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Recall to prison in Belgium: Experiences of parolees who live under licence conditions

Powrót do więzienia w Belgii: doświadczenia warunkowo zwolnionych więźniów

Abstract: In the recent penological literature, the back door of a prison is often presented as a revolving door through which many prisoners leave the prison prematurely, but then return after a short period. A large number of prisoners who have been conditionally released are sent back to prison during the licence period or before the end of their sentence due to a breach of the licence conditions. Since the revocation of a release modality (such as parole) might affect reintegration, a careful balance is needed between proportionality, the risks, the possibility of behavioural change and the opportunities for reintegration. In other words, the impact on detainees should not be underestimated if a decision to recall is being taken. Since the majority of parolees in Belgium are sent back to prison after non-compliance with the imposed conditions, this article discusses the experiences of interviewees who lived under these conditions when being granted a release modality before being recalled to prison.

Keywords: recall to prison, non-compliance, breach, pains, license conditions

Abstrakt: Zgodnie z najnowszą literaturą penologiczną tylne drzwi więzienia często są przedstawiane jako obracające się drzwi, przez które wielu więźniów wcześniej opuszcza więzienie, ale także często wraca do niego po krótkim czasie. Duża grupa więźniów, którzy zostali warunkowo zwolnieni, trafia z powrotem do więzienia podczas okresu warunkowego zwolnienia lub przed zakończeniem okresu wykonywania kary – z powodu naruszenia warunków zwolnienia. Ponieważ cofnięcie formy zwolnienia (takiej jak warunkowe przedterminowe zwolnienie) może wpłynąć na reintegrację, konieczne jest zapewnienie właściwego balansu między proporcjonalnością, ryzykiem, możliwością korekty zachowania a szansami na reintegrację. Innymi słowy, przy podejmowaniu decyzji o cofnięciu warunkowego zwolnienia nie powinno się bagatelizować wpływu tej decyzji na więźniów. Ponieważ większość osób zwolnionych warunkowo w Belgii trafia z powrotem do więzienia z uwagi na nie-

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przestrzeganie nałożonych warunków, w artykule omówione są doświadczenia badanych, na których zostały nałożone te warunki w związku z ich zwolnieniem z więzienia, zanim ponownie do niego trafili.

Słowa kluczowe: powrót do więzienia, nieprzestrzeganie zasad, naruszenia, dolegliwość, warunki zwolnienia

Introduction

"Back door release decisions can have as much influence as front door sentencing practices in terms of sentence length and maintaining overall prison populations" (Padfield and Maruna, 2006). According to Nicola Padfield and Shadd Maruna (2006), a large group of detainees who have been conditionally released are returned to prison during the licence period because they commit a new offence or do not comply with the licence conditions. These recalls can therefore not only be explained as a result of a rise in recidivism, but also due to non-compliance with the conditions related to the release. The published figures emphasise this as being an issue. On 30 June 2018, around 6,300 prisoners were being held in detention in England and Wales due to the revocation of a conditional release. This concerns 10% of the prison population (Howard 2019: 180). We also see similar figures in Scotland. Before 1998 the recalls were limited to less than 1% of the average daily population; the figures increased significantly in 2011 to 9% (Weaver et al. 2012; 2020). However, these findings cannot simply be translated to Belgium. Indeed, the total number of revocations in Belgium has remained relatively stable over the last decade (Breuls, Scheirs 2017; Breuls et al. 2020). For Belgium, no systematic figures are available on the number and nature of the revocations. Limited and partial data from 2010 to 2014 indicate that the number of revocations during the licence period seemed to decline during the period 2010–2014 (with the exception of 2012). Figures published in 2020 indicate that 363 modalities (parole, electronic monitoring [EM] and semi-detention[1]) were revoked in 2019 compared to 303 in 2019 (College van hoven en rechtbanken 2020b; College van hoven en rechtbanken 2020a). In other words, a large proportion of those released under conditions were recalled to prison before the end of the licence period or sentence. However, according to the literature, this proportion appears to be higher in Anglo-Saxon countries than in Belgium (Padfield 2013; Steen et al. 2013; Aebi, Tiago 2018; Webster 2023). Nicola Padfield and Shadd Maruna (2006) therefore represent the prison door as a revolving door through which many prisoners leave the prison prematurely, then return after a short period.

Unfortunately, little is known about the practice of recall. The few existing studies highlight the negative aspects and the particularly painful experience (Digard 2010;

[1] When a convict is granted semi-detention, they may leave the prison during the day to work or to participate in a course. The convict has to return to prison after the course or work to spend the evening and night in prison. During the release modality, they must comply with the general and individualised conditions imposed by the Court.

