

CRIMINAL PUNISHMENT IN TIMES OF RISING PENAL POPULISM

How Criminology & Victimology Contribute
to the Human Rights Perspective?

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INTRODUCTION & BACKGROUND

- what is punishment? whom do we punish? why do we punish?
- **purpose & future of punishment?**
 - from retribution to treatment and resocialisation, into penal populism, (towards) *Feindstrafrecht* and pre-crime constructs... what comes next?
- clearly detectible **rise in penal populism** globally, as well as in Europe
- **intuitive crime policy** that responds to media's calls for harsher punishment by quickly adopting penal reforms that
 - 1) increase punishment (quantitative element) and
 - 2) incriminate ever more types of human behaviour/interaction (qualitative element)
 - ??? scientific evidence
 - ??? evaluation of reforms (e.g. convict criminology)
- **evidence-based crime policy:** tool to counter populism & moral panics
- potentials and limitations of **introducing criminological & victimological knowledge into the protection of human rights** of (potential) victims, offenders and societies as a whole – provide impulses for discussion





ULTIMATE AIM OF LECTURE

Facilitate a discussion about...

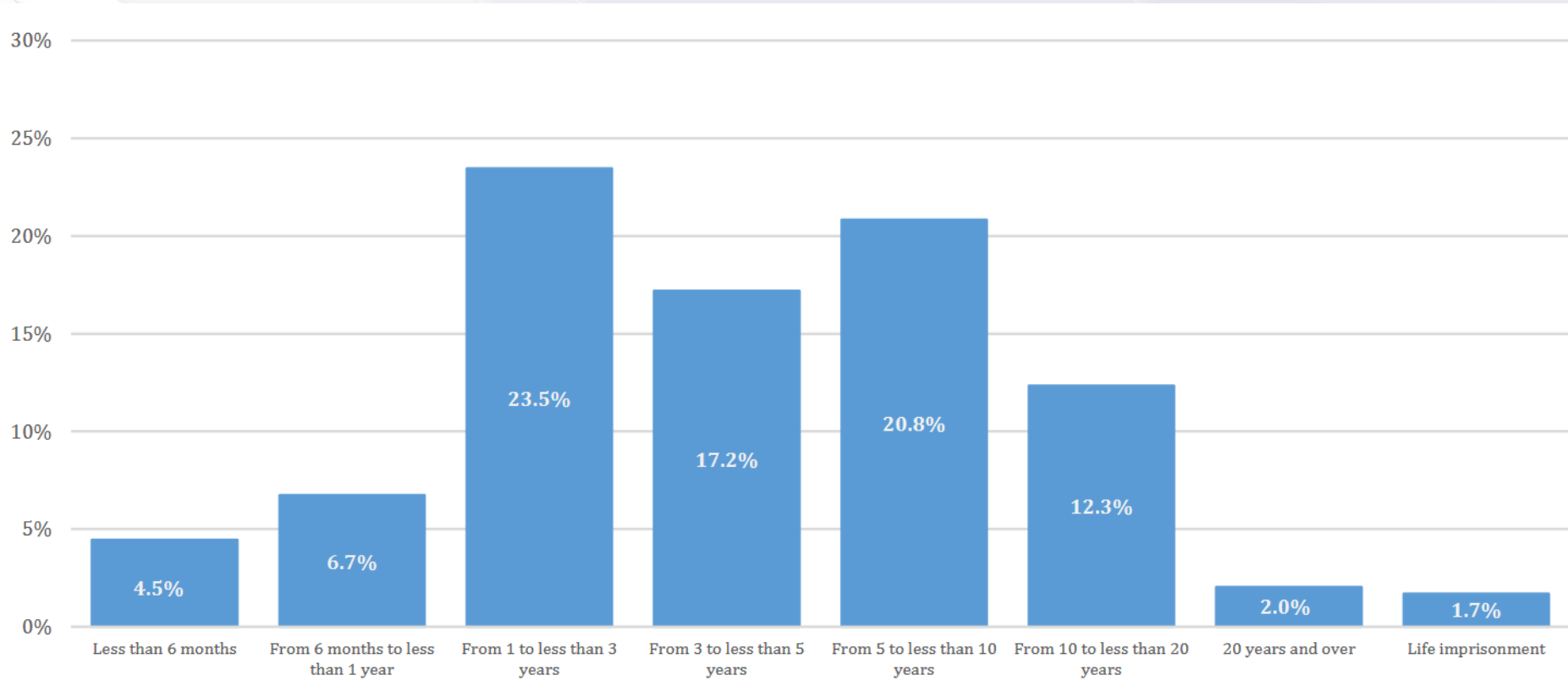
1. is there a **(human) right to criminal punishment and crime policy which are grounded in science and empirical knowledge**, or are we doomed to linger on indefinitely in a limbo of intuitive crime control?
2. how can we truly **protect (future) victims** of crime without research and evaluation studies that detect **what works and what doesn't work in crime prevention and control**?
3. how are we to **fulfil the resocialisation and rehabilitation purpose** of criminal punishment or reintegrate offenders if we do not apply criminological knowledge on **what works and what does not in terms of sentencing and penal treatment**?
4. what can **criminology & victimology offer** in the future and **how should the criminal justice system or ECtHR deal with such questions**?
 - side-note on grey literature & agenda-driven research with a reflection on the **responsibility of academia & the scientific community**





