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(EXECUTIVE REPORT)

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Work team

Authors:

Manel Capdevila Capdevila (coord.) (*head of research*)
Marta Ferrer Puig (*head of the Area of Social and Criminological Research and Training*)
Marta Blanch Serentill (*associate researcher and technical support*)
Berta Framis Ferrer (*Research Unit research technician*)
Aina-Itziar Coloma González (*scholarship research technician*)
Gerard Domínguez Reig (*scholarship research technician*)
Núria Comas López (*scholarship research technician*)
Alexia Cañamares Sanz (*scholarship research technician*)
Albert Garrigós Bou (*scholarship research technician*)
Ariadna Boldú Pedro (*scholarship research technician*)

Methodological advice, data analysis and supervision of the report:

Vanessa Alcaide Lozano (*Dept. of Sociology and Analysis of Organisations, Faculty of Economics and Business, University of Barcelona*)

Field workers:

Oriol Arronis Camps	Albert Garrigós Bou
Josep Babot Barbero	Júlia Mas Maresma
Júlia Boada Danés	Martí Oliver Mora
Alexia Cañamares Sanz	Xavier A. Pedrós Fernández
M ^a José Fernández Hidalgo	Mònica Teixidó Piñol

Special advice:

Maria Dolors Basallo Fernández (*criminologist and prison governor*)
Ismael Loinaz Calvo (*Department of Personality, Assessment and Psychological Treatment, Faculty of Psychology, University of the Basque Country–UPV/EHU*)

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0. Introduction

As a result of the process of detection of research needs promoted by the Social and Criminological Research Unit of the Centre for Legal Studies and Specialised Training (CEJFE), the Area of Planning and Strategic Projects of the Penal Services Department (DGSP), together with the Department of Rehabilitation and Health Programmes, came up with a proposal to study the current application of conditional release in Catalonia with the aim of discovering how it is managed now and describing the main obstacles to extending its use. This proposal is linked to the DGSP's strategic aim of promoting the application of conditional release.

There are two reasons for the aim of extending the application of conditional release in Catalonia: first, taking account of international recommendations and the results of empirical research, to foster the possibilities for rehabilitation provided by the prison sentence by promoting the stage when the prisoner can follow an effective rehabilitation process with guarantees of support and control. Second, and all the more so at a time of serious economic restrictions, to reduce the high cost of imprisonment when it is avoidable.

To this end, on 1 June 2012 the DGSP published Circular 2/2012 on the management, execution and monitoring of conditional release. This was justified by the need to update and simplify the procedure, which dates from 2004, *in order to adjust the number of persons on conditional release to the ratios expected according to the typology and the criminological profile of the prison population of Catalonia*. The Circular speaks of an insufficient use of this measure as a way of serving prison sentences and suggests increasing the number of prisoners who are granted it and reducing the number who return to second degree for failure to fulfil the conditions.

Should conditional release be encouraged?

Should the reader unfamiliar with the issue or society in general be clearly informed of why conditional release should be encouraged? What arguments can be advanced in favour of this proposal by the Catalan penal administration? What benefits can society obtain from this type of proposal?

Of all the arguments expounded in the report we will choose three types in this executive summary: 1) arguments related to penal and prison policy 2) economic arguments and 3) arguments related to criminological efficacy.

1) Concerning the arguments related to penal and prison policy:

- Catalonia has almost doubled its prison population in ten years, although there has been no corresponding increase in criminality in the same period.
- The rate of prison population is one of the highest in Europe (Spain occupies the first place in the EU 15) and we are on a par with the old Eastern European countries in the EU 27.
- Catalonia has a very high prison population density, among the worst in the EU, including the countries of Southern Europe. We should point out that Spain has built new prisons that allow it to show better results in this aspect.
- The average length of effective time spent in prison in Spain is one of the highest in Europe even though there is no life sentence among the applicable measures.
- The requirements for the granting of conditional release are among the most demanding in Europe and have the largest number of additional requisites. All in all, this means that the percentage of prisoners who serve out their time on conditional release is one of the lowest in Europe.
- The percentage of successful early release procedures in Catalonia for 2012 was 99%. 97.3% of the prisoners completed them without incidents. Despite that, the percentage of prisoners classified at second degree of treatment

who have been granted early release in recent years has fallen, though that has nothing to do with there being a higher number of disciplinary files in the prisons (these have also fallen in the last few years).

2) Concerning the economic arguments

Although there are no reliable studies of the real economic cost of penal execution measures, there is a general consensus that the expense involved in conditional release is lower than when the sentence is served in prison.

3) Concerning the arguments related to criminological efficacy

- The studies consulted agree that open custody measures are more effective for working on the rehabilitation process than confinement in prison.
- The supervision is more effective if it includes work on rehabilitation and is not based solely on control measures. Also if that work focuses on the population with a medium or high risk of committing further crimes and the tendency to treat low risk prisoners who will not reoffend, which involves an unnecessary distribution of resources and money, is abandoned.
- Many of the studies mentioned in this investigation confirm that going out on conditional release reinforces the prisoner's wish to refrain from crime and brings down the rate of reoffending. It should therefore be encouraged whenever possible.

1. The investigation

The research project we are presenting aims to be a strategic tool for promoting the use of conditional release in Catalonia through a description of the use currently made in the Catalan penal system and a systematic, comparative identification of the disadvantages and difficulties of its application; a search for information about how it is used in neighbouring countries; and the drafting of proposals for improvement.

1.1 Purpose

The ultimate purpose of this study is to provide data about the Catalan prison system and those of other countries that will enable us to extend the application of conditional release to all prisoners for whom it is possible and suitable.

1.1.1. Aims

1. To discover the present keys to the use of conditional release in Catalonia, whether to grant or to refuse it when it can be applied for.

