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EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS

COMITÉ D'EXPERTS
SUR LE FONCTIONNEMENT
DES CONVENTIONS EUROPÉENNES DANS LE DOMAINE PÉNAL
(PC-OC)

Examples of national legislation and procedures with regard to conditional release and measures involving deprivation of liberty

Exemples de législation et de procédures nationales concernant la libération conditionnelle et des mesures privatives de liberté

STATES / ETATS

ARMENIA / ARMENIE

Information on national legislation of the Republic of Armenia and procedures with regard to conditional release and measures involving deprivation of liberty

Extract from the Criminal Code of the Republic of Armenia

Article 76. Exemption from punishment on parole.

1. The person sentenced to imprisonment or disciplinary battalion can be released on parole, if the court finds that for his correction there is no need to serve the remaining part of the punishment. Also, the person can be completely or partially exempted from supplementary punishment. When exempting from punishment on parole, the court also takes into account the fact of mitigation of damage to the aggrieved by the convict.

2. When applying exemption from punishment on parole, the court can impose on the person the obligations envisaged in part 5 of Article 70 of this Code, which the person will carry out during the unserved part of the punishment.

3. Exemption from punishment on parole can be applied only if the convict has actually served:

1) no less then one third of the punishment for not grave or medium-gravity crime;
2) no less than half of the punishment for a grave crime;
3) no less than two thirds of the punishment for a particularly grave crime, also, of the punishment assigned to the person previously released on parole (if the parole was canceled on the grounds envisaged in part 6 of this Article), with the exception of cases provided by point 4 of the current part of the article.
4) no less then one fourth of the punishment for commitment of crimes provided by the following articles of the current Code: Art. 104 (2) murder with aggravating circumstances, Art. 132 (2) human trafficking with aggravating circumstances, Article 132.2 (2)(3) Trafficking of a child or a person deprived of understanding the nature and significance of his/her act because of a mental breakdown, with aggravating circumstances, Art. 138 (3) Rape, with aggravating circumstances, 139 (2) violent sexual actions, with aggravating circumstances, 175(2) robbery with violence, with aggravating circumstances, 217 (2)(3) terrorism, with aggravating circumstances, Art. 218(2) taking hostages, with aggravating circumstances, Art. 221(2)(3) Hijacking or capture of an aircraft, ship or train, with aggravating circumstances, Art 222(1) Banditry, Art. 226(3) Illegal turnover of narcotic drugs or psychotropic materials with the purpose of sale, with aggravating circumstances, Art. 269 (3) Theft or extortion of narcotic drugs or psychotropic materials, with aggravating circumstances, Art 299(1) High treason, Art. 305 Assassination of a state, political or public figure, Art. 384(1)(2) Aggressive war, Art. 391(2) Inaction or making an illegal command during armed conflict, with aggravating circumstances, Art. 392 Crimes against human security, Art. 393 Genocide, Art. 394 Ecocide.

4. The actual term of imprisonment served by a person can not be less than 3 months.

5. A life-server can be released on parole, if the court finds that the person does not need to serve the punishment any longer and has in fact served no less than 20 years of imprisonment.

6. If during the unserved period of the punishment the convict

1) Maliciously avoids fulfilling the obligations provided by the court when exempting from punishment on parole, then the court, with the motion by the body in charge of the control over the sentenced person's behavior, makes a decision of elimination of exemption from punishment and continuation of the unserved part of the punishment;

2) commits a negligent crime, then the court decides the issue of keeping or elimination of parole
3) commits a willful crime, then the court assigns a punishment based on the rules envisaged in Article 67 of this Code. If a crime through negligence has been committed, the same rules are used to assign punishment and the court eliminates the parole.

7. If a life-server deliberately commits a new crime, which is punishable by imprisonment, the period mentioned in part 5 of this Article is suspended until the expiry of the term for the new punishment.

Article 25. Insanity.

1. The person who was in the state of insanity when committing a socially dangerous crime is not liable to criminal liability, i.e., the person could not understand the dangerous nature of one's actions (inaction) or control one's actions as a result of chronic mental illness, temporary mental disorder, mental retardation or other mental disease.

2. Forced medical measures can be imposed by the court with respect to the person who committed socially dangerous actions in an insane state.

3. Also not subject to punishment, is the person who committed a crime in the state of insanity, however, had fallen mentally ill before sentencing by the court, which deprived him of the capability of understanding the actual nature and significance of his actions (inaction) or controlling them. Forced medical measures can be imposed by the court with respect to such a person, and after recovery this person can be subjected to punishment.

Article 26. Limited sanity.

1. A sane person who, due to mental disorder, when committing the crime could not entirely understand the actual nature of one's action (inaction) and its social danger, or control one's actions, is subject to criminal liability.

2. Limited sanity is taken into account as a mitigating circumstance when imposing the punishment and can become the ground for the enforcement of medical measures, parallel to the punishment.

Measures of medical enforcement.

Article 97. Grounds for application of medical enforcement measures.

1. The court can apply medical enforcement measures in relation to the person who:
1) committed the act envisaged in an article of the Special Part of this Code in an insane state.
2) Who after the committal of the crime develops such a mental disorder which makes assignment or implementation of the punishment impossible.
3) Who committed a crime in the state of limited sanity.
4) Who committed a crime and has been recognized as one in need of treatment against alcohol or drug addiction.:

2. Medical enforcement measures in relation to persons mentioned in part 1 of this Article are assigned only when the mental disorder is related to the danger of inflicting other essential damage or to the danger for other persons or themselves.

3. The procedure of application of medical enforcement measures is established by laws

4. The court can submit necessary documents to health-care bodies in relation to the persons mentioned in part 1 of this Article whose mental state is not dangerous, to solve the issue of treatment of these people or sending them to neurological institutions.

Article 98. Types of medical enforcement measures.

1. The types of medical enforcement measures are:
   1) outpatient supervision by psychiatrist and enforced treatment;
   2) enforced treatment in general psychiatry hospitals;
   3) enforced treatment in special psychiatry hospitals;

2. The court can assign in addition to punishment a outpatient supervision by psychiatrist and enforced treatment for those convicted for committal a crime in the state of mental disorder not ruling out sanity, but who need treatment against alcohol, drugs or mental disorder not ruling out sanity.

Article 99. Outpatient supervision by psychiatrist and enforced treatment.

Outpatient supervision by psychiatrist and enforced treatment can be assigned if the person in his mental state does not need to be admitted to a psychiatry hospital.

Article 100. Enforced treatment in psychiatry hospital.

Enforced treatment in psychiatry hospital can be assigned, if the state of mental disorder of the person requires treatment, care, such conditions of keeping and supervision which can be implemented only in a psychiatry hospital.

Article 101. Assignment, change and termination of enforced medical measures.

1. When assigning enforced medical measures the court takes into account the mental disorder of the person, the nature of committed act and the degree of danger for the society.

2. In case of the person's recovery or change of his illness when there is no need in enforced medical measure, the court, based on the conclusion of the medical institution, makes a decision to terminate the application of these measures.

3. Based on the conclusion of the medical institution, the court can decide also to change the type of the enforced medical measure.

Article 102. Offsetting the period of application of enforced medical measures.

In case of treatment of a person whose mental disorder occurred after committing a crime, when assigning or resorting the serving of the punishment, the period of application of enforced medical measures in the psychiatry hospital is offset to the punishment, calculating one day in the psychiatry hospital as equal to one day of imprisonment.

Article 103. Enforced medical measures added to execution of punishment.

1. In cases provided by part 2 of Article 98 of the current Code, enforced medical measures are applied at the place of imprisonment, and in relation to convicts sentenced to other types of punishment, in outpatient medical institutions that have psychiatric care.

2. Termination of application of enforced medical measures together with execution of punishment is realized by the court, by the motion of the body executing the punishment, based on the conclusion of a commission of psychiatrists.

AUSTRIA/AUTRICHE

According to Austrian Law the decision on conditional release is taken by the competent regional court not before having served half of the sentence imposed if there is a positive prognosis that the person will refrain from further criminal behaviour. When examining conditional release accompanying measures such as the assignment of a probation officer, instructions (to provide compensation for the damage caused by the offence, to undergo a specific training, to be treated for drug addiction, etc.) shall be taken into account. The person has to be released indicating a period of probation if there is reason to believe that he/she will refrain from further criminal behaviour (Section 46 para 1 of the Criminal Code). Having served half, but not yet two thirds of the sentence imposed conditional release can only be refused if in the light of the seriousness of the act committed the further enforcement of the sentence is deemed to be necessary on an exceptional basis to prevent other possible perpetrators from criminal behaviour (Section 46 para 2 of the Criminal Code).

Conditional release is also possible from certain measures involving deprivation of liberty. Mentally ill offenders can be released on parole, if the warning to commit the person to an institution together with a continued medical treatment after release and measures such as the assignment of a probation officer, instructions, etc are considered sufficient - taking into account the personality of the offender, his/her state of health, his/her previous life, the nature of the offence committed, the success of a medical treatment during detention and chances of a positive future life – to eliminate danger emanating from the mentally ill offender. Mentally ill offenders who can be held responsible for the crimes committed can be released from the measures only together with a release from the sentence imposed (Section 45 para 1 of the Criminal Code) Offenders addicted to drugs or alcohol can be committed to a specific institution. A release from this measure, which must not exceed two years, is also possible together with a release from the sentence imposed if there is reason to believe, that the warning to commit the person to an institution together with measures such as the assignment of a probation officer, instructions (in particular to be treated for addiction) are sufficient to overcome the addiction (Section 45 para 2 of the Criminal Code).

A conditional release from other measures, such as a commitment to an institution for dangerous re-offenders is not possible under Austrian law (Section 45 para 4).

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

This information is contained in the country information sheet and confirmed as adequate by the country concerned.

DENMARK / DANEMARK

Rules on Conditional Release

The rules on conditional release are found in Sections 38-41 of the Danish Criminal Code
Danish law provides for five types of release on parole:

1. Ordinary release on parole

It follows from Section 38(1) of the Danish Criminal Code that when two thirds of a prison term, yet at least two months, have been served, the Minister of Justice, or a person so authorised (the Prison and Probation service), shall decide whether a prisoner may be released on parole.
Release on parole presupposes that the sentenced person's personal situation does not render release inadvisable, cf. Section 38(5) of the Danish Criminal Code. Section 38(5) also provides that it is a condition that a suitable lodging and work or other support has been provided for the probationer, and that he agrees to observe the conditions stipulated for the release.

2. Release on parole after completion of half the sentence in special circumstances

Section 38(2) provides that a prisoner can be granted release on parole earlier than after two thirds, when it is justified by special circumstances and when the prisoner has served half of the sentence and at least two months.
Section 38(5) applies as well.
In practice, Section 38(2) is often used when an alien is to be deported after having served his sentence.

3. Release on parole after completion of half the sentence in case of special efforts not to reoffend

According to Section 40a(1)(i), a prisoner can (in other cases than those set out in Section 38(2)) be released on parole when half of the prison term, yet at least two months, have been served, provided that due regard for enforcement of the law does not make it inadvisable and the prisoner has made special efforts not to commit crime again – for instance by participating in treatment, education programs or job training.
Release on parole under Section 40a(1)(i) shall only be granted if the release is not inadvisable by reason of the prisoner's circumstances, if suitable lodging and work or other support has been provided for the probationer, and if the probationer agrees to observe the conditions stipulated for the release, cf. Section 40a(6) and Section 39(1).

4. Release on parole after completion of half the sentence where the prisoner's situation makes it appropriate

According to Section 40a(1)(ii), a prisoner can (in other cases than those set out in Section 38(2)) be released on parole when half of the prison term, yet at least two months, have been served, provided that due regard for enforcement of the law does not make it inadvisable, if the circumstances of the prisoner makes it appropriate.
Section 40a(6) applies as well.

5. Release on parole of offenders sentenced to life imprisonment

Section 41(1) provides that a person serving a life sentence may be released on parole by the Minister of Justice after completion of 12 years of imprisonment. It is a condition that the person's situation does not render release inadvisable, that a suitable lodging and work or other support has been provided, and that the person agrees to observe the conditions stipulated for the release.

Furthermore, it is a condition that the person does not commit any new criminal offences in the parole period, cf. Section 41(3). The parole period must not exceed five years.

Supplementary conditions for release on parole

According to Section 39(1) of the Criminal Code, release on parole is granted on the condition that the parolee does not commit any criminal offences in the parole period, which shall not exceed three years. Where the remaining term of imprisonment exceeds three years, the parole period may be extended to five years.
According to Section 39(2), it may be made a condition for release that the parolee subjects to super-vision, during all or part of the parole period.
Further conditions may be set according to the rules of Section 57 of the Act.
These conditions include:
(1) observing special stipulations concerning place of residence, work, education, use of leisure time or contact with specific persons;
(2) taking up residence in a suitable home or institution; the sentence must specify a maximum period, in general not exceeding one year;
(3) abstaining from the abuse of alcohol, narcotics or similar medical substances;
(4) submitting to curative treatment for alcoholism or addiction to narcotics or similar medical substances, if necessary in a hospital or a special institution;
(5) submitting to a structured, controlled treatment for alcoholics of at least one year's duration;
(6) submitting to psychiatric treatment, if necessary in a hospital;
(7) complying with the decision of the Probation Service concerning restrictions in the probationer's control over income and capital, and the carrying-out of his economic obligations;
(8) paying compensation for any loss caused by the probationer's offence;
(9) submitting to measures pursuant to Section 52 of the Social Service Act as decided by the local authority, possibly of a specified nature, and complying with the instructions given by the local authority to the probationer.

FINLAND / FINLANDE

In Finland transfer of sentenced persons is regulated by the Act on International Co-operation in the Enforcement of Certain Penal Sanctions. According to Article 1 of the Act Finland can enforce a foreign judgment which the person has been left without punishment but is imposed to involuntary psychiatric treatment. And vice versa – a person with such a sanction can be transferred from Finland to another state.

FRANCE

Conditional release

Established by a law of 14 August 1885, conditional release was the first measure to be introduced in France for individualising sentences involving deprivation of liberty.

I. The gradual judicialisation of conditional release.

1. Prior to the law of 15 June 2000: concurrent jurisdiction of sentence enforcement judges and the Ministry of Justice for granting conditional release.

Two authorities previously had jurisdiction to decide on applications for conditional release: the **sentence enforcement judge** or the **Ministry of Justice**, depending on the **quantum** of the sentence.

- If, on the date of the application for conditional release, the sentenced person was serving one or more sentences of **less than five years** involving deprivation of liberty, the application fell within the jurisdiction of the sentence enforcement judge, who was required to seek the opinion of the prison's sentence enforcement board. The decision to grant, defer or refuse conditional release was a judicial administration measure for which no reason was given. The Public Prosecutor could, however, make an application for the decision to be examined by the regional criminal court in chambers.

- If the sentenced person was serving a sentence of **more than five years** involving deprivation of liberty, the Ministry of Justice had sole jurisdiction for granting conditional release upon an application from the sentence enforcement judge and following an opinion from the sentence enforcement board. **The decision to grant or refuse conditional release was taken by ministerial order. No reasons were given for the decision and it was not open to appeal.**

Two successive laws brought far-reaching changes to the conditional release procedure, one initiating a process of **judicialisation of sentence enforcement,** the other **further enhancing its judicial nature.**

2. Law No. 2000-516 of 15 June 2000: the judicialisation of conditional release.

- ***Wider eligibility criteria***

To promote the use of this measure, **the Law of 15 June 2000 widened the general criteria for the grant of conditional release,** stating that "serious efforts at social rehabilitation" on the part of sentenced persons may be demonstrated in the following ways : engaging in an occupation, regularly attending a course of education or vocational training, serving a traineeship or taking up temporary employment, playing an essential part in family life, being required to undergo treatment, or endeavouring to compensate the victims.