SETTING: SPACE STATISTICS Prisons & Prisoners in Europe

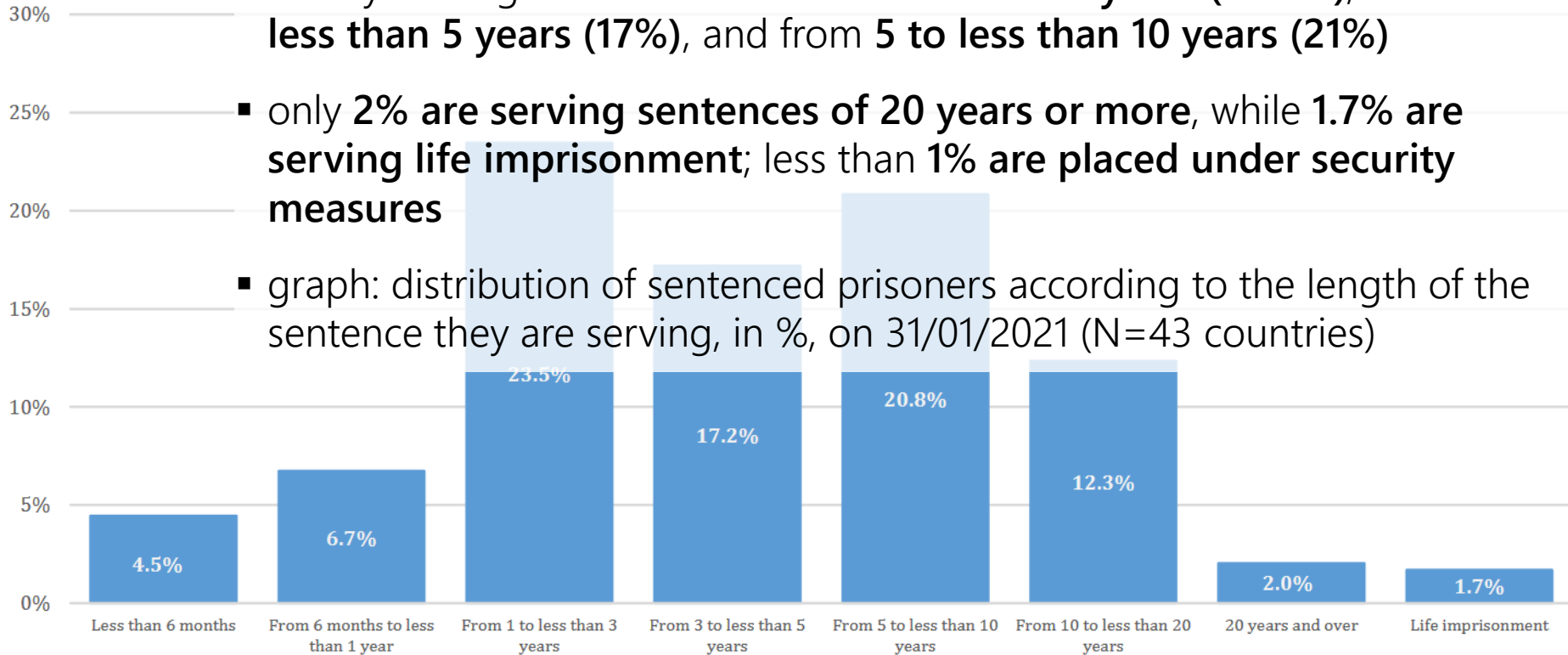
- huge differences in punishment (type & length) throughout Europe





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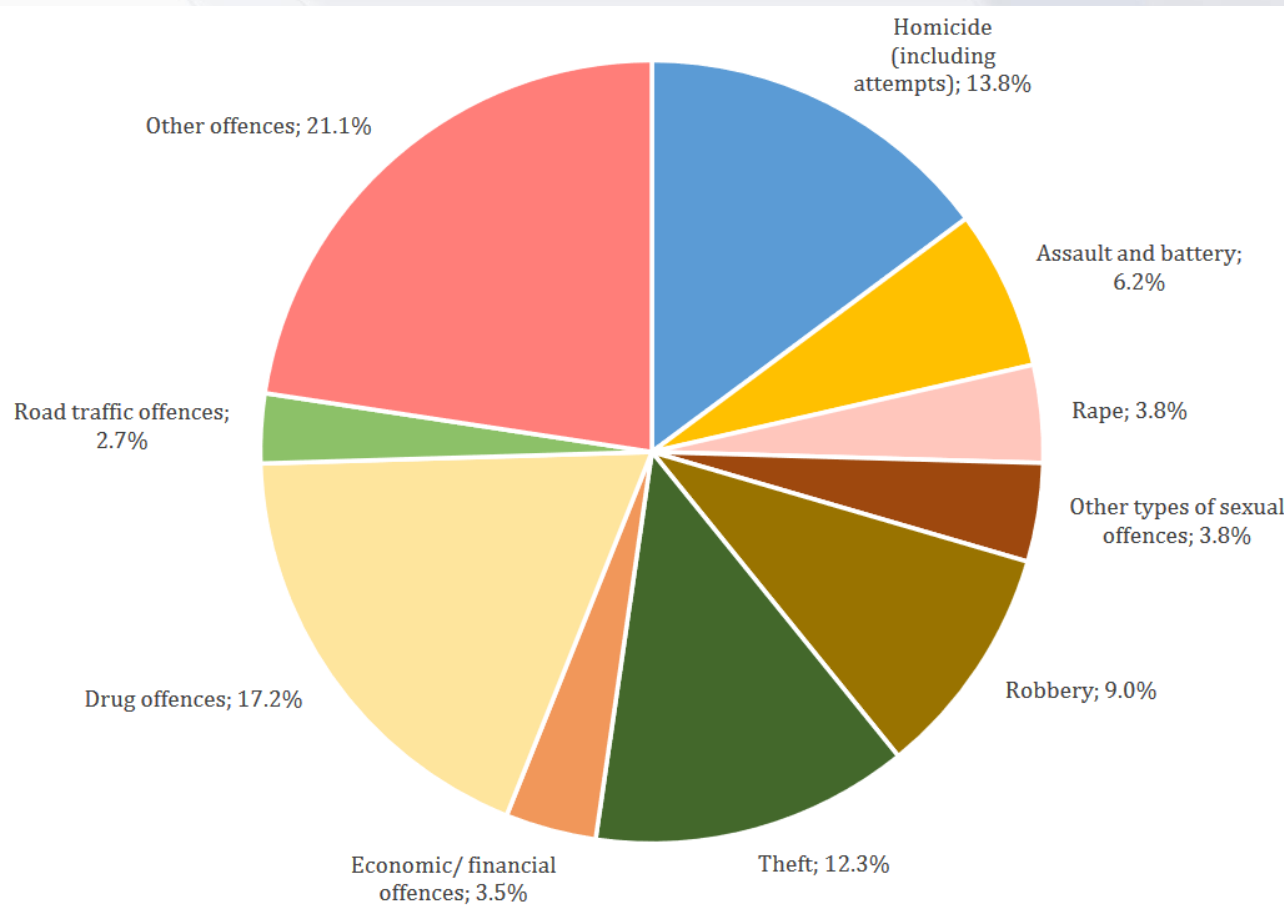
- huge differences in punishment (type & length) throughout Europe
- length of sentences imposed on inmates who are serving a final sentence: mainly serving sentences **from 1 to less than 3 years (23.5%)**, from **3 to less than 5 years (17%)**, and from **5 to less than 10 years (21%)**
- only **2% are serving sentences of 20 years or more**, while **1.7% are serving life imprisonment**; less than **1% are placed under security measures**
- graph: distribution of sentenced prisoners according to the length of the sentence they are serving, in %, on 31/01/2021 (N=43 countries)





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- huge differences in punishment (type of crime) throughout Europe