1.1. In the cases in which it is granted, to describe the profile of the prisoners, according to the Catalan Penal Computer System (SIPC) and Riscanvi. To compile the most common criteria of the prison staff for proposing it, those of the directive centre for granting it and those of the prison supervision judge for approving it.

1.2. In the cases in which it is refused or the process is not set in motion even though the prisoner meets the objective requirements, to detect the main reasons why. To find out if the profiles of the prisoners who are refused it or whose process is not set in motion are different in any aspect from those of the other group and what arguments are behind the absence of a proposal and/or refusals by the prison staff, the directive centre and the prison supervision judge.

- 1.3. To discover the profile of the prisoners who were granted conditional release at two-thirds of the sentence and those who had served three quarters. To find out why more are not proposed in the advanced modality.
2. To find out if there are differences in the application of conditional release (in the number of proposals, way of processing, type of prisoner, etc.) according to different variables: territory, length of the sentence, timescale (before or after the Circular),
3. To find out how long after the first possible time conditional release has been granted and the reasons for that.
4. To find out why the *revokees*, the ones whose conditional release is suspended and who are returned to prison, are not reconsidered for conditional release.
5. To compare a group of prisoners at second degree who meet various objective conditions to reach third degree but have not done so with a group of prisoners at third degree to find out what characteristics of the former might explain why they have not been recommended for progression.
6. To collect, from the main legal operators involved and the DGSP, the proposals for improvement which would help make the recommendations for conditional release stronger.
7. To provide information about the organisation of conditional release in neighbouring countries, which would help with decision-making concerning the improvements to be introduced in Catalonia.
8. To collect the cases and the set of data from the investigation in such a way that in five years' time it would be possible to study the empirical recidivism of the sample in order to assess by means of this indicator whether there are differences between the actions aimed at one group or another and make new proposals for improvement.

1.1.2. Hypothesis

There are two general suppositions of the investigation that we want to study:

- The subjects' characteristics affect the fact that they are granted conditional release (and/or the fact that the road to it is taken).
- The different organisational aspects and professional criteria of the administrations intervening (penal administration and legal administration) have an impact on the granting of conditional release (and/or with the fact that the road to it is taken)

1.2 Methodology

The methodology of the study consisted of triangulating the collection of information to compare what was expected (theoretical concept, laws, earlier studies), what has been observed (quantitative and qualitative results collected) and what has been explained (experts' arguments, existing studies, professionals working in the field). That has entailed using a combination of quantitative and qualitative techniques and analyses which are adjusted as far as possible to the aims pursued at any given time. In this section we will explain the global concept, while readers will find the details of the specific techniques or analyses in each of the chapters in which they are used.

1.2.1. Quantitative analysis

From the data in the Catalan Penal Computer System (SIPC) data base and the specific data of Riscarvi –which have been collected since 2010– for each of the cases studied a template of variables grouped in four blocks has been completed: personal variables (a block that includes all the family and social variables), penal variables (referring to the *basic sentence*¹ which is the object

¹ We should recall that the concept of *basic sentence* which we use in our studies refers to the set of sentences the prisoner is serving without interruption from the moment of the study, starting with the time of his or her imprisonment, although other causes may accumulate during

of the study), prison variables (referring to the situation, behaviour and treatment while the sentence is being served) and, lastly and only for those who have been granted conditional release, a series of data related to the form, moment and conditions of access to it. In total there are 94 secondary variables collected in the prisoner's file.

Concerning the population which is the object of the study, the whole conditional release population (any prisoner who was at any time in 2012 on conditional release with a file submitted to the prison supervision judge and a favourable resolution) has been taken into account: N=1,032 persons.

This group has been compared with a group of prisoners who were at third degree in 2012. The sample was composed of n=1,102 persons.

And lastly they were compared with a group of second degree cases, who met the conditions we have mentioned: a) they had served half the sentence; b) they had no disciplinary file awaiting cancellation in the six months before 2012 and c) they had an assessment done with Riscanvi, close to that date, when the conclusion was low risk. The cases we have called *filtered* second degree, to distinguish them from the characteristics of the ordinary second degree population, were selected and compiled at random. In the end, the sample was composed of n=1,206 persons.

A separate analysis was made with the subjects who had a conditional release revoked in 2012 (N=70), to study their profile and differences from the other cases of the conditional release group.

In total 3,340 valid cases have been studied.

The field work was done between February and March 2013.

the serving. And so a prisoner may be doing time for a single cause or for several. The basic sentence includes this whole uninterrupted period until conditional or definitive release. Since there may be several, crimes we always analyse the main one, which is the one that has received the longest sentence from the legal authority.

1.2.2. Qualitative analysis

We compared the quantitative information with qualitative information through the use of techniques that enabled us to look more deeply into what we had obtained and the explanations that provided the foundations for the possible causalities of the quantitative data found. We used five different methodological techniques.

1.2.2.1 Case analyses: 15 cases

We did an exhaustive monitoring of the files of 15 prisoners throughout their sentence and the circumstances in which they had developed. In these cases, we did not look for any representativeness in the selection, but rather gave priority to singular cases with the widest possible variety.

1.2.2.2. In-depth interviews with key informants

From interviews with persons of recognised prestige in relation to this subject or who worked at the key places in the development of conditional release we looked for valuable qualitative information about its functioning in Catalonia and its strong and weak points at present. We were especially interested in the explanations these experts could give about the fulfilment by the prisoners of the conditions for eventually having access to conditional release and the functioning of the organisation to solve the problems or contradictions generated by everyday practice in contrast with the provisions of the rules.

