, Māori aged 10-13 were almost six times, and Māori aged 17-20 were three times more likely to be apprehended than their Pākehā counterparts (Workman, 2011a). According to the NZP apprehension data in 2011, the likelihood of a prosecution for a Māori aged 10-16 was higher in every category of crime excluding one compared to a Caucasian (Davison, 2013). In 2011, 54% of children and young people charged in court were Māori, 30% Pākehā and 11% Pacific peoples (MoJ, 2013a; Statistics NZ, 2013). Trends are even more worrisome in the last few years; the disproportionality in prosecutions has risen from 44% in 2005 to 54% in 2011, and to 61% in 2015 (Taumaunu, 2015; MoJ, 2015b). There is no officially recorded data on

Romani involvement in the CJS since 1989, but several studies show Romani disproportionality (Huszár 1999; Póczik 2001). In Póczik's (2001) representative sample, 41% of inmates were Romani and 15% were self-reportedly assimilated. Kertesi and Kézdi (1998) estimated the proportion of Romanies aged 14-18 at around 14%, while only 22% of the prisoners in Tököl juvenile prison professed themselves Hungarian, 11% mixed ethnicity and 60% Romani (Barabás, 2012). The situation of Romani juveniles is comparatively similar to Māori youths, since both trends are clearly deteriorating. Solt et al. (2011) found in juvenile justice institutions that the proportion of self-reported Romani reached almost 75% of total inmates.

The common public assumption is that race/ethnicity is a genetic rather than social conception; therefore, racial cognition still determines the 'different realities' experienced by these minorities in having little or no control over these 'realities' (Kádár et al., 2009; Liu & Mills, 2005; Sibley et al., 2011; Sik & Simonovits, 2012; H. Szilágyi, 2009). Repercussions of formerly mainstream, however, completely unfounded and superseded, theories that regarded Māori and Romani as criminally inclined due to inherited, biologically unchangeable characteristics still exist and influence public perception. For example, a 1968 Department of Justice review (cited in Webb, 2003a, p. 91.) reckoned Māori to be violent criminals because of their *"biologically determined traits"*. Findings from a survey of police officers in 1998 indicated that 25% of them held negative attitudes toward Māori, and perceived crime as a Māori problem. Almost one-third of those surveyed had a greater tendency to suspect Māori of an offence, and two-thirds of respondents recounted racist opinions from colleagues (Maxwell, 2005). Comparably, a survey in 2006 showed that almost two-thirds of adults embraced the view that the tendency to commit crime is in the blood of the Romani (TÁRKI, 2006). In 1997, more than half of the surveyed police officers considered criminality as a key element of Romani identity, and only 11% expressed the view that ethnicity has no role in criminality (Csepeli, Örkény & Székelyi, 1997).

Most likely, there is a strong correlation between over-representation and historical injustices, segregation and discrimination. Their cumulative consequences on Māori and Romani life prospects are structural, not merely individual. Geographical and social isolation, and marginalisation raise severe difficulties regarding the most significant socio-economic issues like employment, educational and other social service resources (M. H. Durie, 2003; Ladányi & Szelényi, 2006; UNDP, 2002). Consequences of social marginalisation and institutional bias cannot simply be overcome or changed by single individuals (Revenga et al., 2002). Such

injustices limit life prospects regardless of personal character, motivation or ability, and require efforts on community and macro level, too (Humpage, 2006; Kymlicka, 2010; powell, 2012; Young, 1988). Efficient management of complex social issues and macro-level policy initiatives necessitate long-term commitment and concerted efforts; even multinational levels of cooperation are often seen as essential. That is why in 2011 the European Commission put forward a European Framework for National Roma Integration Strategies up to 2020, which aims to assist country-level Romani policies and mobilise funds available at EU level.

1.4.4.2. Theoretical explanation of over-representation

The practical consequence of the widely accepted theoretical explanation for ethnic disproportionality is highly relevant since it can significantly influence social and criminal policies. Two major explanations exist within the literature:

1. the differential involvement thesis holds that levels of ethnic disparity are largely, if not solely, the product of the differential offending by certain ethnic-minority groups;

2. the discrimination thesis concludes that levels of ethnic disparity should be understood (at least in part) as the result of direct and indirect discrimination within the CJS and society more broadly (Morrison, 2009, p. 12).

Both institutional discrimination and institutional racism are widely and often interchangeably used terms (Cunneen, 2006; Macpherson, 1999; Phillips, 2011). In this thesis, institutional discrimination is used as the general term, which includes institutional racism as well as a variety of other forms of discrimination (based on characteristics like age, sexuality, religion, gender, nationality, class, physical disability, mental health, marital status, migration status, etc.). The most distinctive characteristic shared by Māori and Romani is the disadvantaged social status coupled with the very similar effects of institutional discrimination in the sphere of social justice. As the aftermath of colonisation/industrialisation and social changes, their culture has been marginalised. Although Māori political and economic influence is considerably greater than the Romani in Hungary, they still have insufficient political leverage (Tauri, 2013). Both Māori and Romani are subject to institutional discrimination, where criminal and social policies, seemingly ethnicity-neutral, have a greater and more detrimental impact on them than on others. It constitutes a less easily detectable form of discrimination, often unconscious and unintended but it is effectively able to increase ethnic inequality in criminality and criminalisation (see, for example, Hook, 2009b, 2009c; H.

Szilágyi, 2009; Póczik, 2001; Sibley et al., 2011). Despite the gravity of the unequal outcomes, only limited efforts have been made by criminologists to explore the operation of potential institutional discrimination within the CJS (Cunneen, 2006; Tauri, 2013). Cunneen's (2006) observation seems valid in the case of Māori and Romani:

> *"No large public-funded crime research organisations … have ever undertaken this type of important research. One can only speculate that the study of unlawful behaviour on the part of government agencies connected to the criminal justice system is too sensitive for government-sponsored criminology."* (p. 332)

Discriminatory social mechanisms can create a vicious circle. When a disproportionate number of ethnic minority youth have been entangled in the CJS, the prejudice against them as criminals can be fortified. It is a virtually self-fulfilling process of stigmatisation (and criminalisation) when outcomes, though based on bias, reassert the original supposition (H. Szilágyi, 2009, 2013; M. Jackson, 1988; Póczik, 2003b; Sibley et al., 2011). This process is frequently bolstered by the mass media (Alia & Bull, 2005; Messing & Bernáth, 2012; Messing, 2005). Interconnectedness of marginalisation and ethnicity-based accumulation of socio-economic disadvantages, and intergenerational, apparently unbreakable, disadvantaged social position (in other social justice areas like health, education, housing, labour market, majority attitudes) suggest that the discrimination thesis provides more persuasive arguments in explaining ethnic disparities (M. H. Durie, 2003; Keen & Jacobs, 2009; Ladányi & Szelényi, 2006; Morrison, 2009; UNDP, 2002). Research data consistently show that socio-economic and related factors are able to explain some of the ethnic differences, but are still far from being able to eliminate ethnic differences in offending rates (Blagg et al., 2005; Cunneen, 2006; Fergusson, Horwood & Swain-Campbell, 2003a, 2003b; Spohn, 2000). However, critical review of the literature suggests that differential involvement and discrimination theses are not mutually exclusive despite often having been treated as such; and both have a role to play in the ethnic disproportionality in the CJS (Morrison, 2009). Empirical investigations on the manifestation of differential involvement and discrimination theories in CJSs produced complex, conflicting and often inconsistent findings due to the intricate relationships between ethnic identification, social deprivation and offending (Marie et al., 2009a; Morrison, 2009; Spohn, 2000). Thus, the recognition of the criminogenic ramifications of adverse socio-economic circumstances seems indispensable to interpret the prevalence of crime in communities, regardless of their ethnic/racial structure (Broadhurst, 2002; Doone, 2000; La Prairie, 1999; Marie, 2010).

1.4.4.3. Over-representation and possible discrimination in the CJS

Workman (2012a) pointed to unsettled questions of discrimination on individual and structural level inside the CJS, and called for a reasonably acceptable explanation for the disproportionality in Māori imprisonment rates (six times higher than non-Māori) compared to Māori remand rates (11 times higher than non-Māori). Fergusson et al. (2003a) found strong evidence that the differential involvement theory alone was unable to elucidate the Māori over-representation in crime statistics. Their data analysis showed that Māori were 2.1 to 2.6 times more likely to be convicted than non-Māori with the same self-reported history of offending. After controlling for self-reported offending history, individual characteristics and socio-economic status, Māori were still 1.6 to 1.8 times more likely to be convicted than non-Māori (Fergusson et al., 2003a). This infers an increased risk of conviction for Māori, and it indicates the presence of an ethnic bias. Maxwell et al. (2004) reported that socio-economic factors alone did not explain the ethnic differences in the CJS. Māori youth may come more often to the attention of the police; however, the natures of their offences are less serious than their non-Māori peers. Maxwell et al (2004) affirmed previous research that had suggested that this was because the public and the police were more vigilant toward Māori youth. Their findings indicated that the police were more likely to send Māori youth directly to the Youth Court instead of resorting to diversionary options. Maxwell et al. (2004) reported that since more Māori youth tended to be dealt with in court, therefore, the severity of sentences received was greater, regardless of the nature of their offending. A MoJ (1998) report ascertained that the CJS was not working appropriately for Māori. Responses of the system were often perceived as unhelpful; the court system was meaningless to many Māori; they tended to receive poor-quality legal advice; and culturally inappropriate behaviour of justice stakeholders and inappropriate sentencing of Māori persisted (MoJ, 1998). Bowen et al. (2012) concluded that while New Zealand played a leading role in youth justice innovations, the goal of accommodating Māori interests had not been accomplished because their unabated over-representation in all spheres of the CJS revealed that Māori crime had not been addressed yet.

The overall situation in Hungary is reasonably analogous (Kerezsi & Gosztonyi, 2014; Póczik, 2001). Research conducted by the HHC on procedural discrimination against Romani in the CJS exposed direct police profiling (Farkas et al., 2004). Racial/ethnic profiling is not merely an annoyance for the affected people, because these practices inflict extensive and inescapable burdens on them. Profiling engenders and maintains distrust and negative

stereotypes; it may label entire ethnic groups as suspicious communities (OSI, 2007). On the contrary, fair procedural conduct promotes more efficiently a law-abiding attitude; it can increase the legitimacy of the system (Tyler, 2006). The popular beliefs and media images of Romani further aggravate stereotypes that identify them with criminality. Additionally, at least part of their over-representation can be attributed to their inadequate treatment within the CJS. Research projects illuminated problems of prejudice, institutional discrimination, various injustices like over-policing and vigilantism, inappropriate legal representation and unjustified rates of pre-trial custody (Clark, 2005; Farkas et al., 2004; H. Szilágyi, 2009; Kádár & Pap, 2009; OSI, 2007). There are suggestions in the literature (for example, Farkas et al., 2004; H. Szilágyi, 2009; Kádár & Pap, 2009; Kerezsi & Gosztonyi, 2014; Lévay, 2007; Póczik, 2003a) that criminal law, which formally meets the criteria of the rule of law, during its implementation often transforms to a means of exclusion and stigmatisation of Romanies. Farkas et al. (2004) found procedural discrimination. H. Szilágyi (2009, p. 72) labelled the criminal court procedures as *"ritualised jurisdiction"* and viewed the speediness of the proceedings as the most apparent feature, while reporting that the *"Gypsy trial is not a trial but a rite; a formalised sequence of acts that has no inherent meaning"* (p. 73). Briefly, it means that there is no legal dispute during the formalities of the proceedings. It is reasonable to assume that such practices of criminal justice institutions to compel compliance of Romanies with social norms are improper and immanently inadequate to cope with the basic causes of these social issues.

1.4.4.4. Ethnicity-based approaches to over-representation

Criminal statistics suggest that most CJSs are not appropriately able to address the disadvantaged situation of ethnic minorities in juvenile criminality (Gabbidon, 2010; Goldson, 2002; M. J. Lynch et al., 2008, Muncie, 2006b, 2008; Workman, 2011b). There is a paucity of research that looks specifically at the nexus between prevention and reintegration policies, and juvenile justice systems and the impact they have on Romanies. An incentive for this comparative study was that abundant research information indicated programmes that incorporate specific aspects of Māori cultural values and principles with the special needs of Māori offenders were likely to be more effective at changing offending behaviour than culturally neutral approaches (DoC, 2009; Doone, 2000; Maynard et al., 1999; McFarlane-Nathan, 1999; MoJ, 2012; Oliver & Spee, 2000; Owen, 2001; Warren & Fraser, 2009; Wehipeihana, Porima & Spier, 2003). As such, it is pondered whether cultural sensitisation and consideration of Romani peculiarities in the operation of the CJS and the various social

services could be a more appropriate and effective approach to social and criminal policy issues. Again, many Māori and Pākehā stakeholders (see, for example, Bowen et al., 2012; Dyhrberg, 1994; M. Jackson, 1988, 1995b; Maynard et al., 1999; McElrea, 2011; Morris & Tauri, 1997; Tauri & Webb, 2012) argued that empowerment of Māori in general, and a greater recognition of Māori dispute resolution in particular, could have many beneficial effects. However, there is a long history of deficient and unsatisfactory responses and approaches in the formal justice systems to Māori and Romani issues, which directs the investigation to Māori and Romani community justice.

1.4.5. Māori and Romani community justice issues

A further similarity between Māori and Romani groups is that a number of their communities still attempt to deal with conflicts within their own communities and without resorting to the formal justice system (Balahur, 2007; Loss & Lőrincz, 2002; M. Jackson, 1988, 1995a; Quince, 2007a; Szekeres, 2013). The degree to which this takes place is difficult to measure, although it is widely agreed to exist (Bull, 2001; Marushiakova & Popov, 2007; Morris & Tauri, 1997; Wickliffe, 1995). Considering the common nature of the often shifting and inaccurate boundaries between law enforcement and communal responses to crime, it is not exceptional for Māori and Romani to use, or wish to use, informal methods of conflict resolution. Nevertheless, it is more substantial in the case of Māori and Romani, given their deep-seated mistrust of the authorities and their aspiration for a culturally more sensitive approach, which is not easily attainable in the formal system (Singh & White, 2000; Weyrauch & Bell, 2001). Therefore, historical experiences and consequently evolved mistrust would necessitate a reflexive approach on the side of the state players when cooperating with these ethnic minorities. The efficiency of community-oriented justice models considerably depends on the quality of cooperation and on the extent of empowerment. In fact, a number of critical voices can be found in the literature (for example, Bradley, Tauri & Walters, 2006; Fellegi, 2010a; Kerezsi, 2012; Tauri, 2011; Tauri & Webb, 2012; Workman, 2011b, 2012a). While New Zealand is viewed by many as having a world-leading position in restorative justice processes, introduced in the Children, Young Persons and their Families Act 1989 [CYPFA], one of the most important initial motives behind the legislation – provision for the interests of Māori – has not materialised. Their unabated over-representation in the CJS illustrates clearly that Māori offending is not being settled appropriately (Becroft & Norrie, 2014; Taumaunu, 2015; Tauri & Webb, 2012). Meanwhile Hungary lags well behind New

Zealand because meaningful discussion on Romani issues in the CJS has not yet commenced in earnest among Romanies themselves or among policymakers, researchers and justice stakeholders. Apparently, there is a distorted 'taboo' in scholarship and policymaking against discussing interconnections between crime, marginalisation and ethnicity, while there is no similar scruple among opinion leaders and in the media (Kerezsi, 2012; Messing & Bernáth, 2011). Similarly, there is an almost complete silence about traditional Romani community justice institutions in scholarly and public spheres.

1.4.5.1. Romani community justice

Marushiakova and Popov (2007) argued that in a community like a Romani one, where the power of public opinion on social relations definitely had dominance over personality, the Kris Romani [Romani Court] was much more efficient than any legal institution or instrument of coercion in present day society. Studies in ethnography and legal anthropology (see Caffrey & Mundy, 1997; Hancock, 2002; H. Szilágyi, 2013; Weyrauch & Bell, 2001) suggested that customary dispute resolution methods in traditional, mostly Vlach Romani, communities were more legitimate and respected than formal ones. Romani community justice is a distinctive and powerful mechanism in their ethno-social system and an active social regulator restraining and preventing deviant behaviour. It is an autonomous judicial system for solving internal disputes and grievances (Lee, 1997). Put differently, Romani community justice has remained an active component in the development of the community (Acton et al., 2001; Cahn, 2009; Loss & Lőrincz, 2002).

In general, groups with a Kris system consider it unacceptable that Romanies should turn to the authorities in cases of conflict with other Romanies except in very serious incidents (Egyed, 1996). This is a common phenomenon with some variations based on different groups and their countries of residence (Cahn, 2009; Marushiakova & Popov, 2007). Occasionally, there is a kind of informal recognition of Romani justice by the mainstream system. When there is a conflict, if it can be resolved by the Romanies, including recourse to the Kris (or the Divano), then the state will not assert its jurisdiction (Cahn, 2009). The other important institution of community-based Romani justice is the Divano, the convocation of elders consulting with parties and then advising them on various matters. There are geographical variations in the customary practice but commonly in a Kris or Divano, the parties initiate the proceedings; rarely does the community take action on its own, if the perceived problem

cannot be permitted to continue and therefore requires intervention (Marushiakova & Popov, 2007).

1.4.5.2. Māori community justice

Somewhat similar to Romani community-based justice institutions, and what is more, recognised by the CJS, are the Rangatahi Youth Courts. It is an important development that since 2008, marae-based Youth Courts [Ngā Kooti Rangatahi] have been operating as part of numerous Youth Courts (MoJ, 2012). This judicially led initiative enables juveniles to progress with their FGC plans while being monitored in a marae setting using Te Reo and Māori customs (N. Lynch, 2012a, 2013; Taumaunu, 2014). It does not represent a separate or parallel justice system for Māori at all; and non-Māori youth are also eligible for marae-based hearings. The main aim is to reconnect youths with their culture and communities in order to reduce re-offending. Māori judges preside in these courts; local elders and other knowledgeable community stakeholders assist the procedure as advisers providing specific cultural perspectives (McElrea, 2011). The performance of Rangatahi courts was observed in operation during this study and its features are presented and examined in the thesis.

C. Williams (2001) proposed that the occasional marae sittings of the District Court (since they raised misgivings among Māori) should be replaced by some form of marae-based tribunal for community-based alternatives, in conjunction with the recognition of some aspects of Māori customary law. This provision could be based on the Māori Community Development Act 1962 [MCDA], which provides the legislative base for programmes of diversion on a marae and for the close cooperation of the police, courts and community groups. There have been studies and proposals about the establishment of a Māori Law Commission to build a renewed Māori jurisprudence on which to base Māori-designed and delivered justice (see, for example, M. Jackson, 1988; Joseph, 1999; Morris & Tauri, 1997; New Zealand Law Commission [NZLC], 2001; New Zealand Māori Council [NZMC], 1999; Quince, 2007b; TPK, 2010b). Debates about Māori-designed and -delivered justice revolved mostly around the issue of the location of control and about the formulation of a limited jurisdictional autonomy that is able to reconcile Māori and Pākehā justice systems. However, it was never seriously proposed that the old Māori ways should be reconstructed (Bull, 2001; Dyhrberg, 1994; Toki, 2016). In fact, none of the indigenous or other ethnic minority people in the world have gained full autonomy in dealing with their offenders yet, among other factors because of the difficulties of the realisation of such a system in contemporary

circumstances. For example, Morris and Tauri (1997) illuminated the extent of challenges with the issue of entry point to a Māori system. Without a separate, independent Māori police system, which is regarded widely as improbable and impractical, a close operational cooperation between a Māori justice system and the CJS would be an absolute necessity, since there seems no other viable alternative. Still, it is claimed that Māori justice institutions and models have the capability to transform formal justice systems in practice, too (M. H. Durie, 2003; Tauri, 2011; Toki, 2016; Wickliffe, 1995).

Bowen et al. (2012) invoked the 'Puao-Te-Ata-Tu' [Daybreak Report] (Ministerial Advisory Committee, 1988) and claimed that Māori needs had to be addressed on Māori terms because in many regards the conventional CJS was an inadequate mechanism to handle challenges. The first step should be the recognition that these problems cannot be fixed with mere tinkering to render the system culturally more appropriate. Fundamental changes are required including the achievement of a meaningful self-determination and the restoration of self-government in the management of Māori internal issues (Bowen et al., 2012). It would involve the development of procedures addressing and acknowledging Māori needs and values, not as a subsidiary of the Pākehā system but as an alternative to it. McElrea (2011) proposed that such procedures could *"become the default process for dealing with certain offences and if not completed, the offender could then be diverted back to court to be dealt with in the usual way"* (p. 54). In connection with the required ownership of community justice by Māori, Moana Jackson (1995a, p. 34) pointed out that Māori justice could not be realised through the *"grafting of Māori processes upon a system that retains the authority to determine the extent, applicability and validity of those processes"*.

1.4.5.3. Comparison and prospects of Māori and Romani community justice

There is an ongoing debate over the recognition of autonomous legal systems such as Romani or Māori justice as parallel or subsidiary social structures to the mainstream, formal law system (Cahn, 2009; M. Jackson, 1988; Loss, 2005; Loss & Lőrincz, 2002; Marushiakova & Popov, 2007; Morris & Tauri, 1995, 1997; Toki, 2016; Webb, 2003a; Wickliffe, 1995; C. Williams, 2001). The issue of separate or parallel systems cannot and should not be excluded as a possible long-term outcome of any development. However, it is an important caveat that taking that outcome as a starting point for consideration would divert the focus from what looks currently more feasible (Cahn, 2000, 2009; Szekeres, 2013; Toki, 2012; C. Williams, 2001; Workman, 2011c). It may seem more realistic to initially achieve a greater and more

meaningful involvement in the development and implementation of the mainstream criminal law and justice institutions. With reference to their more communal characteristics, the recognition of the significance of wider family and community participation and responsibility-taking in the maintenance of the rule of law would be a relevant step for Māori and Romani (Cahn, 2000; JustSpeak 2012; Loss & Lőrincz, 2002; Morrison, 2009).

Meanwhile, worldwide trends show that many countries are increasingly paying more attention to minority and indigenous courts (Gabbidon, 2010; M. Harris, 2006; Marchetti & Daly, 2004). The reasoning behind this shift is chiefly utilitarian; it is the understanding that formal judicial systems, by ignoring the traditional legal systems of various indigenous and minority groups, have caused damage. Consequently, some policymakers began to explore native legal institutions and the feasibility of incorporating them into CJSs. For example, several marae-based justice initiatives (DoC, 2008b; MoJ, 2012; Oliver & Spee, 2000; O'Sullivan, 2007, 2008; Spee, 2011; TPK, 2008a; Tukoroirangi, 1994) have started in recent decades. Simultaneously, significant debate has taken place around the concept of a separate or parallel Māori justice system (Bowen et al., 2012; Toki, 2014). Similarly, given the ineffectiveness of many legal systems concerning Romani social and criminal justice issues, policymakers might eventually attempt to resort to community justice models as alternatives to the present approaches (Cahn, 2000, 2009). Recently, in Bulgaria, a project proposal was presented to incorporate the Kris into existing legislation (Marushiakova & Popov, 2007). In 2007/08, for the first time, a discussion began in the national media in Romania as to what the nature of Romani law was, and how it might be afforded broader official recognition (Cahn, 2009).

In the long term it might be considered that Māori and Romani would be given the time and space to develop their perspectives in their own way. Māori and Romani are both proud, strongly community-focused ethnic groups. Various stakeholders suggested that it was fundamental to their self-belief and self-esteem to have the right and responsibility to cope with their own issues themselves, to search and discover their own culturally acceptable answers to their social and communal problems (Balahur 2007; Bárány 2002; Bowen et al., 2012; M. H. Durie, 2003; M. Jackson, 1988; Toki, 2016; C. Williams, 2001). A comparison, including historical overview and the current state of affairs of Māori and Romani community justice institutions and their prospects, is elaborated in Chapter 9.

1.4.6. Unresolved challenges of Māori and Romani offending and victimisation

Arguments in the literature are abundant that detrimental consequences of colonisation on cultural identity and structural inequalities are the crucial features in explaining Māori over-representation in the CJS (Broadhurst, 2002; HRC, 2012; M. Jackson, 1988, 1995a; Marie et al., 2009a, 2009b; Webb, 2003a). Disproportionate Romani offending patterns are also based, inter alia, on historical and cultural causes of socioeconomic disadvantages (Bárány, 2002; Kerezsi et al., 2014; Póczik, 2001, 2003b; Revenga et al., 2002; Tauber, 2000). A number of Māori and Pākehā researchers, political stakeholders and institutions raised the grim actualities and prospects of the social status of Māori (DoC, 2007a; Doone, 2000; M. Jackson, 1988; Sharples, 1995; Tauri, 2011; C. Williams, 2001). M. H. Durie observed:

> *"Current patterns of Māori offending underline the huge waste of human capital, which occurs in young men. Quite apart from personal suffering and loss of dignity, for Māori, and for the country as a whole, it is an economic cost, which simply cannot be afforded."* (2003, p. 72)

Māori and Romani populations in the two countries are projected to grow at a higher rate than the general population. As such, it is vital to notice that they will continue to face the challenge of ever-increasing, crime-related problems while conventional criminal justice responses are becoming less effective. The size of the Romani population steadily expanded in the last century, well above the average growth rate of the total population (Központi Statisztikai Hivatal [KSH], 2002, 2013). The proportion of Romani children in primary schools was 5.5% in 1970, 6.6% in 1990 and 13.3% in 2008 (Papp, 2011). Māori are also a relatively youthful ethnic group; their share in the young population (under 20) is significantly higher than in the national population. The onset of offending mostly begins between the ages of 12 and 16; consequently, any substantial improvement in reducing the share of offending by Māori youths in the immediate future looks unlikely (Marie, 2010).

Furthermore, both Māori and Romani peoples suffer from very high crime rates and violence, especially the most vulnerable groups, women and children (HHC, 2011; HRC, 2012; Lithopoulos, 2007). It should therefore be essential for stakeholders and policymakers to identify the need to reduce crime-related problems in these ethnic minority communities as a high priority area, and consequently make a strong commitment to undertake projects that attempt to address these critical issues. Despite increasing public and official awareness of the

problems, relevant literature suggests similarities between the two countries. Aside from mere rhetoric, reacting to the challenges of Māori and Romani offending and victimisation has never been a top priority for government action (Bull, 2001; HHC, 2011, 2014; Kerezsi, 2012; Póczik, 2003b; Webb, 2003a; C. Williams, 2001; Workman, 2013). The subject tended to become even more politically sensitive with tense public opinion about violent crime and with anxiety about the implications of racial divisions in society (H. Balogh, 2009, 2011; HHC, 2011; Juhász, 2010; Workman, 2011b). As C. Williams (2001) noticed, increased attention, legislative changes and a range of initiatives in the 1980s and 1990s never reached the level of a systemic response to alleviate Māori concerns and to address proposals for structural change. Subsequent studies (JustSpeak, 2012; Kerezsi, 2012; Tauri, 2013) indicated that, excluding small, encouraging steps, most of them occurring in New Zealand, fundamental changes in approach and determination among high-level policymakers have not materialised in either country since C. William's observation.

1.5. Research questions

This study examines thoroughly how Māori and Romani groups have distinct features, but also how their minority-majority relations within their countries share important similarities. It seeks to answer the question of what can be learned from the respective social and criminal policy experiences of the other country that has confronted similar, long-standing issues of ethnic minority marginalisation and over-representation in the CJS. In the course of investigating the previously stated general matters, the study focuses on the following research questions:

- Are the existing CJSs able to address the challenge of the ethnically aggravated social problems in juvenile criminality?
- Are discriminatory practices present in the juvenile justice systems in the concerned countries?
- Do the alternative conflict resolution practices (restorative justice, Māori and Romani community justice) have advantages over the conventional justice system?

- How can juvenile justice be more responsive to the perspectives/predicaments of Māori and Romani youths and communities?

Findings related to these questions emerged from data collected during documentary research and fieldwork (consultations, interviews, observations) in both countries. The data is presented and discussed through the lens of comparative criminology, being the framework for this study.

1.6. Structure of thesis

The thesis is divided into ten chapters:

This chapter, the introduction, presents details about the most significant background information of the research topics, and reviews the context of the study including relevant parts of the available literature, together with identifying gaps in current knowledge.

Chapter 2 provides details of the methodology and research design and a review of the relevant methodological literature. Data collection methods employed in the study are elaborated there. Decisions relating to the use of a multi-method design are justified. Foundations and methods of comparative criminology and research ethics and related requirements are also covered.

Chapter 3 canvasses how theories in criminological thinking inform and address the situation of disadvantaged racial/ethnic groups. The basic theoretical frameworks of criminology forming the foundation of current CJSs in both countries and their critical aspects are portrayed with attention to community justice. Different theories provide various approaches to challenges faced by Māori and Romani; the chapter focuses on what appear to be the most adequate ones.

Historical and current features of structural disadvantages faced by Māori and Romani in the wider society are examined in Chapter 4. The investigation includes social indicators and structural factors in education, employment, health and other social services, and some of their effects on youth justice.

Chapter 5 identifies theoretical and practical difficulties in the collection and use of ethnicity data in both countries. It examines the potential risks of public availability of sensitive ethnicity data. The challenges and limitations created by data shortages are revealed. The chapter provides an overview on the subject of self-identification and external perception in ethnicity data management and investigates feasible solutions for these challenges.

Chapter 6 deals with the current state and effects of monoculturalism and institutional discrimination and with the consequences of the colour-blind social and criminal policy approach for Romani and Māori. The chapter examines the existence and effects of 'white privilege' and the tenability and appropriateness of colour-blind policy approaches.

Chapter 7 explores the historical evolution of the distinct juvenile justice system in New Zealand. Part of the focus is the analysis of socio-cultural and legal backgrounds in relation to Māori youth. The chapter presents an overview on juvenile delinquency and crime statistics, and analyses contemporary trends and the features of mainstream youth justice. Particular regard is given to the different restorative and community-based institutions.

Chapter 8 critically studies the history and contemporary features of mainstream juvenile justice in Hungary. It provides information about the situation of youths and especially Romani youths in it, and devotes attention to the growing inter-ethnic tensions and to the 'normalisation' of Romani mass imprisonment. The feasibility and prospects of the different alternative conflict resolution methods are evaluated.

Chapter 9 details Māori and Romani traditional conflict resolution methods from a historical perspective and attempts to reveal their current practices and viability. It also examines the potential future for Māori and Romani regarding their aspirations for a more meaningful self-determination in the area of community justice. This chapter considers the justifiability of the future formulation of Romani criminology.

Chapter 10 contains the conclusions; it provides the interpretation of the most significant findings of the study and discusses them in relation to the literature. The possible implications and limitations of the findings are disclosed, and suggestions are made for future research.

CHAPTER TWO

This chapter presents the research design and the applied research methods with a review of the relevant methodological literature. Utilisation of a multi-method research design is justified. Descriptions of the strategies used to select and contact participants and the features of the research procedures are here, with explications of the schemes and strategies employed to produce, construe and analyse data sourced from different research methods. The foundations and methods of comparative criminology and research ethics are discussed.

2. Methodology and research design – overall approach and rationale

This research was conceived as interdisciplinary in approach, involved in the area where criminal law, criminology, social history and political science meet. The aim of the comparative analysis was to allow the identification of the challenges and difficulties faced in the CJS by Māori and Romani youths. The comparative analysis encompassed the examination of minority-majority relations; at the same time, it focused on what lessons could be drawn from the respective social and criminal policy experiences. Another goal was to explore the diversity of models, practices, programmes and judicial-normative frameworks involved in implementing community justice (Balahur, 2007; Capobianco, 2009). Moreover, it attempts to investigate processes that offer alternative forms of justice, which include traditional Māori and Romani community values, as opposed to those offered by conventional CJSs. This study utilised a combination of grounded theory and critical ethnographic methodology, combining a number of in-depth qualitative approaches (Hammersley & Atkinson, 2007; Harden & Thomas, 2005). To this extent, it should be considered as a multi-methodological approach to examining understandings of a cross-jurisdictional comparison between Māori and Romani in different juvenile justice systems (Gorard & Taylor, 2004).

Tewksbury (2009) suggested that the utilisation of quantitative, statistically focused examinations alone could not produce the insight available through various qualitative methods. Tewksbury (2009) argued that the numerous advantages of qualitative methods provided a depth of understanding of crime, offenders and justice system operations exceeding that offered by detached, statistical analyses. Beirne (1983) made a similar point

when he emphasised the importance of qualitative comparative research in criminological studies having a strong historical focus. In some regard Heidensohn (2007) and Young (2004) followed Beirne's sentiment when they preferred a mix of explanatory and interpretative strategies and took official statistics, especially in a comparative perspective, with a grain of salt because they considered them capable of hiding as much if not more than they actually revealed. In essence, the aim was to gain understandings of the social aspects of how and why crime rates vary, and how the agents, structures and processes of responding to crime operate in culturally grounded contexts, in this study, with due regard to Māori and Romani.

Tewksbury (2009) asserted that knowledge gained through qualitative investigations was more informative, richer and offered enhanced understandings compared to that which could be obtained through quantitative research only. However, many scholars in criminology view qualitative research as inferior to what can be gained from quantitative methods; many consider it as providing only anecdotal, non-scientific examples of marginally valuable insights (Tewksbury, 2009). With all factors contemplated, and due to the complexity of the everyday reality for Māori and Romani youths and the inherent limitations associated with every research method, a multiple research approach to data collection was adopted to bolster the research design. To achieve the sought-after understanding and depth of insight, the qualitative and quantitative research approach was combined and integrated as likely to be the most suitable and effective procedure. However, it is acknowledged that quantitative data collection was not sought during the primary methods of data collection. The necessary statistical data was acquired from extensive documentary sources.

2.1. Balance of research methods

Due to the sensitivity of the research area (involvement of legal minor offenders from ethnic minorities), ethical approval has only been granted for observations of juvenile and community justice events. Considering that this thesis is principally a comparative study and therefore includes numerous descriptive sections and substantial amounts of statistical data on the socio-economic and offending features of Māori and Romani, much of the data is collected from relevant literature. The collection of written materials included codes of law, policy documents, published statistics, and secondary research data on research projects in both countries. Literature reviews often cover only theoretical, one-dimensional and academic perceptions (Marshall & Rossman, 2011). However, qualitative, in-depth, key informant

interviews with experts on the research topics and numerous additional consultations suitably empowered the researcher to collect and analyse personal views and knowledge. This greatly helped to offset the possible deficiencies of the documentary research method. These methods were complementary to the observations of juvenile justice and community conflict resolution processes in New Zealand.

2.2. Data collection methods

The different type of methods used during the phase of the data collection are presented and discussed in the following sections.

2.2.1. Documentary research

In the first phase, relevant legislation, policy and previous research documents on the appropriate topics were collected. The more significant topics encompassed in this first phase were about the salient traits of nexuses between disadvantaged ethnic minorities and CJSs, and, more narrowly, about the historical and structural contextualisation of the situation of Māori and Romani peoples, together with the available literature on community-oriented justice perspectives. Other main sources of information included publications of international and non-governmental organisations on youths and crime prevention and reintegration, community-based conflict management practices, etc. Scott (2006) argued that documentary research combined with other methodologies could be a very powerful method of gathering and analysing data. Moreover, this methodology has a degree of flexibility to make selective decisions on which items to include and which items to discard from the documents (Noaks & Wincup, 2004). Much of the data was easily accessible from the websites of organisations and from the AUT library and its comprehensive electronic databases. One of the key points during the research process was to determine which sources could provide the best, most accurate and reliable data.

The documentary research included a constant, systematic exploration of relevant information available on Māori and Romani and CJSs. One of the main techniques was an extensive search of academic databases. The databases searched involved, among others, Heinonline, JStore, Google Scholar, ProQuest Central and ProQuest Criminal Justice, Academic Search Premier, Social Science Research Network, Taylor & Francis Online, Ingenta, Oxford Journals and Sage Premier. Governmental, professional and other criminal justice websites

were also searched: DoC, NZP, Legal Services Agency, the Law Commission, Statistics NZ, the Institute of Judicial Studies, the Institute of Professional Legal Studies, HPS, National Institute of Criminology, Prosecution Service of Hungary, Ministry of Justice and Ministry of Interior. A significant volume of further literature could be found by using bibliographies of books and other papers collected during searches of the above-mentioned databases and websites.

2.2.2. In-depth (key informant) interviews and consultations

Relevant information in connection with the conducted interviews and consultations of the study are discussed in the following sections.

2.2.2.1. Selecting and contacting interviewees and consultants, snowball sampling

The aim was to acquire a broad range of evaluation and standpoints, because having interviewees and consultants with heterogeneity in their academic backgrounds and/or professional skills was held as highly beneficial for the aspirations and objectives of this study. The participants included researchers, justice practitioners and officials involved in the CJSs in the two countries. Another group of participants was various stakeholders involved in community-based justice systems (support groups, social services). In all, 15 qualitative, in-depth, key informant interviews (recorded and transcribed) and 14 personal consultations (less formal and structured, unrecorded, notes were taken, see section 2.2.2.2 and 2.2.2.3) have been conducted in the two countries. Seven interviews were conducted with participants from New Zealand; three in Auckland, three in Wellington and one in Brisbane. Eight interviewees were Hungarian, and the great majority of them worked in the capital city, Budapest, but most of them had work and research experience in the countryside, too. An equal number of personal consultations (seven in each) were held in both countries. The number of participants in itself indicates that the project did not intend to produce universally valid or generalisable information. This sample is evidently not statistically representative, rather the goal was to gather and interpret personal evaluations and ideas of the interviewees and consultants. Like other qualitative research projects, the focus was on ‘depth’ rather than ‘breadth’.

The in-depth, unstructured interview approach was chosen because it allowed the participants to engage with the topic and address issues they thought were important. All interviews were carried out like a conversation in which extra questions arose and were discussed during the course of the interview. Although conversational interaction was employed, the interviewer

tried to limit his spoken involvement to ensure that the participants were not interrupted or prevented from completing what they were saying. As the interviewees spoke for themselves with minimal direction from the interviewer, meanings behind personal views/experiences may be better revealed than with any other methods. Some interviews were more informal than others, and it was not always possible to sustain the strategy of limited interaction throughout. It was sometimes regarded as essential to direct the discussion towards certain issues, or to intercede to clarify a point or ask a follow-up question.

The principal criteria for the selection of interviewees were their expertise primarily (but not exclusively) in the fields of Māori and Romani traditional and youth justice, community-based conflict resolution, discrimination and ethnic minority groups. The technique of snowball sampling was used to supplement the study participants when it seemed necessary. The researcher commenced with a group of people he had already known and subsequently recruited more potential participants through contacts of the original group members. This is an effective method of helping the researcher to be known to others by the process of positive recommendation. Snowball sampling is useful where participants agree to take part in the study only if the stakeholders or other 'influential' people in the community invite them to do so (Liamputtong, 2008). In New Zealand (and to a lesser extent in Hungary), where the researcher did not have the necessary web of social and personal connections, snowball sampling was therefore deemed to be an effective recruitment technique because it works like a chain referral. After having an interview or consultation with the initial participants, they were asked for assistance to help to identify further potential participants. Afterwards, contact details were provided by previous participants together with their endorsement for the study.

The interviewees were provided with an information sheet that explained the study in an uncomplicated and jargon-free manner. Additionally, an email was sent to fully inform them about the nature and content of the research. Incorporated in this email was information advising the potential participants on the background and purpose of the interviews as well as their rights as participants and a request for consent to record the interview. They were informed of their rights regarding the transcript of the interviews and their rights to see it and make amendments or deletions. More focus was on trust building, reciprocity and rapport, and not on the mere mechanistic process of securing informed consent. Informed consents consisted of two basic components:

a) Adequate information: in a form and manner that enabled it to be understood and an informed judgement made.

b) Voluntary consent: free from manipulation, coercion or any other undue influence. (National Ethics Advisory Committee, 2006, p. 13)

Participants were assured that what they say would be kept in confidence as that was important for earning their trust and for eliciting accurate data. The procedure for protecting participants' privacy was always explained clearly. A number of topics in the study involved sensitive issues and invariably participants were being interviewed in their professional capacity (some of them were former or current public servants or academics). After careful consideration of all issues and the conditions stipulated by AUTEC, it was desirable that full anonymity of the participants should be maintained. Identifiable information and personal data are not disclosed in the thesis, in publications or conference papers. Participants are allocated a letter to replace their name in order to protect anonymity. Personal and contextual facts that may reveal identities are not used or are altered to protect anonymity. Information collected concerning personal data is confidential to the researcher and his supervisors. To ensure the validity and authenticity of the data, consent forms of the participants, the digitally recorded interviews and their transcripts are to be stored for six years.

2.2.2.2. Interview techniques

Before each interview, participants were asked again whether they objected to being digitally recorded. All interviewees had consented so every interview was recorded. This ensured that the information collected was accurate and allowed the interviews to be transcribed verbatim; it also enabled the interviewer to fully concentrate on the conversation instead of needing to take handwritten notes. However, occasionally, recorded data has been supplemented with handwritten notes taken during or after the interviews. These notes were not extensive but added another layer of detail to the study. The researcher used an agenda with a few core questions that he intended to ask at each session with the aim of increasing data consistency and setting the focus of the discussion. Each session then followed the direction that the interviewee was taking (i.e. successive questions were decided on the basis of the interviewee's previous answers and comments), but at the same time participants were kept inside the topic under study (Liamputtong, 2008). The interview guides simply contained a list of topics to be covered, leaving the wording and order of questions up to the situation. In-depth interviews were conducted with several different categories of people; this involved a separate interview guide for each category. Some questions in the guides may have

overlapped, but each guide was tailored to elicit information specific to the expertise and expert category of participants being interviewed.

The relevant interview techniques included asking one question at a time, verifying unclear responses, asking open-ended questions, avoiding leading questions, and using follow-ups and probes. Study design was iterative, that is, data collection and research questions were adjusted according to what was learned. These methods helped to interpret and better understand the complex reality of a given situation or problem and the implications of some of the relevant quantitative data (like over-representation in crime statistics). Moreover, participants were repeatedly encouraged to elaborate on their answers without expressing approval, disapproval, judgement or bias. The aim was keeping track of the questions yet letting the conversation develop naturally, and managing the interview while still respecting the principle of 'participant-as-expert' (Mack et al., 2005). The perspective of the researcher on the research issues has to be invisible, so this was attempted. This helped to avoid the risk that participants modified their responses to please the interviewer instead of describing their own perspectives. A knowledge base of qualitative research (interviews) was utilised to ensure culturally appropriate ways to put the interviewees at ease throughout the interview (Marsiglia & Kulis, 2009, see also Appendix 6, 7 and 9). The research was able to probe further on responses received for any of the questions to obtain in-depth data. It was a useful practice because, during the data analysis phase, the transcripts were coded according to participant responses and the most salient themes emerging across the set of interviews. Finally, it enabled that the information gathered from stakeholders to be added to the other sources, and all of it was then ready to be compared and, where possible, amalgamated in a way that ensured a rigorous analysis.

2.2.2.3. Consultations

In order to gain a greater understanding of the social and cultural context, the researcher spent significant time in both countries during the study. Auckland was the headquarters, but he travelled three times to Hungary for about two months each time, and had interviews and consultations there as well. During these periods, there were meetings with several stakeholders in juvenile justice and ethnic community groups to assist with the appropriateness of the study. These consultations were informal, and while usually some notes were taken, they were not digitally recorded. In some cases, participants preferred not to be interviewed but they still were willing to assist the research with their insightful knowledge

of various subjects. With due regard to the sensitivity of certain topics, these type of consultations were accepted as 'limited participation' in the study. Supplementary consultations were held in both countries with the aim of mapping out several research areas more unfamiliar to the researcher than others (e.g. special cultural and ethical knowledge, research methodology issues regarding ethnic minority contexts, informal community justice traditions and institutions). Consultations were held with various stakeholders and members of Māori and Romani social research and support groups. The primary purpose of these meetings was to explain the rationale for the research, and to consult with them on the project. The meetings informed the research design as to what was culturally appropriate. The use of grounded theory assisted the avoidance of predetermined cultural assumptions and, to an extent, allowed the data to speak for itself (Yeboah, 2008). For that reason, the grounded theory approach recognised and was sensitive to working in these cross-country and/or cross-cultural situations.

2.2.3. Observations

Observation of juvenile justice and community conflict resolution processes in New Zealand enabled the researcher to develop a familiarity with the cultural milieu that proved invaluable throughout the project. It gave a nuanced understanding of context that could only come from personal experience. Initially, observations were used to facilitate and develop positive relationships between researcher and key informants, stakeholders and gatekeepers, whose assistance and approval were requisite for the study to become a reality. These relationships were essential to the logistics of setting up the study including identifying and gaining access to potential participants. Data collected through observation were used to improve the design of the interviews and consultations. For instance, these relationships helped to ensure the cultural relevance and appropriateness of interview questions (Creswell, 1998; Mack et al., 2005; Patton, 1990).

When conducting observations, the researcher was open about who he was and what he was doing in order not to disrupt normal activity, yet discreet enough that the people observed and interacted with did not feel that his presence could compromise their privacy (Marshall & Rossman, 2011). It meant observation of people as they engaged in activities that would probably have occurred in much the same way if no researcher were present. For instance, during observation of the Rangatahi Court sessions, the researcher stayed in the background, and was essentially unperceivable for the participants. The venues of the FGCs are usually

smaller rooms, thus being ‘invisible’ was not possible; still, every effort was made to reduce the potential influence of his presence. Within this study, observations were typically one method among others used to create a more complete picture of how a given issue affected a community. Observations contributed to this broad understanding by providing well-grounded data on social and cultural norms, the pervasiveness of these norms within the community, and people’s opinions about their own values (Newman, 2003; Noaks & Wincup, 2004). The techniques used involved note-taking during FGCs and other justice processes like the Rangatahi Court sessions. No questions were asked but after the observed events, community justice stakeholders were in a position to provide information during short and informal conversations, to enable collection of valuable data on the effectiveness of the programmes from their perspectives (Yeboah, 2008). Due to the restrictions of the ethical approval, it was not possible to use this method of observation in Hungary. The researcher had some previous experience of observing formal and informal justice events in relation to Romani but data from these observations was not directly utilised. Several interviewees and consultants reported on their observations concerning their own research projects. Some of these secondary research data were taken into consideration in this study. The next section outlines the limitations of research methods and design.

2.2.4. Limitations of research methods and design

The complexity and limitations of finding and contacting participants for this study was anticipated to some extent from the outset. For this reason, gathering a sample distribution, which could guarantee representativeness and replicability, was presumed unrealistic, particularly with limited time and resources. Therefore, it was accepted that any sampling would be grounded on non-probability. Further limits to the scope of the research meant that ethical approvals confined the research methods, therefore no interviews with juveniles and their relatives were conducted. Observations of juvenile and community justice events were allowed only in New Zealand. After all, the object was to undertake an investigation, which produces predominantly qualitative data about Māori and Romani juvenile and community justice issues. Accordingly, it was exploratory research, which presumably would thus create a demand and incentive for further research. Often, the dearth of adequate, disaggregated socio-economic and other statistical data on Romani (and, to a lesser extent, on Māori) meant that a solid and reasonably detailed analysis was not possible. Aversion regarding ethnic data collection (and/or making it widely available to the public) is a well-known, historic fact in

the governmental sphere in many countries (Goldston, 2001; Kállai & Jóri, 2009; Milcher & Ivanov, 2004). This reluctance has emerged, at least partly, from concerns that ethnic data could disclose inconvenient, disturbing evidence and discredit governmental policies. A good example is a 1997 Ministry of Interior survey, which revealed that 54% of police staff classified criminality as a key component of Romani identity (Csepeli et al., 1997). Since then, no official inquiry has been conducted into this matter of public concern. Another illustration of the challenging nature of having access to Romani ethnic data emerged in 2003, when the Ministry of Health declined to publicise findings of a survey evaluating attitudes of health professionals toward Romanies and the quality of service provided for them (Petrova, 2004).

Additional limitations of the study stemmed from the (historic) unwillingness of authorities in both countries to support independent research and critical analysis of the policymaking process, and an external review of the effectiveness of CJSs for Māori and Romani, not to speak of the outright challenge to the status quo. This 'anomaly' is more salient in Hungary, though it is clearly also an issue in New Zealand (Fleck, 2008; Tauri, 2013; C. Williams, 2001). Not only may the traditional entrenchment mentality of bureaucratic organisations play a part in this reluctance, but there is some uneasiness with ethnic monitoring because of its potential to reveal embarrassing facts about governments. This attitude facilitates authorities to evade consideration of complex structural factors and determinants like institutional racism in governmental and justice sectors (Cunneen, 2006; Tauri, 2013). A further point was the apparent reluctance of members of ethnic minorities to become involved with criminal justice issues because of the negative history of ethnicity and crime research, and the inadequate protection of minority rights (Phillips & Bowling, 2003). Owing to these factors, the researcher had to cope with a number of challenges. However, there was no other way but to accept these limitations as part of the present-day 'reality'. Nevertheless, the critically applied method of snowball sampling and having consultations and guidance from knowledgeable experts assisted the researcher to maintain a high standard of validity during this project.

2.3. Research, data analysis and theoretical background

The next sections consider the research design and processes that ensure trustworthiness and credibility of the data analysis, the selected amalgamation of theoretical perspectives and the technique of triangulation.

2.3.1. Theoretical foundations of the research methodology

Both the preparatory phase that had been carried out before the commencement of this study and the research project itself were informed by more than one theoretical perspective. The initial perspective informing the study stemmed from an interpretivist paradigm (Connell, 1996; Marshall & Rossman, 2011; Tolich, 2001). Working from an understanding that social players influence and are influenced by their socio-cultural locations, interpretivism allows for the recognition that justice institutions in both countries, as elsewhere, are embedded in the contexts in which they operate. As such, undertaking an interpretivist approach enabled the data to be informed by social, cultural, ethnic, minority-majority and class influences. A further paradigm directing this research was grounded theory (Glaser & Strauss, 1967). In general, the aim of the study was not necessarily to evaluate but rather to explore how justice systems and justice processes are designed to meet the needs of specific ethnic minorities. Thus, grounded theory was particularly useful due to the project's exploratory nature (Bryant & Charmaz, 2007). The predominantly qualitative and exploratory nature facilitated the research being led by aspects of the participants' understanding of what factors are the most salient to them. As such, the researcher and prospective audiences could appreciate and explore what participants consider important about their experiences in the CJSs in both countries. Additionally, using grounded theory allowed the researcher to develop a rich description of the experiences discussed, as the theory emerged from the data (Dalziel, 2011; Glaser & Strauss, 1967). Moreover, this project, in part, utilised ethnographic research methods. This approach provided the project with rich data that could be used to further contextualise the findings. An ethnographic approach, with its unobtrusive nature, was in many respects one of the most culturally sensitive approaches to employ (D. M. Barnes, 1996; Madison, 2005; Marshall & Rossman, 2011). As well, the realist perspectives of these three methodologies were dedicated to grasping and enhancing lived experiences, aspired to propagate practical knowledge and, at the same time, aimed to maintain rigour, scrupulousness and critique (Reichardt & Rallis, 1994).

2.3.2. Amalgamation of theoretical perspectives

The adaptation of aspects of the grounded theory method to produce a grounded theory approach that fits better with critical ethnographic works seemed advantageous. De Vault (1995) pointed to the importance of actively searching for the effects of such factors as gender and ethnicity, due to the tendency of the socialisation process to teach people to downplay the

effects of these variables. Consequently, social structures and their influence on actions of individuals are usually underplayed (Layder, 1982). Therefore, more consideration needs to be devoted to history and the role of institutions in forming the behaviour of organisations and individuals (Miller & Fredericks, 1999), as well as to matters like the significance of class struggle (Annells, 1996). While such applications of the grounded theory method would not be considered appropriate by Glaser (1992), Strauss and Corbin (1990) and other grounded theorists would agree with such an application (Wuest, 1995).

Therefore, critical ethnography and grounded theory can be a highly harmonious combination, as ethnographic studies can yield the thick description that is very practical data for grounded theory analysis (Glaser & Strauss, 1967). Part of this compatibility stems from similarities in the features between the two methods (Dalziel, 2011). As a realistic form of enquiry, ethnography involves observing and analysing behaviour in naturally occurring conditions (Longabaugh, 1980). Grounded theory likewise performs best with data produced in natural settings (Robrecht, 1995). Both have originated in the symbolic interactionist perspective (Annells, 1996; Robrecht, 1995), and both often rely on participant observations (Wells, 1995). Sample selection is emergent in both ethnography and grounded theory (Wells, 1995), and both seek to acquire emic descriptions of behaviour and events (D. M. Barnes, 1996). This novel combination of the traits of the grounded theory method and critical ethnography was used to systematically collect and analyse large amounts of rich information. In-depth insights into various phenomena and events, and explanatory concepts that emerged could help to improve understanding of what is happening in messy and complex social situations (Dalziel, 2011). These two methods were combined in this research to produce a level of detail and interpretation that would hardly be accessible from other methodologies. Consequently, the amalgamation of a grounded theory approach and critical ethnography to examine and understand the complex interplay between CJSs and ethnic minorities was applied.

The application of the amalgamated methodological approach was selected for additional reasons including a greater potential for sensitivity to cultural difference; greater depth of understanding and thorough data collection methods, providing a more holistic approach to understanding Māori and Romani justice; and allowing for flexibility throughout the research in order to having a greater understanding of the societal impacts on ethnic minority justice issues. The amalgamation of grounded theory and critical ethnography, in essence, abandons the simplified empirical understanding of research, and together with its qualitative emphasis,

reflects those research methods that are generally favoured by Māori and Romani. It was presumed that adopting this approach would go some considerable way to allay the previously listed concerns if they should arise (L. T. Smith, 1999; Thomas, 1993). To further boost integrity and accuracy of study findings, a robust technique of triangulation was used that allowed the corroboration of data through cross affirmation from several sources.

2.3.3. Triangulation

Given that the most obvious critique of qualitative research is one of personal and methodological biases, this study has been designed in a manner to reduce this problem. According to Chadwick, Bahr and Albrecht (1984), it is good research practice to triangulate whenever possible. Mouton (2001) suggested that through method triangulation, a researcher could rise above the personal biases that stem from single methodologies and overcome the deficiencies that flow from one method. Cohen and Manion (2000, p. 254) portrayed triangulation as an *"attempt to map out, or explain more fully, the richness and complexity of human behaviour by studying it from more than one standpoint*". Put differently, triangulation is the application of different sources and/or methods to check information by looking for (ir)regularities in the data (O'Donoghue & Punch, 2003). Consequently, triangulation should be involved in the collection of data, in selecting the topic being studied, applied over different times and for different sources (R. D. King, 2000). This multi-method approach provides a solution for the problem of possible bias that may occur if the study relied only on a few sources. When the analysis and interpretation of one set of data could be corroborated with other sources, then the validity of the findings would be enhanced.

A number of triangulations were put in place to reduce bias. In concrete terms, there was a triangulation of different information-gathering methods (written documents, interviews, consultations and observations) in order to avoid the bias inherent in any single approach to investigation. Triangulation of perspectives (i.e. various stakeholders) on Māori and Romani juvenile justice issues provided a wider understanding of the topic. Furthermore, the support of a supervisory team of researchers coming from different ethnic and cultural backgrounds to regulate the assumptions and prejudices of any single person's worldview was also useful to ensure a rigorous study.

2.3.4. Trustworthiness and credibility of the data analysis

The processes that were used to make sense of the collected information were described in detail and can be scrutinised by others interested in knowing how data categories and themes began to emerge. A high degree of transparency and openness about the conduct of research and the analysis of data was maintained by rigorous elaboration on the processes involved in the labelling and continuous comparison of different items of data to reveal patterns and concepts (Dalziel, 2011). The predominantly qualitative approach adopted is in line with grounded theory and critical ethnography (Madison, 2005). Integral to these approaches is the idea that questions asked are responsive to the participants' discourses (Glaser & Strauss, 1967). Therefore, it was not possible and was not planned to provide a full list of questions to the interviewees and consultants beforehand since a number of them emerged during the process. The focus was mostly on understandings and experiences of justice, perceptions of discrimination/fairness/success in the process, and any suggestions for change.

2.3.4.1. Process of data analyses of interviews

Data gained from the digital recordings of the interviews was transcribed. Recorded data was at times expanded with notes written during or after the interviews. Practically, observations about answers, views and remarkable reactions of the participants were noted down. These annotations were not encompassing but provided an additional layer of detail to the data collection. A qualitative data analysis strategy of preparing transcripts and then coding them was employed, which allowed the meanings and implications to be extracted from the material (Rubin & Rubin, 2005). Data analysis essentially started with the transcription of the interviews. The following phase of data analysis included the procedure of coding parts of the transcriptions, which was the commencement of a repetitive and mostly post hoc process of data categorisation to start to uncover patterns and conceptions (D. Silverman, 2001). Not all of the different coding processes outlined in the original grounded theory method literature were used during the interview data analysis. Instead, the labelling and coding process was simplified; different colours and font sizes were applied, comments were added to the interview texts to differentiate between various categories of views or ideas relating to the main topics. Afterwards, different divisions of data were examined, reviewed and components of them were compared within and between the various categories. Subsequently, more coherent and comprehensible data categories were created, and then separate data groups emerged where interrelated categories could be formulated (Kvale & Brinkmann, 2009).

2.3.4.2. Process of data analyses – combined research methods

Extensive memo writing was applied during data gathering as an intermediary phase between coding and the first, preliminary, version of the different chapters of the thesis. This functioned as a methodological tool assisting the creation of hypotheses and ideas during the data analysis. These were not considered as ultimate and settled as they should be viewed as first analytic concepts, and they were flexibly alterable as understanding evolved (Calman, 2012). As per grounded theory, the whole research material was analysed steadily for recurring statements and themes. These themes were labelled and compared; the aim was to seek similarities and diversities among the pieces of data (Rubin & Rubin, 2005). Information obtained through interviews, consultations, observations and documentary research was analysed and incorporated under each topic area. This allowed for both a qualitative and, where possible and necessary, a quantitative understanding of the issues (Newman, 2003). Again, quantitative data collection was not purposely sought during the primary methods of data collection; the necessary statistical data was acquired from extensive documentary sources.

The application of the grounded theory concentrated on the identification of theoretical classifications that were developed from the data through the consistent utilisation of the comparative method (Glaser & Strauss, 1967; Hammersley, 1989). This consistent comparative method necessitated continuous crosschecks between phenomena discovered in the collected information and the developing conceptual findings (D. M. Barnes, 1996). The material, for instance, from ethnographic methods (key informant interviews and observations), was to be compared to the data from other interviews, observations and documentary data sources as a requisite endeavour to distinguish inherent motives. These motives or concepts could include both analogies and differences (Wells, 1995). The goal was the discovery of similarities and dissimilarities in the research material. These could be used to unfold theoretical categories to assist the interpretation of complex issues under examination (Glaser & Strauss, 1967; Glaser, 1992). This approach to analysis proceeded throughout the data-gathering phase, as the researcher located the next appropriate interviewee, consultant, observable event or documentary data source on the grounds of the knowledge that surfaced from previous interviews, observations and documentary data sources (Glaser & Strauss, 1967; Locke, 1996). Finally, as Burawoy (1991) remarked, grounded theory might not always be sufficiently reflexive with its emphasis on trying to explain more and more phenomena using an array of categories or explanatory concepts.

Therefore, keeping a 'research diary' that contained comments on the progress, successes and failures, and the researcher's views on their role and impact on the research, helped to provide many useful insights into the development of ideas and the trajectory of investigations (Dalziel, 2011).

2.4. Comparative criminology – foundations and justifications

Looking at the widest meaning, research in social sciences is, by definition, comparative. Durkheim (1895/1982, p. 157) noted *"Comparative sociology is not a special branch of sociology; it is sociology itself"*. The paramount aim of comparative studies is not merely to reveal similarity and dissimilarity. The ultimate purpose is the deeper cognisance of the structure and operation of the system, by methodical examination of where, what and why, as well as the similarities and differences that exist and what significance they have (Heidensohn, 2007). Brants (2011) observed that comparison enhanced the grasp of the operation of one's own system as it often revealed strengths, weaknesses and their potential causes. Consequently, broadening criminological knowledge and critical insight into CJSs should not have to be an end in itself. It has an intrinsic value because, through the discovery of different approaches and techniques of managing crime and criminal policy in other countries, there is the essential information that the present situation in a specific country is not predestined or unavoidable (Howard, Newman & Pridemore, 2000). Multidimensional research projects in comparative youth justice are still in a rather nascent stage, but activity in this area is evidently expanding. Current trends show that progressive and practical policies are identified and applied more frequently than ever in Western countries (Muncie, 2006b). Indeed, comparative studies are more frequent between different indigenous peoples but such studies are still rare between indigenous and other disadvantaged ethnic minority people.

The term 'comparative' above all indicates a method, essentially any criminology that compares suits the category of comparative research (Pakes, 2010). Beirne and Nelken's (1997) definition of comparative criminology refers to the method as *"the systematic and theoretically informed comparison of crime in two or more cultures"* (p. xv). It seems equally important to recall that Hardie-Bick, Sheptycki and Wardak (2005) advised researchers to conduct cross-country enquiry in an interdisciplinary way while remaining open to new perspectives in the quest for a more equal and humane society. However, a comparative study may be overly complicated when it attempts to draw parallels between what may seem to be

greatly differing contexts. Since both New Zealand and Hungary have specific socio-cultural backgrounds, they are characterised by the distinctiveness of their legal culture and criminal and procedural regulations. The youth justice systems' purviews are not congruent; there are more or less dissimilar legal terms and phraseologies; the crime statistics and the data collection methods are not harmonised, etc. (Bennett, 2004; Brants, 2011; Hazel, 2008; Heidensohn, 2007). Even so, to compare and contrast the ways of responding to youth crime with those practised elsewhere have become justifiable and, what is more, popular in international literature (Goldson & Muncie, 2015; Nelken, 2009). Policy transfer is an essential characteristic of modern youth justice systems (Muncie, 2001). However, among other things, disparities in ethnic/racial over-representation and challenges in CJSs are greatly location- and context-specific, indicating that reactions and programmes for one specific group in one area are not necessary suitable for other communities in other locations (Morrison, 2009). It is always important to maintain a constant focus on the potential complications of making factual and legitimate cross-country and cross-cultural comparisons. For instance, when the investigation of other systems merely affirms what the researcher presumed was correct and accurate, one needs to be aware that the inquiry may not have given adequate attention to details and to analysing the similarities and differences that may lie behind the practices in question (T. Jones & Newburn, 2006). The researcher must keep in mind the unavoidability of some inherent cognitive limitations and the challenge to realise the limits of the habitual ways of perceiving things. In a comparative analysis one also should be cautious not to deduce motives and objects from the results being accomplished and to avoid the temptation to corroborate or justify the advancement of one's own preconceived agendas for local contexts and discourses (Hardie-Bick et al., 2005). In conclusion, the cognition of other cultures and individuals is distorted to some extent by the perceiver's own cultural and individual features, even when the point is to try to learn from others (Nelken, 2010). Making meaningful comparisons and succeeding in the challenges of contextual differences, this study takes the suggestion from Przeworski and Teune that *"if we work out principles of operational definitions in accord with the variety of social goals and meanings to which these dimensions are related, one society is comparable to any other society"* (1973, p. 120).

2.4.1. Ways of comparing

Investigations in comparative criminology can be conducted in many ways. Therefore, comparative criminologists use a variety of research methods, from statistics to dossier

research and from ethnographic fieldwork to 'virtual ethnography' through the internet (Howard et al., 2000). In this study, existing research literature on Māori and Romani social and juvenile issues is combined with parallel investigations in which similar research design is applied to a similar theme in other countries (Van Swaaningen, 2011). However, there is no point in transferring knowledge in a 'culturally blind' way, where similarities and differences are artificially exaggerated, which easily could result in an unreal and misleading criminological study that does not fit the reality it wants to analyse (Karstedt, 2001). Thus, it seems expedient to apply a culturally interpretative paradigm in this study as in comparative criminology in general (Van Swaaningen, 2011).

Preponderantly, this study was based on an appraisal of the relevant literature, focusing on historical and contemporary Māori and Romani juvenile justice issues, on the analysis of observations in New Zealand, and on qualitative, in-depth interviews and consultations conducted with a number of experts and juvenile justice stakeholders situated in both countries. Regarding the Hungarian component of the thesis, one of the main methods of collecting information was overviewing and evaluating related literature and other secondary research data (data of current and previous research projects) dealing with youth justice in general, the disadvantaged position and over-representation of Romani in society, and in the juvenile justice system in particular.

2.4.2. Researcher's role in comparative research

The researcher intended to follow the *"two commandments of all comparative research: openness towards that which is strange and distance from that which is familiar"* (Brants, 2011, p. 50). Without looking beyond the familiar, there is the risk that suppositions stemmed from the 'axiomatic' can obstruct the profound understanding since, without surprises and novelties, often no further questions are raised by the researchers. Brants (2011) suggested that:

> *"The researcher is always part of the object of his research. However, if that object is a foreign system, the researcher is by definition an outsider, who must question the unexpected in order to understand it, without the answer already being present in the knowledge, assumptions and expectations contained in existing historical, legal and cultural baggage".* (pp. 53-54)

This was the case for the researcher who is a Hungarian lawyer. According to Nelken (2000), comparative studies can be viewed as a form of participant observation. In this regard, there is

a relevant distinction between researchers with 'virtual' presence in a foreign country (using internet-based resources and communication methods) and those who spend significant time to explore and comprehend the targeted research settings. An extended period of time in the concerned countries, cultural knowledge and the command of the different languages are indispensable, since they help to ensure that the collected data and its analysis were not isolated from the political, social and cultural context. As Brants (2011, p. 57) noted *"literature can be found everywhere, but legal culture has to be lived and breathed – in a foreign court of law, in foreign media, in the curriculum of a foreign university, in lecture halls, coffee rooms"*. For these reasons, the researcher has spent significant amounts of time in both countries. In short, comparison is a must if models and solutions from other countries to problems in national CJSs are under consideration. However, Brants (2011) asserted that it made little sense simply to import rules because they apparently worked somewhere else. To sum up, the chief benefit of topical juxtaposition and criminal justice analyses in parallel studies like this one is that substantive comparisons between different countries can be and have been accomplished while *"controlling for the many factors that might lead to unsubstantiated findings"* (Howard et al., 2000 p. 169).

2.5. Personal background – student's role and potential bias

One of the personal motivations of the study was to raise awareness that the provision of various development opportunities for ethnic minority groups in the field of juvenile justice is a long-term investment, which benefits both majority and minority populations. The study expanded on past research projects (Fellegi, 2009; Kerezsi, 2006) by examining the role of community-inspired alternative procedures for juvenile offenders from ethnic minority groups. Accordingly, the study intended to improve current knowledge around these issues.

The researcher is not a member of any ethnic minority group but, as a lawyer and postgraduate student in Hungary, he has had experience with ethnic minority social issues before. Phillips and Bowling (2003, p. 273) noted, *"All criminologists, regardless of ethnic identity, can contribute to minority perspectives"*; and they maintained that it was advisable to *"prevent the exclusion of majority academics and researchers only because they cannot 'speak for' minorities – a form of 'race credentialism"*. They promoted a shared duty to *"confront social positioning in research, policy and practice"* (Phillips & Bowling, 2003, p. 273). A reflective attitude and adherence to a number of guiding principles while embracing a

minority perspective was a further crucial requisite during the study. Overall, there is no reason to presume that the researcher's potential personal bias is above the expected average level. Nevertheless, special attention was paid to avoid the development of preconceptions or biases from findings of previous studies or from the researcher's former experience. Thorough investigation of the study areas, using more than one methodology, appeared to create avenues for the collection of diverse information on the research topic. Each methodology involved in triangulation needed to have appropriate depth to contribute to data analysis. This allowed for minimisation of biases and errors; it improved data quality and performance of research instruments (Yeboah, 2008). Consequently, interpretations of data could be corroborated with other sources; thus, the scientific rigour of the findings was heightened.

CHAPTER THREE

3. Māori and Romani and criminological thinking

This chapter explains how theories in criminological thinking inform and address the situation of certain disadvantaged ethnic groups in CJSs. Basic theoretical frameworks of criminology forming the foundation of current CJSs in both countries and their critical aspects are portrayed, while special attention is devoted to the features of community justice concepts. These theoretical approaches are established on diverse grounds and philosophies that seek appropriate ways of reacting to criminality. Moreover, different theories provide various approaches to present-day challenges faced by Māori and Romani. The chapter focuses on the most adequate ones.

3.1. Critical research paradigm for the study

Research can be conducted in many ways and researchers need to single out the approach seen as the most suitable to answer research questions. Every approach is linked to different research traditions or paradigms. A research paradigm is interpreted as an underlying structure of the philosophical base, which provides a unique research approach (Weaver & Olson, 2006). Traditionally, there are three fundamental paradigms for conducting research in social science: positivist, interpretivist and critical (Guba & Lincoln, 1994). Critical social research approaches generally intend to critique (and alter) social relations by exposing underlying mechanism of those relations and imbalances of power deep-rooted in them (Crotty, 1998). They seek to make visible socio-historical traits of knowledge and discriminatory social processes and structures, and to illuminate how accumulated knowledge and experience recreates structures of inequality (Jupp, 2006). Thus, they offer directions in which the unjust system can be challenged through research and practice (Harvey, 1990).

Critical social research approaches assume that social research is unable to employ an absolutely neutral standpoint, and it *"should not, indeed cannot, stand on the sidelines of society"* (Muncie, 2006a, p. 52). These approaches consider social research as a value-oriented undertaking, which is manifested in the selection of topics and in the specific questions to be examined including interpretations and publication of research outcomes.

Among these critical social research approaches, the broader perspectives of critical legal and critical race theories also informed the study (Delgado & Stefancic, 2012). Challenging prevailing and mainstream suppositions and 'official mindsets' in social/criminal policy in relation to Māori and Romani and their over-representation in CJSs seems a useful and reasonable approach. Muncie (2006a) noted that credentials of critical social research are particularly apparent when applied to expose the concealed motives, ingrained mindsets and preferences of 'official' research, and when they advocate fundamental social changes. A critical attitude toward difference-blind approaches and, as such, a critical social research standpoint was taken, for instance, in Webb's (2003a) study on Māori crime and criminology. He ascertained that in conventional criminological thinking, there is a frequent disregard of the operations through which powerful groups uphold their dominance by inculcating their norms and rules into the next generations. This orthodox, simplified focus on individual characteristics and risk factors associated with the specific social context consistently overlooks broader social structures (Young, 1997). Thus, crime is mostly seen within a limited scope of individual accountability. Criminal law institutions and procedures are rather viewed as necessary and technical operations with the aim of controlling crime (Cunneen, 2006). The next section examines the relevant theories in criminology applied during the research project.

3.1.1. Significant criminological theories informing the study

Over-representation of various ethnic minorities in CJSs is already perceived by many criminologists from many different countries and cultures with a sense of triteness (Gabbidon, 2010). Even so, a relatively low number of them have been interested in the complex theoretical analysis of that observation (Bull, 2004). With the acknowledgement of the complexity and ambiguity of the roots and causes of these over-representations, the subject of this study seemed too extensive to allow a single criminological research approach. Consequently, it was preferred, from the outset, not to limit the study strictly to only one criminological paradigm, but to employ a more overarching conceptual framework. The aftermath of colonisation for Māori, and of social exclusion for Romani, since consequences of historical and social injustice are extensively present in both countries, is coupled with the ethnicisation of crime (Ladányi & Szelényi, 2006; Webb, 2003a; C. Williams, 2001). These factors postulated the consideration of a combination of various critical social theory approaches. The broader sense of critical criminology offers a reasonably strong and diverse

theoretical base to the study; and it appears compatible with critical social research approaches indicated in the previous section. Even if Romani had never been colonised like Māori, it is noteworthy to observe that many postcolonial theorists suggested the classification of non-white ethnic minority peoples as postcolonial populations (Gabbidon, 2007). In postcolonial literature, it is argued that, like colonised peoples, these less advantaged peoples have been dispossessed of much of their language, cultural heritage, traditions and social position owing to multidimensional oppressions and robust socio-economic pressures to adapt to the dominant culture (Tyson, 2011; Wisker, 2007). However, and it is a substantial distinction, differential rights are granted to Māori as First Nations people. New Zealand has obligations under international law[6] to recognise a degree of self-determination for Māori (McMullan, 2011). Therefore, a certain level of legal pluralism (or biculturalism) characterises the relationships between Māori and New Zealand, which is not the case between Romani and Hungary.

Different constructs of social injustice, unequal social structures and their effects in CJSs are common themes among sociological theories of criminology (Blagg, 2016; Brown & Hogg, 1992; Bursik, 1988; DeKeseredy & Schwartz, 2013; Young, 1997). Among them, various postmodern, left realist, conflict, social disorganisation, critical legal and critical race theorists have a strong tendency to analyse at the structural level of the society (including race relations), rather than concentrating on individuals. Consequently, they mainly attribute determining factors to the external (social) situation that people find themselves in; and they are concerned about the ways in which dominant and powerful groups influence CJSs (Arrigo & Bernard, 1997). These theories suggest that criminal justice establishments aim to impose standards of moral values and behaviour, created mainly by dominant groups, on the whole of society to promote interests of these dominant groups and to exercise various forms of social control over the dominated (Brown & Hogg, 1992; Myers, 1988; Turk, 1976, 1982; Welch, 1998, Young, 1988).

Foucault's (1975/1991) description of the control of reality by dominant groups through the creation of knowledge (or ideologies) resonates well with critical criminology and with the approaches adopted by this study. It is also consistent with the Gramscian notion of cultural

[6] There are international minimum standards for the respect, protection and fulfilment of indigenous peoples' rights through the UNDRIP and customary international law.

hegemony, where the dominated indoctrinate, apparently by cultural osmosis, clichés and ideologies dispersed as self-evident knowledge (Pyke, 2010). Foucault (1975/1991) argued that this 'knowledge' was disseminated all over society, which influenced policymakers, administrative practices, organisational structures, social norms, and eventually shaped the perception and attitudes of the public. Accordingly, powerful actors in society are able to portray their own interests as the manifestation of the best interests of the public. They are also able not only to obtain compliance but approval from the majority, and to a certain extent even from underprivileged groups (Gramsci, 1948/1971; Weber, 1948, 1922/1968). The status quo is maintained by preservation and legitimisation of existing power relations (Hopkins Burke, 2012). Thereby, states are able to function in the interests of dominant groups by persuading the public that causes of criminality solely (or mostly) originate from the immediate social context of offenders, without any significant impact from the structural causes of social difficulties. Importantly, some critical criminology advocates posited that conventional theories of crime and most policymakers had a strong (however unfounded) inclination to concentrate predominantly on the deficits of ethnic/racial minorities as the origin of the differential outcomes in crime rates (Blagg et al., 2005; Hawkins, 2011). Critical theorists also argued that a simplified focus on impoverishment and other social abnormalities 'depoliticised' ethnic minority over-representation because it suggested that the prevalence of crime should be considered as a collective consequence of individual shortcomings (Quince, 2007a). Consequently, the next section discusses some of the most important tenets of critical criminology approaches.

3.1.2. Multifaceted critical criminology approach

Critical criminologists have highlighted structural inequalities in society. They extend beyond the conflict (and Marxist) and radical criminological analyses, and focus on gender and ethnic inequalities that contribute to conditions where offending arises (Milovanovic, 2002). A radical approach could not be used because oppressed and marginalised minorities often choose individuals from their own group as their victims. This is hardly what one would expect if, as radical criminology asserts, crime were the expression of outrage against the oppressors in a capitalist society (Young, 1997). As DeKeseredy (1997) noted in North America, from a left realist viewpoint, delinquents from the working class ordinarily had victims from their own class, and adverse effects on these victims were very real problems, albeit often ignored by stakeholders in CJSs and academia. A similar phenomenon is

observable concerning members of Romani and Māori groups, not only in the working class but also in the underclass. Accordingly, it is relevant to draw attention – beyond the relatively similar conditions of working-class Māori and Romani groups – to the marginalisation of a large number of Māori and Romani. Social science in both countries reflected the theoretical developments in the United States regarding socially marginalised 'underclass' populations both in urban and rural environment in the second half of the 20th century (see, for example, Auletta, 1982; L. M. Mead, 1986; Myrdal, 1963; Wilson, 1987). Underclass is generally defined as a category of people beneath working class in the lowest possible position in society, who are greatly exposed to social exclusion. Ladányi and Szelényi (2006) conceptualised the socially entrenched underclass position of many Romani groups, which was seriously aggravated by the political and economic transition in the 1990s. These changes have affected the majority of Romani, led to their social and economic exclusion and seen them ostracised from civil society and the class structure (Babusik, 2005, 2007; Kemény & Janky, 2006; Lévay, 2007). After WWII, a gradual formation of underclass status for a significant proportion of Māori was observed (Chapple, 2000; M. H. Durie, 2003; Newbold, 2000; Poata-Smith, 1997). Some Māori groups have been separated from the 'mainstream' of society by a widening social distance and by virtually impassable cultural and social barriers (M. H. Durie, 2003, 2011; Fleras & Spoonley, 1999; Marriott & Sim, 2014; Walker, 2004). Underclass position almost inevitably implies life-long poverty that tends to be transferred intergenerationally. A similarity between the two countries is that the underclass has disproportionally become ethnically constituted (Babusik, 2002, 2007; Kertesi, 2005; Ladányi & Szelényi, 2006; Marriott & Sim, 2014; T. K. McIntosh & Radojkovic, 2012). Another parallel is the consequences of ethnic over-representation in the underclass, which has had long-lasting effects on crime and criminal policy that also call for a critical criminology approach.

Critical criminology developed from deprivation theories in the 1970s and 1980s. It postulated that impoverishment and other unfavourable social and family circumstances are, to a degree, 'simplified explanations' for offending. Contrarily, there are sophisticated and often latent interplays of different social mechanisms, like discrimination, marginalisation and criminalisation, which eventuate in an increasing racialisation of crime (Hopkins Burke, 2012). The consequence is, however, that disproportionate criminalisation of various groups arises not exclusively when a greater number of crimes are perpetrated, but also when those groups are excessively exposed to surveillance by different authorities and to public

vigilantism. Criminologists mostly accept that over-policing and increased control of ethnic communities perceived as more susceptible to offending boosts police interventions, and increases the prevalence of imprisonment (Bowling, Parmar & Phillips, 2008). Māori and Romani have a proportionately greater reliance on state institutions through social security and support than the majority populations have (Babusik, 2007; TPK, 2005). Wider interaction between different government agencies and ethnic minority groups implicitly culminates in more comprehensive supervision and over-policing (Babusik, 2007; DoC, 2007a; Kerezsi, 2012; Quince, 2007a). However, this intensified surveillance occurs not only because of the more frequent contact between state services and these groups, but also because of demand from the public, the media and politicians (Bernáth & Messing, 2013; Garland, 2001a; R. J. Harris & Sanborn, 2013; Nairn, et al., 2012; Walker, 1990; Young, 1999).

Critical criminology highlights that disadvantaged ethnic minorities are considerably under-represented as members of the police, judiciary, juries, legislation and law schools; so they are largely excluded from the formation and implementation of laws (Milovanovic, 2002). The most disadvantaged members of society are the ones who are least able to attain positions to effectively voice their experiences of injustice and exclusion during public and scholarly discourses (Pyke, 2010). Consequently, outcomes for Māori and Romani are similar; their social and cultural rules and values are largely ignored by the dominant majority and by agents of the state. Without substantive contribution to the development of legal norms and institutions, it is a plausible assumption that a decreased sense of ownership, together with mistrust of the CJS, characterises the majority of these ethnic minorities (Gabbidon, 2010; Van Swaaningen, 1997; Welch, 1998). Critical criminology and critical race theory [CRT] have common grounds in critical theory. Ethnicisation (racialisation) of crime is prevalent in public and criminological discourses in both countries (see, for example, Gerbner & Morgan, 2002; Kövér, Kőszegh & Zádori, 1997; Maxwell, 2005; Morrison, 2009; OSI, 2007; Wall, 1997). This suggests the consideration of the emerging CRT, since it can add further layers to theoretical understandings of the position of Māori and Romani in society and in the CJS.

3.2. Critical race theory and the issue of colour-blindness

A scholarly discipline and a political movement, CRT has developed greatly since its inception in United States law schools in the 1980s; it has merged a progressive political

campaign against racial injustice with a critical assessment of the traditional, mainstream legal and academic norms (Crenshaw, 2011). CRT intends to dispute the validity of the existing construction of race and racial power imbalances, which were intrinsically built into the orthodox theories of law. CRT maintains that values, interests, experience and perspectives of disadvantaged ethnic minority people have been widely ignored by the established school of thought among policymakers and legal practitioners (D. A. Bell, 2008; Delgado & Stefancic, 2012; A. P. Harris, 1990). In this context, mainstream approaches virtually disregard the serious aftermath of relevant and undisputed historical facts. Krieger (1995, p. 1174) reminded that *"before the 1920s, few academics questioned the central premise of 'race theory' that non-white peoples were inferior to whites and that racial distinctions were a rational response to those 'obvious' differences"*. Māori and Romani are visible ethnic minorities affected by present-day consequences of, partly historical, prejudices, stereotypes, discriminative treatments and institutional discrimination/racism[7] (see, for example, Angelusz, 2000; FRA, 2009, 2012; Harris et al., 2006; HRC, 2011, 2012; Phillips, 2011), which invites the consideration of the race-based perspective of the CRT:

> *"CRT recognizes that racism is engrained in the fabric and system of the … society. The individual racist need not exist to note that institutional racism is pervasive in the dominant culture. This is the analytical lens that CRT uses in examining existing power structures … which perpetuates the marginalisation of people of colour."*(UCLA School of Public Affairs, 2009, para. 2)

In a similar vein, T. Williams (2001, p. 207) cited the report of the Commission on Systematic Racism in the Ontario Criminal Justice System and emphasised that systematic racism did not require intent as *"even if there is no intention … the rules, values and policies that shape institutions and processes may have discriminatory consequences"*. CRT contended the adequacy of colour-blind social policy approaches, and claimed that colour-blind policies preserved racial/ethnic inequality at structural and institutional level (Crenshaw, 2011). Classic anti-discrimination laws and liberal approaches of colour-blindness presume that every person, in accordance with international and civil rights laws, has the benefit of equal

[7] While the terms 'prejudice', 'stereotypes' and 'discrimination' are regularly used as if they have the same meaning, there are significant differences between them. They are related but different concepts. Stereotypes are the most cognitive (often unconscious) component, whereas prejudice is the affective component of stereotyping, and discrimination is the behavioural component of prejudicial reactions. Racism contains both prejudice and discrimination based on social perceptions of biological differences between peoples (Fiske, 1998). Spoonley (1994, p. 174) saw racism as *"the practice of classifying people according to certain physical differences and then believing these differences indicate biological and social superiority and inferiority"*.

treatment, regardless of race/ethnicity. This concept, however, is a creation of conventional legal thinking and culture, which does not pay attention to the evidence that seemingly equal political and civil rights alone cannot prevent the reproduction of social inequality and injustice (D. A. Bell, 2008; Delgado & Stefancic, 2012). CRT claims that racial neutrality of civil rights laws is capable of effectively dealing with the most conspicuous forms of discrimination, but is unable to realise significant accomplishments in redressing the legacy of historical injustices such as colonisation, ethnicity-based oppression and persecution (D. A. Bell, 2008; Crenshaw, 2011; Zamudio, Russell, Rios & Bridgeman, 2011).

Brewer and Heitzig (2008) studied the racialisation of crime and punishment, and observed new and more indirect structural and cultural mechanisms maintaining and reproducing stereotypes associated with disadvantaged ethnicities. Apparently, these processes eventuated in institutional discrimination and systemic disadvantages not only in socio-economic status, but in general over-representation in CJSs (Gabbidon, 2007; Morrison, 2009). The production and verification of the 'mythical' correlation between crime and race/ethnicity is a repetitive and systemic mechanism that involves criminal policy, legislation of crime, media representation of crime, activities of criminal justice stakeholders: the historically unequal law enforcement (Robinson, 2000). This system features a wide range of in-built and often uncontrolled discretion, which enables racial stereotyping and biased assumptions of correlation between crime and ethnicity to pervade law enforcement operations (Deane, 1997; Ho, Cooper & Rauschmayr, 2007; Maxwell, 2005; Mirga, 2000; OSI, 2007). Critical scholars proposed that it resulted in the practice of racial profiling, in disparate use of force, arrests and diversionary options, and eventually in a new form of racial segregation: mass imprisonment (M. Alexander, 2012; Garland, 2001b; Robinson, 2000, Young, 1999). Therefore, the CJS is not a mere specialised apparatus for law enforcement anymore, but one of the central parts of managing the massively racialised and impoverished population (Wacquant, 2005). Simultaneously, the amalgamation of penal and welfare policy has rendered welfare more punitive. Wacquant (2009) described the racialised overtone of the shift from liberal social policies and social distribution of the welfare state to a neoliberal-paternalist and punitive regime. Consequently, the neoliberal downsizing of the social state is followed by a paternalistic clampdown on the marginalised (here: Māori and Romani) populations, which have been largely 'lost in transition' in the changing economic situation. This structural progress towards a more controlling society and its penal policy can be observed in both countries in recent times (Kerezsi & Gosztonyi, 2014; Ladányi & Szelényi, 2006; T. K.

McIntosh, 2006; Pratt, 2006). Alternatives to imprisonment are considered as overly lenient and 'pleasing' the law-breakers only, despite the demonstrated failures of prisons. Penal policy has become less interested in rehabilitation and reintegration of offenders, victims and their families; instead it has converted into a more and more security-minded administration mostly interested in risk (i.e. addressing the various forms of marginality) management (Workman & T. K. McIntosh, 2013).

In fact, First Nation/indigenous peoples' experiences in their respective societies are more complex than the circumstances and observations described by CRT and colour-blindness only. Even though differences for various visible ethnic/racial groups are suggested in the social outcomes, these mostly stem from their long-standing, disadvantaged social position and from their external perception, and are rather secondary. Therefore the juxtaposition of the colour-conscious and colour-blind perspectives can be justified and maintained for this study. Nonetheless, there is some sort of 'inevitable' simplification in the application of the colour-blind and colour-conscious approaches in relation to Māori and Romani peoples, too. However, the roots of the perceptional challenges and distortions are shared, as are the subjective views of the public and the general acceptance of any kind of preferential treatment efforts[8]. Racial studies found four different levels of racial discrimination in societies. These are succinctly discussed in the next section.

3.3. Levels of racism (racial discrimination)

Paradies and Williams (2008) proposed that racial discrimination could exert its influence on four different, but often overlapping and interacting, levels. These levels can be discerned as societal, institutional, interpersonal and internalised racism. Societal racial discrimination is the overarching level; it indirectly reveals the socio-cultural atmosphere where authority and power reflect the well-established social order. Societal racism implies traditions, shared values and knowledge, norms and, often unconsciously, learned cultural preferences. It is connected to the concept of structural determinism, when it describes ways culture and legal thought influence content. Eventually, widespread presence of societal racism is able to determine significant social outcomes (Delgado & Stefancic, 2012). Societal racism provides

[8] In addition, relatively similar attitudes can be detected towards visible migrant and refugee groups in both countries (Sibley et al., 2011; Sik & Simonovits, 2012).

the context for institutional racism, where systemic characteristics, institutional practices, policies and attitudes preserve and reproduce unfair disadvantages for certain ethnic/racial individuals and communities. Institutional racism comprises interconnecting issues at structural level, and those are incorporated into institutions of customs, practices and norms. Thus, institutional racism can even exist as a rampant phenomenon without the presence of individual racists (C. P. Jones, 2002). Furthermore, it usually includes historical and structural conditions of colonisation and/or other forms of social and economic marginalisation, as those link contemporary racial inequalities with past historical practices (Babusik, 2005; M. Jackson, 1988; Kemény & Janky, 2006; Rata, 2000).

Racism at interpersonal level ('individually mediated racism') can emerge during direct interactions between people. It is based on, conscious or unconscious, prejudices and biases, which generate differential suppositions about 'racial others' regarding intelligence, skills, motivations, intentions, etc. It comprises discriminative features, which trigger differential behaviour towards those 'racial others' (Allport, 1954/1979). This differential behaviour can be manifested in countless ways such as exclusion, stigmatisation, misgivings, unfair treatment, disrespect, neglect, devaluation, scapegoating and even dehumanisation (C. P. Jones, 2002). Different forms of these interactions can have cumulative effects. Furthermore, actions and/or inactions of more influential individuals have a more significant impact on victims of interpersonal racism (Moewaka Barnes, Taiapa, Borell & McCreanor, 2013). The usual term for the fourth level of racism is internalised racism. A significant proportion of victims of direct and indirect racism start to 'accept' that there are grounds to justify racial ideas. Power imbalances, exclusionary practices, different group representations in mainstream media, and infiltration of the world views of the racially disadvantaged can contribute to the belief of inferiority. The phenomenon is also referred to as *"indoctrination"* and *"mental colonialization"* (hooks, 2003, p. 78). The starting point of internalised racism is when racially marginalised persons and groups adopt identities imposed on them. This negative psychological cycle can become self-perpetuating and self-fulfilling since they are internalised and incorporated into verbal communication, mentality, cultural myths and ideological judgements (Moewaka Barnes et al., 2013; Pyke, 2010).

