



# Prison Leave in Finland: Legal and Empirical Fundamentals of an Established Practice

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Published online: 26 December 2019  
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## Abstract

Prison leave was introduced into the Finnish legal system in 1971, with the aim to reduce negative effects of institutionalization and disadvantages caused by the length of the prison sentence. After the total reform of prison legislation in 2006, the role of the prison leave has become even more central; the number of prisoners has decreased, but the amount of prison leave has increased. Historically, the length of the sentence has been the most common ground for prison leave. A prisoner can be granted a prison leave when two thirds of the prison term has been served, for example, after 2 years if the length of the total sentence served in prison is 3 years. However, during the past 10 years, prison leave based on an important reason has grown into the most common type of prison leave. This indicates a structural change from the rigid legal rules to a more flexible practice. In 2018, there were about 17,000 prison leave applications, and over 13,000 of those were granted, i.e. 79%. The conditions were breached 466 times, which is 3.5% of all prison leaves. The most common breaches of prison leave conditions were returning from a prison leave after the set time limit or under the influence of alcohol or drugs. The majority of prison leave applications are decided in the prisons. On the other hand, for example, the decision on the prison leave of a life-sentenced prisoner is made by the Criminal Sanctions Agency. There have been significant differences in the probability of granting prison leave, which are emphasized especially in the practices of closed prisons. Among those prisoners who serve longer than 1 year in prison, the application rate of prison leave rises over 90%. For the sentences under 3 months, it is less than 20%.

**Keywords** Prison leave · Electronic monitoring during prison leave · Granting of prison leave · Breaching prison leave conditions · Prison leave based on the length of the sentence · Prison leave for an important reason · Prison leave for a particularly important reason

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The aim of this article is to describe the prison leave system as applied in Finland and to study the changes in its use since the total reform of prison legislation in 2006. At the same time as the number of prisoners has decreased, the amount of prison leave has increased. The article is divided into a legal and an empirical part. In sections dealing with rationales for prison leave and decision-making, Finnish legislation is elaborated, and recommendations are made for the development of prison leave. Then, based on national statistics and empirical studies, its links with prison life and release from prison are discussed. Generally speaking, prison leave refers to a short period of time during which a prisoner is allowed to leave prison and then return. In the translation of Finnish legislation by the Ministry of Justice, the official term used is prison leave.<sup>1</sup>

## Rationales for Prison Leave in Finland

### Research Questions

The rationales for prison leave are based on the general principles of the Imprisonment Act of Finland. According to the Act, the only content of imprisonment is loss or restriction of liberty. Imprisonment must not place any other restrictions on the rights of a prisoner than those provided by law or those necessary due to the sentence itself.

The main objective of imprisonment is to increase the readiness and capabilities of the prisoner to lead a life without crime. This aim has many different aspects. The prisoner's ability to manage his or her life and adjustment to society should be promoted, for example, by rehabilitative program and treatment work. At the same time, the commission of offences during the sentence must be prevented, in a way which ensures the enforcement of the sentence is safe for the society, prison staff and prisoners.<sup>2</sup>

According to Finnish law, a prisoner may, upon application, be granted permission to leave the prison for a short period of time (prison leave). The purpose of prison leave is to support the prisoner in maintaining his or her outside contacts, to support the prisoner's reintegration into the society and to reduce the harmful effects caused by the loss of liberty.<sup>3</sup> These purposes were originally expressed in a government proposal dating back to 1971, when prison leave was adopted in the Finnish legal system.<sup>4</sup>

Regarding prison leave, the total reform of prison legislation in October 2006 was an important turning point. That was when the new Imprisonment Act and the Remand Imprisonment Act came into force. This reform was influenced by the constitutional reforms carried out in 1995 and 2000, which obliged the legislator to define the rights and obligations of prisoners in much more detail than before.<sup>5</sup> According to the new legislation, the rules of prison leave have been defined more clearly, and the system as such has been developed to be more structured.<sup>6</sup> In the total reform of 2006, prison leave became a part of the sentence plan,

<sup>1</sup> The Imprisonment Act has been translated and published by the Ministry of Justice, Finland, June 12, 2019, and the Remand Imprisonment Act, July 1, 2019. These texts are legally binding only in Finnish and Swedish.

<sup>2</sup> These general principles are expressed in the Imprisonment Act Chapter 1, Sections 2–3.