1.2.2.3. Discussion groups

Three discussion groups were formed. Those taking part were selected by the directive teams of the prisons from among the treatment professionals in both open and closed custody who, because of their work place, could be closer to the decision-making for the progression from degree to open custody and/or conditional release. We sought to balance them with professionals from the different disciplinary branches (social workers, social educators, jurists, psychologists and teachers) and to have representatives of the large and small prisons, the different territories and the directive centre. In the discussion

groups a series of subjects related to some of the aims of the investigation were dealt with; the participants were also asked for their interpretation of some of the quantitative results that were being generated; and lastly they were asked to identify the strong points they saw in the application of Circular 2/2012 and the main difficulties detected.

The purpose of the discussion groups was fundamentally to analyse the participants' ideological positions and their discourses in order to define the tendencies that make up the different ways of understanding access to the open custody and conditional release, and whether or not that is related to social rehabilitation.

1.2.2.4. Delphi Technique

Basically, this technique consists of sending two questionnaires to a wide group of professionals, the second of which examines the results of the first in greater depth. The second is only sent to those who answered the first.

Those who received this part of the study were all the professionals involved in the general functioning of the Catalan prison system, working as treatment technicians for the central services or supplying their services to external entities working with the administration. In total the first questionnaire was sent to 699 potential participants: 663 belonged to the prison administration and 36 worked for external entities.

The questionnaires were sent by e-mail and both could be accessed through the Google Drive web editor. Both were anonymous. In the first round there were 153 questionnaires completed and in the second 104, 21.9% and 14.9% respectively of the total of the potential population.

Nonetheless, the results obtained give us a good X-ray of what the professionals responsible² for the application of conditional release and access

² We should be prudent concerning the representativeness of the sample since this was not random and we do not know if it represents the opinions of all the professionals working on it.

to open custody think and how they see the implementation of Circular 2/2012 and the future of conditional release in the coming years.

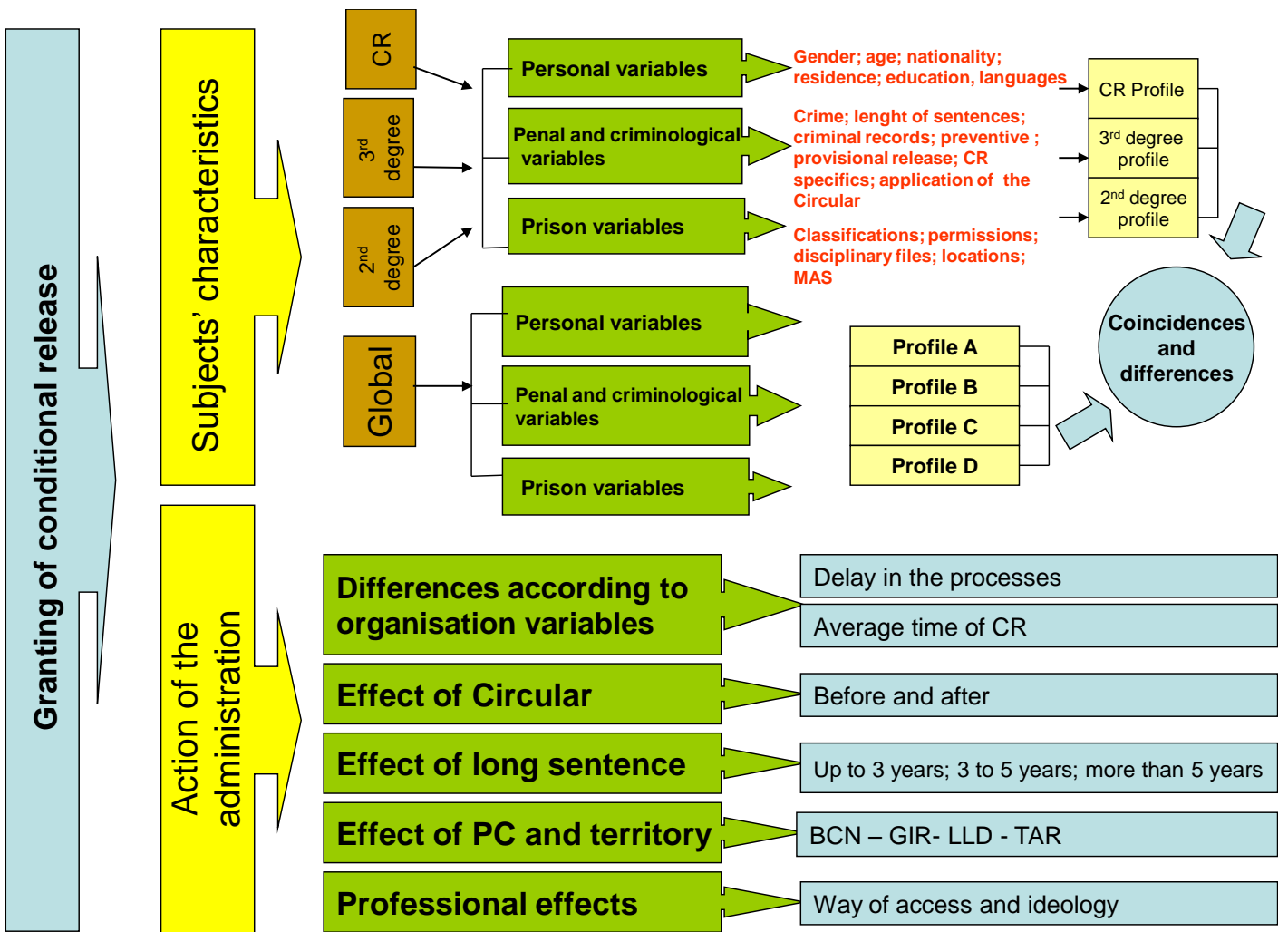
1.2.2.5. Collection of bibliography and comparative legislation of conditional release

Another of the aims to be covered by the investigation was to discover the situation in relation to conditional release in Europe from existing publications and international recommendations. We wanted to compare Catalonia with nearby European countries which also apply conditional release. We also wanted to contextualise the Council of Europe recommendations and those of other prison bodies referring to the subject. The results must allow us to situate us on the map of Europe and, according to the results obtained, make proposals for improvement in the final recommendations.

