European Journal of Probation
University of Bucharest
www.ejprob.ro
Vol. 4, No1, 2012, pp 99 – 111
ISSN: 2006 – 2203

Recalling conditionally released prisoners in Slovenia

Katja Šugman Stubbs[1]
Matjaž Ambrož[2]

Abstract

While many EU countries are seeing an increase in the number of prisoners being recalled to prison from release on parole, Slovenia presents an exception: although the Slovenian system does legislate for revoking parole the measure is hardly ever used in practice. This article explores legal and practical aspects of parole revocation in Slovenia, the role of the judiciary, the attitudes to revocation of the parole shaped by Slovenia's legal culture, and possible reasons for the rarity of parole being revoked in Slovenian penal practice.

Keywords: Criminal sanctions - Prison – Slovenia - Parole - Conditional release - Recall

Introduction[3]

The Republic of Slovenia presents an unusual and interesting model for criminological and penological research. The country's level of social stratification is the lowest in the EU[4] and its prison rates are among the lowest in all Europe. Slovenia therefore has one of the lowest prison populations in European Union. According to the Council of Europe's Annual Penal Statistics, in 2009-10 there were 2032 prisoners in Slovenia (of which 990 were serving a sentence) and the number of prisoners per 100,000 of the overall population was just 67.2,

[1] Author responsible for correspondence, reprints and proofs. Dr. Katja Šugman Stubbs is a professor of criminal law at the University of Ljubljana. Correspondence concerning this article should be addressed to prof. dr. Katja Šugman Stubbs, Faculty of Law, University of Ljubljana, Poljanski nasip 2, 1000 Ljubljana, Slovenia. email: katja.sugman@pf.uni-lj.si
[2] Dr. Matjaž Ambrož is an associate professor of criminal law at the University of Ljubljana, Faculty of law, Poljanski nasip 2, 1000 Ljubljana, Slovenia. email: matjaz.ambroz@pf.uni-lj.si
[3] The authors would like to thank Mr. Marko Šorli, Supreme Court Judge and the Vice President of The Supreme Court of the Republic of Slovenia, and Mr. Miha Wohinz, of the Prison Administration at the Ministry of Justice for their kind help and useful information, along with Mr. Jože Podržaj, Director of the Central Prison Dob, Ms. Mihaela Štukelj, Head of the Education unit, and Ms. Derganc Cizelj Renata, Head of the Legal Unit, Central prison Dob.
[4] Slovenia has the highest equality ratio (an income of the 10% of the richest citizens against an income of the 10% of the poorest citizens (4,8 : 1)) from all the OECD states. See OECD Development Report for year 2011, Social Indicators - income inequality. See as well Jereb, Ferjan 2008.

putting Slovenia in the same category as Denmark with a rate of 67.5.[5] These conditions were maintained even in times of huge political and economic change (from independence in 1991 onwards, Jager 2009). The whole system of early release was until recently managed with an almost 'familial' treatment of prisoners and recall was and is extremely rarely used (Šugman Stubbs, Ambrož 2010). However, the situation has begun to alter in recent years, which have seen an increase in imprisonment rates[6] in tandem with legislative reforms providing for harsher sentences. The final step was the introduction of life imprisonment in 2008 (Filipčič 2009). We can also expect that the pressure for stricter monitoring of released prisoners, greater stringency in enforcing the conditions set for granting release, along with the general clamour from the public and media for a more retributive style of law enforcement will contribute to tightening traditional approaches to the question of recall. At the moment, however, the recall of conditionally released prisoners is not the focus of much specialist or wider public attention. It is a neglected area both in theory and practice.

The purpose of the present article is to outline the legal system for granting and revoking parole in the Republic of Slovenia, to assess how revocation works in practice and consider how greatly practice differs from legal norms.

System of sanctions

The Slovenian system of sanctions is essentially bi-partite: it administers sentences (which basically grounded on a perpetrator's guilt) and safety measures (which are based on the danger a perpetrator, although not necessarily culpable, poses the public). The structure of sanctions as provided for in the Criminal Code (CC) is, however, somewhat more complex, since the code has introduced a third type of sanctions – admonitory sanctions, these being similar in principle to sentences (i.e. predicated on established guilt), but less severe (Šugman, Jager, Peršak, Filipčič, 2004). Therefore the whole structure of sanctions system looks as follows:

a) sentences (imprisonment, fine, ban on driving);

b) admonitory sanctions (suspended sentence, suspended sentence with custodial supervision and judicial admonition);

c) safety measures (confiscation of objects, prohibition from work or other professional pursuit, revocation of driving license, compulsory psychiatric treatment, custody in a medical institution, compulsory non-custodial psychiatric treatment).

