



The purpose of a sentence plan in the decision-making process during an unconditional imprisonment

Mia Kilpeläinen, M of Soc.Sci, PhD student, University of Eastern Finland Law School

Introduction

Imprisonment itself is not a brand new, unique research topic. Extensive research tradition worldwide has been solving, for example, »what works« (and what does not) in the light of recidivism, what kind of individuals inmates are or why these people have ended up in prison in the first place. These themes have been researched over the years from numerous research settings as well as from various disciplinary perspectives – criminology, sociology and other social sciences, psychology, educational science – just mentioning a few. Studying enforcement from the disciplinary perspective of law is under-represented.

This brief essay will describe the outlining of my doctoral dissertation, which is on the stocks. The research will give a bit of a different approach from the legal studies perspective to this extensive research tradition. My research loop consists of two core elements: sentence plans and decision making. My main research questions are: To what extent the research plans are notified in the decision-making concerning prison leaves, transfers and placements to probationary liberty under supervision and what kind of role do they have in practice?

This essay proceeds as follows. First, I will discuss the sentence plans on a general level with linking paths to more general theoretical settings. Secondly, I describe the used data and methodology and finally discuss the Nordic relevance and make some concluding remarks.

1. The Legal basis of a sentence plan

According to Finnish Imprisonment Act, chapter 1 section 2: »The objective of the enforcement of imprisonment is to increase the readiness of a prisoner to lead a life without crime by promoting the prisoner's ability to manage his or her life and by promoting his or her reintegration into society, and to prevent the commission of offences during the term of sentence.« To achieve



the goals set by the section, the sentence plan is a key element (tool) of the enforcement.

The sentence plan must be made for every prisoner despite the length of the sentence (Imprisonment Act chapter 4, section 6). The plan should be the result of collaboration with the sentenced person and can be done before the person enters the facility. The plan describes specific needs of the convicted person to which enforcement officers as well as the convict him-/herself should be focusing on during the enforcement measures. The aim is to lower the risk of reoffending and to help the prisoner integrating into the society after release (rehabilitation). The goals mentioned in the plan can be related e.g. to substance abuse, fostering the family relationships, education or thinking and attitudes. It is stated that concentrating on the goals mentioned in the sentence plan, the prison term can benefit the prisoner by giving tools to life management and by fostering the idea of a lifestyle without crimes. (HE 263/2004 vp.)

The sentence plan can contain up to nine goals. The goals should be set in collaboration with the convicted but nonetheless there are plans made just on a documentary basis. Participation to a sentence plan meeting is voluntary for the convicted even if the assumption by the legislation is to modify it together with the convicted and a Criminal Sanction Agency officer. In practice every year a small amount of plans are made purely on documentary basis.

The sentence plan gives a basis for the placement prison to evaluate how the sentence plan can be pursued in the most effective way in practice in the prison in question. Variation in functions between different prisons is normal and it has to be solved on a case-by-case basis how certain goals in a case of a certain prisoner can be reached in the specific facility. The sentence plan is not the only, and in many cases not the most essential, thing that is considered when deciding the placement of the prisoner. More weight is given e.g. to domicile (from the perspective of maintaining family relationships), age, sex and health conditions.

During the conviction, the sentence plan is a document which must be updated at least three times per year. Updating should be done in collaboration with the prisoner. (Government Decree concerning imprisonment chapter 3 section 16) The main focus in updating the plan is on evaluation: has the prisoner been moving towards or meeting the set goals? For example, if the plan contains a goal related to minimizing substance abuse, the officer evaluates in cooperation with the prisoner whether or not the prisoner's activity is congruent with the goal. Has the prisoner been taking part in rehabilitative programs or not?

In addition to the guidance and assessment role of the plan, the plan has an administrative role. The administrative role of the plan is highlighted in prison officials' point of view; the plan is a binding document in the formal decision-making process. When a prisoner is applying to be transferred to another facility, for a permit to prison leave based on sentence length or probationary



liberty under supervision, the sentence plan is one of the facts in evaluation. The facts to which evaluation should be addressed in the decision-making process are mentioned in Imprisonment Act. In practice, the plan gives a base for evaluation among other things. If the prisoner has been complying with the goals of the plan, the sentence plan can be seen as a positive implication or a factor in the decision-making process – or vice versa.

