

Rozum, Jan – Kotulan, Petr – Tomasek, Jan:

Účinnost dohledu u osob podmíněně propuštěných

Effectiveness of supervision of persons conditionally released

ISBN 978-80-7338-073-1

Summary

This research into the effectiveness of supervision of persons conditionally released was performed in compliance with the Medium-Term Research Tasks Plan of the Institute for Criminology and Social Prevention for the period 2004 – 2007. The person in charge of the research was Mgr. Jan Rozum, and Mgr. Petr Kotulan and Mgr. Jan Tomášek assisted him. A project was prepared in 2005 and the actual research was carried out in 2006 and 2007.

The provision on supervision in cases of conditional release from serving a prison sentence (Section 63, para. 1 of the Criminal Code) was introduced in our criminal legislation in the amendment to Penal Act No. 265/2001 Coll., with effect from 1 January 2002. This measure basically provides a convicted person with the opportunity to prove his/her ability and will to become an orderly and law-abiding member of society with the assistance of a probation officer. Various entities participate in performing tasks in particular phases of conditional release, particularly the Prison Service, the courts, the Czech Probation and Mediation Service, social curators and organisations providing social services. The aim of the research study presented was to ascertain to what extent implementation of this provision is successful in practice, particularly in terms of recidivism and resocialisation of the persons released. These findings should aid gradual improvement in the activity of the authorities involved and in their mutual cooperation.

Examination of the actual effectiveness of particular criminal law measures is one of the most important tasks of current criminological research. The issue of persons released from serving a prison sentence is one which draws the most attention in this respect, for the number of these persons is progressively rising in the majority of countries. As available foreign studies indicate, a significant number of these persons come into conflict again with the law shortly after release. By focusing on a study of risk factors, or factors which demonstrably help successful reintegration of released persons into society (including the activities of the probation service, the courts and other authorities), criminological research can be of considerable assistance in successful avoidance of recidivism in practice. This applies in spite of the fact that research projects of this type face no small number of

methodological problems. In comparison with other countries, however, there is an evident lack of studies in the Czech Republic targeted in this way. The paper submitted is also, therefore, one of the attempts to change the situation in this area, specifically in connection with the mechanism of supervision in cases of conditional release.

The empirical part is based on of a number of research methods and techniques. The authors analysed available statistical data from the Czech Ministry of Justice and the Prison Service. They also made a detailed and profound analysis of data from the Criminal Register relating to persons for whom a court ruled conditional release with supervision and who were on the files of the Probation and Mediation Service in 2003. An integral part of the research was also a specialist questionnaire survey in which officers of the Probation and Mediation Service and social workers – coordinators of social care for persons termed socially unadjusted – took part. A detailed analysis of a sample of court files concerning persons released from serving a prison sentence between 1 January and 30 June 2002 then helped assessment of the practical aspect of performing supervision of persons conditionally released. This part of the survey was directly linked to an earlier study by the Institute for Criminology and Social Prevention conducted in 2004 (Provision on Supervision in Cases of Conditional Release).

Ministry of Justice statistics show that 18,699 persons were conditionally released in the Czech Republic between 2002 and 2006. Supervision was ordered for 3,209 of these (an average of 17.2% per year). Most of those convicted for whom a court applied this measure in this period had served a prison sentence in a controlled prison (2,045 persons). It is certainly worth mentioning that the ratio between positive and negative decisions on applications for conditional release has been constant long-term and fluctuates between 60% and 40% in favour of a positive decision.

Interesting findings have been offered by analysis of data from the Criminal Register enabling more detailed examination of criminal recidivism recorded (its frequency, nature and development), and thereby also assessment of the effectiveness of sentences and measures applied. The research sample included 672 convicted persons conditionally released (629 of these male) for whom a court ordered supervision and who are found on PMS records in 2003. For 555 of this number, it was the first conditional release from a prison sentence. The average age on release was 32.1 (reference pattern 25 years). The youngest person in our sample released was 16, the oldest 62. The most frequently represented age categories were 22 – 29 (37.4%) and 30 – 39 (37.1%). The age of first conviction for criminal activity was

21.3 (reference pattern 18 years). A total of 61.7% of those convicted were first recorded in the Register as early as between the ages of 15 and 20.

