SENTENCE ADJUSTMENT MECHANISMS IN EUROPE:

European Standards and National Patterns Across Seven European Countries

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CHAPTER 4

Sentence Adjustment Mechanisms in BELGIUM: Law and Practices

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1 INTRODUCTION

Belgium has undergone a major overhaul of its system of sentence adjustments over the last twenty years. Historically, until 1998, the responsibility for deciding on sentences enforcement was in the hands of the executive authority. The Dutroux case in 1996 largely accelerated the process towards a reform of this regime, with the idea of jurisdictionalising and legalising this matter.

However, at first, this reform only concerned conditional release, together with the creation of parole boards ('commissions de libération conditionnelle') in 1998[1]. Of administrative nature, these boards were only to be provisional, pending the creation of the sentence enforcement courts ('tribunaux de l'application des peines' – TAP). They raised various critics, which showed the absolute necessity to finalize the reform. Moreover, apart from conditional release, the other forms of sentence adjustments mechanisms were still under the authority of the executive power[2]. This brought legal uncertainty and confusion regarding the principle of separation of powers between the executive power and the judicial one. Indeed, most of the rules were contained in ministerial circulars, which couldn't give all the coherence, transparency and legal security waited for this important matter.

It was then decided that the judicial power should intervene regarding sentence adjustments – especially when it leads to a substantial modification of the sentence's nature –, allowing the convicted person to have his case examined by an independent and impartial court, in the context of an adversarial debate[3]. This led to the adoption of the 17 May

1 Belgium, The Act on conditional release and amending the Act of 9 April 1930 on social protection for abnormal and habitual offenders, replaced by the Act of 1 July 1964 (Loi relative à la libération conditionnelle et modifiant la loi du 9 avril 1930 de défense sociale à l'égard des anormaux et des délinquants d'habitude remplacée par la loi du 1er juillet 1964), 5 March 1998.; The Act establishing parole boards (Loi instituant des commissions de libération conditionnelle), 18 March 1998.

2 Devresse, M.-S. (2013), 'Les aménagements de peine en Belgique. Aperçu des particularités d'un statut dit "externe" en constante évolution', Crimonocorpus, No. 3, pp. 3-5. ; International Prison Observatory (2024), '2024 Notice – From observing prison conditions to denouncing the penal system', 26 April 2024, pp. 101-102.

3 Rapport fait au nom de la commission de la justice par Mme Laloy et le Sénat de Belgique concernant le Projet de loi instaurant des tribunaux de l'application des peines, Doc.parl., Sén., 2004-2005, n°3-1127/5, pp. 3-4. ; Beernaert, M.-A. (2019), Manuel de droit pénitentiaire, Limal, Anthemis, pp. 38 and 42.; Beernaert, M.-A. (2023), Manuel de droit pénitentiaire, Limal, Anthemis, pp. 44. ; Beernaert, M.-A., Funck, J.-F. and Nederlandt, O. (2022), 'L'entrée en vigueur du nouveau régime d'exécution des peines privatives de liberté de trois ans : enjeux et pistes d'action pour éviter l'aggravation de la surpopulation carcérale', Journal des tribunaux, pp. 471-472. ; Nederlandt O. and Jadoul, M. (2019), 'Guide du routard du tribunal de l'application des peines : quelques « bons plans » pour les avocats' in: Berbuto, S., Cirriez, P. et al. (eds.), Actualités en droit pénitentiaire, Anthemis, pp. 101.

2006 Law on the external legal status of persons convicted to a custodial sentence and on the rights granted to the victim in the context of the enforcement of sentence (ELS Law). On the same date, another law was adopted to establish sentence enforcement courts (TAP), which aimed to replace the former conditional release commissions. The first TAPs were established on the 1st of February 2007[4].

However, implementation of the law was largely delayed, and it took until the early 2020s for all its provisions to come into force. Until recently, the federal public service and the prison administration were still responsible to decide on sentence adjustment measures for persons sentenced to 3 years' imprisonment or less, which was posing certain problems in terms of separation of powers. With the entry into force of the latest provisions in September 2022 and September 2023, the judicial authority is now responsible for all sentence adjustments (with the temporary exception of people sentenced to less than 6 months).

In this general background, the present report intends to examine the national legal frameworks governing and organising sentence adjustment mechanisms in Belgium and the practices of Belgian professionals and other stakeholders involved in their framing and implementation.

The conducted research is part of a broader study led by the European Prison Litigation Network between 2024 and 2025 in seven European countries (Belgium, France, Germany, Poland, Portugal, Spain and Ukraine) in partnership with the Universidad Francisco de Vitoria UFV Madrid, Strafvollzugsarchiv, Universidad Complutense Madrid, Forum Penal, Centre de Recherches en Droit Pénal, Université Libre de Bruxelles, the Helsinki Foundation for Human Rights. This study aimed at investigating the European influence on national laws and practices regarding the application of sentence adjustments, through analysing the different national frameworks and the multiple factors impeding and facilitate prisoners access to these mechanisms. The research was supported by the European Union's Justice Programme[5].

4 International Prison Observatory (2024), '2024 Notice – From observing prison conditions to denouncing the penal system', 26 April 2024, pp. 104.; Beernaert, M.-A. (2019), Manuel de droit pénitentiaire, Limal, Anthemis, pp. 50.; Devresse, M.-S. (2013), 'Les aménagements de peine en Belgique. Aperçu des particularités d'un statut dit "externe" en constante évolution', Crimonocorpus, No. 3, pp., p. 5.

5 Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. neither the European Union nor the European Commission can be held responsible for them.

1.1. METHODOLOGY

The research for this report was conducted in two different stages.

The first research stage was conducted in 2024 and consisted of a literature review to identify the relevant legal instruments and case law in respect, analyse available statistics as well as identify other relevant sources including grey literature.

The second stage of the research consisted in a qualitative study. Combining empirical inquiry and documentary analysis, with the aim of understanding the concrete modalities of sentence implementation in Belgium and, more specifically, how sentence implementation judges and tribunals take into account the issues of recidivism risk and dangerousness in their decisions. Eight semi-structured interviews were conducted with actors situated at different levels of the penal field: three sentence implementation judges, two law professors specializing in criminal law and sentence enforcement, two representatives of non-governmental organizations involved in the monitoring and reintegration of convicted persons and one member of the administration of justice. Each interview, lasting on average two hours, was conducted following an open thematic guide designed to explore representations of risk, practices of assessing dangerousness, and the underlying decision-making rationales. All interviews were recorded and anonymized in order to ensure confidentiality and encourage open expression. The analysis of the data followed an inductive and comparative approach, seeking to identify discursive regularities, normative tensions, and the modes of reasoning mobilized by judges and experts. The fieldwork was complemented by a review of relevant case law from the sentence implementation courts, as well as academic and institutional doctrine on sentence enforcement and risk assessment, in order to situate the empirical findings within their legal and conceptual context. This combined empirical and analytical approach aims to shed light on the interaction between law, expertise, and judicial reasoning in the treatment of recidivism risk within the Belgian penal system.

1.2. CHAPTER OVERVIEW

The first part of the report (II, III, IV, V) outlines the legal framework governing sentence adjustment, the institutional actors involved, the measures available, eligibility criteria, procedural rules, and the structural and procedural barriers affecting access to these mechanisms.

The second part (VI, VII) is organised around two main themes that emerged consistently across interviews: the rationales underpinning judicial decision-making in sentence adjustment procedures, and the assessment and use of dangerousness and risk-of-reoffending considerations in sentence enforcement decisions.

2 BELGIUM'S PENAL AND PRISON SYSTEM

Belgium faces a high level of penal and prison pressure, as well as a poor state of its prison estate. Generally speaking, there are many similarities between Belgium and France in terms of penal rationale, the way the prison system operates and the enforcement of sentences.

Two pilot rulings handed down over the last 10 years provide an insight into the main problems of the Belgian prison system:

- In **Vasilescu v. Belgium** (25 November 2014, no. 64682/12), the ECHR ruled that chronic overcrowding, combined with the deteriorated state of the infrastructure and the lack of prospects for improving prison conditions, violated human dignity under Article 3. It considered that these deficiencies were part of a structural problem in the Belgian prison system, and that the latter needed to implement far-reaching reforms in order to meet the requirements of the Convention.
- In **W.D. v. Belgium** (6 September 2016, no. 73548/13), which concerned the situation of mentally ill internees in Belgium and the lack of appropriate care for such persons in the prison system, the ECHR found a violation of Articles 3, 5 § 1, 5 § 4 and 13 of the Convention. It found that many internees were kept in unsuitable prisons, without adequate therapeutic care or effective remedies to address this situation. It therefore encouraged Belgium to reduce the number of people held in prisons without adequate supervision and to redefine the criteria for internment.

FAIR TRIAL GUARANTEES

The Court of Cassation has decided that both Article 5 and 6 of the European Convention of Human Rights does not apply to the TAP: for Article 5 because its control is limited to the conditions and modality of sentence enforcement; for Article 6, since it does not decide on the merits of a criminal charge.[6] However, the Constitutional Court seems to think otherwise and admits that Article 6 of the European Convention of Human Rights applies in sentence enforcement matters.[7]

3 BELGIUM'S SENTENCE ADJUSTMENT MECHANISMS

3.1. INSTITUTIONAL ARCHITECTURE

The institutional structure for implementing sentence adjustments comprises the sentence enforcement courts ('tribunaux de l'application des peines', hereafter TAP), the Minister of Justice and its administration (the federal public service) and the prison administation:

- **TAP:** these courts constitute one of the sections of the Belgian first instance court ("Tribunal de première instance") located at the seat of the Courts of appeal (Mons, Brussels, Antwerpen, Gent). They are composed of sentence enforcement judges ('juges de l'application des peines', hereafter JAP);
- **Federal public service:** it is mainly the 'Direction Générale des établissements pénitentiaires' (DG EPI) who has jurisdiction with regard to sentence enforcement. Within this administration, there is the 'Direction gestion de la détention' (DGD) that deals with the granting of certain sentence adjustment mechanisms.
- Prison Administration: Prison directors play a role in providing opinions on inmates' behaviour and suitability for adjustment mechanisms.

6 Cass. (2e ch.), 13 January 2016, RG P.15.1659.F, available on www.juportal.be.; Cass., 10 October 2007, Revue de droit pénal et de criminologie, 2008, p. 150.

7 C.C., 4 March 2009, n°35/2009, available on www.const-court.be.; Chomé, A. (2010), "Statut externe du détenu" in: Droit penal et procedure pénale, Bruxelles, Kluwer, pp. 142.

3.2. PLAYERS IN THE SYSTEM

The following parties are involved in Belgium's sentence adjustment system:

- Sentence enforcement judges (JAP): Responsible for assessing applications and issuing decisions. As in France, they can either decide alone or in panels (TAP):
- With the entry into force of certain provisions of the ELS law in September 2022 and September 2023, the JAP is now the one responsible for granting (alone) sentence adjustment measures for convicted person up to 3 years custodial sentences;
- TAP have jurisdiction over convicted persons to one or more custodial sentences of more than 3 years, regarding their claims for the different sentence adjustment mechanisms such as: electronic monitoring, limited detention, conditional release, and provisional release for the purpose of deportation or surrender. In exceptional cases, it may also grant permission to leave and prison leave.
- Prison Directors: Provide criminological evaluations and may initiate applications.

It should be noted that until recently, for convicted persons to a one or more custodial sentences up to 3 years, it was the DGD and the prison director who were dealing with the claims of sentences adjustments measures, such as electronic monitoring or provisory release ("libération provisoire"). Therefore, this regime was mainly governed by ministerial circulars. The explanation behind is that the provisions in the law regarding the jurisdiction of the sentence enforcement judge for these measures weren't entered into force yet. However, the DGD keeps its jurisdiction for granting permission to leave and prison leave.

- Probation officers: Prepare reports on inmates' social and behavioural conditions and supervise released individuals.
- Prosecutors: Represent the state and may challenge decisions granting adjustments.
- Lawyers: Advocate for inmates' applications and represent them in legal proceedings.

3.3. TYPES OF SENTENCE ADJUSTMENTS

Belgium's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- Conditional release;
- Limited detention;
- Home detention under electronic monitoring;
- Temporary leave;
- Prison leave (which can be extended);
- Provisional release on medical grounds;
- Placement in a transitional housing facility;
- Early release 6 months before the end of the sentence.

These mechanisms are governed by the Law of May 17, 2006, concerning the external legal status of individuals sentenced to custodial penalties and the rights afforded to victims in the context of sentence enforcement (hereafter referred to as the "ELS Law").

3.4. CRITERIA FOR GRANTING SENTENCE ADJUSTMENT

3.4.1. CONDITIONAL RELEASE

Allows a sentenced individual to serve his or her sentence outside of prison, subject to specific conditions imposed during a fixed probationary period. This probationary period is equivalent to the remaining duration of the custodial sentence yet to be served by the convicted person; however, it must be no less than one year.

- Eligibility: Prisoners may apply after serving at least:
  - » one third of the sentence: for sentences of 3 years or less
  - » one third of their sentence (up to a maximum of 14 years): for sentences of between 3 and 30 years:
  - » 15, 19 or 23 years (depending on the case): for sentences of 30 and life imprisonment
  - » The ELS Law allow convicts to submit a request before reaching the eligibility date for these measures. Specifically, for limited detention and electronic monitoring, a sentenced person can file their request up to four months prior to meeting the time threshold for eligibility. For conditional release, this request can be submitted six months before reaching the eligibility threshold.

- Assessment criteria: the legislative framework sets out 3 cumulative conditions, in addition to the one relating to the time threshold for eligibility. These conditions are different regarding the length of the sentence:
  - » For all convict, the absence of contraindications (art. 28, §1 ELS law):
    - the impossibility for the convict to support themselves;
    - a clear risk for physical integrity of third-parties;
    - the risk that the convicted person bothers victims;
    - the convicted person's attitude towards victims of the offenses having led to their conviction;
    - the efforts made by the convicted person to compensate the victim, taking into account the convicted person's financial situation as it has evolved due to their actions since the commission of the offences for which they were convicted.
  - » For convicts of 3 years and more, to these conditions are added:
- the convict must present social reintegration plan;
    - there should be no risk of committing new serious offences (not merely a "clear risk for physical integrity of third parties").
  - » For all convicts, agreement on the specific conditions.

3.4.2. LIMITED DETENTION

Allows the convicted person, on a regular basis, to leave the prison for a determined period of 16 hours maximum per day. They come back to the prison to sleep. This mechanism is granted to the convicted person to defend its professional, training and family interests that require its presence outside of prison

- Eligibility:
  - » Can be granted to custodial penalties which does not exceed 3 years, 6 months minimum before the date of eligibility for conditional release (this last condition also applies to sentences of more than 3 years).
  - » Assessment Criteria:
  - » the absence of contraindications (see 'Conditional release'), except 1st condition;
  - » for convicts of 3 years and more, to these conditions are added:
    - the convict must present social reintegration plan;
    - there should be no risk of committing new serious offences (not merely a "clear risk for physical integrity of third parties").
  - » agreement on the specific conditions.

3.4.3. HOME DETENTION UNDER ELECTRONIC MONITORING

Allows the person to serve a part of its sentence outside prison under electronic surveillance, following a determined execution plan.

- Eligibility:
  - » Can be granted to custodial penalties which does not exceed 3 years, 6 months minimum before the date of eligibility for conditional release (this last condition also applies to sentences of more than 3 years).
- Assessment Criteria:
  - » the absence of contraindications (see 'Conditional release');
  - » for convicts of 3 years and more, to these conditions are added:
    - the convict must present social reintegration plan;
    - there should be no risk of committing new serious offences (not merely a "clear risk for physical integrity of third parties").
  - » agreement on the specific conditions.

3.4.4. TEMPORARY LEAVE

Allows the sentenced person to leave prison for a determined period.

- Eligibility:
  - » Available for up to 16 hours defend social, moral, legal, family, training or professional interests which requires its presence outside of prison, or to undergo medical examination or treatment outside of prison
  - » During the two years preceding the date of eligibility to conditional release, permissions to leave can be granted to prepare the convicted person for its social reintegration.
- Assessment criteria:
  - » Absence of contraindication: these contraindications are:
    - the risk for the convict to escape the enforcement of their sentence;
    - the risk to commit serious offences during the time of the measure;
    - the risk they bother victims.
  - » agreement on the specific conditions.

3.4.5. PRISON LEAVES

Allows the convicted person to leave prison for longer periods than temporary leaves.

- Eligibility:
  - » Available for up to 36 hours per trimester to preserve and promote the family, emotional and social contacts of the convicted person, or to prepare social reintegration.
  - » The person must ask in the year preceding the date of eligibility for conditional release. The ELS law precises that 3 months prior to meeting the time threshold for eligibility, or immediately if the delay cannot be respected (either the convict meets the time-related conditions at the start of their sentence enforcement or will meet them within a period of less than three months), the prison director inform the sentenced person of the possibilities to be granted prison leaves.
  - » Can be “extended”: this measure was implemented to limit prison overcrowding in 2017-2018, but also during the Covid pandemic and in March 2024. However, unlike the “classical” prison leave, there is no legal basis for this measure (only notes from the DG EPI).

Under certain conditions, the prison director granted the extended prison leave to certain category of convicted person for alternating periods of one month (i.e. 30 days of prison leave, 30 days of detention).

- Assessment criteria:
  - » Absence of contraindication: these contraindications are:
    - the risk for the convict to escape the enforcement of their sentence;
    - the risk to commit serious offences during the time of the measure;
    - the risk they bother victims.
  - » agreement on the specific conditions

3.4.6. PROVISIONAL RELEASE ON MEDICAL GROUNDS

Allows the sentence enforcement judge to grant this measure to the convicted person for whom it is established that they are in the terminal phase of an incurable disease or that their detention has become incompatible with his or her state of health.

- Eligibility:
  - » The person is definitively released by the end of the part of the custodial sentences still to be served at the time of provisional release, up to a maximum of 10 years.

3.4.7. PLACEMENT IN A TRANSITIONAL HOUSING FACILITY

Created by the Law of July 18, 2018. Allows a convicted individual to serve their custodial sentence according to a specified placement plan. The enforcement of the custodial sentence continues during the individual's time in the transitional housing facility. These facilities are regarded as an intermediary step between traditional incarceration and the reintegration of the convicted individual into society, with the objective of facilitating social reintegration.

- Eligibility:
  - » 18 months before the date of eligibility for conditional release.
  - » Assessment criteria:
  - » the convict is able to stay in an open communitarian regime;
  - » the absence of contraindications that cannot be remedied by setting special conditions. These contraindications relate to the risk, during the placement of the convict, that they escape from the sentence enforcement, commit serious offences or bothers victims;
  - » the sentenced person gives their written consent to the placement plan and to the conditions related to this measure;
  - » the person convicted gives their consent to the internal regulation of the transitional housing facility.
- To be noted: not really a sentence adjustment, but more a specific detention regime inside particular prisons (see comparison with France).

3.4.8. EARLY RELEASE 6 MONTHS BEFORE THE END OF THE SENTENCE.

The Law of the July 31st, 2022 (MSS II) reactivated the early release 6 months before the end of the sentence measure. It is however subject to several exceptions.

3.5. PROCEDURE FOR APPLYING

Belgian law provides distinct mechanisms for sentence adjustments, with clear procedural distinctions based on the nature of the adjustment sought and the jurisdiction of sentence enforcement judge ('juge de l'application des peines' – JAP) or the sentence adjustment court ('tribunal de l'application des peines' – TAP).

- » Prison leave, temporary leave or transitional housing facility:
- » The convicted person must submit a request to the prison director to initiate the process, who provides a substantiated opinion regarding the assessment of conditions, potential contraindications, and the timing of the leave (for prison or temporary leaves);
- » The Minister of Justice or the relevant authority will decide within 14 working days of receiving the file. This decision is communicated in writing within 24 hours to the convicted person, the public prosecutor, and the prison director. This period may be extended once by 7 working days if additional information is needed, with notification provided to the prison director and the convicted person.

- For other measures (limited detention, conditional release, or electronic monitoring), the process depends on whether the custodial sentence is more or less than 3 years – determining whether it falls under the jurisdiction of the TAP or JAP:
  - » If the JAP as jurisdiction, the prison director must inform the convict of his or her eligibility (6 months before for conditional release). The convict must submit his or her request to the prison registry.
  - » If the TAP has jurisdiction, the convict must initiate the process by submitting a written request. This request is then transferred from the prison registry to the TAP's registry within 24 hours. The prison director provides their opinion on the request within 2 months for limited detention or electronic monitoring. For conditional release, the opinion must be provided within 4 months. In all cases, this opinion must be based on public safety concerns and the convict's rehabilitation progress.

3.6. PLACEMENT AT THE DISPOSAL OF THE COURT

In addition to the previously mentioned mechanisms, Belgian law allows penal courts to impose a "mise à disposition du tribunal de l'application des peines" (placement at the disposal of the sentence enforcement court) as an additional penalty, which takes effect after the completion of the main penalty. This measure is intended for the protection of society and is applied when there is a need to decide whether

the convicted person should remain in detention or be released under supervision. The penalty period for this measure is set between a minimum of 5 years and a maximum of 15 years.

The court or tribunal imposes this measure after the principal sentence expires, and it authorizes the TAP to decide, prior to the expiry of the main penalty, whether the convicted person should remain in custody or be released under supervision. If the convicted individual poses a risk of committing serious offenses against the physical or mental integrity of others, and this risk cannot be mitigated by special conditions such as electronic monitoring, the TAP can decide to keep the individual in custody.

Since deprivation of liberty beyond the principal penalty should only be used when absolutely necessary, the law stipulates that after one year under this measure, the TAP must reassess the possibility of granting electronic monitoring. The sentenced person will be definitively released once the period of disposal set by the judge expires, in accordance with Articles 34bis and 34ter of the Criminal Code. However, after two years of electronic monitoring, the convicted person may request to lift the measure earlier. If there is no reasonable risk of reoffending, the TAP may grant this request.

4 STATISTICS

Observers points out that electronic monitoring takes the place of conditional release, delaying or impeding it. Conditional release seems to be less and less used. In 2022, for convicted person to custodial sentence of more than three years, 294 conditional releases were granted and 312 electronic monitoring. From the statistics given by the government of Flanders, in 2023, there was 692 electronic monitoring activated. In 2022, 1733 convicted person were granted prison leave and 4858 of them, permission to leave.

	Data valid for:	2004 01.03.04	2014 yearly average	2024 average: 01/01/2024 until 31/08/2024
a. Prison population rate per 100,000 inhabitants; rate of admissions per 100,000 inhabitants; variation rate over 10 and 20 years (2004, 2014, 2024);		88,9	103,8	103,0
b. The number of prisoners (by distinguishing between convicted prisoners in custody, convicted prisoners not in custody (if relevant) and persons remanded in custody). Specify what this indicator was 10 years earlier and 20 years earlier (2004, 2014, 2024);	Convicted in custody	4713	6772,8	7118,2
	Remand in custody	3614	3610,6	3847,3
	Other in custody	918	1194,9	1152,1
	Convicted not in custody	NAP	NAP	NAP
c. The prison density (i.e. ratio between the number of prisoners and the number of places). If necessary, distinguish by type of establishment;		1,15	1,17	1,12
d The average duration of sentences. Specify what this indicator was 10 years earlier and 20 years earlier (2004, 2014, 2024);		7,0	7,4	7,6
e. Turnover ratio (i.e. number of entries compared to number of exits). Specify what this indicator was 10 years earlier and 20 years earlier (2004, 2014, 2024);	turnover (only exits from prisons)	NA	1,36	1,76
	turnover (exits from prisons and electronic surveillance)		1,00	0,99
f. Percentage of women in prison (in 2004, 2014, 2024);		NA	4,2%	4,4%
g. Percentage of foreign nationals in prison (in 2004, 2014, 2024);		NA	45%	44,3%
h. If available, Percentage of elderly (65 and over), ill or disabled people (HIV, TB, etc.) (in 2004, 2014, 2024);		NA	NA	2,5%

5 PROCEDURAL AND SUBSTANTIAL BARRIERS

5.1. HYBRIDITY OF THE BELGIAN NORMATIVE SYSTEM AND CRISIS OF LEGALITY

For an extended period, certain provisions of the law regarding the enforcement of sentences were not implemented, leading to criticism over the legal uncertainty they created. Individuals sentenced to terms of 3 years or less were subjected to unpublished and frequently amended ministerial circulars – it is still the case for less than 6 months detention–, resulting in significant ambiguity in the applicable rules. This lack of transparency and consistency fueled a long-standing "legality crisis". Recently, the entry into force of provisions granting jurisdiction to the sentence enforcement judge for sentences ranging from 6 months to 3 years marks a step toward addressing this issue.

However, the current framework for sentence enforcement mechanisms, recently revised, continues to draw criticism from academics. The overlap of available measures and the authorities responsible for their implementation has created considerable confusion, making the legal framework not only complex but also difficult for those affected to understand. This lack of clarity is not merely a theoretical concern but has practical implications: penitentiary laws that have come into effect are frequently violated, not out of malice but because of their complexity and the limited awareness among stakeholders.

5.2. THE (IN)EFFECTIVENESS OF SUBJECTIVE RIGHTS

When it was passed, the Act of 17 May 2006 sought to change the framework for the enforcement of sentences from one of privileges to one of subjective rights for convicted persons. This change was intended to ensure that access to certain measures, such as conditional release or temporary leave, no longer depended on discretionary goodwill, but was based on legal rights. However, Belgian research shows that simply establishing subjective rights in legal texts does not guarantee their effective or consistent application. Observers continue to point to the persistence of a "privilege" mentality in the practical implementation of

these measures, which undermines their status as genuine subjective rights. Conditional release, for example, was intended to become the norm in the enforcement of sentences, but in practice its application remains limited and its use is steadily declining.

- Persistent discrepancies in subjective rights:

A crucial problem lies in the inconsistency between the rights theoretically granted by the law and their practical recognition. For example, in the case of temporary leave or prison leave, once the convicted person meets the stipulated conditions, the authority granting the leave is legally obliged to approve the application. These measures are therefore unequivocally regarded as subjective rights. On the other hand, prisoners have no such subjective right in the case of conditional releases or releases on medical grounds. Even if the legal conditions are met, these measures remain at the discretion of the competent authority. This reflects a tension between the intention of the law to enshrine rights and its concrete application, which perpetuates inequality of access to mechanisms of sentence adjustments.

- The pre-eminence of discretionary power:

The discretionary power of the judge further complicates the realisation of subjective rights. According to the Cour de cassation, the use of permissive terms in the legal provisions – such as "may" – rather than mandatory terms such as "must" – gives the judge considerable latitude in deciding whether or not to approve certain measures. While this discretion allows for case-by-case assessment, it also introduces significant variability and uncertainty, which can undermine the perception of fairness and law consistency.

5.3. MOTIVATIONAL DEFICIENCIES

Decisions relating to sentence enforcement mechanisms must be systematically substantiated in order to guarantee transparency and legitimacy. For common measures, the process begins with an opinion drawn up by the prison director. This opinion analyses a number of essential elements, such as the conditions for granting the measure, the documents in the file, any contraindications, the need to impose special conditions, etc. Once the opinion has been drawn up, it is forwarded to the competent authority, which makes the final decision, subject to the same obligation to give reasons, in accordance with the law on the execution of sentences (ELS).

Criticism has been raised regarding the quality of the reasoning provided for decisions. In the case of temporary and prison leave, refusals are often based primarily on the seriousness of the original offences, without adequately considering the individual's efforts toward rehabilitation or progress during detention. Furthermore, the rationale behind decisions made by the competent authority is frequently difficult for convicts to understand. These decisions are often viewed as overly bureaucratic and security-driven, seemingly prioritizing subjective judgments over a thorough assessment of the prisoners' actual living conditions and prospects for reintegration.

5.4. PROCESSING DURATIONS NOT SYSTEMATICALLY BINDING

The ELS law outlines specific deadlines for various actions, such as the prison director's opinion, decisions from the Minister, TAP, or JAP. However, these deadlines are not always enforced with penalties for non-compliance. For temporary leave, there is no remedy if the prison director fails to provide an opinion on eligibility. In contrast, if the prison director does not provide an opinion on prison leave within two months of receiving a request, the convict can request the TAP to order the Minister to provide an opinion through the prison director, under the threat of a fine, within the time limit set by the President of the Court of First Instance. If the Minister of Justice or the DGD fails to issue a decision on temporary or prison leave after a positive recommendation from the prison director, the measures are automatically considered granted. However, this rule does not apply to placements in transitional housing.

For other sentence enforcement measures, deadlines are provided for the prison director's opinion, the public prosecutor, the first hearing, and the TAP's decision, but there are no penalties or sanctions if these deadlines are missed. The same applies to deadlines in the procedure before the JAP.

5.5. DIFFICULTIES ENCOUNTERED BY FOREIGN NATIONALS

Although the Constitutional Court annulled the provisions of the "potpourri II" Law of February5th, 2016, which excluded illegal foreign nationals from sentence adjustment schemes, considering that this exclusion was disproportionate and that reintegration in Belgium is not only accessible to people with a residence permit, there are still many difficulties for foreign nationals. The first of these is the difficulty of complying with the legal requirements relating to the construction of a convincing reintegration project.

Another difficulty arises in terms of language and accessibility. If the documents in a convict's file are written in a language they do not understand, they have the right to request a translation into one of the national languages, with the authority covering the cost. However, the reality for allophone prisoners is far more complicated. Without access to translators, these individuals often struggle to understand the legal processes, available remedies, or even their own case files. For example, at the Sint-Gilles prison in Brussels, the internal regulations are only available in French and Dutch, making it nearly impossible for non-speakers of these languages to comprehend them. In such cases, prisoners are forced to rely on fellow inmates or prison staff for translation, which may not always lead to accurate or impartial understanding. The lack of proper translation and interpretative support highlights a significant barrier to fairness and justice in the prison system. The most recent report from the CCSP (Belgian NPM) recommended that prison internal regulations be translated into as many languages as possible, in addition to the current ones, and urged the implementation of an interpretative system within penitentiary facilities.

6 THE LEGAL FRAMEWORK OF CONTRAINDICATIONS AND JUDICIAL ASSESSMENT OF RISK

6.1. GENERAL PRINCIPLES AND THE LOGIC OF CONTRAINDICATIONS

The Belgian legal system is based on the idea that, in principle, convicted persons should be granted sentence adjustment measures, and it is only in the presence of "contraindications" that the court is empowered to reject the prisoner's request. Indeed, in around half of the applications concerning the adjustment of sentences of less than three years, the requested measure is granted by the judges.[8] In this context, there generally exists a body of case law from the sentence implementation judges referred to as the principle of 'progressivity'. It reflects a cautious attitude on the part of the courts, which grant a less restrictive modality of sentence execution only after the successful completion of one or several more restrictive forms of release.[9] These contraindications have the advantage of being exhaustively listed by law, meaning that a court may never refuse a sentence adjustment on any other ground. The main relevant legal source is the Law of 17 May 2006 on the External Legal Status of Persons Sentenced to a Deprivation of Liberty and on the Rights Granted to Victims in the Context of the Modalities for the Execution of the Sentence, which is frequently amended.

6.2. DISTINCTION BETWEEN SENTENCES BELOW AND ABOVE THREE YEARS

The contraindication regime is stricter for sentences exceeding three years. This distinction is deliberate and justified, according to the legislator, "in view of the specific nature of such cases".[10] This introduces an arbitrary boundary, based on long-standing practice, which the legislator, when drafting the Law of 17 May 2006, did not wish to

8 Nederlandt O. Et Beernaert M.-A., L'exécution des peines d'emprisonnement jusqu'à trois ans, Larcier, 2025, p. 227.

9 Nederlandt O. et Slingeneyer T., « Réflexions sur les justifications jurisprudentielles relatives à l'application de l'article 59 de la loi du 17 mai 2006 relative au statut juridique externe des personnes condamnées », note sous TAP Bruxelles (80e ch.), 11 avril 2011 et TAP Bruxelles (81e ch.), 17 juin 2014, RDPC, 2016, pp. 164-165.

10 1128/1 - 2004/2005, p. 60.

challenge. A member of parliament pointed out that "it should not be overlooked that there may also be complex cases among those [involving sentences of less than three years], and that one should therefore avoid drawing an overly rigid line between the two categories". The government acknowledged this, admitting that:

> **" there may also be sensitive cases within that category. However, this does not in any way detract from the usefulness of making a distinction between two categories of offences, according to their seriousness. In any choice, there is always an element of arbitrariness that cannot be avoided. From this perspective, it was therefore deemed preferable to adhere to the policy that has been followed in this area for many years.[11] "**

6.3. CONTRAINDICATIONS FOR SENTENCES OF THREE YEARS OR LESS (ARTICLE 28)

For sentences of three years or less, Article 28, §1 sets out the relevant contraindications. These include the convicted person's inability to provide for their own needs; a manifest risk to the physical integrity of third parties; the risk that the convicted person will harass the victims; and the convicted person's attitude towards the victims of the offences for which they were convicted. The article also requires consideration of the efforts made by the convicted person to compensate the civil party, taking into account their financial situation as it has evolved through their own actions since the commission of the offences.

6.4. INTERPRETATION OF "MANIFEST RISK TO PHYSICAL INTEGRITY"

The contraindication directly related to the dangerousness of the prisoner is number 2: "manifest risk to the physical integrity of third parties". From the wording of the legislation, two points can already be noted: (1) the risk must be 'manifest', which implies a certain degree of obviousness, and (2) the risk must concern the 'physical' integrity of third parties. Regarding the former, according to the terms of the law, a merely 'possible' risk does not constitute a sufficient reason to deny a sentence adjustment. Concerning the latter, offences against

11 2170/010, p. 104.

property (such as theft without violence, fraud, or white-collar crime) are, in principle, not covered. As one member of parliament observed:

> **“ In other words, it is not possible to refuse conditional release to a notorious fraudster who presents an extremely high risk of reoffending if the person can prove that they are able to provide for their needs and if their sentence does not exceed three years. At most, individualised special conditions may be imposed[12].”**

Some uncertainty remains regarding offences that primarily cause psychological harm to victims (such as harassment). However, it appears that harm to the victims’ psychological integrity is indeed encompassed here. In fact, several members of parliament, during the preparatory works of the Law of May 2006, had requested that risk to psychological integrity be explicitly included in the law. An amendment was submitted and unanimously adopted proposing to mention the risk of harm to the “physical and psychological” integrity of third parties among the conditions to be met by the public prosecutor when ordering provisional arrest.[13]

6.5. SCOPE OF “PHYSICAL INTEGRITY” AND MEANING OF “THIRD PARTIES”

As for the current Article 28 concerning contraindications to sentence adjustment for sentences equal to or less than three years, the statutory text still refers only to risk posed to the “physical” integrity of third parties. However, the government clarified in committee that “[if] this notion was not further specified, [it is because] the words ‘physical integrity’ were already understood to encompass it”.[14] Consequently, it seems established that the contraindication relating to the risk of harm to the integrity of third parties covers both physical and psychological integrity.

Moreover, the risk must concern “third parties,” which likely excludes physical harm inflicted on oneself. In response to a member of parliament who raised this issue in the Justice Committee, it was stated that “the power granted to the public prosecutor under the provision under examination is framed within a specific hypothesis, namely when the convicted person seriously endangers the integrity of third parties”.[15]

12 2170/010, p. 33

13 Lég. 51, 1372170/010, p. 137.

14 2170/010, p. 137

15 3-1128/7, 2005-2006, p. 36.

6.6. JUDICIAL INFERENCE OF RISK FROM RECIDIVISM (COURT OF CASSATION)

In its draft bill, the legislature justified contraindication no. 2 in the following terms: "It goes without saying that, in order to protect public and individual safety, there can be no manifest risk that such safety would be threatened by granting a particular modality of sentence execution to a convicted person."[16]

The "risk of harm to the physical integrity of third parties" is an expression intended to cover concrete situations rather than a mere risk of general recidivism. However, the Court of Cassation appears to allow judges to infer from a general risk of reoffending a manifest risk to the physical integrity of third parties. In a judgment delivered on 3 December 2024,[17] the Court stated that Article 28, §1 of the Law of 17 May 2006 does not preclude the sentencing judge from considering, on the basis of the factual elements cited, that there is a real risk of recidivism and subsequently inferring a manifest risk to the physical integrity of third parties, and that by such an assessment the judge does not rely on a contraindication not provided for by law but rather establishes the existence of the contraindication referred to in Article 28, §1, 2°. It further held that Article 28, §1 does not prevent the judge from integrating, in the assessment of the contraindication of a manifest risk to the physical integrity of third parties, the requirement of a reintegration plan that is, in the judge's assessment, completely reliable, and from concluding on the basis of the factual elements cited that no such reliable plan exists and that the manifest risk cannot be neutralised through the imposition of special conditions; again, such an assessment is deemed to establish the existence of the contraindication in Article 28, §1, 2°. Finally, the Court noted that Article 28, §1 does not preclude the judge, on the basis of convictions for drug-related offences and an assessment of the convicted person's income and debt situation, from finding that there is a real risk of recidivism in profitable drug trafficking.

6.7. INTERACTION WITH RELATED CONTRAINDICATIONS

The risk of harm to the integrity of third parties is implicitly assessed in light of the other contraindications set out in the law. Contraindication no. 1 (the fact that the convicted person is unable to

16 3-1128/1 - 2004/2005, p. 49

17 Cass., 3 Dec. 2024, P.24.1543.N, juportal.be.

provide for their own needs) rests partly on the idea that a prisoner without income may be more tempted to engage in lucrative criminal activity. The draft bill at the time justified this contraindication on humanitarian grounds:

> **“ In the framework of a humane execution of the sentence, it is important to ensure that the convicted person does not simply find themselves ‘on the street’ during the period in which the modality of sentence execution is granted. It is important that the convicted person have accommodation during the execution of such a modality, whether offered by family, friends, or a shelter.[18] ”**

Yet the text immediately added: “moreover, the government considers this condition important for limiting recidivism”.[19]

6.8. ATTITUDE TOWARD THE OFFENCE AND DENIAL OF GUILT

Sentencing judges also often take into account the prisoner’s attitude toward the acts for which they were convicted. In a ruling of 4 February 2025, the Court of Cassation recalled that this criterion cannot, by itself, justify the rejection of a request for sentence adjustment, but that “this does not prevent the sentencing judge, when assessing the contraindications stipulated in Article 28, § 1 of the Law on the External Legal Status of Prisoners, from also considering the fact that the convicted person denies their guilt in the acts for which they were convicted, in addition to other factors”.[20]

The Court went even further, holding that the persistent denial of the facts may establish the existence of the contraindication of a manifest risk to the physical integrity of third parties (in other words, that such denial may become a contraindication):

> **“ The mere fact that a convicted person persists in denying having committed the acts for which they were convicted is not a contraindication defined in Article 28, § 1 of the Law on the External Legal Status of Prisoners, and the sentencing judge may therefore not base the refusal of a sentence modality on this fact alone; however, the judge may,**

18 Em, 3-1128/1 - 2004/2005, p. 49.

19 Ibid.

20 Cass., 4 Feb. 2025, P.25.0065.N, juportal.be ; See Cass., 3 Dec. 2024, P.24.1543.N, juportal.be.

in view of the concrete circumstances of the case, base the finding of the contraindication of a manifest risk to the physical integrity of third parties referred to in Article 28, § 1 above, on the convicted person's persistent denial of the facts for which they were convicted.[21] "

6.9. ROLE OF CRIMINAL RECORD IN ASSESSING RISK

In assessing the risk of harm to the physical integrity of third parties, judges also attach importance to the criminal record of the convicted person. This approach was endorsed by the Court of Cassation in a ruling of 14 January 2025, which confirmed that a sentencing judge may base the existence of the relevant contraindication solely on the person's criminal record, provided the reasoning is concretely explained.[22]

6.10. SPECIAL PROCEDURES FOR RISK-ASSESSMENT (ARTICLE 32)

Article 32 of the Law of 17 May 2006 establishes specific procedures for risk assessment in two categories of offences: sexual offences (§ 1) and terrorism or violent extremism (§ 2). In these cases, the court must obtain not only the opinion of the prison management but also a reasoned opinion from a specialised service. This opinion must assess the need to impose treatment in cases of sexual offences, or the need to require an appropriate support programme in cases involving violent extremism.

Article 32 defines violent extremism as "the act of promoting, encouraging or committing acts that may lead to terrorism and that aim to uphold an ideology advocating racial, national, ethnic or religious supremacy, or opposing the fundamental values and principles of democracy".

6.11. INDIVIDUALISED SPECIAL CONDITIONS (ARTICLE 40)

Finally, Article 40 provides a general possibility for the sentencing judge to "subject the convicted person to individualised special conditions if these are absolutely necessary to limit the risk of

21 Cass., 13 Aug. 2024, P.24.1186.N, juportal.be.

22 Cass., 14 Jan. 2025, P.24.1732.N, juportal.be.

recidivism or if they are necessary in the interest of the victim".

6.12. CONTRAINDICATIONS FOR SENTENCES EXCEEDING THREE YEARS (ARTICLE 47)

For sentences exceeding three years, Article 47, §1 sets out the relevant contraindications. These include the absence of prospects for the convicted person's social reintegration, the risk of committing new serious offences, the risk that the convicted person will harass the victims, and the convicted person's attitude towards the victims of the offences for which they were convicted. The article also requires consideration of the efforts made by the convicted person to compensate the civil party, taking into account their financial situation as it has evolved through their own actions since the commission of the offences.

6.12. HOW DANGEROUSNESS IS UNDERSTOOD UNDER ARTICLE 47

It can be observed that the prisoner's dangerousness is assessed primarily through the first two criteria. Criterion no. 2 states this explicitly, while no. 1 does so implicitly. The terminology differs from that used for sentences of three years or less: where Article 28 refers to "the fact that the convicted person is unable to provide for their own needs," Article 47 instead speaks of an "absence of prospects for social reintegration." Likewise, where Article 28 refers to a "manifest risk to the physical integrity of third parties," Article 47 mentions the "risk of committing new serious offences."

6.14. ABSENCE OF "MANIFEST" REQUIREMENT AND IN DUBIO PRO REO

The fact that Article 47 does not require the risk to be "manifest" is, formally speaking, significant. It makes it easier for the Sentence Enforcement Court (Tribunal de l'application des peines, TAP) to reject a request for sentence adjustment. This raises the question of whether the principle in dubio pro reo (that doubt benefits the accused) applies to sentence enforcement proceedings. The Court of Cassation has answered in the negative:

> **" The Sentence Enforcement Court, when called upon to verify whether contraindications to the granting of a requested sentence execution modality exist, does not rule on the guilt of the person prosecuted for the offences charged and is therefore not bound by the general principle of law that doubt benefits the accused, when it is required, under Article 47, § 2, 2°, of the Law of 17 May 2006 on the External Legal Status of Convicted Persons, to assess the risk of committing new serious offences".**[23]

6.15. LIMITS ON USE OF CONDITIONS AND JUDICIAL REASONING

Article 47 specifies that these contraindications must be possibilities "to which the imposition of special conditions cannot respond". This clarification was added by the Pot-Pourri II Law of 5 February 2016 and justified rather tautologically: "The proposed idea is that sentence modalities may, in principle, be granted to all convicted prisoners, except where contraindications exist that cannot be remedied by imposing conditions".[24] However, this legislative addition does not appear to have substantially changed the practice, as the Court of Cassation recently held that: "No provision of the Law of 17 May 2006 on the External Legal Status of Persons Sentenced to a Deprivation of Liberty requires the Sentence Enforcement Court to provide separate reasoning as to why the imposition of special conditions cannot address the contraindication it finds; such reasons may be inferred from the grounds set out in the judgment granting or refusing the requested modality."[25]

23 Cass., 12 July 2017, P.17.0724.N, juportal.be.

24 Note de politique générale, DOC 54 1428/00, p. 27

25 Cass., 10 mai 2023, P.23.0563.F, juportal.be.

6.16. INTERPRETING SERIOUSNESS OF RISK FOR SENTENCES ABOVE THREE YEARS

With regard to custodial sentences exceeding three years, it has been clarified that the notion of a "manifest risk to the physical integrity of third parties" cannot be equated with a mere general risk of recidivism. The Holsters Commission has emphasised that the concept of risk, in this context, must relate to the commission of serious criminal offences; the possibility that a person might commit minor offences is not sufficient grounds to refuse a sentence execution modality. This interpretation aligns with the European Court of Human Rights' reasoning in Stafford v. United Kingdom (28 May 2002),[26] which held that imprisonment based solely on the possibility of future non-violent, unrelated criminal conduct is incompatible with the principles of the Convention.[27]

6.17. REVIEW OF JUDICIAL REASONING BY THE COURT OF CASSATION

As noted earlier, the Court of Cassation accepts that judges may infer a risk of committing new offences from the persistent denial of guilt. However, the Court has also overturned a Sentence Enforcement Court decision in which the formal mention of a contraindication – namely the risk of committing new serious offences and the attitude toward the victims – did not, in substance, justify the rejection of a sentence adjustment. The Court found fault with the decision insofar as "the Sentence Enforcement Court essentially based its rejection of the requested modality on the finding that the applicant continued to deny her guilt for the acts for which she had been convicted".[28] The use of the word "essentially" indicates that the Court reviews the substantive reasoning of the judges rather than merely verifying the formal mention of a contraindication in the decision.

26 (add)

27 Em, 3-1128/1 - 2004/2005, p. 60.

28 Cass., 17 Nov. 2020, P.20.1071.N, juportal.be

6.18. ADDITIONAL FACTORS CONSIDERED BY JUDGES

The following elements, while they cannot themselves constitute a contraindication, may nevertheless be taken into account: uncertain residence or immigration status[29]; absence of a psychosocial assessment (where applicable, due to insufficient command of the national language)[30]; the nature and gravity of the offences for which the person was convicted and the victim's wish to avoid possible encounters with the offender[31]; and the factual circumstances that led to the revocation of a previously granted sentence execution modality.[32]

6.19. CONSTRAINTS ON USING IMMIGRATION STATUS AS A GROUND FOR REFUSAL

Regarding the absence of legal residence, the Court of Cassation has overturned a decision that based the finding of a risk of committing new offences on the lack of a valid residence permit and the resulting impossibility for the prisoner to work (and thus reintegrate) legally in Belgium.[33]

29 Cass., 29 Jul. 2025, P.25.1019.N, juportal.be.

30 Cass., 17 June 2025, P.25.0783.N, juportal.be.

31 Cass., 6 May 2025, P.25.0559.N, juportal.be.

32 Cass., 4 May 2024, P.24.0734.N, juportal.be.

33 Cass., 16 April 2024, P.24.0444.N, juportal.be.

7 EMPIRICAL FINDINGS ON JUDICIAL RISK ASSESSMENT IN SENTENCE ADJUSTMENT DECISIONS

This section focuses on how the risk of recidivism, or the dangerousness of a convicted person is defined and assessed during the analysis of sentence adjustment requests, primarily by judges – an aspect that emerged as particularly significant in the interviews conducted.

According to the judges interviewed, as well as members of associations, whether the sentence under review is for less than or more than three years, two principal contraindications are taken into account, and the presence of just one is sufficient to justify a refusal: the absence of prospects for social reintegration and the risk of reoffending in relation to serious crimes. The evaluation of dangerousness is based on the likelihood of "repeating the same acts". In some cases, depending on the initial offence, judges consider this risk inherent—for example, in cases of paraphilia, financial predation, or violent theft, as one judge explained. The potential to harass or harm victims is also a relevant consideration. Consequently, judges examine the nature of the acts committed (as they may be repeated), the convicted person's attitude towards those acts, their criminal history (whether first-time or repeat offender), personality traits identified in the psychosocial report, and the extent to which victims have been compensated.[34]

For sentences of less than three years, recent legislative reforms have narrowed the criteria for granting early release to two main elements: the availability of a residence and the existence of an immediately observable risk to the physical integrity of others at the time of the hearing, with the aim of allowing greater flexibility in addressing prison overcrowding. Nonetheless, the gravity of the original offence remains central. Although recidivism is technically no longer a criterion under this new framework, judges continue to take it into account when setting the conditions of release. The reforms have removed the requirement for a social inquiry and for the presence of the judicial assistant, and in many cases even the hearing itself, relying predominantly on the prison director's automatic recommendation. One prison director confirmed

34 See too : Nederlandt O. Et Beernaert M.-A., L'exécution des peines d'emprisonnement jusqu'à trois ans, Larcier, 2025, pp. 238-241.

the weight of this recommendation, noting that it is often favourable. Judges perceive that directors' primary aim is to reduce prison populations; however, they appear to follow the director's recommendation in only around half of cases.

Regulations governing sentence adjustments provide for specific risk-assessment procedures for certain categories of offences, requiring compliance with a particular classification system—especially in cases involving sexual offences against minors or terrorism, the latter remaining subject to the previous legislation. For sexual offences, the procedure requires obtaining a detailed specialised opinion on care provision (SPS). The Judge for Sentence Enforcement (JAP or TAP) may also request additional information and reports in cases such as drug-related offences or domestic violence. The volume of available information, including expert evaluations and collected opinions, has a significant impact on decision-making: for the JAP, having more information tends to facilitate granting sentence adjustments, whereas for the prison director, having fewer elements to review—particularly under the new procedure—makes it easier to issue a favourable recommendation. This raises questions about whether the relative weight of preparatory measures has, in practice, increased in recent years.

Moreover, judges, corroborated by association members and administrative staff, report that they evaluate the existence of a stable living environment, the availability of psychological support (if recommended by the psychosocial service), and the presence of a meaningful occupation, primarily work or training, given the view that "idleness is the mother of all vices." Although no standardised tools exist for assessing these risks, judges rely heavily on the prison psychosocial report, which is regarded as the most important document alongside the conviction judgment and any psychiatric assessments. Judges systematically review the conviction judgment in order to understand the sentence imposed and the information that was available to the original trial judge.

Sentence adjustments are frequently combined with security measures, which may include prohibitions on contact or geographic restrictions concerning victims, and such requests are often granted. Victims are informed when release is approved and of the conditions imposed. For sentences of less than three years under the new legislation, security measures are never applied. However, if the JAP grants release despite the presence of risk – as allowed under the new framework – they impose conditions aimed at preventing recidivism and protecting the physical or psychological integrity of others. Any sentence adjustment may be revoked during the probation period if conditions are breached or if the individual endangers the safety of others. Hearings may be reopened if the

individual submits new proposals, and the judge may modify conditions accordingly. The fundamental objective remains social reintegration.

Finally, in the case of Provisional Release on Medical Grounds (LPRM), an individual's health may justify release when they are in the terminal phase of an incurable illness or when detention is incompatible with their medical condition. Even in these cases, however, risk assessment remains essential. Courts systematically examine potential contraindications, including the suitability of the proposed living environment, the general risk posed by the individual, and the potential for causing distress or harm to the victim. For other types of sentence adjustment requests not based on medical grounds, the individual's health is not considered relevant in the judicial evaluation.

CHAPTER 5

Sentence Adjustment Mechanisms in SPAIN: Law and Practices

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Introduction

From a European perspective, the law on enforcement of sentences is characterised by a paradoxical situation. On the one hand, a dense body of European soft law, mainly from the Council of Europe bodies, consistently stresses the primacy of the principle of reintegration and the need to give sentence adjustments a central place. On the other hand, the case law of the European Court of Human Rights, which has been the main vehicle for the reforms and even transformations of prison systems in Europe, remains reluctant to formulate obligations for States in this area.

Based on these observations, the European Prison Litigation Network undertook between 2024 and 2025 a study in seven European countries (Belgium, France, Germany, Poland, Portugal, Spain and Ukraine) in partnership with the Universidad Francisco de Vitoria UFV Madrid, Strafvollzugsarchiv, Universidad Complutense Madrid, Forum Penal, Centre de Recherches en Droit Pénal, Université Libre de Bruxelles, the Helsinki Foundation for Human Rights. This study aimed at investigating the European influence on national laws and practices regarding the application of sentence adjustments, through analysing the different national frameworks and the multiple factors impeding and facilitate prisoners access to these mechanisms. The research was supported by the European Union's Justice Programme[1].

The present report intends to examine the national legal frameworks governing and organising sentence adjustment mechanisms in Spain and the practices of Spanish professionals and other stakeholders involved in their framing and implementation. The report also describes the recent trends in the granting of sentence adjustments or reductions at the national and regional level, and analyses the obstacles to prisoners' access to sentence adjustment or reduction, in general and for specific categories of prisoners.

Finally, the report also examines the role of risk-based rationales and assessment instruments in decision making processes on sentence adjustments and the extent to which such instruments have changed or shaped professional practices in the matter in the past decades.

I. Methodology

The research for this report was conducted in two different stages.

[1] Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. neither the European Union nor the European Commission can be held responsible for them.

The first research stage was conducted in 2024 and consisted of a literature review to identify the relevant legal instruments and case law in respect, analyse available statistics as well as identify other relevant sources including grey literature.

The second stage of the research consisted in a qualitative study. Nine semi-structured interviews were conducted between March and September of 2025 with actors situated at different levels and contexts of the penal field, including: two long-term prisoners, including one on parole; a civil servant from the Central Prison Administration; the Director of Prison Services of the Basque Government; a lawyer and coordinator of the Service for Legal Counselling in Prison at the Madrid Bar Association; two Judges for Prison Supervision; an academic expert on risk assessment tools; and a civil servant from the Catalan Prison Administration. All interviews were anonymised to ensure confidentiality and facilitate open expression. The combination of fieldwork with the review of relevant legislation and academic literature conducted in 2024 allowed the empirical findings to be situated within their broader legal and conceptual context.

II. Overview of the Spanish Prison System

2.1 Territorial administration of the penal and prison system in Spain

There are three penitentiary administrations in Spain.[2] The three share the same basic law (Ley Orgánica General Penitenciaria nº 1/1979) and statutory regulation (Reglamento Penitenciario from 1996), and are identically supervised by the Judge of Penitentiary Supervision and the Public Prosecutors of Penitentiary Supervision, which are State Bodies and provide a common basis and supervision of the three penal execution and prison administrations (execution of all the criminal sanctions, probation, parole and measures dictated by the criminal courts).

1. The State Prison Administration, under the jurisdiction of the Ministry of Home Affairs, operates prisons located throughout the entire Spanish territory, except the Autonomous Community of Catalonia and the Autonomous Community of the Basque Country.

2. The Catalan Prison Administration, under the jurisdiction of the Department of Justice of the Regional Government of Catalonia, manages prisons located in that territory. It was in 1983 when Catalonia materialised the possibility that was provided for in the Spanish Constitution[3] of running its own prison administration through the adoption of Royal Decree 3482/1983, of 28 December, on the transfer of State services

[2] Article 149.6 of the 1978 Spanish Constitution provides for the possibility of transferring to the Autonomous Communities the competence over prison administration, while reserving exclusive competence over penitentiary legislation to the State.

[3] Article 11 of the former Statute of Autonomy for Catalonia of 1979 mirrored art. 149.6 of the Spanish Constitution and provided for the possibility of Catalonia being responsible for the organisation and operation of penitentiary institutions. Art. 168 of the current 2006 Statute of Autonomy for Catalonia includes that same provision.

to the Generalitat of Catalonia regarding Prison Administration. It must be noted that Catalonia has executive competences and a reduced statutory competence on prison issues, subordinated to the legislative competence of the State.

3. The Basque Prison Administration, under the jurisdiction of the Department of Justice and Human Rights of the Regional Government of the Basque Country, runs prisons located in that territory. It was only as recently as 2021, ten years after the ceasefire of the terrorist organization ETA, that the Basque Country[4] started operating its own prison administration through the adoption of Royal Decree 474/2021, of 29 June, on the transfer of functions and services from the State Administration to the Autonomous Community of the Basque Country on the implementation of State legislation on penitentiary matters. The handover of all the services and institutions became effective on the 1st of October 2021, which explains why, given the short period of time it has been in operation, there is no data available in SPACE I 2023 annual report regarding the Basque Prison Administration.

2.2. General trends in the prison population

In 2024, the total number of inmates in Spain amounted to 55 909 persons, from which 83,6% were convicted and 16,4% remanded in custody. Over the past 10 years, the prison population has decreased of 15%, after a decade of increase between 2004 and 2014.

Total number of inmates	**SPAIN (Total)**	Convicted prisoners in custody	Convicted prisoners not in custody[5]	Persons remanded in custody
2023	55,909	46,759 (83.6 %)		9,150 (16.4 %)
2014	65,931	57,295 (19.5%)		8,636 (13.1%)
2004	59,224	45,534 (76.9%)		23%[6]

Table 1. Prison population in Spain. Source : SPACE I annual reports

In 2024, women accounted for 7% of the overall prison population, a figure which has remained has slightly decreased over the past two decades.

Percentage of women in prison	State Administration	Catalonia	**SPAIN (Total)**
2024	7.2%	6%	7%
2014	7.7%	6.7%	7.6%
2004	7.7%	7 %	7.6%

[4] Article 10.14 of the 1979 Statute of Autonomy for the Basque Country attributes to the Autonomous Community exclusive competence over the organisation and operation of penitentiary institutions. Article 12.1 states that the Autonomous Community of the Basque Country is responsible for the execution of State legislation on penitentiary matters.

[5] Data not provided by Space I reports.

[6] Space I for Rest of Spain (not included Catalonia)

Table 2. Percentage of women in Spain. Source : SPACE I annual reports

As regard the percentage of foreign nationals in custody, the average percentage across Spain was of 30,1 % in 2024, with significant higher percentage accounted in Catalonia, where 48,7% of prisoners were foreign nationals, as compared with 31,7 % two decades ago.

Percentage of foreigners in prison	Central Administration	Catalonia	SPAIN (Total)
2024	27.1%	48.7%	30.1%
2014	28.3%	43.9%	30.5%
2004	27.5%	31.7%	28%

Table 3. Percentage of foreign nationals in Spain. Source : SPACE I annual reports

As regard the percentage of elderly people in prison, 3,2 % of the prison population was older than 65 years in 2024, a rate which is similar whether in the State Administration or in Catalonia.

In 2023, the prison population rate was of 116,3 per 100 000 inhabitants, compared to 140.3 in 2004 and 141.7 in 2024. Taking into account that the European median value as regards prison population is 106.5, the State Prison Administration scores high as regards its prison population rate.[7] The Catalan Prison Administration, however, has a low prison population rate[8] (aligned with other Southern European States like Italy (95.4) or Greece (100.7), yet still far away from the values of countries such as Norway (55.2), the Netherlands (52.4), Finland (52.3) or Germany (68.9). The Basque prison population would score in this very low group of prison population rate (72.1).

Prison Population Rate per 100,000 inhabitants	State Administration	Catalonia	Basque Country[9]	**SPAIN (total)[10]**
2023	120	97.8	72.1	**116.3**
2014	144.2	128.6		**141.7**
2004	144.1	120.0		**140.3**

Table 4. Prison population rate per 100,000 inhabitants. Source : SPACE I annual reports

When comparing the prison population rate throughout the last 20 years, the following must be noted:

[7] The State Prison Administration is classified within the cluster including the prison administrations whose score is between 5% and 25% higher than the European median value, see SPACE I 2023 report p. 4

[8] The Catalan Prison Administration is classified within the cluster including the prison administrations whose score is between 5.1% and 25% lower than the European median value, See SPACE I 2023 report p. 4.

[9] According to the official data published by the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, pp. 297 et seq.)*

[10] These are the **non-adjusted figures** provided by SPACE I reports for prison population rates.