Among the consequences of the four levels of racism is the loss of faith in one's own competences and future opportunities, the constant (re)production of the impression of inability and underdevelopment, and the sentiment of general inferiority. Seligman (1975) conceptualised and developed a new theory within the field of behavioural theory and coined

a term, 'learned helplessness', to report how expectations 'convince' individuals experiencing seemingly uncontrollable outcomes to accept them and remain passive in negative situations, despite the possibility of changing those outcomes. White (2008) expanded Seligman's theory and suggested that the notion of learned helplessness could reach beyond the field of psychology into the area of social action. For example, when an ethnic or cultural identity unsuccessfully attempts to accomplish its political or social ambitions, cognition of both collective and individual competence can get disturbed. Consequently, these factors, cumulatively, can contribute to and reinforce the feeling of inability to break out from marginalisation generating significant criminogenic effects (Bowling & Phillips, 2002). System justification theory also provides plenty of evidence of conscious and unconscious maintenance of the status quo that has implications for social change, social policies and for disadvantaged racial/ethnic minorities (Jost, Banaji & Nosek, 2004). The presence and consequences of the different levels of racial discrimination in the two countries is a relevant consideration for this study; accordingly, the extent that each society is racialised is investigated in Chapter 4.

3.4. Socio-cultural factors, social cognition, colour-blindness

There is another aspect of the CRT on the level of individuals, when it refers to a large number of social and cognitive psychological tests[9] and research studies that demonstrate that social and cultural legacy conserve the issue of race (Banks, Eberhardt & Ross, 2006; Lawrence, 1987, 2008). CRT contended and negated the possibility of being absolutely colour-blind and of completely ignoring race and ethnicity. It is quite unmanageable to not act on certain (conscious or unconscious) biases when interacting with other human beings, since classification is a by-product of the natural way of information processing including the reflexive realisation of race (Eberhardt & Fiske, 1998; Fiske, 1998). A 'primitive' part of the brain evolved for reaction as opposed to reason, and this is the basis for cognitive psychology. A Schema is described as a system specialising in mental shortcuts; it is a mental structure of preconceived ideas formulated through experiences; at the beginning, they resemble a simple

[9] See, for example, the Implicit-association test which is now widely used in social psychology and cognitive psychology research among others for testing implicit prejudice and stereotyping (Devine, 2001; Nosek, Greenwald & Banaji, 2005). Empirical studies of implicit bias in the justice system are relatively rare; racial bias in a guilty or not guilty Implicit-association test was examined by Levinson, Cai and Young (2010).

network and gradually they can develop into more complex structures (Mandler, 1984). Schemata work along the lines that the brain naturally organises information into categories; they are able to lead to stereotypes and complicate the absorption of new information that does not harmonise with previously settled ideas. Consequently, inherent bias or stereotyping is seen as biological, automatic and ordinary; a simple cognitive function of cataloguing or grouping information together that all people and not just those deemed to be 'prejudiced' use to make the task of perceiving easier (Allport, 1954/1979; Anderson, 2010). These findings regarding the source of bias or stereotypes imply a kind of unavoidability; therefore, CRT advocates a focus on consequences of bias and stereotypes, instead of on futile attempts to suppress the natural phenomena themselves (Lawrence, 1987, 2008).

Socio-cognitive literature suggests that existing racial and other stereotypes, stemming from the above-mentioned categorisation, generally drive people to see what they expect to see. Reiterating commonly held beliefs is more likely the norm; and stereotype-consistent information has a more significant impact than stereotype-inconsistent information on perception (O'Sullivan & Francis, 1984; Sibley et al., 2011). It is coupled with mutually reinforcing cognitive tendencies, through the usually unconsciously selective perception of facts, of overstating differences between categories, and of minimisation of differences within categories (Anderson, 2010). This type of reliance on categories or creating group identities has pervasive repercussions. These tendencies normally result in finding evidence upholding predetermined group characteristics, rather than in finding inconsistent evidence (Lawrence, 1987; Tuckey & Brewer, 2003). This phenomenon is known in psychological literature as 'confirmation bias' (Nickerson, 1998). Adverse demeanours of visible minorities are more noticeable, therefore more easily memorised and recalled than negative behaviours of majority group members (Levinson, 2007). Stereotype-consistent demeanours and attitudes are viewed as more prognostic of future behaviour than stereotype-inconsistent ones (Krieger, 1995; Lawrence, 1987; Tuckey & Brewer, 2003). Moreover, cognitive processes are able to preserve stereotypes once they are entrenched. Real-life experience of discrimination suggests that as long as categorisations take place along lines of race and ethnicity (as well as, of course, along many other attributions), decision-makers will be influenced and biased by categorisation-related distortions (Banks et al., 2006; Cunneen, 2006; Krieger, 1995; Phillips & Bowling; 2003). Without counteracting factors like conscious control, these distortions, in causal attribution, are able to disfavour individuals from stereotyped and/or socially isolated groups. However, thus far, no evidence has emerged corroborating the hypothesis that

individuals have (or can have) conscious awareness of all perceptual and memory-modifying effects of stereotypes and confirmation biases (Krieger & Fiske, 2006). Thus, the compromise of interpersonal rulings, even in the absence of any intention, can disadvantage certain ethnic minority members, too (Levinson et al., 2010). Moreover, Krieger (1995) coined another term, 'colour-cluelessness', when a consciously neutral decision-maker is actually not colour-blind but most probably simply does not realise that impressions, experiences and decisions are being distorted or misguided by cognitive sources of intergroup-bias.

CRT revealed the ways the dominant society racialises different minority groups at different times, in response to shifting needs in the labour market and other spheres of the economy (see, for example, D. A. Bell, 2008; Crowe, 2007, 2008; Guy, 2001; Ringold, 2000; Walker, 2004). History proves that stereotypes and public depictions of different minorities periodically fluctuate. In one period, certain visible ethnic minority groups might be viewed as carefree, naive and expedient, and willing to subordinately cooperate with dominant groups. In another era, under different social circumstances, the very same minority groups are represented in public discourses and the media as unreliable, violent and threatening social parasites who need to be monitored and contained (Delgado & Stefancic, 2012; L. E. Ross, 2010). This historical pattern of cyclical change, periods of relative acceptance followed by increased antipathy and isolation, was present in the public perception of Māori and Romani (Bull, 2001; Csalog, 1980; Kemény & Janky, 2006; T. K. McIntosh, 2005; Sullivan, 2009). Through the regular practice of ethnicity-based and predominantly negative portrayals of them, the media still has a strong influence in the reinforcement of their marginalised and stereotypical position (Alia & Bull, 2005; Bernáth & Messing, 2013; Matheson, 2007; Walker, 1996; Wall, 1997).

3.5. Distorted perceptions of ethnic minorities

Literature in social cognition shows in both countries the existence of a social context that tolerates and often reinforces negative attitudes toward Māori and Romani as out-groups, as 'different others' (Clark, 2005; Messing, 2005; Nairn et al., 2012; Terestyéni, 2005; Wall, 1997). There are observable symptoms of the self-maintaining nature of some biased social categories and stereotypes (Binder, 2010; Kende, 2000; T. K. McIntosh, 2005; Sibley et al., 2011). Books, newspapers, movies and other mass media representations transmit values, ideologies, cultural myths and preferences. When the prevailing social and media image of a

distinct ethnic group is unfavourable, it evolves into a kind of accepted and mostly unquestioned reality for most media users (Bernáth & Messing, 2013; Dixon, 2007, 2008; Matheson, 2007; Sibley et al., 2011). In most groups feelings regarding 'in-group' members are more differentiated than 'out-group' members, who are rather perceived as a 'uniform mass'. In-group members tend to have more positive observations about other in-group members and less positive about out-group members. This is seen over a variety of different traits, for example, as failures of in-group members are mostly explained as being related to situational factors, whereas out-group members' failings are predominantly attributed to dispositional or habitual factors (Krieger, 1995).

Socio-cultural factors sustaining implicit biases and stereotypes incorporate a wider sphere where norms and values, together with certain beliefs and preferences, are intergenerationally conveyed. They include traditions and thoughts that are so considerably part of the culture – through the influence of media portrayals, relatives, peers, role models, etc. – that they are normally not taught or grasped as explicit knowledge but as part of the rationalisation of the lived personal experience of the 'real world'. Individuals are largely unaware of the omnipresent feature of different socio-cultural stereotypes attributed to other groups that influence their perceptions (Lawrence, 1987; Nairn et al., 2012). According to Ehrlich:

> *"Stereotypes about ethnic groups appear as a part of the social heritage of society. They are transmitted across generations as a component of the accumulated knowledge of society. They are as true as tradition, and as pervasive as folklore. No person can grow up in a society without having learned the stereotypes assigned to the major ethnic groups."* (1973, p. 35)

Due to the casual unawareness of stereotype-producing selective perception, decision-making processes and outcomes would not be viewed as problematic since they are supposedly not influenced by stereotypes (Fiske, 1998). Therefore, administrative decision-makers generally consider their operations as neutral processes based on professional knowledge and experience (Angelusz, 2000; Csepeli, Murányi & Prazsák 2011; Lawrence, 1987; Levinson, 2007). There is another complicating factor. Henry and Tator (2006) highlighted the phenomenon and coined a term, 'democratic racism'. In modern societies, public discourse of tolerance, heterogeneity and multiculturalism can mask interpersonal, institutional and societal racism. This phenomenon can be a significant hindrance to cope with the different forms of racism. It requires more attention in New Zealand because, as the next chapters disclose, obviously discriminative attitudes, conduct and racist language have recently become more prevalent and condoned in Hungary (Csepeli et al., 2011; Juhász, 2010; Váradi,

2014). The next section examines possible correlations between ethnically disparate impacts, colour-blindness and discriminatory conduct.

3.6. Relevance of ethnically disparate impact

CRT emphasised the significance of concentrating on impact rather than on motive or individual culpability in the struggle for equal justice and against discrimination (Lawrence, 2008). Since the most blatant forms of racial discrimination have become less prevalent in developed countries, this change has increased difficulties in the identification, provability and prevention of incidents of discriminatory conduct and attitudes. This is more apparent in the CJS, where discretion in decision-making is a fundamental aspect of the daily operations (Blagg et al., 2005; Cunneen, 2006; Farkas et al., 2004; Latu & Lucas, 2008). There are at least five key areas of discretion: police decisions to devote resources, investigate, arrest and charge; prosecutorial decisions on charges; decisions of the jury or judge to convict or not; discretion at sentencing; and correctional decisions (McMullan, 2011). The bedrock of the legal philosophy on which disparate treatment jurisprudence (anti-discrimination regulations, their normative structures) was built is a hypothesis that decision-makers are in transparent control of their decision-making process, so they can precisely determine the reasons that lead to an outcome in an individual case. Contrarily, massive and conclusive empirical evidence indicates that the (legal) premise of a *"blank slate"* from which decision-makers originate their decisions is completely unsubstantiated since there is no need of discriminatory purport or motivation to engender disparate treatment and/or outcome (Krieger, 1995, p. 1211). Unconscious racism has been in the focus of research conducted by behavioural scientists recently, and they have contributed to the state of knowledge by providing impressive evidence to back the assertion that human beings are invariably affected by racial and other biases based on gender, sexual orientation, body size, religion, accent, height, hand dominance, etc. (H. J. Ross, 2014.). Furthermore, more often than not, these biases cannot be located in the cognisance (Lawrence, 2008). According to powell (2012), if tension arises between the conscious and unconscious cognition, typically the latter would prevail. Without conscious efforts focusing on disparate outcomes, there is no realistic way to counterbalance effects of unconscious biases (H. J. Ross 2014). Human beings harbour miscellaneous, deep and unconscious biases; and these biases have significant impact on racial equality in many important areas from healthcare and education to the labour market, housing and law enforcement, and so on. For example, A. R. Green et al (2007) found that contrary to reports

of participating physicians, an implicit preference favouring white patients had been observable; it provided evidence of unconscious (implicit) race bias among physicians, which contributed to racial/ethnic disparities in the use of various medical procedures. Krieger and Fiske (2006) revealed the role of implicit bias and disparate treatment in an employment discrimination context. Similar findings were published concerning unconscious bias in school admission and educational segregation in both countries (see, for example, Farkas, 2007; R. Johnston et al., 2005; Kertesi & Kézdi, 2013; Ministry of Education [MoE], 2008, 2013; Pálosi, Sik & Simonovits 2007; Thrupp, 2007). Levinson and colleagues' (2010) empirical research suggested that implicit bias affected legal decision-making.

Krieger (1995) called attention to the critical contradiction between the construction of concepts of discrimination in legal systems and their manifestations as real-life experiences. Consequently, Krieger and Fiske (2006) introduced a different approach, what they called *"behavioural realism"*, which suggested scrutiny to be focused on the *"best available evidence about people's actual behaviour"* in discriminatory cases (p. 997). Lawrence (1987) emphasised that the insistence on a culpable wrongdoer mostly inhibited the substantiation of the existence of racial discrimination. Lawrence (1987) asserted that it led to the production of a fictional world where, owing to the created lack of adequate provability, discrimination was non-existent unless deliberately perpetrated. Critical scholars in law (see Crenshaw, 2011; Lawrence, 2008; Unger, 1976, 1996) as well as critical race theorists in social sciences (see Cornell & Panfilio, 2010; Ladson-Billings & Tate, 2006; Parks, Jones & Cardi, 2008) argued that, because not only premeditated practices but also subconscious ones contributed to the creation of 'racial status' and social position, any social and legal reforms must devote effort to the adjustment of these unintended practices (Delgado & Stefancic, 2012; Zamudio et al., 2011). A corollary of this theoretical shift is that claims about discriminative procedures increasingly tend to concentrate on ethnically disparate impacts as evidence of discriminatory decision-making and procedure (Banks et al., 2006; Lawrence, 2008; M. J. Lynch et al., 2008).

3.7. Ethnically disparate impacts and the social harms perspective

A relatively new direction in critical social studies further broadens the horizons of criminology and the concept of crime. Critical criminologists promoted the incorporation of

zemiology, the study of social harms, which is clearly an impact-oriented field of study, into the focal concerns of criminological analyses (Tifft, 1995). Social harms theorists queried the traditional application of crime as the most appropriate underlying basis for criminological analysis. Zemiologists recommended replacement of focus on the conventional category of crime with the focus on multiple types of harm originating from entrenched patterns of social, economic, technological and cultural practices (S. Green, Johnstone & Lambert, 2013; Yar, 2012). Among substantial social harms proposed to be studied, structural inequality, poverty, racial discrimination, marginalisation, segregation, environmental risks and economic exploitation have prominent roles. These are viewed as being much more detrimental to the fabric of society than, for instance, those individually limited actions that are construed as criminal (Hopkins Burke, 2012). Zemiologists promulgated the idea that mainstream interpretation of crime was essentially socio-political without ontological integrity, because it did not define an idiosyncratic class of phenomena. The legalistic category of crime rather reflects interests of powerful social groups; and it is often no more than unjust and formal criminalisation of various phenomena by law-making (Yar, 2012). Zemiology and CRT maintained that disproportionate criminalisation of certain visible minorities was a product, in large part, of how crime is defined (L. E. Ross, 2010). Critical criminologists also suggested that in this way various potentially more harmful actions were left as lawful and unpunishable (Young, 1999). Accordingly, zemiologists asserted: *"harm rather than crime is better suited to act as a critical conceptual anchor in documenting, explaining and challenging social problems"* (Yar, 2012, p. 59). This social harms perspective has informed this study, because literature review revealed that conventional criminological approaches, in themselves, seemed inadequate regarding the situation of Māori and Romani.

3.7.1. Ethnically disparate impacts and (lack of) ethnicity data

Phillips and Bowling (2003) proposed a more complex approach in order to better understand the experience of ethnic minorities (as victims, offenders, professionals and other stakeholders) in the CJS. They stipulated the necessity to accommodate statistical data with personal experiences of minorities. Phillips and Bowling (2003) referred to the disconnection between empirical evidence displaying zero or only minimal racial differences on criminal justice administration practices and the predominant perception of the opposite by numerous people. It can be seen, for example, in the research conducted by the DoC (2007c) regarding Māori and home detention. These perceptions are mostly based on anecdotal evidence of

individual and collective experiences. Still, the absence of hard statistical proof does not mean that the existence and influence of these perceptions are unfounded (see, for example, AC Nielsen McNair, 1997; Bólyai, 1997; FRA, 2012; Ho et al., 2007; HRC, 2011, 2012; N. Jackson, 2002; James, 2000; M. J. Lynch et al., 2008; O'Malley, 1973a).

Nonetheless, in both countries, the stance of policymakers and decision-makers is typically not responsive to independent (or, in general, any) research on the existence and extent of discriminatory conduct in the public sector (Morrison, 2009; Petrova, 2004). Little research data is available on the topic in the CJS; most delved into law enforcement and the court system (AC Nielsen McNair, 1997; Csepeli et al., 1997; Farkas et al., 2004; Fellegi, 2007; Fergusson, Horwood & Lynskey, 1993; H. Szilágyi, 2009; James, 2000; Kádár & Pap, 2009). Moreover, there is no publicly available research that has comprehensively investigated racial/ethnic discrimination within prisons (Kádár & Pap, 2009; Morrison, 2009). Actions and attitudes of stakeholders in other sectors in the CJS are mostly obscured and hardly decipherable, due to the lack of thorough investigations. All the same, several participants in both countries referred to the hardly provable, still pervasive, presence of biased and discriminatory traits of operations in the CJS. The investigation of discriminatory attitudes and colour-blind social and criminal policy approaches in both countries is in Chapter 6.

3.8. Post-colonialism, internal colonialism, aspirations for decolonisation

The applicability of the theory of internal colonialism in the case of Romani people is reviewed; afterwards, aspects of postcolonial theory are contemplated. Subsequently, Māori aspirations for decolonisation and their history of significant political protests and grassroots movements are evaluated. Simultaneously, attention is paid to the basically missing history of similar Romani movements.

3.8.1. Internal colonialism

Some theorists argued that Romani people and their communities could be regarded as internal colonies (Hancock, 2002; Kymlicka, 2007; Okely, 1983; Willems, 1997; Yuille, 2007). Yuille (2007) suggested that while Romani origins were in India, they had not evolved into a distinctive ethnic population before their arrival in Europe; thus, they could be viewed as natives in Europe. Victimised groups of traditional colonisation had lost their land, which

was settled by their colonisers. Through internal colonisation, Romani suffered just the opposite – an obligation to settle on the land of their colonisers, so they had never been colonised through dispossession of land[10]. Colonists of itinerant people did not need to travel in order to achieve their goals; they compelled Romani to settle on the land they had already occupied and controlled. Therefore, this was the colonisation of itinerant groups rather than land as happened in the case of many indigenous peoples (Ashton-Smith, 2010).

Overall, the concept of internal colonialism is part of the conceptual framework of this study. This internal colonial framework in today's literature, among other relevant issues, attempts to offer a better explication of the disparate criminal rates among different but similarly disadvantaged ethnic minority populations (Hawkins, 2011; Tatum, 2000). Unequal structural relations, systematic economic and political control and exploitation of Romani resulted in a social situation that is reminiscent of the internally colonised status of Afro-Americans in the United States (see, for example, Guy, 2001; Tatum, 2000). American scholars developed the concept of an internal colonial framework. Initially, it was employed to study the aetiology of the race gap in social disadvantages and criminal involvement of Afro-Americans, but subsequently it was also applied to other racial/ethnic minorities (Gabbidon, 2010; Hawkins, 2011). Compared to traditional colonial societies, many of the criminogenic factors affecting Romanies have their roots in the legacy of history. Externally and internally colonised ethnic groups are victims of not only interpersonal biases but racially restrictive institutional forces as well. Spatial and physical isolation of minority neighbourhoods and communities is an equally worrisome issue in both countries (Farkas, 2007; Johnston, Poulsen & Forrest 2005; Kertesi & Kézdi, 2013; Morrison, Callister & Rigby, 2002; Thrupp, 2007). Tatum (2000) suggested that internally colonised populations were invariably pressured to dwell in neighbourhoods and communities that were socially, spatially and economically separated from mainstream society. Demographic studies on residential segregation provided valuable understanding of causes and correlations of ethnic asymmetry in rates of offending and other social disadvantages (Harper, Steger & Filčák, 2009; R. Harris et al., 2006; Hawkins, 2011; C. P. Jones, 1999; Solt & Virág, 2010). Criminogenic ramifications of the restricted structural prospects affecting individual opportunities render the perception of crime as a normal response to an abnormal social situation for many (Tatum, 2000). The legacy of history

[10] The UNDRIP considers colonisation and dispossession of the land and territories of indigenous peoples as central to their claim for specialised human rights protection (Botonogu, 2007).

(colonisation and marginalisation) continues to mar the lives of both Māori and Romani, inclusive of Māori and Romani in higher positions of power and authority, even police officers, judges or scholars.

3.8.2. Post-colonialism

Post-colonial theory suggests that irrespective of social class, race can demote formerly colonised ethnic minorities to lower levels of social status. This status is affected by historical factors through structural experiences in the past (Wisker, 2007). The post-colonial model adequately harmonises a traditional colonial approach with perspectives of the emerging or lingering underclass. Dynamic changes in labour demand and discriminatory patterns have most harshly affected Māori (and Romani) in the long term. Accordingly, structural prospects of the lower class of these ethnic minorities are seriously affected by the declining need for unskilled labour; and the problem is exacerbated by discriminatory patterns in the labour market (Eng et al., 2011; Kemény & Janky, 2006; Kertesi & Kézdi, 2006; Sibley et. al., 2011). Being outside of everyday social networks reduces opportunities for social mobility. Historical overview, together with relevant statistical data concerning the current social situation of Māori and Romani populations is presented, compared and analysed in Chapter 4 and 6. Literature review showed that ethnic majority (in this study: white) populations in very similar socio-economic status did not experience similarly harsh consequences in the CJS and in the field of social justice (Farkas et al., 2004; Fergusson et al., 2003a, 2003b; H. Szilágyi, 2009; M. Jackson, 1988, 1990; Morrison, 2009; Rawls, 1971). Adverse social circumstances existing in Māori and Romani communities in New Zealand and Hungary can be directly linked to the consequences of historical injustices as well, and these disadvantageous social conditions are among the potential causes of criminal activity. These consequences are an additional burden to the nexus that can be spotted between racial (ethnic) status and socio-economic status, a nexus that also connects historical injustices and present-day structural disadvantages in both societies. A plausible question here to be explored is whether socio-economically disadvantaged communities of visible minorities confront social constraints not placed upon similarly disadvantaged ethnic majority groups. Reviews of recent literature about post-colonialism and discrimination studies suggested that both Māori and Romani peoples were in relatively more disadvantaged positions in CJSs than majority groups (HRC, 2012; M. Jackson, 1988; Ladányi & Szelényi, 2006; Poata-Smith 1997; Ringold et al., 2005; Sik & Simonovits, 2012; L. T. Smith, 1999; Walker, 2004). Accordingly, it is worth

investigating whether distinctive measures and approaches in crime prevention and law enforcement are able to deliver potentially more favourable outcomes for Māori and Romani peoples. Comparisons between mainstream criminal justice responses and specific Māori and Romani ways of community justice can be used to scrutinise this issue. This scrutiny is in Chapter 7 and 8. The next section discusses the relevant differences between Māori and Romani political influence and campaign activities.

3.8.3. Aspirations for decolonisation and political protest movements

Significant political mobilisation for protest and grassroots movements against injustices created historically by the dominant culture and groups is mostly non-existent (or at best irrelevant in its effects) in the case of Romani people (Bárány, 2002; Ringold et al., 2005; Rövid, 2011; UNDP, 2002). Conversely, Māori protest movements advocating decolonisation attempted, with some successes, to recapture control and run their own affairs (Cox, 1993; M. H. Durie, 1998b; H. Mead, 2003; Poata-Smith, 1996, 2004a, 2004b; L. T. Smith, 1999). Māori constantly asserted that government provision of various social services did not include Māori cultural values or any meaningful Māori influence. From the 1970s, a progressively vigorous movement, aiming at the reaffirmation of Māori economic, cultural and political rights protected by the Treaty of Waitangi, has been developed (Belgrave, 2005; Orange, 2011). An important institution, the Waitangi Tribunal (established by the Treaty of Waitangi Act 1975) has done substantial work in the acknowledgement and restitution of the past injustices Māori suffered due to the impact of colonialism on their culture and assets (Consedine & Consedine, 2012). The Tribunal process requires immense amounts of research and supporting evidence; and it provides a forum for direct negotiations between the Crown and Māori (Belgrave, 2005; Chile, 2006). Through this process, the Tribunal has played a relevant role in the return of lost and confiscated land, forest and rivers to Māori, as well as monetary restitution for treaty breaches. Many iwi have established business organisations run by Māori professionals. These forms of compensation have allowed Māori to restore some of their resource bases, which has enabled them, at least partially, to reclaim their sovereign identity and redevelop their communities on their original tribal lands (Poata-Smith, 2004a; Walker, 2005). A number of Māori stakeholders urged a greater control over justice for Māori (Dyhrberg, 1994; E.T. Durie, 2007; M. H. Durie, 2003, 2011; M. Jackson, 1988, 1990; McElrea, 2011; Tukoroirangi, 1994). As a corollary, Māori claimed, and largely obtained, recognition as tangata whenua, the indigenous people of the land. This achievement includes a

roughly proportional political representation and a special status concerning traditional Māori culture and language; and it has created a limited influence over public policy and administrative decisions (Cox, 1993; M. H. Durie, 1998b, 2011; Poata-Smith, 1996; TPK, 2005; Walker, 2004). Postcolonial and critical approaches are expansively present in Māori scientific spheres; as Mahuika (2008) asserted Kaupapa Māori theory (conceptualisation of Māori knowledge), which informs research methodologies as well, was inherently critical and anti-colonial. This relative success of integration and decolonisation processes in the last few decades in society, and more specifically in the CJS, was a considerable inspiration behind this study. Additionally, Māori middle-class population has grown significantly in the late 20th century (DoC, 2007a; Ministry of Social Development [MSD], 2008, 2010; Robson, 2004; TPK, 2005; Whānau Ora Taskforce, 2009). The swiftness and depth of policy change was noticeable from the 1980s; eventually, it manifested in trends towards a kind of 're-indigenisation' of New Zealand society. Simultaneously, a steadily growing participation in public service and politics characterised the last period (M. H. Durie, 1998b; Poata-Smith, 2004b; Walker, 2004; Whānau Ora Taskforce, 2009).

Contrarily, substantial increases in participation in politics, public service and professional jobs are clearly missing in the case of Romani. From time to time, after the democratic transition, nascent Romani movements attempted to organise effective ethnicity-based political representation but with little success (Babusik, 2002; Dupcsik, 2009; Vermeersch, 2006). The Ethnic and National Minorities Act 1993 obligated the establishment and state funding of a popularly elected minority self-government system [MSGS] on local, county and national levels. It was intended to provide a vigorous, effective and autonomous institutional framework for Romani groups (Kállai, 2005; B. Majtényi, 2006). However, time has proved that it has failed to give Romani groups real power to decide on matters that concern their own communities. MSGS lacks an independent administrative infrastructure and overly relies on state institutions, and does not have the authority to take action outside of a very limited scope of issues. In reality, self-governance over socio-economic issues was never intended to be provided through MSGS by the political elite. It lacks adequate funding to carry out substantial socio-cultural projects but has achieved small-scale initiatives related to education, unemployment, healthcare, community and cultural activities (Kállai, 2009; B. Majtényi, 2006; Majtényi & Majtényi, 2005, 2012; National Democratic Institute, 2006; State Audit Office, 2008). Consequently, MSGS became a rather controversial system for fostering Romani rights and advocating civic and political participation (Majtényi & Majtényi, 2012;

National Democratic Institute, 2006). Some relative successes can be observed in relation to cultural revival and educational scholarship programmes, but in the area of social and community justice issues there has been little progress. A few scholars and experts propagated the recourse to traditional Romani justice institutions, but it has not resulted in meaningful advancement or public discourse (see, for example, Cahn, 2000; Kerezsi, 2012; Loss, & Lőrincz, 2002; Póczik, 2001; Szekeres, 2013). Critical examination of the effects of wider Māori empowerment aspirations on the CJS seems appropriate, especially with regard to the significantly different situation of Romani. This examination and comparison are in Chapter 7-8.

3.9. Community justice

Community justice paradigm has shaped responses of CJSs to breaking social norms with varying intensity in the last centuries (Crawford & Clear, 2001). Most crime issues seem to be unmanageable without community engagement and interventions (Capobianco, 2009; Carruthers, 2011; MoJ, 1999 Workman, 2011c). The concept of community is quite complex; there is no uniform, consistently adopted definition in criminological literature. To clarify the use of the term in this thesis, a definition provided by McCausland and Vivian (2010 p. 303) was adopted, accordingly a "*network of people and organisations linked together by a web of personal relationships, cultural and political connections and identities, networks of support, traditions and institutions, shared socioeconomic conditions or common understandings and interests"*. Whilst the term 'community' is frequently associated inseparably with shared locations in public discourses, the definition above refers to a system of connections based around mutual interests or goals or identity. Many Romani and Māori communities certainly adopt both aspects, while more emphasis is put on the connectivity features (Babusik, 2002; Chile, 2006; M. H. Durie, 2011).

Community justice approaches build upon a switch from conventional, offender-focused and adversarial procedures to more collective responses where most offences are considered as community issues. Communities are able to perform multifunctional tasks in problem solving, including crime prevention and offender reintegration. Authorities still reserve their social control functions, but they may yield part of this capability to communities to react responsively and culturally appropriately to local problems at local level (Ryan, Head, Keast & Brown, 2006). Accordingly, in promotion and realisation of public safety, the criminal

justice system is only one of the contributing actors. Application of some forms of criminal restrictions and deterrence is unavoidable, but they can be ineffective per se. On the contrary, public safety greatly depends on socio-economic justice and a set of adequate and properly directed socio-political interventions (Clear & Karp, 1999). Consequently, there are significant differences between conventional and community justice approaches. Community justice gives more prominence to social justice, ethnic tolerance and community cohesion, and calls for a criminal justice policy, which is essentially a subdivision of social policy. Community justice advocates suggest that innovative, progressive and socially inclusive criminal policy is necessarily community-based (Karp & Clear, 2002; Lanni, 2005; Lévay, 2007; Workman, 2011c).

Community-based restorative justice advocates indicate that the practice of the restorative approach in contemporary communities could have a significant influence, particularly in those postmodern societies where intra-community cohesion has already weakened, and where the formerly thriving community life has been waning (Balahur, 2007; Crawford & Clear, 2001; Kerezsi, 2012). New Zealand is widely renowned in international criminology literature for its unique and outstanding approach to juvenile justice demonstrated in a progressive and non-punitive youth justice system with a high rate of diversion and restorative initiatives (N. Lynch, 2012a). With regard to community and restorative justice approaches in the Hungarian juvenile justice system, there has been some progress but the picture is rather mixed, and an increasingly penal populist trend can be observed (Barabás, 2012; Dünkel, 2014 Gyurkó, 2014; Kadlót, 2014, K. Karsai, 2013; Lux, 2013; Rosta, 2014).

It is important to note that there is an inherent assumption in community-based restorative justice approaches that communities can be viewed as entities, which are able to deal – at least partially – with the consequences of structural inequities in the society (see, for example, Pranis, 2001). However, principal origins of structural causes for ethnic minority over-representation in the CJS may be found at a higher, macro level rather than at community level. Therefore, restorative justice and its present practices are critiqued by many scholars and experts regarding their unwitting ignorance of the influence of systemic injustices on criminality and on criminal justice responses (Caulfield, 1996; Lofton, 2004; McCold, 2004; Pranis, 2001; Tauri, 2011; Tauri & Webb, 2012). The main critique is based on the observation that extensive socio-economic marginalisation and the apparently permanent and entrenched nature concerning social disparities among ethnic minority individuals is not appropriately taken into consideration by restorative justice theory (Lofton, 2004).

Accordingly, restorative justice is criticised on the basis that it attempts only to put right particular, individual consequences without attempting to ameliorate conditions through which a perpetrator is probably a victim of both social and personal circumstances (Hearfield & Scott, 2012). Hearfield and Scott (2012) suggested that if restorative justice in ethnic minority context did not address the historical legacy of minority-majority structural relations, then it could hardly be viewed as restorative.

Most of the critical appraisals seem to be well-founded; still, it is suggested that restorative justice could be productively intertwined with critical criminology (see, for example, Lanni, 2005; Maxwell & Liu, 2007). What is more, community-based restorative justice is regarded as an inclusive and peace-making reaction to crime because it requires the embracement of the idea of social justice (Fuller, 2003). According to its proponents, the concept of social justice is associated with a more universal concept of justice than the orthodox view of 'criminal justice'. It represents another paradigm, which is characterised by the principles of structural equality, proper distribution of social benefits, burdens and representation among society's members – the parity of participation (Arrigo, 2000, Krizsán, 2012; Kymlicka, 2012; Rawls, 1971).

Early proponents of various restorative justice programmes had already suggested that restorative justice was able to offer an alternative to immanently discriminatory and racially prejudiced administrative procedures (Braithwaite, 1994; J. Consedine, 1995). This approach seems to be capable of expanding the range of focus of criminal justice stakeholders to *"the structure and processes of the social system, thus breaking away from the narrow vision of examining only law violators"* (R. C. Barnes, 2007, p. 27). It is proposed that restorative justice deals more appropriately with some inadequate features of the formal justice processes, enabling communities to cope with their internal challenges; it may tackle more efficiently problems of community disorganisation (Dickson-Gilmore & La Prairie, 2005; McCold, 2004; Morris & Maxwell, 2003; Tyler, 2006). Certainly, it requires a significant adjustment of the conventional attitude of stakeholders in a fairly conservative system, where individual culpability and accountability are core principles, together with being essentially indifferent to offenders' social and personal situations. It is suggested that Romani and Māori community justice institutions, on the other hand, are the ones in which the opposite is true (Caffrey & Mundy, 1997; M. Jackson, 1988). Their communities can be more meaningfully involved in the identification and reintegration of offenders, and in the administration of justice, often without recourse to institutions of the formal justice system (Loss & Lőrincz,

2002; Morris & Tauri, 1997; Tukoroirangi, 1994; Weyrauch & Bell, 2001; Workman, 2012b). With similar regard to the potential impacts of the existing structural trap and exclusion, Lofton (2004) emphasised that, through a more socio-economically focused approach of social and community justice, some of the systemic inequalities and criminal justice discrepancies could be addressed more effectively.

3.9.1. Community justice and disadvantaged groups

Harshness and monocultural composition of the majority of criminal and sentencing policies worldwide had destructive impacts on disadvantaged communities (Clear & Karp 1999; Garland, 2001b; Muncie, 2006b). Muncie (2006b) suggested that instances of inappropriate usage of the juvenile justice system to confront complex social issues in developed countries were still far too common. This punitive policy approach, which disproportionately affects underprivileged minority groups, almost inevitably curtails employment prospects and inflicts existential deprivation not only on offenders but also on their families and most notably on their children (Brewer & Heitzeg, 2008; Cunneen, 2006; Gabbidon, 2010; Garland, 2001b; Goldson, 2002; Gordon & MacGibbon, 2011; Spohn, 2000). Incarceration eventually can function as a relevant component of systematic social exclusion. This mechanism produces an intergenerational exclusion; children of imprisoned people are unfairly disadvantaged and largely excluded from meaningful participation in education, employment, healthcare and public and political life (Foster & Hagan, 2007; Goldson, 2002; Gordon & MacGibbon, 2011; Kerezsi & Gosztonyi, 2014; Lux, 2013). These effects, cumulatively, further deteriorate assets and organisational capacities of these already disadvantaged communities. On the other hand, prudent application of community justice models and principles to certain more serious and socially dangerous crimes could enable local communities to find their own harmonious arrangement between protection of community and necessary minimum levels of social loss as a result of law enforcement (Lanni, 2005).

Lanni (2005) ascertained that the growing popularity of the community justice paradigm could be associated with credibility and legitimacy challenges faced by CJSs, especially in disadvantaged, high-crime communities. These challenges are attributable to the forms of social controls, too, that have been increasingly limited to professionals; thus, communities have been gradually losing their influence on administration of informal controls (Christie, 2001; Garland, 2001a; Kerezsi, 2006; McCold, 2004; Pfohl, 1994). Community justice paradigm can have many benefits; among these is the potential boost to the respect for and

compliance with law and law enforcement by providing greater and more active participation in informal controls like prevention and conflict resolution in the community (Clear & Karp, 1999). Ordinary community members are able to exert informal controls, which are hard to evade because these are the most ubiquitous type of controls. When professionals are to enforce social controls it is hardly manageable to ensure similar results because of the frequent and inevitable absence of professionals from the community (Caffrey & Mundy, 1997; Dickson-Gilmore & La Prairie, 2005). This observation is among the strongest arguments for justifying the indispensability of various community justice models in social and criminal policy (Karp & Clear, 2002). A short outline of the interrelationships between Māori and Romani and community justice is in the next section.

3.9.2. Māori and Romani and community justice

It has been suggested that for many Māori and Romani communities informal control mechanisms and their traditional community justice institutions were preferable and more effective options compared to the state-run CJS (see, for example, Balahur, 2007; Bowen et al., 2012; Cahn, 2000, 2009; M. Jackson, 1988; Loss & Lőrincz, 2002; Marushiakova & Popov, 2007; Morris & Tauri, 1997). Māori and Romani control mechanisms and community justice institutions are viewed as more traditional ones, and furthermore, many communities are still participating in the identification of wrongdoers and in the management of conflict resolution. These methods of informal control are able to provide a larger probability that wrongdoers grasp the consequences of their conduct for their own community (Caffrey & Mundy, 1997; MoJ, 2001). Another important issue is the effects of social inequality and deprivation since they can significantly reduce the ability of these communities to operate informal controls over their members effectively. A prominent example is the extensive Whānau Ora initiative since 2008, which builds on empowerment of communities and whānau by supporting and strengthening families within a community context rather than individuals within an institutional context. While this initiative is not exclusively for Māori, Whānau Ora has a strong Māori cultural foundation; it honours collective entities and gives support to group capacity for self-management and self-determination across a range of social and economic sectors (Whānau Ora Taskforce, 2009). Unfortunately, there are no similar large-scale community projects focusing on Romani communities and on extended families; only some sporadic, ad hoc initiatives can be found (Babusik, 2007; UNDP, 2002).

3.10. Influence of critical and colour-conscious approaches in criminal policy

Since the second half of the 1980s, a growing recognition of critical theories influenced several criminal justice organisations, most notably the DoC (Marie, 2010). To a certain extent, they have accepted the limited ability of reacting to Māori offending without regard to the uniqueness of their circumstances, for example, by simply resorting to models imported from overseas (DoC, 2007a, 2007b, 2008a, 2009). Imported models have immanent shortcomings to show due regard for specific cultural and historical factors correlated with Māori offending (see, for example, DoC, 2007b, 2009; Farruggia, Bullen, Dunphy, Solomon & Collins, 2010; Maynard et al., 1999; McFarlane-Nathan 1999). Since the 1980s, there have been attempts to develop colour-conscious and culturally attuned alternatives to mainstream responses. Such initiatives included the Treaty of Waitangi Strategy, the DoC's Māori Strategic Plan 2003-2008, 2008-2013, the 'Closing the Gaps' scheme, iwi-led Crime and Crash Prevention Plans, recruitment/retention of Māori staff, cultural awareness trainings, Police Iwi and Māori Court Liaison Officers, Māori Focus Units in prisons with Whānau Liaison Workers, initiatives targeting Māori youth offending with strong tikanga focus, FGCs, the Rangatahi Youth Court, youth gang liaison projects, etc. (Morrison, 2009; Tauri, 2011). Detailed analyses of some of these initiatives are in Chapter 7.

In the Hungarian context, on the contrary, there is no evidence that policymakers and criminal justice stakeholders ever seriously considered, since the transition to democracy, the unique cultural and historical factors affecting the situation of Romani in the CJS. The Hungarian political and legal systems have not attempted to transcend the tenet of colour-blindness concerning law enforcement and criminal policy (Kerezsi & Gosztonyi, 2014; Majtényi & Majtényi, 2005, 2012). Participant H. stressed that:

> Participant H: *"not only the critical approach was totally missing in social and criminal policy, but there was no identifiable, consciously calculated and reflective social and criminal policy for Romani"*.

He diagnosed the political elite with:

> Participant H: *"general unwillingness to engage genuine and long-term planning regarding structural challenges"*.

Participant B. went further and gave a prognosis that:

> Participant B: *"mainstream political actors presumably would not consider seriously any profound changes in policymaking…unless fear of growing Romani population and of their growing influence in the future would compel them".*

Participant A. added that even:

> Participant A: *"launching state-funded, not colour-blind research projects delving into the situation of Romani in the CJS seemed completely unrealistic".*

Consequently, it is highly probable that critical theories or any type of colour-conscious approaches will not influence social and criminal policymaking in the near future.

3.11. Conclusion

Countless factors affect the present-day criminological situation of Māori or Romani, and there is a myriad of analytical and interpretation issues related to research on this topic. It seems evident that no explanation or theory produces a comprehensive account of the long-standing Māori and Romani over-criminalisation, although each could provide something useful to the full picture. It is clear that the complexity of any explanation would require greater elaboration, well beyond the scope of this thesis. Still, it is maintained that the study of structural injustices and racist and discriminatory factors within the operations of CJSs should be considered as a relevant human right, social justice and public policy issue, regardless of the different explanations of over-representations (see Cunneen, 2006). During the whole study, a reflective self-awareness has been sustained in this regard.

The most relevant criminological research theories with the potential to inform the study were considered. After a scrutiny of the conceivably distorted perceptions of certain visible minorities, and an investigation into the ethnically disparate impact in CJSs as potential evidence of discriminatory decision-making and procedure, a multifaceted critical approach was contemplated. Critical criminology seems to be adequately able to offset shortcomings of more conventional approaches where broader social structures and historical factors are commonly overlooked (Webb, 2003a). The nexus between issues of social cognition (implicit bias, stereotypes) and racial discrimination and colour-blindness was explored. A short review of the socio-cognitive literature suggested that CRT and critical legal jurisprudence with the emerging social harms perspective could add further valuable layers to the investigative lens of the study. Part of the study conceptualisation is the historical perspective, which considers impacts of (external and internal) colonialism on determining current interethnic relationships,

and on the pursuit of decolonisation and interest-articulation of these minorities. These themes seem consistent with the literature reviewed. This theoretical framework allows an evaluation of different responses to criminological challenges from Māori and Romani groups, and of their community justice concepts and institutions with prospective integration of traditional cultural practices into the CJS.

After the most relevant theoretical aspects were examined, an integrated critical and zemiologist approach was adopted as the principal lens for the investigations. Critical and zemiologist perspectives are among the most responsive ones to embrace the colour-conscious approach of the CRT (Cornell & Panfilio, 2010; Milovanovic, 2002; Yar, 2012). Moreover, these approaches emphasised how crucial it is to have input from the public and, more narrowly, from the community, regarding informal control mechanisms. This covers not only crime prevention but reintegration of offenders. Often, traditional ethnic groups have kept comparably more intact informal control systems. Accordingly, these theoretical approaches support investigation and utilisation of more autonomous community justice institutions like those that still exist among many Māori and Romani groups (Caffrey & Mundy, 1997; Loss, 2005; Morris & Tauri, 1997; Quince, 2007b; Szekeres, 2013). In the light of the long-standing disparate ethnic outcomes in CJSs, traditional community justice responses are relevant considerations for this study as a colour-conscious reaction. An outline of the historical and present-day aspects of structural disadvantages endured by Māori and Romani peoples in the wider society (in education, health, employment and other relevant social services), together with some of the effects of CJSs, is presented in the next chapter.

CHAPTER FOUR

An overview of the historical and current features of structural disadvantages faced by Māori and Romani peoples in the wider society (including social indicators and structural factors in education, employment, health and other social services) and some of their effects with regard to CJSs are provided in this chapter. The presence of monoculturalism and discriminatory attitudes and practices and their potential consequences, with some of the available evidence, are also presented in Chapter Four.

4. Social indicators of structural disadvantages and their consequences

In accordance with critical theories, Cavadino and Dignan (2013) argued that there was a kind of inevitability of disadvantages that significantly affected less powerful groups in social control mechanisms and most notably in penal systems. Among these groups, some ethnic minorities are well over-represented. Critical criminology approaches social justice as a long-term policy requirement in CJSs, and acknowledges the rights of different groups to distributive and compensatory justice including the *prima facie* recognition of the unjustness of being ethnic/racial groups in less favourable circumstances than other groups of the society (Arrigo, 2000; Lawrence, 2008). Cavadino and Dignan (2013) noted that most of the disadvantages were inbuilt; they emerged as consequences of the legal definitions of crime, of law enforcement strategies and practices, and of several predetermined criteria of decision-making in remanding, sentencing and parole. Among these criteria are, for example, secure jobs and adequate accommodation, certain level of income, stable family relationships, staying addiction-free, etc. These criteria in the CJS usually have discriminatory effects, which stem from parallel discriminatory social practices in housing, healthcare, education and employment. A good example is the effect of the remand status on subsequent sentencing decisions (Morrison, 2009; Phillips & Bowling, 2003). Consequently, marginalised groups often experience the adverse effects of structural factors without having adequate (personal) opportunities to influence them. Moreover, these criteria can have decisive roles regardless of the way, like uniformity and fairness, the CJS operates in individual cases. As a working

definition, it seems useful to invoke the way in which the Macpherson report in the United Kingdom (1999) defined institutional racism as:

> *"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviours, which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people."* (p. 28)

After a three-year-long investigation, Moana Jackson (1988) acknowledged the validity of similar observations regarding legal frameworks, when he suggested that the very nature of the monocultural features of the CJS put Māori in an unfavourable position. He found that monocultural stereotypes determined the operations of the CJS applying monocultural practices for dealing with suspects; therefore, it was an institutionally racist system (M. Jackson, 1988). Tauber and Végh (1982) and Tauber (1984) argued that the justice system followed a discriminatory pattern, where, besides the stakeholders' personal attitudes and discriminative practices, there were structural factors (ostensibly neutral legislation, practices, policies, etc.) detrimental to Romani groups, since their monocultural and culturally insensitive traits were producing disparate outcomes. Worldwide research literature indicates the necessity of considering responses that are based on a thorough investigation of the share of CJSs in producing and maintaining disproportionate outcomes by their monocultural features (Kerezsi & Gosztonyi, 2014; Morrison, 2009, Solt, 2012).

4.1. Comparative approach to the socio-cultural and legal backgrounds

Even though having markedly different historical heritage, noticeably distinct legal and administrative systems and a relatively substantial variation in demographic numbers and ethnic diversity, the comparison of New Zealand's and Hungary's social structures, contemporary population and socio-economic characteristics discloses that there are numerous commonalities, too. Socio-historical comparative analyses suggest that both nations are socially and economically developed countries with moral values and societal norms that do not differ considerably (OECD, 2011; Ringold, 2005). Additionally, relevant and justified comparisons can be drawn when addressing the ethnic dimensions of the two different juvenile justice systems. However, it is important to repeat the caveat presented in Chapter 2 that direct comparisons between New Zealand and Hungary are often problematic. Among

these challenges are the country-specific structures, peculiarities of the legal culture and discrete criminal and procedural provisions. Their juvenile justice systems do not have an identical scope; there are differing languages and terminologies, different types of data collection methods and crime statistics, etc. (Bennett, 2004; Brants, 2011; Heidensohn, 2007). Socio-cultural factors, demographic and socio-economic figures, which are relevant in a comparative study on the extent and handling of juvenile delinquency and its ethnic dimensions, are challenging to be compared due to their inherent complexity (Howard et al., 2000). Although differences between Māori and Romani history, culture, traditions and current social structures are remarkable, there are many common themes. Perhaps the most relevant is the similar aspiration for greater self-determination, for more meaningful involvement in policy planning and delivery concerning their life as a disadvantaged ethnic minority. However, only a careful consideration of the current social situation in both countries makes it possible to explore empirical lessons, and to evaluate the transferability of various policies and models between the different CJSs.

The shared starting point in the case of Māori and Romani is the common premise that the consequences of intergenerationally accumulated socio-economic disadvantages and discriminatory tendencies, which are correlated inseparably with crime and victimisation, are so severe that self-healing cannot be reasonably expected. Critical theories underline, among the causes of criminality, how the damaged or dysfunctional social environment can predispose individuals to offending behaviour. In both countries, histories of social injustices, marginalisation and exclusion have had negative effects on children's and young people's social, emotional and moral development; and they have often resulted in patterns of intergenerational criminality. To make significant progress in the field of social justice for Māori and Romani requires a system of social management that more adequately incorporates their values and social norms. This study critically analyses the complex interrelationships between the historical, social, cultural and legal backgrounds of social control systems and the unique social situation of Māori and Romani communities. While various facets of these countries' juvenile justice systems and their complex ethnic minority relations have already been more or less documented, this research attempts to provide a comparative analysis of differences and similarities in reactions given by the justice systems to youth crime of disadvantaged ethnic minorities. The next sections first examine the most noticeable differences in ethnicity-based discrimination in both countries.

4.2. Comparison between the gravity of ethnicity-based discrimination

Studies of the various forms of racism and discrimination are extensive and well-established. Still, there are substantial differences not only between the forms of racism and discrimination but also between the studies investigating them (Eberhardt & Fiske, 1998). Arguably, discriminative and racist feelings and beliefs on the part of disadvantaged minority groups towards others observed as unfairly privileged or repressive are, likewise, discriminative and racist. However, they generally are reactive responses of the victims of disparities and injustices (Blagg et al., 2005; Bowling & Phillips, 2002; Dencső & Sik, 2007; Spoonley, 1993). Moreover, the term 'racism' in public thinking is predominantly connected to dominant groups in societies because they are regarded as having the means to oppress others (L. E. Ross, 2010). The investigation of these 'reactive' or 'defensive' racisms obtains much less attention here because of the chosen topic of the study; they mostly gain importance where the potential co-operation and partnership is examined.

Comparisons based on the literature review (Chapter 3) showed that similarities are abundant in relation to the features of ethnicity-based discrimination of Māori and Romani. Nevertheless, differences are equally relevant in a comparative study. Fraser's (1995) work presented the magnitude of the influence of negative preconceptions that determined not only public and political attitude regarding Romanies in Europe, but at times the evidence underpinning 'popular facts' that were inaccurate or erroneous because of entrenched prejudice. The prevailing concept of socio-cultural otherness of Romanies superseded the now anachronistic biological/genetic determinism; still, many studies merely rephrase old-time assumptions, stereotypes, prejudices and negative generalisations. It was an astonishing revelation during this research that even in a recently published doctoral dissertation, the author (a Romani police officer himself) concluded that *"the adherence to the traditions among Romanies were stronger due to some genetic factors"* (Szendrei, 2011, p. 71). There are numerous examples of these negative generalisations like being genetically more prone to criminal acts, about itinerant lifestyle[11] or about false myths of child abductions, etc. (Doughty, 2013; Dupcsik, 2009; Okely, 1983, Póczik, 2003b). These unsubstantiated claims

[11] Itinerant lifestyle characterises now only a tiny proportion of Romanies; in Hungary groups with itinerant traits are already almost non-existent (Dupcsik, 2009).

can have disastrous consequences especially when they appear under scientific disguise (Kende, 2000). Nicolae (2007) showed the sharp distinctiveness existing in the study of contemporary racism concerning Romani:

> *"Despite the fact that anti-Gypsyism fits academic descriptions of racism, until very recently the … discussions/analyses of racism have by and large ignored or simply paid cursory attention to the plight of the Roma, and have not made much effort to theorise/analyse the discrimination faced by Roma."* (p. 22)

The Eurobarometer 2008 survey conducted in many EU countries revealed a similarly eye-opening finding. Even among the self-reportedly tolerant and 'anti-racist' majority group members, there was a significant proportion, in every country, who had hostile feelings towards Romanies. Figure 4.1 indicates that there was an about 36% share of this group in Hungary, which put the country in the mid-range among the surveyed countries (Vitale & Claps, 2011). However, since then, anti-Romani attitudes have worsened (Farkas, 2014; HHC, 2011; Váradi, 2014).

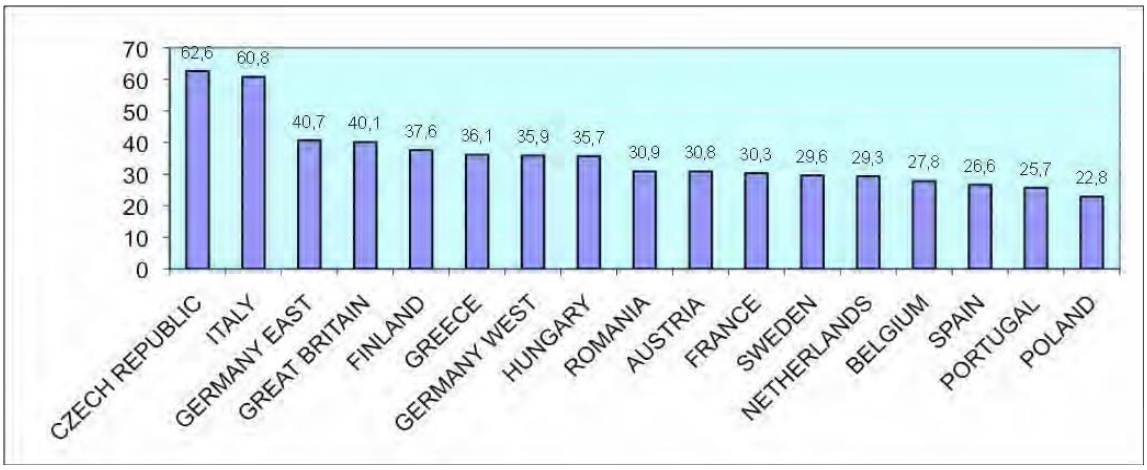

Figure 4.1. Level of anti-Romani hostility among self-reportedly tolerant respondents. Vitale and Claps, 2011, p. 232. Copyright 2008 by Eurobarometer. Reprinted with permission.

The government attitude regarding the study of potential bias and discrimination in its own structures and operations is even less willing than it is in the academic sphere (Majtényi & Majtényi, 2012). In May 2012, the government went further and 'officially announced' that *"there is no discrimination against Romani in Hungary"* (as cited in Immigration and Refugee Board of Canada, 2012, p. 3). In contrast, in New Zealand there has been a more balanced and straightforward academic and public discourse on, and government approach to, these challenges and the improvement of the situation of Māori in general. Numerous government-sponsored investigations have been published revealing uncomfortable facts and using self-critical language (see, for example, Gordon & MacGibbon, 2011; MoJ, 1998; 2011;

Morrison, 2009; TPK, 2000). In 1988, the 'Daybreak Report' (prepared by the Ministerial Advisory Committee for the Department of Social Welfare) summarised the most critical issues that Māori had regarding social services and the CJS. The 'Daybreak Report' can be viewed as a critical juncture for the government and lawmakers because it recognised and declared the existence of institutional racism in the individualised practice of government agencies (Tauri, 1999). The report ascertained that not only the operations of the Department of Social Welfare but the whole society were dominated by Pākehā monoculturalism, resulting in alienation for Māori (Ministerial Advisory Committee, 1988). The report emphasised the consequences of the reduced or missing capacities of Māori self-governance; and the corollary of these deficiencies: the operations of the social services and the CJS could not alleviate but intensified the problems (Bowen et al., 2012).

The application of a broader social lens, in juxtaposition to the current and typical experiences about the nature of everyday racisms in the two countries, discloses conspicuous differences in social interactions. In New Zealand, Guerin (2003, p. 30) determined that in most cases individuals *"do not openly slander members of other racial groups but they still subtly talk in prejudicial ways when safe to do so".* Media representation of Māori, particularly in a criminological context, remains a very problematic issue; however, taking the 'big picture', the tendency is rather encouraging (Alia & Bull, 2005; HRC, 2011; Matheson, 2007; Nairn et al., 2012; Walker, 1996; Wall, 1997). The Māori Television Service Act 2003 was a watershed moment, not only because of its role in revitalising Māori language and culture, but also as it turned into a model of how to offset the biased and negative portrayal of Māori by the mainstream media (Moewaka Barnes et al., 2013). Romanies are more vulnerable and defenceless in this regard; their social and political power is much more limited. Participant P. illuminated that historically, in most instances, the efficient promotion of Māori interest came from Māori community and lobby groups:

> Participant P: *"If you actually have a look at some gains that Māori may have over time, it's actually being demand-driven. … Over time, for example, we have got Te Kōhanga Reo. The first one was established in 1982, a decade later there were many hundreds of them. This just helped the sustainability of the language. New Zealand Māori Council was taking the Government to the Privy Council. Now we have Māori Television. Demand – that is what I mean."*

Mikaere (2000) noted that Kōhanga Reo initially, for many years, operated completely outside the state system, being self-funded and mostly relying on the voluntary and unpaid work of many Māori women. The emergence of a stronger voluntary sector, which aspires

after social change, and challenges the existing structures causing the marginalisation and exclusion of large segments of the society, has already made some difference (Chile, 2006; Consedine & Consedine, 2012; Poata-Smith, 2004b). The effectiveness and quality of bilingual and immersion schools are good; the educational achievement of Māori students (completion with University Entrance qualification) was about equivalent to non-Māori students in English-medium schools by 2010, and twice as high when compared to all Māori school leavers (TPK, 2012). Māori empowerment initiatives, anti-discrimination legislation, and its enforcement, coupled with a more vigorous activity of the civil society, have more efficiently eradicated overt racisms in the last decades, while indirect, more covert or subtle racism remained rather intact[12] (see, for example, HRC, 2012; Morrison, 2009). Unfortunately, this 'achievement' is largely missing regarding Romani in the social and political arena (see, for example, Dupcsik, 2009; Majtényi & Majtényi, 2005, 2012). Evidently, this progress does not mean that racism and discrimination are not significant issues in New Zealand (HRC, 2011; Moewaka Barnes et al., 2013; Sibley et al, 2011). However, by contrast, it is worth citing Timmer's (2010) research experience; it illuminates strikingly the atmosphere and attitudes she met in Hungary:

> *"The general consensus that I came across while doing my research was that Gypsies could not be expected to change, so there was little point in providing aid. Those who work with Roma populations and issues, myself included, become so familiar with discriminatory language and comments that at a certain point they can cease to be data and instead become predictable annoyances."* (p. 268)

In the light of the comment above, it might not seem so remarkable to note that during this study several personal reports of similar experiences have emerged. Available empirical research data corroborated the more ominous conditions in Hungary (see, for example, Farkas et al., 2004; Fellegi, 2009; H. Szilágyi, 2009; Kövér et al., 1997; Solt, 2012). However, three examples are worth reporting here, revealing the blatancy and extensive nature of this phenomenon in different areas of society. Participant H. recounted the case of a Romani judge who was:

[12] For the sake of clarity, a relevant distinction should be made here between direct and indirect racism. Blagg et al. (2005) observed it as the difference between disparate treatment and disparate impact; furthermore, as Krieger (1995) noted, regarding indirect racism/discrimination, the focus had to be on the result, and not on the intent.

> Participant H: *"regularly 'teased' by colleagues with regards his ethnicity; for example, many mornings when arriving to work he was greeted with 'jokes' such as »see, one of your relatives is just brought to be tried again«"*.

During this research, there has been no encounter of any, similarly blatant examples or anecdotes in the New Zealand context. Participant J. recounted another example of everyday racism:

> Participant J: *"There is harassment-style policing in different cities and villages, where police targeted staff members and teachers of NGOs for one reason only, their assistance of disadvantaged Romani communities"*.

They were regularly stopped and routinely fined by local police under the pretext of intensified law enforcement operations. Participant J. also reported that:

> Participant J: *"Social pressure can be crucial. If a police officer would like to be accepted by the majority population including their peers, then it's almost obligatory to be biased against Gypsies. ... even police schools, their atmospheres, were such that they've been able to create or intensify anti-Gypsy attitudes. It's worth mentioning how the management of the Police Academy reacted to the results of research conducted among its students on their views regarding Romanies. The report was classified immediately."*

Romanies are seen by the majority of police officers as 'others' and as 'inferiors', culturally or genetically or both (Szendrei, 2011). A recent documentary (Surányi & Takács, 2013) showed that the operations of the police and other authorities regularly targeted Romani individuals in a clearly harassing manner. The media crew of the documentary experienced a prominent example of the differential treatment. They conducted a rather unsophisticated 'quasi-experiment', which proved that none of the majority individuals were stopped and fined in exactly the same situation on the same day during law enforcement operations (Surányi & Takács, 2013). Participant G. reported another shameless, but a clearly not exceptional, episode of 'overt, everyday racism' she encountered during her research project. A principal of a primary school demonstrating the 'integration efforts' of the school in front of the students told:

> Participant G: *"Come in, and I will show you that we integrate, since children from the Romani settlement are also here and they are not segregated at all. Then in the classroom when everyone was silent, she remarked, 'So can you smell that they* [children from the poor Romani settlement] *are here?' The principal then went on continuing the humiliation of Romani pupils, and made the six–seven-year-old children sniff at the air. Children of this age are already well capable of 'realising' the context of that remark and action. And this is an 'ordinary' situation, and some people really regard it as integration."*

Among the most important factors affecting youth crime rates are the quality of health and education services, the level of non-enrolment and the future employment opportunities of youths (Gillborn, 2008; N. Lynch, 2012b; MoE, 2008; Rosta, 2014; Varga, 2008).

4.3. Social indicators in the field of education, employment, health and environmental quality

Adequate participation in different spheres of social systems, like the labour market, educational, health and other public and political institutions, is indispensable to prevent the process of socio-economic deprivation and marginalisation. Major social systems are inseparably intertwined in modern societies, therefore exclusion from one renders exclusion from others quite probable. Young (1999) demonstrated these social interactions through intergenerationally accumulated socio-economic disadvantages shown by various social indicators. Critical criminology, CRT and zemiology put special emphasis on structural factors and advocate that social policies must pursue greater social justice (Arrigo, 2000; Cornell, & Panfilio, 2010; Crenshaw, 2011; Webster, 2012; Yar, 2012). Study participants, in general, agreed on a conclusion that social policies in both countries had been decisive regarding the current social position of Māori and Romani. Most of them concurred on the issue that it had not been inevitable that such deprivation and such a disadvantaged, marginalised socio-economic situation emerged. As Participant N. summarised:

> Participant N: *"It was the failure of the social policy; nothing was inevitable* [i.e. the disadvantaged position of Māori]. *I mean, before Māori, the Irish populated the prisons. We are talking about a complex mix of facts that affected people, the colonisation of the indigenous population ... alienation of their resources and all the rest. Then you compound that with social policies, the Rogernomics era late 1980s-early 1990s, where you actually preserved the value of capital, by flooding the market with people and not actually allowing them the opportunity to work really. Creating a whole underclass, marginalised group of people and then, that is inevitable, what happens then. Māori already populated the lower class, they were working in manual occupations and areas where people, even who had jobs, were losing jobs."*

Ultimately, processes of marginalisation can easily eventuate in the emergence of underclasses (Ladányi & Szelényi, 2004, 2006; Young, 1999), where a dysfunctional family environment is common. Furthermore, obvious correlation can be found between family environment and future life prospects of children. The environment a child is raised in more often than not has a lasting influence on the types of behaviour that will be accepted as normal in their adulthood. Parents, who are absent or criminally active, usually provide lower

standards of care and supervision; and they may have mentally, physically or sexually abusive relationships and frequent changes of partners (M. J. A. Brown, 2000; Fergusson, McLeod & Horwood, 2013; McLaren, 2000, 2002). These circumstances usually create a hostile and unsafe environment for children. Unsurprisingly, Māori and Romani youths, similarly to other populations, are more likely to accept violence as normal if they were raised in a violent family conditions, which more frequently exist among disadvantaged ethnic families (Balzer et al., 1997; Fergusson & Horwood, 1998; Fergusson, Boden & Horwood, 2006; Marie et al., 2009b; Póczik, 2003b; 2010; Solt, 2012; Solt & Virág). The next sections examine the nexus between the main social spheres and Romani and Māori people.

4.3.1. Education

Interestingly, there are only two countries in the world where the quasi-free school choice system was introduced, New Zealand and Hungary. In practice, it means that parents have the opportunity to enrol children in a school they regard as more satisfactory for their needs, even if it is outside their residential district. Many parents opt for higher socio-economic status schools as the practically unfettered school admissions policy has replaced automatic student assignment. Both countries have experienced similar consequences with 'spontaneous segregation'; expert reviews found that it has led minorities to become increasingly concentrated in low socio-economic status schools (Fiske & Ladd, 2000; Havas & Liskó, 2005; Kertesi & Kézdi, 2005, 2012, 2014; Ladd & Fiske, 2001). Thus, the impacts of these changes were clearly detrimental for Māori and Romani students (Bishop, 2003; Bishop, O'Sullivan & Berryman, 2010; Crooks, Hamilton & Caygill, 2000; Daube et al., 2011; Kertesi & Kézdi, 2005, 2009, 2014; MoE, 2008; Penetito, 2010). However, in Hungary, comparably stronger patterns of widespread 'white flight' can be detected (Kertesi & Kézdi, 2005, 2012, 2014). A standard index of segregation compiled by Kertesi and Kézdi (2013) revealed that ethnic segregation more than doubled in areas with more than one school. Kertesi and Kézdi (2014) ascertained again that significantly lower quality of teaching, educational services and scarcity of resources characterised educational segregation. In 2013, in a landmark ruling, the European Court of Human Rights [ECHR] found a prima faciae case of indirect discrimination.[13] The ECHR determined that *"The definition of mental disability as*

[13] ECHR Horváth and Kiss v Hungary (29/04/2013). At [11]: *"in 2004, 5.3% of primary school children were mentally disabled in Hungary, whereas this ratio stood at 2.5% in the EU. In the last decade, the rate of mentally disabled children has been continuously increasing, especially in the 'mild mental disability' and 'other*

comprising social deprivation and/or having a minority culture amounted to bias and prejudice" against Romanies (Horváth and Kiss v Hungary 2013, para. 91). However, the ECHR decision has not resulted in any significant change regarding this practice yet (Farkas, 2014; Rostás, 2015). What is more, in April 2015 the Supreme Court, in virtual defiance of the above-mentioned ECHR ruling, overturned lower court rulings and effectively sanctioned, in agreement with the current government's position, segregationist practice disguised as religious freedom.[14] The Supreme Court, in essence, declared that segregation of Romani children was lawful in religious-run schools, while the government has been strongly encouraging different Christian churches to take schools over. Intra-school segregation is also pervasive in the country. By now, according to the FRA's survey (2014), there is a much higher share of Romani children in segregated classes (45%) than in comparable countries in the EU like Bulgaria (29%), the Czech Republic (33%) and Romania (26%). A segregated school environment is among the main risk factors for delinquency in the case of Romani children (Kerezsi & Kó, 2013; K. Ligeti, 2008; Póczik, 2001, 2003b; Solt, 2012).

There is a remarkable difference between the two countries in how they attempt to handle school segregation, special and alternative education. In the alternative education sector, there was a more pronounced ethnicity imbalance in comparison to the general New Zealand school-aged population. In 2006, the share of NZ European (in the general school-age NZ population) was 59%, Māori 21.6% and Pacific was 9.1% (Daube et al., 2011), while in the alternative sector Pākehā accounted for 53% of enrolments, Māori for 34% and Pacific for 4%. Figure 4.2 shows the proportion of special education students by their ethnicity in 2009. These figures are relatively consistent with school-aged population figures (Daube et al., 2011) as Pākehā were the largest group (49%), Māori constituted the second largest group (24%), followed by Pacific Island (14%), Asian and Other ethnicity students (13%). These numbers suggest that a conscious policy of segregation or other malpractice through special schools cannot be statistically detected (Thrupp, 2007).

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disability' categories. Children with disadvantaged background, especially Roma ones, are significantly over-represented amongst children with a disability".

[14] The Supreme Court's reasoning was based on the free choice of religion and school, which apparently supersedes the prohibition of segregation. Detailed analysis, critique of the judgement and its reasoning is available at http://www.cfcf.hu/node/129

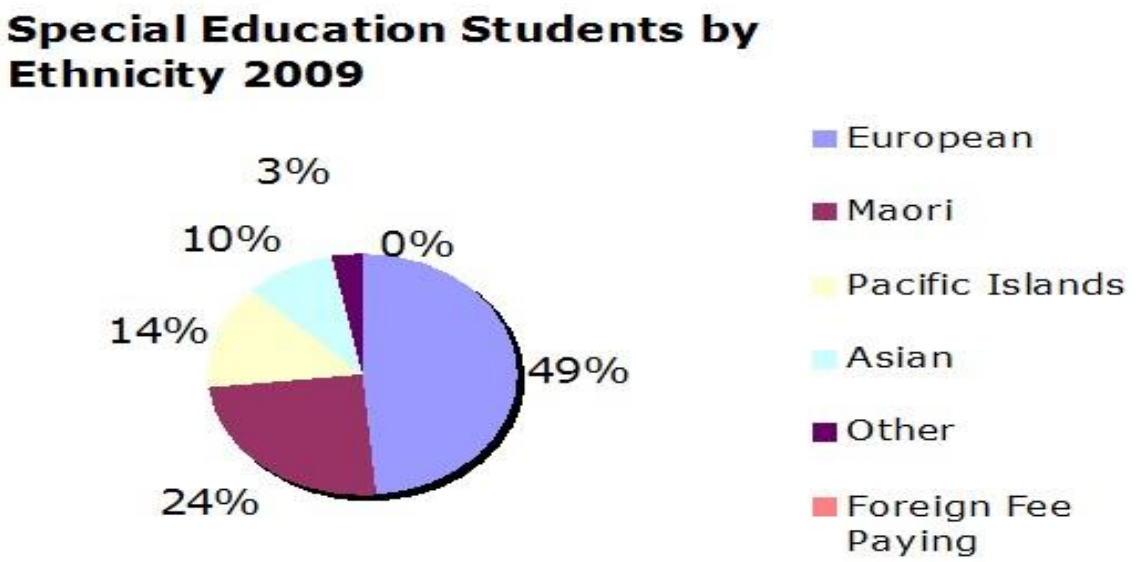

Figure 4.2. The proportion of special education students by ethnicity (Daube et al., 2011). Copyright 2011 by Daube et al. Reprinted with permission.

The alternative education sector has grown continuously in the recent decades; however, quality education services targeting Romani children in this sector are close to non-existent (Farkas, 2014; Kertesi & Kézdi, 2012; 2014). The widespread practice of misdiagnosis of Romani children as mentally disabled and their subsequent placement into special schools (special classes) has a long and unfinished history (Farkas, 2007, 2014; Havas & Liskó, 2005; Henkes, 2000; Pik, 1999; Varga, 2008). This practice has been a frequently used tool to segregate Romanies in the publicly funded school system since at least the 1970s (Kertesi & Kézdi, 2014; Pik, 1999). In 1974/1975, 11.7% of Romani children attended special education. By 1985/1986, their proportion had reached 17.5%, whereas only 2% of majority Hungarians studied in special schools and classes (Havas, Kemény & Liskó, 2001, p. 6). Havas (2008) estimated that the share of Romani students in special education might have reached an extraordinary 85%. Educational authorities 'invented' and since then applied an apparently neutral criterion to disguise the real ground of their discriminative practice. This has been precisely corresponding with Lord Macpherson's (1999) previously cited definition for institutional racism. This criterion was the 'notion of familial disability'; it has been used for the justification of placement of a disproportionate number of Romani into special education (Greenberg, 2010; Havas & Liskó, 2005).

One of the most reliable indicators of future criminal activity is the non-attendance of adolescents in schools (Hazel, 2008; Maxwell et al., 2004; Muncie, 2001). Socio-economic factors are crucial in relation to non-attendance and early school leaving; however, Penetito (2010), Else (1997), Jefferies (1997) and Crooks et al. (2000) found that Māori students faced

extra barriers that made it less probable for them to stay longer in schools. Those barriers were lower teacher expectations, racist comments by peers, difficulties that some Pākehā teachers experienced in communicating with Māori and the frequent lack of knowledge of Māori cultural differences. Turner (2013) ascertained that unconscious bias influenced teachers' relationships with their (14–16-year-old) Māori students resulting in lower expectations for and more negative beliefs in them than students in any other ethnic group. Becroft (2013, p. 38) noted that the *"single biggest initiative to reduce youth offending would be to ensure that all young people were engaged in meaningful mainstream secondary school, alternative education or vocational training"*. There was a general non-engagement with education among youth appearing before the Court. Becroft (2013) provided estimations; accordingly, up to four-fifth of juveniles are not engaged with education; among them Māori have the largest share. In 2011, 22.4% of Māori youth were not in education, employment or training [NEET], while the same indicator for non-Māori was 9.1% (TPK, 2012). Educational data indicates that the gravest concern is the number of non-enrolled students. Table 4.1 shows that among them, Māori were greatly over-represented; their proportion was 61% in 2009, whereas the share of Pākehā and Pacific peoples was only 25% and 11%, respectively. This trend has been consistent since at least 2005 (Daube et al., 2011; TPK 2010).

Table 4.1

Number of non-enrolled students by ethnic group

Non-enrolled students	2005	2006	2007	2008	2009
Asian	11	12	15	32	32
European	542	667	582	544	662
Māori	1222	1560	1226	1409	1585
Other	38	31	38	51	63
Pasifika	193	210	219	279	277
Total	2006	2480	2080	2315	2619

Note. MoE, 2010. Copyright 2010 by MoE. Reprinted with permission.

The latest available data shows that in September 2015, there were about 131,000 Māori in the 15-24 years' age bracket. About 27,200 Māori youth were NEET, which is an increase of 800 Māori youth from a year before. Among Māori aged 15-24, 16% of males and 26% of females were NEET in 2015. Māori females' NEET rate declined, while the rate for males rose (Ministry of Business, Innovation and Employment, 2015).

The right-wing Orbán government's educational policy and public works programme since 2011/12 has significantly contributed to the increase of Romani dropouts and early school leavers who mostly remain without any appropriate qualifications. The new policy reduced the school leaving age from 18 to 16 years after a law change of the compulsory school attendance rules[15] (Kertesi and Kézdi, 2014). Herman's (2014) preliminary statistical analyses already showed that the most adversely affected were the marginalised groups, where Romani are highly over-represented. It was projected that the coming years would create an increasingly big gap in school achievements between disadvantaged and majority groups. This is a stark contrast since the gap between Māori and Pākehā in obtaining National Certificate of Educational Achievement [NCEA] has been closing, as Table 4.2 shows.

Table 4.2

School Leavers with a Minimum of NCEA Level 2, by ethnic group 2001/2012

Ethnicity	2001	2012	absolute change (2012-2001)	relative change
European	68.5%	82.1%	+13.6%	19.9%
Māori	40.6%	60.9%	+20.3%	50.0%
Gap	27.9%	21.2%	-6.7% (closing gap)	-24.0%

Note. Statistics NZ, Census, 2001, 2013. Copyright 2001, 2013 by Statistics NZ. Reprinted with permission.

Other indicators in the different stages of education also show some achievements in closing the gap between Māori and Pākehā over the past decade (Marriott & Sim, 2014). Table 4.3 and Table 4.4 show changes in participation rates in early childhood and in tertiary education. Table 4.5 depicts the changes regarding bachelor's degrees and other post-graduate qualifications. There is significant gender disproportionality among Māori graduates, as 71% were female (MoE, 2013). Males are highly over-represented amongst youth offenders (over 80%). Better educational achievements correlate with reduced criminal activity (Cleland & Quince, 2014; DoC, 2007a). Ergo, improvements in educational gender inequality could assist Māori in obtaining a job that helps them live crime-free.

[15] National Public Education Act 2011 s 45 (6); it has entered into force on the 1st of January 2013.

Table 4.3

Participation in early childhood education by ethnic group 2000/2014

Ethnicity	2000	2014	Absolute change (2000-2014)	Relative change (2000-2014)
European	94.2%	98.1%	+3.9%	4.1%
Māori	83.1%	93%	+9.9%	11.9%
Gap	11.1%	4.1%	-7.0% (closing gap)	-37.0%

Note. MoE, Education Counts. 2015. Copyright 2015 by MoE. Reprinted with permission.

Table 4.4

Age-standardised tertiary participation rates by ethnic group 2001/2012

Ethnicity	2001	2012	Absolute change (2001-2012)	Relative change (2001-2012)
European	7.5%	8.0%	+0.5%	6.7%
Māori	6.6%	9.9%	+3.3%	50.0%
Gap	0.9%	-1.9%	-2.8% (gap is gone)	-311.1%

Note. MoE, Education Counts. 2015. Copyright 2015 by MoE. Reprinted with permission.

Table 4.5

Proportion of the population with a bachelor's degree or above, by ethnic group 2001/2013

Ethnicity	2001	2013	Absolute change (2001-2013)	Relative change (2001-2013)
European	10.8%	18.6%	+7.8%	72.2%
Māori	4.0%	9.1%	+5.1%	127.5%
Gap	6.8%	9.5%	+2.7% (increasing gap)	39.7%

Note. Statistics NZ, Census, 2001, 2013. Copyright 2001, 2013 by Statistics NZ. Reprinted with permission.

At least proportional participation of Romani in early childhood education would have strategic significance for adequate educational achievements (Kertesi & Kézdi, 2011; G. Ligeti, 2000). Unfortunately, at the preschool-age the exclusion from the education system already begins (Pik, 2000). To start, there is a massive disproportionality regarding institutional and foster care, most notably under the age of six. Herczog and Neményi (2007) found that Romani in this age group were almost four times over-represented in comparison to majority children. Attendance rates in kindergarten were 88% in 2003 for non-Romani aged 3-5, while only 42% for Romani children (Kertesi & Kézdi, 2005). Liskó and Fehérvári (2008) conducted an extensive survey with 2,000 teachers from 150 schools; they found that a two-thirds majority accepted the 'deficit theory' approach. The vast majority of teachers working with Romani were convinced that only students and their families were to be blamed

for educational failures. They thought that schools and teachers did not play any role in their unsatisfactory educational achievements. One-third of the surveyed teachers attributed the lack of progress to genetic factors; 65-93% of them agreed with various stereotypical statements, while they believed that they did not hold any prejudiced views towards Romani children and families (Liskó & Fehérvári, 2008). It was a revealing close-up of current conditions, when Participant D. (having researched interethnic relations and community-based conflict resolution) reported that:

> Participant D: *"We watched meticulously all the interviews and we just simply noticed that whenever some physical violence was brought up, in each case Romani were somehow always engaged in it. They talked about exclusion in their daily life. They regularly reported corporal punishment and physical discipline in schools. After a while it was quite unnecessary to record their ethnicity since we never heard about any physical ill-treatment, except in cases in which Romani were involved."*

Teachers' mindsets have inevitably created a further major impediment to Romani students' educational achievements, because they have low expectations for them. This in turn generates a downward spiralling, self-fulfilling prophecy of under-achievement and failure (Bereczky & Fejes, 2010, Kertesi & Kézdi, 2010b, 2012; G. Ligeti, 2000). There is another, albeit less influential, factor affecting achievements. Some Romani communities are still in disagreement over the necessary level of integration into the majority society; traditionalists have greater insistence on maintaining their distinct identities including efforts to preserve and promote Romani language and culture in schools and curricula. Ambitions to integrate can be in conflict with the aim of upholding Romani identity. This could have disadvantageous consequences for academic achievements (Greenberg, 2010; Ringold et al., 2005).

The low level of Romani progress is not entirely due to exclusionist patterns in the educational sector. It is attributable to the complex consequences of social marginalisation, poverty, inadequate housing, lower health status, unmotivated parents and children, and frequent absence of role models showing success through education (Greenberg, 2010; Havas et al., 2001; Kertesi, 2005). Figure 4.3, 4.4 and 4.5 demonstrate the long-term presence of the gap in educational achievement (historical Romani and national trends). All figures show the level of education completed by the adult population, by year of birth, separately for Romani and the total population. The non-Romani figures are more favourable than the national ones since the Romani fraction in the cohort reduces the overall number.

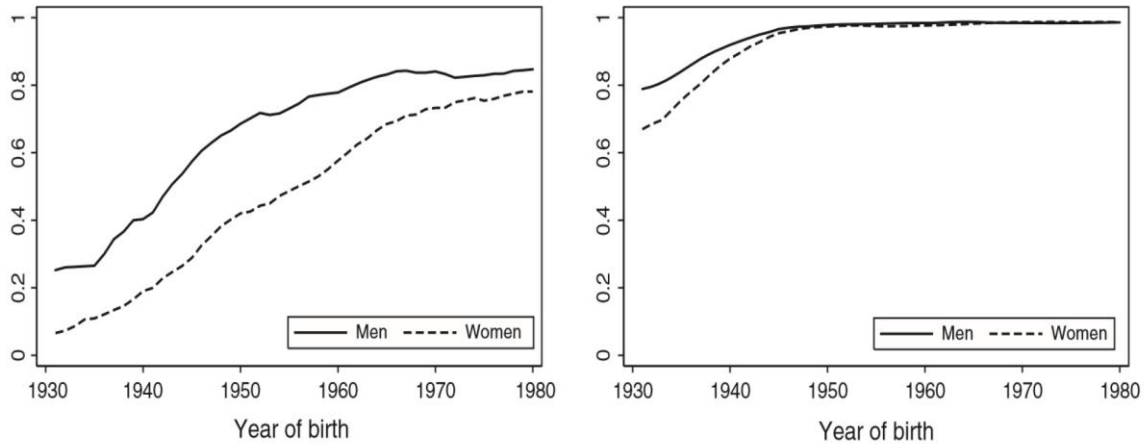

Figure 4.3. Trends in Romani and national educational attainment (yearly birth cohorts). **Primary schools. Left panel Romani, right panel national figures.** Kertesi and Kézdi, 2010a. Copyright 2010 by Kertesi and Kézdi. Reprinted with permission.

Figure 4.3 illustrates that primary school completion was more than 97% in every cohort born after 1950. Romani advanced slowly, first males born after 1960 attained the 80% benchmark; females needed 20 more years for the same rate (Kertesi and Kézdi, 2010a).

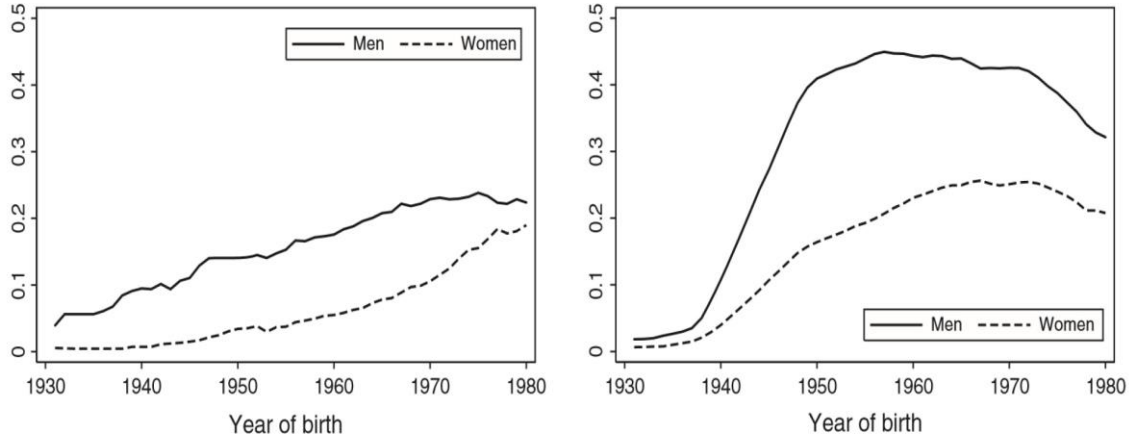

Figure 4.4. Trends in Romani and national educational attainment (yearly birth cohorts). **Vocational schools. Left panel Romani, right panel national figures.** Kertesi and Kézdi, 2010a. Copyright 2010 by Kertesi and Kézdi. Reprinted with permission.

As Figure 4.4 depicts, skilled blue-collar workers were in great demand after WWII, consequently vocational training increased remarkably, particularly among men. Vocational school completion for the cohort born in 1950 exceeded a total average of 40%. With some lag and to a lesser extent, Romani men participated in this growth. Their same indicator reached the highest level at 20% 20 years later. With the economic transition, the demand for manual labour plummeted; consequently, cohorts born after the mid-1970s witnessed a downward trend (Kertesi and Kézdi, 2010a). The other side of the coin is the secondary school completion rates shown in Figure 4.5. After 1990, when the cohorts born in the mid-

1970s left primary schools, participation in secondary schooling started to rise. However, Romani did not follow the national average, either in the decline in vocational training or in the surge in secondary education. More than half of the cohort born in 1980 earned secondary school degrees, while the same indicator for Romani remained consistently below 5% (Kertesi & Kézdi, 2010a). Tertiary education achievements are not depicted here, but Romani numbers would be less than 1% in these cohorts, while the national average would be over 30% (Havas, 2008; Kertesi & Kézdi, 2014).

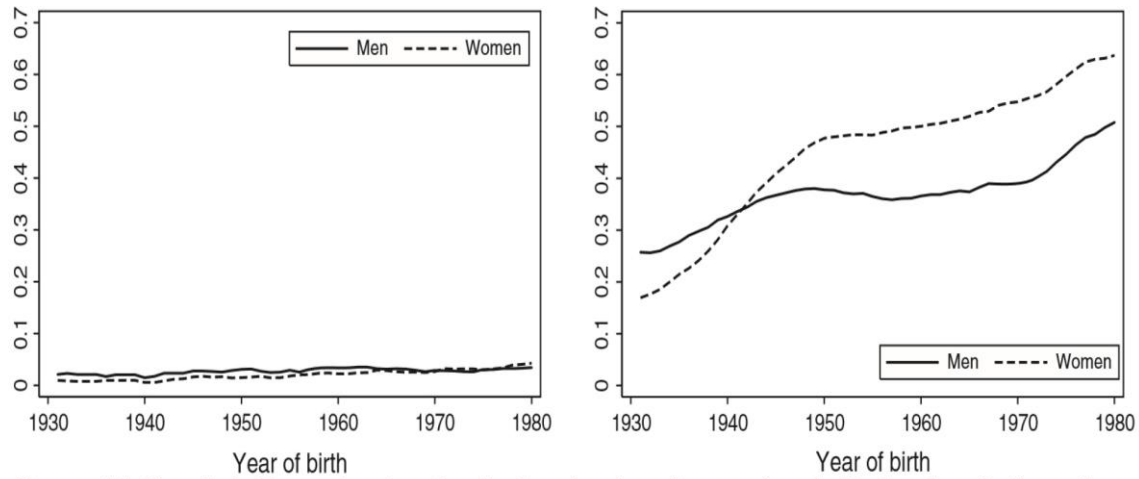

Figure 4.5. Trends in Romani and national educational attainment (yearly birth cohorts). **Secondary schools. Left panel Romani, right panel national figures.** Kertesi and Kézdi, 2010a. Copyright 2010 by Kertesi and Kézdi. Reprinted with permission.

By 2009, in the age group of 16-64, the proportion of Romanies graduating from secondary schools was only 2%, while in the total population 29% held high school diplomas (Kertesi & Kézdi, 2014). In 1993, the Romani cohort had a negligible share of participation in tertiary education (0.22 %). By 2011, there has been an almost tenfold increase (2%), which at first seems impressive, but in fact, the absolute change between Romani and national numbers shows an ever-increasing gap. Participation in tertiary education in 2011 (age group 20-24) was almost 40% for non-Romani, a huge increase from 14% in 1993. Absolute change (1993-2011) is an increasing gap of 24.7% (13.8%–38.5%), the relative change of the gap is a more extreme number: 379 % (KSH, 2002, 2013; Magyar Agora, 2005). The next sections examine another relevant aspect of criminogenic risk factors, the labour market situation of Māori and Romani. Future employment prospects can influence educational aspirations, as they can encourage or discourage youths from studying (Dupcsik, 2009; Fergusson, Horwood & Lynskey, 1997; Fergusson, Horwood & Woodward, 2001; N. Lynch, 2012a).

4.3.2. Employment

Social and economic changes in the 1980s/1990s have transformed both countries profoundly. In the labour market, the transition has triggered some remarkably similar developments for ethnic minorities. Māori and Romani have a disadvantaged labour market position in general; and both are affected by various types of discrimination related to employment (Alexander, Genc & Jaforullah, 2004; Sik & Simonovits, 2012). They experience premarket discrimination (before entering the labour force), and various types of market discrimination like earnings discrimination and occupational discrimination. However, the features, prevalence and consequences of these discriminative attitudes and their disadvantaged positions are quite different. 'Rogernomics' and subsequent neoliberal changes in New Zealand economy, and the political and socio-economic transition in Hungary in 1989/90, meant significant upheaval for Māori and Romani. These events coincided with the 1980s/1990s recessions (Alexander et al., 2004; Chapple, 2000; Kertesi & Kézdi, 2010a; TPK, 1994, 1998). The economic downturn had similar consequences in both countries, as it has reinforced and deepened the previous social construction of Romani and Māori as problem populations (Dupcsik, 2009; Juhász, 2010; Pratt, 1999). Figure 4.6 and Table 4.6 provide information on the current and previous trends in the Hungarian labour market and illuminate the enormous gap between the employment opportunities of Romani and non-Romani.

