

SENTENCE ADJUSTMENT MECHANISMS IN EUROPE:

European Standards
and National Patterns
Across Seven
European Countries

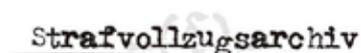
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CHAPTER 1

European Penological Doctrine and Requirements on Sentence Adjustment

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In order to address the way in which states have developed their national laws on the enforcement of sentences, it is first necessary to take into account the mechanisms at the supranational level that encourage or even oblige them to make such changes. While bearing in mind that other forms of dissemination of normative models are possible (notably through the dissemination of academic knowledge, institutional exchanges between national prison administrations, or interventions by non-state actors capable of influencing public debate and/or decision-making processes), there is now a broad consensus on the influence of European law on the evolution of national prison systems. However, as mentioned above, European law in this area is paradoxical in that it is prolific but at the same time reluctant to recognise the full exercise of rights for convicts in terms of sentence adjustment, which are guaranteed under the European Convention on Human Rights and subject to review by the Strasbourg Court.

In order to understand the European influences on the trajectories of national reforms, it is therefore necessary to clarify the contours of European standards, and thus of the Council of Europe's penological doctrine in this area, and the way in which they inform the jurisprudence of the Court.

1

SOFT LAW: THE COUNCIL OF EUROPE'S PENOLOGICAL DOCTRINE

1.1. GENERAL ORIENTATION

The Council of Europe has developed soft-law standards regarding sentence adjustment mechanisms through its recommendations over years. Despite the absence of binding norms, these recommendations reflect an evolving consensus on the necessity of structured and transparent processes governing early release, sentence reductions, and semi-freedom measures.

Indeed, the Council of Europe's penal doctrine is characterised by a reductionist philosophy, which tends to consider imprisonment as a measure of last resort. In the post-sentencing field, this approach is reflected from various angles.

The length of imprisonment has been a fundamental concern in the Council of Europe's approach to penal policy.¹ The Council of Europe has emphasised early release mechanisms as essential in curbing excessive use of imprisonment and promoting the successful reintegration of prisoners into society. It has emphasised that the prospect of being reintegrated into society is intimately linked to human dignity, and the European Prison Rules (EPR)² make it clear that all detention should be managed in a way that facilitates the reintegration of former prisoners into society.

Moreover, a crucial principle underpinning this area is that minimum use must be made of imprisonment and that it is a measure of last resort. In line with this, several recent recommendations by the Committee of Ministers, along with CPT standards, as illustrated below, emphasise reducing the use of imprisonment and promoting community sanctions and measures through early release from prison.

The adoption of the 1987 European Prison Rules was a significant development in the emergence of European prison policy, for it demonstrated a commitment at the official level to identifying general policies

¹ Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights* (OUP 2009).

² Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (revised 2020), Rule 6.

applicable to all aspects of European imprisonment. The formulation of the 1987 EPR also moved further away from the 1955 UN Standard Minimum Rules for the Treatment of Prisoners and towards a specifically European approach in that it contained a list of basic principles that underlined its fundamental commitment to ensuring the human dignity of all prisoners.³

The European Prison Rules (EPR), revised in 2020, lay down, as a basic principle, that “all detention shall so as to facilitate the reintegration into free society of persons who have been deprived of their liberty”.⁴ They stress that “all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty”.⁵ The rules advocate for structured sentence planning from the outset of imprisonment, ensuring that prisoners have access to vocational training, education, and psychological support to increase their chances of successful reintegration into society. The Rules emphasise that sentence adjustment mechanisms must be applied on the basis of individual assessment, proportionality, and non-discrimination, and caution against the unjustified exclusion of particular groups of prisoners—such as those convicted of serious or violent offences—from reintegration-oriented measures.

In the final decades of the twentieth century, the Committee of Ministers issued several Recommendations aimed at curbing the use of imprisonment. The 1992 Recommendation on the European Rules on Community Sanctions and Measures⁶ reinforced the principle of reductionism by highlighting the benefits of non-custodial sanctions⁷ and specifying that imprisonment should not be the automatic consequence of breaching the conditions of a community sanction or measure.⁸ Likewise, the Recommendation on Consistency in Sentencing, adopted the same year, reaffirmed the principle that custodial sentences should only be used as a last resort.⁹

The Council of Europe has also viewed sentence adjustment mechanisms as a crucial means for alleviating prison overcrowding. As prison

³ Rule 1 of the 1987 EPR.