<sup>3</sup> The Imprisonment Act, chapter 14, section 1

<sup>4</sup> Government proposal 95/1970, p. 11

<sup>5</sup> Lappi-Seppälä, p. 140–141

<sup>6</sup> Government proposal 263/2004, p. 45

which was introduced as a comprehensive legal instrument at the same time. This is an individual plan, which shall be drawn up for each prisoner.<sup>7</sup>

Currently there are three different types of prison leave in Finland, which are discussed in the following sections. Prison leave can be based on *the length of the sentence*. Besides this, prison leave can be granted for *an important reason* and for *a particularly important reason*.

The daily average of prisoners in Finland in 2018 was 2910, which is 53 prisoners per 100,000 population of all ages. In the same year, the total amount of granted prison leaves rose to over 13,000. About 6600 of those were granted for an important reason, 5900 were based on the length of the sentence and only about 100 were granted for a particularly important reason. Besides these, combinations of different kinds of leave were used. Approximately 6% of leaves were granted under escort. The changes in the amount of prison leave and prison population during the last decades are analysed more thoroughly in Sect. 3.1–3.5.

The main research questions in this article are the following ones:

- 1) Are there legal challenges concerning the prison leave system since the total reform of prison legislation in 2006?
- 2) How many prison leaves have been applied for, granted and used in 2009–2018?
- 3) What is the percentage of cases in which prison leave conditions have been fulfilled or breached?
- 4) On what grounds has prison leave been granted and are there changes in these?
- 5) Electronic monitoring of prison leave has been regulated by the new law since the year 2015. Has this changed the use of prison leave?
- 6) What is the proportion of those prisoners who apply for or do not apply for prison leave?

### Prison Leave Based on the Length of the Sentence

Historically, prison leave based on the length of the sentence has been the most commonly used type of prison leave in Finland. As such, the legislation is very formal. On the basis of the length of the sentence, prison leave may be granted after two thirds of the prison term has been served.<sup>8</sup> For example, if the length of the sentence served in prison before conditional release is 3 years, prison leave can be granted after 2 years. For prisoners serving a life sentence, the earliest date for prison leave is 8 years because they may be conditionally released at the earliest when they have served 12 years in prison.<sup>9</sup> For a prisoner serving the entire sentence without conditional release or the combination sentence,<sup>10</sup> the earliest date of prison leave is two thirds of the total sentence to be served in prison. However, in all cases at least 2 months must be served in prison before prison leave can be granted.<sup>11</sup>

<sup>7</sup> Vangeille anomuksesta myönnettävät luvat, p. 38–39

<sup>8</sup> The Imprisonment Act, chapter 14, section 3

<sup>9</sup> As a special case, prison leave of a prisoner sentenced to life imprisonment for an offence committed before the age of 21 years is determined as if the period to be served in prison was 10 years, i.e. the earliest date for prison leave in these cases is 6 years and 8 months.

<sup>10</sup> Combination sentence is a specific criminal sanction for violent recidivists since 2018. The prisoner serves the entire sentence in prison without conditional release and after that he or she is electronically monitored in civil society for 1 year. Earlier the entire sentence for violent recidivists did not include the 1-year period of electronic monitoring (Criminal Code of Finland, chapter 2 c, section 11)

<sup>11</sup> The Imprisonment Act, chapter 14, section 3

According to the Imprisonment Act, in special circumstances, prison leave based on the length of time can be granted earlier than the aforementioned quantum is fulfilled. If a prisoner has carefully complied with the sentence plan, the leave based on the length of the sentence can be granted when half of the prison term has been served. This should be necessary, in an individual case, for the maintenance of outside contacts, to advance functioning capability in society, or for another corresponding reason.<sup>12</sup>

Prison leave based on the length of the sentence must always be a part of the sentence plan. The sentence plan includes a plan on the placement of the prisoner, activities during the term of the sentence, probationary liberty under supervision, conditional release, and the granting of prison leave.<sup>13</sup> When granting prison leave, an assessment is made whether the prisoner would comply with the conditions. This assessment is based on the information received on the behaviour of the prisoner during the sentence and his or her personal and criminal history. The prisoner has to submit to substance control, and in many cases, prison leave is supervised by electronic monitoring.<sup>14</sup>

