SENTENCE ADJUSTMENT MECHANISMS IN EUROPE:

European Standards and National Patterns Across Seven European Countries
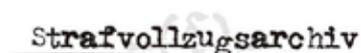
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EUROPEAN PRISON LITIGATION NETWORK

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INTRODUCTION

AUTHORS:

Viktoria Kasongo Akerø
Julia Krikorian

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From a European perspective, the law on enforcement of sentences is characterised by a paradoxical situation. On the one hand, there is a dense and consistent European doctrine, whether resulting from recommendations of the Committee of Ministers of the Council of Europe or from reports of the Committee for the Prevention of Torture, reflecting a strong consensus on the primacy to be given to the objective of reintegration and the need to give sentence adjustments a central place. On the other hand, the case law of the Court, 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 (with the exception of the particular case of life prisoners).

In other words, investigating the European influence on national laws regarding the application of sentences amounts to examining the capacity of soft law to overcome disciplinary and managerial rationales, which are historically known to feed inertia in prison systems and to weigh down the transformative ambitions of reforms.

It is an undeniable fact that there has been a movement towards harmonisation of sentence adjustment mechanisms in Europe, with the spread of a judicialised model with varying degrees of procedural guarantees. Measures that were previously the sole responsibility of the executive authorities and left entirely to their discretion (in other words, on the basis of their assessment of the degree of rehabilitation of the prisoners) have been transferred, either entirely or by way of appeal, to the courts, with the establishment of specific procedures of varying complexity.

Despite the growing recognition of the importance of penological work in the post-sentence field, this convergence of national laws has received limited attention from a European

perspective. The present study aims to assess the degree of harmonisation of national laws governing sentence adjustment and reduction mechanisms, and to evaluate the impact of the increasing judicialisation of these procedures on prisoners' effective access to them. It further seeks to examine how sentence adjustment mechanisms operate in practice, including external influences on the institutional and professional ecosystem in which decisions are made, the rationales underpinning decision-making processes, and the ways in which risk- and security-based considerations pollute these processes. By analysing decision-making practices and granting patterns across different national contexts, the study also explores how such dynamics affect different categories of prisoners.

The present report consists of ten chapters. After re-situating and defining the scope and research questions of the two-year study, the report seeks to further develop the analysis of European doctrine on sentence adjustment. It first consolidates the analysis of Council of Europe standards carried out in 2024 by incorporating an examination of the Council of Europe's soft law on risk assessment in the context of sentence adjustment, as well as the most recent case law of the European Court of Human Rights on this issue (Chapter 1). The report then turns to the doctrine of the European Union, examining relevant EU instruments and the case law of the Court of Justice of the European Union (Chapter 2). Although developments in this field at EU level remain limited, this analysis makes it possible to outline the EU approach to sentence adjustment and to situate it within the broader security-oriented objectives of the Union.

The report then provides an overview of the standards developed over the past decade by both European Union and Council of Europe bodies to ensure the protection of the

right to privacy and personal data, in a context marked by the large-scale collection of personal data through digital services and its increasing processing and use by both private entities and public administrations to support decision-making processes, including within the criminal justice system in the context of sentence adjustment mechanisms (Chapter 3).

The report finally turns to an examination of the structural barriers and facilitating factors affecting access to sentence adjustment in the seven countries selected for the study—Belgium, France, Germany, Poland, Portugal, Spain, and Ukraine—with a view to highlighting areas where European-level harmonisation and safeguards are needed to strengthen prisoners' rights (Chapters 4 to 10 X).

In 2024, desk-based research was conducted, resulting in an initial analysis of the systems of sentence adjustment available in the countries studied, including their legal frameworks, the actors involved, the measures available, eligibility criteria, and the procedural rights afforded to prisoners. This phase of the research also produced preliminary findings on the barriers affecting prisoners' access to sentence adjustment mechanisms.

Building on these preliminary findings, the research carried out in 2025 extended the study in two key directions. First, it examined decision-making practices and the granting of sentence adjustments in the selected countries through qualitative empirical research. Second, it provided a focused analysis of the role and influence of risk-based considerations and assessment instruments in decision-making on sentence adjustment. The research conducted in 2025 also further developed the analysis of European doctrine on sentencing at both European Union and Council of Europe levels.