1.3 Analysis model

In the end, the analysis model is the way in which we make operative all the concepts, dimensions, components and indicators that occur in the investigation, as indicated by the theoretical model in diagram 1.

Diagram 1. Model of analysis of the investigation into conditional release



1.4. Variables to be collected

Personal and social variables	Identifying variables
Date of birth	Study group
Gender	ID
Nationality	
Foreign	
	Specific CR variables
Geographical area of origin	Start CR file
Does s/he have an expulsion file?	Date of commitment
Residence	Date of individual conditional release programme
Spanish language	Date of social integration report
Catalan language	Date of acceptance CR by social services
Children	CR taken to prison supervision judge
Education	Date of start of CR
Problems with drugs or alcohol (Riscanvi)	Date of end of CR
Limited response to psychological treatment (Riscanvi)	Level of monitoring on CR
Attempts at self-harm (Riscanvi)	Prisoner's statement
Lack of economic resources (Riscanvi)	Type of CR modality applied
Lack of family and social support (Riscanvi)	Revocations CR
Hostile attitude or pro-criminal values (Riscanvi)	
Penal variables	Prison variables <i>basic sentence</i>
Previous times in prison?	Reference prison
How many?	Date of first classification of basic sentence
Date of first entry into prison	Date of first ordinary permission basic sentence
Crime basic sentence	Number of classifications
Crime grouping	Number of regressions
Violent crime	Classification in first degree
Date of basic sentence crime	Number of locations in different prisons
Other accumulated prosecutions?	Number of locations in different modules
Criminal record?	Number of locations in different cells
Length of sentence	Does s/he have ordinary permission?
Date of start of sentence	Number of very serious incidents
Date of ¼ sentence	Number of serious incidents
Date of ½ sentence	Number of minor incidents
Date of 2/3 sentence	Any incidents in 2012?
Date of ¾ sentence	MAS ³ assessments
Date of definitive release	MAS level A assessments
Has s/he entered as preventive?	MAS level B assessments
Has s/he left on provisional release?	MAS level C assessments

³ Motivational Assessment System

Penal variables	Prison variables <i>basic sentence</i>
Does s/he have a restraining order for the victim?	MAS level D assessments
Date of first preventive entry	Date of proposal progression third degree
Start of criminal or violent activity (Riscanvi)	Date of access to third open
History of violence (Riscanvi)	Date of first Riscanvi assessment
	Riscanvi version
	Problems of conduct in prison (Riscanvi)
	Escape, breach or non-fulfilment (Riscanvi)
	Self-inflicted violence (Riscanvi)
	Intra-institutional violence (Riscanvi)
	Violent reoffending (Riscanvi)
	Breach of sentence (Riscanvi)
	Date of last Riscanvi assessment

1.5. Timeline

2012 - 2013 month	9	10	11	12	1/2	3/4	5/6	7/9	10/11	12/1
Specification of task, research date and design										
Decision-making and formation of research team										
Present project and start in-depth interviews										
Quantitative: creation of data base, piloting and introduction of data into field work										
In-depth exploitation of qualitative case analyses										
Analysis of quantitative statistics										
Discussion of quantitative results										
Discussion groups										
Delphi (first round)										
Delphi (exploitation of data and second round)										
Collection of bibliography and comparative legislation										
Discussion of global results										
Drafting of final report										
Presentation of results										

1.6. Technical file of the investigation

Quantitative part

Territorial sphere	Catalonia
Population which is the object of the study	Population on conditional release at any time in 2012 (N=1,032 persons) Conditional release revoked (N=70 persons) Sample of the population in third degree, in any modality (N=3,565; reliability level 95.5%, probability p=q=50; error shown 2.5%). The sample chosen has been (n=1,102). Sample of the population in second degree meeting 3 conditions: having ½ the sentence served, no disciplinary files pending cancellation in the last 6 months, low risk in Riscanvi. (N=2.081; reliability level 95.5%, probability p=q=50; error shown: 1.87%). The sample chosen has been (n=1,206). The samples have been selected at random.
Monitoring period (phase 1)	From 1 January 2012 to 31 December 2012
Monitoring period (phase 2)	January 2016 (monitoring reoffending) uneven intervals, according to the subjects' exit date
Source of the data	SIPC
Field work	February and March 2013
Exploitation statistics	IBM SPSS Statistics 17.0 statistical pack
Statistical analyses	Contingency with the Pearson (χ^2) chi-squared test and Phi and Cramer's V. Student's t test for measuring the difference of the averages. Analysis of variance by independent samples (ANOVA). Binary logistical regression. Analysis of conglomerates (two-stage with processing of atypical values).