International recommendations have been closely followed in the development of Finnish legislation. For example, the list of factors that should be taken into consideration for the granting of leave resembles the recommendations on prison leave adopted by the Council of Europe in 1982.<sup>15</sup> In the same way, the granting process defined by the Finnish Imprisonment Act is very similar to that described in the revised commentary to the Recommendation on the European Prison Rules. For instance, prisoners may be refused prison leave because they pose a high risk of reoffending.<sup>16</sup>

When discussing the earliest date of prison leave, it is important to notice that it is connected to the conditional release system, which has been described as semi-automatic. At the beginning of the sentence, the time of conditional release<sup>17</sup> is counted precisely, as well as the date when the prisoner becomes eligible for prison leave. Because of this, the first possible date of prison leave based on the length of the sentence is also informed to the prisoner and staff at an early stage. According to the Criminal Code, the postponement of conditional release is possible, but it is seldom used without the consent of the prisoner. Without consent it can take place only under exceptional circumstances if there is an evident danger that on release, the prisoner would commit an aggravated offence against life, health or liberty and the postponement of the release is necessary in order to prevent the offence.<sup>18</sup>

Special consideration of conditional release takes place only in life imprisonment. The conditional release of life-sentenced prisoners is considered by the Helsinki Court of Appeals. Because consideration of conditional release is a rare phenomenon in the Finnish Criminal Code, successful or breached prison leaves do not have an impact on the time of conditional release. However, prisoners may be placed outside of prison in probationary liberty under

<sup>12</sup> The Imprisonment Act, chapter 14, section 3

<sup>13</sup> The Imprisonment Act, chapter 4, section 6

<sup>14</sup> The Imprisonment Act, chapter 14, section 2

<sup>15</sup> Recommendation Rec(82) 16 of the Committee of Ministers to member states on prison leave, paragraphs 2 and 4

<sup>16</sup> The Revised Commentary to Recommendation CM/REC(2006)2 of the Committee of Ministers to member states on the European Prison Rules, p. 70

<sup>17</sup> Criminal Code of Finland, chapter 2 c, section 5. First timers in prison are conditionally released after serving half of the sentence, recidivists after two thirds of the sentence. For an offence committed below the age of 21 years, the proportions are one third and one half of the sentence.

<sup>18</sup> The Criminal Code of Finland, chapter 2 c, section 9

electronic monitoring for at most 6 months before conditional release.<sup>19</sup> Regarding the consideration of electronically supervised probationary liberty, successful prison leaves may be a positive argument of a prisoner's behaviour as well as his or her following of the sentence plan.<sup>20</sup>

### **Prison Leave for an Important Reason or for a Particularly Important Reason**

Prison leave can also be granted for an important reason. This kind of prison leave is not connected to the length of the sentence served in prison, so it can be granted even at the very early stages of the sentence. Prison leave for an important reason may be granted if the prerequisites referred above are met, and the granting of leave is important in order for the prisoner to attend an outside event concerning his or her family, healthcare, subsistence, work, education, social welfare, housing or for another corresponding reason. Because the occurrence of these events and needs is unpredictable, prison leave based on an important reason is not included in the sentence plan.<sup>21</sup>

A third kind of prison leave is based on a particularly important reason. A prisoner shall be granted prison leave under necessary supervision for a short period of time in order to visit a close relative or some other close person who is seriously ill or to attend the funeral of those persons or for another corresponding particularly important reason. This kind of prison leave can be granted for remand prisoners, too.<sup>22</sup> Prison leave based on a particularly important reason can only take place within the Finnish territory.<sup>23</sup> As such prison leave for a particularly important reason corresponds to both the Mandela Rules and the European Prison Rules.<sup>24</sup>

### **Length and Supervision of Leave**

The maximum amount of prison leave based on the length of the sentence is 3 days per each two-month period. However, these 3 days can be used in shorter parts, e.g. a prisoner can apply for prison leave 1 day at a time.<sup>25</sup> Prison leave based on an important or a particularly important reason is granted for a period necessary to attend to the matters forming the grounds for the leave. In all cases, reasonable travel time is added to the overall duration of prison leave.<sup>26</sup> For example, because of public transport and long distances, prison leave can effectively be longer.<sup>27</sup>

Besides these three types of prison leave, it is possible for prisoners to attend outside events for at most 12 h under escort, electronic monitoring or other necessary supervision. Typically, these activities take place in small open prisons, and they consist of short visits from the institution to a church, mosque, sportshall, library,