- As regards the State Prison Administration: there was an upward trend in the number of inmates up to 2009, when the prison population reached its peak (173.1 incarcerated persons per 100.000 inhabitants), and ever since that date a decrease followed (the percentage change being -18.9%). However, this trend was surprisingly reversed in 2022 when it went from 55.097 inmates in all administrations (31-12-2021[11]) up to 58.942 according to the latest available data (31-07-2024). This results in a 7% increase in two and a half years.
- As regards the Catalan Prison Administration: the same upward trend can be noted up to 2011, when the prison population reached its peak (144.1 incarcerated persons per 100.000 inhabitants), and a subsequent decrease after that year can also be appreciated (the percentage change being -26.9 %). Likewise, since 2022 this downward trend has been reversed; in December 2021 Catalonia had a prison population of 7.746, whereas in July 2024 (latest available data) it had a prison population of 8.450; +704 inmates; +9%.

Two main conclusions can be drawn:

1. The difference between the Catalan and Central Prison Administration rates essentially remains over the years, with the Central Prison Administration having a higher prison population rate than that of the Catalan Prison Administration.
2. The evolution of the two trends (the Catalan and the Spanish) is parallel (upwards up to 2009-2011,[12] and then downwards until 2021,[13] after which they seem to be

[11] https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/anuarios-y-estadisticas/ultimo-anuario-estadistico/Anuario_estadistico_2023_126150729_Prov.pdf.

[12] Doctrine has come up with several reasons to try to explain the very pronounced increase in prison population between the years 2000 and 2009 / 2011 in both Prison Administrations. First, the adoption of several laws of rigorous content: (1.) the 1995 Criminal Code, which on the one hand increased the penalties for various crimes, including the crimes of drug trafficking and robbery that motivate most criminal convictions in Spain and, on the other hand, also abolished the remission of sentences for work (which automatically shortened sentences by 1/3 of their duration and optionally by ½). Although the new Code came into force in 1996, its impact manifested itself in a delayed manner, and the length of stay in prison went from 13 months in 2000 to 19.3 months in 2010. (2.) Law 7/2003, of 30 June, introducing reforms assuring that inmates serve the full length of their sentences. (3.) Law 15/2003, of 25 November introducing a major revision of the Criminal Code which raised occasional abuse in the domestic sphere to the category of a criminal offence (4.) Law 1/2004, of 28 December, regarding violence against women which increased the penalties for occasional abuse where the victim is the woman partner and also raised to the category of crimes threats and minor coercion where the victim is the woman partner.
Cid, J. (2021). El futuro de la prisión en España. PostC: La PosRevista sobre Crimen, Ciencia y Sociedad de la era PosCovid19, (2). El incremento de la población reclusa en España entre 1996-2006 diagnóstico y remedios. José Cid Moliné https://dialnet.unirioja.es/descarga/articulo/2591478.pdf.

[13] This fact has been explained by the impact of the reform of the Penal Code of 2010 (Law 5/2010, of 22 June), which affected the minimum penalty for drug trafficking offences and extended the use of alternatives to imprisonment. Reasons related to the context of the economic crisis could also explain this decrease: faced with the need to reduce public expenditure and given the high cost of maintaining inmates, the administrations are more

increasing again), so that the two prison systems respond similarly to the causes that determine prison population increase and decrease.

Currently, Spain as a whole and both the State Prison Administration and the Catalan Prison Administration score very low (more than 25% lower than the European median value) as regards the rate of admissions.

Rate of admissions per 100,000 inhabitants	State Administration	Catalonia	SPAIN (total)
2023	73.0	68.7	72.3
2014	110.7	89.5	107.3
2004	98.0	87.8	[14]

Table 5. Rate of admissions per 100,000 inhabitants. Source : SPACE I annual reports

inclined to adopt decisions they refer to the renewal of the system of alternative sentences to imprisonment that took place with the adoption of the 1995 Penal Code and which brought our criminal legislation closer to the recommendations of the Council of Europe, which required alternative sentences to be the normal response to a criminal offence. This reform raised the threshold for alternative sentences to include sentences of up to two years' imprisonment and increased the number of alternative sentences available to the judge, including suspension while meeting rules of conduct (probation), community service and day-fines. Europeanisation also refers to the reception by Spanish constitutional jurisprudence of the case law of the ECtHR on the exceptionality of pre-trial detention. Judgment 128/1995 was the first of several decisions of the Spanish Constitutional Court which echoed the ECtHR case law on the exceptionality of pre-trial detention. Subsequently, the Court had to reaffirm its doctrine on several occasions until, finally, in 2003, the legislator reformed the Criminal Procedure Act (LECr) to bring it into line with the constitutional doctrine.
Cid Moliné, J. (2020). El futuro de la prisión en España. Revista Española De Investigación Criminológica, 18(1), 1–32. https://doi.org/10.46381/reic.v18i0.285.

[13] Data not provided by Space I 2004 report.

[13] Understood as the average length of imprisonment for sentenced prisoners.

[13] The Space I 2004 report only offer the provided data.that lead to a decrease in the incarcerated population, including foreign prison population expulsion. J.M. Tamarit Sumalla ¨El sistema penitenciari català: fonament i exercici de la competencia¨ REAF núm. 23, abril 2016, p. 235-273. Doctrine also mentions the process of ¨europeanisation¨ as one of the reasons which explains the reduction in prison population (more precisely, the reduction of the rate of admissions). Under this term, they refer to the renewal of the system of alternative sentences to imprisonment that took place with the adoption of the 1995 Penal Code and which brought our criminal legislation closer to the recommendations of the Council of Europe, which required alternative sentences to be the normal response to a criminal offence. This reform raised the threshold for alternative sentences to include sentences of up to two years' imprisonment and increased the number of alternative sentences available to the judge, including suspension while meeting rules of conduct (probation), community service and day-fines. Europeanisation also refers to the reception by Spanish constitutional jurisprudence of the case law of the ECtHR on the exceptionality of pre-trial detention. Judgment 128/1995 was the first of several decisions of the Spanish Constitutional Court which echoed the ECtHR case law on the exceptionality of pre-trial detention. Subsequently, the Court had to reaffirm its doctrine on several occasions until, finally, in 2003, the legislator reformed the Criminal Procedure Act (LECr) to bring it into line with the constitutional doctrine.
Cid Moliné, J. (2020). El futuro de la prisión en España. Revista Española De Investigación Criminológica, 18(1), 1–32. https://doi.org/10.46381/reic.v18i0.285.

[14] Data not provided by Space I 2004 report.

Doctrine believes that in order to really grasp the full picture and understand the factors that explain the evolution of the incarceration rate in Spain, prison admissions and the duration of imprisonment must be analysed separately, since Spain has one of the longest average lengths of imprisonment in the Council of Europe but at, the same time, has a very low rate of admissions.

Average duration of sentences[15]	State Administration	Catalonia	SPAIN (Total)
2023	33.8 months	61.4 months	36.3 months
2014	16.1 months	17.9 months	16.4 months
2004[16]			16.3 months

Table 6. Average duration of sentences. Source : SPACE I annual reports

Considering that the European median value as regards average duration of sentence is 13.1, both the State Prison Administration and the Catalan Prison Administration score very high. The very noticeable increase in the average duration of sentences has taken place during the last decade.

Access to sentence adjustment mechanism would not lower these figures, since they do not entail a reduction of the sentence, they are rather a means for serving the prison sentence in an open regime as a way for preparing inmates for life out of prison

III. Sentence Adjustments Mechanisms in Spain : a System Articulated to the Structure of Prison Regimes

The Spanish prison system provides for different modalities of serving the sentence which are articulated through a system of classification into three prison regimes (in Spanish *grados de tratamiento*). This classification system is characterised by its flexibility and, in accordance with the so-called principle of scientific individualisation, allows the initial classification of the sentenced person in any prison regime, including the open regime (or third degree) (Article 72.3 and 4 of the LOGP).

The system of scientific individualisation has been built on subjective elements, linking the classification and assignment of each of these modalities to the individual conduct of the prisoner and his or her prognosis for reintegration, in such a way that it is not compulsory to pass through each of the regimes to progress to the next one. Classification in any prison regime is possible.

That said, one. of the requirements for parole is to have reached open regime. And in certain cases (those in which the so-called ¨security period¨ is established), access to open regime does not obey the logic of the system of scientific individualisation.

[15] Understood as the average length of imprisonment for sentenced prisoners.

[16] The Space I 2004 report only offer the provided data.

Within this overall framework, sentence adjustment and reduction can be distinguished between three mechanisms, governed by the Prison Law, the Criminal Code and the Prison Regulations (1) Access to open regime *(Tercer Grado*), (2) Parole (*Libertad Condicional*) and (3) the suspension of execution due to mental illness

3.1. Access to Open regime

One of the key sentence adjustment mechanisms foreseen in Spanish legislation is access to open regime. Theoretically, and according to art. 72.3 of the Prison Law,[17] except in those cases expressly foreseen in the legislation (see below), convicts could serve their prison sentence in open regime directly, immediately after the handing down of their conviction, without necessarily having to pass through those degrees preceding it (i.e. ordinary or closed regime).

In practice and in view of statistics, the vast majority of inmates in Spanish prisons serve their sentences in ordinary prison regime, rather than open regime.

As regards Spain as a whole, in December 2023, out of a total population of 45,561 convicted[18] inmates, 33,594 were serving their prison sentence in ordinary prison regime (second degree), whereas only 8,504 inmates (18.7%) were serving their prison sentences in open regime.[19]

As regards the State Prison Administration, in December 2023, out of a total population of 37,894 convicted inmates[20]: 28,516 were serving their prison sentence in ordinary prison regime (second degree), whereas only 6,721 inmates (17.7%) were serving their prison sentences in open regime.[21]

As regards the Catalonian Prison Administration, in December 2023, out of a total population of 6328 convicted inmates[22]: 4250 inmates were serving their prison

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[17] Art. 72.3 PL states that ¨*whenever it appears from the initial period of observation of an inmate that he/she is capable of living in an open regime, he/she may initially be placed in open regime*¨.

[18] The total prison population of Spain as a whole on 31/12/2023 was 56,698. Out of this number, 45,429 persons were convicted to a prison term, another 9,908 were in pre-trial detention, 530 were subject to security measures, and 831 fell under the so-called ¨convicted with preventive measures¨ (i.e.: persons who have been sentenced by a final judgment by a competent authority to a custodial sentence or measure involving deprivation of liberty but who, at the same time, are still in a pre-trial detention situation for another separate criminal case. For this reason, they cannot be classified in prison treatment grades). Data obtained from Anuario estadístico del Ministerio del Interior 2023, p. 305

[19] Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 306)*

[20] The total prison population of the State Prison Administration on the 31/12/2023 was 47,083. Out of this number, 37,894 persons were convicted to a prison term, another 8,043 were in pre-trial detention, 476 were subject to security measures and 670 fell under the so-called ¨convicted with preventive measures¨. Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 305)*

[21] Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 306)*

[22] The total prison population of the Catalan Prison Administration on the 31/12/2023 was 8,041. Out of which, 6,328 were convicted to a prison term (including here those ¨convicted with preventive

sentence in ordinary prison regime (second degree) and 1,345 inmates (21.25%) were serving their prison sentences in open regime.[23]

As regards the Basque Country, in December 2023, out of a total population of 1,339 convicted[24] inmates: 828 were serving their prison sentence in ordinary prison regime (second degree), whereas 443 inmates (33.1%) were serving their prison sentences in open regime.[25]

The persistent low rate of convicts serving their sentence in open regime can be explained by series of limitations and restrictions established by the the *Organic Law 7/2003, on reform measures for the full and effective enforcement of sentences.*

Besides these normative limitations and restrictions foreseen, other reasons may explain why accessing open regime does not reach its full potential, like the conservative approach of the prison technical staff and of the judges and public prosecutors; the lack of adequate and enough probation services and staff; the insufficient resources for social integration; and the resistance of the public opinion to open regime.

The law rate of convicted prisoners serving their sentences in open regime raises another question. What are the reasons behind the notable differences between the three territorial prison administrations (only 17.7% of the State Prison Administration population is placed in open regime, against 21.25% of the Catalonian Prison Administration population and 33.1% of the Basque Prison Administration)?

The result of the field research suggests several grounds. First and foremost, one interviewee warned about the comparability of data provided by the three administrations and the particularities of the implementation path walked by each prison Administration so far. She stated: ¨These figures depend very much on whether they are based on the total prison population or on the classified population". (Interviewee 2).

Besides, most of the interviewees acknowledged the role played by external relays and service providers. Indeed, most of the training, employment or treatment services that inmates receive while in open regime are managed directly by non-prison associations or organisations. As one interviewee explained ¨*as soon as inmates start to exit prison via open regime or parole and face other challenges, there is hardly any involvement of prison staff. Therefore, it is important to have a strong third sector that starts to intervene inside prisons (for first contacts with inmates) and that accompanies them in*

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measures¨), 1662 were in pre-trial detention, and 51 were subject to a security measure. Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 305)*

[23] Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 306)*

[24] The total prison population of the Basque Prison Administration on the 31/12/2023 was 1574. Out of this number, 1339 persons were convicted to a prison term, another 203 were in pre-trial detention, 3 were subject to security measures, and 29 fell under the so-called ¨convicted with preventive measures¨. Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 305)*

[25] Data obtained from the Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 306)*

their gradual release and the process of reintegration¨ (Interviewee 3). In this regard, one interviewee added *¨there is also another side of the story that must not be overlooked: the support measures that a prisoner can count on after stepping outside prison (in terms of economic support, job opportunities, reception flats, etc.). Without these support measures, sentence adjustment mechanisms are a bit lame. These support measures are a much-needed complement to sentence adjustment mechanisms for a successful social reintegration and they must be encouraged¨* (Interviewee 1). With this regard, with a dense network of organisations and entities offering supporting measures to prisoners, the Basque country significantly stands out compared to other territorial administrations. On this point an interviewee noted that *¨In the Basque country, traditionally, there is a large number of civil society organisations and there is strong support. This contrasts with other areas outside the Basque Country that are larger, less densely populated and with a lesser presence of the ¨third sector¨* (Interviewee 2). On the other hand, due to sociohistorical background related to the ETA terrorism, "*the Basque country (..) has always had a more sensitised vision towards the serving of sentences, there has been a part of society that has been very sensitive to the situation of some prisoners and from there they have helped to mobilise more resources. This sensitivity that was created around the situation of ETA prisoners has been extended to the rest of the prisoners"* (Interviewee 3). A third interviewee also commented *¨Here, in the Basque Country, I also believe that we have a very proactive civil society, due to what we have lived with terrorism…This has generated a certain climate that has been extended to other groups of prisoners. In other words, there is a bigger third sector than, for example, in other parts of Spain (but even so, it is still insufficient) and it is key when it comes to deciding on open regime to know that there is a whole network of resources outside the prison walls¨* (Interviewee 5).

3.2. Access to Parole

Regulated in articles 90 et seq. of the Criminal Code.[26], the current regulation, introduced by Organic Law 1/2015 has modified the traditional nature of parole. Whereas parole was until then understood as the ¨last degree¨ or ¨fourth degree¨ of the system of scientific individualisation in the execution of sentences established in art. 71.2 of the Prison Law, the reform introduced by Law 1/2015 established that parole implies the suspension of the execution of the rest of the prison sentence. Consequently, in case of revocation, the time elapsed during parole is not deducted from the sentence to be served.

Parole is accessible to convicts in open regime and close to the end of their prison sentence. Inmates convicted for terrorist offences or for pertaining to a criminal organisation, provided they are in open regime, cannot however access parole before serving three quarters of the prison sentence. In the case of long-life imprisonment (*prisión permanente revisable*, literally "revisable permanent imprisonment"), parole

[26] Parole is also regulated in Article 72 Prison Law and Article 192 PR

will be possible after 25 to 35 years (the latter in the case of terrorist offences) have been served (Article 92 CC). This minimum prison serving time superior to 25 years in the Spanish long-life imprisonment could result in violation of Article 3 of the ECHR[27]. Just as in the case of open regime, legislation includes provisions which on the basis of human dignity try to facilitate access to parole for septuagenarians and incurably ill persons (art. 90.1 CC).

3.3. Suspension of execution due to mental illness

According to art. 60 CC when, after a final judgement, a convict is found to suffer a lasting situation of serious mental disorder that prevents him from being aware of the meaning of the punishment, the Judge for Penitentiary Supervision shall suspend the serving of the custodial sentence imposed on him, guaranteeing that he receives the necessary medical care, for which he may order that a security measure of custodial sentence be imposed.

In 2023 only 183 petitions of suspension were registered in the Penitentiary Supervision Courts of Spain[28].

3.4. Statistical overview of the use of sentence adjustment and reduction mechanisms in Spain

In Spain, statistics on the use of sentence adjustment and reduction mechanisms, including open regime and parole, are available but lack detailed and consistent data across all areas. Publicly available statistics primarily focus on the **prison population classified in open regime** and some aspects of **parole**, with data segmented by the State Prison Administration, Catalan Prison Administration, and the Basque Prison Administration. However, the granularity of this data varies significantly between regions.

The primary issue with Spanish statistics on sentence adjustments is the **lack of detailed data** regarding specific adjustments, the types of offences associated with them, and the **socio-demographic profile** of those granted sentence reductions. For example:

- Data on the **timing of sentence adjustments** (i.e., how much of the sentence has been served before an inmate is released) is **insufficient** and lacks the detail necessary for meaningful analysis.

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[27] Case of Horváth and Other v. Hungary (Applications nos. 33640/20 and 24 others – see appended list) Judgment 20 June 2024; Case of Taczman and Others v. Hungary (Applications nos. 30127/20 and 20 others – see appended list) Judgment 20 June 2024; Case of Gyenge and Others v. Hungary (Applications nos. 62122/19 and 19 others – see appended list) Judgment 25 April 2024.

[28] Data provided by the General Council of the Judiciary (Consejo General del Poder Judicial, estadística judicial, asuntos, juzgados de vigilancia penitenciaria)

- **Qualitative analyses** of the courts' activities concerning sentence adjustments are limited, and detailed studies of the **profile of individuals** receiving sentence adjustments (e.g., age, gender, nationality) are not systematically published.
- **Judicial and criminological data** from the **General Council of the Judiciary** and other sources on how the courts handle sentence adjustments and reductions is also sparse, making it difficult to assess the trends and effectiveness of these measures comprehensively.

In December 2023, **18.7%** of Spain's total convicted inmate population (45,561) were serving their sentence in open regime. This proportion includes inmates across all prison administrations, with figures as follows:

- **State Prison Administration: 17.7%** of 37,894 convicted inmates were in open regime.
- **Catalan Prison Administration: 21.25%** of 6,328 convicted inmates were in open regime.
- **Basque Prison Administration: 33.1%** of 1,339 convicted inmates were in open **regime.**

Data on **parole** is less readily available and more difficult to access. However, it is known that parole can be granted after a portion of the sentence has been served, with general trends showing a higher proportion of parole granted to individuals convicted of lesser offences.

The Catalan Prison Administration makes available the percentage of inmates on parole. In 2023, 576 inmates (9,10% of the total prison population) were on parole.

Statistics on parole for individuals convicted of **terrorism** or **organised crime** are less common due to their stricter eligibility criteria, including serving three-quarters of the sentence before parole can be considered.

Some studies from academics, who personally requested specific data,[29] shows how the reform introduced by Law 1/2015 that transformed the nature of parole (from a form of serving the sentence to a form of suspension of the remainder of the sentence), has led many inmates to forgo parole (a 65% reduction in the use of parole between 2015 and 2022).

IV. Legal and institutional framework of sentence adjustment

4.1. Law governing sentence adjustment

[29] Cid Moliné, J. (2025), ´El futuro de las alternativas a la prisión en España´, InDret (1), p. 290

The Spanish Criminal Code of 1995[30] aimed at the modernisation of the punitive system and represented a significant change with respect to the previous penal regime. Since its enactment, it has however undergone multiple reforms responding to social demands, legislative changes and criminal policy trends.

As regards the legal texts governing the conditions for granting sentence adjustment, they are both of legislative and regulatory nature : on the one hand, the Prison Law of 1979 (*Ley Orgánica General Penitenciaria*) and the Criminal Code. and, on the other, the 1996 Prison Regulations *(Reglamento Penitenciario*). As far as the Catalan Prison Administration is concerned, the *Regulations governing the organisation and operation of criminal enforcement services in Catalonia*, approved by Decree 329/2006 of 5 September applies together with the Prison Regulations within the territory of that Autonomous Community.

4.1.1. Increasing limitations and restrictions to sentence adjustment

Significant limitations and restrictions to the sentence adjustments mechanism have been introduced in 2003 and 2015 by two Organic Laws.

First, the Organic Law 7/2003 *, on reform measures for the full and effective enforcement of sentences* introduced reforms aimed at making access to open regime and parole more difficult in order to privilege legal certainty (retribution and general prevention) over special resocialising prevention.

A ¨Security period¨ (arts 36.2 and 36.3 CC) was introduced aimed to limit access to open regime to inmates whose prison sentences exceed five years. The law establishes a minimum period of mandatory stay in ordinary prison regime (half of the sentence imposed).[31] The introduction of the security period was the subject of great doctrinal criticism, as it was opposed to the principle of scientific individualisation as the basis of prison treatment. Its name ¨security period¨ is not included in the Criminal Code but in the explanatory memorandum of Law 7/2003 and its origin can be traced to the French Criminal Code (¨*période de sûreté*¨).[32]

In addition, an obligation to satisfy civil liability arising from the offence was estaiblished (art. 72.5 Prison Law). The payment of civil liability is a requirement for accessing open regime and is of special compliance in the event that the inmate has been convicted of offences against the Public Treasury and Social Security. Full

[30] Organic Law 10/1995, of 23 November

[31] When the term of the prison sentence handed down exceeds five years, the sentencing court may order (it's reversible though) that access to open regime does not take place until half of the sentence handed down has been served. That order will be mandatory and not reversible for the crimes of terrorism, organized crime, sexual offenses against children under 16 years of age, trafficking in human beings when victim is underage or an especially vulnerable person, and criminal offences related to prostitution and sexual exploitation and corruption of minors, when the victim is under 16 years of age. In addition, *Organic Law 10/2022, on the comprehensive guarantee of sexual freedom*, introduced the need to assess the use of a penitentiary treatment programme in the case of the inmates convicted of the sexual offences aforementioned for accessing open regime.

[32] Díaz Gómez, A. (2023), *Manual de Derecho Penitenciario: Proyecto Prisiones*, CC BY -NC-ND 4.0

payment of the civil liability is required, but the reparation effort is assessed, taking into account the willingness and ability to pay (Instruction 2/2005).

Finally, the requirement of the abandonment of violence and collaboration for persons convicted of terrorist offences or committed within terrorist organisations (art. 72.6 Prison Law and 90.8 Penal Code for Conditional Release)[33] was introduced. The fight against the terrorism of ETA (Euskadi ta Askatasuna) in Spain has caused a significant number of exceptional measures such as this one.

The Organic Law 1/2015, of 30 March introduced the figure of permanent imprisonment reviewable (*prisión permanente revisable*) for crimes of extreme gravity, such as terrorist murders or murders of minors. New criminal figures such as harassment were included and penalties for crimes of terrorism and cybercrime were aggravated. The procedure for expungement of criminal records was also simplified and parole underwent a major reform. Its traditional nature as the ¨last degree¨ or ¨fourth degree¨ of the system of scientific individualisation in the execution of sentences established in art. 71.2 of the Prison Law was abandoned. Since the reform introduced by Law 1/2015, parole implies the suspension of the execution of the rest of the prison sentence, so that during this period the sentence is not being served and consequently, in case of revocation, the time elapsed is not deducted from the sentence to be served.

This reform was also widely criticised by doctrine[34] considering that this suspensive effect introduced by Law 1/2015 has blurred the principles inspiring parole, mainly the principle of social integration. Indeed, doctrine argues that, unlike the suspension of custodial sentences, the purpose behind parole is not to prevent imprisonment, but to mitigate the negative effects of imprisonment at an advanced stage of the serving of the sentence in order to prepare inmates for their reintegration into society.

Field actors have echoed this criticism in interviews, arguing as well that the reform has led to convicts not applying for parole. One described the 2015 reform as ¨*terrible. It changed its essence, its very nature, and that has led many inmates to forgo their access to parole*¨ (Interviewee 5); another considered ¨*the reform…a negative change because right now inmates prefer not to apply for parole. We have quite a significant drop in the data regarding applications for parole…a system where inmates prefer not to apply for parole is a system where something is not working well*¨ (Interviewee 2). One more interviewee added ¨*I do not know a single professional who thinks the way it is currently regulated is acceptable. Everyone is very critical and believes that the*

[33] The Central Judge for Penitentiary Supervision of the *Audiencia Nacional* and, in case of appeal, the Criminal Chamber of the *Audiencia Nacional*, will assess the compliance of this requirements. Ordinarily, inmates will write a letter with an express declaration of repudiation of their criminal activities and renunciation of violence and an express request for forgiveness to the victims of their crime, and the Judge or the Court will assess the sincerity of the declarations.

[34] Fernández, D. & Medina, O. (2016), ´El beneficio penitenciario del adelantamiento de la libertad condicional en España. Análisis histórico-evolutivo de la institución´, *Revista Criminalidad*, 58 (1): 97-110.

previous legislation was better, and yet I do not know why it is not modified¨ (Interviewee 4).

Finally, another interviewee stated that ¨*the new regulation on parole, which entails the suspension of the remainder of the sentence is effectively extending the time that prisoners remain under the control of the prison administration, with the result that the vast majority of prisoners are foregoing parole, not applying for it, and prefer to serve the last part of their prison sentence in a semi-open prison regime. In fact, appeals against refusals of parole are virtually non-existent*!¨ (Interviewee 8)

These norms are subject to judicial review (the normative text as such and their application to a particular case). There are, however, some voices among doctrine that consider that ¨ If we analyse the criteria currently in place for granting…[sentence adjustment mechanisms]..it can be seen that their legal definition is very limited, that they use indeterminate and ambiguous concepts, and that this leaves ample room for both regulatory development and — especially — administrative discretion¨ [35]

More controversial[36] is the (lack of) regulation of the procedure for granting sentence adjustments There is no specific procedural law regulating penitentiary proceedings.[37]

In an attempt to partially remedy this lack of a specific penitentiary procedural law, a 5th Additional Provision to the Law on the Judiciary (hence, legislative in nature) was introduced (establishing the system of appeals against decisions of the Judges of Penitentiary Supervision). However, it has proven insufficient particularly since, as the Prosecutor's Office has said, the wording of the Fifth Additional Provision of the LOPJ is difficult to interpret.

An earlier attempt to remedy this lack of specific penitentiary procedural law can be found in the so-called *Preventions of the Presidency of the Supreme Court* issued by this institution in 1981 to specify proceedings before the Judges for Penitentiary Supervision, including deadlines, representation and defence, appeals, intervention of the Public Prosecutor's Office or visits to prisons, among others. To complete this framework for action, the General Public Prosecutor's Office issued Consultation 2/1981, on 22 October, to specify how Penitentiary Public Prosecutors should proceed before the Judges for Penitentiary Supervision. Neither the Supreme Court Preventions, nor the Consultation of the Public Prosecutor are legislative in nature, not even regulatory.

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[35] L. Alemán Aróstegui El uso de Riscanvi en la toma de decisiones penitenciarias Estudios Penales y Criminológicos., 44(ext) (2023). ISSN-e: 2340-0080, p. 7 https://doi.org/10.15304/epc.44.8884

[36] One of the latest controversies regarding sentence adjustments (which reached the Supreme Court, ATS 22 July 2020) had to do with the judicial body before which the decisions of a Judge for Penitentiary Supervision can be challenged as regards the application of the so-called flexible regime of Article 100.2 of the Prison Regulations (we have briefly explained this regime in the answer to question nº2).

[37] There was a Draft Organic Law regulating the procedures before the Judges for Penitentiary Supervision (published in the Official Gazette of the Spanish Parliament on 29 April 1997). However, it was never more than a mere draft

The so-called *Criteria for Action, conclusions and agreements approved by the Judges for Penitentiary Supervision*[38] adopted by these Judges in the meetings they have held since 1981 should also be mentioned here, which established criteria for action and interpretation. They are, of course, not binding and do not have a legislative/regulatory nature.

Finally, Instructions, Circulars and Service Orders are internal organisational rules of the Prison Administration. In practice, however, they end up affecting inmates. But the Supreme Court has already warned that these circulars, lacking the nature and guarantees of legal rules, are not the ideal means for regulating the rights and duties of inmates in penitentiary centres

4.1.2 Some legal reforms intended to broaden access to sentence adjustment

The legislation has also included provisions which, either based on human dignity or the principle of flexibility, attempt to broaden the scope of open regime. For example, Article 100.2 of the Prison Regulations states that even in ordinary prison regime (second-degree of classification) a convict may access some adjustments corresponding to open regime, namely the so-called ¨flexible regime¨. The Treatment Board is mandated to decide on this possibility, but this exceptional measure requires the subsequent approval of the relevant Judge of Penitentiary Supervision without prejudice to its immediate enforceability.

Besides, article 104.4 of the Prison Regulations foresees that the Judge of Penitentiary Supervision may resolve progression to open regime for humanitarian and human dignity reasons, irrespective of the variables involved in the usual classification process, in the case of convicts who are gravely ill with incurable illnesses (need of a medical report) and in the case of convicts in their seventies considering in particular the scarce dangerousness.

Convicts with drug addictions may also serve their sentence in open regime, in an extra-penitentiary drug-treatment facility (Article 182 Prison Regulations).

Finally, as regard convicted women, Article 82.2 of Prison Regulations provides that housekeeping and parenting can be a reason to access open regime. This rule could in theory be applicable to men, regarding the rule of non-discrimination.

Regional governments and parliaments have tried to encourage the use of sentence adjustment mechanisms. The Basque Parliament on March 13, 2019, recommended that the majority of the prison population could serve their sentence in open regime; [39] and the Catalan Prison Administration has also pronounced itself along the same

[38] Criteria for Action, conclusions and agreements approved by the Judges for Penitentiary Supervision

[39] Gobierno vasco, Departamento de Igualdad, Justicia y Políticas sociales, ¨Bases para la implantación del modelo político de Euskadi¨, 2021

lines through the adoption this January 2024 of the so-called: National Prison Openness Strategy (2024-2025)[40]

4.2. General Institutional Architecture

The institutional framework for implementing sentence adjustments in Spain combines administrative and judicial authorities.

4.2.1. Administrative authorities

Two administrative authorities are mainly involved in sentence adjustment.

- The Treatment Board (*Junta de Tratamiento*).

This collegiate body, present in each prison, is responsible for preparing sentence adjustment plans, including parole and open regime applications. Chaired by the Director of the Penitentiary Centre, it includes other personnel such as the Deputy Director of the Treatment Team, the Head or Deputy Head of Medical Services, Penitentiary technicians, the social worker, and a Head of Services.

The treatment board evaluates prisoners' circumstances and makes proposals to the Judge of Penitentiary Supervision for parole applications (except in those cases where the JPS acts ex officio or at the request of the inmate) and to the Directing Centre as regards open regime access (although some need further judicial approval or can be controlled by the judiciary).

- The Directing Centre of the Prison Administration (*Centro Directivo*)

This body constitutes the highest authority of the Prison Administration. Each of the three territorial Prison Administrations has its own Directing Centre.. It is in charge of confirming or not the open regime proposal made by the Treatment board of each prison (except in cases of initial classification in open regime by unanimous decision for inmates with sentences of less than one year. In these cases, it is the Treatment Board itself that makes the final decision)

4.2.2. Judiciary authorities

The Judge of Penitentiary Supervision was established in 1979[41], reflecting Spain's democratic reforms after Franco's dictatorship. At that time a social consensus existed,

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Also the regional government of Navarra recommended something along the same lines, *see*: Gobierno de Navarra, *Líneas estratégicas del modelo de ejecución penal en Navarra*, Septiembre 2021

[40] Generalitat de Catalunya, Departament de Justícia, Estratègia nacional d´obertalitat penitenciaria (2024 – 2025)

[41] Prison Law of 1979, Title V in articles 76, 77 and 78

mainly linked with the important number of political prisoners, that change in law was necessary to favour release and foster reintegration during Spain's political transition.

The Judge for Penitentiary Supervision is a court of a peculiar nature. Part of the criminal justice system, it has criminal enforcement functions, but it also regulates the legality of administrative activity, as would the contentious-administrative jurisdiction. It decides on parole applications and reviews decisions relating to open and flexible regimes. Its decisions can be ordinarily appealed before courts of higher jurisdiction.

4.2.3. Capactiy and resources of sentence enforcement courts

According to the publicly available statistics, the 51 Penitentiary Supervisory Courts of Spain have received a total of 206.371 cases in 2023 and adopted a decision on 205.952 of those cases.[42] These figures indicate a very high level of prison litigation when compared to the number of prisoners in the country (56.698[43] inmates). These large numbers also confirm the overload of Judges for Penitentiary Supervision and indicates that their workload impedes a proper assessment of requests of access to parole, as it impedes their assessment of complaints by prisoners, as pointed out by the CPT in its reports of 2017 and 2021.

Back in 2017, the CPT pointed out, rather referring to their control of the legality and proportionality of the application of means of restraint, use of force and of the application of prolonged periods of solitary confinement; that the judges risked becoming a ¨rubber-stamping authorities¨ and an ¨extension¨ of the prison administration.[44] The CPT reiterated its impression in its 2021 report that ¨the role played by the supervisory judges remained merely one of certifying the decisions of the prison administration and there appeared to be no examination of the proportionality and appropriateness of these measures by the supervisory judges¨.[45]

If such conclusions can not be automatically drawn for the activity of the judges regarding sentence adjustments, there are however reasons to believe that the tendency towards ¨bureaucratisation¨ and ¨rubber stamping practices¨ (i.e. judges merely certifying the decisions of the prison administration) can be applied to sentence adjustment decisions.

4.3. Eligibility and Criteria for accessing sentence adjustments

[42] Data obtained from the Spanish General Council of the Judiciary, 2023 broken-down data, overview of the criminal jurisdiction (Consejo General del Poder Judicial, la Justicia dato a dato año 2023, estadística judicial, Resumen de la jurisdicción penal, p.40. *See also*: https://www6.poderjudicial.es/PxWeb2023v1/pxweb/es.

[43] This number corresponds to 31st December 2023 and has been obtained from Ministry of Interior (*Anuario estadístico del Ministerio del Interior, 2023, p. 303)*

[44] CPT/Inf (2017) 34, p.54, §98

[45] CPT/Inf (2021) 27, p. 69, §117

4.3.1. Conditions of Eligibility and Criteria for Accessing Parole

Eligibility criteria

Parole is not granted as a right and requires fulfilling both objective and subjective criteria. Article 90.1 CC implies an automaticity in the granting of parole[46], however, the conditions that must be met by the convict to be granted parole render such automaticity ineffective. To be granted parole, inmates must meet: :

- objective criteria, namely, a time threshold, the satisfaction of the liability arising from the offence ***and having been placed in open regime***
- as well as a discretionary and subjective criterion: i.e. he/she must ¨have been of good conduct¨ (art. 90.1 CC). In determining whether or not good conduct is present, the Judge for Penitentiary Supervision ¨shall assess the personality of the prisoner, his or her background, the circumstances of the offence committed, the relevance of the legal assets that could be affected by a repetition of the offence, his or her conduct during the serving of the sentence, his or her family and social circumstances and the effects that may be expected from the suspension of the execution of the sentence and the compliance with the measures that may be imposed¨ (art. 90.1 CC).

Specific conditions are foreseen for different modalities of parole:

- As regards the modality of <u>early</u> parole, inmates must meet a further subjective criterion i.e. prove their participation during the serving of their sentence in work, cultural or occupational activities either continuously or with a benefit that has led to a *relevant and favourable modification of their personal circumstances* related to their previous criminal activity. In other words, not only the convicted person needs to prove participation in such activities, he must also demonstrate a relevant and favourable modification of those of his personal circumstances related to his previous criminal activity.
- In the specific case of <u>qualified early</u> parole (art. 90.2 CC *in fine*), the convict must as well prove he has *effectively* or *favourably* participated in certain treatment programmes during their stay in prison.
- Finally in the case of <u>parole of long-life imprisonment</u> (*prisión permanente revisable*, art. 92 CC): the inmate must obtain a favourable prognosis of social reintegration (92.c CC) issued by the competent judicial authority, after evaluating the progress reports sent by the penitentiary centre on the personality of the convicted person, his or her background, the circumstances of the offence committed, the relevance of the legal assets that could be affected by a repetition of the offence, his or her conduct during the serving of the sentence, his or her family and social circumstances, and the effects that

[46] Art. 90.1 regulates general parole and reads as follows: ¨The Judge for Penitentiary Supervision <u>shall</u> suspend the execution of the remainder of the prison sentence <u>and grant</u> conditional release to a prisoner who fulfils the following requirements…¨

can be expected from the suspension of the sentence and the fulfilment of the measures that are imposed.

Specific conditions are also provided by art. 91.2 CC for convicts of old age (70 + years) and convicts with serious and incurable illnesses. In such cases, Judges for Penitentiary Supervision shall assess, together with the personal circumstances, the difficulty of committing a crime and the low level of danger of the subject.

Finally, convicts of terrorist offences or within criminal organisations have their own - more restrictive - regime for accessing parole (art. 90.8 CC). They need to submit an express declaration of repudiation of their criminal activities and abandonment of violence and an express request for forgiveness to the victims of their crime or submit technical reports accrediting that they are truly disassociated from the terrorist organisation.

Procedure for Applying

Prisoners may request parole after serving the required portion of their sentence (e.g., half for qualified early parole, two-thirds for early parole or three-quarters for normal parole). The Prison Administration can also propose parole motu proprio, and if approved by the JPS, the prisoner must accept it. Family members cannot initiate parole requests.

In all cases, the application must be approved by the JPS.

The appeals process mirrors that of open regime. Complaint and appeal for reconsideration (*recurso de reforma*) can be filed before the JPS within three days to the same judge. If denied again, the inmate may lodge a *recurso de apelación* (appeal) within five days to a higher court, specifically the sentencing court. This appeal must be signed by a lawyer.

4.3.2. Conditions of Eligibility and Criteria for Accessing Open Regime

Eligibility criteria

Access to open regime is not automatic nor granted as a right. It requires an assessment of individual circumstances by the Junta de Tratamiento (Treatment Board), which evaluates factors such as the inmate's personality, family and social history, criminal record, sentence length, the social environment to which the inmate returns and expected resources he can enjoy.These elements are assessed for all three types of prison regime.

As regards specifically open regime, art. 102.4 PR states that ¨open regime shall apply to inmates who, *on the basis of their personal and penitentiary circumstances*, are suitable for a regime of semi-liberty¨.

In order to be **directly granted open regime** after the handing down of the prison sentence (a possibility expressly foreseen in art. 72.3 of the Prison Law), the following

conditions are to be met (Instruction nº 6/2020 SGIP):

- prison sentence of up to five years
- criminal and penitentiary primarity (i.e. first criminal conviction and first time in prison. Pre-trial detention for the same cause is not taken into account).
- Satisfaction of civil liability, declaration of insolvency or undertaking to satisfy civil liability in accordance with the convict´s financial capacity.
- The offence was committed more than three years ago and the offender has adapted well to society since the offence was committed up to the time of his/her admission to prison.
- To be working at the time of his/her admission to prison or to have a life project in accordance with the convicts´ personal circumstances that allows him/her to meet his/her needs. Other activities, such as education, volunteering, etc., which may be carried out by the convicted person while in open regime will also be taken into account.
- Well-integrated family and social support network or in favourable conditions that allow for self-support or self-help.
- In the case of addictions related to the criminal activity, the person must be in treatment, in a position to undergo treatment or have overcome it favourably. Irrespective of the possibility of undertaking a specific programme, of de-addiction or other, while in open regime.
- In addition to the above circumstances, the circumstances of special vulnerability that the convicted person or their dependent family members (elderly, disabled, minor children, etc.) may present should also be considered.

When the **term of the prison sentence handed down exceeds five years**, the sentencing court may order (with possible reversibility) that access to open regime does not take place until half of the sentence handed down has been served. This is the so-called ¨**security period**¨ (arts 36.2 and 36.3 CC).
Security period are mandatory and not reversible for the crimes of terrorism, organised crime, sexual offences against children under 16 years of age, trafficking in human beings when victim is underage or an especially vulnerable person, and criminal offences related to prostitution and sexual exploitation and corruption of minors, when the victim is under 16 years of age. In addition, *Organic Law 10/2022, on the comprehensive guarantee of sexual freedom*, introduced the need to assess the use of a penitentiary treatment programme in the case of the inmates convicted of the sexual offences aforementioned for accessing open regime.

Inmates placed in **ordinary prison regime, in order to progress to open regime**, must: have served a quarter of their sentence (art.104.3 Prison Regulations) and the variables listed in Article 102.2 PR ¨must have been favourably assessed, with special consideration being given to the criminal record and the social integration of the prisoner¨. The variables listed in art. 102.2 are ¨the personality and the individual, family, social and criminal history of the inmate, the length of the sentence, the social environment to which the inmate returns and the resources, facilities and difficulties existing in each case and at each moment for the success of his/her treatment¨. Beside these variables, inmates also need to have satisfied the civil liability arising from the offence (art. 72.5 Prison Law). This is of special compliance in the event that the inmate has been convicted of offences against the Public Treasury and Social Security. Full payment of the civil liability is not required. Instead the reparation effort is assessed, taking into account the willingness and ability to pay (Instruction 2/2005).

In order to access open regime through the application of the so-called ¨**flexible regime**¨ foreseen in art. 100.2 of the PR (allowing for some adjustments to ordinary prison regime corresponding to open regime), the Treatment Board is to decide on this possibility, but this exceptional measure requires the subsequent approval of the relevant Judge of Penitentiary Supervision without prejudice to its immediate enforceability.

Open regime for **humanitarian and human dignity** reasons (art. 36.4 CC and 104.4 of the Prison Regulations) is accessible to convicts who are gravely ill with incurable illnesses. The latter may then be granted open regime irrespectively of the variables involved in the usual evaluation process. Instead, a medical report proving their condition of grave and incurable sickness is required. In the case of convicts in their +70 consideration will be given to their scarce dangerousness.

Access to open regime for **life-imprisonment** convicts is considered if the subject is serving a sentence for a single offence. In such cases, access to open regime will not be considered before 15 years of imprisonmment,, or 20 years in case of terrorist offence. In case of repeated offences, these periods can be increased to 22 years - or 32 years in cases of terrorism (arts. 92 and 78 bis CC). In addition, an individualised and favourable prognosis of social reintegration will have to be issued (36.1 CC).

Procedure for Applying

Prisoners may access open regime based on a decision proposed by the Treatment Boards *motu proprio (*every six months the Treatment Board reviews the inmate's prison regime*)* and adopted by the Directive Centre. The family cannot apply for the granting of open regime in any case.

The Judge for Penitentiary Supervision only takes action if the inmate or the Prosecutor appeals against the decision of the Prison Administration (art. 107 PR). The prisoner must lodge a complaint (*recurso de queja*) within one month with the Judge for Penitentiary Supervision (JPS). If the JPS denies the request, the prisoner can file a *recurso de reforma* (appeal for reconsideration) within three days before the same judge. If the JPS refuses once more the granting of open regime, the inmate may lodge a *recurso de apelación* (appeal) within five days to a higher court, specifically the sentencing court. This appeal must be signed by a lawyer.

4.3.3. Weight of disciplinary incidents and behaviour

Disciplinary incidents and overall **behaviour in detention** are key factors in both parole and open regime decisions. The law explicitly requires **good conduct** as one of the primary conditions for parole, and similarly, behaviour is crucial for accessing open regime. However, the law’s reliance on general terms like ‘good conduct’ without clearly defining the parameters reinforced **unpredictability**. The weight of individual incidents or patterns of behaviour is often left to the discretion of prison authorities, increasing **uncertainty** for inmates.

The Supreme Court in its judgment STS 859/2019 (ECLI:ES:TS:2019:859) has interpreted that "The requirement of absence of misconduct … is a presupposition of technical weighting **based on all the circumstances that refer to the behaviour and attitude of the inmate**, as well as his involvement in the treatment and in the penitentiary regime applicable to him. **Therefore, the mere existence of serious or very serious disciplinary sanctions will not lead to a lack of the requirement if other objective reasons are found to justify their occurrence**"

4.3.4. Cooperation with Authorities and Remorse

The cooperation with the authorities and **expression of remorse** and **cooperation with authorities** plays a crucial role in access of to parole and to open regime of persons convicted of **terrorism** or offences committed within a criminal organisation (art. 90.8 CC).

In both cases, the convicts must demonstrate **unequivocal signs of having abandoned** the ends and means of the terrorist activity¨. This last condition may be accredited by ¨an express declaration of repudiation of their criminal activities and abandonment of violence and an express request for forgiveness to the victims of their crime, as well as by technical reports accrediting that the prisoner is truly disassociated from the terrorist organisation and the environment and activities of illegal associations and groups that surround it and their collaboration with the authorities¨.

4.4. Recall

If a convict breaches any of the conditions that were laid on him/her for the granting of parole, he or she returns to prison (to ordinary prison regime until the Treatment Board re-classifies the inmate (art. 201.3 PR), i.e. assigns him/her the corresponding prison regime).

Inmates may appeal against the Prison administration's decision (in the case of revocation of open regime) before the JPS, or appeal against the JPS decision (in the case of revocation of parole) before that same JPS and then before a higher court (the Province Court).

The legal mechanisms for reviewing these revocations are always the same as when appealing other decisions: complaint before the JPS (recurso de queja), appeal for reconsideration before the same JPS (recurso de reforma) and finally appeal before the higher court (recurso de apelación).

Some of the procedural guarantees associated with judicial proceedings are available, like for example: effective judicial protection (and the rights derived therefrom, like the right to an ordinary judge predetermined by law, the right to obtain a judgment based

on law, the effectiveness of judicial decisions; or access to remedies) or the right to legal defence in cases of complaints against the Prison Administration.

Most procedural guarantees of judicial proceedings are however not deployed to their full extent. For example, the right to legal assistance and legal aid exists (and very much used by inmates) but not from the first stage of the procedure, including the administrative stage. Also the right to a reasonable duration of the proceedings is nowhere regulated for penitentiary proceedings and no consequences are foreseen if this right is not observed.

V. Decision-making processes in sentence adjustment mechanisms.

Depending on the specific adjustment mechanism considered, one or the other authorities (administrative or judiciairy) decides on its concession. In all cases, the administrative decisions can be appealed to the Judge for Penitentiary Supervision and other courts.

When following the path of progression from second to third degree of prison regimes, i.e. moving from ordinary prison regime to open regime, the prison administration bodies, mainly the Treatment Board (*Junta de Tratamiento*), will propose and the Prison Centre will decide the access to such sentence adjustment mechanism. The Judge for Penitentiary Supervision then acts as the authority before which inmates can file their claims exercising control over the Prison Administration activity.

In the case of access to parole, the Judge for Penitentiary Supervision decides on the granting of a sentence adjustment upon a proposal coming from the Treatment Board.

5.1. From the duty to substantiate to “rubber stamping” practices

Sentence adjustment mechanisms consist of administrative decisions on the one hand, and judicial decisions on the other. There is a legal duty to substantiate, i.e. to state reasons in fact and in law for both administrative and judicial decisions on sentence adjustments. One of the grounds for filing an appeal is the lack of motivation or omissive inconsistency (when judges do not rule on something that has been requested). Effective judicial protection is directly connected to this duty to substantiate decisions.

In practice, sentence adjustment decisions often rely on overly generic justifications, both from the administration and from the judges supervising sentence execution.

Progression to open regime is frequently denied with broad arguments, such as the remaining time left until half of the sentence is served or the perceived lack of guarantees for successful reintegration. Legal reasoning is typically outlined in several

paragraphs, with factual data often limited to just a single paragraph. This reflects a tendency toward excessive reliance on 'rubber-stamp' practices in Spain.

As regard access to parole, Art. 195 PR foresees that the files that are to be submitted to the JPS for requesting parole must enclose: an individualised prognosis report on social integration, issued by the Technical Teams in accordance with the provisions of Article 67 of the Prison Law. According to this provision, the individualised prognosis report on social integration shall state the results achieved by the treatment and a judgement of probability as to the subject's future behaviour on release. Despite its non-binding nature,[47] in practice this report is always included in the file for requesting parole that the Prison Administration submits to the judicial authority (Instruction 4/2015 of the SGIP recommends its inclusion) and is of great relevance to support the decision that is finally adopted.

Academic research[48] has shown that judges highly rely on such “social reports” by the treatment board providing data on the person, their social environment and their attitudes towards the crime. Based on interviews with judges and technicians in the criminal justice system, the study argues that the current practice in Spain of merely considering the time elapsed since the offence was committed and the criminal record leads to the imposition of conditions, which can be difficult to comply with. Other research confirm these findings and highlight the discretion of judges in this matter[49].

Practice of judges however also shows a lack of thoroughness or genuine interest in reviewing individual cases. Judges rarely respond directly to the specific arguments or evidence submitted by inmates. Even when they agree with the inmates’ claims or requests, their responses are often vague, lacking detailed engagement with the issues raised, thereby suggesting “copy-and-paste” practices in decision making. As pointed out by the CPT, Judges for Penitentiary Supervision risk becoming ¨rubber-

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[47] Before, art. 90.1 of the Criminal Code included an express reference to this individualised prognosis report on social reintegration. Currently, however, has disappeared from art. 90.1 Penal Code, which now states as follows: “The Judge for Penitentiary Supervision shall agree to suspend the execution of the remainder of the prison sentence and grant parole to a prisoner who meets the following requirements: a) He/she is classified in open regime. b) three quarters of the sentence imposed have been served. c) he/she has observed good conduct. In order to decide on the suspension of the execution of the remainder of the sentence and the granting of parole, the Judge for Penitentiary Supervision shall assess the personality of the prisoner, his or her background, the circumstances of the offence committed, the relevance of the legal assets that could be affected by a repetition of the offence, his or her conduct during the serving of the sentence, his or her family and social circumstances and the effects that may be expected from the suspension of the execution of the sentence and the fulfilment of the measures that may be imposed.”

[48] Elena Larrauri, Criminological Bulletin 2012 ‘*The need for a social report for the decision and execution of sentences’*

[49] Yolanda Rueda Soriano, Eduardo Navarro Blasco, *Los sistemas actuariales de prevención y gestión de riesgos en el ámbito penitenciario. Configuración y aplicación práctica* and Larrauri, E. (2020). Reducing Discretion in the Administration of Prison Leave: In Search of Legitimacy. European Journal on Criminal Policy and Research,1-16. doi: 10.1007/s10610-019-09435-4

stamping authorities¨ and an ¨extension¨ of the prison administration.[50] The CPT also reiterated in its 2021 report that ¨*the role played by the supervisory judges remained merely one of certifying the decisions of the prison administration and there appeared to be no examination of the proportionality and appropriateness of these measures by the supervisory judges*¨.[51]

One of the interviewed Judge for Prison Supervision directly acknowledged this ¨bureaucratisation¨ of decision making referring to the use of risk assessment tools. ¨*This risk-assessment tool [RisCanvi]…is used directly by the bureaucratised model of judge…as a way of masking the lack of motivation. When they act in this way, they are not fulfilling their review function as provided for in Article 76 of the Prison Law*¨. The interviewee also mentioned how ¨*over the last two decades, there has been a lack of interest by the judiciary in reasoning their decisions and in individualising them. This lack of interest in substantiating judicial decisions has found a great ally in algorithms in the sense that judges shield behind them as if the risk levels they come up with were to be considered enough substantiation. Why is this allowed? I don't know for sure, but it may be because lawyers are not appealing against that particular aspect enough or because the higher courts are not imposing individualisation criteria in accordance with minimum standards comparable to those in other jurisdictions*¨ (Interviewee 8).

5.2. Prosecutors: braking agents in the system ?

Field research indicates conflicting approaches by the Judges of Penitentiary Supervision and Prosecutors in sentence adjustment processes. The interviewees also highlighted that practices differ significantly from a region to the other, revealing the influence of the regional political context on practices of prosecutors and their important role in decision making processes on sentence adjustments.

Generally, practices of prosecutors tend to remain loyal to the positions of the prison administration. In the Basque Country, impregnated by the legacy of the ETA terrorism, the society as a whole and the criminal justice system is more sensitised to the situation of prisoners. In this social historical context, Judges for Penitentiary Supervisions show to be generally inclined to granting open regime. This approach is however countered by the Prosecutors office, unless it is initiated by the Prison Administration. As stated by one of the interviewee ¨*regarding the Judges for Penitentiary Supervision, the reality that I am aware of here in the Basque country is that they favour granting open regime*¨, but "*normally the work of the Prosecutor's Office always tends to be more of a hindering role. They are not usually facilitators and do not separate themselves from the criteria of the prison administration, except when the Administration grants access to open regime"* (Interviewee 3).

As regard an initial classification in open regime, practices in the Basque Country however show slightly different practices of Prosecutors' Office, which differs from that

[50] CPT/Inf (2017) 34, p.54, §98

[51] CPT/Inf (2021) 27, p. 69, §117

in Catalonia. As stated by another interviewee ¨ *Here, in the Basque country, the Prosecutor's Office does not usually appeal. Some time ago, the Prosecutor´s Office tended to appeal initial classifications in open regime, but lately they have had enough of it and I have not received an appeal from the Prosecutor's Office regarding an initial classification in open regime for about two years now. In Catalonia, however, some colleagues have told me that most of these initial classifications in open regime are usually appealed. But then the higher courts end up dismissing many of these appeals*¨ (Interviewee 5).

Regional governments and parliaments have tried to encourage the use of sentence adjustment mechanisms. The Basque Parliament on March 13, 2019, recommended that the majority of the prison population could serve their sentence in open regime; [52] and the Catalan Prison Administration has also pronounced itself along the same lines through the adoption this January 2024 of the so-called: National Prison Openness Strategy (2024-2025)[53] However consecutive legal reforms; in particular the one instituting "security periods" before being eligible to access open regime (Organic Law of 2003) have rather discouraged political efforts to improve access to sentence adjustment. An adverse effect of this reform, has been that public prosecutors now invoke the "emptying of the sentence" (*vaciamiento de la pena*) as an argument for opposing sentence adjustments.

VI. Role of risk-based approaches in accessing sentence adjustment

6.1. Definition of Risk in National Legislation

In Spain, several laws governing decisions on probation and parole establish criteria linked to the assessment of dangerousness. The factors taken into account include the personality of the convicted person, the circumstances of the offence committed, the personal circumstances of the offender, their criminal record, their conduct following the offence, their efforts to repair the harm caused, their family and social circumstances, and any risk they may pose to society or to the rights of others.[54]

The concept has evolved over the past three decades, and what some authors describe as 'a paradigm shift' has occurred: from the assessment of dangerousness, understood as an attribute of the individual determined through clinical judgement, to the assessment of risk, conceived as a state of the individual identified through structured methods of risk estimation. A good illustration of this shift towards the assessment of risk is the timid reception of the first risk assessment tool used in

[52] Gobierno vasco, Departamento de Igualdad, Justicia y Políticas sociales, ¨ Bases para la implantación del modelo político de Euskadi¨, 2021

Also the regional government of Navarra recommended something along the same lines, *see*: Gobierno de Navarra, *Líneas estratégicas del modelo de ejecución penal en Navarra*, Septiembre 2021

[53] Generalitat de Catalunya, Departament de Justícia, Estratègia nacional d´obertalitat penitenciaria (2024 – 2025)

[54] See Article 80, Article 90 of the Criminal Code.

Spanish prisons compared with the later embrace of RisCanvi more than a decade afterwards, following the development of similar tools in Canada and the United States.

The risk assessment tool currently in use in Catalonia, RisCanvi, evaluates several factors when determining an individual's level of risk. These include the risk of self-directed violence, such as suicide, attempted suicide or self-harm within prison or during sentence execution; the risk of intra-institutional violence, encompassing violent behaviour or minor and serious aggression against other prisoners or staff; the risk of breach of sentence, including non-return after ordinary or extraordinary short-term leave, evasion or flight from prison, and breaches of trust or behavioural rules; and the risk of violent recidivism, referring to the commission of a violent offence resulting in re-incarceration, whether after completing a sentence, during a period of temporary release, or in any situation prior to achieving full release. Following the update to its third version (RisCanvi v3), a fifth predictive criterion was added concerning the risk of general criminal recidivism.

The results of risk assessment play a significant role in determining not only whether a person is granted a sentence adjustment, such as access to an open regime (third degree) or parole, but also the conditions that may accompany it. When an open regime is granted, additional safety measures may be imposed on the basis of assessed risk. These can include electronic monitoring, weekly sign-ins at a police station, restrictions on leaving the autonomous community or approaching certain places, or requirements to undergo regular drug testing. In other words, beyond the adjustment itself, further measures may be added to manage the perceived risk. A similar logic applies to the current parole system, now framed as the suspension of sentence. According to an interviewee, the conditions attached, justified in terms of risk mitigation, can be so extensive and burdensome that, in practice, some individuals prefer to request serving their sentence in an open regime rather than opting for parole.

6.2. Risk Assessment Tools

The first Spanish risk assessment tool, established in 1995 through Instruction 1/1995 of 10 January, consisted of the Risk Assessment Chart (TVR) and the Concurrence of Particular Circumstances Chart (M-CCP). Despite their early introduction, these tools have changed very little and remain strictly limited to assessing the risk of breach, specifically the risk of not returning from authorised leave, when deciding on the granting of short-term release permits.

RisCanvi, introduced fourteen years later in 2009 by the Catalan Prison Administration and therefore used exclusively in that region, marked a significant shift by placing risk assessment at the centre of prison management. RisCanvi was developed through collaboration between the regional government and the university, without the involvement of companies or other for-profit entities.

RisCanvi is used for the design, evaluation and updating of the inmate's Individualised Treatment Programme, as well as for major prison decisions such as initial allocation to a prison regime, subsequent changes of regime, and the granting of short-term prison leave. It is also applied in situations involving so-called 'critical events', including

decisions on access to parole. The use of RisCanvi has become a consolidated and routine practice, carried out periodically and applied to the entire prison population, whether convicted or on remand.

Those responsible for using the tool fall into two groups of professionals: first, prison-based technicians (jurists, psychologists, educators and social workers) who maintain direct contact with people deprived of liberty and, in the case of social workers, with their families and wider social environment; and second, the validators, who are either team managers or, in some instances, technicians specifically accredited to carry out this function.

6.3. Risk Factors and Assessment Structure

RisCanvi incorporates 43 static and dynamic risk factors, covering criminal and penitentiary aspects (such as initiation of criminal activity, history of violence, intoxication during the offence, conduct problems in prison, escapes and breaches), personal and socio-family elements (including lack of viable future plans, limited economic resources, absence of family or social support, and criminal history within the family of origin), and clinical or personality-related factors (such as substance abuse, response to psychological or psychiatric treatment, self-harm attempts, hostility, pro-criminal values and irresponsibility). Once these factors are entered into the system, an algorithmic combination produces risk values.

According to the Implementation Handbook of RisCanvi[55], these factors are weighted differently depending on four main variables—sex, age, nationality and sentenced or remand status—which in turn vary according to the five types of risk assessed: self-directed violence, intra-institutional violence, general criminal recidivism, violent criminal recidivism and breach of sentence.

RisCanvi is described as a “multi-scale risk assessment protocol” consisting of two scales: RisCanvi Screening (R-S), which distinguishes low-risk from high-risk individuals and indicates when the full scale should be applied; and RisCanvi Complete (R-C), which provides a detailed assessment. Following the R-C evaluation, the tool may recommend a more specialised assessment of violent recidivism using instruments tailored to specific types of violence, such as VIOFAM, VIOSEX or PSICOPAT, when an individual’s characteristics place them in a group requiring more precise evaluation.