1 <u>SCOPE OF THE STUDY AND DEFINITIONS</u>

The scope of enforcement of sentences varies greatly from one country to another and could cover a very wide area of law that would have been impossible to cover in a comparative perspective, both in terms of time and consistency of approach. Similarly, certain terms in national laws refer to different institutions, making comparative work difficult.It was therefore necessary to limit the scope of the study and to define generic terms, detached from their national legal qualifications. This was done under the following conditions.

1.1. MECHANISMS OF SENTENCE ADJUSTMENTS CONSIDERED WITHIN THE SCOPE OF THE RESEARCH

The procedures considered are:

- **Sentence adjustment** mechanisms: procedures of early release, i.e. leading to the release of the convicts from prison for serving a sentence outside prison (home detention, conditional release, electronic monitoring, suspension of sentence, etc.), even in cases where the persons concerned retain legal prisoner status. 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
- **Sentence reduction mechanisms:** mechanisms that allow convicts to have the duration of their prison sentence reduced, where these measures involve an assessment of the merits of their behaviour (automatic measures are not taken into account).

The conditions of access to the favourable detention regime are taken into account when they are a condition for the granting, de jure or de facto, of sentence adjustment measures. The same applies to temporary leave.

Excluded from the scope of the study:

- Non-custodial punishment handed down by sentencing courts; as well as procedures for converting a prison sentence into a community sentence prior to incarceration (so-called ab initio sentence adjustments).
- Amnesty and pardon measures, unless according to the domestic law and practice, they fulfil a function similar to that of conditional release, particularly for long sentences (see above).
- The conditions and methods under which a prison sentence is served outside a prison facility, once the sentence has been adjusted, do not fall within the scope of this project.
- Sentence adjustment pending international transfer of prisoners is excluded, except when it takes place in the frame of the implementation of Council Framework Decision 2008/909/JHA on the transfer of prisoners,[1] as part of a broader question on the implementation of EU instruments in this area.

The research does not extend to individuals detained in a specialised facility (separate from a prison) under a preventive detention regime[2] (whether it is actually the case in practice or not, due to a lack of available places). Other kinds of detention in medico-judicial facilities for indeterminate periods are also not included. However, the impact of these systems on early release procedures needs to be studied. In other words, the research addresses the question, as whether the risk-based approach of preventive detention impacts on sentence adjustment mechanisms (both in terms of the centrality of risk-based criteria or in procedures, with forensic expertise, etc.)?

1.2. SPECIFIC CATEGORIES OF PRISONERS

Specific categories of prisoners receive special attention in the study, including women, juveniles,[3] prisoners with addictions, prisoners with health issues (in particular mental health issues), foreign prisoners,[4] and prisoners subject to the most restrictive security regimes or measures. The analysis examines specific schemes designed for these categories and assesses whether their legal status, classification, or security designation affects their accessibility to sentence adjustment mechanisms.

1.3. RISK ASSESSMENT APPROACHES AND TOOLS

With regard to **risk assessment tools and procedures,** the following definitions are central. Risk assessment tools are systematic instruments used within the criminal justice system to evaluate the likelihood of an individual engaging in future criminal behaviour. These tools inform decisions at various stages, including pre-trial release, sentencing, parole, and probation. Risk assessment tools may be grouped into several principal categories, including:

Actuarial Risk Assessment Tools

- Definition: Actuarial tools employ statistical methods to estimate the probability of reoffending based on data from large cohorts of offenders. They use fixed algorithms that combine a range of risk factors to generate a quantifiable risk score.
- Example: Offender Group Reconviction Scale (OGRS): Used in the UK to predict reoffending based on criminal history and demographic information.[5]

Structured Professional Judgment (SPJ) Tools

- Definition: SPJ tools combine empirically derived risk factors with the professional judgement of trained assessors. They offer structured guidelines while allowing some flexibility in the final assessment.

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3   The case of juveniles is limited to children (individuals below 18) detained in prisons, (children held in in specialised facilities not run by the prison service are excluded from the research).

4   Are considered "foreign prisoners" persons who do not have the nationality of and are not considered to be a resident by the State on the territory of which they are held in prison (see Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners).