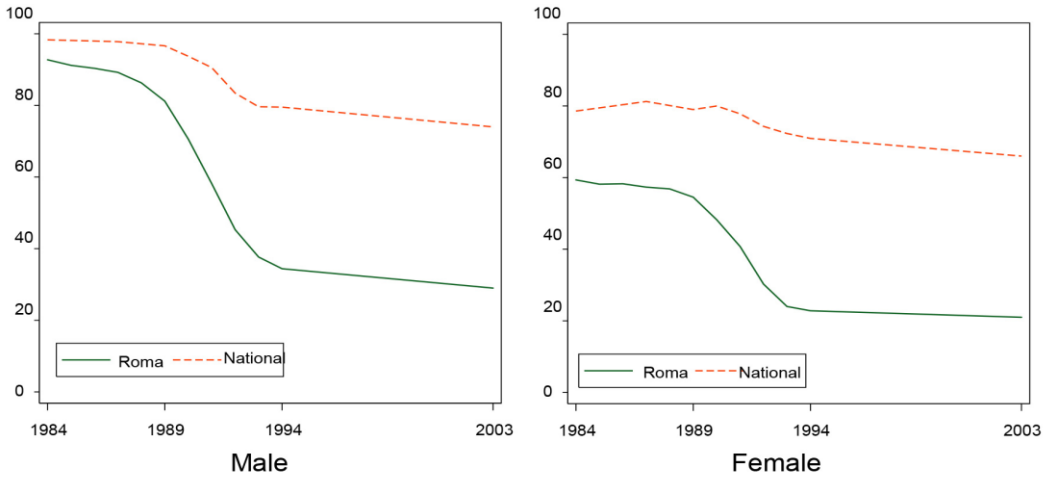

Figure 4.6. National and Romani employment rates by gender. Kertesi, 2005; Dupcsik, 2009. Copyright by 2005 Kertesi, by 2009 Dupcsik. Adapted with permission.

Table 4.6

Employment rate, working age (16-64 years) total and Romani population 1971-2007

	Total population		Non-Romani population		Romani population	
Year	**men**	**women**	**men**	**women**	**men**	**women**
1971	87%	64%	88%	67%	85%	30%
1984	88%	74%	88%	75%	89%	61%
1989	84%	72%	84%	74%	85%	53%
1994	63%	50%	67%	54%	29%	17%
2003	62,7%	50,1%	66%	53%	32%	18%
2007	63,5%	50,2%	67%	53%	35%	24%
2010	60,4%	50,6%	65%	52%	32%	19%

Note. From Kertesi, 2005; KSH, 2002, 2013; Kertesi and Kézdi, 2010a; Copyright by 2005 Kertesi, by 2002, 2013 KSH, by 2010 Kertesi and Kézdi. Adapted with permission.

The Romani socio-economic position has dramatically changed during the transition. In 1985, around four-fifths of their working age population, 125,000 Romanies, were employed (Babusik, 2002; Kertesi, 2005). In 1993, three years after the transition began, this number was 65,000. In the same year, 71% of non-Romanies in the 20-24 age group worked or studied, while the respective Romani number was only 24% (Horváth & Hudomiet, 2005; Kertesi, 2005). Twenty years later, the employment situation of Romanies remained catastrophic. In 55% of Romani households there was no member with permanent employment, and a further one-third of households had only one member who earned income from work (KSH, 2013). A representative study among Romani households in 2003 (Kemény & Janky, 2006) determined that the de facto unemployment rate was an astounding 71% in the 15-49 age group (excluding students); somewhat better for men (62%) than for women (80%). This number is about 10 times higher than the national average.

A representative survey in 2005 found that four-fifths of Hungarians would not disapprove if someone did not get employment because of their Romani ethnicity (Magyar Agora, 2005). Ladányi (2009) reported that labour market discrimination affected eight times more Romani than non-Romani, (31% vs 4%, annually). Babusik's (2008) research revealed even more disturbing facts when he surveyed more than 1800 business organisations employing at least 10 workers. Five-sixths of these employers expressed some forms of unwillingness to employ Romanies even if they had proper qualifications and work experience. A Labour Market Office (county level) reported in 2000 that employers were obviously unwilling to employ

Romani even if significant amounts of tax relief were allocated in return for their employment (Magyar Agora, 2005). Babusik (2008) found that the clear majority of employers had homogeneously discriminative attitude towards Romani; and it was mostly direct racial discrimination and not the statistical one. Likewise, the FRA (2012) ascertained that not less than 40% of Romani job-seekers had experienced direct racial discrimination in the preceding five years. The comparison of the Romani/non-Romani population with the same level of qualifications gives a huge disproportionality in employment rates. For example, unemployment rates for Romani who have completed eight grades were three times bigger than for equally qualified non-Romani (Magyar Agora, 2005). The wage difference is also prominent; in 2011, their average monthly wage income was about 89.000 HUF, significantly lower than the average of 130.000 HUF for the general population (KSH, 2013).

Various governments have launched welfare or public employment programmes; however, the new government in 2011 introduced more extensive public employment schemes aiming to employ up to 300,000 people. These programmes became the primary means of labour market interventions by the state (Messing, 2013). They predominantly involved low-skilled, mostly outdoor, manual labour projects (Csoba & Nagy, 2012). In effect, they implicitly targeted the Romani population. There was a strong pressure on the target population, as entitlement to future social benefits became contingent upon participating in these public work schemes (Szikra, 2014). Nevertheless, these programmes mostly did not provide permanent jobs (Köllő & Scharle, 2012); and participants earned significantly less than the minimum wage. Impact assessment studies invariably showed that public employment did not lead to or facilitate integration into the regular labour force. What is more, the ongoing exclusion of Romani from the labour market by these schemes became evident, as they could not increase their employability but reduced their chances for labour market inclusion (Csoba & Nagy, 2012; Köllő & Scharle, 2012; Messing, 2013; Szikra, 2014). Herman (2014) even found that the decreased compulsory school-age, combined with the public work schemes, motivated students (usually pressed by parents) to leave school at the age of 16 and to participate in these programmes. Detrimental long-term consequences are predictable for these (mostly Romani) youths; and it would be hard not to see how miscalculated policies, structural disadvantages and discrimination contributed to these developments (Messing, 2013).

The employment situation of Māori and Romani is comparable; still the whole picture is much more favourable in New Zealand. Māori experienced solid gains in terms of educational

attainment and occupational status by the late 1970s; however, the large gap in socio-economic status between Māori and non-Māori remained intact (Fifield & Donnell, 1980). The era of economic and social reforms ('Rogernomics') brought about fundamental changes (Alexander et al., 2004). In the secondary sector (particularly in manufacturing, which employed one-quarter of the Māori labour force), there was a sizable Māori over-representation. Secondary jobs ceased to exist on a massive scale; more than 100,000 disappeared between 1986 and 1991 (TPK, 1994). Moreover, approximately a quarter of Māori lost employment because of vigorous economic liberalisation and restructuring in 1993 (Humphries & Grice, 1995). The Māori labour force participation rate stood at 68.6% in 1986 and at 60% in 1995. In contrast, the Pākehā rate was almost unchanged (66%) by 1995. The relative youthfulness of the Māori population (the proportion of those aged 15 years or more but still pre-retirement age) conceals an even greater disparity in participation rates; a sizeable age-adjusted disparity of at least 10% did exist in 1995 (Maré, 1995). Participant K. believed that structural factors and state policies aggravated the situation of Māori:

> Participant K: *"When the economy tanks, the first jobs gone are theirs. Māori were educated and trained to work in the meat works, in the car manufacturing, etc. All those industries there, we had been driven into the cities to service, we were the ones that were retrenched first. Well, it started in the 1970s with the oil crisis. It was exacerbated in the mid-1980s with the neoliberal economic and social policy experience. We were the ones who got hammered the most, us and the Pacific Island communities. We were actually the lab rats. Let's see what happens when we take away, when we try to dismantle the social welfare system that we were famous for."*

Labour market discrimination also contributes to the disadvantaged socio-economic position of Māori. Labour force statistics have constantly recorded that they were more than twice as likely to be employed in low-skilled, elementary occupations as non-Māori (TPK, 1994, 2012). Discrimination and/or a glass ceiling frequently inhibited Māori from moving up to a higher level of the job hierarchy. Criminal records may also hinder their employment and earnings prospects (Fergusson et al., 2001). Negative experience in the labour market can discourage Māori from actively seeking jobs (Alexander et al., 2004; Fergusson et al., 1997, 2001; Fletcher, 1999). As Participant L. summarised:

> Participant L: *"The liberal reforms of the mid-1980s, there was a very strong emphasis on individual achievement, a strong emphasis on survival of the fittest, if I can put it that way. An increasing intolerance of people who were not up to the mark, who were struggling. Those people who were struggling were considered losers. Instead of developing a welfare system based on helping people to achieve and addressing issues of inequality … there was a very punitive approach. Therefore, you develop those sorts of communities, where the culture is one of apathy and surviving*

> *within their own circumstances. And not having any expectations that things might change for them, so they're just in that 'hole' they don't know how to get out, how to try to succeed in a decent job or something."*

Others – for the most part – concurred with the observations above. Direct or indirect experience of past discrimination not only discourages Māori from participating in the labour force, but demoralises them, and eventually dissuades them from pursuing investments in their human capital (Alexander et al., 2004; Figart, 2004). Maré (2005) claimed that over half of the unemployment rate difference was unexplained by demographic characteristics, which indicated the role of direct and indirect discrimination. Alexander et al. (2004) found that Māori more likely experienced repeated spells of unemployment than non-Māori. Participant P. noted that national level statistics on employment could be misleading:

> Participant P: *"In 2006, when the economy was at an all-time best for 20 years, general unemployment was down to 3%, Māori unemployment was still more than 8%. The national picture doesn't actually tell the reality. … you go to Rotorua's or Fiordland's community, and you would find there was a 23% unemployment rate. That was at our 20-year best. Who lives there? Predominantly Māori. Don't forget, at the labour market, every time, if there is a recession, they have to be the first unemployed. When you have been unemployed three times in six years, what you gonna do?"*

Another long-standing labour market disparity is the racial wage gap. In 1997, Māori were paid a 13% lower hourly wage than Pākehā despite the same level of productivity (Alexander et al., 2004). In 2014, they still had significantly lower hourly rates ($19.5 and $18.16), while Pākehā rate was $23.01 (Statistics NZ, 2015). Sutherland and Alexander (2002) found that some form of discrimination was responsible for a proportion of the wage differences (29-48%); they attributed it mainly to earnings discrimination (underpayment within the same or similar occupational classes) and/or occupational discrimination or a glass ceiling. As Table 4.7 and 4.8 show, employment and unemployment rates and trends reflect persistent ethnic differences. Still, Māori are 'only' 2.75 times more likely to be unemployed than non-Māori, while Romani are almost 10 times more likely to be unemployed than non-Romani.

Table 4.7

December quarterly unemployment 2003/2014

Ethnicity	2003	2014	absolute change (2003-2014)	relative change
European	3.2%	4.4%	+1.2%	37.5%
Māori	10%	12.1%	+2.1%	21.0%
Gap	-6.8%	-7.7%	-0.9% (increasing gap)	13.2%

Note. From Statistics NZ, Household Labour Force Survey, December quarter 2003 and 2014. Copyright 2014 by Statistics NZ. Reprinted with permission.

Table 4.8

December quarterly employment 2003/2014

Ethnicity	2003	2014	absolute change (2003-2014)	relative change
European	66.7%	67.3%	+0.6%	+0.9%
Māori	58.1%	59%	+0.9%	+1.5%
Gap	8.6%	8.3%	-0.3% (closing gap)	3.6%

Note. From Statistics NZ, Household Labour Force Survey, December quarter 2003 and 2014. Copyright 2014 by Statistics NZ. Reprinted with permission.

To sum up, the economic transition was accompanied by large-scale de-industrialisation and by the collapse of manual labour markets in both countries. It was followed by the decline in the level of welfare support and by the gradual introduction of 'workfare' and 'behaviour-management' of the poor (Kertesi, 2005; Köllő & Scharle; 2012; Workman & T. K. McIntosh, 2013). The emphasis has shifted in the new era from support to restriction and punishment, from social (re-)distribution to individual responsibility. These new regimes diversely feature neoliberal and paternalist elements; they embrace a 'let-alone policy' for the privileged and 'well-behaved' but paternalist rigour and discipline for the 'undeserving poor' for their failure to comply with 'social norms' manifested in the 'ordinary' participation in low-wage employment (Wacquant, 2009). Punishment gradually extends beyond the CJS as these policies include the increased focus, control and eventually the criminalisation of welfare recipients (for failure to report income, mandatory drug tests, evictions from social housing, sanctioning the parents for their children's truancy and misbehaviour, etc.). Meanwhile the regulation of the dispossessed is tied to the growing racialisation of poorness and social exclusion, in which non-whites are disproportionally affected (Kerezsi & Gosztonyi, 2014; Workman & T. K. McIntosh, 2013). Wacquant (2009) aptly termed these new models of neoliberal-paternalist regimes the "*governments of social insecurity*" that propagate more aggressive control measures for the underclass, since they are "*not playing by the rules of white, middle-class society and are, therefore, not deserving of assistance*" (p.

82). Following the overview of the general socio-economic situation and the relevant indicators in employment and education; the next section examines health and living conditions and certain social services provided for Māori and Romani.

4.3.3. Health and living conditions

While the histories and cultures of these people differ to a great extent, economic and social statistics show that Māori and Romani occupy similar social spheres in their respective societies. In 2013, life expectancy at birth was 73.0 years for Māori males, 77.1 years for females, 80.3 years for non-Māori males and 83.9 years for females. The life expectancy gap at birth has narrowed to 7.1 years by 2013/14 from 9.1 years in 1995; however, it is still about the same level as it was in the early 1980s. Māori have the poorest health of any ethnic groups; their rates of avoidable mortality are more than 2.5 times higher than non-Māori rates (Ministry of Health [MoH], 2003, 2010, 2011, 2015). Robson (2004) ascertained that health disparities had significantly increased since the mid-1980s. Subsequent data analysis indicated that health disparity gaps did persist even after controlling for socio-economic factors (Ellison-Loschmann & Pearce, 2006; Harris et al., 2006, 2012; HRC, 2012). Analysis of the 2002/03 and 2006/07 New Zealand Health Surveys showed Māori reported the highest prevalence (34%) of 'ever' experiencing racial discrimination (Harris et al., 2006, 2012). Ellison-Loschmann and Pearce (2006) found that Māori were less likely to receive specialist services, surgical and high-quality hospital care. Unmet need for primary healthcare is more common among Māori adults and children than it is among non-Māori (MoH, 2012, 2015a). Sudden Infant Death Syndrome rate among Māori infants is still nearly five times as high as that among non-Māori (MoH, 2015a). However, this indicator is only 'the beginning'. During their whole life span, an 'average' Māori is in a disadvantaged position regarding a number of specific factors affecting their lives (Fergusson, Boden & Horwood, 2015). Table 4.9 is based on the New Zealand Health Surveys 2002/03, 2006/07, 2011/12; it is supplemented with the annual update of key results (MoH, 2008, 2012, 2015a). Adjusted rate ratios (ARR) reveal some of the various social and health factors concerning Māori:

Table 4.9

Māori/non-Māori health and social factors

Health and living conditions indicator	ARR Māori vs non-Māori	Note
Current smokers	2.7	Pākehā rate 15%, Māori rate 38%
Young Māori smokers (aged 14-15)	4.2	Pākehā rate 1,7%, Māori rate 7,2%
Hazardous drinking	1,9	
High blood pressure	1,2	
Adult all-cancer mortality	1,8	
Total cardiovascular disease mortality	2,1	
Rheumatic heart disease mortality	5,1	
Renal failure with concurrent diabetes	5,1	
Lower limb amputation	4,6	
Asthma (medicated)	1,5	prevalence among Māori children: 19%
Not filling a prescription due to costs	2,6	
Rates of psychological distress	1,6	
Suicide rates	1,9	
Emotional or behavioural problems	1,3	depression, anxiety disorder, attention deficit and/or hyperactivity disorder
Anxiety or depressive disorder(Males)	2,0	
Child physical punishment	1,8	
Adverse health effects from interpersonal violence	3,4	
Problem gambling There is an obvious link between problem gambling and offending as 40% of the adult Māori inmates were identified as pathological gamblers (Bull, 2001, p. 203).	3,0	Māori: 2,3%, Pacific People: 1,6% Asian: 0,7%, Pākehā: 0,5%
Lack of access to adequate housing	4,0	
Unfair treatment in renting or buying houses females	7,9	
Unfair treatment in renting or buying houses males	4,3	

Note. Adapted from MoH, 2003, 2008, 2012, 2015a, 2015b, Abbott et al., 2014. Copyright 2003, 2008, 2012, 2015 by MoH, 2014 by Abbott et al. Adapted with permission.

Houkamau and Sibley (2015) found that self-reported appearance as Māori (i.e. merely looking more stereotypically Māori) predicted significantly decreased rates of home ownership due to the smaller likelihood of having a mortgage application approved; and adjustment for demographic covariates (education, age, relationship status, household income, area of residence, etc.) did not change this effect. Moreover, while there is a lack of consistent data on the demographic profile of the homeless population (Groot, Hodgetts, Nikora & Rua, 2011); it is known that Māori are disproportionately numbered amongst them. A Wellington survey of the street homeless determined that 56% were Māori, a four times larger share than in the general population (Amore et al., 2013). The situation is similar in Auckland and

Christchurch; among rough sleepers in Auckland the majority were Māori, and 38% in Christchurch (Parliamentary Library, 2014). Vulnerability to over-representation in the homeless population is a logical consequence of the prevalence of poor housing, and impoverished and overcrowded conditions among urban Māori (Groot et al., 2011).

Ethnicity is the strongest predictor of experience of racial discrimination with Asian (Odds Ratio 3.12), Māori (2.54) and Pacific (1.75) ethnic groups at significantly higher risk than Pākehā for overall racial discrimination (Harris et al., 2012). Reported experience in New Zealand Health Surveys covers the following: experience of an ethnically motivated physical or verbal attack, unfair treatment because of ethnicity by a health professional, in work, when renting or buying housing (Harris et al., 2012). Specifically, in the health service sector Harris et al. (2006, 2012) consistently found strong evidence of a relationship between healthcare and racial discrimination. Harris et al. (2006, 2012) determined that Māori people experienced the highest incidence of racial discrimination compared to other ethnic minorities Came (2014) identified the influence of institutional racism on public health policymaking, which has contributed to health inequities. Moreover, research studies found that reported experience of racial discrimination was invariably associated with negative (both mental and physical) health outcomes in adjusted models (Harris et al., 2006, 2012; MoH, 2012, 2015a, 2015b). Table 4.10 shows self-reported experience of racial discriminations.

Table 4.10

Self-reported experience of any racial discrimination, 2011/12

Indicator	Māori			Non-Māori		
	Males	Females	Total	Males	Females	Total
Self-reported experience of any ethnically motivated personal attack or unfair treatment (ever), over the age of 15 (%)	**30.8** (26.9–35.1)	**24.9** (22.1–28.0)	**27.5** (25.2–30.0)	**16.0** (14.4–17.9)	**13.4** (12.1–15.0)	**14.7** (13.6–15.9)

Note. Adapted from MoH, 2012, (New Zealand Health Survey 2011/12). Copyright 2012 by MoH. Adapted with permission.

Moyle (2015) explored contemporary Māori experiences during FGCs and found that Māori women often experienced unacceptable behaviour on the professional side of conferences (intolerant, bureaucratic, disrespectful, controlling, unprofessional and biased attitudes towards them). Networking with whānau, hapū and iwi still can be an issue for many, mostly Pākehā practitioners; moreover, there was a basic lack of useful and practical knowledge on

the effects of child abuse and family violence (Moyle, 2014, 2015). Participant M. reported strong impacts regarding the cumulative consequences of life course experiences:

> Participant M: *"I would feel a much higher level of resentment for a lot of people; especially with the CYF. Some of the families that we work with have been involved in the system for 20-plus years. They already have their own children, and their parents and we are now working with their kids. So there is a huge resentment towards everything, towards the system, towards Police, towards the Courts; so when working with CYF Services, they are so defiant, against everything it stands for. That makes it really hard. Especially, if you got parents like … if you come to their door, they're abusing you. What's the chance then, actually, doing good social work with the child? It's very slim because they see those modelling behaviours of their parents. And exactly, it's because what we are* [the face of the state]*."*

In comparison, the availability of officially gathered data and ethnically disaggregated statistics is far less comprehensive in Hungary. The average Romani life expectancy is 10-12 years below that of the average population (European Commission, 2014; KSH, 2013; Masseria, Mladovsky & Hernández-Quevedo, 2010). Comparably unfavourable life prospects often start even before birth. For example, among smokers, 89.3% of Romani women continued to smoke while pregnant compared with only 14.7% of non-Romani women (Balázs, Rákóczi, Grenczer & Foley, 2013). The quality of nutrition during pregnancy and quality of antenatal care is lower for Romani women. Balázs et al. (2013) found a significantly higher incidence of low birth weight (LBW) and premature birth (PTB) for Romani offspring compared with non-Romani offspring (PTB 9.9% vs. 7.1%, LBW 12.2% vs. 6.5%). Moreover, Romani infant mortality rate (8.1 per 1000 births) is 1.6 times higher than the national population average (5.1 per 1000 births) (European Commission, 2014).

Smoking rates were 77.4% for Romani and 32% for the total population; and their smoking habits were formed at an early age in comparison to the general population (Gara, 2011). Babusik (2005) found that almost half of the Romani population aged 19-34 had some form of chronic disease. Additionally, there was a very high prevalence of depression (75%) and cardiovascular disease (70%). Gara (2011) noted that the prevalence of hypertension among Romani was 57% but only 32% in the total population, diabetes 12.5% and 8%, obesity 35% and 20%, respectively. Nearly one-third of Romani children were obese (European Commission, 2014). Romani women were 10 times more likely to suffer from iron deficiency; the rate of tuberculosis was 11 times higher amongst Romani than non-Romani; and hepatitis A and B rates for Romani were significantly higher (European Commission, 2014). Romanies constantly experienced a greater prevalence of asthma, stomach ulcer and cancer than non-

Romanies (KSH, 2002, 2013; Masseria et al., 2010). Rorke (2011) claimed that Romani women were three times more likely to die from cancer than non-Romani women.

The FRA's (2009) survey revealed that Romanies suffered from both direct and indirect discrimination, which deprived them of equal access to health services. Gara (2011) reported, somewhat surprisingly, that open forms of discrimination by medical personnel and hospital co-patients were more frequent (52%), while the subtler, hidden forms accounted for 47% of such incidents. Babusik (2005) surveyed graduate medical students and found that 10% of them held strong and explicit anti-Romani views, another 40% were, to a varying extent, prejudiced. Discriminative conduct by healthcare personnel was experienced by at least 18% of the Romani respondents in the previous year; 27% of them believed that their health needs were not adequately considered and addressed (FRA, 2009). Experiencing discriminative treatment could lead to higher incidences of mental health issues such as stress, anxiety and depression (European Commission, 2014). About 60% of Romani live in rural environments and the majority of them in segregated residential areas without a decent standard of housing, infrastructure and public services. Some local authorities systematically attempt to force them out of social housing or evict them from their homes without providing acceptable alternatives, which often leads to homelessness and crime (Council of Europe [CoE], 2009, 2015; HHC, 2008, 2010). Despite a seemingly strong governmental commitment to implement effective measures through the National Social Inclusion Strategy 2011-2020, it has had little impact so far on the shortage of social housing provided for Romani (CoE, 2015). Consequently, accommodation overcrowding is widespread for Romani; they live on average with two persons per room; this is the second most unfavourable indicator among the EU member states (Council of Europe, 2015; Kósa, Daragó & Ádány, 2009). Overall, there is a consensus among health experts that the main determinants of Romani chronic health issues are the household wealth and expenditure levels, the inadequate, substandard, unsanitary living conditions, the level and quality of education and the extent of segregation (Babusik, 2005, 2007; Gara, 2011; Kósa, Daragó & Ádány, 2009; Rostás, 2015).

Substance abuse correlates with increased risks of criminal offending among youths (Hazel, 2008). Gerevich, Bácskai, Czobor and Szabó (2010) reported that in the same age group (13-16) there was an extraordinary difference between the rates of substance use. Historical self-reported illicit drug use amongst Romani adolescents was 22.2%, about 13 times more prevalent than amongst non-Romani (Gerevich et al., 2010). This research was conducted

before the consumption of cheap, unregulated and widely available substances known as 'designer drugs' truly skyrocketed. Participant F. reported that

> Participant F: *"the spread of designer drug abuse amongst Romani youth, living in segregated environments, started to hamper significantly the effectiveness of our mentoring and integration programmes"*.

Ironically, as anecdotal evidence suggests, in many poorer areas former alcohol problems have been 'solved' when the new drugs (mostly cheap mixtures of various substances such as synthetic cannabinoids and other stimulants) have basically flooded rural Hungary (Földes, 2015). The speed of change on the drug market is flabbergasting. In 2013 cannabis was still the most popular drug among adults aged 19-65; however, it was immediately followed by synthetic cannabinoids (Csesztregi et al., 2014). These new drugs are much cheaper than the previously popular mainstream drugs. Due to the cost of the traditional drugs, they were and are mostly unaffordable for Romani youth (Földes, 2015; Gerevich et al., 2010). At the same time, even dealers have very limited knowledge of the components of these newly manufactured drugs. Consequently, potential side effects are mostly unknown. In 2013, half of the drug-abuse related deaths involved 'designer drugs'; it was a steep increase and the age of onset of drug abuse decreased significantly between 2007 and 2013, from 20 to 17 in the adult population (Csesztregi et al., 2014). No ethnically disaggregated statistics are available; however, anecdotal reports indicate a faster decline in the age of first drug use among Romanies (Földes, 2015; Gerevich et al., 2010). In New Zealand, there is a shortage of data on the use of synthetic cannabinoids. Due to the increasing demand for products, legal regulation of synthetic cannabinoids has been changed. Since May 2014, these psychoactive substances are no longer legally available for sale. What is known for sure is that in drug use there is a long-standing Māori over-representation. The 2007/08 health survey found that 28% of Māori had used drugs recreationally in the previous year, compared with 17% of Pākehā, 18% of Pasifika and 6% of Asians (MoH, 2008). Data shows that Māori men and women had 2.2 times higher rates of cannabis use compared to non-Māori (MoH, 2015b).

The potential relationship between crime and environmental harms associated with pollution of the air, land, water, etc. was largely ignored in the criminological literature until the 1990s (Stretesky & Lynch, 2004). Then well-established scientific data emerged that early life exposure to heavy metals (most relevantly, lead) was a potential source of offending. Evidence indicated a significant correlation between higher bone-lead levels and adolescent delinquency and behavioural issues like antisocial behaviour, conduct disorder, etc. (Nevin,

2007). Studies showed that the sharp decline worldwide in violent crime rates from the 1990s correlated with the decreased exposure to lead and other heavy metals during pregnancy and early childhood 15-21 years prior (Nevin, 2007; Stretesky & Lynch, 2004; Taylor et al., 2016; Wright et al., 2008). Lead exposure may result from a variety of contamination sources like the (now obsolete) use of lead in paint and gasoline, industrial lead emissions, lead-contaminated toxic waste sites, lead-glazed ceramics, occupational and secondary lead exposures, etc. (Nevin, 2007). For younger children there are particularly detrimental consequences from contact with lead-contaminated dust and other lead sources. Besides the lower body mass, an increased volume can be ingested via normal hand-to-mouth activity as they crawl (Nevin, 2007, Wright et al., 2008). Elevated levels of lead in the developing human body can cause neurotransmission disruptions, which could affect behaviour well beyond adolescence (e.g. impaired impulse control can trigger aggressive behaviours). Outcomes are affected by exposure severity, duration, timing, nutrition and socio-economic status (Needleman et al., 2003; Nevin, 2007; Stretesky & Lynch, 2004; Taylor et al., 2016).

Exposure to neurotoxins can have both class and race correlations, which operate at the sociological level (Wright et al., 2008). Underprivileged groups are more likely to be exposed to environmental sources of neurotoxins and they are less likely to be effectively screened and treated if they have been affected (Stretesky & Lynch, 2004). There is a higher prevalence of lead-based paint hazards in substandard housing, where both Māori and Romani are more likely to live. Nevin (2007) reported that the correlation between violent crime and preschool lead exposure could be replicated for other countries, including New Zealand. Subsequently, Fergusson, Boden and Horwood (2008) confirmed the statistically significant association between dentine lead levels (at ages 6–9) and both officially recorded and self-reported violent/property offending (at ages 14–21). An Australian study found that childhood air lead contamination was the reason for about 30% of the variance in physical abuse rates 21 years later, after adjusting for socio-demographic and lifestyle factors; and lead petrol emissions explained about 35% (NSW) and 33% (Victoria) of the variance in fatal assault rates 18 years later (Taylor et al., 2016, p. 1). Unfortunately, in Hungary there is still no focus on these potential correlations. However, hazardous materials for recycling, like conventional lead-acid vehicle batteries, are widely collected, often illegally and unprofessionally, by poor Romanies as part of the source of their livelihood (Harper et al., 2009; Solt & Virág, 2010). Still, almost nothing is known about the long-term consequences concerning their health,

safety, crime and other issues in this regard. This fact clearly calls for further research in this area.

4.4. Conclusion

This chapter intended to provide an overall picture about various existing patterns of discrimination and structural disadvantages in both countries. Race-based discriminatory attitudes are stronger in Hungary, and overt racism, even within the operations of state agencies is more pervasive. Still, the prevalence and effects of discrimination and structural disadvantages on Māori are also substantial. The main part of the chapter showed, through the available social indicators, the situation of Māori and Romani in different social sectors like education, employment, health and living conditions and environmental quality. The chapter presented some of the impacts of the emerging neo-liberal regimes, which more fully integrate welfare and criminal justice policies, and of the expansion of welfare conditionality on ethnic minority groups. Their disadvantages are comparable regarding marginalisation, emergence of underclasses, self-reported experience of racial discriminations, lower quality of educational services, non-attendance in schools, acceptance of a 'deficit theory' approach among education system stakeholders, health disparity gaps even after controlling for socio-economic factors, substance abuse, environmental harms, etc. However, the evidence is clear-cut that the overall situation and prospects for Romani are more unfavourable. It is remarkably different how they attempt to handle school segregation, special and alternative education (including the practice of misdiagnosis of children as mentally handicapped). Another example is that government policy does not facilitate integration of Romanies into the regular labour force. Still, similarities are also substantial when criminogenic and other risk factors are taken into account. There is a lasting influence of various life conditions on Māori and Romani children's life-courses, like more frequently having an unfavourable and unsafe environment, a greater prevalence of lower standards of care and supervision and of mentally, physically or sexually abusive relationships, and a more frequent acceptance of violence as normal in conflict management. The list of these factors is quite long as it was pictured in the chapter.

Potential structural, environmental inequality is an important consideration in any study on juvenile delinquency and disadvantaged ethnic minorities. For example, the review of the current state of knowledge implies that the association between crime and preschool blood

lead levels have not lent sufficient urgency yet to efforts to eliminate these hazards. After the brief review of several social indicators with reference to Māori and Romani, one should not forget about the causal interconnectedness between these socio-economic characteristics. For example, segregation, discrimination and substandard housing conditions bear upon health conditions, which in turn will affect education and employment opportunities, which then can greatly determine the nature and extent of risks of offending arising from these circumstances for youth. The next chapter identifies theoretical and practical complications in the gathering and use of ethnicity data in both countries.

CHAPTER FIVE

This chapter identifies the theoretical and practical difficulties of the collection and use of ethnicity data in the public and private sector and more narrowly in the CJS in both countries. Challenges and limitations created by ethnicity data issues are revealed in more detail; and the concerns and potential risks of public availability of sensitive ethnicity data are identified. The chapter provides an overview of the issues of self-identification and external perception in ethnicity data management and outlines feasible, practically manageable solutions for these challenges.

5. Theoretical and practical difficulties of the collection and use of ethnicity data

The theoretical and practical difficulties of the collection and use of ethnicity data, which have affected this study, must be acknowledged clearly. One of the two key problems is the strict data regulations and their (mis)interpretations in Hungary; the other one is related to the methodological issue of 'who should be identified' as Romani or as Māori (Babusik, 2004; Kukutai, 2004, 2011; Majtényi & Pap, 2009; Statistics NZ, 2009a, 2009b). Ethnic categories are inevitably and inherently *"socially constructed, culturally shaped, biologically determined, and genetically designed"*; and defining *"race and ethnicity as concepts and categories are far from being stable and shared among scientists, policymakers, public opinion and statisticians"* (Simon & Piché, 2012, p. 1358). Unquestionably, limitations are difficult to eliminate during quantitative data collection, analysis and interpretation. In the absence of appropriate solutions, there is a possibility that the findings are, to some extent, distorted. There are serious problems with the accuracy of ethnicity data in New Zealand (Kukutai, 2004, 2011; Morrison, 2009; Statistics NZ, 2009a, 2009b) but generally the state of affairs regarding the availability and reliability of ethnic data is considerably better than in Hungary (Kállai & Jóri, 2009; Kukutai, 2003, 2011; Morrison, 2009; Ringold, 2005). In the following sections, these challenges are outlined with special focus on the CJSs in both countries.

5.1. Ethnicity data collection and data management

There is a kind of consensus among criminologists that improvements in data collection could substantially benefit disadvantaged ethnic minorities to reveal and reduce potential bias in the CJS (Kállai & Jóri, 2009; McLaren, 2002; Morrison, 2009; C. Williams, 2001). The scarcity of available and reliable ethnicity data aggravates the situation of underprivileged ethnic groups and endangers the efficiency of any public policy aiming at the alleviation of their social issues (MoE, 2008; MoH, 2003; MSD, 2008; Puporka & Zádori, 1999; Ringold, 2005; Ringold et al., 2005; UNDP, 2002). As a starting point, ethnicity is a complex notion; consequently, the collection of information on people's ethnicity is also a complex challenge. The basics of the issue can be grasped through the way the definition of ethnicity is constructed, which is also the key question regarding the comparability of ethnicity data both domestically and internationally (McDonald & Negrin, 2010; Nagel, 1994). The quality of data, consistency of data sources and of data collection methods can largely influence the effectiveness of policy delivery and monitoring (Ringold, 2005). First, the next sections examine ethnicity issues in the New Zealand context.

5.2. New Zealand

The issue of who can be counted as Māori in statistics has been a matter of extensive discussion among stakeholders. The central part of the problem of construing a definition for ethnic group membership is the absence of unequivocal criteria (Borell, 2005; Kukutai, 2004, Robson & Reid, 2001). The question is far from settled. Farruggia et al. (2010) reported on the constantly existing difficulties in qualifying and quantifying the 'Māoriness' of individuals when an increasing diversity of Māori is also noticeable. For example, Quince (2007a) highlighted a possible statistical error originating from methodological problems; the potential over-reporting in the CJS when double/multiple identifications were disproportionally registered in one category (e.g. Māori/Pākehā are registered as sole Māori).

5.2.1. Ethnicity data and censuses

Before 1974, in statutes, the definition of Māori was mostly based on a genetic (biological) approach; consequently, the criterion of 'Māoriness' necessitated half or more blood. By the early 1960s, at least 10 separate statutory definitions existed (Robson & Reid, 2001). However, the 'blood-requirement' was quite liberally observed even in cases where the

determination of eligibility was based on ethnicity. Generally, proof of ethnicity did not need to be provided (Kukutai, 2004). Still, censuses before 1986 used a 'race-based' approach; therefore, the percentage of Māori or other ethnic descent (quantum of blood) was the 'benchmark' (Borell, 2005). However, there is no significant backing of the application of DNA testing to verify ethnic/racial origin in developed countries anymore. Besides the political and human rights considerations, this approach could be criticised on practical grounds, since genetic markers alone do not presuppose any social and cultural affiliation to a distinct racial/ethnic group (Kukutai, 2004).

The alternative to the genetic approach of ethnicity is the socio-cultural conceptualisation, which ordinarily puts emphasis on the evaluation of various indicators of cultural identity and ethnic group adherence. Ethnic origin as an indicator of ethnicity was questioned in the 1986 census; however, there was no further clarification whether the reported ethnic origin was based on cultural affiliation and/or ancestry (Ringold, 2005). The 1991 census was amended to include ethnic affiliation and Māori ancestry. The reason behind this change was in part the determination of special electoral representation in the new electoral system (Māori can choose between the Māori and the General electorate rolls, but only persons of Māori descent can enrol in a Māori electorate). Moreover, iwi called for a reminder for tribal affiliation to be included in censuses. The last census was held in 2013. Māori were counted in two ways; through ethnic affiliation and Māori descent. Evaluations of ethnicity data of different censuses showed a high degree of overlap between ancestry and ethnicity. For the vast majority, cultural identification as a Māori is dependent on identifying with Māori ancestry (Kukutai, 2007, 2011; Statistics NZ, 2013).

Membership in a distinctive cultural and ethnic group inherently involves some entitlement for inclusion. For Māori, since most statutes use ancestry criteria to define 'Māoriness', the determining factor when the issue of entitlement is in question is the ancestral heritage, which is virtually treated as an objective criterion with a sort of a gatekeeping function (Kukutai, 2004). It is an existing, albeit quite rare, phenomenon that some individuals without Māori ancestry identify themselves as Māori. Anthropological explanations are mostly based on socio-cultural immersion like having a Māori spouse, dwelling in a Māori community, being brought up in a Māori family, etc. Forsyth (2013) investigated and revealed relevant issues of Pākehā-Māori transculturalisation. Even so, there is no evidence for a statistically significant number of self-identification as Māori without Māori ancestry. In the 2013 census, 598,605 people identified with the Māori ethnic group and 668,724 people were of Māori descent

(Statistics NZ, 2013). There is no official data on individuals identifying themselves as Māori without ancestry, but Kukutai (2004) analysed the 2001 census and found that among respondents who identified themselves with the Māori ethnic group, just 1% had explicitly denied having Māori ancestry. The 'flax-roots' approach is another alternative way to ancestry and ethnicity in which self-identification is recognised through the existence of tribal affiliation. The usage of 'core Māori population' (tribal affiliation, ancestry and ethnicity are all included) is also promulgated (Kukutai, 2004). This does not necessarily imply that urbanised Māori and their communities are excluded because, as Rata (2000) suggested, urban, non-kin-based Māori social networks can function in a 'tribe-like' way, creating a quasi-tribal identity with authoritative community leaderships.

5.2.2. Ethnicity data and the CJS

Deficient ethnicity data gathering, inconsistent data collection practices, the lack of methodological rigour and recording errors have resulted in significant gaps in relevant information in the CJS. Detailed and consistently disaggregated data on offending by ethnicity were not available or analysed before 1996 (C. Williams, 2001). The underlying principle for ethnicity data produced or collected by the NZP, Courts, DoC, MoJ, etc. is, in theory, the voluntary self-reportedness of ethnicity. However, in everyday practice, it may frequently be recorded on the impressions of the various stakeholders. The extent of this practice, recording Māori offending and victimisation, is not determined yet (Kukutai, 2011; Morrison, 2009). Statistics NZ analysed the ethnicity data gathering in the CJS and found that

> *"There is a clear need for all datasets to be able to be disaggregated by ethnicity (by age, gender, and location) to establish and monitor the extent of offending by, victimisation of Māori, interventions that work well for Māori, and Māori rehabilitation"* (2009a, pp. 22-23).

The same review observed the fact that the NZP method of ethnicity data gathering still did not adhere to the NZ Statistical Standard for Ethnicity. Consequently, there was a lack of consistency with ethnicity data from other official sources (Didham, 2005; Statistics NZ, 2009a). The review warned that the deficiencies of available ethnicity data in the CJS constituted a notable weakness in the light of the over-representation of some ethnic groups in the CJS and of the correlated policy concerns (Statistics NZ, 2009a). There is a lack of quantitative research data on ethnicity and police stop and search practices. Participant L. noted that even without research data, there were many pieces of anecdotal evidence of racial profiling:

> Participant L: *"Obviously, there hasn't been much research done before, but what we know is that Māori have been more likely to be stopped by the police. I have related to this, in my own experience, because I have two adopted children, both Māori, but one is very fair-skinned, could be passed for being white, the other one is dark. Right from the early age of 10-11 we noticed that the one who is dark were being stopped by the police 3-4 times more frequently than the one who was white. That of course influences their attitudes. … The younger boy grew up very angry, angry of authority. … a lot of trouble with alcohol, drugs, drunk driving and stuff like that. He is 22 and only now started to change. It has been a real struggle. But underneath of this is the feeling that because he is very dark he is a less of a human being and he resents that badly."*

There is no publicly available, in-depth research delving into the question of racial/ethnic discrimination within New Zealand prisons or juvenile facilities. Participant K. also brought up the lack of research on potential racial profiling:

> Participant K: *"The cops say 'it's bullshit we don't have militaristic style policing'. Incorrect. You do have experience of it if you are in a poor white or Māori community, because the way they police us is very different from the way that they police Ponsonby. Different matter of resource, different attitude … I tell you a great study to do. Go there and spend six months in patrol cars while they patrol Ponsonby Road and Mission Bay and record the way they engage with people, even those who have committed crime, or are pissed off with them. I bet you spend six month doing the same thing in West Auckland with the poor white community or down in Mangere … very, very different attitude even if it is for the same behaviour."*

These deficiencies represent considerable but also symbolic gaps in the understanding of the complex interplay between ethnicity and the CJS (Morrison, 2009; Workman, 2011c). To sum up, without the implementation of a consistent ethnicity data standard in the CJS, and without serious investment into extensive ethnic data collection, there is no prospect for significant data quality improvement (Morrison, 2009).

5.3. Hungary

The question regarding 'who is Romani' generated intense public and scholarly discourses after the democratic transition. These discussions had several unique features, but at the heart of the issue, there are similar theoretical and practical problems with ethnicity data collection like in New Zealand. However, the legal regulation greatly differs in the two countries. The legal framework in Hungary has apparently been unambiguous since 1993 when the principle of self-identification for defining ethnicity took effect. The collection of personal data, and data on ethnicity, is not categorically banned (Babusik, 2004). Even so, there are strict protective stipulations on data related to the racial/ethnic origin of individuals. Without

directly expressed, written consent or a definitive sanction of the law, there is no mandate to handle this type of data (Krizsán, 2001). The law stipulates that special [here ethnic origin] data may be processed if:

> a) the data subject has given explicit consent in writing, or
>
> b) prescribed by treaty, or if ordered by law in connection with the enforcement of some constitutional right or for national security or law enforcement purposes,
>
> c) ordered by the law in other cases (Data Protection Act 1992 s 3).

The other relevant law is the Rights of National and Ethnic Minorities Act 1993, which declares that ethnic categorisation has to be based on personal choice exclusively. Thus, self-identification has become the only lawful ground for defining ethnicity, at least, as the next sections show in the legal and scholarly discussions, on individual level. Therefore, a profound change took place in ethnicity data collection; and it had immense impact upon policymaking and research on Romani issues (Majtényi & Pap, 2009; Milcher & Ivanov, 2004).

5.3.1. Ethnicity data: self-identification and external perception

Prior to the 1989-90 democratic transition, more precisely before the 1992-93 law changes, ethnic classification was not restricted to ethnic self-definition. One of the main ethnic databases produced annually was built on primary and secondary school statistics where students with Romani ethnicity were recorded. This registration was invariably based on external perception (Babusik, 2004). This practice was by its very nature discriminatory since Romani was the only registered ethnicity. Teachers as external observers categorised students and assessed the learning progress and academic achievements of Romanies separately. Results were compiled on national level and these databases were released regularly (Kertesi, 2005). The censuses are conducted decennially; ethnicity data is based on self-categorisation. However, there are significant discrepancies between censuses' ethnicity data and the schools' data compiled before 1993. Romani population in the censuses is less than half compared to the size based on school data and empirical social research (Csepeli & Simon, 2004; Kemény & Janky, 2006; KSH, 2002, 2013). Nationally representative surveys conducted by the same team provided the following estimations of the total Romani population: 320,000 in 1971 (3.1%), 467,000 in 1993 (4.5%) and 569,000 in 2003 (5.6%)

(Hablicsek, 2007), while censuses showed 142.683 in 1990 (1.4%), 190.046 in 2001 (1.9%), and 315.583 in 2011 (3.2%) (KSH, 2002, 2013). Educational research assessed the proportion of Romani children in primary schools as 5.5% (1970), 6.6% (1990) and 13.3% in 2008 (Papp, 2011).

In the public and scholarly discourses, two main, conflicting positions were discernible after the transition. Havas, Kemény and Kertesi (1998) formulated one of the approaches proposing that the reliability and authenticity of data for empirical research and policymaking had to take priority over the delicate and abstract argument over the very nature of ethnicity. To avoid massive statistical distortions and to properly apprehend the complex sociological reality for marginalised Romanies, they suggested that it was inevitable to resort to ethnicity data based on external observations (Havas et al., 1998). Prominent advocates of the other viewpoint, Ladányi and Szelényi (2000), dissented and asserted that external observers could not have complete confidence when they seek to answer 'who is Romani?' in an everyday or in a research situation. They suggested that the identification always would be subject to the context, the general attitude and the actual perception of the observer. They claimed that most frequently external observers would consider the socio-economic status (i.e. extent of marginalisation and poverty) as the crucial aspect. Since Romani are generally viewed stereotypically as having a 'poverty culture', Ladányi and Szelényi (2001) argued that a number of underprivileged non-Romani would be identified as Romani; and conversely, affluent and successful professionals would be left out from the Romani group. Ladányi and Szelényi (2001) established significant discrepancies in classifications made by various external observers, since about one in every three individuals identified as Romani by the first observer was classified as non-Romani by a second observer. Thus, there is empirical evidence of some blurred lines in the sentiment of Romani/non-Romani ethnic boundaries. As a response, the other side proved empirically that for Romanies the transition in social status and changes of the level of integration/assimilation would not necessarily, or more precisely would not as a general tendency, eventuate in their re-classification (Babusik, 2004; Székelyi, Örkény, Csepeli & Barna, 2005).

During this research, the first theoretical position (Havas et al., 1998) was adopted. Pre-study investigation supported its utility for criminological research on visible, disadvantaged ethnic minorities. In a criminological research context, it is predominantly accepted that differential treatment is not the consequence of self-identification, but it results from the external perception of the (assumed) ethnicity. In fact, discriminatory behaviour is not based on self-

categorisation but on perception (Farkas, 2004). The judgement of the external environment is not a neutral and 'private' opinion; it can create an entrenched social reality, which is able to influence the opportunities and the conduct of life of individuals. In other words, if someone is considered and dealt with as a Romani, this 'experience' creates the Romani status and not the skin colour, language or lifestyle, etc. Indeed, these factors can facilitate being seen as Romani. This theoretical approach seems acceptable as a framework for social scientists and sociological research (Kemény & Janky, 2006). This study adopted the frameworks of zemiology and critical social theories, and they, together with most critical criminologists, regard this approach as legitimate (Arrigo, 2000; Cornell & Panfilio, 2010; Yar, 2012; Zamudio et al., 2011). However, this approach cannot be applied to studies investigating identity or cultural issues. Certainly, there has not even been serious debate about the exclusive role of self-identification in cultural, traditional and community self-determination matters. Lawmakers affirmed that false declarations of belonging to a minority group had abused minority rights and introduced the principle of recognition by the affected minority community in some cases (Kállai, & Jóri, 2009).

5.3.2. The relative lack of ethnicity data and its consequences

The prevalence of discriminatory practices, the extent of disparate outcomes and the structural barriers to have equal opportunity access to the potentially available social resources are obscured in the absence of comprehensive statistics or other credible data (CoE, 2009, 2015). It has had clearly detrimental consequences for this study that, in contrast to New Zealand, there are still no nation-wide statistics about the situation of Romani in Hungary (Goldston, 2001; Kállai, & Jóri, 2009; McDonald & Negrin, 2010; OSI, 2002). The State Audit Office (2008) prepared a report on the efficiency of appropriation of state resources regarding projects in the previous 15 years. Those projects intended to advance Romani integration in many fields, but as absurd as it is untenable, without available ethnic data the identification of the target groups and the monitoring of the effectiveness was self-evidently impossible. Conversely, in New Zealand, it has been demonstrated that the reasonably comprehensive ethnic minority statistics have been invaluable instruments for developing and implementing carefully planned and targeted policies to improve the quality of services provided to these minority groups (DoC, 2007a, 2009; HRC, 2011, 2012; MoJ, 2012; TPK, 2005). Collection and processing of data disaggregated by ethnicity (and by age, gender, location, religion, etc.), reveal in social security, healthcare, labour market, housing, public and social services,

education, CJS, etc. that members of some minority groups encounter specific disadvantages. They may face deprived circumstances and discrimination even in comparison to other minority groups (HRC, 2012). Owing to the availability of certain disaggregated datasets, policymakers and service providers are in a more favourable position to deliver, monitor and evaluate the various policies and services in key sectoral fields.

In contrast, the almost total lack of administratively collected and publicly available data on the situation of Romani makes it difficult, often unrealistic, to design, monitor and evaluate social inclusion and anti-discrimination policies (CoE, 2009, 2015; Kállai & Jóri, 2009; OSI, 2002; State Audit Office, 2008). For a while, the misinterpretation of domestic and EU data protection regulations was a contributing factor to the unwillingness to collect sensitive data (Cahn, 2004; Farkas, 2004; Krizsán, 2001). Consequently, several bodies of the EU declared that those strict rules were applicable to personal data only. The most important regulation is the Directive 95/46/EC, which imposes a general ban on processing sensitive personal data, including data disclosing racial/ethnic origin. However, once personal data has been processed and rendered anonymous, it is not qualified as personal data anymore and it is not subject to data protection laws. Furthermore, the Directive does not outlaw ethnic data collection as a whole; it ensures that effective safeguards protect individuals from inadequate data collection and data procession (European Commission, 2004, 2011).

Moreover, not only the European Commission but also international human rights organisations have provided guidance on the collection and process of ethnicity data while adhering to regulations. Nevertheless, since becoming a member of the EU in 2004, the governments have remained adamantly reluctant (or hesitant at best) to develop legal and institutional framework and procedures indispensable for collecting comprehensive ethnic data (European Commission, 2014; Rorke, 2011). There has not been a noticeable policy shift even after the European Framework for National Roma Integration Strategies was adopted in 2011. The European Commission (2011) specifically urged the implementation of targeted policies based on affirmative action and at the same time highlighted that conventional measures of social inclusion had proven to be inadequate to offset the entrenched disadvantages of Romani. The European Commission (2004) had already suggested the revamp of existing indicators and the development of new indicators in order to evaluate more effectively the weight of discrimination and other exclusionary effects concerning Romani groups. Overall, it is clear that the implementation and monitoring of targeted policies and

affirmative actions are implausible without reliable and extensive ethnicity data. In relation to the CJS, Participant A. noted:

> Participant A: *"The strictness of the Data Protection Act is only the starting point; its interpretation is another issue. Let's accept that there is no 'official way' to gather sensitive data. However, it doesn't preclude doing research. Still, the interpretation of the law led to the position that 'if we are not allowed to know about it officially, then we are not interested in it'. It's an enormous problem with serious consequences. Only the legislation could change the law, but encouragement or funds could be provided by decision-makers, too. Why cannot we see any incentive for research into discrimination in the system? It's hard to believe that there is no discrimination, but it's more 'comfortable' not to know anything about it. Simply outrageous."*

However, the current scarcity of ethnic data hinders not only research but also any targeted programmes regarding Romani. Albeit the number and the scope of studies are limited, it is still apparent that marginalisation and institutional discrimination extensively exist. Still, Participant B. forecasted:

> *Participant B: "I see no promising signs at all, not because political stakeholders, policymakers, are 'blind', quite the opposite. They know very well that extensive data on the situation of Romani would reveal the real depth of the buried issues. A more 'honest' picture would increase the pressure on them to 'act'. However, addressing more adequately the situation of Romani would not only be immensely unpopular in their electorate, but there is no way that significant progress could be achieved within a normal election cycle. Without a minimum consensus of the biggest political parties, there is no room for real change. The situation still has to worsen a lot, and then there might be some chance for political compromise. But don't expect it any time soon."*

This study found a similar scepticism among researchers and other stakeholders interested in Romani social issues. It is widely held that data disaggregated by ethnicity could reveal the inconvenient 'reality' of the Romani situation, which has been exacerbated by ineffective policies and misuse of resources (see, for example, Erős, 2005, 2007; Majtényi, & Pap, 2009; McDonald & Negrin, 2010; Ringold et al., 2005; State Audit Office, 2008).

5.3.3. Concerns and potential risks regarding ethnic data

Romani stakeholders and human rights groups have repeatedly raised concerns that the use of ethnic data could lead to stigmatisation and spreading of different stereotypes of Romani. Crime statistics have been referred to most frequently as posing undue risk in this regard (FRA, 2009; Goldston, 2001; Mirga, 2000; OSI, 2007). Examples of blatant, illegal misuse of ethnicity data regarding Romanies by authorities (i.e. secret police register) can be found as recently as 2013, even in Sweden, where the status of human rights is considered amongst the

best in the world (Mansel, 2013). It is cited regularly that the deep-rooted social construct of 'Romani criminality' inflicted disastrous consequences on the social status of Romani. Here is a short summary of the pros and cons of the collection of ethnicity-based crime statistics, first the most common reasonings against it:

1. The frequent inadequacy of the quality of official crime statistics;
2. complex methodological challenges in the qualifying and quantifying of ethnicity;
3. the risk that these statistics could be used to promote racist (or other pseudoscientific) explanations of crime and to justify disparate treatment in the CJS.

These are the most typical arguments in favour of recording ethnicity in crime statistics:

1. The need to determine whether groups experience differential treatment within the CJS;
2. its contribution to the refutation of the biological/genetic explanations of criminality;
3. the prohibition in itself cannot prevent the propagation of racist beliefs.

To sum up, ethnic data by its very nature should not be problematic; in fact, the context of the usage is crucial. It is proposed here that datasets by ethnicity must cover crime statistics and other relevant figures of social status simultaneously to provide a complex account. Isolated interpretation of data on crime and ethnicity neglects the proper contextualisation; therefore, it hinders the honest and progressive critique of existing social policies (Ringold et al., 2005; Rorke, 2011; UNDP, 2002). Moreover, it is a historical experience and a political reality that media and political actors do not need reliable ethnicity crime statistics in order to disseminate biased views and propagate racial prejudice. Unavailability of reliable data can further facilitate the negative portrayal of marginalised groups, especially groups that have been historically stigmatised and stereotyped (Cahn, 2004; Cram, 2009b; Goldston, 2001; Juhász, 2010; Krizsán, 2012; Quince, 2007a; Whittle, 2009). The ethnic dimensions of crime are still a relevant cognitive factor of present-day interethnic relationships; and they can have extensive ramifications (Kádár & Pap, 2009; Kerezsi & Gosztonyi, 2014; Surányi & Takács, 2013). Therefore, policies and measures have constantly been influenced by deep-rooted stigma of criminality attached to, in this case, Māori/Romani groups. As a historical legacy, it still can be detected in different social and criminal policy approaches and provisions and in

(rather euphemistically named) ‘crime prevention’ projects (CoE, 2009, 2015; Farkas et al., 2004; Fellegi, 2007; OSI, 2007).

However, beyond the clear need for ethnicity data, there is an important caveat. Worldwide experience suggests that the usage of statistical data in the measurement and analysis of discrimination, especially of indirect and institutional discrimination, remains problematic (Gabbidon, 2010; Morrison, 2009). The features and prevalence are more complex and inconspicuous than statistics are able to unveil; still quantitative data can display relevant conditions and tendencies in fairness, impartiality and effectiveness (Cunneen, 2006; Erős, 2005, 2007; Ringold, 2005).

5.3.4. Ethnicity and crime statistics

Policymakers in the last 25 years intractably ruled out the consideration of the delineation of statistics by ethnicity (victims, offenders, other stakeholders) in the CJS. Statistics Hungary and other authorities are not permitted to collect and process data on the ethnic/racial origin of individuals in the justice sector (CoE, 2009; Kállai & Jóri, 2009; Majtényi, & Pap, 2009; Rorke, 2012). However, there are legitimate concerns over the existing inconsistency between the de jure rejection of all ethnicity data as irrelevant in the administration of justice, and the actual ‘presence’ and influence of the ethnicity factor in everyday interactions.

Kállai and Jóri (2009), the Parliamentary Commissioners for the Rights of National and Ethnic Minorities (PCRNEM) and for Data Protection, drew attention to a paradox. The legal framework upholds that the ground of ethnic identification is always the individual’s own and voluntary choice; moreover, ethnic data is sensitive personal data that is subject to particularly strict data protection regulations. The consequence of these regulations, or more precisely, the interpretation of these regulations, is the stern insistence by the authorities that there is no way to produce data and evaluation on the implementation of different policies, potentially disparate outcomes or discriminative treatments in their sectors. However, empirical research, domestic and international surveys reveal systemic discrimination in various social sectors (Kállai & Jóri, 2009). Many studies found evidence of systemic discriminations and disproportionate outcomes in the CJS as well (see Chapter 8). Officials and other stakeholders participating in different empirical studies (informally and off the record) were frequently willing to acknowledge that they had relatively accurate knowledge of ‘who is Romani’. The next section examines the anomalous situations where the perpetrators of racially motivated

crimes are evidently conscious of the perceived ethnicity of their victims, yet authorities do not usually have the willingness and/or the satisfactory procedures to handle these cases.

5.3.5. The issue of ethnically/racially motivated crimes

Another controversial issue is an inconsistent (and most probably unconstitutional[16]) practice in criminal procedures. Pursuant to criminal law, ethnically/racially motivated crimes are felonies. Among these, hate crimes are the violence against members of ethnic/racial minorities (Criminal Code s 216) and incitement against community (s 332). Yet, police and prosecution regularly fail or simply refuse to identify and record the (perceived) ethnicity of the victims. The general 'excuse' for this unwillingness is the excessively restricted interpretation of the data protection regulation (CoE, 2009, 2015; H. Balogh, 2009; HHC, 2008, 2015; Majtényi & Pap, 2009; Milcher & Ivanov; 2004). This approach is in contempt of the law since data protection rules do not make the attempt of the identification of *mens rea* (the guilty mind) illegal, which would include the putative ethnicity of the victim. In these cases, the 'externally' perceived ethnicity is the crucial factor and not the data on ethnic/racial origin or affiliation. Disregard for the procedural duty of investigation of the plausibility of racial motive behind crimes compromises the efficient and lawful operation of the CJS. Moreover, as a signatory state of international covenants, Hungary has the obligation to take adequate measures against hate crimes (CoE, 2015; HHC, 2008). Article 6 of the ICERD requires State Parties to *"assure everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this convention"*. Moreover, this attitude of the state agencies can greatly weaken the trust of Romani communities in the fairness of the CJS.[17] The next section attempts to provide a practical solution to the challenge of lawful handling of ethnicity data in crime statistics.

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[16] The Hungarian CJS is founded on an inquisitorial model of criminal procedure where the principle of legality prevails. It requires, in most instances, mandatory prosecution; and authorities are legally bound to acquire all the relevant information about crimes.

[17] For comparison, the CERD requested the NZ Government to collect statistical data on complaints, prosecutions and sentences for racially motivated violence and abuse in 2007; however, by early 2017 this system was still not operational. There are the crime categories to record these types of complaints; yet no such system has been put in practice (Multicultural New Zealand, 2017).

5.3.6. Addressing the issue of ethnic data in crime statistics

As it was demonstrated in the previous sections, ethnic data management in the CJS is indispensable. Stakeholders in the CJS and in the media regularly use ethnic data with regard to crime. The current (unofficial) practice is unfavourable for Romani, since the restrictions on personal ethnic data in the CJS have been practically overridden by the everyday routine. In public discourses and media reports the term 'Gypsy crime' and the assumed ethnic origin of many offenders are extensively present (Bernáth & Messing, 2013; HHC, 2015; Kállai & Jóri, 2009). Indeed, some form of ethnic data collection in criminal proceedings would be necessary and socially expedient (Cahn, 2004; CoE, 2009, 2015; Kállai & Jóri, 2009). The real issue to be solved is how the lawfulness of ethnic data gathering for policymaking and research projects can be maintained without the strict adherence to ethnic self-definition. In fact, not the ethnic affiliation of offenders and victims but generalised, statistical data disaggregated by ethnicity should be proceeded. Ethnic self-identification results in considerable statistical distortion; therefore, some solution is required to offset it in the CJS. Two data collection methods could be applied concurrently to gain a more credible insight into the situation of Romani. The first method would be based on voluntary self-identification; the other method could determine ethnicity through external judgement. Right after the conclusion of a criminal procedure, which can be at different stages, the defendant/victim could declare (or withhold) anonymously their self-identified ethnicity. At the same time, the representative of the law enforcement agency or the court could fill out a datasheet concerning various relevant information of the case. Data should be provided in a standardised form including the externally determined ethnicity of the defendant/victim, other personal attributes like age, sex, educational and employment status, type of offence, outcome of the case, county, etc. Both documents must be dealt with confidentially and be sent for data processing at Statistics Hungary. No identifiable personal data could be collected. Consequently, policymakers and stakeholders in the CJS would obtain two separate databases allowing them to make comparisons ('reality checks') between the data sourced from self-identification and from external observation (Kállai & Jóri, 2009).

Realistically, the strict data protection regulations will not change soon; and there is no good chance to introduce a similar regime of ethnic data management like the one in New Zealand. Still, it is important to search for viable solutions in this untenable and controversial situation. Overly strict data-protection laws and/or their rigorous interpretation do not necessarily

protect the interests of vulnerable minorities. Everyday experience and legal studies support the view that strong data protection rules can unwittingly bolster the position of the discriminating parties. Without available ethnic data there are serious difficulties to provide evidence of biased treatment or disparate outcomes (CoE, 2009; Kádár et al., 2009; Krieger & Fiske, 2006; Majtényi & Pap; 2009). Regular and representative national crime victimisation surveys containing both self-reported and externally observed ethnicity data also should be introduced. Comparisons between official crime statistics and datasets of self-reported victimisation and offending surveys could reveal not only the dark figure of crime (unreported/undiscovered crime) but also valuable information on its ethnic dimensions. Consequently, it is proposed that both victimisation surveys and extensive ethnicity data are prerequisites of further research, groundwork and strategic planning in the CJS.

5.4. Conclusion

Theoretical and practical challenges of the collection and use of ethnicity data are present in many fields in both countries; however, there are significant differences in the progress that has been made in recent decades. Substantial problems do exist with the collection and accuracy of ethnicity data in New Zealand. Relevant issues were discussed; however, in general, it is asserted that the availability and reliability of ethnic data is noticeably more favourable in New Zealand. Thus, criminal policy and crime prevention initiatives can be more effectively planned, executed and monitored. Even policymakers could effectively utilise some of the New Zealand experiences in the relation between crime, criminal justice and ethnicity data. Since 1990, after decades of democratically and constitutionally untenable practice of crime data collection, ethnicity data and statistics in the Hungarian CJS have been virtually absent. Still, entrenched assumptions about criminal propensities of Romanies remained widespread. The paucity of ethnicity data does not facilitate rather inhibit the containment of biased views. After the overview of legal frameworks and ‘real-life’ conditions, a practically and legally doable solution was outlined to address the shortage of reliable ethnicity data in the CJS. The next chapter examines the current state and effects of monoculturalism and institutional discrimination in both countries. Consequences of the mainstream, colour-blind, social and criminal policy approaches for Romani and Māori are also discussed in Chapter 6.

CHAPTER SIX

6. Monoculturalism, discrimination, colour-blindness, and social and criminal policies

The current state and effects of monoculturalism and institutional discrimination in both countries are examined with a historical overview of these topics. The consequences of the mainstream colour-blind social and criminal policies for Romani and Māori, and the recognisability of their 'otherness' in everyday life are discussed. In line with the concepts of the CRT, the chapter seeks to describe the existence and effects of the 'white privilege', and it aims to contrast the tenability and appropriateness of colour-blind policy approaches in both countries.

6.1. Recognisability of 'otherness' in everyday interactions

When the study of discrimination in society and in the CJS is in question, it is indispensable to clarify how easily the potential victims of discrimination can be 'recognised' by external observers (Fiske, 1998). For Afro-Americans, this visual perception can operate, in most cases, unambiguously (Krieger, 1995; Lawrence, 1987). For Romanies, the various discriminative attitudes and treatments are triggered by the external perceptions of their 'Romaniness' (Csalog, 1973, 1980; Csepeli, 2010; Sik & Simonovits, 2012). External perceptions include the physical appearance, darker skin colour, the hair and eyes; clothing; accent, vocabulary or grammatical construction; distinctive surnames and slightly less frequently given names, location of dwelling, etc. Mixed marriages are particularly infrequent; Bárány (as cited in Immigration and Refugee Board of Canada, 1998, p. 2) described it as *"negligible"*. Tóth and Vékás (2008, p. 348) found that at least 84-85% of Romanies lived in homogeneous marriages, while the same rate among other ethnic minorities was significantly lower (9-51%). The low rate of intermarriage upholds social distance and contributes to the perception of 'otherness' of Romani. A genetic structure study (Pamjav, Zalán, Béres, Nagy & Chang, 2011) showed that the firm boundary, in terms of marriage, and not only between Romani and non-Romani but also between various Romani groups, has created a genetic isolate with limited interpopulation gene flow. Without interethnic

marriages, existing external differences are mainly preserved. Some traditional Romani groups with more intact group structures still have aversion to intermarriage, but the influence of these customs has largely been faded away (Feischmidt, 2008). Social distance and prejudice have become the most decisive factor in intermarriage between Romani and non-Romani (Balassa, 2006; Csepeli, 2010; Durst, 2010; Kende, 2000; Murányi, 2006).

In everyday interactions, for the great majority of Romani individuals their 'Romaniness' is determinable owing to the visibility of their external features, (Csalog, 1973, 1980; Farkas et al., 2004; Pap & Simonovits, 2007). Bárány (as cited in Immigration and Refugee Board of Canada, 1998, p. 3) claimed that it was *"nearly impossible to determine with certainty whether someone was in fact a Romani by his or her physical appearance, although in most cases it was apparent"*. Very fair-skinned, blue-eyed Romanies also live in Hungary, but they are obvious rarity. Lengthy, abstract debates can be held on the accuracy of ethnicity perception; however, in social interactions, a much greater relevance is attached to the consequences of the external judgement than to the 'factual Romaniness' of individuals. Consequently, the other side of the coin is when the 'factual Romaniness' is not recognisable externally; then, in the absence of self-identification, the issue of potential discrimination ought not to be investigated and taken into account. However, everyday experience shows that generally the more discernible a Romani individual, the more likely to be disadvantaged and discriminated against (Babusik, 2002; Kádár et al., 2009; Kövér et al., 1997; Pap & Simonovits, 2007). This is relevant for this study since marginalised Romanies are subjected to discriminatory attitudes and practices in the CJS (Csalog, 1980; Kádár & Pap, 2009). Sik and Simonovits (2012) proposed that recognisability/visibility could have bigger leverage on the procedure of criminalisation than the assumed links between criminality, social otherness and marginalised social status. Significance of the visibility of 'otherness' can be detected in the language, too. In spoken Hungarian, Romani are regularly labelled as 'people of colour', and various derogatory labels are common like 'Brazilians', 'Indians', 'tanned not by the sun', etc. (Csalog, 1980; Pap & Simonovits, 2007).

There are some peculiarities in the recognisability and unequivocalness of 'Māoriness'. For example, Māori names, as Potiki (2010) observed, still have such a bearing on external observers that it overrides immediately an individual's non-Māori outlook . Intermarriage between Māori and Pākehā has bridged the racial divide and appreciably reduced the 'discernibility' of many Māori (Paterson, 2010; Kukutai, 2007). The prevalence of mixed marriages among Māori is quite high; only 46.5% of the respondents in the Māori ethnic

group identified Māori as the only ethnicity, a significant decline from 52.8% in 2006 (Statistics NZ, 2006, 2013). However, the more disadvantaged a member of a Māori group is, the more likely to be discernible and discriminated against. Concurrently, several studies showed that sole-Māori identity group members were more likely in unfavourable social position (Callister, 2008; HRC, 2011; Paterson, 2010). Perception as a Māori (real or erroneous) is similarly crucial for potential victims of bias and discrimination. Kukutai (2004) observed that physical appearance was the most determining factor, which virtually rendered self-identification irrelevant, since individuals having features typically associated with certain distinct ethnic/racial groups are seen and treated accordingly. Thus, Kukutai (2004, p. 94) argued that, at least in social policy, Māori should be regarded as an ethnic group and not a *"socio-economic class".* Evidently, not every person who identifies with a disadvantaged group is disadvantaged by definition. However, in general, as Kukutai (2004) proposed, ethnicity factor could not be ignored since in 'real life' the different sorting and allotment mechanisms were invariably producing disproportionate outcomes (i.e. health, education, unemployment, imprisonment, social mobility, exclusion from conventional resource-rich networks, etc.). Nagel (1994) suggested that for disadvantaged and visible ethnic minorities, identity was mostly not of a choice but a 'lifelong' lived reality. Moreover, among members of the sole-Māori group experiences of discriminatory treatments in everyday interactions are more frequent than in the Māori/other group (Callister, 2008, Morrison, 2009).

In many countries, colonisation or less frequently other historical events have created societies where white people are afforded with unearned privileges and advantages merely by the existing dominancy of their white culture. Dyer (1997) suggested that white people had been traditionally socialised into occupying a disproportionate share of power and privilege in these societies, and simultaneously they had been conditioned to ignore their whiteness. CRT and critical criminology propose that the 'white privilege' factor cannot be ignored in studies like this one (Crenshaw, 2011; Milovanovic, 2002; Parks et al., 2008). The next section examines the issue of the white privilege in further detail.

6.2. Privileges of dominant groups, white privilege

The other, inseparable side of the 'coin' of monoculturalism and discrimination is the diverse forms of privileges enjoyed by dominant group(s) (Rothenberg, 2008). These privileges are logical consequences of when one or more groups are disadvantaged since it provides better

opportunities to the dominant group members (Consedine & Consedine, 2005; Dalton, 2008). Among the various privileges in modern society, the second most prevalent phenomenon, after male privilege, is white privilege (Dyer, 1997). The currently perceivable nature of 'whiteness' (and so the origin of this privilege) is portrayed as hidden, unacknowledged, neutral, normalised, and normative in many societies (Ballara, 1986; Dalton, 2008; Dyer, 1997, 2008; Lewis, 2004; P. McIntosh, 1988, 2008). This 'invisibility' of whiteness has the consequence that the perception of race/ethnicity is realised only by non-whites; therefore, whiteness seems equivalent to the human standard. The ramifications of this perception are reverberating in many ways (Dyer, 1997). The supposition that whiteness is the 'standard' generates a reflexive categorisation of 'otherness' together with a more or less conscious notion of dominance and superiority (P. McIntosh, 2008). Whiteness can be interpreted as an unseen asset, a form of cultural capital granting social and economic benefits; and simultaneously, it affects experiences and daily life of whites and non-whites, in New Zealand too (Addy, 2008; Awatere, 1984; Dyson, 1996; Ministerial Advisory Committee, 1988). A similar phenomenon is observable in Hungary (Dencső & Sik, 2007; Dupcsik, 2009; Feischmidt, 2008; Sik & Simonovits, 2012).[18]

There is a 'complicating twist' regarding white privilege, the psychological notion that merely being included in the dominant white culture (by birth) can (albeit inadvertently and obliviously) contribute to the preservation of cultural racism. Understandably, this notion can create denial and/or embarrassment. O'Brien's (2007) research among white 'self-identified' anti-racists found a frequent incapability to recognise evidence of personal privilege. O'Brien (2007, p. 433) coined the term *"selective race cognizance"* to characterise the ability of noticing and comprehending institutional racism and privilege at macro-level and the simultaneous inability to realise the linkage with their own personal benefits as white individuals. How to make white privilege and cultural racism visible on personal level without evoking emotions of guilt or denial? P. McIntosh (2008) called for the recognition of the contemporary nature of white privileges as not only undeserved but also generally unclaimed. A largely unavoidable immersion from birth into a society teemed with racist thinking, mentality and practices requires the acknowledgement of white privileges in a non-condemning manner (Addy, 2008; Lawrence, 2008). A. Bell (2004) argued that the attitude of

[18] See also the contrast between the two countries' racial and white privilege perception in section 6.3.4.

Pākehā should not be grasped as failings of individuals but as a consequence of colonial history and present-day socialisation. Even if unintentional, the preponderance with which Pākehā values and doctrines determine societal structures can be interpreted as the continuation of the colonial system (Addy, 2008). Profound social changes (especially in population composition) can be favourable in this regard, since diversity has a tendency to moderate the prevalence and severity of racial bias and discrimination (Jolls & Sunstein, 2006).

It is claimed that without coherent and long-term educational, legal, media and social policy efforts to improve intergroup relations and to diminish cognitive and motivational sources of discrimination, there are no real prospects to counterbalance the consequences of the race-based differential outcomes (Crenshaw, 2011; Delgado & Stefancic, 2012; Krieger, 1995; Lawrence, 2008; Zamudio et al., 2011). This study focuses on the justice sector, however, it must be always kept in mind that white privilege and different forms of hidden and more overt discrimination against non-whites do exist in many spheres of everyday life. Callister (2008) noted that not only the authorities contributed to the social construction of an individual's race/ethnicity, since various 'others', important gatekeepers in society had important roles in it. Educational and medical professionals, private sector service providers, employers, landlords, etc. can be found among them. Very similar findings were proven valid and relevant in the Hungarian context, too (Bernáth & Messing, 2013; Sik & Simonovits, 2012; Solt & Virág, 2010).

6.3. Historical and present traits of monoculturalism and institutional discrimination

There is substantial literature on the subject of monoculturalism and discrimination in both countries; however, the academia has devoted appreciably more attention to it in New Zealand than in Hungary.

6.3.1. Monoculturalism and discrimination in New Zealand

As recently as 2012, the UN Committee on Economic, Social and Cultural Rights determined that substantial inequalities were still produced by structural discrimination and encouraged the Government to devote more effort to deal with it (HRC, 2012). Nevertheless, throughout the colonial history, being Pākehā indicated equivalence with normalcy as a fundamental

operational norm in all basic infrastructures (Consedine & Consedine, 2012). The 'Daybreak Report' also found that historical and modern social policies had always mirrored cultural racism, ingrained ideologies and views based on the assumption that Pākehā morals, customs, lifestyle and culture remained superior to other cultures (Ministerial Advisory Committee, 1988). Participant P. opined:

> Participant P: *"once colonised, all ended up like this way. Māori are not the only indigenous group … in a situation like this. It occurred in every colonised country with indigenous populations. It was almost a process of inevitability."*

Therefore, present-day materialisation of racism cannot be isolated from the past. A Department of Justice (1968, p. 209) study illuminated the 'superiority approach' when it claimed that *"members of racial minorities may have fewer and less effective controls than more sophisticated persons belonging to the numerically dominant race with centuries of continuous culture"*. This approach regarded Māori and Pacific peoples as both inherently and culturally less capable of coping with challenges and realities of the modern era (Duncan, 1971, 1972; Hazelhurst, 1988). These views still influence the thinking of many Pākehā (Harris et al., 2012; Keenan, 2000; T. K. McIntosh, 2005).

History of early colonisation reveals that originally the general aim was the reproduction of the white British culture and granting those who asserted British identity various privileges. However, from the early 20th century, an impression was given that whiteness per se was sufficient to ensure many of these privileges. White, non-British, foreign-born immigrants had social status quite different from people of colour despite the fact that they had also encountered both social and legal discrimination at the hands of the prevailing majority (Consedine & Consedine, 2012). Various social statistics reveal that distribution of social goods and resources has remained inadequate since it still favours disproportionately Pākehā people, often to the detriment of Māori welfare (Ministerial Advisory Committee, 1988). Since the publication of the 'Daybreak Report', the main features of these social statistics persisted without decisive changes (HRC, 2011, 2012; MoH, 2003, 2008, 2011; MSD, 2008; Statistics NZ, 2002, 2007b, 2013). These indicators demonstrate that social services and institutions are still principally to satisfy the demands of the powerful white majority. Consedine and Consedine (2012) analysed historical and contemporary social policies and argued that they had been and still were functioning robustly to disadvantage Māori in favour of Pākehā. Consedine and Consedine (2005) summarised that:

> *"New Zealand, through its colonial history, has been designed primarily to benefit Pākehā. Māori were required to fit into Pākehā culture and systems. All our basic institutions function on the assumption that being Pākehā is 'normal' and that there is only one way to make decisions, one way to deliver justice, health and education, one approach to conservation, and only one language that matters. Assimilation was predicated on the assumption that Māori tikanga was irrelevant if Māori were to succeed: everything had to be done the 'white way'. The result is that the infrastructure of New Zealand society is structured to deliver white privilege. Only the exotic features of Māori culture were encouraged, where they benefited the country in areas such as tourism and sport."* (p. 74)

6.3.2. Evidence of discriminatory and monocultural patterns in the CJS

Studies on Māori over-representation at different stages of the CJS uncovered that it came from more than one origin. The accrual of biases was present throughout reporting, arrest and conviction procedures (Deane, 1997; DoC, 2007a, 2007c; HRC, 2012; MoJ, 1999; Morrison, 2009; Triggs, 1999). These biases occur at various levels such as surveillance and the public reporting of offences, police management of those offences, the judicial system decisions including bail, sentencing, corrections, parole and probation (DoC, 2007c; Fergusson et al., 2003a, 2003b; Morrison, 2009; Mugford & Gronfors, 1978). O'Malley (1973a) found wide disparities in bail rates, Māori and Pākehā rates were 61% and 84%, respectively. O'Malley (1973a) observed that legal representation of Pākehā defendants in Magistrates' Courts was two times higher than in cases of Māori. Guilty plea rates with qualified lawyers were 70%, without them 96%. Deane (1997) investigated sentencing in the District Court and found a significant disparity in acquittal rates between Māori and Pākehā women.

The strength of the evidence shows that biases are present in the CJS, which transfer greater risk to Māori (more disproportionately to Māori youth and women) of both police contacts and convictions than non-Māori with a comparable offending history and socio-economic background (Bull, 2001; Fergusson et al., 2003a, 2003b; Morrison, 2009; Workman, 2011a, 2013). Indirect, hidden discriminations are woven into the legal frameworks, institutions and practices (Harcourt, 2006; M. Jackson, 1988; Morrison, 2009; Spohn, 2000). However, the largely unscrupulous adoption of the 'differential involvement thesis' by dominant stakeholders in the CJS provides a contextual reference frame that allows the state omitting the role that bias (direct/indirect, individual/structural, self-conscious/unconscious) plays in the creation and preservation of ethnic disparities (Agozino, 2003; Blagg, 2016; Jeffries & Bond, 2011; Spohn, 2000). There is a common disinclination to accept the influence that attitudes and performance of the agents of the CJS could have on system level outcomes. For

example, the 'justification' of disproportionality in police contacts is based on the assumption of higher crime rates in certain groups; however, in the absence of proof of differential involvement, it manifests evidence of social bias (Bowling & Phillips, 2007).

6.3.2.1. Historical evidence of discriminatory and monocultural patterns

It is often forgotten that prior to the 1950s Māori were not disproportionately represented in crime statistics. The graph below illuminates the changes and general trends in Māori/non-Māori incarceration over each decade since 1890. It clearly depicts the dramatic changes.

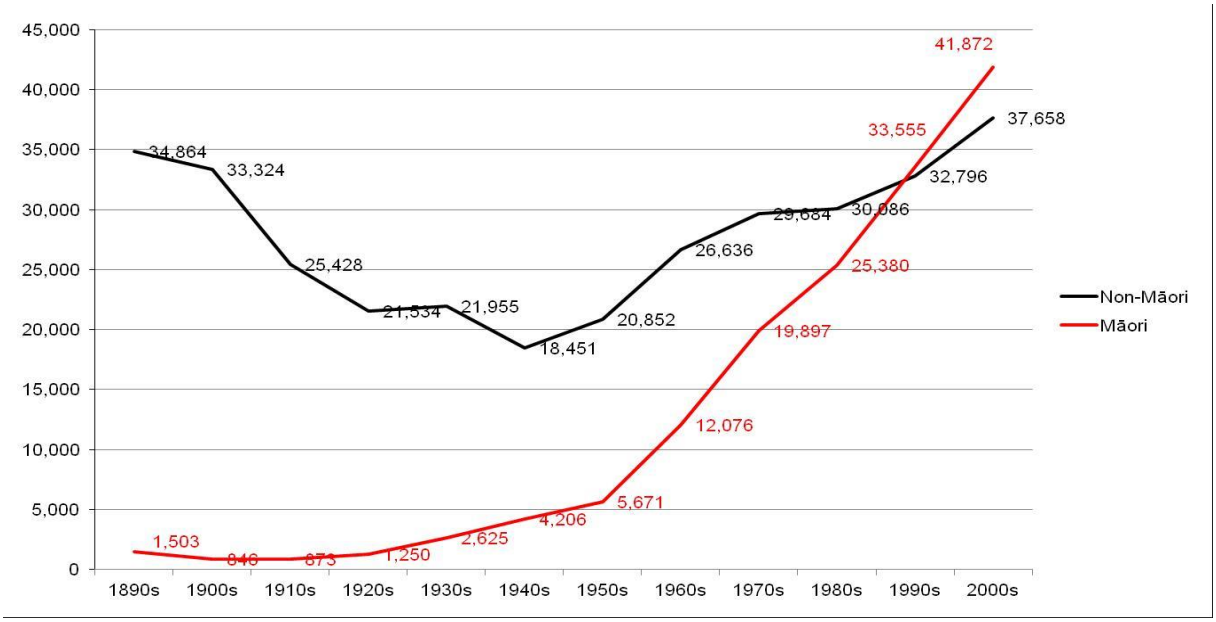

Figure 6.1. Numbers of total imprisonment by decade. From Taumaunu, 2014. Copyright 2014 by Taumaunu. Reprinted with permission.

As Figure 6.1 shows, after WWII, due to the rapid Māori urbanisation and growing contact with Pākehā and agencies of the state, Māori crime rates started to increase (Awatere, 1996; Bull, 2001; Pratt, 1999, 2006). However, the escalation of Māori crime was not hinged entirely on their behaviour in an unfamiliar and modern environment but also on the treatment of them by non-Māori. Socio-economic disadvantages alone are not a sufficient explanation. Participant L. evoked his memories of the stereotypes developed and took root over time:

> Participant L: *"As far as I could remember, in the 1960s and 1970s, Māori were perceived, often, by the white population as being dirty and dishonest, you needed to watch them, when they went for shopping and follow them around. So there were abuses. Everyone got assessed on the bases of these very negative stereotypes. I have seen my father, a Māori, going to a shop, and he never, never borrowed money, if he did not have the cash, he would not buy anything. He had a reputation of being very honest. But when we went to the shop, and I watched, I was a nine-ten-year-old* [in the late 1940s], *that even though he was the first at the counter, he was the last to be*

served. That became very clear to me that for some reason he was considered inferior."

Stereotypes and discriminative attitudes contributed to the amplification of Māori crime. Crime statistics showed rapid increase in offending during a period when unemployment was practically non-existent and the country enjoyed one of the highest standards of living in the world (Pratt, 1994). Still, the perception of Māori newcomers by the majority communities and the police alike was predominantly negative. Their struggle to adapt to the new circumstances was often seen as a risk to the balanced life of formerly homogeneous urban communities (Pratt, 2006; Spoonley, 1993). Participant L. noted the repercussions of this urban drift:

> Participant L: *"After WWII, when the government needed Māori labour for the freezing works and for the factories, they constructed the law in such a way that people were restricted from staying within their own community and they forced them to move into town. When they moved, they were not allowed to live together as a community. Around 1946 about 80% of all Māori was living in rural areas and by the 1980s 80% of them was living in the cities. I was a policeman during these years* [late 1950s]*, it was clear that this was going very badly wrong then. Between 1954-1958, the apprehension of Māori youths for offending rose by 50%. In the past, in the rural communities, children were often looked after by the grandparents while both parents were out for work. Often with the re-settlement, the grandparents stayed in the country, so there was no proper parenting anymore. That gives you some idea what started then."*

Nevertheless, Māori are still more likely to live in extended family; they tend to have more children and at younger ages, and grandparents and other whānau tend to be closely involved in the children's upbringing in comparison to non-Māori (Statistics NZ, 2001, 2007a, 2013). However, historically, the flow-on effect was the shattering of traditional moral communities entrusted with upholding social control. Communities became more disjointed and disconnected and a *"new demographic of the urban dispossessed emerged"* (Liu, 2007, p. 33). Unsurprisingly, Māori have a higher percentage of single-parent families. As Participant K. observed:

> Participant K: *"So what we have is a massive acceleration of our engagement with the police, with the courts and with corrections. Probably more than anything else, like losing our culture and our social ties, the driver was the massively increasing encounter with the CJS. We were very early on in the 1960s, as we came in the cities, viewed as a potential problem population. … Immediately we had a whole range of actors, institutions that were surveilling us. Extensive surveillance, far more excessive compared to any other population groups. Rural based, small community based Māori suddenly pouring into this urban context, they had very limited experience of them, and we had very limited experience of them. It is not surprising how these agencies*

reacted. It was going to happen and it happened very, very quickly. It rapidly moved towards to the 50% of the prison population in 20 years."

As Participant K. noted, this era was characterised by a continued surveillance, over-policing and criminalisation of Māori (and Pacific) communities, which had eventually produced an atmosphere of mutual distrust between these communities and the authorities, and – to a certain degree – the rejection of the justice system (O'Malley, 1973a; Pratt, 1999; C. Williams, 2001). The 1970s/1980s reached a point of crisis for Māori, since they became identifiable as 'others' after large parts of the welfare systems had been downsized. Economic and social disadvantage, in the form of lack of adequate education, housing and unsatisfactory health services, accompanied this crisis, as did a Māori over-representation in crime and unemployment statistics (O'Malley, 1973a; Poata-Smith, 1997; C. Williams, 2001). These variables contributed to their unequal socio-economic status. Some Māori advocates in this era already put the root of the causes of Māori inequality in the failure of their autonomous rights to be upheld and recognised by the agents of different social control mechanisms in the social services and in the CJS (Culpitt, 1995).

The widespread assumption of locating the roots of 'Māori crime' in their cultural practices incorrectly rendered some criminal deeds culturally conditioned (theft, violence, vigilante justice, etc.) and regarded them as reflections of traditional Māori norms (Duff, 1993; Hook, 2009a; M. Jackson, 1988; O'Malley, 1973a, 1973b; Te Punga, 1971; Whittle, 2009). Gradually, the popularity of demanding more and more rigorous controls over Māori increased, and stereotypes of disorderliness, maladaptation, violence, drug and alcohol addictions took root (Heim, 1998; Spoonley, 1993). Consequently, crime was markedly racialised; the notion of 'the Māori criminal' has been created in a process where the mass media with its selective attention and choice of monocultural perspectives played a key role (Heim, 1998; McGregor & Comrie, 1995; Te Punga, 1971; Thompson, 1953, 1954, 1955, as cited in Bull, 2001; Wall, 1997). Distortive and unwarranted practice of racialised 'Māori crime news' was widespread since the 1950s in newspapers (later in televisions), and due to its limited application to Māori (and Pacific people) it was discriminatory (Coxhead, 2005; Duncan, 1972; McGregor & Comrie, 1995). This practice is called 'race-labelling' or 'race-tagging', which is the unjustified usage of ethnic/race references when it provides neither relevant information to the newsworthiness of the article/story, nor serves public interest. Coxhead (2005) added that the media conveyed an explicit connection between Māori and crime.

The Department of Social Welfare reported in 1973 that 40% of all Māori under 16 had appeared at least once in the Children's Court, while the corresponding rate for non-Māori was 10%. The 1960s saw that genetics and neurobiology still define some ethnic peoples including Māori as inherently more likely to be criminals due to their unalterable racial characteristics (Department of Social Welfare, 1973). A 1968 Department of Justice review highlighted this thinking stating that Māori were violent criminals due to their distinctive racial features. Therefore, Māori were seen as inherently criminal and from this standpoint, incarceration rates for them were understandably higher than that of Pākehā (Spoonley, 1990). Wetherell and Potter (1992) found that assumptions of biological determinism and insistences on anti-Māori discourse were prevalent among Pākehā. The thinking that Māori criminal tendencies were biologically fixed and unchangeable saw the rise of plans such as those proposed for the Department of Māori Affairs; the one in 1962 was a gradual integration plan that sought intermarriage with Pākehā to breed away criminal tendencies (Hunn, 1961; Hunn & Booth, 1962). Perception of the fledgling ethnic-affiliated gangs strengthened the direct identification of ethnicity with crime and violence in the public (Heim, 1998; Winter, 1998). Duff's (1990) fictional novel ('Once were warriors') and its movie version expeditiously reinforced the stereotypical image of the influence of Māori warrior past and the widespread impression that violence and dysfunctional adaptation to social norms were rooted in Māori cultural heritage.