6.4. Sources and Quality of Information Relied Upon

Regarding the sources of information, the RisCanvi Implementation Handbook (p. 15) explains that a selective approach should be adopted. In most cases, basic procedures, such as interviews and the consultation of existing documentation, are used. More detailed assessment methods are only required when these basic procedures suggest the possible presence of a risk factor that calls for specialised professional judgement, such as a mental disorder, personality trait, disability or

[55] Manual d’aplicació del protocol de valoració RisCanvi, 2019

criminogenic social support. In such cases, more complex or extensive procedures are used, including self-reports, psychological tests, behavioural observation and additional in-depth interviews.

According to a field research study[56] in which the technicians responsible for collecting this information were interviewed, most report that, in practice, they obtain the information needed to complete RisCanvi through a personal interview, the documentation available to them, information provided by educators on the person's behaviour inside prison, details from the family or social environment regarding circumstances outside prison, and input from other members of the multidisciplinary team, with whom they remain in close daily contact to exchange and verify information.

The field research undertaken for this project revealed several issues regarding the collection of information for RisCanvi. Interviewees explained that some of the necessary information can only be obtained directly from the person deprived of liberty, yet individuals may give inconsistent accounts over time, making the information unreliable.

They also noted that certain items require asking highly sensitive and intimate questions, for example, concerning "promiscuous and risky sexual behaviour" or paraphilias. In addition, some of the required information is simply unavailable, either because it does not exist or because there are no reliable sources from which to obtain it. One psychologist further observed that obtaining some of the data necessary for RisCanvi would require a complex diagnostic process involving specific clinical tools, yet the structure and timelines of the RisCanvi assessment process do not allow adequate space for this.

One interviewee emphasised that the information entered into the tool is "incomplete, contaminated and highly selective," reflecting only what the Administration is able to know about the individual rather than the individual's actual reality. As they noted, the introduction of a sophisticated statistical tool does not necessarily improve the underlying quality of the data: "Risk estimates can never be better than the data on which they are based. So, no matter how well designed the tool is, everything will be very biased".[57]

At the same time, the interviewee acknowledged the broader potential value of these tools at a systemic level. They observed that aggregated data generated through RisCanvi could provide valuable insights into how the criminal justice system functions. For example, individuals who are unemployed or lack financial resources are often assigned a disproportionately high risk of reoffending, which may signal the need for policy adjustments, stronger links with social services or greater financial support for people upon release. Indeed, they suggested that the information produced at an

[56] Alemán Aróstegui, , L. (2023). El uso de RISCANVI en la toma de decisiones penitenciarias. *Estudios Penales Y Criminológicos*, *44*(Ext.), 1-43. https://doi.org/10.15304/epc.44.8884.

[57] Interviewee 6.

aggregate level may be of higher quality than that produced at the individual level, particularly in high-risk cases where the margin of error is significant.[58]

6.5. Lack of Transparency

An important concern raised by one interviewee relates to how the lack of transparency surrounding risk assessment tools affects the prisoners subjected to them: many do not even know that RisCanvi exists, whether it applies to them, or what it is used for. As the interviewee noted, "*This is a major point of friction between RisCanvi and what are traditionally known as fundamental human rights and guarantees. It is striking that when you sign up for a telephone service, there are many clauses about how your data will be treated, yet when it comes to a tool that collects and processes so much personal and sensitive data, the person affected is often not even informed".*[59]

6.6. Bias

While it was hoped, and indeed part of the rationale for creating the tool, that RisCanvi would introduce more objective assessment parameters, several interviewees highlighted the multiple biases that affect its functioning and outcomes.

One interviewee stressed that the tool now requires re-evaluation, given the increasingly heterogeneous profiles of the prison population compared with the 1980s and 1990s. This heterogeneity relates not only to the wider range of offences for which individuals are convicted, but also to the social composition and origins of people in prison.

According to the interviewee, some biases in RisCanvi have been identified and mitigated or compensated for, but others remain entrenched. Such tools also tend to classify long-term or serious offenders as high risk regardless of their personal progress, and the same pattern applies to foreigners. In particular, the interviewee pointed to openly discriminatory effects linked to administrative or immigration status, noting that in practice these factors are "absolutely decisive," and therefore represent a persistent and significant source of racialised bias within the tool.[60]

6.7. The Changing Role of Risk and Expert Assessments across the Country

The fieldwork conducted for this project suggests that the weight of preparatory measures—such as psychiatric assessments, risk evaluations and the collection of professional opinions—has evolved unevenly across different parts of the country.

One interviewee stressed the need to distinguish between tools used by the Central Prison Administration and those employed in Catalonia.

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[58] Interviewee 6.
[59] Interviewee 6.
[60] Interviewee 7.

With regard to the Central Administration's TVR and M-CCP tools, she believed that confidence in them "is practically non-existent," noting that they are rarely used or are invoked merely as a justification once the decision not to grant short-term leave has already been taken.

By contrast, she considered the implementation of RisCanvi to be far more structured and consistent: the regional government has invested in training, created the role of validator in each centre to unify criteria, and established a support service to clarify doubts about the interpretation of evidence. For these reasons, she viewed its use as "more responsible, serious and rigorous," even though problems remain.

6.8. The Reliance on Risk Assessment Tools by Judges

As for the role of RisCanvi in judicial decision-making, interviewees stated that Judges for Prison Supervision tend to be sceptical, largely due to their professional background and unfamiliarity with such tools.

This scepticism, she suggested, stems from reliance on long-standing practices and a response to a method they do not yet fully understand. However, another interviewee expressed the view that many judges and prosecutors, despite claiming not to use risk-assessment tools, nonetheless incorporate the same variables and reasoning found in those tools into their decisions.

Several interviewees further noted that judges, and especially prosecutors, use RisCanvi defensively: when the tool produces a medium or high-risk score, it becomes a powerful argument for denying short-term leave, parole or other adjustments, driven by concerns about justifying their decisions should something go wrong. As one interviewee put it, the underlying logic is: "*If a tool that is supposed to be scientific and objective tells me that there is a high risk and I ignore it and then something happens, how can I defend the decision I took back then?"* [61]

Indeed, although judges have full discretion to depart from the conclusions of risk-assessment tools and are not legally bound to rely on them when deciding on sentence adjustments, several interviewees noted that, in practice, the influence of these tools is substantial. Social pressure and the fear of criticism if something goes wrong appear to constrain judicial decision-making.

Interviewees explained that, in practice, judges do not receive only the outcome of the risk assessment tool but also a set of expert reports used to support the prison administration's proposal. One Judge for Prison Supervision noted that the results of the tools themselves are "very succinct and conclusive," indicating only whether the probability of recidivism is high, medium or low, without any explanation of how that conclusion was reached. However, these results are accompanied by individual reports from the Treatment Board's experts. A second Judge for Prison Supervision confirmed this, describing the classification proposal as being supported by a detailed legal report

[61] Interviewee 6.

from the prison lawyer, as well as reports from the educator, psychologist and social worker; if additional information is needed, judges may request an addendum. Another interviewee acknowledged that such requests are possible but emphasised that, in reality, they are rarely made: judges seldom ask for further clarification on how the tool's parameters were applied, and because neither judges nor prosecutors demand transparency, the administration does not provide it.

6.9. Risk Assessment applied to prisoners with health condition and disabilities : practicalities and ethical issues

The question of a person's medical condition and sentence adjustments is challenging. A first practical issue that arises when considering sentence adjustments for people with health conditions is the lack of adequate resources to meet their needs in open regime. Instead of a person's health condition justifying sentence adjustments, the opposite can occur: it becomes an impediment.

As one interviewee, a senior civil servant at the Prison Administration, explained: "*In the Social Integration Centres… [where open regime is served]… we do not have the means to adequately attend people with a complicated health situation, and it is unfair that people with serious mental disorders or at risk of committing suicide are not accessing open regime or are sent back to ordinary regime because of this lack of means. The Administration's argument is that there is the need to protect the person and based on this argument these inmates stay in ordinary prison centres where there are medical services (which, however, must be said they are also medically understaffed! But still better off than the Social Integration Centres). I believe that, precisely when a person is at risk of committing suicide, they could be better off in open regime, wouldn't they? This is an issue that worries me a lot"*.[62]

A second challenge identified in the interviews concerns a more ethical dilemma. As one interviewee explained, "*Besides transparency, there is another problem that is not new but has been highlighted by risk-assessment tools, that of what information is legitimate to evaluate. Some of the factors that are considered against the prisoner by RisCanvi, such as having an intellectual disability, increase the level of risk. And yet we have a United Nations Convention on Disability for a couple of years now, which establishes that disability cannot be a factor for discrimination in any context. So, to what extent is it legitimate for this item to appear in RisCanvi*? (…) *It has never been as necessary as currently to consider what things are legitimate to assess. Until now, before RisCanvi existed, these parameters were probably also taken into account at times, but now RisCanvi standardises them and makes them mandatory, and the system itself assigns them a value*".[63]

7. Procedural Barriers

[62] Interviewee 2.
[63] Interviewee 6.

7.1. Access to Legal Assistance : Crucial to Understand and Navigate the Procedure

The assistance of a lawyer is required only when lodging an appeal (recurso de apelación) against an order of the Judge for Penitentiary Supervision (JPS). The lawyer has 5 days after the prisoner has been notified of the JPS' order. Hiring a lawyer under the free-legal aid scheme is only possible at this stage of the process (in the appeal phase) and not before: in the administrative pre-judicial phase, nor at the filing of the first complaint before the Judge for Penitentiary Supervision, given that the intervention of a lawyer is not compulsory (it is possible, but would require a paid lawyer and its intervention will not be easy) for these phases.

Bar Associations have a system of duty lawyers specifically for Penitentiary Matters (lawyers who are specialists in prison law). Prisoners can easily request one. These lawyers are appointed for a period of 2 years to defend the prisoner in all appeals that he/she wishes to file. This service is covered by free legal aid system they do not have the means. If the prisoner does not want an appointed lawyer from this system of duty-lawyers, they can appoint a private lawyer of their own choice and bear the costs of their services (in the case of private lawyers, they can appear as soon as an initial complaint is lodged with the JVP or advice the inmate in the filing of this complaint).

Considering that the procedure is an entirely written procedure with the Spanish legislation not providing for any oral hearing nor court appearance, the assistance of a lawyer appears to be crucial. Appeals must be submitted through official registers and the courts reply in writing. In fact, considering no law is regulating prison procedures, in some cases one resorst to the Criminal Procedural Law, the Law on the Judiciary and the Administrative Procedural Law. Some Judges for Prison Supervision do meet with prisoners who request it by videoconference, but in the context of a specific request filed by the prisoner, not as a standard proceeding. Some judges also exceptionally receive lawyers or family members, but this is not provided for in the law. It is a discretionary decision of the competent JPS.

One of the interviewees commented on this crucial need for legal advice for prisoners to understand this procedure in the first place *"I think it's helpful, obviously, but it seems quite impersonal to me too. You have the feeling that papers are being handed over to you under the door, that you accumulate a lot of documentation but you don´t get to see anyone. In the end it is too cold and too impersonal. And there comes a time when that makes you lose respect for this whole story as well. And it hurts you, you feel a little trapped in a game that´s being played around but that you don't understand. It seems to me that more work could be done in terms of really explaining and accompanying the inmate through the legal procedures¨* (Interviewee 1).

7.2. Lack of Access to Interpretation

Unlike for the pre-trial and trial phase, no interpretation is provided by law for the phase of enforcement of sentences. As a result, where prisoners do not have command of

Spanish, they usually rely on other inmates for help or appoint their own translators where they have the means.

7.3. The Issue of Access to Case Files : an Obvious Inequality of Arms

At the administrative stage, prisoners do not have access to their file. The decisions adopted are substantiated and formally communicated to the prisoner, but all the documentation on which decisions have been based are not attached. Prisoners only have access to the Individual Treatment Plan (Pronóstico Individualizado de Tratamiento), which is drawn up by the Technical Team composed of an educator, social worker and psychologist and is reviewed every six months at the same time as the classification reviews, the assessment grid (Tabla de Variables de Riesgo) on which the decision has been partly based, and the agreements of the Treatment Boards if and when the JPS asks the prison to disclose them.

That is, prisoners access their case file only once they reach the judicial stage, if they expressly request it, and if the judge deems it necessary. Still in that case, they will not access it completely. In fact, they will never see their so-called personality protocol, nor the reports of the Technical Teams, for example. Some prisoners cite the ECtHR judgement of Cano Moya v. Spain[64] on the right of access to the file, but usually without positive result.

With this consideration, one can affirm, there is no real equality of arms in the proceedings, particularly at the administrative stage of the sentence adjustment procedures.

7.4. Witnesses and Evidence

The use of witnesses and expert evidence is generally limited to disciplinary proceedings, where inmates can request that witnesses be heard. While not expressly prohibited, this practice is uncommon for other types of inmate requests, including sentence adjustments. Witnesses, in the strict sense, are typically not considered relevant in sentence adjustment mechanisms.

In practice, social workers verify family support claimed by inmates by contacting the designated family members to confirm whether they are willing to assist the inmate during open regime (e.g., on weekends) or parole. In cases involving NGOs or associations, inmates are required to provide official guarantees stamped by the organisation, confirming the place where they will stay during open regime or parole.

Inmates may submit expert reports as part of their appeals before the JPS, but these must be independently requested and paid for by the inmates themselves—a significant obstacle for many.

7.6. Access to Appeal

[64] Application no. 3142/11.

A prisoners may appeal against a refusal to adjust their sentence or a refusal to grant a reduction. They have three remedies available.

Prisoners may file a **complaint (***Recurso de Queja***)** to the Judge for Penitentiary Supervision (JPS) to appeal a decision denying them parole or access to open regime. The appeal must be filed within one month from the day after notification of the Prison Administration's decision. As regard the procedure, prisoners can file the complaint themselves, without requiring legal representation. It must be submitted in writing and can be handwritten. Prisoners may also hire a private lawyer.

Prisoners may then file an **Appeal for Reconsideration (***Recurso de Reforma***)** against the order issued by the JPS. The latter must be submitted within three days from the day after the JPS issues its decision. The appeal is filed before that same JPS. Here again, prisoners may file this appeal themselves, without legal representation, in writing and in their own handwriting. Here too Prisoners may hire a private lawyer

Finally, prisoners may file a last appeal **(***Recurso de Apelación***)** within five days from the day after notification of the reconsideration decision. This appeal requires legal representation. Prisoners may use a private lawyer or a court-appointed lawyer under legal aid. Additional documents supporting the appeal can be submitted alongside it. The appeal is filed with the JPS, the appeal is forwarded to the Sentencing Judge or Court,.

Appeals are common as the process is cost-free for prisoners unless they opt for a private lawyer. Statistics however indicates that Sentencing Judges and Courts uphold the JPS's decisions in approximately 80% of cases.

Other parties may appeal. Indeed, both the public prosecutor and the private prosecution (if represented in the original criminal case) are entitled to lodge appeals, public prosecutor in all cases and private one in parole cases and in access to open regime where a security period has been established.

There are no legal deadlines for the JPS to resolve, nor for the prosecutors when they file opposition briefs, which means a lengthening of the proceedings. Delays are also caused/exacerbated by the lack of staff in the judicial offices.

VIII. Differential Impact for Categories of Prisoners

Certain categories of prisoners have easier access to specific mechanisms. These categories include:

1. Mothers with children under the age of three, as outlined in Article 180 of the Prison Regulations (PR).

2. Individuals suffering from very serious mental health conditions, as specified in Article 60 Criminal Code
3. Persons diagnosed with life-threatening illnesses, as provided for in Articles 91.2 and 91.3 of the Penal Code (PC).
4. Individuals who agree to substitute their prison sentence with admission to a detoxification centre, as stated in Article 182 PR.

Women do not have greater access to these sentence reduction mechanisms than men, except in cases where they have children under three years old in their care. This provision aims to avoid the imprisonment of minors. The percentage of women in prison in Spain stands at 7% of the total prison population, which is higher than the average of 4% observed across the European Union, according to the SPACE I and II reports.

Certain categories of prisoners face disproportionately greater challenges in accessing specific mechanisms, with some being entirely excluded from them. Certain categories of prisoners are subject to specific mechanisms concerning parole and open regimes, while others are excluded from the general frameworks due to the nature of their offences. Mechanisms specific to imprisoned foreign nationals are addressed separately below.

For **parole**, individuals convicted of sexual offences are excluded from qualified early parole for primary offenders serving short prison sentences under Article 90.3 CC. However, they remain eligible for general parole and advanced parole if they meet the applicable requirements, although no specific mechanism exists for this group.

Individuals convicted of terrorism-related offences or crimes committed within criminal organisations face stricter restrictions. They are excluded from early parole, qualified early parole, and early parole for primary offenders. Additionally, these individuals have a significantly higher time threshold of 35 years to access parole if serving a life sentence. They must also satisfy a set of specific and stringent requirements to be considered for general parole. This constitutes a distinct scheme for accessing parole.

There are no specific mechanisms in place for disabled persons, pregnant women, or parents of young children regarding parole.

For the **open regime**, there is a specific provision for elderly prisoners. Article 104.4 of the Prison Regulations allows the Judge of Penitentiary Supervision to authorise progression to an open regime for prisoners aged 70 or older, particularly when their level of dangerousness is considered low. While no specific mechanisms exist for disabled persons, pregnant women, or parents of children under the age of three to access the open regime, these personal circumstances are carefully assessed. In practice, prisoners in these situations are more likely to be granted progression to an open regime, as outlined in Articles 179 – 181 of the Prison Regulations in, Article 104.4 PR, and Instruction No. 6/2020 SGIP.

Individuals convicted of terrorism, organised crime, or certain sexual offences face additional restrictions. Offenders convicted of sexual crimes against minors under 16 years of age, human trafficking involving minors or especially vulnerable individuals, and offences related to prostitution, sexual exploitation, or the corruption of minors are excluded from the general framework for the open regime until they have served half of their prison terms, known as the ‘security period’. After serving this period, they must meet specific additional conditions to qualify for the open regime. For instance, those convicted of sexual offences must undergo evaluation for participation in a penitentiary treatment programme for sexual offenders, as mandated by Organic Law 10/2022.

8.1. Barriers relating to Socioeconomic standing of prisoners

Economic and social factors play a significant role in the granting or denial of open regime or parole. If an inmate lacks stable housing or a source of income, securing these mechanisms becomes extremely difficult. In such cases, inmates are typically required to provide a ‘guarantee’ (aval) from a third-sector organisation, such as an NGO or foundation, that will offer housing in its residences or reception flats.

Several organisations operate within Spanish prisons, supporting inmates through their reintegration process. These NGOs, associations, and foundations run programmes inside prisons and establish relationships with prisoners, which are necessary to issue the required guarantees for housing upon release.

For inmates without economic resources, there was previously a "prison release benefit" available through the Employment Office, which provided non-contributory welfare assistance upon release on parole. However, this benefit was abolished in October 2024. Now, inmates must apply for the Minimum Living Income, subject to meeting specific eligibility requirements.

8.2. Foreign Nationals

The treatment of foreign nationals within Spain’s penal system is influenced by specific legal provisions, practical challenges, and international agreements.

8.2.1. Expulsion as a Substitute for Prison Sentences

Under **Article 89 of the Criminal Code** (as amended by Law 11/2003 and Organic Law 1/2015), along with **Circular 7/2015**, foreign nationals may have their prison sentences replaced by expulsion from Spanish territory.

Expulsion can occur once the inmate has completed a determined part of their sentence, reached open regime, or been granted parole. The sentencing court decides whether to execute part of the sentence before expulsion.

Despite the legal framework, expulsion often proves unenforceable due to:

- Uncertainty regarding the prisoner's nationality.
- Non-cooperation from consular or diplomatic authorities in issuing travel documents.
- Prohibitive repatriation costs.
- Concerns about the returnee's safety in their country of origin.
- Lack of bilateral agreements with certain countries.

As a result, many foreign inmates remain in Spain's prisons despite being eligible for expulsion.

8.2.2. Access to Open Regime for Foreign Nationals

The Prison Regulations (PR) provide limited guidance on foreign nationals in open regimes, leading to varied practices.

Undocumented Foreign Nationals or without a stable social environment in Spain often face barriers in accessing ordinary open regime. These individuals are frequently assigned to a *restricted open regime*, which offers fewer freedoms due to the perceived risk of absconding. Lack of documentation hampers full reintegration into society, particularly the labour and housing markets. Some academics advocate for temporary work permits to support undocumented inmates during their open regime or parole, with occasional success when the Ministry of Labour grants permits tied to the duration of the regime.

Foreign Nationals with work or residence permits are generally eligible for ordinary open regime, similar to Spanish citizens. However, practical challenges arise when these permits expire during incarceration. Renewal efforts are often unsuccessful because having a criminal record disqualifies inmates from renewing their permits. Without valid permits, inmates are considered less socially rooted, leading the Treatment Board to view them as flight risks and assigning them to restricted open regimes instead.

8.2.3. Parole for Foreign Nationals

Parole for foreigners is governed by **Article 197.1 PR**, rather than the Prison Law.

For foreign inmates without legal residence in Spain, parole may involve a request to the Judge for Penitentiary Supervision to authorise parole in the inmate's country of residence. The inmate's consent is required to proceed with this request.

Bilateral and international agreements on prisoner transfer facilitate monitoring and enforcement during parole. These agreements allow the prisoner to be supervised by the authorities in their home country, who enforce the conditions imposed by Spain and report any violations.

8.3. Minors

Article 14 of the Organic Law Regulating the Criminal Responsibility of Minors (LORRPM) provides specific provisions regarding minors subject to criminal measures when they reach the age of majority. When a minor who is serving a measure under this Law turns 18, the measure continues to be enforced until the objectives outlined in the original sentence are fully achieved.

In cases where the measure imposed involves internment in a closed regime and the minor reaches the age of 18 without having completed it, further steps are considered if their conduct does not align with the objectives of the sentence. The Judge for Minors, after consulting the Public Prosecutor, the minor's legal counsel, the Technical Team from the juvenile facility, and the public entity responsible for protecting minors, may issue a reasoned decision to transfer the individual to a penitentiary facility. In such cases, the general prison regime established under the Prison Law applies.

Once the minor begins serving their measure in a penitentiary facility, any other measures previously imposed by the Judge for Minors, whether pending or served concurrently, are rendered void if they are incompatible with the prison regime.

The time the individual has already spent in the juvenile center is credited towards their sentence. From the moment they are placed in the penitentiary facility, the ordinary time thresholds and conditions for open regimes and parole apply, just as they do for other inmates. No special considerations are given, except for placement in a youth module within the penitentiary facility to account for their age and developmental needs

Conclusion

The research undertaken between 2024 and 2025 reveals a Spanish penitentiary landscape in which the promise of reintegration, repeatedly affirmed by European soft law, collides with entrenched institutional practices that limit prisoners' actual access to sentence-adjustment mechanisms.

Spain's mechanisms of sentence adjustments strongly articulate with prison regimes, which classify inmates into three "treatment grades" (grados de tratamiento), ranging from closed to open regime. The law intends to permit flexible, scientifically-individualised placement, allowing a convicted person to be assigned directly to any regime—including the open (third) degree—based on personal conduct and reintegration prospects, without having to progress sequentially through the grades. However by conditioning access to parole to reaching the last degree of open regime and establishing a ¨security period¨ for certain categories of prisoners, the system of access to early release diverts in fact the logic of scientific individualisation. In particular the Organic Laws of 2003 and 2015, intended to reinforce legal certainty

and public safety over resocialization have significantly narrowed the pathways through which inmates can obtain early release.

The Spanish system of sentence adjustment is also marked by an increasing influence of risk-assessment approaches, in particular in Catalonia, where the risk assessment tool RisCanvi, is implemented to help the prison administration decide on the most important prison decisions affecting inmates, including sentence adjustments. While intended to provide structured, objective and individualised evaluations of an inmate's likelihood of reoffending and committing violent acts these tools have been criticised for reinforcing a bureaucratised approach in which prison staff rely on algorithmic scores rather than conducting thorough assessments. Practitioners also warn that this reliance can mask a lack of motivation in judicial reasoning and engagement of Judges of Penitentiary Supervision, reinforcing thereby the "rubber-stamping" practices of judges denounced by the CPT in both its reports from 2017 and 2022.

In this context, strengthening the procedural guarantees of inmates, in particular their access to legal assistance at all stages of the proceedings appears to be crucial to ensure that prisoners can navigate the system with equality of arms, against the prison administration and prosecutors. This is particularly true for certain categories of prisoners, who are significantly disadvantaged by the system, in particular prisoners serving long sentences and foreign nationals.

CHAPTER 6

Sentence Adjustment Mechanisms in FRANCE: Law and Practices

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Introduction

France's current system of sentence adjustment is the result of a large number of reforms over the last few decades, with a particular intensity since the early 2000s and the intensification of jurisdiction in this area – almost the entire field of sentence adjustment now comes under the authority of sentence enforcement judges.

The main reforms over the last 15 years include the 2009 Act, which introduced the principle that imprisonment should be the exception and the alternative the rule; the 2014 Act, which created the mechanism of release under constraint ('*libération sous constrainte*' – LSC); the 2019 Act, which introduced a reform of the sentencing scale and affirmed the principle of the adjustment of sentences of one year or less; and the 2021 Act, which added a new form of automatic' LSC and reformed the system of sentence reductions.

However, despite the strengthening of procedures and the increased role of the judiciary in recent decades, the rates of sentence adjustment remain surprisingly low: around three quarters of prisoners in France serve their sentence to the end without benefiting from an early release. This situation can be explained by legal criteria that are sometimes unsuited to the socio-economic realities of prisoners, by the limited use of specific measures (for example, for parents, or ill and elderly people), and by a certain mistrust of certain profiles (particularly foreign nationals or people targeted by safety considerations).

The French system is also characterised by an accumulation of exception regimes that restrict the prospects of accommodation for an ever-growing panel of individuals. This gradual erosion of ordinary law reveals a deeper conflict between judicial independence and political interference. In other words, although the separation of powers has strengthened judicial autonomy, the latter appears at the same time to be subject to constant political pressure – officially justified by safety considerations or social expectations, but no less indicative of the executive's stranglehold on the field of sentence adjustment.

In addition, from a utilitarian point of view, sentence adjustments in France are caught up in a tension between prison overcrowding and penal populism, and therefore acting as an ambivalent political instrument aimed both at reducing the prison population and at reinforcing the perception of greater judicial severity. In the view of many observers, such ambivalence undermines the possibility of any clear guidelines for the enforcement of sentences. The concept of "extreme centre" theorised by historian Pierre Serna[1] may shed some light on this dynamic: penal policies move forward without coherence, guided by 'common sense' and an 'invisible penal hand' characteristic of all neoliberal systems. Yet French adherence to neoliberal pragmatism is expressed in several ways. Firstly, by a constant need to reform, at the risk of overcomplicating the law and losing sight of the guiding principles that govern this area. Secondly, by the adoption of laws that aim to 'restore the meaning of punishment', a consensual and politically profitable concept but rarely backed up by the material and human resources needed to implement it, nor by any truly binding effects. And thirdly, by a continuous increase of the prison capacity – which conveniently demonstrates that something is being done not only to deal with penal inflation

[1] *P. Serna, La république des girouettes. 1789-1815 et au-delà. Une anomalie politique : la France de l'extrême centre*, Paris, Champ Vallon, 2005.

but also to fight overcrowding – and regardless of the fact that this strategy has proved ineffective for over 40 years.

As a result, sentence adjustments are increasingly seen as tools for management and regulation, to the detriment of their initial function of rehabilitation. This approach exposes judges to a loss of meaning in their work, which is already weighed down by a crying lack of resources. This shift towards utilitarian management is illustrated by the strategy adopted by the government before the Committee of Ministers following the *J.M.B. v. France* judgment (see below). Since the possibilities for judges to adjust sentences have been expanded in recent years, the executive is relying on their 'common sense' to reduce prison inflation, while at the same time placing the responsibility for any failure on them.

All this raises a crucial question: are sentence adjustments in France still instruments of justice or have they become political tools for regulating the prison system?

Against this general background, the present report intends to examine the national legal frameworks governing and organising sentence adjustment mechanisms in France and the practices of French professionals and other stakeholders involved in their framing and implementation.

The conducted research is part of a broader study led by the European Prison Litigation Network between 2024 and 2025 in seven European countries (Belgium, France, Germany, Poland, Portugal, Spain and Ukraine) in partnership with the Universidad Francisco de Vitoria UFV Madrid, Strafvollzugsarchiv, Universidad Complutense Madrid, Forum Penal, Centre de Recherches en Droit Pénal, Université Libre de Bruxelles, the Helsinki Foundation for Human Rights. This study aimed at investigating the European influence on national laws and practices regarding the application of sentence adjustments, through analysing the different national frameworks and the multiple factors impeding and facilitate prisoners access to these mechanisms. The research was supported by the European Union's Justice Programme[2].

1.1. Methodology

This report forms part of the broader comparative research project on sentence adjustment mechanisms in Europe but focuses exclusively on the French context: It combines desk-based legal analysis conducted in 2024 with qualitative empirical research carried out in 2025.

The 2024 phase consisted of desk-based research aimed at identifying structural and legal obstacles to sentence adjustment in France. This phase involved a systematic review of legislation, policy documents, statistical data, case law, institutional reports, and academic and grey literature relating to the enforcement of sentences. The findings of this phase were synthesised in a comparative report on structural barriers to sentence adjustment and complemented by a country factsheet providing an overview of the French legal framework and the main sentence adjustment mechanisms in force.

Building on these findings, the 2025 phase sought to move beyond formal legal frameworks and examine how sentence adjustment mechanisms operate in practice. This second

[2] Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. neither the European Union nor the European Commission can be held responsible for them.

phase was based on qualitative fieldwork designed to capture decision-making rationales, professional constraints, and the lived experience of sentence enforcement. A total of nine semi-structured interviews were conducted between July and September 2025 with actors situated at different levels of the sentence enforcement system.

Two focus groups were held with Prison Rehabilitation and Probation Counsellors (*conseillers pénitentiaires d'insertion et de probation* (CPIP, here referred to as PRPCs)). The first brought together one outside probation counsellor (PRPC 1) and one inside probation counsellor (PRPC 2). The second involved two additional counsellors (PRPC 3 and PRPC 4), both of whom are also representatives of a major probation staff union with left-wing sensibilities.

Two interviews were conducted with sentence enforcement judges: one serving in the Paris region (judge 1) and another based in a court in central France (judge 2). The research also included interviews with two former inmates (former inmates 1 and 2), both of whom had served long custodial sentences for drug trafficking offences. Finally, an interview was conducted with the director of an establishment housing long-term prisoners (prison director).

1.2. Chapter overview

The report provides in its first part an overview of France's penal and prison system (1) and of sentence adjustment mechanisms (2). It sets out in particular the institutional architecture of sentence enforcement, the main adjustment and reduction mechanisms available under French law, the applicable eligibility criteria and procedures, and relevant statistical trends (3). The report then identifies key procedural and substantive barriers (4), including the accumulation of exception regimes, the managerialisation of sentence adjustments, material and human resource constraints, and the differential impact of these mechanisms on specific categories of prisoners (5).

After having established this overall legal and structural context necessary to understand how sentence adjustment is formally designed to operate, the report then examines sentence adjustment mechanisms as they are applied in practice (6). It focuses on decision-making rationales in sentence adjustment procedures and analyses the standardisation of practices. It also explores the pressures faced by the institutional and professional ecosystem and the influence of political and security-oriented narratives in decision making in sentence adjustment.

Finally the report looks at the use and influence of dangerousness and risk-based approaches in sentence adjustment (7). It also analyses how the use of actuarial and structured assessment tools is reshaping professional roles, particularly within probation services, and affecting prisoners' access to sentence adjustment.

I. France's Penal and Prison System

The French penitentiary context is plagued by several serious problems, first and foremost massive overcrowding and an advanced state of disrepair in many establishments, exposing

their occupants to detention conditions that are often undignified. With an average density of 119.2 inmates per 100 places, France ranked 3th among Europeans countries with the most overcrowded prisons on 31 January 2023 (with a median density of 90.2 prisoners per 100 places in Europe)[3]. National data show that the situation has since worsened dramatically, with the density rising to 128.5 on 1 November 2024. At that date, 80,130 people were being held in French prisons, with only 62,357 operational places.

Although no pilot judgment has been handed down in France in the penitentiary field, it is worth noting the importance of the quasi-pilot judgment J.M.B. and others v. France issued on 30 January 20204 – the only one in which the Court applied Article 46 of the Convention. In this judgment, the Court found France guilty of inhuman and degrading treatments because of the conditions of detention inflicted on the applicants (violation of Article 3) and for failing to respect the right to an effective remedy (violation of Article 13). Above all, it found that the occupancy rates in the prisons concerned revealed the existence of a "structural phenomenon" (§ 315) and recommended that France "adopt general measures [...] to ensure that detainees are held in conditions consistent with Article 3 of the Convention" and, in this perspective, to reach "the definitive resorption of prison overcrowding", as well as to establish "a preventive remedy enabling prisoners, in an effective manner, in combination with the compensation remedy [...], to redress the situation of which they are victims" (§ 316).

Generally speaking, there are many similarities between France and Belgium in terms of penal rationale, the way the prison system operates and the enforcement of sentences.

II. France's sentence adjustment mechanisms

France's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- Conditional release;
- House detention with electronic monitoring, semi-liberty or outside supervision;
- Release under constraint ('*libération sous contrainte*' – LSC), in its "classic" and "automatic" forms;
- Suspension and fragmentation of sentences for medical reasons;
- Reductions of sentences;
- Temporary leaves.

These mechanisms are all provided for in the Code of Criminal Procedure, and have been subject to major changes through several laws in 2014, 2019 and 2021.

2.1. Institutional architecture and players in the system

The system of sentence adjustments is based around the figure of the sentence enforcement judge ('*juge de l'application des peines*' – JAP). The function of JAP, created

[3] SPACE I, 2023.
[4] *J.M.B. and others v. France*, 30 January 2020, no. 9671/15 (and 31 others).

in 1958[5], was initially assigned to any judge of the *tribunal de grande instance* (now called *tribunal judiciaire*). This judge was mainly responsible for monitoring suspended sentences and probation, as well as measures for prisoners (temporary leave, semi-liberty). His role evolved in the 1960s and 1970s, with an increase in his jurisdiction over convicted prisoners. In 1986, this specialisation was reinforced by the creation of dedicated staff.

The reforms of the 2000s (laws of 2000[6], 2004[7] and 2005[8]) broadened the JAP's functions by introducing jurisdictional procedures (debate, reasoned decision, appeal) and new supervisory tools, in particular to better supervise the release of long-sentenced prisoners. Since then, the JAP has had general jurisdiction over measures to individualise custodial sentences – although some measures fall within the special jurisdiction of the sentence enforcement tribunal (‘*tribunal de l’application des peines’* – TAP). Both the JAP and the TAP are courts of first instance, with decision-making, supervisory and monitoring powers.

- **JAP/TAP**: Broadly speaking:
    - The JAP has jurisdiction to adjust sentences of less than or equal to 10 years' imprisonment or when the time remaining is less than or equal to 3 years;
    - The TAP has jurisdiction to adjust sentences of more than 10 years' imprisonment and when the time remaining is more than 3 years (cumulative conditions). It also has exclusive jurisdiction over all applications for conditional release made by persons sentenced for the most serious crimes or those presenting a ‘particular danger’, as well as for crimes and offences committed in the context of terrorism.

- **Sentence Enforcement Commission** (‘*commission de l’application des peines*’ – CAP): Produces an opinion for the JAP/TAP on requests for sentence adjustments.

- **Prosecutors**: Represent the state and may challenge decisions granting adjustments.
- **Prison and probation office** (‘*Service pénitentiaire d’insertion et de* probation’ – SPIP): Prepare criminological and social reports on inmates’ situations and supervise released individuals.
  Each prisoner is individually monitored by a dedicated officer.
- **Prison Administration**: Prison directors play a role in providing opinions on inmates' behaviour and suitability for adjustment mechanisms.
- **Lawyers**: Advocate for inmates’ applications and represent them in legal proceedings

2.2. Criteria for granting sentence adjustment

2.2.1. Conditional release

Eligibility:

[5] Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature.
[6] Loi n° 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes.
[7] Loi n° 2004-204 du 9 mars 2004 portant adaptation de la justice aux évolutions de la criminalité.
[8] Loi n° 2005-1549 du 12 décembre 2005 relative au traitement de la récidive des infractions pénales.

- For “classical” sentence, after half of the sentence has been served
- For long sentences, the person needs in addition:
    - To have completed their security period (*i.e.* the minimum period of detention before they can apply to have their sentence adjusted)
    - To go through a multidisciplinary assessment of dangerousness carried out in a specialised department responsible for observing detainees, together with a medical expertise.
- Judge or court may impose parole conditional upon the prior granting of another sentence adjustment measure or a temporary leave.

Assessment criteria:

- The judge will look at the “serious efforts towards reintegration” of the convict person. Such efforts are assessed in the light of:
    - either the exercise of a professional activity, an internship or a temporary job, or their attendance at an education or vocational training course;
    - their essential participation in the life of their family;
    - the need to undergo medical treatment;
    - their efforts to compensate their victims;
    - or their involvement in any other serious integration or rehabilitation project.

Specific provisions:

- For parents and pregnant women:
    - Possible when the sentence doesn’t last more than 4 years, or 4 year before the end of the sentence;
    - The children must 10 years old or less
    - The pregnant women must be 12 weeks pregnant
    - not applicable to persons convicted of a crime committed against a minor (exception provided by case law)

- For elderly:
    - Possible with no time limit for people aged 70 or over
    - The measure may be refused if there is a serious risk of the offence being repeated or if release is likely to cause a "serious disturbance to public order"

- For medical reasons:
    - Possible one year after the granting of a suspension of sentence on medical grounds.
    - A new expert opinion must establish that the prisoner's physical or mental health is still permanently incompatible with continued detention, and that the prisoner can provide care appropriate to his situation.

- For foreign nationals sentenced to deportation order:
    - Possible on condition that the measure is executed
    - Exception for criminal deportation orders: the person can be released on parole, and have their order automatically lifted at the end of the parole if they have complied with the conditions.

- For perpetrators of terrorist acts:
    - Only granted by the TAP
    - Only after the opinion of a commission responsible for carrying out a multidisciplinary assessment of the person's 'dangerousness'
    - Parole may be refused if the TAP considers that the person is likely to cause a "serious disturbance to public order".

2.2.2. House detention with electronic monitoring, semi-liberty or outside supervision

Eligibility:

- Can be decided when the person's remaining sentence is less than or equal to 2 years

Assessment criteria:

- The judge will look at the "serious efforts towards reintegration" of the convict person (see 'Conditionnal release')

2.2.3. Release under constraint ('libération sous contrainte' – LSC)

Eligibility:

- For "classical" LSC (created in 2014), only for people sentenced to up to 5 years' imprisonment and after two-thirds of the sentence has been served
- For "automatic" LSC (created in 2021), only for people sentenced to up to 2 years' imprisonment and 3 months before the end of the sentence.

Assessment criteria:

- None – this mechanism was designed (in 2014) and then developed (in 2019 and 2021) to concern people who do not have a particularly defined exit plan
- But the judge can refuse when "it is impossible to implement" one of the sentence adjustments.
- For "automatic" LSC, the judge can refuse "in the event of material impossibility resulting from the absence of accommodation".

Exception regimes: "Automatic" LSC does not apply either:

    - For persons convicted of crimes, acts of terrorism or any type of violence against minors under the age of 15, against a public official or against a partner;
    - For prisoners who have been subject to a disciplinary sanction during their detention for different kinds of offences (violence, resistance, participation to a collective action, etc.).

    - in the event of "material impossibility resulting from the absence of

accommodation" (Code of criminal procedure, Article 720).

- For foreign nationals sentenced to deportation order.

2.2.4. Suspension and fragmentation of sentences for medical reasons

Eligibility:

- Convicted can be granted any adjustment measure, as well as a split or suspended sentence on medical ground.

- Person on remand can also apply for release until trial on medical grounds.
- Time threshold: none.

Criteria:

- The person must be able to justify one of the following two criteria:
  - Incompatible of the health condition with detention;
  - Vital prognosis engaged, *i.e.* if the detainee suffers from a life-threatening condition in the short term.

- The application may be rejected if there is a "serious risk of the offence being repeated".
- The materiality of the health condition must be based on one or more medical reports.

2.2.5. Reductions of sentences

Eligibility:

- Maximum of 6 months per year of imprisonment
- Maximum of 14 days per month for a period of imprisonment of less than one year

Exception regimes:

- For persons convicted of terrorist offences (except in cases of provocation or apology):
  - 3 months per year of imprisonment.
  - 7 days per month for less than one year's imprisonment.

- For persons convicted of certain offences (violence of any kind, murder, aggravated murder, torture or acts of barbarism) committed against a public official after 26 May 2021 (or 23 December 2021 for some of them):
  - If a crime: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

  - If a 'less serious offence' (*délit*[9]): 4 months per year of imprisonment and 9 days per month for less than one year's imprisonment.

[9] French offences are divided into *crimes*, *délits* and *contraventions*.

- For people who do not follow the proposed medical treatment, although they have been found criminally liable but their discernment was impaired at the time of the offence, or they have been convicted of an offence for which socio-judicial supervision is incurred: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

Assessment criteria:

- Evidences of “good conduct” including:
  - the absence of incidents in detention;
  - compliance with the establishment's internal rules or service instructions;
  - involvement in daily life;
  - or behaviour with prison staff or those working in the establishment, with other detainees and with persons on mission or visiting.

- “Serious efforts toward reintegration”, including:
  - regular attendance at school, university or vocational training aimed at acquiring new knowledge;
  - progress in education or training;
  - commitment to learning reading, writing and arithmetic;
  - work activity;
  - taking part in cultural activities, particularly reading;
  - participation in supervised sporting activities;
  - following a therapy designed to limit the risk of re-offending;
  - sustained investment in a care programme offered by the prison integration and probation service;
  - or voluntary payment of sums due to victims and the Treasury.

2.2.6. Temporary leaves

Eligibility:

- A one-day leave can be granted for several reasons (see below) to a convicted serving a sentence of up to 5 years' imprisonment, or to a convicted serving a sentence of more than 5 years and who has served half the sentence

- A 3 days leave can be granted to a convicted in the event of serious illness or death of a close family member, or the birth of his child, when the person is serving a sentence of up to 5 years' imprisonment, or a sentence of more than 5 years and half the sentence has been served.

- A 3 to 10 days leave can be granted to maintain family ties or prepare for professional or social reintegration, the time threshold and duration depends on the type of establishment in which the person is imprisoned:

  - If the convicted is held in a maison d’arrêt (prisons for short sentences and pre-trial detention), a maison centrale (prison for long sentences) or a semi-liberty centre, he/she is eligible for a 3 days leave maximum when:
    - the sentence is one year or less;
    - they have served half of their sentence and have less than 3 years left to serve.

- If the convicted is held in a or a structure d'accompagnement vers la sortie (dedicated to the professional integration of prisoners at the end of their sentence), he/she is eligible for a 3 days leave maximum without time threshold.

If the convicted is held in a centre de detention (prison for medium to long sentences), he/she is eligible for a 5 days (and once a year 10 days) leave when they have served one third of their sentence.

Assessment criteria:

- One-day leave can be granted for:
  - Meeting any employers or professional or educational facilities when the convicted is soon to be released or may be eligible for a sentence adjustment;
  - Taking an examination;
  - Going to a care facility;
  - Voting.
- For others leaves, the person must provide the relevant supporting documents.
- The judge takes into account the behaviour of the person in detention as well as the existence of disciplinary sanctions.
- Foreign nationals subject to a deportation order may not be granted temporary leave. However, there is an exception in the case of a judicial deportation order: the person may apply for leave to prepare an application to lift the ban.

2.3. Procedure for applying

The sentence adjustment request must be submitted in writing to the sentence enforcement judge (JAP), through the prison administration office or via registered mail. Incarcerated individuals can also file a declaration with the prison's director, which must be signed, dated, and forwarded to the judge's office. Requests that do not follow this procedure may be ignored by the JAP. The judge can also act on his or her own initiative to process improperly filed or missing requests. If the request is within the jurisdiction of the sentence enforcement court (TAP), the JAP's clerk forwards it unless it is inadmissible.

Once the request is submitted, a hearing before the judge must take place within 4 months, or 6 months if under the TAP. If this deadline is missed, the convicted person may directly petition the sentence enforcement chamber (appeal court). The person is informed of the hearing date at least 10 days in advance, and their lawyer is notified.

For release under constraint, no procedure is required and the situation is automatically presented to the Sentence Enforcement Commission.

2.4. Recall

The law[10] allows parole to be withdrawn in the event of:

- A new conviction;
- Notorious misconduct;
- Breach of the conditions or non-compliance with the measures set out in the parole decision;
- Refusal to start or continue the treatment prescribed by the doctor treating the offender

[10] Code of criminal procedure, Article 733.

and offered to the offender under a treatment order.

While the concept of "notorious misconduct" has been the subject of recurring criticism for its lack of a clear definition and the resulting risk of arbitrariness, the *Cour de cassation* considers that it complies with the principles of criminal legality and the intelligibility of criminal law, since it is up to the judge, through his or her power of interpretation, "to qualify behaviour that the legislator cannot list exhaustively a priori" (Crim., 15 January 2014, no. 13-83542).

The case must be referred to the competent court no later than one month after the end of the period for assistance and supervision.[11]

While legal provisions allow the judge to withdraw the benefit of a modified sentence in certain specific cases, some authors have pointed out that sentence enforcement courts sometimes interpret these provisions much more broadly than the law allows[12].

III. Statistics

Based on the data from the sources referenced earlier, the rates of granting different sentence adjustment measures remain consistently low.

For example:

- Overall Sentence Adjustment Rate: As of August 1, 2024, only 27.6% of convicted and incarcerated individuals benefited from sentence adjustments. This means that nearly three-quarters of inmates are released without any adjustment. This rate has remained stable for the past 30 years.
- Release Under Constraint ('*libération sous conrainte*' – LSC): Although the 2014 impact study estimated that 14,000 to 29,000 LSC measures would be granted annually, only 3,000 were granted each year between 2015 and 2018, rising to 6,000 annually between 2019 and 2021. By the end of 2024, the average grant rate for "automatic" LSC measures stood at just 59%.
- Conditional release: As of March 31, 2024, only 3,811 individuals were under conditional release in the community, including 764 within the framework of LSC.
- Sentence reductions: In the first 16 months after the new sentence reduction regime took effect on January 1, 2023, only 62% of eligible reductions were granted, compared to 72% under the previous regime in 2019. Consequently, the number of sentence reduction granted has fallen by nearly 19 days per one-year sentence, increasing the length of sentences accordingly.
- Semi-liberty: As of January 1, 2024, only 2,222 individuals were under the semi-freedom regime.
- House detention with electronic monitoring: By January 1, 2024, this measure applied to 14,984 of the 15,750 incarcerated individuals who were not physically detained (95%).

[11] Code of criminal procedure, Article 712-20.
[12] Léa Déplante, « Du retrait de mesures d'aménagement de peine résultant d'une interprétation extensive des textes », in *Bulletin des arrêts de la cour d'appel de Grenoble*, 2024/2.

- Outside supervision: As of January 1, 2024, only 766 sentenced individuals were on outside supervision without accommodation provided by the prison administration (e.g., hosted by partner structures), while 211 were placed with prison-administered accommodation.
- Foreign nationals: On 30 June 2024, only 9.5% of people on probation were foreign nationals, compared with 24.8% in prison.

IV. Procedural and substantial barriers

Observation of the French system reveals a number of initial trends that help to explain the low rate of sentence adjustment.

4.1. Accumulation of exception regimes

A characteristic of the French sentencing system is the accumulation of exceptional regimes for the adjustment of sentences. These regimes, which vary according to the type of offender, concern both the possibilities of granting adjustment measures and sentence reductions. They also concern an increasingly varied range of offences. Indeed, while the first legal restrictions originally concerned the perpetrators of acts of terrorism and then sexual offences, recent legislative developments have brought the perpetrators of violence against public officials and domestic violence within the scope of the exception. For different reasons – in that they are only legally discriminated against when they are subject to a deportation order, but also empirically as soon as they are in an irregular situation – foreign nationals also suffer from a largely unfavourable application of sentence enforcement law.

Broadly speaking, these exceptions involve the inaccessibility of certain measures (semi-liberty and outside supervision for terrorists), “automatic” release under constraint for perpetrators of violence against a public official or domestic violence), the requirement of additional conditions (care injunction, socio-judicial monitoring), reduced maximum sentence reductions, etc. This accumulation of exceptions not only overcomplicates the system of sentence adjustment to the point where professionals in the system lose their way, but also contributes to the reasons for the low overall adjustment rates.

4.2. The managerialisation of sentence adjustments

Another major trend is that the jurisdictionalistion of sentence adjustment has been accompanied by growing procedural complexity, as the judge has gradually increased his area of jurisdiction – which in turn has led to procedural congestion due to the mass influx of prisoners and the multiplication of deadlines. The procedures frequently overlap, particularly for short sentences, where release under constraint (LSC) and ordinary procedures compete with each other. The new sentence reduction scheme makes the situation even more complex, sometimes limiting access to LSC. This complexity makes it difficult for prisoners to understand the procedures and increases the risk of errors, reinforcing a feeling of opacity.

Overload also affects the efficiency of the system. The Sentence Enforcement Commissions, which are responsible for examining an ever-increasing number of procedures, deal with a considerable volume of cases, leaving a particularly limited amount of time for each case.

This massification of procedures seems to raise doubts about the ability of magistrates, prison probation officers and prison staff to carry out their duties under optimum conditions. In addition, this over-proceduralisation leaves many justice professionals with a lack of sense of their role, faced with the feeling that the reforms undertaken in recent years are aimed more at managing and regulating the system than at genuinely individualising it.

4.3. Major material and human shortcomings

In line with the previous point, a number of reports in recent years have highlighted the profound institutional shortcomings of both probation staff (with regard to the supposedly individualised execution of sentences) and judges (in terms of considering requests for sentence adjustment). The findings point to a serious lack of human resources: up to half the number of judges on duty compared to the needs, and a caseload per probation officer that is still well above European standards (and even worse in the most overcrowded prisons).

These shortcomings are also material and affect the capacity of alternative regimes (in particular semi-liberty and work release), which does not encourage judges to impose these measures.

4.4. The weight of behaviour and discipline

The criteria for granting a sentence adjustment focus mainly on demonstrating “serious efforts towards rehabilitation” and assessing the individual's “personality”, which is a key factor in the evolution of the execution of the sentence. Consequently, behaviour in prison and the existence of incidents have a significant influence on the prospects of sentence adjustment and reduction. As regards the latter, the Code of Criminal Procedure explicitly authorises judges to take note of the fact that a prisoner has not behaved “good”. This covers both sanctioned and non-sanctioned behaviour, criminal offences or not, the existence or non-existence of evidence as to the materiality of the facts, and so on. In other words, the all-encompassing dimension of “good behaviour” is generally insecure for prisoners seeking to have their sentences adjusted. This insecurity applies to all sentence adjustments, even though “good” or “bad” behaviour is largely dependent on the context of imprisonment and poor conditions of detention.

The effect of behaviour on the prospects of reintegration is all the more striking in the case of the “automatic” release under constraint (LSC) introduced in 2021, which exclude prisoners who have been disciplined for acts of violence against staff or prisoners, for resisting orders or for taking part in disruptive collective action. These exclusions, which enshrine the link between administrative measures and judicial decisions, are indicative of the pre-eminence of the former over the latter, which for several observers reveals an infringement of the separation of powers.

The judicial supreme court does not follow this line of reasoning. On the contrary, it has upheld that disciplinary sanctions and sentence reductions serve distinct purposes-security and individualized sentencing-and can coexist without violating the principle of *non bis in idem*.

4.5. Appeals from the public prosecutor

A possible conflict with the European Convention arises from the frequent opposition by public prosecutors to sentence adjustment requests and its resulting consequences. If a convicted individual appeals a denial of sentence adjustment, the appeal lacks suspensive effect. However, when a public prosecutor appeals a favorable decision, enforcement is suspended, keeping the person detained until the *chambre de l'application des peines* (responsible for appeals) delivers its ruling. This delay, often lasting up to two months, frequently undermines employment opportunities that are crucial for obtaining sentence adjustment, leading to the failure of many appeals. This imbalance, favoring the prosecution, breaches the principle of equality of arms guaranteed by the Convention. It often results in initial favorable decisions for the offender being overturned.

4.6. Poor compliance with procedural deadlines

However, the convicted person may waive the presence of their lawyer or the notice period. However, in practice, the 4- or 6-months deadlines are often exceeded. Appeals to the Chap by convicted persons or their lawyers remain uncommon.

Another recurring problem concerns long sentences, and relates to the length of time needed to undergo the multidisciplinary assessment required for any decision to adjust a sentence. The wait to be transferred to a centre dedicated to this assessment is particularly long (up to 18 months), sometimes rendering obsolete the psychological assessments also required, which are valid for 2 years. More generally, there are many shortcomings in the way long-sentence prisoners are dealt with, which are exacerbated by the length of the procedures.

V. Differential impact for categories of prisoners

The French system provides for several 'preferential' regimes:

- For people over the age of 70: If the convicted person is over the age of 70, parole may be granted without a time limit, provided that the person's integration or reintegration is assured – in particular, if the person receives care adapted to his or her situation on leaving the prison or if he or she has accommodation. The measure may be refused if there is a serious risk that the offence will be repeated or if release is likely to cause a "serious disturbance to public order".

- For parents of young children or pregnant women: A special arrangement, commonly known as "parental parole", is provided for people who are parents of minors and have been sentenced to a custodial sentence of 4 years or less, or for whom the remaining sentence is 4 years or less. For this to be the case, the person concerned must exercise parental authority over a child under the age of 10 who is ordinarily resident with the detained parent. The same arrangement is possible for women who are more than 12 weeks pregnant. However, this system does not apply to persons convicted of a felony or misdemeanour committed against a minor (Cass. crim.,1 June 2022, no. 21-84648).

On the other hand, a number of restrictive regimes are provided for by law:

- **For people convicted of acts of terrorism** (except for apology of terrorism), conditional release can only be granted by the sentence enforcement court (i.e. by a panel of judges) and following the opinion of a special commission responsible for carrying out a multidisciplinary assessment of the dangerousness of the person. Parole may also be refused if the court considers that the person is likely to cause a "serious disturbance to public order". In all other respects, the person must meet the ordinary law requirements for conditional release. However, a law passed in 2016 considerably reduced the possibilities of sentence adjustment for people convicted of terrorism-related offences, excluding them from the benefits of semi-liberty and work release, including probation. The only remaining option is to make conditional release conditional on the execution, on a probationary basis, of a home detention order under electronic surveillance. Persons sentenced before 22 July 2016 are eligible for the full range of sentence adjustments. The judicial supreme court has also confirmed that foreign nationals subject to a deportation order, including those convicted of terrorist offences, may apply for 'deportation' (or, where applicable, 'suspension') parole (Cass. crim., 20 October 2021, no. 20-84240).

- **Foreign nationals** subject to a deportation order cannot be granted any adjustment or leave. The only exception, which is rarely applied, is in the event of a judicial deportation order.

- "Automatic" LSC is excluded for persons convicted of crimes, acts of terrorism or any **type of violence against minors** under the age of 15, against a public official or against a partner, and for prisoners who have been subject to a disciplinary sanction during their detention for different kinds of offences (violence, resistance, participation to a collective action, etc.).

- "Automatic" LSC is also excluded "in the event of material impossibility resulting from the **absence of accommodation**".[13]

- The law provides for a reduction in the maximum amount of sentence reduction that can be granted:

    - For people convicted of acts of terrorism (except for apology of terrorism): 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

    - For persons convicted of certain offences (violence of any kind, murder, aggravated murder, torture or acts of barbarism) committed against a public official after 26 May 2021 (or 23 December 2021 for some of them):
        - If a crime: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.
        - If a 'less serious offence' (*délit*[14]): 4 months per year of imprisonment and 9 days per month for less than one year's imprisonment.

[13] Code of criminal procedure, Article 720.
[14] French offences are divided into *crimes*, *délits* and *contraventions*.

- For people who do not follow the proposed medical treatment, although they have been found criminally liable but their discernment was impaired at the time of the offence, or they have been convicted of an offence for which socio-judicial supervision is incurred: 3 months per year of imprisonment and 7 days per month for less than one year's imprisonment.

5.1. Lifers

The conditional release of individuals sentenced to life imprisonment or long sentences for the most serious crimes is determined by the sentence enforcement court (TAP) following a multidisciplinary assessment of dangerousness conducted at the national assessment centre, supplemented by medical expertise. In cases involving specific crimes, two additional experts evaluate the appropriateness of medical treatment to inhibit libido. These assessments must be completed within six months and remain valid for two years; however, in practice, these deadlines are rarely met.

Crucially, the offender must have served their full safety period before becoming eligible for a sentence adjustment. This period—set at the discretion of the trial court—precludes any possibility of early release and has been firmly established as an integral part of the sentence by the supreme courts. The Constitutional Council has ruled that the safety period is a sentencing component, as it is determined by the trial court when deciding on the accused's guilt (Cons. const., 3 September 1986, no. 86-215 DC). Likewise, the Cour de Cassation has confirmed that the safety period is a method of sentence enforcement rather than a separate measure (Crim., 16 January 1985, no. 84-93553).

While the safety period can be lifted, the law stipulates that this is only possible in exceptional cases where the offender demonstrates "serious signs of social rehabilitation."[15] However, as the legislation does not define this concept, its interpretation is left to the discretion of the judge reviewing the application (Crim.,[1] October 2003, no. 03-84375; Crim., 21 October 2015, no. 14-86990).

5.2. Foreigners

In principle, foreign prisoners are entitled to have their sentences adjusted in accordance with the criteria of ordinary law, but specific provisions apply in certain situations. For example, if they are subject to an administrative or judicial deportation order, their conditional release is subject to the condition that this order is carried out – this provision may be decided without the person's consent.[16] On release from prison, the person is therefore taken directly to the airport or to an administrative detention centre. This specific conditional release, according to the case law of the judicial supreme court, "does not have to be examined in the light of the personal, family and social criteria" of the person (Cass. crim., 6 March 2002, no. 01-85914). The decision to impose this measure is merely an option for the sentence enforcement court, which is responsible for making its own assessment of whether it is appropriate, in the light of the convicted person's personality, the concrete prospects of his removal from national territory, his plans for resettlement and, where applicable, the progress

[15] Code of criminal procedure, Article 720-4.
[16] Code of criminal procedure, Article 729-2.

of the probationary measures to which he has been subjected (Cass. crim., 27 May 2021, no. 20-82727).

However, an exception has existed since 2003:[17] the sentence enforcement judge may grant conditional release to a foreign national subject to a judicial deportation sentence (but not an administrative one), by ordering the suspension of the enforcement of this sentence for the duration of the conditional release. If the person has complied with their obligations and prohibitions by the end of their conditional release, his or her deportation sentence is automatically lifted. The texts also provide for the possibility of making the conditional release of a foreign national subject to the obligation to "leave the national territory and not appear there again".[18] This measure is intended to be used in the case of foreign nationals who are not subject to a deportation order (this time both judicial and administrative) and who base their plan to have their sentence adjusted on a desire to settle in a country other than France. Unlike the "deportation" conditional release, this measure cannot be imposed on the person concerned.

With regard to "automatic" release under constraint, the Code of criminal procedure stipulates that it only applies to foreign nationals subject to an administrative or judicial deportation measure on condition that the measure is carried out[19]. Like "deportation" conditional release, it can be decided without the consent of the foreign national concerned.