⁴ Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (revised 2020).

⁵ Rule 6. Basic Principles, EPR.

⁶ Recommendation No. R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures.

⁷ See also Recommendation Rec(2000)22 of the Committee of Ministers to Member States on Improving the Implementation of the European Rules on Community Sanctions and Measures.

⁸ Rule 86 of Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures.

⁹ Recommendation No. R (92) 17 of the Committee of Ministers to Member States on Consistency in Sentencing.

populations rose across multiple European countries in the 1990s, leading to severe overcrowding, the CPT condemned this phenomenon in its 7th Annual Report in 1997, identifying it as a primary cause of inhuman and degrading treatment.¹⁰ In response, the Committee of Ministers sought to reinforce existing principles by adopting the Recommendation on Prison Overcrowding and Prison Population Inflation. In 1999, it established a fundamental guideline stating that “deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided only when the seriousness of the offence would make any other sanction or measure clearly inadequate.”¹¹

A core instrument on sentence adjustment mechanisms is Recommendation Rec(2003)22 on conditional release (parole). Its Preamble strongly advocates for conditional release, describing it as “one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.”¹² This perspective has also been explicitly endorsed by the CPT.¹³ The recommendation differentiates between discretionary and mandatory release systems, emphasizing the necessity of clear eligibility criteria and procedural safeguards. The recommendation highlights the importance of post-release supervision and individualised conditions aimed at reducing reoffending, while also stressing the need to balance risk management with rehabilitation, preventing prisoners from being arbitrarily denied early release based on broad security concerns without individual assessment. It further underscores the role of post-release management, allowing for the imposition of individual conditions where necessary.

Recommendation Rec(2003)23 on the management of life and long-term prisoners provides additional guidance, affirming that those serving lengthy sentences should have a prospect of release, subject to periodic review. The recommendation highlights the necessity of individual sentence planning, risk and needs assessments, and progressive movement towards less restrictive conditions, particularly through open regimes or conditional release. It also calls for the use of therapeutic interventions and structured reintegration programmes to counteract the negative effects of long-term imprisonment, such as institutionalisation and social isolation.

¹⁰ CPT 7th General Report [CPT/Inf (92)12] §§ 12–15.

¹¹ Recommendation No. R (99) 22 of the Committee of Ministers to Member States on Prison Overcrowding and Prison Population Inflation.

¹² Preamble to Recommendation Rec(2003)22 of the Committee of Ministers to Member States on Conditional Release (Parole).

¹³ CPT Ukraine Visit 2006 [CPT/Inf (2007) 22] § 94.

1.2. SPECIFIC AREAS OF EUROPEAN SOFT LAW

These instruments illustrate the Council of Europe's evolving approach to sentence adjustment mechanisms, rooted in principles of rehabilitation, proportionality, and human rights protection. Soft law not only provides a framework for the national systems of sentence enforcement, it also seeks to promote specific measures, which should be briefly reviewed in order to put into perspective the convergence movements achieved by national laws in this area.

CONDITIONAL RELEASE

Conditional release has long been a cornerstone of European prison penology, with its origins tracing back to the 19th century.¹⁴ Over time, its significance in prison policy has grown, driven by the increasing recognition of the need to facilitate a structured transition from incarceration to life in the community. Ensuring effective reintegration has become a central goal, as reflected in the 2003 Council of Europe Recommendation on Conditional Release (Parole).

The Council of Europe standards recognise that when prisoners' behaviour influences their release date, high procedural standards must be met. While prison adaptation does not always correlate with post-release success, many European countries consider conduct when deciding on conditional release.¹⁵ The CPT has criticised systems where vulnerable prisoners lose early release opportunities due to their refusal to report inter-prisoner violence.¹⁶

The Council of Europe's Recommendation on Conditional Release (Parole) distinguishes between mandatory and discretionary systems.¹⁷ Some countries apply a hybrid approach, granting automatic release for shorter sentences while maintaining discretion for longer ones.¹⁸ In mandatory systems, the focus shifts from whether release should be granted to determining appropriate supervision conditions, facilitating sentence planning and post-release support, particularly in employment and housing.