Padfield 2013; Howard 2019). For instance, they indicate that the process of revocation is considered unjust and is associated with a lot of loss (including family ties and employment) and fear. Revocation is also seen as punitive rather than part of the reintegration process. In addition, recall is also associated with a feeling of powerlessness and a lack of inclusion in the decision-making process (Digard 2010; Padfield 2013; Howard 2019). In Belgium, non-compliance with the imposed conditions will not always lead to an immediate decision to recall someone. Research indicates a more reintegration-orientated recall practice (Breuls et al. 2020). In Belgium the decision to review, suspend or recall the parole, EM or semi-detention of offenders who are sentenced to more than three years' imprisonment (up to life imprisonment) is taken by multidisciplinary Sentence Implementation Courts (Act of 17 May 2006). The Belgian Sentence Implementation Courts have a broad discretionary power they can use to take into account the specific circumstances, individual background and underlying problems of the people on parole (Scheirs 2014b). According to Yves Van Den Berge and Frank Verbruggen (2014), the court still focusses too much on the facts, imposing standardised conditions without effectively considering whether they apply to the person in question. Whilst Belgian research from Veerle Scheirs (2014), Joséphine Bastard (2017) and Olivia Nederlandt (2020) provides us with insight into the functioning of the Sentence Implementation Courts, research on other areas, such as the practice of recall or life under licence conditions, is lacking. In addition, Veerle Scheirs (2014) clarified in her research that members of the court already make limited individualised decisions by weighing the possible negative consequences of a recall against the positive elements so that the people on probation can be further supported in the process of reintegration. It is already known that granting a release modality such as conditional release is an important step in the reintegration process of a prisoner. The members of the Sentence Implementation Courts want to give the convicts the opportunity to return to society gradually and with support, with the idea that they will become rehabilitated, take a different approach and take the right path (Scheirs 2014b). On the other hand, to provide the necessary control mechanisms and to be seen as a threat, a licence period and/or conditions are imposed along with the granted release modality (Scheirs 2014a; Beyens et al. 2020: 9). It is within the framework of these control mechanisms that recall can take place. However, because a revocation can interfere with the reintegration process – namely employment, housing and social ties (Uit Beijerse et al. 2018: 86) – a careful balance needs to be made between proportionality, risks, the possibility of behavioural change and the opportunities for reintegration. In other words, the impact on detainees should not be underestimated if a decision to recall is being taken.

This article is part of a larger project that aims to provide insights into the experiences of recall with regard to semi-detention (e.g. supra), EM and conditional release and its impact on detainees in Belgium. First, the legal framework is briefly outlined. Following a definition of "pain", an overview of the various pains and the dimensions of pain is then given. Next, the method of data collection is discussed.

Then, based on an analysis of semi-structured interviews with 40 detainees who were recalled to prison between 2019 and 2021, the article discusses the experiences of participants regarding the conditions imposed before being recalled. The experiences discussed in this article are divided into three main topics: the feeling of having a sword of Damocles above one's head, the realities of living in an open prison and the many conditions and lack of individualisation. The article ends with some final thoughts and a conclusion.

1. Legal framework[2]

As mentioned above, in Belgium the decision to impose, review or recall a conditional release, semi-detention or EM of offenders who are handed down a prison sentence of more than three years (up to life imprisonment) are taken by multidisciplinary Sentence Implementation Courts (Act of 17 May 2006). The licence conditions are imposed for a minimum period of one year and a maximum of ten years. The legislature defined three general conditions which every person on semi-detention, EM or parole has to comply with when released under one of these modalities: (1) the prohibition to commit new offences, (2) the obligation to have a fixed address (except for semi-detention) and immediately inform the public prosecutor – and, where appropriate, the justice assistant responsible for their supervision – of their address and (3) to follow up the calls of the public prosecutor and, where appropriate, the justice assistant responsible for supervision (Act of 17 May 2006: Art. 55). In addition, the Sentence Implementation Court can also impose specific, individualised conditions such as the obligation to follow a treatment plan or to have a daily activity (for instance, (volunteering) work) or the prohibition to use drugs, alcohol and/or possess guns. In addition, authorisations can also be granted, for example, the authorisation to take specific medication (Beyens and Scheirs 2017). According to Veerle Scheirs (2014; 2016) and Olivia Nederlandt (2020), the release procedure in Belgium is orientated to both social reintegration and risk reduction. In practice the conditions are formulated this way so as to enhance the prisoners' reintegration, but also to minimise the possible risks of reoffending. During the licence period a recall to prison is possible. In brief, the recall takes place after an adversarial procedure where the public prosecutor and the offender are heard. The public prosecutor can initiate the recall procedure if the legal requirements for a recall are met, but is not obliged to do so. The public prosecutor can refer the case to the Sentence Implementation Court in the following cases:

[2] Since September 2021, the Sentence Implementation Judge can also decide to impose release modalities for prisoners with a prison sentence of more than 2 years (up to 3 years). This study was conducted before the implementation of this part of the law. Therefore, the legal framework will be discussed as it applied at the time of the data collection, which took place in 2020–2021.

1) when a new offence is committed during the licence period,
2) when the convict poses a serious risk to the physical or psychological integrity of third parties,
3) when the specific imposed conditions are not complied with,
4) when the convict fails to respond to the appointments with the justice assistants,
5) when the convict fails to communicate a change of address to the justice assistant, and
6) when the convict is not complying with the programme and schedule of the release modality (in the case of a semi-detention or EM).

Since a single breach of licence conditions can initiate a recall procedure, these legal requirements can be easily met (Breuls et al. 2020: 9).

After the referral by the public prosecutor, the Sentence Implementation Court has to take the final decision. The court can issue a warning, suspend the release modality for up to one month while the person is detained, tighten the conditions or impose additional specific conditions with the consent of the parolee, impose another release modality or ultimately revoke the release modality. If a decision to recall is made, the person will be sent back to prison (Act of 17 May 2006: Art. 67). Regarding the time frame, Article 68 of the Act on the External Legal Position stipulates that the justice assistant must provide a report at least every six months. This clause also stipulates that the hearing needs to take place within 15 days and that a decision needs to be taken within seven days after the hearing is closed. In practice, the person can also receive an additional chance to work on their reintegration plan. The Court will then decide to not close the hearing, but to take the final decision after an additional hearing. In the next section, the different pains and dimension of pains are discussed in order to give a broader framework for the ongoing research about the experiences regarding recall.