The most frequent sanction in practice is the suspended sentence, which is passed in more than three quarters of final verdicts (in the last years the level of suspended sentences has settled at around 77 per cent of all final verdicts). Unfortunately the so-called alternative

[5] Source: Council of Europe Annual Penal Statistic of 22. 3. 2011, http://www.coe.int/t/dghl/standardsetting/cdpc/Bureau%20documents/PC-CP(2011)3%20E%20-%20SPACE%20I%202009.pdf, p. 26. All data from 1. 1. 2009.

[6] Data from the annual reports of the Prison Administration of Slovenia show that in 2005 there were (on average) 1137 prisoners in Slovenian prisons, while in 2006 and 2007 the average prison population rose to 1267 and 1339 respectively. In 2008 there were already 1364 prisoners in Slovenian prisons on average. 'On average' means the daily average of imprisoned people in the Republic of Slovenia during a given calendar year.

sanctions such as house detention and community service and are rarely applied (in 2009 there were 12 cases of community service and only one case of house detention). One of the reasons for such low figures lies probably in the legal nature of such sentences: the court may not pass them directly, since they are technically defined as "a way of implementing" the prison sentence. This means that the court must first pass a non-suspended prison sentence (which they resort to rarely in less severe cases, especially when perpetrators are first-time offenders) before alternative sanctions may be sought as a form of implementing that non-suspended sentence.

The law only considers conditional release with respect to imprisonment. There was however some legal debate as to whether house detention might be regarded as "a special form of imprisonment", which would lead to the conclusion that one could be conditionally released from house detention as from any other form of custody. But the extremely small number of cases of such detention the legal practice has not yet provided an answer to this problem.

The law on parole

General guidelines on conditional release are provided in the Criminal Code (CC),[7] but more specific provisions are set down in the Enforcement of Penal Sentences Act (EPSA),[8] the Pardon Act,[9] and in the Rules on the Implementation of the Sentence of Imprisonment.[10] While the Criminal Code stipulates only the most fundamental rules on conditional release, more specific provisions can be found in the Enforcement of Penal Sentences Act, which is the core legal document as regards the implementation of penal sanctions. The technical questions raised by conditional release are regulated in Rules on the Implementation of the Sentence of Imprisonment; implementing these rules lies within the jurisdiction of the Minister of Justice.

Conditional release, unlike amnesty and pardon, does not end the enforcement of a court sentence; it only alters the manner of its implementation (Damjanović, 2004)**.** As a general rule, two conditions must be met in order for a prisoner to be eligible for parole: (1) a substantive condition – that it is reasonable to expect the prisoner[11] not to offend again; (2) and a formal condition – that is, that a certain period of time has already been served in prison. There is, therefore, no mandatory early release system in the Republic of Slovenia.

The substantive condition (that it is reasonable to expect that the prisoner will not offend again) must be satisfied each time parole is granted, and is further specified in CC (Art. 88(5) CC). The law provides that in deciding on this aspect the following factors should be considered: whether the convicted person was a recidivist, whether there are any unfinished criminal proceedings against the convicted person for criminal offences committed before his or her sentence began, the current attitude of the convicted person towards the criminal

[7] Official Journal of the Republic of Slovenia (O. J.) 63/94, 23/99, 40/04.
[8] O. J. 45/05, 86/04.
[9] O. J. 45/05, 86/04.
[10] O. J. 102/2000, 127/06, 112/07.
[11] A terminological addition: a prisoner is not referred to as a 'prisoner' once he or she has been granted conditional release. A parolee who has been recalled to prison regains the status of a prisoner. There is no distinction in treatment between those who have been released and then recalled, and those who have not yet been released.

offence committed and/or towards the victim of that offence, his or her conduct while serving the sentence, his or her efforts and progress in treatment of addiction, his or her personal abilities and other considerations suggesting how capable he or she will be of rejoining society outside prison.