One of the facts monitored was the time from first conviction to the actual conditional release (this was in fact the time the criminal career of the person released was registered up to the date of conditional release). On average this was 10.8 years, and the longest interval was 40 years. Generally most numerous was the group whose criminal activity had lasted over a long time period (for 41.8% of convicted persons the time from first conviction to the time of conditional release was more than ten years). According to the number of previous convictions in the sample, individuals for whom 4 to 6 previous legal convictions had been recorded in the Register (40.1% of the whole set) dominated. More than a fifth of those convicted already had 7 and more records. On the other hand, only a tenth had been convicted for the first time. As regards the nature of recidivism, for more than half of those conditionally released (52.5%) this was specific recidivism (repeat of criminal offences involving the same facts of the crime), for 29.6% general recidivism (repeat of criminal activity as such) and for 17.9% recidivism of the same nature (repeat of the same type of criminal offence). By far the majority of persons were conditionally released by courts from serving a prison sentence for a conviction for a crime against property under section nine of the Criminal Code (almost half of the total sample), then a fifth for committing a criminal offence under section eight (the majority of them for the criminal offence of robbery). As regards the length of sentence imposed which the convicted person had served before conditional release, sentences of up to three years predominated (65.3%). Sentences of up to one year constituted more than a quarter.

The average length of probation amounted to just under 4 years. Probation for one year was stipulated by a court only for 11 persons (2.1%), whereas in contrast to this courts stipulated the longest possible length in 50 cases (7.4%). A three-year probation period was the most common (25.6% of those convicted). It was shown that there is a clear and statistically significant connection with the length of the preceding sentence. The longer a sentence is served the longer the probation period set by the court. Also the relationship to the age of the person conditionally released appears to be interesting, where the courts impose a somewhat shorter probation period on younger persons but a longer probation period on older persons.

Certification of fitness was already indicated in the Criminal Register for 14.6% of the persons in this sample, whereas we noted an order to serve the rest of a prison sentence for 15%. If we look at persons with a shorter probation period, where a court was close to

reaching a decision on termination during the period in which our research was being conducted (probation period of 1 to 3 years – a total of 132 persons), certification of fitness was indicated in the Register for 64 of these (48.5%), whereas 24 persons in this group had been ordered to serve the rest of their sentence (18.2%).

We have to regard as very alarming the finding that we noted further convictions (most frequently one) recorded in the Criminal Register during the probation period for 268 of those conditionally released in our sample (39.9%). There were even 18 persons who were convicted more than three times during the conditional release with supervision probation period. Statistical analysis indicated a clear connection with the age of the person conditionally released, in that the older he/she was the less likely a further conviction was in the probation period. We certainly cannot overlook the fact that half of the youngest persons conditionally released were re-convicted in the probation period (whereas roughly only every tenth one of the oldest was). The Criminal Register also made it possible to deal with any further convictions after the end of the actual probation period (this affected a total of 266 persons). Recidivism was recorded for 15% of this group, while for half of them there was a further conviction within six months following the end of the probation period.

An important part of the research was a specialist questionnaire survey conducted with a sample of probation officers and social curators – coordinators of social care for socially unadjusted persons. Its aim was to map out the experience of respondents regarding performance of supervision of those conditionally released, cooperation between individual entities and the actual work with clients. We sent out questionnaires designed for probation officers through the Czech Probation and Mediation Service Directorate to all 76 centres (always one questionnaire for a probation officer who deals with the issue examined). 68 questionnaires were returned to us (so the return rate amounted to 89%). The questionnaire for social curators was sent through the nationwide Pandora electronic conferencing system. A total of 208 social workers were approached and 59 of them sent in questionnaires (a return rate of 28%).