Qualitative part

Case analyses	Fifteen cases, selected by intentional theoretical sampling. The cases are extreme ones (unusual in relation to the majority) and typical ones (the ones that become normative regularities), looking for the ones that provide maximum heterogeneity.
In-depth interviews	With key informants. Intentional theoretical sampling searching for maximum heterogeneity and snowball pragmatic sampling. From the penal administration (6 persons); from the legal administration (6 persons), from the academic world (2 persons)

Discussion groups	<p>Three discussion groups (two in June 2013 and one in September).</p> <p>Formed by treatment professionals (psychologists, teachers, social educators social workers, jurists, team managers) in all the prisons in Catalonia and representatives of the directive centre.</p>
Delphi technique	<p>Two progressive questionnaires published on the web in Google Drive.</p> <p>People consulted in the questionnaires: treatment technicians in prisons, deputy directors and coordinators of treatment teams (N=663 persons) and professionals from external services who work with the prison administration on care for persons sentenced who are in open custody and/or conditional release (N=36 persons)</p> <p>Field work: June 2013- October 2013</p> <p>Participants first round: 153 professionals (21.9%)</p> <p>Participants second round: 104 professionals (14.9%)</p>
Bibliography and comparative legislation for conditional release	<p>Council of Europe Data (SPACE I and SPACE II).</p> <p>Data for <i>probation measures and alternative sanctions in the EU</i></p> <p>Collection of international studies (see bibliographical references)</p>

2. Conclusions

A) Concerning the state of conditional release in our country and its potential

1. In terms of prison policies, many of the indicators collected place us at the most negative extreme of the different European praxes –rate of prison population, prison density rate, average time of serving the sentences, to mention a few indicators–, on a par with the countries of Eastern Europe, historically the least developed in penal and prison policies.
2. In terms of prisoner privileges and specifically conditional release, Catalonia and Spain also lose out in comparison with the rest of Europe: we are the ones that take the longest to propose it during the period of sentence and demand the most additional requisites for granting it. All in all this means that the percentage of prisoners who serve out their sentence on conditional release is one of the lowest in Europe.

B) Concerning the classification of the subjects

3. The subjects of the three groups studied who were on conditional release, third degree treatment or second degree treatment⁴ in 2012 show significant differences, which clearly identify each one with a specific profile.
 - 3.1. The prisoners granted conditional release have a more socially adapted profile. From the time they go into jail they have the highest percentages in the indicators of protection of personal and social variables. They also show lower values in the risk of violence and reoffending variables.

⁴ But who meet certain objective conditions for being in third degree, to wit: they have reached the middle of the sentence, they have no disciplinary files pending cancellation in the last six months and are assessed as low risk in the *Riscanvi* done by the professionals.

3.2. The third degree prisoners have an intermediate profile and show an evolution while serving the sentence from initial characteristics similar to the group classified at second degree to ones similar to the conditional release subjects.

3.3. The prisoners who remain at second degree even though they meet certain objective conditions that would allow them to be at third degree and/or on conditional release are the ones with a more difficult profile. The reasons that best explain the lack of progression in degree are:

- a) Not being given ordinary permission
- b) Active drug addiction
- c) Not responding properly to treatment or doing so with limitations
- d) Showing a hostile attitude or having pro-criminal values
- e) Having committed a crime *against property* as the main offence
- f) In the case of foreigners, being in an irregular administrative situation, having an expulsion file open.

We have just seen that not being given ordinary permission is the main indicator for not progressing in degree (this variable alone accounts for 54.3% of the cases). The main reasons for not starting the *permissive sentence* are:

- a) Having no economic resources outside prison
- b) Having no family or social support outside prison
- c) Having had regressions of degree while serving the sentence
- d) Having committed a *sex offence* as the main crime

4. The present system of classification in degrees of treatment functions according to the discretionary model, based solely on the criterion of the professional for selecting the prisoners according to their personal and criminological characteristics. According to the statistical analysis of the total of the sample studied (3,340 subjects), 75.8% would be correctly classified

statistically according to the criteria we have listed in section 3 of the conclusions. But the research has detected that 24.2% of prisoners (620 persons) could be better classified without increasing the risk of their committing more crimes or perpetrating acts of aggression inside the institution.

5. The length of the sentences influences the process of classification and progression of degree. And so the prisoners with *short* sentences (less than three years) are usually at second degree in a far higher proportion than the other groups studied. The professionals admit that they are reticent about taking rapid decisions about the initial third degree classifications and rapid progressions of degree with prisoners sentenced to *short* terms..
6. In the process of classification and concession of permission the main crime committed in the basic sentence also has an influence, especially if it is a crime *against persons* or a *sex offence*. In these cases, there is a tendency to delay the start of the *permissive sentence*, though that delay does not necessarily have a direct relation with the degree of risk assessed in Riscanvi, the assessments made on the MAS or the degree of success of the ITP⁵.
7. The main conclusion of this section is that conditional release is being applied to prisoners with a low risk profile with little likelihood of their reoffending, for whom an especially close monitoring or supervision would not be necessary.

C) Concerning the delays in granting prisoner privileges

8. 60.5% of the sample studied had begun the *permissive sentence* later than the first possible time (i.e., having completed one quarter of the sentence). Most of the variables that explain this fact are related to the characteristics

⁵ Individualised Treatment Programme.

of the subject and have already been referred to in the previous point. As for the variables related to the action of the administration, the ones which best explain the delay in the granting of the ordinary permission are:

- a) Having committed a *sex offence* in the basic sentence as the main crime
- b) Having entered preventive custody⁶
- c) When the sentence is *long* (three to five years) or *very long* (more than five years) there is a tendency to delay granting permission until the sentence is well under way to avoid the risk of breach of sentence by failure to return.

9. Concerning access to conditional release, the investigation has enabled us to identify 52.6% of cases in which the file is opened with a delay in relation to the times established for the modality eventually proposed. Among the incidents which can be imputed to the administration, the professionals themselves identify the following:

- a) *Prison transfers*. Each time there is a transfer, cases are diagnosed again and some aspects assessed and the prisoner is required to make a certain temporary adaptation to the new environment in order to *consolidate* the treatment processes. Little predisposition to continue working with the prisoner at the point where s/he left off at the previous jail is shown, which sets the whole process back. Nor does it help that the computer application for the management of the prisoners' files (SIPC) is designed to hide or replace part of the existing information when there is a change of prison or work unit and the management of the conditional release file has to be restarted each time.
- b) *Excess bureaucracy*. There is a perception that the procedures could be simplified a lot more.