Concerning foreign nationals not subject to a deportation order, the law does not make the granting of a sentence adjustment conditional on the production of a valid residence permit. In practice, however, judges are often reluctant to grant such a measure to illegal foreign nationals.[20] This is clearly demonstrated by the proportion of foreign nationals on open probation (i.e. being monitored on the outside as part of a probation measure): on 30 June 2024, only 9.5% of people on probation were foreign nationals, compared with 24.8% in prison.[21]

VI. Practices of Decision-Making in Sentence Adjustment

From the perspective of the decision-making rationales underpinning sentence adjustments, the interviews revealed several key themes. These can be grouped into four broad categories. The first concerns institutional and social shortcomings and their impact on probation work (A). The second relates to the prevailing political climate and its influence on the broader economics of sentence adjustments (B). The third addresses the rise of a "security mindset" and the resulting standardisation of decision-making (C). The fourth highlights the negative consequences of recent reforms to sentence enforcement (D). The final section sets out the main reasons identified by interviewees for why nearly three out of four sentences are not adjusted (E).

[17] Law no. 2003-1119 of 26 November 2003 on immigration control.
[18] Code of criminal procedure, Article D.535.
[19] Code of criminal procedure, Article 720 (IV).
[20] Laurence Blisson et Morgan Donaz-Pernier, « L'aménagement des peines : sortir de l'impasse ! », *Plein droit*, Gisti, n° 138, octobre 2023, p. 13.
[21] Prison administration, quarterly statistics for closed prisons and open regimes, second quarter 2024.

6.1. The Impact of Institutional and Social Shortcomings

Desk research has shown that the closed probation environment has long suffered from serious shortcomings in terms of human and financial resources. These shortcomings result in an insufficient number of Prison Rehabilitation and Probation Counsellors (PRPCs), which in turn leads to a high number of cases per counsellor, inevitably affecting the quality of individual follow-ups. While national averages for the number of cases per counsellor do exist,[22] these figures are often disputed by practitioners, as they are considered underestimated and do not reflect the reality in the most overcrowded institutions ('*maisons d'arrêt*'), which are intended for pre-trial detention and sentences of up to two years, and where around 70% of the prison population is concentrated:

> "This average is not at all representative of what we observe."[23]

> "There were certainly significant recruitment plans under Christiane Taubira[24] and under Nicole Belloubet,[25] but these increases were absorbed by the growth in the prison population, and there has been no increase in positions for the past three years. Furthermore, according to figures from the prison administration, which are disputed, there is a shortage of 924 probation officers. However, these figures are based on the prison population figures as of January 1, 2024, and do not take into account the increase since that date, even though sentences have been handed down indiscriminately for the past two years."[26]

Ultimately, this lack of human resources results in very limited individual support, which is particularly true in the case of short sentences, which account for the vast majority of prison sentences served:[27]

> "Short sentences are impossible to work with. Often, we barely have time to see them for the first time before their release date is already approaching, and we haven't had time to set anything up with them. The number of 'dry releases'[28] that I witness helplessly is staggering."[29]

More broadly, all of the interviews conducted converge on the authorities' sense of powerlessness in the face of the structural precariousness affecting a large part of the prison population. The trajectories of prisoners reveal, in the vast majority of cases,

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[22] A report by the General Inspectorate of Justice published in March 2025 noted that "the number of people monitored by a PRPC has fallen sharply in recent years, standing at 66 in 2023" (GIJ, Report on the emergency mission relating to the enforcement of sentences, March 2025, p. 40). However, this ratio still appears to exceed European recommendations on the matter, which advocate a ratio of 60 cases per officer.
[23] PRPC 3.
[24] Minister of Justice from May 17, 2012, to January 27, 2016.
[25] Minister of Justice from June 21, 2017, to July 6, 2020.
[26] PRPC 4. The number of prisoners increased by 10,748 between June 1, 2023, and June 1, 2025, revealing an unprecedented growth in the prison population over the last two years.
[27] According to official statistics published by the prison administration, 73% of convicted persons entering prison are serving sentences of one year or less, and 90% are serving sentences of two years or less.
[28] This term (in French, "sorties sèches") is used to refer to release at the end of a sentence, without any adjustment of the sentence or preparation for release.
[29] PRPC 2.

sociological determinants marked by profound economic and social fragility, often deeply entrenched. Yet the administration struggles to correct, or even to mitigate, these inequalities. This limited capacity for action is all the more significant for those serving short sentences, where the duration of imprisonment does not allow for the completion of appropriate steps or the initiation of a genuine reintegration process:

> “There is a push for reintegration that is so out of touch with the reality we live in. I shouldn't say this, but sometimes it reassures me to see clients released before I get to meet them, because I tell myself that there would have been nothing I could have done for them anyway.”[30]

The impact of institutional shortcomings must therefore be considered at all levels, both in relation to the limited room for manoeuvre available to PRPCs, who are constrained by very heavy caseloads, and in relation to the structural precariousness that the administration struggles to address, particularly within tight timeframes. In this context, counsellors appear to prioritise medium or long sentences, where the period of detention is more substantial and allows for more sustained support. These choices, whether conscious or unconscious, are, however, once again overtaken by certain material realities:

> “There is a glaring lack of facilities outside. We encounter many profiles that could benefit from an alternative, within the framework of solid, individualized support, but we don't know where to refer them because all the facilities are full.”[31]

An opinion tempered by a sentence enforcement judge regarding external placement (*placement à l’extérieur*):[32]

> “External placement is by far the most attractive option, as it allows for genuine empowerment and accountability on the part of the individual, far removed from the surveillance mindset that characterizes day release or electronic tagging. And contrary to popular belief, external placement schemes are far from saturated—at least on a national scale. However, within the administration, there is a lack of awareness and even a lack of culture surrounding this more permissive alternative. External placement programs are centralized in a software program[33] for which staff are not trained. Furthermore, external placement involves a lot more procedures, preparatory interviews with the individual, prior permission to leave, etc., all of which are procedures that probation staff do not have time to manage. As a result, they do not take advantage of it and fall back on electronic bracelets.”[34]

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[30] PRPC 2.
[31] PRPC 2.
[32] External placement is a sentence adjustment measure that most often allows convicted persons to serve all or part of their sentence outside prison, with comprehensive support provided by both the prison rehabilitation and probation service (PRPS) and an association approved and accredited by the prison administration. Given its ability to meet the need for comprehensive and individualized support across all the issues that the person concerned may face (housing, healthcare, employment, access to rights, maintaining or restoring family ties, integration into social life, etc.), external placement is particularly suitable for isolated and vulnerable convicted persons. As of March 1, 2025, only 1,037 convicted persons were subject to external placement, compared with 2,428 on day release and 16,720 under electronic surveillance.
[33] PE360°.
[34] Judge 2.

Beyond these cultural obstacles, whether or not a person depends on the effectiveness of public reintegration services gives rise to a certain degree of unequal treatment, particularly in the case of long sentences:

> “The staff at my facility are trained to support inmates serving long sentences, for whom it is inevitably more difficult to plan for release. Long sentences lead to social isolation, so the conditions for reintegration (housing, employment, family network) deteriorate over time. Everything has to be rebuilt with them. However, we are very often confronted with a lack of accommodation or access to employment. These shortcomings also lead to unequal treatment based on standard of living and social class, with the most vulnerable people being the furthest removed from the conditions of reintegration required to benefit from special arrangements.”[35]

These structural deficiencies, therefore, do not only concern reception in dedicated facilities (as in the case of external placement), but also the entire public reintegration service – i.e., support mechanisms for housing, employment,[36] or training, whose capacity varies greatly depending on the region:

> “The issue of geographical distance is fundamental, because when a person is incarcerated in a facility surrounded by nothing, or when their home is far from the place of incarceration, it is difficult to plan for a local arrangement. This reinforces differences in treatment between prisoners.”[37]

> “During my last incarceration, I was detained hundreds of kilometres from my home. When I became eligible for release, we began to consider a resettlement project in the vicinity of my prison, which was absurd because I had no intention of staying in that region after my release. However, there were no suitable offers in the area, either in terms of housing or employment. I finally found an organization willing to take me in in another region of France, but my counsellor and the judge opposed it because they felt it was too far away.”[38]

Finally, it should be noted that the shortage of human resources within the criminal justice system also affects the time taken to process applications. While statistics do not shed light on this issue, interviewees reported varying delays depending on the location and the type of institution:

> “The four-month deadline is clearly not being met in the Paris region.”[39]

> “In my jurisdiction, at the detention centre [penal institution], hearings are scheduled more than 8-9 months in advance. My colleague has more than 150 requests pending. The delays are enormous, so inmates often withdraw their requests. But in

[35] Prison director.
[36] For example, the number of advisors from France Travail, the public employment agency, assigned to prisons is derisory: 70 full-time equivalents (FTEs) were provided for in the 2023-2025 three-year agreement between France Travail and the Ministry of Justice, for more than 84,000 prisoners as of September 1, 2025.
[37] Prison director.
[38] Former inmate 1.
[39] PRPC 2.

remand centres, we manage to hold hearings within four months. To put it simply, the longer the sentence, the longer the delays."[40]

6.2. The 'Spirit of the Times' and the Influence of Politics

Another important dynamic can be seen in the way the overall economy of sentencing appears to be strongly influenced by the repressive appetite that permeates contemporary criminal justice policies. This trend, characterised by an increasing emphasis on firmness and a mistrust of alternative measures, reinforces the idea that a reduced sentence is a sentence not served. This discourse, now fully endorsed at the highest levels of government, can be observed, for example, in the bill recently introduced by the current Minister of Justice, who seeks to overturn the principle of mandatory sentence adjustments.[41]

However, while judges are expected to remain detached from political and media pressures, the independence inherent in the judicial function does not preclude a degree of susceptibility to prevailing trends. Magistrates, as actors of their time, may be sensitive to perceived social expectations and security concerns, and their decisions may therefore, sometimes even unconsciously, reflect the contemporary climate surrounding the enforcement of sentences. Although it is, of course, impossible to determine the individual motivations behind each decision, jurisprudential choices made in a context saturated with repressive discourse may nonetheless indicate a degree of adherence, at least partial, to the dominant criminal justice narrative.

This adherence can be observed across several judicial profiles:

> "those who are openly reactionary, who espouse a conservative ideology and readily acknowledge its influence on their practice; those whose ideology is fluid and who, out of career opportunism or a desire to 'keep the peace', align themselves with the spirit of the times (Zeitgeist) and its expression in criminal matters, without recognising the impact this alignment has on their judicial role; and those who, rejecting any ideological bias and entertaining an illusion of objectivity and neutrality, consider repressive measures an appropriate response to certain transgressive behaviours".[42]

Applied to the enforcement of sentences, this plurality of individualities inevitably means that some judges – how many? – are opposed to sentence adjustments:

> "Judges are not immune to the overall climate. Some are fundamentally opposed to sentence adjustments. And then, in the current context, a judge has to be pretty

[40] Judge 2.
[41] The establishment of this idea is the result of a reactionary offensive led in the political and media spheres by influential figures in the world of justice – see for example: Devecchio A., "Lack of prison space, non-enforcement of sentences, partiality: a magistrate's truths about justice," in Le Figaro, February 26, 2024.

[42] See Fischmeister J., « Le clair-obscur du juge pénal : pouvoir d'appréciation et usages politiques du droit de punir », in e-legal, ULB Law and Criminology Review, vol. 8, June 2024.

> gutsy to adjust the sentence of someone who presents a high risk of reoffending. In the past, judges were more impervious to the effects of their decisions."[43]
>
> "In Versailles [a jurisdiction known for its conservative approach to criminal law], I only had two parole grants. It was clear that the judge was opposed to this type of measure."[44]

This opinion seems to be shared by the two judges interviewed:

> "In my jurisdiction, we have a policy that favours sentence adjustments. But I am aware that we are quite marginal in France, and I have many colleagues throughout the country who do not want to hear about adjustments."[45]
>
> "The vast majority of magistrates do not view prison as a last resort. This applies both at the sentencing stage and during the execution of the sentence. In such cases, if the person really makes an effort, makes amends, and presents themselves well, something may possibly be considered to allow them to be released early, but this remains the exception. For many, incarceration remains the norm. It is a cognitive mechanism."[46]

A similar dynamic can be seen in the behaviour of other actors within the system—the public prosecutor's office, the prison administration, and the prison reintegration and probation service. All appear, to varying degrees, susceptible to the prevailing repressive climate, which fosters a culture of caution and self-censorship, particularly pronounced among PRPCs:

> "The precautionary principle is very much present in our profession. We see this with foreigners, and also with domestic violence [see below, C.]. Here, the effects of politics are very clear. Giving a favourable opinion in these cases is not insignificant: there may be repercussions from the hierarchy, or even from the judge. Today, the risk of further acts of violence has become unbearable. However, if we no longer assume the risk, there will be no more enforcement of sentences."[47]

This restraint is all the more problematic given that the Prison Rehabilitation and Probation Service (PRPS, to which PRPCs belong) carries out extensive screening of the cases submitted to sentencing judges. Although prisoners may file requests for sentence adjustments without consulting their counsellors, the latter must in all circumstances provide an opinion on the appropriateness of such adjustments. In practice, the cases most likely to succeed are therefore those put forward by the counsellors themselves, as these submissions presuppose the prisoner's commitment to the release plan and the reintegration guarantees presented.

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[43] PRPC 3.
[44] PRPC 4.
[45] Judge 1.
[46] Judge 2.
[47] PRPC 4.

> “In my jurisdiction, there has been a sharp decline in the number of cases submitted by PRPCs. I don't know whether this is due to work overload, reluctance to support sentence adjustment projects, or a form of discouragement among counsellors. Our reaction [with her fellow judges] was to examine unpresented cases ourselves, but this is excessive zeal compared to what is done elsewhere.”[48]

As one counsellor points out, interactions between prison administrators and judges reveal a dynamic in which everyone is primarily concerned with covering their own backs:

> “The prison administration is increasingly adopting a logic of disengagement, showing caution in its opinions and proposing fewer options to judges. Judges, for their part, are increasingly susceptible to the prevailing political discourse and the risks they could incur by handing down a favourable decision. In other words, there is so much reluctance upstream that when a case comes before them, they think twice.”[49]

6.3. Security Tropism and Standardisation

Given the above developments, the repressive appetite driven by politics is mirrored in a cautious approach to security among all actors in the sentence enforcement system. This security dimension must therefore be understood in a broad sense: it encompasses not only the risks that a sentence adjustment might pose to society, but also the fear, among those involved, of acting contrary to a political and media climate that prizes toughness in criminal justice. In practical terms, this manifests both in a growing intolerance of misconduct or disciplinary sanctions (a.), and in the adoption of standardised approaches towards certain categories of prisoners (b.).

6.3.1. The Effect of Discipline and Behaviour

All respondents emphasised the prominent role played by discipline and behaviour in detention when requests for sentence adjustments are examined. Although this factor is significant, its assessment varies according to the actors involved and the prison policies implemented locally.

This importance is particularly evident in the role of the prison governor, or their representative, whose opinion is systematically sought when an adjustment request is under consideration:

> “There is a tendency for the administration to focus on behaviour. This leads them to systematically give a negative opinion when the person has or has had a behavioural problem, whatever it may be.”[50]

> “For both adjustments and sentence reductions, you know that when there is an incident report, regardless of whether or not it is followed by a sanction, it will end up

[48] Judge 1.
[49] PRPC 4.
[50] PRPC 3.

> in the detention notice. It will say: in our opinion, there has been bad behaviour, therefore unfavourable opinion."[51]

Some respondents expressed concern that a similar stance is at times adopted by the Prison Rehabilitation and Probation Service (PRPS), despite its mission being, in principle, more oriented towards the reintegration of individuals:

> "At the PRPS level, we were made to understand that an unfavourable opinion had to be given when the person had been involved in an incident."[52]

For the same respondent, this internalisation of the security perspective by the very services responsible for reintegration is all the more questionable given that incarceration—particularly when coupled with prison overcrowding—creates tensions:

> "We are in fact dealing with a population that is more exposed to violence. Prison leads to a form of conditioning that produces situations of conflict, whether between inmates or between inmates and guards. However, this aspect is rarely taken into account."[53]

This systematisation is also viewed as unable to take into account the vulnerability factors affecting certain inmates, particularly those suffering from psychiatric disorders:

> "Overcrowding means that guards no longer have time to distinguish between incidents involving serious psychiatric cases and those committed by ordinary inmates. We are therefore witnessing a veritable criminalisation of mental illness."[54]

Furthermore, this systematisation is problematic in that the handling of incidents in detention is not accompanied by the safeguards inherent in a fair trial:

> "Incidents are rarely objectively assessed, as disciplinary committees operate with a high degree of opacity. The prison director acts as both judge and jury, and procedural rights are minimal.[55] This is particularly detrimental, as disciplinary sanctions often result in a loss of benefits in terms of sentence adjustments."[56]

The probation officers interviewed consider their profession incapable of counterbalancing these mechanisms:

> "We don't care about the PRPS's opinion. No one listens to us as much as the establishment does."[57]

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[51] PRPC 4.
[52] PRPC 2.
[53] PRPC 2.
[54] PRPC 3.
[55] International Prison Observatory (French section), "In the heart of the prison, the disciplinary machine," report, February 2024.
[56] Prison director.
[57] PRPC 2.

For the same respondent, this lack of consideration for the opinions of PRPCs can be interpreted from a gender perspective:

> “The service is predominantly female, whereas administrative staff are mainly male. This gives the impression that everything related to so-called security is the responsibility of men, and that women are in charge of rehabilitation.”[58]

Issues that, in his opinion, are particularly contradictory.

With regard to the public prosecutor’s office, the automaticity seems to stem from instructions from the Ministry of Justice:

> “The instruction given to all public prosecutors is to issue an unfavourable opinion, or to lodge an appeal with suspensive effect, whenever a person has caused an incident—whether or not there has been a sanction—particularly in cases of violence against prison guards. These are directives from the prison administration and Gérald Darmanin [Minister of Justice since December 23, 2024].”[59]

However, a former inmate qualifies this point by recounting his own experience:

> “About a week before the date of the review of my request for accommodation, a phone was found in my cell. Of course, an incident report was filed, but the warden, who knew and liked me, decided to let it go. I did not receive any disciplinary action. The judge was also understanding, and I obtained my adjustment.”[60]

This final account illustrates less a general rule than the contingent nature of the impact that a prohibition on sentence adjustments may have. Its effect depends on a combination of multiple factors and forms part of an interpersonal negotiation between the inmate and the various actors in the system— with the judge ultimately having the final say.

6.3.2. Administrative Logic and the Marginalisation of Specific Prisoner Groups

When asked whether, in their view, certain profiles of prisoners were stigmatised and limited in their prospects for sentence adjustment, foreign nationals were almost always mentioned first:

> “Foreigners are clearly the main victims of the system.”[61]

Their cases are rarely considered eligible for sentence adjustments, often because of their irregular administrative status. This status arises from a migration policy which, over the past decade, has focused on revoking residence permits and deporting foreign prisoners at the end of their sentences. This approach is reflected in a series of directives issued to

[58] PRPC 2.
[59] Judge 2.
[60] Former inmate 2.
[61] PRPC 3.

prefects by successive Interior Ministers,[62] as well as in the close cooperation between the Interior and Justice Ministries.[63]

More recently, the issue of deporting foreigners at the end of their sentences has also been included in the scope of action of the Ministry of Justice. A circular dated 21 March 2025, stated in its introduction:

> "The unprecedented prison overcrowding in our country also requires us to use all the levers at our disposal, including with regard to foreigners who are incarcerated, have been definitively convicted, and are subject to removal from the national territory under an administrative or judicial removal order."[64]

While the judiciary is theoretically independent of the political authorities, and judges are in principle free to adjust sentences as they see fit – with certain exceptions – this independence may be called into question by a bill currently being promoted by the Minister of the Interior and scheduled for early 2026. This bill aims, in particular, to make sentence adjustments impossible for undocumented foreign nationals. In line with the March 2025 circular, several memos issued by the interregional prison services already restrict the possibility of adjusting the sentences of individuals who are subject to expulsion orders or who are simply undocumented.

This development has been strongly criticised by professionals in the sector, who condemn the growing intrusion of administrative logic into the judicial sphere and into the mission of rehabilitation. Many believe that migration considerations now take precedence over fundamental principles of criminal law and the individualisation of sentences:

> "The fact that the person is a foreigner is clearly an obstacle to adjustment; this is now almost accepted within the profession. For me, this has no bearing on my decision, because the law does not provide for any distinction based on nationality or administrative status. But most of my colleagues do not think the same way."[65]

In certain institutions, such as the one where PRPC 2 works, the opinion of the PRPS management–which takes precedence over that of the referring officer–is systematically negative when the person concerned is in an irregular situation. Despite some resistance, the situation of foreign detainees remains largely discriminatory:

> "Everyone is starting to give up on them."[66]

Foreign nationals are not the only ones who encounter reluctance when seeking sentence adjustments. Several respondents noted, for example, that perpetrators of domestic violence—whose numbers in detention have risen markedly in recent years following

[62] Almost every year since 2017, ministerial instructions have required prefectural authorities to be uncompromising toward foreigners who have had dealings with the criminal justice system.
[63] See, in particular, instruction INTV1919916J of August 16, 2019, on improving the coordination of the monitoring of incarcerated foreigners subject to removal measures.
[64] Circular JUSD2505449C of March 21, 2025, concerning the care of foreign nationals who have been definitively convicted and are in detention.
[65] Judge 1.
[66] PRPC 2.

various reforms in the post-#MeToo era—also experience reduced opportunities compared to other categories of offenders:

> “Perpetrators of domestic violence are asked even more than others to acknowledge the facts and make amends.”[67]

> “Particularly with these offenses, acknowledgment of the facts is paramount for judges. The person must show remorse and be sincere. It's absurd, because prisoners are aware of this and can say what the judge wants to hear. It's worthless.”[68]

The two former prisoners, both convicted of drug trafficking offenses, make similar observations:

> “I behaved exemplarily while in prison, but for a long time the judge didn't want to let me out because she thought I would inevitably reoffend, as it is well known that you can earn much more money in this sector than in a regular job. It was something I couldn't fight against, it was beyond my control. No matter how much I told her I wanted to go straight and find a legal job, she didn't believe me.”[69]

> “There are so many so-called sensitive profiles that everyone ends up being penalised.”[70]

6.4. The Adverse Effect of Recent Reforms in the Enforcement of Sentences

Several respondents emphasised the adverse effect of recent reforms in the enforcement of sentences and their consequences for the increasing bureaucratisation of their profession.

The most unanimous criticism concerned the “automatic” conditional release mechanism (LCC-D) introduced by the law of 22 December 2021.[71]

Several reservations were expressed. First, many respondents questioned its real effectiveness in reducing prison overcrowding, even though the law’s impact assessment anticipated a gradual decrease in the prison population due to the quasi-automatic nature of release. The restrictive criteria and the short duration of the sentences concerned were cited as explanations for this limited impact.[72]

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[67] PRPC 2.
[68] PRPC 1.
[69] Former inmate 2.
[70] PRPC 3.
[71] The LSC-D (in French, Libération sous contrainte de plein droit) automatically allows a person sentenced to a prison term to benefit from a sentence adjustment when they are serving a sentence of two years or less and the remaining sentence is three months or less. The stated objective of this reform is to reduce the number of “dry releases” by promoting a return to freedom accompanied by monitoring by probation services. However, this automatic release may be refused in cases of “material impossibility,” in particular the lack of accommodation. It is also inapplicable to certain offenders (including terrorists), to persons who have been subject to disciplinary sanctions for acts of violence during their detention, and to foreign prisoners subject to expulsion from French territory.
[72] In 2025, it stands at around 55%.

Furthermore, the quasi-automatic nature of the measure is seen as undermining the individualisation of sentences:

> "Automaticity completely contravenes individualisation. This is an important principle, guaranteed by all national legislation. I think conditional release is a good idea because it provides a kind of transition between prison and life after prison. But the LSC-D does not allow for this transition. People are released automatically, without having the time or opportunity to prepare anything."[73]

Sentence enforcement judges emphasise that their margin of discretion has been reduced, while Prison Rehabilitation and Probation Counsellors (PRPCs) note that the measure leads to a standardised management of prisoner flows rather than genuine reintegration support:

> "We are trying to empty prisons rather than not fill them. PRPSs are seeing their workload increase, but this increase is not paying off in terms of results. We are constantly caught up in regular deadlines, and agents are subject to bureaucratization that undermines the overall monitoring of individuals. The systematization imposed by successive reforms is incompatible with the individualization that is nevertheless advocated."[74]

> "There is now a logic of management that overrides that of reintegration."[75]

Added to this are significant material constraints, with professionals stressing that the lack of accommodation solutions is a recurring obstacle to granting release. They also highlight the inadequacy of the human and budgetary resources allocated to PRPSs to ensure quality follow-up: without additional resources, the LSC-D risks exacerbating workload pressures and further reducing the time available for individualised support. Finally, some respondents expressed concern that the measure may discourage prisoners from actively engaging in rehabilitative efforts, since release appears to be guaranteed regardless of the steps taken.

It should be noted that while the total number of prison releases resulting from sentence adjustments has risen significantly in recent years,[76] this trend is largely attributable to the entry into force of the LSC-D in 2023. However, several stakeholders acknowledged that these figures are misleading, as the LSC-D, in their view, provides less for individualised support on release than for early release three months before the end of the sentence.

Another recurring criticism concerns the reform of sentence reductions introduced by the law of 22 December 2021 (applicable since 1 January 2023):[77]

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[73] Judge 2.
[74] PRPC 4.
[75] PRPC 2.
[76] It rose from 33.1% in 2022 to 46.9% in 2024.
[77] This law profoundly reformed the sentence reduction system. It abolished automatic sentence reduction credits, which previously granted days or months of unconditional remission, and introduced a single, non-automatic system. From now on, sentence reductions are granted by the sentencing judge to prisoners who have "shown sufficient evidence of good behavior and [...] made serious efforts to reintegrate" (Article 721 of the Code of Criminal Procedure). The reform therefore reinforces the meritocratic dimension of the prison system. Sentence reductions are no longer an automatic right, but an individualized reward.

> “With the 2021 reform, behaviour in detention takes precedence over everything else. While overcrowding inevitably leads to violence and bad behaviour, this backfires on prisoners.”[78]

Although this criticism will not be further developed here, as sentence reductions fall outside the scope of this research, it may be noted that, like compulsory releases, they are viewed less as a genuinely individualised measure and more as a tool for managing prison populations — particularly given their high potential for arbitrariness.

Finally, several respondents drew attention to the circumvention of procedures for referral to support structures for release (*structures d'accompagnement vers la sortie* – SAS).[79] Designed to assist the most vulnerable prisoners in preparing for their return to free life, these facilities in practice tend to accommodate individuals who are already professionally and socially integrated, considered unlikely to reoffend, and close to release. Those experiencing the greatest difficulties are often excluded. As a result, SAS facilities tend to select the most autonomous prisoners, thereby diverting from their initial objective of providing enhanced support to those most vulnerable:

> “Beyond the fact that SAS are increasingly being used to relieve overcrowding in prisons, it is clear that the profiles assigned to them are those that already show the best prospects for reintegration—whereas it could legitimately be argued that others are in greater need than them. They are therefore favoured in their requests for adjustments compared to inmates incarcerated in other facilities, as judges view their transfer to a SAS favourably.”[80]

6.5. Free Expression of Respondents

At the end of each interview, participants were asked an open-ended question inviting them to identify what they believed to be the main reasons why nearly three out of four sentences are not adjusted. Several points of convergence emerged.

Several participants pointed to a fundamental reluctance on the part of certain judges to adjust sentences. Four interviewees identified this judicial hesitation as a major obstacle to the broader use of sentence adjustments.

Three participants emphasised that sentence adjustments are extremely difficult to obtain for short sentences. This is particularly problematic given that short custodial terms constitute the vast majority of sentences imposed.[81]

Three respondents, including two former prisoners, highlighted the stigmatization of individuals based on their criminological profile. They noted that categorisation mechanisms generate resistance towards certain groups—such as those convicted of terrorism,

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[78] PRPC 4.
[79] Announced in 2018, the SAS aim to offer prisoners in the greatest difficulty sustained support towards their release, in particular through work and vocational training. Of the 25 structures planned, 17 are now operational (October 2025).
[80] PRPC 2.
[81] In the first six months of 2025, 35% of new inmates were sentenced to six months or less, and 67% to one year or less.

domestic violence, sexual offences, drug-related offences, or foreign nationals—undermining the possibility of a common legal framework for the application of sentences.

Two PRPC respondents expressed concern about discouragement within the profession. They explained that limited resources, lack of recognition, contradictory instructions, and a repressive political climate negatively affect their practice, to the extent that they are submitting fewer and fewer cases to sentencing judges.

VII. Assessing Dangerousness and the Risk of Recidivism in Sentence Adjustment

Since the early 2000s, the French prison administration has gradually adopted a series of tools designed to prevent recidivism and guide the work of Prison Rehabilitation and Probation Counsellors (PRPCs). These instruments, which have been brought together since 2018 under the Operational Practices Reference Framework (*Référentiel des pratiques opérationnelles*, RPO), are not fixed methods but rather a methodological framework aimed at harmonising professional practices. Drawing on both relational techniques, such as motivational interviewing and support-based approaches, and, increasingly, an actuarial approach to risk management, the RPO seeks to structure reintegration work. Inspired by the North American Risk-Needs-Responsivity (RNR) model and, to a lesser extent, by Dutch practices, it provides agents with intervention tools intended to support and standardise their work.

The rise of actuarial tools appears to form part of a broader process of securing public action. The Tony Meilhon case in 2011 and the subsequent creation of the DAVC (criminological diagnosis) system, followed by the launch of the PREVA programme in 2014, helped to encourage the adoption of imported assessment methods, including the LS/CMI (Level of Service/Case Management Inventory). The LS/CMI, which has become the principal tool in use, consists of a rating grid designed to generate a risk index on which the level of intervention required will depend.[82] Other specialised instruments have since been incorporated into this landscape, such as Static-99 for sexual offences, ODARA for domestic violence, and tools for identifying radicalisation processes.

In the opinion of the PRPCs surveyed, this proliferation of tools reflects a desire on the part of the administration to make decisions increasingly objective by giving the illusion of neutral and universal indicators:

> “The basic intention to standardize practices was good and responded to a need that was unanimously recognized within our profession. The problem lies in the biases introduced by risk detection tools.”[83]

Many criticisms appear to stem from this drive for objectification. Several interviewees highlighted both the importation of foreign models that are poorly adapted to the French

[82] Charton T. et al. “Assessing the predictive validity of the LS/CMI in predicting disciplinary incidents in prison.” Criminology, vol. 44, no. 2, fall 2011, pp. 279–303.
[83] PRPC 3.

context and the scientific fragility of the tools themselves, which can lead to a risk of discrimination (A). Others pointed to efforts to harmonise practices, which are undermined by insufficient training for staff in the use of these tools and by their lukewarm reception among judges (B). Furthermore, the profound transformation of the PRPC profession, reduced increasingly to a managerial and security-oriented approach, is also strongly criticised (C).

7.1. Scientific Weaknesses, Conflicts of Interest, and Risks of Discrimination

Substantive criticism appears to be one of the most sensitive issues raised by the stakeholders interviewed, who are particularly concerned about the importation of tools that are poorly suited to the French context:

> "These are nothing more than actuarial tools, even if the prison administration prefers to refer to them as benchmarks or methodological supports. But these tools are not even produced in France. They are designed in specific foreign contexts, marked by different scientific, cultural, and political rationales, and their transposition to France raises significant adaptation issues."[84]

The RNR model also raises concerns about its scientific reliability:

> "Studies validating the RNR model are often based on limited or heterogeneous samples produced by the designers themselves, which raises questions of conflicts of interest and scientific independence."[85]

Respondents also highlight the lack of genuine transparency in the development of these tools. They note that the prison administration has refused to fund independent testing prior to their widespread implementation and continues to train staff without opening a real scientific or ethical debate. This approach reinforces the perception that the supposedly scientific nature of the tool is driven more by political rhetoric than by robust empirical validation. Interviewees also warn against the commodification of science, given that the Canadian LS/CMI tool remains embedded in a commercial logic. By using it, the French administration is effectively entrusting part of its public policy to a foreign private company:

> "The prison administration itself admits that it is concerned by the fact that some of the data produced by LS/CMI is sent back to the Canadian commercial publisher, raising issues of sovereignty and confidentiality. It also acknowledges that it does not have sufficient national data to build a specifically French tool. As a result, dependence on foreign models is inevitable."[86]

Above all, it is noted that these tools operate according to a probabilistic logic inspired by the insurance industry. They calculate risk on the basis of so-called 'static' factors (age, gender, criminal record, etc.), which by definition cannot be altered through support work:

[84] PRPC 4.
[85] PRPC 4.
[86] PRPC 4.

> “The biggest flaws are static factors, because unlike dynamic factors, they cannot be changed. For example, a criminal record works against individuals, even though it is never questioned.”[87]

Ultimately, respondents are alarmed that these tools perpetuate, and even exacerbate, the mechanisms of domination and stigmatisation that permeate French society:

> “By reproducing structural inequalities in this way, they promote discriminatory biases, as Canadian research on indigenous populations has shown.”[88]

Finally, they are concerned about their potential use in criminal policy projects:

> “The grids are not neutral; they serve as a veneer of objectivity for repressive political orientations. Moreover, if we look at these assessment tools, we see that in the end even the rating is political. Look at Spain, where there is a tool designed to protect victims of domestic violence. This has led to more pretrial detention and more incarceration, because the tool has been adapted to political demands. Furthermore, in the current political climate, it is more than questionable that pseudo-objective grids can have an impact on our opinions.”[89]

7.2. Variable Uses and Reception

Despite the rise of risk assessment tools, their use in practice remains highly variable. Some services make extensive use of them, particularly in open environments with the LS/CMI, while others favour more flexible approaches, including those inspired by restorative justice. This heterogeneity reflects both the resistance of many professionals and the absence of a genuinely binding regulatory framework:

> “The use of these tools is really up to each individual. Our management does not particularly encourage us to use them, but neither does it discourage us.”[90]

Rather than directly imposing these tools, the prison administration promotes their dissemination through training, particularly at the National Prison Administration School. However, the voluntary nature of these training processes sometimes leads to harmful situations:

> “We sometimes have bizarre reports that mix criminology and psychology, even though the officers are not trained.”[91]

> “Officers need to be trained to use these tools, which is not the case. As for LS/CMI, there is no nationally funded training, so it's a bit of a case-by-case basis, at the initiative of the directors.”[92]

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[87] PRPC 3.
[88] PRPC 4.
[89] PRPC 4.
[90] PRPC 2.
[91] PRPC 4.
[92] Prison director.

At the same time, their reception by sentencing judges remains ambivalent. While judges appear to appreciate the structure these tools bring to the reports produced by the PRPS, they do not examine how the grids are used and are largely unfamiliar with their specific features:

> “There is no harmonisation on the part of the PRPCs, but neither is there any at the level of the judges. The RBR approach reinforces the qualitative aspect and the structure of the reports: professional opinion, personal opinion, housing situation, life in detention, facts of the person's life, sentence adjustment plan, etc. That being said, judges never have access to the interview reports.”[93]

Ultimately, the use of risk assessment tools is characterised by the absence of a genuine national framework and by heterogeneous professional practices. While these tools may serve as a potential methodological support for some practitioners, their adoption continues to depend on access to training, professional culture, and the degree of acceptance among the actors concerned.

7.3. Mutation of the PRPCs Mandate and Bureaucratisation of the Profession

In the view of those interviewed, the introduction of these tools is profoundly transforming the meaning of the PRPC mandate. From professionals responsible for supporting reintegration and preparing individuals for a return to free life, they are gradually becoming accountants of a supposedly objectified criminal risk:

> “PRPCs have become guarantors of the risk of recidivism and the protection of society.”[94]

> “This development individualizes responsibility for recidivism by linking it to a risk profile and obscures the social and structural determinants of crime.”[95]

The bureaucratisation of the profession is one of the direct consequences: an increase in standardised reports, a prioritisation of rating and traceability, and a reduction in the time devoted to qualitative support:

> “This inevitably leads to a deterioration in the social dimension of the work, in favour of managerial and security-based rationality.”[96]

[93] Judge 2.
[94] PRPC 4.
[95] PRPC 3.
[96] PRPC 4.

CHAPTER 7

Sentence Adjustment Mechanisms in GERMANY: Law and Practices

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I. Introduction

The German criminal justice system is built upon a structured and legally grounded framework for sentencing and sentence adjustments, with a unique interplay between penalties and measures of Betterment and Security. Sentence adjustment for adults falls under the purview of specialized sentence enforcement courts, established within district courts' criminal law branches in locations housing institutions of confinement, such as prisons, forensic psychiatric hospitals, or forensic withdrawal clinics. These courts, operational since January 1, 1975, draw on earlier practices from juvenile justice, where youth court judges oversee enforcement.

This structure aligns with key constitutional principles. In its 1972 ruling, the Federal Constitutional Court (FCC) emphasized the necessity of a legal foundation for sentence enforcement, attribution, and adjustment. By 1977, the FCC further clarified that sentence adjustments in cases of lifelong imprisonment must be governed by formal parliamentary law, rejecting reliance solely on state regulations or executive clemency.

The applicable legal provisions for sentence adjustment are detailed in the Federal Criminal Code (StGB) and the Federal Procedural Code (StPO), with the Narcotics Act addressing release mechanisms tied to drug therapy. Central to the German sanctioning system is the duality of penalties, focused on past guilt, and measures of Betterment and Security, aimed at preventing future offenses. This integrated system highlights the dual objectives of justice and societal protection.

This study is part of a project led by the European Prison Litigation Network undertook between 2024 and 2025 in seven European countries (Belgium, France, Germany, Poland, Portugal, Spain and Ukraine) in partnership with the Universidad Francisco de Vitoria UFV Madrid, Strafvollzugsarchiv, Universidad Complutense Madrid, Forum Penal, Centre de Recherches en Droit Pénal, Université Libre de Bruxelles, the Helsinki Foundation for Human Rights. This study aimed at investigating the European influence on national laws and practices regarding the application of sentence adjustments, through analysing the different national frameworks and the multiple

factors impeding and facilitate prisoners access to these mechanisms. The research was supported by the European Union's Justice Programme[1].

II. Methodology

The research for this report was conducted in two different stages combining documentary analysis with empirical inquiry in order to examine both the legal framework governing sentence adjustment and its operation in practice.

The first research stage was conducted in 2024 and consisted of a literature review to identify the relevant legal instruments and case law in respect, analyse available statistics as well as identify other relevant sources including grey literature.

The second stage of the research consisted of a qualitative study. It comprised five semi-structured interviews conducted between June and November 2025 with actors situated at different levels of the sentence enforcement system. These included two former detainees serving long-term sentences (between 20 and 30 years), one of whom had experienced both imprisonment and preventive detention, and the other imprisonment and placement in a forensic psychiatric clinic; two defence lawyers specialising in sentence adjustment and prison law; and one researcher specialising in sentence adjustment and prison law. In addition, informal discussions ("hallway conversations") were held with a prison director. All interviews were anonymised to ensure confidentiality and to facilitate open and candid discussion.

III. Overview of Germany's Penal and Prison System

In Germany, a large proportion of prison sentences, around two-thirds in 2021, are suspended where they do not exceed two years' imprisonment, in accordance with

[1] Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. neither the European Union nor the European Commission can be held responsible for them.

Article 56 of the StGB. In such cases, a probation officer may be appointed, and obligations such as paying a sum to charity or the state may be imposed.

For drug-related offences, the Narcotics Law (BtMG) offers an alternative to imprisonment. A prison sentence of up to two years can be avoided if the offender undergoes extramural therapy. Every day spent in therapy counts as a day of imprisonment, even if the therapy fails. However, this measure is limited to two-thirds of the sentence, and successful therapy allows the execution of the remaining sentence to be cancelled, in accordance with articles 35 and 36 of the BtMG.

In cases where the sentence is not suspended or the probation period fails, usually due to serious recidivism, the convicted person is summoned to prison by the public prosecutor, transferred from pre-trial detention or arrested directly at a court hearing.

Prison sentences vary from a minimum of one month to a maximum of 15 years, or even life imprisonment, according to article 38 of the StGB. Offences tried in the same trial result in a combined maximum sentence of 15 years, or life imprisonment if one of the sentences is already life imprisonment. Multiple sentences are combined into a cumulative sentence that exceeds the heaviest individual sentence, without however reaching the total sum of the individual sentences, in accordance with article 54 of the StGB.

Germany also uses preventive detention. This applies to serious crimes and requires a previous conviction or a proven risk of re-offending, particularly for offences causing serious psychological or physical injury. It is always associated with a prison sentence. At the end of the prison sentence, the sentence enforcement court assesses whether preventive detention is still necessary. There is no time limit on pre-trial detention since the previous ten-year limit was abolished in January 1998. This abolition, applied retroactively, was challenged by the European Court of Human Rights (ECHR) in the case of *M. v. Germany* (2009), which ruled that this retroactivity was contrary to fundamental rights. However, in 2018, the Grand Chamber of the ECHR validated the current legislation in the case of *Ilnseher v. Germany*. In 2011, the German Federal Constitutional Court declared pre-trial detention unconstitutional, but allowed it to continue under certain conditions, including the 'distance' rule. This requires pre-trial detention to be distinct from ordinary prison conditions (FCC, ruling of 4 May 2011).

	2023[2]	2014[3]	2004[4]
Number of Prisoners	59,545[5]	65,710[6]	79,676
Per 100,000 inhabitants	70,6	81.4	96.5
Prison density (per 100 places)	80.1	86.3	100.6
Duration (in months)[7]	4.6	8.5	7.1
Turnover ratio	75.3	na	na
Women (percentage)	5.7	5.7	5.0
Juveniles (14-17, percentage)[8]	0.5[9]	0.8	1.8
Remand (percentage)	20.2	17,1	20.5
Foreigners (percentage)	38.2	29.8	28.2
Elderly (65 and older, percentage of adults)[10]	1.0[11]	1.5[12]	1.1[13]
Unpaid Criminal Law Fine (percentage)[14]	12.0	10.0[15]	10.2
Preventive Detention[16]	601	498	304

[2] 1st January 2023.
[3] 31st March 2014.
[4] 31st March 2004.
[5] Including 1,447 inmates being absent on the day of count, but not released (eg on prison leave or in hospital); the following numbers refer to the actual imprisoned on the day of count (58,098).
[6] Of which are 112 foreigners held for administrative reasons; SPACE I 2014 refers to 1,500 prisoners held in private prisons or special institutions (p. 37); actually these numbers refer to state prisons with a social therapy approach (p.41), but these are still prisons.
[7] Based upon the stock and flow.
[8] The numbers refers to 14-17. However prisoners can be up to 23 years of age in a juvenile prison (section 114 Youth Courts Act).
[9] 31st March 2022 (Federal Statistical Office); Space I 2024 is unclear on what numbers it refers to.
[10] 2024 SPACE I numbers; 2014 and 2004 Federal Statistical Office.
[11] Federal Statistical Office on 31st March 2022 refers to 4.3 per cent 60-70, 1.0 per cent 70-80, and 0.1 80 and above; a distinction made by the age of 65 is not included.
[12] Federal Statistical Office; please note, since there is an age group 60-65 and one 65-70, in what group prisoners being 65 years of age are counted for is not certain – numbers of 65-70 and 70 and above were applied.
[13] Federal Statistical Office; please note, since there is an age group 60-65 and one 65-70, in what group prisoners being 65 years of age are counted for is not certain - – numbers of 65-70 and 70 and above were applied..
[14] On the day of count; Federal Statistical Office numbers; only 2014 Space I gave numbers, but this number was not comparable to the Federal Statiscal Office numbers of that and the other years.
[15] According to Space I: 6.8
[16] Included in the total number of prisoners.

Psychiatric hospital (forensic)	6,429 (8,036)[17]	6540 (8175)[18]	5390 (6737)[19]
Withdrawal clinic (forensic)	4,796 (5,778)[20]	3822 (4777)[21]	2412 (3015)[22]
Prisoners+Psychiatry+Withtrawal[23]	73,359	78,662	89,428
Per 100,000 inhabitants	86.7	96.9	108.4

Numbers: Refer to Space one (2024, 2014 and 2994), Jehle (2023), and the Federal Statistical Office (2015).

IV. Overview of Germany's Sentence Adjustment Mechanisms

Germany's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- early release (parole);
- **earned days off for prison work;**
- **drug therapy-based sentence adjustment;**
- temporary leave.

[17] 2021, 31st March 2021, based upon the data collection oft he Länder, not all 16 Länder, but 10 of the 11 former western states (excluding Rhineland Palatinate), plus Berlin as a whole, and plus Mecklenburg-Western Pomeronis and Saxony, cf. Jehle (2023), p. 88 – this represents about 83 per cent of the population (2023 figures); number in brackets calculated by refering the numbers to the population of Germany as a whole; one might add about 900 interim detainees (comparable with remand – in the last past years between 600 and 700 persons, cf. Federal Parliament, Drucksache 20/7264, but referring only to parts of Germany, representing about 71 per cent of the overall population).
[18] 1st March 2014, former western states, but including Berlin as a whole (Rhineland Palatinate numbers by 2010), representing about 80 per cent of the population, , cf. Federal Statistical office; number in brackets calculated by refering the numbers to the German population as a whole.
[19] See above for 2014.
[20] See above for 2021.
[21] See above for 2014.
[2222] See above for 2014.
[23] Refering tot he estimated numbers above (those in brackets).

These mechanisms are all provided for in the Federal Criminal Code (StGB), the Federal Procedural Code (StPO) and the Narcotics Act addressing release mechanisms tied to drug therapy.

4.1 Institutional architecture and players in the system

4.1.1 Special Sentence Enforcement Courts

1. Installed at district courts (criminal law branch) since January 1, 1975.
2. Decide on sentence adjustments for adults:
   i. 3 professional judges handle cases of lifelong imprisonment, preventive detention, or placement in forensic psychiatric hospitals.
   ii. A single judge decides for other sentences.
3. Appeals can be made within a week to higher district courts for adults and juvenile district courts for juveniles.
4. Also competent for legal complaints against the prison or forensic institution covering the way of the specific enforcement of a sentence.
5. The court is not obligated to follow the opinions or statements of any stakeholder.

4.1.2 Prosecution Service

a. Maintains prosecution files and monitors time limits for court involvement.
b. Decides on filing immediate complaints on behalf of the state.
c. Provides statements and recommendations on early release, often based on prison reports and expert evaluations.
d. Competency lies where the sentence was issued, not where the detainee is held.

4.1.3 Prison or forensic institution

Reports on the prisoner's development and makes recommendations on early release.

4.1.4 Expert evaluators

a. Psychologists or psychiatrists providing assessments of the convicted person's risk of reoffending.
b. Mandatory in cases like lifelong imprisonment, preventive detention, or placement in psychiatric hospitals.

c. Required by law for prison sentences exceeding two years in specific serious offenses (e.g., crimes against life, physical integrity, or public order).
d. Opinions assess whether the individual still poses a danger based on prior offenses.
e. Experts must present their evaluations in court unless all parties waive this requirement.

4.1.5 Defence counsel

a. Mandatory in cases involving expert participation, with costs prepaid by the court.
b. Costs are later charged to the convicted person, regardless of the proceeding's outcome.

4.1.6 Convicted person

Must be heard in court unless they waive this right alongside their defence counsel and the prosecution.

4.2. Criteria for granting sentence adjustment

4.2.1 Conditional release

Governed by Sections 57-58 StGB, this is the primary form of sentence adjustment in Germany.

Eligibility:

- **Adult prisoners:**
  - Sentences of any length, including life imprisonment.
  - Time threshold:
    - Two-third of the sentence: standard threshold for eligibility
    - Half of the sentence: For first-time offenders serving up to two years, or in cases of significant personal development and character improvement during incarceration.
    - Minimum of 15 years: lifers
- **Minor prisoners:**

- Time threshold:
  - One third of the sentence for sentences of one year or more
  - For sentences under one year, release is considered after 6 months in exceptional circumstances.

Criteria:

- The person must not present a risk of re-offending.
- In practise the main criterium to assess the likelihood of reoffending is the testing of inmates in prison leave measures. Long-time detainees will rarely be released without prior extended prison leave.

4.2.2 Earned days off for prison work

Eligibility:

- Number of days earned varies by region (Länder).
- 6-8 days are earned for each year of work.
- These days can be converted into up to 12 days off annually.

Criteria: All prisoners who engage in work while incarcerated.

4.2.3 Drug therapy-based sentence adjustment

This mechanism, governed by Sections 35-36 BtMG, applies specifically to drug-related crimes.

Eligibility:

- Prisoners convicted of drug-related offenses.
- Sentences of up to 2 years.

Criteria:

- Participation in an extramural drug therapy program.
- Each day in therapy counts as one day of imprisonment, even if therapy is unsuccessful.
- Therapy duration is capped at two-thirds of the sentence.

- Successful therapy may result in the suspension of the remainder of the sentence.

4.2.4 Prison leave

Prison leave in Germany can be categorized into different levels based on supervision and duration, with flexibility to accommodate specific purposes or circumstances:

- Supervised prison leave:
  - Prisoners are accompanied by 1-3 armed or uniformed officers and may be cuffed.
  - These leaves serve purposes like maintaining social skills, counteracting imprisonment effects, or attending medical appointments.
  - Used when higher-level leave poses a risk.

- Accompanied prison leave:
  - Prisoners are escorted by trusted individuals, often prison staff.
  - This form of leave may be for rehabilitation or reintegration activities.

- Unaccompanied prison leave:
  - Short-term: Prisoners leave unsupervised for limited periods to specific areas, such as a nearby supermarket.
  - Overnight or extended: Available in some regions after certain durations (e.g., lifers after 10 years) for reintegration or family visits.

- Work outside prison:
  - Unsupervised: Prisoners may work outside during designated hours.
  - Supervised: Often involves group activities near the prison, like gardening.

- Living Outside the Institution: Prisoners in social therapy or forensic clinics may live in assisted housing while technically remaining under custody.

- Other specific leaves: Includes participation in seminars, extended educational programs, or activities with peer accompaniment, demonstrating flexibility in prison leave arrangements.

4.3 Procedure for applying

Sentence adjustment at the two-thirds mark of a prison sentence occurs automatically. It is the responsibility of the prosecution service to track these dates and initiate proceedings before the sentence adjustment court. In other cases, the prisoner must actively apply for sentence adjustment.

For individuals serving life sentences, the process may be initiated by the prisoner, the prosecution service, or the sentence enforcement court.

A prisoner's application must be submitted directly to the sentence adjustment court. If an application is mistakenly filed with another authority, it should be forwarded to the appropriate court.

V. Statistics

The official statistics on Probation and Parole ("Bewährungshilfestatistik" by the Federal Statistical Office ended referring to 2011. It was due to the low quality and amount of statistics by the Länder. The statistics included only the numbers from the former western states plus Berlin as a whole, but excluding Hamburg. Some of the Länder (10 out of 16) still provide some numbers, representing two-thirds of the overall population, but in some respects the numbers seem to be questionable. Even when the federal statistics existed, only those cases were accounted for, where a probation officer had been installed. All cases without a probation officer were not (and are not) included into the statistics. Some estimates have been made by scholars using the existing numbers and take into account a "re-offending-study", that uses the official criminal law records as a basis.[24] These numbers by Wolfgang Heinz will be taken into account, even though others speak of quite different numbers.[25]

The installation of a probation officer is mandatory after serving a juvenile prison term, it should be installed of the parolee being below the age of 27, or the sentence was

[24] Heinz (2023), who refers i.a. to 2005, 2015 and 2021.
[25] E.g. Groß/ Klett-Straub (2020), schedule 57 StGB, para. 6, speaking of below 15 percent of prisoners being granted sentence adjustments.

higher than nine months of imprisonment. After serving the whole sentence of two years or above, or one year or above with sexual crimes, an surveillance order takes place and includes the installation of a probation officer, too ("negative sentence adjustment", see above).

	2021[26]	**2015**	**2005**
Number of prisoners	49,224	54,437	60,615
Overall number of Probation/Parole and supervision cases	188,475	214,014	231,673
Overall (incl. schedule 35 Narcotics Act, percentage)	63.9[27]	63.2	58.4
Probation (percentage)	44.0[28]	41.4	39.0
Parole (percentage)	16.0	17.5	16.5

	2021[29]	**2015**	**2005**
Prisoners being released	43,950	72,472	84,856
Serving the whole sentence (percentage)	75.0	73.2	64.4
Suspension (percentage)	13.9	12.7	15.7
Schedule 35 Narcotics Act (percentage)	6.6	4.4	5.6
Suspension, Juveniles (numbers)	967	1,868	3,176
Lifelong imprisonment (numbers)	53	80	56
Preventive Detention (numbers)	59	48	20
Pardon[30] (percentage)	2.1	7.0	10.4

[26] The numbers might not be comparable because oft he corona pandemic.
[27] 2020.
[28] 2020.
[29] The numbers might not be comparable because oft he corona pandemic.
[30] These numbers seem to be rather high, they might include „Christmas-Pardons" granted at the end oft he year to prisoners who would have been released between aboud mid-december and mid-january.

It has been estimated, that about 20-30 per cent of all persons released with a suspension of the sentence were ordered the supervision and support of a probation officer. In 2013 these rates might have reached 40 percent.[31]

VI. Recall

Parole may be revoked if the individual reoffends during the parole period, violates release conditions, or fails to meet with their probation officer as required. In such cases, the individual may be required to serve the remainder of their prison sentence. However, not all violations or reoffences automatically lead to revocation. The outcome depends on several factors, including the nature and severity of the offence or violation, the time already spent on release, and the overall progress of rehabilitation. A hearing—sometimes conducted in writing—will take place, and the individual has the right to appeal the decision.

When reoffending occurs, the decision to revoke parole is primarily influenced by the sentence imposed for the new offence. If the court grants probation for the new offence, parole is unlikely to be revoked.

For individuals serving life sentences, revocation results in their return to prison under the terms of their original life sentence.

VII. Procedural barriers

7.1 Access to Legal Assistance and Representation

Prisoners can be assisted by a lawyer at any stage of the sentence adjustment process, including matters related to prison law, such as prison leave. However, access to legal representation is subject to significant limitations. While legal aid is available for lifers, long-term prisoners, and those in preventive detention or forensic psychiatric hospitals, it is rarely granted for cases related to prison law or withdrawal clinics. Even when legal aid is provided, the financial compensation for lawyers is

[31] Heinz (2023), p. 17.

minimal (around 100 euros per case), which discourages many from taking on prison law cases.

Lawyers may be present in court hearings, but their participation in key interviews—such as those conducted by internal or external experts or prison conferences on sentence progression—is uncommon and often not permitted even when requested. Access to legal representation is further hindered by the lack of internet access in prisons, making it difficult for prisoners to find legal assistance. Inmates often rely on recommendations from fellow prisoners, and even phone access to lawyers is complicated in some Länder, such as North Rhine-Westphalia. The situation is even more challenging in preventive detention and psychiatric hospitals, where access to legal counsel is severely restricted.

7.2 Access to Case Files

Sentence adjustment proceedings in Germany do not follow a fully adversarial model, and access to case files is limited. Prisoners do not have direct access to their files and can only obtain them through their lawyers. Expert opinions and statements from the prison administration are usually shared with the prisoner, but full access to the prison file itself is rare. Prisoners can challenge assessment grids used by experts through cross-examination during hearings, but there are no formal mechanisms to demand full disclosure of all documents relevant to their case.

7.3 Witnesses and Evidence

The role of witnesses in sentence adjustment hearings is minimal. Public prosecutors are rarely present, and hearings often rely primarily on expert assessments rather than witness testimony. Second expert opinions are uncommon and must be requested by the court itself. While prisoners can commission their own expert evaluations, courts typically consider these less credible, as they are paid for by the prisoner. This limits the ability of prisoners to challenge unfavorable assessments effectively.

7.4 Public Access to Proceedings

Sentence adjustment hearings are not public. While relatives may be allowed to attend in some cases, their presence is contingent on the consent of all participants, particularly the prisoner. Hearings may take place either in court or within the detention facility, depending on local custom. The use of videoconferencing is extremely rare and was primarily limited to the COVID-19 pandemic period.

7.5 Time Limits

There are no strict binding time limits for sentence adjustment proceedings, except in cases related to "Betterment and Security" (preventive detention), where periodic reviews must occur within specific intervals. If a court fails to meet these deadlines, it must justify the delay in its decision. If the explanation is deemed insufficient, appeal courts or the Federal Constitutional Court (FCC) may grant financial compensation. However, in most cases, the recognition of an unlawful delay is considered sufficient redress, without additional penalties imposed on the state.

7.6 Access to Appeals

Prisoners can appeal sentence adjustment decisions to the Higher District Court, which reviews the decision made by the District Court (sentence enforcement court). However, no statistical data is available on the frequency or success rate of appeals. Some Higher District Courts are believed to rarely overturn lower court decisions, though this remains an area for further empirical research. Appeals can be initiated by either the prisoner or the prosecution service, but victims and prison authorities do not have standing to appeal.

7.7 Premature Applications and Delays

There are no explicit observations on premature applications in Germany. However, delays in processing cases are common, particularly at the appeal stage, where proceedings can take several months due to the lack of statutory time limits for higher

courts to issue decisions. The appeal process is generally conducted in writing, though the Higher Court may order additional expert opinions or hold a hearing at its discretion.

VIII. Differential impact for categories of prisoners

Germany does not officially exclude specific categories of offenders from sentence adjustment mechanisms. However, certain provisions create indirect disparities in access to release. One key example is the supervision order (negative parole), which imposes additional conditions based on the nature of the offense.

For most prisoners, eligibility for a supervision order requires that they have served at least two years of their sentence in full. However, for individuals convicted of sexual offences, the threshold is significantly lower—requiring only one year of completed imprisonment.

8.1 Lifers

The number of lifers and their sentence adjustments remain relatively low: Over the past 20 years (2002–2022), approximately 1,800 to 2,000 prisoners were serving life sentences, [32] with between 48 and 141 being released each year.[33] However, these release figures include deaths (4–26), deportations (6–33), and other factors. The number of releases specifically through sentence adjustments varied between 33 (2002) and 82 (2022).[34]

Due to the relatively small number of lifers and their releases, identifying a consistent pattern is difficult. However, two key factors contribute to a restrictive approach. First, the severity of the crimes leading to life imprisonment—the vast majority of cases involve (attempted) murder, with only a small number of other offenses (all involving loss of life). This severity is considered a core element in assessing dangerousness.

[32] Dessecker/ Akgül (2024), p. 6.
[33] Dessecker/ Akgül (2024)., p. 32.
[34] Ibid.

Second, the indeterminate nature of life sentences complicates release preparation, as there is no fixed term to structure rehabilitation. Additionally, institutionalization effects may arise, prison leave opportunities often begin late, and overnight or extended leave (exceeding 24 hours) is significantly restricted for lifers. In most Länder, such leave is only permitted after at least 10 years of imprisonment.

XI. Differential Risk-based Approaches in Sentence Adjustment

9.1 Risk and Dangerousness in Sentence Adjustment Decision-Making

Under German legislation, risk is defined in a twofold manner. First, it concerns the likelihood of an offence being committed in the future. Second, it concerns the severity of the presumed future offence, which must be comparable to, or even more severe than, the offence(s) previously committed. At the same time, the time already spent in detention must also be taken into account in the assessment.