2. Pains and experiences

The existing research shows that the recall of a release modality (e.g. conditional release) can be an extremely painful experience (Digard 2010; Padfield 2013; Howard 2019). Painful experiences during detention or during a release modality can take different forms: repeated unassigned modalities, uncertainty in and outside the prison, stigmatisation, living under a large number of conditions, constant control and supervision, etc. According to the definition of Nils Christie (1982), pain can be defined as a subjective, negative experience. According to him, pain is not limited to physical suffering, but can also be mental anguish or emotional trauma in response to a negative or positive stimulus. In addition, he states that the experience of pain is individual. In the penological literature, the term pain is used in

different contexts (Johnson, Toch 1982; Crewe 2011; Durnescu 2011; Shammas 2014; Hayes 2015; Nugent, Schinkel 2016; Crewe et al. 2017; Durnescu 2019; Griffin, Healy 2019). The following paragraphs give an overview of the various pains (i.e. pains of imprisonment, pain of non-custodial sentences and pains of re-entry) that have emerged throughout the years. Afterwards, the different dimensions of pain will be described based on the contributions of Ben Crewe (2011) and Lori Sexton (2015).

2.1. Pains of imprisonment

The study of the pains of imprisonment originated in Gresham Sykes' *The Society of Captives* (Sykes 1958). Sykes tried to create a broad, thorough overview of the elements that characterise detention as punitive. For Sykes, the pains consist in "the deprivations and frustrations of prison life" and provide a framework for describing the challenges of imprisonment from the experiences of prisoners. Specifically, Graham Sykes identified five major categories of deprivations linked to the prison sentence: the deprivation of freedom, the deprivation of goods and services, the deprivation of heterosexual relations, the deprivation of autonomy and the deprivation of security (Sykes 1958). These deprivations are determined by criminal and penitentiary policies, by the prison regime and by the place that prison is given in the wider society. According to him (and Shammas), experienced pains can vary between secured, closed prisons and open prisons (Sykes 1958; Shammas 2014). According to the same logic, the pains in a classic Ducpétiaux prison will differ from a modern (semi-)open regime or a halfway house. Moreover, it is also expected that the pains of imprisonment will differ regarding the prisoner's demographic characteristics, such as gender, ethnicity and sexual orientation (Crewe et al. 2017). The pains of imprisonment offer a more structured and nuanced vocabulary of how prison life is experienced daily (Hayes 2019). They remind us that detention cannot only be seen as the deprivation of freedom (Sykes 1958). In addition, they enable us to determine what makes a prison sentence so painful and provide us with a conceptual framework for further research (Sykes 1958; Johnson, Toch 1982; Hayes 2019).

Sykes' classic pains of imprisonment were reviewed by Ben Crewe. This led to three new pains of imprisonment based on the idea that modern penal practices involve additional burdens and frustrations. The first one is the pain of indeterminacy, in particular, the emotion of uncertainty experienced in the context of whether or not a release modality will be obtained during a detention of predetermined length (Crewe 2011). The second pain concerns the pain of psychological assessment. It relates to the process of being psychologically assessed, which not only impacts the detainee's future, but also their daily life. The third and last new pain concerns the pain of self-government, where detainees are given only a limited degree of autonomy to manage their own conduct and be held responsible for the outcome. While the classic discussion of Graham Sykes' pains has always been highly regarded amongst researchers, only recently has the attention been shifted to other penal contexts.

2.2. Pains of non-custodial sentences

It is only in the last two decades that there has been some attempt to apply a pain-based analysis to non-custodial sentences. In brief, the literature on the pains of community penalties can be described as the study of the pains of oversight, linking the study of the pains to the control and supervision of non-custodial sentences (Durnescu, 2011; Hayes, 2015; Gainey and Payne, 2000; Payne and Gainey, 1998). According to David Hayes, this supervision can take different forms: technological supervision, human supervision or a combination of the two (Hayes 2019). The pains of community penalties reflect substantial differences between custodial and non-custodial sentences. However, they also dispute the view that non-custodial sentences are "softer" alternatives with no punishing character (Hayes 2015; 2017). Hayes emphasises three major differences between the pains of custodial and non-custodial sentences (Hayes 2019). Firstly, non-custodial sentences such as parole and EM are characterised by a less objective deprivation of freedom. Although participants of both forms of punishment report pains related to the release process, this deprivation is generally considered less important than other pains in non-custodial sentences (Hayes 2015). Secondly, people on parole experience pains of shame linked to their reintegration (Hayes 2019). These pains of rehabilitation , as well as these pain of desistance studied by Briege Nugent and Marguerite Schinkel (2016), also imply that pains are not equivalent to the suffering that imprisonment entails. Finally, according to David Hayes, the character of non-custodial punishments is more intrusive than a prison sentence (Hayes 2015). New opportunities for pains are created because of the interaction between penal life and social life (Hayes 2019). Although David Hayes (2015) mainly talks about suffering associated with physical and psychological well-being – a lifestyle change (for example, the cessation of an addiction) or a feeling of shame (about the offences committed) – feelings of fear and uncertainty regarding one's reintegration and the sudden assumption of responsibilities can also be considered forms of suffering that arise from a non-custodial sentence.