⁶ In some cases, the time the prisoner spends in preventive custody exceeds a quarter of the sentence when it is final.

c) *Bad management of the ITP.* Drafting begins late, it is ineffective in managing payment of the civil liability and is excessively linked to the completion of the treatment programme.

d) *Satisfaction of civil liability.* It takes too long to tackle the issue. It should be worked on from the first moment of serving the sentence.

e) *Disorders in the treatment programme.* The main disorders are: 1) the programmes begin late within the period of the sentence; 2) not all the prisoners should be obliged to follow the treatment programme linked with the type of crime they have committed if they do not have the problems worked on in it; and 3) they should not have to have completed a programme in order to have access to the prisoner privileges or improve the classification of the degree. We consider it necessary to turn the treatment programmes into transversal ones for the duration of the sentence, in the form of itineraries. They should begin inside the prisons and continue at the third degree, ending with monitoring on conditional release.

f) *Shortage of programmes in open custody.* There is no continuity in the treatment programmes in open custody. There are not enough professionals to develop them, nor is there a methodological commitment by the organisation to foster them.

g) *Difficulties with resources in open custody.* Community resources and family support are two key elements for guaranteeing success, especially in the first months after release. We consider that given how important they are few resources are earmarked for them and they have been even more limited with the cuts.

h) *Lack of specific programmes for new types of crime.* In the face of the new profiles of criminals entering the prisons (having committed serious economic or traffic crimes, among others), specific attention –or rather lack of attention– to their problems is seen with concern by a sector of the judiciary, who question the granting of conditional release if no specific work has been done on them.

D) Concerning the positioning and training of the professionals who have to apply conditional release

10. The legal operators (members of the judiciary, the directive centre and treatment professionals) do not hold a uniform opinion about ways of managing conditional release. This heterogeneity of criteria is not only observed in the management of conditional release; it is also evident in regard to: 1) the other prisoner privileges, 2) the intervention models, 3) civil liability, 4) intervention with foreigners in an irregular situation and 5) the monitoring of conditional release.

10.1. Prisoner privileges are managed differently according to the ideological position of the legal operators, which we have found to take the shape of three differentiated profiles.

a) The first corresponds to a *rehabilitating profile* (approximately one third of the professionals of the prisons and social entities), which believes that conditional release is always positive and that it is not sufficiently applied at present. This profile does not see any supposition that would prevent it being granted and believes that the conditions of application should be relaxed.

b) The second profile corresponds to the *ambivalent profile* (approximately 60%), which believes that the majority of the prisoners should leave on conditional release, though with some exceptions. This profile believes that the penal sentence serving system should neither be tightened nor relaxed and prefers to continue as so far, with no changes.

c) Lastly, the third profile corresponds to the *security profile* (approximately 10%), which believes that only some cases should leave on conditional release and that at present it is applied excessively. They are in favour of specifying certain penal and criminological characteristics that should always prevent access to conditional release and that the conditions of application should be tightened.

10.2. Concerning the conditional release application models, half the professionals of the prisons and social entities in Catalonia opt for the discretionary model as the best working one, 33% opt for the mixed one and only 10% are favourable to the automatic one. If we introduce the variable of the ideological profiles of the professionals in the comparison, we observe that trust in the discretionary model is 82.4% among the legal operators who respond to the *security profile* and in the mixed model 50% among the legal operators who respond to the *rehabilitating profile*. The mixed model is shown in the studies consulted and the international literature as a good tool for improvement of the management and organisation of the cases.

10.3. Concerning civil liability, the criteria of the judiciary (sentencing judge, prison supervision judge and prosecutor), the directive centre and professionals of the prison or the prison social services do not agree either, and in each territory it is dealt with differently according to the professionals who work there and the particular ways the different bodies have of reaching agreements. In practice, we propose that the time has come to specify it given the lack of clarity in some aspects:

- a) The amount to be paid, if it has not been clearly stated in the sentence.
- b) What is understood by *effort at reparation* and the criteria concerning the assessment of its adequacy for obtaining prisoner privileges.
- c) The way of specifying its fulfilment in the IPT and the way of later transferring the arguments for a request for any prisoner privilege in the monitoring and control reports.
- d) There is no statement of from what moment work must be done on reparation for the victim and how.

10.4. Concerning intervention with foreigners in an irregular situation, the application of art. 197 Penal Regulations (granting conditional release to foreigners who accept expulsion in exchange for returning to their own

country to serve the sentence) has practically no connection with the cases of foreigners with an expulsion file open (only 13.3% of the 46 subjects to whom it was applied in 2012). Some professionals speak of the existence of certain contradictions between the Foreigner Circular 1/2011 and the Conditional Release Circular 2/2012. It is still early to speak of the changes brought about by the new Circular 1/2013 amending Circular 1/2011 on foreigners in prisons, in force since April 2013. There should be monitoring in the future to assess the impact.

10.5. Concerning the monitoring and control of conditional release, the professionals believe that it is not optimal and do not trust it as might be wished. In the face of the doubts it generates, they choose to be cautious and conservative in the assumption of risks. That explains why the prisoners reach conditional release later than they might, bearing in mind the conditions of their sentence and their risk profile.

11. The perception of a large sector of the key informants is that the profile of the prison treatment professionals has changed in recent years owing to the human resources policies practised, specifically because of the priority given to the internal promotion of specialist prison technicians for the treatment technician posts. That would not be a problem were it not that in the everyday task of treatment there has been a transfer of the work habits and skills that might have been useful for them in the past as security staff. These are ways of doing that are not suitable for the task of rehabilitation and hamper the establishment of a bond of trust and work to motivate the prisoner towards change and rehabilitation. All in all, the possibilities of promotion and access to the privileges by the prisoners suffer, while differences in the ways of operating between the teams at the centres are created, which affects their quality and efficiency.