The formal condition (a certain period of time which has already been served in prison) that must be fulfilled for parole to be granted varies according to the severity of the custodial sentence and other circumstances. A general rule regarding the formal condition is that release on parole may be granted to a prisoner who has served at least half of his sentence (Art. 88(1) CC). However, specific rules exist for particular sentences which modify this general rule. A person sentenced to more than fifteen years' imprisonment may be released on parole only after serving three quarters of that sentence (Art. 88(2) CC). Offenders who have been sentenced to life imprisonment may be released on parole after they have served 25 years of imprisonment (Art. 88(3) CC). This period appears excessive when set alongside other legal systems which the Slovenian legislator commonly refers to for comparative purposes.[12]

What seems even more peculiar is that the Slovenian legislator did not define the probation period for cases when a prisoner is conditionally released from life imprisonment. Technically this implies that conditional release may be revoked (or even must be in cases of obligatory revocation) at any point during the subsequent life of the parolee; a harsh and unreasonable solution.

Exceptionally, a prisoner may be released on parole after serving only one third of the sentence, if 'special circumstances regarding the prisoner's personality'[13] indicate that he or she will not repeat their criminal offence (Art. 88(6) CC). This last exception also applies in cases of those who have been sentenced to more than fifteen years imprisonment, but it may not be applied in the case of a life sentence.

The recent Criminal Code adopted in 2008 provided for the first time for the possibility of the court setting certain requirements which the parolee must meet once parole is granted e. g. to undergo therapy and rehabilitation, undergo treatment for addiction, to attend appropriate centres for professional, psychological or other forms of counselling (Art. 88(8) CC). Besides these conditions, the new Criminal Code enables the court to put the parolee under so-called 'custodial supervision' which involves assistance, supervision and custody, and is exercised by a guardian appointed by the court (Art. 88(7) CC). The guardian is under obligation, *inter alia*, to maintain relations with the parolee, to offer him aid and supervision and also to provide practical advice in order to prevent him from committing further criminal offences. The system of 'custodial supervision' at present exists only in rudimentary form: there are no specific provisions on what might be the precise nature of the specified "aid and supervision" on the relationship of the parolee and the guardian etc. This area of sentence implementation is relatively neglected, to put it mildly, and therefore further developments are expected.

The system of custodial supervision is not a complete novelty to the Slovenian legal system, but it has previously been limited to cases of suspended sentences. Even in these cases the

[12] The Austrian, German and Swiss Criminal Codes, for example, require in such cases that the offender has served at least fifteen years. See Art. 57a of German CC, Art. 46(5) of Austrian CC and Art. 86(5) of Swiss CC.

[13] This legal standard is usually illustrated with the following examples: a considerable worsening of the prisoner's health; disability; and a well-founded expectation that the sentence will be lowered in a renewed procedure (Bele 2001). Thus, the common interpretation of the provision transcends the literal meaning of 'circumstances regarding the prisoner's personality'.

measure has been applied very rarely indeed by the courts, most probably because more specific regulations for implementing it are lacking. It seems that the custodial supervision of parolees will suffer the same fate, since we learned in our interviews that the courts have only recently begun making use of these relatively new provisions to set the requirements which must be satisfied once parole is granted. Even now these decisions are very rare. One can also speculate that a specific *circulus vitiosus* is at work: the courts do not favour applying custodial supervision, since there is very little experience in this field; a lack which only continues while the courts' reservation towards the measure persists.

The procedure for deciding on parole is provided by the Enforcement of Penal Sentences Act (EPSA). The body deciding on parole is a special Commission appointed by the Minster of Justice. It consists of three members, of whom one must be a Supreme Court judge, one a Supreme State Prosecutor and one a civil servant from the Ministry of Justice Prison Administration Unit. The Commission decides on a motion filed by the convicted person, members of his or her family, or the prison governor. The prison's team of counsellors[14] must present a report each time a motion for parole is filed. The report must contain: the personal data of the prisoner asking for parole, data on the criminal offence and the penalty, information on the prisoner's attitude towards the victim of the offence and the harm committed, an account of the prisoner's behaviour in prison and possible behavioural or personal changes that the prisoner underwent while serving the custodial sentence: data on the prisoner's health, data on their personal situation and the social circumstances of their family, and data on the conditions under which the prisoner would be living and the opportunities he or she would have if released on parole. The team must suggest whether it supports the prisoner's motion for parole. Generally the main factor which the commission will take into account is the likelihood of the prisoner re-offending (this broad question is concretized with a set of more specific criteria defined by the Criminal Code, such as prisoners' previous recidivism, his or her conduct while serving the sentence, unfinished criminal proceedings against him or her, etc).