<sup>19</sup> The Criminal Code of Finland, chapter 2 c, sections 5 and 8–10

<sup>20</sup> The Probationary liberty under supervision Act chapter 1, section 9

<sup>21</sup> The Imprisonment Act, chapter 14, section 4

<sup>22</sup> The Imprisonment Act, chapter 14, section 5 and the Remand Imprisonment Act chapter 9 section 14

<sup>23</sup> The Imprisonment Act, chapter 14, sections 5 and 11

<sup>24</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rule 70 and Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, paragraph 24.7

<sup>25</sup> Keinänen et al. (2010), p. 103–107

<sup>26</sup> The Imprisonment Act, chapter 14, section 7

<sup>27</sup> Government proposal 263/2004, p. 187

shopping centre or other services if these services cannot be provided in the prisons.<sup>28</sup> The smallest independent open prisons have places for only 40 prisoners, and therefore, the services in the surrounding society are often used as a complement. For remand prisoners, short visits under escort are possible in order to attend to an urgent and absolutely necessary matter.<sup>29</sup> These short visits are not included in the prison leave statistics presented in Sect. 3.1–3.5.

Electronic monitoring is also used during prison leave, and it is regulated by the new law of 2015.<sup>30</sup> If electronic surveillance is used outside the prison, it can simultaneously act as a means for monitoring restraining orders which protect specific crime victims from individual suspects or offenders. Electronic monitoring during prison leave is discussed more thoroughly in Sect. 3.3.

There are special rules in legislation to make sure that visits outside the prison cannot be totally excluded. If a prisoner is serving a life sentence, the earliest date of prison leave based on the length of the sentence is usually 8 years. If prison leave after this quantum is not granted, the prisoner shall be allowed to have a visit under escort outside the prison at least once a year. A prisoner placed in a high-security ward may be granted prison leave for an important or particularly important reason but only under escort.<sup>31</sup> These special arrangements on their part fulfil the Council of Europe's recommendation to grant leave for offenders subject to security measures.<sup>32</sup>

### Conditions of Prison Leave, Violation of Conditions and Travel Costs

The written decision on prison leave contains necessary information concerning grounds for prison leave, conditions relating to moving outside the prison, abstinence from using intoxicating substances, supervision, behaviour of the prisoner, returning to the prison, and the consequences for a violation of the conditions.<sup>33</sup>

A disciplinary punishment may be imposed on a prisoner who violates the conditions of prison leave. If a prisoner commits an offence outside the prison, the provisions of the Criminal Code apply. Most prison leaves are granted in open institutions. If the conditions of leave are violated, besides disciplinary punishment, a prisoner may be transferred from an open institution to a closed prison.<sup>34</sup> In practice, this is often regarded as the most severe punishment.<sup>35</sup>

Prison leave is calculated as part of the sentence if the prisoner returns to the prison at the time determined in the conditions of the prison leave. If the prisoner does not return to the prison at the determined time, the excess is not counted as part of the sentence. However, the period of time may be counted as part of the sentence if the prisoner has had a compelling reason for not returning to the prison at the determined time or if the delay has been minor.<sup>36</sup>

According to the basic rule, the prisoner pays the travel costs related to prison leave. As an exception, travel costs related to prison leave granted for a particularly important reason are

<sup>28</sup> Government proposal 263/2004, p. 186

<sup>29</sup> The Remand Imprisonment Act chapter 9 section 14

<sup>30</sup> The Imprisonment Act, chapter 14, section 8

<sup>31</sup> The Imprisonment Act, chapter 14, sections 6–7

<sup>32</sup> Recommendation Rec (1982)16 of the Committee of Ministers to member states on prison leave, paragraph 7

<sup>33</sup> The Imprisonment Act, chapter 14, section 8

<sup>34</sup> The Imprisonment Act, chapter 6, section 2

<sup>35</sup> Keinänen et al. (2010), p. 98

<sup>36</sup> The Imprisonment Act, chapter 3, section 7

paid from state funds as well as the costs of short escorted visits. In addition, travel costs may be paid from state funds if this is justifiable due to the lack of means of the prisoner or the reason for the leave.<sup>37</sup>