On the other hand, Brian K. Payne and Randy R. Gainey (1998) emphasise that many of the pains described by Graham Sykes, as well as a number of additional pains, are also experienced by people on EM. Firstly, there is the impact of EM on the convicted person's family. Secondly, the individuals are often forced to watch others engage in activities that they would like to participate in, but this is made impossible by the licence conditions. Finally, there is the impact of wearing an ankle monitor. They often have to choose between wearing trousers or living with the uncomfortable feeling associated with these devices. This mutual exposure between the criminal and the social context undermines the traditional notion that punishment is entirely independent of the social life of the interviewee and reveals a complex web of interactions between actors responsible for the control of the parolee and the actors responsible for their guidance.

These different groups of pains emphasise the way actors from the criminal justice system actively contribute to the experiences of the participants. These participants are not prisoners, but nor are they completely free. They are therefore in a transitional period. Consequently, it is not possible to disconnect the classic pains of imprisonment from the other pains (Hayes 2017). The pains of probation refer to the experiences of offenders who are under probation supervision (Durnescu 2011). Ioan Durnescu (2011) identified six pains: the deprivation of autonomy, the deprivation of time, the financial costs, the effects of stigmatisation, the forced return to the offence and living under a tremendous threat. The pains of community penalties described by David Hayes (2015) include the pains of rehabilitation, the pains of deprivation of liberty, penal welfare issues, the pains of external agency interventions, process pains and stigma. The pains of deprivation of liberty include the loss of time, money and freedom. In addition, the penal welfare issues include accommodation, job searches, welfare, finances and relationships with family members. Next, the pains of external agency interventions refer to the intrusive interventions of controlling actors. The process pains represent the procedural justice and the supervision of the police that are experienced. Stigmatisation is also included among the pains/community penalties. Finally, the pains of desistance describe three central pains: the pain of isolation, the pain of goal failure and the pain of hopelessness. Not being able to participate fully in life outside prison and failing to achieve established goals will lead to a loss of hope. According to the authors, this hopelessness causes a lack of motivation to achieve one's original goals and finally leads to a feeling of helplessness (Nugent, Schinkel 2016). This does not mean that community-based pains are worse than detention – it simply means that they are different and that, in consequence, more attention should be paid to the way in which individuals experience their punishment (Durnescu 2011; Gainey, Payne 2011).

2.3. Pains of re-entry

Recently, further steps have been taken in applying pain-based analysis. In 2019 Ioan Durnescu described the pains of re-entry (Durnescu 2019). This concerns obstacles or frustrations reported by prisoners before and after release. Kristel Beyens highlights the difficult path that characterises this process (Beyens 2020). The numerous obstacles people on parole are facing in this process, according to her, contrast greatly with the perception that parole is awarded to all persons at one third of the way through their sentence. This translates into an increasingly stringent legal framework to grant a release modality, which leads to more uncertainty for the prisoners concerned. This uncertainty can also be found in the research of Ioan Durnescu, Diarmuid Griffin and Deirdre Healy (Durnescu 2019; Griffin 2019; Griffin, Healy 2019). According to Durnescu, some examples of the pains linked to reintegration (in and outside the prison) concern adaptation to the new environment, social isolation, stigma and instability. These pains proved to

be universal. Stigma, failures, despair and a lack of social support are universally cited in the stories of ex-detainees when questioned about their reintegration (Bahn, Davis 1991; Cullen 1994; Funk 2004; Lebel 2012; Durnescu 2019). However, a number of other identified pains appeared to be context-bound, given that the study took place in Romania. This concerns, for example, the pains of poverty and fighting against bureaucracy (Durnescu 2019). As part of his results, Ioan Durnescu indicates that not all pains are equally present at every stage of the reintegration process. For example, a number of pains can only be active in the first months after release, and others can only be present later. In the reintegration process, social, personal, cultural and economic characteristics play a fundamental role in the presence or absence of specific pains at a specific time (Shammas 2014).

Diarmuid Griffin and Deirdre Healy also applied the existing pains, but to people on their way to parole (Griffin and Healy, 2019). Their analysis shows that three large pains are experienced by this group: firstly, the deprivation of autonomy (Sykes 1958), and in particular the denial of prisoners' autonomy and their ability to make their own choices; secondly, the pains of indeterminacy (Crewe 2011); and finally, the pains of desistance (Nugent, Schinkel 2016). In contrast, people on parole experienced three large groups of pains: isolation/loneliness, failure and loss of hope. These pains can form one entity and can lead to a feeling of hopelessness among prisoners, undermine their confidence in the system, cause them to disengage in reintegration and ultimately slow down their release.