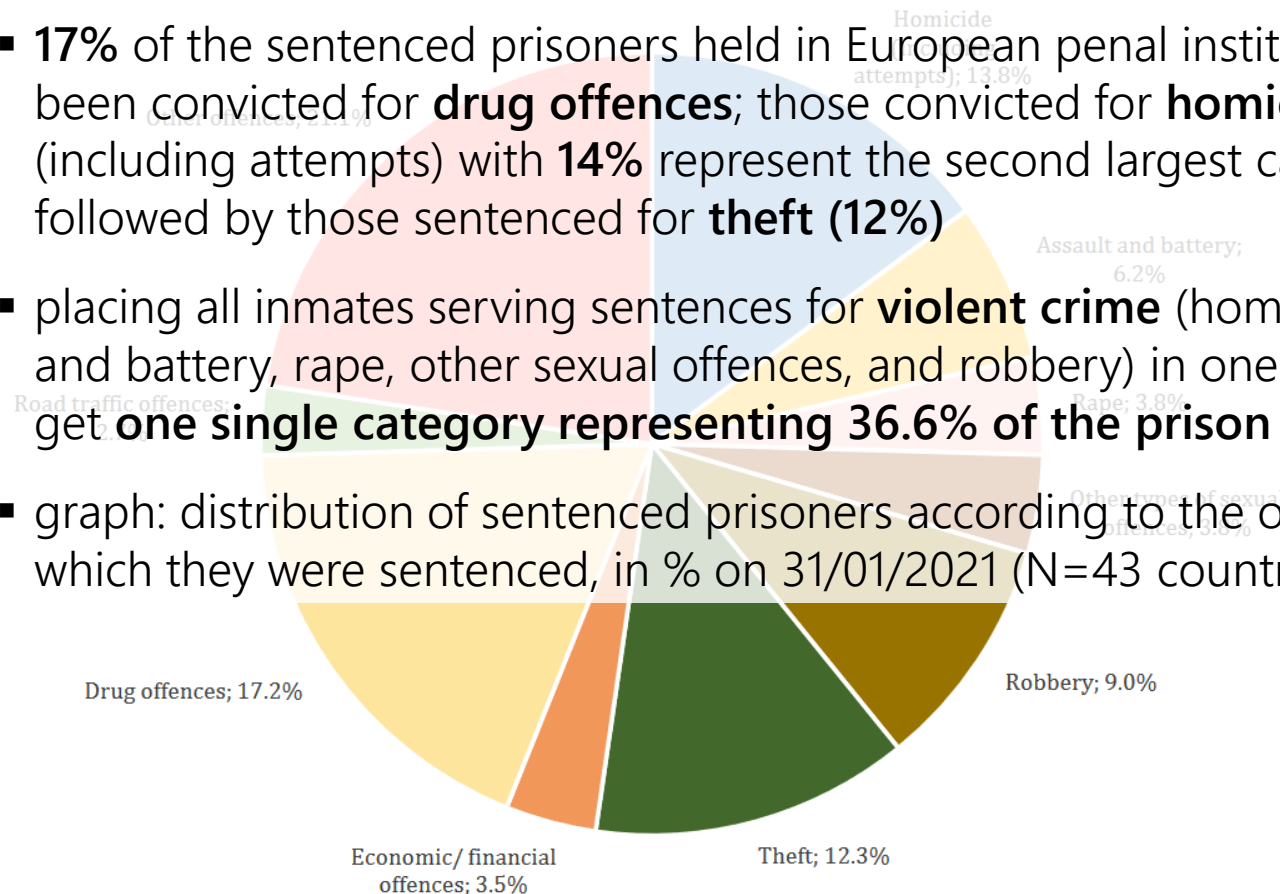




SETTING: SPACE STATISTICS

Prisons & Prisoners in Europe

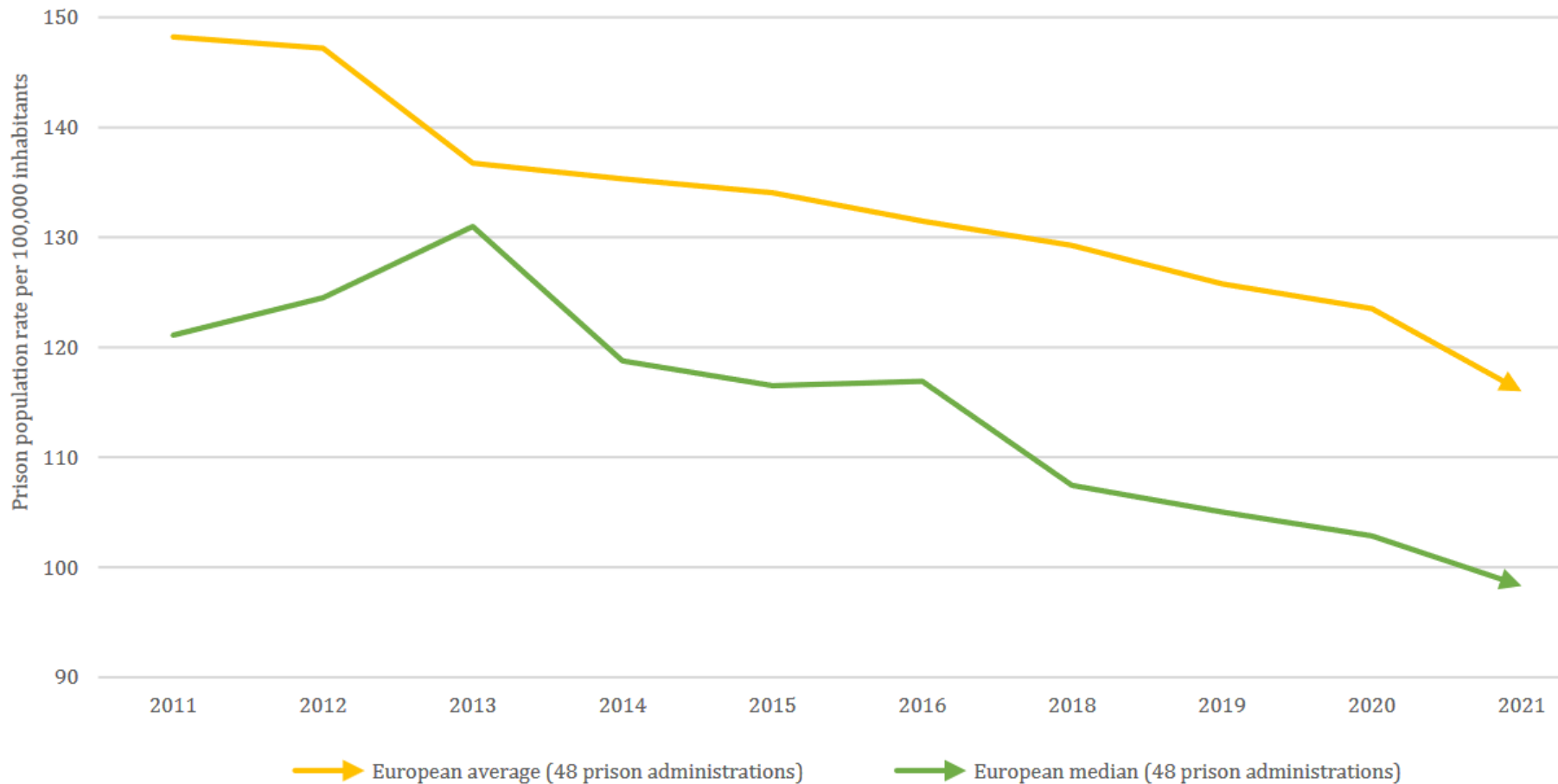
- huge differences in punishment (type of crime) throughout Europe
- **17%** of the sentenced prisoners held in European penal institutions have been convicted for **drug offences**; those convicted for **homicide** (including attempts) with **14%** represent the second largest category, followed by those sentenced for **theft (12%)**
- placing all inmates serving sentences for **violent crime** (homicide, assault and battery, rape, other sexual offences, and robbery) in one group we get **one single category representing 36.6% of the prison population**
- graph: distribution of sentenced prisoners according to the offence for which they were sentenced, in % on 31/01/2021 (N=43 countries)