## Decision-Making, Legal Protection and Legal Challenges of Prison Leave

### Power of Decision, Administrative Review and Appeal

The prison director, whose power is often delegated to deputy directors on security or operational fields, decides on prison leave. According to the Imprisonment Act, the power of decision-making cannot be delegated to lower levels of personnel. In special cases, the Central Administration of the Criminal Sanctions Agency (i.e. Prison & Probation Service) decides on prison leave. The decision is made by the Central Administration if prison leave is applied for by a prisoner serving a life sentence, an entire sentence or a combination sentence. In the same way, the Central Administration decides if leave is granted in order to travel outside Finland.<sup>38</sup> However, the Central Administration may delegate the power of decision-making concerning life, entire or combination sentences to the prison director. For example, this delegation usually takes place if a prisoner serving a life sentence has been on prison leave many times without violations.<sup>39</sup> The Central Administration made a decision on 508 applications of the total number of over 17,000 prison leave applications in 2018.<sup>40</sup>

According to the Constitution of Finland, everyone has the right to have a decision pertaining to his or her rights reviewed by a court of law or other independent organ for the administration of justice.<sup>41</sup> In this context, prison leave is not usually regarded as a legal right. It is prohibited to request for an administrative review of or appeal against a decision that concerns prison leave on the basis of the length of the sentence or for an important reason. However, certain decisions are regarded so important that they are eligible for an administrative review and a judicial appeal. These can be requested if it is a question of prison leave for a particularly important reason or compensation for travel costs related to prison leave.<sup>42</sup>

In the last-mentioned cases, the decision of a prison director can be reviewed by the regional director.<sup>43</sup> A decision made by the regional director may be appealed against to the administrative court of the judicial district where the decision was made by the regional director. An appeal against a decision of the Central Administration of the Criminal Sanctions Agency shall be lodged with the Helsinki Administrative Court. After the decision of the administrative court, it is possible to appeal to the Supreme Administrative Court but only if it grants a special leave to appeal, for example, based on the general importance of the legal question in the case.<sup>44</sup> However, these cases are rare in administrative courts.<sup>45</sup>

<sup>37</sup> The Imprisonment Act, chapter 14, section 10

<sup>38</sup> The Imprisonment Act, chapter 14, section 11

<sup>39</sup> Government proposal 263/2004, p. 187

<sup>40</sup> The database Vankitietojärjestelmä (VATI)

<sup>41</sup> The Constitution of Finland, section 21

<sup>42</sup> The Imprisonment Act, chapter 20, sections 1–2

<sup>43</sup> The Imprisonment Act, chapter 20, section 3. In Finland, the Criminal Sanctions Agency is organisationally divided into three criminal sanctions regions, which each have an assessment centre and prisons under them. These regions are led by regional directors (The Imprisonment Act chapter 1, section 4).

<sup>44</sup> The Imprisonment Act, chapter 20, sections 4–6

<sup>45</sup> Liimatainen and Rantala, p. 36–38; The Administrative Court of Eastern Finland 14/5714/1

## Oversight of Legality

The Parliamentary Ombudsman of Finland investigates complaints concerning prisons and makes inspections to places and facilities where individuals deprived of their liberty are detained, including prisons and remand prisons. These inspections take place as a part of the ombudsman's capacity as the National Preventive Mechanism against Torture (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>46</sup>

For example, the NPM has drawn attention to the prison leave practices in the prison of Mikkeli. The prison applied a policy concerning prison leave that diverged from those of other prisons without a justifiable reason. Due to policy differences and strict local standards, prisoners were not treated equally to inmates of other prisons when granting prison leave. The Ombudsman gave recommendations and required further development. On the follow-up visits to the prison of Mikkeli, it became apparent that the practices regarding prison leave had been modified to correspond to those of other prisons.<sup>47</sup>

In a similar way, the number of prison leaves granted was low in the prison of Turku. According to prisoners, this was due to the fact that their sentence plans had not been updated. These plans should be updated at least three times per year, and they should contain the necessary information for prison leave. The Central Administration of the Criminal Sanctions Agency was enquired about the measures it would take regarding these observations.<sup>48</sup>

Based on the complaints, the Ombudsman has also drawn attention to the processing of prison leave applications. When a decision on prison leave is made, the prisoner must be provided with an explanation of its grounds. This equals to the Council of Europe's recommendation, according to which the prisoner should be informed, to the greatest extent possible, of the reasons of a refusal of prison leave.<sup>49</sup> For example, if a negative decision is based on a prisoner's behaviour in prison, it has to be argued clearly which concrete circumstances are referred to. In the same way, if the negative decision is based on material that has to be kept secret, that principle has to be expressed in the decision.<sup>50</sup>

## Legal Challenges of Prison Leave

In the legal context of Finland, prison leave should be compared to other permissions which make it possible for prisoners to take part in activities in civil society. These are civilian work, education, other activities outside the prison and probationary liberty under supervision.