2.4. The different dimensions of pain

For a long period, the pains of punishments were studied in binary terms: either they were experienced or not. Although certain pains seemed more significant than others, binary thinking made it practically impossible to compare the experiences of two respondents with similar painful experiences. Recently, however, several attempts have been made to discuss these pains in less binary terms. Ben Crewe (2011) examines the different dimensions of pain. He tries to map pain using four broad dimensions: depth, weight, tightness and breadth. In brief, depth acts as a metaphor for the extent to which a punishment constrains, controls and isolates the subject from wider society. Weight represents the level of oppressiveness and psychological trauma caused by incarceration. Tightness measures the extent to which the exercise of power within the prison regime is coercive and authoritarian. Finally, breadth is the level of what is called the penetration of penal control into the subject's everyday life before, during and after the punishment. These dimensions can tell us something about the type and dimension of the pain experienced by a specific person and allows us to make comparisons. Lori Sexton (2015) emphasises that the subjective perceived severity of the punishment is very dependent on the expectations of the people living it. Her analysis suggests that punishment will be more painful when the deprivations have a symbolic load of stigmatisation or power abuse. In short, the pains of punishment have expanded far beyond

Graham Sykes' catalogue of deprivations. The pains were examined in all kinds of penal contexts with attention paid to the different experiences of people with different backgrounds, ethnicities, genders and sexual orientation. Pains also offer the possibility to measure the relative gravity of criminal interventions from an intersubjective approach. The extent to which pains are taken into account in criminal decision-making is part of a large number of debates (Downes 1988; Crewe 2011; 2015; Crewe et al. 2017). The potential value of a pain-based analysis is that it allows us to see punishment as a process that includes subjective and objective advantages and disadvantages (Christie 1982). Despite the fact that the pains were examined in all kinds of contexts, there is no research into the possible pains of recall. However, the limited international literature on the subject shows that the revocation of implementing procedures is a particularly painful experience (Digard 2010; Weaver et al. 2012; Padfield 2013; Howard 2019). In the next section, the method used to gather the data for our study is discussed.

3. Research method and data

Purposive sampling was used to select a sample of participants from 13 prisons in Belgium. Prison staff provided the researcher with lists of all prisoners who had been sentenced to more than three years and had been recalled between 2019 and 2021. The prisoners of the first ten establishments received an envelope containing a letter, an informed consent letter and an answer form because of COVID-19 restrictions in effect at the moment of data collection. The prisoners from the other three prisons were approached in person by the researcher. In total, 233 prisoners were approached, 61 agreed to participate (although later) and 21 withdrew from the study. The final sample therefore consisted of 40 prisoners. The participants were male and their age ranged from 23 to 60 years. The majority had Belgian nationality, while six had a different nationality. Half of the respondents had experienced more than one recall. Most of the respondents (n=28) were recalled because of a breach of licence conditions. The licence conditions varied, as did the number and types of breached conditions.

Each participant was interviewed separately in 2021. The interviews lasted between 35 and 134 minutes and were facilitated by a topic guide. The topics included the detention period, the period before the recall, the process of recall (perception of the conditions, compliance and non-compliance with the conditions, communication and cooperation with the different actors and guidance), the revocation (motive, perception, legitimacy, objective, perceptions of judicial actors and prevention), the period after the revocation and related consequences and the new path to reintegration (understanding, obstacles, engagement, activities, guidance and support). All interviews were strictly confidential and pseudonyms were used

to refer to the interviewees. All interviews were audio-recorded and transcribed afterwards. Data analysis followed an iterative data analysis process, which is often part of qualitative research – grounded theory, in particular (Mortelmans 2013). After the data collection was finalised, open coding was used to identify themes through line-by-line analysis. This phase was followed by more focussed coding using the memos that had been written and the links that had been made between the themes, while assuring that these themes were relevant to and appropriate for the full dataset.

4. Findings

The findings are divided into three sections: the feeling of having a sword of Damocles above one's head, the feeling of living in an open prison outside the prison walls and the many, small individualised licence conditions imposed.

4.1. Sword of Damocles

As the discussion above clearly stated, it is important to highlight the pains and suffering that imprisonment and probation entails. These pains can be diverse (e.g. pains of imprisonment, pains of non-custodial sentences and pains of re-entry), as explained, but another of these pains is the execution of a sentence in the community under the threat of being recalled to prison if the licence conditions are not complied with. When the parolees fail to comply with these conditions, there is a high probability that they will be sent back to prison. They are therefore regularly reminded of the consequences of any breach of the conditions. If a release modality is granted while there is still significant time remaining on their sentence, this time can be seen as a deterrent. In fact, if the modality is revoked, the parolee knows that they will return to prison for a time. Also, if they are recalled to prison, the time spent in release will not always be deducted from the remaining sentence (Breuls, Scheirs 2017). Article 62 of the Act on the External Legal Position states that it is the Court who determines the part of the custodial sentence that the parolee still must undergo when being recalled to prison following a period of conditional release, taking into account the probation period that has gone well and the efforts that the participant has made to respect the licence conditions (Act of 17 May 2006: Art. 68). When a person is recalled from EM or semi-detention, the time spent in the community is always deducted from the remaining sentence. Almost all interviewees therefore have the feeling that they are living under a huge threat of being recalled to prison. The feeling of having a sword above one's head was actually expressed by over half of the participants. This expression reflects the feeling of all these interviewees. For example:

> It isn't even about the conditions, but it's the sword of Damocles that is hanging over my head. Because if someone is hit, by accident, and I have a three-year licence period, it is considered a breach of my conditions… Or there may still be other things that are punishable, but which are out of my control. Accidents happen every day and the driver is still condemned for unintentional manslaughter. Or something like that. Everything can happen… so I'm taking a huge risk… if I lose my self-control, although I have been managing for years now… (R106_PI5)

Research also shows that some participants hesitate to accept a conditional release because of the pressure they have to live under for years, along with the chance of being recalled to prison at any time if they violate a condition during the release modality (Beyens, Boone 2013). The experiences described by 23 interviewees have convinced them that no matter how hard they try, they can be put in prison at any time because of a new recall. The following quote from a respondent confirms this finding, along with the experiences of 23 other interviewees:

> Yes, that was really heavy for me, frankly it was a bit suffocating. So you know, it's the six years above my head and knowing that, when I'm walking down the street, you know, if he looks at my girlfriend's ass, for example, and I get mad and hit him, I'll go back to jail, six years and a half will drop. You know what I mean? Six and a half years down the road. (R35_PI7)

Because of the threat of being recalled to prison at any moment, but also because of the threat that the time spent under parole will not be deducted from the remainder of the sentence, almost half of these participants prefer to "max out" with EM instead of being released on parole:

> Or maybe you say hello to someone – that person, you don't know if he's been in prison – if you come across the police, you go back to prison. Or maybe the person smokes, you don't smoke, a control, you go back to prison. Parole is too, too difficult. No, the bracelet, frankly, the bracelet, you don't break your head as much. There are schedules to comply with…. With the bracelet you can hang out with people who do drugs, who've served time, you know. Now, when I hear about parole, it scares me…. No, no, no, never again. I'm wearing the bracelet. I'll be released on a bracelet or I'm staying here. That's what I want to do, but parole – give me a break, it's too difficult and that's it. No, parole is over, it's over, I'm done with it. (R29_PI4)

Below, another interviewee also states that he would prefer to carry out the full sentence in prison rather than to live with this sword of Damocles over his head a second time. Just over half of the respondents who were interviewed also clearly stated this. In effect, the prisoners are opting to stay in prison rather than continuing to pursue early release.

> No, no. My sentence ends in 2023. Not two, but three years were added. That's the thing with parole. My sentence is ending in 2023, not a few years later with a lot of conditions to comply with. I want to get away from the judicial system by 2023. I don't want to have anything to do with it anymore. My sentence will be maxed out.

> The feeling... it isn't a normal feeling, those conditions. It's not normal. I suffered so much. I had underestimated it. I can't live with the possibility of a recall every second of the day. (R12_PI3)

According to Luc Robert (2009), it is not possible to identify one single explanation for committing to fulfilling one's prison sentence. He also states that prisoners seem to be influenced by different combinations of elements when carrying out their full sentence in prison, suggesting that the mechanism of maxing out is based on the unique circumstances of the detainee. These findings are consistent with the narratives in the interviews conducted for this study. In addition, the length of the licence period, which can sometimes be longer than the original sentence, makes it difficult to be on conditional release with this so-called sword of Damocles being there, and it can lead someone to decide to max out in prison.

> Because if you have two years left on your sentence, they'll give you a five-year licence period, although you have only two years left. It's like they're reconvicting you, it's like they're adding a new offence. (R26_PI4)

Furthermore, Article 54 of the Act on the External Legal Position stipulates that the person has to agree with the conditions being imposed. However, according to Olivia Nederlandt (2020; Nederlandt et al. 2022) some of these conditions are not discussed at the hearing, such as the prohibition of contact with ex-convicts. Moreover, just over half of the interviewees stated that not every condition is easily accepted and can lead to a discussion in court. When the conditions are accepted, it is often for the wrong reasons. Different grounds for accepting the conditions were identified. According to ten respondents, the main reason to accept is for their family. This was the most important motive that was identified. People who are close to the parolees are often the reason why they want to stay out of prison. Secondly, four of the respondents had a clear purpose in life, for instance, starting a family, having a home, getting married and creating their own business. This was mentioned when asking about the motivations that led to compliance with the licence conditions. Thirdly, five of the participants thought it would speed up the process to accept the conditions without a debate. Finally, four interviewees wanted to reach the end of the sentence and be done with it, be free, regardless what was asked of them. This last element is contradictory, because four of the respondents also indicated that the modality has a greater chance of success if they have themselves compiled the reintegration plan and if they were able to apply it as planned. If the conditions are accepted for the wrong reasons, there will be a greater risk of being recalled to prison because of a breach of conditions.

The denial of the ability to make their own choices can be related to the pains of parole described earlier (Griffin, Healy 2019). Moreover, in the interviews, 29 prisoners felt that they had been "set up to fail" by unreasonable licence conditions, relating to the pain of failure described by Ioan Durnescu (2019). The expression most often used was that they felt it was impossible for them not to fail. According to them, licence conditions can be somewhat muddled and/or confusing. The prisoners were clear

that many licence conditions were inappropriate and unnecessary, but also impossible and illogical; most of the respondents felt the weight of their conditions. The weight of numerous conditions might make it difficult for the 29 parolees to succeed. The emotion of uncertainty resulting from not knowing if and when a recall will take place was clearly present (Crewe 2011; Griffin, Healy 2019). Our findings also emphasise the intrusive character of the licence conditions, not only for themselves but also for housemates.