SETTING: SPACE STATISTICS Prisons & Prisoners in Europe

- declining trend in prison population rates in past decade in Europe





SETTING: SPACE STATISTICS

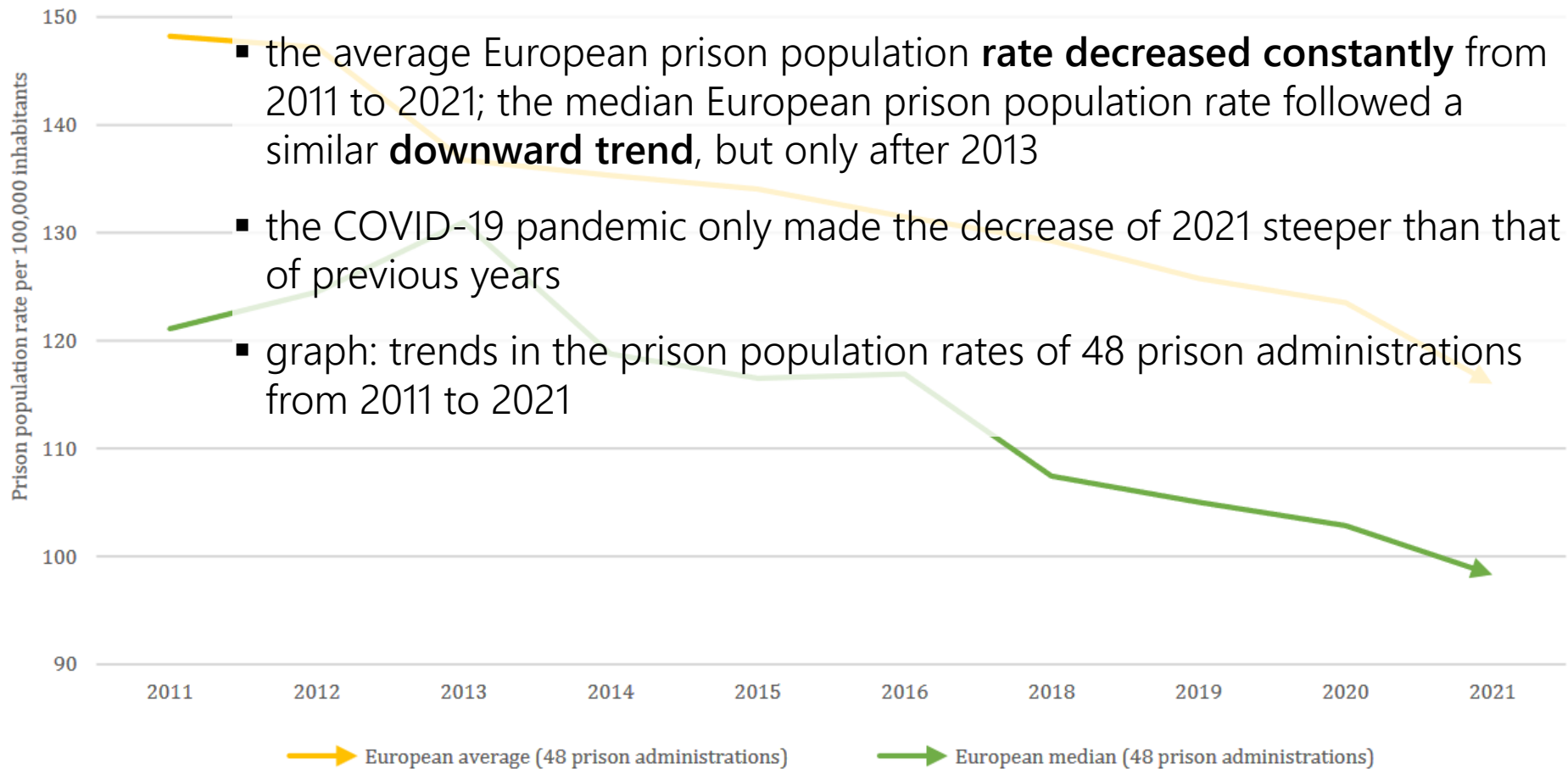
Prisons & Prisoners in Europe

- declining trend in prison population rates in past decade in Europe

- the average European prison population **rate decreased constantly** from 2011 to 2021; the median European prison population rate followed a similar **downward trend**, but only after 2013

- the COVID-19 pandemic only made the decrease of 2021 steeper than that of previous years