- ***Jurisdiction of the courts for granting conditional release: introduction of adversarial procedure.***

The Minister for Justice no longer takes part in the decision on whether or not to grant conditional release.

- The sentence enforcement judge **has jurisdiction to decide when the person has been sentenced to up to 10 years' deprivation of liberty or,** whatever the initial sentence, **the period of imprisonment remaining to be served is 3 years or less.**
- **The regional conditional release court** has jurisdiction for decisions concerning persons sentenced to **a term of more than 10 years or with more than 3 years left to serve.**

The sentence enforcement judge and the regional conditional release court **deliver their judgments, following an opinion from the representative of the prison authorities, after an "adversarial" hearing** in chambers during which they hear the submissions of the prosecution, the **observations of the sentenced person and, if appropriate, those of his/her lawyer.**

Sentence enforcement courts are **required to give reasons for their decisions**, which are **open to appeal within 10 days** of being served. **An appeal by the Public Prosecutor has suspensive effect if lodged within 24 hours of the decision being served**.

3. Law No. 2004-204 of 9 March 2004: completion of the judicialisation process

This law completed the process of **judicialisation of sentence enforcement**, initiated by the Law of 15 June 2000, by establishing **two new courts, the sentence enforcement court,** which in practice replaces the regional conditional release court, and the **sentence enforcement chamber of the court of appeal**, a new specialist section of the appeal courts.

Following this reform, the sentence enforcement judge and the sentence enforcement court **constitute the first-instance sentence enforcement authorities and the sentence enforcement chamber of the court of appeal the second instance.**

4. The Prison Law of 24 November 2009: wider conditions of eligibility for conditional release.

This law, which establishes the general principle of sentencing adjustment prior to or during the enforcement of prison sentences, widened the criteria for granting early release by stating that it may be granted in the event of involvement in "any serious integration or rehabilitation project".

II. Positive law: the conditions for granting conditional release:

Articles 729 et seq of the Code of Criminal Procedure

Conditional release is a **sentence individualisation measure which enables a sentenced person to be released, subject to certain conditions, before completing his/her sentence.** Its aims are the rehabilitation of offenders and the prevention of re-offending through supervised release from detention and the provision of social and educational support.

1. Conditions relating to the sentence being served:

Whatever the nature of the sentence being served, due account must be taken of any **period of unconditional imprisonment** during which no form of release may be granted (Articles 720-2 and 729 of the Code of Criminal Procedure).

Conditional release may be granted when the period served by the sentenced person is at least equal to the period remaining to be served (**"mid-term"** rule), due account being taken of any sentence reductions (sentence reduction credit, additional sentence reduction, remission).

However, **re-offenders** are not entitled to conditional release unless the period served is at least twice the period remaining to be served ("**2/3 sentence"** rule).

2. Conditions relating to the sentenced person's plans:

A sentenced person who applies for conditional release must **show that he/she is making serious efforts at social rehabilitation and provide evidence of the following:**

- being engaged in an occupation, a traineeship or temporary employment, or regular attendance at a course of education or vocational training,
- or playing an essential part in the life of his/her family,
- or the need to undergo medical treatment,
- or his/her efforts to compensate the victims,
- or his/her involvement in a serious integration or rehabilitation project.

Throughout the period of conditional release, the person is under the supervision of the sentence enforcement judge, who may, in the event of the person **failing to comply with his/her obligations** or committing a **fresh offence**, **revoke** the sentence adjustment and return him/her to prison.

3. Special cases

- ***Easing of the basic conditions in certain cases:***

- **Conditional release on grounds of "parental authority"**: persons sentenced to terms of imprisonment of 4 years or less or who have less than 4 years left to serve and who exercise parental authority over a child who is less than 10 years of age on the day of the application and habitually resides with them, may apply for conditional release without conditions as to time-limits. This provision cannot be applied to persons convicted of crimes on juveniles or persons convicted of a repeat offence.

- **Prisoners over 70 years of age:** sentenced persons over 70 years of age may be granted conditional release without the conditions relating to the period served being applicable. Provision must be made for the integration and rehabilitation of such persons (accommodation, appropriate support), and there must be no serious risk of their re-offending or disturbing public order.

- ***More stringent conditions in certain cases:***

Conditional release may not be granted to persons convicted of a crime for which they are liable to socio-judicial supervision and who refuse during their imprisonment to undergo the treatment offered to them by the sentence enforcement judge. Neither may conditional release be granted to sentenced persons who give no undertaking to undergo the proposed treatment following their release.

Since the **Law of 10 August 2011** on participation of citizens in the operation of criminal justice and juvenile justice, there have been specific rules applying to persons sentenced to life imprisonment or to a term of imprisonment of 15 years or more for an offence for which they are liable to socio-judicial supervision, and those sentenced to a term of imprisonment of 10 years or more for a crime listed in Article 706-53-13 of the Code of Criminal Procedure (crimes for which secure surveillance or detention may be ordered). In these cases, **conditional release may only be granted after a multi-disciplinary assessment of the person's dangerousness, an expert medical opinion and an advisory opinion from the multi-disciplinary board on security measures.**

Furthermore, when conditional release is not accompanied by electronic tagging, it may only be granted **after a trial period of one to three years' semi-detention or electronic tagging**.

III. Positive law: the procedure for granting conditional release.

1. The courts with jurisdiction.

Conditional release may be ordered by a **sentence enforcement judge** or a juvenile judge (when the initial sentence is 10 years or less or, whatever the length of the sentence, when the person has 3 years or less left to serve); in other cases, jurisdiction lies with the **sentence enforcement court** or the juvenile court. Their decisions must be **reasoned** and are open to **appeal**.

2. Application

The sentence enforcement judge may commence proceedings on his/her own initiative or upon an application from the sentenced person or submissions from the Public Prosecutor.

Article D. 523 of the Code of Criminal Procedure requires an **annual review of the sentenced person's situation,** even in the absence of any request from the sentenced person.

3. Examination of applications

Applications for conditional release are examined under adversarial procedure. The sentenced person is required to be present, and may if necessary be assisted by a lawyer.

In proceedings under the jurisdiction of both the sentence enforcement judge and the sentence enforcement court, **the opinion of a representative of the prison authorities** is sought.

IV. The content of an order for conditional release

1. Duration of the measure:

The period of conditional release is at least equal to the **part of the sentence not served** at the time of release.
That period **may be extended by one year.** The total length of the period under judicial supervision may not exceed ten years.
In the case of persons sentenced to life imprisonment, the duration of the measure may not be less than five years or more than ten years. It may, however, be of indefinite duration where the sentence is to be served in full.

2. Obligations:

The court which grants conditional release specifies the relevant arrangements and conditions. The conditionally released person is subject to the general obligations of probation (obligation to answer summonses and report changes of address, ban on leaving the country without authorisation etc.).

The conditionally released person may also be subject to:

- **specific obligations and prohibitions,** such as the obligation to receive treatment, look for a job or compensate the party seeking damages, and a prohibition on going to certain places or associating with certain people.
- electronic **tagging**.
- a **care order**, unless the sentence enforcement judge decides otherwise, if a medical opinion establishes the need for treatment.

GERMANY / ALLEMAGNE

Conditional release from imprisonment is regulated in the following provisions:

Section 57 (1) of the German Criminal Code (hereinafter referred to as StGB) provides that the court shall suspend execution of the remainder of a fixed term of imprisonment and grant probation, if two thirds of the imposed sentence, but not less than two months, have been served (no. 1), the release is appropriate considering the security interests of the general public (no. 2), and the convicted person consents (no. 3). To be considered in making the decision are, in particular, the personality of the convicted person, his/her previous history, the circumstances of the offence, the importance of the legal interest endangered should he/she re-offend, the conduct of the convicted person while in custody, his/her living circumstances and the anticipated effects of the suspension of the remainder of the sentence on him/her.

The court may also suspend execution of the remainder of the prison sentence after half of a fixed-term of imprisonment has been served, but not less than six months thereof (section 57 (2) StGB), if the convicted person is serving his/her first term of imprisonment, such term not exceeding two years (no. 1), or a comprehensive evaluation of the offence, the personality of the convicted person and his/her development while in custody show that special circumstances exist (no. 2), and if the remaining requirements of section 57 (1) StGB have been fulfilled.

In accordance with section 57a (1) StGB the court shall suspend execution of the remainder of a sentence of imprisonment for life and grant probation, if fifteen years of the sentence have been served (no. 1), the particular seriousness of the convicted person's guilt does not require its continued execution (no. 2); and the requirements of § 57 (1), first sentence, nos. 2 and 3 StGB are met. Section 57 (1), second sentence, and (6) StGB shall apply mutatis mutandis. If imprisonment for life has been imposed as an aggregate sentence, section 57b provides that the individual offences shall be comprehensively evaluated in determining the particular seriousness of the guilt (section 57a (1), first sentence, no. 2 StGB).

Conditional release in the case of placement in a psychiatric hospital (section 63 StGB), in an institution for withdrawal treatment (section 64 StGB) or in preventive detention (section 66 StGB) is governed by section 67d (2) StGB. It states that if no maximum period has been provided or the period has not yet expired, the court shall suspend the measure on probation if it can be expected that the person subject to the measure will not commit any further unlawful acts if released. If a term of imprisonment is executed prior to a simultaneously ordered placement [this applies to preventive detention], the court shall review, before execution of the term of imprisonment has been completed, whether the purpose of the measure still requires the placement concerned [that means, whether the person subject to the measure still poses a danger to the general public]. If that is not the case, the court shall suspend the execution of the placement on probation (section 67c (1) StGB).

Apart from suspension on probation, such placements shall be terminated according to the following provisions:

Placement in an institution for withdrawal treatment may not exceed a period of two years (section 67d (1) StGB). If the maximum period has expired, the person concerned shall be released and the measure shall thereby be terminated (section 67d (4) StGB). The court shall also declare the placement in an institution for withdrawal treatment terminated if the prerequisites of section 64 no longer apply (section 67d (5) StGB). If, after the execution of the placement in a psychiatric hospital has begun, the court finds that the prerequisites for the measure no longer apply or that the continued enforcement of the measure would be disproportionate, the court shall declare it terminated (section 67d (6) StGB). If a person has spent ten years in preventive detention, the court shall declare the measure terminated and order

his/her release if there is no danger that the person concerned will, due to his/her propensity, commit serious offences which would inflict severe mental or physical harm on the victims.

Section 67e (1) StGB provides that the court may review at any time whether the further enforcement of the placement in preventive detention should be suspended or whether it should be declared terminated. It is obliged to do so before the expiry of fixed time-limits. The time-limit shall be six months in the case of placement in an institution for withdrawal treatment, one year in the case of placement in a psychiatric hospital and two years in the case of placement in preventive detention (section 67e (2) StGB).

It should be noted, however, that the Act on the Nationwide Implementation of the Distance Requirement in the Law of Preventive Detention of 5 December 2012 (Federal Law Gazette, Part I, page 2425 et seq.) will amend the provisions on preventive detention as of 1 June 2013. In particular, additional reviews of the placement in preventive detention will be required.

The newly created section 66c (1) no. 1 StGB essentially provides that preventive detention will be executed in institutions which offer individualised care to the person under placement – including, in particular, psychiatric, psycho-therapeutic and socio-therapeutic treatment – the purpose of which is to reduce his/her dangerousness to the general public in order for execution of the measure to be suspended on probation or declared terminated as early as possible. If the court has ordered placement in preventive detention in the judgment, made a deferred or subsequent order for placement in preventive detention or reserved the option to order preventive detention in the judgment, the offender has to be offered such a treatment already during the (preceding) execution of the prison sentence, the aim being that the execution or the order of placement in preventive detention should, as far as possible, be made unnecessary.

The new version of section 67c (1), first sentence, no. 2 StGB provides that the execution of preventive detention will also be suspended on probation at the end of the preceding execution of the prison sentence (i.e. that execution of preventive detention will not even begin), if the placement would be disproportionate because the offender was not offered sufficient care within the meaning of section 66c (2) in conjunction with section 66c (1) no. 1 StGB (new version).

The new version of section 67d (2), second sentence StGB provides for the suspension of any ongoing execution of preventive detention, if continued execution would be disproportionate, because the person under placement was not offered sufficient care within the meaning of section 66c (1) no. 1 before the expiry of a period of six months at the most, as set by the court.

Furthermore, the interval for the periodic review of the placement in preventive detention will be reduced by the new version of section 67e (2) StGB from two years to one year; after ten years of preventive detention it will be reduced to nine months.

NETHERLANDS / PAYS-BAS

The Dutch Penal Code (annex 1) and some other laws were amended as of 1 July 2008 in connection with changing early release into conditional release. The main difference with the former regulation is that the early release now is combined with conditions and that prisoners can be only released early if they behaved well in prison. Prisoners who are with regard to the length of time they stayed in prison almost in a position to be conditionally released can participate in a programme of detention phasing that offers more freedom and a little more leave. The task of the prosecution in connection with early release was enlarged as the prosecutor has to decide now about the special conditions to be combined with the conditional release and to organize and manage the supervision of the probationers who should be watched closely. If a probationer does not fulfil the condition(s) combined with the early release it is the prosecutor who has to react as quickly as possible, the severest means being revoking the conditional release and executing the rest of the prison sentence.

In the new regulation the judge keeps the task to decide about suspending, refraining from and revoking early release although there were proposals made to assign these tasks to the prosecution combined with the possibility to appeal to the court. In order to introduce a law that without doubt keeps in line with the Art. 5 and 6 of the European Human Rights Convention the Dutch Government choose the model with the judge as decision maker in cases conditions were not fulfilled or infringed. An important idea behind the introduction of conditional release is that one wants to make the prisoner responsible for his own future.

Those sentenced to a prison sentence of more than one year (or several short prison sentences lasting altogether one year or longer) and not more than two years, not being a partly suspended sanction, can be conditionally released if their imprisonment lasted at least one year and if at least one third of the remaining prison sentence was served. Those sentenced to more than two years prison sentence, the sentence not being lifelong imprisonment, can be conditionally released after serving two thirds of the whole length of the prison sentence the judge imposed. The probation period is as long as the period of the early release. A prisoner sentenced to 30 years imprisonment for example, theoretically can be released after two thirds of this period, his probation period lasting then for 10 years. In cases the judge decided that the prison sentence or a part of it should not be executed, the regulations about conditional release are not applicable.

There are two kinds of conditions: the general condition and special conditions. Conditional release is always combined with the general condition that until the end of the probation period the convicted may not become guilty committing a punishable act. Next to the general condition, special conditions concerning the behaviour of the convicted person can be imposed. These special conditions can include programmes of activities focussing on the return of the probationer into society or to undergo special care, such as care and treatment for addicts or measures for the improvement of mental welfare. The special conditions can also include restrictions concerning behaviour and freedom of movement for the convict. Furthermore a special condition can be combined with electronic monitoring. Special conditions may neither restrict the freedom of the convict's confession nor his or her political freedom.
There is no need to impose special conditions in those cases in which the risk of recidivism is relatively low as for example if the convicted was already sufficiently prepared for his early release during the execution of his prison sentence or when his/her personal circumstances make recidivism not really probable. For those individuals who should be early released only under additional special conditions the next question is what special conditions could fit best with the individual person and his/her situation.