A prisoner may be given permission to work or to participate in a traineeship outside the prison during actual working hours. The wages and other terms of employment for the civilian work must not materially deviate from the terms generally complied with in the work in question. The civilian work shall be ordinary economic activity with regard to the financial and social factors relating to the workplace and the employer.<sup>51</sup>

<sup>46</sup> Parliamentary Ombudsman of Finland, summary of the annual report 2017, p. 32, 36, 40 and 43

<sup>47</sup> National Preventive Mechanism Annual Report 2017, p. 46–47; Parliamentary Ombudsman of Finland, summary of the annual report 2016, p. 96

<sup>48</sup> Parliamentary Ombudsman of Finland, summary of the annual report 2016, p. 96

<sup>49</sup> Recommendation Rec(82)16 of the Committee of Ministers to member states on prison leave, paragraph 9

<sup>50</sup> Eduskunnan oikeusasiamiehen kertomus 2017, p. 189

<sup>51</sup> The Imprisonment Act, chapter 8, section 6



In the same way, prisoners may participate in education outside the prison. Special permission, a so-called study permission, is needed. Also, a prisoner may be given permission, under sufficient supervision, to participate in such activities outside the prison that support the prisoner's rehabilitation, outside contacts and placement in society. This is called a permission for supervised activities outside the prison.<sup>52</sup>

Besides these, a prisoner may be placed outside the prison in probationary liberty under supervision, i.e. electronic monitoring, for at most 6 months before conditional release.<sup>53</sup>

On the basis of the length of the sentence, prison leave may be granted, when two thirds of the prison term – or half in special cases – has been served before the conditional release. On the other hand, civilian work, education, other activities outside the prison and probationary liberty under supervision are possible at all stages of the prison sentence without requirements considering the length of served time. This kind of flexible arrangement is more realistic and suitable for a situation in Finland, where the median sentence served in prison was 4.8 months in 2018.<sup>54</sup> When granting prison leave based on the length of the sentence, it is also required that at least 2 months must have been served in prison. This kind of stiff rule does not promote the prisoner's adjustment to society in short sentences.

In a similar way as prison leave, permissions for civilian work, education, other activities outside the prison and probationary liberty under supervision are usually decided on by the prison director or deputy directors. Compared to prison leave, in these cases the legal position of the prisoner is stronger, because an administrative review or a judicial appeal of a decision may always be requested.<sup>55</sup> All in all, permissions for civilian work, education, other activities outside the prison and probationary liberty under supervision offer a challenge to prison leave in their flexible usage and stronger legal status.

## National Statistics

### The Official Statistics of Prison Leaves

In Finland, the Criminal Sanctions Agency publishes an official statistical yearbook. The report, freely accessible online, provides information concerning unconditional prison sentences and community sanctions on a statistical level. The report contains information about the structure of prison population, prison activities such as rehabilitation programmes, statistical information of prison leaves, violation of their conditions, etc.<sup>56</sup>

In the statistical yearbook, the information on prison leave includes the total amount of applied, granted, cancelled and used prison leaves. The yearbook also gives an overview of the success of prison leaves: the number of prison leaves in which conditions have been fulfilled or breached. The most central figures of prison leaves during the last 10 years are presented in Table 1.

The total number of applications for prison leaves has risen during the past 10 years from 15,728 to 17,243, that is, 10%, respectively. These numbers include all types of prison leaves,

<sup>52</sup> The Imprisonment Act, chapter 8, section 9

<sup>53</sup> The Criminal Code of Finland chapter 2 c, section 8

<sup>54</sup> The database Vankitietojärjestelmä (VATI)

<sup>55</sup> The Imprisonment Act, chapter 8, section 14 and chapter 20, section 1; The Probationary liberty under supervision Act, sections 32 and 40