Revoking parole

Discussing parole revocation in Slovenia one must be careful not to confuse parole (conditional release) with early release, which can be granted by a prison director (Art. 108 EPSA). Early release can be granted after two thirds of a prison sentence has been served, but it only permits a maximum reduction of three months at the end of the sentence (i.e. a prisoner on early release may be set free only up to three months before serving his full sentence). Early release may, of course, be combined with parole. Early release is regarded as an award for good behaviour in prison and is not bound to any conditions. It is, to clarify, a reward for a prisoner's *past* conduct that is not, unlike parole, based upon expectations of his *future* conduct. For that reason, it cannot be revoked even if a prisoner released early reoffends immediately after leaving custody: it is indexed only to a prisoner's past behaviour in prison and constitutes an *unconditional* reduction of sentence, rather than the conditional *conversion* of sentence which parole involves. In addition, revocation of parole is also not to be confused with *revotation,* undertaken by the parole commission in cases when they have already decided to grant parole to a prisoner who subsequently (but before the day of scheduled release) commits a serious breach of prison rules. In cases of revotation the decision of the commission is altered and parole is cancelled.

[14] Each prison has a team of counsellors. Depending on the prison's policy and requirements this team usually consists of psychologists, pedagogical workers, social workers etc.

The decision on revoking parole is always judicial; the parole board has therefore no say in it (Jakulin 1989). The competent court in such cases is the one which tries the parolee for a newly committed criminal offence. The Slovenian penal system distinguishes between obligatory and non-obligatory revocation of parole. The court *must* revoke parole if the parolee commits during the parole period[15] one or more criminal offences incurring a prison sentence of more than one year (Art. 89(1) CC). However, the court *may* revoke parole, if the parolee commits during the parole period at least one criminal offence for which the court has imposed a prison sentence for a term of no more than one year (Art. 89(2) CC). When deciding on whether to revoke parole, the court must consider in particular the similarity of the offences committed, their seriousness, the motives for which they were committed and other circumstances indicating whether it is reasonable to revoke parole. It is worth mentioning that in Slovenia parole can not be revoked in cases of a parolee committing a misdemeanour (unlike, for example, for example Croatia, in cases of misdemeanours incurring a prison sentence of longer than 30 days) nor in cases of 'notorious' bad behaviour (such as e.g. revocation for *inconduite notoire* in France[16]).

When parole is revoked, the part of the sentence suspended by parole comes back into force in full (the period spent outside the prison is not deducted from the prison sentence). In cases where parole is revoked because another criminal offence has been committed, the court then decides on a new combined sentence. Firstly, there is the part of the original sentence which remains to be served, which the court takes as determined (Art. 89(3) CC). Then the court passes a sentence for a newly committed criminal offence according to the rules of Criminal Code. At the end, a combined sentence is passed according to rules set in Article 53 and 55 CC. Those two articles provide for a set of rules on passing a sentence for concurring criminal offences. The same rules also apply when the parolee is convicted of another criminal offence committed before being released on parole (Art. 89(4) CC).

This solution does not provide for any deduction of the conditional release period from the prison sentence on a tariff basis (e.g., two days of conditional release as an equivalent to one day in prison). It has not as yet been critically assessed in Slovenia, although such an assessment would be welcome. However, it should be said that in professional and academic discussions of the legal nature of conditional release, there is a broad consensus that conditional release should be regarded as a special way of executing the sentence (Jescheck and Weigend, 1996; Novoselec, 2009). Thus if it is true to say that the sentence continues to be executed during the period of conditional release, it is reasonable to expect that this period should count as time served if conditional release is then later revoked (Stojanović, 1984; Kurtović, 1995).

There are two interesting rules regarding the revocation of the parole. Firstly, the rule (Art. 89(5) CC) which provides that if the parolee is newly sentenced to imprisonment for a term not exceeding one year and the court decides not to revoke parole, the remaining period of parole is suspended until the end of this further sentence. And secondly (Art. 89(6) CC), if the parolee commits a criminal offence which violates the terms of his or her release while still serving parole but the court does not pass judgement until that term has already expired, the

[15] Under Slovenian law the parole period always corresponds with the remaining sentence. The legislator did not make any distinction between the length of the parole period and the remaining sentence even in cases of life imprisonment, most probably through oversight.