One lawyer interviewed reported on a client who had spent nearly ten years in a forensic psychiatric clinic for threatening to take a police officer’s pistol and shoot him—an act that ultimately did not occur. Almost all expert opinions concluded that, if released, the individual might commit a killing or grievous bodily harm. However, the final expert assessment stated that the individual was more likely to commit minor offences, such as theft, making threats, or insults. The expert described the detainee as having a “big mouth” but considered it unlikely that he would commit serious violent crimes. The Sentence Adjustment Court followed this assessment and ordered his release within six months to allow for preparation of release. The prosecution service did not appeal this decision. According to the interviewee, despite the court’s decision, the clinic strongly disagreed and imposed severe security measures until the day of release, including confinement to his room and

handcuffing whenever he left it. No preparations for release took place during this period.

Around twenty years ago, in 2006, a multiprofessional working group—composed of judges, psychiatrists, psychologists, and other professionals—established minimum standards for expert opinions in criminal law and sentence adjustment cases. These standards aimed to harmonise and professionalise risk assessments in such proceedings.

A specific issue was highlighted by one interviewee on the basis of his own professional experience: the case of a terminally ill prisoner held in preventive detention. It took approximately eight months to secure his release, after which he died around two weeks later. In the days immediately preceding his release, it remained uncertain whether he would be able to die outside prison. One of the interviewed former prisoners knew this individual personally and stated that he was aware of several prisoners who were not released and instead died in detention. The arguments advanced by the institutions involved – the prison, the Sentence Enforcement Court, the prosecution service, and external institutions such as hospices – demonstrate that the decisive issue was not framed primarily as one of human dignity or the right to die outside prison, but rather as one of assumed dangerousness. Throughout the process, the recurring question was: “Is he able to hold a knife?” Only once it was established that he was physically incapable of threatening someone with a knife, and an expert confirmed that he would not be interested in threatening others with bodily harm, was he released.

Another interviewed former detainee reported his own prolonged fear of dying before release. His release required several years of preparation and was marked by numerous setbacks. He was initially diagnosed with various personality disorders and described as sadistic, which shaped assumptions about his dangerousness. Over time, these assumptions shifted. He was eventually permitted to live in an external flat-share while still formally in detention. During this period, he experienced an alcohol relapse and was returned to the psychiatric clinic, where he again underwent an alcohol rehabilitation programme. This was considered successful and was viewed as a positive issue to be addressed prior to final release. He was then

allowed to return to the flat-share. However, a subsequent external psychiatric expert, who was a member of the above-mentioned working group on minimum standards, described the clinic in his expert opinion as “very brave” for allowing the detainee to live in an external flat-share. As a result, the detainee was returned to the clinic, and his release was delayed by several additional years. During this extended period of detention, he suffered two heart attacks, and it was uncertain whether he would survive imprisonment. He did survive and was eventually released. He also referred to other detainees he had known who died while still in detention.

Scientific and expert-based risk assessment criteria are generally applied only in severe cases or cases involving long-term detention, where expert opinions from psychiatrists and/or psychologists are considered necessary. The same applies at the sentencing stage before the criminal courts, or in less severe cases where issues of excluded or diminished criminal responsibility arise. In such cases, it is possible that no sentence or security measure, such as placement in a psychiatric hospital, is imposed at all.

9.2 Basis and Sources of Information for Risk Assessment

In cases involving assessments of risk and dangerousness, an expert opinion is ordered. These assessments usually rely on actuarial checklists, including instruments such as HCR-20, SVR-20, VRAG, and PCL-R/PCL-SV, combined with an individual (idiographic) assessment. Experts also draw on multiple documentary sources, including the original criminal court files, the files of the Sentence Enforcement Court, and the prisoner’s prison files.

Access to prison files and the conduct of a personal examination require the consent of the prisoner.

9.3 Use of Risk-Assessment Tools in Practice

The above-mentioned instruments are used primarily by external experts. Within the prison system, however, different tools or in some cases no formal tools at all may be applied. The interviewed lawyers reported instances of unqualified or inappropriate use of risk-assessment instruments. In particular, not every psychologist working in prisons appears to be qualified to apply tools such as the PCL-R or PCL-SV, yet these tools are nevertheless used in practice.

One researcher reported that instruments such as VERA-2R, DyRiAs, and RADAR-iTE are used within the prison system for the risk assessment of persons presumed to be radicalised. This practice was described as particularly problematic, as RADAR-iTE is applied indirectly. It is used by the police, and the results are then communicated to prison authorities. In addition, the criteria underlying this tool are not publicly available

9.4 Risk Assessment Procedures and the Use of Safety Measures

For individuals serving a life sentence, those held in preventive detention, and those placed in a criminal law psychiatric hospital or a criminal law withdrawal clinic, a psychological or psychiatric expert opinion is mandatory for conditional release. The same applies to persons sentenced to two years of imprisonment or more for certain violent crimes or sexual offences, where it cannot be ruled out that considerations of public safety may preclude release. In practice, however, the application of this requirement appears inconsistent. None of the interviewees was able to clearly identify how uniformly it is applied, and the lawyers interviewed were aware of cases in which no expert opinion had been ordered by the court.

Persons released from measures of betterment and security, namely preventive detention, psychiatric hospitals, or withdrawal clinics, are subject to a supervision

order that may include a range of instructions. These may involve residence requirements, prohibitions on contact with certain persons, abstinence from alcohol and illegal drugs, including urine testing, and electronic monitoring. Abstinence orders were described as very common, while the number of cases involving electronic monitoring was said to be low. All individuals subject to a supervision order are assigned a parole officer and fall under the authority responsible for supervision orders.

By contrast, individuals released through standard sentence adjustments from prison may receive certain conditions and, to some extent, supervision by a parole officer. Abstinence orders and electronic monitoring are not part of parole. Whereas a breach of parole conditions may result in the reinstatement of the remaining prison sentence, a breach of a supervision order can itself constitute a criminal offence. For example, consuming alcohol in breach of an abstinence order may lead to a fine or a prison sentence of up to three years. According to the interviewees, such criminal proceedings do take place.

Supervision orders also apply in cases where prisoners serve a fixed-term sentence in full, up to the final day. Individuals completing a sentence of two years or more or one year or more in the case of certain sexual offences are likewise subject to a supervision order upon release.

9.5 Evolution and Increasing Weight of Preparatory Risk Measures

Over approximately the last 27 years, several waves of change in sentence adjustment practice appear to have occurred. One interviewed researcher referred to a possible decline in the use of parole. In 1998, the statutory time limit for preventive detention, previously capped at ten years, was abolished, allowing preventive detention to be imposed for an unlimited duration.

The number of external expert opinions by psychiatrists and psychologists has steadily increased, largely due to growing numbers of individuals held in preventive detention and in forensic psychiatric hospitals. In the latter context, the law was amended in 2016 following the case of Gustl Mollath, who spent approximately seven years in a forensic psychiatric hospital after being diagnosed with a psychiatric disorder and presumed dangerous. It later emerged that he did not suffer from a psychiatric disorder and that all expert opinions produced during sentencing and throughout his detention were factually incorrect.

In the aftermath of this case, the law was intended to reduce the number of placements in forensic psychiatric hospitals. However, according to the interviewee, the number of such placements appears to be increasing. At the same time, the number of external expert opinions has also increased, as these must be produced every three years or every two years after six years of detention in a forensic psychiatric hospital.

CHAPTER 8

Sentence Adjustment Mechanisms in PORTUGAL: Law and Practices

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I. Introduction

Portugal was among the first countries in the world to abolish both the death penalty and life imprisonment in the 1800s. The most severe punishment is imprisonment, with a maximum limit of 25 years.

Penal law defines deprivation of liberty as a punishment of last resort and thus provides a wide variety of alternative sentences. The legislation governing the implementation of prison sentences establishes rehabilitation as its primary goal.

Portugal nevertheless presents a high prison population rate (113 per 100,000, as of 31.12.2023)[1] and one of the highest average lengths of imprisonment among Council of Europe Member States (according to SPACE figures).

The present report intends to examine the national legal frameworks governing and organising sentence adjustment mechanisms in Portugal and the practices of Portuguese professionals and other stakeholders involved in their framing and implementation. The report also describes the recent trends in the granting of sentence adjustments or reductions at the national and regional level, and analyses the obstacles to prisoners' access to sentence adjustment or reduction, in general and for specific categories of prisoners.

Finally, the report also examines the role of risk-based rationales and assessment instruments in decision making processes on sentence adjustments and the extent to which such instruments have changed or shaped professional practices in the matter in the past decades.

This study is part of a project led by the the European Prison Litigation Network undertook between 2024 and 2025 in seven European countries (Belgium, France, Germany, Poland, Portugal, Spain and Ukraine) in partnership with the Universidad Francisco de Vitoria UFV Madrid, Strafvollzugsarchiv, Universidad Complutense Madrid, Forum Penal, Centre de Recherches en Droit Pénal, Université Libre de Bruxelles, the Helsinki Foundation for Human Rights. This study aimed at investigating the European influence on national laws and practices regarding the application of sentence adjustments, through analysing the different national frameworks and the multiple factors impeding and facilitate prisoners access to these mechanisms. The research was supported by the European Union's Justice Programme[2].

1.1. Methodology

The research for this report was conducted in two different stages combining documentary analysis with empirical inquiry in order to examine both the legal framework governing sentence adjustment and its operation in practice.

The first research stage was conducted in 2024 and consisted of a literature review to identify the relevant legal instruments and case law in respect, analyse available statistics as well as identify other relevant sources including grey literature.

[1] Sources: Prison Service Statistics (prison population of 12,012) and National Statistics Institute (resident population in Portugal of 10 639 726).
[2] Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. neither the European Union nor the European Commission can be held responsible for them.

The second stage of the research consisted in a qualitative study. It consisted of seven semi-structured interviews conducted between June and September 2025 with actors situated at different levels of the sentence enforcement system. These included a criminal defence lawyer, two former judges at a Court for the Execution of Sentences, a representative of the prison administration, a representative of EUROJUST (Portuguese Desk), a person serving a custodial sentence, and a representative from the Ombudsperson's office. All interviews were anonymised to ensure confidentiality and to facilitate open and candid discussion.

1.2. Overview of Chapter

The first part of the report provides an overview of the penal and prison system in Portugal (2) and of the use of sentence adjustment (3). It outlines the legal and institutional framework governing sentence adjustment (4,5), the actors involved, the measures available, applicable criteria and procedures, and the principal procedural and substantive barriers affecting access to these mechanisms (6), including their differential impact on specific categories of prisoners (7).

The final section (8) examines sentence adjustment mechanisms in practice, with a particular focus on the use of risk-based approaches in decision-making on sentence adjustment. It analyses how risk-based considerations are articulated in legal standards, operationalised through assessment tools and institutional reports, and relied upon by judges and other actors in sentence enforcement decisions.

II. Portugal's penal and prison systems

2.1. Evolution over the past 20 years

The main reforms related to prison matters and the use of imprisonment over the last 20 years are described below.[3]

In **2007**, a reform of the **Penal Code** and the **Code of Criminal Procedure**[4] introduced relevant changes concerning alternative sentences, conditional release, and pretrial detention. It created the possibility of serving short prison sentences in home detention; broadened the threshold for replacement of prison sentences by non-custodial sentences (up to then, only prison sentences up to three years could be replaced; the threshold was raised to five years); restricted the threshold that allowed for the imposition of pre-trial detention, to limit its use; allowed for the possibility of granting early release after serving half of the sentence (until then, for more serious crimes, it could only be granted after serving 2/3) and expressly established the possibility of appealing decisions of non-granting early release (possibility already established by the Constitutional Court but still to state in law).

In **2009**, the **Code governing the Implementation of Prison Sentences** was approved. It replaced the penitentiary law of 1979. Although the latter has been considered progressive

[3] Also described (despite only from 2009 onwards) in our 2023 national report within the scope of the PRISON CIVIL ACT Project ('Reception and implementation of the European bodies' practice and jurisprudence on structural problems related to prisons and critical assessment of the impact and effectiveness of these interventions at national level').

[4] Law No. 59/2007 (https://diariodarepublica.pt/dr/detalhe/lei/59-2007-640142) and Law No. 48/2007 (https://files.dre.pt/1s/2007/08/16600/0584405954.pdf), respectively.

for its time, after more than twenty years in force there was consensus on the need to update it.

According to what was stated in the explanatory report of the draft law, the main reasons for reform were the law being out of date with the evolution of prison practices, the change in the profile of the prison population, the evolution in the social and criminal reality and the new challenges of prison intervention. The Code sought to translate European norms, especially the European Prison Rules, into national law. It also sought to implement many recommendations from the CPT, especially those formulated or reiterated in the CPT report of its visit in 2008. The new Code significantly broadened the competencies of the courts for the execution of sentences (*tribunais de execução das penas*), namely those of judicial review of decisions of the prison administration.

In **2017**, an **amendment to the Penal Code**[5] introduced a new system of **home detention** as a form of implementation of prison sentences up to two years, or the remaining two years of imprisonment in case of recall to prison following revocation of a non-custodial sentence. Those prison sentences shall be implemented in home detention whenever the court finds that, by this means, the purposes of punishment are adequately and sufficiently fulfilled. Home detention implies an obligation to remain at home, with electronic monitoring, for the length of the prison sentence. A "rehabilitation plan," which shall guide the implementation of the sentence, must be prepared by the probation service whenever the sentence exceeds six months, or the offender is younger than 21 years old; the plan is subject to the approval of the court for the execution of sentences. The court may allow the offender to leave home at certain times of the day for specific purposes, namely, to attend rehabilitation programmes, keep a job, or attend school or vocational training. The court may additionally impose specific duties. Both the duties and the leaves of absence may be modified throughout the implementation of the sentence by the court responsible for the implementation of sentences. The 2017 amendment also eliminated two penalties of a custodial nature, due to their inefficacy in practice: weekend detention and semi-detention.

2.2. Trends in the prison population

The prison population in Portugal has varied over the past two decades, with fluctuations in both total numbers and demographic characteristics. In 2004, the total population of Portugal was 10,529,255, and the total number of inmates, including pre-trial detainees, stood at 12,956. The prison population rate was 123.05 per 100,000 inhabitants, and the total capacity of penal institutions was 12,789. By 2014, the population of Portugal had decreased slightly to 10,427,301, while the number of inmates increased to 14,003, with a prison population rate of 134.3 per 100,000 inhabitants. At that time, the total capacity of penal institutions was 12,591, and the prison density was 111.2 per 100 places. As of September 2024, the population of Portugal had risen to 10,639,726, and the number of inmates had decreased to 12,151, with a prison population rate of 114 per 100,000 inhabitants. The total capacity of penal institutions had increased slightly to 12,608, resulting in a prison density of 98.1 per 100 places.

Regarding the composition of the prison population, in 2004, there were 12,956 total prisoners, with 9,895 convicted prisoners in custody and 3,000 persons remanded in custody.

[5] Law No. 94/2017, https://diariodarepublica.pt/dr/detalhe/lei/94-2017-108038373

By 2014, the total number of prisoners had increased to 14,003, with 11,534 convicted prisoners in custody and 2,330 persons remanded in custody. In 2023, the total prison population decreased to 12,383, with 9,913 convicted prisoners in custody and 2,470 persons remanded in custody. This indicates a slight reduction in the total number of inmates but an increase in the number of remanded prisoners.

The average duration of sentences served by prisoners in Portugal has also seen some variation. In 2004, a significant portion of inmates were serving sentences of 3 years to less than 9 years, totaling 5,850 prisoners. Additionally, there were 2,125 prisoners serving sentences longer than 9 years. In 2014, the distribution of sentences had shifted, with a greater number of prisoners serving sentences between 1 and 3 years, totaling 1,653, and 4,246 serving sentences ranging from 5 to 10 years. By 2023, a similar distribution was observed, with 1,531 prisoners serving sentences between 1 and 3 years and 3,587 serving sentences ranging from 5 to 10 years.

Other significant trends in the prison population include the turnover ratio, which is a measure of the rate at which prisoners enter and leave the system. In 2004, the turnover ratio was 32.5, while in 2015, it decreased to 28.9. By 2023, the turnover ratio had further decreased to 25.0, suggesting a more stable prison population over time.

The percentage of women in Portugal's prisons has remained relatively stable over the years. In 2004, women accounted for 7.1% of the total prison population. By 2014, this percentage had decreased slightly to 6%, but by 2023, it had returned to 7.1%. The percentage of foreign nationals in the prison population has also remained fairly consistent, starting at 17.5% in 2004, rising slightly to 17.6% in 2014, and then decreasing to 15.3% in 2023.

The elderly population in Portugal's prisons has seen a slight increase over the years. In 2004, there were 433 prisoners aged 60 and over, which represented a small percentage of the total prison population. By 2014, this number had increased to 652, and by 2023, the number of elderly prisoners stood at 494. This suggests a growing trend of older individuals being incarcerated, which may have implications for the types of sentence adjustments or health-related mechanisms available to them.

2.3. ECtHR Judgments against Portugal

The main ECtHR judgments dealing with prison issues were *Stegarescu and Bahrin v. Portugal* (2010), *Petrescu v. Portugal* (2019), *Miranda Magro v. Portugal* (2024) and *Fernandes v. Portugal* (2024).

Stegarescu concerned **access to courts** to challenge decisions of the prison administration establishing a more restrictive regime. The Court found a violation of **Article 6** (civil limb). The situation that the ruling originated from preceded the entry into force of the Code governing the Implementation of Prison Sentences. Currently, following a Constitutional Court ruling (Ruling No. 20/2012), the decision to impose the security regime is now subject to judicial review by the courts for the execution of sentences.

Petrescu was the first ruling concerning prison conditions, finding a violation of **Article 3** for **inhuman and degrading treatment**. It has a quasi-pilot nature, and its execution has since been under supervision by the Department for the Execution of Judgments of the Council of Europe. Following *Petrescu*, between 2020 and 2004, 10 other rulings concerning prison

conditions found violations of Article 3, of which some also found a violation of **Article 13** due to the lack of domestic remedies to challenge prison conditions.

Miranda Magro concerned a security measure of commitment to a psychiatric unit, imposed on mentally ill person exempted from criminal responsibility. Because the measure was implemented at a prison hospital's psychiatric unit, in conditions the Court found inadequate, and without the appropriate and sufficient assistance and care, the Court found a violation of **Articles 3 and 5**.

Fernandes concerned the security regime, a stricter regime of implementation of prison sentences, applicable to higher-risk inmates. The judgment found a violation of Article 3, due to aspects concerning procedural safeguards attached to the decisions of placement/continuance in security regime; reassessment procedure; the restrictions implied by the regime (including body searches and insufficient purposeful activities).

III. Overview of the use of sentence adjustments in Portugal

3.1. An instrument to relieve overcrowding

In the late 20th century, amnesty laws were used to reduce the prison population and during the COVID-19 pandemic, exceptional measures, including sentence adjustments, were adopted to alleviate prison overcrowding.[6]

In April 2020, following recommendations from international/European bodies – in particular, the UNHCHR, the WHO and the CPT – and from the Portuguese Ombudsperson (who also acts as the NHRI and the NPM), the Parliament approved a law providing for exceptional measures aimed at preventing the spread of the coronavirus in the prison system. Law No. 9/2020, of April 10, allowed for the immediate release – either permanent or temporary – of inmates, by means of:

1) **A collective pardon** of sentences up to 2 years and of the remaining 2 years of the longer sentences (in the latter case, only for prisoners presently serving the last 2 years of their sentence, and provided that they have served at least half of the sentence). It was not applicable to persons convicted of specific crimes (including murder, domestic violence, sexual offences, corruption, crimes against police or prison officers, crimes committed by politicians, public officeholders, or police or prison officers, among many other serious offences).

2) The possibility of an exceptional **individual pardon** by the President of the Republic, to be decided on a case-by-case basis, following a proposal by the Minister of Justice. This measure applied to inmates who were 65 years old or over and suffering from health conditions. The same exclusions regarding specific categories of offenders and offenses applied.

3) A special **prison leave**, granted by the Director General of the Prison Service, of 45 days, renewable for new periods of up to 45 days, depending on the person's conduct and the

[6] For more detailed information on these exceptional measures and its impact, see Rodrigues/Pinto (2021), pp. 411–423.

evolution of the pandemic. This leave could only be granted if all general conditions for granting prison leaves are met and with the additional condition that the inmate has previously benefited from judicial prison leaves. Unlike regular prison leaves, this special leave entailed the obligation of the inmate to remain at home, under the supervision of the probation service and/or the police.

4) For persons granted the special leave mentioned above, the court for the execution of sentences could grant **early release** up to six months before the inmate would normally be eligible for it. That bonus period was to be served in home confinement under the supervision of the probation service and/or the police.

Before the law came into force, the Portuguese prison population totalled 12,553 inmates (800 of whom were over 60 years old) for a total of 49 prisons. Under the new law, between April and May 2020, 2,035 inmates were released (either temporarily or permanently) from the prison system. The prison population decreased from 12,553 (as of 1 April) to 10,997 inmates (as of 15 May), which meant a drop in the occupancy rate from 97.7% to 85% (as of 15 May 2020). In the following months, the population rose again to 11,315 (1 December 2020).

3.2. Statistics on the Granting of Sentence Adjustments/Reductions

The available data on the granting of sentence adjustments and reductions in Portugal provides some insight into the use of alternatives to imprisonment and the different reasons for release. However, it should be noted that the statistics are limited.

Releases by Reason for Release (2004 - 2022)

In 2004, the total number of releases was 6,354. The reasons for these releases were as follows:

- **Acquittal**: 110 releases (1.7% of the total).
- **Pre-trial detention not maintained**: 1,079 releases (1.7%).
- **Home detention with electronic surveillance**: 223 releases (3.5%).
- **Suspended sentences and other non-custodial measures**: 1,137 releases (17.9%).
- **End of sentence**: 2,172 releases (34.2%).
- **Early release**: 2,003 releases (31.5%).
- **Other reasons**: 602 releases (9.5%).

In 2014, according to the SPACE 2014 report, a total of 5,479 releases occurred in 2013. These releases were categorised as follows:

- **Releases under condition (including conditional release and external placement under electronic monitoring or probation)**: 1,401 releases.
- **Unconditional releases at the end of a custodial sentence**: 2,446 releases.
- **Other reasons (including acquittals, changes in enforcement, decriminalisation, and other circumstances)**: 1,632 releases.

In 2022, data from the DGRSP indicated that a total of 4,131 releases occurred. The breakdown of reasons for release was:

- **For the termination of pre-trial detention**:
  - Acquittal: 36 releases.
  - Detention/Pre-trial detention not maintained: 149 releases.
  - Suspended sentences and other non-custodial measures: 835 releases.
  - Other reasons: 170 releases.
- **End of sentence**: 1,136 releases.
- **Early release**: 1,520 releases.
- **Other reasons**: 285 releases.

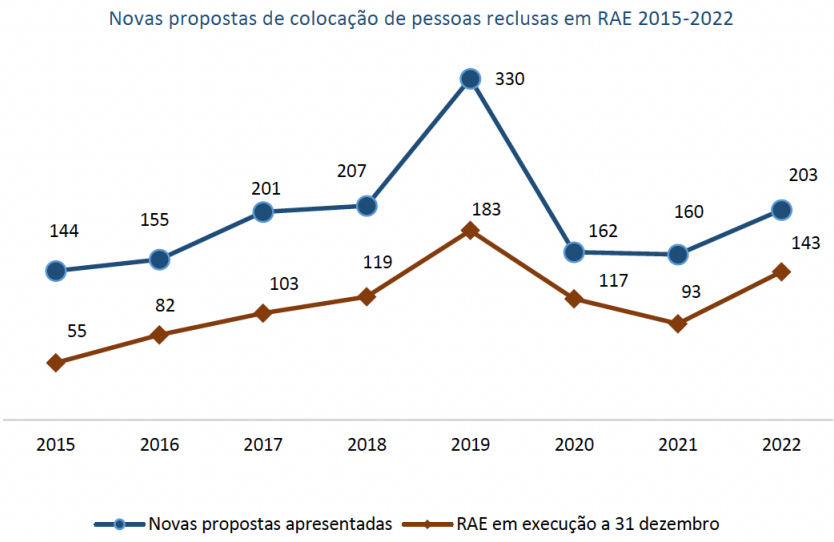
Proposals for Sentence Adjustment Mechanisms

In 2014, there were 98 proposals for the placement of prisoners in open regime, a form of sentence adjustment mechanism.

Other Statistics Related to Releases and Prison Leaves

In 2002, 62 prisoners were granted "adaptation to conditional release," a form of early release. Additionally, 9,128 prison leaves were granted, with 58 cases of non-compliance (persons who did not return at the designated time), yielding a 99.4% success rate for granted leaves.

Proposals for the placement of prisoners in open regime 2015-2022

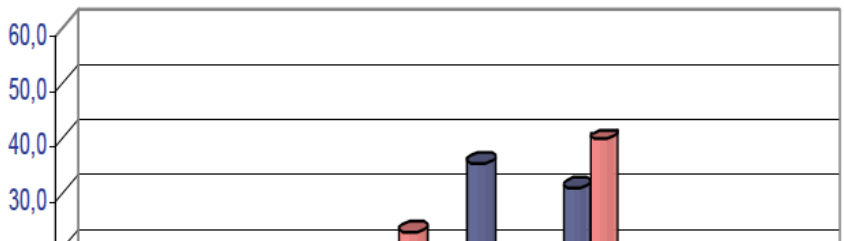


(blue: nu *ember)*

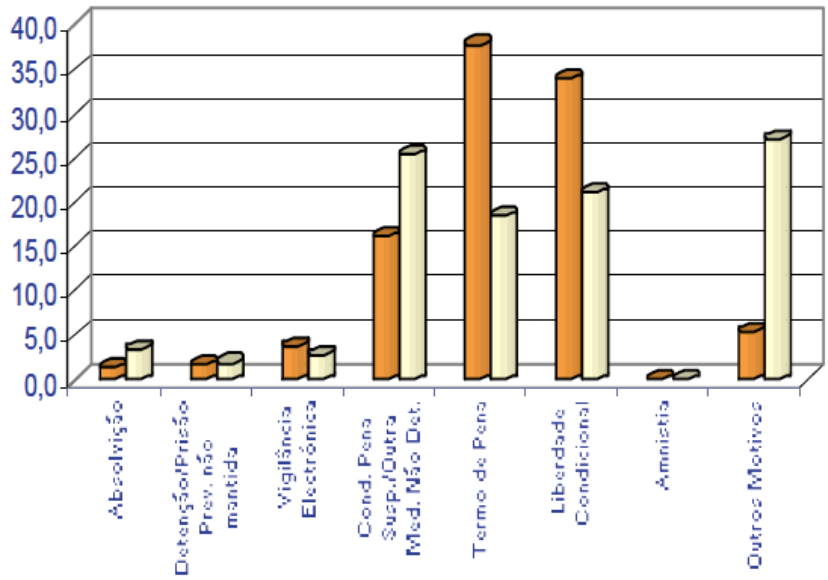
Catego

2004

Reasons for releasing men and women (blue: men; pink: women)



Reasons for releasing national and foreign inmates (orange: national; yellow: foreign)



Portuguese	English
Absolvição	Acquittal
Detenção/prisão preventiva não mantida	Pre-trial detention not maintained
Vigilância Electrónica	Home detention with electronic surveillance
Condenação em pensa suspensa ou outra medida não detentiva	Suspended sentences and other non custodial measures
Termo da Pena	End of the sentence
Liberdade Condicional	Early Release
Amnistia	Amnesty
Outros motivos	Other

3.3. Landmark rulings on the adjustment of sentences

Ruling No. 638/2006, on the question of the right to appeal judicial decisions not granting conditional release (parole), judged unconstitutional a provision which did not allow for appeal. The Penal Code was subsequently amended, in 2007, to provide for the right to appeal.

Rulings No. 150/2013 and 332/2016, on the contrary, did not rule unconstitutional the provisions according to which decisions on "*adaptation to conditional release*" are not subject

to appeal. This jurisprudence is based on the differences between conditional release (where the offender is put in freedom) and adaptation to conditional release (where the offender is released from prison but still deprived of liberty, in home confinement). However, a later judgment (Ruling No. 764/2022) ruled the provision unconstitutional. The law is still to be changed accordingly.

Rulings No. 477/2007 and 181/2010 dealt with revocation of parole due to the offender committing further crimes, namely with how to count the time still to be served in prison.

Rulings No. 560/2014 and 752/2014 did not rule unconstitutional a provision that does not grant the prisoner the right to appeal against the judicial decision refusing to grant prison leaves, despite the fact that the Public Prosecution Office may appeal both the decisions to grant and not to grant leaves.

IV. Legal and Institutional Frameworks of Sentence Adjustment Mechanisms

The primary framework governing sentence adjustments is legislative, as this is a matter reserved for Parliament. Accordingly, the types of sentence adjustments, their conditions, and the procedures for granting them are regulated by the Penal Code and the Code for the Implementation of Prison Sentences.

The General Regulation of Prison Establishments, also legislative in nature but enacted through a Decree-Law approved by the Government, contains additional provisions relevant to sentence adjustment mechanisms. These regulations are more practical in scope, addressing the formalities of requests, internal processing, preparation of reports, monitoring, and communication procedures.

In addition, the Prison and Probation Service operates under internal guidelines and procedural manuals, which provide specific instructions for assessing cases and drafting relevant reports. These documents ensure consistency in practice and supplement the broader legislative framework.

The main mechanisms of sentence adjustment are the following:

1. Prison leave (*licenças de saída)*
2. Conditional release (parole) *(liberdade condicional)*
3. Adaptation to conditional release (anticipation of parole) *(adaptação à liberdade condicional)*
4. Modification of the execution of the prison sentence *(modificação da execução da pena de prisão)*
5. Open regime *(regime aberto no exterior)*

Prison leave allows inmates to leave the prison for some days, without custody. They are aimed at keeping and strengthening family and social ties and at the preparation for release. There are shorter prison leaves, granted by the prison service, and longer leaves, granted by the judge. This mechanism is included in the report because it is time spent without custody or surveillance, it is a prerequisite for granting open regime and it counts as time served in prison (meaning, in practice, a reduction of the number of days spent in prison).

Conditional release (parole) may be granted by the judge after having served half or two-thirds of the prison sentence, provided that at least six months have been served. Conditional release is mandatory after serving five-sixths of sentences longer than six years, provided that the convicted person consents.

Another form of early release is '**adaptation to conditional release**' or anticipation of parole. It consists of the possibility of anticipating conditional release, up to one year before the date when parole may be granted. This period is spent in home detention with electronic monitoring, for a period of up to one year before conditional release.

The '**modification of the execution of the prison sentence**' is a mechanism based on humanitarian grounds. It allows for inmates with a serious and irreversible disease, a serious and permanent disability or of advanced age, to request the judge to serve the rest of the sentence in their home or in a health or social facility, with or without electronic surveillance.

Open regime allows inmates to leave prison during the day, unaccompanied, to work or attend school, training or a program. It will be referred to in this report because it may in practice facilitate a positive decision on early release, and also because it allows for significant periods in the outside, without direct supervision of the prison administration.[7]

4.1. Institutional Architecture

The institutional structure for implementing sentence adjustments in Portugal consists of specialised courts, the probation service, and the prison administration:

- **Courts for the Execution of Sentences**: These specialised courts, created in 1944, oversee the implementation of custodial sentences, including decisions on conditional release, home detention, and reviewing decisions made by the prison administration. Each court is a single-judge body, with judges assigned to supervise sentence implementation in specific prisons. The **Public Prosecution Service** is represented at these courts, providing additional oversight and input.

- **Probation Service**: Managed by the **Directorate-General of Reintegration and Prison Services (DGRSP)** under the Ministry of Justice, the probation service is responsible for preparing prisoners for release, supervising sentence adjustments, and facilitating reintegration. The service includes **re-education officers**, who work within prisons to support prisoners' reintegration, and **social reintegration officers (probation officers)**, who liaise with families, supervise community measures, and report to the courts.
- **Prison Administration**: The **Director-General of the Prison Service** grants open regime, subject to confirmation by the court. Prison governors can grant short-term leaves (e.g., weekend leaves), while longer adjustments remain under judicial authority.

4.2. Players in the System

[7] According to the inclusion and exclusion criteria contained in the Guidelines for this research, 'Semi-freedom measures are included in the research when they provide the people concerned with large periods of freedom of movement in the community, outside the supervision of the prison administration, in a way that allows them to have a social life and maintain relations with the outside world'.

The following actors are involved in Portugal's sentence adjustment system:

- **Judges**: Judges of the courts for the execution of sentences are primarily responsible for assessing applications and issuing decisions related to sentence adjustments.
- **Prison and Probation Service (DGRSP)**:
    - **Re-education Officers**: Operate within prisons to facilitate prisoners' reintegration and prepare for sentence adjustments.
    - **Social Reintegration Officers (Probation Officers)**: Supervise community measures, maintain contact with families, and provide regular reports to the court regarding compliance and progress.

- **Prison Governors**: Handle decisions related to shorter sentence adjustments, such as weekend leaves, and oversee prisoners' conduct during sentence execution.

- **Prosecutors**: Represent the state's interests, monitor judicial decisions, and can challenge grants of sentence adjustments where necessary.

- **Police**: Cooperate with the probation service to ensure compliance with conditions and report any relevant developments to the courts.
- **Defence Lawyers**: Represent prisoners in their applications for sentence adjustments, advocating for their rights and interests during judicial proceedings.

Portugal's sentence adjustment system faces significant resource constraints, particularly in staffing levels within the Prison and Probation Service (DGRSP). Reports from the National Preventive Mechanism (NPM) and the European Committee for the Prevention of Torture (CPT) highlight persistent shortages of re-education officers, who are critical for facilitating prisoners' reintegration and preparing sentence adjustment applications. In prisons with larger populations, the ratio of re-education officers to prisoners is especially low, resulting in limited opportunities for individualised attention and support. For example, in one notable case at the Setúbal Prison, a severe staff shortage left a single officer responsible for duties previously managed by three, significantly impacting prisoner access to personalised reintegration plans. The overburdening of officers with bureaucratic tasks, such as managing visit requests, further detracts from their ability to focus on rehabilitation programmes and partnerships with external organisations.

4.3. Criteria for Granting Sentence Adjustment

In Portugal, the granting of sentence adjustments is governed by a combination of **formal requirements** (time served, prison regime) and **substantive criteria** (rehabilitation potential, public safety, and specific personal circumstances).

4.3.1. Conditional Release (Parole)

In Portugal, **conditional release** (parole) is granted when the requirements for reintegration into society are met, and the release is considered compatible with public safety.

Eligibility:

- Conditional release can be considered after half of the sentence has been served, provided at least six months have passed.

- For longer sentences, **mandatory release** occurs once five-sixths of the sentence has been served for sentences exceeding six years.

- In the case of recidivists or multiple recidivists, stricter eligibility thresholds apply. Conditional release may be considered after serving two-thirds of the sentence for those classified as **recidivists**, and after serving three-quarters for **multiple recidivists**.

Assessment Criteria: The judge considers several key factors:

- **Individual Prevention**: This includes an assessment of the inmate's personality, behaviour, and life prior to incarceration, as well as their progress during sentence execution. The judge evaluates whether the offender is likely to lead a socially responsible life upon release.

- **Public Safety**: The judge also ensures that the release will not compromise societal safety, evaluating the seriousness of the crime and its broader impact on society.

- **Rehabilitation Prognosis**: A positive evaluation of the offender's ability to reintegrate into society, demonstrated by participation in rehabilitation programmes and good conduct during imprisonment, is critical.

- **Consent of the Prisoner**: The inmate must consent to parole, as it comes with conditions and supervision.

- **Legal Duty**: If the conditions are met, the court is required to grant parole, as stated in **Article 61 of the Penal Code** (a "power-duty"). The decision must be reasoned and is subject to appeal.

-

4.3.2. Adaptation to Conditional Release (Anticipation of Parole)

Eligibility: The requirements for adaptation are the same as those for conditional release. **Assessment Criteria**: Similar to conditional release, the judge evaluates the offender's rehabilitation and likelihood of reintegration into society, ensuring that release is compatible with the safety of the public.

4.3.3. Modification of Sentence Execution

Eligibility:

- A **modification of sentence execution** can occur in cases of illness, disability, or old age that make imprisonment incompatible with the prisoner's well-being.
- There are no specific time requirements for sentence modification based on humanitarian grounds.

Assessment Criteria:

The court must evaluate whether the modification will not undermine **strong demands of prevention** or **social order and peace**. This measure is often motivated by humanitarian concerns and aims to provide alternative sentencing for those whose condition makes prison detention untenable.

4.3.4. Prison Leave

Prison leave is granted under certain conditions to allow prisoners temporary release.

Eligibility:

- The prisoner must have served at least **one-sixth** of the sentence (for sentences not exceeding five years) or **one-quarter** (for sentences exceeding five years).
- The prisoner must be serving their sentence in a **common or open regime**.
- There must be no pending legal cases requiring pre-trial detention.
- No history of evasion or unlawful absence in the 12 months prior to the request.

Assessment Criteria:

- **Rehabilitation Prognosis**: A well-founded expectation that the prisoner will behave in a socially responsible manner and will not evade the execution of the sentence.
- **Social Compatibility**: The prisoner's family and social environment are evaluated to ensure successful reintegration.
- **Victim's Protection**: The needs for victim protection are also considered in the decision-making process.

4.3.5. Open Regime

The **open regime** allows inmates to serve their sentence with more freedom, subject to certain conditions.

Eligibility:

- The inmate must have served at least **one-quarter** of the sentence.
- The inmate must have successfully completed a **prison leave** prior to being considered for open regime.
- There must be no pending legal proceedings that would imply pre-trial detention.

Assessment Criteria:

- **Prisoner's Conduct**: The inmate's behaviour during imprisonment, including their ability to adhere to prison rules and engage in rehabilitation activities.

- **Public Safety**: There must be no concerns that the prisoner will evade the sentence or use the privileges of open regime to commit crimes.

- **Rehabilitation and Reintegration**: The court considers the appropriateness of the open regime for the individual's rehabilitation and their ability to live safely within society while serving the remainder of their sentence.

4.4. Procedure for Applying

4.4.1. Conditional Release (Parole)

The process for conditional release in Portugal is primarily judicially supervised, involving reports and assessments from the prison and probation services. Notably, parole is initiated automatically once formal requirements are met, rather than by a direct request from the prisoner.

- **Initiating Applications**:
  - The procedure for parole is initiated **ex officio** by the court for the execution of sentences (*tribunal de execução das penas*) when the formal requirements are fulfilled (1/2, 2/3, or 5/6 of the sentence served).
  - The following reports are prepared and submitted to the court:
    - A **prison service report** detailing the prisoner's progress during incarceration, including behaviour, skills acquired, and attitude toward the crime.
    - A **probation service report** assessing the prisoner's remaining needs for social rehabilitation, reintegration prospects (family, social, and professional), and proposed conditions for parole, including victim protection considerations.
    - Any other elements deemed relevant by the prison administration, public prosecutor, or judge.

- **Court Review**:
  - Before deciding, the court convenes the **advisory council** (*conselho técnico*), which includes the judge, the public prosecutor, the prison governor, and officers responsible for rehabilitation, security, and social reintegration. The advisory council provides input to inform the decision.
  - A hearing is conducted with the prisoner before the judge. The public prosecutor may attend, and the prisoner has the right to legal representation during the hearing.
  - The judge may suspend the decision for up to three months to allow time for specific conditions to be met or for the preparation of a social integration plan.

- **Appeals**:
  - The judge's decision, whether to grant or deny parole, must be reasoned and is subject to appeal.
  - Appeals can be filed by the prisoner or the public prosecutor and are reviewed by the **Court of Appeals**.
  - If parole is denied, the court must re-examine the case yearly.

- **Post-Decision Supervision**
  - Parole may include conditions, duties, or probationary measures as part of an individualised social rehabilitation plan.
  - The probation service is responsible for supervising compliance with parole conditions, with additional support from entities such as the police, who periodically report to the court or notify it of relevant circumstances.

4.4.2. Adaptation to Conditional Release (Anticipation of Parole)

The procedure for adaptation to conditional release mirrors that for conditional release but includes significant differences:

- **Initiation**: Unlike parole, adaptation to conditional release requires a **formal request** from the prisoner to the court for the execution of sentences.

- **Appeals**: There is no provision for appealing decisions denying adaptation to conditional release. This lack of an appeal mechanism has been challenged before the Constitutional Court. While some rulings have upheld its constitutionality, a recent judgment declared the absence of an appeal as unconstitutional.

4.4.3. Modification of Sentence Execution

Modification of a prison sentence may be requested under specific circumstances, such as illness, disability, or old age that makes continued imprisonment incompatible with the prisoner's condition.

- **Initiating Applications**:
  - Requests may be submitted by the prisoner, a spouse, partner, or family member, or by the Public Prosecution Service, either **ex officio** or at the proposal of the prison governor.

- **Court Review**:
  - Relevant reports and opinions are collected from the prison service and other stakeholders.
  - The public prosecutor issues an opinion on the case before the judge makes a decision.

- **Appeals**:
  - Decisions on sentence modifications are subject to appeal by the prisoner or other parties involved.

4.4.4. Prison Leave

Prison leave allows prisoners temporary release under specific conditions. The procedure for granting leave is judicially supervised.

- **Initiating Applications**:
  - Prisoners must request leave from the court for the execution of sentences.

- **Court Review**:

    - The **prison service** provides relevant information to the court to support or contest the request.
    - The **advisory council** is convened to evaluate the request. The judge may choose to hear the prisoner if deemed necessary.

- **Appeals**:
    - The public prosecutor may appeal decisions to grant leave.
    - Prisoners cannot appeal decisions denying leave, though this lack of an appeal mechanism has been challenged before the Constitutional Court. In recent rulings, the absence of an appeal process has been declared unconstitutional under certain circumstances.

4.4.5. Open Regime

Open regime provides prisoners with greater freedom while serving their sentence under specific conditions.

- **Initiating Applications**:
    - Open regime may be requested by the prisoner or proposed by the prison service.

- **Decision Authority**:
    - The **Director-General of the Prison Service** decides whether to grant open regime.
    - This decision must then be confirmed by the judge of the court for the execution of sentences.

- **Appeals**:
    - There is no provision for appealing decisions on open regime.

4.5. Time Limits

The law in Portugal establishes guidelines for the duration of procedures related to sentence adjustments. However, courts often treat these deadlines as indicative rather than mandatory, and delays carry no automatic consequences.

- **Conditional Release (Parole)**:
    - The procedure is initiated *ex officio* when formal requirements are met. While the process has no explicit deadline, delays frequently occur in practice. Judges are required to review parole eligibility annually if parole is denied, but this review often faces delays.

- **Adaptation to Conditional Release**:
    - There is no legally mandated timeline for decisions. Although the procedure mirrors that for parole, the absence of strict time limits can result in significant delays, with no enforceable penalties for non-compliance.

- **Modification of Sentence Execution**:

- Decisions require reports from multiple stakeholders and opinions from the Public Prosecution Service, which can prolong the process. While there is an expectation for timely decisions, courts and prison administrations face no repercussions for delays.

- **Prison Leave**:
  - There is no legally established timeframe for deciding on applications for prison leave. Delays are common, especially when courts must convene advisory councils or review multiple cases simultaneously. Appeals by the Public Prosecution Service against granted leave can further extend the process.

- **Open Regime**:
  - The decision by the Director-General of the Prison Service, which requires judicial confirmation, is not subject to strict timelines. The lack of binding deadlines often results in delays without consequences.

4.6. Recall

-
- In case of non-compliance with the conditions attached to early release, prisoners may be recalled to prison.
- However, recall to prison is not automatic, and a decision by the court is always necessary. The court may either issue a warning, require guarantees of compliance with the obligations, impose new conditions or change the requirements of the plan. If the parolee violates the conditions seriously or repeatedly, the judge may revoke parole. Parole is also revoked if the convicted person commits a crime and is convicted, thus revealing that the purposes for which he/she was released could not be achieved.
- A hearing of the parolee takes place before the court's decision (Article 185 of the Code governing the Implementation of Prison Sentences). The procedure is the same as for the hearing for granting parole. Revocation implies recall to prison to serve the remaining part of the sentence. The decision to revoke probation is subject to appeal by the sentenced person or the public prosecutor (Article 186 of the Code governing the Implementation of Prison Sentences).
- The Lisbon Court of Appeals, in a ruling of 27 April 2022 (case no. 4084/10.5TXPRT-Q.L1-3) [8] found that "*a mere conviction for an offence committed during the course of parole does not, in itself, lead to its immediate revocation*".
- The Porto Court of Appeals, in a ruling of 13 September 2023 (case no. 433/14.5TXPRT-J.P1)[9] found that "*the point of differentiation that should dictate the maintenance or revocation of an early release in the event of the perpetrator committing a new offence during the period of parole is whether or not the objectives that were the basis of the previous decision to grant early release can still be achieved*".

[8] Available at: http://www.gde.mj.pt/jtrl.nsf/33182fc732316039802565fa00497eec/fc458055550a9d0c80258872003148ca?OpenDocument

[9] Available at: https://www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/a53521ee8f7f967480258a39003be4e3?OpenDocument

V. Substance of Sentence Adjustment Decisions

In Portugal, decisions regarding sentence adjustments, particularly **conditional release (parole)**, **prison leaves**, **open regime**, and **modification of sentence execution**, are based on a combination of **legal requirements**, **individual assessments**, and **risk evaluations**. While the legislation sets out criteria, decisions often depend on the interpretation of these criteria by the court and the involvement of various institutions, such as the **prison service**, the **probation service**, and the **public prosecutor**.

5.1. Factors Considered in Conditional Release Decisions

For **conditional release (parole)**, the primary factors considered by the court include:

- **Criminal Prognosis**: A fundamental element in the decision to grant parole is the **criminological prognosis**, which evaluates the likelihood that the prisoner will commit future crimes if released. This prognosis is based on the **evolution of the prisoner's personality** during incarceration, their behaviour in prison, and their **attitude towards the crime**. The court looks at whether the prisoner has shown remorse, adapted to prison life, and demonstrated changes in attitude. This prognosis is considered both in terms of the **individual prevention** (the likelihood of recidivism) and **general prevention** (the need to deter others from committing similar crimes).

- **Social Reintegration Prospects**: The **probation service** plays a crucial role in assessing the prisoner's potential for reintegration into society. This assessment includes evaluating the prisoner's **family, social, and professional environment**, and whether there are sufficient support structures to facilitate the prisoner's reintegration. The **social rehabilitation plan** developed by the probation service is critical in determining whether the prisoner can adapt successfully to life outside prison.

- **Prisoner's Behaviour in Prison**: The court will consider reports from the **prison service** that outline the prisoner's **behaviour during incarceration**, including any involvement in rehabilitation programs, work in the prison, and interactions with staff and fellow prisoners. A **disciplined record** is generally seen as a positive factor, while evidence of disruptive behaviour, substance abuse, or violent incidents can negatively influence the decision.

- **Victim Protection**: Decisions on parole also take into account the **victim's protection needs**. In cases where the release of the prisoner poses a potential risk to the victim or society, the court may choose to delay or deny parole.
- **Prisoner's Consent**: Parole requires the **prisoner's consent**, as they must agree to the conditions of parole, including community supervision. The consent is important because the conditions attached to parole (such as probationary measures) require the active participation of the prisoner.

If the requirements are met, the court is **obliged** to grant parole, as specified by the law. The decision is based on a **"power-duty"**, meaning that once the conditions are met, the court must grant parole. However, the decision must be **reasoned** and is subject to **appeal** by both the prisoner and the public prosecutor.

5.2. Prison Leave Decisions

Prison leaves, including **administrative prison leaves** (e.g., weekend leaves granted by the prison governor), are another form of sentence adjustment. For **judicial prison leaves**, which are granted by the court, the following factors are assessed:

- **Expectation of Socially Responsible Behaviour**: The court assesses whether there is a **well-founded expectation** that the prisoner will behave in a socially responsible manner, without committing crimes during the leave period.

- **Compatibility with Social Peace**: The court examines whether granting the leave would be compatible with maintaining **social peace** and whether the release poses a risk to public safety.

- **Risk of Evasion**: The likelihood that the prisoner will evade the execution of their sentence during the leave period is also considered.
- **Prisoner's Behaviour**: The prisoner's behaviour in prison is an essential factor. Disciplinary records and participation in rehabilitation programs influence the court's decision. The **progress during sentence implementation** is critical, as it reflects the prisoner's readiness for reintegration.

The decision to grant a prison leave is based on these factors, but **disciplinary sanctions** or **bad behaviour** can prevent the leave. Importantly, while the public prosecutor can appeal the decision, the **prisoner cannot** appeal a rejection, although a decision to revoke a leave based on non-compliance is subject to appeal.

5.3. Open Regime Decisions

The **open regime** is another adjustment measure in Portugal, allowing prisoners to serve their sentence in a less restrictive environment. The criteria for granting open regime include:

- **Suitability Based on Behaviour**: Prisoners must have **demonstrated appropriate behaviour** in prison. The court considers whether the prisoner has complied with prison rules, participated in rehabilitation programs, and shown signs of rehabilitation.

- **Risk of Evasion**: There must be no substantial risk that the prisoner will evade the execution of the sentence or exploit the opportunities provided by the open regime to commit further crimes.

- **Social Reintegration Support**: Like in parole decisions, the court will assess the prisoner's **support systems**, including family or social networks, and their readiness for reintegration into society.

The decision to grant open regime can be **initiated by the prisoner or proposed by the prison service**, and it is subject to the approval of the **Director-General of the Prison Service**, who makes the final decision. The decision must be confirmed by the **court for the execution of sentences**. Notably, there is **no appeal** to this decision, which is a key feature of the open regime process.

5.4. Modifications of Sentence Execution

For modifications to the **execution of the prison sentence**, such as **adaptation to conditional release (anticipation of parole)** or changes due to **health issues or old age**, the **court** is the decision-maker. The requirements for these changes are more **flexible** compared to parole. Factors such as **disease, disability, or age** that make continued imprisonment incompatible with the prisoner's welfare can lead to modification. In these cases, the court must ensure that the modification does not conflict with **strong demands of prevention** or public order.

5.5. Quality of the Law and Legal Uncertainty

While the legislation governing sentence adjustments is generally clear, certain **legal ambiguities** can lead to inconsistent decision-making. Key points of criticism include:

- **Criminological Prognosis**: The **certainty** required for a positive criminological prognosis is often debated. The law calls for a **"favourable prognosis"** regarding the prisoner's future behaviour, but what constitutes a "sufficiently favourable" prognosis can be interpreted subjectively by different courts, leading to varying decisions. Some argue that the standard for granting parole is unnecessarily high, with courts demanding **near certainty** of future good behaviour, which may result in unwarranted denials of release.

- **Absence of Remorse**: The lack of **remorse** or **guilt admission** can negatively affect decisions, even though it is not a legal requirement. Courts may place significant weight on the prisoner's relationship with the crime committed, and some cases have shown that a failure to express remorse can lead to denial of parole or early release.

- **Standardisation**: While legal scholars argue that decisions should be tailored to the individual circumstances of each case, there are instances where decisions appear **standardised**, particularly for **prison leave** applications. The use of forms that categorise reasons for decisions can sometimes undermine the **individuality** of the review process.

VI. Procedural Barriers

Domestic law in Portugal incorporates fair trial requirements into sentence adjustment procedures, as established under Article 20 of the Constitution. This article guarantees access to the law and courts, effective judicial protection, and the right to secure decisions within a reasonable time and through a fair process. Although specific case law on the issue is not abundant, the Constitutional Court has applied Article 20 to address deficiencies in procedural safeguards. For example, it has ruled provisions unconstitutional when they

denied prisoners the right to appeal decisions rejecting prison leave requests or parole applications. Additionally, the Code governing the implementation of prison sentences mandates that all court decisions in this area must be reasoned, as required by Article 146.

6.1. Access to Legal Assistance and Representation

In Portugal, prisoners have the right to **legal assistance** during the execution of their sentence, including during proceedings for **sentence adjustments** such as **early release (parole)** and **prison leaves**. Prisoners can request a **private lawyer** or be assigned **legal aid** if they cannot afford legal representation. Legal aid lawyers are appointed ex officio by the **Bar Association** and are assigned based on their chosen area of expertise. However, prisoners often lack knowledge of the application process for legal aid during the execution phase, leading to potential delays or missed opportunities for legal support.

Legal representation is not mandatory during **all hearings** related to sentence adjustments. For example, while prisoners have the right to be represented during hearings for **early release** or **prison leave**, the **law does not mandate** the presence of a lawyer in every case. However, when issues of law arise (e.g., challenges to decisions by the prison administration), or when dealing with cases of **criminal insanity** (for individuals subject to forensic internment measures), the assistance of a lawyer becomes **mandatory**.

Logistical barriers further complicate access to legal assistance. **Prison visitation policies** can create significant obstacles to effective legal representation. Lawyers report **long wait times**, **cancellations**, and **inadequate meeting spaces** for confidential consultations. Additionally, the limited number of lawyers with **specialised knowledge** in **prison law** means that many prisoners receive representation from **general criminal lawyers** who may not have the expertise necessary to navigate the complexities of **sentence execution procedures**.

6.2. Access to Case Files

Prisoners have the **right to access their case file**, including the documents involved in the sentence adjustment proceedings, according to the **Code governing the Implementation of Prison Sentences**. This right, however, is subject to limitations. Prisoners may have access to court files and supporting materials, but they **cannot access** documents maintained by the **prison administration**, such as the **criminological assessments** that form part of the decision-making process for early release or parole. This restriction hinders prisoners' ability to challenge these assessments or ensure that the information being used against them is accurate.

In practice, while **court files** are generally accessible, the **prison administration's file**, which includes crucial information such as behavioural evaluations, **criminological prognoses**, and other personal assessments, remains inaccessible to the prisoner. This limits the prisoner's ability to **contest decisions** or provide counter-evidence during their parole hearings.

6.3. Evidence

Prisoners are allowed to present **evidence**, **request witnesses**, and **ask for expert evaluations** in support of their sentence adjustment applications. However, in practice, these rights are **rarely exercised**. The **focus** of the proceedings is largely on **institutional assessments** and **reports** from prison officials or probation officers, with **expert opinions** playing a limited role. Expert opinions, especially psychological or psychiatric assessments, are infrequently requested or relied upon by the court, which limits the scope of evidence presented in many cases.

Moreover, although prisoners have the right to request **additional expert evaluations** if they feel that existing assessments are incomplete or unclear, such requests are rarely granted. This reflects a **general reluctance** by penitentiary courts to order independent evaluations, with **institutional reports** dominating the decision-making process. A study in 2019 revealed that only a small percentage of cases involved expert opinions, and most of these were limited to basic criminological or psychological assessments.

6.4. Public Access to Proceedings

Sentence adjustment hearings, such as those related to **early release** or **prison leaves**, are conducted in **prison** and are **not public**. These hearings are typically **not open to the public**, and **civil society representatives** are generally **not allowed** to observe the proceedings. This lack of public transparency limits **accountability** and may prevent the broader public from understanding how **decisions** about prisoners' futures are made. During the **COVID-19 pandemic**, some of these hearings were held **remotely** via **videoconference**, and while this practice was initially a response to health concerns, it has since become **institutionalised** in certain cases.

In these hearings, the **public prosecutor** is always present, and prisoners can be represented by their **defence counsel**. However, the **absence of public access** means that these proceedings are **largely unobserved**, which may raise concerns about the fairness and transparency of the decision-making process.

6.5. Access to Appeals

Prisoners and **public prosecutors** have the right to **appeal** decisions on **conditional early release** (parole) and other sentence adjustment measures. However, the appeal process is **not available** for all types of adjustments. **Prison leaves** and **modifications of sentence execution** (such as humanitarian releases) are often not subject to appeal, though the **public prosecutor** can challenge decisions regarding these matters.

In cases where **appeals are allowed**, such as for **parole**, the appeal process typically involves the **Court of Appeals** reviewing the case based on the original file and any legal arguments presented. However, the chances of success in appeals are generally **low**, with most decisions **upheld** by the higher courts. The **limited scope of review** in appeals, combined with **infrequent successful outcomes**, suggests that the appellate process in Portugal may not be an effective mechanism for prisoners to secure **sentence adjustments**.

6.6. Delays and Premature Applications

One issue that exacerbates the **procedural delays** in sentence adjustment cases is the **premature filing of applications**. Many prisoners or **defence lawyers** submit applications for **early release** as soon as the eligibility criteria are met, often in anticipation of delays. However, **courts may dismiss applications as premature** if the required criteria are not yet fulfilled, particularly for those serving shorter sentences or in cases where the time served is close to the minimum eligibility threshold.

The **absence of formal mechanisms to address delays** further compounds the problem. There are no provisions for prisoners to challenge delays in the processing of their applications, leaving them without recourse to expedite decisions. This leaves prisoners in a state of **uncertainty**, often serving a significant portion of their sentence while waiting for a decision.

VII. Differential Impact for Categories of Prisoners

In Portugal, sentence adjustment mechanisms, including early release, open regime, and parole, are generally available to all prisoners, but certain categories of prisoners face specific conditions or challenges that influence their access to these mechanisms. While there are no blanket exclusions for categories such as those convicted of terrorism or sexual offences, there are a few notable distinctions based on personal circumstances and the nature of the offence.

7.1. Foreign Nationals

Foreign nationals, particularly those subject to a deportation order, face a **distinct scheme** for early release. Unlike other prisoners, foreign nationals are **excluded from the general conditional release (parole) system**. If a foreign national is subject to deportation, they may only be granted early release under a **separate deportation procedure** once they have served a significant portion of their sentence. Specifically, the judge may order the enforcement of deportation after **half of the sentence** has been served for sentences up to five years, or after **two-thirds** for longer sentences. The **early execution of deportation** serves as an alternative to the general parole system, resulting in the prisoner's release once deportation is enforced. However, this mechanism is not always successfully implemented due to practical challenges such as **difficulty in confirming nationality**, lack of cooperation from consular authorities, and **the cost of repatriation**, which may delay or prevent the execution of deportation orders.

7.2. Elderly, Disabled, and Health-Related Adjustments

Prisoners with **serious health problems**, disabilities, or who are **70 years or older** have the possibility to apply for a **modification of the execution of their sentence** based on **humanitarian grounds**. This mechanism allows eligible prisoners to serve the remainder of their sentence at home or in a health or social facility, with or without electronic monitoring. The procedure may be initiated by the prisoner, their family, or the **Public Prosecutor's Office**, and requires a **medical opinion** to assess the severity and irreversibility of the prisoner's condition. However, despite its availability, this adjustment is **seldom granted**, and a lack of **adequate facilities** to accommodate these prisoners further limits its

application. In a 2024 ruling, the Lisbon Court of Appeals found that even though a 79-year-old prisoner suffering from **irreversible diseases** was eligible for this adjustment, the request was denied because his condition could be managed within the prison system. Thus, while the mechanism exists, its application is constrained by institutional limitations and practical considerations.

7.3. Prisoners Convicted of Serious Offences

Although there are no general exclusions based on the offence committed, certain **prisoners convicted of serious crimes**—such as **terrorism or sexual offences**—may face **stricter conditions** for early release, especially if their crimes are perceived as more dangerous to society. For example, although individuals convicted of **sexual offences** are not excluded from conditional release, they may face additional **requirements** and **longer waiting periods** before becoming eligible for parole. This can include mandatory participation in **rehabilitation programs** specifically designed for sexual offenders. These additional requirements are meant to assess the risk the prisoner poses to society and ensure that the conditions for their release meet the goals of both **individual and general prevention**.

7.4. Minors

For **minors** or those convicted of crimes committed during their minority, Portugal does not have specific **differentiated rules** for accessing sentence adjustments. When a minor reaches adulthood, the sentence continues to be enforced under the general regime, but their prior time in a juvenile detention facility is credited towards their sentence. Once transferred to an adult prison, the same criteria for early release, parole, and other adjustments apply as they do for adult prisoners. Therefore, **there are no special adjustments** available specifically for minors once they transition into the adult system.