<sup>56</sup> Rikosseuraamuslaitoksen tilastoja 2018, p. 27 and 35

**Table 1** An overview of prison leaves in 2009–2018

	Applied		Granted		Cancelled		Used		Conditions fulfilled		Conditions breached	
	N	N	%	N	%	N	%	N	%	N	%	
<b>2009</b>	15,728	11,555	73	342	3	11,213	97	10,726	96	487	4.3	
<b>2010</b>	13,997	10,669	76	242	2	10,427	98	9932	95	495	4.7	
<b>2011</b>	14,768	11,016	75	293	3	10,723	97	10,256	96	467	4.4	
<b>2012</b>	14,749	10,984	74	318	3	10,666	97	10,212	96	454	4.3	
<b>2013</b>	15,921	11,829	74	399	3	11,430	97	10,921	96	509	4.5	
<b>2014</b>	15,579	11,639	75	327	3	11,312	97	10,868	96	444	3.9	
<b>2015</b>	16,550	12,708	77	405	3	12,303	97	11,832	96	471	3.8	
<b>2016</b>	17,776	13,813	78	465	3	13,348	97	12,857	96	491	3.7	
<b>2017</b>	17,852	13,844	78	464	3	13,380	97	12,926	97	454	3.4	
<b>2018</b>	17,243	13,557	79	390	3	13,167	97	12,701	96	466	3.5	

which can be applied based on the length of the sentence, for an important reason, a particularly important reason or their combinations. The national data does not contain information about the distribution of the number of applications per prisoner. So the same prisoner may have applied for prison leave several times per year on the same or different grounds.<sup>57</sup> In a similar way, the published data does not contain more detailed information on the grounds of applying for prison leave, i.e. how many of those have been applied for based on what grounds. The last-mentioned question is discussed in detail in Sect. 3.2.

Also, the amount of granted prison leaves has increased both in absolute numbers and as a percentage of all applications. The absolute number of granted prison leaves has risen from 11,555 to 13,557 and the approval rate from 73% to 79% in the years 2009–2018. The vast majority of prison leave is granted in open prisons. The total amount of granted leaves was 11,500 in open prisons (85%) and 2057 in closed prisons (15%) in 2018. Approximately 6% of prison leaves were granted under escort.<sup>58</sup>

If the prerequisites of prison leave are no longer met after a decision to grant the leave has been made, the leave may be cancelled. Typically, the cancellation is due to the positive result of a substance test, which can be carried out before leaving for prison leave and after returning from it. There were 390 cancellations in 2018, that is, 3% of all granted leaves, and this rate has been consistent.

Due to the rising number of applications and the ascendant approval rate, the number of used prison leaves has increased from 11,213 to 13,167, that is, 17% in 2009–2018. This change has been even more prominent if the simultaneous decrease of the prison population is taken into account. The daily average number of prisoners in 2009 was 3492 including sentenced prisoners, remand prisoners and those who were serving a conversion sentence for unpaid fines. Since then, the number has come down to 2910 in 2018.

One reason for the decline of the prison population is electronic monitoring. A new community sanction called the monitoring sentence was introduced in 2011. In the criminal sanctions system, the monitoring sentence is placed between community service and unconditional imprisonment. It is used to replace short unconditional prison sentences, and it can be

<sup>57</sup> The question of the cumulation of prison leave has been handled in earlier study. According to that, the application and granting of prison leave was clearly concentrated on the group of active prisoners (Vangeille anomuksesta myönnettävät luvat, p. 21–23).

<sup>58</sup> The database Vankitietojärjestelmä (VATI)

6 months long at most. The monitoring sentence has somewhat lessened the number of drunk drivers in prisons.<sup>59</sup>

Because remand prisoners and those who are serving a conversion sentence for unpaid fines are granted prison leave only in exceptional circumstances, it is more suitable to use the daily average of sentenced prisoners as a statistical baseline. The daily average of sentenced prisoners was 2840 in 2009 and 2304 in 2018. However, even the number of sentenced prisoners does not provide an exact picture. This number includes prisoners in probationary liberty under electronic monitoring. Their daily average has increased from 85 to 207 in the years 2009–2018. This also decreases the amount of those prisoners who would potentially apply for prison leave because they are already placed outside the prison, even though they are counted into the sentenced prison population. Excluding this group, the daily average of sentenced prisoners has decreased from 2755 to 2097 in 2009–2018, that is, 24%.

All in all, the decreasing number of inmates combined with the increasing number of applied, granted and used prison leaves indicates that the role of prison leave has become more central after the total reform of prison law in 2006.

Despite the increase of used prison leaves, the percentage of failed leaves has been decreasing. The percentage of breached prison leaves varied between 4.3 and 4.7 in the years 2009–2013 and between 3.4 and 3.9 in 2014–2018. In 2018, the percentage was 3.5. One reason for this might be the enhancement of electronic monitoring techniques over the years discussed in Sect. 3.3.