> I think the functioning and fallout, the follow-up is certainly not what it should be. And also, all these conditions, it's too much. So yes, it's not livable. For the time being, you're thinking about maxing out. These conditions, it's an intrusion in your life. That's what it comes downs to. (R104_PI5)

People on parole may feel that the conditions and the follow-up regarding these conditions are an intrusion into their privacy. Once outside the prison, they reported feeling constantly under control because their daily life is regulated by the licence conditions or certain other prohibitions of behaviours (e.g. you must work and you cannot consume alcohol), places (e.g. you must see the judicial assistant and you cannot go to the pub or places where your victim lives) and relationships (e.g. it is necessary to develop a relationship of trust with the judicial assistant because of the importance that the Court gives to this aspect and it is no longer possible to see ex-prisoners or former accomplices because of the risk of recidivism). Finally, the common-sense value of complying with the licence conditions was obvious for only a minority of the respondents. This "common sense" can be interpreted according to the model of compliance by Anthony Bottoms (2002). For Bottoms, legitimacy is fundamentally relational, but it is distinct by virtue of its concern with the proper exercise of formal authority. Here, the actors of the criminal justice system (like the Sentence Implementation Court or the judicial assistant) might exercise influence over the person's behaviour in and through their cognition that the authority is legitimate and, moreover, that its exercise is fair and reasonable. In this way, it will be "normal" for the person to comply. For example,

> If you lived in a world where you are all alone, the conditions there are… I won't worry about the conditions, it's just a reminder of daily life in the outside world, we'll say. With moderations. It's normal to drink in moderation. I'm not a drug addict, so it's normal. They aren't conditions that…. Yes, I had no problems with the conditions, it's like a normal life, rules and standards of living. (R35_PI6)

4.2. Open prison

In line with the findings from previous research, the respondents saw parole and EM as a chance, but also as a penalty (Payne, Gainey 1998; Martin et al. 2009). It felt like an open prison, a prison outside the prison walls. It must be said that nine respondents reported feeling more emotionally stable in prison than out

on licence, partly due to the uncertainty surrounding their ambiguous licence conditions. They had the feeling that they could be recalled to prison at any moment for any transgression, however small, that they were set up to fail (e.g. pain of failure and indeterminacy). Going on a release modality was thus not always the easiest option. Another aspect that amplified this feeling of living in an open prison is the stigmatisation as a result of having a criminal record. This criminal record and the pain of stigmatisation (Durnescu 2019) remain important obstacles through the reintegration path of the parolee:

> And then there's this perpetual prison. Society says you can, but you don't. Your criminal record and this famous, uh, this famous risk of reoffending. The slightest thing you do can be blamed. The slightest accusation can send you back to prison. I just found stability – that isn't always ease. (R30_PI7)

The criminal record can be an obstacle to employment and can create an additional difficulty in finding housing (Claes et al. 2016; Travis 2002). This feeling was confirmed by eight other respondents, implying that not only could the imposed licence conditions interfere with the reintegration process, but so could the stigmatisation of being a person viewed as an (ex)convict, evoking anxiety and stress. A few decades ago, Joan Petersilia (1990) noted that community sentences may be experienced as more punitive than imprisonment. Nine respondents suggested that it was easier to do time in prison than on parole and said that they would actually prefer to do time in prison since they do not have as much responsibility in prison as in the community. The interviewees developed expectations about what they thought was awaiting them after release. They were expecting more freedom and less control and constraints; they therefore had the feeling of living in an "open prison" with no freedom at all. An interviewee on semi-detention stated:

> Yes, that's not freedom. That's just… doing your time outside the walls of the prison! Excuse me, Madam, what freedom? I'm getting up in the morning to work my hours and then go back to my cell. Yes, I'm getting released every day, but I'm not free. But what is freedom? Being inside the prison, it's actually just the location that's different. I work in a different location, but that's not freedom. (R93_PI6)

For 30 respondents, "being outside of the prison" was seen as one of the most appealing elements of a release modality. While they all mentioned some disadvantages of being under supervision, the advantages (like being able to be with family, to work, to pay off debts, etc.) exceeded the disadvantages of having the feeling of being imprisoned outside the prison walls.

4.3. Many small individualised conditions

Research has shown that with the exception of one Sentence Implementation Court that has chosen to limit the number of licence conditions imposed, all the other Courts impose a significant number of conditions when prisoners are released on

a modality, with a general average of about 15 conditions being added to the three general conditions (Nederlandt et al. 2022). With the exception of five respondents, all the interviewees for our project also considered the number of conditions excessive; the terms these 35 respondents used to describe the situation included "exaggerated", "unworkable", "unbearable", "doomed to failure", "difficult to respect", "stressful" and "mentally harsh", making the conditional release unattractive. As respondent 141 stated:

> At the end of the day they give you so many conditions. On paper you can still follow and still understand, you see, but in real life you're not a robot. You can't be programmed. It was a whole list. (R141_PI2)

Nine respondents also pointed to the lack of individualised conditions specifically, and 33 interviewees said they had the same conditions as everyone else, or that the conditions were copied and pasted. The findings also highlight the fact that those affected sometimes do not know the difference between a general condition and a specific condition, that they are often convinced that all conditions apply to all convicted offenders (as a "package" of conditions) and that there is no room for negotiation.

> But most of them were standard procedures. The standard conditions. General condition. Don't commit new offences, don't flee… no contact with drugs, continue my daily activity, continue my guidance, pay my fines on time. Yes, 19 conditions in total. That was, just, the standard conditions. (R7_PI6)

Vague or ambiguous conditions can also be more easily breached. Conditions are not always specific or clear enough for the parolees, which makes them difficult to comply with. This also allows the Court to use the conditions as a "tool" to recall. This is particularly the case when an interviewee complies with the conditions, but the Court notes a situation of tension within the home environment, or when the convicted person is questioned as a suspect for a new offence – without being able to establish grounds for revocation on the basis of the presumption of innocence.