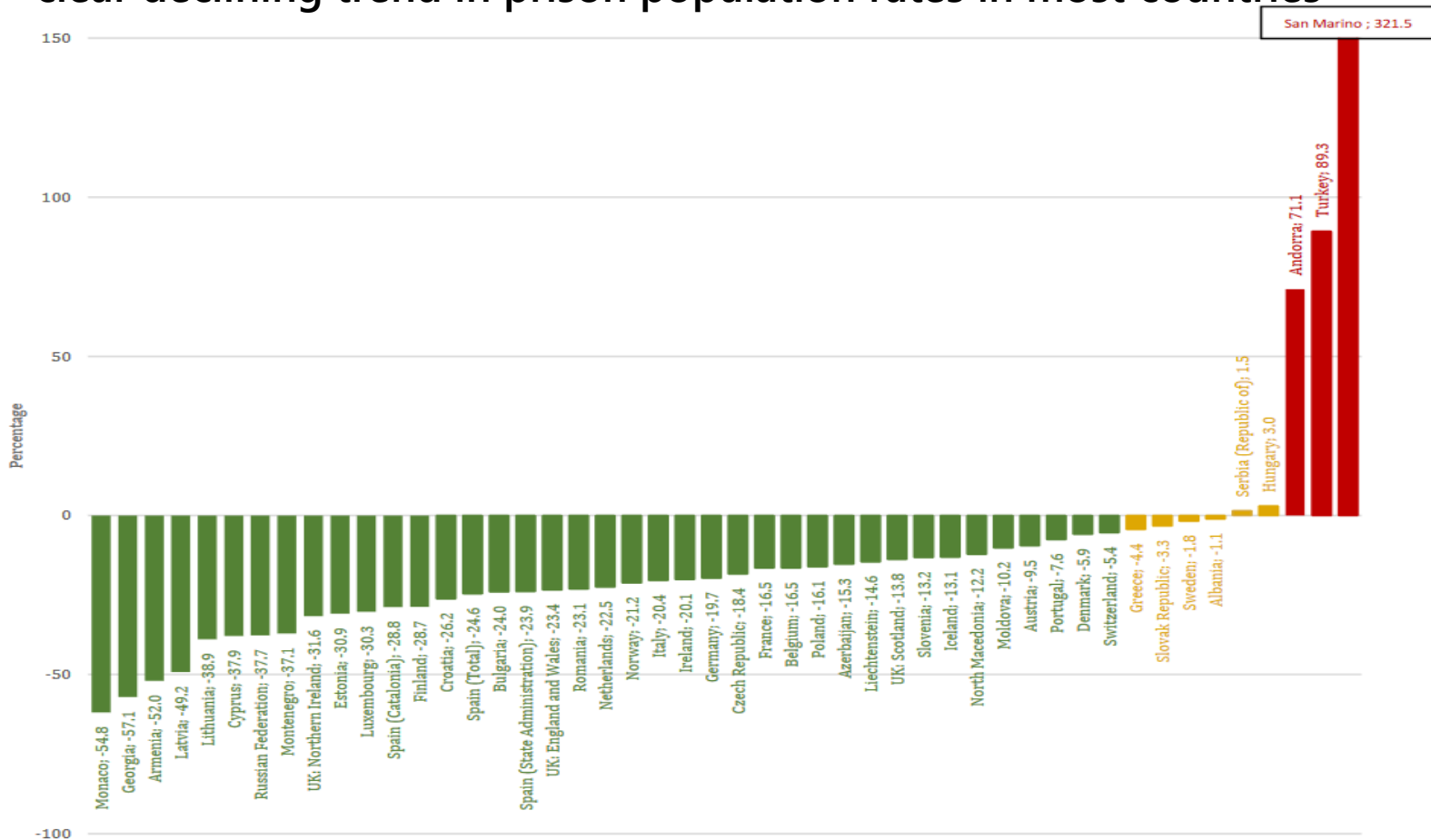
- graph: trends in the prison population rates of 48 prison administrations from 2011 to 2021





SETTING: SPACE STATISTICS Prisons & Prisoners in Europe

- clear declining trend in prison population rates in most countries





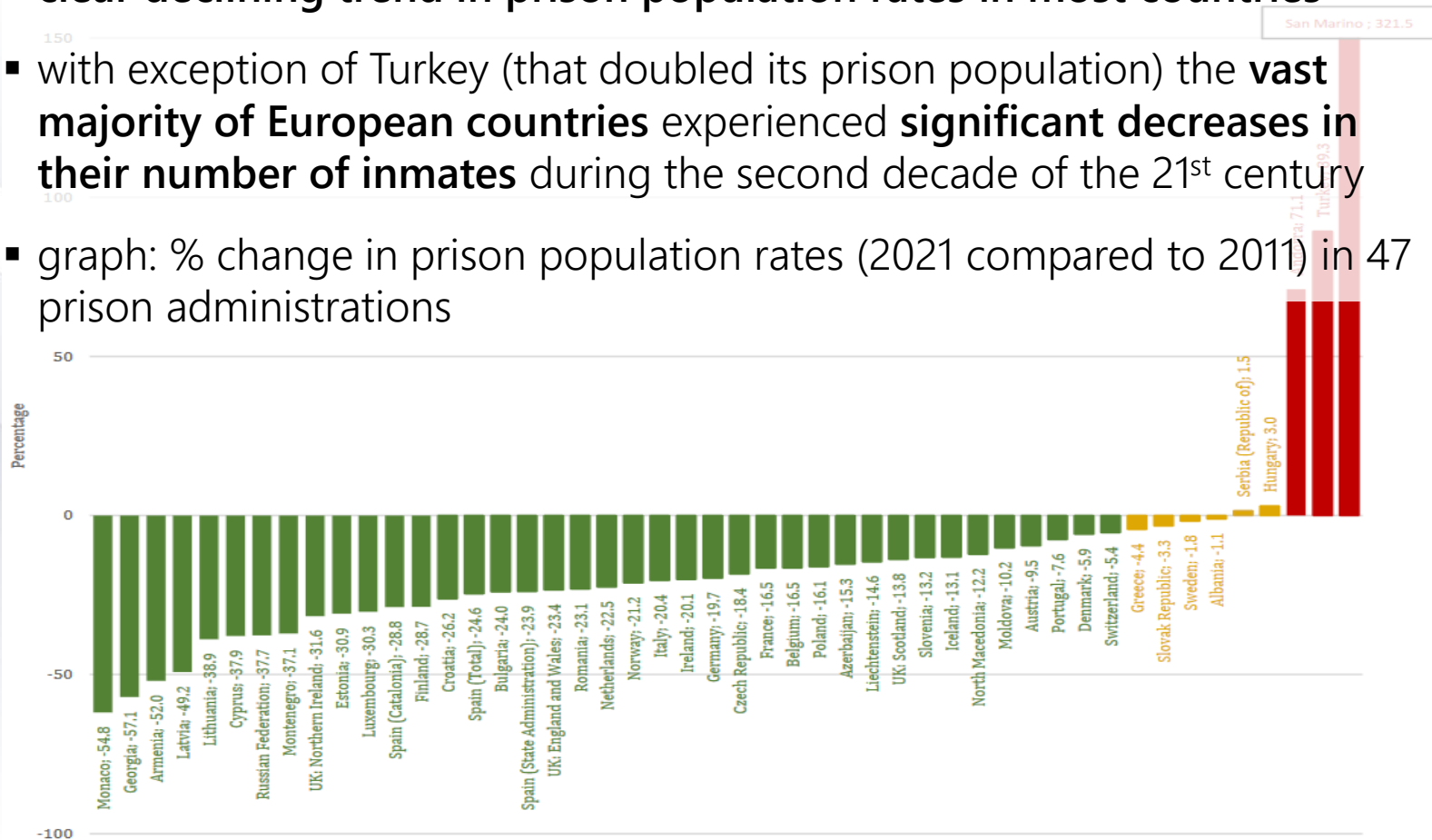
SETTING: SPACE STATISTICS

Prisons & Prisoners in Europe

- clear declining trend in prison population rates in most countries

- with exception of Turkey (that doubled its prison population) the **vast majority of European countries** experienced **significant decreases in their number of inmates** during the second decade of the 21st century

- graph: % change in prison population rates (2021 compared to 2011) in 47 prison administrations