7.5. Social and Economic Barriers

Prisoners without stable housing or a source of income face significant **barriers** in accessing sentence adjustments like conditional release or parole. The **lack of social support** is a key factor in these cases, as prisoners are often required to provide a **guarantee** from a third-sector organisation (such as an NGO) to secure housing or support in the community before being granted early release. This requirement creates a barrier for prisoners who lack such support networks or who are unfamiliar with the process of securing such guarantees. Additionally, changes in **economic circumstances** (such as the abolition of the "prison release benefit" in 2024) may further limit the access of economically disadvantaged prisoners to sentence adjustments, placing more pressure on community-based organisations to provide housing or other support.

VIII. Risk-based approaches in sentence adjustment

8.1. Definition of Risk in National Legislation

In Portuguese criminal law, dangerousness (*perigosidade*) is defined as a well-founded risk that an offender will commit further acts of the same kind. This concept is applied exclusively in the context of security measures imposed on offenders deemed not criminally responsible due to mental health conditions, as set out in Article 91 of the Penal Code. Within the framework of sentence adjustment mechanisms, the assessment of the risk of reoffending forms part of the general requirements for granting such measures. For instance, in decisions on conditional release (parole), judges must determine, on the basis of the circumstances of the offence, the offender's life prior to the crime, and their personality and its evolution during sentence implementation, whether there are grounds to expect that the individual will lead a socially responsible life without committing further crimes once released. These criteria also apply to the measure of adaptation to conditional release (anticipation of parole).

In contrast, the requirements for modifying the execution of a prison sentence on humanitarian grounds are less demanding: the judge must simply be satisfied that the modification will not conflict with "strong demands of prevention" or "social order and peace." The granting of prison leaves similarly relies on a well-founded expectation that the prisoner will behave in a socially responsible manner without committing offences, and that they will not evade the execution of the sentence. For placement in an open regime, it must be established that there is no fear that the sentenced person will abscond or misuse the opportunities provided by the regime to commit crimes.

There have been no significant changes in the legal concept of dangerousness over the past twenty years. A representative of the prison administration further emphasised that, in practice, the term 'dangerousness' is not used; instead, the administration refers to 'risk', including risks of escape or risks associated with individuals serving repeated custodial sentences.

8.2. Assessment Framework for Risk

Portugal's risk assessment instruments fall within the structured professional judgment model, characterised by the use of standardised evaluation frameworks combined with practitioner discretion, rather than actuarial or algorithmic prediction tools. The SAP (*Sistema de Avaliação dos Preventivos*) and the SARNC (*Sistema de Avaliação de Risco e Necessidades Criminógenas*) both rely on progressive assessments, standardised forms, multiple information sources, and interdisciplinary contributions. These instruments were developed in collaboration with universities and academic experts, supported by manuals and detailed guidelines, and the scientific community played a role in their design. While the tools incorporate structured factors, such as offending history, behaviour in prison, and reintegration prospects, they do not employ statistical modelling, automated scoring, or algorithmic processes. Instead, the final assessment remains interpretative and grounded in the professional judgement of prison staff, reintegration services, and clinical experts.

However, the prison administration representative interviewed noted that certain actuarial or specialist tools are currently being examined for potential use in Portugal, including the VERA-2R (Violent Extremist Risk Assessment 2 Revised) and the RRAP (Radicalisation Risk Assessment in Prisons).

The assessment of dangerousness or the risk of reoffending in Portugal is grounded in a structured set of reports and procedures. Before deciding on conditional release, judges are required, within the 90 days preceding the admissible release date, to obtain specific information pursuant to Article 173 of the Code. This includes: (a) a report from the prison services evaluating the evolution of the prisoner's personality during sentence implementation, skills acquired, behaviour in prison, and attitude towards the offence committed; (b) a report from the social reintegration (probation) services assessing outstanding reintegration needs, prospects for family, social and professional integration, and recommended conditions for conditional release, taking into account the need to protect the victim; and (c) any additional elements the court considers relevant, whether on its own initiative or at the request of the Public Prosecutor or the sentenced person.

In decisions concerning sentence adjustment measures more broadly, the judge convenes the advisory council (*conselho técnico*), an advisory body to the court responsible for sentence execution. This council, composed of the judge, the public prosecutor, the prison governor, and officers responsible for rehabilitation, security, and social reintegration, provides opinions on the granting of conditional release, prison leaves, and open regimes, including any conditions attached.[10] The council meets within the prison, with each member contributing information from their area of responsibility; for example, the security officer offering insights into the prisoner's behaviour, and the probation officer providing information on family support and social environment.

According to the prison administration representative, assessments of the risk of reoffending draw heavily on disciplinary records, behaviour in prison, social support networks, and expert evaluations, with information sourced from prison staff, reintegration services, and psychological or psychiatric assessments. These evaluations follow official guidelines, beginning with the '72-hour assessment', conducted within the first 72 hours of admission and providing a global physical and psychological evaluation. For pre-trial detainees, a subsequent continuous assessment (*sistema de avaliação dos preventivos* (SAP)) reviews factors such as prior offences and repeat offending. For sentenced prisoners, risk assessment is guided by the *sistema de avaliação de risco e necessidades criminógenas* (SARNC), a document updated over time and transferred with the prisoner between establishments. Within this system, the prison administration must prepare an Individual Rehabilitation Plan (*plano individual de readaptação*, PIR) for anyone sentenced to more than one year of imprisonment, developed with the prisoner's participation and approved by the court.

8.3. Transparency

According to the prison administration representative, the criteria underlying the risk assessment instruments are publicly known, and procedure manuals exist to guide their application. Judges receive only the final report, which is described as detailed and structured, covering essential aspects such as external support, the feasibility of proposed measures, and the overall opinion. Judges may request additional information when necessary, although the interviewee was not aware whether this could include input from external experts. The representative also indicated that the Centre for Judicial Studies

[10] Articles 142 and 143 of the Code.

(*Centro de Estudos Judiciários*) provides some training for magistrates on the interpretation of these assessment tools.

With regard to access for detainees, both the prisoner and their lawyer have access only to the final report. While the criteria are publicly available, the underlying materials used to produce the assessment are not directly accessible to them beyond the structured conclusions contained in the final document.

8.4. The Reliance on Risk Assessment Reports by Judges

Judges in Portugal are not bound by the conclusions of risk assessment reports, and the legislation does not refer to the use of such tools in judicial decision-making. Assessments prepared by prison and probation services serve as advisory inputs, but they do not have binding force. Ultimately, it is the judge's own assessment that prevails.

8.5. Specific Categories of Prisoners

According to the prison administration representative, the assessment tools used vary depending on the legal status and characteristics of the prisoner—for example, whether the person is in pre-trial detention or serving a sentence, the type of offence, as well as age and gender. A specific protocol also exists for transgender people.

In decisions on sentence adjustment measures, judges may impose conditions tailored to the individual case, as provided for in Articles 78(3), 177(2) and 192(2) of the Code. There are no mandatory conditions. The only sentence adjustment mechanism that necessarily involves electronic monitoring is the adaptation to conditional release (anticipation of parole), which allows release to be brought forward by up to one year and requires the prisoner to spend this period under home detention with electronic monitoring. Other restrictions, such as geographical limitations, residence requirements, or prohibitions on attending certain places, may be imposed on a case-by-case basis. The prison administration representative further noted that specific risk assessment procedures may be applied to certain categories of prisoners when necessary. For example, in cases involving domestic violence or sexual assault, security measures are required: police are informed and must file a report, and monitoring or geographical restrictions may be introduced.

Further insights were provided by practitioners interviewed for this research. A criminal defence attorney stated that, in practice, control measures are often limited. For prison leaves, it is assumed that the prisoner will return at the end of the permitted period. In cases of parole, the person is summoned for periodic interviews. If an individual lacks external support, this is often considered an indication that the conditions for safely granting the measure are not met. Similarly, if a serious illness arises, treatment in a prison hospital environment may take precedence.

A former judge at a court for the execution of sentences explained that the measure of modifying the execution of the prison sentence may be granted when the legal criteria are met, specifically where there is no public alarm and no risk. The judge emphasised that individuals who are seriously ill or bedridden typically pose a reduced risk, as most offences

require some degree of mobility. Depending on the case, other measures may be imposed, such as prohibiting the use of computer applications or IT resources, or requiring the person to remain at home with electronic surveillance. The interviewee added that they would not grant any sentence adjustment mechanism if they believed there were associated risks; of approximately twenty applications assessed, only five or six were granted.

Another former judge at a court for the execution of sentences highlighted that decisions ultimately depend on the specifics of each case. Where tension exists between security concerns and humanitarian considerations, closer monitoring or tailored conduct requirements may be imposed. In cases involving domestic violence or sexual assault, the appropriate response similarly depends on the circumstances of the individual case.

8.6. Risk Assessment and Medical Leave

There are no predetermined rules governing situations in which risk-based considerations conflict with a prisoner's medical condition. The sole sentence adjustment mechanism grounded in medical criteria is the modification of the execution of the prison sentence. This measure allows prisoners suffering from a serious and irreversible disease, a serious and permanent disability, or advanced age to request authorisation to serve the remainder of their sentence at home or in a health or social facility, with or without electronic surveillance. For the measure to be granted, the court must determine that the modification does not conflict with "strong demands of prevention" or "social order and peace."

Case law illustrates the importance accorded to these risk-based considerations. In a decision of 2 July 2024,[11] the court held that although the convicted person was 79 years old and suffered from progressive and irreversible health conditions, modification of the sentence's execution was not warranted because the prison provided an adequate therapeutic response that kept him clinically stable.

A former judge at a court for the execution of sentences explained that the modification of the execution of the prison sentence may be granted only where the legal conditions are met, including the absence of public alarm or risk; if such risks exist, the measure will not be authorised. The judge noted that individuals who are seriously ill or bedridden generally have significantly reduced capacity, given that most crimes require some degree of mobility. In certain cases, restrictions such as prohibitions on using computer applications or IT resources, or requirements to remain at home under electronic surveillance, may be applied. This former judge emphasised that no sentence adjustment mechanism would be granted if he believed there were associated risks. Over the course of his work, he reviewed approximately twenty requests for modification of sentence execution and granted only five or six.

[11] Lisbon Court of Appeal, proceedings no. 1273/23.6TXLSB-B.L1-5.

CHAPTER 9

Sentence Adjustment Mechanisms in POLAND: Law and Practices

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Introduction

From 2016, political leadership with a heavy penal populist approach and rhetoric took charge of the penitentiary system in Poland. The prevalence of penal populism since has had a stark impact on sentence adjustment mechanisms in the country.

Hostile Government measures have sought to repress civil society's criticism of sentence adjustment mechanisms through various intimidation tactics. Between 2015 and 2023, civil society in Poland faced an increasing number of hostile actions from the Government.[1] The Government significantly diminished the value of public consultations by disregarding any critical feedback from civil society and legal scholars. Moreover, the Ministry of Justice threatened civil lawsuits against authors of critical opinions on proposed legal reforms[2] and sought to undermine the credibility of academic institutions and non-governmental organisations by labelling them as 'defenders of criminals' in response to their vocal criticism of amendments to the parole system.[3]

Not only have sentence adjustment mechanisms been merely *influenced* by the rise of penal populism, it has become a central *medium* through which the Government and Penitentiary Administration both 1) manage prison overcrowding, and 2) reinforce their penal populist agenda. This dual function is facilitated by the structural design of these mechanisms, which position the Penitentiary Administration as the primary gatekeeper of successful applications.

Against this general background, the present report intends to examine the national legal frameworks governing and organising sentence adjustment mechanisms in Poland and the practices of Polish professionals and other stakeholders involved in their framing and implementation. The report also describes the recent trends in the granting of sentence adjustments or reductions at the national and regional level, and analyses the obstacles to prisoners' access to sentence adjustment or reduction, in general and for specific categories of prisoners.

Finally, the report also examines the role of risk-based rationales and assessment instruments in decision making processes on sentence adjustments and the extent to which such instruments have changed or shaped professional practices in the matter in the past decades.

The conducted research is part of a broader study led by the European Prison Litigation Network between 2024 and 2025 in seven European countries (Belgium, France, Germany, Poland, Portugal, Spain and Ukraine) in partnership with the Universidad Francisco de Vitoria UFV Madrid, Strafvollzugsarchiv, Universidad Complutense Madrid, Forum Penal, Centre de Recherches en Droit Pénal, Université Libre de Bruxelles, the Helsinki Foundation for Human Rights. This study aimed at investigating the European influence on national laws and practices regarding the application of sentence adjustments, through analysing the different

[1] Ploszka A., Shrinking Space for Civil Society: A Case Study of Poland, European Public Law, Volume 26, Issue 4 (2020) p. 941 – 960.
[2] Newsweek Polska, Ministerstwo Sprawiedliwości pozywa profesorów UJ. Zarzuca im kłamstwo, 15.06.2019.
[3] Poland, Ministry of Justice, Front obrony przestępców chce zatrzymać reformę Kodeksu karnego.

national frameworks and the multiple factors impeding and facilitate prisoners access to these mechanisms. The research was supported by the European Union's Justice Programme[4].

I. Methodology

The research for this report was conducted in two different stages.

The first research stage was conducted in 2024 and consisted of a literature review to identify the relevant legal instruments and case law in respect, analyse available statistics as well as identify other relevant sources including grey literature.

The second stage of the research consisted in a qualitative study. Six semi-structured interviews were conducted between July and September 2025 with actors situated at different levels and contexts of the penal field, including: a penitentiary judge; an attorney working in cooperation with a civil society organisation; a second attorney; an academic who also works with a civil society organisation; a representative of the Central Prison Administration; and a representative of a local prison administration. All interviews were anonymised to ensure confidentiality and to encourage open and detailed responses. The combination of fieldwork with the review of relevant legislation and academic literature conducted in 2024 allowed the empirical findings to be situated within their broader legal and conceptual context.

II. Poland's Penal and Prison System

Poland's penal and penitentiary system, as of 2024, comprises 171 facilities, including 39 remand centres, 64 prisons, and 68 external divisions linked to specific institutions. These facilities collectively provide 83,098 places, of which 80,491 are for residential use. This capacity marks a significant increase from 2004, when the system could accommodate 69,573 individuals. The highest recorded capacity was in 2014, with 87,742 places. Despite modernisation efforts, many facilities—built during the Polish People's Republic or earlier—struggle with substandard conditions, including a national living standard of just 3 m² per inmate, among the lowest in Europe.

As of August 31, 2024, the prison population stood at 70,827 inmates, occupying 85.97% of total capacity. This figure includes 61,743 convicted individuals (3,146 women), 8,137 pre-trial detainees (528 women), and 947 detained for misdemeanours (99 women). Most inmates are adults (98.6%), with notable subgroups such as 935 males and 51 females under 21 years old, and 3,445 inmates over 60. The elderly inmate population has tripled since 2004. Foreign inmates accounted for 3.6% of the prison population, a significant rise from 0.64% in 2009. Currently, 1,317 inmates are in open-type prisons, 33,475 in closed, and 26,839 in semi-open facilities.

The sentencing structure reveals that the average prison term (excluding life imprisonment) was 44.92 months in 2023, with a median of 24 months. Presently, 575 inmates (17 women)

[4] Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. neither the European Union nor the European Commission can be held responsible for them.

are serving life sentences. Programs for rehabilitation are available, with 28,628 inmates serving sentences under the ordinary system, 28,924 under programmed impact, and 4,950 under therapeutic systems. However, 172 inmates, deemed a serious threat to society or prison security, serve sentences under special conditions in closed-type prisons.

The system's turnover rate is high, with 96,825 admissions and 94,108 releases in 2023, resulting in a turnover ratio of 2.5. The variation rate in the inmate population was 3.51% in 2023, a notable shift from 2004 and 2014, which saw lower and negative variation rates, respectively.

The most recent available data on the number of convictions by Polish courts is from 2020.[5] In that year, Polish courts issued 251 369 convictions, with the vast majority—245 717—being delivered by district courts. In contrast, regional courts, which handle more serious offenses, issued 5 652 convictions. Out of 251 369 convictions, 33,4% were fines (without other penalties), 29,4% were restrictions on liberty, and 90,524 convictions (36% of the total) resulted in prison sentences. For 41,947 of these sentences (46,4%), execution was suspended.

Poland's penitentiary system has faced scrutiny from the European Court of Human Rights due to issues such as overcrowding (e.g., *Orchowski v. Poland*), inadequate healthcare (*Kudła v. Poland*), poor treatment of disabled and vulnerable inmates (*D.G. v. Poland*), and failure to address sexual violence within prisons (*M.C. v. Poland*).

III. Overview of Sentence Adjustment Mechanisms

Poland's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- conditional early release;
- conversion of imprisonment to home detention under electronic monitoring;
- temporary interruption in the execution of the prison sentence;
- temporary release from prison to allow the prisoner to arrange housing or employment for post-release life.

These mechanisms are governed by the Penal Code and Executive Penal Code.

3.1. Conditional Early Release

Among the aforementioned mechanisms, **conditional early release** is the most significant sentence adjustment tool. Its primary role is to positively influence the behaviour of inmates and encourage their rehabilitation. Additionally, it serves to manage the prison population by ensuring that individuals who no longer pose a threat to society are not unnecessarily kept in custody.

A court can grant conditional early release when a prisoner's attitude, personal circumstances, the nature of the crime, and behaviour during their sentence suggest that they will abide by the law and not commit new offenses after release. Conditional release is available after serving at least half of the sentence. For sentences of at least 25 years, it can be granted after 15 years, and for life sentences, after 30 years.

[5] Poland, Ministry of Justice, Skazania prawomocne z oskarżenia publicznego - dorośli - wg rodzajów przestępstw i wymiaru kary w l.2008-2020.

3.2. Conversion of Imprisonment to Electronic Monitoring

Another sentence adjustment mechanism is the **conversion of imprisonment to electronic monitoring**. In this system, the prisoner remains at home, with their location monitored electronically.

Electronic monitoring is available for sentences of up to 18 months. It can be applied either from the start of the sentence (ab initio sentence adjustment) or after part of the sentence has been served. It is also available for sentences of up to 3 years if the remaining time to be served in prison does not exceed 6 months. However, repeat offenders or those who commit crimes as a regular source of income cannot benefit from this option. Furthermore, to apply electronic surveillance, the prisoner must have a permanent residence that meets technical requirements and obtain consent from any adults living in the same household. Finally, the court must ensure that such a decision will not impede the goals of the sentence.

3.3. Temporary Interruption in the Execution of the Prison Sentence

The **temporary interruption in the execution of the prison sentence** is a sentence adjustment tool with mostly humanitarian value. It allows for a temporary halt to the execution of imprisonment due to serious personal or family reasons. A penitentiary court must grant the interruption in the execution of sentence in cases of mental illness or other severe medical conditions that prevent the execution of the sentence. The court may also grant it for significant family or personal reasons.
If the interruption lasts for at least a year and the prisoner has served at least 6 months of his or her sentence, the court may grant him conditional early release for the remainder of the sentence. In such cases, the prisoner does not need to meet the usual minimum time served for early release, as long as the total sentence does not exceed 3 years.

3.4. Temporary Release from Prison

Another sentence adjustment mechanism is **temporary release from prison**, allowing prisoners to leave for up to 14 days to arrange post-release housing and employment. This option is intended to help prisoners prepare for life after release. It can be granted if the prisoner's behaviour suggests they will comply with the law during their time outside the prison. Unlike conditional early release, conversion to electronic monitoring, or suspension of the sentence, this permission is granted by the prison director, not a court.

3.5. Preventive detention

Since 2013, Polish law has allowed for preventive measures after a prisoner's release. These measures were initially introduced in response to cases involving former death row inmates whose sentences were commuted to 25 years imprisonment when the death penalty was abolished.

In 2013, concerns arose in the media about the release of individuals who had served 25-year sentences after their death sentences were commuted. This led to the passage of a law regarding persons with mental disorders who pose a threat to life, health, or sexual freedom. This law allows for post-penal detention of individuals who have served their sentence but suffer from mental disorders such as intellectual disability, personality disorders, or sexual preference disorders, and who are considered highly likely to commit violent crimes again. These individuals are held in the National Centre for the Prevention of Dissocial Behaviour, with their detention reviewed every six months by the court based on expert opinions.

In 2015, the Penal Code was amended to allow security measures to be imposed alongside a prison sentence in cases where the offender committed a crime in a state of diminished mental capacity, or due to severe personality disorders or sexual preference disorders. These measures may include electronic monitoring, therapy, addiction treatment, or psychiatric hospital detention. Their application is indefinite, subject to review every six months.

Conditional early release is the most widely used adjustment mechanism, followed by electronic monitoring for short-term sentences.

3.6. Statistics

Conditional Early Release

According to data from the Prison Service, in 2023, penitentiary courts received 20 299 applications for conditional early release,[6] representing 26.7% of the prison population. Of these, 1 651 applications were submitted by prison directors (5 by prosecutors or courts, 7 by court-appointed probation officers). The remaining 18 630 applications were filed by the convicts themselves, their defence lawyers, or representatives. The majority of these applications—81%—were rejected. In contrast, applications submitted by prison directors were overwhelmingly successful, with 95% being approved.[7]

Overall, in 2023, penitentiary courts released 5 019 convicts on conditional early release (24,72% of all applications).[8] A historical analysis reveals a **steady decline** in the number of conditional release approvals. In 2004, there were 53 357 applications, with 21 314 resulting in conditional release (26,56%).[9] By 2014, the number of applications had dropped to 41 958, with 16,183 approved (20,49%).[10]

Another noticeable trend is the **significant decrease** in the **submission** of applications for conditional release by **prison directors**. In 2004, prison directors submitted 10 815 (13,48% of the prison population at that time)[11], while in 2010 the directors submitted 16 525 of such applications (19,94%).[12] In 2014, it was 9 929 (12,57%).[13] In 2023, however, only 1 651 applications were submitted by prison directors, accounting for just 2,16% of average the prison population.[14]

The Prison Service does not provide information on the probationary measures imposed on convicts who are conditionally released, nor does it publish data on the types of crimes committed by these individuals. However, a 2012 study[15] by the Institute of Justice indicated that, when granting conditional release, courts imposed specific obligations on convicts in at least 98.5% of cases. Nearly all released individuals were placed under the supervision of a court-appointed probation officer. The most commonly imposed obligations included:

- engaging in employment, education, or vocational training,

[6] Poland, Prison Service, Annual statistical report for the year 2023.
[7] Own calculation based on: Polish Prison Service, Annual statistical report for the year 2023.
[8] Poland, Prison Service, Annual statistical report for the year 2023.
[9] Poland, Prison Service, Annual statistical report for the year 2004.
[10] Poland, Prison Service, Annual statistical report for the year 2014.
[11] Poland, Prison Service, Annual statistical report for the year 2004.
[12] Poland, Prison Service, Annual statistical report for the year 2010
[13] Poland, Prison Service, Annual statistical report for the year 2014.
[14] Poland, Prison Service, Annual statistical report for the year 2023.
[15] Jankowski M., Momot M., WARUNKOWE PRZEDTERMINOWE ZWOLNIENIE – WYBRANE ASPEKTY PRAKTYKI, Warszawa 2012.

- refraining from alcohol abuse or the use of drugs.

According to the study, this set of obligations applied to at least 32% of conditionally released convicts. Other frequently imposed measures included prohibiting association with certain environments or being in specific places (20%), adhering to legal order (15,4%), and requiring permission from a probation officer before changing residence (9,9%).

There is no available official data on the relationship between the period served by convicts prior to conditional early release and the remaining sentence yet to be served. However, the aforementioned study by the Institute of Justice[16] indicates that in the examined sample of conditionally released convicts, the largest group had between 1 to 2 years left to serve at the time of their release (31.5%). For 23.3% of the convicts, less than one year remained. Comparatively, a relatively significant group (10% of those studied) still had more than 5 years of imprisonment left to serve.

Electronic Monitoring

Regarding electronic monitoring, as of June 30, 2024, 6 736 individuals were serving their sentences under this system, utilising 67,36% of the system's 10,000-place capacity.[17] However, no official data is publicly available regarding the current number of requests for converting a prison sentence to one served under electronic monitoring. Historical data shows that in 2019, 39 797 requests for electronic monitoring were filed, with 12 427 (31,1%) approved.[18] The rejection in 2019 was at the rate 26,3%. Additionally, a significant number of proceedings were dismissed (5 152), which suggests possible organisational challenges within the penitentiary courts.[19]

Sentence Interruptions

In 2023, the Prison Service reported that sentence interruptions were granted to 1 394 convicts.[20] By August 2024, there were 1 423 convicts benefiting from sentence interruptions. Among them, 985 received interruptions due to mental illness or other serious medical conditions, while 438 were granted interruptions for important family or personal reasons. The Prison Service also noted that among abovementioned group 386 individuals failed to return to prison as scheduled.[21]

In all of 2023, only one convict was allowed temporary leave from prison to seek housing and employment opportunities before release.[22]

Category-Specific Statistics

The Polish Prison Service publishes limited data on conditionally released individuals. Statistics from 2023 show the breakdown of conditionally released prisoners into different classification groups. According to this data, prison directors most frequently submitted

[16] Jankowski M., Momot M., WARUNKOWE PRZEDTERMINOWE ZWOLNIENIE – WYBRANE ASPEKTY PRAKTYKI, Warszawa 2012.
[17] Poland, Prison Service, Zaludnienie w latach 2018-2024.
[18] Przesławski T., Stachowska E., Analiza i oceny funkcjonowania systemu dozoru elektronicznego w Polsce w latach 2018-2019, Warszawa 2021.
[19] Przesławski T., Stachowska E., Analiza i oceny funkcjonowania systemu dozoru elektronicznego w Polsce w latach 2018-2019, Warszawa 2021.
[20] Poland, Prison Service, Annual statistical report for the year 2023.
[21] Poland, Prison Service, Annual statistical report for the year 2023.
[22] Poland, Prison Service, Annual statistical report for the year 2023.

conditional release requests for first-time offenders (1 123 requests) and repeat offenders (525 requests). For requests submitted by prisoners, their defence attorneys, or legal representatives, the numbers were similar for both groups, with 8,995 requests for first-time offenders and 9,546 for repeat offenders[23].

The data also shows that of the 5 292 individuals conditionally released from their primary prison sentence, 93% were men. Among this group, there were only 15 convicts under 21 years old, including one female[24].

In terms of the electronic monitoring system, the available data details the age and gender of individuals serving sentences under this system. As of August 31, 2024, of the 6,377 individuals in electronic monitoring, 639 were women. The majority of those monitored (65%) were aged between 27 and 46. There were also 159 individuals under 21 years old, 101 individuals aged 67 or older, including 13 people aged at least 77 years old[25].

In 2023, sentence suspension was applied to 1 394 prisoners, including 95 women. Among the men whose sentences were suspended, six were under the age of 21[26].

IV. Legal and institutional framework of sentence adjustment

4.1. Institutional Architecture

The institutional structure for implementing sentence adjustments comprises penitentiary courts, penitentiary commissions, and prison administration.

- **Penitentiary Courts**: These courts, often sections within circuit courts, are responsible for decisions on conditional release, sentence interruptions, and electronic monitoring applications.
- **Penitentiary Commissions**: Created by the 2023 amendments to the Executive Penal Code, these commissions address simpler applications, such as conversion to electronic monitoring for shorter sentences.
- **Prison Administration**: Prison directors play a role in initiating applications and providing opinions on inmates' behaviour and suitability for adjustment mechanisms.

The penitentiary court plays a crucial role in the application of sentence adjustment mechanisms. These courts are usually sections within circuit courts (the second level in Poland's three-tier judicial system). However, their organisational separation is not mandatory. As a result, some courts only have penitentiary sections within their criminal divisions, while others may not have a separate penitentiary court at all. In such cases, criminal court judges take on the responsibilities of a penitentiary court.

The organisational separation of penitentiary courts was first introduced in 1969, when separate Penitentiary and Sentence Supervision Divisions were established within provincial

[23] Poland, Prison Service, Annual statistical report for the year 2023.
[24] Poland, Prison Service, Annual statistical report for the year 2023.
[25] Poland, Prison Service, Populacja skazanych w SDE wg. wieku i płci
[26] Poland, Prison Service, Annual statistical report for the year 2023.

courts. These divisions were responsible for penitentiary matters, including decisions on conditional early release[27].

The penitentiary court handles cases specifically assigned to it by the Executive Penal Code. It decides on issues such as conditional early release, the conversion of remaining imprisonment to electronic monitoring, and the suspension of a sentence. Jurisdiction for penitentiary cases is generally based on the location of the prison where the inmate is being held.

After the 2023 amendment to the Executive Penal Code, penitentiary commissions were also granted the right to adjust sentences and convert imprisonment into electronic monitoring, unless the initial sentence was longer than 4 months. The members of the penitentiary commissions are appointed by the prison director from among the prison service officers and employees working in the given penitentiary facility. The commission may also invite other trustworthy individuals to participate in its operations.

4.2. Capacity and Resources of Penitentiary Courts

As of September 19, 2024, there were 29 penitentiary departments and 9 penitentiary sections within criminal divisions operating in Poland's judiciary system, with at least 124 judges assigned to them (4,5% of overall number of judges adjudicating in circuit courts)[28].

The Ministry of Justice provides only partial data regarding the number of penitentiary cases handled by these courts. In the first quarter of 2022, the Ministry recorded 6 219 cases concluded by penitentiary courts. The majority of these cases were resolved within 14 days of filing, with an average processing time of 0.7 months[29].

There is no recent data available on the total number of cases processed throughout the entire year. Historical data shows that in 2015, penitentiary court records registered 29 343 cases in penitentiary courts. Based on this, it can be estimated that around 25 000 cases were registered in 2022. This would mean that each judge handling penitentiary matters dealt with approximately 200 cases. By comparison, in 2021, the average number of new cases per judge across Poland was 1 421[30].

The interviewed penitentiary judge complained on the staffing levels. According to her, while the number of judicial assistants is generally adequate, the availability of secretarial staff is insufficient in relation to the volume and pace of work. She underlined that the constant flow of matters requiring immediate attention disrupts planned tasks and creates structural delays.

4.3. Players in the System

The following parties are involved in Poland’s sentence adjustment system:

- **Judges**: Responsible for assessing applications and issuing decisions.
- **Prison Directors**: Provide criminological evaluations and may initiate applications.
- **Probation Officers**: Prepare reports on inmates’ social and behavioural conditions and supervise released individuals.
- **Prosecutors**: Represent the state and may challenge decisions granting adjustments.

[27] Wiktorska P., Opinia w sprawie funkcjonowania sądów penitencjarnych w Polsce i wybranych państwach europejskich, Warszawa 2016
[28] Own calculation based on the websites of circuit courts.
[29] Poland, Ministry of Justice, Average duration of proceedings before common courts in the first half of 2022.
[30] Own calculation based on the data included in: Poland, Ministry of Justice, The number of cases in common courts in Poland.

- **Defence Lawyers**: Advocate for inmates' applications and represent them in legal proceedings.

4.4. Criteria for Granting Sentence Adjustment

Conditional Early Release

A court can grant conditional early release when a prisoner's attitude, personal circumstances, the nature of the crime, and behaviour during their sentence suggest that they will abide by the law and not commit new offenses after release.

- **Eligibility**: Prisoners may apply after serving:
  - Half of their sentence.
  - Fifteen years for 25-year sentences.
  - Thirty years for life sentences.
  - Recidivists and multiple recidivists face stricter thresholds, requiring two-thirds or three-quarters of their sentence to be served, respectively. Stricter requirements apply to repeat offenders under so-called 'basic recidivism'. A convicted offender in this category may be eligible only after serving two-thirds of their sentence. Under the Penal Code, "basic recidivism" applies when a person convicted of an intentional crime has served at least six months of imprisonment and, within five years of release, commits a similar intentional crime. Similar crimes are defined as those that target the same legally protected interest (e.g., public safety) or involve violence, threats, or financial gain.
    Even stricter limitations apply to convicts classified as multiple recidivists. This includes individuals who have previously served a sentence under conditions of "basic recidivism" or as convicts outlined in Article 64a of the Penal Code[31], have served a cumulative one year in prison, and subsequently, within five years, committed another serious crime, such as one involving life or health, rape, robbery, burglary, or property offenses involving violence or threats. For such convicts, the Code mandates serving at least three-quarters of their sentence before conditional release can be considered.
    Moreover, the requirement to serve ¾ of the sentence is envisaged by the Penal Code with regard to convicts against whom a final decision has been issued stating that they unlawfully obstructed the execution of the sentence of deprivation of liberty. Under the Executive Penal Code, an order for obstructing the execution of a sentence of imprisonment may be issued by the court if the convicted person, with the intention of obstructing the execution of a sentence of imprisonment, fled, hid, took action to escape or hide.

- **Assessment Criteria**: The primary factor is a positive criminological prognosis. Courts assess:

[31] Article 64a of the Penal Code: If the offender, within 5 years after serving at least 6 months of a custodial sentence imposed for the crime of murder in connection with rape or for an offence against sexual freedom punishable by a custodial sentence of at least 8 years, commits such a crime or such an offence again, the court shall impose the custodial sentence provided for the imputed offence in an amount from the lower limit of the statutory threat increased by half to the upper limit of the statutory threat increased by half.

- **Behaviour during imprisonment**: Includes compliance with prison rules, participation in educational or rehabilitative programs, and any disciplinary infractions.
- **Personal qualities and conditions**: Such as social ties, remorse, and efforts towards rehabilitation.
- **Nature and circumstances of the offence**: The seriousness of the crime and its impact on society.
- **Likelihood of lawful behaviour upon release**: Evaluated through reports prepared by probation officers and prison administration.

- **Additional Provisions**: Courts may impose conditions on release, such as probationary supervision or specific behavioural requirements.

Conversion to Electronic Monitoring

- **Eligibility**:
  - Sentences up to 18 months.
  - Sentences up to 3 years if less than six months remain.
  - Excluded categories: Repeat offenders, habitual criminals, and those whose criminal activity constitutes a regular source of income.

- **Assessment Criteria**:
  - **Technical Feasibility**: Requires a residence with appropriate conditions for electronic monitoring.
  - **Household Consent**: Co-residents must agree to the arrangement.
  - **Sentencing Goals**: Courts must determine that electronic monitoring aligns with the rehabilitative and punitive aims of the sentence.

Temporary Interruption of Sentence Execution

- **Eligibility**:
  - Mandatory for severe health conditions or mental illnesses that prevent imprisonment.
  - Discretionary for significant personal or family reasons, such as caregiving responsibilities or medical treatment outside the prison system.

- **Assessment Criteria**:
  - **Humanitarian Grounds**: Whether the interruption addresses a critical need.
  - **Practicality**: Consideration of the prisoner's likelihood of complying with legal requirements during the interruption.

- **Extension of Benefits**: Interruptions lasting over one year may lead to conditional early release, provided specific criteria are met.

- Regarding sentence interruption, the law does not stipulate specific rules about the minimum duration of a sentence required to request an interruption. However, it requires a minimum one-year interval between consecutive interruptions, except in cases of mental illness, serious health issues, or other exceptional circumstances.

Temporary Release for Reintegration

- **Eligibility**:
  - Available for up to 14 days to facilitate post-release planning, such as securing housing or employment.

- **Assessment Criteria**:
  - **Behavioural Record**: Prisoners with positive conduct and adherence to prison rules are more likely to be granted release.
  - **Reintegration Potential**: Evaluated based on the prisoner's readiness to engage in societal and legal norms during the temporary release.

4.5. Procedure for Applying

Conditional Early Release

The application from the convicted person must provide sufficient justification to be considered by the court. Applications that repeat the same factual arguments, contain language deemed vulgar or offensive, use criminal slang, lack adequate substantiation, or are clearly unfounded may be dismissed by the court without review.

The process for applying for conditional early release in Poland is largely uniform across all prisoners, with some variations depending on sentence length for those reapplying after an initial denial.

- **Initiating Applications**: Applications for conditional early release can be submitted by:
  - The prisoner;
  - The prison director;
  - A probation officer;
  - The prisoner's defence counsel.

  Each application must include justification, with reports from the prison administration outlining the prisoner's criminological prognosis and behavioural record.

- **Court Review**: The penitentiary court conducts a formal hearing, which includes:
  - **Prosecutor Participation**: A prosecutor attends to represent the state and may contest the application.
  - **Witness and Evidence Presentation**: The court may call witnesses, review behavioural records, and examine expert reports, especially for certain offences requiring psychiatric evaluations.

- **Timelines for Reapplication**:
  If denied, prisoners may reapply after six months for sentences under five years or one year for longer sentences. Courts review reapplications independently of prior rulings.

- **Objections**:
  If conditional release is granted, the prosecutor can file an objection, delaying enforcement until the appeal is resolved.

Conversion to Electronic Monitoring

- **Initiating Applications**: Applications must include:
  - A written request from the prisoner, their legal representative, or the prison director.
  - Documentation confirming a suitable residence and consent from those they will reside with.

- **Review Process**: Penitentiary courts or commissions assess:
  - The technical feasibility of monitoring.
  - The prisoner's compliance record and likelihood of meeting sentencing goals under supervision.

- **Outcome**:
  If granted, prisoners are notified of their monitoring conditions and obligations.

Temporary Interruption of Sentence Execution

- **Initiating Applications**:
  Prisoners or their representatives may submit requests, accompanied by supporting evidence such as medical certificates or documentation of family circumstances.

- **Court Review**: The court assesses:
  - The urgency and proportionality of the request.
  - Potential risks of non-compliance during the interruption.

- **Duration**:
  Interruptions are granted for the period necessary to address the cited reason and may lead to conditional early release if the interruption lasts over one year.

Temporary Release for Reintegration

- **Initiating Requests**:
  Requests are made to the prison director, who evaluates the prisoner's readiness for reintegration.

- **Decision Authority**:
  Decisions are based on behavioural records and reintegration planning. Prisoners must demonstrate compliance with rules during release.

4.6. Time Limits

The Executive Penal Code provides non-binding guidelines for reviewing complaints:

- Conditional Early Release Decisions: The law stipulates a 14-day period for reviewing complaints, but this is instructional only, with no penalties for delays.

- Electronic Supervision: A 30-day timeline exists for decisions, but research indicates frequent violations, with some cases taking up to five months.

- Sentence Interruption: No specific deadlines exist for reviewing complaints about refusals, further contributing to delays.

Since 2017, executive criminal proceedings have been excluded from mechanisms allowing complaints about prolonged proceedings, leaving parties without recourse to address delays or claim compensation for procedural inefficiencies.

4.7. Recall

In Poland, the revocation of conditional early release is managed by the penitentiary court and is governed by strict legal provisions requiring revocation in certain circumstances. These provisions, however, present procedural barriers and raise constitutional concerns regarding fairness and judicial discretion.

Mandatory Revocation Requirements

The court is legally required to revoke conditional early release if:

1. New Crimes During Probation: The convicted person commits an intentional crime during the probation period that results in an unsuspended custodial sentence.

2. Repeated Behaviour in Domestic Violence Cases: A person convicted of violent or threatening behaviour toward a close person or minor residing with them repeats such behaviour during the probation period.

Revocation may also occur if the individual grossly violates the law or fails to fulfil court-imposed obligations. In cases of non-compliance with obligations, revocation becomes mandatory if the probation officer has issued a written warning to the individual, unless there are exceptional circumstances justifying leniency.

Constitutional Concerns with Mandatory Revocation

The mandatory nature of revocation decisions limits judicial discretion, which has raised constitutional concerns. Similar mandatory revocation provisions for suspended sentences were deemed unconstitutional by Poland’s Constitutional Tribunal. The Tribunal emphasised the need for courts to have the flexibility to consider special circumstances on a case-by-case basis. The automatic revocation of conditional early release could similarly be viewed as inconsistent with the right to a fair trial under Article 45 of the Constitution, as it restricts the judiciary's ability to exercise discretion.

Revocation of Other Sentence Adjustments

The Executive Penal Code outlines conditions under which the penitentiary court may revoke other forms of sentence adjustments:

- Sentence Interruption: Revocation is permitted if:
  - The reason for granting the interruption ceases to exist.
  - The convicted person misuses the interruption for purposes unrelated to its original intent.
  - The individual grossly violates the law during the interruption.

- Electronic Supervision: Revocation is mandatory in cases such as:
  - Evading the installation of supervision equipment.
  - Committing a new offence.
  - Failing to meet obligations associated with electronic monitoring.

Courts retain some flexibility in electronic supervision cases, allowing them to avoid revocation if special circumstances justify leniency.

Procedural Aspects of Revocation Hearings

Revocation proceedings involve several participants and procedural considerations:

1. Participants: The convicted person, their defence counsel, the probation officer, and the public prosecutor (whose attendance is mandatory) may participate in hearings.
2. Physical Presence: If the convicted person is detained, the court has the discretion to determine whether their physical presence at a second-instance hearing is necessary.
3. Immediate Enforcement: Revocation orders are immediately enforceable unless the court grants a suspension.
4. Appeals: Convicted persons may appeal revocation orders, though the immediate enforceability of such orders can limit the practical effectiveness of appeals.

4.8. Quality of the Law and Legal Uncertainty

The application of conditional early release has been a topic of significant legal discussion, particularly concerning the balance between rehabilitation and general prevention in eligibility determinations. The debate on general prevention was resolved by the Supreme Court in case I KZP 2/17, which clarified some aspects of its application. However, other areas of uncertainty and limitations in judicial discretion continue to generate criticism, as outlined below.

Ambiguity in Criminological Prognosis

One of the most debated aspects of conditional early release is the level of certainty required for a positive criminological prognosis—confidence that the convicted person will obey the law and refrain from further criminal activity:

- Terminological Discrepancies: The Penal Code uses different terms to describe the certainty required for probationary measures. Conditional early release requires “persuasion” of lawfulness, whereas conditional discontinuance of criminal proceedings uses the term “assumption.” This linguistic distinction has been

interpreted as requiring a higher degree of certainty, or "near certainty," for conditional early release, as courts feel compelled to "guarantee" the prisoner's future compliance. Critics argue that this interpretation creates an unnecessarily conservative standard, leading to unwarranted denials of release.

- Proposed Revisions: Some scholars advocate returning to a standard of "presumption" for positive behaviour, a less stringent requirement that was in place before the enactment of the 1997 Penal Code. They argue this approach aligns better with the rehabilitative goals of conditional early release.

Ambiguity in Legal Terminology

Several terms within the Penal Code related to conditional early release remain ambiguous, leading to inconsistencies in interpretation:

- 'Legal Order': This term lacks a precise definition in the Penal Code but is generally understood to include family, civil, and administrative law. Legal violations in these areas do not always constitute crimes or misdemeanours, creating uncertainty about what qualifies as a breach of the legal order. Some commentators suggest removing or clarifying the term to improve consistency.

- 'Circumstances of the Commission of the Offense': Courts often limit their consideration of this term to the factual elements of the crime, neglecting broader contextual factors such as the gravity or social impact of the offence. Legal scholars argue for a more expansive interpretation that includes these dimensions.

- 'Personal Conditions': This term is also unclear, with debates over whether it includes material and financial circumstances. In other sections of the Penal Code, personal conditions are treated separately from property and income status, suggesting these may not be relevant in the context of conditional early release.

Removal of 'Way of Life Before the Crime' as a Criterion

The 2012 legislative amendments to the Penal Code removed the consideration of the convict's way of life before committing the crime as a factor for determining eligibility for conditional early release. This change has been criticised for:

- Narrowing the Assessment: Previously, courts could consider the convict's broader background and social integration, offering a more comprehensive view of their likelihood to comply with the legal order.

- Potential for Rehabilitation Oversight: Without this factor, courts may overlook aspects of the convict's past that are relevant to their rehabilitation efforts.

Challenges for Electronic Monitoring

Electronic monitoring as an alternative to imprisonment has specific eligibility requirements, including the absence of factors that would prevent the monitoring from achieving sentencing goals. Critics have raised concerns about this requirement:

- Conflicts with the Principle of Ultima Ratio: Legal commentators argue that if a court determines during initial proceedings that imprisonment is unnecessary, it is contradictory for the same court to later deem electronic monitoring as sufficient to meet sentencing objectives.

- Unclear Guidelines: The ambiguity surrounding what constitutes 'factors preventing the achievement of goals' leads to inconsistent application of this provision in practice.

V. Decision Making Processes on Sentence Adjustment

A study published in 2019[32] examined the factors most frequently considered by courts when assessing applications for conditional early release. The findings indicate that the convict's behaviour within the penitentiary unit was the most commonly evaluated factor, appearing in 35% of the cases analysed. The second most frequently considered element was the inmate's general attitude. Courts also assessed other factors such as the convict's conduct outside the penitentiary during sentence serving (12.1%), including behaviour during leaves, work performance in non-restricted settings, and sentence compliance under the electronic supervision system. Additionally, personal circumstances (13.6%), lifestyle prior to incarceration (4.4%), criminal record (1.6%), personal traits (4.2%), physical and mental health (0.5%), and drug addiction (5.7%) were also reviewed. The study's authors highlighted a notable gap in the analysis, as courts did not typically consider prior convictions and previously applied probationary measures as part of their assessments.

For applications to serve a sentence under the electronic supervision system, the 2014 study[33] revealed that technical limitations were the primary reason for denial, accounting for 29.5% of refusals. These limitations included issues like lack of mobile coverage, absence of electricity, and inadequate proximity to facilities such as toilets (toilet was too far from the place in which the surveillance device was installed). Another frequent reason for refusal (18.9%) was the court's assessment that serving a sentence under electronic supervision would not fulfil the sentencing objectives. This rationale was occasionally linked to the convict's degree of moral corruption (5%), with the courts citing multiple prior convictions, failure of previous custodial sentences, ineffectiveness of prior imprisonments, and negative personal traits or lifestyle as supporting factors.

5.1. A Lack of Individualised Review by Courts

In Polish courts, decisions on sentence adjustments, such as conditional release, sentence interruption, and electronic monitoring, are intended to reflect the specific circumstances of individual prisoners. However, there is a documented tendency for courts to rely on pre-prepared templates with little or no modification, which compromises the individualised nature

[32] Nikołajew J., Burdziak K., Jankowski M., Kowalewska-Łukuć M., Diagnostyka sądowo-kryminalna w orzekaniu i wykonywaniu warunkowego przedterminowego zwolnienia w teorii i praktyce sądowej – raport z badania, Prawo w Działaniu. T. 39 (2019), s. 9-68

[33] Jankowski M., Momot M., Wykonywanie kary pozbawienia wolności w systemie dozoru elektronicznego. Sprawozdanie z badania aktowego, „Prawo w Działaniu. Sprawy Karne" 2015/22, p. 36–40.

of these decisions. For example, in eight conditional release decisions issued by a judge of the Circuit Court in Jelenia Góra on June 30, 2016[34], the decisions varied only in the convict's personal details and the description of their sentence, with similar obligations imposed on each convict during their probation. Each conditionally released prisoner was required to secure employment, refrain from alcohol and drug abuse, and avoid individuals with negative social influence. Some were additionally required to provide for their children, presumably those with a maintenance obligation.

The justification for granting conditional early release in each order was nearly identical. Each referenced the fact that the convict met the formal requirements for release, cited the relevant legal provision, and emphasised the importance of a positive criminological prognosis. According to the court, this prognosis primarily considered the convict's behaviour post-offense and during the sentence. The court reviewed the convict's personal file and the penitentiary administration's opinion, noting rewards or punishments received, relations with staff and fellow inmates, participation in prison subculture, and whether the convict expressed remorse for the offense. Finally, the court noted the end date of the convict's sentence and stated that the imposed obligations were meant to "consolidate positive changes in the convict's attitude."

In contrast, decisions denying conditional early release were more individualised. For instance, an analysis of refusal decisions from the Circuit Court in Słupsk on December 3, 2015[35], shows a higher degree of specificity. These decisions cited the convict's behaviour in prison, interactions with staff, engagement in rehabilitation programs, conduct during leaves, substance use, the circumstances of the crime, and the convict's prior criminal record, offering a more tailored assessment of each convict's case.

5.2. External Influences Impacting Decision-Making by Courts

Data from the Prison Service highlight the essential role that penitentiary administration activity plays in influencing the number of conditional early releases, as applications from prison authorities are more likely to receive favourable decisions from the court. However, this activity appears to be highly sensitive to the prevailing political climate. For instance, there was a marked increase in conditional release applications from prison directors during periods focused on reducing prison overcrowding. Conversely, a significant decline in these applications followed the easing of overcrowding issues, with a dramatic drop observed after 2016, when political leadership favouring so-called "penal populism" took charge of the penitentiary system.

This shift suggests that both the lack of pressing overcrowding issues and the political atmosphere may influence not only penitentiary administrations but also the courts responsible for conditional early release decisions.

[34] Poland, Circuit Court, Jelenia Góra, IV Kow 701/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 615/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 601/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 603/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 631/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 595/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 593/16, 30.06.2016; Poland, Circuit Court, Jelenia Góra, IV Kow 557/16, 30.06.2016.
[35] Poland, Circuit Court, Słupsk, III Kow 1674/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1787/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1644/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1769/15, 3.12.2015; Poland, Circuit Court, Słupsk, III Kow 1858/15, 3.12.2015.

Both Prison Service interviewees have observed that the Service's policy on filing applications for conditional release is strongly influenced by political factors. They recalled a dramatic shift following a change of political leadership. According to one, this has required a complete rethinking of the Prison Service's philosophy, positioning conditional release as an instrument of correctional practice and a means of influencing prisoners. Another interviewee, however, stressed that the Service tends to swing from one extreme to the other—from a restrictive policy aimed at minimising applications for parole, to one in which staff are expected to submit them frequently.

> "We swing from one extreme to the other: from a situation where conditional release was heavily restricted, to one where there is pressure to apply for it frequently."[36]

> "We have moved away from statements emphasising that prison is not a sanatorium and that sentences must be served to the very end."[37]

> "As a prison service we now place strong emphasis on treating conditional release as another method of influencing prisoners. This also requires a shift in awareness within the Prison Service itself."[38]

A Prison Service officer pointed out that the approval rate for applications for conditional release varies significantly across regions, which directly affects prisoners' chances of obtaining parole. He emphasised that these differences are substantial, amounting in some cases to several hundred conditional releases between prisons with comparable populations. Such variation is also visible in applications submitted directly by prisoners and their defence lawyers, with acceptance rates ranging from as low as 6 per cent to as high as 30 per cent depending on the institution.

> "Acceptance rates for applications vary across judicial appeals. As a result, a prisoner who is refused conditional release in one appellate jurisdiction might be granted it in another."[39]

A defence lawyer likewise observed that criminal policy shapes the practice of conditional release, both through formal legislative changes and through the broader political rhetoric centred on "tougher penalties." She stressed that, although judges are formally independent, the prevailing climate inevitably affects how decisions are approached.

Additionally, the likelihood of penitentiary administrations and courts granting conditional early release may also be influenced by media coverage of cases where individuals on conditional release commit serious crimes. In recent years, such incidents—whether involving Polish or foreign convicts—have received extensive attention in the Polish media. This widespread reporting can create heightened scrutiny and may impact the willingness of authorities to approve conditional release applications[40].

As one of the interviewed defence lawyer noted, isolated high-profile cases tend to distort the broader perception of conditional release. She added that, despite the recurring intensity of

[36] Prison Officer 2.
[37] Prison Officer 1.
[38] Prison Officer 1.
[39] Prison Officer 1.
[40] Krajewski K., O wpływie ustawodawstwa karnego na politykę karną, Archiwum Kryminologii, 2019, no. 2, p. 41-80.

media reactions, there is no sustained or informed public debate that would help place these incidents in a proper legal and statistical context.

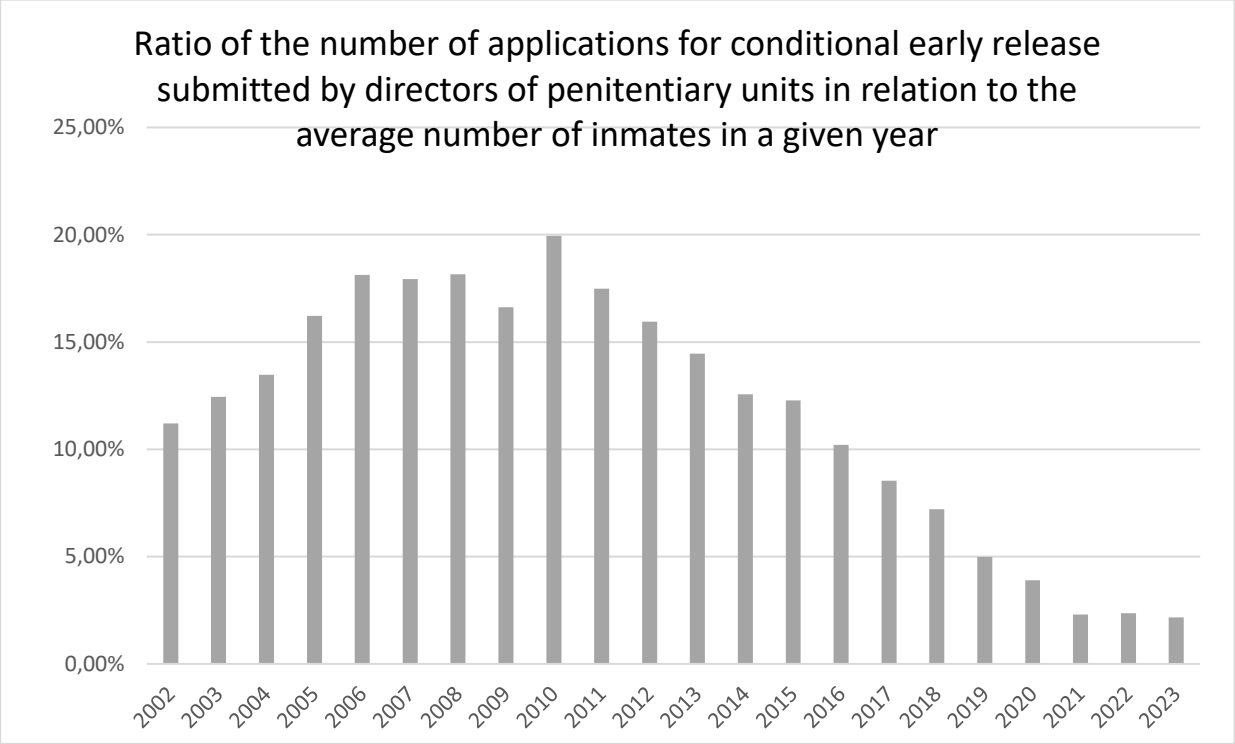

Table I: Ratio of the number of applications for conditional early release submitted by directors of penitentiary units in relation to the average number of inmates

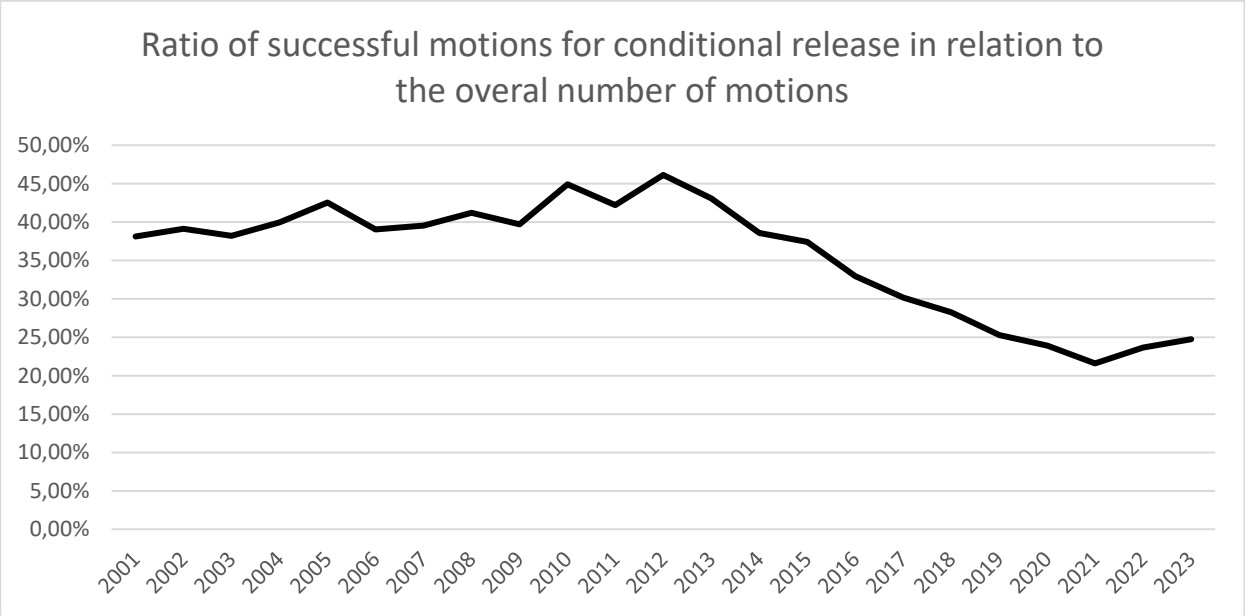

Table II: Ratio of successful motions for conditional release in relation to the overall number of motions

The use of conditional release as a strategy to reduce prison overcrowding has also been supported by international bodies. Significant impetus came from European Court of Human Rights rulings in *Norbert Sikorski v. Poland*[41] and *Orchowski v. Poland*[42], where the ECtHR identified overcrowding in Polish prisons as a systemic issue. In its response, the Polish Government cited data on the number of conditionally released inmates and the use

[41] ECtHR, Norbert Sikorski v. Poland, 17599/05, 22.10.2009.
[42] ECtHR, Orchowski v. Poland, 17885/04, 22.10.2009.

of electronic monitoring as part of its efforts to implement these rulings. The Committee for the Prevention of Torture also urged[43] Polish authorities to intensify efforts against overcrowding, recommending adherence to the Council of Europe's guidelines on prison population reduction and conditional release (Rec (99) 22 and Rec (2003) 22).

During the COVID-19 pandemic, sentence interruptions and electronic monitoring were further utilised to manage the prison population. Episodic provisions were introduced to relax the criteria for obtaining sentence interruptions, allowing them during the pandemic even without special circumstances involving the convict or their family, provided a positive criminological prognosis was established. Courts could extend these interruptions for additional periods. The maximum sentence duration eligible for electronic surveillance was also temporarily increased, enabling more inmates to serve their sentences outside prison facilities.[44]

5.3. Health Condition and Conditional Release

According to one penitentiary judge, health conditions are an important factor in decisions on conditional release. In her view, ill or elderly prisoners have greater prospects of obtaining early release, as age- or health-related limitations automatically reduce the risk of reoffending. This, in turn, encourages courts to apply conditional release in such cases.

She observed that penitentiary judges sometimes even suggest to the Prison Service that it apply for conditional release on behalf of sick or elderly prisoners, rather than requesting temporary suspension of the sentence. Conditional release is often preferred in such circumstances because suspension requires cyclical extensions, whereas early release provides a more stable and final solution. For this reason, in cases of serious illness, courts are frequently more inclined to grant conditional release than to order suspension.

By contrast, a defence lawyer recalled a widely publicised case involving a life-sentenced prisoner convicted of a politically motivated homicide. Enforcement proceedings in his case were suspended owing to mental illness and progressive dementia, confirmed by expert opinions. Nevertheless, the decision provoked strong public opposition, reflecting society's reluctance to accept the release of offenders convicted of serious crimes, regardless of their deteriorating health.

> "Age and health limitations mean that some people are simply not physically capable of committing further offences."[45]
>
> "The release of a prisoner serving a life sentence, and the negative social reaction it provoked, illustrates that we are not yet able to have a conversation about situations where continued imprisonment ceases to be a humane form of punishment."[46]

[43] Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 15 October 2004.
[44] Rojek-Socha P., Coronavirus will increase electronic surveillance - MoJ proposes changes, prawo.pl.
[45] Penitentiary Judge 2.
[46] Attorney 2.