Release date and prisoner transfer

The EU Framework Decision 909 regarding the transfer of prisoners enables states to take over the release date of the sentencing state if this date is more favourable. The Penal Code has been adapted for this reason (annex 1) and provides for the possibility of taking into account an earlier date for early release applied abroad, if applicable, provided that the date for early release applied abroad is definite or has been determined with a high degree of probability. This applies only to request that have been received on or after 1 November 2012. In those cases we the sentencing state will be asked to inform us on the applicable (and definite) release date and whether they would agree to the application of that date by the Netherlands.

The prisoner will be informed (annex 2).

Annex I: Criminal Code Article 15 (effective from 1 November 2012)

1. Those who have been sentenced to a custodial sentence of more than one year and at most two years will be released conditionally if the deprivation of liberty has lasted at least one year and one third of the remaining sentence to be served has already been served.
2. Those who have been sentenced to a temporary term of imprisonment of more than two years will be released conditionally when they have served two thirds of the sentence.
3. The first and second paragraph do not apply if:
    a. the judge ordered, on the basis of Article 14a, that a part of the custodial sentence will not be executed;
    b. the judge issued an order as referred to in the first paragraph of Article 14g;
    c. the convicted person is a foreign national without the right to reside in the Netherlands within the meaning of Article 8 of the Aliens Act 2000.
4. In application of the first and second paragraph, the time spent by the convicted person in police custody, pre-trial detention or in detention abroad pursuant to a Dutch request for extradition will be included in the term, unless that time, in application of Article 68(1) final sentence of the Dutch Code of Criminal Procedure, has already been deducted from another punishment undergone by the convicted person.
5. If the convicted person is to undergo more than one custodial sentence, these will be executed consecutively as much as possible. In such cases, unconditional custodial sentences will be designated jointly as a single custodial sentence, with the exception of imprisonment for non-payment of a fine, to which this Article and Articles 15a to 15l apply.
6. Articles 570 and 570a of the Dutch Code of Criminal Procedure apply.
7. In derogation of the first and second paragraph, Our Minister of Security and Justice may determine that the conditional release will take place at an earlier time in the case of the execution in the Netherlands of a custodial sentence imposed abroad, if the convicted person would have been released at that earlier time if the execution had not been transferred to the Netherlands.

Annex II : information for the detainee (if the Netherlands consent)

I would like to ask you to submit this information to ***detainee's name***

EXPLANATION OF THE CONSEQUENCES OF TRANSFERRING THE ENFORCEMENT OF A SENTENCE

You have been sentenced in <country> and are eligible for a transfer in compliance with the Convention on the transfer of sentenced persons (Strasbourg, 21 March 1983). This means that you will serve your prison sentence in the Netherlands. Your sentence will be continued: it will remain unchanged in the Netherlands. [Your sentence will be continued, but will be adjusted to the maximum term of imprisonment applicable in the Netherlands to the offence for which you have been sentenced.]

Regulation for conditional release
After having been transferred to the Netherlands, Dutch law will be applicable to you. This means that the Dutch regulations for conditional release will apply to you.

Under the regulations for conditional release, persons who are serving a prison sentence of more than two years may be released conditionally after having served two thirds of the imposed prison sentence.

Your conditional release may be prohibited or suspended by the court if the court has a reason to do so (in other words: if they have legal grounds for this).

If you are released, a probationary period will take effect, during which you must observe specific conditions.
A general condition for all convicted persons is that they may not commit any new offences during his probationary period. In addition, special conditions may be imposed, such as an alcohol prohibition, training or treatment or supervision by the probation service.
If you fail to meet the conditions, you will have to serve the rest of your prison sentence after all.

Foreign regulations for conditional release
Under the Dutch regulations for conditional release, detainees who have been sentenced to two years' imprisonment or more will be released after having served two thirds of their sentence. Other countries may apply other regulations. The date by which you would have been released early or conditionally in the country where you were sentenced, may be taken into account in the Netherlands.
This will be allowed only if:

1 If we received the official request from <country> on or after 1 November 2012.
2 that date is in your favour (i.e. earlier) than the date based on the Dutch regulations for conditional release; and
3 that date is *final* or *has been determined with a high degree of probability*; and
4 the country where you are residing *has agreed* to the application of that date.

<*option 1*> In your case, the authorities of <country> have indicated that the date for conditional release has been determined at <date>.
The authorities in <country> have also stated that they do not object to our application of this date. Therefore, the foreign date for conditional release will be applicable to you.

Please note: only the date is applied. The Dutch regulations for conditional release as described above will apply to you in all other respects. Your probationary period will be calculated on the basis of the foreign sentence.

<option 2> We have received the official request from <country> on <date>. This means that you can be released after having served two thirds of your sentence.

<option 3> In your case, the authorities of <country> have stated that your date for conditional release is *not final* or *has not been determined with a high degree of probability*. This means that you can be released after having served two thirds of your sentence.

<option 4> In your case, the foreign sentence has been adjusted to the maximum term of imprisonment applicable in the Netherlands to the offence for which you have been sentenced. Furthermore, the Dutch regulations for conditional release will apply to your case and you may be released after having served two thirds of your prison sentence.

<option 5> In your case, the date of conditional release given by the authorities of <country> is not in your favour. This means that you can be released after having served two thirds of your sentence.

POLAND / POLOGNE

Act of 6 June 1997

The Penal Code
GENERAL PART

Chapter VIII.
Measures connected with the placing the perpetrator under probation

Article 66. § 1. The court may conditionally discontinue the criminal proceedings if the guilt and social consequences of the act are not significant, the circumstances of its commission do not raise doubts, and the attitude of the perpetrator not previously penalised for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that even in the event of the discontinuance of the proceedings, he will observe the legal order and particularly that he will not commit an offence.

§ 2. Conditional discontinuance shall not be applied to the perpetrator of an offence for which the statutory penalty exceeds 3 years deprivation of liberty.

§ 3. In the event that the injured party has been reconciled with the perpetrator, the perpetrator has redressed the damage or the injured party and the perpetrator have agreed on the method of redressing the damage, the conditional discontinuance may be applied to a perpetrator of an offence for which the statutory penalty does not exceed 5 years deprivation of liberty.

Article 67. § 1. The conditional discontinuance shall be made for the term of probation which is between one and two years, which shall run from the date the judgement becomes valid and final.

§ 2. In discontinuing conditionally the criminal proceedings, the court may, in the probation period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.

§ 3. In discontinuing conditionally the criminal proceedings, the court shall obligate the perpetrator to redress the damage in whole or in part or the court may impose on the perpetrator duties mentioned in Article 72 § 1 section 1-3, 5, 7a or 7b, and additionally, the court may adjudicate pecuniary consideration as specified in Article 39 section 7 and an interdiction of driving motor vehicles mentioned in Article 39 section 3, up to 2 years. Imposing a duty on the perpetrator of a crime committed with the use of violence or unlawful threat with regard to a person close to the perpetrator mentioned in Article 72 § 1 section 7b, the court shall specify the way of frequenting of the perpetrator with the injured.

§ 4. The provision of Article 74 shall be applied accordingly.

Article 68. § 1. The court shall resume the criminal proceedings, if the perpetrator has during the probation period committed an intentional offence, for which he has been validly and finally sentenced.

§ 2. The court may resume the criminal proceedings if the perpetrator during the probation period flagrantly breaches the legal order, and in particular if he committed an offence other than that specified in § 1, evades supervision, does not perform the obligations or penal measure imposed or if he does not fulfil the settlement concluded with the injured person.

§ 3. The court may resume the criminal proceedings if, after the decision on the conditional discontinuance was rendered but before it became valid and final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The criminal proceedings conditionally discontinued may not be resumed any later than 6 months after the expiration of the probation period.

Article 69. § 1. The court may conditionally suspend the execution of a penalty of deprivation of liberty of up to 2 years, restriction of liberty or a fine adjudicated as a one-off penalty, if it is regarded as sufficient to attain the objectives of the penalty with respect to the perpetrator, and particularly to prevent him from relapsing into crime.

§ 2. In suspending the execution of a penalty, the court shall primarily take into consideration the attitude of the perpetrator, his personal characteristics and conditions, his way of life to-date and his conduct after the commission of the offence.

§ 3. Suspension of the execution of the penalty shall not be applied to the perpetrator as specified in Article 64 § 2, unless there is an exceptional case justified by extraordinary circumstances; suspension of the execution of the penalty specified in Article 60 § 3 through 5 shall not be applied to the perpetrator as specified in Article 64 § 2.

§ 4. Suspension of the execution of the penalty or fine shall not be applied to the perpetrator of an act of a hooligan nature. With regard to the perpetrator of an act of a hooligan nature and the perpetrator of a crime defined in Article 178a § 4, the court may conditionally suspend the execution of the punishment of the depravation of liberty specifically in justified cases.

Article 70. § 1. Suspension of the execution of a penalty shall be granted for a probation period, which runs from the time the sentence becomes valid and final and is for:

1) from 2 to 5 years - in the case of a conditional suspension of the execution of a penalty of deprivation of liberty,
2) from one year to 3 years - in the case of a conditional suspension of the execution of a fine or a penalty of restriction of liberty.

§ 2. In the case of the conditional suspension of the execution of a penalty with respect to a perpetrator who is a young offender or the one specified in Article 64 § 2, the probation period is from 3 to 5 years.

Article 71. § 1. In suspending the execution of the punishment of the depravation of liberty, the court may adjudicate a fine at the amount of up to 270 daily rates, in the event that the imposition of such penalty on a different ground is not possible; in suspending the execution of the punishment of the depravation of liberty, the court may adjudicate a fine at the amount of up to 135 daily rates.

§ 2. In the event of ordering the execution of the penalty of the deprivation or restriction of liberty, the fine adjudicated under § 1 shall not be subject to execution; the penalty of deprivation or restriction of liberty shall be reduced by the number of days equal to the number of daily fines paid, rounded up to the nearest full day.

Article 72. § 1. In suspending the execution of a penalty, the court may obligate the sentenced person :

1) to inform the court of the probation officer about the progress of the probation period,
2) to apologise to the injured person,
3) to carry out a duty incumbent upon him in order to provide support for another person,
4) to perform remunerated work, to pursue an educational activity or train himself for an occupation,
5) to refrain from abusing alcohol or using other intoxicants,
6) to submit to treatment, specifically to detoxification or rehabilitation, or therapeutic treatment,
6a) to participate in corrective and educational programmes,
7) to refrain from frequenting specified community circles or places,
7a) to refrain from frequenting with the injured or other persons in a specific manner or approaching the injured or other persons,
7b) to leave a place shared together with injured person,

8) to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence.

§ 1 a. in the event that the duty mentioned in § 1 section 7b is imposed on the perpetrator of a crime committed with the use of violence or unlawful threat with regard to a person close to the perpetrator, the court shall specify the manner of frequenting the perpetrator with the injured.

§ 2. The court may obligate the perpetrator to redress the damage in whole or in part, unless it has adjudicated a penal measure as specified in Article 39 section 5, or to pay a pecuniary consideration as specified in Article 39 section 7.

Article 73. § 1. In suspending the execution of a penalty, the court may, in the probation period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.

§ 2. The placing under supervision is mandatory with respect to a young perpetrator of an intentional offence, perpetrator specified in Article 64 section 2, and with respect to the perpetrator of an offence committed on the basis of sexual orientations disorders.

Article 74. § 1. The time and manner of execution of the imposed obligations, specified in Article 72 shall be determined by the court after hearing from the sentenced person; the imposition of the obligation specified in Article 72 § 1 section 6 shall require the additional consent from the sentenced person.

§2. If educational considerations so warrant, the court may, during the probation period, institute, extend or modify the obligations imposed on a person sentenced to a deprivation of liberty with a conditional suspension of its execution, as mentioned in Article 72 § 1 sections 3 through 8, or release him from these obligations (except the obligation specified in Article 72 § 2), and likewise either place the sentenced person under supervision or release him from the aforesaid.

Article 75. § 1. The court shall order the execution of the penalty, if the sentenced person during the probation period, committed an intentional offence similar to the previous one, for which he has been validly and finally sentenced for a penalty of deprivation of liberty.

§ 1 a. The court shall order the execution of the punishment if the person sentenced for a crime committed with the use of violence or unlawful threat with regard to a person that is close to the perpetrator or to a juvenile living with the perpetrator during the probation period grossly violates law by repeated use of violence or unlawful threat with regard to a person that is close to the perpetrator or to a juvenile living with the perpetrator.

§2. The court may order the execution of the penalty, if the sentenced person in the probation period flagrantly breaches the legal order, and, in particular, if he committed an offence other than that specified in §1, has not paid the fine, has evaded supervision, or failed to fulfil the obligations or penal measures imposed.

§ 3. The court may order the execution of the penalty if, after the sentencing decision was rendered but before it became valid and final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The order to execute the penalty may not be issued any later than 6 months after the end of the probation period.

Article 76. § 1. The sentence shall be expunged by virtue of law 6 months from the termination of the probation period.

§ 2. If a fine or a penal measure were imposed upon the sentenced person, the expunction of the sentence may not occur before the execution, remission or prescription thereof; this shall not be applied to the penal measure specified in Article 39 section 5.

Article 77. § 1. The court may conditionally release a person sentenced to the penalty of deprivation of liberty from serving the balance of the penalty, only when his attitude, personal characteristics and situation, his way of life prior to the commission of the offence, the circumstances thereof, as well as his conduct after the commission of the offence, and while

serving the penalty, justify the assumption that the perpetrator will after release respect the legal order, and in particular that he will not re-offend.

§ 2. In particularly justified cases the court, in imposing the penalty of deprivation of liberty, may determine more rigorous restrictions to prevent the possibility of him benefiting from the conditional release other than those specified in Article 78.

Article 78. § 1. The sentenced person may be conditionally released after serving at least half of the punishment.

§ 2. The sentenced person defined in Article 64 § 1 may be conditionally released after serving two thirds of the punishment whereas the sentenced person specified in Article 64 § 2 may be conditionally released after serving three quarters of the punishment.

§ 3. The person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and the person sentenced to deprivation of liberty for life, after serving 25 years of the sentence.

Article 79. § 1. The provisions of Article 78 § 1 and 2 shall be applied accordingly to a sum of two or more penalties not amenable to an aggregate penalty, which the sentenced person has to serve as subsequent terms; the provision of Article 78 § 2 shall be applied if even one of the offences has been committed in the conditions specified in Article 64.

§ 2. Notwithstanding the conditions specified in Article 78 § 1 or 2, the sentenced person may be conditionally released after serving 15 years deprivation of liberty.

Article 80. § 1. In case of conditional release, the portion of the penalty which remains to be served constitutes a probation period, which may not, however, be less than 2 or longer than 5 years.

§ 2. If the sentenced person is the person specified in Article 64 § 2, the probation period may not be shorter than 3 years.

§ 3. In a case of the conditional release of a person sentenced to deprivation of liberty for life, the probation period shall be 10 years.

Article 81. In case of revocation of the conditional release, the sentenced person may not again be conditionally released before the lapse of one year from the date of committing him to the penal institution, and in case of the penalty of deprivation of liberty for life, before the lapse of 5 years.