It can be regarded as a positive finding that, in the opinion of the majority of probation officers, promotion of the appropriate methodological procedures and standards in probation and parole have been by and large successful. It is shown, however, that some of them would welcome certain changes in current practice in the field of preparation and execution of supervision of persons conditionally released. There is widespread dissatisfaction in particular with the standard of cooperation between the court and the PMS (66% of the responses from probation officers commented on this issue), and the necessity was stressed in particular for

timely response by the courts to probation officers' reports on the progress of supervision. Respondents also recommended a number of legislative changes, inter alia in the field of issuing decisions on conditional release. Proposals were also made to shorten the period of supervision or probation and to tighten up execution of supervision in general. Greater attention should be devoted according to some probation officers to selection of suitable convicted persons for conditional release, including creation of tools for objective assessment of risks and the needs of convicted persons. Certain room for improvement can also be seen in encouraging probation resocialisation programmes and other measures and services for those conditionally released (in particular opportunities for accommodation and finding suitable work). As in other surveys, this time too dissatisfaction was expressed with the staffing and technical facilities of the PMS, which should according to the respondents be significantly enhanced.

The opinion prevails among probation officers that supervision is by and large successful in reducing the risk of recidivism for convicted persons conditionally released, and also ensuring positive changes in their behaviour. As regards ordering service of the rest of a sentence, the commonest reason according to probation officers is further legal conviction of the client for commission of a criminal offence during the probation period. Some respondents stated in their comments that they do not receive the necessary feedback from courts as to whether there was a reaction and what it was to their notification that supervision conditions had not been complied with. Probation officers consider the most common reasons for recidivism to be financial problems on the part of a person conditionally released, return to a bad environment, a worsened possibility of finding employment, loss of family and social background and loss of a home. This basically corroborates the findings from other criminological studies.

Respondents in general evaluated conditions for performing selected duties connected with conditional release as average or rather poor. They had a more favourable view of conditions for treating intoxicating substances addiction; in contrast conditions for implementing social training and re-education programmes came out worst. Probation officers pointed out that restrictions of a general statement nature (for example, avoiding visits to an unsuitable environment, avoiding contact with certain persons or avoiding gambling games) are very difficult to enforce and to check. At actual meetings with clients, the most frequent problems dealt with are those of a financial nature, in particular compensation for damage and other debts of a person sentenced.

Findings concerning cooperation of probation officers with social curators showed a favourable response. According to them, the latter have specific information on convicted persons and are willing to provide them to the PMS. A number of respondents appreciated the fact that this cooperation leads to better motivation of clients and their direction to other organisations (for example for ensuring a stay in shelters). A further benefit is provision of a financial allowance to sentenced persons, and also greater possibilities for curators in making investigations in the place where a convicted person lives. Some probation officers also see positive elements in cooperation with providers of social and other services specifically targeted to work with those conditionally released. The advantages, as seen by them, are in particular an individualised approach to the client and more intensive work with him/her, or better awareness of his/her problems.

The questionnaire survey conducted among social curators showed that the services most frequently provided to persons conditionally released are social assistance from them, advisory activities and individualised short-term action. On the other hand, in only relatively exceptional cases do they engage in specialist psychosocial and therapeutic activity. Conditionally released clients utilise mainly the possibility of provision of financial and in-kind social care benefits or other social benefits. They approach the curators most often on the initiative of a certain facility or institution. As regards their actual activity in practice, a slight majority of social curators (63%) stated that they provide it on the basis of notification in writing from the Czech Prison Service where the client is placed in prison.

According to social curators, supervision mostly proves successful in getting victims involved in the conditional release process. On the other hand, it is not particularly successful in achieving positive changes in the behaviour of a conditionally released person; nearly half of the respondents did not see any influence of supervision on reducing recidivism. By far the greatest benefit of supervision with respect to the provision on conditional release according to social curators is freeing the capacity in prisons. As regards the causes of re-offending, respondents saw as the most problematic the return of a sentenced person to a bad environment, loss of family and social background, worsened opportunities for finding employment and unwillingness to change the way of life he/she has led so far.

