

## Progress Evaluation Report

### I. Introduction

This progress evaluation report shall provide preliminary results of the evaluation of the JCN project (JUST/2011/JPEN/AG/2943). The outcome of the evaluation is based on the answers to the initial project questionnaire from both the project partners and the associated project partners.

### II. Overview on national penal law concerning high risk offenders

In most of the participating countries in the project the concept of “dangerousness” or high risk is not addressed in criminal law. Only in Finland and Germany a reference to the concept of “dangerousness”/high risk could be found in the national criminal codes. Further such references in the respective national prison codes, however, were reported by Belgium and Slovenia. Out of these only Finland possesses a legal definition for a “dangerous”/high risk offender.

On the level of law on sentencing risk assessment is still rarely found. Out of the seven countries Finland is the only state in which provisions for risk assessment exist in the law on sentencing<sup>1</sup>.

In contrast, legal provisions for a redefinition of risk or a risk assessment during the execution of the prison sentence are found in all project member states, except in Belgium and Ireland. Estonia, Finland, Germany and Slovakia have set up fixed intervals for a risk (re-)assessment of inmates. In Germany and Slovenia the risk assessment is part of the review of the sentence plan.

### III. Early and conditional release from prisons

Early release as an automatic or unconditional release scheme<sup>2</sup> is only available in Ireland and Slovenia. In Ireland all prisoners with a determinate sentence are credited with a 25% remission and are therefore automatically released after having served three quarters of their sentence without further restrictions unless such restrictions have been imposed by the sentencing court<sup>3</sup>. In Slovenia the prison governor is entitled to grant a prisoner early release (for a maximum of three months prior 1. 2 3 2 to release) after having served two thirds of his/her sentence, given that he/she made an effort in his/her work and participated actively in other useful activities<sup>4</sup>.

Conditional release is a form of release known to all seven jurisdictions. While a conditional release after having served one third of the prison term is rather the exception than the rule<sup>5</sup>, the average standard time

<sup>1</sup> Pursuant to the Code of Judicial Procedure [Finland], c 17, s 45 an assessment of the danger of the defendant shall be requested next to an examination of the mental state, if the court considers the imposition of an order to prevent the defendant from being early released

<sup>2</sup> See Padfield, N., van Zyl Smit, D., Dünkel, F. (Eds.) (2010): Release from Prison – European policy and practice. Cullompton: Willan Publishing.

<sup>3</sup> Prison Rules 2007 [Ireland], s 59(1) (as provided for by Prisons Act 2007, s 35) constitutes an entitlement of a prisoner for early release, which may, however, be forfeited in whole or in part through misbehavior.

<sup>4</sup> Penal Sanctions Enforcement Act [Slovenia], s 108.

<sup>5</sup> Standard in Belgium, while in Slovenia it is considered merely in special circumstances at this point. In Estonia a conditional release after one third of the sentence is available only for prisoners convicted for a misdemeanour or a felony through negligence, if they agree to post-custodial electronic monitoring.



for release is somewhere between half<sup>6</sup> and two thirds<sup>7</sup> of the prison term. The earliest time for conditional release for offenders sentenced to life imprisonment ranges from 12 years in Finland to 30 years in Estonia. Ireland, being the only Common law state within this project, differs from all other jurisdictions in so far as the executive branch of government, i.e. the Minister of Justice and Equality, is statutorily empowered to grant temporary release to prisoners at any time<sup>8</sup>.

The conditions imposed on the parolee may either consist of an obligatory catalogue of requirements for all parolees with an additional set of discretionary conditions (Belgium, Estonia, Finland) or may be selected from a range of conditions (which are split into directives/restrictions and obligations in Germany and Slovakia) at the court's discretion.

The probation term generally reflects the extent of the unserved part of the term of imprisonment, while minimum levels (1 – 2 years) and maxima (3 – 7 years) vary. The term of post-custody supervision is either connected to the probation term (as it is in Belgium and Finland) or dependent on the respective court order for such supervision, ranging from one to five years. The duration of post-custody supervision for offenders conditionally released from life imprisonment lasts three years in Finland, five years in Estonia and Germany, ten years in Belgium and is life-long in Ireland.

#### **IV. Overview on penitentiary law regulations for dangerous/high risk offenders**

All prison systems differentiate between open and closed institutions. In some countries special security units for high risk offenders or specific offender groups are provided, such as for sexual offenders in Ireland.

#### **V. Transitional phase, preparation for release**

Sentence plans exist throughout all penitentiary systems, as do release plans (which are part of the sentence plans in Slovakia and Slovenia).

A transfer to an open prison was reported as being legally provided for in almost all countries. While the prerequisites for such a transfer vary between jurisdictions and are mainly dependent on the length of imprisonment and the level of security required, high risk offenders were not seen as eligible for it in any of the countries throughout the major term of their imprisonment<sup>9</sup>. The same holds true for prison leaves.

The number of services involved in the release preparation differs significantly between the countries. Slovakia only involves members of the Corps of Prison and Court Guard in the release preparation, while

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<sup>6</sup> Standard in Finland, Slovakia and Slovenia, as well as in Estonia for prisoners convicted for a misdemeanour or a felony through negligence (without electronic monitoring) and for prisoners convicted for a felony, if they agree to postcustodial electronic monitoring. In Germany applied to first time offenders with a term of imprisonment not exceeding two years or in special circumstances.