[16] Reuflet, K.: France; in Padfield N., Zyl Smit D. and Dünkel F.: Release from Prison: European Policy and practice, Cullompton: Willan, pp 181.

parole may still be revoked, retrospectively, but only within one year of the term of parole expiring.

As mentioned above, the Criminal Code (2008) has introduced the possibility of imposing certain requirements which the parolee must meet once parole is granted. The decision on revocation in such a case would have to be judicial since CC provides that the court may revoke parole when the parolee does not meet these requirements (Art. 89(2) CC). The court is limited to a binary decision: either to revoke or not – there is no third way such as partial revocation, or making the previously imposed requirements stricter instead of revoking parole altogether (a tried and tested solution e. g. in Belgium)[17] or prolonging the length of supervision. This 'all or nothing' approach appears to be relatively rudimental.

Unfortunately there are no other, more specific, provisions specifying the procedure in cases of revocation due to non-fulfilment of requirements. It is not clear, for example, whose duty it is to inform the court of the parolee's breach of the requirements and further on - must the court wait for the public prosecutor's motion for revocation or may the court itself act *ex officio*. The law is therefore very unclear.

Parole may thus only be revoked in cases where a new combined sentence is passed in which the term of parole is included. This can therefore happen in cases (1) when the parolee has committed a new offence while on parole and in the course of the subsequent trial the court revokes the parole and passes a combined sentence including the term of revoked parole and a sentence for a criminal offence committed on parole (Art. 89(1)) or (2) when the parolee is tried for a offence committed before release on parole and the court trying this case passes a combined sentence which includes the term of parole and a sentence for a criminal offence committed before parole was granted (Art. 89(4) CC). In theory it would be possible that parole could be revoked even without a combined sentence being passed (thus leaving the term of parole to stand as a separate entity) if the court revoked parole for a minor criminal offence incurring only a fine; but in practice this does not occur. It can therefore safely be claimed that before the possibility was introduced of imposing certain requirements on the parolee, parole revocation was never a solitary instrument: – it was always a component of a newly determined combined sentence. The possibility of imposing certain requirements on a parolee substantially changes this practice. It is now possible for the court to revoke parole even when there is no new trial (for a new or an old offence) and for parolees to be recalled even when no further criminal offence is committed. In such a case the recalled parolee will always have to serve the period in prison remaining at the time he was granted parole – without the time served on parole being taken into account.

There is no special form of appeal against parole revocation. In the great majority of cases revocation is an integral part of the judgment, by which the court finds the parolee guilty for a newly committed offence or offences. In such cases a prisoner may contest the decision on revocation, and his appeal will be decided by the court of second instance. In such cases general legal provisions on appeal against judicial decisions apply.

Numbers

Unfortunately it is impossible for us to establish the number of parolees recalled, since such

[17] Snacken S., Beyens K. Beernaert M.-A.: Belgium; in Padfield N., Zyl Smit D. and Dünkel F.: Release from Prison: European Policy and practice, Cullompton: Willan, pp 181.

data is not included in official statistics. Neither do the courts or any of the prisons keep their own records of recall figures. Yet on the basis of our interviews with prison workers and the fact that they could hardly remember any cases of recall it is safe to claim that in practice parole revocation is extremely rare and does not contribute to the overcrowding of Slovenian prisons.