5.4. Security Measures

The Code of Execution of Criminal Sentences provides for the possibility of placing the offender under the supervision of a probation officer, a trusted person, or an association, organisation, or institution engaged in education, the prevention of demoralisation, or the assistance of offenders. In practice, however, this probationary measure is applied almost universally. Research conducted by the Institute of Justice shows that supervision was ordered in 98.8% of cases.

Other probationary measures—including those more directly linked to security, such as restraining orders, bans on contact, or prohibitions on entering specified places—are imposed far less frequently. Their application depends largely on the individual offender and the nature of the crime committed.

A representative of the bar stressed the need to make stronger use of new technologies in controlling conditional release. In her view, the Ministry of Justice should expand the use of electronic monitoring, which under the current legal framework cannot be employed for this purpose.

> "What surprises me about the Ministry is that whenever they raise penalties, they never stop to think how existing or new tools could be used to achieve the same, or even better, results in terms of control over potential offenders."[47]

> "The way in which probation supervision is carried out differs greatly depending on the individual probation officer."[48]

VI. Risk-based approaches in accessing sentence adjustment

6.1. Definition of Risk in National Legislation

In the context of conditional early release, the decisive consideration for both prison authorities and penitentiary courts is whether the offender is likely to commit a further criminal act. Consequently, these bodies adopt a restrictive interpretation of the notion of "compliance with the legal order" as set out in the Polish Criminal Code.[49]

> "It is not only the Prison Service that shapes conditional release policy. Much also depends on the circuit courts."[50]

[47] Attorney 2.
[48] Representative of academia and CSOs.
[49] Poland, Criminal Code (Kodeks karny), consolidated text, Journal of Laws 2025, item 383, 6 June 1997.
[50] Prison Officer 1.

> "We look at who can provide assurances that they will not return to crime."[51]

> "When applying to the court for parole, the key consideration is who can provide assurances that they will not re-offend."[52]

Judicial practice indicates that the assessment is directed primarily towards the risk of reoffending. Minor infringements of the law or involvement in neighbourhood disputes are generally of limited significance, unless they occur persistently or reveal a systematic pattern.

Both the literature[53] and case law[54] emphasise that such assessments are prognostic in nature and inevitably involve a degree of uncertainty. The aim is to reduce the risk of reoffending to an acceptable level—one that keeps the likelihood of further offences within reasonably predictable limits, while at the same time preserving the rehabilitative objectives of the penal system.[55]

> "The majority of prisoners serve their sentences in full, because the entirety of their lives and their extensive criminal records leave little chance of not reoffending."[56]

Over the past twenty years, the legal understanding of the risk of reoffending has not undergone any substantial modification. The only significant controversy in judicial decisions concerned whether, when assessing the justification for conditional early release, courts should also be guided by the general sentencing directives. These directives include, inter alia, the degree of social harm caused by the offence, the need to satisfy the sense of social justice, and the importance of shaping society's legal awareness (general prevention).

Two conflicting approaches emerged in the case law. Ultimately, however, the matter was resolved by a resolution of the Supreme Court, which held that sentencing directives must not be taken into account when evaluating applications for conditional release.[57]

While a wide range of factors is taken into consideration in practice, the central criterion remains the likelihood of the offender committing another offence in the future. Other circumstances are assessed only insofar as they contribute to forming a comprehensive picture of the offender in this respect.

> "The legal framework governing conditional release relies on broad general clauses, deliberately left open-ended so that courts may exercise discretion in giving them substantive content. This design reflects the intention not to unduly restrict judicial evaluation."[58]

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[51] Prison Officer 2.
[52] Prison Officer 1.
[53] Goniewicz, G. (2017), 'Positive criminological prognosis as a premise for the application of probationary measures', *Czasopismo Prawa Karnego i Nauk Penalnych*, Vol. XXI, No. 4.
[54] Poland, Court of Appeal in Wrocław, Decision of 15 October 2012, II AKzw 1433/12, *Orzecznictwo Sądu Apelacyjnego we Wrocławiu* (OSAW), 2014, No. 2, item 317.
[55] Poland, Court of Appeal in Wrocław, Decision of 15 October 2012, II AKzw 1433/12, *Orzecznictwo Sądu Apelacyjnego we Wrocławiu* (OSAW), 2014, No. 2, item 317.
[56] Prison Officer 2.
[57] Poland, Supreme Court (7 judges), Resolution of 26 April 2017, I KZP 2/17, *Orzecznictwo Sądu Najwyższego. Izba Karna i Wojskowa* (OSNKW), 2017, No. 6, item 32.
[58] Attorney 1.

6.2. Assessment Framework for Risk

The assessment of dangerousness, understood as the risk of reoffending, is based on a combination of behavioural, social, and institutional factors. Courts and prison administrations evaluate the offender's conduct during imprisonment—including disciplinary records, participation in work or educational activities, and responses to temporary release—as well as their personal and family circumstances, social reintegration prospects, and future plans.

> "If someone has previously been granted parole, reoffended, and is classified as a multiple recidivist, in practice they have no chance of obtaining conditional release."[59]

Expert opinions, particularly psychiatric or psychological assessments, and in sexual offence cases, mandatory sexological evaluations, may also prove decisive. In principle, the evaluation does not rely on a single criterion but on a broad, multi-source evidentiary framework aimed at determining whether the offender can be expected to comply with the law once released.

In practice, however, the assessment of risk does not follow a uniform pattern but depends on the offender's legal and procedural situation. In particular, courts distinguish between individuals seeking conditional release after long-term pre-trial detention and those applying while serving a prison sentence. This distinction influences both the evidentiary basis and the reliability of the information available.

Respondents also noted practical differences between convicted persons who became eligible for conditional release owing to time spent in pre-trial detention, and those who acquired eligibility after serving part of their sentence. The former group, once released from pre-trial detention, often remained at liberty until their final conviction.

In such cases, the period spent in detention, credited towards their sentence, may exceed the statutory minimum required for conditional release. At the same time, these offenders had an opportunity to demonstrate how they functioned in freedom: whether they complied with the law, and whether the experience of detention had acted as a meaningful deterrent.

> "A person who applies for conditional release while living at liberty may already have worked on himself and may already have shown how, after a long period of pre-trial detention, he functions in freedom. What kind of lesson was it for him? What lesson did he take away from it? Has he returned to the right path?"[60]

By contrast, offenders serving prison sentences are in a different position. According to one penitentiary judge, their capacity to comply with the law and avoid further offending is tested

[59] Prison Officer 2.
[60] Penitentiary Judge 1.

only occasionally; for example, when they are granted temporary release or permitted to work outside the prison without an escort.

> “Persons serving prison sentences have a harder time. They are tested in conditions of freedom only incidentally—working without an escort or using temporary release. Such testing is less reliable.”[61]

This differentiation also shapes the evidentiary material available to courts. For former long-term pre-trial detainees who subsequently lived at liberty, decisive weight is attached to the offender’s statements and to information concerning personal circumstances, employment, and family situation obtained from probation reports. These reports incorporate input from family members, neighbours, and the offender himself, and enable verification of the account he provides.

> “The probation officer conducting the social inquiry allows us to enter that home for a moment, to see how it looks from the inside.”[62]

For offenders still incarcerated at the time of applying, the key source of information is the opinion prepared by the prison administration. Since 2024, this has been produced within the framework of the Advanced Risk of Recidivism Assessment System (PSORR), discussed later in this study.

> “I appreciate that someone has genuinely started to examine what influences recidivism. It is a step towards ensuring that criminological and social opinions are not written without any real foundation.”[63]

Another important source is the offender’s own statements, which are cross-checked against PSORR findings. Courts attach particular importance to post-release plans, assessing whether they are realistic or merely aspirational. Employment opportunities are regarded as especially significant.

> “Employment is the first indicator that the offender will not commit further crimes, because he will have a source of livelihood. Work provides something essential in life. It also takes away time—he won’t have time for foolishness.”[64]

At the same time, certain factors may be given disproportionate weight.

> “Having a place to live or a job offer often becomes the decisive factor, though it should not be.”[65]

Courts also consider the social environment to which the offender will return, particularly whether it is conducive to continued rehabilitation or, conversely, likely to encourage

[61] Penitentiary Judge 1.
[62] Penitentiary Judge 1.
[63] Academic and CSO.
[64] Penitentiary Judge 1.
[65] Attorney 1.

regression into criminal behaviour. One judge stressed that the family situation is crucial, especially the family's ability to provide motivation to change.

A lawyer interviewed expressed a similar view, emphasising the importance of secure housing. She noted, however, that the justice system's concern for the offender's material and social stability ends with the conditional release decision. For offenders released after serving a full custodial sentence, such considerations are disregarded and support is minimal.

> "There are offenders who, at the age of forty, declare that they have matured and will not commit crimes again, because they have met a partner, started a family, and have a child."[66]

Health conditions may also play a role. According to the interviewed judge, poor health may render an offender physically incapable of committing certain offences.

> "The range of elements subject to judicial assessment is very broad."[67]

Both a lawyer and a penitentiary judge observed that courts increasingly pay attention to whether offenders attempt to compensate victims, for example by paying damages or other financial obligations. Yet, as one judge noted, many offenders are unaware that this factor is taken into account. The lawyer further stressed the unfairness of criticising non-payment when offenders were not given employment opportunities in prison.

> "Courts have increasingly started paying attention to whether the offender has paid fines and complied with compensation orders. That is generally a proper step."[68]

Another significant factor is whether the offender admits guilt and expresses remorse. A penitentiary judge reported cases where release was denied due to refusal to accept responsibility. She added, however, that under existing law this should not formally determine the outcome of the proceedings. She also noted that ostentatiously asserting innocence before a penitentiary court—which does not review the conviction itself—is a poor tactical choice.

The nature of the offence is also decisive. Particular weight is attached to the legal classification of the act attributed to the convicted person; offenders who have committed crimes involving violence have a reduced likelihood of being granted early release. Moreover, respondents observed that those convicted of sexual offences or homicide face significantly greater obstacles.

> "A prisoner convicted of failing to pay child maintenance has a greater chance of release on parole than one convicted of robbery or violent crime—though even in the first case this is not a rule. If someone repeatedly fails to pay, their parole application may also be refused."[69]

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[66] Penitentiary Judge 1.
[67] Penitentiary Judge 1.
[68] Attorney 2.
[69] Prison Officer 2.

In sexual offence cases, a sexological opinion is obligatory. In homicide cases, courts focus on whether the act was committed in a sudden emotional outburst or in a cruel, premeditated manner. This approach was criticised by a representative of the CSO sector, who argued that it undermines the very purpose of rehabilitation activities for prisoners.

> "Perpetrators of sexual offences, murderers, and those who do not admit their guilt are categories of offenders for whom it is very difficult to obtain conditional release. Their chances are minimal."[70]

> "In cases of sexual offences, we appoint an expert to assess the reasons why the offender committed the crime and to determine whether he is likely to reoffend if favourable circumstances arise."[71]

> "Penitentiary work with prisoners makes little sense if the algorithm always classifies them as high risk of recidivism due, for example, to the nature of the offence they committed."[72]

Similar considerations apply in domestic violence cases, where the court additionally examines whether the offender will return to the family home and how the family perceives his return.

Guidelines and trainings

There are no official guidelines on how particular behavioural factors should be assessed, and much depends on judicial discretion. One judge explained that judges occasionally hold professional meetings to discuss practical issues, but noted the absence of specialised training programmes for penitentiary courts.

Hearings

Hearings may take place either in prisons or in court buildings. In the latter case, offenders participate via videoconference from a separate room. Whether a case is heard remotely or in person depends entirely on the presiding judge: some insist on holding all hearings inside prisons, while others adopt a more pragmatic approach and conduct them remotely in order to avoid time spent travelling to distant institutions.

The conduct of these hearings may also raise concerns regarding equality of arms. When proceedings concern an imprisoned offender and are held remotely, the defence lawyer is required to participate from the prison. One penitentiary judge observed that this arrangement is not fully functional, as lawyers cannot, for example, present documentary evidence to the court immediately. Her court therefore adopted an unwritten practice allowing lawyers to attend in person at the court's location, provided the prisoner consents. However, this practice is applied inconsistently across Poland. By contrast, prosecutors always retain the right to request remote participation.

6.3. Risk Assessment Tools

[70] Attorney 1.
[71] Penitentiary Judge 1.
[72] Academic and CSO.

Since 2024, Poland has operated the Advanced Risk of Recidivism Assessment System (PSORR), developed within a project financed by the Norwegian Funds. The tool was designed by Prison Service officers and, according to its authors, consulted with representatives of academia[73]. Initially, the creators intended to transplant solutions used in other countries into the Polish context, but this proved impossible. In the view of a Prison Service representative, none of the available tools were suitable for Polish conditions, due both to the expectations of the Prison Service and to cultural differences. As a result, a working group within the Central Board of the Prison Service was established to develop the system.

PSORR is actuarial in nature: it produces percentage scores and provides separate outputs for static factors, dynamic factors, and aggressive-behaviour tendencies. Dynamic factors are further broken down into several subscales. There is no indication that PSORR constitutes a structured professional judgement (SPJ) tool; its operation is rule- and weight-based rather than narrative-clinical. While respondents sometimes describe it as an "algorithm," no independent AI model is disclosed.

> "This is a classic algorithm producing percentages of recidivism that will be decisive for the court."[74]

Scope and Timing

All prisoners serving at least three months are subject to assessment. The first assessment takes place within three months of commencing the sentence, initiated by the case officer responsible for rehabilitation. The analysis is repeated when the prisoner becomes eligible for conditional release, reward leave, permission to leave the facility, or work/study outside without escort.

Data Sources and Workflow

PSORR is linked to the Central Database of Persons Deprived of Liberty, from which it automatically retrieves available records. Supplementary information must be gathered from other sources accessible to the Prison Service. Data entry is distributed across three staff members, each within their area of competence: the case officer, the prison psychologist, and a security officer.

Each respondent completing the questionnaire may add free-text notes relevant to the case. Once the questionnaire is finalised, the educator may supplement the forecast with an assessment of the prisoner's degree of demoralisation (based on all available documentation) and indicate whether the overall prognosis is positive or negative (for the initial assessment, the prognosis remains undetermined). The record must be updated whenever trust is abused during leave, or when behavioural, family, or legal-status changes occur. One interviewee, however, expressed concern that prison staff may not have sufficient time to enter data into the PSORR system reliably.

[73] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.
[74] Attorney 1

> "The most important problem for me related to PSORR is the concern over whether prison staff will have the time to enter data into the system reliably."[75]

Rationale for Introduction

The declared objectives were to improve the quality of prognostic analysis, standardise practice, enhance the accuracy of risk estimation, and provide staff training support.[76]

> "PSORR was developed because we believed that criminological and social prognoses were too subjective and depended too heavily on the judgement of a single officer, most often the educator."[77]

> "Until now, criminological and social opinions were prepared by reviewing case files and the database of persons deprived of liberty. A concrete tool was lacking."[78]

According to its authors, PSORR was intended to address recurring problems: subjective conclusions in criminological-social opinions, the lack of a uniform methodology for questioning and information gathering, the absence of a common assessment standard, and divergent evaluations of identical behaviours.[79]

> "The way opinions were prepared also depended on who drafted them. Some did so more diligently, while others less so, basing their work only on one-sentence references to individual circumstances."[80]

It was also designed to improve decision-making in relation to conditional release, temporary leave, and substitution of imprisonment with electronic monitoring.

An interview with a Prison Service representative confirmed this perspective. He stressed the need to objectify the assessments prepared when drafting criminological and social prognoses. It was not uncommon, he explained, for two different officers to produce drastically different evaluations of the same person within a short period of time. The results also depended heavily on the diligence of the officer preparing the assessment, and ultimately, even when working from the same case, staff could still reach divergent conclusions.

> "PSORR was created in response to the lack of any coherent policy on granting conditional release."[81]

> "PSORR was also intended to make the work of prison educators easier, as

[75] Representative of academia and CSOs.
[76] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.
[77] Prison Officer 1.
[78] Prison Officer 1.
[79] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.
[80] Prison Officer 1.
[81] Representative of academia and CSOs.

they were responsible for dozens of convicted persons and had no chance of getting to know them fully."[82]

Design and Outputs

According to its developers, the tool was modelled on comparable systems used in other jurisdictions, notably the Czech Republic. However, it is largely an original solution, devised by specialists from the Penitentiary Bureau of the Central Board of the Prison Service. It examines approximately 400 items relevant to the risk of recidivism.

- **Static factors** (unchangeable circumstances) include, inter alia: dysfunctional family background; serious upbringing problems; placement in youth institutions; early conflict with the law; prior imprisonment; high social harmfulness of previous offences; difficulty complying with prison internal order; and prior abuse of trust during imprisonment.
- **Aggression-tendency scale**: a separate dimension capturing a sustained readiness to respond with disproportionate aggression. It considers both the nature of committed offences and aggressive behaviours or intentions displayed during imprisonment.
- **Dynamic factors**, divided into subscales, cover: environmental conditions, financial resources, mental health, sexual-sphere disorders, family relations and support networks, behaviours and corrective interventions, as well as education and employment.

  "The system assesses 400 variables entered by staff working with prisoners—educators, psychologists, and security officers. Previously, we assessed around 15 variables."[83]

Below is a description of sample circumstances influencing the result recorded on individual scale concerning dynamic factors.

Domain	Risk Factors
Environmental conditions	• Lack of stable housing • Insufficient material resources on release • Risk of returning to criminogenic milieus • Identification with criminal subculture • Lack of support from close persons • Socialisation within certain subcultures
Finances	• Insufficient means to function at liberty • Unpaid debts • Lack of a realistic five-year debt-repayment plan
Mental health	• Substance dependence • Lack of effective addiction treatment • Lack of motivation to remain sober • Diagnosed mental disorders • High risk of sexual offending Note: This scale exists in two versions—a basic version for all prisoners and an in-depth version applied only to those in specialised

[82] Ibid.
[83] Prison Officer 1.

Domain	Risk Factors
	therapeutic units due to diagnosed paraphilic disorders, reflecting (per the authors) the need for closer scrutiny of this subgroup.
Family relations	• Lack of interest from close persons who could aid readaptation • Instrumental or superficial family contacts • Antisocial support networks • Propensity for violence towards family members • Lack of supportive relationships
Behaviour & corrective work	• Identified behavioural deficits • Need for readaptive interventions • Refusal to cooperate in developing prosocial attitudes • Negative attitudes towards self and others • Uncritical stance towards past crimes and lifestyle
Education & employment	• Low level of education • Lack of motivation to improve skills • Avoidance of lawful employment • Difficulty complying with workplace rules • Negative attitude towards work

Question Format and Weighting

The precise item banks for the educator, psychologist, and security officer are not publicly available. The available materials indicate the use of closed yes/no questions, for example: “Is the environment the offender will return to criminogenic?” or “Does the offender have a real support network?” Such items may be difficult to interpret, and precise answers are often problematic. Responses are weighted according to their prognostic value for recidivism risk. A Prison Service representative was unable to specify what determined the inclusion of particular items in the PSORR analysis, or how these elements were weighted in the final outcome of the assessment.

Scoring and Presentation

The final output consists of a percentage score on each of the static, dynamic, and aggression-tendency scales, supplemented by a textual summary listing salient risk-relevant information by factor. Results are presented within a 20–100% range (never lower than 20%), reflecting the developers’ assumption that some degree of risk is always present.

The report is incorporated into the prisoner’s criminological-social prognosis, which sets out personal data, the proportion of the sentence served, and the date of eligibility for conditional release. It also includes a timeline of previous imprisonments and PSORR charts relating to static, dynamic, and aggression-related factors. The prognosis specifies the factors considered in the PSORR analysis and provides a detailed justification for the positive or negative assessment recorded in the document.

Differentiation by Profile

PSORR applies uniformly to all prisoners meeting the time threshold. Differentiation arises primarily through the specialised mental-health subscale for prisoners in therapeutic units for sexual-preference disorders, as well as through the aggression-tendency scale. In practice, however, respondents reported that the type of offence (e.g. sexual offences, homicide) heavily influences outcomes and subsequent judicial decisions.

Algorithmic Character and Safeguards

Interviewees described the system as algorithmic, operating on fixed rules and weights. There is no public evidence of machine-learning or AI components, nor of published validation safeguards.

According to its authors[84], full validation has not yet been conducted; the solution remains pilot in character and requires additional time and large-scale data analysis. They themselves caution against over-reliance on the results. In their view, factor weights require verification in longitudinal studies; blind faith in statistical outputs should be avoided; and scores must be considered in light of protective resources available both to the individual offender and to society.

> "PSORR is modelled on foreign solutions; however, I am concerned that the significance attributed to particular circumstances in increasing the risk of recidivism is not scientifically grounded."[85]

Transparency and Access

Judges, defence counsel, and prisoners do not have access to the underlying item-level data on which PSORR outputs are based—only to the final scores and accompanying opinion. The penitentiary judge noted that she lacks access to the raw material underpinning the PSORR score within the criminological-social prognosis, as well as to other Prison Service data potentially relevant to conditional-release decisions.

Defence lawyers likewise emphasised non-transparency: they are unaware of the detailed items or their relative weightings. This prevents them from verifying whether outputs reflect case realities and, in their view, creates scope for manipulation—for example, deliberate score inflation in the context of conflicts between staff and prisoners.

On the other hand, a Prison Service officer questioned the competence of defence lawyers to verify assessments carried out by staff who are formally trained in pedagogy and psychology.

> "A defence lawyer representing a client cannot access this tool. It is a working instrument for prison staff. The court and the parties are only provided with its final result."[86]

> "I do not believe that a defence lawyer is entitled to verify the competence of staff who hold higher education degrees in pedagogy and psychology and are trained to work with prisoners."[87]

> "Courts should have access to all the material available to the prison administration."[88]

> "The court does not know where the elements influencing the percentage result come from."[89]

Critiques and Potential Biases

[84] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.
[85] Representative of academia and CSOs.
[86] Prison Officer 1.
[87] Prison Officer 1.
[88] Representative of academia and CSOs.
[89] Attorney 1.

Prison Service representatives acknowledged that PSORR is not a perfect tool and is still affected by various teething problems, though they were reluctant to provide specific examples. One interviewee pointed to the system's lack of refinement and concerns over the transparency of the criteria applied. He noted that some penitentiary judges do not accept the tool in its current form, considering a chart alone insufficient for a proper assessment. He further underlined that such criticism has even taken an official form, being explicitly recorded in the reasoning of judicial decisions.

> "This tool is certainly not perfect."[90]

> "This tool is the beginning of something better. It is good that it was created, but it is unfinished."[91]

The same interviewee added that PSORR was originally intended as a support tool for Prison Service staff, yet in practice it has been given significant weight. From the perspective of a prison director applying for conditional release, it may be unclear which specific elements contributed to a given score. At the same time, neither the director nor the court has the ability to access the system and review the individual criteria on which the assessment is based.

> "Prison management should know which elements determined the shape of the prognosis."[92]

Defence representatives criticised PSORR for distorting the assessment of offenders, particularly by elevating risk for indigent prisoners on the assumption that lack of financial resources predisposes to offending—even where the index offence was not economically motivated. One lawyer described a socially engaged, otherwise promising client denied conditional release because the algorithm produced a high-risk score contrary to the factual context.

> "During the public debate on PSORR, doubts arose about the fact that the risk of recidivism was considered higher due to the financial situation of the convicted person. Yet the majority of prisoners fall into this category."[93]

Another concern was that certain categories of offender (e.g. those convicted of homicide) are in practice almost excluded from favourable outcomes, since their algorithmic risk "always comes out high," undermining rehabilitative objectives. This reservation, however, was met with a critical response from a representative of the prison administration, who pointed out that the criteria taken into account by PSORR cannot be treated as losses or gains for the convicted person. PSORR serves to assess the risk of reoffending, and that risk may, in certain circumstances, increase.

> "We cannot treat PSORR results as a loss or a gain for the prisoner. It is meant to assess the risk of recidivism. I find it difficult to agree with the claim that if someone leaves a penitentiary without work or means of subsistence, their risk of reoffending does not increase."[94]

More broadly, the introduction of PSORR into the Polish legal system raises legal concerns. There is no explicit statutory basis for preparing a criminological-social prognosis by means of such a tool. Under the Regulation of the Minister of Justice, the prognosis must contain an analysis of a range of factors, including: the family environment; personality traits (with

[90] Prison Officer 1.
[91] Prison Officer 2.
[92] Prison Officer 2.
[93] Representative of academia and CSOs.
[94] Prison officer 1.

particular attention to self-discipline and propensity for violence); alcohol- or drug-related problems; past treatment and motivation to remain abstinent; the offender's trajectory of social derailment and degree of demoralisation; the nature of the offence; behaviour during previous imprisonments (with special regard to use of temporary leave); and the environment in which the offender will reside during leave.

The regulation explicitly requires an analysis, whereas PSORR provides primarily a percentage-based diagram, which cannot in itself constitute such an analysis. This raises the risk that penitentiary courts may rely more heavily on the diagrammatic output than on the substantive reasoning contained in the written assessment.

6.4. Transparency, Evidence, and Decision-Making in Risk-Based Assessments

The risk-assessment tool employed by the Polish Prison Service raises serious concerns regarding transparency. The precise set of circumstances considered in the analysis is not publicly disclosed, nor is information available on how individual factors are weighted in calculating the recidivism score. This makes it impossible to verify whether the selected variables and their assigned weights are scientifically grounded and based on empirical evidence, or whether they were determined arbitrarily—an outcome that would undermine the tool's value as a reliable assessment instrument.

> "PSORR may become an excellent tool for blocking any conditional releases."[95]

According to the report prepared by the tool's creators, its design was consulted with academics from three universities. The weighting of individual factors was reportedly carried out "on the basis of indications from competent judges."[96] However, no details are provided as to which judges, or how many, were involved in this process.

Equally troubling are the statements of PSORR's authors themselves, who underline its pilot character, the need for future evaluation, and the likelihood of adjustments[97]. According to a Prison Service representative, the Service plans to carry out an evaluation of the tool using funds from the forthcoming Norwegian Financial Mechanism budget, and intends that this be conducted by an external body.

Furthermore, the authors of PSORR also stress the limited role of the system and the importance of critically interpreting its results. As they explicitly caution:

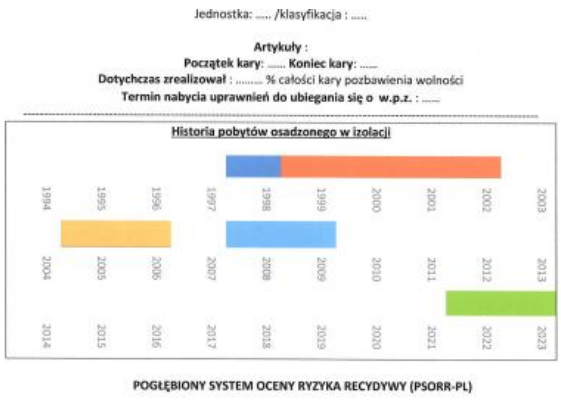
> "Given the need to initiate further research on the tool in connection with the

[95] Representative of academia and CSOs.
[96] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.
[97] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.

evaluation of its assumptions, when using PSORR, one cannot rely solely on the final results obtained through it. According to the authors' intention, the results should be used as one source of information about the offender, providing an important contribution to the criminological-social prognosis being prepared." [98]

These caveats, however, stand in contrast to the actual role the system has acquired in Polish penitentiary practice. In reality, PSORR output forms the central and most prominent element of the criminological-social prognosis submitted to the penitentiary court.

The results are presented as a percentage score, accompanied by a second chart illustrating dynamic factors and a point-form list of the risk factors that shaped the outcome. In addition, the criminological-social prognosis must state the overall direction of the prognosis—positive or negative—together with reasoning. It also contains space for optional remarks from the psychologist and the educator and must specify the prisoner's degree of demoralisation, categorised as low, moderate, or high.


Jednostka: ..... /klasyfikacja : .....

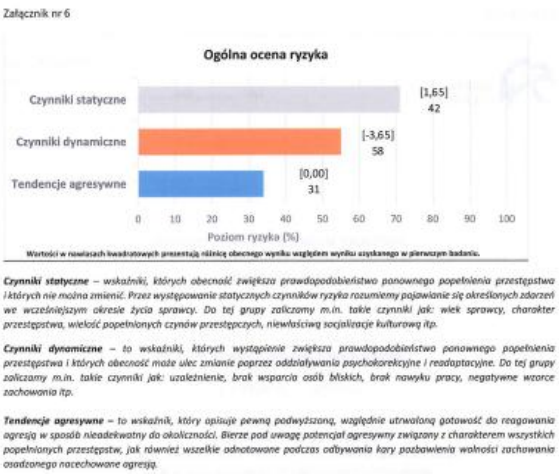
Artykuły :
Początek kary: ..... Koniec kary: .....
Dotychczas zrealizował : ..... % całości kary pozbawienia wolności
Termin nabycia uprawnień do ubiegania się o w.p.z. : .....

Historia pobytów osadzonego w izolacji

1994 1995 1996 1997 1998 1999 2000 2001 2002 2003
2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
2014 2015 2016 2017 2018 2019 2020 2021 2022 2023

POGŁĘBIONY SYSTEM OCENY RYZYKA RECYDYWY (PSORR-PL)

PEN0071
Strona 1 z 3


Załącznik nr 6

Ogólna ocena ryzyka

Czynniki statyczne [1,65] 42
Czynniki dynamiczne [-3,65] 58
Tendencje agresywne [0,00] 31

0 10 20 30 40 50 60 70 80 90 100
Poziom ryzyka (%)

Wartości w nawiasach kwadratowych prezentują różnicę obecnego wyniku względem wyniku uzyskanego w pierwszym badaniu.

Czynniki statyczne – wskaźniki, których obecność zwiększa prawdopodobieństwo ponownego popełnienia przestępstwa i których nie można zmienić. Przez występowanie statycznych czynników ryzyka rozumiemy pojawianie się określonych zdarzeń we wcześniejszym okresie życia sprawcy. Do tej grupy zaliczamy m.in. takie czynniki jak: wiek sprawcy, charakter przestępstwa, wielość popełnionych czynów przestępczych, niewłaściwą socjalizację kulturową itp.

Czynniki dynamiczne – to wskaźniki, których wystąpienie zwiększa prawdopodobieństwo ponownego popełnienia przestępstwa i których obecność może ulec zmianie poprzez oddziaływania psychokorekcyjne i readaptacyjne. Do tej grupy zaliczamy m.in. takie czynniki jak: uzależnienie, brak wsparcia osób bliskich, brak nawyku pracy, negatywne wzorce zachowania itp.

Tendencje agresywne – to wskaźnik, który opisuje pewną podwyższoną, względnie utrwaloną gotowość do reagowania agresją w sposób nieadekwatny do okoliczności. Bierze pod uwagę potencjał agresywny związany z charakterem wszystkich popełnionych przestępstw, jak również wszelkie odnotowane podczas odbywania kary pozbawienia wolności zachowania osadzonego nacechowane agresją.

[98] Lizińczyk, S., Bojda, G., Podolak, E., Kapała, A. and Bijok, J. (2024), *In-depth Recidivism Risk Assessment System PSORR-PL – A Guide for Prison Service Officers and Staff*, Warsaw, Akademia Wymiaru Sprawiedliwości.

Illustration 1: Sample criminological-social prognosis. The sample prognosis contains graphs showing periods of imprisonment and the overall risk assessment, expressed through coefficients for static factors, dynamic factors, and aggressive-behaviour tendencies.

Evidentiary Practice and Court Access

The court may request the prison administration to provide additional information about the prisoner. As one penitentiary judge explained, judges sometimes request such information directly during hearings, instructing the administration to check specific data in the Central Database of Persons Deprived of Liberty. She noted that she would prefer to have direct access to the database from her workplace, as this would facilitate preparation and analysis of cases. Despite repeated requests from penitentiary judges over many years, such access has not been granted.

The current arrangement also limits the time courts can devote to each case. Typically, around fifteen minutes are scheduled per case, and requests for additional information consume time allocated to other matters.

In principle, the court may also take other forms of evidence: it can hear witnesses, examine documents, or appoint experts. In practice, however, the last option is rarely used outside sexual offence cases. A representative of the bar observed that judges generally regard penitentiary opinions as clear and consistent, thus seeing little need to commission further opinions. A penitentiary judge expressed a similar view, noting that, apart from sexologists, she saw little scope for appointing other experts in such proceedings.

A defence lawyer stressed that the initiative in producing evidence lies largely with the defence, which must build an evidentiary case strong enough to persuade the court to grant release.

Non-binding Nature of Prognosis

The conclusions of the criminological-social prognosis are not legally binding on penitentiary courts. A court may disregard the prison administration's assessment entirely. According to Prison Service statistics, however, in 2024 applications for conditional release submitted by prison directors (all of which contained a positive prognosis) had a success rate of 99.96%. Out of 6,396 such applications, only 201 were rejected[99]. A lawyer noted that these applications typically concerned short-term prisoners.

By contrast, applications submitted directly by prisoners or their defence counsel—often accompanied by mixed or negative prognoses—succeeded in only 17.5% of cases[100].

> "What really matters is the opinion the court receives from the prison administration. The rule is that when the opinion is positive the court will have the same approach to the case."[101]

[99] Central Board of the Prison Service (Ministerstwo Sprawiedliwości, Centralny Zarząd Służby Więziennej) (2024), Annual Statistical Report 2024, Warsaw, Ministry of Justice / Central Board of the Prison Service.
[100] Central Board of the Prison Service (Ministerstwo Sprawiedliwości, Centralny Zarząd Służby Więziennej) (2024), Annual Statistical Report 2024, Warsaw, Ministry of Justice / Central Board of the Prison Service.
[101] Attorney 1.

Transparency and Access to PSORR

Neither courts, prisoners, nor defence lawyers have access to the individual answers underlying the PSORR analysis. A Prison Service interviewee noted that this problem also extends to the management staff of penitentiary institutions, who likewise lack insight into PSORR's detailed findings. As a result, they cannot see how specific responses affect the final score, nor how coefficients within the static, dynamic, or aggression scales are adjusted.

A penitentiary judge admitted she has no access to the data on which the PSORR result in the prognosis is based. Lawyers voiced similar concerns: they and their clients remain unaware of which factors are taken into account or the weight assigned to them, which prevents verification of accuracy and raises the risk of manipulation.

> "If the convicted person is informed that they have a 65% score in a given category, without being told where this comes from and how to improve it, then the solution will make no sense."[102]

> "We had no influence to oblige judges and probation officers to participate in training sessions on PSORR."[103]

This deepens the lack of transparency in enforcement proceedings, where prisoner assessments are based largely on IT system data and personal files. Under Article 102(9) of the Code of Execution of Criminal Sentences, prisoners have the right to access opinions prepared by the prison administration forming the basis of decisions taken against them. A contrario, this excludes access to other materials concerning the prisoner. As a result, information entered by the Prison Service into IT systems or personal files remains inaccessible to both the prisoner and the defence, unless the court decides to attach the file to the case record. Only then can the parties review the complete documentation.

A related issue is court access to the Prison Service IT system in which most data about prisoners' conduct is recorded. Judges have long demanded direct access, but currently they can only obtain information indirectly through the Prison Service.

Fair Trial Concerns: Equality of Arms

This lack of access connects to broader issues of equality of arms and fairness in conditional release proceedings, primarily in relation to the role of the prosecutor. The prosecutor is an obligatory participant and may object to a conditional release order. Such an objection requires no reasoning and does not oblige the prosecutor to lodge an appeal. Even without an appeal, the release order is suspended. One penitentiary judge remarked that this practice is widespread, driven by prosecutors' fear of criticism from superiors. Since objections carry no consequences, they are often lodged automatically.

This arrangement is particularly problematic given that the prosecution service in Poland is subordinated to the executive branch. In practice, this opens the possibility of influencing, directly or indirectly, how frequently conditional release is granted. The combination of automatic objections and hierarchical dependence raises concerns about political or

[102] Representative of academia and CSOs.
[103] Prison Officer 1.

institutional pressures shaping outcomes in an area that should remain judicially independent.

Another channel of influence lies in the ease with which prison directors can be dismissed—for example, if they submit an application for conditional release in respect of a prisoner who subsequently reoffends. This risk creates a "chilling effect," discouraging directors from filing applications, especially in politically sensitive cases. As research and practitioners' observations suggest, this phenomenon tends to intensify following changes of government, leading to a measurable reduction in the number of applications submitted.

> "Prosecutors often object to decisions on conditional release because they fear the reaction of their superiors if they do not. Later, they usually do not appeal."[104]
>
> "Unfortunately, each change of political power brings a change of policy regarding conditional release."[105]

Training and Judicial Capacity

A Prison Service representative explained that staff using PSORR received training before the system was introduced. The training followed a cascade model, with designated coordinators appointed in each institution to oversee implementation. The sessions were practical in nature and allowed participants to work directly with the tool.

He further noted that training opportunities were also offered to penitentiary judges and probation officers. These sessions were optional and focused primarily on presenting the principles of using PSORR. Participants received training materials and a handbook outlining the system's basic functions. The interviewee added that the Prison Service lacked the means to organise mandatory training for judges.

On the other hand, according to the official implementation report, training was delivered only to prison staff, although selected judges were consulted during the system's development. One penitentiary judge criticised the lack of training, emphasising that judges exchange experiences with PSORR only during annual meetings.

Furthermore, the introduction of PSORR was also addressed during conferences organised by the Prison Service.

Practitioners' Concerns

The lawyer strongly criticizes the recidivism assessment system, portraying it as opaque, scientifically unfounded, and potentially harmful to fair trial standards. He emphasizes that the algorithm, which produces decisive percentages, lacks transparency regarding the factors and their assigned weights, raising doubts about the credibility of its foundations. According to him, courts rely uncritically on prison administration opinions without verification, which undermines judicial independence. Moreover, he highlights that certain groups of offenders—such as sexual offenders, murderers, or those denying guilt—face almost

[104] Penitantiary Judge 1.
[105] Representative of academia and CSOs.

insurmountable obstacles in obtaining conditional release. Ultimately, he concludes that Polish enforcement proceedings deviate significantly from international standards, which could serve as grounds for strategic litigation.

> "As soon as the Deputy Minister of Justice announced that such a system for assessing recidivism had been created, I knew it was not a good solution."[106]

> "I fear that the justification for selecting certain factors and assigning them particular weights came from isolated cases, not scientific evidence."[107]

> "Enforcement proceedings in Poland diverge from international standards. This is material for strategic litigation."[108]

A penitentiary judge and a Prison Service representative both pointed to the lack of dialogue between the Prison Service and the penitentiary courts, noting too few meetings and limited opportunities for exchange. A Prison Service officer remarked that she would welcome greater opportunities to understand the judges' perspective, including more detailed explanations of why their assessments sometimes diverge from those of the Prison Service.

6.5. Criminological-Social Prognosis and Mandatory Probation Measures

The criminological-social prognosis, incorporating the PSORR assessment, is applied to all prisoners serving sentences longer than three months. The sole exception concerns offenders placed in therapeutic units due to diagnosed sexual-preference disorders, for whom the mental-health component of PSORR is expanded and more detailed.

Polish law[109] permits courts to impose probationary measures on offenders granted conditional early release. For certain categories, the imposition of such measures is mandatory. This applies to: life-sentenced prisoners; offenders convicted of sexual offences linked to diagnosed sexual-preference disorders; young offenders convicted of intentional crimes; repeat offenders; and individuals who, after serving at least six months of imprisonment for homicide connected with rape or for a serious offence against sexual freedom, commit such an offence again.

In these cases, when granting release, the court must simultaneously order supervision or other measures. In other cases, the court has discretion. Failure to comply with probationary measures may result in the revocation of conditional release.

The principal probationary measure is supervision, which may be exercised by a probation officer, a person of trust, or an association, organisation, or institution engaged in education, the prevention of demoralisation, or the assistance of offenders.

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[106] Attorney 1.
[107] Attorney 1.
[108] Attorney 1.
[109] Poland, Regulation of the Minister of Justice of 14 August 2003 on the methods of implementing penitentiary measures in prisons and remand centres (consolidated text, Journal of Laws 2024, item 1344).

Additionally, conditionally released prisoners may be subjected to further probationary or protective obligations. These may include: informing the court or probation officer about the course of the probation period; abstaining from alcohol abuse or other intoxicants; undergoing therapy; participating in corrective or educational programmes; refraining from entering certain environments or places; refraining from contacting or approaching the victim or other specified persons; or vacating a dwelling shared with the victim. Courts also retain the power to impose any other obligations considered necessary during probation in order to reduce the risk of reoffending.

Conditionally released offenders assigned probation duties but not placed under supervision are nonetheless obliged to:

- report promptly (no later than seven days after release) to the probation officer of the district court of their permanent place of residence;
- attend meetings as directed;
- provide explanations concerning the course of probation;
- refrain from changing residence without court approval; and
- comply with all other obligations imposed.

In specific categories, the court is required to order probation officer supervision.

6.6. Preparatory Measures and Expert Assessments in Conditional Release Proceedings

In Poland, the role of preparatory measures—such as psychological or psychiatric opinions, multidisciplinary reports, or interviews—in proceedings concerning conditional early release has not significantly increased over the last decade. The only change in this regard was the introduction in 2022 of a provision allowing prisoners to be subjected to sexological examinations.

Under the law, an offender may, where necessary and with their consent, undergo psychological and psychiatric examinations. A penitentiary judge, however, may order such examinations to be carried out without the offender's consent. Where required, and again subject to the offender's consent, sexological examinations may also be conducted, although here too the penitentiary judge retains the power to order them irrespective of consent. These examinations are to be carried out primarily in specialised diagnostic centres run by the Prison Service.

The outcome of an opinion issued by a diagnostic centre may have a decisive impact on the prison administration, which holds a crucial role in proceedings concerning conditional release. Both statistical data and practitioners' observations indicate that the strongest predictor of a positive outcome is whether the application was initiated by the prison director.

Courts rarely commission opinions from external experts. The main exception concerns cases involving sexual offences, where sexologists are more frequently appointed. Defence lawyers, however, highlight difficulties in securing additional expert evidence to challenge penitentiary assessments. In practice, courts rely primarily on the views of the prison administration.

This situation has not generated broader public debate. Critical voices are found mainly among the legal profession and scholars of criminal enforcement law, who emphasise the limited possibilities for challenging prison assessments and the very narrow scope of independent, multidisciplinary expertise. A defence lawyer noted that courts are reluctant to appoint external experts, often considering them unnecessary on the grounds that penitentiary opinions are “clear and comprehensive.

> “Courts often do not take into account motions to appoint an expert.”[110]
>
> “The opinions prepared by diagnostic centres within penitentiary institutions do not truly reflect who the prisoner is.”[111]
>
> “I doubt whether a psychologist who spends two hours with a prisoner can really say anything meaningful about that person.”[112]
>
> “Courts limit themselves to what the prison administration writes in its opinion. They have no intention of verifying it.”[113]

As a result, the decisive role in proceedings is played by opinions of the penitentiary administration and, in some cases, those of diagnostic centres operating within penitentiary institutions. Yet data from the Prison Service show that prisoners applying for conditional release are not systematically referred to such centres. Diagnostic assessments in the first half of 2024 were carried for 517 prisoners[114], compared with 9312 applications[115] submitted by prisoners for conditional release.A Prison Service representative explained that, in practice, the opinions of diagnostic centres have limited significance for conditional release decisions. They are prepared only for selected categories of prisoners, such as juveniles or those serving life sentences, and are primarily used to ensure proper classification—for example, determining whether placement in a therapeutic unit is necessary. For this reason, their role in conditional release proceedings remains limited.

Nevertheless, the very nature of this system has been questioned by members of the bar, who argue that such assessments should be produced by bodies independent of the prison administration. One lawyer reported repeatedly raising objections to the content of these reports. She recounted conversations with psychologists who admitted to being pressured by prison directors to ensure opinions adopted a particular tenor—for example, so as to avoid triggering a reclassification of the prisoner.

> “Opinions about prisoners should be prepared by entities independent of the prison administration.”[116]

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[110] Attorney 1.
[111] Attorney 2.
[112] Attorney 2.
[113] Attorney 1.
[114] Central Board of the Prison Service (Centralny Zarząd Służby Więziennej) (2025), *Quarterly Statistical Report, 1st Quarter 2025*, Warsaw, Central Board of the Prison Service; Central Board of the Prison Service (Centralny Zarząd Służby Więziennej) (2025), *Quarterly Statistical Report, 2nd Quarter 2025*, Warsaw, Central Board of the Prison Service.
[115] Central Board of the Prison Service (Centralny Zarząd Służby Więziennej) (2025), *Quarterly Statistical Report, 1st Quarter 2025*, Warsaw, Central Board of the Prison Service;Central Board of the Prison Service (Centralny Zarząd Służby Więziennej) (2025), *Quarterly Statistical Report, 2nd Quarter 2025*, Warsaw, Central Board of the Prison Service.
[116] Attorney 2.

She also expressed concern about the preparation of such assessments, citing superficial examinations and, in some cases, reports that appeared to be compiled from pre-existing documents—evidenced by the erroneous inclusion of another prisoner's personal data.

> "In our enforcement proceedings there is no guarantee that the evidence used is collected reliably. It is difficult to speak of reliability when a prisoner's expert opinion contains personal data belonging to an entirely different individual."[117]

Furthermore, she recalled one case in which an expert issued a highly favourable opinion regarding a prisoner convicted of homicide. The opinion highlighted extensive rehabilitative work, assessed the prisoner's current level of demoralisation as lower than that of the general population, and concluded that further progress in isolation was impossible because he had already exhausted the rehabilitative opportunities available. According to the lawyer, this opinion provoked a negative reaction from prison authorities.

6.7. Centrality of Risk Assessment in Sentence Adjustment Decisions

Statements from both defence lawyers and a penitentiary judge indicate that the risk of committing a new offence is the **key element** assessed by prison authorities and penitentiary courts. This focus has been further reinforced by the introduction of **PSORR** into the Polish penitentiary system, as the tool is centred on evaluating the likelihood of reoffending, thereby making it the **central criterion** in the overall assessment.

According to the interviewed lawyer, this strong emphasis often reduces the weight of other circumstances that might otherwise be considered relevant, such as the offender's rehabilitation efforts, family situation, or employment prospects. While these elements are not entirely disregarded, they are primarily interpreted through the lens of whether they mitigate or aggravate the probability of reoffending. As a result, the evaluation of dangerousness and risk of recidivism effectively becomes the decisive criterion, while broader considerations relating to reintegration or social rehabilitation are treated as secondary or conditional.

VII. Procedural Safeguards

Domestic law in Poland upholds fair trial requirements under Article 45 of the Constitution, which aligns closely with Article 6 of the European Convention on Human Rights by guaranteeing the right to a fair, public hearing by a competent, independent, and impartial court without undue delay. The Supreme Court has clarified that "case" in Article 45 encompasses both the main subject of proceedings and incidental issues affecting fundamental rights. This interpretation extends to matters before penitentiary courts. Similarly, the Constitutional Tribunal has affirmed that the right to a court applies to any situation where rights are at issue.

[117] Attorney 2.

Despite these protections, Polish law only grants prisoners the right to apply for conditional early release, not a guaranteed release after serving a portion of their sentence. This distinction means that Articles 5(1) and 5(4) of the ECHR, which cover the right to liberty and specific procedural protections for those deprived of liberty, do not fully apply to sentence adjustment mechanisms in Poland. Article 5 protections would only be triggered if a subjective right to release after a set period were established, which Polish law does not provide. Additionally, a constitutional complaint filed in 2021 challenged the exclusion of conditional early release cases from the Act on the Complaint on the Lengthiness of Proceedings, which aims to ensure timely judicial review. However, this complaint remains unresolved, reflecting the limited application of procedural safeguards to sentence adjustment mechanisms.

7.1. Access to Legal Assistance and Representation

During enforcement proceedings, convicted persons may receive assistance from a defence counsel, who can represent them in critical sessions before the penitentiary court. These sessions include hearings on applications for conditional early release, sentence interruption, or electronic monitoring. Defence counsel may be privately retained, or if the convicted person demonstrates financial hardship, a public defender can be appointed. However, the court may withdraw this appointment if the person's financial circumstances improve, and such decisions are subject to appeal.

The law guarantees attorney-client privilege, allowing convicted persons to communicate privately with their defence counsel during visits or phone calls. Conversations are not subject to surveillance, ensuring confidentiality. However, the practical application of these rights is hindered by procedural constraints and inconsistencies across facilities. For example, a 2023 regulation intended to standardise telephone access to a minimum of once per week has, in practice, become an upper limit in many penitentiary units.

Logistical issues further complicate access to counsel. Defence attorneys report inconsistencies in visitation policies, including long wait times, sudden cancellations, and inadequate private spaces for meetings. These obstacles undermine effective representation, especially as enforcement proceedings require a comprehensive understanding of both the client's circumstances and the procedural context. Moreover, there is a shortage of lawyers who specialise exclusively in enforcement proceedings; most defence counsels in these cases are criminal attorneys who extend their practice into the enforcement phase.

7.2. Access to Case Files

Convicted persons have certain procedural rights, including access to court files and the ability to make copies. However, they are not allowed to consult the penitentiary administration's personal file, which forms the basis for criminological prognoses regarding their behaviour if released. This restriction limits their ability to challenge or verify assessments used to evaluate their eligibility for adjustments.

7.3. Evidence

Convicted persons may present evidence, request witnesses or expert evaluations, and raise relevant points. However, these rights are rarely exercised. Enforcement proceedings tend to focus on enforcing sentences rather than fully considering adversarial evidence. For example, cognitive evaluations, such as interviews with probation officers, often take precedence over other forms of evidence.

Expert Opinions

In accordance with the Code of Criminal Procedure, convicted persons may request additional expert opinions if they can demonstrate that existing opinions are incomplete or unclear. However, penitentiary courts rarely request expert evaluations. A 2019 study revealed that out of 540 reviewed cases, only six involved court-ordered expert opinions, and just three were specified as psychological or psychiatric evaluations. This limited engagement with expert input reduces the opportunity for a more adversarial and balanced proceeding.

7.4. Public Access to Proceedings

Conditional release hearings are typically conducted within prisons, as required by the Criminal Executive Code. Since 2020, however, many hearings have been held remotely via video and audio technology—a practice initially introduced during the COVID-19 pandemic and later institutionalised. These hearings are not public, although representatives of civil society organisations have occasionally been permitted to monitor them.

During these sessions, the presence of a public prosecutor is mandatory, alongside the convicted person, their defence counsel (if applicable), and other parties involved in the application. In remote hearings, the convicted person and their defence counsel participate from the prison, while the court proceedings occur elsewhere via video link. Similar remote procedures are used for hearings on sentence interruptions and electronic supervision applications.

7.5. Time Limits

The Executive Penal Code provides non-binding guidelines for reviewing complaints:

- Conditional Early Release Decisions: The law stipulates a 14-day period for reviewing complaints, but this is instructional only, with no penalties for delays.
- Electronic Supervision: A 30-day timeline exists for decisions, but research indicates frequent violations, with some cases taking up to five months.
- Sentence Interruption: No specific deadlines exist for reviewing complaints about refusals, further contributing to delays.

Since 2017, executive criminal proceedings have been excluded from mechanisms allowing complaints about prolonged proceedings, leaving parties without recourse to address delays or claim compensation for procedural inefficiencies.

7.6. Access to Appeals

Both convicted persons and public prosecutors may appeal decisions on conditional early release. Convicted persons can only appeal refusals, whereas prosecutors can challenge both approvals and refusals. If applications are initiated by a prison director or probation officer, they may also appeal refusals.

- Appeal Success Rates: Research from 2019 showed that appeals against decisions granting release were rare, with only 1.85% of 540 cases involving such appeals. In 2023, prison directors filed 50 appeals against refusals, with only 13 of 40 reviewed appeals succeeding.

- Other Appeals: Decisions on electronic supervision or sentence interruptions can also be appealed, but success rates are similarly low. For example, studies indicate only about 4% of complaints in 2011 resulted in favourable outcomes.

The scope of review for the appellate court is defined by the specific grounds of the complaint challenging decisions on conditional early release, sentence interruption, or execution of imprisonment under the electronic monitoring system. Typically, the appellate court is restricted to the issues raised within the appeal. An exception exists, however, for cases involving an ‘absolute appeal defect’, where the court must overturn the decision irrespective of the arguments presented. Such defects include serious procedural issues, such as improper court composition or failure to allow the convicted person an opportunity to defend their rights (e.g. by not informing convict’s counsel about the date of the hearing). Additionally, the court may also extend its review beyond the appeal’s scope if it finds the original decision to be manifestly unjust.

7.7. Premature Applications and Delays

Defence lawyers frequently submit early applications for conditional release to ensure timely consideration once eligibility is met. However, courts inconsistently handle these applications. Some accept them, while others dismiss them as "premature" if filed before the statutory criteria are fulfilled. This inconsistency particularly affects individuals with shorter sentences, as delays in processing applications can result in prisoners serving nearly their entire term before a decision is reached.

Moreover, procedural delays in conditional release and other enforcement processes cannot be formally challenged, as complaint mechanisms for prolonged proceedings are excluded for executive criminal matters. This leaves applicants without an effective remedy to expedite decisions or address delays.

VIII. Differential Impact for Marginalised Prisoners

A 2019 study[118] sheds light on the typical characteristics of conditionally released individuals. The predominant traits included no prior criminal record, serving a sentence in a semi-open or open prison within a program-based system, a sentence of no more than two years, and

[118] Nikołajew J., Burdziak K., Jankowski M., Kowalewska-Łukuć M., Diagnostyka sądowo-kryminalna w orzekaniu i wykonywaniu warunkowego przedterminowego zwolnienia w teorii i praktyce sądowej – raport z badania, Prawo w Działaniu. T. 39 (2019), s. 9-68.

support from the penitentiary administration in securing release. Conversely, convicts less likely to be granted conditional release often had one or more of the following characteristics: prior convictions under the recidivism provisions of the Penal Code, sentences exceeding seven years, convictions for crimes against sexual freedom, life, or health, or service of their sentences in the regular system.

8.1. Barriers relating to Socioeconomic standing of prisoners

Neither the conditions for applying for conditional release nor those for sentence interruption directly address the circumstances of the convict post-release. However, socioeconomic factors can be indirectly considered as part of evaluating a convict's positive criminological prognosis. For instance, the Appellate Court in Lublin, when assessing whether the convict's behaviour suggested a positive prognosis, considered their family relationships, the support they received from relatives, and whether they had a stable place to live upon release.[119]

The requirements differ somewhat for those seeking to serve their sentences under electronic supervision. To qualify, convicts must have a permanent residence, and any adult household members must consent to electronic supervision in the home. Prior to issuing a decision, the probation officer must assess the convict's family, social, and living conditions.

A 2014 study indicated that probation interviews were conducted in 75% of the cases reviewed, though practices varied widely among courts. As the study's authors observed, some courts made use of probation interviews only sporadically.[120]

8.2. Lifers

The Penal Code permits courts to impose stricter eligibility conditions for applying for conditional early release for lifers. Although there is no available data on the frequency with which courts exercise this option, in practice, it is generally applied to individuals serving long-term sentences, including life imprisonment.

Life imprisonment was introduced relatively recently into Polish law, in the mid-1990s. Poland's population of those sentenced to life imprisonment currently stands at 574.[121] Publicly available information indicates that only one woman sentenced to life imprisonment has been conditionally released so far.[122]

[119] Poland, Appellate Court, Lublin, II AKzw 291/10, 24.04.2010. Similarly: Poland, Appellate Court, Szczecin, II AKzw 819/10, 20.10.2010.
[120] Jankowski M., Momot M., Wykonywanie kary pozbawienia wolności w systemie dozoru elektronicznego. Sprawozdanie z badania aktowego, „Prawo w Działaniu. Sprawy Karne" 2015/22, p. 36–40.
[121] Poland, Prison Service, Monthly statistics - September 2024 Data includes 24 persons not sentenced to life imprisonment.
[122] Pawlicka K., She is the first "lifer" in Poland. She was recently released from prison, wp.pl.

CHAPTER 10

Sentence Adjustment Mechanisms in UKRAINE: Law and Practices

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EUROPEAN PRISON LITIGATION NETWORK

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Introduction

In Ukraine, sentence adjustment system was entrusted to the judiciary from 14 July 1954, when the Presidium of the Supreme Council of the USSR issued the Decree "On the Introduction of Conditional Early Release (Parole) from Places of Imprisonment". Jurisdiction of court included the same issue in accordance with the Criminal Code of the Ukrainian SSR, which was in force from 1961 to 2001. And since its adoption in 2001, the Ukrainian Criminal Code still provides that the rules relating to the adjustment and reduction of sentences are entrusted to the judiciary.

From an institutional point of view, the State Department for the Execution of Sentences was created in 1998 as a central executive authority. In 2005, the Verkhovna Rada passed the Law on the State Criminal Enforcement Service, which defined the structure of the criminal enforcement system. By late 2010, the State Department for the Execution of Sentences was reorganized into the State Penitentiary Service, a central executive authority under the supervision of the Minister of Justice. In 2016, the State Penitentiary Service was dissolved, and its responsibilities were transferred to the Ministry of Justice.

The texts governing sentence adjustments are primarily legislative in nature. The key legislative acts include:

- Criminal Code: Chapter XII, titled “Exemption from Sentence and Its Serving”;
- Criminal Procedure Code: Article 537, “Issues Decided by Court During Execution of Sentences”;
- Criminal Executive Code: Chapter V, “Exemption from Serving Sentence, Assistance to Persons Exempted, and Their Supervision and Control”;
- Law on Probation.

Additionally, courts refer to the Resolution of the Plenum of the Supreme Court on “Parole from Serving a Sentence and Replacing the Unserved Portion of a Sentence with a Milder One” (2002) when addressing sentence adjustment matters.

Ukrainian criminal executive law generally takes a neutral stance on the use of sentence adjustments. While it establishes procedures and conditions under which these measures can be applied, it does not actively encourage their use. For example, according to §2 of Article 81 of the Criminal Code, parole may be granted if the convict demonstrates reformation through conscientious behavior and a positive attitude toward work. Similarly, §3 of Article 81 states that replacing the unserved portion of a sentence with a milder one is possible if the convict shows progress toward reformation.

I. Methodology

The research for this study was conducted using a qualitative empirical approach combined with legal and institutional analysis, with the aim of examining both the formal regulatory framework governing parole and its operation in practice. The research proceeds from the assumption that formal compliance with risk assessment procedures and social and educational work does not necessarily ensure a genuinely individualised approach to prisoners, nor does it guarantee well-founded judicial decisions on parole. Accordingly, the focus is placed not only on legal and regulatory requirements, but primarily on their practical implementation within penal institutions and their interaction with judicial decision-making.

The empirical component of the research was based on materials collected during field visits to penal institutions. In order to ensure the systematic and comparable collection of information, a structured checklist was developed and applied. This checklist was based on the Methodological Recommendations of the Ministry of Justice of Ukraine and on standard documentation used by social, educational, and psychological services within prisons. It served as a tool for recording risk assessment practices, the content of social, educational, and psychological work, and the manner in which these elements influence decisions concerning the duration and conditions of imprisonment.

As part of the documentary analysis, the study examined prisoners' personal files, including initial, periodic, and final risk assessment forms; individual work diaries; character references; individual social and educational work programmes; and documentation relating to employment, training, incentives, and disciplinary measures. This analysis made it possible to assess how risk assessments are constructed, which factors are treated as significant, and how assessment outcomes are used in the preparation of materials submitted to courts and in decisions affecting the legal status of convicted persons.