5   For more information, see: LINK

- **Examples:**
  - » Historical Clinical Risk Management-20 (HCR-20): Assesses the risk of violent behaviour by examining historical, clinical, and risk management factors (e.g. used in Spain).
  - » Violence Risk Appraisal Guide (VRAG): Used to evaluate the risk of violent recidivism among offenders with mental health needs (e.g. used in Spain).
  - » Structured Assessment of Protective Factors for Violence Risk (SAPROF): A structured risk assessment guideline specifically for the evaluation of protective factors for violence risk and serious problem behaviour. Developed in the Netherlands in 2007.[6]

CLINICAL (UNSTRUCTURED) JUDGEMENT

- Definition: This approach relies on the subjective judgement and experience of the assessor without a predefined framework. The practitioner interprets information from various sources to form an opinion on the individual's risk level.

ALGORITHMIC AND MACHINE LEARNING-BASED TOOLS (INCLUDING AI-BASED TOOLS)

- Definition: These tools use algorithms, including machine learning methods (AI), to analyse complex datasets and predict the likelihood of reoffending. They are capable of processing large amounts of data to identify patterns.
- Seem to be rare in European prison contexts but increasingly present in adjacent fields (e.g. predictive policing).
- **Examples:**
  - » Harm Assessment Risk Tool (HART): Developed in the UK, HART employs machine learning algorithms to predict future offending risk.[7]
  - » OxRec: A tool designed to estimate recidivism risk, incorporating both dynamic and static factors. This tool is designed to predict violent reoffending in individuals being released from prison after 1 or 2 years. Fourteen variables are included in the tool: gender, age, immigrant status, length of incarceration, violent index offence, previous violent offence (before index offence), neighbourhood deprivation, income level, mental disorders, civil status, highest education, employment, disposable income, neighbour deprivation scale, alcohol abuse, drug abuse, any mental disorder, any severe mental disorder.[8]

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6 See: https://saprof.com/.

7 Analysis and studies on HART has shown the system has many serious flaws, including the deliberate over-estimation of people's likelihood of re-offending, and the use of racist data profiles. However, until now the extent of its use had not been made public. For more information, see e.g: LINK.

8 For more information, see e.g.: PDF

2 TIME SCOPE

The research identifies evolutions in the legal framework and practice surrounding sentence adjustments over the past decade (2014-2024). However, when it is relevant for a given country, other periods of comparison were taken into account, especially if they help to anchor certain aspects of the research in a historical perspective. The statistical aspects were examined over a 20-year period (2004-2024).

3 METHODOLOGY

Two methods of data collection were employed in this research: desk-based research and a qualitative empirical study. The desk-based research involved the systematic review and analysis of relevant legislation, statistical data, case law, and other documentary sources, including grey literature, and was primarily conducted in 2024. The qualitative fieldwork was carried out in 2025 and consisted of semi-structured interviews with actors operating at different levels and within varied contexts of the penal field. All interviews were anonymised to ensure confidentiality and to encourage candid and open participation. The combination of empirical fieldwork with the earlier review of legislation and academic literature enabled the findings to be situated within their broader legal, institutional, and conceptual framework.

4 OBJECTIVES

The general objectives of this study are:

- To critically analyse the legal frameworks governing sentence adjustment and reduction mechanisms in the seven selected European countries, with particular attention to their functioning, implementation, and operation in practice, and to the extent to which they reflect or depart from European penological standards emphasising reintegration.
- To assess the degree of convergence and harmonisation of national approaches to sentence adjustment and reduction, and to examine the influence of European soft law instruments and jurisprudence on domestic legal frameworks and institutional practices.
- To analyse recent trends in the granting of sentence adjustments and reductions, both overall and in relation to specific categories of prisoners, identifying patterns of inclusion, exclusion, and differentiation across jurisdictions.
- To examine the effects of the increasing judicialisation of sentence adjustment procedures on prisoners' effective access to these mechanisms, including the role of procedural safeguards, judicial discretion, and avenues for review or appeal.
- To identify and analyse the multiple factors that impede or facilitate access to sentence adjustment and reduction, with particular attention to the pressures faced by the institutional and professional ecosystem involved in decision-making, the rationales underpinning these decisions, and the ways in which risk- and security-based considerations pollute decision-making processes.
- To assess the growing role of risk assessment tools and practices in sentence adjustment decisions, including their interaction with legal criteria, professional judgment, and security classifications, and their implications for equality, transparency, and individualised assessment.
- o highlight structural shortcomings and promising practices across national systems, and to identify areas where European-level harmonisation and safeguards could strengthen prisoners' rights in this area.

The national reports prioritise an analysis of the underlying national dynamics for each of the measures, rather than providing a precise and exhaustive description of their legal regimes. Technical details are instead addressed in footnotes.