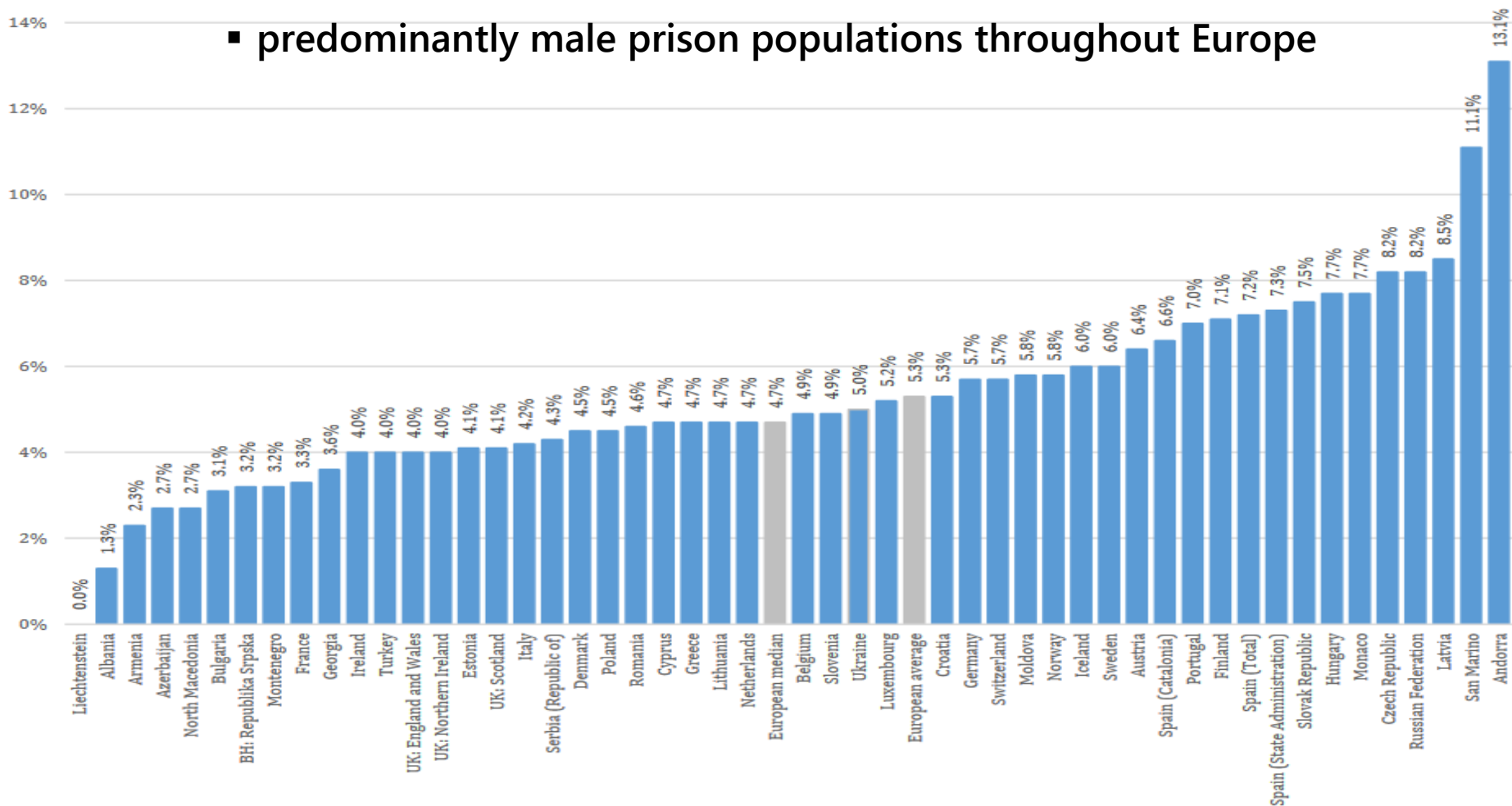




SETTING: SPACE STATISTICS

Prisons & Prisoners in Europe

- predominantly male prison populations throughout Europe

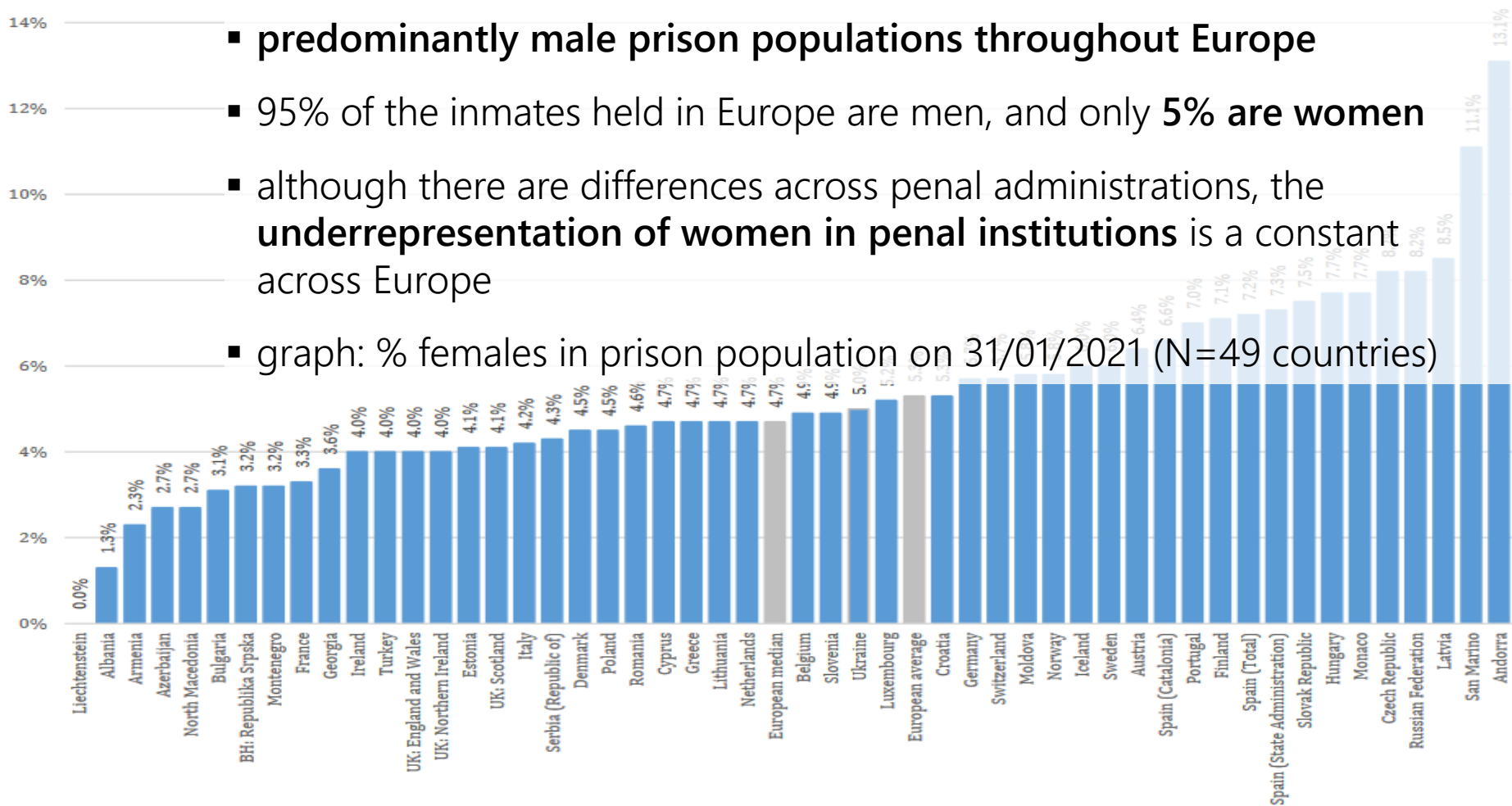




SETTING: SPACE STATISTICS

Prisons & Prisoners in Europe

- predominantly male prison populations throughout Europe
- 95% of the inmates held in Europe are men, and only **5% are women**
- although there are differences across penal administrations, the **underrepresentation of women in penal institutions** is a constant across Europe
- graph: % females in prison population on 31/01/2021 (N=49 countries)





HOW DO THESE FINDINGS FIT INTO THE CRIME PICTURE?

- **...well, they don't**, or to be more precise, it would be insensible to compare (1) sentencing practices as such and (2) outside the context of sentencing frameworks (unique for each country)
 - European Sourcebook of Crime and Criminal Justice Statistics
 - Victimization Surveys (dark figure of crime)
- example: the **apparent** rise in sexual or domestic violence
 - vast expansion of scope of criminalisation
 - heightened sensitivity (reporting, prosecution, convicting, sentencing)
- **methodological challenges** to comparative criminological research and general lack of (un)official crime data
- **hinders evidence-based crime policy** and makes meaningful evaluation studies virtually impossible

**state obligations to provide crime statistics
and conduct regular victimisation surveys?**





WHAT WE DO KNOW ABOUT CRIME & CRIMINAL POLICY

- research has established **peer delinquency, moral beliefs** and **self-control** as powerful **predictors of criminal behaviour**
- crime is most likely to occur when **individuals with a tendency to offend** are faced with outer **contextual circumstances favourable to the commission of crime**
- **personal predisposition moderates** the impact of environment: crime-conducive settings are assumed to exercise their greatest effect among individuals with a high propensity to offend
- the **ability to exercise self-control** will affect an individual's level of crime involvement predominantly among those who have **poorly internalized a society's legal rules** – simply because they are more prone to see crime as a “real” alternative

Hirtenlehner H. et al (2021) Do Morality and Self-Control Protect from Criminogenic Peer Influence?





WHAT WE DO KNOW ABOUT CRIME & CRIMINAL POLICY

- **limited (at best) deterrent effect** of proscribed/harsh punishment on potential offenders (e.g. capital punishment)
- **perception of discovery/prosecution likelihood** has a very limited impact on very specific groups only (importance of rule of law!)
- **research on self-control from neurocriminology** – there is much more to our biology than we would like to think (as with age and crime or gender and crime)
- transdisciplinary **transmission of knowledge** from ‘distant’ disciplines is **slow and hindered** by the boundaries of our (semi)normative and social science disciplines