The 'Jackson-report' (1988) was the first and only large-scale research to assess the relationship between Māori and the CJS. It involved hui (meetings) with over 3,000 Māori held throughout the country. Moana Jackson (1988) claimed that Pākehā research into Māori crime was in the abstract monocultural, which contributed to the negative bias towards Māori. Owing to the monocultural nature of these research projects, they inherently missed the full recognition of the contributing socio-cultural variables and of the mechanisms needed to comprehend them. It was argued that police impartiality became close to impossible because of the 'survival' of negative biases built and woven into the CJS (M. Jackson, 1988; James, 2000; Johnson, 2006; Maxwell & Smith, 1998). Concurrently, public perceptions of some groups (above all Māori) as inherently more criminal resulted in higher notification levels to the authorities (Fergusson et al., 1993). Pratt (1994) noted that because of this bias, the intensity of police surveillance had increased, which, in turn, led to higher prosecution and conviction rates of Māori. Deane's (1997) study of sentencing found a disparity in rates of acquittal between Māori and Pākehā women: a 31% higher probability of acquittal for the

latter (however, access to legal representation was far from being equal). The negative evaluation paradigm creates a positive feedback loop fuelling an ever-increasing cycle of negative bias towards Māori. In addition, if criminals can be identified by their 'race', it will have very real implications for police and prosecution policies (Pratt, 1994). As early as 1975, Fergusson, Donnell and Slater examined the effects of race and socio-economic status on juvenile offending (a 1957 male cohort), and found, forebodingly, that the magnitude to which higher crime rates amongst Māori youth could be ascribed to their socio-economic status was 16-33% only. Perhaps unsurprisingly, Participant K. noted

> Participant K: *"I reckon what we also need. … Less police around, less crime, less crime discovered, less targeting of Māori, less arresting of them for 'walking while brown'. That would radically cut the Māori offending rate in half"*.

Finally, an obvious legislative discrimination was 'condoned' by the lawmakers (effectively from 1868) against Māori. They were excluded, for almost a century, from serving on a jury if either the defendant or the victim were non-Māori (Quince, 2007a). The jury selection method has also been corrupted. Dunstan, Paulin and Atkinson (1995) analysed court data and found that almost half of the Māori nominees for jury were challenged. Moreover, Māori nominees were twice as likely challenged as non-Māori in the High Court, and three times as likely in the District Court.

6.3.2.2. Contemporary evidence of discriminatory and monocultural patterns

Until now, the majority of the judges tend to come from elite white backgrounds[19], and studies indicated that they were not unsusceptible to cultural racism and therefore they might exhibit cultural biases (M. Jackson, 1995b; Morrison, 2009; Pratt, 1999). They are likely to share the underlying values and views of their cultural background, which may be inconsiderate or even hostile to the culture, traditions, experiences and needs of Māori (Latu & Lucas, 2008; Tauri, 2011). Another relevant sphere of the CJS is law enforcement. Māori perceptions of the police and police perceptions of Māori were evaluated in 1998 (Maxwell & Smith, 1998; Te Whaiti & Roguski, 1998). Results gathered from Māori participants were consistent that the police were a racist institution that perpetuated strong anti-Māori attitudes (Maxwell, 2005). The examples of evidence given were many and included being stopped and

[19] In 2011, out of the 62 judges appointed to the higher courts only two were Māori (McMullan, 2011).

questioned[20] on the pretext of criminal offending, verbal racist abuse and physical abuse during arrest, and disrespect for tikanga. The accounts given by the Māori participants were consistent and independent of age, gender, income, educational level and geographical location (Te Whaiti & Roguski, 1998). The research conducted in parallel on police observations of Māori closely matched the negative bias theme seen in the Māori study. Not less than two-thirds of the 737 participants commented on hearing fellow officers using racist remarks on Māori. There was a higher inclination to presume the perpetration of a crime by Māori, or to stop and interrogate Māori driving 'flash' cars. The results concluded that at least 25% of the police force harboured negative attitudes towards Māori (Maxwell & Smith, 1998). Analysis prepared by Cunningham et al. (2009), which was based on a 2006 crime and safety survey, mainly reinforced the findings of the studies above. Various datasets indicated that police were prone to interpret certain peculiar behaviours, such as facial and hand gestures, gaze aversion and interrupted speech patterns, as 'suspicious' (Johnson, 2006; Winkel & Vrij, 1990). Some of these behaviours may indeed be culturally influenced or determined (Johnson, 2006).

Tactical Options Reporting data also reveal disproportionate and potentially discriminatory police conduct affecting Māori (NZP, 2012, 2013, 2014). Among the available tactical options, when engaging with the public, Taser stun guns are the most recently introduced ones. The NZP started a trial of them in frontline policing in 2006. During the trial period, 29% of those tasered were Māori. There were fears at that time that disproportionate use of Tasers against Māori could become a possibility. Annual/biannual Taser-use reports showed the continuously disproportionate deployment of these weapons on Māori. In 2012 49%, in 2013 53%, in 2014 51% of Taser 'shows' (i.e. presentation, laser painting or arcing) and 60% in 2012, 52% in 2013, 51% in 2014 of Taser 'discharges' (discharge with probes and/or contact stun) were against Māori (NZP, 2012, 2013, 2014).

The Christchurch Health and Development Study [CHDS] is a longitudinal study of a birth cohort of over 1000 participants who have been continuously researched since their births in 1977 (Fergusson et al., 1993, 2015; Marie, Fergusson & Boden, 2012). Self-reported and

[20] Quantitative research has not been conducted yet with regard to ethnicity and police stop and search practices. NZP are not legally obliged to publish statistics (age, sex, ethnicity, reason for the measure, etc.) on those practices. Data is recorded if there is an arrest; for less formal interactions (approaching someone on the street or pulling over a vehicle, etc.) NZP have complete discretion.

officially recorded conviction data have been captured at consistent time intervals. Testing the data collected, the CHDS has analysed the potential magnitude to with offending rates amongst Māori were amplified by discriminatory police routine; and whether these practices could possibly eventuate in more frequent police contacts and higher rates of conviction (Fergusson et al., 1993, 2003a, 2003b, 2015). For example, Fergusson et al. (1993) found that Māori under 14 were 2.9 more likely to have police contact than non-Māori, and these ethnic disproportionalities could not be attributed entirely to the ethnic differences in self-reported offending. The study calculated that the probability of police contact with Māori was twice that of non-Māori with identical self-reported history of offending and social background (Fergusson et al., 1993). Fergusson et al. (2003b) investigated rates of arrest/conviction for cannabis related offences by the age of 21, and reported that given identical levels of self-reported cannabis use, same gender, same history of offending, the same levels of police contacts for other offences, Māori were over three times more likely to be arrested for these offences. Fergusson et al. (2003b) alluded then to the high probability of ethnicity-based prejudice in the arrest/conviction practices. Fergusson et al. (2003a) established that annual rates of conviction for property and violent offending for Māori aged 17-21 were 5.9 times higher than rates for non-Māori, while conviction rates for all offences were 4.1 times higher for Māori. After adjustment for ethnic differences in self-reported offending Māori still had 2.6 times higher rates of conviction for property and violent offences, and 2.1 times higher the rates for any offence compared to non-Māori. When further adjustments for socio-economic factors, educational background and self-reported offending were done, Māori still were shown to be between 1.6-1.8 times more likely to be convicted than non-Māori (Fergusson et al., 2003a).

An investigation into police diversion practices found that despite having a 40% share of the total apprehensions, Māori were involved only in 20% of the cases where diversion was granted (Workman et al., 1998). Moreover, in home detention and community-based sentences Māori are significantly under-represented if their proportion in the prison population is taken into account (DoC, 2007a, 2007c; MoJ, 1999; Nasedu, 2007; Workman, 2011a, 2011b). More recent evidence compiled by a justice reform group called ‘JustSpeak’ revealed that prosecution rates of Māori youths for the same type of offences are significantly higher in comparison to Pākehā youths (Davison, 2013). Table 6.1 shows, numerically and proportionally, these differences.

Table 6.1

Prosecution vs. total apprehension numbers for 10-16-year-olds, year 2011

Offence	Pākehā	Māori	Odds	
			Pākehā	Māori
Homicide	0/1	2/2	0%	100%
Acts intended to cause injury	290/1415	497/1876	21%	26%
Sexual assault	54/159	41/89	34%	46%
Dangerous or negligent acts endangering persons	1/11	6/13	9%	46%
Abduction, harassment	66/425	101/429	16%	24%
Robbery, extortion	42/73	195/302	58%	65%
Unlawful entry with intent/burglary, break and enter	317/954	1295/2944	33%	44%
Theft	588/3495	1173/5660	17%	21%
Fraud, deception	49/229	32/111	21%	29%
Illicit drug offences	117/768	107/643	15%	17%
Prohibited and regulated weapons, explosives	57/297	119/424	19%	28%
Property damage, environmental pollution	382/1913	581/2690	20%	22%
Public order offences	183/1728	370/2412	11%	15%
Offences against justice procedures, government security and operations	82/186	204/382	44%	53%
Miscellaneous offences	4/32	2/26	13%	8%

Note. Adapted from NZP Statistics, 2012 (as cited in Davison, 2013). Copyright by 2012 NZP Statistics. Adapted with permission.

The data in Table 6.1 reveal relevant differences. The probability of a prosecution for a Pākehā aged 10-16 was lower in every category of crime except one (miscellaneous offences) compared to a Māori youth (Davison, 2013). Workman (2012a) noted another significant disparity, the remarkable discrepancies in qualification for police diversion that varied greatly and largely inexplicably from region to region for young Māori. Sharples (2011) argued that it was necessary to understand how social and cultural dynamics like attitudes and prejudices interface with the justice system; and to understand the way these variables are normalised in society to create an experience of injustice. This undertaking has not been adequately accomplished yet. The following sections focus on the relevance and consequences of monoculturalism and discrimination for Romanies.

6.3.3. Monoculturalism and discrimination in Hungary

Discrimination and prejudices against Romani is entangled in Hungarian society (Bernát, Juhász, Krekó, Molnár, 2013; Dencső & Sik, 2007; Enyedi, Fábián & Sik, 2004). It has been common practice to ‘reasonably justify’ ethnic disparities with deficit theories (Kerezsi et al.,

2014; Kerezsi & Gosztonyi, 2014). The persistent myth promoted to elucidate the roots of Romani hardships is that they have not adjusted to the contemporary circumstances or they have simply failed to realise their 'potential' in a modern society. The most prevalent attitude is that 'they have problems'; therefore, they have to change, since they are the ones who can do something with their situation (Angelusz, 2000; Babusik, 2007; Bakó, 2006; Póczik, 2003b; Székelyi et al., 2001a). This 'certitude' is not a new phenomenon. Márkus (1967) and Hann et al. (1979) found similarly hostile attitudes; in Márkus representative sample, 68% were antagonistic to Romanies. Tauber (1986) ascertained that there were only insignificant differences in anti-Romani attitudes in society (e.g. age, sex, education, income, profession, region, religion, personal experience, etc.). In a 1989 poll, the majority thought that Romani were given too much welfare subsidies; seven out of eight respondents saw unacceptable the publicly financed housing programme for them. Two-thirds endorsed spatial and housing segregation and harsher police actions against Romani; and three in ten would even approve involuntary 'repatriation' of them to India (Silverman, 1995).

Some deficit theories assert that the failings of Romanies are based on inherent deficiencies within their groups (Kende, 2000). Among those deficiencies are the frequently alleged limited intellectual abilities, linguistic weaknesses, and lack of motivation for change in social status or for hard work (Bakó, 2006). These theories largely ignore the effects of societal structures and how the dominant cultural ways of life influence and increase ethnic disparities (Dupcsik, 2009). 45-55% of the Romani population lives in segregated environments (Kósa et al., 2009; Solt & Virág, 2010). These settlements are economically deprived and mostly located in the least developed regions of the country. This not only maintains social exclusions but also increases the intergenerational transference of socio-economic disadvantages. Discrimination has been preserved through the lack of strategic policies targeting the interrelation between everyday discrimination, social disadvantage and crime (Rorke et al., 2015). The government is rather *"in total denial"* of the existence of discrimination (Immigration and Refugee Board of Canada, 2012, p. 3). Insufficient attention has been devoted to the consequences that the discriminatory practices have bestowed upon Romanies; many of the issues being explained away as stereotypical generalisations about lack of competence and labour market experience, and culturally disparate attitudes towards work and law (Bernát et al., 2013; Kertesi, 2005; Majtényi & Majtényi, 2012). Recent studies rejected deficit theories as mostly unsubstantiated; however, this thinking is perpetuated by the media, infiltrates into society and enables misguided social and criminal policies

(Babusik, 2005; Kerezsi et al., 2014; Majtényi & Majtényi, 2012; Messing, 2005; Messing & Bernát, 2012).

6.3.3.1. Attitudes towards Romani

Romani are often viewed as a 'threat' to the majority population. A 2009 representative survey asked the proportion of Romanies in the Hungarian population. The average estimate was 22%, while their actual proportion is somewhere between 4-8% (Marketing Centrum, 2009). Another survey revealed that 81% of the majority population was antipathetic to Romani, and exactly the same proportion of respondents would support the forced assimilation of Romani (Publicus Research, 2009). Owing to the largely missing Romani middle class, most of the surveyed have never had contact with Romani CEOs, officers, professors, doctors, lawyers, etc. Thus, their only experience is through the media showcasing the typecast roles of unskilled workers, criminals, musicians or professional sportsmen (Bernáth & Messing, 2013; Murányi, 2006). Another survey found that two-thirds of the surveyed agreed that in contemporary media Romani were generally presented as criminals, and they had not seen or heard programs in the previous year, which was free of negative portrayal and stereotypes (Váradi, 2014). Unsurprisingly, they have then the tendency to conclude that Romanies are naturally inclined toward certain careers and ways of life and therefore unfit for other roles (Csepeli, 2010). It was emblematic that 57% of police officers did not consider it desirable to have Romani police officers, and 71% did not want to see Romani judges at all (Csepeli et al., 1997).

Direct discrimination tests reinforced the existence and effects of the previously cited negative notions. For example, Pálosi et al. (2007) carried out discrimination tests in job-seeking situations and found that Romani were obviously the most discriminated group among various disadvantaged groups. Traces of embedded prejudice were discovered at a very early age, even among kindergarten-age children (Kende, 2010). Strong prejudice was prevalent among tertiary students, too. Interestingly, the most massive prejudice was detected among Police College students (Krémer & Valcsicsák, 2001; Végh, 2008) and would-be elementary school teachers and history teachers (Vásárhelyi, 2009). Murányi (2006) even saw the justification for introducing the concept of prejudice as a 'life-form'. Another representative poll found that anti-Romani attitudes in the societal value-system could be seen as a 'common denominator' (Publicus Research, 2009). The other aspect of discrimination was illuminated in Neményi's (2007) study on identity-strategies of Romani youth. The social

distance (e.g. widespread refusal or at least aloofness, a general negativity from the majority) was obvious for them; therefore, they unconditionally preferred to lose their identity and assimilate into the majority society to prosper in their life. Participant A. had a similar observation:

> Participant A: *"Our research revealed that the majority of Romani adolescents have a strong desire to achieve social integration; most of them were even willing to disavow their ethnic affiliation. If their Romani identity would not be continuously violated, if they would not experience rejection and exclusion on both institutional and personal level, they might be able to rely on traditions of their Romani communities, and on the protection and security provided through their familial socialisation. If their ethnicity would not be equal to social marginalisation, exclusion and almost inevitable poverty, then they might be able to have more confidence and a healthier self-evaluation through their transition to adulthood, while keeping their Romani identities."*

Labelling Romani as criminals is an 'age-old topic' in Europe and in Hungary. Porajmos (the Romani holocaust) was the most dreadful period in Romani history (Hancock, 2005; L. Karsai, 1992). Persecution and then extermination attempts were established on a pseudoscientific theory that proclivity for antisocial behaviour, dishonesty and criminality was an innate and ineradicable 'Romani trait' (Balassa, 2006; Crowe, 2007; L. Karsai, 1992; Mezey, Pomogyi & Tauber, 1986). Operations and attitudes of various authorities contributed to upholding the criminality stereotype after WWII (Sághy, 2008; Székelyi et al., 2001b, Tauber, 1984, 2000). In the 1950s, racial discrimination manifested even in special 'black' ID cards issued for them (Fehér, 1993; Purcsi, 2001). In the 1960s, quite symbolically, when a public debate among stakeholders of law enforcement took place, the editor of the official journal of the Ministry of Interior gave the following conclusion: *"there is a need to robustly address the lingering notion, among police officers and in the public too, that all the Gypsies are criminals"* (Győrök, 1963 as cited in Szendrei, 2011, p. 39).

Recognition of Romani as a distinct ethnicity was refused by the socialist state; they were labelled simply as backward social groups (Sághy, 2008). The political leadership of the socialist regime (the Politburo) decided in 1961 that the 'Romani question' was a 'social' and not an 'ethnic' matter (Mezey, 1986). The long-term policy was assimilation through obligatory work programmes, state housing and schools. It was presumed that this way the 'Romani issue' would cease to exist without having said anything about how majority prejudices against them should be dealt with (Majtényi & Majtényi, 2012; Sághy, 2008). The 1970s saw the 'official' appearance of the controversial term, the 'gypsy crime'. This concept created a direct link between ethnicity and crime. Tauber and Végh (1982) proved that while

among some Romani families ‘criminal lifestyle’ could be detected, still less than 1.5% of Romani had ever offended. However, their findings did not influence the criminal policy at all. Mainstream scholarship in criminology accepted the legitimacy of the concept, while in 1971 the Ministry of Interior began to register the ethnicity of offenders, in a clearly discriminatory manner, as Romani was the only registered ethnicity (Tauber & Végh, 1982). Various repressive legal and security measures were implemented like constant ID checks, use of excessive force during police raids, arbitrary detentions, unlawful and abusive interrogations and other systematic injustices and breaches of the criminal procedures (Fehér, 1993). From the 1970s, a special police department focused on the ‘peculiarities of Gypsy criminality’. Even pseudoscientific methods were adopted. For example, thousands of fingerprints and line patterns in the palm from Romani living in childcare institutions (mostly without criminal records) were gathered and analysed to prove/disprove that they had genetic inclination to commit crime disproportionately (Fehér, 1993; Tauszik & Tóth, 1987). Long history of stereotypes created and influenced anti-Romani views. Actually, the denomination of Romani peoples in many European languages has negative connotations; for example, the English verb ‘to gyp’ has the meaning to cheat or swindle, the Hungarian verb ‘cigánykodik’ has a similar meaning (Silverman, 1995).

Historical antecedents greatly conduced to the harshly racist popular belief that Romani are inherently criminal. Surveys in 1994 found 64%, in 2000 55%, in 2008 60% and in 2011 again 60% of respondents supported the notion of the biologically determined criminality of Romanies (Simonovits & Szalai, 2013). The majority of police officers in surveys (1997, 2006) agreed with the statement that criminality was a central element of Romani identity (Csepeli et al., 1997; OSI, 2007). This stereotyped belief has been fuelled by several serious crimes, as they were linked, justly or unjustly, to Romani offenders. This has increased racial hatred towards Romani in recent years (CoE, 2015; H. Balogh, 2009, 2011; HHC, 2011, 2015; Juhász, 2010). However, when respondents were asked, they denied that any form of stereotypes or bias had influenced them; they unshakeably stated that their attitudes were based on their own experience (Hungarian Gallup Institute, 2009; OSI, 2005, 2007). The other side is the perception of this sentiment by Romanies themselves. A survey ascertained that more than nine in ten respondents thought that their discrimination was widespread; more than six in ten personally encountered discriminations in the previous year; four in ten were subject to at least one police stop and check, among them six in ten attributed it to ethnic profiling (FRA, 2009).

6.3.3.2. Bias and discrimination in the CJS

Romanies are disproportionately stopped, searched and detained while less likely to be unofficially warned or cautioned and more likely to be charged following these proceedings. They are more likely to be remanded in custody and more likely to be convicted (Kádár et al., 2009), and then less likely to be fined but they have a greater probability of being imprisoned (Huszár, 1999; Kádár et al., 2009; K. Ligeti, 2008; Pap, 2011; Pap & Simonovits, 2007). Direct racial profiling by the police against Romani was investigated in 2002/2003 and widespread discrimination was found in the CJS (Farkas et al., 2004). The project analysed court data to reveal how offenders were originally identified. The results resembled the similar Anglo-American studies that analysed procedural bias and prejudice against visible minorities in the CJS s (Bowling & Phillips, 2007; Miller et al., 2008). Romani were far more likely to be identified, as suspects, at police stops when compared to non-Romani whom were mostly caught during the act (Farkas et al., 2004). The study highlighted that the differences were due to bias in the CJS. It was established that those non-Romani who were not caught in the act had significantly better chance of avoiding prosecution altogether (Farkas et al., 2004). Unsurprisingly, empirical studies reported that incarceration rates for Romani were between four and seven times higher than for the general population (Barabás, 2012; Huszár, 1999; Póczik, 2001, Solt et al., 2011). This study focuses largely on the mechanisms of social control by the CJS. However, it is worthwhile citing Participant K. in the New Zealand context on the broader scope of social control involving:

> Participant K: *"much more than the operations of the police, judiciary, corrections, etc. alone; they include the entirety of the colonial political and economic order"*.

This observation is largely in unison with Participant E. comment on the overall approach in society towards the 'control' of Romani:

> Participant E: *"The history of the relationship between Romani and the majority society unfolds that both the intensity and the harshness of social controls that affected Romanies were different, even unique. It mostly occurred in the form of unjustified targeting as part of the 'law enforcement policy'. It regularly resulted and still results in detention, arrest, prosecution, even in the absence of factual antisocial behaviour. Thus, they, as a visible ethnic minority, commonly experienced disproportionately the attention of the social control systems and interventions in the name of 'crime control'. Overall, these broader spheres of social control have eventually bred a constant state of criminogenic conditions where a sociopathology-based criminality can flourish."*

Over-policing and police discrimination against Romani was highlighted by 'The Strategies for Effective Police Stop and Search' [STEPSS] project; qualitative research conducted in 2007/2008 (Kádár et al., 2009). It found that Romani, especially youth aged 14-16 were, firstly, more likely to be stopped and secondly, more likely to experience ill-treatment on the street. It was observed that Romani outside the 14-16 age range had a 22% chance of being stopped as opposed to a 32% if one was in the 14-16 age group. Both data indicated an about three times larger probability of being stopped than in the case of the non-Romani (Kádár et al., 2009). The estimated proportion of Romani in the total population is between 4-8% (median 6.4%). Romani has a much younger population profile; in the age group 15-19, their proportion is about 12% (Kádár et al., 2009; KSH, 2013). Figure 6.2 shows how police officers categorised the race/ethnicity of the stopped and checked individuals during the research.

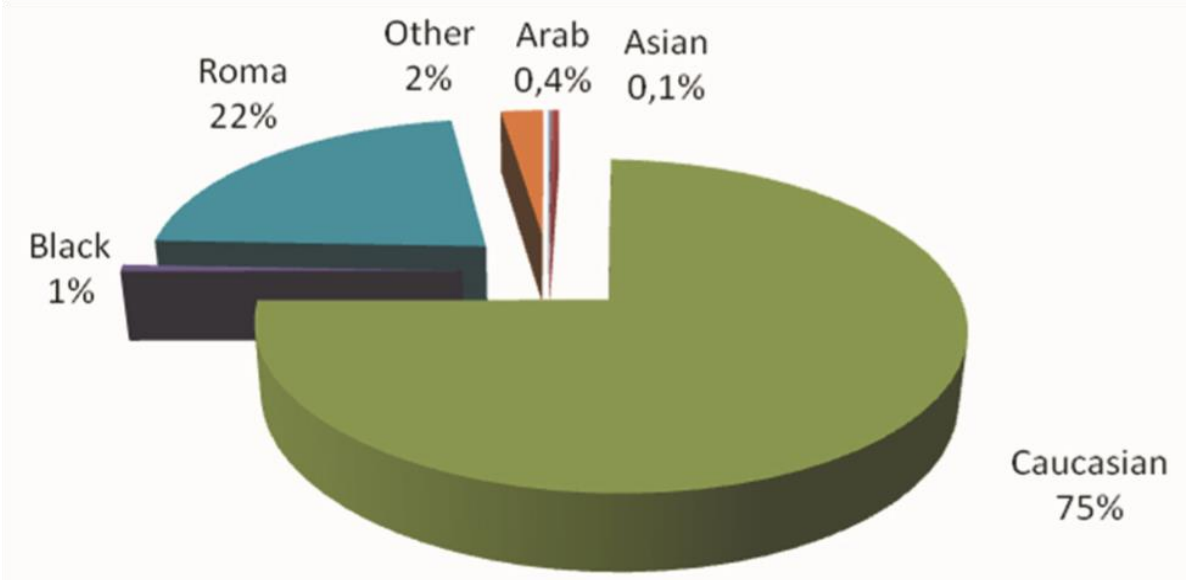

Figure 6.2. Perception of the race/ethnicity of the participants. From Kádár et al., 2009, p. 36. Copyright 2009 by Kádár et al. Reprinted with permission.

Figure 6.3 depicts that the proportion of ID checked Romani aged 14-16 was much higher than their already high average share in the whole sample (32% versus 22%).

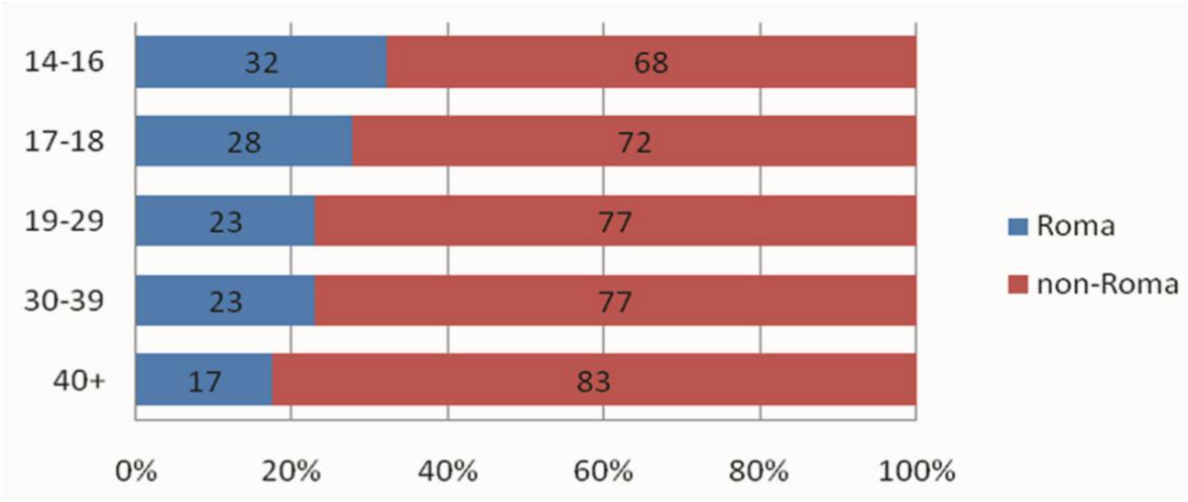

Figure 6.3. Age of ID checked individuals by ethnicity. From Kádár et al., 2009, p. 37. Copyright 2009 by Kádár et al. Reprinted with permission.

It is often asserted that discriminatory practices are just since they are based on the correlation between ethnicity and potential criminal conduct (Buerger & Farrell, 2002; Harcourt, 2006; D. A. Harris, 2002). Studies showed, without exception, strong prejudices against Romani and other (mostly migrant) minorities. These studies revealed how the police and the general populace speculated about the ethnic patterns of offending (Kádár & Pap, 2009; Pap & Simonovits, 2007; PCRNEM, 2008; Végh, 2008). For example, Kádár et al (2009) reported that almost four-fifths of the surveyed police officers believed that Romani did not abide by the law, three-fifths agreed that privation is only a self-justification for offending. The contributing factors that maintained these discriminatory practices were the inadequate police supervisory structures and the insufficient or missing evaluations of the efficiency of police stops and checks (Kádár & Pap, 2009; Pap & Simonovits, 2007). Still, the evidence is clear that Romani are unequally subjected to ID checks; however, the data (Figure 6.4) shows that this inequality is not warranted, since, on average, Romanies are no more likely to offend than non-Romanies (Bólyai, 1997; Kádár et al., 2009; OSI, 2007). Data collected nationally showed that 78% of Romani ID checks were ‘unsuccessful’ (i.e. no further action was undertaken), while it was 79% for non-Romani. For petty offences, detected by the ID checks, the ratios were 19% for Romani and 18% for non-Romani. Nationally the rates for arrests and short-term detention were almost identical in the two samples (Kádár et al., 2009).

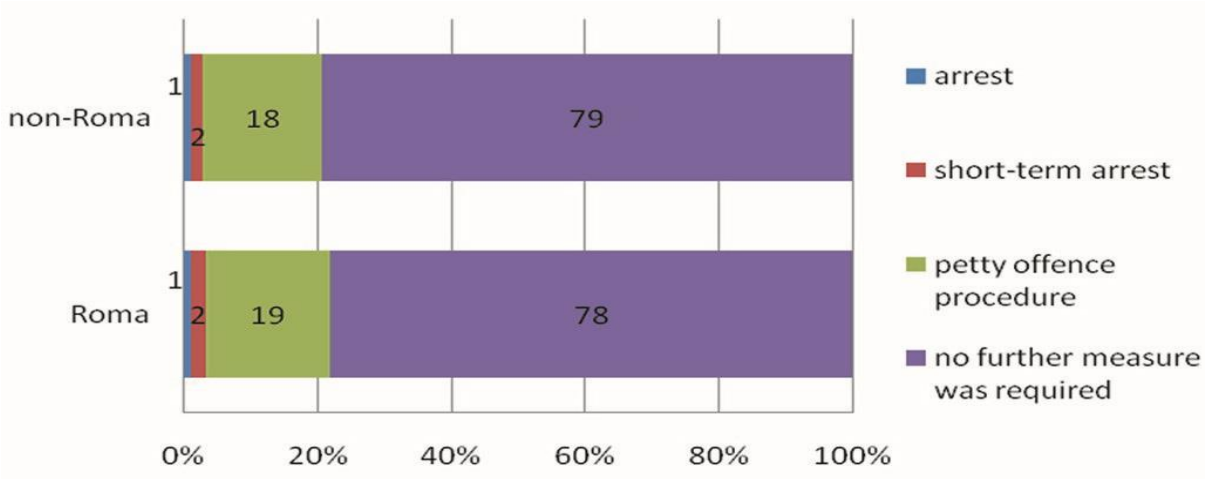

Figure 6.4. Effectiveness of ID checks by ethnicity. From Kádár et al., 2009, p. 39. Copyright 2009 by Kádár et al. Reprinted with permission.

Perhaps the most interesting finding of the STEPSS project is shown in Figure 6.5. It presents cases when ID checks were based on the suspicion of a crime. As Pap and Simonovits (2007) and Pap (2011) ascertained, findings were similar to the results of comparable studies on the effectiveness of ID checks in the US and the UK. In principle, the normal 'hit rate' should be higher in those cases showed below. Still, a far higher proportion of Romani (37%) were targeted, where it was subsequently proved that the suspicion was baseless or unproven. In contrast, the respective number for non-Romani was only 25% (Kádár et al., 2009).

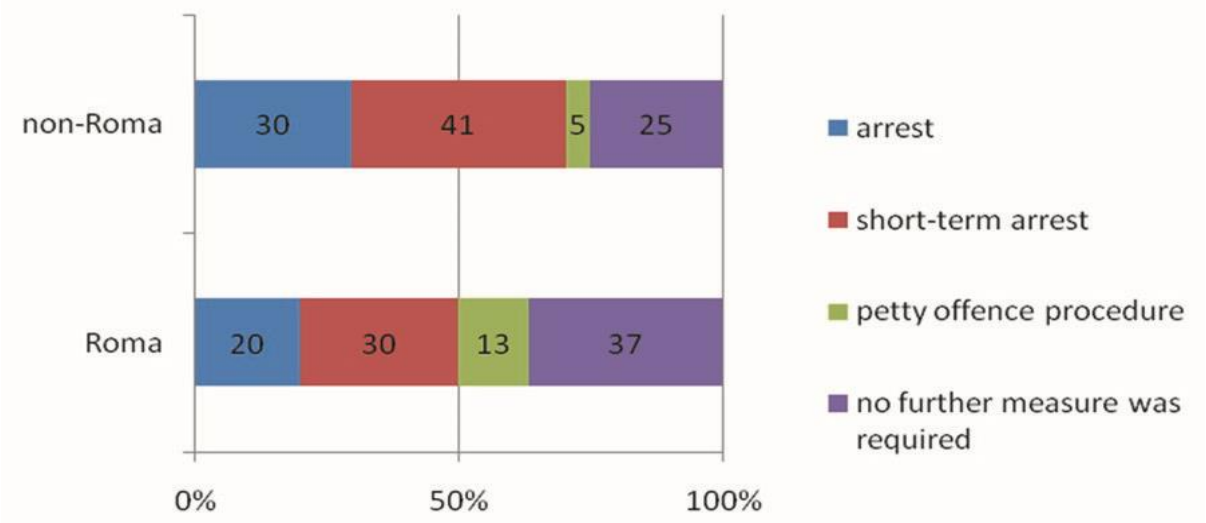

Figure 6.5. Effectiveness of ID checks based on the suspicion of a crime, by ethnicity. From Kádár et al., 2009, p. 40. Copyright 2009 by Kádár et al. Reprinted with permission.

Romani respondents reported much more likely objectionable experiences after ID checks (Kádár et al., 2009). 9% of Romani and 3% of non-Romani respondents experienced some forms of disrespectful treatments during contact with authorities, health and social service providers (OSI, 2007). Surányi and Takács (2013) documented extensive and often blatant

discrimination in law enforcement and the discriminative use of sanctions by local authorities in infringement cases. H. Szilágyi (2009) reported the findings of an empirical research where criminal court procedures against Romani defendants were examined. Although in most cases the formalities of the procedures were observed, these trials manifested social repudiation and stigmatisation, including criminalisation of Romanies. Some judges and prosecutors before or after the hearings explicitly expressed, in front of the research assistants, negatively biased views towards Romani defendants and witnesses. The activity of duty lawyers providing legal representation for defendants was almost without exception meaningless. The study concluded that these trials were part of the perpetuation of mutual prejudices between Romani and the majority population contributing to their marginalisation and segregation (H. Szilágyi, 2009). Participant G., recalling her own research, reported that among judges and prosecutors there might have been a:

Participant G: *"belief that Romanies are able to tolerate imprisonment 'traditionally' better than non-Romanies".*

Participant G. added that this thinking was chiefly based on the assumption that:

> Participant G: "*incarceration can be more disruptive to non-Romani families; while their other consideration was the apprehension about the negative public reactions regarding potential perception of unduly lenient sentences, the fear being seen as soft on crime."*

It is not an unprecedented statement since among the majority, and even among Romanies, there is a common thinking that (mass) imprisonment has become a 'normal life event' for many Romanies (see more details in section 8.5.4.). Still, it is unlawful to differentiate between offenders in sentencing based on such assumptions.

6.3.4. Social harms perspective

Higher level of marginalisation, social alienation, more limited social cohesion characterise the more individualistic and unequal societies. These circumstances more frequently create criminogenic contexts from which heightened criminal harms may arise (Pemberton, 2015). Exclusion from societal structures creates a self-perpetuating and institutionalised mechanism of stigmatisation, which denies its victims access to societal opportunities like adequate participation in educational and in labour market, acceptable quality of housing, healthcare and other social services. Consequently, capabilities of Romani and Māori become limited to contribute to the proper functioning of the society, which reinforce majority views of ethnicity-based undeservedness, inferiority and criminality (Csepeli et al., 2011; M. H. Durie,

2011; Hook, 2009c; Houkamau & Sibley, 2005; Humpage, 2006; Juhász, 2010). Recent studies in zemiology provide progressive 'new directions' for critical criminology as they focus on harms caused by inequality and social exclusion (Dorling et al, 2008; Pemberton, 2015). Zemiology highlights the direct interrelationship between ethnic/racial groups involvement in crime and social harms originated from similarly entrenched patterns of socio-economic, technological, institutional and cultural practices as it can be seen in the case of Romani and Māori (S. Green et al., 2013; Yar, 2012). As Chapter 3 revealed, the origins of zemiology are in the critique of mainstream criminology and its notion of crime (Dorling et al., 2008). The social reality is that there are groups who are recognisably victims or 'casualties' of the socio-political system, which signifies that the system itself is defective. Therefore, zemiology advocates the scrutiny of wider harms produced by states and social structures and especially of the social harms correlated with socio-economic inequalities and injustices (Dorling et al, 2008; Pemberton, 2015; Yar, 2012). The social harms perspective suggests that the narrow focus of the mainstream criminology and criminal policy on crime is not capable of properly identifying and addressing the causes of various deep-rooted harms. Participant P. described this as a characteristic of the conventional political, governmental and power structure 'realities':

> Participant P: *"The issue that we were talking about is actually not about evidence. Nothing to do with evidence. What it does have everything with, is that who has power and who does not. ... In terms of how you look at the evidence and how you use it, it's not the question of evidence at all; it's a question of power. Of course, the people who populate the prisons are powerless. ... Why we talk about a community driven response, is actually putting the power back to the people that they don't have now. It's incredibly hard to do because people who have power, they fight to the death to keep it. It hinges upon people, bunch of people who have power, extreme power. They're part of the state machinery, they impose it on people, and it doesn't work."*

It would be necessary to reach out to a wider range of disciplines and employing a more holistic approach to harmful situations. This perspective propagates investing in the search for alternative systems of social control. Zemiologists conclude that the narrow focus has led to criminalisation and punishment in such a way that creates more social harms than advantages for the society (Dorling et al, 2008; Pemberton, 2015). Andreas and Nadelmann (2006, p. 251) summarised the nexus between social and criminal policies:

> *"... crime control has too often substituted and distracted attention away from the need for more fundamental political, social, and economic reforms. Across much of the world, a punitive policing state increasingly overshadows and substitutes for a*

retreating welfare state, even as the social dislocations that result fuel further calls for more policing."

There is interconnectedness between crime, harm, social justice, the expansion of the CJS and the current 'agonies' of the social/welfare state (Pemberton, 2015; Yar, 2012). In Hungary, and to a somewhat lesser degree in New Zealand, by focusing on punishment instead of attempting to tackle the complex root causes of crime, government policies frame social challenges in such ways that suggest the workability of simpler solutions. The political reasoning behind this attitude is typical as it facilitates being able to claim 'progress' and 'results' sooner and more easily (Cleland & Quince, 2014; Kerezsi & Gosztonyi, 2014; Lévay, 2012; O'Sullivan, 2008; Winter, 1998; Workman, 2011c, 2013). This is discussed in Chapter 7 and 8. The usefulness of the zemiological approach is justifiable for this study since no social or criminal policy can potentially be effective if it ignores the 'social reality' of disadvantaged, discriminated groups.

6.3.5. Contrast in the perception of discrimination and 'white privilege'

Academic and public discourses on white privileges are comparatively scarcer in Hungary; while laws, social policy planning, implementation, monitoring and evaluation mostly do not allow for the consideration of ethnic/racial factors (Majtényi & Majtényi, 2012; State Audit Office, 2008). There are no notable studies on experiences and attitudes regarding the issue of white privilege. However, attitudinal studies showed that even self-identified anti-racists struggled to realise the 'other side of discrimination': the privilege for whites as a group and as individuals (Bernát, 2005; Sik & Simonovits, 2012). Moreover, self-identified liberals and anti-racists are a currently shrinking minority in society (Balassa, 2006; Bernát et al., 2013; Enyedi et al., 2004; Simonovits & Szalai, 2013) that lacks the population diversity, which could advance the alleviation of racial bias and discrimination (Dencső & Sik, 2007; Jolls & Sunstein, 2006). Hungarian society has remained, except the increasing proportion of Romanies, fairly homogeneous. The share of all other visible (migrant) minority is well below of 1%, and no significant change is expected in the next decade (KSH, 2013). Moreover, recently, the right-wing Orbán government popularises and strongly encourages anti-refugee stance, anti-immigrant and xenophobic attitudes (UN Refugee Agency & CoE, 2015). In comparison with New Zealand, there is a divergent tendency of growing social distance, perception of 'otherness' and inclination towards discriminative and xenophobic attitudes

(European Commission, 2014; Farkas, 2014; HHC, 2011; MoH, 2015b; Sibley et al., 2011; UN Refugee Agency & CoE, 2015).

A scaling technique for empirically measuring willingness to participate in social contacts, known as the 'Bogardus scale', shows that negative attitudes toward Romani are not only the strongest but also the most universal. The Bogardus social distance scale asks people the extent to which they would accept others from certain, for instance ethnic or national, groups as neighbours, colleagues, family members by marriage or as close friends (Bogardus, 1925). An attitudinal survey revealed that 49% of Hungarians would not accept Romanies in any of these relationships, while only 19% would accept them in all of them (Simonovits & Szalai, 2013). Moreover, a 2011 survey found that the perception of ethnic tension was strikingly high, 97% of the population observed some level of hostilities between Romani and non-Romani (Simonovits & Szalai, 2013). In conclusion, in New Zealand more likely the agents of the CJS have 'institutionally racist' features, while in Hungary a more universal version of this frame of reference does exist. More precisely, structural racism has saturated the wider Hungarian society; this ingrained and pervasive racism creates a CJS where discrimination is symptomatic of the structural inequalities. However, a relevant commonality in both countries is that even proponents of bi- or multiculturalism and the modern liberal ideology represent an attitude, which has the best description as an unrelenting avoidance of the acknowledgement of differences from birth. It is based on the declaration (or interpretation) that every human being is equal (Liu & Mills, 2005). This is also known as the 'colour-blind perspective' or the 'myth of sameness' (Dyer, 1997), an ostensibly well-meant stance promulgating that race should not and does not matter. It incorporates the supposition that colour-blindness eventually eliminates racism (Fiske & Taylor, 2013). The following section examines the tenability and suitability of the colour-blind social policy approaches in the two countries.

6.4. Tenability and appropriateness of colour-blind policies

In developed countries, the colour-blind approach can be popular among decision-makers attempting to offset consequences of racial discrimination (Alexander, 2012; Lewis, 2004; Robinson, 2000). This perspective eschews the acceptance of differences in pursuance of the assertion that everyone is equal. The long-term objective of the colour-blind approach is the elimination of racial imbalances, however, its impact may be quite the contrary (Brewer & Heitzeg, 2008; Lawrence, 2008; Parks et al., 2008, Zamudio et al., 2012). Its fundamental

'tenet' is the concept of formal equality articulated as 'equality of opportunity' without having regard to existing structural and economic inequality (Webster, 2012). However, for example, the Council Directive 2000/43/EC ('Race Directive') implementing the principle of equal treatment in the EU is not 'colour-blind' and explicitly allows positive (affirmative) actions. Article 5 provides that *"With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin".* (Directives are binding on all Member States). Ethnicity ignoring needs-based models (for example Hungary: Ladányi & Szelényi, 2001, 2006; Póczik, 2001, 2003b; New Zealand: Marie, 2010; Newbold, 2000; Chapple, 2000; Australia: Snowball & Weatherburn, 2007, 2008) approaching disadvantaged people as socio-economic classes can be critiqued on valid grounds. They overlook the sorting mechanisms by which disadvantaged groups come to be disproportionately concentrated in those strata that are the neediest. In racialised societies, where inequalities persist for generations seemingly naturally and predictably, it is prevalent that discourses on ethnicity/race and racism remained marginalised or even muted by the domination of colour-blindness in the liberal and positivist views of laws and policies (Dupcsik, 2009; Kymlicka, 1995; Ladson-Billings & Tate, 1995; Lawrence, 2008; O'Sullivan, 2008).

Not only laws and public policies but also present-day mainstream criminological theories, almost invariably, adopt a 'colour-blind' approach (Webster, 2012). Sullivan (2009) argued that the assumption of the colour-blind policy was profoundly unrealistic because substantial imbalances between certain groups still evidently did exist; and they were repeatedly reproduced by the limited social mobility. This is in tandem with M. H. Durie's (2005) notion that the ignorance of ethnicity and indigeneity in public policy planning was illusive. M. H. Durie (2005) claimed that it was disingenuous to promote policies that maintain the myth of the suitability of colour-blindness; since, being inherently unable to handle ethnicity-based structural and historical barriers, they had largely preserved disparity, exclusion and marginalisation of Māori and Pacific peoples. Conventional methods of measuring effects of racism in the CJS are based on positivist benchmarks, which are seen by many schools of thinking as irredeemably flawed (see Chapter 3). Critical and critical race theorists (for example, Krieger & Fiske, 2006; Lawrence, 2008; Yar, 2012; Young, 2004) denounced positivistic approaches as incapable of detecting concealed and indirect forms of racism. Fiske and Taylor (2013) demonstrated that the self-maintenance of stereotypes and the denials of

biased behaviour stemmed from and shaped by the 'normal' functioning of the human social cognition. Race/ethnic discrepancies between official crime records and self-reports of offending indicated the shortcomings of the positivist methodologies (Fergusson et al., 1993, 2003a, 2003b; Thornberry & Krohn, 2003; Walker, Spohn & DeLone, 2012). Critical and CRT approaches tended to recognise the validity of alternative criteria of evaluation to comprehend the experience of some minorities and the effects of various forms of social injustice on their life (Hearfield & Scott, 2012; L. T. Smith, 1999; Webster, 2012). These approaches acknowledge experiential knowledge of racial/ethnic minorities about enduring subservience as justifiable, pertinent and crucial instrument to interpret, analyse and cope with these 'realities' (Solorzano, 1998). Lived experiences are essential for CRT, therefore different additional methods including storytelling, family history, biographies, scenarios, parables, chronicles and narratives need to gain legitimacy. For example, Delgado and Stefancic (2012, p. 144) defined counter-story-telling as a *"method of telling a story that aims to cast doubt on the validity of accepted premises as myths, especially ones held by the majority".* Recognition of the rationale of these alternative methods to better understand the challenges affecting the lives of racial/ethnic minorities is still in a nascent stage in both countries. This study intends to draw attention to these deficiencies and to suggest the need for further research in this respect.

Critics of race/ethnicity-based social policy approaches argue that there is an inconsistency in these approaches because of the existence of cultural and socio-economic diversity within the generally underprivileged groups (Gabbidon, 2010; Gabbidon & Taylor Greene, 2015). The other side usually counters that the persistent disproportionately in socio-economic inequality and discriminatory treatments is a sufficient justification for ethnicity-based social policies. Similar debates have taken place in both countries (for example, Binder, 2010; Havas et al., 1998; Kukutai, 2004; Ladányi & Szelényi, 2000, 2001). Sullivan (2009) analysed public policy developments and claimed that a colour-blind public policy approach had spread vigorously and defined political discourses, which brought about the dismissal of the concept of ethnicity/indigeneity as a crucial factor in public policy development. Chapple (2000) declined even to consider ethnicity as a factor in the case of Māori, and argued that socio-economic circumstances only and exclusively ought to provide a basis for social policies, since Māori, as a group, did not have a shared experience of socio-economic inequality. The change towards a colour-blind policy direction in the 2000s was

> Participant P: "*triggered by speculations about political consequences of initiatives portrayed in the mass media and by numerous politicians as preferential treatment, and not by any identified inadequacies of ethnic targeting.*

Similarly, even faint attempts of preferential treatment initiatives and colour-consciousness in public and social policy faded away completely by the 2010s in Hungary without any serious efforts to evaluate and improve the efficiency of these policy approaches (CoE, 2009, 2015; HHC, 2011, 2015). A deep-rooted and widely expressed overtone of disapproval regarding the assumed preferential treatment of Māori and Romani is present in most segments of these societies; irrespectively of the fact that there are still evidently substantial differences in social inclusion and life opportunities for them and for the majority populations.

Against the common belief, liberal social policy approaches do not contradict the challenge to the tenability of colour-blindness. Kymlicka (1995) provided a liberal theoretical framework to accommodate cultural differences and to prevent hegemonic cultural domination for a more equitable treatment of minority groups, and argued that group-specific rights could be congruous with liberal doctrines and they could facilitate participation in the political, economic and cultural progress of society than would otherwise be possible. Kymlicka (1995) emphasised that genuine equality and fairness dismissed identical treatment, and to accommodate differential requisites they rather called for differential treatment. Probably the most convincing argument against the tenability of colour-blindness in social and criminal policy is that in most cases racism is not perpetuated by extremist individuals. Certain level of racism is commonplace, accustomed and not an abnormality but rather a 'business as usual' happening in modern societies (see details in Chapter 3 and the reasonings discussing options for more autonomous justice initiatives in Chapter 9). The ordinary characteristic indicates that the alleviation of racist phenomena might require unorthodox approaches and some more radical measurements, too. Delgado and Stefancic (2012) found that colour-blind understanding of equality, articulated in regulations that require the uniformity of procedural treatment only, would always remain unable to remedy less blatant forms of discrimination. Put differently, as Justice Blackmun famously wrote in his opinion in the Bakke case *"In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently"* (as cited in L. E. Ross, 2010, p. 400).

Forasmuch as it was concluded in Chapter 3, it is emphasised again that criminological aspects of the situation of Romani and Māori suggest the consideration of critical and

zemiologist perspectives as they are among the most responsive ones to embrace a colour-conscious approach (Cornell & Panfilio, 2010; Milovanovic, 2002). Initial steps of studying linkage between post-colonial models and CRT took place; however, this perspective has largely remained unexplored in criminological thinking (Gabbidon, 2010; Webster, 2012). These perspectives prefer a more vigorous approach to social progress in contrast to the more circumspect and colour-blind approach of liberalism. They are critical of civil rights scholarship and anti-discrimination laws as they have more confidence in political and community organizing and activities. Therefore, Chapter 9 presents, examines and compares various approaches and models of Māori and Romani community justice.

6.5. Conclusion

One only needs to look at history in New Zealand and Hungary to see the foundations of social, economic and cultural inequality. Invading and/or dominant cultures enforced a way of life on mostly non-white populations that was foreign to their natural way of being. Historically, the state had mostly excluded Māori and Romani from government policy decisions and public administration concerning their lives. In Hungary, it is still common that policy decisions affecting them are made without or with only superficial consultation with Romani representatives and organisations. Lack of understanding from dominant groups gave rise to explanations to why minorities did not accommodate well to a newly enforced societal structure. Stigmatising labels, specific legal practices and monocultural mores that saw minorities as inferior were created to further explain away why minorities have been unable to integrate well into a 'modern society'. Some studies revealed that the widespread belief in their 'inferiority' has mostly not been created by the historical attitude of racial discrimination anymore; rather, there is a latent supposition of the inherent cultural inferiority (Csepeli et al., 2011; HRC, 2011; Sullivan, 2009). Thus, the underlying and maintaining belief that their marginalised position is attributed to some unspecified inadequacy in them is, usually, not openly expressed but remains woven into the 'mainstream' culture. The upshot of this is that inequality has become entrenched in these societies. Emotions, thoughts, socially expected ways of being have filtered out and have morphed themselves into a system of social symbols and meanings that predictably bypass the implementation of the rectifying civil rights legislation and social justice initiatives. The lingering challenge is that one may remove from the consciousness the thoughts that created this inequality but while the symbols of this inequality remain, so to do their meaning as well as the feelings they invoke, and these

feelings will continue to morph one's behaviour. Even where theories of biological inferiority have been repudiated, other, more intricate and innovative systems of 'cultural inferiority' have been formed and superseded the previous conceptualisation. Their exponents ascribe racial discrepancies in educational attainment and in intellectual ability to a mentally incapacitating cycle of culture of poverty in which many Māori and Romani have grown up.

The tenability of colour-blindness in social and criminal policy approaches can be reasonably challenged on the ground that disparate outcomes are to be in the focal point without regard of their origin, since they constitute the fundamental social problems to be addressed. Previously unknown and more indirect mechanisms for preserving systemic racism and its economic and social underpinnings have evolved. Correlatively, explicit, de jure racial discrimination was gradually replaced by a 'de facto racism' that manifests itself in inequitable protection of the law, undue level of surveillance, racial profiling, severe segregation and mass incarceration, all in the name of effective crime control (M. Alexander, 2012; Brewer & Heitzeg, 2008; Wacquant, 2009). Methodological imperfections seem to make it impossible to exactly determine the sources that contribute (and the extent of their contribution) to the disparate outcomes in society and in the CJS. The persistent existence of methodological difficulties provides a further argument for concentrating on consequences of disparity as such rather than insisting on the unrealistic quest for identification of pure discrimination or bias. Individual criminogenic factors, invariably invoked by the proponents of the differential involvement thesis, inseparably operate concurrently with direct and indirect discrimination, and they jointly produce ethnic disparities (Morrison, 2009). Aggravating effects of discriminatory attitudes and actions can explain why visible minorities in the same disadvantaged socio-economic position are more disproportionately involved in crime than their non-visible counterparts are. Consequently, the moot point is how the cycle of disadvantage and offending might be broken to reduce ethnic disparities (Webster, 2012). Critical criminology and CRT advocate that without conscious efforts to adjust social policy and institutions to reduce social exclusion and to better accommodate ethnic and cultural differences there is no chance of real progress. This long-term goal requires the improvement of intergroup relations and the reduction of the cognitive sources of intergroup prejudice. This prejudice stems from widespread and deep-rooted cultural conflicts necessitating broad-based cultural approaches and solutions (Krieger, 1995).

The next two chapters provide an overview of juvenile delinquency and crime statistics in both countries; they deal with the historical evolution of distinct juvenile justice systems first

in New Zealand and then in Hungary and conclude with a comparison. Part of the focus is the analyses of the socio-cultural and legal backgrounds in relation to Māori People and Romani People.

CHAPTER SEVEN

7. Māori and the social control and justice systems

An overview of juvenile delinquency and crime statistics are presented in Chapter 7. It deals with the historical evolution of distinct juvenile justice. Part of the focus is the analyses of the socio-cultural and legal backgrounds in relation to Māori People. The chapter pictures some of the contemporary features of the mainstream juvenile justice system with particular regard to the various restorative justice and community-based institutions, the diverse range of diversionary options and models including FGCs and Rangatahi courts.

7.1. Encounter between Māori society and the colonial system

Before the arrival of Pākehā, Māori had their own system of rights and obligations; this distinctive justice system was widely accepted[21] (H. Mead, 2003; Stafford, 1997). The violence that evolved after the arrival of Pākehā quenched the originally positive expectations for their law (Fleras & Spoonley, 1999). Confidence continued to decrease even after the signing of the Treaty of Waitangi with blatantly discriminative legislation such as the Māori Prisoners' Trials Act 1879. It removed basic civil liberties, as it did not permit trial for Māori without an explicit approval of the governor; and it enabled authorities to keep prisoners awaiting trial for up to two years (Bull, 2001). As Participant L. noted:

> Participant L: *"The criminalisation of Māori resistance to land acquisitions was the early experience of the CJS. Māori communities resisted to the government's desire to acquire land. Those people who resisted were treated as criminals. They were often imprisoned without trial, and not only the men but also the women and children … were deported to prisons or settlements in Chatham Islands."*

The cultural damage done to Māori can be clearly linked to the settlers, their governments and the administration of European law, as they lacked understanding and respect for Te Ao Māori (Māori worldview) and for cultural appropriateness (Belich, 1996; H. Mead, 2003; Stafford, 1997). There were attempts made with legislation to respect the cultural differences of Māori like the Constitution Act 1852, which allowed for 'native districts', but like other

[21] Māori worldview and traditional conflict resolution in more detail are in Chapter 9.

pro Te Ao Māori legislation, it was largely ignored and never decently installed (Consedine & Consedine, 2012; M. King, 1997). The colonial legal system was completely foreign to Māori, also overly formal and inflexible and imparted alien penalty options such as imprisonment (Ballara, 1998). Wrongdoings by individuals came under the ambit of the Pākehā criminal and civil law; consequently, breaches of personal mana and tapu, if they did not violate the colonial law, remained unpunished (Quince, 2007b). Many areas and notions of the colonial system did not resonate well and conflicted with Tikanga; they included the followings:

- materialistic focus;
- the primacy of individualised responsibility for wrongdoings;
- civil and criminal sub-jurisdictions;
- the legal concept that unintentional wrongdoings often do not carry responsibility;
- the alienation of the victims and communities from the justice processes; and the concept that the state has the role of the injured party in many conflicts;
- no emphasis on reparation of the inflicted damage (Quince, 2007b, p. 341).

In early colonial period, measures were put in place to appoint Māori magistrates to integrate and oversee the application of justice in Māori communities; but in general, Tikanga was ignored (Quince, 2007a). Participant L. pictured the early colonial period:

> Participant L: *"When you look at the first 40-50 years of New Zealand* [colonial] *history, what is so striking is the absence of Māori in the prisons and in the* [justice] *systems. They were, by and large, considered being law-abiding citizens. The trouble was caused mainly by several white men who were living in New Zealand and who behaved very badly. Until up to about 1915 there was very little evidence of Māori being over-represented in the criminal justice system."*

Separate juvenile justice statistics from the 19th century are not available (youth were not dealt with differently), but all through that century the share of Māori prisoners was remarkably low, generally less than 3% of the total prison population (Pratt, 1992; Roper, 1987). 'Māori offending' was not particularly present in the public discourses before the 1910s (Bull, 2001). The first substantial rise, which doubled the recorded Māori crime, was observable between 1906 and 1921 (Bull, 2004). A further, gradual increase started in the 1930s (Pratt, 1992).

Assimilative tendencies might have contributed to the rise as Māori themselves started to report crimes (typically thefts) to authorities rather than to iwi (Bull, 2004). Over-policing also began as reported Māori offending started to be viewed as a grave social issue, which, in turn, was justifying the necessity of further law enforcement measures, and eventually becoming a self-fulfilling prophecy (Bull, 2004). In 1936, the Māori male imprisonment rate was 11%, directly after WWII, it reached 21% (DoC, 2007a). An even more dramatic change happened to Māori women. Their share was less than 5% of the total prison population in 1930; by 1958, their proportion reached 48% (Hunn, 1961). Pre-1965 statistics show that the majority of men in prison were white; 1982 was the point when Māori officially became 50% of the male and female prison population, when they were only about 10% of the total population (Tauri, 2011). The situation of Māori women was even worse. While the share of women in the total custodial sentences remained low (about 10%), Māori females received the majority of them. For example, in 2006 546 Māori women represented 62% of the total custodial sentences (Morrison, Soboleva & Chong, 2008; Webb, 2011). Meanwhile, women population in prison between 1986 and 2009 has grown at nearly twice the rate of men, a rise of 297% versus 161% (DoC, 2010).

The reaction of the Māori society to the lingering socio-economic inequalities became stronger. In the 1970s and 1980s, persistent protests by Māori stakeholders and political movements have reached some of their goals (Poata-Smith, 1996). Since the 1984 Hui Taumata, New Zealand saw an increase in authority and opportunity for Māori to develop and experiment with approaches that incorporate Kaupapa Māori into the area of justice, policymaking and social service delivery. Through the Māori Language Act 1987, Te Reo gained official language status (Chile, 2006). Separate and alternative Māori services, such as Māori immersion education and Māori health providers have become relevant; their impact on policy design has been extensive (Bishop et al., 2010; MoH, 2007; MoE, 2013; Penetito, 2010; TPK, 2010a). The Māori language program for young children from birth to six years of age, Te Kōhanga reo has been a substantial success and it really increased the uptake and reacceptance of the Māori language. It was followed by the establishment of Māori immersion schools (Kura Kaupapa), which teach predominantly in Māori (Walker, 2004). Different levels (early childhood, secondary and tertiary levels and adult learning) of Māori education has contributed to the progress forward; a major catalyst was involving adult Māori in their children's education (Ringold, 2005). Following this momentum, Te Whare Wānanga (publicly owned tertiary institutions providing education in a Māori cultural context) have

been created as well as Māori print and broadcast media including Māori television (Chile, 2006). Another example is the increased involvement of Māori in the health service provision which has improved Māori access to quality health-care and their awareness of critical health risks (MoH, 2007, 2015a). These service provisions are usually designed to take into account the specific needs of Māori; they increased Māori participation in the delivery and devolved it to iwi and various Māori organisations; they bolstered the outreach to the communities (Haar, 2011; TPK, 2010b). Consequently, iwi have gained flexibility to design systems based on their own priorities, culture and traditions (Ringold, 2005). However, the picture is not clear-cut at all (Doolan, 2005). As Participant P. noted:

> Participant P: *"The service side is driven by the government who gives the contracts. You will do, as a Māori service provider with the best intents for your people, to keep your business going, to keep your next contract coming. You will strive to meet the demand side of your contracts specifications … yes, there is an increase in Māori service provision, there are Māori health services all over the place, there are Māori education providers, there is Māori private training establishment, there is a whole lot of Māori things. But let's have a look at the numbers!"* [Social and crime statistics]

When we 'look at the numbers', it is hard not to see what Participant P. was speaking about. Ethnic statistics and social indicators reveal where Māori young people 'stand' in the country. For example, significantly more Māori youth were unemployed in 2012 compared to 2006. Their number increased by 39.6%, while the same number of non-Māori youth decreased by 15.1% (TPK, 2012). Table 7.1 depicts the key differences between Māori and non-Māori concerning some of the most important youth statistics.

Table 7.1

Social Indicators for Youth

Youth Indicator (aged 15-24)	**Māori**	**non-Māori**
Number of people	126,410	516,020
% of population	18.8%	13.8%
Rate of school leavers achieving University Entrance standard	20.0%	47.9%
Secondary school retention rate (to age 17)	50.6%	75.4%
Formal tertiary participation rate ages 18 and 19	38.5%	48.4%
Tertiary qualification completion rate	51.9%	66.5%
Employment rate	40.4%	51.2%
Unemployment rate	25.7%	14.2%
Not in employment, education and training rate	22.4%	9.1%
% of income from government transfers	25.5%	13.8%

Note. Adapted from TPK, 2012. Copyright 2012 by TPK. Adapted with permission.

Educational indicators in Table 7.1 invariably show a lower performance during the various stages of education. Māori youth have lower rates of employment (40% vs. 51%), and higher rates of unemployment (26% vs. 14%) than non-Māori. The share of employed Māori youth has decreased considerably, as it stood at 50.6% in 2006. Māori youth are still more likely to be in low-skilled jobs, and more likely to receive government assistance (Marriott & Sim, 2014). Participant P. added that the well-intended approach of the (Māori) service providers could not be questioned, even though the original goals are usually not or not fully achieved:

> Participant P: *"Initially, the service providers thought that 'we can get the service provision that mobilise our people; our people to be healthier, better educated, socially mobilised'. However, what they ignored is the strength of bureaucracy, the inertia in the governmental sphere, and the way the government uses its powers to control and coalesce people into. So you end up probably in a system that creates its predicaments in their own. I have not known of anyone who really thought about it. Since involved, they have not been conscious of these issues. These things just evolved. Unless you take a step back, take a stop and ask 'wait, what's happened'?"*

After a quick overview of the encounter between Māori society and the colonial state, the next sections examine the historical development of the juvenile justice system.

7.2. Evolution of the juvenile justice system

Before the 1870s, colonist children were not treated differently to adults by criminal provisions. Separate criminal dispositions emerged for the first time between 1870 and 1925 (Doolan, 2008). The Justices of the Peace Act 1882 was the first law that differentiated between children and young persons. The Criminal Code Act 1893 guaranteed that under seven no children could be prosecuted or convicted, and provided the benefit of the *doli incapax* rule under twelve (N. Lynch, 2012a). Due to the presumptive limitation of criminal liability, children under twelve were to be deemed incapable of forming the intent to commit a crime. Thus, the prosecution had the obligation to prove that the offender comprehended the wrongfulness of the behaviour/deed. The next significant step forward in the development of a distinct youth justice system was the Juvenile Offenders Act 1906. It included provisions for special legal proceedings, like private hearings before the court. The first example of the diversionary approach had already appeared in this Act (the court was not obliged to record a conviction against juveniles); discharge without conviction and/or admonishment could be the outcome of the procedure (Watt, 2003). In 1917, the position of the juvenile probation officer was established, which heralded the subsequently key role of the child welfare officers. Nonetheless, the general approach to deal with offending, destitute or otherwise neglected or maltreated children and young persons in this era was the removal from their (supposedly) socially unsuitable family environments. Institutional care (mainly industrial schools) served as the basic social service for children (N. Lynch, 2012a). Guardianship of neglected or 'criminal' children was handed over to the managers of the schools. Adolescents could be held in industrial schools until the age of 21; they were meant to be educated and trained there for a productive, morally correct way of life (Dalley, 1998). However, as this historical period preceded Māori mass urbanisation, these services were primarily provided to the non-Māori population. At that time, the traditional, community-based methods of protection and supervision of Māori youths remained relatively untouched (Doolan, 2008).

The welfare model was in those times predominant in most western countries and was transferred to New Zealand. As such, the model was designed to address the various issues of children within a European context. The Child Welfare Act 1925 represented the first comprehensive legal regulation concerning child welfare as a professional activity; and it implemented a welfare model into the juvenile justice system. The model emphasised the rehabilitation needs of the youths with unfixed, adaptable procedures. It did not provide the

procedural safeguards of the due process approach. The new Act listed harmful situations to children in such a general, blurred way that the discretion of the authorities became excessive in decision-making. It was considered a ground for complaint if a child was *"neglected, indigent or delinquent, or not under proper control, or living in an environment detrimental to its physical or moral well-being"* (Seymour, 1976, p. 41). This Act largely determined the main features of the social service practices for needy children for about half of a century (Dalley, 1998; Doolan, 1988); and created the first separate court system for children (Watt, 2003). The Act and its replacement, the Children and Young Persons Act 1974, consolidated the dominant role of the state in child welfare services (N. Lynch, 2012a; Watt, 2003). Juveniles were regularly placed in child welfare institutions; however, in more serious cases detention centres, borstals, corrective training institutions were used. Indeterminate guardianship orders were frequently issued by the courts as, at least nominally, the ultimate response to persistent offending behaviour. The original legislative intent suggested the application of this measure only in exceptional cases to restrain children beyond control (Doolan, 1988, Watt, 2003). However, this most intense and restrictive intervention was regularly used after relatively trivial lawbreaking, only because a juvenile was deemed to be in need of assistance and control (Doolan, 1988; Dalley, 1998).

In 1974 the former Children's Court was replaced with the Children's and Young Persons' Court. Subsequently, the newly established Court had both criminal and civil jurisdictions; which, in practice, created an unfortunate blur between the two (Department of Social Welfare, 1985; Doolan, 1988, Watt, 2003). This vagueness often resulted in unwarranted criminal procedures seeking to address unstableness of family care or other welfare need issues. Procedural outcomes were determined mainly by welfare factors. Consequently, by open-ended sanctions like the indeterminate guardianship and other non-specific supervision orders, numerous young people were virtually 'sentenced to welfare' (Doolan, 1988; 1993, 2008; N. Lynch, 2012a). The overuse of institutionalisation largely contributed to the further development of anti-social behaviour and to the stigmatisation through the normalisation of both external and internal perception of juveniles as 'bad boys/girls' (Department of Social Welfare, 1985; Dalley, 1998). As the 'Daybreak Report' ascertained, the central focus on the child was not in keeping with the Māori understandings of family (Ministerial Advisory Committee, 1988). For Māori, traditionally, the welfare of the child could not be set apart from the well-being of the extended family since children always belong to their whānau and not just to their parents. Many Māori children placed in institutions or foster homes were

virtually ‘lost’ to their whānau. Stanley’s (2016) analysis revealed systemic abuse of children (histories of physical mistreatment and even torture, psychological denigration, sexual exploitation, Electroconvulsive Therapy, etc.) under the guise of state care and protection, and it also showed how mass institutionalisation and ‘racially’ different pathways into residential care and disparate treatment in those institutions affected Māori children and marginalised whānau.[22] Over 100,000 vulnerable children were in state care between the 1950s and 1990s (Devoy, 2017). The first state care institutions were launched in the 1950s and by the 1970s about half of all children in state care were Māori (Stanley, 2016). A retrospective study of around 58,000 New Zealander born in 1989 revealed the relation between child removal and placement in care and the trajectory into juvenile and then adult offending. Children who have progressed across CYF and justice services fared badly; by the age of 20, they were 15 times more likely to end up with a Corrections record and 107 times more likely to be imprisoned (Devoy, 2017).

Even though the Children and Young Persons Act 1974 was intended to overhaul and modernise child welfare law and to reform the Children’s Courts, and it established the Children’s Boards[23] to formalise diversionary strategies; still, in effect, it rather reinforced the formerly entrenched practice of the ‘child rescue’ model (Cleland & Quince, 2014; Dalley, 1998; Watt, 2003). It was also observable that the NZP systematically preferred the circumvention of the diversionary mechanisms and secured prosecution by the excessive use of detention (Dalley, 1998). Albeit indirectly, still child welfare laws and practice clearly suggested that the state had the obligation and competence to intervene, when parents seemed unsuccessful in fulfilling their parental duties and responsibilities. Moreover, it meant that child welfare regulation discouraged the traditionally so important involvement of whānau in problem handling. Consequently, the welfare regime largely insulated children and young people from their own families (Dalley, 1998; Doolan, 1988). Eventually, the welfare-oriented approach resulted in high levels of state care, institutionalisation, frequent adoptions, massive alienation of children from their nuclear and extended families. By the late 1980s, the number of children secluded in social welfare institutions surpassed 2,000; institutional

[22] Unfortunately, the government to date has refused to launch a full and independent inquiry into the abuse of children held in state care during this era. Moreover, public apology has not been offered to the victims; and adequate redress and rehabilitation have not been provided yet (Devoy, 2017; Kirk, 2015).

[23] It must be noted that Children’s Boards provisions were applied only to those under 14 years as the preferred alternative to court proceedings.

conditions were alarming and there was a clear scarcity of meaningful programmes of rehabilitation and reintegration (Dalley, 1998; N. Lynch, 2012a). Growing academic criticism coupled with public discontent with the paternalism of the state, and more specifically the dissatisfaction with the welfare model, challenged the adequacy of responses provided by various professionals (Doolan, 2008; N. Lynch, 2012a). Māori resentment towards the insensitive, disconnected and monocultural nature of the social services and social control mechanisms meant the most significant challenge to the system (Cleland & Quince, 2014).

7.3. Youth justice since the 1989 paradigm change

In parallel with the culminating indignation felt by Māori in the 1980s, general dissatisfaction with the mainstream youth justice system also demanded more efficient responses from the government. The welfare-oriented juvenile justice regime had produced one of the highest rates of incarceration internationally; still youth crime rates were persistently high (MacRae & Zehr, 2004; N. Lynch, 2012a). Since then, juvenile justice policy has become much less punitive and more preventative and it seeks wider community involvement (Becroft, 2009; Cleland & Quince, 2014; N. Lynch, 2012a). The CYPFA has overhauled the juvenile justice system; it shifted away from the previous, almost entirely welfare-oriented regime by concentrating on responsibility and reintegration of the juveniles simultaneously (N. Lynch, 2012a). Thus, a hybrid justice and welfare system has been created. Both welfare and justice approaches are served by the amalgamation of different aspects; the rehabilitation of juveniles, the protection of the interests of victims and the wider society, and the protection of the interests and legal rights of the juveniles and their families (Cleland & Quince, 2014; Doolan, 2008). CYPFA stipulates that child welfare aspects per se should not be the basis for the commencement of any criminal proceedings. When there is a supposition that a child or young person is in need of care and protection, the case should be dealt with in the Family Court in accord with its specific principles and procedures and not by the youth justice system (CYPFA ss 208(b), 284(2); CYPFA Part 2, Part 3).

7.3.1. Diversionary approach of the juvenile justice system

CYPFA has a distinct set of principles directing the administration of juvenile justice. These principles are in harmony with the Beijing Rules 1985 (N. Lynch, 2012b). One of the most

important ones requires that criminal procedure must be an ultima ratio (measure of last resort) in youth justice.[24] Accordingly, a child or young person should be dealt with by other measures than criminal proceedings, unless the public interest requires otherwise. These other measures include warnings, cautions and diversionary plans (CYPFA ss 208(a), 209, 211, 258(b)(d)). Currently, about 84% of youths involved in apprehensions are kept out of the youth court system; even the majority of the more serious offences are disposed without recourse to prosecution (N. Lynch, 2012b; MoJ, 2013a, 2015a). Since the introduction of CYPFA, the youth justice system has achieved and preserved its position among the top countries in the world regarding the levels of diversion (Cleland & Quince, 2014). Both formal and informal diversionary procedures do exist. Enforcement officers may decide that instead of making an arrest, they could give informal warnings or arrange for any other person to do so (CYPFA ss 209, 210). Subsequently, with strong commitment of the NZP to the general principle of diversion, a new approach, combined with innovations in developing their own procedures, has taken root in their operations. This embracement of the general statutory provision in CYPFA s 208(a) by the NZP (mostly the Police Youth Aid officers), gradually transformed the statutory authorisation into a comprehensive Youth Diversion Scheme (N. Lynch, 2012a; Maxwell et al., 2004; Winfree, 2004). In contrast, adult diversionary procedures do not have similar statutory basis. They are workable only because law enforcement agencies have the discretion to arrest and/or lay charges in court. Even so, in general, Māori youth offending is also kept away from the formal juvenile justice system[25] (Becroft, 2005; Bowen et al., 2012; MoJ, 2015a). New Zealand has two more unique features in its youth justice system. It is the only country worldwide having a specialist police force dealing with young offenders and having specifically qualified lawyers (called youth advocates) for the Youth Court procedures funded by the state (Becroft, 2015). The extensive nature of police discretionary power necessitates careful training, supervision and monitoring of these procedures. The extension of their discretionary power without careful attention to fixed attitudes among police officers and without improving cultural sensitivity and responsiveness could produce greater possibilities of unfairness and summary justice (McLaren, 2011; Morrison, 2009).

[24] There is a striking contrast with the recent changes in the Hungarian youth justice where the governing right-wing political regime has undermined the ultima ratio character of criminal proceedings and confinement (HHC, 2014; Karsai, 2013). See the details in Chapter 8.

[25] See more details in section 7.4. Māori in the conventional juvenile justice system.

Subsequently, after the paradigm change, the number of children charged and placed in state institutions decreased dramatically; from 2,000 in 1988 to less than 100 in 1996 (Becroft & Norrie, 2014; Spier, 1998). As depicted by Figure 7.1, there was a decline in the use of the Youth Court for juveniles since 1989. The less than a three year-long period between 1989 and 1991 symbolises the 'overnight revolution' for youth in police and prosecution practices. What is more, studies in comparative criminology reveal that no other country ever experienced such a dramatic and enduring decrease regarding the number of youths charged (Becroft & Norrie, 2014).

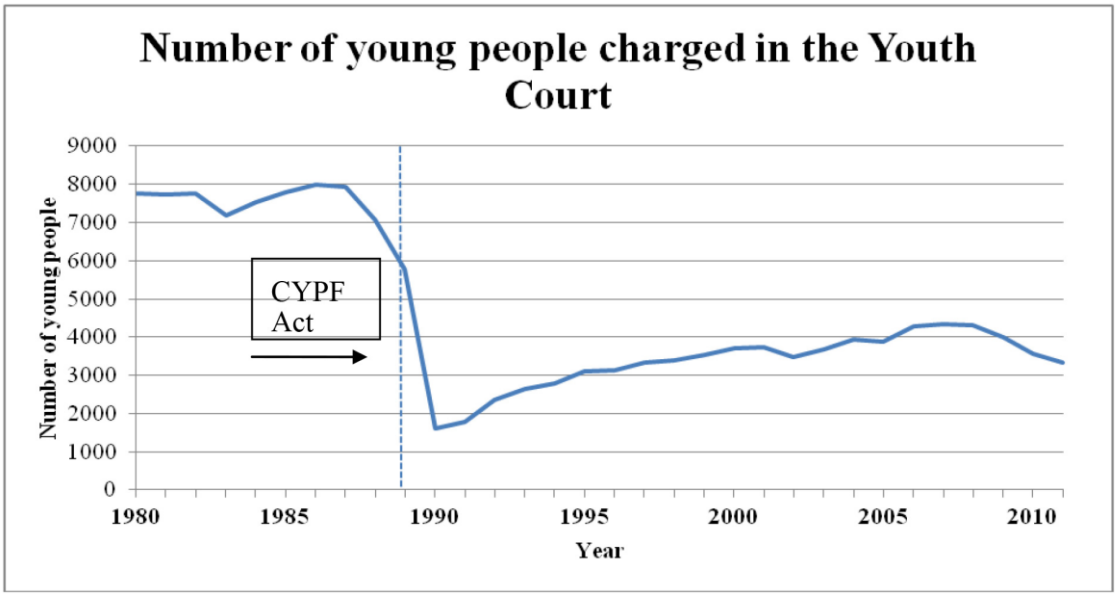

Figure 7.1. Trends in charges in Youth Court 1980-2010. From the MoJ, 2011. Copyright 2011 by MoJ. Reprinted with permission.

Consequently, with the decline of the number of youths charged, the rates of imprisonment and corrective training (a three-month custodial sentence for 16-19 year olds, followed by six-month supervision; abolished in 1996) dropped radically since 1989 (Lash & Watson, 2006; Morrison et al., 2008, Spier, 1998). Figure 7.2 shows this greatly diminished reliance on custodial sentences. The number of the incarceration and corrective training sentences stood well over 300 in 1987 but they fell below 50 by 2008; and, with some fluctuation, it has not increased since then. Furthermore, by 2013 less than 0.5% of juveniles received a custodial sentence before the Youth Court. Simultaneously, the use of community-based sentences increased unabatedly (MoJ, 2013b).

Figure 7.2. Trends in custodial sentences 1987-2013. From the MoJ, Youth Court Quarterly Reports, 2013b. Copyright 2013 by MoJ. Reprinted with permission.

The youth justice system is undoubtedly in marked contrast to the volatile and punitive adult criminal jurisdiction. There penal populism is considerably more influential, as Participant L. observed

> Participant L: *"in the last 20 years, we have treated offenders increasingly harshly, so the length of sentences has increased by 50% over the last 20 years".*

Participant N. also noted:

> Participant N: "*We have had changes in penal policy, which have been very damaging for Māori, like the Sentencing Act 2002. These changes have really increased the length of sentences and they have invited an attitude change in the parole versus restorative justice debate."*

After a glance at the sharp contrast between the two justice systems, the next sections examine the general procedure in the juvenile justice system and the role of the FGCs.

7.3.2. Pathways through the youth justice system and the types of FGCs

The introduction of and adherence to a complex and robust diversionary scheme and the establishment of the FGCs with a central role in the youth justice system were pivotal contributing factors to the changes since 1989. The transformational FGC model has (at least partially) relocated the power and responsibility of a consensus-based decision-making procedure from agencies of the state to offenders, victims, their families and communities

(Levine, 2000; MacRae & Zehr, 2004; MSD, 2012). Figure 7.3 shows illustratively the potential pathways through the youth justice system.

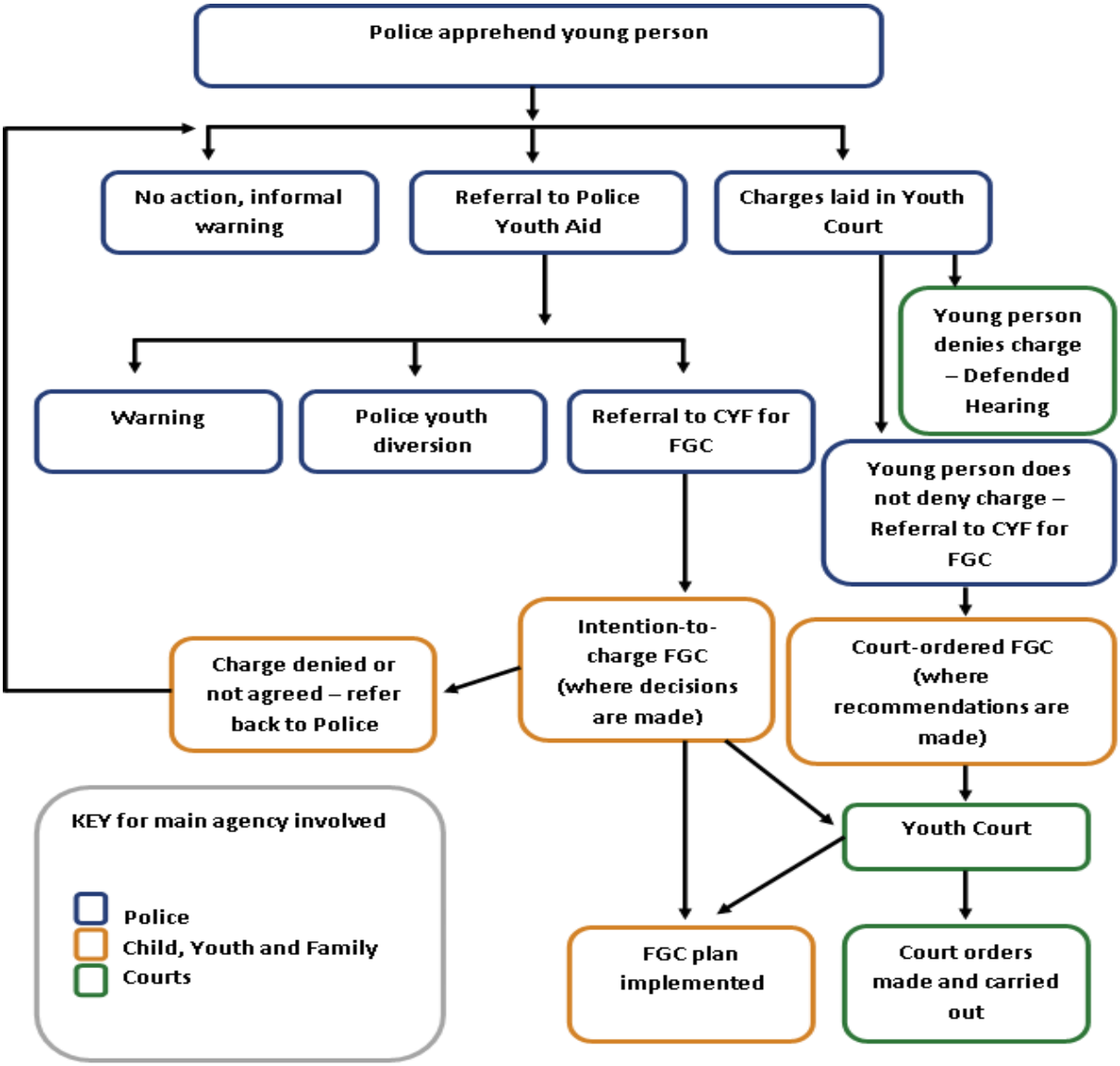

Figure 7.3. The potential pathways through the youth justice system. MoJ, 2011. Copyright 2011 by MoJ. Reprinted with permission.

There are three state institutions directly involved by the CYPFA. The NZP have the general responsibility for uncovering crimes, investigating reported crimes and providing for prosecution in court. The second institution is the Child, Youth and Family [CYF] Services that, among many other duties, manage children and youth detention facilities, oversee community-based programmes, and employ Youth Justice Coordinators [YJCs] who arrange the FGCs. Finally, the third institution is the court system, mainly the Youth Court, which deals with cases involving formal prosecution procedures (Cleland & Quince, 2014; Lynch, 2012a).

The Youth Court has jurisdiction to try juveniles over the age of 10 and under the age of 17. The age of criminal responsibility has been regularly criticised as being too low by international standards (Committee on the Rights of the Child (CRC), 2011). Prosecution is allowed between the age of 10-12 only when the offence is murder or manslaughter; however, these cases, with the exception of brief initial hearings before the Youth Court, are dealt with in the adult courts (CYPFA ss. 14(1), 272(1)(a), 272(2)). In certain cases, the Youth Court's jurisdiction is expanded to children between the age of 12-14. If the offence is very serious, where the maximum of the punishment can be imprisonment for life or for at least 14 years; in addition, if the child has a previous offending history and the maximum penalty available is or includes imprisonment for at least 10 years, then the Youth Court acquires jurisdiction over these children (CYPFA ss. 272(1)(a)-(b)). The last provisions, allowing the prosecution of certain serious and persistent child offenders, were introduced in 2010 (Becroft & Norrie, 2014). The punitive nature of this age-limit decrease has been criticised since it has simply moved the focus on the type of offence; but largely ignores the needs of the children who offend. Over 14 and under 17, an individual (who is not married or in a civil union) is defined by the law as a 'young person' who is subject to the Youth Court's general jurisdiction for any criminal charge. The fact that the 17 years olds are excluded is inconsistent with international standards. The UNCRC sets the age of 18 as the onset of adult criminal liability; it defines a 'child' as someone being under 18. New Zealand, although a signatory, does not comply with it. However, as Muncie (2006b) noted, while the rules of the UNCRC are impressive, non-compliance remains without formal interdiction. It has the largest number of signatories among international human rights treaties but it is also the most disregarded.

The NZP has the main gatekeeper role, as the decision on the consequences of a presumed crime following an apprehension is their exclusively reserved right. As Figure 7.3 illustrates, the least restrictive choice is the no action at all or giving an informal warning/caution, in most cases immediately and generally 'on the street'. In 2014, 23% of all youth cases were closed in this way (Taumaunu, 2014). Another option is a referral to NZP Youth Aid division, where usually a diversionary approach prevails (McLaren, 2011). A formal warning or some form of an 'Alternative Action' with tailored solutions can be used to terminate the procedure then. Perhaps the most relevant youth justice principle is the clear authorisation for pursuing 'alternatives' to criminal proceedings (CYPFA s 208(a)). The name of Alternative Action refers to this principle. McLaren (2011) found that warnings and Alternative Actions were particularly effective for children under 13, young girls and in lower risk cases. The Youth

Aid Officers have widespread discretionary power to apply measures, which are probably able to prevent re-offending, and to re-integrate juveniles into their communities and at the same time to satisfy victims. In comparison with many overseas youth justice systems, Youth Aid Officers have a high degree of autonomy in deciding what level of action should be taken (Cleland & Quince, 2014; N. Lynch, 2012a; McLaren, 2011). Even high-risk juveniles responded more positively to steps taken outside of the formal court system; however, as McLaren (2011) reported, they needed much more effort of the NZP and collaborating services. Alternative Action meetings were indispensable to form a plan capable of addressing the underlying needs/issues, which lead to the offending behaviour. The role of the Youth Aid Officers is similar in many regards to the social workers. After the admission of an offence, an Alternative Action plan is prepared, which, in practice, can be quite similar to the FGC plans (see section 7.3.3.). Alternative Action plans often include rehabilitative elements; and completion/failing of completion is recorded in NZP database. Failing of completion within the given time frame usually results in a FGC (McLaren, 2011); Police Youth Aid can refer them to CYF Services (for a FGC). The most typical elements of Alternative Action plans are: letter of apology or reparation/financial restitution to the victim; donation to a nominated charity; community work; attending a programme or counselling; re-enrolling in school or a training course; curfew, commitments not to associate with certain peers, driving restrictions (Hopkins, 2015).

Alternative Action is the highest-level police-led diversion option, which constitutes about 40% of all youth justice cases (McLaren, 2011; Taumaunu, 2014). Even the judiciary advocates that NZP-led, often community-involved responses, like Alternative Actions, operate more effectively than court-based proceedings. Most young offenders react noticeably better to community-based interventions; and their recidivism rates are lower than those who appear in court (Becroft, 2013). CYPFA s 245 makes it clear that in most cases prosecution cannot be instituted unless YJCs consulted and FGC held. FGCs are not held when the charge is murder/manslaughter, or non-imprisonable traffic offence or minor offences, which handled on the spot by an infringement notice. Accordingly, FGCs are the next level intervention option; however, NZP retains the right of laying charges after an FGC. Their highest level of intervention option is arresting and laying charges in the Youth Court. FGC became a world-renowned and emblematic ‘institution’ that operates functionally and procedurally as one of the most essential parts of the state and community response to juvenile offending. It is the main and obligatory decision-making forum for the great majority of offences and youth

offenders (Cleland & Quince, 2014). However, if the child or the young person denies the charge, then a defended hearing must be held. This procedure follows the rules of the normal adversarial trials, the same way as it is for adults. Since less than 5% of youth cases involve a 'not guilty plea'; these trials are normally reserved for cases of claimed innocence (Taumaunu, 2014). One of the pathways through the system is referrals made by the Youth Aid division to a FGC, the other one is referral by a court order. CYPFA s 247 stipulates that FGCs must be held in six different situations; however, the great majority of them are the 'intention to charge' and the 'not denied' FGCs.

1. When the goal is to figure out the most adequate 'reaction' to the behaviour of a child offender, a 'child offender care and protection' FGC should be held. The NZP (mostly Youth Aid Officers) contact CYF Services to have a consultation with YJCs (typically qualified social workers having experience with this age group). Afterwards, if the NZP see it necessary in the public interest, an application for a declaration of care and protection can be considered at the FGC. It should focus on the adequate responses to the child's offending behaviour (CYPFA s 18(3)).

2. An 'intention to charge' FGC is held to determine whether the case could be settled without filing charges in Youth Court. NZP have a consultation with YJCs before the decision. This type of FGC accounts for about 35-45% of all FGCs, the second most typical FGC after the 'not denied' FGC (Cleland & Quince, 2014). It is determined whether the charge is denied or not and then a decision is made on the consequences (CYPFA ss 258(b), 259(1)). Juveniles in these cases are not under arrest. The consequence can be a unanimously agreed, voluntarily undertaken plan (outside of the Youth Court). If completed satisfactorily, it usually terminates the process; the other main option is to lay charges in the Youth Court with no FGC plan (Taumaunu, 2014).