¹⁴ Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights* (OUP 2009).

¹⁵ H Tubex (with P Tournier) Study of Conditional Release in the Member States: Analysis of Replies to the General Questionnaire (PC-CP (2000) 24 REV 4) Strasbourg 17 February 2003.

¹⁶ CPT Visit Lithuania 2004 [CPT/Inf (2006) 9] § 61.

¹⁷ Recommendation Rec(2003) 22 on Conditional Release (Parole) § 5.

¹⁸ H Tubex (with P Tournier) Study of Conditional Release in the Member States: Analysis of Replies to the General Questionnaire (PC-CP (2000) 24 REV 4) Strasbourg 17 February 2003.

Discretionary systems, however, require a structured decision-making process to ensure compliance with the rule of law. The minimum period before eligibility should be legally defined,¹⁹ and authorities should initiate the process promptly.²⁰ The primary criterion is whether release would pose an “unbearable risk” to public safety,²¹ yet this does not provide prisoners with clear expectations for eligibility. The Recommendation therefore insists on explicit, realistic criteria that account for individual circumstances and available resettlement programmes.²²

Moreover, European policy recognises that barriers to release should not stem from factors beyond a prisoner’s control. The Recommendation on Conditional Release explicitly states that lack of employment or housing should not justify refusal or postponement, and temporary accommodation should be provided if necessary.²³ However, systemic obstacles exist within prison administration. Some prisoners are denied access to rehabilitation programmes required for release, potentially rendering their continued detention unlawful. Long-term prisoners may only be released from minimum-security prisons or after multiple periods of leave, and refusal to grant these transfers or leave can effectively prolong their incarceration.²⁴ To prevent such administrative obstructions, some countries, such as France and Germany, entrust one judicial authority with both sentence implementation and conditional release decisions.²⁵ In Belgium, the same authority also oversees other forms of prison regime relaxation, further integrating sentence management.²⁶

PRISON LEAVE

Temporary release is a key element in easing the effects of ‘prisonisation’ and facilitating reintegration. The European Prison Rules (EPR) recognise prison leave as an integral part of sentence management, particularly in preparing prisoners for their eventual release.²⁷ Since 1982, the Council of Europe has promoted a common policy on prison leave, highlighting its role in making prisons more humane and aiding social reintegration.²⁸ The Recommendation on Prison Leave urges

¹⁹ Recommendation Rec(2003) 22 on Conditional Release (Parole) §§ 5 and 16.

²⁰ Recommendation Rec(2003) 22 on Conditional Release (Parole) § 17.

²¹ Official Commentary on § 18 of the Recommendation Rec(2003) 22 on Conditional Release (Parole).

²² Recommendation Rec(2003) 22 on Conditional Release (Parole) § 18.

²³ Recommendation Rec(2003) 22 on Conditional Release (Parole) § 19.

²⁴ N Padfield, *Beyond the Tariff: Human Rights and the Release of Life Sentenced Prisoners* (Collumpton: Willan, 2002).

²⁵ D van Zyl Smit “Degrees of Freedom” (1994) 13 (1) *Prison Journal* 36–51 at 35.

²⁶ Act of 17 May 2006 on the External Legal Position of Prisoners and the Rights of Victims.

²⁷ EPR 103.6.

²⁸ Recommendation No. R (82) 16 of the Committee of Ministers to Member States on Prison Leave.

states to grant leave for medical, family, social, educational, and occupational reasons, encompassing both day release schemes and structured leave programmes common in many European prison systems.²⁹ The CPT has endorsed such measures, commending Estonia's system of 21 days' annual home leave for working prisoners as beneficial for social rehabilitation.³⁰ The ECtHR has also acknowledged the value of temporary release, emphasising its role in reducing recidivism and improving public safety upon release.³¹