2. Sentence plan in decision making

Being an essential tool (from both the prisoner's and the administration point of view) in executing the prison term and its central role in decision making, it is important to evaluate what kind of a role it has *de facto*. Hence executing unconditional imprisonment hasn't been researched from this point of view. Theme is closely related to procedural justice discussion, where it is shown that more procedurally just treatment resulted in a more law-binding behavior. There are only a few studies associated with offender population and it is still unknown how just treatment effect on reoffending rates. (Beijersbergen, Dirkzwager and Nieuwbeerta, 2016; Lundeborg, 2017) My study does not answer to this but add knowledge of the mechanisms that may affect to this.

Due to the relevant role given to the plan in both theory and practice, it should be coherent with the actual decisions. The sentence plan is explicitly mentioned in Imprisonment Act as one of the factors to be considered in decision-making and should therefore form a base to the actual decisions respectively.

On the other hand, the decision-making must follow and fulfil the requirements and boundary conditions set in Administrative Procedure Act. According to the act, the decisions have some formalities based on both content and form. One of the essential parts of the decision is to *give reasons* for it. This means that prisoner should be able to see from the written document (the actual decision) why the decision is positive or negative. Hence the sentence plan is mentioned as one of the factors, it should be considered in the written reasons. In my dissertation, attention is also paid to the Administrative Procedure Act aspect.

In a nutshell, the formal decision-making process will start by an application made by a prisoner. An administrative officer (a criminal sanction supervisor) will receive the application and register it to the central prison database where the decisions are made in practice. The officer opens the case (so to speak) in the database to which relevant professionals (such as guards, a social worker, counselors of different sectors) can give their statements. The responsible administrative officer (the referendary) gathers the statements together and makes a formal presentation of the case to the head of prison. The formal presentation should give all the facts of the case including a proposition for the decision (positive or negative) and the reasons for it. A vast majority of



the cases will be solved by head of prison. In the case of prisoners convicted to life imprisonment, the decision is made in the Central Administration unit of Criminal Sanction Agency.

Over the years the Parliamentary Ombudsman has paid attention to the decisions given by prison authorities (EOAK/2154/2020; EOAK/5083/2018). Ombudsman has criticized prison authorities in its decision about the lack of reasons in the decision. Speaking of decisions given by Ombudsman, it is always connected with one special case. In my study I'll review all the decisions given in a certain year and reflect if the lack of reasons is a systematic challenge or just a reflection in specific cases. The description of the data will be given thereafter.

3. Research data and used methodology

The research questions set in the introduction will be answered by using empirical methods. The data is collected from Finnish prison data base (Vankitie-tojärjestelmä (VATI)), which is administrated by our national Criminal Sanctions Agency (central administrative authority) and consists of all the information of executed sanctions as well as prisoners. In a more general level, the information of the data base consists of e.g. information related to prisoners and their sentences, the information of the created sentence plan and information of all the administrative decisions made by the head (or the vice head) of prison (as mentioned in the previous section »sentence plan in decision making«). The data base enables choosing variables, and information provided in the central data base can be used in research. Data usage always requires applying for a research permit from the Agency.

The dataset of this research consists of all the decisions made in 2014 which deal with prison leaves based on sentence length (N=7 848), transfers between prisons (the decision of the first facility (in the beginning of the sentence) included, N=10 186) and decisions of placements to probationary liberty under supervision (N=705). The key element in selection of decision categories was the sentence plan; if the sentence plan was mentioned in Imprisonment Act as one of the factors in decision making (e.g. the prison leave or transfer to another facility promotes implementation of the sentence plan), it was included in the data collection.

The observation unit in the data is one decision, not one prisoner. In many cases it is normal that the same prisoner may leave several applications during the year to obtain a leave or being transferred to another facility; and a formal decision has to be given to all applications. The information of an applicant (a prisoner) was linked to each observation (decision). Prisoner related information collected was age, facility, sentence length and information of sentence plan (set goals). Decision related information consists of among other things statement of the referendary, the actual decision and the given reasons.