Like probation officers, most social curators also appreciated the possibility of mutual cooperation. The advantages according to them are mainly mutual provision of information, willing, helpful and flexible cooperation, the professionalism and specialist skills of probation officers, the possibility of consultation and individualisation of cases and also the possibility of greater socio-therapeutic action on a client. Vital in the cooperation with providers of

social and other services is, according to the social curators, the opportunity of specific help to clients in the form of providing accommodation, offers of employment, material assistance, specialist advisory services and psycho-social help. An inadequacy, unfortunately, is the very limited network of providers for the time being, and thus a limited availability of these services for clients (or limited capacity of already existing facilities).

The concluding part of the research report consists of a summary of findings from analysis of 97 court files entered in the conditional release register in 18 district (area) courts. This was part of a sample of sentenced persons for whom conditions of court decisions on their release had been ascertained in previous research in 2004 (see above). It was shown that monitoring of the execution of supervision in the cases examined was always (except for two omissions) entrusted to the appropriate PMS centre. This remit was implemented by an instruction in writing from the offices for dispatch of form 151 of Office Rules; courts also attached legal decisions on conditional release to it and in some cases sent notification of or attached written documents with further information required for correct targeting of the execution of supervision. PMS centres were given a statutory six-month time limit for submitting reports to courts, and sometimes a specific date was even set for submission of the first report. Only for two convicted persons was a time limit other than the statutory one set for submission of reports. In most cases, PMS centres were charged with execution of supervision shortly after the decision on conditional release came into legal force (in more than half the cases within 14 days). However, we also noted cases when this authorisation was sent late, usually as a result of delay in implementing an instruction of the presiding judge by court offices.

It was ascertained that, after registering the conditionally released persons, PMS centres were quick in inviting them to a first consultation (in nearly half of the cases the first mutual contact took place within two months of a conditional release). Any delays were caused by failure to respond to an invitation to a meeting with the probation officer by the sentenced person, often repeated. On the other hand it was shown that some of those conditionally released did not wait for an invitation and appeared at the PMS centre of their own accord. For a total of 10 conditionally released persons in our sample there was no contact at all with a probation officer (the reason here was most often custody or starting to serve a prison sentence).

Unfortunately it was shown that the legally stipulated obligation to inform a court was not always duly complied with by probation officers. For the first report, probation officers complied with the six-month time limit only for 40.2% of those conditionally released and

also further regular reports were submitted very irregularly. On this point, probation officers requested a change in the statutory time limit in only three cases. Courts pressed the PMS centres concerned for submission of reports after the statutory time limit had elapsed, sometimes repeatedly. So it was not always done conscientiously and often after a relatively longer period of execution of supervision. Nevertheless it applied in general that probation officers complied with the obligation to inform the court concerning more serious breaches of supervision conditions (mostly loss of contact or decisions made in further criminal prosecution) or concerning more systematic breach of reasonable restrictions or obligations. Together with actual notification that supervision had not been performed, they requested provision of measures which would lead to elimination of defects ascertained, assistance in tracing where people lived or views on further procedure.

Courts mostly responded to defects indicated depending on their gravity, from written warning of a person conditionally released, pointing out the necessity of due compliance with supervision conditions and the possibility of ordering service of the rest of the sentence in the event of continuation in inappropriate behaviour, up to ordering a public hearing and if need be a decision to order service of the rest of the sentence already during the probation period. Cases were also found, however, when courts did not respond at all even after repeated notification by probation officers. In addition to the actual reports from PMS centres, courts requested additions to the Criminal Register transcript at regular half-yearly or annual intervals and also further reports from the place of residence, as well as reports from the Czech Police and the Czech Prison Service, and reports on compensation for damage or costs of criminal proceedings. But in some cases these reports were requested only once, shortly before or even after the end of the probation period, or not furnished at all.