Many European states set fixed periods after which prisoners are entitled to leave if they pose no risk, ensuring that considerations of sentence length and offence severity do not unduly influence decisions.³² Where no fixed period is prescribed, decision-makers must balance security concerns with the European-level emphasis on temporary release. The Recommendation on the Management of Life and Long-term Prisoners stresses the importance of leave in maintaining family ties and preventing social isolation.³³ Regardless of the approach, fair and transparent procedures are essential, including clear reasoning for refusals and a mechanism for review.³⁴

LIFERS

The early release of life-sentenced prisoners presents a paradox: while empirical evidence suggests they have low reoffending rates,³⁵ life imprisonment remains the most severe penalty in most European states.³⁶ Overall, European penal policy insists that all life-sentenced prisoners must have a realistic prospect of release.³⁷ This principle is embedded in key European instruments. The 1976 Committee of Ministers Resolution on Long-term Prisoners recommended reviewing lifers for conditional release after 8 to 14 years, with regular reassessments

²⁹ Preamble to the Recommendation No. R (82) 16 on Prison Leave.

³⁰ CPT Estonia Visit 2003 [CPT/Inf (2004) 6] § 76.

³¹ *Mastromatteo v Italy* (GC) 2002-VII (ECHR 2002).

³² D van Zyl Smit and F Dünkel (eds) *Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions* 2nd ed (The Hague/London: Kluwer Law International, 2001) 838-839.

³³ D van Zyl Smit "Leave of Absence for West German Prisoners: Legal Principle and Administrative Practice" (1988) 28 *British Journal of Criminology* 1-18.

³⁴ See, for example, CPT the Former Yugoslav Republic of Macedonia Visit 2006 [CPT/Inf (2008) 5] § 95; Hungary Visit 2005 [CPT/Inf (2006) 20] § 115; Recommendation No. R (82) 16 on Prison Leave, § 9.

³⁵ H Tubex *Dualisering en selectiviteit in de vrijheidsberoving—Toepassing op (levens)lange straffen* (Ph D dissertation, Vrije Universiteit Brussels, 1999).

³⁶ S Snacken "Recommendation Rec (2003) 23 on the management by prison administrations of life-sentence and other long-term prisoners" (2006) 25 & 26 *Penological Information Bulletin* 8-17.

³⁷ C Appleton and B Grover "The pros and cons of life without parole" (2007) 47 *British Journal of Criminology* 597-615.

thereafter.³⁸ The CPT has reaffirmed that all life-sentenced prisoners must have a realistic prospect of release, supported by rehabilitative opportunities in prison.³⁹ Similarly, the 2003 Recommendation on Conditional Release (Parole) mandates that conditional release be available to all prisoners, including lifers.⁴⁰ The CPT has also opposed 'actual life' sentences, urging that all lifers be considered for release.⁴¹

European policy increasingly supports conditional release for life-sentenced prisoners, yet the legal framework remains unsettled. A clearer recognition of this right under human rights law is emerging, although the European framework has a limited capacity to prevent the development at national level of systems of indefinite detention that largely escape the cardinal principles of criminal law.⁴² Meanwhile, concerns persist over the detention of prisoners with severe mental illnesses, whose confinement often serves as de facto preventive detention rather than penal punishment.⁴³ Their risk must be proportionately assessed to prevent indefinite incarceration based solely on speculative threats.

RISK ASSESSMENT

The Council of Europe defines risk as the "high likelihood of a further very serious sexual or very serious violent offence against persons",⁴⁴ tying risk to the probability of serious recidivism. The Recommendation distinguishes between risk assessment—which it defines as the process of understanding risk by examining the nature, seriousness, and pattern of previous offences, the characteristics of the offender, and the circumstances contributing to their behaviour—and risk management, which refers to the selection and application of interventions in custody, the community, the post-release period, or under preventive supervision with the aim of reducing that risk. In the Council of Europe framework, risk work is both diagnostic (assessment) and operational (management), with the explicit purpose of preventing very serious sexual or violent harm. Importantly, it stresses that a clear distinction should be made between the offender's risk to the outside community and their risk within prison, and that these two forms of risk should be evaluated separately.⁴⁵ More broadly, it stresses that the

³⁸ Resolution (76) 2 on the Treatment of Long-term Prisoners.

³⁹ CPT 11th General Report (CPT/Inf (2001) 16) § 33.