- **intuitive** crime policy and sentencing (e.g. ‘hungry judges’)





WHAT WE DO KNOW ABOUT CRIME & CRIMINAL POLICY

- there is an **age/crime curve**, which means that offenders age in and out of crime (demography & planning?)
- poor people commit **street crimes**; rich people commit **white collar crime**
- **huge dark figure & dropout**: vast majority of offences do not result in an apprehension, and fewer still result in a conviction
- **criminal justice is not crime control**; it is about apprehending and punishing after a crime has been committed
- supporting families and integrating youth into the workforce are the **most effective forms of crime prevention**
- we are **not able to predict individual dangerousness**, only identify social conditions that produce higher rates of violence

Garland, D. (2021). What's Wrong with Penal Populism? *Asian Journal of Criminology*, 16(3), 257–277.





WHAT WE DO KNOW ABOUT CRIME & CRIMINAL POLICY

- deterrence operates (at best) through **perceived risk of apprehension**, not the severity of punishment
- mandatory sentences generate **injustice and discretionary workarounds** (e.g. pardons)
- **prison incapacitates & punishes - but it doesn't reform**: its typical effect is to destroy human capital making re-entry more difficult (peak of effect of prison sentences!)
- violent offenders have generally been **victims of violence themselves** (e.g. intergenerational transmission of domestic violence)

Garland, D. (2021). What's Wrong with Penal Populism? *Asian Journal of Criminology*, 16(3), 257–277.

do we incorporate such knowledge into crime policy and daily sentencing? how do judges pick the type and measure of sentences? ...extremely intuitively... qualified to do so?





PENAL POPULISM & EVIDENCE-BASED CRIME POLICY

penal populism is a form of political discourse that denigrates the views of professional experts and liberal elites and claims instead the **authority of “the people”** whose views about punishment it professes to express

instead of attending to the views of penological experts, populist politicians and law-makers claim to take their lead from **the long-suffering, ill-served people, above all from victims**, whose preferences are usually said to be for more punitive (or protective) measures

Garland, D. (2021). What's Wrong with Penal Populism? Politics, the Public, and Criminological Expertise. *Asian Journal of Criminology*, 16(3), 257–277.





PENAL POPULISM & EVIDENCE-BASED CRIME POLICY

- evidence-based policy, public policies, programs, and practices that are **grounded in empirical evidence**
- movement for evidence-based policy is an outgrowth of a movement in the UK in the 1990s calling for “**evidence-based medicine**”, which argued that only those treatment modalities (such as drugs) that are grounded in laboratory (experimental) evidence should be used
- linked to older, 1970s-era concerns for a proper evaluation of policy outcomes → **ACCOUNTABILITY!**

Yanow, D. (2018, December 7). Evidence-based policy. Encyclopedia Britannica.