51 cases (52.5% of the total number) had been completed by court decision during the period of our survey. Of these a judgement of certification of fitness was issued for 21 persons and an order to serve the rest of the sentence issued for 30. For 22 persons there was certification by legal fiction and for 23 proceedings were not completed because the probation period had not yet ended, or no decision was made within the time limit of one year following the end of the probation period. In one case the method of completion could not be ascertained from the file. The district courts concerned decided to order service of the rest of the prison sentence for 22 persons conditionally released during the probation period, and issued a similar decision for 8 persons conditionally released after it had elapsed. The reason for initiating proceedings was primarily probation officers' reports which indicated serious shortcomings in the behaviour of those conditionally released or in complying with

supervision conditions. The reason for ordering service of the rest of the prison sentence for most of those conditionally released (roughly 90%) was legal conviction for further criminal activity, and in the rest of the cases the reason was the failure to fulfil the obligations arising from supervision. However, these reasons were in most cases cumulative, often also including the failure to fulfil other obligations, in particular obligations to provide compensation for damage caused or to pay ongoing and owed maintenance.

Judgements were made on certification of fitness for persons conditionally released during the whole year after the probation period had elapsed, most often within three months, and always when all the statutory conditions for this decision had been met. Recommendations to courts for a judgement of certification of fitness often also contained final reports from probation officers. Written consent to issue of a judgement of certification of fitness at a closed hearing, after the written documentation had been examined, was given in all cases by a state prosecutor.

In a number of disputed cases the occurrence of a legal fiction was found in completed proceedings on conditional release from serving a prison sentence. The proportion of these (30.1%) is relatively high in relation to all cases terminated. Conditional release was also terminated in this way in cases when, after all the statutory conditions had been met, it was immediately possible upon expiry of the probation period to issue a judgement of certification of fitness pursuant to Section 64, para. 1 of the Criminal Code. In all cases the previous consent of a state prosecutor to this procedure was also given. By its systematic inclusion in the law and by its nature, a court decision to issue a judgement of certification of fitness is to take precedence over certification by indicating a fiction.

In addition, certain cases where a public hearing was to be ordered were also completed in the way stated above, for the facts ascertained indicated that conditional release had not led to a respectable life during the probation period, the stipulated conditions had been breached in a serious manner and obligations arising from supervision had culpably not been fulfilled. The fact that courts did not respond to deficiencies ascertained and allowed the probation period and also a further period of one year to pass without discussing the case detracted from the purpose of the provision on conditional release with supervision and also its educational nature. And finally, cases were noted of completion by indication of a legal fiction, where there were reasonable doubts concerning fulfilment of one of the basic statutory conditions for this procedure, namely that the person conditionally released was not to blame for the fact that the court had not come to a decision. Those conditionally released changed their place of residence without notifying the authorities concerned of the change, so that

courts could not make the necessary investigations and make a decision within the stipulated time limit. In these cases a legal fiction was indicated prematurely, for it could be traced where the person conditionally released was living and a decision could be made in one of the statutory ways before the statutory limitation period expired (Section 68 of the Criminal Code).

In the written statements of judgements, the practice of courts varied when stating the provisions applied; some courts only stated substantive law provisions (Section 64, para. 1 of the Criminal Code) and others supplemented these with procedural provisions (Section 332, para. 1 of the Criminal Procedure Code). Differences were also found when it was ruled that the rest of a sentence should be served. The correct procedure was adopted by courts which stated all provisions in their rulings and gave a numerical indication of the rest of the sentence which the person conditionally released was obliged to serve. Where a judgement to order service of the rest of a prison sentence contained the reasons, the provision on supervision was in some cases underrated in their written statements, when the conditions for it had not been met at all, or was assessed quite inadequately.

In analysing PMS reports on the progress of supervision, we also focused on certain other factors. One of these related to employment of persons conditionally released. For a total of 28% of those convicted in our research sample, a commitment by a future employer was submitted before the court made its decision on conditional release. Several of these were persons for whom the PMS had acted before release. Nevertheless it was shown that only about half of this number actually started work, whereas the others registered at a job centre after their release. Actually, the great majority of those convicted went to one during their probation period (this did not apply only to 16% of those for whom the required information is available in PMS reports). However, the time during which individual persons convicted cooperated with this institution varied. Whereas some were only registered briefly and actively looked for work, some of those released were basically content to receive the social benefits they were given.