3. Custody FGCs are held when a young person has been arrested and brought before the Youth Court to determine whether any alternatives to pre-trial custody are available in the case. It decides whether the custody should be maintained and if yes, then where (NZP or residence in the custody of the CYF) (CYPFA ss 247(d), 258(c)).

4. 'Not denied' FGCs are held when the charge before the Youth Court is 'not denied' by the offender, which at first might seem an unusual category, but in fact, it can be truly beneficial in many cases (Becroft & Norrie, 2014). Effectively, an FGC is set in

motion without the requirement of a 'full admission' of guiltiness. It is a form of acceptance that there was some level of guilt in something. This mechanism allows a 'deal' because it does not necessarily mean that the guilt was in the very same charge that was filed. However, if there is no admission or if later the FGC is unable to ascertain whether the juvenile admits any offence, then no plan or other recommendation can be prepared (Schulz, 2009). This type of FGC accounts for about 50-55% of all FGCs (Taumaunu, 2014). They can determine appropriate responses as an alternative mechanism to an often lengthy and complicated trial. The FGC usually prepares a plan, which is considered and in most cases accepted/sanctioned by the judge, who adjourns the case. The progress with the 'plan is monitored by the judge; the juvenile is regularly called up before the Youth Court. If the progress is satisfactory, then, after completion, the offender is normally discharged without any criminal record (Cleland & Quince, 2014).

5. 'Charge proved' FGC is held after a trial where the NZP proved the case beyond a reasonable doubt. It is also called as 'penalty FGC', which is to find out what action and/or penalties are suitable for the juvenile (CYPFA ss 258(e), 281).

6. The 'Youth Court's discretion FGC' have two main functions; dealing with any concerns about the completion of a plan or to assist the court in exercising its discretion. It can be ordered at any stage in the proceedings, if necessary or desirable, in relation to any matter relating to the offender (CYPFA s 281B) (Hopkins, 2015).

Concerning the various types of FGCs, in the end, the Youth Court retains the ultimate authority for decision-making. It is obliged to consider the plan; however, its adoption does not necessarily happen. Above all, the plan should address both the consequences and the causes of the offending behaviour. Two main aspects are weighed, holding the juvenile accountable for the offending and at the same time devising a comprehensive, rehabilitative plan (Cleland & Quince, 2014; N. Lynch, 2012). Rarely the judge needs to provide a remedy to prevent the coercion of the juvenile into a too onerous imposition (McElrea, 2011); or seldom, the judge views the plan as too lenient in the given circumstances. It is an important procedural protection of the rights of the offender and/or the victim, although over 90% of all plans are approved fully or with minor modifications (Carruthers, 2011). Another legal safeguard in the CYPFA (s 323) is the appointment of a Youth Advocate, a qualified lawyer,

when charges are filed in court. Appointments occur automatically for offenders without a lawyer, there is no assessment of financial eligibility (Hopkins, 2015).

7.3.3. Features of the FGC procedure

The YJCs have vital role in the management and delivery of the FGC procedure. They ensure that the procedure is completed within the periods stipulated in the CYPFA (MoJ, 2004). Generally, it must be convened within 21 days after their notification. Thereafter, it must be completed within one month. Much shorter time limits are applicable when the juvenile is in detention: convention within seven days and completion within a further seven days. Potential FGC participants (including the juvenile) can voluntarily decide on their attendance and any involvement in the procedure (CYPFA ss 245, 249). The YJCs' another duty is the taking care simultaneously of the victims' needs and of strengthening the juveniles and their families to have an effective and beneficial role during the conference (MacRae & Zehr, 2004). In essence, FGCs have four distinct stages:

1. Preparation stage: the YJCs explore, contact and cooperate with the potential participants, including the whānau network of the juvenile/victim, other professionals or support personnel if their attendance seems necessary. YJCs often spend time with non-professional participants beforehand preparing them for the event.

2. Information sharing stage takes place right after the conference's commencement. The NZP officer summarises the facts of the offence; the juvenile has the opportunity to comment on it. If there is an irreconcilable disagreement, then the FGC ends and the NZP or the Youth Court must decide what to do next. Admission of responsibility is indispensable to carry on the procedure. The YJC and other professionals can share their concerns they have for the juvenile with the whānau, including the need to identify the potential causes of offending. Family members, victims can ask any questions, so information can be clarified for all participants. If present, the victims get the chance to present their views or make an impact statement.

3. Private deliberation stage: professionals (and victims if present) leave the whānau alone to let them have the opportunity to figure out what needs to happen moving forward. They can draft a plan jointly that aims at addressing concerns with regard to the juvenile and the offence committed.

4. The last phase includes the presentation of the designed plan. If the family's recommendations and plans do not leave the concerned child 'at risk', and if it is acceptable for all participants, then an agreement is achieved. If there is no agreement, then the FGC must be adjourned and the case goes back to the NZP or the Youth Court for determination of the following steps. About 10% of FGCs are referred back due to the lack of agreement (Maxwell et al., 2004).

Studies on FGC practices were generally in agreement regarding the features that can assure their high quality (Carswell, o-Hinerangi, Gray & Taylor, 2014; Connolly, 2006; Levine, 2000; Maxwell & Morris, 2003; MacRae & Zehr, 2004). Obviously, the attitude of the juvenile and their family can be the most decisive factor. Willingness to accept responsibility for the deed and its consequences, an apology and expression of remorse to the victim, and a sincere engagement in the procedure are reliable indicators of a meaningful and favourable FGC experience and outcome (Slater, Lambie & McDowell, 2015). It is recommendable that the plan is formulated on strengths-based language, which gives extra priority to achieving positive changes as opposed to decreasing or eliminating negative behaviours (Hopkins, 2015; MoJ, 2004; MSD, 2012). An 'average' plan includes details of a time frame for what tasks and when need to be completed; which family member or other person supports the young person during the completion; and who monitors each of the tasks (MacRae & Zehr, 2004). Slater et al. (2015) collected some of the key components of an effective YJC's skill-set: professional dispute management and competence in mediation, guiding group dynamics, delicate handling of emotional challenges, showing empathy with participants, knowledge of adolescent developmental issues, etc. Slater et al. (2015) added some specialist knowledge components, like dealing with child offenders, sexual offending or domestic violence. Effectiveness of FGCs depends on additional factors:

- quality preparation, tailoring the process to the participants' needs;
- exploring broader contextual factors including negative peer groups, drug and alcohol issues, involvement in educational, sport, cultural, employment, etc. activities;
- awareness of personal/family relationships, identifying potential 'key' supporters;
- for Māori youth, YJCs encourage the formation of a positive environment using kawa, karakia, tikanga, as it seems appropriate;

- juvenile's meaningful participation in the formulation of the plan, creating a feeling of ownership, thereby increasing the likelihood of completion;
- victim input can personalise the offence, and act as a powerful catalyst;
- collaborative professional partnerships between agencies;
- functional working relationships with the NZP (local Youth Aid Officers);
- linking the young person with their community (locally-based programmes/services);
- mobilising the community to take responsibility (Slater et al., 2015, pp. 628-632).

Unfortunately, victim participation has become a real problem as attendance rate in person decreased to 22%, while 40% of them have written contributions. Becroft (2013) found that without the contribution of the key players to the FGCs their effectiveness usually remains considerably limited. Another daunting issue is the greatly reduced participation/activity of family members of recidivist youths (MoJ, 2011).

7.3.4. Recent changes and developments in the youth justice system

Between 1989 and 2010, the juvenile justice system remained surprisingly stable. However, the amendment of the CYPFA then, signified an attitude shift regarding child offenders by giving more emphasis to the accountability rather than the welfare aspects (Cleland & Quince, 2014). In practice, the implementation of the legislative changes has 'tamed' the punitive nature of the conceptual shift. Practitioners have preserved the priority of the diversionary focus, victim participation and family and community input (Becroft & Norrie, 2014). One piece of the legislative change that has facilitated their efforts was the so-called 'push back' provision: a declaration that the child is in need of care and protection (CYPFA ss 67, 280A). Thus, after the charge is deemed to be discharged, the child is 'pushed back' from the Youth Court to the Family Court jurisdiction, where care and protection needs can be more adequately managed (CYPFA s 280A(3)(b)). Consequently, the caseload of children in Youth Court since the lowering of the age of prosecution has remained smaller than expected (14 in 2011, 13 in 2012, and 24 in 2013). The judiciary reported that the majority of child offenders have been diverted into care and protection (Becroft & Norrie, 2014).

The 2010 legislative changes have introduced several new Youth Court Orders. Still, the clear majority of juveniles do not receive any formal orders. Normally, the successful completion of the FGC plan results in a discharge without conviction (CYPFA s 282), and no criminal record remains. However, it is necessary to present what measures are available when the Court sees the plan inadequate, or the completion is unsatisfactory, or the offence is too serious or in cases of persistent offenders. FGCs also can recommend a formal order to be made. The catalogue starts with lower end orders and continues with higher end orders; a hierarchy of orders was introduced in 2010. The law makes it clear that the Court imposes the least restrictive outcome adequate in the given circumstances (CYPFA ss 283, 289). Three new orders (CYPFA ss 283(ja)(jb)(jc)) were introduced in 2010 to complement the sentencing 'toolkit' and to give more focus to the observed causes of offending (Becroft & Norrie, 2014). CYPFA ss 283(a)-(o) provide the following order options and categories:

- Discharge, recording court appearance, no further measure (Group One (G1) order).
- Admonishment (G1).
- A 'suspended sentence': if new offence within 12 months, offender can be called upon, further action may be taken (G2).
- Pay a fine (if the offender has the capacity to pay within 12 months (G2)).
- Pay some of the costs of the prosecution (parents/guardian if offender under 16) (G2).
- Pay reparation (compensation) to the victims for emotional harm, or loss of or damage to property (parents/guardian if offender under 16) (G2).
- 'Restitution', return property (parents/guardian if offender under 16) (G2).
- Confiscation of property, forfeiture of property to the Crown (G2).
- Disqualification from holding or obtaining a driver's licence (G2).
- Confiscation of motor vehicles (G2).
- Attend a parenting education programme for up to six months (if he/she is or will soon be a parent) and/or parent or guardian to do so (G3, introduced in 2010).

- Attend a mentoring programme for up to 12 months (assisting re-engagement with community, building confidence and employment skills, promoting educational achievement, reducing recidivism) (G3, since 2010).

- Attend a drug or alcohol rehabilitation programme (residential or non-residential, for up to 12 months) to help addressing the causes of offending (G3, since 2010).

- Place the offender under the supervision of CYF Services or another organisation or person, for up to six months (the potential duration lengthened in 2010, G4).

- Community work (between 20-200 hours) within a period of up to 12 months (G4).

- Supervision with activity for up to six months, attending and participating in activities set by the supervisor (the potential duration lengthened in 2010, G5).

- Supervision in a youth justice residence (3-6 months), combined with any specified programme or activity (the potential duration lengthened in 2010, G6).

- Conviction and transfer to the District Court for sentence (over 15, or between 14 and 15 if offence's maximum prison term 14 years or more), imprisonment of up to five years; the most serious order (G7).

- Intensive supervision order, up to 12 months, if in non-compliance with the judicially monitored condition of supervision/supervision with activity order; applies to G3/G4/G5, more restrictive measures may be imposed, since 2010.

In addition to the criticism of the penal populist turn, the judiciary and other juvenile justice stakeholders regard some changes as clearly beneficial. After four years' experience, Becroft and Norrie (2014, p. 38) asserted that the extension of the powers of the Youth Court was one of the most constructive steps in contemporary juvenile justice. Now the sentencing power has moved closer to those available for the District Court; consequently, the caseload of conviction and transfer has greatly diminished. The enhanced willingness to keep persistent or otherwise more serious youth offenders within the Youth Court jurisdiction is based on that judges can be more reassured that aspects of individual accountability and public safety can be properly realised through their orders (Becroft & Norrie, 2014).

The 2010 amendment of the CYPFA paid special attention to the significance of education and health issues by directing the consideration of health and education needs at the FGC (s 255(1)). The juvenile justice sector is required to provide adequate, comprehensive health responses to youths affected by neuro-developmental disabilities or psychological disorders. The key is early identification/early intervention, since without them Youth Court measures would just further criminalise and not support juveniles (Becroft, 2013). The CYPFA requires information and advice relating to the education needs of every juvenile. YJCs have this obligation while Education Officers assist YJCs and the Youth Court (Youth Court Education Officers Initiative) and provide timely, useful and accurate information on education status, and assist the young person to re-engage in education or vocational training (Becroft, 2015). Certainly, it is not a realistic expectation that punishment and deterrence alone will ever be able to address health and educational need factors, which are largely responsible for the increased risk of offending (Becroft, 2013; Cleland & Quince, 2014).

After the 2010 and 2013 legislative changes, the declared aim of the youth justice regime has remained the same: the adequate recognition and accommodation of the needs of youth with recourse to the least restrictive measures (MoJ & MSD, 2013). The Government revealed a cross-sector initiative, called Youth Crime Action Plan 2013-2023 (YCAP), in October 2013 to improve the administration of juvenile justice. Its primary aim is the further reduction of crime among children and young people. The YCAP also concentrates on the minimisation of escalation by the limitation of further involvement in the CJS (MoJ & MSD, 2013). However, new government strategies were not without critical evaluation given their (mostly unchanged) institutional and structural bases. For example, Participant P. underlined:

> Participant P: *"You cannot look at any of it [the strategies] in isolation. That is one of the biggest problems we have in government, the way how the government is organised. Like the Ministry of Education, Department of Corrections, Ministry of Social Development, Te Puni Kōkiri. We are portfolio-based, but in the real world, it is not like that. … when you start looking at the problem through those departmental lenses, in isolation, you are not going to really get very far."*

Nonetheless, recent general trends in juvenile offending are encouraging. The number of juveniles charged in court in the year ended in June 2015 was the lowest in over two decades. Violent offending by juveniles also decreased since its climax in 2007 (MoJ, 2013a, 2015a, 2015b; MSD, 2008). Adult sentences received by juveniles declined by 77% between 2005/06 and 2014/15. Normally, the judge who presides in the Youth Court would preside over the sentencing decision as a District Court judge. Usually, the case stays within the building or

the courtroom. The current rarity of such decisions is a welcoming fact since provisions for responding to juvenile offending, in terms of shifting them between courts/jurisdictions due to the gravity of offending, compromises the rights of children guaranteed by the UNCRC. (As noted above, the Youth Court 's sentencing powers are now more akin to those available in the District Court, which contributed to this drop in case transfers (Becroft & Norrie, 2014)). The most serious sentence in District Court is a sentence of imprisonment of up to five years. Another favourable development is that juveniles make up less than 3% of the total offenders charged in court[26] (MoJ, 2015a, 2015b). This is mainly accomplished through two different incentives; firstly, de-institutionalisation through community-based diversionary programmes supervised by the NZP. They deal with 76% of youth offending. Other 8% are settled by pre-charge FGCs where most of the resolutions are reached without charges being laid (Cleland & Quince, 2014; Levine, 2000; McElrea, 2011).

From a Māori point of view, perhaps the most relevant piece of the legislative principles is the encouragement of the meaningful input of the whānau in the procedure of deciding how the juvenile and the consequences of the offence should be dealt with (Cleland & Quince, 2014; Schulz, 2009). CYPFA s 208(c) requires the engagement of the wider community in the treatment of offenders. Participant M. summarised his practical experience:

> Participant M: *"The big difference is, what the FGC makes, because the police still can be punitive in its approach … but because of the FGC, everyone has its say what they think should happen, what needs to be addressed, in dialogues, they have their influence."*

FGCs were inspired by traditional Māori practices of conflict resolution as well, particularly the concept of korero tahi ('talking together'), a process that brought parties together to talk through issues and come to a joint resolution (Metge, 2001, p. 12). In a Māori context, this can be seen as a reintroduction of the whānau-based decision-making as the FGC model attempts to imitate, albeit in a highly diluted fashion, the traditional social control function of the whānau directed by tikanga (J. Williams, 2013). Depending on the facilitators and participants, Māori customs and traditional rules (tikanga o Ngā hara, the law of wrongdoing)

[26] On the contrary, in Hungary, juvenile constituted 12.6% of the total offender population, 10% of all charges and 6.5% of all convictions (OPG, 2013). Juvenile justice policy trends are clearly diverging from the trends in New Zealand in accordance with Muncie (2008, pp. 110-111.) observation throughout Europe that *"…punitive values associated with retribution, incapacitation, individual responsibility, and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support".*

could be part of the dispute resolution process. Many elements of the traditional procedures do not exist anymore; whānau meetings in many Māori communities are still in use to resolve disputes (Becroft & Norrie, 2014; Quince, 2007b). However, there are elements of the FGCs that are alien to Māori traditions, for example, the presence of state representatives or forensic and educational examinations (see more details on Māori justice procedures in Chapter 9).Yet, whānau-based decision-making has become essential (Becroft & Norrie, 2014). Among the General Principles, it is stated that:

> *"wherever possible, a child's or young person's family, whānau, hapū, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whānau, hapū, iwi, and family group"* (CYPFA s 5(a)).

Another relevant axiom is the emphasis on the involvement of the community. A child or young person should, where possible, be kept in the community (CYPFA s 208(d)). In accordance with the 'Tokyo Rules', CYPFA seeks to engage the wider community in the management of juvenile justice. Community-based responses are strongly dependant on the local community; therefore, they are the foundations of the diversionary systems. Substantial resources are required to run such systems since more than three-fourth of juveniles are handled this way. While police set the diversionary process, the community groups' support and participation that are needed there to provide venues and services as well as mentors and supervision. Hence, they can provide truly worthwhile and meaningful rehabilitative processes (Becroft, 2005; MoJ, 1999; Paulin et al., 2005). In reality, however, there is strong evidence that various principles and institutions of the CYPFA, community involvement and other initiatives have been unable to change the overall situation of Māori youth. For example, although almost 40% of juveniles never reappear in the system after an FGC, still 12% of youths have between 6 and 12, 11% a dozen or more return. Māori youths have the clear majority in these two categories (Pakura, 2004). Slater et al. (2015) found that FGCs were seen as an effective mechanism for the majority of offenders, but mostly unproductive or inadequate for high-risk, recidivist juveniles; therefore, they proposed the creation of a different FGC procedure focusing on complex personal issues for these youths. Follow-up studies found that being Māori and the limited or missing whānau presence at FGCs have the greatest prognostic factor for recidivism (Connolly, 2006; Levine, 2000; MSD, 2012; Moyle, 2015). Participant N. reinforced this notion:

> Participant N: *"If you look at evidence, we have had FGCs supposedly on the back of the Puao-Te-Ata-Tu since 1989. We have had restorative justice, marae-based*

restorative justice since Mana social services at Hoani Waititi back in the 1980s. I mean for individuals it's a better experience. ... they are better than the mainstream way ... but structurally, I mean, there is no difference for these disadvantaged groups."

Participant N. acknowledged serious concerns over the situation of Māori youths in the CJS:

Participant N: *"If you look at the FGCs, as a concept, it is brilliant. It was trying to power families and communities. But look what has actually happened! We were just being out and consulted all around the country about the Youth Crime Action plan. It [the CJS] had been bureaucratised, and people, most of them Māori, feel that they just get told that your kid is rotten; the kids get feel that they are marginalised. You should have the feedback from the people all over the country."*

Still CYPFA is one of the most important and inclusive legislative product, which aims to fulfil, partially, Māori aspirations for self-determination. However, the last two and half decades have proved that despite many, initially promising signs of improvement for Māori, significant part of the targeted population has been 'let down'. Many Māori youths live in broken or dysfunctional families and communities, and legislative and other measures have not been able to accommodate and provide for their needs (Becroft & Norrie, 2014; Marie et al., 2009a; Moyle, 2015; Slater et al, 2015; Taumaunu, 2015; Wilkinson & Spier, 2015). Far too often Māori communities lack the cultural, material and financial resources to tap into the procedures and measures that are permitted under CYPFA (Becroft & Norrie, 2014). Among 'hard-core' youth offenders the Māori share is still bigger than 50%. Their offending rate has not decreased at the same rate as it has happened to youth offenders in general (Cleland & Quince, 2014, Taumaunu, 2015). Persistent offenders have remained responsible for half of youth offending. Five-sixth of them are male; their lack of engagement with school and alcohol and drug abuse are prevalent (70-80%) (Becroft & Norrie, 2014).

The CHDS ascertained that Māori youth with multiple disadvantages (among them persistent juvenile offenders are highly over-represented) were the ones most likely to be disengaged from their culture/cultural heritage (Fergusson et al., 2004, 2015). Marie et al. (2009a) reported that one of the most decisive reasons behind that was the long-term socio-economic disadvantage, which contributed significantly to the loss of culture and community coherence. Many Māori youth experience some form of neuro-developmental disability or psychological disorder (especially conduct disorders, attention deficit disorder, autism spectrum disorders, speech and/or other communication disorders, specific learning disabilities, foetal alcohol syndrome, aftermaths of traumatic brain injuries) or a combination of these (Boden, Fergusson & Horwood, 2013, Fergusson et al., 2015; Marie et al., 2012). The impact of

communication disorders should be stressed since proceedings like FGCs and Rangatahi Courts rest heavily on communication capabilities. Appreciation of the procedures and positive engagement are indispensable (Becroft, 2015). Dysfunctional family environments (Becroft & Norrie, 2014; MoH, 2015b; MSD, 2012) often aggravate these issues. There are numerous initiatives, targeted projects and studies to better understand the relative failure of the juvenile justice policy for Māori. The next sections examine the nexus between Māori and the conventional juvenile justice system with special regard to the Rangatahi Courts initiative.

7.4. Māori in the justice system

Māori and non-Māori stakeholders (see, for example, Fifield & Donnell, 1980; M. Jackson, 1988; O'Malley, 1973a, 1973b; Tauri, 1999; Webb, 2003a) have repeatedly highlighted inadequacies and disapprovals concerning Māori, the social services and the CJS since the 1970s. These indications included that traditional Māori philosophy and the adversarial criminal procedures seemed to be irreconcilable; and this was detrimental to Māori. A telling early example was the finding that Māori were coming to official notice more than six times more frequently between 1980 and 1984 than non-Māori (Lovell & Norris, 1990). Moreover, Māori disproportionally received custodial sentences in the 1980s (Watt, 2003). Governments and institutions attempted to develop culturally sensitive approaches to attend to the issue of Māori offending (Quince, 2007a; Webb, 2003a; C. Williams, 2001). The 'Daybreak Report' (1988) summarised core Māori concerns, advocated culturally more appropriate ways to deal with Māori youth offenders, emphasised the consequences of the mono-cultural bias; and recognised the alienation and marginalisation that Māori felt when interfacing with the CJS. The individualised structure of the services was a direct contradiction of tikanga (Ministerial Advisory Committee, 1988). However, many stakeholders believe that fundamental changes are still awaited. Participant L. reckoned:

> Participant L: *"For Māori, we have to realise that there is more than one driving factor, not only socio-economic factors, but the fact is that a lot of the training and the rehab programs so forth don't cater well for Māori and they don't meet Māori needs. We have to recognise the cultural differences; thus, different approaches are required."*

Individualised services still often imply disaffection and unhelpfulness to people whose culture and traditions entail the liability for caring not only certain, closely affected people but the whole community (M. J. A. Brown, 2000; Culpitt, 1995; Cunneen, 1997; Dalley, 1998;

Tauri, 1998, 1999). Moreover, the ‘Daybreak Report’ proposed the acknowledgement of the role the CJS and social services played in the exacerbation of the situation; it emphasised that Māori lacked a sense of autonomy in the problems and issues they faced (Ministerial Advisory Committee, 1988).

7.4.1. Efforts and initiatives targeting Māori

Eventually, the CYPFA targeted at better providing for Māori youth and their needs. It gave birth to restorative justice processes aimed to more adequately reflect and integrate with Māori conflict resolution methods. However, while preparing the CYPFA, policymakers assumed that non-Māori actors could properly comprehend, without Māori collaboration, the Māori perspectives (C. Williams, 2001). Consequently, analyses of exclusion and prejudice endured by Māori in the CJS were not accompanied by their meaningful participation in institutional and operational changes (Bradley et al., 2006; C. Williams, 2001; Tauri, 1999; Webb, 2003a). Propositions presented by Māori in Matua Whāngai (in 1985), in the ‘Daybreak’ and ‘Jackson’ Reports (both in 1988) were co-opted and ultimately transformed into something quite different from the authentic concepts and institutions (C. Williams, 2001). Matua Whāngai community crime prevention programme in Hamilton (operated between 1983 and 1990) could be seen as an example of a coordinated effort between government agencies and Māori communities. It acknowledged the importance of dealing with offenders holistically to meet their needs and focused on nurturing tamariki within their whānau. Still, eventually, it failed because the dominance of Pākehā thinking and practice overrode Māori concepts (MoJ, 1999; Tauri, 2011). Indeed, like in the general youth population, 84% of Māori offending is kept out of the youth court system. The aim is to better recognise and accommodate the needs of Māori youth (DoC, 2008b; MoJ & MSD, 2013). However, after a quarter of a century since the overhaul of the youth justice sector, there is a near general agreement among stakeholders that Māori expectations, which accompanied the introduction of the new system, have not been fulfilled yet (Becroft & Norrie, 2014). The shortcomings in the meaningful integration of tikanga into the CJS reinforced Māori distrust (Bowen et al., 2012). Table 7.2 lists examples of the initiatives and strategies developed by different departments and agencies:

Table 7.2

State responses to Māori over-representation (*examples of initiatives and strategies)*

Youth Justice	FGCs
	Youth rehabilitation programmes with cultural 'add-ons'
	South Auckland Youth Project
Courts	Cultural training for judges
	District Court Restorative Justice
	Māori Court Liaison Officers
	Marae-based youth court hearings
NZP	Māori Responsiveness Strategy
	Memorandum of Understanding with Iwi
	Joint- TPK youth gang liaison project
	Iwi Liaison officers, communicating between Youth Aid and Iwi groups
	Māori Advisory Boards in Police Districts
	Māori wardens
Corrections	Treaty of Waitangi Strategy
	Māori Focus Units (prisons)
	Māori cultural programmes
	Māori cultural assessment tools
	Māori liaison officers
Strategic state responses	MoJ: Crime Reduction Strategy (launched in 2001)
	MoJ: Youth Justice Strategy (2001)
	MoJ / TPK: Māori Plan of Action (2007)
	MoJ / NZP: Organized Crime Strategy (2009)
	MoJ: Drivers of Crime (2010)

Note. Adapted from Tauri, 2011. Copyright 2011 by Tauri. Adapted with permission.

Positive examples and initiatives with more innovative and responsive models can be found in the CJS. For instance, since 1999, NZP employ iwi liaison officers across police districts to assist the police managing cultural issues and improving relationships with Māori (TPK, 2002). A recent report found more than 40 full-time specialist staff with cultural competence and community credibility facilitated the reduction of offending and victimisation among Māori (O'Reilly & NZP, 2014). Since 2000, a number of Māori Advisory Boards were established at area, district and national level. At area level, they support on-the-ground services and projects; at higher level, they focus on more strategic responses, including consultations with various iwi to formulate a collaborative approach in crime prevention (O'Reilly & NZP, 2014). Māori wardens have been around since 1860. Currently, over a

thousand wardens work in and for Māori communities (TPK, 2013). The Māori Wardens Project is a joint venture between TPK and NZP (since 2007). They are not members of the NZP but community-based volunteers protecting and supporting their communities (Walker, et al., 2008). Their potential tasks have broadened over time. TPK's (2013) evaluation report ascertained that Māori wardens provide excellent value for money. They have roles in caring for rangatahi, street patrols, providing security at events and in public areas, controlling disorderly behaviour, easing tensions; performing walk-throughs at licensed premises, participating in traffic and crowd control; giving first aid; ensuring attendance and support in court, etc. (TPK, 2013). There are many positive examples; still most of the Māori concerns have not been alleviated by the way the CJS agencies engaged with their communities (Tauri, 2011; Tauri & Webb, 2012). Even government sources reinforced the notion that one of the most crucial changes in the approach to Māori has not properly materialised yet:

> Participant N: *"They* [policymakers] *come up with a strategy they designed; part of it is the 'restorative justice thing' for the young people … 'go this training and that training you do it like this, you do it like that'. They just want to make it look like 'restorative justice in the box'. You go, you are telling this Kaumātua, these people who know their reality, their local kawa; and they have decided how it should look to make a difference for them. … Any changes? … No, they cannot have them; you have to push it back to the box."*

Tauri (2011) concluded that empirical evidence was missing or unconvincing on the effectiveness of crime policies. Restorative justice initiatives can be considered as the expansion of the indigenisation strategy, which utilises aspects from traditional Indigenous culture to legitimise a non-traditional, government-controlled mechanism (O'Malley, 1996; Tauri, 2009). Participant N. added that:

> Participant N: *"We are still very colonised in our thinking; something worked in Canada, then we use it here, for some reasons thinking it will work here. When it doesn't, we just think that we haven't done it well enough, or do it twice as hard, because with Māori we are going to need a double dose because they are 'extra bad'. … When you actually look at it, it doesn't work for Māori, but because it has come from somewhere else, it's a huge privilege and huge amounts of investment … so you are then trying, so it's 'working'. The whole criminogenic framework in prisons, and so many other things that do not actually work for Māori, but they have been persistently allowed to continue. … Multisystemic therapy, Incredible Years... We spend millions on it, because it has worked somewhere supposedly, but when you actually interrogate the data whether it has worked for conduct problems to stop offending? No, there is no evidence of that. We don't believe in our own evidence, in our own ability to analyse."*

Policymakers generally presupposed; however, with little prior empirical evidence that 'indigenisation' (intensified Māori employment in the CJS) would result in decreased Māori offending and significant improvement of the relationships with Māori communities (Cleland & Quince, 2014; Cunneen & Tauri, 2016; Havemann, 1988; Tauri, 2011). The next section examines the 'actual effectiveness' of state-responses.

7.4.2. 'Actual effectiveness' of the current justice system for Māori

Although New Zealand is still recognised as one of the world leaders in innovative youth justice, it has ultimately failed to deliver on the promise of upholding and recognising Māori interests (Becroft & Norrie, 2014; Bowen et al., 2012). The failure is indicated by the perpetual over-representation of Māori in all aspects of criminal processes (Taumaunu, 2014; Workman, 2011a). One of the most appalling facts is that while more than five-sixth of the general youth population involved in apprehensions is kept out of the youth court system, 6% of all Māori who reached the 'Youth-Court-age', would be brought before the Youth Court (Taumaunu, 2014). Another grim statistical indicator shows that under the age of 35, 44% of Māori have already received criminal conviction (Workman, 2013). The latest major change in youth justice was introduced in 2010 to improve the efficiency of FGCs and redress Māori over-representation. However, since these reforms, for example, the number of Māori in the custody of the CYF has increased unabatedly, by almost 25%, whilst Pākehā numbers have decreased considerably. As Table 7.3 shows, between June 2011 and December 2015 the proportions of Māori and Pākehā tamariki in CYF custody have clearly diverged, from 49.5% to 60%, and from 39.5% to 28%, respectively (CYF Practice Centre, 2015).

Table 7.3

Tamariki in the custody of the CYF

Ethnicity	June/2011	June/2012	June/2013	June/2014	June/2015	December/2015
Māori	2,488	2,607	2,711	2,882	2,969	3,083
Pākehā	1,982	1,830	1,650	1,610	1,446	1,449
Pacific Peoples	383	385	400	457	422	400
Asian	49	55	69	77	60	76
Other European	28	44	34	33	48	55
Other/Multiple	90	58	96	129	81	76
National	**5,020**	**4,979**	**4,960**	**5,188**	**5,026**	**5,139**

Note. From CYF Practice Centre, 2015. Copyright 2015 by CYF Practice Centre. Reprinted with permission.

Moreover, Moyle (2015) reported that after 25 years of history of FGCs, Māori practitioners and participants still regularly saw them as unsuitable culturally for Māori, controlling and disempowering since instead of becoming strength-based they had remained enforcement-based. A strength-based practice/approach would not mean the denial of problems and challenges but the appreciation of existing capacity, skills, knowledge, social networks and potential in individuals and communities (Byrne, 1999; McLaren, 2002; Oliver & Spee, 2000; Paulin et al., 2005). Māori stakeholders emphasised that focusing on collaboration, resiliency and on productive coping strategies with realistic goals and expectations would characterise a more effective system (Moyle, 2015; Pakura, 2004). Māori practitioners experienced that they were over-worked and under-valued. Many Māori attendees of the FGCs viewed the process as biased since many of the 'professionals' had remained culturally incompetent, which contributed to the barriers that whānau experienced (Moyle, 2015).

The adverse consequences of being brought before the Youth Court cannot be overestimated (Maxwell & Morris, 1999, Singh & White, 2000; Wilkinson & Spier, 2015). For many with a Youth Court history, the entrance into the minimum age of adult criminal liability is proceeded by incarceration (Hopkins, 2015). Maxwell et al. (2004) found, based on the analysis of follow-up data on life outcomes after a Youth Court appearance, that 55% of youth had been convicted of an offence within a year after reaching adulthood, two-thirds had been convicted within two years and 73% within three years. This indicates that the system failed to address adequately the initial offending behaviour for a big proportion of juveniles. For example, in 2004, the number of young people brought before the Youth Court for the

first time was 3,191. By the age of 24 (i.e. 8 to 10 years later), 804 individuals from this cohort received adult custodial sentence, which is a 25% imprisonment rate (Hopkins, 2015). Figure 7.4 shows a different, but interesting aspect of the potential aftermath of a Youth Court history. The data shows the still relatively high proportion of young people who had any contact with the CJS after a previous Youth Court appearance. Māori here are over-represented as in other stages in the CJS (Hopkins, 2015).

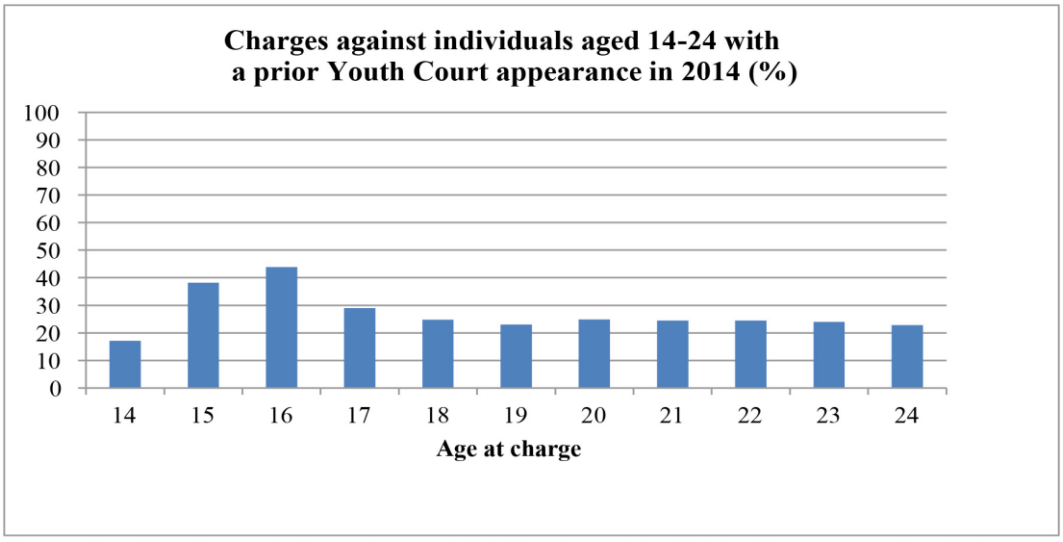

Figure 7.4. The share of all youths, aged 14-24, charged in 2014 with previous Youth Court history. From MoJ (as cited in Hopkins, 2015, p. 100). Copyright 2015 by MoJ. Reprinted with permission.

As Figure 7.5 reveals, in comparison to other ethnicities, in 2004 Māori were in the most disadvantaged position regarding the potential consequences of a Youth Court history.

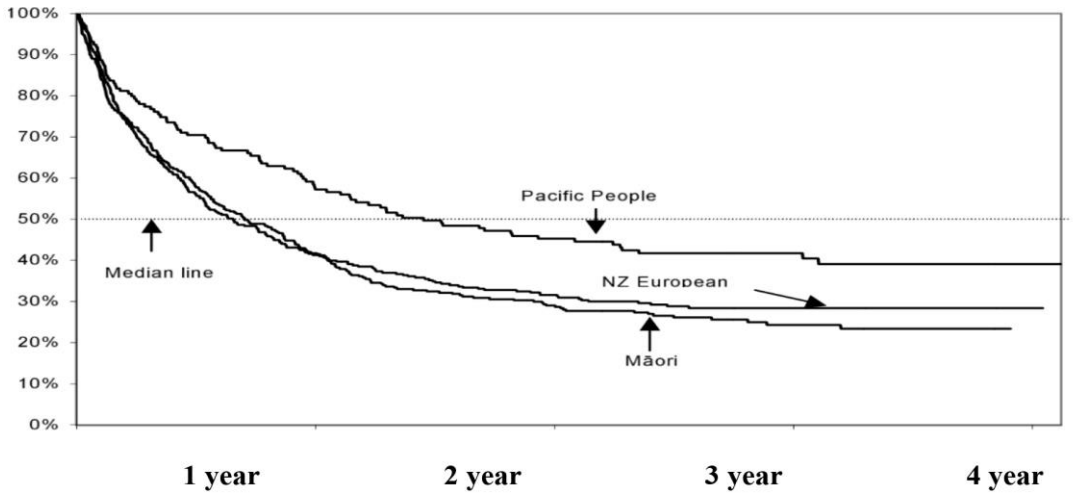

Figure 7.5. Share of a retrospective sample of **not** convicted individuals after the age of 17 (n=999), From Maxwell et al., 2004, p. 195. Copyright 2004 by Maxwell et al. Reprinted with permission.

The MSD published an assessment on the effectiveness of various Youth Court supervision

orders (Sturrock & Qiao, 2009). In each order category, four-fifth of the youth reoffended within the follow-up period. Table 7.4 and Table 7.5 show these reoffending statistics. The highest custodial Youth Court order is supervision with residence (i.e. youth prison).

Table 7.4

Proportion of re-offenders (January 2002-March 2008)

All (1800)	Proportion of re-offenders within a specified period (%)				
Youth Court Order	**6 months**	**1 year**	**2 years**	**3 years**	**5 years**
Supervision (1181)	24	45	67	74	78
Supervision with Activity (247)	17	42	69	76	79
Supervision with Residence (372)	20	49	70	76	79
Ethnic group	**6 months**	**1 year**	**2 years**	**3 years**	**5 years**
Māori (956)	22	47	69	77	80
European (528)	25	47	70	75	78
Pacific peoples (208)	21	41	61	70	75

Note. From Sturrock and Qiao, 2009, p. 12. Copyright 2009 by Sturrock and Qiao. Reprinted with permission.

Table 7.5

Proportion of re-offenders by ethnicity and by order categories

Ethnicity	**Supervision (1181)**	**Supervision with Activity (247)**	**Supervision with Residence (372)**
	Re-offenders	**Re-offenders**	**Re-offenders**
Māori	80% (489)	79% (122)	80% (153)
European	77% (271)	81% (46)	81% (97)
Pacific peoples	75% (104)	75% (18)	78% (36)

Note. From Sturrock and Qiao, 2009, p. 13. Copyright 2009 by Sturrock and Qiao. Reprinted with permission.

The situation has clearly deteriorated, recent statistics show that the proportion of Māori who were given Youth Court supervision orders reached 65% of the total number (Becroft & Norrie, 2014) a sizable increase from 55% in the 2002-2007 period (Sturrock & Qiao, 2009). Participant P. reinforced the notion that policies in the CJS were inadequate for Māori:

> Participant P: *"Look at the overall numbers! What's the overall number of Māori in the CJS? What we know is that youth crime has been falling overall. Yet Māori youth crime hasn't. It's actually a policy failure. … at the micro-level, it has certain appeal,*

> *a certain nice 'oh look at this lovely Māori whānau group conference and karakia'! But look at the numbers! Māori are 50% of the prison population in the last 30 years! Nothing has changed, but 50% today is different in volume from the 50% 30 years ago. Stop looking at the micro-level because you aren't gonna get an accurate picture of what is actually happening, what's working and what isn't. ... So the truth of the matter is, it hasn't made any difference; if anything, it might get worse. Overall, volumes have gone up, numbers of real lives that are damaged are now more than 30 years ago."*

Nonetheless, the age structure of Māori is one of the sources of their over-representation (Bull, 2009). Māori population is younger than other groups; their median age is 22.7 years, while national average is 35.9 years (Statistics NZ, 2007a). Most crime is committed by young people aged 14-30 (Chong, 2007). In 2011, the proportion of Māori among rangatahi aged 10-16 was 23% (MoJ, 2013); in 2014, it was 24% (Taumaunu, 2015). In 2004, around 25% of all Māori were aged 15-29, while the same indicator for non-Māori was only 20%. Put differently, reducing the proportion of Māori to the level of non-Māori would have meant approximately 15,000 (or 20%) less Māori males potentially involved in the CJS. There are clearly favourable trends in youth crime in the general population. Still, a good example is the apprehension rates, which are dropping much more swiftly for non-Māori; consequently, the disproportionality is worsening. Young Māori reached as high as 58% of the total apprehensions (Taumaunu, 2015). Another telling sign is the failure to achieve the objectives of 'The Turning of the Tide' prevention and education strategy, which targets Māori entering and re-entering the CJS. Among the main objectives is a 10% decrease in the proportion of Māori first-time offenders. 2011/12 represents the baseline year. By early 2016, there has been no change at all. The second main objective is a 20% reduction in the proportion of repeat Māori (youth and adult) offenders. By early 2016, trends are moving just the opposite directions, the proportion of repeat youth from 55% to 60%, adult offenders from 41% to 45% (NZP, 2016). Virtually all available statistics indicate the exacerbation of tendencies for Māori. For example, crime trends for young Māori females, in contrast with general crime trends, have worsened. Their violent offending was one-third higher in 2012 than in 2002, while an increasing number of them have been victims of sexual abuse (Fergusson et al., 2013, 2015; Fergusson & Horwood, 2002). The number of charges in Youth Court has decreased by 59% since the 2007 peak; however, Māori over-representation in court cases has deteriorated markedly. Figure 7.6 shows the ethnic distribution of the total youth prosecutions. 54% of them involved Māori youths while their share is only 22% in these age groups (Taumaunu, 2014, footnote 3).

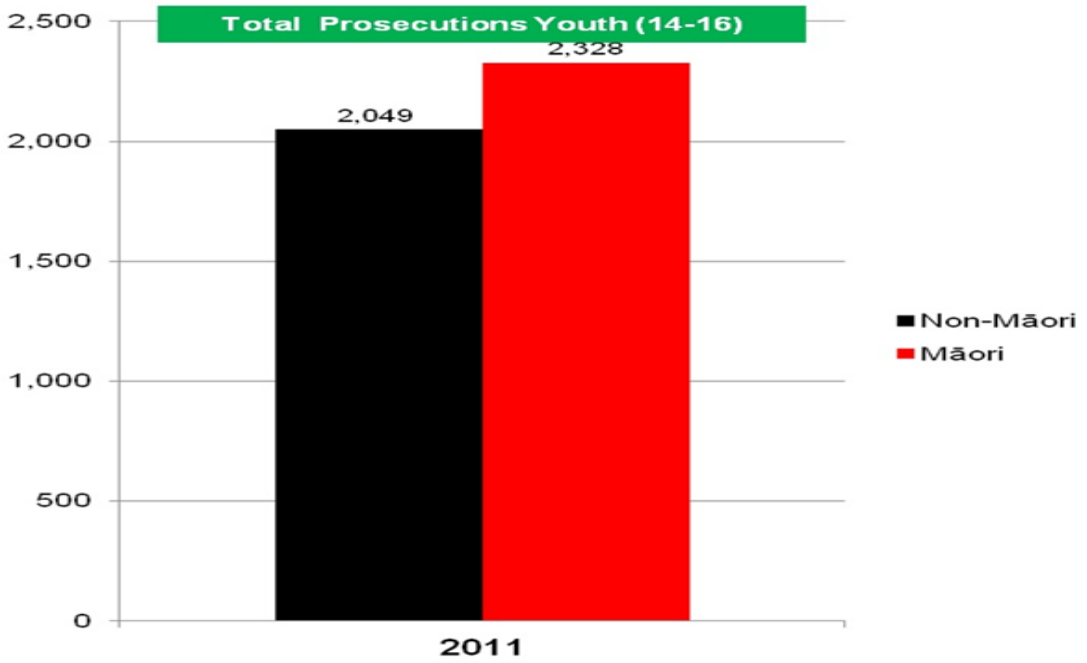

Figure 7.6. Total youth prosecutions in 2011. From the MoJ, Youth Court Quarterly Reports, 2013b. Copyright 2013 by MoJ. Reprinted with permission.

Figure 7.7 illustrates that the deteriorating disproportionality in 2011 was not an outlier; the worsening trend is continuous. The share of Māori youth in the total prosecution was 'only' 44% in 2005, it reached 54% in 2011, 59% in 2014, and 64% (!) by the end of 2016 (Becroft, 2015; MoJ, 2015b, 2015c, 2016; Taumaunu, 2014). Unsurprisingly, there is a near consensus among stakeholders that there is an urgent need to improve the effectiveness and responsiveness of the CJS to Māori youths (Becroft & Norrie, 2014; Bowen et al., 2012; N. Lynch, 2012a). Primary data collected from participants revealed similar observations.

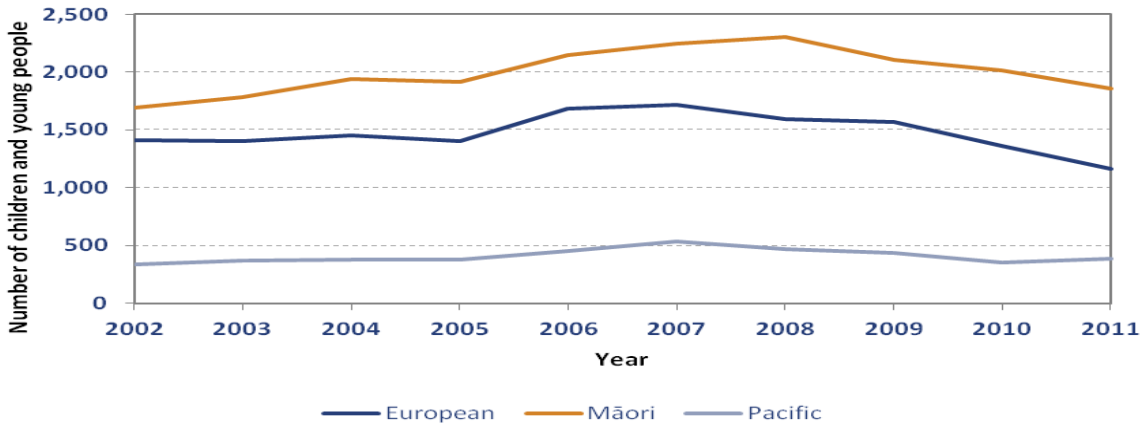

Figure 7.7. Ethnic distribution of rangatahi appearing in court, number of cases, 2002-2011. Copyright 2011 by MoJ. Reprinted with permission.

Another relevant piece of data shows the severity and geography of Māori youth over-representation in the CJS. The national average for Māori youths stood at 62% in 2015;

however, there were four Youth Courts where in every single case a Māori youth was involved (MoJ, 2015c; Taumaunu, 2015). Table 7.6 shows the location of the 24 Youth Courts where the proportion of Māori was over 70%.

Table 7.6

Local Youth Courts and the representation of Māori among the defendants

Location	Proportion of Māori (%)	Total number of young people
Taumaranui	100%	12
Wairoa	100%	11
Taihape	100%	3
Te Kuiti	100%	1
Gisborne	92%	36
Kaikohe	88%	25
Rotorua	85%	96
Whakatāne	84%	37
Whangarei	83%	65
Thames	83%	6
Dargaville	83%	6
Hastings	83%	69
Waihi	80%	10
Kaitaia	81%	36
Huntly	81%	16
Opōtiki	80%	5
Hamilton	77%	139
Tauranga	77%	87
Papakura	75%	53
Te Awamutu	75%	4
Wanganui	73%	37
Taupō	71%	21
Hāwera	70%	27
Masterton	70%	30
National	61%	1752

Note. Adapted from Taumaunu, 2015. Copyright 2015 by Taumaunu. Adapted with permission.

Explanation for the inadequacy of the CJS can be partly found in the poor utilisation of some CYPFA provisions created specifically for the welfare of Māori (Doolan, 2005). For example, after an arrest, CYPFA (ss 234(c)(ii), 238(1)(d)) makes possible the release from custody, with the rangatahi's agreement, into the care of an Iwi or Cultural Social Service. This is as an empowerment opportunity for Māori communities to look after their own rangatahi; however, as Doolan (2005) ascertained, it was not as widely used as the conditions might have allowed

it. CYPFA (s 336) authorises the Youth Court to obtain cultural or community report before making any formal order. Directly related to this provision is the role of the Lay Advocate (ss 326-328), which was meant to increase cultural and whānau representation and to make sure that the Court is aware of the cultural and community context that is relevant to the proceedings. Lay Advocates should provide effective community and whānau advocacy (Becroft & Norrie, 2014). Unfortunately, these provisions are rarely used; albeit, cultural, whānau and community backgrounds must have significance in sentencing, if it is to fit the offender and not only the offence (J. Williams, 2013). Becroft and Norrie (2014) referred to several underutilised or ineffectively used CYPFA provisions like the Iwi Remand Services, community-based sentences, cultural reports, whānau assisting lay/cultural advocates, etc. Indeed, further legislative steps, in the form of some well-drafted provisions, have not mitigated Māori over-representation system yet (Hess, 2011). Participant N. argued against the popular belief that Māori had acquired a substantial autonomy in shaping public policies:

> Participant N: *"So what we are saying, let's at least put some resources into Māori designed, developed, delivered; not just Māori providing Incredible Years but actually Māori being given the chance to design what would work for them. And locally … because what works in Gisborne might not work in Auckland."*

Māori and non-Māori stakeholders inside and outside the CJS suggested that the incarceration rate of Māori could possibly be reduced if there were culturally relevant ways of handling minor and moderate level offences (see, for example, Bowen et al., 2012; E.T. Durie, 2007; Hess, 2011; Maynard et al., 1999; Olsen et al., 1995; TPK, 2010b; Toki, 2009, 2016; Wickliffe, 1995). Historically governments have been resistant to having an alternative justice system to deal with Māori as the presiding view has stated there should be 'one law for all' (O'Sullivan, 2008; Quince, 2007b). McMullan (2011) found that legal studies in New Zealand did not pay considerable attention to the recognition and understanding of cultural patterns of behaviour or alternative (Māori) conflict resolution procedures. However, Māori incentives such as tikanga programmes offered to inmates and Māori Focus Units together with whānau liaison positions have been introduced to allow for a culturally more sensitive and rehabilitative system. Accordingly, at least the DoC acknowledges the ability that culture has in rehabilitating Māori inmates (Cram et al., 1998; DoC, 2007b, 2009; Pfeifer et al., 2005). The growing recognition of inadequacy inspired the judiciary to initiate new mechanism within their ambit. This led to the establishment of a culturally more appropriate institution, Ngā Kooti Rangatahi. The first one was launched in 2008, and there is a similar initiative

since 2010, the Pasifika Youth Courts (MoJ, 2012). The next sections give an overview of the history and operation of the Rangatahi Courts.

7.4.3. Ngā Kooti Rangatahi

The establishment of Ngā Kooti Rangatahi system sees the first adaptation of the mainstream FGC model to the values of Māori communities. The role of these courts is to provide an environment that connects with Māori youth and the facility to discuss how FGC plans to be administered and monitored (MoJ, 2012). The proceedings are held on a marae using Te Reo and Tikanga. Kuia and Kaumātua (local female/male elders) and other knowledgeable community members convene with the judge (also a Māori) in an advisory role highlighting Māori understanding of the offence. Kaumātua and Kuia do not have a legal role; they provide meaning to the defendant by giving helpful personal advice getting them to connect with cultural values and customs including their whānau and marae (Taumaunu, 2014). Rangatahi are supported and inspired to understand the wider meaning and impact of their actions and use perspective gained from connecting with their whānau, community, ancestors and natural environment. Rangatahi Courts are aimed at dealing predominantly with Māori youth offending; however, they can be elected by all young people (McElrea, 2011).

In part, the Australian experience of the Koori Courts served as a model for the judiciary. It is not a separate system but a supplement to the standard youth justice. Offenders are still obliged to appear first in person in the Youth Court. Ngā Kooti Rangatahi has no specific statutory basis; the legal basis comes from a stipulation that authorises courts to have sittings outside the courtrooms (District Courts Act 1947 s 4(4)). The original legislative intention might be the dealing with emergency or otherwise special situations. Nonetheless, such a utilisation of this provision entitles judges to move procedures to an environment, which seems culturally more appropriate. This medium for the proceedings could provide a more meaningful and productive participation opportunity (N. Lynch, 2013). One of the primary focuses is to reduce the risk of reoffending by involving the whānau, hapū and iwi, as they can provide a cultural construct and environment that helps juveniles with making meaning of the offence and complying more effectively with FGC plans (MoJ, 2012). The monitoring of the progress incorporates periodic (usually fortnightly) reappraisals by the same judge allowing a form of rapport to be evolved between the judge and rangatahi (HRC, 2012; Workman, 2012b). The next sections describe the proceedings based on literature, interviews and the researcher's observations made in 2011/2012 at Te Kooti Rangatahi o Hoani Waititi.

7.4.3.1. Procedure in Ngā Kooti Rangatahi

The Rangatahi Court convenes at the designated marae and adheres to strict cultural customs. The formalities proceed in stages starting with a pōwhiri (a ritual ceremony of welcome); which process and its cultural aspects are the critical first steps in engaging rangatahi and whānau. Contextually, it is the acknowledgement of mana, which embraces the recognition of the inherent values and worthiness of the rangatahi, who gain paramountcy for the duration of the procedure, as they are the whole purpose of why that pōwhiri is being held. They are not singled out and named as 'the burglar', 'the robber', etc. (MoJ, 2012). Accountability comes only after the acknowledgement of their worthiness and potential, which assists restoring the mana by giving self-respect, dignity and hope (Taumaunu, 2014). Participant M. reported some challenges of the procedure in the Manukau area:

> Participant M: *"They don't really identify with their roots, like the traditions of their iwi. So going on to the marae, it's a bit foreign to them; it can be intimidating for the families because they don't really practising* [tikanga]. *They are still identified as being Māori but it's a bit alien to them."*

Before the proceedings, visitors wait at the gate to the marae; they include the presiding judge, court staff, police, social workers, youth and lay advocates, victims if present, rangatahi, their whānau and other supporters. The karanga, which is a series of traditional welcome calls (and replies), invites the group to the marae. A series of blessing in the form of a karakia is initiated, which leads to whaikōrero, an exchange of formal speeches of welcome and reply between the speakers of the marae and the visitors. The whaikōrero speeches are framed with waiata (songs) after each speaker has spoken. After the speeches, a coming together of the groups is performed with an exchange blessing called hongi (formal pressing of noses), which signals and acknowledges that the visitors are now people of the marae for the duration of their stay. Next commences the introduction exchanges called whakawhanaungatanga where the visitors and the tangata whenua (people of the marae) individually introduce themselves (Taumaunu, 2014). Tapu is a state of spiritual restriction and all participates of the pōwhiri have now entered this state; they must all be made noa, which means to be freed from tapu, this is done by the consumption of kai (food and drink). Accordingly, all pōwhiri participants share their kai at the end of the pōwhiri (MoJ, 2012).

After the morning tea, rangatahi are invited individually into the wharenui (meeting house). Kaumātua and Kuia of the marae address them and present whānau with a short mihi (a traditional greeting). Each rangatahi has a lay advocate appointed to assist them for the

entirety of the procedure. The original version of the CYPFA (1989) had already established the position of lay advocates, but their appearance in procedures was sporadic at best until the emergence of the Rangatahi Courts. By now, they have gained an essential role (Alison & Quince, 2014). Gradually, lay advocates have been appointed in Youth Courts, too (Becroft, 2015). It is beneficial for their effectiveness that they are seen as community volunteers rather than agents of the authorities (MoJ, 2012). They often have better access to family dynamics and problems compared to state actors (social workers, YJCs, appointed Youth Advocates). Rangatahi are required to prepare and deliver their own pepeha or mihi (Becroft & Norrie, 2014). The layperson would normally help with the process to connect to their cultural background and with providing a better understanding of the court procedure and of what is required of them. The layperson also provides the court with valuable insight information about the rangatahi (HRC, 2012; MoJ, 2012; Taumaunu, 2014). Subsequently, the proceedings continue mostly the same way as it happens in the Youth Court. The judge requests the rangatahi, and if necessary, the youth justice professionals to provide an update. The judge usually has questions to the rangatahi and professionals about the expediency and practicality of any proposed steps in the completion of the plan. After the last hearing of the day, one of the Kaumātua/Kuia performs a karakia closing the court sitting (MoJ, 2012).

7.4.3.2. Evaluation of Ngā Kooti Rangatahi

Judge Carruthers (2011) asserted that it was fundamental for the realisation of the initiative's full potential that appropriate community-based rehabilitation programmes are available and accessible for rangatahi. Carruthers (2011) saw encouraging developments like support programmes, which included a range of interventions, for example, cognitive learning programmes, alcohol and drug programmes, cultural strengthening programmes. An initial evaluation of five Rangatahi Courts was done in 2012. The report proposed that any support programmes designed to run alongside the judicial initiative needed to fulfil a range of tasks. These included providing a framework of standards for accountability and responsibility; personal therapy, addressing alcohol, drug and anger management issues, anti-social attitudes. Potential programmes providing Māori interventions could be Te Reo, tikanga, kapa haka, waka ama; educational/training opportunities, etc. The report held essential to dealing with the underlying causes of the offending and providing feasible transitions when the programme is ended (MoJ, 2012).

The evaluation study (MoJ, 2012) showed some common trends with rangatahi who were marked as success stories. The similarities included stable living environments, not being associated with their former peer group anymore, and participation in education/training. These cases featured active and innovative social workers and lay support acting as positive role models; whānau having strong support from service providers; of importance was the development of new friends, involvement in tikanga programmes as well as marae and cultural activities. The 'success case rangatahi' was then encouraged to act as a model to coach and mentor other rangatahi. Rangatahi who had previously appeared in Youth Court confirmed that Ngā Kooti Rangatahi provided a more positive experience. It was, in part, due to the environment allowing preconceived negatives and biases to be addressed. For example, the ability to share kai with the judge and other professionals helped to dissolve preconceived negative perceptions; it facilitated their approachability and respect for judges unseen before (MoJ, 2012). Whānau attendance, including the so often missing fathers, has been increased over time. In general, whānau perceived it as fair processes. Rangatahi encountered a higher level of accountability; still, a more positive engagement was observable as they became more active the further they progressed through the monitoring procedure. Motivational factors have grown through the realisation that they were privileged to participate. Judges made it clear that reoffending, breaching bail conditions, failure of meaningful engagement or other unacceptable behaviours could easily be resulted in sending them back to the mainstream system (MoJ, 2012). Participant M. reported positive experience:

> Participant M: *"One thing, which is a kind of cool, which we have for Māori people to address their issues is the Rangatahi Court. This isn't compulsory, but when they initially appear in Manukau Youth Court, the option is given. About 80% of them choose it. I guess, because of the features of our court system; it's a lot less formal being on the marae. It's culturally appropriate; the outcomes are a lot better. So for young Māori in our area the marae youth court is a huge, a massive benefit."*

Participant M. mentioned other positive aspects *"the focus on a strengths-based approach, on positive youth development and resilience"*. The procedure was characterised by the lack of gang presence and the low-key role of police at the marae. Participant M. referred to the duty of being meaningfully engaged in the procedure, in contrast with the Youth Court where it was much easier avoiding the same level of engagement:

> Participant M: *"The atmosphere provides better opportunities for dialogue, there's a much closer physical proximity between the participants, including the judge. The process, with the normal youth court, judges are sitting up there and looking down, there's a power imbalance straight away, there are walls up. Very formal. … You have*

> *to stand up in the dock when you address the judge. Whereas, on the marae, all that is gone. It's just like you and me, just sitting across the table. It's the judge to the young person, the barrier is gone, so they're less intimidated, they feel supported; both young people and their families feel supported."*

During this research, similar observations were made at Hoani Waititi Marae in Waitakere. Participant S. claimed that:

> Participant S: *"the Marae had a number of strategies in place designed to support rangatahi and whānau beyond the FGC monitoring process"*.

Rangatahi are usually given the opportunity to participate in a tikanga programme. Some rangatahi was subsequently invited to return to support the programme. Participant S. reported that:

> Participant S: *"the majority of rangatahi experienced increased self-confidence and resilience; they reacted favourably to contacts with positive role models and new peer networks. Many rangatahi have developed positive attachment to the marae and the wider community"*.

A year-long programme, tailored for rangatahi, was available at Te Whānau o Waipareira after discharge from Ngā Kooti Rangatahi. The MoJ's report (2012) found that these programmes efficiently assisted rangatahi with resting on the progress that they had already made during the monitoring process. There is growing popularity and effectiveness of the initiative. While only 6% of the eligible juveniles chose Rangatahi Courts in 2010/11, by 2014/15 18% of them opted for it (Cowlishaw, 2016). Various recidivism data is available for attendees, but all of them show comparatively favourable outcomes. Rangatahi who did not elect it had a higher re-offending rate than their Rangatahi Courts' counterparts did, 51% and 44%, respectively (Becroft, 2013; MoJ, 2012). The Justice and Courts Minister addressed the UN Human Rights Council and reported that *"analysis conducted in December 2015 suggests that young people who appeared in a Rangatahi Court from 2011 to 2013 had a 6% lower rate of reoffending than comparable young people that appeared in mainstream youth courts"* (Adams, 2016). Another report showed somewhat lower recidivism rates among attendees. They committed 14% less offences and they were 11 % less likely to commit a serious crime within a year than comparable youths were in the CJS (Cowlishaw, 2016).

7.4.4. Critical evaluation of responses to the situation of Māori youths

Even the Principal Youth Court Judge observed that the legislation approved FGCs being held at any suitable location (including a marae) in reality, only a low number of them are held at

an actual marae (Becroft, 2013). In fact, Youth Courts are directed by CYPFA s 284(1) to endeavour to address the underlying causes of offending, it is an unrealistic expectation that Youth Courts and/or Ngā Kooti Rangatahi initiative alone would ever be able to effectively cope with the underlying causes of offending. Fixing Māori over-representation in the CJS requires more fundamental changes (Tauri & Webb, 2012). Monitoring FGC plans, culturally more appropriately on the marae, is what the Ngā Kooti Rangatahi initiative promotes; however, many stakeholders regard it as an insufficient mechanism to counterbalance structural disadvantages. Participant L. added:

> Participant L: *"The Rangatahi Court is a good example of how you can run a valid Māori experience within a Pākehā system. It gives pretty close to a genuine Māori experience. However, departmental claims that initiatives like this or the Māori Focus Units have the potential to address the issue of structural discrimination within the system fundamentally miss the point. Cultural appropriateness of these well-intended services or programmes, in whatever guise, is inherently unable to address the existence of personal racism and structural bias within the justice system."*

Tauri and Webb (2012) gave voice to their circumspection concerning the potential exaggeration of the significance of Ngā Kooti Rangatahi initiative; while acknowledging the willingness of the state to engage marae in these procedures; however, they questioned the extent to which it could possibly create a meaningful jurisdictional autonomy for Māori. Tauri and Webb (2012) argued that it was a clear overstatement that tikanga had a significant influence in the recent development of criminal policy, because neither the resources devoted to initiatives nor legislative empowerment had enabled Māori to cope considerably more efficiently with Māori crime. Participant K. detailed his criticism:

> Participant K: *"Rangatahi Court is really just purely a youth court sitting in a marae. No disrespect to the judges who are running them, because it's an interesting experiment and incorporation. It's not a big deal, it isn't actually a court hearing, just a sentencing hearing, already everything has done. … In some ways it's good, a really interesting experiment but let's be honest! It's not a significant change in how we do youth justice as Judge Becroft and the Māori judges who are involved believe. I talked to Judge Becroft during a seminar in Canberra in late May [2013]. I said 'let's not bullshit ourselves about what this is'. He said 'oh you don't think that we should do this?' I said 'no, no, no, the elders want to do this, the judges want to do, then this is good because it's in their power'. It's a good thing for the communities, the elders, the families are there, they can participate and even understand what's going on, and having some sort of say in guiding them. But this isn't ours. This is about the formal state process. Our issues and concerns are secondary."*

Participant K. put in a wider social perspective (see further discussion in Chapter 9) the Māori empowerment in the CJS illuminating the influence of social stratification within Māori society on these initiatives:

> Participant K: *"That type of process* [Rangatahi Court] *is the one that maybe the Māori middle class would be interested in. They are not going to be interested in giving over the authority, what their families have to a purely Māori run process, because they are not going to be better out of this as similar power in authority has been given to them through the formal court processes. ... A successful Māori-led response to Māori offending … won't come from the middle class. It's gonna come from predominantly the Māori working class enclaves in the urban context and the rural Māori."*

Other means of dealing with Māori offending have been proposed and supported, of note is the traditional marae justice where offenders are judged by their cultural peers, and victims are part of the process (Hess, 2011; Napia, 1994; NZMC, 1999; Tukoroirangi 1994, C. Williams, 2001). Their proponents deem it the most culturally relevant way to deal with Māori offending; however, the government has been for long less than forthcoming to embrace and incorporate it into the CJS (Hess, 2011; Morris & Tauri, 1997; Webb, 2003a). A tikanga-based justice system finds culturally suitable practices of exacting utu for crimes committed. This system can be more severe, more demanding on offending than the standard CJS, because it addresses these issues upfront and honestly (MoJ, 2012; Quince, 2007b; Taumaunu, 2014). However, those procedures and the FGC model can be more effective, in comparison to situations where the social distance is larger, when people from similar socio-economic background or from the same ethnic group are involved. Participant M. illuminated this in local context:

> Participant M: *"Unlawfully taking a car is the most common offence in South Auckland. … When we have people from similar backgrounds or cultures, it [FGC] can become quite powerful. They're related to each other; people can see that you are taking from your own people. That can have a quite big impact especially on the parents. It's a kind of shame, embarrassment. In the first place, their child has committed an offence, but secondary, it's committing an offence against a Māori family who also might be in a very similar position … When young people steal from within South Auckland, those people usually don't have insurance for their cars. Taking a car for a joy ride and then crash it, to them it's just a car, just an object. When you take them to an FGC and their victim, a Māori woman, let's say, same age as their mum with three kids and she needed that car to take them to school, whatever. … It's more uncomfortable for them and usually there are signs of it."*

Participant M. endorsed that:

> Participant M: *"conflict resolution within the same community or ethnic, cultural groups could be more beneficial for participants".*

Importantly, initiatives and models like FGCs or Rangatahi Courts are not indigenous processes and forums. They represent a colonial legal system's attempt to cope with problems created by the exclusion and marginalisation of indigenous people and their ways of life (Quince, 2007b). Moreover, these developments also symbolise the persistent Indigenous (Māori) endeavours for improvements in the way the CJS functions. These initiatives and models can be grasped as a type of inter-cultural communication representing a "*hybrid form of justice*", which incorporates both Indigenous and non-Indigenous "*legal philosophy and practice*" (Proloux, 2005, p. 98). The 'end results' of this evolution are 'hybrids' in the space between these two domains: they are neither exclusively Indigenous nor colonialist (Blagg 2016, Cunneen & Tauri 2016, Proloux, 2005). Thereby, policymakers suppose that giving some authority back to the whānau and hapū means that they are able to deal with crimes and other unacceptable behaviours in a way that brings more meaning and ownership to offenders and communities and makes punishment more relevant for both (Quince, 2007b; Toki, 2009). However, many elements of the Indigenisation policies do not adequately harmonise with Māori political aspirations for greater self-determination (Cunneen & Tauri 2016, Moyle, 2015). Meanwhile, to achieve more meaningful intra-community changes, Māori need to re-evaluate their role and responsibilities. Self-critical observations were frequent during this study; Participant K. also formed a critical assessment:

> Participant K: *"There are also real issues in our own attitudes as Māori and the problems that we cause ourselves through the way we socialise our kids. This whole sort of warrior ethic is being subversive. The only way to get what you want is to smack someone and you slap your woman around. There has to be a major change in our attitude. It's not all the system's fault. We can argue but I'm also getting tired of Māori academics saying: 'yeah, it was caused by the colonisation'. Of course it bloody was. That's a good explanation. So what are you gonna do about that? We can't sit back and go to the state or to the justice system saying: 'It's all your fault. It's all your duty to do something about it'."*

Procedurally a significantly different example is from Victoria (Australia), where the legislation has established indigenous sentencing courts (Te Koori Courts) as separate divisions of the local court system (Blagg, 2016; Hess, 2011; Hulls, 2002). It can be thoughtfully examined what is the feasibility of a similar option, upon request, for Māori offenders. Chapter 9 discusses Māori traditional conflict resolution methods, their prospects and viability in present-day context.

7.5. Conclusion

On a historical account, the youth justice sector's encounter the growing number of Māori rangatahi showed a mixed picture of effectiveness and adaptability. The colonial justice system was not well prepared for this challenge; it had been designed to reflect to the needs of Pākehā families; its approaches were mostly based on experience gathered in the Westminster system and applied to rangatahi without any meaningful modification. Child welfare objectives were the justification for the gradually intensified intervention into the lives of rangatahi and whānau; however, this policy and professional practice largely remained without tangible positive results. Welfare policy and practice generally culminated in the alienation from whānau, hapū and iwi for many rangatahi. This became more and more obvious following the acceleration of Māori urbanisation. Māori communities instinctively and consistently rejected the proliferating residential and therapeutic programmes, which went against their traditions; still these interventions were mostly forced on them. The system isolated and concentrated youths in institutional care. Ultimately, these interventions, executed by an overburdened and ineffective system became one of the main contributors to the aggravation of problems of vulnerable juveniles rather than being part of the solution (Department of Social Welfare, 1985; Doolan, 2008; Watt, 2003). This historical 'heritage' and the intergenerationally transmitted socio-economic disadvantages still heavily influence the nexus between Māori and the CJS.

The reaction and adjustment attempts to Māori over-representation were slow and largely inefficient. By the early 1980s, the incarceration rate for juveniles was among the highest in the developed world; however, youth crime rate had not been decreased at all. After repeated efforts by Māori stakeholders to achieve a more meaningful self-reliance and autonomy capable of counterbalancing a monocultural legal system, which had undermined family structures and discriminated institutionally against them and mostly disregarded differences in traditions and community values, the first favourable changes started to appear (Doolan, 1988, 1993; Ministerial Advisory Committee, 1988). Eventually, CYPFA became the legislative outcome of the reform efforts, which lead, symbolically, to 'changing lenses' and created a less punitive and more preventative youth justice system with a more victim-friendly approach and a broader community engagement. Paradigm change by CYPFA has established a hybrid system, which has amalgamated justice and welfare approaches.

Alternative Action developed by the NZP as alternative to prosecution, serve as one of the most important pillars of the youth justice system; the 'first line' in the realisation of the diversionary goals of the CYPFA. FGCs, the principal decision-making forums represent, symbolically, procedurally and functionally, the virtual hub of the system. FGCs make or inform consensus-based arrangements of formal prosecution, pre-trial detention, interventions for offending, reactions to any failure to comply with previous decisions. Unique components of the system are the Youth Aid Officers, specialist NZP members dealing with young offenders; Youth Advocates, specifically qualified lawyers assisting the juveniles; and lay advocates (Hopkins, 2015; MoJ, 2012). Owing to these changes and their coherent and 'loyal' application, New Zealand achieved and has retained its world-leading diversionary model among youth justice systems. However, as participants and juvenile statistics revealed, the reformed system's performance is significantly better for non-Māori than for Māori. Unsuccessful interventions and implementations of FGC plans are frequent when there is a lack of supportive family backgrounds, which characterise significantly more Māori than non-Māori families (Alison & Quince, 2014; N. Lynch, 2012a, 2012b).

Numerous initiatives have already been launched since the birth of CYPFA to handle more adequately the disadvantaged situation of Māori youths. One of the apparently most potent schemes, initiated from within the system, is Ngā Kooti Rangatahi, a limited relocation of power from the Youth Court and other professionals to the (Māori) community. It monitors the progresses with previously agreed and sanctioned FGC plans; however, it also functions as a catalyst to foster pro-social conduct of rangatahi by reinforcing their (Māori) identity and social connectedness. Early evaluations found a generally positive reception by participants; first statistics for reoffending are favourable (Adams, 2016; MoJ, 2012). Whether it delivers significantly better outcomes for rangatahi than other procedures is remained to be seen (Taumaunu, 2014). Overall, developments since the introduction of the CYPFA have proved that a maintained focus on diversionary and restorative practices is able to provide harm-reduction for juveniles even through the operations of the formal justice system. Moreover, these practices proved their ability to combine harm-minimisation and positive youth development approach (Alison & Quince, 2014). These policy developments and results have drawn juvenile justice a bit nearer to the perspectives of zemiology, critical criminology and social justice (Delgado & Stefancic, 2012; Yar, 2012; Zamudio et al., 2011), which were chosen as the main theoretical filters of this study. However, despite all the positive developments, this chapter found a relative but clear failure of the juvenile justice policy for

Māori. There are frequent suggestions by stakeholders that, after decades of unchanged Māori over-representation, it might be timely to restore more Māori autonomy in the CJS (McElrea, 2011; Tauri, 2011; TPK, 2010b; J. Williams, 2013; Workman, 2013). Therefore, it seems necessary to examine the feasibility of the restoration or revival of more autonomous Māori justice mechanisms and the potential of locally designed, developed and delivered ('by Māori for Māori') programmes. This examination is sought in Chapter 9. Owing to the positive experiences, New Zealand's juvenile justice has been placed in the spotlight of extensive international interest. However, this interest rarely focuses on marginalised, non-Indigenous ethnic minorities like the Romani people. The next chapter attempts to picture the Hungarian juvenile justice system and the situation of Romani youths in it.

CHAPTER EIGHT

8. Youth Justice in Hungary

This chapter critically examines the historical and contemporary features of the mainstream juvenile justice system and provides information about the situation of youths and especially Romani youths in it. The main characteristics of the various sanctions, measures, the principal authorities, agencies and service providers operating the system are discussed. The chapter devotes attention to the growing interethnic tensions and to the 'normalisation' of Romani mass imprisonment. The prospects of certain alternative procedures and the potential of various restorative justice and community-based initiatives are also reviewed.

8.1. Introduction

One of the most apparent differences between the two justice systems is that, contrary to New Zealand's common law system, Hungary has a civil law system; so youth justice is founded on an inquisitorial model of criminal procedure. Thus, proceedings in court are generally investigative rather than adversarial. The principle of legality prevails, which requires, in most instances, mandatory prosecution when authorities acquire information about crimes (Kerezsi & Lévay, 2008). The general investigating authority is the police. The Public Prosecution Service [PPS] oversees the legality of police operations; it has the power to order an investigation into any case when it seems justified (Karsai, 2013). The system of trial jurisdictions comprises municipal courts (111), County Courts (20), Regional Courts of Appeal (5), and the Curia (Supreme Court). Apart from the separate military justice, the court system is established uniformly; there are no special courts for juveniles or any specialised courts (drug, mental health, domestic violence courts, etc.).

There is no criminal court jury system; trial judgement of finding of guilt and sentencing/imposing sanctions do not constitute a separate stage, they occur concurrently (Karsai, 2013). Youth justice is part of the standard CJS; however, there are special juvenile rules in separate chapters in the Criminal Code [CC] and in the Criminal Procedure Act (CPA). A 'juvenile offender' is anyone between the age of 12 and 18 years at the time of committing an offence (CC s 105). Contrary to the legislative framework in New Zealand,

Hungary disregards the characteristics and peculiarities of juvenile delinquency. It has not provided a special administration of juvenile justice and a coherent system for youth crime prevention is still awaited. Infractions (petty crimes, minor rulebreakings) as in most civil law systems are not qualified as criminal acts or offences. They are administered by the police or various local authorities. Accordingly, no convictions can be entered; however, the consequences of an infringement still can be harsh, as severe sanctions, confinement included, can be applied even to legal minors (Lévay, 2012). The next sections present the short history of the youth justice system.

8.2. History of the youth justice system

The gradual acceptance of the need for special treatment of juveniles was a long, slow process like in many other European countries. The first significant consideration of differentiation appeared in a criminal code bill in the Parliament in 1795; however, ultimately nothing had been realised, the bill never became a law. It was a draft criminal code, which supported the idea that under the age of seven no criminal liability could be established; additionally, it suggested an age-differentiated punishment regime (Mezey, 2007). There was no substantial development for long; albeit, another unmaterialised bill in 1843 contained relevant youth-specific, at that time truly progressive procedural elements and institutions (Mezey, 2007; Vókó, 2009). After lengthy preparations, the first comprehensive legislation dealing with crimes and the CJS was enacted in 1878 (the Criminal Code Law [CCL]); however, it still did not devote considerable attention to juveniles (Bogár, Margitán & Vaskuti, 2005). The CCL stipulated that children under 12 were not criminally responsible for their deeds; youth aged 12-16 were treated differently from adults. Youth offenders aged 16-18 got no special treatment before 1908 (Lőrincz, 2002). The CCL established the first reformatories with compulsory education, but the implementation of the new correctional institutions was rather slow; the first reformatory was built five years after the CCL had come into force (Vókó, 2009). In 1896, another safeguard was provided for juveniles under 16, the compulsory representation by a defence lawyer during the main trial hearings (Bogár et al., 2005). 1901 saw the first comprehensive child protection legislation and the first acknowledgement of the wide-ranging responsibility of the state for the care of needy children (Act VIII of 1901, Act XXI of 1901). Additionally, the purview of the legal (child) protection was extended until the age of 15 (Anghel, Herczog & Dimac, 2013).

The amendment of the CCL (Act XXXVI of 1908) had eventually created a juvenile justice system for offenders aged 12-18 (an increase from 16). The new regulation provided more youth-friendly options for young adults (aged 18-20) since corrective and educational measures applicable to juveniles could be extended (Bogár et al., 2005; Lőrincz, 2002). Act VII of 1913 reformed criminal procedure law and the establishment of a separate juvenile jurisdiction completed the modernisation of youth justice. Its approach and principles visibly deviated from the repressive philosophy prevailed before; its special provisions placed great emphasis on the personality of juveniles (Domokos, 2013). The new policy brought in a new perspective; the idea of prevention became the key standard while imprisonment was made as a measure of last resort and special sentencing reductions became available (Lőrincz, 2002). The intellectual/moral maturity of juveniles had to be investigated before the establishment of guilt; this obligation was applicable regardless of the seriousness of the offence at hand (Mezey, 2007). However, in practice, the courts regularly ignored the appropriate investigation of the intellectual/moral maturity and commonly asked the knowledge of The Ten Commandments as the fulfilment of this investigation (Bogár et al., 2005). Hungary adopted some, then cutting-edge policies and practices transferring a few new legal provisions and mechanisms from the Anglo-American CJSs. The very first statewide probation system was established in Massachusetts in 1878; a similar system was created in England and Wales in 1907 (Hazel, 2008). The option of conditional sentences, the deferral of sentencing for a year under probation with strict behavioural rules, the establishment of a Probation Service were among the transferred innovations (Domokos, 2013; Lőrincz, 2002). Not only the separate juvenile jurisdiction was a highly progressive step, but also the power acquired by courts for appropriate individualisation (corrective measures such as reprimand, probation, correction-education) in sentencing was a promising achievement (Domokos, 2013; Mezey, 2007). Corporal punishment in juvenile institutions became expressly prohibited. The principles of the reformed youth justice regime made it clear that the purpose of punishments could never be based on retaliation for the offence committed (Bogár et al., 2005).

The legislative changes and the assistance provided by the institutions of child protection were meant to ensure that they could work in an integrative form with youth justice. In theory, conditions for a high quality, up-to-date and effective juvenile justice were given. However, historical events, ‘financial reality’ and institutional inertia interfered with the practical development of a progressive youth justice system (Lőrincz, 2002). WWI and the social upheaval followed created insurmountable obstacles to a well-functioning system. Moreover,

appropriate skills and goodwill during the preparations of the legislative and institutional changes alone were inadequate to achieve a substantial modernisation. Courts, prosecution, police and correctional institutions were not prepared to meet the objectives set; willingness and motivation for change were 'on short supply' (Bogár et al., 2005; Vókó, 2009). In the 1930s, it became more and more obvious that the modernisation process had been stalled. Youth court judges did not use their discretionary power in sentencing, partly because of the lack of practical opportunities (i.e. inappropriate conditions to execute alternative orders), partly due to the lack of motivation to change ingrained sentencing practices (Lőrincz, 2002). Correctional facilities did not apply in everyday practice the achievements provided by educational and behavioural sciences at that time (Vókó, 2009). Thus, despite the modern and youth-friendly legislation, the everyday operations of the system had not changed much. Albeit the special regulation for youths was not repealed, after a while even the interest of the policymakers was lost (Bogár et al., 2005; Mezey, 2007).

WWII, the ensuing military occupation by the Soviet Union and the transition to a socialist state with a one-party system fundamentally disrupted the previous social order. In 1951, a new regulation came into force (Law-decree 34 of 1951). Overall, it was a retrograde step; however, this was the first and only time when all statutory provisions of the juvenile justice system (including criminal, procedural and correctional law) were codified in one regulation (Bogár et al., 2005; Vókó, 2009). There was no particular attention dedicated to juvenile justice since the new socialist/communist ideology presupposed that the elimination of the capitalist social order would inevitably eradicate crime. History of the nascent socialist state proved that this notion was 'premature'. Policymakers needed to admit the 'delay' in the realisation of a 'crime-free' socialist order (Vígh, 1964). A new legal framework (criminal code, Act V of 1961 and criminal procedure regulation, Law-decree 8 of 1962) was enacted. A substantial and progressive change was the increase of the age of criminal liability from 12 to 14 (Karsai, 2013). A new procedural safeguard, the compulsory participation of defence attorneys before trial was enacted (i.e. through the police investigation phase). The separate jurisdiction and independent organisational structure of youth courts and prosecution were abolished; however, in practice it did not result in significant changes as special rules for juveniles were incorporated into the unified criminal and criminal procedural law (Bogár et al., 2005; Vókó, 2009). Probation service was re-established in 1962; however, an evaluation report found that probation had been clearly ineffective for high-risk juveniles (Dávid, 1968). The report criticised the length of probation available for juveniles as too short to achieve any

meaningful corrective/educational results. Dávid (1968) warned that without adequate disciplinary measures, probation could be a weightless intervention in the lives of youth and proposed mandatory rules of conduct for juveniles under probation. A separate probation service was established in 1970 under the auspices of the Child Protection Service; however, only the new Criminal Code 1978 created more satisfactory conditions (Vókó, 2009). Its special juvenile rules represented a more modern and youth-friendly approach. In theory at least, incarceration was expressly made an exceptional punishment, while probation, suspended sentences, reformatories and other educational measures became essential. Still, in fact, procedures and sanctions did not differ from the adult's regime as substantially as the legislative intent envisaged (Váradi-Csema, 2011). Overall, sentencing practice retained a 'socialist character' that, with minor variations, was 'imprisonment-centred', as it was reflecting on the autocratic social and political system. Even in juvenile justice, the prevailing approach that influenced sentencing practices largely ignored defendants' individual circumstances; the focus was mostly on the seriousness of the offence (Lévay, 2012).

The relative harshness of the sentencing regime did not have significant impact on the criminal tendencies. From the mid-1970s, social and economic changes contributed to a slow but persistent increase in overall and in juvenile crime. Growing number of violent crimes aggravated these trends (Karsai, 2013). While violent crimes were much more prevalent in rural areas in the 1960s, by the 1980s both youth and adult violence became more commonplace in the cities (Gönczöl, 1991). The number of recorded crimes between the mid-1960s and mid-1970s stayed around a yearly average of 120,000, then it reached 140, 000 by 1984. The gradual growth in criminality seemed manageable until the mid-1980s; however, afterwards, the registered figure of crime skyrocketed from 166,000 in 1985 to 341,000 in 1990. Simultaneously, the average proportion of offenders who remained unknown was 18% in 1965-1975, 26% in 1975-1985 but 55% in 1990 (Gönczöl, 1991). Youth crime statistics also showed extreme changes in intensity. The year 1990 compared to the year 1980 saw 88% more convicted youth offenders, while the same indicator for adults was 54% (Gönczöl, 1991). The marked rise in juvenile delinquency is revealed by registered crimes annually per 10,000 youths. It was 110 in 1970, 133 in 1975, 161 in 1985, and 192 in 1990 (Lévay, 2012). The number of families where child protection needed to intervene due to the elevated risk of family dysfunctions had almost doubled, from around 23,000 in 1978 to 44,000 in 1987 (Gönczöl, 1991).

The comparison of crime statistics and criminal tendencies pertaining the period before and after the transition often cannot be clear-cut. Social, political and legal changes were so transformative that a simple contrasting of numbers and other indicators is often misleading (2008; Váradi-Csema, 2011). The rule of law, the democratic power-sharing accomplished through a system of 'checks and balances', the full recognition and protection of human rights were not realised during the socialist era, which greatly affected the CJS (Lévay, 2012). A more pronounced presence of authorities and service providers in the lives of individuals resulted in broad restrictions on civil liberties and in increased control over personal autonomy (Gönczöl, 1991; Karsai, 2013). While the social and economic system of this era was unsustainable; however, it had its advantages in the management of youth justice. For example, up until the late-1980s, probation service was more efficient, having significantly smaller caseload and better-organised cooperation with the educational and health sector. Moreover, virtually full employment characterised the labour market assisting the reintegration of juveniles. Even unskilled or otherwise disadvantaged juveniles had real opportunities to get permanent jobs at state owned enterprises; large employers provided affordable accommodation at workers' hostels (Rosta, 2014; Vókó, 2009).

8.3. Developments in youth justice after the political transition

The change of the political system in 1989/1990 and the following several years represented a watershed for Hungary and its relatively homogeneous and closed society as rapid and drastic economic and social changes occurred. Society and state actors including juvenile justice stakeholders were largely unprepared for the challenges that ensued (Gönczöl, 1991; Kerezsi & Lévay, 2008). A 'social trauma' emerged, which involved a dramatic growth in unemployment, social inequality and insecurity. It generated a spread of social tensions and conflicts and contributed to the dysfunctions of the previously accustomed social networks. Polarisation of the society was going hand in hand with a reduced level of tolerance (Emigh, 2001; Lévay, 2012). They affected the abilities to cope with conflicts; consequently, a great deal of discrimination-related (usually ethnicity-based) local tensions arose (Fehér, 1993; Human Rights Watch, 1996; Ladányi & Szelényi, 2004).

The social instability of the transition can be approached by the various theoretical construct of anomie. In Durkheim's interpretation of anomie, rapid social changes can create an imbalance where the formerly valid cultural and social norms and values disintegrate. An era

of a major social and economic crisis fits well in Durkheim's interpretation of anomie (Durkheim, 1893/1964; P. Smith, 2008). Merton's construct of anomie, the strain theory (Merton, 1938), is based on the emergence of a 'gap' between socially acceptable goals and lawful means available for attaining them; it occurs when socially dictated goals become unrealisable for many (Hopkins Burke, 2009). Messner and Rosenfeld (1994) proposed, relying profoundly on both Durkheim's and Merton's theoretical premises, a combined theory of institutional anomie. This theory seems mutually compatible with both theories; it uses Merton's interpretation of anomie, but it focuses on the social criticism emphasised by Durkheim (Bjerregaard & Cochran, 2008). Merton's conception of anomie is, among other things, the consequence of the *"uneven distribution of opportunities in the social structure because it fails to live up to its promise of equal opportunity*" (Bernburg, 2002, p. 738). Institutional anomie theory preserves the notion of systemic imbalance but also aims attention at the actual strength and protective factor of the non-economic social institutions. Messner and Rosenfeld (1994) proposed that if the overvaluation of economic ambitions coupled with growing economic inequality, and with a depreciation of the non-economic social institutions and higher levels of family disruption, they would collectively engender anomic social situation and higher rates of crime. Furthermore, due to the previously discussed discriminatory fashion of allocating power and privilege in society, access to material and social success by conventional means (education, hard work, etc.) is far more limited for disadvantaged ethnic minorities. Moreover, it is widely held, that unsuccessful individuals are predominantly responsible for their failure as they are inherently lazy, passive or maladapted in some way (Bernburg, 2002; Tóth, 2009).

The adaptation to the new system and new life conditions often constituted insurmountable difficulties. Misfortunate victims of the social and economic transformation formed the majority of the offenders in the 1990s (Lévay, 2012). Romani people were disproportionally over-represented among the 'losers' of the transition (Ladányi & Szelényi, 2006).[27] In order to conform to the democratic and EU standards, penal policy and criminal procedure law were adjusted to the new requirements to provide more procedural safeguards (Lévay, 2012; Rosta, 2014). In the early 1990s, legislation reflected the more progressive criminal policy concepts of the EU (Kerezsi & Lévay, 2008). This adjustment put more limitations on the state's

[27] See in more detail in section 8.5.

punitive power including investigatory tools and procedural rights of the police. The strictness of penalties was also eased (Vókó, 2009). The 'social trauma' of the transition together with the changes in the CJS led to a further rise in crime.