12. Without this being a majority opinion, some of the informants blame the middle commands for the disorders we have just commented on, for not pointing out and correcting the deviations concerning the aims of the prisoners' ITP and not backing up the professionals of the teams sufficiently by carrying out a task of coordination. Moreover, the lack of assessment of

the methodologies and the results hampers the establishment of corrective policies or ongoing training suited to the needs and skills of the workplace. As we have said, this opinion is not generalised among the whole group of professionals consulted in the investigation, but it is pondered and firm and among the ones who identify it as a problem.

E) Concerning the changes introduced by Circular 2/2012

13. The Circular has helped improve access to conditional release, but has not helped increase the prisoners' global access to open custody, since approximately the same number of persons are granted it as before (27.8% of the prison population). What has changed, however, is the internal distribution: now there are more prisoners on conditional release and fewer at third degree.
14. Moreover, so far there has not been any percentage increase in the advanced modality of conditional release⁷ (if in 2006 it was 32.6% of the total, in 2012 it was 25.7%), despite the mistaken perception of the professionals, according to whom there has been an increase in its application. We are of the opinion that it is still too soon to assess the real changes brought about by the application of the Circular and that we need to wait to see results at least until the end of 2014, assuming that the policies of application are continued. It should be pointed out, however, that the forecast for the future made by the professionals in the *Delphi* is optimistic in terms of the increase of application in all modalities of open custody and conditional release, though we are not sure that that will necessarily happen.
15. 80.3% of the professionals who were willing to take part in the research acknowledge that the Circular has changed their way of working and make a fairly positive assessment of its application (80%). The professionals' positive perception specifically means that thanks to the Circular:

⁷ Art. 205 PR and art. 91.2 PC.

- a) More prisoner privileges are applied to the *short* sentences.
- b) The procedure for payment of the civil liability has moved forward because it makes it obligatory to take account of it at the outset (this is seen as something positive).
- c) The quality of the reports has improved (although this perception is more widespread among the treatment professionals and less so amongst the members of the judiciary, the directive centre and some prison governors).

16. There are also aspects in which a negative perception of the Circular carries more weight:

- a) The professionals report that its application has involved more bureaucracy with the demand for the drafting of many reports, even if they are to give an unfavourable assessment.
- b) The task of making more conditional release proposals is seen with apprehension by some of the treatment team, especially when it is suspected that the dispatch of the proposal will be taken badly by the prison supervision judge.
- c) The professionals have an ambivalent attitude to the speeding up of processes to meet the deadlines that give the prisoner the right to the prisoner privileges. They understand the ultimate purpose of the measure, but believe that decisions about whether the prisoner is prepared for life in semi-freedom or conditional release are taken hastily because the subject *is not known well enough, or has not spent enough time* in prison to make the proposal, or consider that his/her adaptation to the institutional environment *has not been consolidated*.
- d) The change proposed by the Circular has increased the work load for the professionals at a time when resources, salaries and timetables are being cut back, which provides little work motivation for the change. The discourse also reveals a suspicion that the economic crisis is the real

reason for this change rather than a real policy of commitment to rehabilitation.

F) Concerning revocation

17. The profile of the revokee coincides strongly with the characteristics of the second degree treatment prisoners of our sample. The differences are that the conditional release revokees have evolved positively –albeit with ups and downs– in prison and deserved sufficient trust to be proposed for it. The professionals say that the prisoners with these characteristics would need much closer monitoring than the others who are granted it.
18. In these cases international studies recommend not increasing *supervision* (understood as a greater number of meetings between the prisoner and the referral officer to detect breaches), but using the conditional release contacts as a *treatment* tool (understood as aims of the IPT drafted together with the prisoner and monitored and assessed with the referral officer).
19. There are sparse resources for proportionately penalising the breaches of rules of conduct on conditional release without that meaning a complete revocation. The international literature also recommends grading the regression of measures, so that breaches do not necessarily entail a return to prison, given that the studies show that that does not lead to a reduction in reoffending.

3. Proposals

A) Strengthen the rehabilitating character of conditional release

Concerning granting:

1. Notify the prisoner from the start of the sentence when and according to which criteria s/he can have access to conditional release and, in the case of refusal, inform him/her of the reasons and the date when it can be reconsidered.
2. Promote the granting of conditional release for prisoners with a medium and high risk profile according to Riscanvi and earmark most of the resources for them instead of the ones who are low risk and do not need them.
3. Increase the application of the third degree regime as a natural process prior to granting conditional release.
4. Guarantee that conditional release is given enough time for the rehabilitating benefits to be seen.

Concerning monitoring:

5. Begin contact with the monitoring team before the conditional release and increase supervision in the first months, coinciding with the period of the greatest risk of reoffending (first three to nine months). In these cases, extend the individual monitoring programme (IMP), emphasising the treatment rather than the supervision.
6. Also use Riscanvi as an assessment tool for the subjects on conditional release.
7. Work for the regeneration of bonds between the prisoner and his/her support network and encourage the public bodies that provide resources and assistance (stable accommodation and a job) to work with the open custody professionals.
8. Foster informal social control (family, friends, workmates, neighbours, etc.) and provide incentives for neighbourhood supervision for the monitoring of conditional release.