Very typical for most of those convicted is the existence of debts in connection with their previous stay in prison and costs of the criminal proceedings that had taken place (this applied to nearly 90% of the sample surveyed). For 47 of those convicted it could be seen in the PMS reports whether and to what extent they paid these debts. We found that roughly 40% of debts were paid in the probation period and the required documentation for this presented to the PMS, then approximately the same number paid them only partly and did not submit proof regularly to a probation officer. A fifth of those convicted did not pay their

debts at all. This proportion would probably, however, turn out to be less positive if all the clients in our sample were included, namely including those in whose case there was practically no cooperation with the probation service.

For a total of 36 clients, the court imposed reasonable restrictions or reasonable obligations. Most frequently these related to compensation for damage caused by criminal activity (24 persons). It can be seen from PMS reports that of the 21 clients concerning whom we had the required information only two actually duly paid it. Ten clients paid compensation for damage only partly and did not submit the required documentation to the probation officer at their meetings, and a further seven clients did not pay it at all, most frequently giving the reason that their financial situation did not make it possible for them. They came in for criticism for this attitude in some cases from the PMS, but in others the probation officer responded to an argument of this type and stated it in his/her assessment as an objective impediment to the client fulfilling his/her particular obligations. In the last two cases of this number the clients showed interest in paying for damage, but did not succeed in doing this during their probation period despite the efforts of the probation officer to link them up with the injured party.

The second most common obligation stipulated by the court was the obligation to enter employment without delay, or to register at a job centre as an applicant for employment. This concerned a total of 10 persons; eight of these fulfilled this obligation to register at a job centre, and one entered employment (in the last case the relevant findings could not be obtained). The obligation to pay maintenance imposed in addition to ordering supervision related to 6 convicted persons. Analysis of PMS reports showed that most had serious problems in meeting these payment obligations and when they did pay maintenance it was only irregularly. Probation officers generally criticised this attitude in their reports for the court.

Absolutely crucial information in PMS reports on the progress of supervision is overall assessment of the client's cooperation with the probation officer and compliance with supervision conditions. For nearly half of those convicted we were able to find positive assessment throughout the probation period, and for roughly another fifth of the clients the probation officer had minor reservations, though not such that would according to them lead to an order to serve the rest of their sentence. Despite this, some of these clients did not prove themselves during their probation period, most frequently because they committed a further criminal offence. It can be seen from their PMS reports that the probation officer was often informed of these facts late, and we even found cases when the PMS sent a positive report on

cooperation with a client who was already serving a further prison sentence at this time. Probation officers already had serious reservations concerning compliance with supervision conditions for roughly a quarter of the clients in our sample, and for 10% supervision basically did not take place. Also the court usually ordered these sentenced persons to serve the rest of their sentence. As has been stated above, however, unfortunately cases were found when the court took no notice of information from the PMS and granted certification to the client despite repeated warnings from the probation officer that supervision was not fulfilling its purpose.

These findings indicate that the effectiveness of supervision for those conditionally released is not yet adequate. In the authors' opinion it could be enhanced by a number of measures. For instance, attention needs to be devoted to the question of the actual selection of convicted persons for whom this provision appears suitable. A key point here also appears to be cooperation between the court and the Probation and Mediation Service, which according to the findings presented above is not always ideal. Inadequacies can be detected in particular in connection with responses by courts to probation officers' reports on failure to comply with supervision conditions by a sentenced person. A point worth considering is to regulate the duty of the court to notify the PMS centre of the termination of supervision. Similarly, it would be useful in practice in this area to introduce the possibility of flexibly revoking supervision where needed during the probation period of a person conditionally released, or conversely to stipulate it; the authors also propose to regulate by law the obligation for a person conditionally released to report to the PMS within a certain time limit after release (for example within seven days). The overall effectiveness of the provision on conditional release understandably cannot be assessed without creating appropriate offers of resocialisation programmes and other services for those released, let alone without adequate personnel and also technical reinforcement of the Probation and Mediation Service.

Translated by: Marvel s.r.o.