8.3.1. Statistics on the delinquency of juveniles

The most basic criminal statistics is the number of officially recorded crime and offenders (convicted or otherwise dealt with). The sharp increase during the transitional period is observable on Figure 8.1.

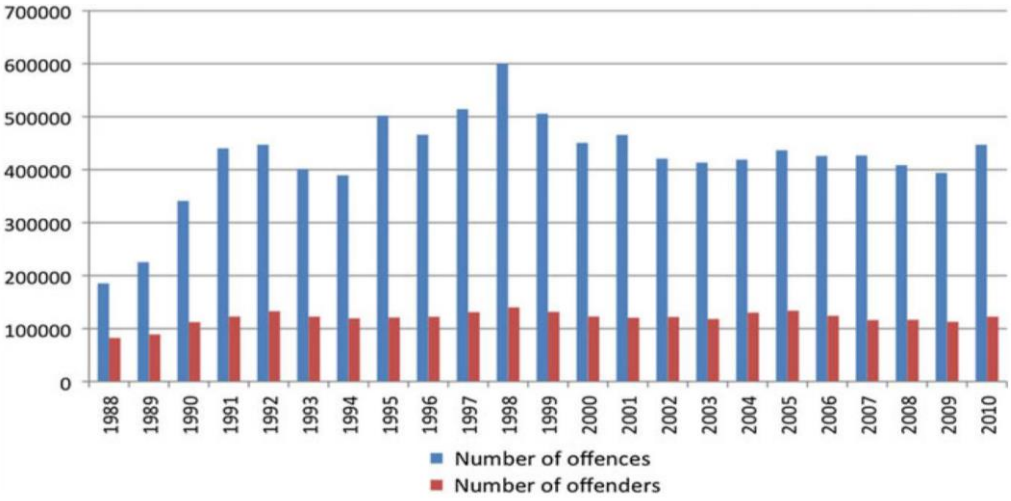

Figure 8.1. Number of recorded crimes 1988–2010. From Lévay, 2012, p. 121. Copyright 2012 by Lévay. Reprinted with permission.

The incidence of crimes between the mid-1960s and the early 1980s remained stable, a yearly average of 120,000. This magnitude of criminal activity was equivalent to a crime rate of 1150-1200 per 100,000 inhabitants per year; the same indicator for youths was about 1200-1250 (Lévay, 2012). There had already been a gradual increase of recorded crimes between 1980 and 1988. However, the truly drastic rise took place between 1988 and 1998. Numbers climbed from 185,000 to 341,000 in 1990, to 502,000 in 1995, and finally to 600,000 in 1998. However, in 1998, there was a serial fraud with 78,000 victims (each recorded individually). Excluding this anomaly, recorded crimes peaked around 500-520,000 between 1995 and 1999. The number of the victims also increased dramatically, from 45,000 in 1988 to 130,000 only three years later (Gönczöl, 1993). Both recorded crimes and offenders (140,000) peaked in 1998. Since then, after a sizable decline, recorded crimes settled around 400,000 with some variance. For example, in 2008 it was 394,000; 451,000 in 2011 and 329,000 in 2014 (Eurostat, 2015). The volume of recorded offenders also decreased substantially from the

peak of 140,000 to around 100,000 (Váradi-Csema, 2011). This indicator was 124,000 in 2006; 120,000 in 2010; 97,000 in 2012 and 94,000 in 2015 (Eurostat, 2015). Figure 8.2 displays trends of child and youth populations and juvenile crime between 1985 and 2009.

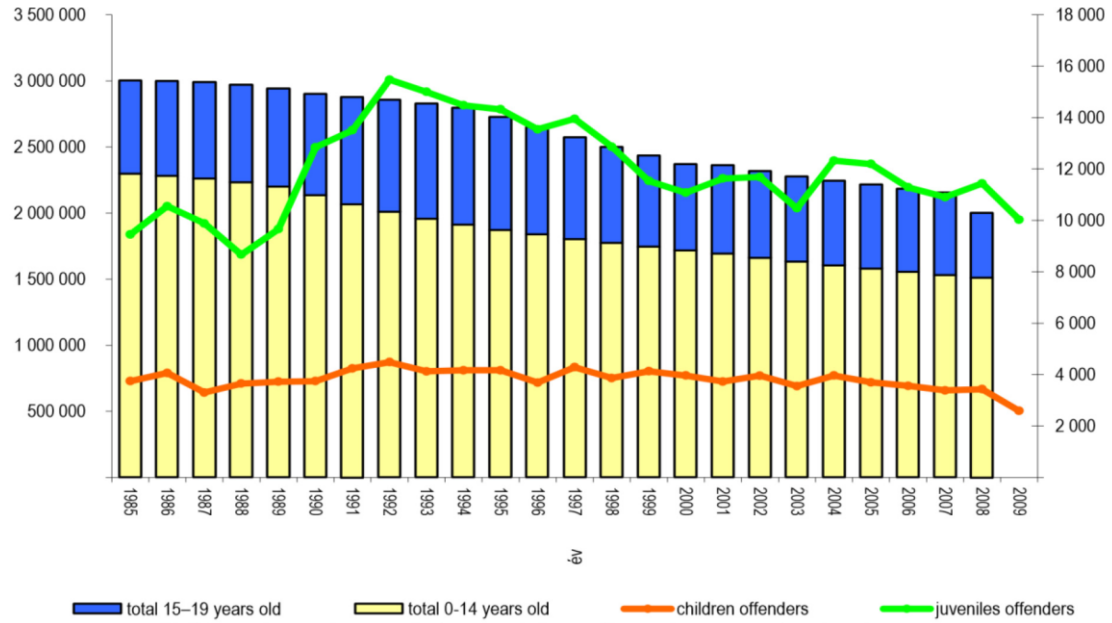

Figure 8.2. Child and youth population and juveniles who committed crimes, 1985-2009. From Karsai, 2013, p. 18. Copyright 2013 by Karsai. Reprinted with permission.

The child population (under 18) has been constantly decreasing, by 12% between 2001 and 2011. Youth population (aged 14-18) has decreased by 14% in those years (KSH, 2002, 2013) and this trend is continuing unabatedly. The number of youth offenders was generally around 7,000 per year between the mid-1960s and the early 1980s (Gönczöl, 1991). The highest number of juvenile offenders was 15,000 in 1992; subsequently it dropped to 11,000 by 2000, then it fluctuated between 9,000 and 12,000 (KSH, 2015). Youth crime was around 40,000 in 1990 then peaked around 60,000 in 1998 (Váradi-Csema, 2011). Afterwards a significant decline occurred, in 2008 it stood at 21,000, at 17,000 in 2010 and at 14,000 in 2012, child offending was at 3,500 in 2008, at 2600 in 2010 and 2012 (Office of the Prosecutor General [OPG], 2013). Criminal activity rate among youth aged 14-18 was 1200-1250 per 100,000 youths in the early 1980s; it was around 1,800 between 1986 and 1989; by 1992 it rose to 4,300; in 1995 it was about 5,100, and after a strong declining trend it was 2,400 in 2010 and 2000 in 2014 (KSH, 2015; Lévay, 2012). In 2011, the proportion of youth and child offenders in their populace was 2%, and 0.25%, respectively (Karsai, 2013). Despite these statistical variances, youth crime remained a highly politicised and populist issue for the government (Rosta, 2014; Karsai, 2013; Váradi-Csema, 2011).

As it was discussed, the era of the social and economic transition has created anomic social and institutional conditions and affected criminality and perceptions of public safety (Bjerregaard & Cochran, 2008; Lévay, 2012; Messner & Rosenfeld, 1994). Not only had the volume of crimes changed substantially but the proportion of different types of crimes within it (Kerezsi & Lévay, 2008). The share of property crime increased from 55% in 1980 to 78% in 1990. Subsequently a slow but continuous declining trend occurred reaching 64% in 2009 and 55% by 2012 (Gönczöl, 1991; OPG, 2013). This trend was attributed to the 'social trauma' of the transitional period (Gönczöl, 1993; Kerezsi & Lévay, 2008). The clearance rate of crimes declined substantially since the rapid increase of crime was exacerbated by the rapid growth of property crimes (Lévay, 2007, 2012). By far the most frequent crime is theft, for instance in 2012 it constituted 82% of all property crimes. One quarter of thefts is qualified as burglary, 14% of all property crimes as fraud, 5% as intentional damage and slightly more than 1% of all property crimes as robbery. These proportions are quite constant (OPG, 2013). However, violent crime rate and the share of traffic offences greatly diminished since 1980 (Gönczöl, 1991; OPG, 2013).

Characteristics and rates of youth crime differ somewhat from the structure of overall crime. Between 2003 and 2012, the share of youth crime within the total crime figure fluctuated between 9-10% (OPG, 2013, 2014). Property crimes are the most prevalent having a 53% share among juveniles and a 60% share among child offenders (OPG, 2013). The prevalence of violent crimes is proportionally larger than in the adult population. Compared to the total share of juveniles in all offenders (9-10%), violent crimes rate fluctuated between 15-16%, while property crimes stood at around 14% (OPG, 2013). Juveniles have even worse rates regarding certain grave offences like robbery (29-37%), extortion (24-30%), rape (11-17%), burglary (18-22%). However, among violent crimes the less serious ones are the most prevalent; for instance, common assault, anti-social behaviours like affrays and disorderly conduct (Karsai, 2013; Lévay, 2012; OPG, 2013, 2014; Rosta, 2014). The next sections give an overview about the available sanctions and their functions in the CJS.

8.3.2. Penalties and measures

The sanctions are divided into two groups: penalties and preventive measures. There are separate chapters in the CC and the CPA, which contain the special rules applied in juvenile procedures. International conventions on child rights and experts recommend a coherent juvenile justice code, like the one in New Zealand. Unfortunately, in Hungary this is not the

case. Still, a relevant distinction that the aim of interventions for juveniles differs from the aim specified for adults. The latter one puts the emphasis on influencing behaviour through general and specific deterrence *"The aim of a punishment is to prevent, in the interest of the protection of society, the perpetrator or any other person from committing a crime"* (CC s 79). For juveniles, the CC reformulates and provides more details and guidance:

CC s 106:

> *(1) The principle objective of any penalty or measure imposed upon a juvenile is to positively influence their development to become a useful member of the society, and such a sanction should therefore have a primary consideration for the juvenile's guidance, education and protection.*
>
> *(2) A penalty shall be imposed upon a juvenile when the application of a measure appears to be impractical. Only measures may be imposed upon a person who has not reached the age of 14 at the time of offending.*
>
> *(3) A measure or penalty involving the deprivation of liberty may only be imposed against a juvenile if the aim of the sanction cannot otherwise be achieved.*

Since the 1995 juvenile justice reform, imprisonment has become a measure of last resort. A mandatory order of sanctions has been prescribed in the CC. The legislation made it clear that reintegration into the society (special prevention) became the paramount objective (Lévay, 2012; Rosta, 2014). The court has the obligation to analyse and balance the appropriateness of available sanctions to achieve as efficiently as possible the prescribed objectives. Sanctions involving the deprivation of liberty (imprisonment, reformatory education) can be only exceptionally applied (Karsai, 2013). The following sections analyse the penalties and measures applicable in the CJS; however, before that, Table 8.1 shows recent statistics and trends in juvenile justice interventions.

Table 8.1

Convictions, penalties and measures applied against juveniles 1997-2014

Year	Total number of sentences	Total number of imprisonment	Total number of suspended imprisonment	Total number of fine	Total number of other penalty / preventive measure	Total number of probation	Total number of special education/ reform schools
1997	7230	2101	1504	502	5164	4451	178
1998	7845	2271	1676	563	5274	4509	249
1999	8805	2753	2042	802	5584	4838	197
2000	7877	2491	1093	752	5049	4436	239
2003	7334	2038	1513	421	4676	3980	238
2004	6935	1762	1379	434	4531	3947	201
2005	6880	1820	1425	434	4385	3773	189
2006	7174	1891	1524	368	4673	4078	199
2007	6213	1691	1302	339	3944	3459	191
2008	6283	1610	1183	359	4029	3515	229
2009	6309	1762	1330	271	3933	3403	229
2010	6007	1790	1385	196	3560	3136	182
2011	6312	1867	1465	113	3755	3321	210
2012	5096	1 595	1259	53	3015	2 677	177
2013	5624	1567	1205	52	4373	3668	169
2014	5980	1618	1257	74	4547	3693	232

Note. Table 8.1. includes data of penalties based on the former CC. The new CC entered into force on the 1st of July 2013, with relatively minor changes regarding penalties for juveniles. Adapted from Karsai, 2013, p. 26; from the OPG, 2013, pp. 37-38; 2014b, pp. 26-29, 2015, pp. 24-26. Copyright 2013, 2014, 2015 by OPG, copyright by 2013 Karsai. Adapted with permission.

Official data reveal a decreasing trend in the use of imprisonment, while the proportion of suspended sentences has been on the rise. The role of fines has lessened significantly, from 6-9% to 1-2%, which was partly due to legislative changes (Karsai, 2013; OPG, 2013a, 2015). In contrast, in New Zealand the proportion of monetary orders has remained about the same (MoJ, 2010, 2013a, 2015c). Probation has invariably had the absolute majority, with little fluctuation among sanctions. Special education in reformatory institutions has always remained negligible (Karsai, 2013).

8.3.2.1. Penalties applicable in youth justice

a) Imprisonment

Imprisonment is the most serious sentence available. The CC contains a framework regulation for imprisonment with the ranges of its length for every type of crime. There are two types of imprisonment: life sentence and fixed term of imprisonment. Only persons over 20 at the time of offending shall be sentenced to life imprisonment (CC s 41). The minimum term for juveniles is one month, regardless of the ranges prescribed for the particular offence (CC s 109(1)). In contrast to the adult punishment regime, there are no mandatory imprisonment sentences while CC s 116 provides further judicial discretion: a juvenile may be sentenced conditionally for any crime (i.e. probation). However, supervision is compulsory during probation (CC s 119(1)(b)). Suspended sentences became more common; around 74-80% of sentences are suspended on probation for 1-5 years (OPG, 2013b, 2014b). Two-year imprisonment is the maximum term for suspension, if it is reasonable to assume that the aim of the sanction may be attained this way (CC s 85). Table 8.2 shows the maximum terms of imprisonment available for juveniles (CC ss 109(2)-(3)). The age of the offenders is determined by the date of offence.

Table 8.2

The maximum term of imprisonment for young offenders *(in case of a cumulative sentence)*

<table>
<tr><th>Offence category</th><th colspan="2">Age of the offender</th></tr>
<tr><td></td><td>14-16 years</td><td>16-18 years</td></tr>
<tr><td>imprisonment for life is an option (adults)</td><td>10 years (15 years)</td><td>15 years (20 years)</td></tr>
<tr><td>imprisonment may exceed 10 years (adults)</td><td rowspan="2">5 years (7,5 years)</td><td>10 years (15 years)</td></tr>
<tr><td>imprisonment may exceed 5 years (adults)</td><td>5 years (7,5 years)</td></tr>
<tr><td>imprisonment may not exceed 5 years (adults)</td><td colspan="2">according to the ranges for adults</td></tr>
</table>

In New Zealand, the maximum length of imprisonment for juveniles (excluding murder and manslaughter) is 5 years; in Hungary, there are much higher maximum limits. Fortunately, juvenile imprisonment became far less frequent as it was before the democratic transition, still recent trends and policy changes are worrisome (HHC, 2014; Karsai, 2013; Rosta, 2014). Table 8.3 and 8.4 present numbers, sex ratio and proportion of juvenile imprisonment in comparison to the adult's statistics. The proportion of incarcerated females is below 8%, which is a low rate even in international comparison (Hazel, 2008); in New Zealand it was 7% in 2014 (ICPS, 2015). The proportion of imprisoned juveniles seems negligible at first glance; however, the overall number is rather high. In 2014, under 18 it stood at 474; however, if the age at offending was taken into consideration, the number was over 900 (HHC, 2014). The

share of juveniles in the total prison population was 1.8% while only 0.6% in New Zealand, a remarkable, threefold difference (ICPS, 2015).

Table 8.3

Prison population by gender and age in 2015

	Total population		**Juveniles (between 14-21)**	
Male	16 692	92,42%	1 272	95,21%
Female	1 370	7,58%	64	4,79%
Total	18 062	100,00%	1 336	100,00%
			Total: 7,39%	

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Table 8.4.

Prison population by age groups in 2015

Age groups	**Number**	**%**
under 16	14	0,08
16-18	236	1,31
19-24	2 760	15,28
25-29	2 710	15,00
30-39	5 668	31,38
40-49	4 437	24,57
50-59	1 732	9,59
over 60	505	2,80

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b) Custodial arrest

This is a newly introduced penalty; it is applicable only in certain less serious offences. Custodial arrest remained under 100 in 2013 and 2014 (HHC, 2014; Lux, 2013). Its duration for juveniles is 3-30 days. The use of short-term deprivation of liberty to address minor youth offending is contrary to the international conventions.[28] Furthermore, as Nagy (2014, p. 12) indicated, the new sanction was not only *"unnecessary and unjustifiable"*, but it has been proved to be an *"expensive and harmful measure"* not only for juveniles but adults.

[28] CC s 111. The UNCRC was ratified and in 1991 incorporated into the national legal system. See custodial arrest for minor infractions in section 8.3.2.

c) Community service work

Community service work is not applicable for juveniles under 16 at the time of sentencing. Its length is 48-312 hours; the sentence determines the type of work. Personal circumstances and capabilities (i.e. health condition, educational/work activities) are taken into consideration (CC ss 47-49, 112). Kerezsi (2006) warned that community service work should make contribution to the community life or values rather than just being an activity created simply for the sake of 'giving a punishment'; she extensively criticised the system's inability and/or unwillingness to provide meaningful opportunities, as it created its under-utilisation. With appropriate preparations and cooperation between stakeholders, community service work could build on the strengths and/or interests of the youth; and work experience could facilitate subsequent (paid) work (Schwarczenberger, 2011; Vókó, 2009).

d) Fine

The role of fine has significantly decreased, from 7-9% around 1999 to 1-2% in 2011-14 (OPG, 2013b, 2014b, 2015). A relevant restriction is that independent income or sufficient assets are required to impose it on juveniles. Its decline is attributable to the decrease of working youths due to educational and labour market changes (Rosta 2014). Fines are expressed in daily units; each day (15-250) represents the same amount. In case of non-compliance, when the payment cannot be legally enforced, it shall be substituted by community service work (over 16) or by imprisonment (CC ss 50-51, 113).

e) Disqualification from holding or obtaining a driver licence

It can be imposed if a motor vehicle was used for any criminal activity, or the offence was the violation of traffic rules. It is mandatory if driving under the influence of alcohol or drugs was the offence. Its period is permanent or between 1 month and 10 years (CC ss 55-56). Disqualification of juveniles is rare since the minimum age of eligibility for holding a licence is 17 years.

f) Prohibition from residing in a particular area

If public interests require, offenders can be banished from municipalities or from a designated part of a municipality. The duration can be 1-5 years. There is a legal restriction; juveniles living in an appropriate family environment may not be banned from their families' municipality (CC ss 57, 118). However, this type of punishment is rarely applied, since

probation with individualised behaviour rules (wide scale of obligations and prohibitions) can usually better serve the aim of preventing recidivism (Schwarczenberger, 2011).

g) Ban from visiting sport events

If an offence is related to a sport event, the offender can be banned from visiting any sport event or from entering any sports facilities for 1-5 years (CC s 58). This is a sparsely imposed penalty since probationary supervision can be a more flexible option (Schwarczenberger, 2011).

h) Deprivation of civil rights (only as an additional penalty)

In case of a prison sentence for deliberate offences, the court examines whether the convict should lose certain civil rights. Juveniles can be deprived of certain civil rights (for 1-10 years) if imprisonment is over one year. It includes the loss of suffrage; holding a public office; the forfeiture of certain memberships, positions, offices, military ranks, mandates or decorations, etc. Its term starts after the end of the imprisonment (CC ss 61-62, 115).

8.3.2.2. Corrective and preventive measures in youth justice

a) Warning

The least serious intervention is issuing a written warning, which is equivalent to a discharge without conviction. Courts and prosecutors are entitled to apply it; the mandate depends on the actual phase of the criminal procedure. In essence, they express disapproval and convey an admonition advising the juvenile against engaging in any criminal activity (CC s 64).

b) Conditional sentence

A significant discretionary power for the courts that conditional sentences can be applied for any crime committed by juveniles. The court must find reasonable grounds to suppose that probation (for 1-2 years) will serve the purpose of rehabilitation. Juveniles under probation are supervised by probation officers (CC ss 116(1), 119(1)(b)). If the probationer violates the behavioural rules, probation may be extended once by not more than one year. When the probation ended satisfactorily, all charges are dismissed. In case of non-compliance, the court order placement in a reformatory institution or impose a penalty (CC ss 65-66, 116). In essence, the legal mechanism of the conditional sentences is equivalent to the legal power

granted to the Youth Court (CYPFA s 208) discharging a charge. Another similarity is that these are by far the most frequent outcome for prosecuted juveniles.

c) Work performed in reparation

The court has the choice to apply another measure for less serious offences (imprisonment up to 3 years) if there are reasonable grounds to assume that it will serve the aim of rehabilitation. It requires the deferral of sentencing for one year with the combination of activity (work) as reparation and probationary supervision. The activity is 24-150 hours and a one-year period is given for compliance; if completed fully, all charges are dismissed, otherwise a conviction is entered and penalty imposed. The juvenile must be over 16 at the time of sentencing. The offender can choose the place and institution like NGOs, church and religious organisations, public service providers, etc. (CC ss 67-68, 117, 119(2)).

d) Probation with supervision

Probationary supervision for juveniles, as a preventive measure, may take place in case of any crime. It is mandatory for the duration of parole, probation, conditional sentence, suspended prison sentence, temporary release from a reformatory institution, deferral of prosecution and work performed in reparation. Its length is the same as the duration of the various sanctions, up to 5 years (CC ss 70(1), 119(1)-(2)). It is the most common supplementary measure to support and control juveniles before, during or after the court procedure. Maintaining regular contact with the probation officer is the norm; individualised behavioural rules, obligations and prohibitions may be included. The CC s 71(2) gives optional behavioural rules: no contact with the accomplices; not consuming alcoholic beverages in public; avoiding victims; refraining from visiting certain public places, events; contacting employment agencies or local authorities for employment; pursuing specific studies; receiving specific medical treatment, attending therapeutic procedures (if consented); community programmes, group sessions arranged by the probation officer. CC s 71(2) confers a wide discretionary power on the court/prosecutor (deferred prosecution) to prescribe further rules of conduct to enhance the reintegration of the juvenile. In the 2000s, reintegrative efforts, reparation, mediation and some restorative justice processes got greater focus; however, theses progressive directions

have been substantially stymied by the downsizings of the probation service and by the populist, punitive turn in the juvenile policy since 2010[29] (Kerezsi & Kó, 2013; Rosta 2014).

e) Placement in a reformatory institution

Corrective education is an exclusive special measure applicable only against juveniles under 20 at the time of sentencing. It is imposed if a juvenile needs to be removed from the usual environment but imprisonment seems unnecessary and the appropriate education can only be provided in an institution. For child offenders, this is the only applicable measure involving the deprivation of liberty. Formerly juveniles aged 14-19 could be placed in a reformatory institution; the new CC makes it possible for juveniles aged 12-21. The potential nine-year age gap between inmates creates a difficult to manage situation with increased risks of abuses. Its duration is 1-4 years (previously up to 3 years). If the goal of the placement may be achieved without any further deprivation of liberty, the court has the power to temporarily release the juvenile after half of the prescribed term (but at least one year) completed (CC ss 120-122). This is a rarely applied measure but proportionally it is slightly growing. Recent studies tended to conclude that its impact on reforming offenders was favourable (HHC, 2014; Kerezsi et al., 2007).

f) Involuntary treatment in a mental institution

It is a remedial measure that involves compulsory psychiatric treatment (therapies). In case of violence (offences against the person), if a serious mental health condition (insanity, reduced responsibility) precludes prosecution and it is reasonable to assume that further violence is likely, it can be imposed by the court. A further prerequisite is that without the mental condition imprisonment would be over one year. It has to be terminated if its application is not necessary anymore (CC s 78). For juveniles, it is a marginally applied measure; 34 juveniles spent a usually short period in a mental institution in 2012 (HHC, 2014).

g) Forfeiture and confiscation of property

Forfeiture and confiscation of property are measures against offenders or anyone who gained financial means or advantage from crime or possesses evidence, proceeds or instruments of

[29] See the critical evaluation in section 8.4.

crime or otherwise dangerous objects (CC ss 72-76). The rationale is to identify and secure any property having criminal origin, secure objects assisting criminal procedures and protect society from harmful goods (Karsai, 2013).

8.3.3. Diversionary mechanisms in the juvenile justice system

The democratic transition triggered substantial changes in the youth justice and increased the role of diversion. The share of unconditional discharge, usually applied with a warning, more than doubled from a proportion of 16% in 1980 to 34% by 2007 (Váradi-Csema, 2011). The use of suspended sentences also increased substantially, from 47% in 1980 to 74% by 2007 (Dünkel, 2014). The proportion of not suspended prison sentences decreased by two-thirds, to 6% in 2012 while the corresponding number was 18% in 1980 (Lévay, 2012; Váradi-Csema, 2011). However, if an offender is convicted of another imprisonable crime committed before the expiry of the suspended sentence, both sentences are executed (CC s 87(a)). This happens rarely as 5% of suspended juvenile sentences were converted to executable sentences in 2014 (OPG, 2015). New forms of diversion have emerged recently. Referral to victim-offender mediation [VOM] became part of the CJS in 2007; while the deferral of indictment was introduced in 1995 (initially for juveniles, since 2003 as a general diversionary option). Consequently, dealing with offending became more informal; the proportion of charged offences dropped from 84% in 1980 to 58% by 2007 (Dünkel, 2014). Sentencing practices also tended to be less severe; however, the 2010 penal populist turn has influenced the operations of the courts (Kadlót, 2014; Karsai, 2013). The next sections picture the various diversionary mechanisms.

8.3.3.1. Deferral of indictment

This is one of the main alternative and divertive procedural institutions applicable for juveniles in less serious offences (imprisonment up to 5 years). The prosecution evaluates the circumstances of the offence/offender to decide on the deferral (for 1-2 years) of filing an indictment. The main criterion is the likely prospect to achieve a positive impact without charging the juvenile (CPA s 459(1)). The decision is normally based on the pre-sentence report of the probation service. A personal hearing can be held, where, if necessary, the probation officer may be heard (Kerezsi & Kó, 2013; Lux, 2013). The pre-sentence report attempts to reveal factors indicating recidivism risks and suggests programmes as well as individualised behaviour rules. Moreover, the preparation of the report can create a rapport

between the juvenile and the probation officer in this relatively early phase of the procedure (Hatvani, 2010). Subsequently, probationary supervision with individualised behavioural rules is set. The prosecutor has a wide discretionary power to set rules of conduct and obligations.[30] The adherence to the rules and obligations shall be supervised and assisted by the probation officer; therefore, probation officers play an important role in the initial phases of the criminal procedure. Victims cannot veto the deferral but they are entitled to make an appeal to the superior prosecutor. If it elapses and the juvenile's conduct is satisfactory, then the procedure will be terminated without any sanction (CPA ss 225(1)-(3), 225(5), 228(1)). Unfortunately, its application for juveniles has decreased recently; it stood at 2046 in 2011; 1840 in 2012 and 1502 in 2014 (OPG, 2015).

8.3.3.2. Victim-offender mediation

In 2007, another form of diversion was introduced. Key characteristics of the VOM procedure are that the offender has to accept the responsibility for the offence and some form of reparation has to be offered. Reparations can be material and/or immaterial compensations, also symbolic restitutions (Hatvani, 2010). The PPS or the court can suspend the procedure for up to 6 months and refer the case to a VOM. If it is satisfactorily completed, the criminal procedure is terminated. It can be initiated by the offender, defence counsel, victim, or ex officio by the PPS or courts. There are statutory limits on the gravity and categories of offences: crimes against the person or property and traffic crimes, where imprisonment is up to 5 years (CPA ss 221/A(1)-(2), (7)). Unfortunately, even for juveniles with the 'more lenient' preconditions, robberies, regardless of the circumstances, are excluded. The number of juvenile cases referred to VOM has even decreased; it was 582 in 2011; 524 in 2012; 527 in 2013, 512 in 2014, 440 in 2015 (OPG, 2015). 88% of mediation cases concerned adults, the involvement of juveniles is still relatively low compared to other EU countries (Dünkel, 2014). In Western Europe, the proportion of VOM among prosecuted offences is 8-10%, while in Hungary it is 2% only (Dünkel, 2014; OPG, 2015). Participant A. emphasised the highly important role the EU[31] played in its introduction:

[30] Among the obligations can be, for example, to fully or partially compensate the victim for the damage caused, or to undergo a psychiatric treatment or treatment for alcohol or drug addiction or preventive education, etc.

[31] See Article 10 of the Council Framework Decision (2001/220/JHA) on the standing of victims in criminal proceedings.

> Participant A: *"The EU States are obliged to promote mediation in criminal cases since 2001. This duty requires the regulation of mediation in such way that agreements between the parties can be taken into account. The 2006 reform of the CPA was stimulated by this obligation. Without this, the implementation of this diversionary mechanism would have materialised much slower."*

The VOM is always a consensual procedure provided to the parties free of charge. All decisions are based on voluntarily achieved agreements (Barabás, 2012; Fellegi, 2009). Compensations for the victims can be in any form that is not unethical or unlawful; virtually everything depends on the parties. Material compensation, some sort of personal service, repair of the damage caused, or often even the juvenile's pledge to undergo medical treatment or behavioural therapy can be sufficient (Fellegi, 2009). More than four-fifth of VOM cases eventuated in an agreement in 2010; 90% of all 'deals' were completed satisfactorily. Similar success rates (78 % agreement, 92% completion) were maintained in 2012 (OPG, 2013b). Initially, only probation officers were entitled to carry out the VOM; however, since 2008, attorneys with special training may act as mediators. There are two relevant procedural safeguards: the presence of the juvenile's legal representative and statements given by the parties may not be used later as evidence. Accordingly, the outcome may not be evaluated to the detriment of the offender. If VOM proves to be unsuccessful, the criminal procedure continues, usually the PPS files a charge. When the PPS ascertains that the agreement is completed, the procedure is terminated and the offender is no longer (criminally) liable for the offence. (CPA ss 221/A(5), 459 (1)-(3)).

Interestingly, some professional participants commended the VOM for its potential to bridge gaps between socially distant groups (Hatvani, 2010). Interpersonal, direct communication enables the parties to explore the circumstances and causes, which led to the offending. It provides an opportunity for questions, answers, apology, remorse, forgiveness and finding ways of reparation. These factors can effectively facilitate the reduction of prejudices and distance between participants and indirectly in society (Fellegi, 2009). Moreover, it could contribute to the empowerment of Romani communities to access and apply elements of their traditional means of handling conflicts. However, alternative conflict resolution is still heavily underutilised in interethnic conflicts; it still represents an exception rather than a rule. As Participant C. commented on community-based interethnic conflict resolution initiatives:

> Participant C: *"To describe the circumstances, it's worth mentioning that in these communities people did not even know what it is at all. The first question that arose was whether we had been talking about meditation or mediation, with a 't' in the word or without it."*

Participant C. explained the apparently bleak prospects of interethnic community relations and dispute resolutions:

> Participant C: *"Can we move beyond the stereotypical approaches? Are these procedures capable of revealing deeper issues and interrelationships in ethnically mixed villages and towns? Can we understand that if we remain at this level of the 'dialogue', if we are just scratching the surface, then there would be no real hope for constructive solutions for recurring conflicts? It should be remembered that the general picture in many places includes a very limited level of formal and even informal interaction between Romani and non-Romani residents due to the historical segregation and marginalisation."*

There is another possible reason for the underutilisation of mediation: the lack of confidence or even distrust among stakeholders regarding the practical feasibility of alternative options. Fellegi (2009) conducted 45 in-depth interviews with judges and prosecutors on restorative justice practices. It was revealed that deep-rooted fear of and aversion to Romani offenders among victims could prevent the effective operation of restorative practices in interethnic conflicts. A good example of these reservations was the concern expressed by a judge:

> *"It is very hard to imagine that social, structural and individual characteristics of many Romani offenders would make it possible to develop such a nice, cooperative rapport between Romani offenders and non-Romani victims. To sit down and work together for the goals of a restorative process; it does not seem feasible"* (Fellegi, 2009, p. 302).

Participant C. also saw seemingly insurmountable obstacles faced by the potential parties:

> Participant C: *"There are some personal factors as well that render highly challenging any initial work in a local community, where large social distances exist. Let's say, a Romani women living in extreme poverty can hardly be an equal partner in an alternative dispute resolution or in any community justice project with, for example, a teacher, an engineer or a successful entrepreneur, because their social position and communication skills can be so different. We also encounter this challenge."*

The next sections seek to provide a critical assessment of the juvenile justice system.

8.4. Critical evaluation of the juvenile justice system

One of the greatest, long-standing concerns is the length of the procedures against juveniles. Unfortunately, the importance of a prompt response to the wrongdoings is too often ignored. Speediness is a general procedural requirement. There are specific procedural deadlines for juveniles, still only about half of procedures are ended within six months (Dünkel, 2014; Kerezsi & Kó, 2013). Pre-trial detention still occurs far too frequently and for far too long.

Over 60% of detained juveniles spent more than three months in pre-trial custody in 2010/2011 (Kőszeg, 2011). Alternative procedural options (home detention, prohibition of leaving residence area) are still underutilised (HHC, 2015). Another controversial and upsetting issue is the separation of juveniles from adults in pre-trial detention. CPA makes separation compulsory, still the same, usually overcrowded institution with little difference in the atmosphere (shared facilities, same staff) can be used for both since 2015 (HHC, 2014). It is a very serious issue as detention can be extremely detrimental to the personality of juveniles. Separation is crucial in order to protect against the risks of 'criminal contamination' and various hazardous situations. Studies proved that juveniles in unseparated detention five times more likely suffered sexual harassments and twice as likely physical abuses than in juveniles only detention. Psychological violence like extortion, intimidation and manipulation is common in these detention facilities (Dünkel, 2014).

The participation of a defence counsel is statutory in juvenile proceedings (CPA s 450) still the quality of service provided by legal aid is generally much worse than that of provided by private lawyers. One of the reasons for that could be that authorities can choose the appointed lawyers (HHC, 2015). Exclusion of the public during the trial is still not obligatory. Information, including personal data disclosure to the press may be provided (CPA ss 74/A, 74/B, 460). By contrast, New Zealand Youth Courts are always closed to the public; media can attend, but the judge must approve the content of the reports and the name of the offender/ victim or their school under no circumstances can be reported.

There are insufficient alternative forms of sanctions for juveniles. The CC provides only a few special, corrective measures. Procedural options of diversion can only partially cover this gap (Dünkel, 2014). A. Frech, a retired judge with special expertise on juvenile cases noted that *"the appreciation of the relevance of restorative approaches, mediation and other alternative conflict resolution methods was commonly absent from the mindset of the judges"*. Frech put emphasis on the responsibility of public prosecutors as *"they largely ignored the available diversionary options"* (as cited in Lux, 2013, p. 255). It was unjustifiably infrequent that judges/prosecutors used their discretionary powers in applying individualised behavioural rules during probationary supervision (Fellegi, 2010b; Hatvani, 2010). The Probation Service gradually became under-resourced and understaffed due to the growing caseload, which has unavoidably led to a less adequate service (Lévay, 2012; Lux, 2013). Moreover, it is a bewildering fact in the 21st century that, in contrast to New Zealand, the recruitment and selection of police staff dealing with juveniles is not based on any special criterion. There are

no preconditions for special qualification, professional practice or compulsory individual training (Gyurkó, 2014; Lux, 2013).

As the CC and CPA mandate, in principle at least, incarceration and placement in a reformatory institution are exceptional interventions. Fine or community work and some other interventions require certain special conditions: age, income/property, etc. The lack of them can prevent their application. The annual share of fine and community work, cumulatively, fluctuated between 3-6% in 2012-2014 (OPG, 2013b, 2015). The prohibition of community work under 16 is not based on a reasonable concern since a 15-year-old juvenile could easily be obliged to work a number of hours in the garden of a victim, in a nursing home or animal shelter, etc. (Fellegi, 2009). Subsequently, only probation and suspended (imprisonment) sentence remain, thus courts do not really have sufficient options to tailor sentences to individual needs (Gyurkó, 2014). Consequently, there has been a systemic failure to develop adequate alternatives to imprisonment even before the penal populist turn in 2010 (HHC, 2014; Kerezsi et al., 2007).

Youth justice is characterised by the lack of appropriate cooperation (between various sectors), by the lack of special training of police, prosecutors, judges and prison staff and by unsatisfactory rehabilitative opportunities. A good example is the compulsory notification to the child protection of offending by juveniles in order to take them into protection. However, these actions are often formal, inadequate with no effective communication. Regularly, if vulnerable children break the law, despite the warnings given to the child protection, still the timely and adequate actions are skipped, and a few years later many of them will already have started a criminal career (Anghel et al; 2013; Herczog; 2007). About 70% of juvenile offenders were known to the child welfare services even before their offence. However, there is no reliable data on preventative measures (if any) implemented before the offending (Herczog, 2007; Lux, 2013). Even child offenders living in residential homes often lack the professional support they need since the majority of the staff is not trained in rehabilitation and other reintegrative methods. Moreover, various forms of abuse can affect the lives of these young residents (Anghel et al., 2013; Herczog, 2007). In short, usually no special, tailor-made services are provided for at-risk children, which lead to an imprudent application of the juvenile justice system with lack of proper focus on prevention and early intervention (HHC, 2014; Kerezsi & Kó, 2013; Lux, 2013). Muncie (2006b) noted that the extensive employment of custodial measures was not rationally but politically and culturally motivated. Finally, the most critical issue is the re-arrival of the explicitly populist penal policy in 2010.

8.4.1. The reign of the penal populism in the criminal policy

Penal populism is a term attributed to politicians propagating punitive penal policies, justifying them by their popularity among the general public, while discrediting evidence-based expertise of professionals and academics (Pratt, 2007). The elements of the 'law and order' and 'zero tolerance' programme introduced since 2010 reveal how criminality has been deeply politicised again through the advocacy of the 'tough on crime' approach. A receptive atmosphere was created in the public with the assistance of the media and populist political parties. Interestingly enough, the single nationally representative victimisation survey to date (with over 10.000 participants in 2003/2004) revealed that crime was not among the five most important social problems. Respondents felt that the most relevant issue was unemployment (21.6%), followed by social tensions (9%), economic climate (7.7%), political situation (7.5%), the standard of living (7.1%) and then crime (5.5%) (Papp & Scheiring, 2009, p. 104). Subsequently, the public confidence in the CJS was seriously eroded (Kerezsi, 2012). All this has been happening while Hungarian crime rates are quite low in the EU (Lévay, 2012). Another survey indicated a threefold overestimate of violent crime in the public (Papp & Scheiring, 2009). Other studies confirmed the distorting effect created by the media and the politicisation of crime (Bernáth & Messing, 2013; Korinek, 2006; Vicsek, 1997; Vidra, 2006).

Crime trends and criminal policy have apparently diverged; a policy of zero tolerance and an increasingly harsh and expansionist penal policy have quickly returned with the new, right-wing Orbán government in 2010 (Kadlót, 2014; Karsai, 2013; Lévay, 2012). First, the amendment of the CC created 'three strikes' rules[32]; then mandatory life sentences without parole was re-introduced.[33] More severe provisions for special and multiple recidivist offenders were legislated; the discretionary power in sentencing was considerably limited (Lévay, 2012). The new government continuously propagates an overly punitive criminal policy and put the emphasis on deterrence-oriented law and institutional changes. Over-policing, under the guise of the 'visible police' concept, is promoted as the only effective tool to deter street crime. Another 'concept' sponsored by the government is the demonstrably

[32] Interestingly, this change coincided with the Sentencing and Parole Reform Act 2010 introducing similar 'three strikes rules' in New Zealand.

[33] In 2014, the ECHR adjudicated that actual life imprisonment option violated the prohibition of torture and inhuman or degrading treatment or punishment. Subsequently, some legislative changes were introduced; still the proceedings have not met the standards set out in the ECHR's judgement (HHC, 2015).

counterproductive expansion of the criminal law and law enforcement in the social control of drugs, which reinforces punitive attitudes and an atmosphere of intolerance of social problems in society (Csesztregi et al., 2014; Földes, 2015; Lévay, 2012). Accordingly, the new crime prevention policy has a narrow focus on being tough on crime; methods based on punishment and repression have gained a dominant role, less common are now the situational and targeted crime prevention models, while approaches and measures designed to reinforce protective factors are treated as the least favourable. Evaluations of prevention measures are inadequate, usually formal, hectic, unprofessional and often without reliable standards, or they are simply missing (Kadlót, 2014; Kerezsi & Gosztonyi, 2014). A good example to feature the new approach is the application of law enforcement against truant children under 14. Eliminating truancy by coercive measures is unreasonable, ill-suited and can result in a distressing and hurtful experience for children (Lux, 2013). There are even more negative youth justice developments, like the legislative authorisation for the use of confinement/detention for petty offences. Basic changes visibly stand in absolute contrast to meeting the demand given by the CRC concerning the administration of juvenile justice:

> *"In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety"* (General Comment No. 10, Children's Rights in Juvenile Justice, 2007, para. 10).

The most relevant changes in the youth justice policy, including the abolishment of the separate jurisdiction, the decrease of the age of criminal liability and the option of confinement or detention of juveniles for misdemeanour, are presented in the next sections.

8.4.2. Confinement or detention of juveniles for misdemeanour

One of the untenable changes concerning youths was the introduction of a draconian regulation on certain administrative and minor offences[34] rendering them punishable not only

[34] Minor Offences Act 2012/Minor Offences Act 1999 do not fall in the purview of criminal law and criminal procedure law.

by a fine but by confinement as well. They are most frequently applied in cases of petty offences against property. Concurrently, the restriction prohibiting confinement of minors for petty offences was repealed (HHC, 2015; Karsai, 2013). In practice, when the fine remains unpaid, it may be converted to confinement (for 3-45 days); ergo authorities are entitled to deprive children from their liberty for petty offences. The 'legalisation' of confinement/detention for misdemeanour is fully contrary to basic principles set out in the UNCRC Article 3, 9, 37 and 40. The option of applying alternative sanctions was not even considered; thus, warning, mediation, community work, etc. cannot be used (HHC, 2014, 2015; Karsai, 2013; Lévay, 2012; Lux, 2013). Even worse, petty offence confinements are executed in penitentiary institutions instead of reformatories. This regulation contradicts the Beijing Rules violating the best interests of the child:

> *Article 17.1(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.*
>
> *Article 19.1. The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.*

An Office of the Ombudsman's report on juvenile detention facilities expressed major concerns over the conditions and criticised the prevalence of violence and emotional abuses in them (HHC, 2014; Lux, 2013). Short-term deprivation of liberty for minor infringements is evidently detrimental with many negative effects. It is implausible to implement any professional or educational programmes and there is a real risk that juveniles form criminal connections. Another risk is that juveniles might identify themselves with the image of criminals. Detention/confinement might cause physical and/or emotional harms while it is not cost-effective (Lux, 2013).

The principle of graduality is pivotal in international juvenile justice. It is neither acceptable nor justifiable to impose instantly the most drastic punishment, but only as a measure of last resort (Karsai, 2013). The 'Riyadh guidelines' demand the avoidance of criminalising children for minor misdemeanours (Gyurkó, 2014; Lux, 2013). The Ombudsman took the apparently indisputable and unconstitutional issue to the Constitutional Court, which was a mostly effective, independent institution protecting principal rights since 1989. However, after 2010, its number of positions was raised and stuffed with government loyalists. Therefore, rather unsurprisingly, the Constitutional Court adjudicated that petty confinement

was indispensable for the ‘moral education of the youth’, and it was in compliance with the constitution and international law (Karsai, 2013). The judgement is evidently untenable and politically motivated; it departed from the international commitments of the country and contravened the Constitution (Dünkel, 2014; HHC, 2015; Karsai, 2013). The ECHR remained the last resort of protection; a complaint has already been brought before this Court (HHC, 2015). The situation is a clear nonsense as the CC prohibits sentencing children under 16 to community service/community work; while children aged 14-16 can receive petty offence confinement. Moreover, several elements of the (criminal) procedural safeguards are missing, for example the compulsory participation of an attorney (HHC, 2015). As an alternate to confinement, the Ombudsman proposed, in vain, a law change making mediation available in petty offence procedures (Lux, 2013).

8.4.3. The abolishment of the separate juvenile jurisdiction

An apparently pernicious legislative change was ‘justified’, superficially, without impact analysis, by ‘speeding up’ criminal procedures. The separate juvenile jurisdiction was established in 1913 as a progressive and liberal achievement even in the developed world (Lőrincz, 2002). Table 8.5 shows the historical changes in ‘juvenile jurisdiction’; however, it is observable that some form of a separate jurisdiction existed without interruption since 1913.

Table 8.5

History of the regulation of the juvenile jurisdiction

1913-1951	Juvenile Courts
1951-1962	Local courts with exclusive jurisdiction
1962-2011	County courts and local courts with exclusive jurisdiction
2011-	County courts and all local courts

Since September 2011, even this relative separation of ‘youth courts’ has been abolished, consequently all municipal courts (111) and county courts (20) are qualified for juvenile procedures (Karsai, 2013). This change ignored The CoE Guidelines on Child-Friendly Justice, which emphasised that *“treatment of children in justice should be realized through special courts, or chambers of courts, procedures and institutions including the police, the judiciary, the judicial system and the specialized agencies of the attorneys’ offices”* (Lux,

2013, p. 17). Accordingly, it was an unusual and 'historical' change, albeit no evidence provided yet to substantiate its necessity. The government presupposed that each local court and local PPS would be able to execute satisfactorily the special tasks required when dealing with juveniles. Unsurprisingly, substantial part of the special expertise accumulated at juvenile courts has been lost. No special training has been provided yet for judges and prosecutors (Kadlót, 2014; Karsai, 2013; Lux, 2013). Since 2003, the Probation Service operates in a separate institutional structure; specialised units deal with juveniles. Fortunately, the law change has not modified the existing subdivisions yet. The PPS has attempted to maintain the former system where appointed prosecutors dealt with juvenile cases (OPG, 2013a). Ironically, processes for youths have become even longer than before, about half of the cases are not completed within 6 months (HHC, 2014). Participant A. noted:

> Participant A: *"Responses to youth offending have become more and more punitive. The focus has been visibly shifting from the interest of the child towards the presumed interest of society, public safety and the preference of incarceration. However, it's not a unique phenomenon; several legislations have toughened measures on young offenders."*

Participant H. summarised the situation and influence of the key-stakeholders in the CJS:

> Participant H: *"Several prominent judges insistently advocated for the establishment of separate youth courts. Even before the abolition of the separate case management, they considered this type of assignments inadequate due to the lack of special trainings. These judges, for example Judge Vaskuti and Judge Dénes, propagated that institutional independence, exclusive case management by assigned judges and special training were indispensable. Reform-minded judges promoted the adoption of well-established methods, techniques applied by the Family Courts like child-friendly hearings of witnesses, age-appropriate approaches to juveniles. Of course, almost nothing has been realised. Moreover, the penal populist political shift since 2010 has made the situation even harder and more unlikely for any meaningful change."*

Recent developments are even more disappointing in the light of the previously prepared strategies to reform the CJS. Among the proposed changes was the establishment of an independent juvenile justice system including separate law enforcement and juvenile prosecution, and reinforcement of the juvenile prison system (Gyurkó, 2014; Walther & CoE, 2008). The rationale behind the reform would have gone beyond the reorganisation of the youth justice system. The Ministry of Justice revealed the gist of the reform *"... merging the specialist knowledge and experience of various professions dealing with prevention ... and creating conditions for flexible criminal law interventions corresponding to the situation"* (cited in Walther & CoE, 2008, p. 52). This 'new paradigm' would have put special emphasis

on applying restorative approaches, avoiding criminalisation, seeking family-based or other alternatives to custody. Restorative interventions would have targeted victims and communities with elements aiming at the direct compensation of victims and seeking reconciliation with the community (Kerezsi & Lévay, 2008).

8.4.4. The decrease of the age of criminal liability

The new government promised and delivered the lowering of the age of criminal responsibility. It supported the application of adult criminal law to recidivist juveniles in certain cases. Since July 2013, special rules are applied to child offenders aged 12-14. Five categories of grave offences are listed for criminal liability: homicide, voluntary manslaughter, some aggravated forms of battery, robbery, and robbery through intoxication or intimidation. A further condition is the capacity to understand the nature and consequences of their acts. Legal and psychological experts have criticised this criterion, which involves the examination of mental and moral maturity, for being vague and ambiguous (Gyurkó, 2014; Karsai, 2013). The examination requires special, child-psychologist expertise. In 2014 alone, 42 procedures were launched, each case was robbery; pre-trial detention was ordered for one in four child-offenders (OPG, 2015). Academics and practitioners pleaded vainly for the retention of the higher age limit and propagated the extension of the previously introduced mediation and community-based responses (Kadlót, 2014; Lux, 2013). Ironically, the Guidelines on Child-Friendly Justice was adopted in the same year intending to facilitate children's access to justice and ensuring their adequate treatment no matter who they are or what they have done (CoE, 2011). The CRC issued a recommendation that 12 years of age shall be considered the minimum age of criminal liability. The Committee objected to the lowering of this age to 12 if it had already been placed higher than that (HHC, 2014). Indeed, after this change, it would have been even more justified and indispensable to create a system of special courts, procedures and institutions. Participant A. cautioned that it would have been necessary but not sufficient in itself:

> Participant A: *"Specialised court system for juveniles could be favourable; but without far-reaching changes in the underlying legal system, it would not have a profound impact. Without fundamental changes in legal thinking and practice, and in the stringent regulation of trials, the hoped-for Youth Courts would remain quite the same what we have now. For example, one of the associate judges of the court with original jurisdiction over juveniles must be a teacher. In practice, however, their role is marginal at best. Courts impose sanctions applying the CC, and hardly ever ask or consider the opinion of the lay judges. Having a child protection specialist added or*

having a separate youth court, in itself, would not mean a critical and radical change."

Several participants expressed pessimistic opinion on the outlook for meaningful, positive changes in the near future. Participant H. noted:

> Participant H: *"The justice sector always had a strong reluctance to allow any internal and especially external analysis of their effectiveness. The firmly established workplace and professional culture exacerbated by an overburdened, often burnt-out staff creates impediments to change. Commonly, stakeholders have a tendency to find ways to accommodate any change within the existing methods of their operations. The intention to use diversion and youth-friendly alternatives does exist, in theory at least, but the practice largely remains the same. Therefore, still too many youths are being held in pre-trial detention or sentenced to imprisonment."*

Participant G. corroborated these observations, based on interviews with a larger pool of judges and prosecutors:

> Participant G: *"The bench and legal professionals generally have a robust group culture; they are protective of their status including being accustomed to exercise authority and control over others. Relinquishing power and authority is always challenging. Restorative or community justice initiatives face organisational resistance obviating any incentive for change and it resumes the routine operations as 'business as usual'."*

The current 'political message' is that deterrence and prisons work adequately for youths, even when evidence indicates the contrary. The imprudent use of the youth justice system, the overuse of custodial measures to address deeply rooted and often intergenerationally transferred problems are prevalent. Implicitly it includes the tough control of disadvantaged, mostly Romani youths. However, this approach seems to be culturally and politically inspired, rather than pragmatically (Kadlót, 2014; Lévay, 2012). Several criminologists had similar conclusions; for instance, as Participant A. summarised:

> Participant A: *"Many leading criminologists and the National Institute of Criminology have warned that significant gaps in information on offending and reoffending made it hard to establish any direct causal link with policy and institutional changes. Shortage of information on the effectiveness of programmes or sentences on reoffending rates was constant. … Romani-specific information on offending or reoffending patterns that would enable comparisons and measurement of trends is completely missing."*

8.4.5. The contrast between crime trends and criminal policy changes

Statistics show a continuous decrease in child offending (under 14). Between 1994 and 2013 it has almost halved, a decline from 4,200 to 2,200 (OPG, 2014a). This trend hardly

corroborates the 'political justification' of the age reduction of criminal responsibility. Actually, there is no realistic prospect to obtain meaningful information or to prepare well-founded analysis of the efficacy of youth justice policy. Participant A. noted:

> Participant A: *"There is no adequate information on the number of juveniles who carry on becoming or remaining career offenders in adulthood; no reliable data about the proportion of adult offenders with youth justice history. This dataset would be essential to appraise the effectiveness of criminal policies; still, the policymaker just doesn't care."*

In absolute numbers, youth crime dropped by 30%, from about 15,000 to 10,000 per year between 1994 and 2013, while the ratio of youth crime slightly increased from 2,200 per 100,000 youths in the age group in 1994 to 2,400 in 2012 (OPG, 2014a). Imprisonment rates of adults and juveniles have been continuously rising irrespectively of the trends and patterns of crime. The punitive turn in criminal policy explains most, if not all parts of this rise (Kadlót, 2014). In the absence of comparable data on juveniles, the next two data sources show the nexus between penal populism in legislation and law enforcement and trends in imprisonment. Figure 8.3 pictures trends in the general prison population. Table 8.6 reveals the changes in incarceration rate since 1988. Demographic changes have made the total prison population trends even worse than it might seem at first glance. Since the 1988 peak, as Figure 8.2 depicted, both the total number and the proportion of the most affected age group have declined. In 1990, the total number of youths under 20 was 2,9 million, in 2013, it was 2 million, a staggering decrease of more than 31% (KSH, 2013).

Table 8.6

Prison population per 100,000 inhabitants

1988	1990	1992	1995	2002	2004	2006	2007	2009	2010	2011	2012	2013	2014
193	122	153	121	178	164	147	143	153	160	174	177	185	187

Note. Adapted from the HPS, 2015, p. 21, and from Vókó, 2009. Copyright 2015 by HPS and copyright by 2009 Vókó. Adapted with permission.

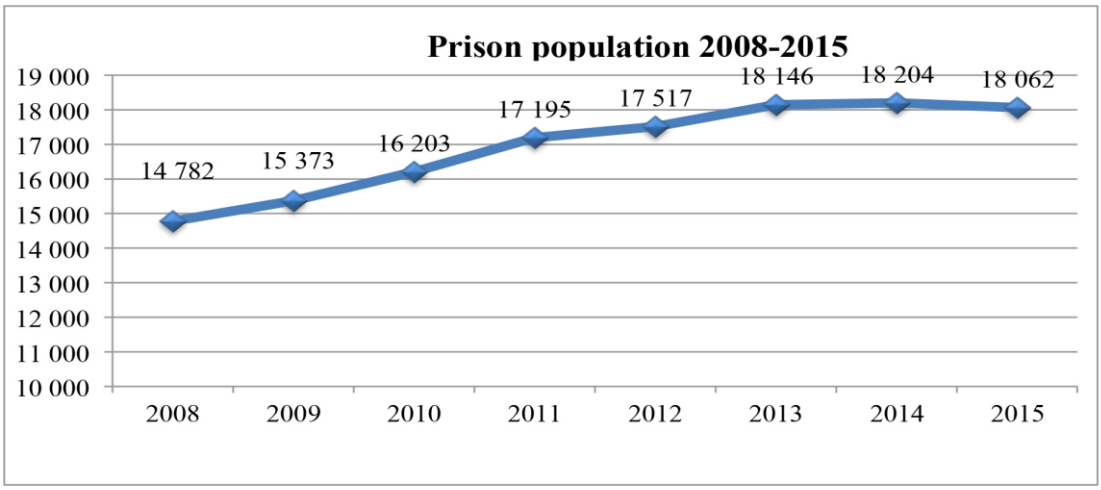

Figure 8.3. Prison population 2008-2015. From the HPS, 2015, p. 4. Copyright 2015 by HPS. Reprinted with permission.

After this swift increase recently, now prison population rates in the two countries are very similar. In 2014, the rate was 187 in Hungary and 190 in New Zealand per 100,000 of national population (ICPS, 2015). Separation (from adults) and conditions (overcrowding, quality and availability of remedial, educational, rehabilitative programmes) are regularly unsatisfactory in detention facilities (HHC, 2014; Lux, 2013; Vókó, 2009). The CoE Annual Penal Statistics revealed that Hungary had the worst overcrowding among member states in 2014 (Aebi, Tiago & Burkhardt, 2015). Figure 8.4 shows the 2004-2014 overcrowding trends. Data on juvenile inmates is not reliably available but a recent report found that their situation was slightly better than the conditions in adult facilities (HHC, 2014).

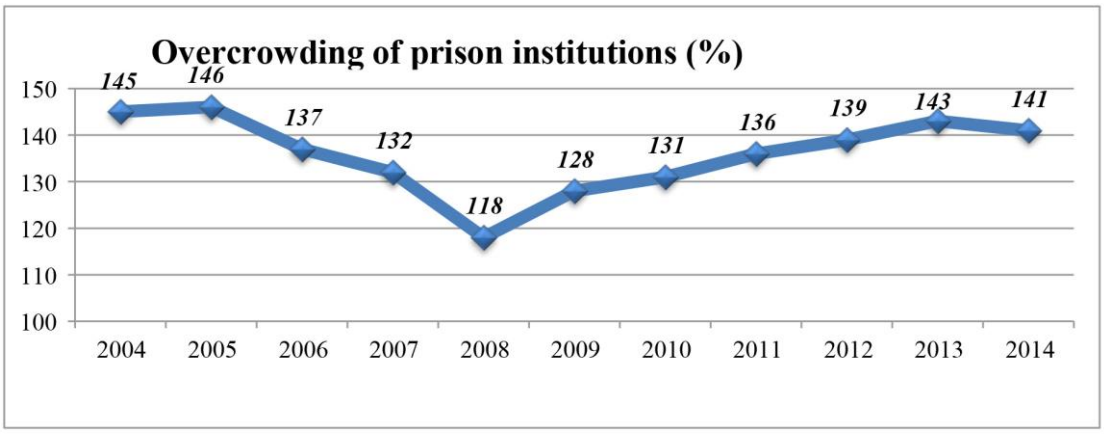

Figure 8.4. Overcrowding of prison institutions. From the HPS, 2015, p. 4. Copyright 2015 by HPS. Reprinted with permission.

As part of the critical evaluation and as part of the historical review of youth justice policies, the next sections portray a recent policy reform endeavour. Albeit it was mostly abandoned, it still demonstrates the potential and receptivity to new ideas and projects in the CJS.

8.4.6. National Strategy for Social Crime Prevention – a reform attempt

A comprehensive criminal law reform, based on a Parliamentary Decree on The National Strategy for Social Crime Prevention [NS], was launched in 2003. It recognised that criminal justice policy and crime prevention are the two main pillars of crime control. The NS reinforced the notion of social inclusion and social justice as a relevant consideration in crime prevention, which has a special importance for Romani. In this context, it acknowledged:

> "*Combating crime is a socially recognised objective. However, measures taken to pursue this objective, with the often pervasive fear of crime, can have undesirable effects, such as excluding certain groups and increasing prejudices against juveniles, ex-inmates, drug addicts, the homeless, the poor and Romanies. The basic principle of social crime prevention is social justice. It must therefore endeavour to avoid the trap of social exclusion and prejudice and to uphold rights to security."* (NS 5.1)

The key aims of the reform were the gradual extension of various forms of diversion, compensation, reparation, community sanctions, restorative justice including the more efficient representation of victims (Hatvani, 2010). The NS regarded restorative justice as one of its focus points and put special emphasis on community-based interventions to reaffirm the role of communities in crime prevention and in social cohesion. The rationale for the new approach was the recognition of the consequences of the transitional period, the loosening ties within and between communities (Fellegi, 2009; Kerezsi, 2006). Hatvani (2010, p. 219) summarised the key components and features of community-based interventions. First, the focus of the sanctions is not the deprivation of liberty or separating offenders from their communities; they involve some restriction while providing assistance. The interventions rely on the (re)integrative power of communities and require offenders to fulfil obligations, to be active (behaviour rules, mediation, active repentance, reparation) and failure to meet the terms/conditions of the sanctions have consequences. These features were mostly in accordance with the Recommendation R(92)16 of the CoE on European rules on community sanctions and measures (Hatvani, 2010). The various models do not regard or propose that these sanctions are the 'softer option'. Taking active responsibility for the offence is an essential feature, which is more than just compliance with the various regulations (Fellegi, 2009; Kerezsi, 2006). The NS long-term plans envisaged a complex system of support for youth including assistance for educational development, psychological/mental help, improved services in family aid centres, in schools, in child welfare and juvenile justice institutions (Váradi-Csema, 2011). The NS was a fairly progressive and potent initiative to transform criminal policy and crime prevention.

The NS acknowledged that effective crime prevention had been no longer the sole responsibility of the state and various service providers but also the civil society, NGOs, religious, cultural, sport, business associations, neighbourhoods and local communities had to have considerable roles (Fellegi, 2010b). To facilitate the implementation of these progressive crime prevention approaches, a National Crime Prevention Board was established; it provided financial resources to make projects possible. For example, cooperation between the Probation Service and several NGOs created a unique project where the FGC model was adapted to prepare inmates, families, supporters, and service providers for their release. The aim was to mobilise community and family resources to assist probation officers' after-care services (Fábiánné, Negrea & Velez, 2010). The new approach and the available funding triggered the spread of restorative justice initiatives and supported inclusive crime control, which were beneficial to marginalised groups including Romani (Lévay, 2012). These new initiatives, in part, served to comply with the regulations and recommendations of the EU (Hatvani, 2010; Kerezsi & Lévay, 2008). However, at least some efforts were made to take into consideration the situation of Romani in the system. For example, in 2007/2008, a few projects were tailored to certain needs of Romani inmates. These included training in order to learn traditional Romani handicraft, to practice and present Romani musical, dance and other folk traditions, which could strengthen their cultural identity and self-esteem (Gyökös, 2010).

Some ideas of a more just and representative court system emerged in the 2000s. The number of judges with Romani origin is extremely low, which does not facilitate the overall trust of Romani people in the court system (FRA, 2009; H. Szilágyi, 2009; Okely, 2005). To improve the situation, Sértő-Radics and Strong (2004) suggested a provision guaranteeing that Romani people are proportionately represented, at least among associate judges (laypersons or assessors). Thus, in procedures of Romani offenders, at least one of the associate judges should be a Romani. The law stipulates that local councils, which have knowledge of locally available candidates, nominate assessors; accordingly, the introduction of this model would not cause much practical difficulties (Sértő-Radics & Strong, 2004). This proposition remained among the never realised or seriously considered ideas. While initiatives under the aegis of the NS were commendable, the NGOs' and civil society's contribution were rather isolated; they lacked considerable social support and progress. The propagation of restorative justice concepts and practices mainly remained a top-down mechanism since being launched, funded and controlled by government agencies. Moreover, there is an inadequate level of social cohesion and solidarity in society (Tóth, 2009). Some degree of unpreparedness and

incompetency of the civil society also hinders these initiatives (Fellegi, 2009; Gyökös, 2010; Kerezsi, 2012; Tóth, 2009). Participant H. noted:

> Participant H: *"There is a factor that cannot be really influenced .... neither the courts nor the prosecutors, no one. Various institutions and mechanisms of the community justice presuppose a level of cooperation, social cohesion and openness. We have massive issues with these, looking at surveys on social values … also very serious problems with social norms blocking the acceptance of the need for integration and solidarity."*

Not only surveys but also personal research experiences, narratives given by interviewees corroborated that the majority of the victims lacked the receptivity for alternative conflict resolution. Participant C. reported:

> Participant C: *"If they trust only in the CJS; if exclusively the reliance on it restores the sense of security, it will be very difficult to change their mindset. The question we need to raise is 'Let's say, the court imposes a sentence of four years' imprisonment. Still you would not be satisfied, is that correct?' Then let's see what would make you more satisfied; whether the mainstream justice or some other alternatives to it would have a greater chance to make you more satisfied."*

The proper dissemination of information on alternative forms of conflict resolution can:

> Participant C: *"broke the ice for interested parties. However, it requires long-term projects, funding and commitments for alternative methods to take roots in these communities. These conditions are usually missing".*

Scepticism about civil maturity in society was expressed in general but the personal and professional 'readiness' of the justice sector was also questioned. Participant A. noted:

> Participant A: *"The philosophy and mentality of the restorative and community justice are not embedded yet, neither in the mindset of the legislators nor the practitioners. They apply them, but this application doesn't fulfil the philosophy, the essence of these methods. They are only preferred when they can 'speed up' procedures, not because of the understanding of their real benefits. I can't see chance for judicial initiatives such as the previously mentioned rangatahi court or anything similar."*

Summing up, until 2010, Hungary had made some progress towards meeting the international standards that give priority to minimum level of intervention and propagate an increasing role of the communities and restorative approaches (Dünkel, 2014; Karsai, 2013).

8.4.7. The expansion of the repressive social control mechanisms

Lea's (2010) observation about the features of contemporary social control mechanisms can be validated by the Hungarian example. The state deploys various social control mechanisms

including the CJS as a tool and a collateral consequence of its 'law and order' ideology is the reinforcement the exclusion of certain disadvantaged, most notably marginalised Romani, groups (CoE, 2015; HHC, 2011, 2015). New offence categories have been created since 2011. A good example is the persecution of people for 'homelessness' in certain public areas. The aim is to control behaviours that are seen as socially annoying or otherwise uncomfortable. Unsurprisingly, intensified criminalisation targets mostly those who are at the bottom of the society; minorities who have already been disproportionately discriminated against (HHC, 2015; Lévay, 2012). The right-wing oriented 'law and order' government has adopted a clearly repressive social control approach against 'undesired' and seemingly 'unworthy' groups. This policy is based on public fear, which has been exacerbated by governmental policies and campaigns. However, this is rather a worldwide development in recent decades (Cavadino & Dignan, 2013; Christie, 2001; Garland, 2001a, 2001b). The spread of a prison-oriented criminal policy can be observed in many countries. These criminal policy approaches, tacitly or admittedly, aim to control male poverty and segregated racial/ethnic minorities (Gönczöl, 2005; Kerezsi & Gosztonyi, 2014; Pfohl, 1994; Pratt, 2006). At the same time, they violate the requirement of equal and human treatment of these groups (CRC, 2011; HRC, 2012; Lévay, 2012).

The government, manipulating public fear, can 'easily' justify the surge of spending on public security, the growing size of the police and prison force. This policy brings the escalation of the severity of punishments for offences and petty crimes unheeding the declining trends in youth and overall crime (OPG, 2014a, 2015). Hungary is among the countries, and that is consonant with Muncie (2006b, 2008) findings, where penal populism and the overuse of prison are 'sold' as the most adequate social reaction. Ironically, the 'most adequate' represents here a political and symbolic construction, even when this 'social reaction' is a proven fiasco in terms of social cost-effectiveness (Christie, 2001; Garland, 2001b; Goldson, 2002; Gönczöl, 2005; Lévay, 2012). In harmony with Lea's (2010) observations about the effects of these tough social control mechanisms, Participant E. noted:

> Participant E: *"Police officers patrolling in various disadvantaged, mostly Romani populated, neighbourhoods would assure you that their operations are strictly just enforcing the law, nothing else. In reality, their actions enforce a social order, which can be best described by a growing socio-economic inequality combined with poverty- and ethnicity-based discrimination. Spatial segregation of poor Romani communities assists the police to concentrate their operations on certain local areas; and it makes possible to hide this 'reality' from the majority population. This fact, nonetheless, isn't really present in the current public or even in academic discourses."*

After the critical evaluation of the CJS, the next sections focus on historical and current issues between Romani and the majority society, including aspects of the social control mechanisms.

8.5. Encounter between Romani and the majority society

Unfortunately, there is a lack of studies based on 'hard data' and on profound, reliable analyses of the situation of Romanies. This research has also been greatly hindered by this fact; it concerns primary data providers, interviewees and consultants, too.

8.5.1. Short history of the social control over Romanies

The first statewide attempts to control Romani people by administrative measures took place in the second half of the 18th century when forceful assimilation campaigns were launched. Various measures were applied, for example, the prohibition of itinerant lifestyle or the use of Romani names and language, forced adoptions as a punishment against disobeying families (Bari, 2010; Mezey et al., 1986). It is disputed to what extent these measures were observed by local authorities; however, the following two centuries saw the routine surveillance and registration of individuals as 'vagrant' or 'Gypsy' (Mirga, 2000). The long-term goal was total assimilation (Hancock, 2002). Consequently, frequent removal of children from their family and placement in foster care begun. The removals were partly based on the belief that they inherited 'deviant traits' producing natural tendencies to commit crimes. It was argued that these traits needed to be eliminated with state assistance (Kende, 2000). The origin of the criminal labels can be traced back to these efforts to control Romani groups (Bari, 2010).

The modernisation of the social control mechanisms, including policing, coincided with the evolvement and spread of the stereotypical conception of 'Gypsy criminality'. Comprehensive police registers (photography, fingerprinting) exemplified institutionalised stigmatizing labels (Tauber, 1988). A national register was established by the gendarmerie in 1940. It collected data only on Romanies regardless of any former criminal conduct. The justification was based on a clearly racist assumption *"a Romani, who has not started yet a criminal life, still could become a criminal any time"* (cited in Szendrei, 2011, p. 37). The normalisation of the negative and stereotypical depictions inevitably led to an exaggerated perception of Romani as criminals, which further facilitated their over-policing (Human Rights Watch, 1996). Once this image had been firmly established, anyone who fit, or appeared to fit this image unwittingly reinforced these stereotypes. Incidents like thefts, robberies, aggressive

panhandling, disorderly conduct, etc. served as a breeding ground for the growth of stigmatisation (Clark, 2005; Fehér, 1993; Mirga, 2000). Reported Romani offending got significance beyond itself; it justified further interventions and surveillance. Crime prevention regularly became the central part of policies towards Romani. It was the well-known social phenomenon called 'self-fulfilling prophecy' of criminalisation, polarisation and marginalisation (Binder, 2010). Targeting certain groups almost inevitably intensifies their feelings of mistrust, alienation and triggers drift into offending. Participant E. noted:

> Participant E: *"Experiencing 'non-stop' surveillance by authorities, service providers, in shops, on the street, etc. is similar to enduring a sense of harassment, which hardly avoidably culminates in a constant stress of interpersonal discrimination. Anxiety due to this continuous and unwanted attention is a relevant issue for these people. The prevalence of the discriminatory attitude maintains and catalyses over-surveillance and contributes to the rate at which Romani crime is perceived, reported and recorded."*

Given is then a society with perpetuated and reciprocal antagonism created by stereotyping, which has eventually turned prejudices into strong and seemingly unalterable anti-Romani attitudes (Balassa, 2006; Erős, 2005; HHC, 2011; Nicolae, 2007; Political Capital, 2008, 2014). Another symptom of this antagonism was observable as the relatively few Romani policemen were generally seen as *"turncoats"* within their communities. They cope with a *"two-way distrust"*: Romanies mostly remain distrustful of them while non-Romani police staff expresses, more or less overtly, misgivings about working with them (Szendrei, 2011, p. 96).

Major social changes including swift urbanisation from the 1960s were accompanied with intensified targeting of Romanies by various social control measures, especially by law enforcement. They had substantial consequences in a relatively short period of time[35] (Tauber, 1979; Tauber & Ferencz, 1980; Tauber & Végh, 1982). By the late 1970s, the number of non-Romani offenders per 10,000 inhabitants was 70 but 133 among Romanies. The same indicator for Romani/non-Romani juveniles was 343 and 118, respectively (Prosecutor General's Office, 1980 as cited in Szendrei, 2011). The number of Romani juveniles increased by 70% between 1975 and 1986, while the total number of juveniles grew by 20% only (Szendrei, 2011). However, as Tauber (1988) noted, the intensity of police 'attention' to

[35] These rapid social and criminological changes were similar to the changes concerning Māori in about the same era (see Chapter 7).

Romanies easily distorted the statistics. Registered crime trends often indicated the changes in police operations rather than actual changes in crime. Moreover, most crimes committed by Romanies involved unsophisticated or otherwise not well-planned offences like petty thievery, shoplifting, disturbing the peace and robbery. They were more frequently and/or efficiently discovered, investigated and proved in court (Huszár, 1999; Tauber, 1988). Unlike Māori, Romanies are under-represented in sexual assaults and homicides (DoC, 2007a; Huszár, 1999; Póczik, 2001, 2003b; Taumaunu, 2015). An interesting geographical variance is observable in the general attitude towards Romani and in the handling of local interethnic issues. Both the southwestern and northeastern part of Hungary has a higher than average level of poverty and Romani population (KSH, 2002, 2012a, 2013). Still, the prevalence of crime and the incidence of interethnic hostilities are much lower, while the quality of cooperation is better in southwestern Hungary (Póczik, 2003b; Szendrei, 2011). Participant D. reported on Romani practices managing interethnic relations:

> Participant D: *"We experienced some local, intra-community 'Romani solutions' to resolve interethnic conflicts. For example, after a dispute resolution procedure, a deviant Romani family was expelled from the community and the village. The whole Romani community was pestered by the villagers since these maladapted guys committed burglaries and caused troubles in the village. This is an existing form of local conflict resolution today."*

This proves that interethnic conflicts can be more efficiently handled, if appropriate attention is devoted to the underlying, local factors; and the CJS could react differently to similarly unfavourable socio-economic structures.

8.5.2. Romanies and the current justice system

In principle, Hungary provides the rule of law with most of the procedural safeguards required by international legal standards. However, the practical realisation of these legal guarantees is a different matter. After the country joined the EU, government efforts targeting Romani and other socially disadvantaged groups started to vanish (Dupcsik, 2009; Majtényi & Majtényi, 2012). The practice of the police, due to the widespread prejudice against Romani, is often openly biased. Fair procedure is far from ensured; Romanies are generally not informed adequately about their rights (CoE, 2009, 2015; HHC, 2008, 2015; Surányi & Takács, 2013). Negligence, omissions or even wilful obstruction prevent them to enjoy the procedural position provided, in theory, by the law. However, the current system makes impossible to refute or confirm the existence of institutional discrimination. Participant H. noted:

> Participant H: *"This type of discrimination can hardly be detected from the files. Under the current regulation and circumstances, no research study will ever prove that systematically more severe penalties are imposed on Romani. However, for sure, one can get a clearer picture with a detailed analysis of certain types of crimes and sentences in certain regions. A considerably harsher sentencing practice would reveal the existing ethnic differences. Undisputedly, the system and the rules are declared culturally neutral. Procedural and judicial discretion should give the impression of that neutral image. However, factually, the very same discretion enables institutional discrimination to plague in the system."*

Farkas et al. (2004) examined court files and found that Romani defendants were more likely 'identified' by police 'stop and search' due to the racial profiling applied. In addition to that, they were unable to prove or disprove institutional discrimination in sentencing practices. Authorities and social service providers reported the virtual lack of complaints lodged about discriminatory treatment. 'Miraculously', penal institutions, the Probation Service and the National Police Headquarters reported no discriminatory treatment complaint. At national level, not more than 20 complaints were filed, zero in the CJS.[36] On the surface, it could mean that these institutions fully enforce the principle of equal treatment (PCRNEM, 2008). However, with 20 years of experience, the Office of the Ombudsman claimed that the lack of complaints did not mean the lack of problems at all since advocacy skills are generally extremely limited in disadvantaged social groups (Lux, 2013). There is a serious lack of in-depth research projects focusing on Romani experiences in the CJS (Kerezsi & Gosztonyi, 2014). Participant B. recounted a planned but eventually unfinanced project:

> Participant B: *"We select a number of Romani/non-Romani participants with similar personal characteristics; same-sex, same age, dressed the same, etc. A real-life situation: visiting police stations, requesting assistance or attempting to initiate formal investigation, designing the same panel of conversation, timing, police stations are random, filtering factors like busyness, fatigue, boredom, etc. A completely random layout to investigate, with questionnaires allowing the description as many details as necessary, how they are treated. To study factors like being received by policemen standing up, remaining seated, saying greetings in advance, shaking hands or not, dismissive treatment, officers making participants waiting without a clear reason etc. Therefore, there are many elements to be checked; the very essence is whether participants receiving appropriate assistance, information, etc. These are just simple, standard stuff; this can be repeated regularly. Then we could see whether Romani are treated noticeably differently or not."*

The few studies in similar topics were in concert regarding Romani experience in the CJS. Around 70% of Romani were reluctant to report their experience of personal victimisation.

[36] AJB 2485/2012 Ombudsman's inquiry report (cited in Lux, 2013, pp. 84-95).

Four-fifth of Romani victims of assault, threat or serious harassment saw them as racially motivated (FRA, 2009, 2012; HHC, 2011). Several surveys, case studies found that the treatment of Romani victims was often inappropriate. There was a clear pattern of unwillingness to register reported crimes as racially motivated or to investigate this motivation. Courts were hesitant to declare racial motivation behind crimes. Ironically and absurdly, more Romani were sentenced for racially motivated crimes against ethnic Hungarians than the opposite (Gárdos, 2007; HHC, 2015; Krémer & Valcsicsák, 2005; Rorke, 2012). Surveys and reports on conditions in pre-trial detention revealed that Romani detainees were more likely to experience mistreatment than non-Romani (Huszár, 1999; Kövér et al, 1997; Solt et al., 2011). Forced interrogation and other abuses disproportionally affected Romani while institutional attitude more likely condoned their maltreatment than of non-Romanies (Póczik, 2003a). Romanies were regularly obstructed contacting their lawyers; when public defenders were involved the quality of assistance was usually very low (Póczik, 2000). Kádár (2004) ascertained that Romani defendants were far more likely represented by public defenders than by private attorneys.

Discriminatory attitudes and social distance can be observed even at the most prestigious level of the justice sector, among prosecutors and judicial officers. This is a telling quote from an interview (Fellegi 2009, p. 300) regarding the perception of Romani offenders:

> *"Here* [at Public Prosecution] *pretty much everyone has the belief that they steal because they are 'dirty Gypsies' who commit crimes anyway. Therefore, they* [the colleagues] *don't look for any further explanations, reasons or motivations behind offending. Their conclusions are usually based on some forms of oversimplification. Alternatively, they might use some kind of biological or psychological explanation."*

Fellegi (2009) asked whether negative social and criminal characteristics attributed to Romanies were exclusively their characteristics. The responses revealed mixed feelings. Interestingly, the majority voiced that these characteristics were Romani-specific; however, many of them acknowledged, after clarifying questions that most negative features and incidents actually existed in a quite similar way among disadvantaged non-Romanies, too. Some judges and prosecutors maintained that discrimination was only a plausible excuse for offending; and if there was any discrimination as contributing factors, they were merely economic ones (Fellegi, 2009). Fellegi (2009) noted that the attitudes of the stakeholders were largely influenced by their general approach to Romanies. Among the 45 interviews, there were hardly one or two in which the interviewees did not analyse the potential relationships between criminal lifestyle and 'Romaniness'. Some respondents mentioned positive

experiences as well; however, most of them attached only negative connotations to them (Fellegi, 2009). Another controversy is that while Romani offenders are given a lot of publicity, Romani victims usually remain unknown. One factor is the seclusion of close-knit communities; the other one is the social indifference to their plights (Solt & Virág, 2010). In fact, a significant proportion of abused women and vulnerable children are Romani (Anghel et al., 2013; European Roma Rights Center [ERRC], 2007; Herczog & Neményi, 2007). Solt and Virág (2010) conducted research among Romanies living in segregated settlements and found a higher level of victimisation and exploitation of women and children, which remained mostly unreported. Another typical example of the predicaments of Romani women and teenager girls is their widespread trafficking for sexual exploitation and domestic servitude (Lux, 2013; Neményi & Messing, 2007).

8.5.3. Romanies in the child protection and youth justice system

Although the gravity of the situation of Romani in the child protection and juvenile justice system is usually not denied, still the disinterest of the policymakers and stakeholders is palpable (ERRC, 2007, 2011; McDonald & Negrin, 2010; Timmer, 2010). The few recent studies showed that even the positive changes introduced since the democratic transition seemed to relinquish most of their positive potential when the system treated Romani (Kerezsi & Gosztonyi, 2014; Neményi, 2007). It appears that this is often related to the application of the law rather than to the inadequacy of the legislation (Fellegi, 2009; Kóczé & Versitz, 1998; Rosta, 2014). Young Romanies frequently experience the coercive and institutionalising features of the system (ERRC, 2007; 2011; Lux, 2013). The implementation of alternative or special measures in child protection is scarcer when Romani families are involved (Anghel et al., 2013; Herczog & Neményi, 2007). The heightened risk of involvement in offending by vulnerable and/or socially marginalised Romani children cannot be denied or downplayed (Neményi, 2007; Solt, 2012). Nevertheless, there are correlations between prejudices against Romani and the risk of being institutionalised in the system (ERRC, 2007, 2011). Distorted perception of Romani offending facilitates the impression that being a disadvantaged Romani youth is somehow synonymous with a ‘well-founded assumption’ of deviance and delinquency (Herczog, 2007; Kóczé & Versitz, 1998; Neményi, 2007).

An extensive research explicitly focused on the over-representation of Romani children in state-care and the quality of service provided for them and their families (ERRC, 2007). Over-representation among institutionalised children was evident as in 2007 their share in this age-

group was 12% but at least 58% of children had Romani origin (ERRC, 2007, pp. 37-38). The study found a clear tendency, disproportionally and often without adequate evidence, to classify Romani children as mentally disabled or having special learning difficulties. Their enrolment in 'special needs education programmes' was astonishingly high (63% Romani, 10 % half-Romani and only 24% non-Romani) (ERRC, 2007, pp. 88-89). Another study found that Romani children living in state care institutions or with foster parents, akin to disabled children, were rarely adopted (Herczog & Neményi, 2007). Poverty and marginalisation can greatly undermine kinship care, while the childcare system remained mostly unable to provide adequate family protection services to keep children in their families (Anghel et al., 2013; Lux, 2013). Here, again, substantial differences are between the two countries. Put differently, conditions in the Hungarian child protection and family support services for disadvantaged ethnic minorities are reasonably similar to the situation where New Zealand was 3-4 decades ago (see, Anghel et al., 2013; Herczog, 2007; Ministerial Advisory Committee, 1988; Neményi & Messing, 2007; Social Services Select Committee, 2012; Stanley, 2016).

Over-representation of Romani in the child protection and juvenile justice system is a long-established, well-known but deliberately overlooked fact by the authorities. Walther and the CoE (2008) noted that in many countries a similar situation (i.e. excessive engagement of one or more racial/ethnic groups in the CJS) usually stimulated at least some inquiries and introspection, which could reflect on the contributive effects of systemic factors. A relatively good example in Europe is the United Kingdom. The post-Macpherson reform efforts demonstrated that an appropriate legal framework, a prudently organised collection of ethnic data allow for better informed and nuanced policymaking, implementation and monitoring in the CJS (see Home Office, 2011). Another, 'better practice' example is in Canada (see Office of the Correctional Investigator, 2012). Yet, there is no 'official' intention to place Romani offending within a specific socio-economic and cultural context. This stands in a stark contrast to the approach in New Zealand. Nonetheless, comparative criminological knowledge suggests that it is unrealistic to expect that without appropriate contextualisation the appreciation, prevention and administration of Romani offending could be more successful (Friedrichs, 2011; Gabbidon, 2010; Nelken, 2009).

8.5.4. The 'normalisation' of Romani mass imprisonment

A similar social phenomenon is observable in some Romani and Māori communities, a sort of 'normalisation' of imprisonment in the sense that it became an expected and even accepted

part of life (Kerezsi, 2012; T. K. McIntosh & Radojkovic, 2012; Workman, 2011b). A TPK (2010b) report noted that Māori culture and traditions required a value-based rite of passage to become a man; however, it had largely been lost and replaced by alcohol, drugs, smoking and prisons. Kerezsi (2012) argued that incarceration and contact with the CJS became a common experience and even a rite of passage for many young Romani males. There is a general perception that social control mechanisms are oppressive and loaded against them, which in turn creates an ambivalent acceptance of, and a 'realistic' and 'practical' attitude towards imprisonment (H. Szilágyi, 2009; Kerezsi & Kó, 2013; Solt, 2012). In certain cases, even grave crimes are condoned without attaching a stigma to the perpetrators in some disadvantaged Māori and Romani communities (Kerezsi, 2012; McCausland & Vivian, 2010; Payne, 1997; Solt, 2012; Solt & Virág, 2010). In Hungary, traditionally the military service provided a sort of separation between youth and adult age. It was widely regarded as an initiation rite: formal admission to adulthood. In 2003, the military conscription was abolished, and this rite of passage has disappeared. Kerezsi and Kó (2013) reported that among young Romani inmates prisons had started to replace the former function of the military service. Interestingly, reformatories, even though they include the deprivation of liberty, have not acquired a similar role (Kerezsi, 2012).

M. J. Lynch et al. (2008), Wacquant (2009) and Gabbidon (2010) found, in the international comparative context, that imprisonment became so commonplace and normalised among young, disadvantaged, racial/ethnic minority men that it could be considered as 'normal' part of their life course. Prison remains a source of suffering for most of them but not automatically of stigma within the marginalised ethnic minority 'domain'. The experience of being incarcerated in a 'white jail' can metamorphose into something clearly different from the terms of reference of the white society and of its law enforcement personnel (Blagg, 2016). Foster and Hagan (2007) concluded that with the trivialisation of incarceration, the deterrent or any dissuasive effect of prisons lessened on the primary 'target' population. Kerezsi (2012) warned that the mass incarceration of Romani youths would collectively reshape adulthood for whole generations. Kóczé and Versitz (1998) drew attention to another 'social reality'. In some Romani communities offending became, more or less, predestination. The age of entry into adulthood and the accompanying 'age of responsibility' (contributing to or even earning a livelihood) commences for many Romani youths sooner than the legal age (18) of adulthood. Often adults are the instigators of crimes; children are asked or even forced to participate as accomplices. Due to their potential vulnerability and dependency, these

children could be especially at risk of being used and abused; therefore, they should be viewed as vulnerable victims, too (Kóczé & Versitz, 1998). Still, specific crime prevention programmes targeting these Romani children at risk are almost non-existent (HHC, 2014; Lux, 2013).