B) Implement a mixed model in the application of conditional release

9. In the cases of *short* sentences (up to three years) grant the prisoner privileges automatically, except for the cases in which a medium or high score on Riscanvi is obtained and it is considered that the open custody intervention does not mean a reduction in the risk of reoffending.
10. In the cases of *long* sentences (more than three years) continue to apply the discretionary model currently in operation.
11. Design specific training for the implementation of this mixed model.

C) Grade the responses to breaches of the conditions of conditional release

12. Treat the relapse as a natural part of the process of giving up crime, without it meaning a loss of trust by the team in the prisoner, and foster his/her responsibility in the rehabilitation process.
13. Draft proposals to include in state legislation a graded system of responses to breaches so that they do not necessarily mean a revocation of conditional release.

D) Improve the drafting and application of the IPT

14. Approach the treatment as a unitary process with different phases linked to the different regimes of prison life (closed custody, third degree and conditional release), assuring continuity between the actions of the different treatment teams and adapting the demands of the results to those phases.
15. Focus the design of the treatment according to the criminological needs and not only on the basis of the crime committed.

16. Start the specific treatment programmes as soon as they are included in the IPT.
17. Foster reparation for the victim as part of the process of rehabilitation from the outset, so that the work process is clear from the start.
18. Access to prisoner privileges must be much more closely linked to fulfilment of the IPT, the MAS assessments and the Riscanvi assessments.
19. Create IPT for prisoners in preventive detention, disconnected from the presumed crime.

E) Promote changes in the work habits of the prison professionals and the prison social services

20. Draft and implement specific training plans in the skills of the treatment technicians in the framework of the rehabilitation process.
21. Promote good practices forums and disseminate successful experiences in the field of conditional release and the whole passage through the penal system.
22. Strengthen the figure of the middle commands as a key element in the coordination of the interdisciplinary teams in the management of the prisoners' rehabilitation process, especially risk management and the efficient and effective application of the permissive sentence and as a figure of support for the workers.

F) Promote a change in the social perception of conditional release

23. Make the different people involved (the prisoner, the treatment teams and public opinion) aware that conditional release is one more stage in the rehabilitation process and an effective tool for integrating the prisoner into the community and encouraging him or her to give up crime.

Afterword

Concerning the immediate future and possible legislative changes to the Penal Code

News of the preliminary project of the new reform of the Penal Code proposed by the state government does not inspire optimism in terms of any improvement in the system of granting conditional release.

First, the legal experts who have studied the matter emphasise that this reform is not committed to the progressive system⁸. It will point the legal operators' action in such a direction that in many cases the sentence will be served in its entirety (incapacitation of the person sentenced), putting this incapacitation before rehabilitation.⁹ This doctrine, which always enjoys great popularity among the general public, since having the criminal in jail gives a false sensation of security in the medium term, is a serious problem because it hampers preparation for release, so that refraining from committing further crimes and social rehabilitation are seriously affected¹⁰. In the long term it means increasing the negative weight of the indicators collected in the introduction and chapter 1, in which Catalonia and Spain already start from an extremely negative situation (rates of imprisonment and prison population density, average length of effective time in jail, etc.), as well as creating a more expensive and economically unsustainable system that will significantly increase the number of prisoners at a time when we need to look carefully at priorities in public expenditure.

Specifically, one of the new articles proposed in the reform of the Penal Code is 90.6, referring to conditional release. According to the experts mentioned, the

⁸ Seminar mentioned *De l'execució de penes a la reinserció*, p. 17. Also Alfonso Serrano *Notas al Anteproyecto de Reforma del Código Penal Español de octubre de 2012* (op.cit.)

⁹ Daniel Varona Gómez. Lecture "Execució de condemna i reformes penals" in *VII Jornada de Juristes de Centres Penitenciaris*. Compartim Programme. CEJFE. 15.10.2013. <http://www.cejfe.tv/ca/viijornadauristescpdvarona.aspx>

¹⁰ The treatment involves starting staggered exit processes which make it possible to control behaviour and any problems that may arise.

amendment proposal means an important change in philosophy insofar as granting it will mean that the execution of the rest of the sentence will be provisionally suspended so that, if the prisoner reoffends, s/he will have to serve the full time remaining when the concession was granted. That will make application for it not very attractive and it will be very difficult to propose a revocation for the ones to whom it has been granted, given the far more serious consequences of the measure.

Moreover, the Spanish government has also presented the preliminary project of the law The Statute of the Victim of Crime¹¹, which announces, among the most notable novelties, that the victims will have the right to appeal against the conditional release of the prisoner when the sentence is longer than five years. They can also appeal against the resolutions of classification in third degree of treatment proposed by the prison supervision judge when it is proposed before half the sentence has been served¹².

The recommendations of the investigation concerning all these changes go against the legislative proposals we have been commenting on. The last recommendation we want to touch on is the need to set aside the serving of the sentences in closed custody and foster the use of open custody, one part at third degree and another on conditional release. Incentives must be found to make the serving in open custody account for at least half the total of the sentence. There should be hardly any exceptions to this rule.

Through the investigation we have given sufficient arguments to support this last recommendation: bibliographic, scientific and empirical arguments, arguments based on criminological efficacy and on economic efficiency, but most of all linked to the humanist idea that must be behind the sentence of deprivation of freedom.

¹¹ Consult http://www.ub.edu/dpenal/Estatut_victima_APLO_25_10_2013.pdf (last visit 7 January 2014).

¹² Consult the press note at: <http://www.mjusticia.gob.es/cs/Satellite/ca/1215197775106/Medios/1288786623195/Detalle.html> (last visit 7 January 2014).

We must remember that the humanist idea and the purpose of social rehabilitation of the sentences appears throughout our basic legislative framework, repeatedly in the first articles and in the setting out of reasons that justify the promulgation of the laws and which, moreover, are at the base of the European recommendations which have been approved over the last decades.

Barcelona, January 2014