Case

Since parole is so rarely revoked, and since there are subsequently no official records regarding revocation it was very difficult to get data on a concrete case. We are indebted to the good memories of the prisoner workers we interviewed for the information we gathered on the following case. Defendant NN was firstly convicted for (1) prohibited crossing of a state border or territory on 11. 4. 2001 (then Art 311(2)(3) CC/2004) and received a suspended sentence of 1 year with a 3-year suspension term. On 5. 3. 2002 he was then convicted for the (2) unlawful manufacture and trade of narcotic drugs (then Art 196(1) CC/2004) and given a 1-year custodial sentence which he started serving on 9. 4. 2002. He was conditionally released on 27. 10. 2002 but was again convicted on 12. 1. 2004 for (3) concealment (then Art 221(2) CC/2004) and was fined. Later he committed a series of criminal offences for which he was tried separately but then a combined sentence of 3 years and 11 months was passed. The criminal offences and the sentences incurred were as follows: (4) unlawful manufacture and trade of narcotic drugs on 8. 10. 2004 (then Art 196(1) CC/2004) - 1 year and 11 months imprisonment; (5) robbery on 4. 2. 2005 (then Art. 213(1) CC/2004) - 1 year in prison, (6) grand larceny (burglary) on 21. 6. 2005 - 1 year imprisonment, and (7) grand larceny (burglary) on 9. 11. 2005 - 4 months imprisonment. While he was serving his combined sentence he was convicted for a further series of criminal offences: (8) fraud on 26.10. 2006 (incurring 1 year in prison), (9) grand larceny (burglary) on 18. 9. 2006 (1 year in prison), (10) grand larceny again on 7. 5. 2007 (again 1 year in prison), and finally on 4. 7. 2008 for (11) theft for which (surprisingly) a suspended sentence (surprisingly, given the gravity of the case) was passed of 1 year in prison with a suspension term of 5 years. For all of those offences – eleven altogether in number – a combined sentence of 6 years and 9 months of imprisonment was passed.

NN started serving his 3 year 11 months combined sentence on 16. 3. 2005. While he was serving this sentence he asked for a combined sentence to be passed on his first and last series of criminal offences, which was granted – the court decided that the just sentence for all these criminal offences was 6 years and 9 months of imprisonment. On 16. 3. 2005 he therefore began serving this sentence (with his pre-trial detention since 7. 11. 2004 being counted as time served), which was due to elapse on 7. 8. 2011. He requested parole on several occasions and was turned down, but then was granted it on 1. 7. 2010 and released on 7. 7. 2010. His full prison sentence would otherwise have elapsed on 7. 8. 2011 – giving him a reduction of 1 year and a month of time in prison. The parole commission decided in favour of parole on the basis of a report from the prison's team of counsellors. Taking into account his behaviour in prison, his abstinence from drugs, working habits and the self-critical attitude he developed to his previous conduct the team of counsellors recommended parole. In their view the prisoner had been rehabilitated and seemed unlikely to commit further criminal offences.

Yet by 9. 9. 2010 the parolee had already been arrested and put into pre-trial detention for theft and attempted burglary. He was tried in December 2010 and was convicted for those two offences, for which he was sentenced to 10 months of imprisonment. However, the court of first instance surprisingly did not revoke parole claiming that it had not received a motion to

do so from the prosecutor. The state prosecutor appealed the decision and the Appellate court decided that no such motion is strictly necessary, since the court can revoke the parole *ex officio*. The Appellate court then revoked the 13 months term of parole with its own decision along with the suspended one-year sentence of 4. 7. 2008 and passed a new combined sentence of 2 years and 9 months of imprisonment. The prisoner is now serving sentence in the same prison from which he had been released on parole.

Table 1 – Case study overview

no	date	criminal offence	sentence	combined sentence	serving
1	11.4.2001	prohibited crossing of a state border	1 year suspended sentence/3-year suspension term	not included	
2	5. 3. 2002	Unlawful manufacture and trade of drugs	1 year imprisonment		in 9. 4. 2002 – out 27. 10. 2002 (parole)
3	12. 1. 2004	concealment	fine		
4	8. 10. 2004	unlawful manufacture and trade of drugs	1 year and 11 months imprisonment	4	in pre-trial detention since 7. 11. 2004 in prison since 16.3. 2005
5	4. 2. 2005	robbery	1 year imprisonment	5	...
6	21. 6. 2005	grand larceny	1 year imprisonment	6	...
7	9. 11. 2005	grand larceny	4 months imprisonment	7	...