The qualitative empirical stage further comprised semi-structured interviews with convicted persons held in institutions of different security levels (minimum, medium, and maximum), including individuals serving life sentences. In parallel, interviews were conducted with prison staff, including social and psychological workers, psychologists, and heads of relevant departments.

The combination of documentary analysis and interviews enabled data triangulation through comparison of prisoners' accounts, staff explanations, and the documentary content of individual cases. This approach made it possible to identify discrepancies between formally declared approaches and actual practice, as well as to highlight the factors that play a decisive role in determining access to parole.

The study is qualitative and analytical in nature and does not aim at statistical generalisation or quantitative evaluation of system-wide effectiveness. Rather, its objective is to identify the practices and mechanisms that shape whether a convicted person has a genuine opportunity to reduce their sentence, and to examine how risk assessment and prison practices influence parole decisions from a human rights perspective.

II. Overview of Ukraine's Penal and Prison System

By a process that remains to be determined and analysed in the next part of the research, Ukraine divided its population by almost 4 between 2014 and 2022, and by almost 5 since 2004 – this decrease not being the only effect of the war, since the ratio was already 1 to 3 between 2012 and 31 January 2022, just before the Russian invasion (SPACE I).

A number of decisions have been handed down by the ECHR in recent years, including:

- 2024, Medvid v. Ukraine (no. 745323): violation of Article 3 as regards an unconditional sentence of life imprisonment.
- 2022, Yakovlyev v. Ukraine (no. 42010/18): force-feeding of prisoner on hunger strike, in protest against prison treatment, subjecting him to excessive physical restraint and pain;
- 2022, Kupinskyy v. Ukraine (no. 5084/18): upon prisoner's transfer, of foreign reducible life sentence into irreducible one owing to unavailability of parole for life prisoners in his home State
- 2020, Sukachov v. Ukraine (no. 14057/17), pilot judgement: Ukraine required to reduce prison overcrowding, improve conditions of detention and introduce preventive and compensatory remedies;
- 2019, Radyukin v. Ukraine, (no. 27805/18): applicant was kept in detention in poor conditions: overcrowding, lack of fresh air, lack of or insufficient electric light, mouldy or dirty cell, poor quality of food, inadequate tempeFrature;
- 2019, Petukhov v. Ukraine (No. 2) (no. 41216/13): since sentence in form of life imprisonment cannot be reduced, this is a violation of Art. 3 of the Convention;
- 2013, Yuriy Illarionovich Shchokin v. Ukraine (no. 4299/03): violation of Articles 2 and 3 of the Convention due to death of a convict in penal colony as a result of torture and lack of a proper investigation;
- 2012, Kaverzin v. Ukraine (no. 23893/03): failure to provide proper medical care and failure by authorities to conduct effective investigation into applicant's complaint of torture;
- 2012, Yermolenko v. Ukraine (no. 49218/10): deficiencies in medical care

contrary to Article 3.

Fair Trial Guarantees

Domestic law does consider that ordinary law requirements of a fair trial apply to sentence adjustment procedures.

According to the Criminal Procedure Code, when considering request on sentence adjustment, convicted person, his defense attorney, legal representative, and prosecutor are summoned to court hearing. Following consideration of request, court issues decision that may be appealed. In case of court decision refusing to grant sentence adjustment becoming effective, consideration of repeated request on the same issue for persons sentenced to life imprisonment, as well as for persons sentenced for serious and especially serious crimes to imprisonment for term of at least 5 years, may take place no earlier than one year from date of court decision on refusal, and for persons convicted of other crimes and juvenile convicts - no earlier than six months.[1]

Ukrainian national case law does not uphold applicability of provisions of articles 5(1) and 5(4) of ECHR in sentence adjustment area. Legality of convicts' stay in prison is not contested because sentences against them have become final.

At the same time, provisions of Article 6(1) of ECHR apply to sentence adjustment. Requests for sentence adjustment are considered in fair and public hearing within reasonable time by independent and impartial court established by law.

III. Overview of Ukraine's Sentence Adjustment Mechanisms

3.1. Institutional architecture

- Ministry of Justice :
    - Develops and implements state policies in the fields of sentence execution and probation;

[1] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(5-7)

    - Supervises the Department for Execution of Criminal Sentences.

- Department for Execution of Criminal Sentences:
    - Represents the State Criminal Enforcement Service;
    - Exercises the Ministry of Justice's powers regarding criminal sentence enforcement.

- State Criminal Enforcement Service:
    - Consists of various bodies and institutions involved in sentence enforcement;
    - Does not function as a separate legal entity.

3.2. Players in the system

The following parties are involved in Ukraine's sentence adjustment system:

- Central Body of Executive Power:
    - Implements state policy on criminal sentence execution and probation.

- Territorial bodies:
    - Handle the regional implementation of sentence execution and probation measures.

- Authorized probation bodies:
    - Oversee probation-related activities.

3.3. Types of sentence adjustments

Ukraine's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- Parole;
- replacement of sentence or its unserved part with a milder one;
- parole for military service;
- exemption from serving sentence of pregnant women and women who have children under the age of three;
- exemption from sentence due to illness;
- exemption from serving sentence due to transfer of convict for exchange as a prisoner of war.

The norm on sentences adjustment/reduction is entrusted to judiciary and contained in the Criminal Code of Ukraine since its adoption in 2001.

3.4. Criteria for granting sentence adjustment

3.4.1. Parole

The court can grant conditional early release when a prisoner's attitude, personal circumstances, the nature of the crime, and behaviour during their sentence suggest that they will abide by the law and not commit new offenses after release.

- Time threshold for eligibility: Prisoners may apply after serving a minimum of:
    - half of the sentence: for criminal misdemeanor or minor crime, except for corruption and traffic safety-related, as well as for reckless serious crime;
    - two-thirds of term of sentence: for non-serious corruption crime or traffic safety-related, intentional serious crime or reckless especially serious crime, as well as if person previously served sentence of imprisonment for intentional crime and committed intentional crime again before conviction was served or expunged, for which he/she was sentenced to imprisonment;
    - three quarters of term of sentence: for intentional especially serious crime, in case of replacing life imprisonment with sentence in form of imprisonment for certain period, as well as sentence assigned to person previously released on parole and committed intentional crime again during unserved part of sentence.
- Assessment criteria:
    - Parole may be granted if a sentenced person displays decent behaviour and diligence in work by way of proof of his or her reformation.

3.4.2. Replacement of sentence or its unserved part with a milder one

The court may replace the unserved portion of a sentence with a milder one. The duration of the milder sentence is calculated from the day the original sentence is replaced. This new sentence is imposed within the limits specified in the Criminal Code for that type of sentence and cannot exceed the remaining unserved portion of the original sentence.

- Time threshold for eligibility: Prisoners may apply after serving a minimum of:
    - a third of the sentence: for criminal misdemeanor or a minor crime, except for corruption and traffic safety-related, as well as for reckless serious crime;
    - half of term of sentence: for non-serious corruption crime or traffic safety-related, intentional serious crime or reckless especially serious crime, as well as if person previously served sentence of imprisonment for intentional crime and committed intentional crime again before conviction was served or expunged, for which he/she was sentenced to imprisonment;
    - two-thirds of term of sentence: for intentional especially serious crime, as well as sentence imposed on person previously released on parole and committed new intentional criminal offense during unserved part of sentence.
- Assessment criteria:
    - The person needs to be on the path to reformation

3.4.3. Exemption for pregnant women and mothers

Court may exempt from serving sentence within term for which, according to the law, woman can be released from work due to pregnancy, childbirth and until child reaches age of 3.

- Time threshold for eligibility: none.
- Assessment criteria:
    - Concerns women who became pregnant or gave birth to children while serving sentence may be exempted from serving sentence;
    - Doesn’t apply to women sentenced to imprisonment for term of more than 5 years for serious and especially serious crimes;
    - The woman needs to have family or relatives who have given consent to live together with her, or to prove ability to independently provide adequate conditions for raising a child.

3.4.4. Exemption for ill persons

Person can be released from sentence if while serving sentence he/she fell ill with mental illness which deprives him/her of ability to be aware of his/her actions (inaction) or to control them.

- Time threshold for eligibility: none.
- Assessment criteria:
    - Gravity of committed crime, nature of disease, personality of convicted and other circumstances of the case are taken into account.

3.4.5. Parole for military service

During mobilization and/or martial law, court may release imprisoned persons on parole to perform contract military service. Application of parole is possible if convict has expressed will to perform military service and meets requirements for military personnel. This type of parole cannot be applied to those convicted of certain types of crimes (against national security, some violent and grave corruption crimes).

3.4.6. Exemption in war context

Convict, in respect of whom decision has been made to hand him over for exchange as a prisoner of war and who has given written consent to such exchange, shall be released by court from serving sentence.

3.5. Procedure for applying

After convict has served prescribed part of sentence, administration of penal colony is obliged to consider within a month issue of possibility of starting procedure of parole or replacing unserved part of sentence with a milder one. If procedure can be started for convicted person, administration of penal colony sends request to court within a month.

In other cases, administration of penal colony sends requests to court with relevant additional documents: medical report, report on convict's degree of reformation, convict's statement about his will to serve military service, etc.

Issues of sentence adjustments/reductions are considered by courts within 10 days from day of receipt of request, except cases of exemption from serving sentence due to transfer of convict for exchange as a prisoner of war when request is considered on the day of reception. Court issues decision which can be appealed in appeal procedure.

IV. Recall

There are some legal mechanisms to review decisions made to recall prisoners to custody who have been granted early release.

Women who became pregnant or gave birth to children while serving sentence and were exempted from serving sentence, may be returned to prison. After child reaches age of 3 or in case of his/her death, court, depending on behavior of convicted woman, may exempt her from sentence or replace it with a milder one or send convicted woman to serve imposed sentence. In this case, court may fully or partially count time during which convicted woman did not serve sentence into term of serving sentence. If convicted woman who has been exempted from serving her sentence abandons her child, places her in orphanage, disappears from her place of residence, or evades raising or caring for her child, or systematically commits offenses that have resulted in administrative penalties and indicate unwillingness to embark on path of reformation, court may, upon motion of supervisory authority, send convicted woman to serve imposed sentence.[2]

Also, in case of recovery of persons exempted from serving sentence due to illness, they must be sent to serve their sentence, unless statute of limitations has expired or there are no other grounds for exemption from sentence.[3]

If exchange of convict who was exempted from serving sentence by court due to transfer of him/her for exchange as a prisoner of war has not taken place, court, at request of prosecutor, shall make decision to send convict to further serve previously imposed sentence.[4]

Procedural guarantees are similar to those available during trial on issue of sentence reduction/adjustment.

V. Statistics

5.1. Lack of unified criminal statistics system

In Ukraine, there is no centralized system for compiling criminal statistics. Data on the prison system is neither publicly accessible nor consistently available. While it is possible to request specific statistical information from the Department for the Execution of Criminal Sentences

[2] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 83
[3] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 84(4)
[4] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 84[1](2)

under the Law on Access to public information, obtaining such data is challenging. This is because the Department does not regularly collect or organize statistical data.

Under the same law, public information is defined as pre-existing, fixed data created or received by a public authority in the course of its duties. Since the law does not mandate authorities to perform generalizations, calculations, or compile information based on requested criteria, agencies such as the Department for the Execution of Criminal Sentences often reject detailed statistical requests, claiming it would require the “creation of new information.”

5.2. Sentence adjustments statistics

Data from the Department for the execution of criminal sentences (2024 and 2014)

- In 2024, courts replaced the unserved portion of sentences with milder alternatives for 288 convicts.
- In 2014, this measure was applied to 2,911 convicts.
- Parole releases (including those sentenced to correctional labor, service restrictions for military personnel, restriction of liberty, disciplinary detention, or imprisonment):
    - 2014: 4,595 convicts.
    - 2004: 8,975 convicts.

Judicial statistics report (2023, 2014 and 2008)

	Received			Pending			Considered			Granted		
	2023	2014	2008	2023	2014	2008	2023	2014	2008	2023	2014	2008
Parole requests	5,316	18,701	28,453	5,940	-	-	5,484	18,512	28,316	3,445	16,908	27,979
Requests to replace unserved portions of sentences with milder ones	1,153	3,409	5,574	1,319	-	-	1,154	3,366	5,497	523	2,870	5,366
Requests for exemptions for pregnant women or women with children under 3	30	68	68	37	-	-	32	68	69	20	55	48
Requests for	270	930	1,340	319	-	-	285	917	1,288	138	569	904

exemptions due to illness												

Observations

The data highlights a notable decline over time in the number of parole requests and other sentence adjustment measures granted by Ukrainian courts. This trend reflects changes in judicial practices, legislative reforms, or shifts in criminal justice policies. The lack of a unified criminal statistics system continues to hinder transparency and access to detailed data.

VI. Procedural and substantial barriers

6.1. Substance of decisions

The Expert Center for Human Rights, in its Analysis of the Practice and Prospects of Parole for Convicted Persons (2021), identified one of the most persistent challenges in the application of parole as the varying interpretations of legal norms among stakeholders. It highlighted the need to refine criminal, criminal-executive, and other related legislation to ensure a more coherent and consistent approach to parole decisions.[5]

Lawyer Serhii Skvortsov, in his article Practical Problems of Parole (2019), underscores the lack of clear legislative definitions for key concepts such as "conscientious behavior" and "conscientious attitude to work." This ambiguity makes it difficult to determine the required level of such behaviour needed to demonstrate a convict's rehabilitation, leading to inconsistencies in parole decisions.[6]

Professors Serhii Diomenko and Olena Riabchynska of the Classical Private University (Zaporizhzhia), in their 2023 article The Latest Methods of Assessing the Correction of a Convicted Person in the Process of Serving a Sentence, analysed the Procedure for Determining the Level of Reformation of a Convict and the Methodology for Determining the Level of Reformation of a Convict. They concur with expert opinions that the current system of qualitative and quantitative indicators used to

[5] Expert Center for Human Rights (2021) 'Analysis of the practice and prospects of parole for convicted' (*Аналіз практики та перспектив умовно-дострокового звільнення засуджених*), available at: https://ecpl.com.ua/news/analiz-praktyky-ta-perspektyv-umovno-dostrokovoho-zvilnennia-zasudzhenykh/

[6] Skvortsov, S. (2019) 'Practical Problems of Parole' (*Практичні проблеми умовно-дострокового звільнення*), available at: https://pravo.ua/praktichni-problemi-umovno-dostrokovogo-zvilnennja/

assess rehabilitation presents significant challenges. These criteria do not always allow for an objective evaluation of a prisoner's transformation in terms of both consciousness and behaviour.[7]

6.2. Access to legal assistance and representation

In accordance with Art. 110 of the Criminal Enforcement Code, in order to receive legal aid and confidential legal consultations, convicted persons, on their own initiative or on initiative of their relatives or lawyer, have right to urgent visits without any time or number restrictions on working days, weekends, holidays, and non-working days at any time from 8 a.m. to 8 p.m. with lawyer. That is, convict can receive legal assistance at any stage, but only in form of meetings with lawyer.

Lawyer is also present at hearing of sentence adjustment case by court.

Convicted person can receive paid legal aid on basis of contract with lawyer in accordance with the Law "On Advocacy and Legal Activities". Also, in accordance with Art. 14 of the Law "On Free Legal Aid", those sentenced to imprisonment and life imprisonment have right to free secondary legal aid, that is, lawyer at expense of state. Prisoners submit request for free secondary legal aid to free legal aid center through administration of sentence execution institution. Free legal aid center, within 10 working days from date of receipt of request makes decision on providing free secondary legal aid and appoints lawyer who is included in the Register of lawyers providing free secondary legal aid.[8]

6.3. Interpretation

In accordance with the Law On Free Legal Aid, if a person entitled to free secondary legal aid does not speak Ukrainian and/or has a hearing impairment, the Free Legal Aid Center arranges for an interpreter, including a sign language interpreter, in the language the applicant can communicate in, at the state's expense.[9]

6.4. Access to case files

A prisoner participates in drafting the conclusion on their level of reformation. If a prisoner refuses to take part in this process or provide the necessary information, they must confirm their refusal with a written statement, which is then attached to their

[7] Diomenko, S., Riabchynska O. (2023) 'The Latest Methods of Assessing the Correction of a Convicted Person in the Process of Serving a Sentence', *Legal Scientific Electronic Journal*, No. 8, p. 352
[8] Ukraine, Law 'On Free Legal Aid' (*Закон «Про безоплатну правничу допомогу»*), Kyiv, 3640-VI, 2 June 2011, Articles 18, 19, 21
[9] Ukraine, Law 'On Free Legal Aid' (*Закон «Про безоплатну правничу допомогу»*), Kyiv, 3640-VI, 2 June 2011, Art. 19(7)

personal file.[10] If a prisoner wishes to personally apply to the court for sentence adjustment, they must submit a written request to the administration of the sentence execution institution. The administration is required to provide the prisoner with copies of relevant documents, including the conclusion, free of charge within 30 days for submission to the court.

The prisoner is given access to the draft conclusion. If they disagree with the content or any specific information within it, they have the right to submit a written, reasoned objection.[11]

The prisoner also has the opportunity to review their case file, including assessments and conclusions, both during the drafting of the conclusion and during court proceedings. They may call witnesses to testify or request a second opinion if they contest the findings of a forensic expert assessment. These rights are provided under the trial procedures set out in the Criminal Procedure Code.

6.5. Public access to proceedings

Hearings for sentence adjustment procedures are held in court and are open to the public.

A person held in a sentence execution institution may participate in the court hearing via video conference from within the institution, using its technical facilities and their own qualified electronic signature. If they do not have a qualified electronic signature, participation via video conference is facilitated through the institution's electronic office or the office of an authorised official.

Video conference participation is permitted in cases where direct attendance is not possible due to health or other valid reasons, the need to ensure the efficiency of proceedings, the imposition of martial law, or quarantine measures established by the Cabinet of Ministers. The court may also determine other sufficient grounds for remote participation.[12]

[10] Ukraine, Procedure for Determining Level of Reformation of Convict approved by the Order of the Ministry of Justice of Ukraine (*Порядок визначення ступеня виправлення засудженого, затверджений наказом Міністерства юстиції України*) Kyiv, № 294/5, 19 January 2023, para. 6
[11] Ukraine, Procedure for Determining Level of Reformation of Convict approved by the Order of the Ministry of Justice of Ukraine (*Порядок визначення ступеня виправлення засудженого, затверджений наказом Міністерства юстиції України*) Kyiv, № 294/5, 19 January 2023, para. 6
[12] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 336

6.6. Duration of proceedings

The duration of the procedure is strictly regulated. The court must consider a request for sentence adjustment within 10 days.[13] Once a prisoner has served the required portion of their sentence, the administration of the sentence execution institution is obligated to review the matter within a month and submit a request to the court for the application of parole or the replacement of the sentence, or the unserved portion, with a milder one.

However, there are no penalties for failing to comply with these timeframes.

6.7. Access to appeal

Following the court's consideration of a request for sentence reduction or adjustment, a decision is issued, which may be appealed. A prisoner, their lawyer, or their representative may challenge the decision before the court of appeal in accordance with the procedure set out in the Criminal Procedure Code.

The prosecutor also has the right to appeal a decision on sentence reduction or adjustment. If a prosecutor appeals a court decision granting parole or replacing the unserved portion of a sentence with a milder one, its execution is automatically suspended.[14]

There are no separate statistics on appellate reviews of decisions concerning sentence reduction or adjustment. The Judicial Statistical Report 2023 provides only the total number of appeals against court decisions related to the execution of sentences, which includes not only sentence reduction or adjustment but also postponements of sentence execution, applications of forced treatment and/or feeding of prisoners, and the resolution of doubts or contradictions arising during sentence execution. In 2023, courts of appeal received 2,131 such appeals (396 from prosecutors), with a total of 2,834 appeals under consideration. Of these, 1,884 appeals were reviewed, resulting in 14 first-instance court decisions being modified and 481 being overturned.[15]

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[13] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(3)

[14] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(6)

[15] Ukraine, State Court Administration, 'Report of the courts of appeal on the consideration of appeal complaints in criminal proceedings; 2023' (*Звіт судів апеляційної інстанції про розгляд апеляційних скарг у порядку кримінального провадження за 2023 рік*), available at: https://court.gov.ua/userfiles/media/new_folder_for_uploads/main_site/2-k_4_2023_2.xls

According to the Expert Center for Human Rights, in 2019, prosecutors filed 180 appeals against decisions granting parole at the first-instance level, of which 104 were upheld (representing 1% of the total 6,500 court decisions on parole that year). In 2020, prosecutors filed 235 appeals, of which 127 were upheld (2% of the total 6,400 court decisions). Meanwhile, prisoners and other participants in the process filed 542 appeals against parole decisions in 2019, of which 100 were successful (18.5% of appeals or 1.5% of total court decisions). In 2020, 578 such appeals were filed, with 69 granted (11.2% of appeals or 1% of total court decisions).[16]

An appeal against a first-instance court decision on sentence reduction or adjustment must be filed within seven days from the date the decision is announced. The appeal is submitted through the first-instance court that issued the decision. Three days after the appeal period expires, the first-instance court forwards any received appeals, along with the case materials, to the court of appeal.[17]

The court of appeal reviews the first-instance court's decision within the scope of the appeal. However, it may go beyond the appeal claims if doing so does not worsen the prisoner's situation. At the request of the parties, the court of appeal must re-examine circumstances established during the trial if they were assessed incompletely or with procedural violations at the first-instance level. The court may also consider new evidence that was not examined by the first-instance court, provided that a request to examine such evidence was made during the original trial or that the evidence only became known after the contested decision was issued.[18]

The appeal hearing follows the same procedural rules as trials in the first-instance court, adhering to the principles of equality before the law, adversarial proceedings, and the parties' freedom to present evidence and argue its persuasiveness before the court.

The Criminal Procedure Code does not specify strict time limits for the appeal process. Instead, the general requirement under Article 318 of the Code—that proceedings be conducted within a reasonable timeframe—applies.

6.8. Access to cassation

On October 13, 2016, the Supreme Court of Ukraine ruled that decisions of appellate courts regarding issues related to the execution of sentences could be appealed through cassation proceedings.

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[16] Expert Center for Human Rights (2021) 'Analysis of the practice and prospects of parole for convicted' (*Аналіз практики та перспектив умовно-дострокового звільнення засуджених*), available at: https://ecpl.com.ua/news/analiz-praktyky-ta-perspektyv-umovno-dostrokovoho-zvilnennia-zasudzhenykh/

[17] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 397

[18] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 404

However, in 2019, the Supreme Court determined that following legislative changes made to Article 129 of the Constitution of Ukraine, Part 2 of Article 424, and Part 6 of Article 539 of the Criminal Procedure Code, decisions of first-instance and appellate courts on matters related to the execution of sentences are no longer subject to cassation appeal.

As a result, there is currently no practice of the Supreme Court addressing such issues, apart from outdated resolutions of the Plenum from 2002 and 1973.

6.9. Delays in transmitting court decisions on sentence adjustment

In his article, Serhii Skvortsov highlights the issue of delays in sending court decisions on sentence reduction or adjustment to sentence execution institutions. According to Article 153(5) of the Criminal Executive Code, early release from imprisonment must be carried out on the day the relevant documents are received. If the documents arrive after the end of the working day, the release should occur in the first half of the following day.[19]

However, due to the heavy workload of court staff, there are cases where court decisions cannot be transmitted to the sentence execution institution on the same day. Even if the decision is sent on the day it is announced, it typically takes at least 3–4 days to reach the institution. As a result, during this period, the prisoner remains unlawfully detained.

Additionally, the absence of individuals who were duly notified of the time and place of the hearing does not prevent the trial from proceeding, except in cases where the court deems their presence mandatory or where the individual provides valid reasons for non-attendance.[20]

[19] Skvortsov, S. (2019) 'Practical Problems of Parole' (*Практичні проблеми умовно-дострокового звільнення*), available at: https://pravo.ua/praktichni-problemi-umovno-dostrokovogo-zvilnennja/
[20] Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(5)

VII. Differential Impact for Categories of Prisoners

Certain categories of prisoners and specific legal provisions prevent access to some sentence adjustment mechanisms.

Parole for military service is not available to the following categories of prisoners:[21]

1. Those convicted of crimes against Ukraine's national security.
2. Those convicted of the intentional murder of two or more people, or murder committed with particular cruelty, in conjunction with rape or sexual violence.
3. Those convicted of particularly serious corruption offences.
4. Those convicted of rape, sexual violence, coercion into sexual activity, sexual acts with a person under 16, the corruption of minors, or child sexual harassment.
5. Those convicted of terrorist offences.
6. Those convicted of traffic-related crimes committed while intoxicated, if the offence resulted in multiple fatalities.
7. Those convicted of attacking or endangering the life of a law enforcement officer, a member of a public security formation, or military personnel.
8. Officials who held especially high-ranking positions and were convicted of offences related to their duties.

Additionally, minors are ineligible for the replacement of an unserved portion of their sentence with a milder one.[22]

Exemption from serving a sentence due to pregnancy or having a child under the age of three does not apply to women sentenced to more than five years' imprisonment for intentional serious or particularly serious crimes.[23]

7.1. Pregnant women and mothers of young children

A special mechanism allows for the exemption of pregnant women and mothers of children under the age of three from serving their sentences. To qualify, the prisoner must meet the following criteria:[24]

- They must have been sentenced to no more than five years of imprisonment for an intentional serious or particularly serious crime.

[21] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 81[1]
[22] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 107(4)
[23] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 83(1)
[24] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 83(1, 2)

- They must have family or relatives who have consented to live with them or must be able to independently provide suitable conditions for raising the child.

Once the child reaches the age of three or in the event of the child's death, the court may, depending on the prisoner's behaviour:

- Exempt them from serving the remainder of their sentence,
- Replace the sentence with a milder one, or
- Order them to serve the original sentence.

In making this decision, the court may fully or partially count the period during which the sentence was not served toward the total sentence duration.

If a prisoner who has been exempted from serving their sentence abandons the child, places the child in an orphanage, disappears from their place of residence, evades parental responsibilities, or repeatedly commits offenses leading to administrative penalties that indicate an unwillingness to reform, the court may, upon the request of the supervisory authority, order them to serve the original sentence.[25]

The court grants release based on a request from the administration of the sentence execution institution and the supervisory commission.[26]

7.2. Minors

Parole for individuals who committed crimes under the age of 18 is granted based on proof of their reformation through conscientious behaviour, attitude toward work and education, and completion of a required portion of their sentence.

Parole may be applied if the prisoner has served:

- At least one-third of their sentence for a non-serious crime or a reckless serious crime.
- At least half of their sentence for an intentional serious crime or a reckless especially serious crime. This also applies if the prisoner had previously served a sentence for an intentional crime and, before their criminal record was expunged or removed, committed another intentional crime under the age of 18, resulting in a new sentence of imprisonment.
- At least two-thirds of their sentence for an intentional especially serious crime. The same threshold applies if the prisoner had previously served a sentence, was granted parole, and, before completing the unserved portion of their

[25] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 84(4, 5)
[26] Ukraine, Criminal Executive Code (*Кримінально-виконавчий кодекс України*) Kyiv, 1129-IV, 11 July 2003, Art. 154(10)

sentence and before reaching the age of 18, committed another intentional crime leading to a new prison sentence.[27]

Minors are not eligible for the replacement of an unserved portion of their sentence with a milder one.[28]

7.3. Lifers

A key decision was issued by the Constitutional Court on September 16, 2021, in a case concerning the review of the sentence of a person sentenced to life imprisonment. The Court declared §1 of Article 81 and §1 of Article 82 of the Criminal Code unconstitutional because they prohibited parole and the replacement of life imprisonment or its unserved portion with a milder sentence for individuals sentenced to life imprisonment.

The Court emphasized that life imprisonment is an indefinite sentence, causing unique suffering as it denies the prisoner any certainty about a future release date. Within Ukraine's constitutional framework, the relationship between hope for release and human dignity is reflected in the right to free development (Article 23 of the Constitution). The Court found that Articles 81 and 82 of the Criminal Code lacked a proper mechanism for early release from life imprisonment, depriving individuals of the opportunity for such consideration. Consequently, the Constitutional Court mandated the Verkhovna Rada (Parliament) to amend the provisions of Articles 81 and 82 to align with the Constitution.

As a result of this ruling, the Parliament adopted Law No. 2690-IX, amending Article 82 of the Criminal Code to allow for the replacement of life imprisonment with a fixed term of 15 to 20 years.

However, as the Donetsk Court of Appeal noted on 10 February 2022, no changes have been made to the legislation and Article 81 of the Criminal Code remains unchanged, continuing to prevent individuals sentenced to life imprisonment from being eligible for parole.

[27] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 107.
[28] Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 107(4).

VIII. Empirical Study: The Role of Risk Assessment, Prison Practice and Procedural Safeguards

Risk assessment for recidivism is one of the key tools of prison practice, on which access to parole and other decisions affecting the length and conditions of imprisonment depend. In the normative model, it should ensure an objective, individualised and predictable approach and serve as a legitimate basis for administrative and judicial decisions.

National regulations require that risk assessments be carried out in accordance with approved methodological guidelines, within specified time frames, with the involvement of specialists and with the results duly recorded in official documentation. The aim of this model is to reduce arbitrariness in decision-making, ensure consistent and transparent review over time, and direct practice towards supporting real changes in the behaviour of convicts.

At the same time, it is the practical implementation that determines whether the risk assessment fulfils its function or becomes a formal element of documentation. Since the results of the assessment affect the characteristics, materials sent to the court, the work of commissions, regime decisions and disciplinary practice, the quality of the assessment directly determines the reality or illusory nature of access to parole.

8.1. Description of cases and context of the field study

This section describes nine cases of convicts held in institutions of different security levels: three cases of life prisoners held in a maximum security colony, four cases in medium security colonies (in two institutions) and two cases in a minimum security institution. The cases were selected to show how risk assessment works in different regime conditions, how it is combined with social, educational and psychological work, and how its results are used for decisions that have significant legal consequences for prisoners.

The description of the cases is not intended to assess the personalities of specific prisoners or to review the legality of individual decisions. Its purpose is to reproduce the actual context in which risk assessment is applied and to identify typical practices and problems, which are then analysed through the prism of regulatory guarantees, procedural requirements and human rights standards.

8.1.1. Cases of prisoners serving maximum security sentences

An analysis of cases of persons sentenced to life imprisonment and held in maximum security facilities allows us to trace the characteristic features of the functioning of the risk assessment system, preventive records and socio-psychological work with this category of convicts. Despite differences in age, health status and individual life circumstances, all the cases studied demonstrate a common logic of penitentiary practice, in which risk assessment is used primarily to record the dangerousness of a person and reproduce already established restrictions, rather than to review them, dynamically rethink risks or truly individualise the approach.

The case of convict Z

The case of convict Z. illustrates the lack of dynamic risk review in the long term. Preventive classification as "prone to attack" was introduced more than twenty years ago and has since been maintained as a permanent administrative status. An analysis of the case file, risk assessment forms, individual social and educational work programmes, and individual work diaries did not reveal any clearly defined correctional goals, measurable risk reduction indicators, or logic for reviewing this status, taking into account behavioural dynamics, the duration of the sentence served, or changes in the person's condition.

In such a model, risk status becomes self-perpetuating: it is continued not as a result of a new assessment or recorded incidents, but because of the very fact of its previous existence. This, in turn, blocks the possibility of a positive reassessment of the convicted person in the context of access to parole or review of the sentence, transforming risk assessment from an instrument of individualisation into a mechanism for preserving the legal status quo.

The case of convict I

The case of convict I. concerns the application of preventive registration as "prone to self-harm". The convict has been on this register for a long time, with the decision to introduce and subsequently extend it having been taken many years ago. The documentation of the social and psychological service formally records the educational and psychological work carried out, but its content is general and formulaic and is not related to the specific risk of self-harm.

Interviews with staff at the institution did not confirm the existence of a targeted psychological programme aimed specifically at reducing this risk. The head of the social and psychological service confirmed that the convict was on preventive registration, but did not provide examples of individualised measures or criteria for reviewing his status. The convict himself reported that he did not have regular

sessions with a psychologist and had repeatedly attempted to appeal his preventive status, which he considers unfounded and automatically renewed.

The case materials indicate that decisions to extend preventive registration are formal in nature and are in fact based on the mere fact of previous registration, without proper assessment of the current psycho-emotional state or behavioural dynamics. As a result, preventive registration loses its preventive and therapeutic content and functions as an indefinite administrative restriction.

The case of convict B

The case of convict B. is an extreme example of systemic formalism in working with life prisoners. The convict is a person of late mature age, has a Group I disability, is in a state of complete or almost complete immobilisation and is permanently bedridden. His physical condition objectively makes it impossible for him to participate in any form of work, resocialisation or educational programmes.

At the same time, the socio-psychological characteristics and individual programmes of social and educational work contain standard formulations about "readiness for change", "awareness of the need for resocialisation" and "failure to realise the desire to participate in influence programmes". Such formulations create a distorted picture of an alleged "behavioural choice" where in fact there is an objective physical impossibility of participating in the relevant activities.

The risk assessment in this case does not lead to any changes in the approaches to detention or legal response. At the same time, the case file contains medical data that could potentially correspond to the List of Serious Illnesses, which is grounds for applying to the court for release. However, there are no signs that the administration has initiated such a procedure.

Summary

Taken together, the three cases of prisoners serving life sentences in a maximum security facility point to a systemic problem: risk assessment and preventive status do not have a procedurally secured mechanism for regular review, social and psychological work does not perform a corrective function, and risk is used as a tool to legitimise existing restrictions. This practice is focused on control and isolation rather than individualisation, and creates serious risks of non-compliance with standards of humane treatment and the prohibition of inhuman or degrading treatment.

8.1.2. Cases of prisoners in medium-security facilities

The analysis of cases of prisoners serving sentences in medium-security institutions was based on materials from two penal institutions and covered four individual

cases. This allows the identified practices to be considered as inter-institutional in nature, rather than limited to the specificities of one administration.

Case of convict K

A study of the materials in K.'s personal file indicates the presence of a combination of social, behavioural and psycho-emotional factors that significantly influence the serving of his sentence. The documentation repeatedly records signs of mental instability, emotional instability, difficulty in predicting the consequences of his own behaviour and episodes of self-harm. At the same time, these circumstances have not been properly clinically assessed and have not been integrated into decisions on conditions of detention, risk assessment or planning of individual social, educational and psychological work.

Repeated disciplinary reactions by the administration (in particular for refusal to work and other non-violent violations of the regime) were applied without any apparent analysis of the connection between behavioural manifestations and mental health. In this configuration, a punitive response logic prevails, which reproduces conflict and does not create conditions for risk reduction. The risk of reoffending is assessed as "medium", but without a clear explanation of how mental health affects risk and what corrective measures should be applied. This case demonstrates that in medium-security practice, the mental health of convicts often remains outside the focus of systemic decisions, which calls into question the compliance of such approaches with the objectives of punishment and human rights standards.

The case of convict Ch

The case materials of convict Ch. show a typical gap between the formalised "paper" model of individual work and the actual situation of the convict in the institution. The documents show the regularity of procedures: keeping a diary of individual work, repeated risk assessments with a "medium" result, psychological conclusions about the absence of acute crisis situations. At the same time, key prerequisites for resocialisation remain unresolved: the "special notes" explicitly mention the absence of a Ukrainian passport, which is a critical obstacle to the realisation of rights, official employment and proper preparation for release.

Additional risks arise from a combination of two factors: the convicted person's declared performance of the "dirtiest" work without pay and without proper documentation (in particular, cleaning administrative premises) and his informal status as "rejected" among other convicts. This creates a situation of double vulnerability: social stigma reduces the ability to defend rights, and the lack of documents and formal employment status makes work virtually "invisible" for accounting and control purposes. Under such conditions, disciplinary sanctions and general formulations in character references can serve as a tool for managing

behaviour without offering real alternatives — legal employment, restoration of documents, and access to effective protection mechanisms.

The case of convict F

The case of F. illustrates a situation where a formally conducted risk assessment and a socio-psychological characterisation do not ensure a truly individualised approach. The documents define the risk of reoffending as “medium”, but this decision is based mainly on general formulations without a clear explanation of the cause-and-effect relationships between individual factors and the convicted person’s behaviour.

At the same time, the case file contains information about the absence of aggressive behaviour and disciplinary violations, the presence of incentives for conscientious work, admission of guilt and sincere repentance. Despite this, the defence factors are not given due weight in the overall assessment, and the results of the assessment are not transformed into clear, individualised recommendations for risk reduction or preparation for release. The individual social and educational programme is mainly formal in nature and does not demonstrate a direct link between the identified needs and the planned measures. This case shows the risk of "fixing" medium risk status as an administrative constant without a real review of behavioural dynamics.

Case of convict L

The case of L. demonstrates a combination of formal risk assessment with the practice of actual use of labour without adequate safeguards. According to the case file, the convict is serving a five-year prison sentence; initial and interim risk assessments were conducted, which determined the risk of reoffending and the probable danger to society to be "medium". The socio-psychological profile contains contradictory statements: alongside the observation that there have been no disciplinary measures and that the regime has been observed, there is a statement about low motivation to change and formal participation in programmes, without any explanation of how this was established and what should be done to change the situation.

It has been separately established that the convict has been involved in work in the institution's vegetable workshop on a regular basis for a long time. At the same time, the case file does not contain any documents confirming the legal formalisation of work, recording of working hours and calculation/payment of wages (orders, time sheets, payroll records). Under these conditions, the work becomes unaccounted for and potentially unpaid, and its resocialisation content is negated. Case L. shows that even with formally "positive" behaviour and no violations, employment can be used primarily for the economic needs of the institution without becoming a real tool for preparing for release.

The analysed cases of convicts serving sentences in medium-security institutions demonstrate a consistent model of formal application of risk assessment tools and social and educational work. Regardless of the specific institution, risk assessment mainly records an "average" level of danger without proper analysis of cause-and-effect relationships, without balancing risk factors and protective factors, and without adjusting conclusions to take into account the behavioural dynamics of convicts. The mental state and social vulnerability of individuals are either ignored or considered in isolation from management decisions, leading to the dominance of disciplinary rather than rehabilitative logic. In a number of cases, labour has the characteristics of de facto involvement without proper legal formalisation and social guarantees, which negates its resocialisation potential. Taken together, this indicates a systemic gap between the declared goal of individualising punishment and the actual practice, in which medium-security institutions function primarily as a mechanism of administrative detention and control, rather than as an environment for reducing the risk of reoffending and preparing convicts for release.

8.1.3. Cases of convicts in minimum security facilities

An analysis of cases of female prisoners serving sentences in minimum security institutions reveals a different set of problems in terms of access to sentence mitigation and parole. Unlike maximum and medium security institutions, there are no strict regime restrictions, disciplinary violations or high formalised risks. At the same time, even under such conditions, positive individual characteristics, employment and the absence of violations do not translate into a realistic path to release and social reintegration.

The case of convict Ch

The case of convict Ch. demonstrates a situation of formally "successful" serving of a sentence. The convict has no previous convictions, has experience of stable employment prior to conviction, is involved in paid work in the institution while serving her sentence, conscientiously performs her work duties and has no disciplinary penalties. At the same time, her employment is not combined with individual planning for her release, the restoration of social ties, or preparation for independent life after serving her sentence. Social, educational, and psychological work is general in nature and is not aimed at forming specific steps for resocialisation. The absence of any incentives for long-term conscientious work and good behaviour illustrates the limited ability of the system to convert positive behaviour into real incentives and legal prospects.

The case of convict G

The case of convict G. highlights another aspect of this problem. The convict has professional education and significant work experience prior to her conviction, does

not violate the detention regime and is not confrontational. Upon arrival at the institution, she was involved in work, but later her stable participation in work decreased due to her health condition and emotional exhaustion. At the same time, the system does not offer adapted solutions, alternative forms of employment or motivation support. Formal pre-release training programmes are not accompanied by practical measures for future employment, housing or social support, which gradually creates a sense of hopelessness and loss of faith in the possibility of change in the convict.

In both cases, a common pattern can be observed: a minimum level of security does not mean that the system is automatically oriented towards release or reintegration. Work and social education programmes primarily serve to maintain internal order and regime stability, but do not become a tool for gradually reducing the length of sentences or preparing for return to society. The prospect of release remains abstract rather than achievable, even for individuals with positive characteristics and no violations, which effectively negates the resocialisation potential of the minimum security level.

8.1.4. Generalisation across three security levels

An analysis of nine cases at the maximum, medium and minimum security levels revealed a common systemic problem: risk assessment and related practices mostly function as a mechanism for documentation and internal control, rather than as a tool for individualisation, risk reduction and ensuring real access to parole.

At the maximum security level, risk statuses and preventive records become static and have no effective review mechanism, even in the event of significant changes in behaviour or health status. At the medium level of security, risk assessments often record an “average” risk without substantive justification, failing to integrate mental health, social vulnerability and employment guarantees into the decision. At the minimum level of security, work and resocialisation programmes do not provide realistic preparation for freedom and do not produce tangible legal results even for individuals with positive characteristics.

8.2. Regulatory guarantees of human rights in risk assessment

Risk assessment in the Ukrainian penal system is defined by law as a mandatory element of individual work with convicts and as a tool to ensure the predictability and validity of decisions that affect a person's legal status. Given its impact on access to parole, changes in regime and other decisions with significant consequences, the risk assessment procedure must be accompanied by guarantees for the protection of human rights.

The regulatory framework provides for risk assessment in accordance with the Methodological Recommendations of the Ministry of Justice of Ukraine, within specified time limits, with the involvement of specialists and the recording of results in official documentation. This regulatory framework is aimed at preventing unfounded decisions, ensuring the verifiability of conclusions and consistency in their application over time.

The key guarantees are the principles of objectivity, individualisation, equality and non-discrimination. The assessment cannot be based on stereotypes, generalisations or the mechanical transfer of previous conclusions, but must reflect the current circumstances and dynamics of the individual concerned. Equally important are respect for dignity, the avoidance of stigmatising language and the adequate protection of personal data.

The results of risk assessments should be used to properly justify decisions, rather than as a formal basis for automatically reproducing existing restrictions or narrowing the scope for independent judicial assessment. The effectiveness of regulatory safeguards is determined by the extent to which they are implemented in practice, which is the subject of analysis in the following sections.

8.3. Compliance with risk assessment procedures and deadlines

Compliance with risk assessment procedures and deadlines is a basic procedural guarantee of the rights of convicts and a determining factor in the legitimacy of decisions made on its basis. Risk assessment should be a dynamic process that reflects changes in the behaviour, psycho-emotional state and circumstances of the convict, rather than a one-off formality.

Regulatory approaches provide for an initial assessment within a set time frame after arrival at the institution and periodic reviews. Separate enhanced requirements apply to persons placed on preventive registration as prone to self-harm or bodily harm: for them, the assessment of their psycho-emotional state and risks should be carried out monthly with mandatory recording of the results and adjustment of psychological and socio-educational measures.

Analysis of the materials studied shows that in practice, the deadlines and procedures are not consistently or formally adhered to. Periodic reviews often boil down to a reproduction of previous conclusions without any real new assessment, which makes it impossible to track dynamics and undermines the validity of subsequent decisions.

The practice regarding persons prone to self-harm is particularly problematic: the lack of documentary evidence of monthly assessments indicates a mechanical

extension of preventive status without procedural review and without proving the actual necessity of such a measure.

This approach is not consistent with the standards of the European Court of Human Rights, according to which the state has a positive obligation to ensure effective, regular and individualised monitoring of the condition of persons deprived of their liberty, especially when there is a known risk of self-harm. Formal or sporadic assessments without proper frequency cannot be considered proper fulfilment of this obligation.

8.4. Completeness and quality of information gathering on prisoners

The completeness and quality of information gathering is a prerequisite for objective and individualised risk assessment. The normative model provides for the use of several sources of information: personal file materials, the results of interviews with the convict, observation of behaviour, as well as data from psychological and medical services.

Research materials show that in practice, information gathering is often limited to the formal use of personal file documents and previous character references. Interviews with convicts, observations, and interdisciplinary data are either not used or are of a declarative nature. The practice of using outdated information and repeatedly reproducing the same formulations without taking into account real changes in behaviour, health, and social circumstances is widespread.

Thus, information gathering in the institutions studied is often partial and formal, which does not provide a sufficient factual basis for individualised risk assessment and creates the conditions for erroneous or arbitrary decisions with direct consequences for the rights of convicts.

8.5. Soundness and individualisation of risk assessment

The validity of risk assessment is a key requirement for its quality and legitimacy. It requires a clear, internally consistent logical connection between the information collected about the convicted person, the assessment of individual risk indicators, the scores assigned, and the final conclusion regarding the level of risk of reoffending or danger to society. This connection must not only be formally recorded in the documentation, but also understandable for verification by an outside observer, in particular a court, lawyer or supervisory authority.

Individualisation of risk assessment means that each conclusion must be based on an analysis of the specific person, their life history, behaviour during imprisonment, health status, social connections, dynamics of change and current needs. In this sense, risk assessment cannot be reduced to mechanically filling out forms or repeating previous conclusions, but must reflect the current state of the convicted person at the time of assessment.

An analysis of the cases studied shows that in practice these requirements are often not met. The scores given for individual risk indicators are often not accompanied by adequate factual justification. The individual work logs lack explanations of what circumstances or observations led to a particular assessment, why a specific factor was considered significant or, conversely, ignored. As a result, the final risk level appears to be a formal calculation rather than the result of a balanced professional analysis.

Particularly indicative is the practice of recording the "average" level of risk as a standard or universal conclusion. In most of the cases studied, this level is determined without a clear explanation of how risk factors and protective factors were correlated, whether the behavioural dynamics of the convicted person were taken into account, and whether positive changes had a real impact on the overall assessment. This approach effectively turns "average risk" into a convenient administrative category that allows both mitigation and clear justification of further restrictions to be avoided.

In the cases studied, positive circumstances — such as a long absence of disciplinary violations, stable behaviour, participation in work, admission of guilt, or objective limitations related to health — rarely lead to a correction of the risk assessment. Even in situations where the physical or mental condition of the convicted person objectively reduces the possibility of harm, the overall level of risk remains unchanged. This indicates the predominantly static nature of the assessment, which does not correspond to the very idea of dynamic risk assessment.

Under such conditions, risk assessment loses its character of professional judgement and becomes an administrative formality. It ceases to function as a tool for supporting behavioural change and individualising the approach, and is instead used to record the existing status of the convicted person. This undermines confidence in the results of the assessment and devalues its role as a sound basis for decisions that directly affect human rights, particularly in matters of parole or changes in conditions of detention.

Thus, the lack of proper justification and real individualisation of risk assessment is one of the key reasons why this tool does not ensure fair and predictable decision-making in the practice studied. Addressing this problem requires a shift from the formal completion of assessment forms to a substantive analysis of the individual

and the dynamics of their changes, which is a necessary condition for the implementation of the principles of individualisation of punishment and protection of the rights of convicts.

8.6. Respect for the rights of convicts when determining the level of risk

The procedure for determining the level of risk of reoffending has a direct impact on the implementation of a wide range of prisoners' rights. The results of the risk assessment determine the extent of regime restrictions, conditions of detention, access to work and incentive mechanisms, participation in social, educational and psychological programmes, as well as the actual possibility of applying for conditional early release. In such circumstances, risk assessment cannot be considered a purely internal administrative procedure, but must comply with basic human rights standards.

The key legal principles that must be ensured when determining the level of risk are the prohibition of arbitrary decisions, the principle of proportionality and respect for human dignity. The prohibition of arbitrariness means that decisions on the level of risk must be based on clearly established criteria, verifiable facts and comprehensible assessment logic. Proportionality requires that restrictions on rights associated with high or medium levels of risk correspond to the actual intensity of the threat and are not applied automatically or for reasons of administrative convenience. Respect for dignity implies that risk assessment should not become a tool for stigmatisation or for attributing permanent negative characteristics to a person, regardless of their actual behaviour.

The research materials show that these principles are implemented inconsistently in the practice of the institutions studied. In some cases, risk assessment is actually used as a tool for management and disciplinary influence, rather than as a neutral professional assessment. The level of risk becomes the basis for maintaining or tightening restrictions without proper analysis of individual circumstances and without demonstrating that such restrictions are necessary and proportionate.

The quality of the arguments in the documents containing the results of the risk assessment is a particular problem. The materials studied contain general or evaluative statements that do not reveal the causal links between the behaviour of the convicted person, the identified risk factors and the final conclusion. In the absence of clear reasoning for the decision, the convicted person is effectively deprived of the opportunity to understand the grounds on which the relevant level of risk was determined and, therefore, has no effective tools to appeal it or change their behaviour in order to reduce the risk.

Insufficient motivation for risk level decisions also affects the exercise of convicts' procedural rights. In a situation where the logic of assessment remains opaque, the right to participate in the risk assessment procedure becomes formal, and the ability to influence one's own legal status is significantly limited. This creates asymmetry between the administration of the institution and the convicted person and increases the latter's dependence on the discretionary decisions of staff.

It should be emphasised that the use of risk assessment as an administrative management tool is contrary to its normative purpose. Instead of serving as a means of individualisation, supporting behavioural change and justifying the gradual easing of conditions of detention, risk assessment in some cases serves to fix the legal status of the convict without any real possibility of review.

Thus, the results of the study show that the failure to respect the rights of convicts when determining the level of risk is systemic in nature and is primarily associated with the lack of adequate transparency, reasoning and procedural balance in this procedure. Ensuring that risk assessment complies with human rights standards requires not only formal adherence to methodologies, but also a rethinking of its role as a tool for protecting rights rather than a means of administrative control.

8.7. Assessment of the risk of harm to life and health as an element of protection against violence

Assessing the risk of harm to the life and health of prisoners is part of the state's positive obligation to protect persons deprived of their liberty from violence, self-harm and other forms of harm. Given the complete dependence of prisoners on the prison administration, it is the state that bears increased responsibility for the timely identification of risks and the implementation of effective preventive measures. This obligation stems from both national legislation and international human rights standards.

The normative logic of assessing the risk of harm to life and health is based on an understanding of this process as dynamic and continuous. Unlike the assessment of the risk of reoffending, which can be relatively stable, the risk of self-harm or violence is variable and depends on the person's psycho-emotional state, conditions of detention, interpersonal conflicts, state of health and other situational factors. That is why the assessment of such risk should be carried out regularly, with a clearly defined frequency, and accompanied by constant monitoring.

Of particular importance is the assessment of risk for persons who are on preventive registration as prone to self-harm. For this category of convicts, regulatory acts provide for increased requirements for the frequency of assessment, interdisciplinary participation of specialists and recording of results. In such cases, risk assessment should perform not only a diagnostic but also a prognostic function — serving as a

basis for adjusting conditions of detention, individualising psychological assistance, and reviewing the appropriateness of maintaining preventive status.

Analysis of the cases studied shows that in practice, the assessment of the risk of harm to life and health is often formal in nature. Even when personal files contain information about mental disorders, previous episodes of self-harm or long-term preventive supervision, the assessment is reduced to a mechanical recording of status without proper analysis of the dynamics of the convicted person's condition. The frequency of assessment is not adhered to, and the results are not used to review the chosen strategy of influence.

A significant shortcoming is the gap between risk assessment and actual psychological work. The materials studied reveal a situation where the existence of risk is formally recognised but does not lead to the development and implementation of targeted correctional programmes. Psychological work is limited to general conversations or standard entries in documentation that do not reflect specific goals, risk reduction methods, or criteria for evaluating the effectiveness of interventions.

The practice of maintaining preventive statuses without effective review requires separate attention. In a number of cases, a person remains on the register as prone to self-harm for years without a documented assessment of the relevance of the risk. Under such conditions, the very fact of being on the preventive register begins to be used as an argument for its further continuation, which deprives this tool of its preventive content and transforms it into a form of permanent control.

This approach does not meet the standards of effective protection of the life and health of persons deprived of their liberty. Formal assessment without real preventive measures does not allow for a timely response to the deterioration of the convict's psycho-emotional state and does not ensure an adequate level of safety. Moreover, maintaining high-risk status without psychological support can in itself exacerbate feelings of hopelessness, stigmatisation and psychological pressure.

Thus, the results of the study show that the assessment of the risk of harm to life and health in the institutions studied does not fully fulfil the function of protection against violence and self-harm. The lack of a dynamic approach, the formal nature of preventive records and the gap between risk assessment and actual psychological support measures create risks of violating the state's positive obligations to protect life and prohibit inhuman or degrading treatment of persons deprived of their liberty.

8.8. Use of risk assessment results in decisions affecting the rights of prisoners

Risk assessment results play a key role in the decision-making system in the field of enforcement of sentences, as they directly affect the scope and nature of restrictions

on the rights of convicts. Risk assessments are used as a basis for decisions on detention regimes, transfers between institutions of different security levels, admission to work, the application of incentives or disciplinary sanctions, and the preparation of materials for consideration of conditional early release. In this context, risk assessment has not only managerial but also legal significance.

Given this impact, the results of risk assessments must meet high quality standards. They must be internally logical, factually sound and understandable both to the prisoner and to the authorities that make decisions on their basis, in particular the courts. Risk assessment cannot be an abstract characteristic or a set of scores without an explanation of the circumstances that led to the conclusions and how they relate to the person's behaviour and changes.

The normative model provides that risk assessment is used as an auxiliary tool to justify decisions, rather than as a self-sufficient or automatic basis for restricting rights. Its function is to provide structured information that allows for individualised decisions to be made, taking into account the current state of the convicted person, the results of social, educational and psychological work, and behavioural dynamics. In such a model, risk assessment should reinforce the validity of decisions, rather than replace a substantive analysis of the specific situation.

However, the research materials indicate significant deviations from this normative logic. In a number of cases, the use of risk assessment results is selective or declarative. The conclusions of the assessment are used to justify decisions when they confirm the administration's already established position, while being ignored or not reinterpreted in cases where the convict's behaviour shows positive dynamics.

The practice of applying risk assessments in the context of conditional early release is particularly illustrative. In some cases, the level of risk is used as a universal argument for refusing to support a petition or forming a negative characterisation, without analysing whether this risk is relevant, whether it has decreased during the sentence, and whether real measures have been taken to correct it. Under such conditions, risk assessment ceases to function as a tool for supporting change and becomes a formal basis for maintaining restrictions.

Another problem is the lack of a transparent link between risk assessment and the content of management decisions. The materials studied do not always make it possible to determine how specific risk assessment conclusions influenced decisions on incentives or disciplinary responses. This creates a situation where risk assessment is formally present in the personal file, but its real role in decision-making remains opaque and impossible to verify effectively.

This approach contradicts the principles of legal certainty and predictability. The convicted person is effectively deprived of the opportunity to understand what actions or changes in behaviour could lead to an improvement in their legal situation

and, consequently, is deprived of real incentives for change. In this sense, risk assessment loses its resocialisation potential and fails to function as a motivational tool.

Thus, the study shows that the results of risk assessment in the practice of penal institutions are often used not as a dynamic analytical tool, but as an auxiliary element of administrative justification of decisions. The lack of clear standards for integrating risk assessment into the decision-making process, insufficient transparency and selective application undermine its legitimacy and call into question the compatibility of such practices with the principles of individualisation of punishment and effective protection of human rights.

8.9. Typical violations and systemic problems identified by the checklist

Analysis of the results obtained using the unified checklist allows us to identify a number of typical violations and systemic problems in the practice of risk assessment in the penal institutions studied. The identified shortcomings are recurrent in nature, can be traced in institutions of different security levels, and cannot be explained solely by individual mistakes of individual employees or the specifics of a particular institution.

First of all, risk assessment in a significant number of cases is carried out formally. The completion of the relevant forms and the compilation of characteristics are not accompanied by a proper analysis of the actual circumstances, behavioural dynamics or changes in the mental and physical condition of prisoners. The assessment often boils down to a reproduction of previous conclusions, which deprives it of its dynamic nature and contradicts the very idea of an individualised approach.

A systemic problem is the failure to comply with the deadlines and frequency of risk assessment reviews. In a number of cases, reassessments are carried out late or not at all for a long time, even when there are circumstances that objectively require a reassessment of risks. This is particularly critical for persons on preventive registration, as well as convicts with mental disorders or serious illnesses, for whom regular risk reviews are a key guarantee of the protection of their rights.

The use of outdated and formulaic information is a particular concern. The data entered into risk assessment forms is often mechanically transferred from previous documents without taking into account actual changes in behaviour, the results of social, educational or psychological work, the length of the sentence served or the state of health. This approach effectively preserves the previously established level of risk and makes it impossible to correct it.

There's also a lack of a proper interdisciplinary approach. Although regulations call for psychologists, medical workers, and other specialists to be involved, in practice, their role is often limited to formally approving documents. The conclusions of different specialists aren't integrated into a single analytical model and don't influence the final risk assessment.

A significant systemic problem is the practice of automatically extending preventive records. Decisions to maintain them are made without proper justification, without establishing clear criteria for cancellation and without proving the actual necessity of such a measure. As a result, preventive records lose their preventive nature and become a stable administrative status with long-term legal consequences for convicts.

Another typical violation is the gap between the results of risk assessments and actual correctional work. Even in cases where specific risks are identified in the assessment, this is not accompanied by the development and implementation of targeted psychological or socio-educational measures. Individual programmes are often general in nature and not related to the risks that are formally recognised as significant.

Taken together, these problems shape a practice in which risk assessment is gradually losing its human rights and corrective function. Instead of being a tool for individualisation, supporting behavioural change and justifying proportionate decisions, it is used as an administrative mechanism to reinforce existing restrictions. It is these systemic conclusions that form the basis for the recommendations formulated in the final section of the study.

8.10. Conclusions and recommendations from a human rights perspective

The study allows us to conclude that the risk assessment system in the practice of Ukrainian penal institutions largely fails to perform the individualisation and correction functions assigned to it by the regulatory model. In most cases, risk assessment functions as a formalised administrative procedure, the results of which merely reproduce previously established statuses and restrictions, without responding adequately to changes in the behaviour, health or social circumstances of prisoners.
Existing regulatory guarantees — in particular, requirements regarding the frequency of assessments, interdisciplinary participation, individualisation, and documentary justification of conclusions — remain declarative in many cases. They are not transformed into effective procedural mechanisms capable of influencing the legal status of the convicted person, ensuring the review of preventive statuses or creating real preconditions for the application of conditional early release.

The practices studied reveal a systemic gap between the declared purpose of risk assessment as a tool for supporting change and the actual use of this institution. Risk assessment is often used as a means of administrative management and legitimisation of existing decisions, rather than as the result of professional judgement based on up-to-date information and the dynamics of an individual's behaviour. This approach contradicts the principles of proportionality, legal certainty and respect for human dignity. From the point of view of human rights standards, the problems identified have a direct impact on the reality of prisoners' access to conditional early release. In the absence of regular risk reviews, transparent criteria for changing assessments and effective corrective measures, the institution of parole loses its resocialisation meaning and becomes a formally provided but practically unattainable legal opportunity.

In order to bring the practice of risk assessment into line with human rights standards and its original purpose, it is advisable to:

1. ensure that risk assessment is regular and dynamic, taking into account real changes in the behaviour, health and social functioning of prisoners;
2. introduce mandatory review of preventive statuses with clearly defined, pre-determined criteria for their termination or modification;
3. ensure that risk assessments are interdisciplinary in nature, with the real, rather than formal, involvement of psychologists, medical professionals and other specialists;
4. increase the transparency and validity of conclusions by clearly setting out the logic of the assessment, weighing up risk and protection factors, and properly recording the results;
5. prevent the use of risk assessment as a purely administrative control tool without corrective content and legal consequences for improving the situation of the convicted person.

Only if these approaches are implemented can risk assessment fulfil its human rights function, serving as the basis for individualised, proportionate and fair decisions, and conditional early release become a real mechanism for resocialisation rather than a declarative element of the penal system.