8.5.5. 'Gypsy crime' and the spread of anti-Romani public sentiment

Developments in the domestic political scene since around 2006 have led to an increasingly negative public perception of various minorities. These changes have contributed to a public atmosphere whereby discrimination became growingly excused, even tacitly encouraged (Bernát et al., 2013; CoE, 2015; Halász, 2009). Surveys revealed that social values, attitudes and a self-righteous stance concerning law-abiding behaviour show an almost total lack of solidarity and empathy with disadvantaged groups, most conspicuously with Romani people (Political Capital, 2014; Tóth, 2009). There has been a strengthening tendency approaching to a near-consensus that tolerance of Romanies and the rejection of the justification of their discrimination is actually a form of deviance (HHC, 2011; Publicus Research, 2009; Simonovits & Szalai, 2013). The term 'Gypsy crime' has been re-introduced into political and public discourses and the media (Bernáth & Messing, 2013; HHC, 2011, 2015; Juhász, 2010). An emerging radical, right-wing party ('Jobbik') launched a nationwide campaign concentrating on 'Gypsy crime' and defining its implicit meaning and usage. Jobbik communicated that it took *"in charge as the only party to face one of the underlying problems of the society, the unsolved situation of the ever-growing Romani population"* (Jobbik, 2009, para 4). It stated that *"everyone knows but it is silenced by 'political correctness' that the phenomenon of 'Gypsy crime' is real. It is a unique form of delinquency, different from the crimes of the majority, in nature and force"* (Jobbik, 2009, para 4). The share of offenders from the Romani minority is 'officially' unknown since 1992, while research data is a rare exception in this sphere (CoE, 2009, 2015; Kállai & Jóri, 2009; Pap, 2006). The racist rhetoric specifically targeting Romanies clearly helped the Jobbik's swift surge in the polls and the rise of a heated anti-Romani sentiment (Juhász, 2010; Political Capital, 2008, 2014; Publicus Research, 2009). Due to the unavailability of reliable data, it is quite simple to instigate hostile emotions and reactions by the stigmatisation of Romani as criminals (H. Balogh, 2011; Juhász, 2010). Legal, including ethnic data, regulations and practices, academic and social environment provided suitable conditions for these developments. Participant A. noted:

> Participant A: *"There is no research on the nexus between Romanies and the CJS. It makes much easier the position of professionals; they simply don't have to face the issue. No reliable information, no research data, nothing at all. Truly outrageous. Hungarian criminology doesn't devote sufficient attention to this problem. The academic sphere allowed the interpretation of this issue to become a prey of the political actors. Ergo, an oversimplified thinking has gained ground in society. Thus, in public discourses, the usage of 'Gypsy crime' has become established, almost normal. Its discussion as a topical issue leads to the racialisation of social conflicts."*

The acknowledgement of the gravity of the situation is essential. Chapter 5 investigated it and attempted to provide a solution to address the shortage of ethnicity data, which hinders the mitigation of interethnic tensions while rewards the right-wing Orbán government and the even more radically right-wing Jobbik. The coalition of right-leaning parties, which formed government in 2010 and 2014, gradually embraced substantial parts of the policies of the radical right. The term 'Gypsy crime' has obtained contexts and interpretations far beyond the original criminological meaning and usage in the pre-democratic era (i.e. types of crimes and means of offending). As racist beliefs have become more and more tolerated and embraced, the reinterpretation of criminal propensity of Romanies has eventuated in a common reference frame for the otherwise miscellaneous forms of discrimination. It also reinforces the 'legitimisation' of public expression of prejudice for many (Farkas, 2014; Kerezsi & Gosztonyi, 2014; Simonovits & Szalai, 2013). Participant E. noted that:

> Participant E: *"Governments have a great responsibility to end or at least moderate discrimination. The key is the change of the largely predestined social disadvantages of Romanies. Public campaigns, education can be beneficial but the most important issue would be the change of their overall situation. Then many 'real-life reasons' of prejudices could be eliminated. Particularly, the key is the reduction of obstacles of labour market entry, such as the availability and quality of education and the family environment."*

8.5.6. Interethnic tensions and racially motivated crimes

Interethnic tensions and anti-Romani attitudes have never fully disappeared from society but the seemingly egalitarian regime in the communist era 'put a lid' on ethnic issues (Csalog, 1980; Dupcsik, 2009; Hann et al., 1979; Kemény, 1976). The steadily increasing level of animosity, the re-emergence of physical violence and pre-planned attacks against Romanies are disturbing developments (CoE, 2015). The European Commission against Racism and Intolerance [ECRI] found that racist violence was one of the most crucial issues in Hungary. Militant radicals committed numerous verbal and physical attacks. The ECRI ascertained that 61 different atrocities, including guns, hand grenades and Molotov cocktails, had been

committed against Romani individuals/properties between January 2008 and September 2012. Nine people died, including two minors, and dozens were injured (CoE, 2015). The widespread passivity, indifference, lack of solidarity even in connection with the most shocking and brutal killings of random Romani villagers, including a small child, should be viewed as an anomie. It is an unacceptable issue in a society, which considers itself modern and civilised (Bernát et al., 2013; H. Balogh, 2009, 2011; HHC, 2011; Rorke, 2012; Tóth, 2009). Meanwhile, the attitude of the authorities towards interethnic conflicts, intolerance and even racial hatred is at least dubious (H. Balogh, 2009, 2011; CoE, 2015; HHC, 2015; Rorke, 2012). Monitoring and suppression of racially motivated crimes is not a priority at all; there is no awareness training, no support for systematic appraisal of crimes and trends in this field. Despite racial hatred is an aggravating factor, stakeholders are apparently unwilling to investigate it as a potential motivation of certain crimes. The CoE (2015) cited an egregious example of judicial 'unwillingness' in a case, where the dissolution of an undisguisedly anti-Romani paramilitary organisation was in question. The judge rejected the petition and argued:

> *"Being Romani should not be primarily interpreted as a racial category, rather as a way of life chosen by a group of people who stand apart from the traditional values of the majority society, whose lifestyle is characterised by the avoidance of work and the disrespect of private property and the norms of living together."* (CoE, 2015, p. 16)

The judge went on and gave a 'narrative' of 'Gypsy crime':

> *"It cannot be denied that a relatively high proportion of offenders are of Gypsy origin. Although the set of Gypsies and criminals is not identical ... overlap between the two justifies the use of 'Gypsy crime' for describing this anomaly".* (CoE, 2015, p. 16)

There was some public outrage and condemnations by the National Council of Judicial Ethics; however, the overall attitude has not changed (HHC, 2015). Several report established that Romani individuals and communities continued to be victims of intimidation, hate speech and various physical attacks. Radical groups have been marching and organising vigilante surveillances, demonstrations against Romani communities (CoE, 2009, 2015; FRA, 2012; H. Balogh, 2009, 2011; Rorke, 2012). The issue of handling ethnically motivated crimes remains unsettled in these political and legislative conditions (see section 5.3.7.).

A complicating factor is that interethnic hostilities have a feature, which is not that rare in interethnic conflicts: both parties identify themselves as the only 'real' victim. Romanies see themselves as victims of centuries of discrimination, oppression and marginalisation. In contrast, non-Romanies believe that they are sufferers of extensive social maladaptation,

criminality, lifestyle and cultural differences 'chosen voluntarily' by Romanies (Bernát et al., 2013). Both groups have their own narratives, self-justification, and they expect apologies and changes initiated first by the other party (Kerezsi, 2012; Montiel, 2002). However, there are several international examples (Northern Ireland, the Former Yugoslavian States, Ruanda, etc.), where restorative and community justice initiatives in reconciliation and/or in bridging the social gap between ethnic groups were, more or less, effectively applied (Pranis, 2001; Sawatsky, 2007). Participant A. noted:

> Participant A: *"Restorative justice and alternative forms of conflict resolution might have the capacity to rebuild trust and solidarity between groups having large social distance. It would be rational if these approaches could play a more significant role in public policy and in handling interethnic tensions and conflicts."*

8.5.7. Consequences of Romani distrust of the formal justice sector

Unfavourable experiences have led Romani people to distrust the justice system and its formal institutions. They hardly ever launch procedures in police or courts to settle their internal issues (Okely, 2005). Romani frequently rebuke the justice system and complain about unfair treatment (FRA, 2009, 2012). They regularly find discouraging the lack of support from court staff and the overall operations of the system and see too complicated to comprehend how it functions (Hungarian Gallup Institute, 2009; Kóczé & Versitz, 1998; H. Szilágyi, 2009). Another long-standing issue is that Romani continue to be seriously under-represented as professionals in the justice sector. In theory, they can 'easily' find employment in the CJS. For instance, the Ministry of Interior informed the Office of the Ombudsman that its policy explicitly supports and encourages young Romani to become police officers (Lux, 2013). Indeed, a few recruiting programs have been launched; however, no official data can be found on the ethnic makeup of law enforcement agencies (CoE, 2009, 2015; Pap, 2011; Walther & CoE, 2008). The most recent available assessment showed that Romani representation was between four and six times smaller than in the general population (CoE, 2009); and there have been no significant improvements, if any at all, yet (CoE, 2015). Szendrei, (2011) a Romani police officer, claimed that from a disadvantaged socio-economic position with visibility of Romaniness there is no realistic chance to get into the police force. Szendrei (2011) emphasised that this was true even if the police did not acknowledge it. Thus, rather unsurprisingly, many Romani still prefer to deal with (internal) conflicts on their own terms, within their own family or group structures (FRA, 2012; Loss & Lőrincz, 2002; Weyrauch & Bell; 2001). Some Romani groups have preserved their own conflict resolution methods to

keep or restore internal peace and cooperation. However, these methods are often limited to specific areas of issues (Cahn, 2000; Marushiakova& Popov, 2007; Weyrauch & Bell; 2001). These methods are explored in the next chapter.

Romani people have procured unique experiences and worldview stemming from a long history of persecution, oppression and humiliation. Their overall perspective has been formed in the environment provided by larger family/community structures. These structures still serve as bases of resistance to discrimination and help coping with unfavourable experiences gained in interaction with the majority society (Bernát, 2005; C. Silverman, 1995; Kligman, 2001). However, negative experiences and lower level of social prestige and prospects often generate feelings of exclusion, despair, resentment, defiance and aggressiveness that can lead to offending (Bakó, 2006; Kerezsi & Gosztonyi, 2014; Seligman, 1975). Moreover, the overall approach of the majority largely lacks tolerant understanding, interpretation and acceptance of the 'Romani lifestyle' and attitudes as a coping strategy developed and cultivated over generations (Hancock, 2002; Kligman, 2001).

8.6. Conclusion

The history of New Zealand and Hungary, in a comparative perspective, shows that there have been similar aftermaths of colonisation, modernisation, urbanisation and oppressive social policies, which systematically disintegrated the social fabric of their ethnic groups (Binder, 2010; M. Jackson, 1988, 1995b; Majtényi & Majtényi, 2012; Pratt, 1999; Walker, 2004). These erosions affected enormously both Māori and Romani peoples, including their socio-economic positions, traditional ways of life, kin group structures and local community ties (Dupcsik, 2009; M. H. Durie, 2003; Romano Rácz, 2008). Consequently, the traditional sense of community responsibility and the capacity of community support for families have been weakened. The lives of many children increasingly have the characteristics of instability, environmental harms, alcohol and drug issues, domestic violence, separation from their families and elevated risks of abuse in state institutions (Babusik, 2005; Gordon & MacGibbon, 2011; Moyle, 2014; Neményi, 2005).

The tough question arising is how to break the well-established cycle of structural disadvantages and discriminatory attitudes in society and in the CJS? If there are too many decision-makers, prospects for change are low because it seems to be in their primary interest to maintain the previously formed structures and attitudes. However, if decisions are made by

institutions, such as governments or corporations, it is more likely to achieve substantial changes, since decision-makers have the opportunity to consider the effects the structural disadvantages and prejudices have on the views and behaviours of both sides (i.e. majority/minority stakeholders). Then they can take preventive and follow-up actions and counterbalance these effects (Cunha & Heckman, 2009). This can be achieved if policymakers accept that the most significant component of the permanently poor performance is a negative feedback mechanism. Accordingly, they must refuse any 'blame' based on some form of exogenous difference such as the falsely propagated explanation of unfavourable cultural differences (Babusik, 2005; A. Bell, 2004; Duff, 1993; Keenan, 2000; Kertesi, 2005). For meaningful changes, it is essential to send a strong message to the public that Romani marginalisation is so severe that it may have unpredictably negative long-term consequences for the entire country. They are the only minority affected by such a degree of social exclusion; thus, it is essential to alleviate interethnic conflicts and tensions. Alternative conflict resolution can be an option. Local actors should be heavily engaged in community justice programmes, which could reinforce community ties and cooperation. Resorting to the still functioning Romani community institutions must be considered as a complementary mechanism. These issues are examined in Chapter 9.

In Chapter 3 and 4 it was demonstrated how the arguments of critical criminology and the social justice perspectives (Arrigo, 2000; Yar, 2012) could be integrated with notions regarding the nexus between social harms and crime (Dorling et al., 2008) and how they could be duly applied in this study. In addition, achievements in critical race realism and zemiology could be used to highlight the effects and consequences of the structural disadvantages and discriminatory attitudes in policymaking and in the implementation of policies into practice (Crenshaw, 2011; Parks et al., 2008; Pemberton, 2015; L. E. Ross, 2010; Zamudio et al., 2011). These approaches provide a better starting point to take 'social realities' into account. Unfortunately, policymaking processes, realisation and monitoring of the policies aiming at the improvement of the situation of Romani people ignore 'social reality'. A good example is the implementation of the Decade of Roma Inclusion 2005–2015 strategy (McDonald & Negrin, 2010). The initiative was unable to achieve most of its goals because 'social reality' was not in 'harmony' with them. The title of the report on the Decade asks: 'A lost decade'? The strategy could not deliver the necessary social transformations. Structural discrimination, widespread exclusion and prejudice have remained, they are even worsening. Rorke et al. (2015, p. 61) put in a nutshell the experience, which was based, among others, on personal

interviews *"Emigration* [of Romani, which is growing] *is perhaps the most poignant testimony to the failure of the Decade to at least deliver hope for a better future"*. Another example of the ignorance of 'social reality' is a State Audit Office (2008) report on publicly funded Romani projects. Evidence indicated large-scale inadequacy of planning, implementation, monitoring and evaluation of these projects.

The 'attitude of ignorance' disregards that the vast majority of the society increasingly reject and seek to exclude Romanies (CoE, 2015; HHC, 2011). There is no analysis of factors, motives, manifestations and consequences of these rejections and exclusionary behaviour patterns. How would government strategies provide then expedient ways to achieve progress in the elimination of hindrances to inclusive 'closing the gaps' policies? The implementation of these strategies necessarily requires commitments from the stakeholders (central/local government officials, social service providers, etc.). However, these stakeholders are also ordinary members of the society who share similar views and stereotypes on Romanies as others. Not only the answers but even these questions are largely missing from the public discourse and the political context. This does not bode well for the future.

The next chapter examines the potential for different cultural aspects to acquire a role in the administration of the CJS. Along this 'road', it is questioned whether a separate justice system might be, in certain circumstances, a more just and fair option. Alternatively, should the powerful legal axiom, the 'one law for all' be accepted and applied (procedurally too) in the CJS with no exception? Do 'justice' and the 'process of achieving justice' correspond to each other inseparably (Dyhrberg, 1994; Rövid, 2011)? Do culture, social positions based on visible differences and personal background remain relevant in sentencing, if the sentence is to accommodate not just the offence but also the offender (J. Williams, 2013)? Is the assumption of the same equality of opportunity in modern-day societies based on a formalistic view of equality and opportunity? Is it a rigid, inflexible approach, which fails to recognise that the same treatment of people can easily exacerbate rather than mitigate inequalities (Charters, 2009; Sharp, 1997)? If the law and the justice system are meant to accommodate a pluralistic society, they might have to acknowledge and respect difference, too. Consequently, the doctrine of equality and neutrality might be unsuitable as currently defined and practiced (Bonilla-Silva, 2006; McMullan, 2011; Rövid, 2011). Some findings of this study suggested that the 'one justice for all' maxim should not be the equivalent to that inevitably the very same procedure brings the 'one justice' in every case or for everyone. The next chapter explores these issues in more detail.

CHAPTER NINE

Chapter 9 details traditional conflict resolution methods in historical perspectives and attempts to illuminate their current practice and viability in Māori and Romani communities. The chapter examines the potential future for Māori and Romani regarding their aspirations for more meaningful self-determination in the area of community justice and considers the justifiability of the formulation of Romani Criminology.

9. Māori and Romani and community justice

The historical overview revealed previously that no serious consideration was ever given to the idea that other laws and procedures than the ones preferred in the mainstream CJS with its western, monocultural traditions should be applied (Dupcsik, 2009; Mezey et al., 1986; NZLC, 2001; Tauri, 2009; Webb, 2003a). However, in New Zealand, in other sectors there have been debates, and some capacities and controls (Māori media, immersion education, Waitangi Tribunal and Treaty Settlements, iwi social and community services, Kaupapa Māori social and health services, Whānau Ora, Rangatahi ora programmes, etc.) have been delegated to Māori iwi and other communities (Belgrave, 2005; Cormack & Robson, 2010; Doolan, 2005; M. H. Durie, 1998a, 1998b, 2011; Poata-Smith, 2004a). The only relevant power transfer to the Romani communities was the establishment of minority self-governments, albeit their political and economic power have remained significantly limited (Kállai, 2005, 2009; Majtényi, 2006). Independent evaluation report found that they *"fell far short of the range of competencies that the title self-government implies"*; and they even tended to further *"marginalise Romani issues by depositing them in a parallel, fairly powerless, quasi-governmental structure rather than addressing them through established governing bodies"* (National Democratic Institute, 2006, p. 6). Previous chapters revealed indicators of inadequacy in the functioning of the society for Māori and Romani; most evidently in social justice, in a narrower sense in the CJSs. Ideally, the CJS and its sanctions must be seen and felt as fair and equitable regardless of the ethnic affiliation of the concerned parties. This requirement is less likely to be realised when certain groups are singled out as being criminogenic, and therefore they are seen to be in need of increased level of policing and surveillance, tougher sanctions, etc. (Banks et al., 2006; Gabbidon; 2007; D. A. Harris,

2002; M. J. Lynch et al., 2008). Thus, the probability of these measures and procedures being viewed as impartial and legitimate is often decreased.

The foundations of Romani and Māori societies were historically based on oral traditions. Therefore, saving, recording and codifying their languages and creating a written history to preserve their myths, ancient legends and historical events became important for both (Ballara, 1998; Best, 1924; Fraser, 1995; Hancock, 1999; King; 1997; H. Mead, 2003; Stafford, 1997). Inter- and intra-group diversity is a similarity for both peoples. However, Māori have tribal and subtribal differences, while Romani groups and subgroups are rather characterised by different features (lingual diversity, kin-group relations, traditional occupations, religion, etc.) evolved in countries and regions in which they have lived (Fraser, 1995; Hancock, 2002, 2010; Marushiakova & Popov, 2001; Stewart, 1997). Māori people, as tangata whenua, the original inhabitants of Aotearoa have a larger legitimising historical framework than Romani people in Europe do. Historically, Romani have been perceived as unwanted invaders and treated with wide-scale enmity and discrimination since their arrival to the given country (Greenberg, 2010).

Cultural anthropology, as Hiebert (1985) summarised, divides societies, roughly, into two main groups, shame society (also shame culture) and guilt society (or guilt culture) regarding the primary method of social control and the maintenance of social order. Both Māori and Romani societies belong to the shame culture category where the preservation of social order is ensured by the inculcation of shame and the parallel risk of exclusion from the community (Acton et al., 2001; Caffrey & Mundy, 1997; H. Mead, 2003; Metge, 1986; Stafford, 1997). In Romani tradition, the notion of lajav or lazhav (shame, disgrace) has substantially larger importance than the concept of sin (bezax) in creating and maintaining obedience and conformity. It is in stark contrast to most of the local, non-Romani host societies (Hancock, 2002; Mezey et al., 1986; Okely, 1983). In traditional Māori culture, the concept of whakamā (shame, embarrassment) has a pivotal role in ensuring compliance with the norms of the community (Metge, 1986; MoJ, 2001). Considering that there is no ‘mutually exclusive’ truth in shame cultures/shame societies, thus each conflicting party has its own truth, consequently Māori justice and Romani justice aspire to the restoration of respect and peaceful relations between the affected parties. The main and ultimate goal of these procedures is always focused on the future harmony and cohesion of the community (Barlow, 1991; Lee, 1997; Quince, 2007b; Weyrauch & Bell, 2001). Among Romani communal control mechanisms, Kris Romani [Kris] is traditionally one of the most important ones since it embodies both the

collective wisdom and the social consciousness of the community (Cahn, 2000, 2009; Marushiakova & Popov, 2007). In communities where Kris is still practiced, it is intended to maintain order, to control potentially harmful conduct, to preserve traditions; whilst it has unifying and protecting functions in a potentially unfriendly host society (Acton et al, 2003; Caffrey & Mundy, 1997). For Māori, their traditional worldview, culture, social and legal system also preserved, to a disputed extent, the ability to control, regulate and protect their communities (Consedine & Consedine, 2012; M. H. Durie, 1994; 2011; Quince, 2007b).

The question arising is whether some level of power and control redistribution, providing more opportunities to resolve issues in the communities according to their own customs, would not be more beneficial than the current CJSs. Modern legal systems and the (criminal) law function as a reflection of the values and norms of the majority. They not always reflect adequately or make allowance for the norms of a minority culture. Modern states criminalise certain behaviours, which are not disapproved or viewed in some communities as being problems. Vice versa, they cannot criminalise certain acts and conduct, which can cause problems in these communities or are otherwise held unacceptable. Rudin (2005) argued that initiatives in the sphere of alternative justice could advance on two directions. One of them is to achieve various changes within the framework of the existing system; the other one is the aspiration to attain self-government. Any reasonable policy development and long-term strategy would require the mapping out and at least some level of appreciation of the grey area concerning the nexus between authorities and ethnic communities (Ringold, 2005; Ryan et al., 2006). First, the next sections describe the historical and cultural background to the Māori community justice.

9.1. Māori and community justice

The critical evaluation of responses to the situation of Māori youths within the CJS (see sections 7.4.2. and 7.4.3.3.) showed a general inadequacy in many regards. For example, even the Principal Youth Court Judge highlighted that the legislation approved FGCs being held at any suitable location but in reality a low number were held at an actual marae (Becroft, 2013). However, there is a certain level of agreement that fixing Māori over-representation in the CJS requires more fundamental changes (see recent examples Bowen et al., 2012; Hess, 2011; McElrea, 2011; T. K. McIntosh & Radojkovic, 2012; Moyle, 2015; Tauri & Webb, 2012). Monitoring FGC plans, culturally more appropriately at the marae, is what the Ngā Kooti

Rangatahi system promotes; still, most stakeholders regard it as insufficient to counterbalance structural disadvantages. Among them are several participants of this study. It does not mean that they oppose Ngā Kooti Rangatahi initiative, but see it as deficient tool to redress the current crisis concerning Māori. Participant L. concluded that it was a:

> Participant L: *"… good example of how you can run a valid Māori experience within a Pākehā system … pretty close to a genuine Māori experience".*

Marae-based justice programmes supported or at least tolerated by the CJS have been run and tested before Nga Kooti Rangatahi; some of them were regarded as effective and legitimate instruments by policymakers (Oliver & Spee, 2000; Paulin et al., 2005; Singh & White, 2000; L. T. Smith & Cram, 1997; TPK, 2000, 2008; Tukoroirangi, 1994). However, Quince (2007b, p. 287), while acknowledging the potential benefits of marae hearings and models of restorative justice, refuted them as merely *"moving the Pākehā legal system to the marae is not marae justice"*. Participant K. noted:

> Participant K: *"This is not ours. This is about the formal state process. Our issues and concerns are secondary".*

Quince (2007b) and others (Bowen et al., 2012; Moyle, 2015; Toki, 2012; Tauri & Webb, 2012) warned that these models could produce impediments to achieve justice in Māori communities in an authentic way. One of the most significant risks is that rangatahi and their families would identify, consciously or unconsciously, their marae with conflicts, sanctions and social controls exerted by outsiders on them (M. Jackson, 1988; Quince, 2007b). Conflict resolution and the marae are traditionally linked, but only in case when ownership is retained by Māori. As a venue and assembly, its significance is hard to be exaggerated; it symbolised *"the body of ancestors and represented a world in balance"*; and served as a place where *"mana could be restored and wairua healed"*; its protocol was *"similar to court protocol in the sense that there was an agreed framework"* (Toki, 2009, p. 276). Still, the simple relocation of court processes onto a marae setting, as many Māori regards Pākehā court hearings there, seems incompatible with marae justice (Tauri, 2011). Māori argued that alien and externally forced elements of the process were able to *"denigrate the mana of the marae, by reinforcing the notion that the mana of the community is beneath the Pākehā law"* (Quince, 2007b, p. 287). Participant N. reminded:

> Participant N: *"even if it is a better experience for Māori individuals, real progress on macro-level has not achieved yet".*

Tauri (1999) and Moyle (2014) concurred on the issue, and proposed more substantial changes than a simple increase of Māori workforce, since this would only be tokenism, a *"grafting Māori faces and processes onto the same monocultural system"* (Moyle, 2014, p. 58). Apparently, 'indigenisation' has not empowered Māori to regain jurisdictional autonomy or meaningful influence on policy development and on resource allocation; it has not resulted in the reduction of Māori overrepresentation in the CJS, nor has it significantly improved relationships with Māori communities (Tauri, 2011). As Participant L. noted:

> Participant L:*"What we were seeing in the last 25 years since that report* [Puao-Te-Ata-Tu] *came out, have been a number of unsuccessful attempts by departments like the Corrections to integrate Māori thinking into predominantly Pākehā initiatives. Corrections have had bicultural therapy; an attempt to determine Māori criminogenic needs whatever that means. Ideas, values have been co-opted by Pākehā, by white people, into a wide construct rather than develop something that is tikanga or based on Kaupapa Māori. Unless the government is prepared to leave those to an extent, and Māori can develop their own programmes and deliver them in their own way; we'll never know whether it likely be effective or not."*

After a quick glimpse at 'biculturalisation' and 'indigenisation' (Tauri, 1998, 1999) attempts in the CJS, the next section discusses some elements of the traditional Māori community justice and provides a brief background to the Māori society prior to Pākehā contact.

9.1.1. Features of Māori communities and justice before the colonisation

Māori had their own, fully functional political, social and justice system before the arrival of the colonisers (Belich, 1996; M. King, 2003; Walker, 2004). These pre-Pākehā establishments were based on social rights and obligations that bound individuals to their wider communities. Pre-colonial Māori society was founded on interdependent relationships and community-centred approaches, which had a focus on the collective needs and self-determination of whānau, hapū and iwi (Ballara, 1998; Metge, 1995; MoJ, 2001). Whanaungatanga, the concept of relatedness supported the commitment and liabilities between individual members of whānau and the wider community (Barlow, 1991; Metge, 1995). Collective values and togetherness took precedence over individualism (Barlow, 1991). The principle of whakapapa (genealogy, family tree) was also fundamental to Te Ao Māori and to the identity of every Māori since self-identification and community membership were inseparably interconnected by whakapapa (Barlow, 1991; MoJ, 2001). Pre-contact Māori social and legal system had its origins in Te Ao Māori, while tikanga represented the cultural framework of knowledge; it primarily denoted 'straight, direct, correct and right' (H. Mead, 2003).

The NZLC (2001, p. 1) examined Māori Custom and Values in New Zealand Law and considered Tikanga as *"the body of rules and values developed by Māori to govern themselves – the Māori way of doing things".* Actions that were objectionable (hara) were dealt with by institutions and procedures developed for dispute resolution (Barlow, 1991; Napia, 1994; Quince, 2007b). There were certain variations in these instruments and procedures since every iwi had distinctive history and customs. Iwi affiliation meant that its members were subject to their own iwi's rules, practices and authority. Marae kawa (protocol) had also some peculiarities (Ballara, 1998; Walker, 2004). A continuously developed dispute resolution mechanism was adapted to the circumstances. It dealt with offenders, their hara, and the imbalances emerged in the community. Rūnanga o nga ture (court or council of law) operated in most Māori communities; this institution was supervised by the tohunga o nga ture (expert of law). Kuia/Kaumātua were members of these councils, they were overseeing the process. Whānau of the victim and offender had the right (and obligation) to delegate representatives to the rūnanga o nga ture (Morris & Tauri, 1995, 1997; Pratt, 1992).

Tikanga o nga hara or the 'law of wrongdoing' was principle-based and provided well-known and transparent concepts of right and wrong, even in the absence of written rules (Patterson, 1992). However, unwritten Tikanga o nga hara had further benefits: the flexibility and adaptability to the changing conditions to figure out suitable options of action. When certain precedents, rites or procedures became out-of-date or otherwise impractical, they could be set aside (NZLC, 2001; Toki, 2016). The concepts of mana, tapu, utu and muru were central to Māori justice philosophies and they were universally known and recognised throughout Aotearoa (Barlow, 1991; Joseph, 1999; Webb, 2003b). Another important concept is whakamā which can *"act as a strong deterrent to prevent Māori from affecting tapu and mana, because whakamā is borne not only by the offender but also his or her whānau, hapū, or iwi"* (MoJ, 2001; pp. 115-116). As noted before, Māori has a 'shame culture'; consequently, whakamā felt by the individual can be an extremely powerful and emotional force. Importantly, as the MoJ (2001) report on Te Ao Māori ascertained, the magnitude and impact of whakamā could be greater when the misbehaviour was addressed on marae.

The promptness of communal reactions to hara was a relevant element of the traditional conflict resolution (MoJ, 2001). Even though hara to an individual was a violation of personal tapu, it affected the entire whānau, including the whānau of the perpetrator since Tikanga o nga hara incorporated the idea of group responsibility (Quince; 2007b). The concept of whanaungatanga was a proper incentive to the wrongdoers and their communities to accept

responsibility; otherwise, it was passed to their living relatives, even to next generations due to the intergenerational transmission of liability and obligations. The admission of responsibility enabled offenders/communities to re-establish mana within the group and in intergroup relations. The community collectively determined the necessary actions to establish utu. Some form of utu (reciprocity) was unavoidable in order to restore the balance (Tinsley & McDonald, 2011). The process of muru was usually less complicated when parties were from the same whānau or hapū. In short, the restoration of mana of the victim and offender along with the equilibrium in the community or intercommunity was the ultimate goal (Quince, 2007b; Toki, 2016). Recurrent offending by the same person was viewed as the persistent lack of balance between the offender's body (tinana), spirit (wairua) and life force (mauri). This usually culminated in the permanent incapability to maintain his wellbeing (ora), which eventually led to an imbalance within the community. Thus, community intervention became unavoidable, it focused on the identification, acknowledgement and addressing of the causes of problems (Toki, 2009, 2016). Importantly, an integral part of the conflict resolution was the redress of harms inflicted on victims. The extent of the restitution mostly hinged on the gravity of the offence and the personal status of the parties involved (Joseph, 1999).

Pre-colonisation customary dispute resolution did not differentiate between civil and criminal matters. Without coercive mechanisms of a formal state, it was reasonable that conflicts were resolved by the parties themselves. Depending on the circumstances, it was done with or without recourse to their wider community (NZLC, 2001; Ward, 1995). Consensual enforcement of rules and principles was of paramount importance; only this could ensure that the settlement of the case was acceptable to all parties and other participants (Napia, 1994). However, in order to maintain peace and security, dispute resolution mechanism could not always dispense with coercive or violent measures (Morris & Tauri, 1997; Quince, 2007b). In some cases, the constraint of the offender was inevitable. The concepts of mana and tapu were closely connected, and the function of tapu involved the effective control of behaviour. Disturbance of the community relations required utu to restore harmony and social cohesion. Yet, utu had multiple aspects; it could include revenge, even capital punishment or pana (banishment) from the community, which was a harsh penalty since only kinship and community bonds could provide adequate care and protection in those times (MoJ, 2001; Webb, 2003a). Therefore, a mediated, consensus-based dispute resolution was not the only option ensuring acceptable behaviour (Napia, 1994; Olsen et al., 1995; Ward, 1995). Tikanga

is a forward-looking system and holds that the contextuality of everyday life and conflicts is more relevant than absolute categories in themselves (NZLC, 2001; Patterson, 1992). Again, reconciliation and restoration of the disturbed balance and peace in the affected individuals, in interpersonal, intra-community and intercommunity relationships is the ultimate goal (Quince, 2007b; Turvey, 2009). The next section outlines some of the developments in Māori society and justice after the Pākehā contact.

9.1.2. History and features of Māori justice since colonisation

The pre-colonial Māori legal system remained largely intact for a period after the Treaty of Waitangi (1840). Initially, there was no substantial friction, the historically and culturally disparate social and legal systems were coexisting. It lasted while Māori were not outnumbered by Pākehā, and they were able to preserve the operability of their traditional social systems (Bull, 2001; Ward, 1995). However, beginning with colonisation, the economic, cultural and political exploitation of Māori, their deprivation of land, other resources and power base were set in motion (Walker, 2004). Consequently, the repressive features of the colonial administration gradually undermined the socio-economic and cultural basis of the Māori society (Ward, 1995). Pākehā brought and promoted a greatly dissimilar culture, which revolved around the concept of individuality. Pākehā notions gradually replaced Māori notions of social order, crime and wrongdoings. For instance, a transgression affecting someone's mana and/or tapu was irrelevant and remained without sanction if Pākehā law did not prescribe legal consequences. The fundamentals of the marae justice system were eroded; its procedures were marginalised as the colonial judicial system was gradually consolidated (Quince, 2007b). The 'modernised' Māori system's basic unit was the village rūnanga (committee); both civil and criminal cases fell under its purview. Admonitions and fines were among the sanctions. Initially, the role of rūnanga in the enforcement of stability and peace was recognised, even encouraged by the colonial administration (Metge, 1995; Webb, 2003a; C. Williams, 2001). However, the colonial state increasingly sought to defuse or deflect Māori autonomism; accordingly, the Magistrates Court Act 1893 repealed all the remaining special Māori provisions in the judicial system. Consequently, Māori became subject to the ordinary jurisdiction of the various law enforcement institutions (Bull, 2001).

The law enforcement system was gradually built with the stabilisation of the colonial state, but it was not unplanned that its personnel were almost exclusively made up of Pākehā up until the second half of the 20th century. It was widely assumed that Māori did not have a

"responsible enough temperament" to perform adequately in those important positions (Hill, 2004, p. 270). In reality, in the early period of colonisation, the authority of the stat was largely confined to the major settlements. With the passage of time, law enforcement and legal sanctions were increasingly extended to Māori (Belich, 1996). However, back in the late 19th century, Parliamentary (Paremata Māori) unity movements, Kīngitanga (the Māori King Movement) and other pan-tribal and tribal organisations still sought separate Māori authority (Cox, 1993). They performed state-like functions, and they had their own police; for example, the watene of Kīngitanga or the marae police of Kotahitanga (Hill, 2004). Generally, they were rūnanga-based organisations with limited authority to manage local disputes. Their duties included the control of liquor consumption, patrolling, enforcing religious observances, keeping order at marae, etc. (Pratt, 1992; Hill, 2004; Webb, 2003a).

After WWII, Māori were able to form committees and tribunals that allowed them dealing with minor offences within their communities (Hill, 2004). Māori urbanisation in the 1950s and 1960s created pan-tribal committees. The MCDA 1962 updated the law but kept the committees as an option to address low level Māori offending. These committees gradually superseded the former tribal committees and saw newly urbanised Māori come together as a collective with shared experiences in coping with the challenges of urban life (Webb, 2003a). The tribunal processes aimed to resolve offences through consensus; however, the tribunal had the power to impose fines (up to $20), too. Though the process lacked traditional Māori leadership, the hearings incorporated traditional components of conflict resolution (NZLC, 2001; J. Williams, 2013). Māori who were entitled to be heard retained the option of hearings before the Magistrates Court (Webb, 2003a). Restoring and upholding community harmony was also an aim; attention was on mitigating possible resentment from defendants towards the committee and the community (Bull, 2001; M. Jackson, 1988). Traditionally this is referred to as hohou te rongo (cultivating peace and goodwill). A collective moral force wielded social pressure spurring the defendant on accepting decisions; this increased the effectiveness of the process. Even non-Māori could and did petition to have a tribunal hearing against Māori (Webb, 2003a). The tribunals operated reasonably effectively, but from the early 1950s, Māori justice practices had been greatly restricted. The tribunals' jurisdiction was limited over offences and offenders (Morris & Tauri, 1997). As Ranginui Walker (2004) noted, by the 1970s the Department of Māori Affairs had disheartened tribunal operations by the strict control of funding. It did not provide resources to launch initiatives apart from those approved

by government policies. Consequently, most tribunals had ceased functioning (Love, 2006; Olsen et al., 1995).

Urban migration, socio-economic and cultural changes with the splitting up of the whānau and hapū had serious implications on Māori concerning the CJS, too (Pratt, 1992; Tauri, 2011; Webb, 2003a). The lack of authority and expertise has left a serious deficit in the ability to navigate the complex social issues of today, as has the lack of resources contributed to a 'more talk and less action' paradigm (H. Mead, 2003). However, as the CHDS confirmed, the stronger the Māori identity in a family, the more protective with regard to family violence and various forms of child abuse and maltreatment (Marie et al., 2009b). This finding implies that reconnecting more vulnerable Māori to their cultural heritage and customs could assist the progress in reducing risks of domestic violence (Toki, 2009, 2016). Indeed, the great majority of Māori, particularly in urban areas, no longer live in tribal communities. Often they do not even constitute a distinctive, identifiable community anymore. Consequently, these modern, urban 'communities' are more fragmented; it is much more challenging now to draw individuals into taking part in communal activities. Smaller, rural communities usually preserved a higher level of social cohesion (DoC, 2008b; Oliver & Spee, 2000; Rata, 2000; Whānau Ora Taskforce, 2009). Interviewees corroborated this observation. Participant K. noted:

> Participant K: *"In general, it* [marae justice] *is more likely to be meaningful to Māori in the rural context. Because Māori would be the predominant ethnic group there. They are more likely to get buy-in from criminal justice officials including the police because more than not they are Māori there. In those rural, or in those working class enclaves, they* [marae justice initiatives] *could work more effectively, also because those in the marae, in the local community, the leaders of those communities would drive the process every route to do work."*

Even so, urbanisation was not equivalent to a cultural/political vacuum because it boosted the advancement of the notion of ethnic unity among urbanised Māori (Greenland, 1984; Poata-Smith, 1996). The display of various symbols of 'Māoriness' (e.g. clothing, hairstyles, behaviour, elements of folklore, name changing to Māori) played a role in the compensation for the loss of other cultural features (e.g. language, close-knit traditional communities, rohe – dwelling in traditional tribal area), which had been cultivated in previous generations (Bull, 2001; Poata-Smith, 1996). Moreover, aspirations for the revitalisation of traditional community justice were among the aims of the Māori renaissance movement.

9.1.3. Aspects of a more autonomous Māori justice

Alternative or more autonomous justice and conflict resolution systems have been suggested and discussed repeatedly (Consedine, 1995; M. Jackson, 1988; Napia, 1994; Quince, 2007b; Tauri & Morris, 1997; Toki, 2014, 2016; Wickliffe, 1995; J. Williams, 2013). Proponents of more autonomous justice suggest that Taha Māori, literally the Māori side (of the question) or the Māori perspective is still largely ignored by the dominant Pākehā perspective. It is advocated that a marae-based justice system would enable Māori to address minor and moderate level offending more adequately. Moreover, it would potentially give the added benefit of promoting whānau to act as one in providing the appropriate support and in having a voice where the mana of the whānau and hapū requires affirmation (Hakiaha, 1997; Tinsley & McDonald, 2011). From the perspective of a more autonomous Māori justice, Ngā Kooti Rangatahi and Matariki Court are acceptable inceptions but only the very first phase as they have scarcely touched the surface of the real-life challenges. The Matariki Court (established in Kaikohe in 2012 with support and involvement of Ngapuhi, the local iwi) is part of the CJS as a specialised (adults) court. The long-term goal is the reduction of Māori recidivism. The initiative intends to increase the application of s 27 of the Sentencing Act 2002, which recognises that the offenders' cultural background might have contributed to the offending. It empowers the offenders' whānau, hapū and iwi to address the court at sentencing (J. Williams, 2013). Outside actors can provide information regarding the offender's background, how this may have related to the offence, how familial or community support may prevent further offending and what informal conflict resolution is available (Sentencing Act 2002, ss 27(1)(a)-(e), 51(c)). This approach facilitates the community taking greater responsibility for wrongdoers in a way that is more consistent with tikanga. However, a substantially more autonomous justice would implicitly extend the use of tikanga from its limited application in the sentencing phase to its incorporation into the entire criminal procedure (Toki, 2016).

McMullan (2011) argued that Māori dispute settlements stemmed from tikanga and mātauranga Māori (knowledge base and concepts related to a specific tikanga) and both were regarded as taonga (treasured things, objects, natural resources including intangibles such as language, culture, intellectual property, etc.). Thus, institutions of Māori conflict resolution are taonga, protected by the Treaty of Waitangi since it declared the Māori retainment of the undisturbed possession of their taonga (H. Mead, 2003; Orange, 2011). Importantly, in New Zealand, it is not legally obligatory to report crimes to the authorities. Victims, in most cases,

can decide on the consequences of an offence. In theory, they can opt for an alternative process, if one is available. However, alternatives are very scarce if they prefer a conflict resolution outside the mainstream system (Tinsley & McDonald, 2011). J. Williams (2013) noted that the vision of the Puao-te-Ata-tu Committee had not been realised yet – concerning family law, domestic violence and other discrepancies – in the absence of the extension of the jurisdiction of iwi. Meaningful integration of tikanga principles and philosophies into the CJS is still to come (Bowen et al., 2012). Adequately prepared and locally authentic marae justice with the sense of ownership and participation might be such an option. Marae protocol views, symbolically, the marae as a platform, an area of space which is declared being neutral (M. Jackson, 1988). Here, selected members of the community and supporters of the participants can confront offenders with the consequences of their offending. Subsequently, reintegration back into whānau and their community can be possible (Consedine, 1995). For example, Aroha Terry in the Waikato region in the 1990s started to work with whānau independently. This 'trial' initiative dealt with sexual abuse and family violence in a process of open accountability on the marae (C. Williams, 2001). Confession was required in front of whānau and the marae community. The procedure intended to provide effective responses to the problems at hand; it applied the concepts and mechanisms of forgiveness and healing to preserve the intactness of families as much as possible, and to educate others in the community (Tukoroirangi, 1994). An integral feature is the task to address whakamā experienced by the participants. Again, whakamā is a cultural and behavioural construct, which assists dispute resolution among Māori. It does not have an exact equivalent in the 'Pākehā world' but western concepts of shame, embarrassment, self-abasement, feeling inferior or inadequate can broadly describe its connotations (Sachdev, 1990). Marae justice initiatives have therefore the potential to provide a more satisfactory resolution and to bring closure to victims as well (Tinsley & McDonald, 2011).

After his long, extensive investigation, Moana Jackson (1988) claimed that the CJS, within its structural frameworks, was unreformable for Māori due to its cultural inappropriateness and incapability to deal with its own, long-standing institutional racism and structural bias. As for example Dyhrberg (1994), Moana Jackson (1988, 1995a), JustSpeak (2012), Tauri (2005), Toki (2016), Webb (2003a) and Wickliffe (1995) suggested, contemporary Māori criminality had to be grasped, reinterpreted and responded to within Māori justice philosophies and values. It is internationally claimed that the 'one law for all' axiom had to be reconsidered since it was proven that it could not realise comparable outcomes due to its insensitivity to

difference and discrimination (Blagg, 2016; Cornell & Panfilio, 2010; Gabbidon, 2010; Milovanovic, 2002; Rudin, 2005). The truly significant difference is not found in which conduct is morally and culturally reprehensible but in the approach to dealing with the conflicts and wrongdoings (JustSpeak, 2012). However, in contemporary societies, only somewhat different procedures and sanctions are able to reflect on the existence of diverse traditions and cultural concepts. To aspire to a common ideal of justice, it is necessary not to confuse the phrase 'one law and one justice for all' with one, and only one process for achieving justice (Dyhrberg, 1994). As Tauri (2009) argued, it was necessary to treat people dissimilarly in order to attain the same outcome and social justice. The most relevant theoretical approaches for this study (critical criminology, CRT, zemiology) share a common point; they maintain the necessity of making distinction between the two concepts of 'justice'. Put differently, the primacy of the formal, procedural justice must be transcended in order to cope better with the long-standing issue of ethnic over-representations in CJSs (Arrigo, 2000; Crenshaw, 2011; Parks et al., 2008; L. E. Ross, 2010; Yar, 2012).

The legal system has already acknowledged the existence of a certain level of legal pluralism in New Zealand. The most pronounced example is the customary law in Māori communities with a very real presence and effect for many Māori (NZLC, 2001; Toki, 2016; C. Williams, 2001). It was argued that without a separate or parallel justice system, where the control of justice for Māori was in Māori hands, structural bias and the ensuing disparate impact could not be eliminated. Moana Jackson (1988) proposed the gradual relinquishment of control over the administration and prevention of Māori crime. These views are similar to the CRT and critical criminology approaches (see Chapter 3-4), since they dismiss the reformability of the CJSs within the current structural and institutional frameworks for many disadvantaged racial/ethnic minorities. Māori criminology shares, at least parts of, this notion (Cunneen & Tauri, 2016; Tauri, 2011; Toki, 2012, Webb, 2003a). Māori criminology takes into account the present-day effects of colonisation and the imposition of a culturally Eurocentric justice system. Moreover, it pursues systemic change rather than implementation of isolated initiatives and Indigenisation strategies including top-down managerialism and limited policy modifications. For example, among the most influential criminogenic factors for Māori are domestic violence and childhood abuse (Cleland & Quince, 2014; DoC, 2007a; Moyle, 2015; Stanley, 2016). As Participant N. highlighted, care and protection services and the CJS were mostly unable to cope with intergenerational transmission of crime among many Māori:

> Participant N: *"We see family violence; we take the father away, put him in prison, make them children of prisoners. They grow up with a series of other people, drug and alcohol things in their lives, repeated trauma. We then put them in a foster home, where they are abused, then change their place many times, and at the time they're 14, they're in the youth justice system. We do that repeatedly. ... You got intergenerational problems, they're all concentrated in particular sub-communities. You can have a different system for individual children, but what I missed* [is] *that the whole community is mobilised to be demanding something different, not just a differently operated justice system."*

Toki (2016) argued from a different aspect but in essence reached similar conclusions: in historical Māori society tikanga had competently protected women and children since it had viewed physical violence (like wife beating) as hara and hence impermissible. Without acknowledging the effects of colonialism, the western law and the breakdown of whānau, family violence would not be eliminable. Again, tikanga is a forward-looking system, while western law is retrospective; therefore, the two is hardly reconcilable. These arguments and the massive ineffectiveness of the mainstream system convinced many Māori/non-Māori stakeholders to propagate significant changes including the consideration of separate or parallel Māori social services (Bowen et al., 2012; M. H. Durie, 2003; C. Williams, 2001).

The creation of a separate or parallel Māori justice system is inextricably linked to the question of Māori sovereignty granted by the Treaty of Waitangi. This issue, especially the term 'tino rangatiratanga' has a long history of disputes and controversies, which surrounds the duties and commitments acknowledged by each signatory (Archie, 1995; Consedine & Consedine, 2012; Melbourne, 1995; Orange, 2011; Walker, 1999, 2005). Governments have invariably based their interpretation of the Treaty upon the English version. Thus, it is claimed that the Crown has been granted sovereignty, which includes empowering it to exclusively control and regulate law, jurisdiction and legal institutions (Archie, 1995; Orange, 2011). On the contrary, according to the interpretation of the Māori version, Māori have been pledged in Article Two that the preservation of their 'tino rangatiratanga' has been assured, and their sovereignty has not been ceded to the Crown at all (Orange, 2011; Melbourne, 1995; Palmer, 2008; Walker, 2005). Article One in the Māori version provides that the Crown be granted only the limited power of kawanatanga ('governorship'). There was no direct translation of the notion of sovereignty at that time; the term 'kawanatanga' could not be regarded equivalent to it. Consequently, the Māori text has an apparent inconsistency between Article One and Two (i.e. kawanatanga or governorship versus tino rangatiratanga or absolute independence) if one interprets kawanatanga as sovereignty (Palmer, 2008; Walker, 2005; Ward & Hayward, 1999).

Article Three granted equal citizenship to Māori; the same rights and privileges entitled Māori as Pākehā (Orange, 2011). However, equal rights/equal citizenship is compromised if criminal policy and law enforcement have considerably differential impacts on Māori resulting in disproportionate and/or mass imprisonment and societal marginalisation (JustSpeak, 2012; Workman, 2011a, 2011b; Workman & T. K. McIntosh, 2013). Disparate impact might be declared unlawful as indirect discrimination pursuant to s 65 of the Human Rights Act 1993. Ergo, the Government has the liability to ensure that, regardless of the original intent, policies or any conduct, practice, requirement or condition do not have the effect of treating a person or group of persons differently (i.e. discriminating indirectly). This liability includes that justice policy has to be monitored to prevent discriminatory effects (HRC, 2012; JustSpeak, 2012). Moreover, Article Two safeguards for Māori the unqualified exercise of chieftainship including the control over intra-Māori conflicts in accordance with Māori custom (Walker, 1999). Thus, it is argued that Māori has not relinquished their authority over conflict resolution. The UNDRIP, however legally non-binding, still directs the international minimum standards for Māori as well. It contains (Article 34) the right to develop institutional structures and juridical systems (McMullan, 2011). In applying the provisions above in the CJS, authority for Māori requires the respect of tikanga in policymaking and implementation, while it requires being mindful of any particular impact on Māori (JustSpeak, 2012; Toki, 2014).

9.1.4. Separate or parallel Māori justice?

Advocates of a separate or parallel justice system suggested that only independent or differentiated structural frameworks applying Māori justice philosophies and practices could adequately address Māori offending (Dyhrberg, 1994; M. Jackson, 1988, 1995a; Morris & Tauri, 1997; Olsen et al., 1995; Sharples, 1995). The public and academic discourse since the Puao-Te-Ata-Tu (1988) and the Jackson report (1988) has frequently revolved around the re-evaluation of the meaning and requirements of legal equality in modern societies. Opponents usually argued that it would generate inequality and disunion in society and provide unjust advantages to Māori (Doone, 2000; Marie, 2010; Newbold, 2000). M. H. Durie (2003) disputed this argument and noted that opponents were not willing to acknowledge that by now

> *"The real and harmful divisions … are only too apparent in contemporary New Zealand … Māori non-Māori disparities in all social areas have led to dangerous divisions which a single mainstream approach has been unable to remedy. Māori*

> *systems (of health, education, justice, commerce) are likely to reduce (not increase) the gaps"* (pp. 67-68).

Moana Jackson's (1988) study in the topic has remained unique and commonly cited; however, even supporters of the renewal of the CJS expressed reservations regarding some of its conclusions. Part of the scepticism concerned the usual, well-known governmental and political reluctance to cede power. Participant L. noted:

> Participant L: *"The idea of a parallel Māori system has been advocated for many years. The significant report really has been done more than 25 years ago by Moana Jackson. My problem with that Report was that … they wanted to propose a parallel system, and they did not offer any other options. The Government was never going to agree with that. I still do not understand why they did not consider other approaches, which might have given a higher level of acceptability."*

Others expressed their reservations about the feasibility of the reconstruction of procedures, institutions and capacity to reclaim authority over Māori community members. The challenges include unsatisfactory enthusiasm and support by iwi and community leadership, inadequate financial and communal resources, poor knowledge of Māori traditions, marae protocol and limited skills in Te Reo (Bull, 2001; Morris & Tauri, 1997). Participant K. reported:

> Participant K: *"In the mid-1990s, I've interviewed elders of urban marae, tribal leaders and asked 'how would you feel about on your marae, or within your iwi that we develop a separate or parallel justice system with you'? They were like 'oh, yeah, we wouldn't mind'. With the sort of low level, non-violent young people but the rest; we don't interest in'* [them]. *If you translate that to how we do criminal justice issues, then most of those tribes have no interest. Trouble issue. They see it like as too problematic, it's difficult, it's state job, and not only that but they classify those Māori as undeserving of assistance. … When we think about the iwi leadership, supposedly based on the so-called traditional values, about support and reciprocity, it's bullshit."*

Without sufficient state funding, parallel or separate Māori justice or even the operation of a marae-based justice mechanism within the frameworks of the CJS could place further strain on iwi services and Māori communities (Toki, 2016). Participant K. noted:

> Participant K: *"I had a discussion with Moana Jackson, I said 'I think some of you who are advocating for a separate, parallel justice system for Māori, are naive, you're assuming that we just all want the system; that we're all actually anticipate and see the benefits from it. They don't have interest in developing their own youth justice system, because it would be a drain on their resources."*

The objective of a separate indigenous justice system has not been realised yet in any countries (Gabbidon, 2010; Jeffries & Bond, 2011; Toki, 2016). There is no example of

working models of a fully separate justice system; consequently, the international literature has mostly remained theoretical. Advocates acknowledged practical difficulties of a systemic change; still they have mostly been unspecific about how the transition could be implemented in practice (Bull, 2001; M. Jackson, 1988; Morrison, 2009; Tauri, 2011; Toki, 2016; Webb, 2003a; C. Williams, 2001). Certainly, it does not necessarily mean that an autonomous Māori justice system cannot be materialised. However, if moving in that direction, steps must be taken to ensure that all other factors, besides the monocultural nature of the system, are properly considered. Notably, without significant changes in structural inequalities and socio-economic marginalisation, there is little hope that considerable cutback could be achieved in Māori over-criminalisation. By all accounts, structural bias and inequalities, over-policing and mass-imprisonment are mutually reinforcing processes that interact with each other. Consequently, in the long term, an adequately funded and operated Māori justice system could have the potential to contribute to the reduction of structural inequalities and socio-economic marginalisation. Caution and carefulness with systemic changes is always recommended; however, there are examples in New Zealand history when implementations of fundamental changes were fruitful. Bearing in mind the CJS, several participants gave historical examples. Participant K. argued:

> Participant K: *"Let's start what we do with education. If we are going to do something, particularly in the criminal justice sphere, we already got a template for it. In the late 1970s, our language was dying, hardly anyone spoke it. So what did we do? We developed our own Kōhanga Reo nests. We now have our own primary schools, high schools and universities. Right? And that's fair. But what we need is a movement."*

Bull (2001), Moyle (2015) and Toki (2016) observed that the potential role that Māori women could play in the pursuit of a Māori renewal and adaptation to the present-day challenges, for example contributing to the development of justice models based on tikanga, was still usually downplayed and underutilised. This assertion seems legitimate despite the fact that Māori women have a history of intensive involvement with the development of Kohanga Reo and Kura Kaupapa Māori. Proponents of various marae justice initiatives proposed that the MCDA could be the legislative base (Bull, 2001; Toki, 2016; Turvey, 2009; C. Williams, 2001). Māori committees had been established under the MCDA in the 1960s; these communities could be re-constructed as marae-based judicial committees. The MCDA has been utilised (rather under-utilised, partly due to under-funding) for diversionary schemes on

the marae, where community groups, NGOs, NZP, courts, etc. could coordinate activities. The powers of these institutions could be gradually expanded[37]. Initially, it could cover a broad range of low-level offences regulated under the Summary Offences Act 1981. Toki (2016) suggested that the question of guilt would not be investigated in the conventional way:

> *"In accordance with tikanga, if you are alleged to have committed an act or offence then you must take responsibility. The offender would enter into a marae-based programme. There is no question of guilt or innocence; it is rather a question of mana and instituting a process to achieve balance. It may be that the person did not commit the offence alleged. This will be uncovered during the process and the ensuing actions or muru will reflect this".* (p. 293)

Certainly, there are practical issues arising how Māori justice could settle cases where non-Māori are involved. If a Māori wrongdoer does not deny guilt/responsibility, and the victim is a Māori and both are willing to participate in a Māori justice procedure, it will be the least complicated setting. In such cases, there is not much impediment to the application of a mutually mediated muru (M. Jackson, 1988; Morris & Tauri, 1997; Toki, 2016; Wickliffe, 1995). In practice, if the matter is reported to the police, the officer could query the self-identification of the involved parties. If self-identification as Māori, regardless of the external perception, is missing, then the conventional procedure continues (Toki, 2016). Accordingly, both parties must consent to the process in the parallel system. It must be ensured that no undue, direct or indirect influence is used to persuade/dissuade either the victim or the offender to participate (Tinsley & McDonald, 2011). The choice of self-identity must be respected; even if the perpetrator is evidently a non-Māori, it should not prevent participation (Toki, 2016) as it was detailed concerning self-identifications in Chapter 5. McMullan (2011) agreed and suggested that cultural self-determination and not ethnicity would be the criterion for transfer from the Pākehā legal process. M. H. Durie (1995) supported – based on that Māori did not constitute a homogeneous group and Māori society was not fixed but ever-changing and interactional – the view that only self-identification could capture the different

[37] There are several examples where indigenous peoples have regained, at least partly, authority and jurisdiction over their internal matters. In the United States, Navajo tribes redeveloped their own court system, which has become the world's largest and most established tribal legal system (Capobianco & Shaw, 2003). Moreover, various traditional community justice systems and some provisions for dual justice systems can be found in a number of post-colonial countries (for example in Papua New Guinea; Fiji; Solomon Islands; Vanuatu; Kiribati; Samoa). In these countries *"the legacies of small self-regulating 'stateless' societies have survived and adapted to the cumulative impacts of colonialism and modernisation and, specifically, the establishment of the modern state and its national legal system*" (Dinnen, 2009, p. 1). The experience accumulated in these community-based jurisdictions can be studied and might be utilised in New Zealand and Hungary as well.

(Māori) social realities. Another fundamental principle is the acceptance of responsibility before or at an early phase of the process (Dyhrberg, 1994; M. Jackson, 1988). Morris and Tauri (1997) examined several practical issues of a potential separate or parallel system and claimed that Māori customs were clear regarding Pākehā victims. Māori practice, above all, requires the empowerment of the victims; thus, offenders and their whānau are obliged to respect their decisions. Offences where victims are legal entities or considered 'victimless' in the jurisprudence, depending on the circumstances, can remain in the mainstream system. Drug and alcohol rehabilitation services, behavioural problem (such as anger management) therapies, problem gambling programmes, etc. are to be adapted to tikanga and Māori cultural perspectives (Porima & Wehipeihana, 2001; Toki, 2016). During and after the procedure, perpetrators must keep in mind the nature and consequences, from a tikanga perspective, of their wrongdoings, and face primarily the victim but the community as well. In the centre of the procedure is a balanced approach, which considers the victims' safety and other needs and the future well-being of the offenders/communities (Toki, 2016).

The composition of the marae-based justice institutions has great importance. Moana Jackson (1988) proposed that they needed to represent not only the traditional leadership and authority but also the social reality of the young people. It requires that the make-up of the body be based on a balanced male/female mix with at least some persons delegated by the youths of the marae. Some representation from the whānau of the wrongdoer and the victim is always prudent (M. Jackson, 1988; C. Williams, 2001). The establishment of Māori legal services could contribute to the delivery of Māori-designed justice and to the creation of a revived Māori jurisprudence, marae procedures and training in legal issues (Olsen et al., 1995; Tinsley & McDonald, 2011). Initially, the development of a Māori justice system could focus on young, first time, minor offenders and on child welfare matters (C. Williams, 2001; Morris & Tauri, 1997; Toki, 2016). In theory, as a next step in the progress, for more serious offences the jurisdiction of the Māori Land Court could be extended to criminality or another special judicial body could be established within the mainstream system. Marae-based judicial institutions could assume jurisdiction on a gradual basis and legal remedies reflecting Māori concepts of redress could be introduced progressively. Māori stakeholders seem realistic about the current capacity of their communities and institutions to deal with offenders; they do not advocate for a completely separate system. Sufficient time (and funding) is needed to restore mana and authority, and to re-construct networks on which Māori social and conflict management could be based. However, ultimately, there is no reason to presume that these

initiatives would be doomed to failure and that Māori justice systems cannot assume full jurisdiction over a wide range of matters at their own pace. The next sections examine and discuss the past and present features of Romani community justice institutions.

9.2. Romani communities and their justice institutions

In spite of discrimination and centuries of persecution, many Romani groups have, to a certain degree, preserved their culture and unique identity without the presence of visible autochthonous institutions (Crowe, 2007; Fraser, 1995; L. Karsai, 1992; Willems, 1997). The sense of communal identity is often maintained with strong extended family connections; while traditional rituals and celebrations are major source of reinforcing the close communal bonds (Guy, 2001; Száraz, 2007). The extended family structure (familija) and traditional family values have largely preserved their integral part in the identity and culture of Romani people (Fraser, 1995; Hancock, 2002). The familija still often includes children, parents, grandparents, great-grandparents, cousins, aunties, uncles and grand uncles, grand aunties, etc. (Durst, 2010; Feischmidt, 2008; Guy, 2001). The bonds of kinship and family cohesion are still held in high respect within many familija; they bind people together through ancestry, sense of belonging, mutual support and solidarity (Fraser, 1995; Guy, 2001; Stewart, 1997; Száraz, 2007). In traditional communities, the elderly (puré) are seen as bearers of wisdom, experience and knowledge; they have important roles in sharing insights and knowledge of customs; they take part in community education since they are mentors of children and youths. Therefore, they are treated with much respect and reverence (Crowe, 2007; Hancock, 2002). Nuclear family and extended kinship structure together function as the primary socializing network, and in order to inculcate children with social skills and values, they are consciously drawn into the daily activities of the community. The familija bears collective responsibility to ensure that family heritage and resources are managed wisely; it facilitates that collective rights to participate in community decision-making is upheld (Acton, 2003; Hancock, 2002; Szelényi & Ladányi, 2003). The relative isolation, the own strength of many familija and the social and cultural distances between various Romani communities have contributed to the shortage of other strong Romani institutions like movements and political parties (Fehér, 1993; Kovats, 2001; Vermeersch, 2006). Bárány (2002) claimed that many Romani groups had serious dearth of mobilisation prerequisites including strong and cohesive leadership, ethnic self-identity, organisational ability and capacity, cultural and political unity. Another issue contributes to the weakness of Romani self-determination, which is the

excessive outside influence and interference of non-Romani advocates in their movements (Greenberg, 2010; Vermeersch, 2006). Furthermore, transnational campaigns and organisations unavoidably encounter cultural and communication (language) barriers, (Greenberg, 2010).

In many communities, cultural traditions are still adhered to and respected deeply even if they contradict mainstream societal norms (Csepeli, 2010; Hancock, 2002; Szelényi & Ladányi, 2003). Therefore, sometimes, hard choices are made whether to face criminal procedure or disregard customary duties imposed by their culture. The consequence of that disregard could be distressing; it concerns spiritual beliefs, self-esteem or the respect of community members. In communities that are more traditional, they might even be oblivious of the discrepancy between internalised cultural norms and the norms of the majority. This can be seen further in communities that have their own systems of justice to protect their cultural identity (Guy, 2001; Okely, 2005; Yuille, 2007). Even in the 21st century, it is not uncommon to maintain taboo practices that project their sovereign identity into the wider community, as it serves as a way of standing up to those that seek to oppress and/or assimilate them (European Commission, 2004; Kligman, 2001; Magyar Agora, 2005; Yuille, 2007). Historical findings show that Romani were treated as social outcasts and scapegoats in many countries, and Hungary was not an exception (Hancock, 2002, 2004; Mezey et al., 1986; Willems, 1997). Participant E. summarised his impressions of the historical resilience of Romanies:

> Participant E: *"They have created a culture and a social structure and they survive when everyone around them, through centuries and centuries, just wants them to go away, to get rid of them. ... What impresses me is how strong their communities are, and I sympathise with that, because they had to protect themselves for centuries from persecution and even genocide. And genocide was not just coming and killing them all. It was also the purposeful moving them all the time so they could not actually develop sustainable communities. That is a much gentler way of trying to eradicate a population, and Romani people in Europe suffered for hundreds of years."*

The next section scrutinises the traditional forms of Romani community justice, philosophies and strategies.

9.2.1. Traditional Romani community justice philosophies and strategies

Perhaps the closest similarity between Māori and Romani community justice traditions is that, in the narrower sense, they are not rule-based systems, they have not been codified but enforced in accordance with the necessities of the community and of the situation in question.

Moreover, Māori and Romani legal institutions can be viewed as keepers of the collective rights of Romani/Māori communities (Caffrey & Mundy, 1997; Egyed, 1996; M. Jackson, 1988; NZLC, 2001; Okely, 2005). Another similarity is that Romani concepts of justice are also largely excluded or ignored by the mainstream system. Accommodating peculiarities of the traditional and the mainstream legal structures in one broad system remained a great challenge to structure, authority and process (Cahn, 2000, 2009; Hess, 2011; M. Jackson, 1988; Morris & Tauri, 1997; Weyrauch & Bell, 2001). The conventional CJS in neither country allows their participation through the exercise of traditional authority (Loss, 2005; H. Szilágyi, 2013, C. Williams, 2001). Still, there are supporters calling for the reduction of state intervention into communities, which are able to manage their internal conflicts without recourse to the formal systems of justice (Cahn, 2000; M. Jackson, 1988; Kerezsi, 2012; Morris & Tauri, 1997; Póczik, 1999; Ryan et al., 2006; Toki, 2016; Wickliffe, 1995; J. Williams, 2013). It is similar to Māori dispute resolution that Romani communities also view the Kris as an institution of 'real justice' where justice is not only done but seen to be done. Further common features are the restoration of the dignity of people involved in the conflict and the re-establishment of peace and internal balance within the community (Acton et al., 2001; Egyed, 1996; Szekeres, 2013).

Romanipen (or Romaniya) is a complex set of codes followed to remain 'true Romanies'. It is historically and culturally constructed and based on Romani philosophy, which incorporates culture, values, laws and the totality of the Romani spirit, traditions and behaviour (Fraser, 1995; Hancock, 2002). It embraces the willingness and desire to follow the Romani way of life; it includes the awareness of belonging to the Romani community (Willems, 1997). Put it more simply, it is being a Romani; it represents the Romaniness of an individual. Even ethnic Romanies are treated as non-Romanies if they do not possess Romanipen. On the contrary, ethnic non-Romanies are reckoned Romanies, for example adopted children, if they have Romanipen (Crowe, 2007; Fraser, 1995). Lee (1997, p. 355) noted, *"Romaniya is really based in an ancient folk religion going back to Indian sources"*. However, as Romani historically encountered widespread prejudice and attempts of forced assimilation, 'their Romaniya' adapted to the specific circumstances in each of the countries they have lived. They often adjusted and compromised the strict interpretation of customary rules and values (Crowe, 2007; Stewart, 2001; Willems, 1997). Therefore, diverging trends are observable in the interpretation and application of Romaniya (Guy, 2001; Lee, 1997). This diversity in Romaniya leads to a quasi-definition of a 'way of life', which embodies all the differences

and complexities of the Romani groupings (Clark, 2005). Moreover, contradictions are unavoidable in legal culture and practice, which have been based on oral traditions for centuries (Acton et al., 2001). Geographical, historical, linguistic and ethnic heterogeneities and complexities of their various groups also indicate that generalising about Romaniya and traditional community justice philosophies, rules, procedures and dynamics would regularly meet with contradictions and conflicting evidence from other communities (Crowe, 2007; Hancock, 1999; Lee, 1997).

9.2.2. Romani community justice institutions: Kris and Divano

The origin of the term 'Kris' is in the Greek language (κρίση: judgement), although the roots of the concept appears to be linked to the Indian panchayat, which is an institution of local self-government; it broadly translates as a village council and a court of law (Lee, 1997; Weyrauch, 2001). Despite the fact that the procedure at the Kris is fairly formal and long-established, it is a 'public-friendly' justice institution; hearings are open to all members of the community without any restriction (Cahn, 2009; Loss & Lőrincz, 2002). Traditionally the language spoken was exclusively the Romani one. However, nowadays, mostly due to the loss of fluency in speech and the simplification of the procedure, this custom is often not observed anymore, and many Kris are being held in the language of the majority in order to facilitate and encourage participation (Balahur, 2007; Cahn, 2000, Loss & Lőrincz, 2002). The Kris, as a conflict resolution mechanism, has remained an integral part of the Vlach Romani culture and traditions. It not only provides an effective dispute resolution method but also has a substantial impact on the everyday life of communities. More or less formal community juridical traditions do exist among many other Romani groups as well. However, a significant difference between Māori and Romani justice that a considerable proportion of Romani groups in Central-Eastern Europe never had such a dispute settlement forum (Marushiakova & Popov, 2007). Despite this fact, in recent times, some non-Vlach Romani communities have started to adopt elements of this community justice institution (Cahn, 2009; Marushiakova & Popov, 2007; Szekeres, 2013).

Loss (2001) asserted that even if it seemed incredible for many academics in Hungary, the Kris still existed and had a significant role in the life of those communities practising it. The Kris does not have regular hearings; it is convened ad hoc, when an otherwise unresolvable problem arises (Loss & Lőrincz, 2002). Romanies do not rush to the mainstream court system when they feel that they need to seek redress; they prefer to convene respected elders and let

them do justice. One of the main reasons for their preference to avoid authorities is the deeply fixed sentiment that in the end these interventions into internal matters results in more detrimental consequences for them than their own justice (Cahn, 2009; H. Szilágyi, 2013; Pomogyi, 1995). In fact, their trust has wavered in the institutional system of the external society long ago. Tradition and belief dictate that 'real' justice in their disputes can be achieved only by their own community justice mechanism (Balahur, 2007; Egyed, 1996; Szekeres, 2013). Additionally, there are 'special', not 'reportable' cases where involved parties would be prosecuted in any event. Erdős (1959, p. 209) reported such examples like this one:

> *"Two Romanies committed a burglary. Only one of them was caught and imprisoned. He co-operated with the police and 'confessed' that he was a lone perpetrator. Therefore, his partner remained 'protected'. After release, he demanded that his former partner pay him 'compensations'. If the former partner remained reluctant to do so, a Kris would be able to solve the issue."*

In addition, the litigation in the mainstream system is unaffordable for many underprivileged Romani people. It starts with the cost of travel, the cost of court proceedings and ends with the particularly high fees of attorneys (H. Szilágyi, 2013; Szekeres, 2013). Thus, it is an expectation that the procedure is comparatively cheaper than other alternatives. Moreover, the Kris returns a rapid and more equitable verdict (Loss & Lőrincz, 2002). Clearly defined exceptional cases like grave offences (e.g. murder, manslaughter, rape, large-scale drug dealing) have generally been outside of the scope of these procedures and dealt with by the authorities. This scenario is almost inevitable due to medical and/or practical reasons and the mandatory law enforcement in such cases (Cahn, 2009; Egyed, 1996; Loss & Lőrincz, 2002; Szekeres, 2013). If one of the parties involved in a dispute is a non-Romani, then, in general, a Divano or a Kris cannot be held (Lee, 1997; Marushiakova & Popov, 2007).

Although the Kris is based on ancient traditions, it is a dynamic system, which has been able to adapt to new social situations. It is a mediator of social changes and a guardian of traditions at the very same time (Weyrauch & Bell, 2001). Lee (1997) claimed that Romani justice was able to retain, re-interpret and customise its laws and even to introduce new rules to cover spheres or cases, which had previously been undefined or for which no precedents had existed. Lee (1997) found that the external impact of the modern society became increasingly significant. Among these new issues are, for example contraception, termination of unintended pregnancies, substance abuse, feminism, wearing non-traditional dresses by Romani women, etc. While the most common cases involve two conflicting parties, there are

exceptions. If an issue affects the entire community, like the spread of illicit drug use, a Kris can be convened, which can declare a ban on the sale of drugs or expel alleged drug dealers from the community. Thus, Romani justice, as an active social regulator, can control and adjust potentially harmful behaviours (Lee, 1997; Marushiakova & Popov 2007). Another atypical Kris was reported by Caffrey and Mundy (1997), which were held in order to discuss negotiations with the German Government concerning the compensations entitled to the survivors (or their descendants) of the Porajmos.

9.2.2.1. Procedures of the Romani community justice institutions

The dispute resolution usually commences with a request for justice. The cause can be a charge that, if proven, would be equivalent to an offence. However, non-criminal matters are also frequent; for example, personal prestige issues, moral and ethical disputes, breaking taboos, family relations like divorce, elopement, various forms of domestic conflicts and abuses, commercial or business disputes like rivals 'sharing the market', indemnity and debt, community counselling after violent conflicts, etc. (Acton, 2003; Balahur, 2007; Cahn, 2000; Szekeres, 2013). In reality, the majority of the cases dealt with by a Kris involve some forms of business or family issues (Egyed, 1996; Marushiakova & Popov, 2007). However, the Kris is regarded and applied as a measure of last resort (Acton, 2003; Szekeres, 2013). Disputes are attempted to be resolved by less formal proceedings; the aggrieved party is allowed asking for a Kris usually when these attempts proved to be unsuccessful (Marushiakova & Popov, 2007). Yet, demanding a Kris is not simply an option but an expectation in such cases, since private violence or revenge would be viewed as much an offence against the community justice as the original wrongdoing (Acton, 2003).

Two stages precede the convocation of a Kris. Yet, in some cases, the gravity of the matter requires a Kris from the outset. As a very first step, the parties try to reach an agreement on the spot where the issue arises. In this very informal phase, outsiders are not allowed interfering with the matter (Loss & Lőrincz, 2002). If no settlement achieved; then, as a second step of the procedure, a Divano is held. It is still informal, usually relatives, friends and locally influential and respected Romanies (clan leaders of the parties, elders, etc.) can participate (Acton, 2003; Balahur, 2007). Actually, the Divano, the convocation of respected community members consulting with the disputing parties, is more prevalent among Romani groups than the Kris. It is part of the life of many non-Vlach Romani communities, and practised among Muslim Romani groups as well (Crowe, 2007). The word 'Divano' literally

means ‘discussion, advice session’ or ‘round table’, which in general is a more preferable option than a Kris as a means of settling a dispute. In some communities, it is even held that a Divano could prevent further hostilities risked by a contested Kris. As a Romani saying goes *“Maj feder te huladjon sar amala and'ekh Divano, de sar dušmaja and'ekh Kris. It is better to part as friends from a Divano than as enemies from a Kris”* (Hancock, 1997, p. 332). This ‘warning’ is rather figurative since the conclusion of a Kris almost always brings peace; still, in fact, most cases are preceded by a Divano (Lee, 1997, Loss, 2005; Szekeres, 2013).

Divano is generally convened at a neutral, peaceful place like home of a Romani who is unrelated to the parties. Here, they are able to ask elders and relatives to give advice on how to settle the dispute, but there is no decision on behalf of the parties. Advice is offered, the two sides are encouraged to consider the recommendations (Cahn, 2009; Loss & Lőrincz, 2002). Occasionally, a party is willing to take the ritual Romani oath (soláx), which serves the purpose of eliminating contradictions and establishing the truth (Balahur, 2007). By the means of the soláx, the dispute can be ended as the other party could accept it. If an agreement is achieved, then the assembly of a Kris and its financial and emotional burdens becomes avoidable (Acton, 2003; Szekeres, 2013). If an ‘amicable settlement’ cannot be realised, then senior relatives of the aggrieved party announce *“Ame mangas kris”* (Acton et al., 2001, p. 94). In fact, they *“demand Kris”* which here *“means both justice in the abstract, and the physical reality of the tribunal which delivers it”* (Acton, 2003, p. 642). Community members, if required or challenged, are obliged to take part in the proceedings (Loss & Lőrincz, 2002). There is no strict time limit for the Kris; in complicated cases, the trial could last even for days. The number of judges can be wide-ranging; it largely depends on the complexity of the case and the authority of the parties. The lowest number in Hungary is two; the average number is 7-8, occasionally 10-20. However, the trend is that the parties prefer to keep the number low as it facilitates time- and cost-efficiency (Erdős, 1959; Loss & Lőrincz, 2002; Marushiakova & Popov, 2007).

As in Māori justice, the main purpose is the reconciliation of the conflicting parties. The principal tool to achieve it is the hearing, discussion and evaluation of both sides’ argument including the interrogation of witnesses and the clarification of the circumstances of the case (Erdős, 1959; Loss, 2005; Okely, 2005). First, both sides present their position. Making a compromise is quite frequent; it assists well the procedure and it is part of the Romani tradition. The judges make serious efforts to formulate a consensus-based verdict/conclusion (Cahn, 2009; Weyrauch & Bell, 2001). Marushiakova and Popov (2007) observed in their

comparative Eastern European study on the Kris that consensus was simply indispensable as it was the very essence of the tribunal. Acton (2003) concluded that the ultimate goal and emphasis were on the re-establishment of peaceful relations: *"in a sense, the Kris embodied the ideals of restorative justice long before the term was ever coined"* (p. 643). Regarding its rationale, there is nothing radically new in the thinking of restorative justice. The common root can be found in Māori and Romani justice too, which is the aim of maintaining harmony, preserving social fabric and ensuring the survival of tight-knit communities. A frequently quoted definition of restorative justice is that given by Marshall *"all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future"* (1996, p. 37). The Kris operates as a dispute resolution where dialogue is encouraged; and the application of customary law remedies indicates the long heritage of non-adversarial justice (Acton, 2003).

The proceedings of the Kris are traditionally very solemn. The speeches are rather formal. Still, quite often, a very ornate, ceremonial form of the Romani language is spoken and embellished phrases are used abundantly, while strict procedural rules apply to the participants and audience (Caffrey & Mundy, 1997; Cahn, 2009; Loss & Lőrincz, 2002). According to the ancient tradition, members of the Kris were seated in a circle. Customarily the eldest or the principal judge (frequently the same person) sat in the middle of the circle (Erdős, 1959). The principal judge opens formally the hearing. It was and is, to a certain degree, similar to the marae justice as the chairperson invokes the ancestral dead (mule) of the involved communities; he asks for their auspices, and they would then be presumed to be present during the procedure (Lee, 1997). Even today, it is a rarity that non-Romanies engage in a Kris. A non-Romani judge is still unthinkable, but they may be present as witnesses (Loss & Lőrincz, 2002). The principal judge is always the most neutral participant being as distant from the parties as possible. The other judges (krisnitori, plural: krisnitorya) are nominated by the parties in an equal number (Cahn, 2000; Loss, 2005). If conflict arises between parties from different groups, then krisnitorya are mixed, equal number are from the two groups, while the chairperson is from a third group (Marushiakova & Popov, 2007). There are no hereditary krisnitori positions; krisnitorya are lay adjudicators. Thus, no formal qualifications are required; they are nominated on a case-by-case basis being 'in office' only for the duration of the given case (Balahur, 2007; Cahn, 2000). It is expected that krisnitorya have proper eloquence, wisdom and respect in their community, capacity to judge complex matters and competence in justice traditions (Cahn, 2009).

The judges take a soláx in a ritualised form before the commencement of the hearing. They swear that they remain together without food and drink[38] until both parties are gained a satisfactory hearing, the truth found out and a wise decision made (Erdős, 1959; Loss & Lőrincz, 2002). It is the responsibility of the chairperson to keep the order during the procedure. The Kris is an oral procedure. The acceptance and/or necessity of any written evidence are rare; it requires peculiar circumstances (Marushiakova & Popov, 2007). Trial in absentia cannot be held; the representation of the parties by others is not permitted (Balahur, 2007; Cahn, 2000; Loss & Lőrincz, 2002). Soláx obliges everyone to speak the truth; one cannot lie under the soláx; this is one of the most important cornerstones of the Kris. In theory, when a soláx is taken, the following statements are accepted unreservedly and the matter is seen as being in the hands of God from then on. It is widely believed that committing a perjury under soláx would result in severe punishment by God.[39] Therefore, it is not rare that considerable efforts are made to escape swearing it; for example, by challenging the request or somehow avoid taking a 'genuine' one. If oaths are contradictory or an oath cannot resolve the issue, the Kris will not announce a sentence but put the 'decision' into the hands of God (Cahn, 2009; Marushiakova & Popov, 2007).

Both sides can bring witnesses; they also swear, therefore it could happen that witnesses would not give supporting evidence to the party who summoned them to the Kris. Most of them are so fearful of the strength of the soláx that they dare to tell only the truth. Thus, parties are almost always satisfied that their 'side' has been fully heard, carefully considered and equitably evaluated. After listening to both parties' presentations on the case, the krisnitorya have the opportunity to ask questions to see the matter clearly. Kris is a democratic institution since every attendee can have a say on the dispute; the proceedings are always public. During the hearing, evidence can be given, precedents can be cited, traditional practices, lessons from folklore and life stories can be invoked (Marushiakova & Popov, 2007). Marushiakova and Popov (2007) asserted that customs and protocols were quite similar throughout Central-Eastern Europe in the case of Lovari/Lovara and Vlach subgroups; they found that the proportion of Romanies who still had Kris was around 30% in Hungary.

[38] This must be understood only figuratively by now (Loss & Lőrincz, 2002).

[39] Romanies have preserved a high level of religious practice. A 2009 survey showed that almost 60% of Romani adults belonged to a church or congregation, while in the total population the same indicator was only 13% (Greenberg, 2010; KSH, 2013; Marketing Centrum, 2009).

Traditionally, verdicts were incontrovertible; any appeals were regarded as contempt of authority. However, to a certain degree and mostly in special cases, it has become accepted that appeals are allowed without having a negative impact on the authority of krisnitorya (Loss, 2005; Marushiakova & Popov, 2007). In general, the justification for an appeal may be new evidence; for example, a witness who could not be heard during the first procedure. The second trial usually involves a higher number of krisnitorya giving even more authority to the judgement. If the appeal is not based on new evidence, it must be announced immediately after the first decision is declared. In this case, krisnitorya of the first trial have the option to attend the second trial and defend their position (Marushiakova & Popov, 2007).

9.2.2.2. Rulings and sanctions of the Kris

Rulings of the Kris are not uniform in similar or even in identical cases; so, strictly speaking, the system is not based on case law like in the Westminster system. Although trends can be observed, still equating them to the binding precedents in the common law would be misleading (Lee, 1997; Okely, 2005; Weyrauch, 2001). Decisions may be quite different for similar or (almost) identical cases since krisnitorya allow for the litigants financial and family backgrounds (Loss & Lőrincz, 2002). Justness and equitability are therefore the key concepts. With these features, traditional Romani justice shares common traits with traditional Māori justice. Another common character is that the extent of redress depends on the seriousness of the wrongdoing but also the personal status of the parties can have an influence on the outcome (Bull, 2001; Caffrey & Mundy, 1997; Joseph, 1999; Weyrauch & Bell, 2001). Other similarity is that neither Māori nor Romani justice require fault or culpability in order to impose sanction. The explanation is that all personal action/inactivity is considered as being within the individual's mana or accountability. The degree of culpability (malignity, premeditation, re-offending, negligence, etc.) gets significance only in the course of sentencing (Lee, 1997; Marushiakova & Popov, 2007; Quince, 2007a, 2007b).

Since there are potential personal, material and non-material damages in these disputes; consequently, various forms of punishments, compensation and reparation can be applied. However, Romani, like Māori, no longer have the death penalty, mutilation or physical retaliation (Cahn, 2000, 2009; Loss & Lőrincz, 2002; Marushiakova & Popov, 2007). If the Kris concludes that an unjustified imbalance has been emerged between the parties and its nature and/or gravity requires, then sanctions will be imposed (Lee, 1997; Marushiakova & Popov, 2007). There is a hierarchy of sanctions. Giving publicly voice to the moral qualms of

the community about the behaviour of the wrongdoer is the most lenient sanction (Balahur, 2007). The resolution of the Kris usually involves financial restitution: an individualised amount of money (Loss, 2005). The Kris invariably considers the wrongdoer's financial situation; moreover, a grace period is usually provided (Erdős, 1959; Loss & Lőrincz, 2002; Marushiakova & Popov, 2007). Nowadays, the most frequent type of the penalties is monetary fine (glaba) paid by the offender to the aggravated party. If both parties are found culpable to an extent and fines are paid, generally these are allocated to underprivileged members of the community (Cahn; 2000; Lee, 1997). Sanctions can include unpaid labour for the local community (Caffrey & Mundy, 1997). The sentence of being declared 'unclean' (marime) for a definite/indefinite period is also available in cases of grave wrongdoings. Marime also means ritual pollution or social avoidance; consequently, this sanction generally involves some forms of shunning or even ostracism from the community (Weyrauch & Bell, 2001). This can range from social avoidance to isolation within the community and to actual banishment (shudine). It depends on the gravity of the wrongdoing and the internal rules of the group (Cahn, 2000). Shudine can be of varying duration; sometimes it lasts only for weeks or months. Its main reason is usually the prevention of any personal revenge in order to ensure peace in the community (Balahur, 2007). The most severe penalty is the declaration of perpetual marime and exclusion from the community (Lee, 1997; Marushiakova & Popov, 2007). The permanent denial of belonging to the community is the most appalling punishment. The 'return' can be complicated and challenging. After having been declared marime at an earlier time, another Kris must be held where the declaration of cleanness (vuẑiardo) is announced (Hancock, 1997).

The verdict of the Kris is binding but not legally enforceable (by the means of the state). Still, normally, it cannot be ignored. It would be an extraordinary disrespect to the krisnitorya who possess authority in the community (Marushiakova & Popov, 2007). Actually, there are no institutions with coercive measures like prisons or police. Therefore, their only effective 'tool' is the influence and moral pressure of the community on its own members (Acton, 2003; Loss, 2005; Weyrauch & Bell, 2001). However, even today, it often appears that Romani justice institutions can be much more adept and cost-effective than state institutions with means of coercion and significant human resources (Balahur, 2007; Cahn, 2009; Lee, 1997; Loss, 2005). Disobedient party would risk becoming an outcast, which facilitates compliance. Occasionally the ruling of a Kris was followed by dispute or reluctance, but eventually cases resulted in a compromise; and in the acceptance of the sentence (Marushiakova and Popov,

2007). When the Kris is finished, parties are supposed to shake hands and all hostility or resentment must be forgotten. Then it is presumed that the re-establishment of peace is achieved. A feast of rapprochement follows the dispute settlement; a similar conclusion of the procedures is in Māori customs (Lee, 1997, Szekeres, 2013). Ultimately, the decisions of the Kris are intended to maintain and/or restore the integrity of the community and to confirm the legitimacy of Romanipen. Eventually, Romani community justice institutions must adhere to the reinforcement of kintala (spiritual balance, harmony), which is the most imperative concept of Romanipen. This is a significant similarity between Romani and Māori justice, since the restoration of the equilibrium in the community (or intercommunity) relations is also the goal in Māori justice (Quince; 2007b; Toki, 2016).

9.2.2.3. Current 'state' of the Romani community justice institutions

In the last decades, the Kris has been in decline. In many communities, it was no longer functioning as it did in the past (Acton, 2003; Loss, 2005; Marushiakova & Popov, 2007). Lee (1997) asserted, in the Northern American context, that Romani justice was not as effective as before; its influence on everyday life, its internal jurisdiction and ability to manage issues had been eroded. These developments were attributed to the influence of western societies causing substantial changes in values and cultural norms, and to the new generations who did not respect the Kris as much as their predecessors had done. Acton (2003) noted that a nexus could be identified between the preservation of the Romani language and the vigour and respect of the Kris. After WWII, substantial changes have taken place in Romani culture and communal dynamics in Hungary including temporary or permanent discontinuation of the application of many traditional norms as strict rules. This era coincided with a decline of the authority of traditional leaders and community institutions, which were the principal guardians of Romaniya (Guy, 2001; Kapralski, 2005; Stewart, 2001). In fact, a major issue today is that the young have few people to respect. Many of their puré are perceived as not up to the standard required of being krisnitorya or a mentor. This renders the old system of accountability, communal education and control management more problematic (Crowe, 2008; Guy, 2001). Marushiakova and Popov (2007) underlined the importance of the Kris in the consolidation and preservation of Romani communities; they concluded that its decline was an indication that the vitality and cohesion of these communities become uncertain.

These developments get even more relevance when Durkheimian concepts (anomie, imbalance, maladaptation, deviance, etc.) are considered. The recovery of the cohesion and

core values of the communities is crucial when *"weak social integration and failed moral regulation"* have undermined the effectiveness of social and community controls (Durkheim, 1982/1895 p. 66). P. Smith (2008) argued that it was worthwhile to heed Durkheim's legacy for criminological studies and to recognise that the evolvement of more cohesiveness in disadvantaged communities usually goes hand in hand with the progress of becoming more sensitive to objectionable behaviours and more prepared to deal with them. Therefore, even if challenging, it seems indispensable to consolidate non-economic social institutions, social bonds, community morals and values, too (Braithwaite, 1989, 1994; P. Smith, 2008). It may help the mobilisation for community engagement in justice processes and problem-solving, which can strengthen community-based procedures of informal controls and assistance (Caffrey & Mundy, 1997; Clear & Karp, 1999). Marushiakova and Popov (2007) maintained that Romani community justice institutions would be plausible and practical instruments to relieve overburdened and inefficient CJSs and to reduce Romani over-representation. Cahn (2000) found similar the situation First Nation peoples faced with in Canada and Romani people did in Europe; he suggested that recent changes and initiatives in the Canadian CJS provided innovative and feasible alternatives to the conventional, increasingly dysfunctional approaches. Cahn (2009) proposed that the state would not need to claim jurisdiction if a case seemed satisfactorily manageable by Romanies but also warned against over-reliance on Romani justice institutions in their current state. Cahn (2000) added that if Romani justice meant to be authorised to handle certain conflicts, it had to adopt a much higher profile. The development of a more extensive body of case law would be essential. Research, documentation and explaining of the Kris and the Divano, their origins, proceedings and legal authority will require adequate time frame and resources (Cahn, 2009).

9.2.2.4. Romani community justice in Central and Eastern Europe

In Central and Eastern Europe, there have been several initiatives to integrate autonomous Romani community justice institutions into the formal justice system. In Bulgaria, a project proposal was considered to incorporate some elements of Romani justice into the judicial system; however, it was not accomplished yet (Marushiakova & Popov, 2007). A similar project was set in motion in Ukraine, even a special Romani court was established, which administered disputes between Romani and non-Romani as well. This court included Romani representatives of various NGOs (Marushiakova & Popov, 2007). In Romania, as Cahn (2009) reported, in national media there had been ongoing debates on Romani community justice, on the nature of Romani law, and how it might be granted more extensive formal

recognition. In Romania, peaceful community relations between Romani and non-Romani are still frequently maintained or restored by collaboration between the police and traditional Romani 'authorities'. For example, Cahn (2009) documented meetings between Ministry of Justice officials and traditional Romani judges. These developments indicated the first steps of a de facto recognition of Romani justice by the conventional system. Moreover, there have been propositions to transform the Kris into new community dimensions and integrate into the international Romani movements. In contrast, in Hungary, similar initiatives have remained in the range of theoretical considerations and debates (Loss, 2005; H. Szilágyi, 2013). The next section discusses the key aspects of the current conditions of the mainstream and the traditional justice systems and their possible future directions for Māori and Romani.