> Because they also say you were out on a good reintegration path and you've kept that up for a long time. It's not that you were back in prison after a month. No, that went well. I think, they also once controlled me when I was smoking drugs. Then I also had to go to the Court for a hearing. But they also immediately told me…. If they see your probation is going okay, they usually let you go without a recall to prison…. But it wasn't the case, because of the drugs and the tensions at home… uh… so in that period I had to go to court twice … perhaps, because of a breach and because of tensions and drugs, because afterwards I had this offence, all of them…. I didn't understand it… But that's really a violation of your conditions. (R4_PI6)

Regarding the nature of the conditions, 11 respondents considered that they are standardised and minimally individualised. This lack of precision can lead to uncertainty, confusion and therefore to conditions that are difficult to comply

with in practice. For example, there is a general prohibition against associating with ex-inmates rather than a prohibition against associating with a particular person (Nederlandt et al. 2022). The same conditions are used as an example in the following quote of a participant who had been recalled to prison:

> Because yes, I had to come to the court because I had come into contact with an ex--prisoner. But that was someone I worked with at work. Yes, I said that to the court. They don't walk around with an 'ex-convict' sign'. He answered me directly that if I wanted to stay on parole, I had to ask. I thought to myself, what the hell is he saying now? (R141_PI2)

The above statements show the difficulties, pains and some of the experiences of being released under licence conditions and living with this sword of Damocles above one's head.

Final thoughts and conclusion

The experiences associated with recall are not only painful, but also associated with a large number of deprivations because of the interference with the steps already taken towards reintegration. The article shows the relevance of pain-based research. A pain-based analysis enables us to see punishment as a process that includes subjective and objective pros and cons. Despite the fact that the benefits were not part of this article, they were investigated and will be part of the final results. When this article was written, no positive aspects of recall were identified. A pain-based analysis also offers the possibility of using an intersubjective approach to measure the depth, weight, tightness and breath of criminal interventions, of which pain is an intrinsic part. A confrontation with the pains that are caused encourages less painful and harmful alternatives to be considered in order to achieve the result that is pursued in the criminal justice system. Although pains were examined in all kinds of contexts, research on the pains of recall is lacking. If people who have been convicted wish to be able to execute a part of their custodial sentence outside of prison on licence, they will have to seize the Sentence Implementation Court and prepare a reintegration plan to be put in place when leaving the prison. The content of this plan has to be sufficient to regulate the risk of recidivism in the eyes of the Court. The Court will also impose specific, individualised conditions. Once the convicted person carries out their sentence(s) in the community, the Sentence Implementation Court will seek to avoid a recall and a return to prison. Indeed, they will generally give someone who has not respected the conditional device an opportunity to regain control. As the majority of the recalls to prison in Belgium are due to non-compliance with the licence conditions, we took a closer look at the experiences of living under these conditions. A range of conditions,

such as the prohibition of contact with ex-convicts, are not discussed at hearings. In addition, certain conditions, which are not adapted to either the situation of the convicted person or to life in society, seem difficult to understand and therefore difficult to respect; this is particularly the case with the prohibition of consuming alcohol, visiting establishments which serve alcohol or meeting ex-prisoners; the time constraints of EM and the intrusive character of the different modalities are also difficult to reconcile with social life. In addition, certain conditions seem too demanding in view of their precarious situation and the socioeconomic context; this is particularly the case with conditions that require a convicted person to pay various debts despite their criminal record remaining a significant obstacle to employment and their time in prison not only preventing them earning a proper income, but also worsening their financial situation and that of their loved ones. Another structural challenge is the stigmatisation of ex-detainees, preventing people who have served their sentence from investing or reinvesting in their role as citizens. This perpetual feeling of being seen as an outsider makes it difficult to reintegrate and increases the chance of being recalled to prison. The parolee lives under control and supervision, with the constant threat of being sent back to prison if the conditions are not complied with – conditions that they do not always perceive to be significant and/or meaningful, which leads to a source of additional stress and anxiety. Also, being granted a release modality does not allow the individual to reintegrate in all aspects of social life, but rather limits their sociability by prohibiting them from certain activities and imposing others, by forbidding them to visit certain places and persons and by requiring them to constantly "hunt for certificates". So many difficulties and constraints assigned to people already in a precarious situation, in a context lacking in social assistance, inexorably results in many of them determining not to execute the remainder of their sentence on probation. It has been shown how probation subjects the parolees to an experience just as "totalising" as that of prison, by deploying around them a panopticon that encompasses all aspects of their existence (living space, occupation, people and places they visit). These experiences can form a whole and can lead to a feeling of hopelessness in someone who is recalled to prison, undermining their confidence in the system, causing them to disengage in the reintegration process and ultimately slowing down their release or even resulting in them choosing to stay in prison. Despite the fact that revocation is intended as a transition phase to a new release modality, and therefore does not constitute an end point within the reintegration process, it is important to look at how the negative effects can be reduced to match the purpose of the revocation. The impact of recall on the convicted person and their family must certainly not be underestimated. The impact can be significant. To understand this impact and remedy, further research into the perception of those affected who had their modality revoked is necessary.

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Legal acts

Wet van 17/05/2006 betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten [Act of 17 May 2006 on the External Legal Position of convicted prisoners and the right of the victims in the framework of modalities of implementation of sentences]. Available online: https://openjustice.be/ [08.01.2024].