⁴⁰ Recommendation Rec(2003) 22 on Conditional Release (Parole) § 4.4.

⁴¹ CPT Hungary Visit 2007 (CPT/Inf (2007) 24) § 33.

⁴² This aspect will be developed in the second part of the study.

⁴³ I Kinzig *Die Sicherungsverwahrung auf dem Prüfstand* (Freiburg: Max-Planck-Institut für ausländisches und internationales Strafrecht, 1996).

⁴⁴ Recommendation Rec(2014)3 on dangerous offenders.

⁴⁵ Para. 33 dangerous offenders rec

effectiveness of risk assessment and management of dangerous offenders should be evaluated by encouraging and funding research that will be used to guide policies and practices within the field.

The Council of Europe recognises that risk-based assessments increasingly shape sentence-enforcement decisions and urges states to ensure that such assessments remain transparent, proportionate, and subject to judicial oversight.⁴⁶ It cautions against reliance on security-based classifications that may delay release indefinitely based on speculative judgments about future behaviour rather than demonstrated conduct.⁴⁷ The Recommendation calls for periodic reassessments and for ensuring access to rehabilitation programmes that enable prisoners classified as dangerous to demonstrate progress towards reintegration. An approach is encouraged that blends structured risk assessment tools with professional decision-making,⁴⁸ emphasising that assessment and management practices must be evidence-based⁴⁹ and rely on the “best reliable information”.⁵⁰ The depth of assessment should correspond to the level of risk and be proportionate to the gravity of the potential outcome.⁵¹

Those carrying out risk assessments must, according to the CoE, “be aware of and state clearly the limitations of assessing violence risk and of predicting future behaviour, particularly in the long term”.⁵² They must be provided with appropriate training, and staff working with offenders with mental disorders must have “particular competencies”.⁵³ Where national systems use assessment instruments, staff should be trained to understand their potential value and limitations and to use them in support of their professional judgement.⁵⁴ The Council also stresses that offenders should be enabled to make an active contribution to the formal assessment of risk, including by giving due weight to their views.⁵⁵

Regarding the use of risk assessment tools, the Council specifies that such instruments must be “appropriately validated” before being put to use, and should also specifically be carefully evaluated to identify

⁴⁶ Recommendation Rec(2014)3 on dangerous offenders.

⁴⁷ Ibid.

⁴⁸ para 28 Recommendation Rec(2014)3 on dangerous offenders

⁴⁹ rule 10, Recommendation Rec(2010)1 on the Council of Europe Probation Rules

⁵⁰ Para 27 Recommendation Rec(2014)3 on dangerous offenders

⁵¹ Ibid, para 26.

⁵² Ibid, para. 28.

⁵³ Ibid.

⁵⁴ Rule 71, Recommendation Rec(2010)1 on the Council of Europe Probation Rules

⁵⁵ Para 67, Recommendation Rec(2014)3 on dangerous offenders

cultural, gender, and social biases. It is also underscored that risk assessment instruments should not be used to determine the sentence. Instead, “risk assessment instruments should be used to develop the most constructive and least restrictive interpretation of a measure or sanction, as well as to an individualised implementation of a sentence”.⁵⁶ When such tools are used, it stresses that offenders should be involved in the assessment process and have access to information about the procedure and to the conclusions reached.⁵⁷

2 THE EUROPEAN COURT OF HUMAN RIGHTS’ JURISPRUDENCE

The European Court of Human Right has consistently restrained itself from intervening in post-sentencing matters, and this reticence stems primarily from its restrictive interpretation of the requirements of Articles 5 § 1 and 5 § 4. The crux of this is that the Court has held that no further review is required beyond conviction, as the supervision mandated by Article 5 § 4 is deemed to be incorporated into the court’s decision at the conclusion of judicial proceedings.⁵⁸ The Court only departs from this and holds that intervention under Article 5 § 4 is required in cases where the causal link between the initial conviction and the detention has been broken. As the case law stands, this is the case in two areas: (1) decisions revoking a prisoner’s release on licence⁵⁹ and (2) indeterminate detentions for public protection in the UK context, where the competent authority seeks to “rely solely on the risk posed by offenders to the public in order to justify their continued detention”.⁶⁰

In *Kafkaris v. Cyprus*,⁶¹ the Court held that when the sentencing court explicitly stated that the applicant was sentenced to life imprisonment for the remainder of their life, the justification for the sentence did not rely on any factors subject to change over time. Consequently, no further review was required under Article 5 § 4.⁶²

⁵⁶ Ibid.