9.3. Discussion and future directions for Māori and Romani and the (criminal) justice systems

Deeper investigations into the informal, traditional controls are necessary to understand how they still work and under which conditions would their operations be potentially more effective than the conventional systems. It is queried whether in crime control and prevention the agencies of the state are still the sole legitimate agent performing effectively these duties (Christie, 2001; Clear & Karp, 1999; Garland, 2001a; Lea, 2010; Tinsley & McDonald, 2011). It is implicitly assumed that informal controls originated in Māori and Romani community traditions can be adapted to the circumstances in modern, urbanised societies. However, this assumption is corroborated by the fact that many successful Māori and Romani projects are community-oriented and involve community mobilisation elements (Barcy, 1998; Byrne, 1999; Cahn, 2009; Carruthers, 2011; Chile, 2006; Fábiánné et al., 2010; Oliver & Spee, 2000; Tamatea, 2010; Workman, 2012b). Probably one of the most conspicuous features that emerged during data collection, interpretation and analysis was the notion that the large majority of research participants and secondary research sources directed their views towards the necessity of fundamental changes in both countries. These observations related not only to structural factors but also to the mindset of the public and to the political and economic 'climate'. Participant L. worded it succinctly as

> Participant L: *"the only way that* [criminality] *can be overcome if we had a very radical shift in the values what we hold in New Zealand. For example, we are extremely punitive and we always had been".*

Participant K. went even further:

> Participant K: *"We like locking people up and punish them. It not just going to have to mean a change of mindset about our attitude towards punishment. We are gonna have to have a whole change in what is what we privilege. Social infrastructure, individual versus community, etc.; a fundamental change in economy, in the way our economy is structured and the distribution of resources. We'll have to have a completely different ethos around how we share the welfare that comes from our economic activity."*

However, almost without exception, part of the prognosis given by participants was a – depending on viewpoints – realistic or pessimistic prediction that elemental changes cannot be expected soon. Participant K. concluded:

> Participant K: *"There have to be a fundamental change in our ethos. … away from the sort of rule privileging of the individual to a more communitarian social ethos. That is not gonna happen. Those things have to happen for any radical and significant change in terms of Māori engagement in the CJS."*

Interestingly, several participants made similar observations that were resonating well with the principal viewpoints of critical criminology and zemiology. Considering the long history of unfruitful criminal justice policy for Māori and Romani, radical modifications of the ordinary patterns and models or even the replacement of the established approaches were recommended for deliberation. Participant P. argued how crucial is being aware of the perspectives of these long-standing issues:

> Participant P: *"The lenses, which through you look at the problem, determine the outcome. If you look at gangs as groups of crime, there is only one answer for that: law enforcement. But if you take a look at different lenses, and say 'how did, how do gangs come to be'? Industrialisation, social environments, 'hard to reach'. Then you look at the problems through totally different lenses. Solutions are there, but are you looking for the right place? In terms how you look at the problem, would be how you solve it."*

'Changing lenses' requires the re-evaluation of social challenges from a social harms perspective. It got significance from participants in many different ways. They regularly emphasised that irrespective of goodwill and appropriation of considerable resources, without re-evaluation, there would be no realistic prospects to achieve major improvements in the CJS. Participant P., more figuratively, put it this way:

> Participant P: *"Like you have a sore throat and the doctor takes a stick, gives you advice. You go to the chemistry, get the prescriptions, take them and sore throat gone. What has not changed is the way you treat yourself. The food that you eat, your exercise, your living conditions, they have not changed. … So the group that we try to fix is still the same. What is not so the same, what is worse, that is that things are*

> *compounding. We are now in the second to third generation of ethnic gang members. Really serious crimes, have a look at the level of family violence, at the level of children's exposure to violence. We socialised in* [it]; *generations to generations, and this generation knows no alternatives."*

Certainly, it is unfortunate that no serious effort has been made to consider the potential role of Romani community justice philosophy and institutions in the mainstream system. This study found, besides the prognosis that Romani marginalisation would remain, that most probably non-recognition and ignorance of Romani community justice would be the dominant attitude in the foreseeable future. Above all, it is because two historically and culturally disparate social systems coexist in Hungary. Furthermore, there is a notion that customary law is only acceptable if it fits in, without much complication, with the values reflected in the mainstream system. Romani law would have to 'assimilate'. Put differently, Romani law is perceived as inferior and required to harmonise with the standards dictated by the conventional legal system. Remarkably similar notions do exist in the New Zealand context regarding Māori law and justice. Traditional Romani approaches to justice are also based on and connected to the collective rights of communities possessing their own structures for social management. Legal, scientific and philosophical dilemmas concerning individual versus collective rights are for this reason of great significance for Romani justice, too. However, these issues traverse a great field of disciplines and they are beyond the scope of this study.

9.3.1. Māori and Romani perspectives: Māori and Romani criminology

It is argued here that Māori and Romani should be given time and space to develop their perspectives in their own way, using their own language and traditional methodologies and not the categories and conceptual frameworks provided for them by the majority or outsiders. Critical understanding of and deconstruction of the 'conventional' way of thinking of these minorities would be necessary. Māori criminology has been conceived as a reaction to the over-representation of Māori in the CJS. It is intended to spell out socio-cultural dynamics that affect Māori crime. It reveals that any simplified premise based on that Māori offending is produced by the same factors (e.g. the long heritage of colonialism, the imposition of a culturally alien justice system, or explanations provided by the differential involvement theory) is flawed (Blagg, 2016; Cunneen & Tauri, 2016; Tauri, 2011; Toki, 2016; Webb, 2003a). Indeed, tikanga remained the most important guideline for Māori culture; it is still constituted the normative system of Māori society (McMullan, 2011). Māori criminology

advocates the inclusion of Māori cultural philosophies to conceptualise crime; the coping with the institutional racism by the decolonisation of the justice system; and the provision of rights to self-determination in criminal justice processes, which could rectify current ineffectiveness for Māori (Toki, 2014; Webb, 2003a). From the perspective of Māori criminology McMullan, (2011, p. 93) asked, *"If Māori cannot act according to tikanga Māori in New Zealand, where can they"?* In fact, New Zealand is the only country, where a legitimate realisation of Māori culture can be achieved.

Along the same lines with the slow but steady development of Māori criminology, consideration should be given to the formulation of a Romani perspective in criminology. It could be part of the goal of increased self-determination and social justice across a wide range of psychological, economic, social and cultural area. There are examples in the western world, including New Zealand, where cultural defence is recognised or even encouraged (Blagg, 2016; J. Williams, 2013). Thus, that defence could be a useful starting point for Romani criminology. It could provide a first step of a genuine inclusion of Romani concepts of justice. However, the semblance of neutrality of justice, the insincere depoliticisation of the notion of crime as a simple social and/or individual issue, and the focus on state support/intervention on behalf of Romani successfully redirect attention from the decisive impact of discrimination and structural inequalities (Kerezsi & Gosztonyi, 2014; Ladányi & Szelényi, 2006). Furthermore, there is still a 'false taboo' in the Hungarian criminology against the academic deliberation of any relationship between ethnicity and crime. This leaves the issue an 'easy prey' to those penal populists and/or racist political actors who use it unscrupulously for their own agenda. There has been a controversial history of ethnicity and crime research. The consequences are exacerbated by the inadequate level of minority rights and support provided for Romani communities. Therefore, potential Romani scepticism and apprehension to engage with an externally inspired development of minority perspectives must be acknowledged. However, for instance, specially appointed officers and social service providers working specifically with Romani communities in a liaison officer or police aide role could assist with trust-building. It is indispensable to show sensitivity to and sympathy for the dilemma of confronting publicly with ethnic offending and victimisation since there is a non-negligible risk that it contributes to the intensification of criminal stereotypes of Romani people. Community-centred crime prevention, promotion of social welfare and inclusion, and safeguarding the cultural integrity of Romani communities must complement the efforts of developing Romani criminology.

Consideration for the above-listed caveats and minority aspects is indispensable, yet the evolution of Romani criminology could potentially lead to the reinterpretations of theory construction, empirical data collection, policymaking and everyday practice routine. A further basic condition is that like Māori so Romani People will conduct extensive research into the foundations of their traditional law including the analysis of the doctrines and procedures that are adaptable to the current social circumstances. Probably the most essential principle of both Māori and Romani law is the conception that individual and community rights and responsibilities are shared and interdependent (Acton et al., 2001; H. Mead, 2003; NZLC, 2001; Weyrauch & Bell, 2001). Another similarity gives support to the development of autonomous, community-based initiatives: the same majority attitude that expects them to resolve their 'own' difficulties. Both minorities can therefore rightly request the provision of adequate social resources and the recognition of their culture and conflict resolution methods. Perhaps an 'overused' concept in community development for disadvantaged groups still pertinent is the need for 'mobilisation'. Participant P. argued that:

> *Participant P: "What we were talking about quite openly here is mobilisation. We have to re-engage with those communities. To help them mobilise themselves, like any movement, you have to make a start. The Māori renaissance movement, there was a beginning point. … There is growing awareness amongst some of those groups that we referred to as 'hard to reach' that change has to come. You have to believe in that. It's about realizing the plights that we are in and what we are gonna do about it."*

Participants placed a particular emphasis on the need for growing self-determination and reliance on own, community-based initiatives. Probably Participant K. formulated the most 'radical' approach to the aspirations for greater autonomy:

> Participant K: *"What we need is a movement. We turn around and just say we are just gonna do ourselves. We are just gonna have a Māori-based justice system; let's start doing that, the cops are gonna hate it anyway, but we are just gonna ignore them. Then you would have a very different way of dealing with social harms. You will have a decrease in the number of young Māori going to youth detention unit, Māori going to prison."*

Apparently, this 'radical' thinking is attributable to the frustration of decades of mostly fruitless attempts targeting Māori in the CJS. Participant K. acknowledged:

> Participant K: *"practical feasibility requires cooperation between Māori, the majority population and state actors".*

Concurrently with the undertakings of initiatives by minorities, the majority needs to have a greater appreciation of minority perspectives. This can be assisted by dialogue, education and

research. For example, history and folklore education can be useful to show and explain how ethnic differences, like the traditional Romani style of living and culture, emerged as part of coping skills or survival strategies in interaction and coexistence with the majority (Walther & CoE, 2008). Community development and strengthening vulnerable Romani communities is still in its infancy compared to the situation of Māori. Participant C. described the conditions for community justice initiatives in general:

> Participant C: *"Our dilemma was from the outset whether we can develop real, living communities with strong, deep-rooted ties and resilience. Ultimately, the goal of creating trust inevitably leads to this issue. Are we just focusing on the resolution of certain conflicts? You cannot just deal with the conflicts alone. For example, preparations for a mediatory procedure usually start with talking about the issue at hand with would-be parties; however, it isn't community development at all. It always requires long-term commitments and resources. Unfortunately, provisions of appropriate conditions for creating strong and viable community development projects are painfully rare."*

Historically, Romani have been treated as subjects of dependency. Programmes and policies have invariably remained paternalistic denying them to take greater control over their lives. Ideally, Romani leadership and elites would play key roles in the development of communities and institutions; they would be intermediaries and relevant agents of progressive changes. However, they have largely been unable to fulfil these expectations. Misuse of state resources and EU funds by Romani leaders selected on political grounds by governments, has become increasingly rampant. In fact, Romani political elites have a long history of fragmentation and lack of long-term vision and shared political strategies. Unsurprisingly, the current right-wing Orbán government easily exploits the weaknesses of Romani grass roots and leaders and manipulates, short-sightedly, the conflicts between Romanies and non-Romanies. Still, ideally, the focus of a (more) Romani oriented criminology should be on the promotion of a more equitable social and justice system across ethnic lines. Put differently, the proposed Romani criminology would still keep larger part of its focus on crime and offenders, but it would adequately take into account social realities and dynamics. Romani criminology should make a clear distinction between 'inclusive' and 'exclusive' criminal policy and crime control measures. The current political regime and criminal policy have a strong exclusionary character (Kerezsi & Gosztonyi, 2014; Lévay, 2012). This study found that exclusionary tendencies were present in New Zealand social and criminal policy as well; however, recent decades had brought an increasing awareness and understanding of these issues. Participant P. noted

> Participant P: *"So our definition of 'hard to reach' is social exclusion by policy intent. Because no one is 'hard to reach'. If you want to reach, you might need the effort"*.

Participant N. added:

> Participant N: *"Talking about Māori and the CJS, it is not 'those Māori' we are going to talk to or to give any ability to design what make a difference in their community. Because they are 'bad Māori'. We use the term 'how to reach' whānau, how do we get to those high-risk populations. The reason you use 'how to reach' is because nobody is 'hard to reach'. It brings up the whole discourse about 'we just don't wanna reach them'. We just discounted them. We just wanna marginalise, stigmatise and keep them away."*

In contrast, the Hungarian political regime and criminal policy still even more strongly distinguish between 'us', the decent, law-abiding citizens and the dishonest, irresponsible 'them'. Its institutions and personnel mostly see a socially separate stratum of offenders and consider them merely as risk factors for society. There are three main levels of exclusion affecting Romani. The first level is the economic and financial exclusion in which the majority of Romanies are unable to get paid, full-time jobs. To recall, about 25% of Romani aged 16-64 were employed in 2010, the same indicator was 76% in 1984. The non-Romani employment rate was 81% and 58%, respectively (Kertesi & Kézdi, 2010a). The second level of exclusion stems from social, regional and spatial isolation. The majority of Romanies still lives in segregated environments (European Commission, 2014; Kósa et al., 2009). The third level of exclusion is created by the CJS using exclusionary policies and practices. It is proposed here that Romani criminology, and more broadly criminologists with proper focus on social responsibility, should engage in the promotion of greater social justice. An inclusive social and criminal policy would better recognise and support individuals' will and ability in their quest for positive changes. For a vision of a more inclusive society, it would be essential that these policies see equal citizens, members of the same society regardless of their actual social position. Participant E. described the challenge of a considerable social change:

> Participant E: *"First and foremost, the people need to have a growing awareness of their own predicament; asking the 'why we are in the situation'-question. Until they are not aware of the true nature of their predicament, nothing is gonna change. Because their lives have been permanently steered down the road for a series of historical events and policies. Through those processes, they believe of what people wanted to make them believe, so that they are. That they are powerless, hopeless, criminals and good for nothing. They should not even exist. Thus, the dysfunctions get more severe over time. If you understand your predicament … what are the things that have caused to you to live in these environments, and if you doubt whether it is the way you are, if you say 'I don't buy this anymore, I'm gonna change my predicament'. Then you start demanding change. Through that demand process, through*

mobilisation, somewhere along this line supply will meet demand. So it is actually a process of social change. But without it? You most likely end up in the social underclass. No rights, no respect."

9.4. Conclusion

State policies and cultural bias (embedded in criminal law as well) have weakened Māori and Romani culture and marginalised their authority. They have been used deliberately and often incidentally, to hold in check and oppress Romani and Māori groups. Still, in fact, Māori have a substantially more favourable legal position than Romani. Under the domestic law (Treaty of Waitangi, New Zealand Bill of Rights Act 1990[40], Human Rights Act 1993, etc.) and international law (UNDRIP), the state has obligations to honour a level of Māori self-determination and the right to live according to Māori values and culture. However, in comparison to the UNDRIP, the 'Race Directive' and the European Framework for National Roma Integration Strategies can be seen, to a certain degree, as provisions of similar multinational legal (and financial) ground for Romani, and as a way forward in colour-conscious policy attempts. Moreover, they might be able to assist Romani with their self-determination and jurisdictional autonomy aspirations. Māori community justice institutions are in a reasonably better shape than their Romani counterparts. Still, historical evidence and this research too reveal that insensitivity, insufficient recognition and/or obvious ignorance of Romani and Māori culture, justice and legal institutions have probably contributed to the over-policing and criminalisation of their unfamiliar and unappreciated legal culture and daily life. One part of the misconception of criminal propensity attributed to Māori and Romani peoples might be due to the disregard or unawareness of the concepts and rules of Te Ao Māori and Romanipen still followed by many Māori and Romani. Even if these concepts and rules are made part of cultural defence in the CJS, they tend to be rejected by stakeholders as irrelevant or unconvincing in culture- and colour-blind approaches and procedures. However, the use of Māori and Romani dispute resolution methods and cultural concepts could be facilitators of greater understanding and improved interethnic relations. Moreover, the differences between traditional justice, values, approaches and procedures and standards of

[40] New Zealand Bill of Rights Act 1990 section 2: "*persons belonging to minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture and a right to self-determination*".

the mainstream law and legal institutions in the two countries may not be as insurmountable as at first sight they appear.

Furthermore, despite the unacknowledged status, Māori and Romani legal traditions and customs continue to rival state laws; they still frequently determine or influence the outcome of issues within these communities. Modern state elites who dominate power structures and policymaking habitually consider ethnic/cultural 'otherness' as part of the characteristics of these 'subordinated' groups, which contribute to their 'helplessness and incompetence'. However, the appropriate functioning of a justice system is simply unattainable without adequate community support and recognition. It is symptomatic that in both countries most functions of the social control mechanisms are limited to professionals. By their very status, it is implicitly accepted that their skills and experience are more efficient and superior to that of the non-professionals. In addition, the agents of the state usually discredit (potential) stakeholders of these informal control systems. They view them as an inseparable part of their communities, and these communities are often branded as criminogenic. Therefore, various disadvantaged groups have been disavowed the right to administer their own informal controls. Consequently, the conventional approach remains in place with top-down management and imposed frameworks to solve 'their problems' and to reduce 'their deficits'. Apparently, the CJS is demonstrably inadequate for Māori and Romani; however, as this study also found, there is no prospect for meaningful changes and for more autonomous community justice institutions before long. Yet, the chapter revealed, academic and practical development of Māori and Romani criminology could be one of the possible ways to improve the current situation.

CHAPTER TEN

10. Discussion

This chapter provides the interpretation of the findings of the study and discusses them in relation to the relevant literature and research data. The possible implications and limitations of the findings are disclosed, and suggestions are made for future research.

10.1. Introduction

This study examined social and policy experiences and lessons in two countries, which have confronted reasonably similar, constant issues of ethnic minority marginalisation in society and over-representation in the CJS. Primary data collection aimed at the accumulation of a wide range of assessments and points of view of the stakeholders. The endeavour included the investigation of the experiences of different countries to disclose strengths and weaknesses of their juvenile justice systems. In addition, the comparative analysis involved the scrutiny of minority-majority relations and alternative forms of justice. Special emphasis was placed on the exploration of the effectiveness of community-oriented juvenile justice and its ability to accommodate cultural and ethnic diversity in New Zealand and Hungary. Unquestionably, this exploratory study has shortcomings of its own as the analysis has required a quite wide spectrum. While that has its merits, it implies that the predetermined scope of a thesis and the actual research design were immanently inadequate to dig really deeply into a specific area within the thesis and provide many concrete, clear-cut findings. However, at the same time, it has opened up opportunity for considerable further research. The study also focused on the following research questions:

- Are the existing CJSs able to address the challenge of the ethnically aggravated social problems in juvenile criminality?
- Are discriminatory practices present in the juvenile justice system in the concerned countries?

- Do the alternative conflict resolution practices (restorative justice, Māori and Romani community justice) have advantages over to the conventional justice system?

- How can juvenile justice be more responsive to the perspectives and predicaments of Māori and Romani youths and communities?

The history of the two countries reveals how colonisation, modernisation, urbanisation and repressive social policies dismantled the social cohesion in Māori and Romani groups (Majtényi & Majtényi, 2012; Pratt, 1999). These changes altered markedly their socio-economic situation, their traditional lifestyle, familial structures and local community relations (Dupcsik, 2009; M. H. Durie, 2003). The upbringings of many Māori and Romani are characterised by growing uncertainty and vulnerability, environmental harms, alcohol and drug problems, domestic violence, disconnection from their families and increased risks of abuse in state care (Babusik, 2007; Gordon & MacGibbon, 2011; Moyle, 2014; Neményi, 2005). In general, the study corroborated that no interpretation or theory delivers an indisputable and complete account to the dilemma of the long-established Māori and Romani over-criminalisation, even though each could contribute something expedient to the full picture. However, one of the most conspicuous differences between the two countries remained beyond doubt. The government has no will at all to put Romani offending within a specific, 'reality-based' socio-economic and cultural context. This stance is a broad contrast to the approach and policymaking evolved respecting Māori. The right-wing government in Hungary propagates anti-refugee position, anti-immigrant and xenophobic sentiment (UN Refugee Agency and Council of Europe, 2015). Therefore, unlike in New Zealand, there is a tendency of increasing indifference, cognition of 'otherness' and receptivity for discriminative and racist attitudes.

10.2. Appropriateness of the juvenile justice for Māori and Romani

New Zealand is renowned for its unique approach to juvenile justice, which is demonstrated in a progressive and supposedly non-punitive youth justice system with a high rate of diversion and various restorative initiatives (N. Lynch, 2012a). The CYPFA established a less punitive, more protective and more victim-friendly juvenile justice system with wider

community engagement. The study examined the 'actual effectiveness' of the present justice system for Māori youth. Follow-up data on life outcomes after involvement in the system revealed that it failed to address competently the first offences for a big proportion of Māori. The number of all prosecuted rangatahi has decreased by almost 60% since the 2007 maximum; however, the over-representation of Māori in youth court cases has worsened considerably in the last decade. Nearly half of Māori by the age of 35 have received criminal conviction (Workman, 2013). The proportion of Māori youth in the total prosecution has increased from 44% in 2005 to 64% by 2016. Another recent example is the lack of progress in achieving the objectives of 'The Turning of the Tide' prevention and education strategy targeting Māori. By early 2016, not improving but deteriorating trends were observable in the statistics (NZP, 2016). Study participants and youth justice statistics affirmed that the efficiency of the reformed system was far more favourable for non-Māori youth than for Māori youth. Unsuccessful youth justice interventions, FGC procedures and implementation of FGC/Alternative Action plans mostly occur when there are shortfalls in family support, which currently characterise more Māori than non-Māori families (Alison & Quince, 2014; N. Lynch, 2012b).

The 'normalisation' of incarceration as a part of the 'normal life course' has become an accepted social reality for many Romani and Māori families and communities in recent decades (H. Szilágyi, 2009; T. K. McIntosh & Radojkovic, 2012; Workman, 2011b). A contributing factor to this 'normalisation' is the widespread sentiment regarding law enforcement as being oppressive and discriminative against them. Cumulatively, it trivialise sanctions including prisons; consequently, the deterrence effect incorporated in the punitive criminal policies is decreasing substantially for many Romani and Māori (Kerezsi et al., 2014; Payne, 1997; Solt & Virág, 2010; Tauri, 2011). Analysis of empirical and statistical data in the thesis consistently showed that when the greatly reduced educational prospects were followed by missing or limited labour-market participation, it considerably diminished the chance of successful integration into society and maintained a marginalised and criminalised status. The evaluation of the appropriateness of the youth justice system for Romanies is quite challenging since official, Romani-specific information about offending/reoffending trends and patterns is not available. In optimal circumstances, disproportionate involvement of an ethnic/racial group in CJSs would inspire scrutiny and reflections on the operation of the social control systems. However, realistically, there is no prospect for such an undertaking in Hungary in the coming years.

It was observed that changes and trends in the Hungarian youth justice system were comparatively more worrisome than in New Zealand. While The National Strategy for Social Crime Prevention from 2003 supported the notion of social inclusion and social justice as a decisive aspect in crime prevention and designed a complex system of support for juveniles, the progressive directions have been side-tracked by the populist, punitive turn in youth justice. Basic changes evidently stand in strong contrast to meeting the requirements of the CRC concerning the administration of juvenile justice. The dissolution of the separate juvenile jurisdiction, the reduction of the age of criminal responsibility and the alternative for confinement/detention of youths for minor rulebreakings are the most controversial issues. This rekindled preference for custodial measures is in a complete contrast to New Zealand's juvenile justice system. Another long-running, unsettled worry is the protracted nature of procedures against juveniles as less than half of them are ended within 6 months while pre-trial detention is still too frequent and too long (Dünkel, 2014). Further direct contrast to New Zealand is that no special training is required from police officers dealing with juveniles. Finally, there is a lack of appropriate cooperation between the justice and the social, health and educational sector. Inadequate or missing special training of judicial officers and the prison staff and the shortage of satisfactory rehabilitative programmes are widespread. The study finds that the inappropriate usage of the youth justice system disproportionately affects underprivileged Romani communities and serves as an instrumental component of a systematic social exclusion.

10.3. Discriminatory practices in the juvenile justice system

In the examination of this research topic, one of the key issues to emerge was the need to accommodate statistical data with individual experiences of Māori and Romani People. One of the most notable impressions among several study participants in both countries was the 'statistically' hardly verifiable, still widespread presence of prejudice and discrimination in the administration and practices of the CJS. The contrast between official crime statistics and datasets of self-reported victimisation and offending surveys could assist the better understanding of these issues; however, they are missing. Nevertheless, the strength of the evidence still reveals that biases and discrimination are present in both justice systems. These biases create increased risk to Māori and Romani youth of both police profiling, prosecutions and convictions when compared to majority groups with a similar offending history and socio-economic background (Bull, 2001; Davison, 2013; Farkas et al., 2004; Fergusson et al.,

2003a, 2003b; Póczik, 2001; Workman, 2011a, 2013). Documentary research and primary research data of the study indicated that the 'discrimination thesis' proved to be more compelling in explaining ethnic disparities in New Zealand and Hungarian youth justice. Yet, differential involvement thesis is not discredited at all, as both theories explain parts of the contributive factors to ethnic disproportionalities (Morrison, 2009).

Dovidio, Kawakami and Gaertner (2000) distinguished between different forms of prejudice like the conventional types that are conspicuous and deliberate and the indirect, unwitting, and often unconscious forms of bias. Due to the diminished leniency for overtly communicated discrimination, less of the traditional form of prejudice and more of the unconscious form can be observed in western countries. Findings of the study suggest that, comparatively, in New Zealand probably some of the agents of the juvenile justice system have institutionally discriminative features, while in Hungary a rather universal discriminatory attitude is present. It penetrates Hungarian society, which influences the justice system where discrimination, more or less tacitly, becomes an operational norm. Anti-Romani attitude and distorted cognition of Romani marginalisation bolsters the belief that being a disadvantaged young Romani is inevitably tantamount to deviance (Herczog & Neményi, 2007; Kóczé & Versitz, 1998). The presence of social reticence, aversion and even discriminatory practices can be found at the most prestigious level of the justice sector, and they frequently influence process outcomes (Kerezsi & Gosztonyi, 2014; H. Szilágyi, 2009). This study finds that less severe still clearly discriminatory and exclusionary tendencies are present in New Zealand as well; however, a clear-cut distinction is not made between the two countries. The study ascertains that categorical, de jure discrimination was replaced by a de facto discrimination in both countries. In fact, it has brought unequal protection of the law, unwarranted level of surveillance, police profiling, relentless segregation, mass imprisonment, all of them under the guise of efficient crime control. Certainly, personal criminogenic factors operate jointly with incidents of overt and indirect discrimination within the justice system and more broadly in society; and they jointly produce ethnic disparities (Garland, 2001b; Morrison, 2009; Wacquant, 2009). Blagg et al. (2005) noted that the cardinal differentiation between overt and hidden, direct and indirect discrimination was therefore the contrast between disparate practice and disparate consequence for individuals of various ethnic origin in the CJS. In practice, as social and cognitive psychology determined, it implicates that it is unrealistic not being influenced by certain (conscious or unconscious) biases in human interactions.

The study agrees with the claims of CRT and critical criminology that colour-blind policies preserve racial/ethnic inequality, and has questioned the tenability and appropriateness of colour-blind policy approaches in either country. Critical criminology and CRT propose that conscious efforts are needed to adapt social/criminal policy and institutions to moderate social exclusion and to accommodate ethnic and cultural differences more adequately. The issue of 'white privilege' was also investigated in the thesis. It is suggested here that without raising white racial awareness, whiteness would persist as mostly invisible to many white people, while it remains easily perceivable to most people of colour (Consedine & Consedine, 2005). Consequently, without appropriate countermeasures, there are little understanding and limited motivation among whites to address the arising inequalities and injustices. The thesis affirms that the appropriateness of the colour-blind social policies and criminological approaches can be rationally disputed since disparate outcomes are to be in the focus of policymakers and stakeholders regardless of their origin, because they embody the essence of social issues to be addressed.

10.4. Alternative justice practices

First, the study notes that the appreciation of the rationale of alternative approaches in the proper understanding of the challenges affecting the lives of ethnic minorities is still in its inception in the New Zealand and more obviously in the Hungarian criminological literature. The most pertinent theoretical constructs for the thesis, such as critical criminology, CRT and zemiology have a common point here, the need to differentiate between concepts of 'justice' and equality. The supremacy of the conservative 'equality' and the procedural 'one law for all'-justice should be surpassed for the sake of more efficient outcomes in relation to the 'age-old' ethnic over-representation and structural disadvantages in the CJSs (Crenshaw, 2011; L. E. Ross, 2010). The zemiologist perspective submits that dogmatic approaches in conventional criminology and criminal policy on ethnic crime are unable to suitably address various deep-seated social traumas. Critical criminology and zemiology reasoned that the lack of policy prudence and the limited attention to performance feedback process have created (over-)criminalisation and retribution in such a way that produces more social disadvantages than benefits (Dorling et al, 2008; Pemberton, 2015). In addition, the study noticed a relevant parallel between community-based Māori and Romani justice practices. Accordingly, restorative and peace-making attitudes with the ambition to re-establish stability and balance have remained vital in many Romani and Māori communities (or between communities). In

the mainstream systems, these notions are still widely ignored. Meanwhile, the 'normalisation' of Māori and Romani mass imprisonment is also alarming with respect to inter-ethnic relations.

In reality, the current care and protection services and juvenile justice systems are mostly unable to cope with the challenge of intergenerational transmission of crime in the lives of many Māori and Romani. Data of this study suggests that major improvement cannot be reasonably expected without fundamental, system-wide changes. Persistent ineffectuality of the mainstream justice system persuaded many Māori and Pākehā stakeholders to propose more radical changes including the consideration of separate or parallel Māori social services (Bowen et al., 2012; M. H. Durie, 2003; Toki, 2016; C. Williams, 2001). In Hungary, even the realisation of the futility of current justice practices to cope with Romani overrepresentation, and the demand of fundamental changes in the CJS are still to come. The potential contribution of Romani community justice philosophies and institutions to the operations of the mainstream justice system has not been considered yet. This study anticipates that social and political marginalisation of Romanies and strong anti-Romani attitudes will mostly remain dominant; and the utter disregard for Romani community justice institutions will not be significantly changed.

10.5. A more responsive juvenile justice for Māori and Romani youths and communities

Traditionally, both States had prevented the meaningful participation of Māori and Romani in government decisions and policymaking and in the public administration concerning their communities. Although Māori political and economic power has been extended in comparison to that of Romani, they still possess insufficient political influence to become the key determinant of their future. The study observed that underprivileged social status considerably eroded kinship care, while social services remained too often incapable of providing satisfactory family protection to keep children in their families. The paradigm-change in the child and youth care system in New Zealand intended to give a much bigger role for whānau in the care of their tamariki. However, one main contributor to Māori disillusionment was the realisation that still almost half of their tamariki in the care of the state were not placed within whānau, hapū, iwi networks. Most Māori stakeholders saw it as a clear failure of the legislative intent (Pakura, 2004). Moreover, social workers who got the custody of Māori

children often remained ignorant of the ways in which the kinship network provided support to family members in difficulty (Moyle, 2014). The study discerned that circumstances in the Hungarian child and family protection services for disadvantaged Romani families are similarly unfavourable.

Historically, indifference, unsatisfactory acknowledgment and/or visible disregard for Māori and Romani culture and justice have been partly responsible for the unceasing over-surveillance and criminalisation of their unusual and unrecognised customs and communal life. To some degree, the misjudgement of criminal susceptibility ascribed to Māori and Romani emerged from the ignorance of or unfamiliarity with the principles and guidelines of Te Ao Māori and Romanipen. Undoubtedly, significant changes have taken place in Māori and Romani culture and communal dynamics like the disruption in the adherence to established norms. The strength of the principal protectors of Te Ao Māori and Romanipen has been weakened as the authority of community dignitaries and institutions have waned (M. H. Durie, 2011; Kapralski, 2005). Yet, the more cohesive the ethnic community the more responsive to reprehensible behaviours and the more prepared to manage them competently. Culture-blind atmosphere and procedures reject traditional principles and rules. Still, evidently, the current justice procedures lack the meaningful consideration of the ethnic/cultural features of an offender, notably in relation to discretionary decisions. The study findings indicate, however, that the practice of Māori and Romani conflict resolution and cultural concepts could be conducive to better cooperation with authorities and to an enhanced interethnic harmony. Additionally, the differences between the principles, approaches and procedures of the conventional legal system and of the traditional justice in the two countries may not be as irreconcilable as on the surface they seem. The advocates of the culture- and colour-conscious policies should refer to the European Commission's (2011) support expressly encouraging affirmative actions and disparate treatment since orthodox measures of social inclusion turned out to be insufficient to countervail the structural disadvantages of Romani. Importantly, in New Zealand, the legal basis for affirmative action is also provided (Human Rights Act 1993 s 73, New Zealand Bill of Rights Act 1990 s 19(2)).

The research concludes that probably both Peoples will continue to encounter growing crime-related issues while the reactions of the mainstream system are not developing adequately. Fundamental changes would require the re-evaluation of social challenges from a social harms perspective. Secondary research sources and several research participants expressed it in various forms. They reiterated that irrespective of benevolence and allocation of substantial

funding, without structural ‘reconfiguration’, they saw no feasible prospects to accomplish major advancement in the effectiveness of the (youth) justice system. Interviewees in both countries voiced similar remarks and recommendations that were congruous with the basic perspectives of zemiology and critical criminology. Having regard to the decades of fruitless criminal policy mostly ignorant of difference and discrimination against Romani and Māori, they proposed for consideration a profound adjustment of the prevailing justice models or conceivably the supersession of the ‘one law for all’ axiom. Indeed, the aspiration for a separate or parallel indigenous/ethnicity-based justice system has not been satisfied yet in any countries (Jeffries & Bond, 2011; Toki, 2016). Without precedents for models in operation, the international literature is still largely theoretical (Gabbidon, 2010). At the outset, the development should focus on juveniles, first and minor offenders; and extending the jurisdiction progressively to other subjects. However, in the end, there is no ground to presuppose that significantly more independent justice systems cannot be realised. The next section discusses the perspectives of the Māori and Romani criminology.

10.5.1. Māori and Romani criminology

Minority perspectives in criminology are rarely articulated emphatically in the mainstream, conservative approaches because those approaches mostly situate the explanations of offending at individual or subcultural levels (Phillips & Bowling, 2003). The data of this study also suggests the consideration of the forming of Romani Criminology, in a similar way as Māori Criminology has been evolved (Bull, 2001; M. Jackson 1988, Tauri, 2011; Tauri & Webb, 2012; Webb, 2003a). The study findings indicate that Romani, as Māori as well, need adequate opportunity and time to develop their perspectives in their own fashion, applying their own terminology and methods. Māori criminology involves Māori cultural philosophies to conceptualise crime; and it promotes greater self-determination in criminal procedures and the decolonisation of the justice system as the best way to manage institutional racism and to redress systemic ineffectuality for Māori. This study implies that the formulation of a Romani perspective in criminology also seems prudent as part of their self-determination ambitions and social inclusion. Cultural defence, which is recognised in New Zealand (McMullan, 2011; J. Williams, 2013) could be a kick-off for Romani criminology and the beginning of a more authentic incorporation of Romani concepts of justice. Certainly, Romani criminology needs to focus on the ‘reality’ of crime as social challenge as well. Carefully addressing any Romani

hesitation and qualms concerning outside interference (i.e. externally encouraged advocacy of minority perspectives in criminology) is also essential.

Without extensive social inclusion policies and improved social welfare services, the usefulness of the development of a Romani (or Māori) criminological perspective remains elusive. Moreover, community-oriented crime prevention and protection of cultural and communal integrity should supplement the aspirations for developing Romani criminology. Progress in Māori and Romani criminology could encourage the deconstruction of mainstream theories, further empirical research and investment in data collection disaggregated by ethnicity, the revision of policymaking and law enforcement practice. Simultaneously, Māori and Romani People need to analyse their traditional law and to investigate the institutions and procedures that are readjustable to modern social conditions. Many successful Māori (and some Romani) projects showed that updated informal controls can be adapted to the contemporary, urbanised societies. Wider recognition of minority perspectives can be supported by dialogue, history and folklore education, which could demonstrate how ethnic differences evolved as coping skills for survival. For the idea of an inclusive society, the political atmosphere and the mindset of the public need to be adjusted, and community mobilisation should be supported. However, even in a well-resourced and more autonomous Māori or Romani justice system, with unchanged structural inequalities and/or marginalisation, there is limited prospect for major reduction in over-representation in crime. Apparently, marginalisation, institutional discrimination, systemic disparities, over-surveillance and mass-incarceration are synergic interactions. Still, competently managed Māori/Romani justice institutions could have the capacity to contribute to the alleviation of the exclusionary effects of the criminal/juvenile justice systems.

10.5.2. Scope for further research

Since this research is an exploratory study, which intended to draw attention to the existing gaps in the literature, it is suggested that there is a need for further investigations. Further research seems to be necessary in connection with Māori and Romani peoples in criminal/juvenile justice systems to gain valuable information about ethnic dimensions of crime and law enforcement. It is advocated that in Hungary, as it is in New Zealand, regular victimisation and self-reported offending surveys be introduced. Moreover, reliable and extensive ethnicity data is the prerequisite of meaningful further research, groundwork and strategic planning in social and criminal policies. In the Hungarian youth justice, there is a

great scope for exploration of the further consequences of social injustices concerning Romani children and young people. It looks evident that further research is indispensable to examine the impact of the increased substance use among Romani youth on their future life course and crime rates. Scientific evidence and gaps in the literature provide reasonable grounds for further research in Hungary since there is a clear need to interpret the relationship between lead and other neurotoxins and crime sociologically

Thorough analyses are requisite concerning informal, community controls to learn more about their operations and to realise how they can be more effective than the mainstream systems. The advancement of knowledge on Romani and Māori law would be indispensable including the further discovery, recording and explanation of the Māori and Romani justice institutions, their geneses, procedures and jurisdiction. It is recommended that Romani perspectives be given greater role in the education of criminology and criminal justice. The development of the curriculum for these studies is also urgent together with training about culturally more sensitive/appropriate attitude towards Romani (and Māori) People. Finally, it is vital to note that research participants and youth justice stakeholders in both countries emphasised that most importantly young people needed proper skills and experiences to get along better in a crime-free, more ordinary way of life. Findings in social psychology suggest that individual self-realisation requires realistic opportunities to experience appropriate level of dignity and equality. There are countless ways of symbolic derogation, educational and employment discrimination; and those practices significantly impair their victims' capacity by depriving them of the experience of self-respect or appreciation of the distinctive values of their identities and paths of life. Without greater awareness, the 'big picture', the social reality for these disadvantaged youths will remain obscure in the system. In addition, the issues emerged and recommendations from the stakeholders could be used more widely to assist Romani communities throughout the EU. Several findings of the study could also be adapted to other marginalised groups in Europe.

10.5.3. Concluding remarks

This study intended to shed light on the different social, cultural and historical backgrounds and various strengths and weaknesses of the approaches in each country's youth justice systems. Differences in the political, social and cultural context, in the legal systems and in statistical and evaluation methods in each country often produce hard to compare figures and facts regarding the extent and characteristics of juvenile delinquency. While direct

comparisons between the two countries and between the different perspectives and views of the stakeholders cannot be always drawn for lack of comparability, insight has been gained into the differences and similarities of the policing practices in Hungary and New Zealand with regard to their respective ethnic minorities.

Comparative investigations into the treatment of vulnerable children and juvenile offenders, in theory, enable child protection and youth justice systems to learn from each other's experiences and to develop more innovative and efficient practices. The Police and Probation Service have started to employ some alternative (restorative) justice methods but these are still in a nascent stage and without any meaningful attention to the specific needs of Romani youths, hence the far more advanced practice experience in New Zealand deserves increased attention. Hungary could profit from contemplating the more tolerant and less punitive approach to juveniles including the relatively well-functioning restorative justice (especially FGCs) and police diversion practices, judicial innovations and, *mutatis mutandis*, the greater Māori influence over the administration of justice. In summary, the study detected a comparatively more cynical approach and disingenuous attitude of policymakers and authorities regarding the over-representation of Romanies in the child protection and juvenile justice system. There is a typical way of accelerating children and young people into the system without recognising them as victims of those procedures as well. Their further traumatisation in these systems are common, while attempts to intervene intergenerationally are usually inadequate. Importantly, in comparison, New Zealand has a more progressive and holistic view to youth offending. Even so, in general, features and outcomes have remained correspondingly unsatisfactory regarding ethnic discrimination, social exclusion, monoculturalism and access to justice and the reality of Māori and Romani ethnic disparities within their respective youth (criminal) justice systems. On this point, the study found a parallel pattern; accordingly, profound changes among high-profile policymakers in approach and in commitment to 're-imagine' the youth (criminal) justice framework had not been realised yet.

APPENDICES

Appendix 1 – Glossary of Māori and *Romani* words and concepts used in the thesis

Aroha	*love, affection, compassion, empathy*
Āwhina	assistance, aid, help, benefit
Bezax	*the concept of sin*
Divano	*conversation, discussion, advice session, round table, a dispute settlement mechanism*
Familija	*extended family*
Gadjo/*Gadji*	*Non-Romani, a person who has no Romanipen (male/female), also an ethnic Romani who does not live within Romani culture*
Glaba	*a fine (usually imposed by the krisnitorya)*
Hapū	smaller subset of iwi
Hara	crime or transgression, objectionable acts
Hohou te rongo	to make peace, cultivating peace and goodwill
Hongi	a greeting (by the pressing of noses)
Hui	gathering together of people for discussion
Iwi	a tribe which traces descent from a common ancestor
Kai	food, meal together
Kapa haka	Māori cultural group, Māori performing group
Karakia	prayer, ritual, incantations, chants recited rapidly using traditional language
Karanga	formal call, ceremonial call, welcome call
Kaumātua	respected male elders
Kaupapa	topic, policy, matter for discussion, plan, agenda, initiative
Kaupapa Māori	Māori approach, Māori customary practice, Māori ideology – a philosophical doctrine, incorporating the knowledge, skills, attitudes and values of Māori society
Kawanatanga	governorship
Kīngitanga	kingdom, sovereignty, the Māori King Movement
Kintala	*spiritual balance, harmony*
Koha	gift, donation
Kohanga Reo	Māori language preschool
Kōrero	dialogue
Kōrero tahi	talking together
Kotahitanga	unity, inclusiveness, togetherness, solidarity, collective action, Māori Parliament – 19th century movement for self-government and national unity
Kris Romani	*Romani Court or Gypsy Peace Trial, Romani community justice institution / dispute resolution method*
Krisnitori/ Krisnitorya	*judge(s) at a Kris Romani (lay adjudicators)*

Kuia	respected female elders
Kura Kaupapa Māori	Māori-language immersion schools (primary)
Lazhav/ lajav	*shame, disgrace, immorality*
Māori	indigenous people of New Zealand
Mana	influence, prestige, honour, authority, power
Mana whenua	trusteeship of the land
Mana tangata	indigenous rights
Marae	meeting area, focal point of settlement, courtyard
Marae kawa	protocol of the marae, procedures
Marime	*unclean, being declared unclean, ritual pollution, social avoidance*
Mātua	parents
Mātauranga Māori	the knowledge base and concepts related to a specific tikanga
Mauri	life force, unique essence; untapped potential
Mihi	traditional greeting in Te Reo Māori, pay tribute, acknowledge
Mokopuna	a grandchild or young person
Mule	*ancestors*
Muru	seizing of goods to address an imbalance, ritual plunder
Noa	free from tapu or any other restriction, ordinary, unrestricted
Ora	wellbeing, health
Pākehā	New Zealander of European descent
Pana	banishment, dismissal,
Pepeha	tribal saying, set form of words, saying of the ancestors
Porajmos	*The Romani genocide or Romani Holocaust, literally 'the Devouring'*
Pōwhiri	a ritual ceremony of welcome, normally held on a marae
Puré	*patriarchs, elders, custodians of the Romani laws and traditions, bearers of wisdom, experience and knowledge, they serve as krisnitorya as well*
Rangatahi	young adults
Rangatira	chief
Rangatiratanga	chieftainship, right to exercise authority, self-determination
Rohe	boundary, district, region, dwelling in the traditional tribal area
Romanipen/ Romaniya	*Romani culture, behaviour and values, Romaniness, a complicated term of Romani philosophy, Romani culture and Romani law*
Romano Zakono	*Romani Code, the framework of Romani law*
Rūnanga	council, tribal council, iwi authority, village committee
Rūnanga o nga tura	court or council of law
Shudine	*banishment from the community, ostracism*
Soláx	*the ritual Romani oath*
Taha Māori	the Māori perspective, Māori identity, Māori character, Māori side
Tamariki	children
Taonga	treasures, prized possessions
Tangata whenua	(indigenous) people of the land, local people, hosts
Tapu	sacredness, inviolability, having spiritual restriction
Te Ao Māori	Māori worldview
Te Puni Kōkiri (TPK)	Ministry of Māori Development
Te Reo Māori	Māori language
Te Tiriti o Waitangi	Treaty of Waitangi

Te Whare Wānanga	Māori tertiary institutions
Tikanga Māori	Māori customs, straight, direct, correct and right, the Māori way of doing things
Tikanga o nga hara	the law of wrongdoing
Tinana	(physical) body
Tino rangatiratanga	possession, chieftainship, control, power, self-determination, sovereignty, autonomy
Tipuna/ tupuna	ancestors, grandparents
Tohunga	a healer or a priest, an expert in traditional lore
Tohunga o nga ture	expert of law
Utu	reciprocation, form of compensation, revenge, balance
Vlach/Vlax	*Designation of a division of the Romani population which traces its ancestry in Europe to the former slaveholding principalities of Wallachia (now Romania)*
Vuẑiardo	*declared clean (at a kris, after having been declared marime)*
Waiata	song, sing, poem, chant
Wāhine	women
Wairua	spirit, spirituality
Waka	canoe, vehicle, allied kinship groups
Waka ama	outrigger canoe, outrigger canoeing
Wātene	warden
Whakamā	shame, embarrassment
Whakapapa	genealogy, family tree, lineage
Whakawhanaungatanga	process of establishing relationships, relating well to others
Whaikōrero	formal speech-making, exchange of formal speeches of welcome
Whānau	family or extended family, descent group, the basic social unit in Māori society
Whanaungatanga	relatedness, kinship, sense of family connection
Whānau Ora	Literally family health, a contemporary cross-government health initiative driven by Māori cultural values
Wharenui	meeting house, communal house, the focal point of a marae
Whenua	land, placenta

Appendix 2 – List of Abbreviations

AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ARR	Adjusted Rate Ratio
AUT	Auckland University of Technology
AUTEC	Auckland University of Technology Ethics Committee
CC	Criminal Code (Hungary)
CCL	Criminal Code Law 1878 (Hungary)
CE	Common Era or Current Era
CERD	Committee for the Elimination of Racial Discrimination
CHDS	Christchurch Health and Development Study
CJS	Criminal justice system
CoE	The Council of Europe

CPA	Criminal Procedure Act(Hungary)
CRC	Committee on the Rights of the Child
CRT	Critical Race Theory
CYF	Child, Youth and Family (New Zealand)
CYPFA	Children, Young Persons, and Their Families Act 1989 (New Zealand)
DoC	Department of Corrections (New Zealand)
DNA	Deoxyribonucleic Acid
ECHR	The European Court of Human Rights
ECRI	The European Commission against Racism and Intolerance
ERRC	European Roma Rights Center
EU	The European Union
FGC	Family Group Conference (New Zealand)
FRA	The European Union Agency for Fundamental Rights
GPI	Global Peace Index
HHC	Hungarian Helsinki Committee
HRC	Human Rights Commission (New Zealand)
HUF	The Hungarian Forint (currency)
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination (New York, 1966)
ICPS	International Centre for Prison Studies
KSH	Központi Statisztikai Hivatal. (Hungarian Central Statistical Office)
LBW	low birth weight
MCDA	Māori Community Development Act 1962
MoE	The Ministry of Education (New Zealand)
MoH	The Ministry of Health (New Zealand)
MoJ	The Ministry of Justice (New Zealand)
MSD	The Ministry of Social Development (New Zealand)
MSGS	Minority self-government system (in Hungary)
NCEA	National Certificate of Educational Achievement (New Zealand)
NEET	Not in education, employment or training
NGO	A non-governmental organisation
NS	The National Strategy for Social Crime Prevention (Hungary)
NZLC	The New Zealand Law Commission
NZMC	The New Zealand Māori Council
NZP	The New Zealand Police
OECD	Organisation for Economic Co-operation and Development
OPG	Office of the Prosecutor General (Hungary)
OSI	Open Society Institute
PPS	Public Prosecution Service (Hungary)
PCRNEM	Parliamentary Commissioner for National and Ethnic Minority Rights of Hungary
PTB	Premature birth
STEPSS	Strategies for Effective Police Stop and Search project (Hungary)
TÁRKI	Társadalomkutatási Intézet (Social Research Institute)
TPK	Te Puni Kōkiri (Ministry of Māori Development)
UCLA	The University of California, Los Angeles
UN	The United Nations
UNCRC	The United Nations Convention on the Rights of the Child 1989
UNDP	United Nations Development Programme

UNDRIP	The United Nations Declaration on the Rights of Indigenous Peoples
VOM	Victim-offender mediation (Hungary)
WWI	the First World War
WWII	the Second World War
YCAP	the Youth Crime Action Plan 2013-2023 (New Zealand)
YJC	Youth Justice Coordinator (New Zealand)

Appendix 3 – Approval of ethics application – New Zealand

AUT UNIVERSITY
TE WĀNANGA ARONUI O TAMAKI MAKAU RAU

MEMORANDUM

Auckland University of Technology Ethics Committee (AUTEC)

To: John Buttle
From: **Dr Rosemary Godbold** Executive Secretary, AUTEC
Date: 2 April 2012
Subject: Ethics Application Number 12/31 **Māori and Romani and juvenile justice – approaches and responses from different justice systems.**

Dear John

Thank you for providing written evidence as requested. I am pleased to advise that it satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC) at their meeting on 13 February 2012 and I have approved your ethics application. This delegated approval is made in accordance with section 5.3.2.3 of AUTEC's *Applying for Ethics Approval: Guidelines and Procedures* and is subject to endorsement at AUTEC's meeting on 30 April 2012.

Your ethics application is approved for a period of three years until 2 April 2015.

This approval has been granted for the New Zealand stage of the study only. I remind you that information about the Hungarian stage of the research needs to be provided to and approved by AUTEC before the data collection for that stage commences.

I advise that as part of the ethics approval process, you are required to submit the following to AUTEC:

- A brief annual progress report using form EA2, which is available online through http://www.aut.ac.nz/research/research-ethics/ethics. When necessary this form may also be used to request an extension of the approval at least one month prior to its expiry on 2 April 2015;
- A brief report on the status of the project using form EA3, which is available online through http://www.aut.ac.nz/research/research-ethics/ethics. This report is to be submitted either when the approval expires on 2 April 2015 or on completion of the project, whichever comes sooner;

It is a condition of approval that AUTEC is notified of any adverse events or if the research does not commence. AUTEC approval needs to be sought for any alteration to the research, including any alteration of or addition to any documents that are provided to participants. You are reminded that, as applicant, you are responsible for ensuring that research undertaken under this approval occurs within the parameters outlined in the approved application.

Please note that AUTEC grants ethical approval only. If you require management approval from an institution or organisation for your research, then you will need to make the arrangements necessary to obtain this. Also, if your research is undertaken within a jurisdiction outside New Zealand, you will need to make the arrangements necessary to meet the legal and ethical requirements that apply within that jurisdiction.

To enable us to provide you with efficient service, we ask that you use the application number and study title in all written and verbal correspondence with us. Should you have any further enquiries regarding this matter, you are welcome to contact me by email at ethics@aut.ac.nz or by telephone on 921 9999 at extension 6902. Alternatively you may contact your AUTEC Faculty Representative (a list with contact details may be found in the Ethics Knowledge Base at http://www.aut.ac.nz/research/research-ethics/ethics).

On behalf of AUTEC and myself, I wish you success with your research and look forward to reading about it in your reports.

Yours sincerely

Dr Rosemary Godbold
Executive Secretary
Auckland University of Technology Ethics Committee

Appendix 4 – Approval of ethics application –

Hungary

AUT
UNIVERSITY
TE WĀNANGA ARONUI O TAMAKI MAKAU RAU

MEMORANDUM

Auckland University of Technology Ethics Committee (AUTEC)

To:	John Buttle
From:	Rosemary Godbold, Executive Secretary, AUTEC
Date:	28 August 2012
Subject:	Ethics Application Number **12/31 Māori and Romani and juvenile justice – approaches and responses from different justice systems.**

Dear John

Thank you for providing written evidence as requested. I am pleased to advise that it satisfies the points raised by the Auckland University of Technology Ethics Committee (AUTEC) at their meeting on 13 August 2012 and I have approved your ethics application. This delegated approval is made in accordance with section 5.3.2.3 of AUTEC's *Applying for Ethics Approval: Guidelines and Procedures* and is subject to endorsement by AUTEC at its meeting on 10 September 2012.

Your ethics application for the Hungarian phase is approved for a period of three years until 27 August 2015.

I advise that as part of the ethics approval process, you are required to submit the following to AUTEC:

- A brief annual progress report using form EA2, which is available online through http://www.aut.ac.nz/research/research-ethics/ethics. When necessary this form may also be

used to request an extension of the approval at least one month prior to its expiry on 2 April 2015;

- A brief report on the status of the project using form EA3, which is available online through http://www.aut.ac.nz/research/research-ethics/ethics. This report is to be submitted either when the approval expires on 2 April 2015 or on completion of the project, whichever comes sooner;

It is a condition of approval that AUTEC is notified of any adverse events or if the research does not commence. AUTEC approval needs to be sought for any alteration to the research, including any alteration of or addition to any documents that are provided to participants. You are reminded that, as applicant, you are responsible for ensuring that research undertaken under this approval occurs within the parameters outlined in the approved application.

Please note that AUTEC grants ethical approval only. If you require management approval from an institution or organisation for your research, then you will need to make the arrangements necessary to obtain this. Also, if your research is undertaken within a jurisdiction outside New Zealand, you will need to make the arrangements necessary to meet the legal and ethical requirements that apply within that jurisdiction.

To enable us to provide you with efficient service, we ask that you use the application number and study title in all written and verbal correspondence with us. Should you have any further enquiries regarding this matter, you are welcome to contact me by email at ethics@aut.ac.nz or by telephone on 921 9999 at extension 6902. Alternatively you may contact your AUTEC Faculty Representative (a list with contact details may be found in the Ethics Knowledge Base at http://www.aut.ac.nz/research/research-ethics/ethics).

On behalf of AUTEC and myself, I wish you success with your research and look forward to reading about it in your reports.

Yours sincerely

Dr Rosemary Godbold
Executive Secretary
Auckland University of Technology Ethics Committee

Appendix 5 – Psychological support for research participants

AUT UNIVERSITY STUDENT SERVICES

MEMORANDUM

TO Bence Takacs

FROM Kevin Baker

SUBJECT Psychological support for research participants

DATE 26th March 2012

Dear Bence

I would like to confirm that Health, Counselling and Wellbeing are able to offer confidential counselling support for the participants in your AUT research project entitled:

'Māori and Romani and Juvenile Justice – approaches and responses from different justice systems.'

The free counselling will be provided by our professional counsellors for a maximum of **three** sessions and must be in relation to issues arising from their participation in your research project.

Please inform your participants:

- They will need to contact our centres at WB219 or AS104 or phone **09 921 9992 City Campus** or **09 921 9998 North Shore campus** to make an appointment
- They will need to let the receptionist know that they are a research participant
- They will need to provide your contact details to confirm this
- AUT has a Maori counsellor and participants can request to see this person
- They can find out more information about our counsellors and the option of online counselling on our website: **http://www.aut.ac.nz/students/student_services/health_counselling_and_wellbeing**

Yours sincerely

Kevin Baker
Head of Counselling
Health, Counselling and Wellbeing

Appendix 6 –Historical, cultural and ethical issues to the Ethics Approval

Historical and cultural sensitivity

The appreciation of Māori and Romani history and the grief, loss and pain that exist in these communities, which are unquestionably associated with different forms of oppression and marginalisation helped to significantly improve the researcher's ability to be culturally more competent. As Mahuika (2008) stated, experiences of many of the world's indigenous and ethnic minority peoples could attest to the devastating and dehumanizing impact that seemingly 'objective' researchers have had on their traditional cultures (see, for example Bishop & Glynn, 2003; Cram, 2009a; Gibbs, 2001; Havas & Liskó, 2005; Ladányi & Szelényi, 2006; Póczik, 2003a; L. T. Smith, 1999; Spoonley, 1999). L. T. Smith (1999) warned researchers who study minority cultures to be conscious of the *"power dynamic which is embedded in the relationship with their subjects"*; as they had *"the power to distort, to make invisible, to overlook, to exaggerate, to draw conclusions, based not on factual data but*

on assumptions, hidden value judgements, and often downright misunderstandings" (p. 176). Accordingly, there is the potential to extend knowledge or to perpetuate ignorance.

Although most researchers would sincerely believe that they wish to improve the conditions of their research participants or subjects, this has not always happened. Many research projects are designed and carried out with little recognition accorded to the people who participated – 'the researched'. Indigenous people and various minority groups in society have frequently been portrayed as powerless victims of research, which has attributed a variety of deficits or problems to just about everything they do. Years of research have frequently failed to improve the conditions of the people who were researched (L. T. Smith, 1999). Sharples put the question (as cited in Mane, 2009) about participating in research that relegates anything to do with Māori as problematic, or looking actively to participate in research that will bring about positive change. Timmer (2010) also argued that the starting point of many stakeholders in Romani issues was based on faulty reasoning:

> *"A key question raised by the Romani example is how social problems can be addressed without victimizing and ethnicizing a group in ways that overemphasise marginality. ... As long as the Romanies are conceptualised as a problem by those very people who are attempting to help them, the Romani/non-Romani divide will not be broken down and the organisations will be severely limited in their ability to make substantial inroads in addressing the needs of their beneficiaries."* (p. 276)

Consequently, during the whole study, it is constantly examined whether the research designed and conducted in ways that seek to create positive engagement, to display cultural and historical sensitivity, to give voice to its participants and to show them that they are directly involved with reasonable influence.

Cultural competence, cultural sensitivity

The use of substantial amounts of research output on cultural competence, cultural sensitivity, cultural appropriateness and cultural safety (American Psychological Association, 2002; Humphery, 2001) has assisted the study. Achievements in cultural competence challenged the researcher to think about culture, the forms and quality of relationships with ethnic minority peoples, and created spaces where, more or less, invisible institutional structures as racism could be uncovered (Sonn, 2004). It was attempted to understand power structures that are inherently embedded in the different 'social realities' of various ethnic minority groups. These power structures provide filters through which the world is viewed and interpreted; they provide the particularity of daily life experiences for individuals of majority and minority

groups. Power structures also influence the manner of behavioural reactions in different cultural contexts (Greenhill & Dix, 2008).

It was also paramount to be conscious of the importance of being aware of the heterogeneity of Māori and Romani identity and the diversity of their culture that is traditional, urban, rural and very different in many regards. Available research methodologies are usually representations of the researcher's own cultural background. The quest for an effective and culturally acceptable research practice is not a question of mere methodology, but of being prepared to remain conscious of the responsibility (as a non-ethnic minority researcher) of the potential for the research to do harm (Davey & Day, 2008).

Treaty of Waitangi and the research design

The research design and research practice were prepared to satisfy the principles of the Treaty of Waitangi:

Partnership: during the whole research project, it was recognised that *"indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge"* (The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, 1993 Section 2.1.). It also declared that:

> *"Indigenous peoples of the world have the right to self-determination and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property. The Declaration insists that the first beneficiaries of indigenous knowledge must be direct indigenous descendants of that knowledge".* (Preamble)

Guidelines produced by minority groups called on researchers to maximise benefits of research to (ethnic) minorities and Indigenous peoples. Respecting the conception that "all research in New Zealand is of interest to Māori, and research which includes Māori is of paramount importance to Māori", the recommendations of Te Ara Tika Guidelines was followed regarding Māori ethical understandings and perspectives (Hudson, Milne, Reynolds, Russell & Smith, 2010, p. 1). It is expected that research *"should benefit the concerned population at a local level and more generally"*. It goes then further: *"A reciprocal benefit should accrue for their allowing researchers (often intimate) access to their personal and community knowledge"* (AIATSIS, 2000, Principle 11). The principle is fulfilled by making results and analysis generated from the study available to Māori and Romani peoples.

Participation: The researcher advocated the importance of participatory approaches, of being flexible, understanding community and cultural protocols and refraining from being 'the expert'. To the extent possible and whenever it was appropriate, the researcher involved Māori and Romani community representatives and professionals in the conduct of the study.

Protection: The research process was culturally and socially sensitive and respectful to all participants. There were cultural sensitivity and respect for protocols on the marae. All participants protected through the provision of confidentiality and the strategy of informed consent. It was assured that participants know and feel that their participation was voluntary. Protection from harm required the avoidance of any possible research situation that might cause physical or emotional harm. Obviously, the study cannot be so important that it would be able to justify compromising the welfare of the participating or any other individuals.

It is important to underline that the design and practice of the Hungarian stage of the research also implemented the principles of the Treaty. Consequently, similar level of consultation about and consideration of the cultural and ethical issues for Romani people were guaranteed.

Further ethical consideration

At every stage in the research process (from conceptualisation to thesis submission), the researcher has the moral obligation to adhere to the acceptable moral behaviour and consider ethical issues. Consequently, ethical consideration has given to all research decisions, including subject matter, hypothesis, research questions, identification and implementation of research design, etc. (Yeboah, 2008). An essential ethics related feature of comparative research is the variety of recognised moral behaviours that researchers have to work with (Bennett, 2004). Something may appear morally pertinent or satisfactory to one ethnic group may not necessarily be acceptable to another (Cram, 2009a). Accordingly, various standards of behaviour, cultural and social practices and morally appropriate conduct have been taken into account during the entire study (Marshall & Rossman, 2011). It was critical to be sensitive to the respondents' backgrounds as well as to discern potentially sensitive linguistic and cultural issues, especially where the study involved participants with different linguistic and cultural backgrounds to those of the researcher (Yeboah, 2008).

Given the nature of this study, several ethical aspects were taken into consideration. Above all, every participant was treated with respect and courtesy. Ethical research practice is grounded in the moral principles of respect for persons (privacy, choice of participation and

anonymity), beneficence (prevent any possible harm), and justice (distributive justice with special attention to the redress of past and current social injustices). A strategy of informed consent was adopted; the aim and methods of the research were being made clear to all participants. It was assured that participants know, understand and feel that their participation is voluntary. Study participants were free to withdraw from the research for any reason at any time (Marshall & Rossman, 2011). The confidentiality of views and responses was assured; consent was always sought for recording the interviews.

Appendix 7 – Participant Information Sheet – New Zealand

Participant Information Sheet

Date Information Sheet Produced: 15/07/2012

Project Title

Māori and Romani and Juvenile Justice – approaches and responses from different justice systems

An Invitation

You are invited to take part in the research study: Māori and Romani Juvenile Justice. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask me if there is anything that is not clear or if you would like more information. Take time to decide whether you wish to take part. Thank you for reading this.

I am Bence Takacs, a PhD student at AUT University, supervised by Dr. John Buttle and Dr. Robert Webb. As part of this degree I am undertaking a research project leading to a thesis. The framework of this study based on the comparative nature of the research and its two principal features are the community-based restorative justice approaches within the formal justice systems and the traditional Māori and Romani justice practices.

You must understand that participation is voluntary and you are free to withdraw at any time prior to the completion of data collection without explanation and without incurring a disadvantage. Your participation is greatly appreciated.

What is the purpose of this research?

This study explores the underlying mechanisms of community justice, concentrating on the challenge of the over-representation of the ethnic minorities in the criminal justice systems and on access to justice in Hungary and New Zealand. By learning about what is happening in different countries, improvements can be made in understanding crime, in particular the social and cultural factors that impact on the incidence and prevalence of crime, and lessons from one country may be adopted and used in another country.

As research output a thesis will be submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy. Articles will be submitted to academic journals. Conference papers and presentations will be delivered in academic environments and to professionals working in the field of the formal justice system or restorative justice.

How was I identified and why am I being invited to participate in this research?

You have been invited as a potential participant because of your interest/involvement in the juvenile justice system.

What will happen in this research?

Your involvement in the study would be to take part in an interview where we discuss your understandings and experiences of justice, perceptions of fairness/success in the process, personal views of the prospects of the different community-based juvenile justice concepts and practices, any suggestions for change.

The interview will probably last between 1 hour to 2 hours depending on how much time you have available, and how much information you want to share. I will record the interview with your permission. The recording will be written up and you will be offered a copy of the transcript. The lawfulness of the recording and transcription of the procedure will be rigorously maintained during and after the observation.

It is up to you to decide whether to take part. If you do decide to take part, you will be given this information sheet to keep. You will also be asked to sign a consent form and provided with a copy of this. If you decide to take part, you are still free to withdraw from the study at any time and without a given reason.

What are the discomforts and risks?

I acknowledge that this may be a sensitive and personal topic. Talking about your experiences may trigger some emotions and psychological discomfort. You will be reminded that you do not have to answer any questions that might cause you discomfort.

How will these discomforts and risks be alleviated?

You can pause or stop the interview and the study at any time; you will be reminded of this at the beginning. In addition, you can refuse to answer any questions. If you become too distressed, I will stop the interview, give you some time to recover, and ask you if you want to stop or continue. If required, the AUT Counselling Service also will be available, free of charge, for you. AUT Counselling provides an online service, too. AUT has a Māori counsellor and you can request to see this person.
You can contact AUT Counselling centres at WB219 (55 Wellesley Street East, Auckland Central) or AS104 (90 Akoranga Drive, Northcote, Auckland) or phone 09 921 9992 City Campus or 09 921 9998 North Shore campus to make an appointment. You will need to provide my contact details to confirm that you are a research participant.
You can find out more information about the counsellors and the option of online counselling on the following website: **http://www.aut.ac.nz/students/student_services/health_counselling_and_wellbeing**

What are the benefits?

Whilst there are no immediate benefits for those people participating in the project, it is hoped that the benefit of this study will be the development of further understanding of criminological knowledge about Māori and Romani peoples with particular emphasis on the best community-based prevention and reintegration practices for youth. The findings of the study also will be used in my PhD thesis, articles, and presentations.

How will my privacy be protected?

All information, which is collected, about you during the course of the research will be kept strictly confidential. Any information about you, which is disseminated, will have your personal data removed so that you cannot be recognised from it.
All interview recordings will be destroyed six years after the end of the research. In addition, any details, which potentially could identify you, will also be removed or changed. My academic supervisors will have access to the anonymised transcripts of your interview. Your participation in this study will not be discussed with other interviewees, or anyone else.

What are the costs of participating in this research?

There are no financial costs to participating in the study. Your only cost will be time. The interview will probably last between 1 hour to 2 hours. I will record the interview with your permission.

What opportunity do I have to consider this invitation?

I would ask that you reply to the invitation within 2 weeks of receiving it so that I might organise travel arrangements. You can contact me or my supervisor (contact details below) to find out further information.

How do I agree to participate in this research?

If you agree to participate in this research, please contact me and we will set up an appropriate time to meet. You will need to fill out a consent form, which I have attached. I will collect this form at the meeting.

Will I receive feedback on the results of this research?

You will be given the chance to read the transcripts and thesis before handing it in. You will be provided with a summary of findings at your request. A digital copy of the submitted thesis will be available for participants. If you wish to receive information about the research output, contact details must be provided. Email addresses are preferred as contact details because these are the least problematic sources of information about the confidentiality of personal data.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Project Supervisor, Dr. John Buttle, Email: john.buttle@aut.ac.nz. Phone: +64 9 921 9999 extension 8964.

Concerns regarding the conduct of the research should be notified to the Executive Secretary, AUTEC, Dr Rosemary Godbold, *rosemary.godbold@aut.ac.nz* , +64 9 921 9999 extension 6902.

Researcher Contact Details:

Bence Takacs, doctoral student, AUT University, Faculty of Applied Humanities, Department of Social Sciences. Email: wsb7785@aut.ac.nz, bencetaka@gmail.com, +64 21 079 1703, +36 30 350 1716

Approved by the Auckland University of Technology Ethics Committee on 2 April 2012

AUTEC Reference number: 12/31

Appendix 8 – Participant Consent Form – New Zealand

Participant Consent Form

Project title: ***Māori and Romani and Juvenile Justice – approaches and responses from different justice systems.***

Project Supervisor: ***Dr John Buttle***

Researcher: ***Bence Takacs***

- ○ I have read and understood the information provided about this research project in the Information Sheet dated 15. 07. 2012.
- ○ I have had an opportunity to ask questions and to have them answered.
- ○ I understand that notes will be taken during the interview and that it will be audiotaped and transcribed.
- ○ I understand that I may withdraw myself or any information that I have provided for this project at any time prior to completion of data collection, without being disadvantaged in any way.
- ○ If I withdraw, I understand that all relevant information including tapes and transcripts, or parts thereof, will be destroyed.
- ○ I agree to take part in this research.
- ○ I wish to receive a copy of the report from the research (please tick one): Yes○ No○

Participant's signature:.....……

Participant's name:.....……

Participant's Contact Details (if appropriate):

……..

……..

……..

……..

Date:

Approved by the Auckland University of Technology Ethics Committee on 2 April 2012

AUTEC Reference number: 12/31

Note: The Participant should retain a copy of this form.

Appendix 9 – Participant Information Sheet – Hungary

Kutatási Tájékoztató

A kutatás megnevezése:

Fiatalkorúak igazságszolgáltatása Maori és Roma szemmel.

Felkérés

Szeretném felkérni Önt az alábbiakban részletezett tudományos kutatásban való részvételre. Mielőtt eldöntené, hogy részt kíván-e venni fontos, hogy megismerje, miért történik ez a kutatás, és mit tartalmaz. Ennek érdekében kérem, olvassa el figyelmesen az alábbi információkat, és ha szükségesnek érzi, ossza meg azokat rokonaival, ismerőseivel is. Ha bármilyen kérdése felmerülne, forduljon hozzám bizalommal! Fordítson időt arra, hogy eldöntse óhajt-e részt venni. Köszönöm, hogy elolvassa a következőket!

Dr. Takács Bence vagyok, az AUT Egyetem ösztöndíjas doktorandusz hallgatójaként végzek összehasonlító kriminológiai kutatást Dr John Buttle és Dr Robert Webb programvezetése mellett. A fokozat megszerzésének része a jelen kutatómunka elvégzése is.
A kutatás a hagyományos igazságszolgáltatás alternatíváival kapcsolatban meglévő elképzelések, attitűdök strukturális elemeinek vizsgálatára fókuszál a fiatalkorúakkal foglalkozó igazságügyi intézmények és közösségi szervezetek körében. Az általános és az etnikum-specifikus közösségi alapú reintágrációs és bűnmegelőzési módszerek összetett vizsgálatával a korábbi kutatások által feltáratlanul hagyott közösségi, illetve helyreállító igazságszolgáltatási lehetőségeket kutatom. Másodsorban a magyar büntető igazságszolgáltatás megreformálásának lehetőségeire koncentrálok a közösségi bűnmegelőzés és reintegráció eszközrendszere felől közelítve.
Szeretném felhívni a figyelmét arra, hogy a kutatásban való részvétel teljesen önkéntes.

A kutatás célja

Ez a kutatás feltárni törekszik a közösségi alapú igazságszolgáltatás én konfliktusrendezés működési mechanizmusát és jövőbeli lehetőségeit. Ennek során egyes etnikai kisebbségek büntető igazságszolgáltatás területén való felülreprezentáltságára, és az igazságszolgáltatási rendszerek válaszainak adekvátságára mint alapvető társadalmi kihívásra fókuszál Magyarországon és Új-Zélandon. A társadalmakon és kultúrákon átívelő elemző kutatás célja a különböző jogszabályi háttér és bírósági gyakorlat, a fiatalkorúakat érintő közösségi programok, modellek gyakorlati vizsgálata, hatékonyságuk elemzése, a különböző jó gyakorlatok továbbfejlesztési lehetőségeinek feltárása. Az összehasonlító kutatás révén lehetőség nyílik a különböző országokban zajló bűnözéskezelési megközelítések hatékonyságának vizsgálatára, a társadalmi és kulturális tényezők hatásainak megértésére.

A kutatómunka eredményeképpen doktori disszertáció kerül elkészítésre és benyújtásra. A kutatás főbb megállapításai pedig szaklapokban jelenhetnek meg, illetve konferenciákon, szakmai megbeszéléseken kerülhetnek bemutatásra.

Miért szerepelek a kutatás résztvevői között?

A fiatalkorúak igazságszolgáltatásával, bűnmegelőzéssel, a társadalomba való reintegrációt érintő szakmai tevékenysége/érdeklődése/érintettsége miatt tartom szükségesnek a kutatásban való részvételét.

Mi fog történni ebben a kutatásban?

Amennyiben úgy dönt, hogy részt vesz a kutatásban, akkor egy interjú keretében a fiatalkorúak igazságszolgáltatásával kapcsolatos tapasztalatait fogjuk megvitatni. Lehetősége lesz kifejteni véleményét a fiatalkorúak igazságszolgáltatásának roma vonatkozásai kapcsán, az eljárások sikerességéről, korrektségéről, esetleges javaslatait a közösségi alapú konfliktuskezelés, a helyreállító igazságszolgáltatás különböző modelljei kapcsán.

Az interjú hossza várhatóan egy és két óra közé tehető, annak függvényében is, hogy mennyi időt tud a kutatásra áldozni, illetve mennyi információt kíván velem megosztani. Amennyiben hozzájárul, a beszélgetés rögzítésre kerül. A beszélgetések egy részéről átirat készül, amennyiben igényli, ennek egy példányát megtekintésre, illetve jóváhagyásra meg fogom küldeni.

A vizsgálatban való részvétel teljes mértékben önkéntes és csupán az Ön döntésén múlik! Ha beleegyezését adta, és később mégis úgy döntene, bármikor mindenféle indokolás nélkül visszavonhatja azt, és ez semmilyen negatív következménnyel nem jár Önre nézve!

Van-e a kutatásnak bármilyen kockázata, adódhat-e bármilyen kényelmetlenség a számomra?

Tekintettel a kutatási területre, előfordulhat, hogy a téma a részvevő szempontjából érzékeny kérdéseket is érint. Személyes érzésekről, tapasztalatokról beszámolni bizonyos esetekben fokozott érzelmi reakciókat válthat ki, ez akár kellemetlenül is érintheti a részvevőt. Azonban nyomatékosan felhívom a figyelmét arra, hogy lehetősége van a bármely kérdés megválaszolásától eltekinteni, illetve az interjút leállítani.

Hogyan történik a kényelmetlenségek és kockázatok minimalizálása?

Menet közben az interjút bármikor megállíthatja, illetve megszakíthatja. Továbbá a válaszadás egyetlen esetben sem kötelező, ez mindenkor az Ön döntésén múlik. Amennyiben a kutatás következtében úgy érzi, hogy professzionális segítségre, tanácsadásra (pszichológus, lelki segély szolgálat) van szüksége, kérem, azonnal jelezze.

Milyen előnyök származ(hat)nak a kutatásból?

Noha közvetlen előnyök feltehetőleg nem származnak a kutatásból a részvevők számára, de remélhetőleg a kutatás eredményeképpen bővül a rendelkezésre álló kriminológiai tudás a Maori és a Roma népcsoportot illetően, különösen a közösségi-orientált bűnmegelőzés és reszocializáció vonatkozásában.

A kutatás eredményei felhasználásra kerülnek a doktori disszertációban. E mellett pedig a szélesebb szakmai és laikus közvélemény számára a kutatás eredményeit szeretném ismertté tenni (konferenciák, szakmai lapokban való publikáció, előadások).

Bizalmasan kezelik majd az adataimat és a részvételemet a kutatásban?

Minden Önről gyűjtött információt a legszigorúbb adatvédelmi szabályok betartásával kezelünk! Az adatok tárolása és feldolgozása az AUT Egyetemen történik. Az ottani kutatócsoport (a programvezetők és a doktorandusz hallgató) a legteljesebb diszkrécióval fogja kezelni az adatait, amelyek kódolt formában, anonim módon kerülnek feldolgozásra. Az adatokat legalább 6 éven át megőrzik, majd biztonsági szabályok betartása mellett megsemmisítik.

Milyen költségei vannak a kutatásban való részvételnek?

Az Ön számára nincs anyagi vonzata részvételnek. Az egyetlen “költség” a részvevők részéről a kutatásban való részvételre fordított idő, ami előreláthatólag egy és két óra közötti időtartamot jelent.

Milyen lehetőségem van a kutatásban való részvétel megfontolására?

Kérem, szíveskedjék a felkérés megérkezésétől számított két héten belül válaszolni. Pozitív válasz esetén így alkalmam nyílik az utazás megszervezésére. Az elérhetőségem a tájékoztató végén megtalálható. Amennyiben további információra lenne szüksége, akkor akár engem, akár a programvezetőmet megkeresheti ennek érdekében. (Az elérhetőség szintén a tájékoztató végén van.)

Mit kell tennem, ha részt veszek a kutatásban?

Amennyiben úgy dönt, hogy részt vesz a kutatásban, kérem, jelezze azt számomra. Kérem, töltse ki a tájékoztatóhoz mellékelt beleegyező nyilatkozatot és írja alá. A beszélgetés alkalmával szükségem lesz erre a beleegyező nyilatkozatra, kérem, hozza Magával.

Kapok visszajelzést, tájékoztatást a kutatási eredményekről?

Amennyiben igényt tart rá, lehetősége lesz a disszertáció és az elkészített átirat áttanulmányozására. Igény szerint a kutatási összefoglalót szintén a rendelkezésére bocsátom. Ehhez szükségem lesz az elérhetőségére, lehetőleg elektronikus levélcímére a könnyebb kommunikáció érdekében.

Mit kell tennem, ha bármilyen további kérdésem, esetleges aggályom merülne fel?

Bármely további kérdésével, esetleges aggályával a kutatást érintően forduljon a kutatásvezetőhöz: Dr John Buttle, Email: john.buttle@aut.ac.nz Tel.: +64 9 921 9999 extension 8964, illetve az egyetemi etikai bizottság vezetőjéhez: Dr Rosemary Godbold, *rosemary.godbold@aut.ac.nz* , +64 9 921 9999 extension 6902.

A kutatást végző elérhetősége:

Dr. Takács Bence, rektori ösztöndíjas kutató, AUT University, Faculty of Applied Humanities, Department of Social Sciences. Email: wsb7785@aut.ac.nz, bencetaka@gmail.com, +64 21 079 1703, +36 30 350 1716

Engedélyeztetve az Auckland University of Technology Etikai Bizottsága által 2012. augusztus. 27. napján. A bizottsági engedély száma: 12/31

Appendix 10 – Participant Consent Form – Hungary

Beleegyező Nyilatkozat

A kutatás megnevezése: ***Fiatalkorúak igazságszolgáltatása Maori és Roma szemmel.***

Kutatásvezető: ***Dr. John Buttle***

Kutatást végző: ***dr. Takács Bence***

- ○ Elolvastam a kutatásról szóló tájékoztatóban foglaltakat, és annak tartalmát megértettem.
- ○ Lehetőségem volt kérdéseimet feltenni a kutatást végző személynek, és kérdéseimre kielégítő válaszokat kaptam.
- ○ Hozzájárulok jegyzetek készítéséhez, illetve a beszélgetés rögzítéséhez, arról átirat készítéséhez.
- ○ Tudatában vagyok, hogy részvételem teljes mértékben önkéntes, valamint azt bármikor minden indokolás nélkül visszavonhatom, anélkül, hogy ez bármilyen negatív következménnyel járna.
- ○ Tudomásul veszem, hogy a kutatásban való részvételem visszavonása esetén minden lényeges adat – beleértve a hangfelvételeket és az azokról készült átiratokat – megsemmisítésre kerül.
- ○ Kijelentem, hogy részt kívánok venni a kutatásban.
- ○ Szeretném megkapni a kutatási jelentés egy példányát: Igen: Nem:

Résztvevő aláírása:
.....

Résztvevő neve:
.....

Résztvevő elérhetősége:

……..

……..

……..

Kelt:

Engedélyeztetve az Auckland University of Technology Etikai Bizottsága által 2012. augusztus. 27. napján. A bizottsági engedély száma: 12/31

Megjegyzés: A kutatásban résztvevő számára készült példány

Appendix 11 – Permission letter form

Letter to the Judge of the Rangatahi Court for permission

Dear Judge _____,

I am Bence Takacs, a PhD student at AUT University, supervised by Dr. John Buttle and Dr. Robert Webb. As part of this degree, I am undertaking a research project leading to a thesis. The focal point of my research is to discover the ways in which the community justice paradigm and its different models can be applied to social policy and juvenile justice systems. The study explores the underlying mechanisms of community justice, concentrating on the challenge of the

over-representation of the ethnic minorities in the criminal justice systems and on access to justice in Hungary and New Zealand.

In general, the aim of the research is not necessarily to evaluate, but rather to explore how justice processes are designed to meet the needs of specific ethnic minority groups. Observations and in-depth interviews are planned to collect data about the contemporary features of the operations of traditional Māori and Romani justice institutions and of the restorative justice programmes in the formal juvenile justice system. Focus groups with selected stakeholders in the juvenile justice system will be the last stage of the fieldwork, providing a strong assistance with the synthesis of the field research experience.

As part of the field research component, might I respectfully ask your permission to observe the operation of the Rangatahi Court session at _____ on _____?

When conducting observations, I will be discreet enough about who I am and what I am doing that I do not disrupt normal activity, yet open enough that the people I observe and occasionally interact with do not feel that my presence compromises their privacy. In other words, it is an observation of people as they engage in activities that would probably occur in much the same way if I were not present. If permission granted, the techniques used for this project during observations will involve the use of audiotaping and note taking of the justice processes (there will be no questions asked by the researcher during this process).

If you have any reservations concerning this research project, please do not hesitate to contact me. Many thanks in advance for your kind assistance, it is greatly appreciated.

Kind regards,

Bence Takacs

Appendix 12 – Research Observation Protocol

Research Observation Protocol[41]

[41] This research instrument is a non–intrusive observation: participants do what they normally do without being disturbed by the observer. The advantage of this method is that participants can be observed in the environment where the juvenile justice system is normally operated. However, one must always be aware of the possibility of

BACKGROUND INFORMATION

Observed Event_____

Judge/ Coordinator Name _____

Date of Observation _____

Start Time _____

End Time _____

Observer _____

OBSERVED EVENT'S CHARACTERISTICS

I. Event's Purpose

- According to the Judge/Coordinator, what was the purpose of this event and how does the outcome relate to the goals of the juvenile justice process?
- Family members', friends' and other supporters' reactions to the process.
- Any unresolved issue after the procedure completed?

II. Observational impressions

Notes on participants' behaviour

- Any evidence that the participants seemed interested and/or engaged in the procedure
- Any derailing of the process
- Any problems in the group dynamics (dominating members, quiet members, lack of cooperation, any remaining hostility among the participants, etc.)
- Any problems understanding the directions of the procedure
- Any motivational factors to be supported, obstacles to them
- Any behavioural issues, non-verbal messages relayed (gestures, etc.)
- Anything else thought to be substantial

III. Suggestions based on the observations

1. Given the observations, what aspects of the procedure need to be changed? How could the overall approach be improved?

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the so called "Hawthorne Effect"; the fact that people usually perform differently under observation because of the attention paid to them.

2. What aspects of the procedure should remain the same? What worked well?
3. Other strengths and weaknesses of the procedure.

During the observations, the observer is present, he sits passively and records as accurately as possible what is going on (audiotapes and field notes are used whenever permission granted for their use). During the process, a quite free approach is applied: the observer records all of the impressions rather than trying to group them instantly in some way. The aim is to identify relevant categories for use in the wider study later, and to define clearly the criteria to be applied by the observer in putting observed behaviour into particular categories.

Appendix 13 – Interview and consultation schedule/ Indicative questions – New Zealand[42]

1. How do you see the broad picture, what are your personal views on the historical lessons for Māori People and New Zealand society as a whole regarding the current status/position of Māori? (In the spheres of social issues: health, education, housing, cultural, community, economic and justice matters.)
2. What do you think about the future prospects of Māori as the distinctive Indigenous Population of New Zealand?
3. Do you have experience in empirical research on ethnicity, minorities, social exclusion and ethnic conflicts?
4. What do you regard as the main factors contributing to the current situation of Māori in the CJS? What are the most "valuable targets" in crime prevention? High-risk individuals/communities? Māori ethnic gangs in New Zealand? How do you see their effects on Māori youths?
5. With regard to justice institutional matters, what organisational/attitudinal changes are feasible in the political/social context in New Zealand? What are the prospects of various long-term governmental plans?

[42] Please note that interviews and consultations did not cover all the topics; the focus of each data collection procedure was mostly determined by the special field/interest of the research participant.

6. How do you see the future position of Māori youths in the CJS? What are your views on or experiences with the Rangatahi court initiatives? Te Hurihanga pilot? Te Whānau Awhina project? Any other interesting/promising initiatives?
7. What do you think about the prospects of parallel or autonomous justice institutions and methods? Rural/urban area differences? How do you see the perspectives of the Marae based conflict resolution initiatives?
8. In general, what are the strengths/weaknesses of present-day Māori communities, local and national level leaders? How do you see the class issues among Māori? Is there any willingness in the Māori middle class to play a significant role in prevention and in community-based reintegration for their juveniles?
9. How do you evaluate the role of the media in social divisions in New Zealand? And their effects on (potential) biases and discriminatory attitudes.
10. Imaginary question of an ideal CJS: having the power to form/develop the CJS in New Zealand; what would be the main modifications in the direction?
11. Is there anything else you can think of that might be significant for this research?

Appendix 14 – Interview and consultation schedule/ Indicative questions – Hungary[43]

1. What do you think, how effectively the community justice paradigm and its different models can be applied to social policy and criminal justice systems in Hungary?
2. How do you see the community perspectives on juvenile delinquency, violence and victimisation? How do you evaluate the role and potential of restorative justice in Hungary?
3. What are the most relevant factors affecting attitudes towards alternatives to conventional criminal justice among policymakers, juvenile justice stakeholders and community members?
4. How do you see the advantages and disadvantages of alternative conflict resolution practices compared to the formal justice system?

[43] Please note that interviews and consultations did not cover all the topics; the focus of each data collection procedure was mostly determined by the special field/interest of the research participant.

5. Do you have experience in empirical research on ethnicity, minorities, social exclusion and ethnic conflicts?
6. How do you evaluate the position of young Romani in the educational sector and in the labour market? How do you see civil initiatives, programs targeting the improvement of their school and /or labour market conditions?
7. How can prevention programs be more responsive to the perspectives of ethnic (Romani) minority individuals?
8. Have you identified systemic service delivery gaps and have you found promising interventions that can have the capacity to prevent offending behaviour among ethnic minority (Romani) youths?
9. How do you see the relation between the community (juvenile) justice and social justice, procedural justice, penal or retributive justice, cultural justice?
10. How do you perceive the complex relations between law enforcement and Romani minority, Romani juveniles and the criminal justice institutions? How do you see criminal law codification prospects in Hungary? (consultation with a member of a preparatory committee for criminal law codification)
11. How do you evaluate the role of the media in social divisions in Hungary? And their effects on (potential) biases and discriminatory attitudes?
12. What practical solutions can you imagine for the management of sensitive ethnic data in the criminal justice system?
13. Have you experienced the presence of overt or hidden discrimination during your projects? If so, in what form? How do you see its measurability and its effects on the relationships between the Romani minority and the criminal justice system, judiciary?
14. Is there anything else you can think of that might be significant for this research?

Appendix 15 – Participants

Participant A.: Hungary, personal communication (interview), March 6, 2013

Participant B.: Hungary, personal communication (interview), September 24, 2012

Participant C.: Hungary, personal communication (interview), April 23, 2013

Participant D.: Hungary, personal communication (interview), July 16, 2013

Participant E.: Hungary, personal communication (interview), August 2, 2013

Participant F.: Hungary, personal communication (consultation), October 5–7, 2011

Participant G.: Hungary, personal communication (interview), September 27, 2012

Participant H.: Hungary, personal communication (interview), September 23, 2012

Participant I.: Hungary, personal communication (consultation), September 15–29, 2011

Participant J.: G. Hungary, personal communication (interview), April 13, 2013

Participant K.: New Zealand, personal communication (interview), July 12, 2013

Participant L.: New Zealand, personal communication (interview), July 19, 2013

Participant M.: New Zealand, personal communication (interview), March 22, 2013

Participant N.: New Zealand, personal communication (interview), July 18, 2013

Participant O.: New Zealand, personal communication (consultation), April 15, 2013

Participant P.: New Zealand, personal communication, (interview), July 18, 2013

Participant Q.: New Zealand, personal communication (consultation), March 20, 2013

Participant R.: New Zealand, personal communication (consultation), May 4–9, 2012

Participant S.: New Zealand, personal communication (consultation), November 9–December 14, 2011

Participant T.: New Zealand, personal communication (consultation), June 18, 2012

Participant U.: New Zealand, personal communication (interview), April 24, 2013

Participant V.: New Zealand, personal communication (interview), November 15, 2011

Participant W.: New Zealand, personal communication (consultation), August 3–11, 2012

Participant X.: Hungary, personal communication (consultation), September 21, 2011

Participant Y.: Hungary, personal communication (consultation), October 21, 2011

Participant Z. Hungary, personal communication (consultation), October 5, 2011

Participant AA. Hungary, personal communication (consultation), October 4–25, 2011

Participant AB. Hungary, personal communication (consultation), September 12–21, 2012

Participant AC. New Zealand, personal communication (consultation), March 3–11, 2012

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