Article 82. If in the probation period and in the course of the following 6 months, the conditional release has not been revoked, the sentence shall be considered to have been served at the time of the conditional release.

Article 83. A person sentenced to a penalty of limitation of liberty who has completed at least half of the adjudged penalty, respected the legal order, performed diligently the work ordered by the court, and fulfilled the obligations imposed upon him, may be relieved by the court from the rest of the penalty, considering it as executed.

Article 84. § 1. The court may, after half of the period for which the penal measures specified in Article 39 sections 1 through 3 were imposed, consider them executed, if the sentenced person has respected the legal order and he has been subjected to the penal measure for at least one year.

§ 2. The provision of § 1 shall not be applied if the penal measures specified in Article 39 section 2 and 3 have been adjudicated under Article 41 § 1a, Article 41a § 3 or Article 42 § 2 or 3.

Article 84a § 1**.** The obligation to refrain from staying in particular environments and places, the interdiction of communicating with particular persons, or interdiction of leaving a specified whereabouts without court's permission, adjudicated forever, may be regarded to be fulfilled, if the conduct of the convict after he committed an offence and when serving his prison

sentence justifies the assumption that after obligation or interdiction is revoked, he shall not commit another offence against sexual latitude or decency committed against a minor, and obligation or interdiction has been in force for at least 10 years.

§ 2. In the proceeding concerning the further use of obligation or interdiction referred to in § 1, the court requests for expert opinion.

§ 3. A motion from the injured person or from their counsel, filed before 2 years after the decision was taken to refuse to accept obligation or interdiction as referred to in § 1 and regarded to be fulfilled, is not considered.

Chapter X.
Preventive Measures

Article 93. The court may adjudicate preventive measures, as provided for in this chapter, that relate to placing the perpetrator in a closed medical institution or refer the perpetrator to an outpatient clinic for treatment only if it is necessary to prevent the perpetrator from a repeated commission of a prohibited act related to his mental disease, sexual orientation disturbance, mental disability or addiction to alcohol or to any other intoxicant; prior to deciding about such preventive measure, the court shall hear to psychiatrists and psychologists and in the cases of sexual orientation disturbance also to sexologists.

Article 94. § 1. If the perpetrator has committed a prohibited act of significant harm to the community, in a state of irresponsibility as specified in Article 31 §1, and that there is a high probability that he will commit such an act again, the court shall commit him to a suitable psychiatric institution.

§ 2. The duration of the stay in the institution shall not be fixed in advance; the court shall decide on the release of the perpetrator from the institution if his stay there is no longer deemed necessary.

§ 3. The court may again decide on committing a perpetrator as specified in § 1 to a suitable psychiatric institution if it is advisable in the light of the circumstances specified in § 1 or Article 93; the order may not be issued later than 5 years after the release from the institution.

Article 95. §1. In sentencing a perpetrator to a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence committed in a state of diminished accountability as specified in Article 31 §2, the court may order his commitment to a penal institution where special medical treatment or rehabilitation measures shall be applied.

§ 2. If it is advisable in the light of the effects of medical treatment or rehabilitation, the court may conditionally release the perpetrator as specified in § 1, sentenced to the penalty of a deprivation of liberty not exceeding 3 years, under conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.

Article 95a. § 1. Upon the imposition of a penalty of deprivation of liberty without a conditional suspension of the execution of the same for an offence against sexual latitude due to sexual orientation disturbance, the court may decide, after serving the sentence by the perpetrator, to refer the perpetrator to a closed medical institution or to an outpatient clinic for a pharmacological treatment or psychotherapy with an intention of preventing repeated commission of such offence, including specifically the decrease of disturbed sex drive of the perpetrator. Pharmacological treatment shall not be applied if such treatment is hazardous to life or health of the sentenced person.

§ 1a. The court shall adjudicate placing the perpetrator mentioned in § 1 that is sentenced for an offence described in Article 197 § 3 section 2 or 3 in a closed medical institution or to refer such perpetrator to an outpatient clinic.

§ 2. Within the time limit of up to 6 months prior to the expected conditional suspension or penalty execution the court shall indicate:

1) the need and way of executing the measure adjudicated by the court mentioned in § 1,
2) the manner of executing the measure adjudicated by the court mentioned in § 1a.

§ 2a. The court may decide about the change of the manner of executing a preventive measure specified in § 1 or 1a.

§ 2b. The court shall decide to place the perpetrator in a closed medical institution if the perpetrator evades ambulatory treatment mentioned in § 1 or 1a.

§ 3. Provisions in Article 94 § 2 and 3 shall be applied accordingly.

Article 96. § 1. In imposing a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence connected with an addiction to alcohol or the other intoxicant, the court may decide to commit the perpetrator to a closed medical institution for withdrawal treatment, if there is a high probability of him committing another offence connected with his addiction.

§ 2. The measure specified in § 1 shall not be imposed if the perpetrator was sentenced to the penalty of deprivation of liberty exceeding 2 years.

§ 3. The duration of the stay in the closed withdrawal treatment institution shall not be fixed in advance, it may, however, not be for less than 3 months or for more than 2 years. The court shall decide on the release from the institution on the basis of the results of the treatment, having heard the opinion from the person conducting the treatment.

§ 4. The duration of stay of the perpetrator in the institution as specified in § 1 shall be credited to the penalty.

Article 97. § 1. Depending on the progress in the treatment of the perpetrator specified in Article 96 § 1, the court may send him, for a probation period lasting from 6 months to 2 years, for outpatient treatment or to a rehabilitation programme in a rehabilitation/treatment facility. At the same time the court may place him under the supervision of a probation officer or a person of public trust, public institution or community organisation whose responsibilities include educational care, preventing the demoralisation of or providing to the sentenced persons.

§ 2. The court may again order placing the perpetrator in the closed withdrawal treatment institution or in a penal institution, if the perpetrator under probation, evades treatment or rehabilitation, commits an offence or flagrantly breaches the legal order or breaches the rules of the treatment/rehabilitation facility.

§ 3. If in the probation period and in the course of the following 6 months, no order on the placement of the sentenced person again in a closed withdrawal treatment institution or a penal institution has been issued, the penalty shall be considered to have been served at the lapse of the probation period.

Article 98. If it is advisable in the light of the effects of the treatment specified in Article 96 § 3, the court shall conditionally release the sentenced person from the serving of the balance of the sentence, under the conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.

Article 99. §1. If the perpetrator has committed a prohibited act in a state of insanity as specified in Article 31 §1, the court may apply, as preventive measures, the interdictions or the obligations specified in Article 39, sections 2 or 3, if it is deemed necessary for the protection of legal order, and the forfeiture specified in Article 39 section 4.

§2. The interdictions specified in § 1 shall be adjudged without specification of the period of time; the court shall decide to annul the interdiction, if the reasons for the imposition thereof are no longer applicable.

Article 100. If the social consequences of the act are insignificant, and also, in case of the conditional discontinuance of the proceedings, or upon ascertaining that a circumstance exists excluding a penalty for the perpetrator of the prohibited act, the court may apply the forfeiture provided for in Article 39 section 4.

RUSSIA / RUSSIE

Information on the Russian Legislation and the procedures of deprivation of freedom and conditional-early relief of convicted persons

In compliance with Article 44 of the Criminal Code of the Russian Federation deprivation of freedom for a determined term relates to one of the forms of punishment.

It is provided for in Article 56 of the Criminal Code of the Russian Federation that deprivation of freedom shall consist in isolation of the convicted person from society by means of sending him to a colony-settlement, placing him into a juvenile correction colony, medical treatment correctional institution, correctional general, strict or special regime colony, or to prison. Deprivation of freedom shall be stipulated for a term of from two months to twenty years.

Punishment in the form of deprivation of freedom (Part 6 of Article 88 of the Criminal Code of the Russian Federation) shall be imposed on a juvenile convicted person, who has committed a crime at the age of under sixteen years, for a term of no longer than six years. Punishment of juveniles of the same category, who have committed especially grave crimes, as well as other juvenile convicted persons shall be imposed for a term of no longer than 10 years and shall be served in juvenile correctional colonies. Punishment in the form of deprivation of freedom may not be imposed on a juvenile convicted person, who has committed at the age of under sixteen years a crime of little or average gravity for the first time, as well as on other juvenile convicted persons, who have committed crimes of little gravity for the first time.

Assignment of the type of correctional institution for those sentenced to deprivation of freedom shall be governed by Article 58 of the Criminal Code of the Russian Federation.

The serving of deprivation of freedom shall be imposed on:

a) persons convicted for crimes committed through carelessness, as well as on persons sentenced to deprivation of freedom for commission of intentional crimes of little or average gravity, who have not previously served deprivation of freedom, - in colony-settlements. Taking into account the circumstances of commission of the crime and the personality of the guilty person, the court may prescribe that the said persons shall serve a punishment in correctional general regime colonies, with specifying the reasons for the decision made;
b) men sentenced to deprivation of freedom for commission of grave crimes, who have not previously served deprivation of freedom, as well as on women sentenced to deprivation of freedom for commission of grave or especially grave crimes, including in the event of any type of recidivism, - in correctional general regime colonies;
c) males sentenced to deprivation of freedom for commission of especially grave crimes, who have not previously served deprivation of freedom, as well as in the event of recidivism or dangerous recidivism of crimes, if the convicted person has previously served deprivation of freedom, - in correctional strict regime colonies;
d) males sentenced to deprivation of freedom for life, as well as in the event of dangerous recidivism of crimes, - in correctional special regime colonies.

The serving of part of the term of punishment in prison may be imposed on men sentenced to deprivation of freedom for a term of over five years for the commission of especially grave crimes, as well as in the event of especially dangerous recidivism of crimes; in doing so the court counts the time of keeping the convicted person in custody pending coming of the judgement of conviction into legal force in the term of serving the punishment in prison. The serving of punishment in juvenile correction colonies shall be imposed on persons sentenced to deprivation of freedom, who have not reached the age of eighteen years by the time of delivering a judgement by court.

The change of the type of correctional institution shall be executed by a court in compliance with the criminal executive legislation of the Russian Federation.

In the event of recidivism of crimes the punishment shall be imposed according to the rules of Article 68 of the Criminal Code of the Russian Federation. When imposing a punishment in the event of recidivism, dangerous recidivism or especially dangerous recidivism of crimes, the character and degree of social danger of the previously committed crimes, the circumstances by virtue of which the correctional influence of the previous punishment proved to be insufficient, as

well as the character and degree of social danger of the newly committed crimes shall be taken into account.

The term of punishment in the event of any type recidivism of crimes may not be less than one third of the maximum term of the most severe type of punishment provided for the crime committed, but within the limits of the sanction of the corresponding Article of the Special Part of the Criminal Code of the Russian Federation.

In the event of any type of recidivism of crimes, if the mitigating circumstances provided for in Article 61 of the Criminal Code of the Russian Federation were established by court, the term of the imposed punishment may be less than one third of the maximum term of the most severe type of punishment provided for the crime committed, but within the limits of the sanction of the corresponding Article of the Special Part of the Criminal Code of the Russian Federation, and in the presence of exceptional circumstances, provided for in Article 64 of the Criminal Code of the Russian Federation, a more lenient punishment than the one provided for this crime may be imposed.

Conditional-early relief from serving a punishment shall be governed by Article 79 of the Criminal Code of the Russian Federation.

A person serving a punishment in the form of deprivation of freedom shall be subject to conditional-early relief, if the court admits that fully serving of the punishment imposed by court is not needed for his reformation. In doing so the person may be fully or partially relieved from serving a supplementary form of punishment.

Conditional-early relief may be applied only after the actual serving by the convicted person of:

a) not less than one third of the term of the punishment imposed for a crime of little or average gravity;
b) not less than half of the term of punishment imposed for a grave crime;
c) not less than two thirds of the term of punishment imposed for an especially grave crime, as well as two thirds of the term of punishment imposed on a person previously conditionally-early relieved, if the conditionally-early relief was reversed on the grounds provided for in Part 7 of Article 79 of the Criminal Code of the Russian Federation;
d) not less than three quarters of the term of the punishment imposed for the crimes against sexual inviolability of the minors, as well as for grave or especially grave crimes associated with illegal turnover of narcotic means, psychotropic substances, or precursors thereof, as well as for crimes provided for in Articles 205, 205.1, 205.2 and 210 of the Criminal Code of the Russian Federation;
e) not less than four fifth of the term of punishment imposed for the crimes against sexual inviolability of minors under fourteen years old.

The term of deprivation of freedom actually served by the convicted person may not be less than six months.

When considering an application for conditional-early relief from serving a punishment filed by the convicted person for the crime against sexual inviolability of a minor under fourteen years old, a court shall take into account the results of a forensic psychiatric expert examination in respect of such convicted person.

A person serving deprivation of freedom for life may be conditionally-early relieved if the court admits that the further serving of this punishment is not needed and not less than twenty five years of deprivation of freedom has actually been served. Conditional-early relief from further serving of deprivation of freedom for life shall be applied only in the absence of malicious breaches by the convicted person of the established procedure for serving the punishment during the previous three years. A person, who has committed a new grave or especially grave crime while serving deprivation of freedom for life, is not subject to conditional-early relief.

Control over behaviour of the conditionally-early relieved person shall be executed by the authorized special state authority.

If during the remaining unserved part of the punishment:

a) the convicted person committed a violation of public order for which an administrative penalty was imposed on him, or maliciously evaded discharging of duties imposed on him by a court when applying conditionally-early relief, as well as of compulsory measures of medical nature imposed by a court, the court upon the recommendation of the authorities

mentioned in Part 6 of Article 79 of the Criminal Code of the Russian Federation may rule that the conditional-early relief and the execution of the remaining unserved part of punishment shall be reversed;

b) the convicted person committed a crime through carelessness or an intentional crime of little or average gravity, the question of reversal or preservation of conditional-early relief is decided by court;
c) the convicted person committed a grave or an especially grave crime, the court shall impose a punishment on him according to the rules provided for in Article 70 of the Criminal Code of the Russian Federation. Punishment shall be imposed according to the same rules in the event of commission a crime through carelessness or an intentional crime of little or average gravity, if the court reverses the conditional-early relief.

In compliance with Article 97 of the Criminal Code of the Russian Federation compulsory measures of medical nature may be imposed by a court on persons:

a) who have committed actions provided for in Articles of the Special Part of the Criminal Code of the Russian Federation in a state of insanity;
b) those, who after the commission of a crime have become mentally deranged, which makes the imposition or execution of punishment impossible;
c) who have committed a crime and suffer from mental disorders, which do not exclude sanity;
d) who, at the age of over eighteen years, committed a crime against sexual inviolability of a minor under fourteen years old, and suffer from sexual preference disorder (pedophilia), which does not exclude sanity.

Compulsory measures of medical nature shall be imposed on the persons mentioned in Part 1 of Article 97 of the Criminal Code of the Russian Federation only in cases when the mental disorders were connected with the possibility of these persons to cause other material harm or with the danger to themselves or to other persons.

A court may impose the following types of compulsory measures of medical nature (Article 99 of the Criminal Code of the Russian Federation):

a) compulsory out-patient observation and treatment by a psychiatrist;
b) compulsory treatment in a psychiatric in-patient hospital of a general type;
c) compulsory treatment in a psychiatric in-patient hospital of a specialized type;
d) compulsory treatment in a psychiatric in-patient hospital of a specialized type with intensive observation.