				4 + 5 + 6 + 7 = 3 y 11m imprison.	...
8	26.10. 2006	fraud	1 year imprisonment	8	...
9	18. 9. 2006	grand larceny	1 year imprisonment	9	...
10	7. 5. 2007	grand larceny	1 year imprisonment	10	...
11	4. 7. 2008	theft	1 year suspended sentence/5 year suspension term		
				4 + 5 + 6 + 7 + 8 + 9 + 10 = 6y9m imprison.	Released on parole on 7. 7. 2010
12	12.12.2010	theft			
13	12.12.2010	attempted burglary		10 months imprisonment	
			revocation of parole (13m) + revocation of suspended sentence (12m) + 10 months imprisonment = 2y 9m combined sentence		in 9. 9. 2010

The case very well illustrates both the general positive and negative sides of Slovenia's judiciary and penal policy. To those with backgrounds in countries with a harsher crime policy it is probably surprising to see how as the defendant committed a series of criminal offences the courts continued passing sanctions of similar severity. Even for his tenth criminal offence (that of grand larceny on 7. 5. 2007) the defendant still received the same penalty as that passed for his second or fourth criminal offences, namely 1 year in prison. Admittedly we do not know the factual side of those cases, but the consistent leniency is still remarkable. Probably the most surprising of all his sentences is the one passed on 4. 7. 2008, his eleventh

conviction, for which he got a suspended sentence. This lenient criminal policy probably explains in part Slovenia's low prison rate. The second surprising feature is the way the court of first instance dealt with the defendant's case when trying him after his release from prison on parole. Knowing that the defendant was on parole the court still didn't recall him to custody The court's later claim that they could not revoke parole without a motion to do so from the prosecutor's office is very unconvincing indeed, and suggests it was either at a loss as to its role in the process or reluctant to assume it. In all likelihood the lenient position of the courts also explains why revocation is so rare even in cases where it would be a perfectly reasonable option. Firstly, cases requiring recall really are so rare that the courts often may not know how to deal with them. Secondly – when they do come across such a case they prefer not to deal with this question since it complicates their decision-making on other criminal offences. Our courts are also overburdened, and thus avoid complicating or duplicating their tasks wherever possible.

Conclusion

There is a discrepancy in Slovenia as in other countries between the legal norms providing for parole revocation and what happens in practice; but here the discrepancy goes against the pattern seen elsewhere. Although the system does legislate for recalling parolees this measure is hardly ever used. A variety of reasons may explain this situation. The implementation of penal sanctions has been relatively neglected by all of the three main legal authorities: the legislator, the judiciary, and academy (Brinc 1990). All three have mainly been occupied by questions of how prisoners 'get in' (from the perspectives of both criminal process and substance), much less by questions of how they 'get out' and still less by questions of 'getting them back in again'. The last two issues have been regarded as being of a more or less accessorial nature; therefore they were only lightly regulated by the law and avoided by the judiciary. One might also assume that questions of sentence implementation are viewed by the judiciary as an unwanted "additional burden", since there are no special judges for the implementation of sentence in Slovenia (therefore the work has to be done by the 'regular' judges, who cope with relatively sharp quantitative norms – they must finish a certain number of cases in a certain time). Besides that, academics are also a part of the story: they have always had more interest in 'big questions', meaning that implementation of sentence was not one of the priorities.

On the other side, reasons for the low Slovenian rate of recall can also be explained by the system's weakness when it comes to managing prisoners after release (Ambrož, Šugman Stubbs 2011). In prison there is a special post-release plan (in collaboration with local Centres for social work, health services, social security services, schools etc.) made for all newly liberated prisoners, providing advice on common social problems, ways of getting education or employment, obtaining treatment for addiction, etc. Slovenia does not have special parole officers: in theory similar counselling should be supplied by specialists in Social Work Centres, but in reality in most cases parolees are left to themselves upon release (Brinc, 2004).[18] There is also the factor of poor communication among different agencies which are supposed to support and control the parolee (e. g. social services, addiction treatment centres, the police and judiciary. Legal aspects also contribute to the fact that there are nearly no recalls on parole: the rule that allows for a prisoner to be recalled to complete his full sentence only up to a year after his parole has expired, bad procedural rules on revocation, and judges

[18] Annual Report 2007, Prison Administration of the Republic of Slovenia, Ljubljana, April 2008, p. 96, pp. 49-50.

not understanding them and thus trying to avoid making use of them (as the case study above will show). We can also add that the new measure of imposing additional requirements on the parolee has hardly been put into practice; the courts rarely and reluctantly use this option at all. Until now there has been no known case of parole being revoked because of such conditions being breached. There is, therefore, no sufficient record yet of practice in this field to give a comprehensive assessment of how harsh or otherwise the policy of revocation might be in practice. Since parole is so rarely revoked even when the parolee breaches the main condition of release (that is, by committing another criminal offence) it is very unlikely that the courts would revoke it solely because of the breach of additional conditions.