Selected data will be analyzed using both quantitative and qualitative approaches. In a quantitative analysis a regression model will be constructed to find out which factors explain whether the prisoner gets prison leave or transfer to another facility or not. Factors included to the regression model are age, sex, multiplicity (how many times prisoner have been sentenced to unconditional prison term), type of the facility (closed versus open prison), number of goals set in the sentence plan and content of the goals (macrolevel goals) and the type of offence of which the ongoing prison sentence have been given. In addition to that nationality, time in the facility (net time of the sentence) and the Criminal Sanction Region (Southern Finland, Western Finland and Eastern and Northern Finland) are also included to the analysis.

The qualitative approach will be used in analyzing the referendary statements and given reasons for decisions. Statements and justifications are in text format (free form), which have been written during the decision-making process. Both factors can be collected from central prison data base, where data of made decisions is automatically transferred while making the decision. The content of these texts will be closely examined. The main focus will be analyzing, which matters are mentioned in the statements and justifications (content analysis). The main question is which factors give reasons for either positive or negative decision. As an output of the close reading the information of the assessed viewpoints, the role e.g. the sentence plan in decision-making can be evaluated. The output of the content analysis will be reflected towards legislation where the factors that should be assessed have been set. At this point the analysis, both quantitative and qualitative are not finished and therefore it is too early to give even a glimpse of the results.

4. What about the Nordic criminology relevance?

The topic of my dissertation is tightly bound to national legislation. Despite of that it will contribute or affiliate to the Nordic discussion from various aspects. First, research findings will be discussed in the scope of more general principles given to enforcement measures of an unconditional prison term. The general objective of the enforcement of the unconditional prison term – widely shared in the Nordic countries – can be divided into the following principles: normality, legal and safe enforcement, harm minimizing, equality and promoting human dignity and non-discrimination. In addition to that, enforcement should promote rehabilitative aspects as well as maintaining life management skills and health. (Imprisonment Act, chapter 1) Tool in promoting the principles of enforcement measures is the sentence plan. If the research findings imply that the sentence plan *de facto* has an important role (or if the outcome is opposite), the findings will be reflected towards the principles.

Secondly, findings will be discussed in the light of an individual preventive effect, which is represented as a general goal of executing unconditional



imprisonment; the punishment should benefit the prisoner by promoting abilities to minimize reoffending. (HE 263/2004 vp, p. 94) Drafting the sentence plan and executing it can be seen as a practical way in achieving the mentioned goal. (HE 263/2004 vp, pp. 110-111)

Even if justification of criminal law is based on the idea of general prevention (Lappi-Seppälä, 2000, p. 29; Backman, 1976, p. 29; Salmiala, 1953, p. 223; Salmiala, 1966; Andenaes, 1974) and the idea is applied across all Nordic countries, it does not mean that individual preventive (see von Liszt, 1908) effects can be ignored when discussing executing sanctions. Executing sanctions and the measures during it appear on a practical level. In practice, the actual measures will (or will not) promote or maintain individual preventive effects. (Lappi-Seppälä, 2000, pp. 46-47; Tapani – Tolvanen, 2016, p. 396) This study will not assess the effects but will contribute to the discussion by assessing the actual tool or mechanism used to promoting the individual preventive effects. If the mechanism does not support reaching the goal set for imprisonment, it definitely will have an implication in promoting individual preventive effects.

5. Concluding remarks

Imprisonment has been in the loop of the researchers for ages. My study will offer a different aspect to the research tradition. The study combining actual decision-making and central mechanism (tool) in execution is not done nationally – and as far as I know – not in the Nordic context either. If the study ends up with findings that imply insufficiencies from the sentence plan perspective in executing unconditional imprisonment, the assessment of the whole tool would be necessary. The previous study in the Finnish context has found some inadequacies (Liimatainen et al, 2017) in the tool and my study will contribute to it from a decision-making perspective. In addition to that, my study will set the sentence plans into a broader context, which has not, according to my knowledge, been done.

Kontaktoplysninger

mia.kilpelainen@uef.fi

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