<sup>7</sup> Standard in Germany and used in Estonia for prisoners convicted for a felony (without electronic monitoring), as well as in Slovakia and Slovenia in more severe cases. In Finland prisoners defined as recidivists are conditionally released after having served two thirds of the sentence. Further dispositions concerning minimum periods to be served before a conditional release are three fourth in Slovakia and Slovenia and at five sixth in Finland.

<sup>8</sup> Criminal Justice (Temporary Release of Prisoners) Act 2003 [Ireland].

<sup>9</sup> All countries provide for possibilities of a transfer to an open prison towards the end of the term of imprisonment.



Ireland and Mecklenburg-Western Pomerania, by contrast, employ a multiprofessional approach with up to nine services involved.

Four countries have enacted legal provisions determining the latest point for the beginning of the preparatory stage for release. In practice this phase begins in all countries sometime between the start of the imprisonment and six months before release<sup>10</sup>.

Visits of a probation officer to the prisoners in prison are available in all countries, except in Belgium and Slovakia. There is no minimum amount of visits provided for by law, but in some countries practice ensures a minimum of one or two visits (e.g. in Finland and Mecklenburg-Western Pomerania).

Continuity of care is provided by law only in Finland, Ireland and Mecklenburg-Western Pomerania<sup>11</sup>, but is always linked to post-custody supervision.

Case managers are existent in prison and in the community in all four main project partner states and in Belgium. In Slovenia case managers are available in prison, but not in the community. While the case managers' tasks in prison are focused on the preparation for release, in the community they oscillate between support and control.

Halfway houses as part of the transition process are legally provided for in Finland and Mecklenburg Western Pomerania, but are as yet practically only used in Finland.

Electronic monitoring is either used as a means of preparation for conditional release (Belgium, Finland<sup>12</sup>), as a condition to an early conditional release (Estonia<sup>13</sup>) or in post-custody supervision (Mecklenburg-Western Pomerania<sup>14</sup>). In Slovakia a scheme for electronic monitoring in the postcustody phase is currently being developed.

The involvement of NGOs, self-care groups, spiritual groups and other voluntary organizations in the transition process is common both in prison and in the community.

## VI. Aftercare and supervision

The services predominantly engaged in the community are the probation service, social workers or the local municipality. In Ireland and Mecklenburg-Western Pomerania other services, such as the police or employment agencies, are involved in the community as well.

The use of a risk assessment tool for probationers is legally regulated only in Estonia, where probationers with a sentence exceeding one year are subject to a risk assessment according to the Probation Supervision

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<sup>10</sup> Estonia (2 months), Finland („well before release“), Mecklenburg-Western Pomerania (6-12 months), Slovenia (3 months).

<sup>11</sup> As well as in other German penitentiary laws

<sup>12</sup> As part of the transition scheme “Supervised Probationary Freedom”

<sup>13</sup> Release after one third instead of half or half instead of two thirds of the sentence, if the prisoner agrees to postcustodial electronic monitoring.

<sup>14</sup> As part of supervision of conduct only



Act. Practice provisions and guidelines or standards for a risk assessment, however, are existent in Estonia, Finland and Mecklenburg-Western Pomerania.

Services with legal responsibilities in aftercare supervision other than the probation service are only existent in Belgium<sup>15</sup>, Ireland<sup>16</sup> and Mecklenburg-Western Pomerania<sup>17</sup>.

Police forces are involved in post-custody supervision in almost all countries except for Ireland, where they are involved only in relation to the requirements of sex offenders under the Sex Offenders Act 2001. Their task is generally to control the compliance of the parolee with the imposed conditions. In Finland the police can also assist the supervisor with appointments (e. g. provide safe rooms, etc.) and police officers can function as assistant supervisors for high risk offenders.

### VII. “Good practices”, promising developments and failures (“bad experiences”)

*The identification of “good practices” is still an on-going process in the project and therefore not covered in this report.*

### VIII. Process evaluation

*The process evaluation is still being conducted and there are no preliminary results at this stage.*

### IX. Summary and conclusions

The descriptive evaluation of the transition management processes concerning high risk offenders within the seven jurisdictions involved in the JCN project unveils certain similarities as well as differences. The concept of a “high risk offender” seems to have had remarkable little effect on the national legislation concerning imprisonment and release in most of the project member states. Yet, most states show similar patterns of prison and transition management for high risk offenders, which are, however, largely reduced to the exclusion from relaxations. Generally high risk offenders are subject to a similar treatment and management in prison and in the community as offenders, who are not considered of being at high risk. However, a high risk offender is more likely to be subjected to post-custody supervision. This provides for a continuity of care in those cases in at least three project member states as an ancillary effect due to the link between continuity of care and postcustody supervision in those jurisdictions. The use of certain instruments in the transition process, such as risk assessment schemes, halfway houses or the involvement of services with own legal responsibilities, varies significantly between all seven states. Equally, means of control (involvement of the police, electronic monitoring) are employed to different degrees and for different means among the project member states.

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<sup>15</sup> Police services and mental health outpatient services for sex offenders.

<sup>16</sup> Irish Prison Service, Courts Service, An Garda Síochána (Police).

<sup>17</sup> Supervisory agency, Court for the Execution of Sentences, Forensic psychologist, Prosecution, Non-profit organisations.