Provisions of the Criminal Code of the Russian Federation and the Criminal Executive Code of the Russian Federation which govern punishment in the form of deprivation of freedom entered into force by Federal Law of the 27th of December 2009 № 377-FZ «Concerning the Introduction of Amendments to Specific Legislative Acts of the Russian Federation in Connection with the Enactment of the Provisions of the Criminal Code of the Russian Federation and the Criminal Executive Code of the Russian Federation concerning Punishment in the Form of Deprivation of Freedom».

A person convicted to restriction of freedom, while serving punishment at the place of residence, does not have a right to: leave home in a specific time of a day, visit particular places, including those where mass events are held and participate in them, leave the territory of the municipality, change place of residence and of work (studies) without coordination with the criminal executive inspection (hereinafter – CEI, inspection) and others.

Meanwhile the court charges a convicted person with an obligation to appear in the criminal executive inspection from one to four times a month for registration. The imposition of limitations by a court on the convicted person on changing the place of residence or of stay without consent of the CEI, as well as on leaving the territory of the municipality is obligatory.

This punishment shall be imposed for a term of from two months to four years in the capacity of the main type of punishment for the crimes of little or average gravity, as well as for a term of from six months to two years in the capacity of the supplementary type of punishment to deprivation of freedom in the event provided for in corresponding Articles of the Special part of the Criminal Code of the Russian Federation.

The criminal executive inspection at the place of residence of the convicted person shall serve him within 15 days from obtaining a copy of the judgement (ruling, regulation) with a formal

notice on the necessity to appear in the inspection for registration. A convicted person is obliged to appear within 3 days after receiving the mentioned notice in the CEI, where the rights and obligations, procedure and terms for serving a punishment, as well as responsibility for their violation are explained to him, job placement assistance is rendered.

When registering, the convicted person is subject to fingerprinting and photographing. Criminal executive inspections carry out an educational work with the person convicted to punishment in the form of deprivation of freedom. Within 3 days from registering the person convicted to deprivation of freedom, inspection shall inform a body of internal affairs at the place of his residence of it.

In the event of malicious evasion of serving a restriction of freedom by the convicted person, which was imposed as the main form of punishment, a court, upon CEI's presentation may substitute the unserved part of punishment with the forced labour or the deprivation of freedom at two days of restriction of freedom or one day of deprivation of freedom per two days of restriction of freedom.

Criminal case may be instituted under Article 314 of the Criminal Code of the Russian Federation in respect of the convicted person, on whom the restriction of freedom was imposed as the supplementary punishment, and who maliciously evades of serving this punishment.

SERBIA / SERBIE

I CONDITIONS FOR CONDITIONAL RELEASE

CRIMINAL CODE
*(Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005*72/2009, 111/2009 and 121/2012*)*

Conditional Release

Article 46

(1) The court shall release on parole a convicted person who has served two-thirds of his/her prison sentence if during serving of sentence he/she has rehabilitated to such extent that it may be reasonably assumed that he/she shall conduct himself/herself properly at liberty, and particularly that he/she shall not commit a new criminal offence prior to expiry of the time to which he/she was sentenced. In evaluating whether to release a convicted person on parole his/her conduct during serving of sentence, performance of work duties, in respect to his/her working ability, as well as other circumstances indicating that the purpose of punishment in respect to him/her has been achieved, shall be taken under consideration. A convicted person who has attempted to escape from prison or escaped from prison may not be released on parole.

(2) If the requirements of paragraph 1 this Article are fulfield, the court may conditionally release a convicted person:
- who is serving a prison sentence of 30 to 40 years;
- who was convicted of criminal offences against humanity and other rights guaranteed by international law (Articles 370 through 393a), sexual offences (Articles 178 through 185b), criminal offence of domestic violence (Article 194 paras 2 . through 4), criminal offence of unlawful production and circulation of narcotics (Article 246, paragraph 4), criminal offences against the constitutional order and security of the Republic of Serbia (Art. 305 to 321), criminal offense of accepting bribe (Article 367) and criminal offense of soliciting bribe (Article 368);
- who was convicted by a competent courts, or their special departments in proceedings conducted in accordance with jurisdiction specified by the Law on the Organization and Jurisdiction of Public Authorities in fighting organized crime, corruption and other serious crimes;
- who was more than three times sentenced by a final judgment to unconditional imprisonment, and the sentence was not erased or there are no conditions for some of sentences to be erased.

(3) The court may order in the decision on conditional release that the convicted person have to fulfill obligations specified by criminal provisions.

(4 In case referred to the paragraphs 1 and 2 of this Article if conditional release is not revoked, it shall be considered that the convicted person has served his sentence.

*(**Note:** Before the Amendments to the Criminal Code of 24.12.2012 (Official Gazette of RS, Nos. 121/2012) Article 46 contained the following provisions:*

(1) The court may release on parole a convicted person who has served half of the prison sentence if in the course of serving the prison sentence he has improved so that it is reasonable to assume that he will behave well while at liberty and particularly that he will refrain from committing a new criminal offence until the end of the imposed prison sentence. In deliberating whether to release the convicted person on parole, consideration shall be given to his conduct during serving of the sentence, performance of work tasks relative to his abilities, and other circumstances indicating that the purpose of punishment has been achieved.
(2) The court may order in the decision on conditional release that the convicted person have to fulfill obligations specified by criminal provisions.

(3) In the case referred to in paragraph 1 of this Article, if conditional release is not revoked, it shall be considered that the convicted person has served his sentence.

**The main difference is that the court had the option to order the conditional release if certain conditions are fulfilled, and now it is imperative for court.)*

Revocation of Parole

Article 47

(1) The court shall revoke parole if the convicted person, while on parole, commits one or more criminal offences punishable by a term of imprisonment exceeding one year.
(2) The court may revoke parole, if a person on parole commits one or more criminal offences punishable by a term of imprisonment of under one year or fails to fulfill any of the obligations the court has ordered in accordance with Article 46 Paragraph 3 of this Code. In determining whether to revoke the parole, the court shall particularly take into consideration whether criminal offences are related, motives and other circumstances justifying revocation of parole.
(3) Provisions of paragraphs 1 and 2 of this Article shall also apply when the paroled person is tried for a criminal offence committed prior to release on parole.
(4) When the court revokes parole it shall pronounce sentence by applying provisions of Article 60 and 62, paragraph 2 hereof, taking the previously pronounced sentence as already established. The part of the sentence served by the convicted person pursuant to previous conviction shall be calculated into the new sentence, whilst time spent on parole shall not be calculated.
(5) If the paroled person is convicted to a term of imprisonment under one year, and the court does not revoke parole, parole shall be extended for the period of imprisonment for such sentence served by the convicted persons.
(6) In cases referred to in paragraphs 1 through 3 of this Article, parole may be revoked not later than two years from the day parole has expired.

II PROCEDURE FOR CONDITIONAL RELEASE

CRIMINAL PROCEDURE CODE

(Official Gazette of the FRY, Nos. 70/2001 and 68/2002 and the Official Gazette of the RS", Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010), provides:

Procedure for conditional release

Article 522

(1) The procedure for conditional release shall be initiated on a petition by the convicted person.
(2) The petition shall be submitted to the court which tried the case in the first instance. (3) The chamber of the first-instance court (Article 24 paragraph 6) shall establish if the period prescribed by law for ordering conditional release has passed, and request a report from the administration of the institution where the convicted person is serving a prison sentence about his conduct, performance of work obligations assigned taking into account his capacity for work, and other circumstances which indicate whether the purpose of the punishment has been accomplished, unless such a report was attached to the convicted person's petition.
(4) If it does not deny the petition, the chamber shall take a statement from the public prosecutor acting before that court.
(5) Appeals against the chamber's decision may be submitted both by the public prosecutor and the convicted person who submitted the petition for conditional release.

CRIMINAL PROCEDURE CODE - 2011

(Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012 и 32/2013), wich will be implemented as of October 15, 2013, except in proceedings for criminal offences belonging to organised crime or war crimes held before the special department of the competent court, in which case its implementation began on January 15, 2012, provides:

Proceedings for the Release on Parole

Instituting Proceedings

Article 563

A convicted person who has served two-thirds of the imposed prison sentence or his defence counsel may submit a petition for release on parole.
The panel (Article 21 paragraph 4) of the court which adjudicated in the first instance decides on the petition.

Preliminary Examinations

Article 564

Immediately upon receiving a petition for the release on parole the panel shall examine if all statutory requirements for submitting the petition are fulfilled and shall dismiss the petition with a ruling if it determines:
1) that it was submitted by an unauthorised person;
2) that the convicted person has not served two-thirds of his prison sentence;
3) that the convicted person tried to escape or did escape from the custodial institution while he was serving his prison sentence.
If it does not issue the ruling referred to in paragraph 1 of this Article, the panel shall request a report from the custodial institution in which the convicted person is serving his prison sentence about his conduct and other circumstances indicating whether the purpose of the penalty has been fulfilled, as well as a report of the official of the administrative body in charge of enforcing criminal sanctions.

Scheduling a Hearing for Deciding on the Petition

Article 565

The panel president issues an order scheduling the date, time and place of holding of a hearing for deciding on a petition for the release on parole.

The panel president summons to the hearing the convicted person, if he deems his presence necessary, the defence counsel of the convicted person, if he has one, the public prosecutor acting before the court deciding on the petition, and, if the report is positive, a representative of the custodial facility where the convicted person is serving his sentence.

The defence counsel shall be cautioned in the summons that the hearing shall be held even if he fails to appear at the hearing.

The summons must be served on the persons referred to in paragraph 2 of this Article in such a way as to leave at least eight days between the date of service of the summons and the date of the holding of the hearing.

Course of the Hearing

Article 566

A hearing for deciding on a petition for the release on parole commences with the presentation of the reasons for the release on parole by the defence counsel , and if the defence counsel is absent, the panel president shall briefly present the reasons for submitting the petition.

If the convicted person is attending the hearing, the panel president shall take a statement from him, and then call on the public prosecutor to present his position on the convicted person's petition.

If a representative of the custodial facility where the convicted person is serving his sentence has been invited to the hearing, the panel president shall examine the representative about the conduct of the convicted person during the service of the sentence, execution of work duty, in view of the convicted person's capacity for work, as well as other circumstances which would indicate that the purpose of the punishment has been achieved.

Decisions Concluding the Hearing

Article 567

Immediately after the end of the hearing, the panel shall issue a ruling rejecting or granting the petition for release on parole, and shall particularly take into account an estimate of the risk posed by the convicted person, his success in the execution of the action programme, prior convictions, personal circumstances, and the expected effect of the release on parole on the convicted person.

The panel may determine in the ruling on release on parole that the convicted person is required to fulfil certain obligations stipulated by criminal law, and may also decide to place the convicted person on parole under electronic surveillance .

The ruling on the release on parole is served on the convicted person and his defence counsel, public prosecutor, custodial facility where the convicted person is serving his sentence, court which sent the convicted person to serve the sentence, judge in charge of the enforcement of criminal sanctions whose territorial jurisdiction covers the permanent residence of the convicted person, police authority, officer from the administrative body in charge of enforcing criminal sanctions and social service centre in the area where the convicted person has permanent residence.

The public prosecutor, convicted person and his defence counsel may appeal against the ruling referred to in paragraph 1 of this Article.

Proceedings for Revoking the Parole

Article 568

The provisions of Articles 545 to 551 of this Code apply *mutatis mutandis* to the proceedings for the revocation of parole.

SLOVENIA / SLOVENIE

Institute of the conditional release and measures involving deprivation of liberty.

In the Republic of Slovenia these institutes are regulated by the Criminal Code (Official Gazette RS, No. 55/2008), Criminal Procedure Act (Official Gazette RS, No. 32/2012 – consolidated text), Enforcement of Criminal Sanctions Act (Official Gazette RS, No. 59/2002, 113/2005-ZJU-B, 70/2006, 110/2006-UPB1, 76/2008, 40/2009, 9/2011-ZP-1G, 96/2012-ZPIZ-2, 109/2012) as well as by the Rules on the Implementation of the Sentence of Imprisonment (Official Gazette, RS, No. 127/2006, 112/2007, 62/2008, 76/2008-ZIKS-1C, 19/2009, 86/2009, 109/2012-ZIKS-1E).

The Slovenian system of sanctions is basically dual: it regulates sentences (which are basically grounded on a perpetrators guilt) and safety measures (which are based on the danger a perpetrator, although not necessarily culpable, poses for the public).

Institute of the conditional release

The Criminal Code regulates only the basic rules on conditional release, however specific provisions can be found in the Enforcement of Penal Sanctions Act (EPSA) as well as in the Rules on the Implementation of the Sentence of Imprisonment (RISI), which regulates more technical aspects of the institute. According to the Article 88 of the Criminal Code the offender, who has served half of his sentence of imprisonment, may be released from a penal institution under the condition that until the expiration of the term, for which he was sentenced, he would not commit another criminal offence (par. 1 of the Article 88). The offender, who has been sentenced to over fifteen years of imprisonment, may be conditionally released after he has served three quarters of the sentence (par. 2 of the Article 88), while the offender, who has been sentenced to life imprisonment, may only be conditionally released after he has served twenty-five years in prison (par. 3 of the Article 88). The offender may be released on parole when it is reasonable to expect that he will not repeat the criminal offence (par. 5 of the Article 88).

Due to the above mentioned two conditions must be met in order for a prisoner to be conditionally released; a substantive condition – that it is reasonable to expect that the prisoner will not commit another offence as well as the formal condition – that a determined period of time has already been served in prison. There is no mandatory conditional release system in the Republic of Slovenia.

The substantive condition (that it is reasonable to expect that the prisoner will not commit another offence) must be satisfied each time conditional release is granted. According to the fifth paragraph of the Article 88 of the Criminal Code the following circumstances should be taken into account when deciding on this substantive condition: 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 crime.

As it has been already mentioned, the formal condition (execution of a certain period of time in prison) varies according to the severity of the custodial sentence. A general rule regarding the formal condition is that conditional release may be granted to a prisoner who has served at least half of his sentence. But for longer (harsher) sentences specific rules apply. Exceptionally (e. g. serious illness) the offender who has served only one third of his sentence may be released on parole if he complies with the above listed conditions and if special circumstances referring to his personality indicate that he will not repeat the criminal offence (par. 6 of the Article 88).
The Criminal Code adopted in 2008 added to Slovenian penal system also the institute of conditional release with additional probation measures – obligations and instructions (par. 7 of the Article 88). Consequently the court may impose one or more probation measures to the conditionally released offender. It is the enumerated list of the probation measures and is limited only to the following obligations and prohibition (the obligation to submit himself to a course of medical treatment at an appropriate institution, also treatment of alcohol or drug addiction with his

consent; the obligation to attend sessions of vocational, psychological, or other consultation; obligation to qualify for a job or to take up employment suitable to his health, skills, or inclinations; obligation to spend income according to the duties relating to family support; prohibition of association with certain persons; restraining order to keep the perpetrator away from the victim or some other person; prohibition on access to certain places). But the court may also put the offender under custodial supervision on the proposal of the body responsible for granting and denying conditional release. Custodial supervision is performed by a counselor who has the same tasks as within the supervision of the suspended sentence with custodial supervision (par. 7 of the Article 88). The guardian is under obligation (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 as well as to report to the court (Article 66 of the Criminal Code).