Hopefully, things will begin to change, among other reasons, because the implementation of sentence has become one of the most contentious issues in EU criminal law. However, we do not expect more extensive law reform in the near future. Changes in the field of sentence implementation will most probably be done on a step-by-step basis, with all the advantages and drawbacks of a gradual approach.

References

Ambrož, M., Šugman Stubbs, K. (2011) 'Conditional Release (Parole) in Slovenia: Problems and Possible Solutions', *Prison Journal*, 91 (4): 467-488.

Bele, I. (2001) *Kazenski zakonik s komentarjem, splošni del (Commentary on the GeneralPart of Criminal Code)*. Ljubljana: GV Založba.

Brinc, F. (1990) *Pravice zapornikov in njihovo varstvo v Republiki Sloveniji* (*Rights of the Convicted Persons and their Protection in the Republic of Slovenia*). Ljubljana: Inštitut za kriminologijo.

Brinc, F. (2004) 'Kriminalna prognoza – iluzija ali resničnost?' ('Crime Prognosis – Illusion or Reality?'), *Revija za kriminalistiko in kriminologijo* 54 (4): 341-355.

Damjanović, I., *et al*. (2004) 'Uvjetni otpust s izdržavanja kazne zatvora (od 1998. do 2002)' ('Early release from prison on parole (from 1998 to 2002)'), *Hrvatski ljetopis za kazneno pravo i praksu*, 11: 2, pp. 867-892.

Filipčič, K. (2009). La Slovénie. *Deviance et societe* 33 (3): 367-382.

Jager, M. (2009). Slovenia: 'Crime Policy in Time of Change'. Paper presented at the conference of the European Society of Criminology, Ljubljana: September 2009.

Jakulin, V. (1989) 'Pogojni odpust in preklic pogojnega odpusta' ('Parole and Revoking of Parole'), *Pravni*k 44 (11/12): 533-552.

Jereb, E., & Ferjan, M. (2008) 'Social Classes and Social Mobility in Slovenia and Europe', *Organizacija* 41 (6): 197-206.

Jescheck, H., & Weigend, T. (1996). *Lehrbuch des Strafrechts, Allgemeiner Teil (Textbook on the General Part of Criminal Law)*. Berlin: Duncker & Humblot.

Kurtović, A. (1991) 'Ustrojstvo i pravna priroda uvjetnog odpusta' ('The Structure and the Legal Nature of Parole'), *Zbornik Pravnog fakulteta sveučilišta na Rijeci* 16 (2): 309-322.

Ristić, S. (1980) *Uslovni otpust* (*Parole*). Niš: PF u Nišu.

Novoselec, P. (2009) *Opći dio kaznenog prava* (*The General Part of Criminal Law*). Zagreb: Sveučilište u Zagrebu.

Reuflet, K. 'France' in Padfield N., Zyl Smit D. and Dünkel F.: *Release from Prison: European Policy and practice*. (2010) Cullompton: Willan.

Stojanović, Z. (1984) 'Uslovni otpust: problemi i predpostavke' ('Parole: problems and suppositions'), *Zbornik pravnog fakulteta u Zagrebu* 35 (1/2): 185-200.

Šugman, K., Jager, M., Peršak, N., Filipčič, K. (2004) *Slovenia : criminal justice systems in Europe and North America*. Helsinki: HEUNI - European Institute for Crime Prevention and Control, affiliated with the United Nations.

Šugman Stubbs, K., Ambrož, M. 'Slovenia' (2010) in Padfield N., Zyl Smit D. and Dünkel F.: *Release from Prison: European Policy and practice*. (2010) Cullompton: Willan.

Annual Report 2007, Prison Administration of the Republic of Slovenia, Ljubljana, April 2008, pp. 49-50.

Council of Europe Annual Penal Statistic of 22. 3. 2011, http://www.coe.int/t/dghl/standardsetting/cdpc/Bureau%20documents/PC-CP(2011)3%20E%20-%20SPACE%20I%202009.pdf (9.10.2011)

Society at the Glance (2011), OECD Social Indicators, OECD, 2011, p. 67.

http://www.oecd.org/dataoecd/27/60/47570121.pdf