⁵⁷ Ibid, para 32.

⁵⁸ De Wilde, Ooms and Versyp v. Belgium, no. 2832/66, 1971, § 76.

⁵⁹ see *Etute v. Luxembourg*, no. 18233/16, 2018, §§ 25 and 33.

⁶⁰ see *James, Wells and Lee v. the United Kingdom*, no. 25119/09, 2012, § 218.

⁶¹ *Kafkaris v. Cyprus (dec.)* (no. 9644/09, 2011).

⁶² see also *Murray v. the Netherlands (GC)*, no. 10511/10, 2016.

Article 6 § 1 of the Convention does not compensate for the lack of applicability of the guarantees under Article 5 § 4. Despite the increasing use by the Court of fair trial guarantees in prison cases, it has not applied them to sentence adjustment procedures.⁶³ The Court considers that the examination of requests for temporary release or of issues relating to the manner of execution of a custodial sentence do not fall within the scope of Article 6 § 1 of the Convention. According to the case law, they concern neither the determination of “a criminal charge” nor the determination of “civil rights and obligations” within the meaning of this provision. The Court has made it clear that the Convention “does not guarantee, as such, a right to conditional release or to serve a prison sentence in accordance with a particular sentencing regime”.⁶⁴

This rigid approach has been criticised for overlooking the significant impact parole decisions have on prisoners’ liberty and rights. Judge Costa, dissenting in *Léger v France*, argued that once a state establishes a parole system, its decisions should be subject to judicial scrutiny.⁶⁵ He maintained that it was illogical for the ECtHR to deny review, particularly as procedural fairness in parole decisions is increasingly emphasised in European and national law.⁶⁶

An exception to this restrictive approach in the area of sentence adjustments is the case of prisoners serving life sentences, for which the Court has defined under Article 3 of the Convention a series of precise obligations of both a substantive and procedural nature, ensuring that they are offered a realistic prospect of release. The Court requires States to establish a regular review mechanism that enables the competent domestic authorities to assess whether, over the course of the sentence, any changes in the life prisoner and their progress toward rehabilitation are significant enough to render continued detention unjustified on legitimate penological grounds.⁶⁷

⁶³ *De Tommaso v. Italy* (GC), no. 43395/09, 2017.

⁶⁴ *Ballıktaş Bingöllü v. Türkiye*, no. 76730/12, 2021, § 48.

⁶⁵ *Léger v France*, 11 April 2006.

⁶⁶ *Léger v France*, partly dissenting opinion of Judge Costa § 9.

⁶⁷ *Vinter and Others v. the United Kingdom* (GC), no. 66069/09, 2013.

As summarised by Judge Pinto de Albuquerque in his partly concurring opinion in the case *Murray v. the Netherlands*,⁶⁸ the obligation incumbent on States is structured around five binding relevant principles:

“ (a) the principle of legality (“rules having a sufficient degree of clarity and certainty”, “conditions laid down in domestic legislation”); (b) the principle of the assessment of penological grounds for continued incarceration, on the basis of “objective, pre-established criteria”, which include resocialisation (special prevention), deterrence (general prevention) and retribution; (c) the principle of assessment within a pre- established time frame and, in the case of life prisoners, “not later than twenty-five years after the imposition of the sentence and thereafter a periodic review”; (d) the principle of fair procedural guarantees, which include at least the obligation to give reasons for decisions not to release or to recall a prisoner; (e) the principle of judicial review.⁶⁹ ”

The State’s positive obligation is one of means⁷⁰ and can be achieved, for example, “by setting up and periodically reviewing an individualised programme that will encourage the sentenced prisoner to develop himself or herself to be able to lead a responsible and crime-free life”.⁷¹ This necessitates detention conditions that enable the objective of rehabilitation to be achieved,⁷² and where necessary provide to lifers with mental health issues adequate care with a view to facilitating their rehabilitation and reducing the risk of their reoffending and to enable them to receive suitable treatment—to the extent possible within the constraints of the prison context—especially where it constitutes a precondition for the life prisoner’s possible, future eligibility for release.⁷³