Procedure

The procedure for deciding on parole is regulated by the Enforcement of Penal Sanctions Act (EPSA). The competence for the adoption of the decision is within the special Commission appointed by the Minister of Justice. The commission adopts decisions in a composition of three members: a Supreme Court Judge, a Supreme State Prosecutor and an official from the Ministry of Justice (par. 1 and 2 of the Article 105 EPSA). The Commission decides on a motion lodged by the convicted person, members of his or her family, or the prison governor (par. 1 of the Article 106 EPSA). In the request for conditional release the place where the prisoner intends to reside while on conditional release must also be stated (par. 2 of the Article 106 EPSA). The prison's team of counselors must present a report each time a motion for the conditional release 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 behavior in prison and possible behavioral 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 (Article 127 of the RISI). The commission adopts decisions at a session with a majority of votes. A decision must be in writing. If the decision is negative (rejection of the conditional release) it must also contain the reasons for this decision. There is no legal remedy against the decision of the Commission (Article 107 EPSA).

Revocation of conditional release

According to the Slovenian system the decision on revocation of conditional release is always judicial (Article 89 of the Criminal Code). The competence for the revocation of the conditional release has the court before which the proceeding for a new criminal offence is conducted. The Slovenian penal system distinguishes between obligatory and non-obligatory revocation of conditional release. The court must revoke the conditional release if the parolee during the probation period commits one or more criminal offences punished by a custodial sentence for a maximum period of at least one year (par. 1 of the Article 89 of the Criminal code). However, the court may revoke parole, if the parolee commits during the probation period at least one criminal offence punished by a custodial sentence for a maximum period of one year. Relevant circumstances for the adoption of the decision on the revocation that should be taken into consideration are the similarity of the offences committed, their seriousness, and the motives for which they were committed and their circumstances indicating whether it is reasonable to revoke the conditional release (par. 2 of the Article 89 of the Criminal code).

If the conditional release is indeed revoked, the part of the suspended sentence is fully renewed – the period spent on the conditional release is not deducted from the custodial sentence. In cases where the conditional release is revoked due to the commission of another criminal offence, the court imposes combined sentence taking into account the special rules determined by the

Criminal Code. The part of the original sentence which remains to be served is taken as determined, so the court imposes a sentence for a newly committed criminal offence according to the rules of Criminal Code. After that a combined sentence is imposed, based on the provision of the Articles 53 and 55 of the Criminal Code (par. 3 of the Article 89 of the Criminal Code).

There are two specific rules regarding the revocation of the conditional release. The first one determines that if the parolee is newly sentenced for the custodial sentence under one year and the court decides not to revoke parole, the remaining period of parole is suspended until the end of this additional sentence (par. 5 of the Article 89 of the Criminal Code). The second rule determines that if the parolee commits a criminal offence which violates the terms of his or her release while still under the conditional release but the court does not pass the judgment until that term has already expired, the conditional release may still be revoked, retrospectively, but only within one year after the conclusion of the probation period (par. 6 of the Article 89 of the Criminal Code).

In the cases where within the conditional release additional probation measures have been imposed and the conditions for the revocation of the conditional release are met the court is limited to an alternative decision: either to revoke or not – there is no third way such as partial revocation, or making the previously imposed obligations stricter instead of revoking the conditional release, or prolonging the length of supervision.

Safety measures

According to the Article 69 of the Criminal Code only one safety measure which relates to the deprivation of liberty may be imposed – compulsory psychiatric treatment and confinement in a health institution. When imposing a safety measure the court must, according to the principle of proportionality, take into consideration the gravity of the offence and offences which it reasonably believes might be committed by the offender if the safety measure was not imposed on him. Compulsory psychiatric treatment and confinement in a health institution could be independently imposed on an insane offender if there is no other way to ensure the safety of people (par. 2 and 3 of the Article 70).

Institute of the compulsory psychiatric treatment and confinement in a health institution is regulated by the Article 70a of the Criminal Code. The court may impose a measure of compulsory psychiatric treatment and confinement in a health institution on an offender who has committed an offence, punishable by a prison sentence of at least one year, in a state of insanity or considerably diminished responsibility if, on the basis of the gravity of the offence committed and the degree of the mental disturbance of the offender, it establishes that, while at liberty, the offender might commit a serious offence against life and limb, sexual integrity or property and that this risk may only be eliminated by ensuring that the offender receives treatment and care in a forensic psychiatric ward of a health institution that meets special security conditions provided by law. The court must suspend the measure or replace it by another one (less severe) in cases where it establishes that treatment and confinement in a health institution are no longer necessary. There are periodical checks on the measure, since the criminal code explicitly determines that the court must every six months decide whether further treatment and confinement in a health institution are still necessary. The maximum period for this measure in the case of an insane offender is five years.

In the case of an offender who committed an offence in a state of considerably diminished mental capacity and was sentenced to imprisonment the execution of the measure must be suspended when the offender has served the amount of time in a health institution to which he was sentenced. The time spent in a health institution is included in the serving of the prison sentence. If this time is shorter than the period of the prison sentence imposed, the court may order that the convicted person serves the remainder of the prison sentence or that he be conditionally released. When deciding on conditional release, the court should take into consideration the

success of the treatment, the convicted person's health, the time spent in a health institution, and the length of the sentence that has not yet been served (par. 5 of the Article 70a of the Criminal Code).

Execution of the measure

Medical institutions in which the safety measures of compulsory psychiatric treatment and care in a medical institution are performed are appointed by the ministry responsible for health (Article 148 EPSA). The safety measure of compulsory psychiatric treatment and care in a medical institution is carried out in a medical institution in which conditions for psychiatric treatment and care are guaranteed. The court which passed the safety measure must, after it has received an opinion from the consulting commission, make the decision as to which medical institution the person against whom the measure was passed should be submitted to. The consulting commission is founded and its members appointed by the minister responsible for justice, in agreement with the minister responsible for health (Article 151 of the EPSA). The person against whom the safety measure of compulsory psychiatric treatment and care in a medical institution has been passed, who is in custody or who has started a prison sentence before the judgment became final may, at his request, be submitted to a suitable medical institution before the judgment or decision becomes final. This decision is made by the court which passed the safety measure of compulsory psychiatric treatment and care in a medical institution (Article 152 of the EPSA).

Only those restrictions on movement and contacts with the outside world as are necessary for the safety and treatment of the person and the safety of the outside environment are allowed against persons sentenced to the safety measure of psychiatric treatment and care in a medical institution (Article 153 of the EPSA). The medical institution in which the safety measure of compulsory medical treatment and care in a medical institution is carried out must notify the court which passed the measure as soon as it considers that treatment and care in the institution are no longer required. The medical institution must report to the court which passed the measure once a year on the course and progress of the treatment (Article 154 of the EPSA).

Procedure

Procedure for the imposition of the security measure is regulated by the Criminal Procedure Act (CPA), which determines that if the accused has committed a criminal offence in a state of mental incapacity, the public prosecutor may propose to the court to order compulsory psychiatric treatment and custody of such perpetrator in a medical institution, or compulsory psychiatric treatment of the perpetrator at liberty, if preconditions for the imposition of the measure, determined by the criminal code, exists. If the accused is in detention, he will be committed to the appropriate medical institution until the conclusion of the proceedings for the application of a security measure. The provisions, which regulate the institute of detention applies *mutatis mutandis* to the length, testing and elimination of the placement of the accused. The defense by the defense counsel is mandatory in the cases where the measure of the compulsory psychiatric treatment has been proposed (par. 1, 2 and 3 of the Article 491 of the CPA).

The accused has the right to submit an objection against the proposal to the treatment, which is decided by the panel of the district court (in both procedures – the proceedings before the District court as well as Local court). The court must proceed with particular promptness in the procedure for the use of security measure (par. 4 of the Article 491 of the CPA).

The decision on the measure of compulsory psychiatric treatment and custody in a medical institution could only be adopted after the execution of the trial, by the court of jurisdiction in first instance. In addition to persons who must be summoned to the main hearing, psychiatrists from the institution to which the examination of mental capacity of the accused was entrusted must also be summoned as experts. The accused should only be summoned if his condition enables his attendance at the main hearing. If the accused can not be interrogated or if his speech is

unintelligible, it is considered that he opposes the motion for imposition of security measure. The spouse, the parents or the guardian of the accused must also be notified of the main hearing (par. 1 and 2 of the Article 492 of the CPA).

If the court on the basis of all evidence concludes that the accused has indeed committed a specific criminal offence and that at the time of commission of the criminal offence he was mentally incapable, it decides, after the relevant testimonies as well as on the basis of findings and opinion of experts, whether or not to impose the security measure of compulsory psychiatric treatment and custody in a medical institution or compulsory psychiatric treatment at liberty. The court is not bound by the motion of the public prosecutor, which of this measure should be imposed. However, if the court on the basis of all examined evidences concludes that the reasons for the dismissal of the indictment or for the acquittal exists the criminal proceedings are suspended by way of a decision. The decision may be challenged within eight days of the serving by all those entitled to appeal against the judgment except the injured party. An appeal may be lodged to the advantage of the accused even against his will (par. 3, 4 and 5 of the Article 492 of the CPA).

If the state prosecutor withdraws the proposal for the imposition of a security measure at the main hearing or if the court establishes that the accused was not mentally incapable at the time of committing the criminal offence the motion for the application of the security measure is dismissed. In this case the state prosecutor may file an indictment or indictment proposal within fifteen days after the decision on the dismissal of the motion has become final, for the same criminal offence (par. 6 of the Article 492 of the CPA).

Security measures may also be pronounced when, at the main hearing, the public prosecutor modifies the filed indictment or indictment proposal in a way to propose the imposition of the security measures (Article 493 of the CPA).

When imposing punishment on a person who committed criminal offence in a state of substantially diminished mental capacity the court will, by the same judgment, pronounce the security measure of compulsory psychiatric treatment and custody in a medical institution if it finds that conditions determined by the Criminal Code exist.

The final decision imposing the security measure of compulsory psychiatric treatment and custody in a medical institution or compulsory psychiatric treatment at liberty is sent to the court with jurisdiction to decide on the deprivation of contractual capacity. The decision must also be reported to the social welfare agency. The court must, not later than three months before the expiry of the security measure of the compulsory psychiatric treatment and confinement in a health institution, notify on the imminent expiry the social assistance body and the closest relatives pursuant to the act regulating the mental health, if it establishes, on the basis of the received reports on the application of the measure, that this is necessary for the purpose of continuing the treatment of the sentenced person (Article 495 of the CPA).

The court of first instance which pronounced the security measure of compulsory psychiatric treatment and custody of the perpetrator in a medical institution must *ex officio* or on the motion of the perpetrator or of the medical institution and on the basis of the opinion of specialists, adopt all further decisions in respect of the duration and modification of this measure referred to in the Criminal Code. Those decisions are adopted at a panel session of the District court. Notification of the session is also sent to the public prosecutor and defense counsel. Before taking the decision the court must hear the perpetrator if necessary and if his condition enables that. The defense by the counsel is also mandatory in proceedings for reconsideration of the duration or modification of security measure. If the court orders the release of a person with diminished mental capacity because of the expiry of the term specified in the Criminal Code, it must notify thereof the court having jurisdiction to decide on the retaining of persons in psychiatric institutions (Article 496 of the CPA).

SWEDEN / SUEDE

The Swedish Penal Code (1962:700),

Chapter 26, on imprisonment

Section 6

A person serving imprisonment for a fixed term shall, unless otherwise provided by the second or third paragraph, be conditionally released when two-thirds of the sentence, but at least one month, has been served.

If there are exceptional reasons against a conditional release, it shall be postponed as set out in Section 7. In assessing whether there are exceptional reasons against a conditional release special attention shall be paid to whether the prisoner has seriously breached the regulations and conditions that apply to enforcement of the sentence.

Conditional release may not, however, be granted from imprisonment imposed in accordance with the provisions of Chapter 28, Section 3, or from imprisonment in conversion of a fine. Law (2006:431).

The Forensic Mental Health Care Act (1991:1129)

Section 15

In the case of person receiving forensic mental care under Section 4 the senior consultant shall immediately decide that this care shall be terminated when the conditions for such care are no longer in place.
The senior consultant shall give continuous consideration to the termination of the forensic mental care.

Forensic mental care under the first paragraph shall be terminated no later than:

1. when the decision on a deprivation of liberty expires in the case of a person who has been arrested or detained;

2. when he or she may no longer be retained at the assessment unit in the case of a person admitted under Section 10 of the Act on Forensic Mental Examinations (1991:1137);

3. for a person who is an inmate of a prison, when the release from prison takes place;

4. for a person who has been admitted to a special residential home for young people on account of a sentence to secure youth care under Chapter 32, Section 5 of the Penal Code at the end of the enforcement of the sentence. Law (2008:416).

Special Discharge Review
Section 16

In the case of forensic mental care under Chapter 31, Section 3 of the Penal Code with a special discharge review the care shall be terminated when:

1. there is no longer a risk that the patient will relapse into serious crime as a result of the mental disturbance that led to the decision on a special discharge review; and

2. in the light of the patient's mental health and other personal circumstances there is no longer any other reason for him or her:

    a) to be admitted to a health care facility for mental care combined with a deprivation of liberty or other coercion; or

    b) to receive out-patient forensic mental care. Law (2008:416).

Section 16 a

A question concerning special discharge review shall be examined by the administrative court following a notification by the senior consultant or an application by the patient.

The senior consultant shall notify the question of a special discharge review no later than four months after the order of the court has become enforceable under Chapter 31, Section 3 of the Penal Code or when the patient has arrived at the health care facility on a later date, from that date. Thereafter a notification shall be made no later than every sixth month from the date on which the administrative court made its most recent order in the question.

The senior consultant shall immediately notify a question of special discharge review when he or she considers that the forensic mental care can be terminated or should shift to or out-patient or in-patient forensic mental care.

When making an order for out-patient forensic mental health care the court shall stipulate the special conditions under Section 3 b, first paragraph, point 3 that shall apply to the care. The special conditions may be conditions set out in Section 26, third paragraph of the Act on Compulsory Mental Care (1991:1128). The court may leave it up to the senior consultant to take decisions on the special conditions. When there is reason to do so, the court may withdraw this right to make decisions. Law (2009:810).

SWITZERLAND / SUISSE

This information is contained in the country information sheet and confirmed as adequate by the country concerned.

ISRAEL / ISRAËL

Information on National Legislation and Procedures Regarding Conditional Release and Measures Involving Deprivation of Liberty

Section 1: Conditional Release Laws

Summary of the main provisions in the Conditional Release Law, 2001-5761
The overall legal framework for conditional release of prisoners in Israel was established by the Conditional Release Law, 2001-5761 (hereinafter: the "**Law**") that codified the rules relating to conditional release under one law. The following is a brief summary of the main points of the Law:

Parole Boards
The Law regulates the responsibilities of parole boards - quasi-judicial bodies competent to hear and determine the matter of conditional release of prisoners. In addition, the Law defines several conditions, as well as the various considerations, that the parole boards must or may consider when deciding whether to accept or to reject a prisoner's request for a conditional release. It should be emphasized that the conditional release of a prisoner under the Law is different than his early release, since the meaning of conditional release is not the annulment of the sentence imposed on the prisoner by the court, but rather, the granting of a license allowing the prisoner to serve the remainder of his sentence outside the prison walls. In addition to the regular parole boards authorized to decide in most cases, the Law also establishes a special parole board, authorized to decide on the conditional release of prisoners sentenced to life imprisonment (hereinafter: "**Life Prisoner**").