PENAL POPULISM & EVIDENCE-BASED CRIME POLICY

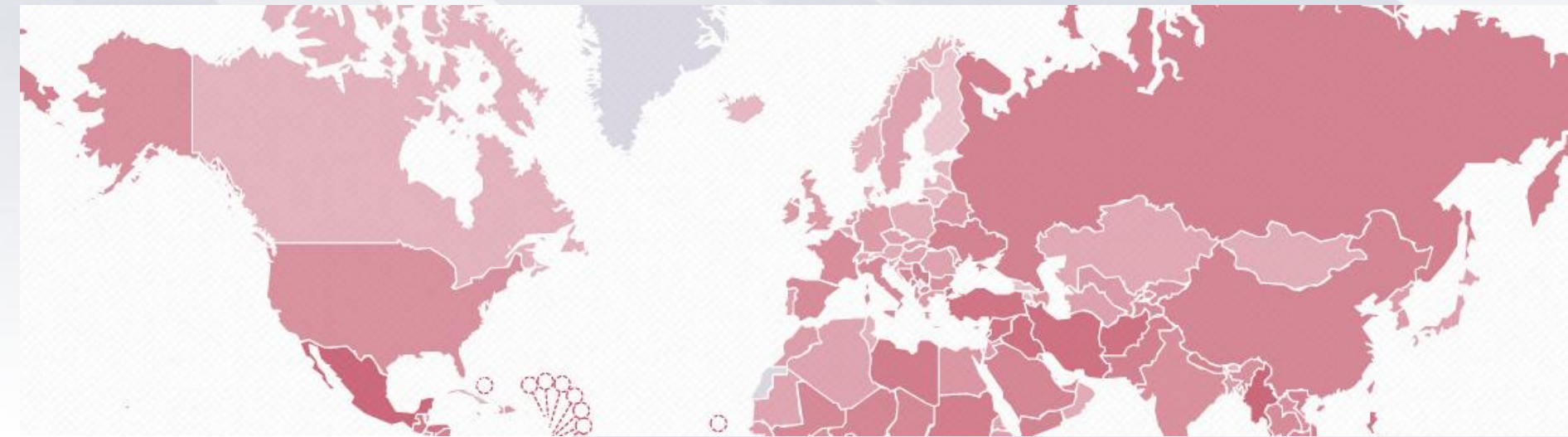
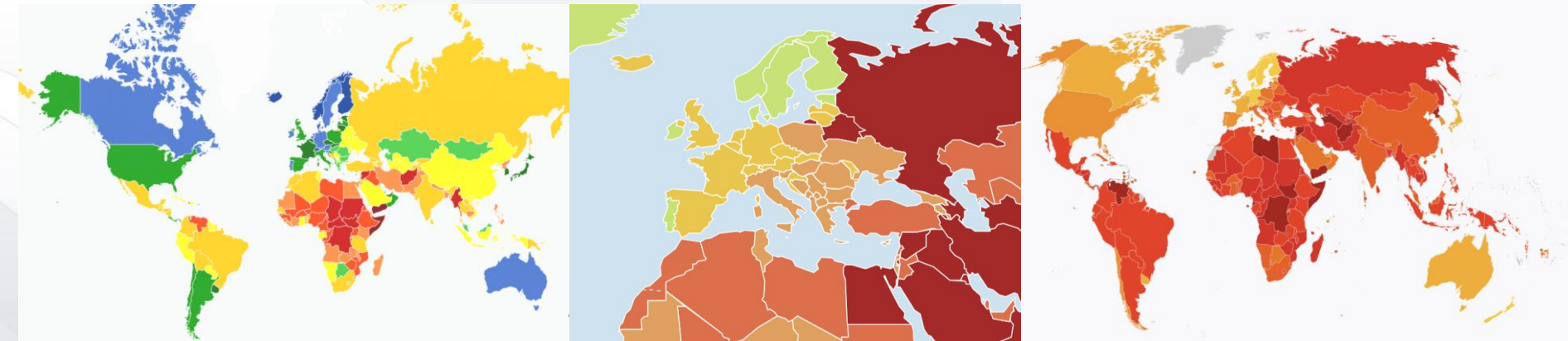
- **limits to evidence-based policy:** evidence, emotion and criminal justice
- criminal justice policies are more likely to be adopted if, in addition to gathering and presenting evidence, they recognise and deal with the **roles of emotions, symbols, faith, belief and religion in the criminal justice system**
- evidence alone is unlikely to be the major determinant of policy outcomes – the creation and successful implementation of policy also requires **extensive engagement and evidence-based dialogue with interested and affected parties – role of academia!?**

Freiberg, A., & Carson, W. G. (2010). The Limits to Evidence-Based Policy: Evidence, Emotion and Criminal Justice¹. *Australian Journal of Public Administration*, 69(2), 152–164.





GREY LITERATURE & AGENDA-DRIVEN RESEARCH





GREY LITERATURE & AGENDA-DRIVEN RESEARCH

- examples of how NOT to do it and research NOT to use, or if used – use with extreme caution!
- common mistakes – using constructed INDEXES as facts and figures, although most of them are far away from being that
- [corruption perceptions index](#) & [global corruption barometer](#)
CPI aggregates data from a number of different sources that provide perceptions by business people and country experts of the level of corruption in the public sector
- [failed/fragile states index](#)
- [world press freedom index](#): responses of experts to questionnaire
- [global organized crime index](#) or [rule of law index](#)





GREY LITERATURE & AGENDA-DRIVEN RESEARCH

AMNESTY
INTERNATIONAL



WHO WE ARE

WHAT WE DO

COUNTRIES

GET INVOLVED

SHARE



< PRESS RELEASE

May 21, 2019

Switzerland: One in five women is a victim of sexual violence

Rape and sexual violence levels 'staggeringly high' in Switzerland with women 'failed by dangerous laws'

Unlike the UK, Swiss law still does not define rape on the basis of lack of consent





EXAMPLE FOR AGENDA-DRIVEN RESEARCH

AMNESTY INTERNATIONAL

WHO WE ARE WHAT WE DO COUNTRY

SHARE < PRESS RELEASE

May 21, 2019 9:00 am

Switzerland: One in five women is a victim of sexual violence

unwanted sexual behaviour

"[...] Have you ever after the age of 16 experienced unwanted sexual behaviour? (in % of women aged 16 and older, lifetime prevalence)"

YES 22% NO 72% difficult 6%

- **about the gfs.bern study** (see Baier 2019, 34-36 and gfs.bern 2019)
 - not representative → selfselection → overestimation
online sample promoted by Amnesty (4010) + online-panel politrends.ch (385) + random sample (100)
 - no past 12 months data
 - projection of results on total population → alarming
„If we project these 22% on the total population, then around 800.000 women have been or currently are suffering unwanted sexual behaviour.“ → AI: one in five women in Switzerland is a victim of sexual violence
 - only women asked → men are implicitly seen only as perpetrators





EXAMPLE FOR AGENDA-DRIVEN RESEARCH



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current risk of sexual victimisation in Switzerland is rather low (Baier 2019, 36)

out of all female study participants (aged 18 and older) 3.4 % reported having been subject to sexual harassment within the past 12 months, whereas 0.3 % reported having been sexually attacked/raped in the same period





GREY LITERATURE & AGENDA-DRIVEN RESEARCH



GREVIO

**RESPONSIBILITY OF ACADEMIA &
THE CRIMINOLOGICAL COMMUNITY**



Switzerland



THANK YOU FOR YOUR
ATTENTION!

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DISCUSSION

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- how can we truly **protect (future) victims** of crime without research and evaluation studies that detect **what works and what doesn't work in crime prevention and control**?
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