As the obligations were set out by the Court in relation to Article 3 of the Convention, implying a very high threshold, they have so far been confined to life sentences. To date, this case law has not resulted in the extension of its underlying principles to other provisions. If the ECtHR has placed a positive obligation on States to reintegrate offenders into society,⁷⁴ its useful effect in the context of sentence adjustment procedures seems

⁶⁸ *Murray v. the Netherlands* [GC] (no. 10511/10, 2016).

⁶⁹ § 13.

⁷⁰ *Viola v. Italy* (no.2), no. 77633/16, 2019, § 113.

⁷¹ *Murray*, § 103.

⁷² *Petukhov v. Ukraine* (no. 2), no. 41216/13, 2019.

⁷³ *Murray*, § 108.

⁷⁴ *Khoroshenko v. Russia* [GC], no. 41418/04, 2015.

limited in the case of determinate sentences and confined to the question of life sentences.⁷⁵

Moreover, hopes that these safeguards would be extended beyond life sentences have not been realised. On the contrary, recent jurisprudence suggests a dilution of the protections afforded even to life prisoners. This is illustrated by *Medvid v Ukraine*,⁷⁶ in which the Court held that Ukraine's newly introduced two-stage review mechanism for life sentences complied with its established Article 3 standards.

This conclusion is difficult to reconcile with the Court's own case law. Although Article 3 requires that life prisoners have a realistic opportunity for release after no more than twenty-five years' detention, the Ukrainian mechanism sets the minimum eligibility threshold at twenty-six years and three months. In practice, this minimum period is often significantly longer for prisoners who had already served more than fifteen years of their life sentence at the time the new system entered into force. For the applicant, this meant a realistic prospect of release only after more than thirty-three years of imprisonment, with domestic courts retaining discretion to impose even longer fixed terms following commutation.

Moreover, the Court found the mechanism compatible despite the fact that the criteria used to assess rehabilitation under the mechanism were based on an assessment score system that was arbitrary and inconsistent, and which afforded only a very small proportion of life prisoners any prospect of commutation. Statistics showed that, of over 1,200 life prisoners, only sixty-two had achieved the threshold score, and only eight had obtained a commutation of their sentence.⁷⁷ This, coupled with the two-stage structure of the procedure and the lengthy intervals between reviews, further undermined any tangible prospect of release.

Additional deficiencies included the absence of meaningful procedural safeguards at the assessment stage, the lack of prisoner participation in the process, and detention conditions that were not conducive to rehabilitation. In particular, prison authorities failed to provide conditions enabling detainees to demonstrate good behaviour and a positive attitude to work, even though these factors were relied upon in assessing prisoners' reformation.

⁷⁵ In particular, it makes it possible to reinforce the effectiveness of the substantive obligation on Contracting States to ensure that a life sentence does not over time become a penalty incompatible with Article 3, by apprehending the concrete conditions under which the sentence is carried out in detention.

⁷⁶ *Medvid v. Ukraine*, no. 7453/23, 10 October 2024.

⁷⁷ § 34.

All in all, the European normative power remained in midstream. While sentence adjustment is increasingly recognised in the Council of Europe’s recommendations as central to a rehabilitative approach to imprisonment, this issue remains largely sidelined in Strasbourg case law, which remains scarce on the matter. Sentence adjustment mechanisms are still often viewed as mere “privileges”⁷⁸ or matters of discretion⁷⁹ rather than enforceable rights.

Moreover, this shift toward incentive-based law—offering minimal resources to those it targets—aligns with the widespread adoption of a neutralisation rationale in sentence enforcement. This is particularly evident in the resurgence and proliferation of security measures aimed at preventing future crimes rather than punishing past offences. This will serve as a central focus of the field research to be conducted in 2025.

⁷⁸ Boulois v. Luxembourg (GC), no. 37575/04, 2012.

⁷⁹ UN Tokyo Principles, Rule 3.3.