Conditions of Release
The Law defines three pre-conditions, which must be fulfilled when deciding whether to approve a prisoner's request for conditional release:

1. The prisoner served at least two-thirds of the total sentence imposed on him,
2. The prisoner merits a release, and
3. The prisoner's release does not endanger the public safety.

The Considerations of the Parole Board
According to article 9 of the Law, the parole board should consider the anticipated jeopardy arising from the release of the prisoner, not only to the public safety, but also to the safety of the prisoner's family, the victim of the offence, and to the state's security; the chances for the rehabilitation of the prisoner; and his behavior while in prison.

In order to reach a conclusion with regard to the above mentioned criteria, the Law lists certain data regarding the prisoner, which the parole board must take into account. Such data may include among others, the offence for which the prisoner was imprisoned and the circumstances of its execution; the prisoner's criminal record; mitigations of sentence he received and previous decisions of the parole board concerning him; his behavior in prison; professional opinions relevant to the prisoner and the opinion of the Prisoner Rehabilitation Authority, if exists; as well as personal background concerning the prisoner, including his age and family.

It is important to mention that although the Law does not give the parole board discretion as to whether the data mentioned by the Law should be considered or not, it does not limit the parole board from considering additional data concerning the prisoner not detailed in the Law.

Considerations of Public Interest
Article 10 of the Law adds another level of considerations that the parole board may consider when deciding on a conditional release, but only in particularly severe cases and under special circumstances. Unlike the considerations mentioned above, which relate only to the circumstances surrounding the specific case of the prisoner, the considerations in article 10

exceed the particular case and deal with the implications of the decision to release the prisoner on public interest. In this context, the Law notes the public confidence in the judicial system, law enforcement and public deterrence. Nonetheless, the Law imposes strict limitations on the parole board in that regard, thus minimizing the Board's permission to weigh those public interest considerations only in cases when the public values mentioned above are likely to be severely damaged, as a result of a prominent disproportion between the offense committed and the period of incarceration (if the prisoner is released). In addition, the Law states that those kinds of public considerations shall not replace the "regular" considerations of article 9 but will only be added to them. The authority of the parole board to consider public considerations, usually a prerogative given only to the court, was a highly disputed issue in Israel. In 2001, an extended panel of the Supreme Court determined that the parole board may consider the public interest in special cases and the Law adopted this ruling, though limiting its use.

The "Conditions" Within the Conditional Release
According to the Law, there are two kinds of conditions accompanying the conditional release. The primary condition is that prisoner will not commit any other felony or misdemeanor (as those terms are defined in the Israeli Penal Law, 1977-5737) during the period of his conditional release. The breaching of this condition would result, except in special cases, in the renewal of the full incarceration of the prisoner until the end of his original sentence.

In addition, the parole board may, at its discretion, impose further conditions and limitations on the prisoner, such as a night curfew or partaking in a rehabilitation program. Correspondingly, a breach of these secondary conditions by the prisoner will not necessarily be cause to return the prisoner to full incarceration in prison. Rather, this matter is left up to the parole board who may decide whether to return the prisoner to his imprisonment or not and for what period of time. The conditions decided upon by the parole board will be written in the license that the prisoner must carry with him during the period of his conditional release.

Parole Boards and the state's president authority
According to Article 11(b) of the Israeli Basic Law: The President of the State (1964), the President of the State of Israel holds the power to pardon offenders and to reduce or commute prison sentences. The special Parole Board is allowed, at the request of a **Life Prisoner**, to recommend to the President that he use his above-mentioned authority and determine the Life Prisoner's sentence. However, such a recommendation can only be made after the Life Prisoner has served at least 7 years in prison and shall not be for a sentence less than 30 years.

In a case where the special Parole Board did not find that the Life Prisoner merited a commutation of his sentence, it has to reconsider the matter at least every two years, or at any time, at the request by the President or the Justice Minister. In addition, the special Parole Board can recommend that the President further determine the sentence of the Life Prisoner.

It is important to note in that regard, that any prisoner released under the authority of the President under Article 11(b) above, shall be considered a prisoner under conditional release, and will be subject to the provisions of the Law, as described above.

Section 2: Laws on Sex Offenders

Public Protection from Sexual Offences Law 5766-2006
The Public Protection from Sexual Offences Law (hereinafter: "**the Public Protection Law**") was enacted for the purpose of balancing the safety of the public from recidivistic sexual perpetrators and the perpetrators rights to rehabilitation after they have finished serving their sentence. Article 1 of the Public Protection Law states that: "The purpose of this law is to protect the public from recurring sexual offences by sexual offenders, through evaluation and danger assessments during the criminal proceedings, and supervision programs." The public protection law refers to adult sex offenders only.

The Public Protection Law is divided into two sections. The first section deals with the protection of the public from recidivistic sexual perpetrators, after they are released from imprisonment. In Israel, contrary to other states, there is no public database containing information on sexual perpetrators and their whereabouts, in order to respect their privacy and allow them the possibility of rehabilitation without their being banned from society. The second section deals with procedures for the rehabilitation of convicted sex offenders, both during their incarceration in prison and in special centers within the community, after they are released.

The Public Protection Law refers mainly to procedures regarding the release of sex offenders from lawful custody. Article 6 to the public protection law states that prior to reaching a decision regarding the early release of sex offenders from prison, parole boards must first receive a professional evaluation of the level of danger the sex offender may pose to society (this evaluation applies to the following laws as well). Furthermore, a court which decides to convict a sex offender but does not sentence him to imprisonment, must receive a similar evaluation prior to that decision. These evaluations must be written by a psychiatrist, psychologist, social worker or clinical criminologist. If the evaluation estimates that the sex offender poses a certain degree of danger to society, a court, after conducting a hearing on the matter, may issue a supervision order setting limitations on the sex offender, such as a prohibition on drinking alcohol, driving a vehicle, being in contact with minors and even a curfew for certain hours during the day.

The Israeli Prison System operates a supervision unit that is responsible for the sex offenders' registration, which includes personal details regarding the sex offender, the sex offender's sentence and punishment and the limitations imposed on the sex offender in accordance with the supervision order. The supervision unit is also responsible for conducting routine inspections of sex offenders who were given a supervision order, in accordance with the Public Protection Law, and sex offenders are obliged to meet periodically with supervision officers and to comply with their instructions.

Supervision orders are limited to a maximum of 5 years according to the Public Protection Law. Nevertheless, if after 5 years after receiving an updated evaluation the court finds that a sex offender still poses a danger to society, the court can issue a new supervision order which is also limited to a maximum term of 5 years. In total, the Public Protection Law allows the renewal of supervision orders to a maximum total of 20 years.

Limitations on the Return of a Sex Offender to the Surroundings of the Victim Offence Law 5765-2004

The purpose of this law (hereinafter: "**the Limitations Law**") is to protect victims of sexual offences from psychological damage caused by an encounter with the sex offender who committed the crimes against them. In order to prevent such an encounter, the victim, the Attorney General, or someone on his behalf or a welfare officer, may request that the court that convicted the sex offender, issue an order prohibiting the sex offender from living or working in the vicinity of his victim. A court will issue such order if it finds that the victim would experience psychological damage if the offender lived or worked in the victim's vicinity. The court may request a professional examination of the victim's condition and the damages the victim may suffer if the offender stays in his vicinity.

The limitation order can be issued for a term of up to 3 years and once it expires the court can issue a new order, if it deems it necessary. The limitations law enables a sex offender who received a limitation order to submit a request for a hearing before the court which issued the order, if circumstances have changed since the issuing of the order. Furthermore, the sex offender is entitled to appeal the limitation order to a higher court.

Prevention of Employment of Sex Offenders in Certain Institutions Law 5761-2001
The purpose of this law (hereinafter: "**the Prevention of Employment Law**") is to prevent convicted sex offenders, especially pedophiles, from working near minors and people with disabilities whom they may be able to harm more easily. According to the Prevention of Employment Law, any adult who wishes to work in an institutions or businesses where minors and/or people with disabilities are usually found (such as schools, day cares, youth movements, hospitals etc.) must first obtain formal authorization from the police, stating he has no criminal record of sex offences. Police authorization may be given to someone convicted of sexual offences, but only if 20 years or more have passed since his conviction. A sex offender whose request to receive authorization was denied, may appeal the refusal before a committee made up of a magistrate judge and two experts on the behavior of sexual offenders. The committee may reverse the police's decision but only after receiving a professional evaluation indicating that the appellant does not pose any danger to minors and/or the mentally disabled.

Section 3: Laws on Mentally Ill Persons

The Law for Treatment of the Mentally Ill, 5751 – 1991
The Law for Treatment of the Mentally Ill (hereinafter: "**the law**") defines the rights of the mentally ill, as well as the measures that can be taken for them. The law does not refer to all mental disturbances that are not mental illnesses (i.e.: personal disturbances, delinquency, etc.).
A mentally ill individual is one who suffers from a mental illness which impairs his/her judgment and sense of reality.

Hospitalization in a Psychiatric Hospital
According to section 3 of the law, the pre-condition for committing an individual to a psychiatric hospital, except if he/she has been issued an hospitalization order, is that the individual must have undergone a medical examination (mental and physical) in a hospital, and it was determined that he/she must be hospitalized. If the patient is a minor, he/she must be examined by a child/youth psychiatric expert and only if this condition is met, may the question of his/her consent or lack of consent to being hospitalized be examined.

Voluntary Commitment
According to section 4 of the law, a patient who requests to be committed to a psychiatric hospital of his or her own free will must sign a consent form for hospitalization and receiving of treatment. Nonetheless, there are special treatments determined according to the statutes of the law, for which the individual will be required to sign a separate consent form in order to receive them (currently, this only refers to electric shock therapy).
If an individual agrees to be hospitalized, he/she may not be released immediately; but rather only within 48 hours of his/her request for release. During this period, the hospital may submit a request to the district psychiatrist to issue a compulsory hospitalization order if the psychiatrists treating the patient in the hospital believe that the patient's situation meets the conditions required for compulsory hospitalization.

Compulsory Hospitalization by means of a District Psychiatrist
The district psychiatrist is appointed to issue orders for compulsory psychiatric testing. According to sections 6 and 7 of the law, in order to issue such an order, the psychiatrist must be persuaded that the individual for whom the compulsory testing is being requested is: (1) Ill and as a result of the illness, significantly impaired in terms of judgment capabilities or the ability to ascertain reality; (2) Liable to endanger him/herself or others and poses an immediate physical danger; (3) Has refused to be tested by a psychiatrist.
According to section 8 of the law, a compulsory testing order issued by the district psychiatrist is valid for 10 days from the day it is issued.
After the individual undergoes psychiatric testing, the hospital is permitted to submit a written rationale to the district psychiatrist, requesting that an urgent hospitalization order be issued. The conditions for issuing an urgent compulsory hospitalization order are identical to the conditions for

issuing a compulsory testing order (illness + an immediate physical danger to oneself or to others).
According to section 10 of the law, compulsory hospitalization according to a district psychiatrist's order is for an initial period of only 7 days. According to the hospital's rationale, the psychiatrist is permitted to extend the hospitalization period for an additional 7 days. At the conclusion of the 14 days, authority regarding continuation of the hospitalization is transferred to the district psychiatric board, which is then authorized, according to a hospital rationale, to continue the hospitalization to a maximum of 3 months. Afterwards, the board is authorized to extend the hospitalization for periods of up to 6 months each. In every instance, the conditions for extending compulsory hospitalization are identical to the original conditions for compulsory testing and compulsory hospitalization (meaning illness + an immediate physical danger to oneself or to others).

Hospitals are permitted, according to their own discretion, to release someone who is hospitalized under compulsory hospitalization in civil proceedings, or may grant the individual leaves. If the patient or his/her immediate family member opposes, approval of the district psychiatrist is required for release. The district psychiatrist's decision may be appealed before the psychiatric board.

Compulsory hospitalization in criminal proceedings
It is important to distinguish between compulsory hospitalization in civil proceedings and compulsory hospitalization in criminal proceedings. Compulsory hospitalization in criminal proceedings is performed according to a judge's order as part of criminal proceedings against an individual. In principle, a just criminal trial requires the defendant to have an understanding of the trial proceedings, ability to participate in the proceedings and ability to defend himself or herself. The relevant point in time where the defendant's fitness to stand trial is at the time of the trial and not the person's fitness at the time of the commission of the offence.
According to Section 15 of the law, in the event that a defendant is being prosecuted and during the criminal proceeding the court believes (based on evidence presented before the court) that the defendant suffers from mental illness and therefore cannot stand trial, the court may order that the defendant be hospitalized or receive medical treatment. The Court shall give the order only after a District Psychiatrist's evaluation of the defendant. If the court finds the defendant unfit to stand trial due to his/her mental state, the court may still decide to resume with the criminal proceeding and the order given by the court on how to treat the mentally ill defendant will be valid until the trial is over.
It should be noted that the law determines different and stricter instructions regarding compulsory hospitalization of minors. Only the Juvenile Court has the authority to give an order to forcibly hospitalize a minor above the age of 15 who opposes his/her hospitalization.

Hospitalization of detainees
According to Section 16 to the law, in the event a court orders the arrest of a person and believes (based on evidence presented before the court) that the detainee is mentally ill and requires hospitalization, the court may decide that the detainee will be kept in a hospital, as determined by the District Psychiatrist. The Court shall give the order only after a District Psychiatrist's evaluation of the detainee.

Compulsory Hospitalization not by means of a District Psychiatrist Order
According to section 5 of the law, a psychiatric hospital manager may also make a decision regarding the necessity of an urgent compulsory hospitalization in unique cases and under special circumstances by means of an exception.
The period of urgent compulsory hospitalization of this type may not be more than 48 hours. At the end of this period, the patient will be released unless a hospitalization order was given during that period or the patient consents to his/her hospitalization.
In a case in which a minor is brought to a psychiatric hospital by a welfare officer, the hospital manager is permitted to receive the minor for hospitalization against his/her will after a mental and physical examination, even if the conditions for hospitalization according to Section 9a have not been met, if testing has found there to be a substantial possibility that the minor is mentally ill

or is seriously mentally disturbed, and is thus liable to endanger him/herself or poses an immediate physical danger to others.
The period of urgent hospitalization of this type may not be more than 48 hours; at the end of this period, the minor should be released, unless a hospitalization order has been issued during that period, or the minor's guardian agrees to the minor's hospitalization or, if a minor who is at least 15 years old consents to his/her own hospitalization, or if a court orders the minor to be hospitalized according to the juvenile law provisions.

The Welfare Law (Care for Mentally Disabled), 5730 – 1969
Sections 19A-19J of the Welfare Law (Care for Mentally Disabled), 5730 – 1969 (hereinafter: "**the welfare law**"), detail the procedures with regard to conditional release and measures which involve deprivation of liberty of the mentally disabled.
According to section 19A of the welfare law, in the event a court gives the order to arrest an individual who is mentally disabled, the court will also order whether the detainee should be kept separately or in a locked home, if it is for the benefit of the detainee. In any case, the mentally disabled individual will not be detained in a locked home unless the investigation is completed.
According to section 19B of the welfare law, in the event a defendant is prosecuted and during the criminal proceeding the court believes (based on evidence presented before the court) that: (1) the defendant does not have full mental capacity and therefore can not stand trial, or that (2) the defendant committed the crime but can not be held criminally liable due to lack of full mental capacity at the time of the commission of the crime, the court shall then order that the defendant will be brought for evaluation by a diagnosis committee that will also decide on the measures to be taken in handling the defendant.
According to Section 19C of the welfare law, in the event that a court convicted a person in a criminal case and found that he or she suffers from lack of full mental capacity, the court may, instead of sentencing that person, to give an order that the convicted person will be brought for evaluation by a committee that will also decide on the measures to be taken in handling him or her.
According to Section 19D of the welfare law, in the event that a court convicted a person in a criminal case and sentenced this person for imprisonment, the court may order that the term of imprisonment shall be carried out in a locked home.
According to section 19E of the welfare law, in order for the court to give orders as detailed in sections 19A-19D of the welfare law, the court may order that the person in question will be brought for evaluation by a diagnosis committee.

The Criminal Procedure Law, 5742-1982
While the law for the Treatment of the Mentally Ill, 5751-1991, deals with the authorities of the court concerning the mentally ill, Sections 170 and 171 of the Criminal Procedure Law, 5742-1982, complete the legal framework by defining the procedure of the actual criminal proceedings whereby the defendant was found mentally ill.
Section 170(a)-(c) of the Criminal Procedure Law concerns the question of whether to continue or discontinue criminal proceedings pertaining to defendants, who are unfit to stand trial due to mental illness, and whether to acquit him or her.
Specifically, Section 170(a) maintains that where a court has decided that a defendant is not fit to stand trial because of a lack of full mental capacity, the court shall discontinue criminal proceedings against that defendant. However, if the defense counsel requests an investigation into the defendant's guilt, the court shall investigate it, and it may do so pursuant to its own motion for special reasons, which shall be recorded.
Section 170(b) indicates that at the conclusion of an investigation into the defendant's guilt, if the court holds that it is not proven that the defendant committed the crime, or that he is not guilty, for a reason other non-responsibility due to mental illness, then the court shall acquit the defendant. On the other hand, if the court does not see any reason to acquit the defendant, it shall merely discontinue the criminal proceedings against him, which may occur even before the conclusion of the investigation. Section 170(c) allows for the court's decision under subsection (b) to be subject to an appeal.

Section 171 concerns a defendant who is once again brought to stand trial after he had been hospitalized as a mentally ill person, and subsequently, released. This section states that where such a person is brought to stand trial, the court may receive evidence given during an investigation under section 170 without hearing it again. However, a party may subject a witness to cross-examination or further cross-examination, and the defendant may request that his witnesses be heard again; where this is not possible, the court shall take this fact into account in weighing the evidence.

SOUTH KOREA / COREE DU SUD

1) Conditional release: Pursuant to Korean law, a person under execution of imprisonment or imprisonment without prison labor who has behaved himself well and has shown sincere repentance may be provisionally released by an act of the administrative authorities when 20 years of a life sentence or one-third of a limited term of punishment has been served.

2) The conditions : The Review Board shall take into account the relevant convicted prisoner's age, motive for crime, name of an offence, period of punishment, correctional record, health status, means of livelihood and living environment after parole, risk of recommitment of a crime and other necessary circumstances and decide the eligibility for parole.

APPENDIX / ANNEXE
FRENCH CONTRIBUTION IN ORIGINAL LANGUAGE / CONTRIBUTION DE LA FRANCE EN LANGUE ORIGINALE

La libération conditionnelle

Instaurée par une loi du 14 août 1885, la libération conditionnelle est la plus ancienne mesure d'individualisation de la peine privative de liberté en France.

I. La juridictionnalisation progressive de la libération conditionnelle.

1. Avant la loi du 15 juin 2000 : la compétence concurrente des juges de l'application des peines et de la Chancellerie pour l'octroi des libérations conditionnelles.

Deux autorités étaient compétentes pour statuer sur une demande de libération conditionnelle : **le juge de l'application des peines (JAP)** ou **le ministre de la justice**, en fonction du **quantum** de la peine à exécuter.

- Si le condamné devait subir à la date de la demande une ou plusieurs peines privatives de liberté d'une durée **inférieure à cinq années**, la demande relevait de la compétence du JAP qui devait recueillir l'avis préalable de la commission de l'application des peines (CAP) auprès de l'établissement pénitentiaire. La décision d'octroi, d'ajournement ou de rejet était une mesure d'administration judiciaire non motivée que le procureur de la république pouvait cependant demander à faire examiner par le tribunal correctionnel qui statuant en chambre du conseil.

- Si e condamné devait subir une peine privative de liberté d'une durée **supérieure à cinq années :** le ministre de la justice était seul compétent pour l'accorder sur saisine du JAP, après avis de la CAP. **La décision prise par arrêté, d'octroi ou de rejet, n'était ni motivée, ni susceptible de recours.**

Deux lois successives sont intervenues, modifiant profondément la procédure de libération conditionnelle, l'une instituant une **juridictionnalisation de l'application des peines**, la seconde **renforçant son caractère juridictionnel.**

2. La loi n° 2000-516 du 15 juin 2000 : la juridictionnalisation de la libération conditionnelle.

- ***L'élargissement des critères d'octroi***

Afin de favoriser le recours à cette mesure**, la loi du 15 juin 2000 a élargi les critères généraux d'octroi de la libération conditionnelle** en précisant que les efforts sérieux de réinsertion sociale du condamné pourront notamment résulter soit de l'exercice d'une activité professionnelle, soit de l'assiduité du condamné à un enseignement ou à une formation professionnelle, ou encore d'un stage ou d'un emploi temporaire en vue de son insertion sociale, soit de sa participation essentielle à la vie de famille, soit de la nécessité de suivre un traitement, soit de ses efforts pour indemniser les victimes.

- ***La compétence juridictionnelle pour l'octroi de la libération conditionnelle : naissance de la procédure de débat contradictoire.***

Le ministre de la justice ne prend plus part à la décision d'octroyer ou non une mesure de libération conditionnelle.

- Le juge de l'application des peines **est compétent pour statuer lorsque la peine privative de liberté prononcée est d'une durée inférieure ou égale à 10 ans ou** quelle que soit la peine initialement prononcée, **la durée de détention restant à subir est inférieure ou égale à 3 ans.**
- **La juridiction régionale de la libération conditionnelle (**JRLC**)** est compétente pour les décisions concernant les condamnés **à une peine supérieure à 10 ans ou dont le reliquat à exécuter est supérieur à 3 ans.**

Le juge de l'application des peines et la JRLC **rendent leurs jugements, après avis du représentant de l'administration pénitentiaire, à l'issue d'une audience appelée « débat contradictoire »** tenu en chambre du conseil, au cours de laquelle ils entendent les réquisitions du ministère public et les **observations du condamné et le cas échéant celles de son avocat.**

Les juridictions de l'application des peines **ont pour obligation de motiver leurs décisions,** qui **sont susceptibles d'appel dans les 10 jours** à compter de leur **notification**. **L'appel du procureur de la République est suspensif s'il est interjeté dans les 24 heures de la notification.**

3. La loi n° 2004-204 du 9 mars 2004 : l'achèvement de la juridictionnalisation

Cette loi a complété **la juridictionnalisation de l'application des peines,** instituée par la loi du 15 juin 2000, en créant **deux nouvelles juridictions, le tribunal de l'application des peines (TAP)** qui se substitue en pratique à la juridiction régionale de la libération conditionnelle (JRLC) et la **chambre de l'application des peines de la cour d'appel,** nouvelle chambre spécialisée au sein des cours d'appel.

Au terme de cette réforme, le juge de l'application des peines et le tribunal de l'application des peines **constituent les juridictions de l'application des peines du premier degré**, **la chambre de l'application des peines de la cour d'appel, celle du second degré.**

4. La loi pénitentiaire du 24 novembre 2009 : l'élargissement des conditions d'octroi de la libération conditionnelle.

Cette loi, qui pose le principe général que les peines d'emprisonnement doivent être aménagées avant leur mise à exécution ou en cours d'exécution, a élargi les critères d'octroi de la libération conditionnelle en précisant qu'elle peut être accordée en cas d'implication dans « tout projet sérieux d'insertion ou de réinsertion ».

II. Le droit positif : les conditions d'octroi de la libération conditionnelle (LC):

Articles 729 et suivants du code de procédure pénale

La libération conditionnelle est une **mesure d'individualisation de la peine qui permet à une personne condamnée d'être libérée avant le terme de sa peine sous certaines conditions**.
Elle tend à la **réinsertion des condamnés et à la prévention de la récidive** par une sortie de détention encadrée et un suivi socio éducatif.

1. Conditions liées à la peine exécutée:

Quelle que soit la nature de la peine en cours d'exécution, il y a lieu de tenir compte le cas échéant de **la période de sûreté** qui interdit toute mesure de libération conditionnelle avant son expiration (art. 720-2 et 729 CPP).

Elle peut être accordée lorsque la durée de la peine accomplie par le condamné est au moins égale à la durée de la peine lui restant à subir (**règle de la mi-peine**), en tenant compte des

diverses remises de peines ayant pu intervenir (crédit de réduction de peine, réduction supplémentaire de peine, remise gracieuse).

Toutefois, les condamnés **en état de <u>récidive</u>** ne peuvent en bénéficier que si la durée de la peine accomplie est au moins égale au double de la durée de la peine restant à subir (**règle des 2/3 de peine**).

2. <u>Les conditions liées au projet du condamné</u>

La personne condamnée qui sollicite une LC doit **manifester des efforts sérieux de réadaptation sociale et justifier :**

- soit de l'exercice d'une activité professionnelle, d'un stage ou d'un emploi temporaire ou de son assiduité à un enseignement ou une formation professionnelle,
- soit de sa participation essentielle à la vie de sa famille,
- soit de la nécessité de suivre un traitement médical,
- soit de ses efforts en vue de l'indemnisation des victimes,
- soit de son implication dans un projet sérieux d'insertion ou de réinsertion.

Le condamné libéré est pendant toute la durée de la mesure sous le contrôle du juge de l'application des peines qui peut**, en cas de manquement aux obligations** ou de commission d'une **nouvelle infraction**, **<u>révoquer</u>** l'aménagement de peine et réincarcérer le condamné.

3. <u>Les cas particuliers</u>

➢ ***Des conditions de fonds allégés dans certaines hypothèses :***

- **La libération conditionnelle « autorité parentale »** : les personnes condamnées à une peine inférieure ou égale à 4 ans d'emprisonnement ou dont le reliquat de peine est inférieur à 4 ans, et qui exercent l'autorité parentale sur un enfant âgé de moins de 10 ans au jour de la demande et qui réside habituellement avec elles, peuvent solliciter une libération conditionnelle sans condition de délai. Cette disposition ne peut recevoir application pour les personnes condamnées pour crime ou délit commis sur un mineur et lorsque la personne a été condamnée pour des faits commis en état de récidive légale.

- **Les personnes détenues âgées de plus de 70 ans** : la personne condamnée âgée de plus de 70 ans peut bénéficier d'une LC sans que les durées de peine accomplies soient applicables. L'insertion et la réinsertion des condamnés doit être assurée (hébergement, suivi adapté) sauf risque grave de renouvellement de l'infraction ou de trouble à l'ordre public.

➢ ***Des conditions de fond renforcées dans certaines hypothèses :***

La LC ne peut pas être accordée aux personnes **condamnées pour crime ou délit pour lequel le suivi socio-judiciaire** est encouru et qui **refusent** pendant leur incarcération **de suivre le traitement** qui leur est proposé par le juge de l'application des peines. Aucune mesure de libération conditionnelle ne peut être davantage octroyée au condamné qui ne s'engage pas à suivre, après sa libération, le traitement qui lui est proposé.

Depuis **<u>la loi du 10 août 2011</u>** sur la participation des citoyens au fonctionnement de la justice pénale et le jugement des mineurs, **des règles spécifiques sont prévues pour les personnes condamnées à la réclusion criminelle à perpétuité** ou celles condamnées à une peine d'emprisonnement ou de **réclusion criminelle égale ou supérieure à 15 ans** pour une infraction pour laquelle le suivi socio-judiciaire est encouru, ou celles condamnées à une peine d'emprisonnement ou de réclusion criminelle égale ou supérieure à 10 ans pour une infraction mentionnée à l'article 706-53-13 du CPP (liste prévue pour la surveillance et la rétention de sûreté). Dans ces cas, **la libération conditionnelle ne peut être accordée qu'après une <u>évaluation pluridisciplinaire de dangerosité,</u> <u>une expertise médicale</u> et le <u>recueil de l'avis</u>**

consultatif de la commission pluridisciplinaire des mesures de sûreté.

En outre, lorsque la libération conditionnelle n'est pas assortie d'un placement sous surveillance électronique mobile (PSEM), elle ne peut être accordée qu'après l'exécution, **à titre probatoire, d'une mesure de semi-liberté ou de placement sous surveillance électronique pendant une période de un à trois ans.**

III. Le droit positif : la procédure d'octroi de la libération conditionnelle.

1. La juridiction compétente.

La libération conditionnelle peut être prononcée par le **juge de l'application des peines** ou le juge des enfants (lorsque la peine initialement prononcée est inférieure ou égale à 10 ans ou que quelle que soit sa durée, la peine restant à subir est inférieure ou égale à 3 ans) ; dans les autres hypothèses c'est **le tribunal de l'application des peines** ou le tribunal pour enfants qui sont compétents. Leurs décisions doivent être **motivées** et peuvent faire l'objet d'un **appel**.

2. La saisine

Le juge de l'application des peines peut s'autosaisir ou être saisi par requête du **condamné ou réquisitions du procureur de la République**

L'article D. 523 CPP impose un **examen annuel de la situation du condamné**, même en l'absence de demande du condamné.

3. l'examen de la demande

La demande de libération conditionnelle est examinée selon la procédure de débat contradictoire avec la comparution du condamné, assisté éventuellement d'un avocat.

Tant dans les procédures de la compétence du juge que du tribunal de l'application des peines, **l'avis du représentant de l'administration pénitentiaire** est recueilli.

IV. Le contenu de la décision de libération conditionnelle

1. La durée de la mesure:

La durée de la libération conditionnelle est au minimum égale à la **durée de la peine non subie** au moment de la libération.
Cette durée **peut être prolongée d'un an**, la durée totale de la période sous le contrôle de la justice ne pouvant excéder dix années.
S'il s'agit d'une peine perpétuelle, la durée ne peut être inférieure à cinq ans ni supérieure à dix ans. La durée pourra toutefois être fixée sans limitation de temps pour les condamnés à la réclusion criminelle à perpétuité dite incompressible.

2. Les obligations :

La juridiction qui accorde la libération conditionnelle fixe les mesures et conditions de cet aménagement. La personne condamnée est soumise aux obligations générales du SME (obligation de répondre aux convocations, de signaler ses changements de résidence, interdiction de se déplacer à l'étranger sans autorisations…)

Elle peut également être soumise :

- **aux obligations et interdictions particulières du SME et notamment aux obligations de suivre de soins, de justifier de recherche d'emploi ou d'une activité professionnelle, d'indemniser la partie civile et aux interdictions de se rendre dans**

certains lieux ou de fréquenter certaines personnes.

- **à un placement sous surveillance électronique mobile (PSEM),**
- **à une injonction de soins, sauf décision contraire du JAP, si une expertise médicale établit qu'elle est susceptible de faire l'objet d'un traitement.**