According to the internal prison leave statistics of the Criminal Sanctions Agency, there has been no change in commonly occurring types of breaches. The conditions of prison leaves were breached 466 times in 2018. The most common misdemeanours were breaching the determinated return time (265) and returning back to prison under the influence of intoxicating substances (102). Only ten prisoners committed a crime or were suspected to having committed an offence during the prison leave.<sup>60</sup>

## Different Types of Prison Leaves

Prison leave can be based on the length of the sentence, an important reason, a particularly important reason or their combinations. For this study, the number of different types of used prison leaves was collected from the database of the Criminal Sanctions Agency from 2009 to 2018 (Table 2).<sup>61</sup>

In 2009, the length of the sentence was the most common ground for used prison leave, 66% of all cases of leave. Since then, its percentage has gradually decreased to 45% in 2018. At the same time, the percentage of prison leave based on an important reason has increased from 30% to 50%. Prison leave for a particularly important reason has been permanently rare, only 1 % of all prison leaves, the absolute number being 132 in 2018. Regarding combinations, almost all of them consist of prison leave based on the length of the sentence combined with prison leave for an important reason.

At the moment, an important reason is the most common ground for prison leave, the absolute number of which has almost doubled from 3388 to 6583 in 2009–2018. This indicates a structural change from the stiff rules connected to prison leave based on the length of the

<sup>59</sup> Rikosseuraamuslaitoksen tilastoja 2018, p. 38 and 43

<sup>60</sup> The database Vankitietojärjestelmä (VATI)

<sup>61</sup> The database Vankitietojärjestelmä (VATI)

**Table 2** Different types of used prison leaves in 2009–2018

	Total number of prison leaves N	Length of the sentence		Important reason		Particularly important reason		Combination of different types	
		N	%	N	%	N	%	N	%
<b>2009</b>	11,230	7375	66	3388	30	128	1	339	3
<b>2010</b>	10,434	7055	68	2947	28	110	1	322	3
<b>2011</b>	10,753	6802	63	3575	33	97	1	279	3
<b>2012</b>	10,695	6421	60	3872	36	93	1	309	3
<b>2013</b>	11,458	6335	55	4613	40	135	1	375	3
<b>2014</b>	11,333	5917	52	4925	44	111	1	380	3
<b>2015</b>	12,347	6015	49	5818	47	108	1	406	3
<b>2016</b>	13,384	5757	43	6999	52	109	1	519	4
<b>2017</b>	13,439	6180	46	6571	49	103	1	585	4
<b>2018</b>	13,226	5908	45	6583	50	132	1	603	5

sentence to a more flexible and practical system of prison leave granted for an important reason.

### Open Prisons and Electronic Monitoring During Prison Leave

The approval rate of prison leave differs clearly between open and closed prisons. In open prisons 85% of prison leave applications were granted in 2018, whereas in closed prisons, only 52%.<sup>62</sup> This is partly due to the fact that in long sentences, the transfer to an open institution usually takes place at the later stage of the sentence. Timewise this transfer quite often coincides with the possibility to apply for prison leave based on the length of the sentence. A sentenced person may also be placed in an open institution directly from freedom if the sentence is less than 2 years long and the risk of recidivism and substance abuse is low.<sup>63</sup> As such, these background factors tend to ascend the approval rate of all types of prison leave.<sup>64</sup>

Electronic monitoring of prison leave has been regulated by law since the year 2015.<sup>65</sup>

Five open prisons or units are in a special position because electronic equipment is used there to supervise the prisoners 24/7.<sup>66</sup> The equipment comprises of an ankle tag and a monitoring device. In these five prisons, the inmates must always be contactable with the monitoring device when being within the prison perimeter or outside of it, for example, on prison leave. In other prisons, the use of electronic monitoring under prison leave is based on discretion case by case. Before electronic monitoring, mobile phone positioning was used to some extent.<sup>67</sup>

Constant electronic monitoring is used in the open prisons or units of Kuopio, Ojoien, Oulu, Suomenlinna and Vanaja. Of all 13,557 granted prison leaves in 2018, 4492 were granted in these units. The conditions of prison leave were breached 95 times, which is 2.1% of all cases. In other open prisons, without constant electronic monitoring, the conditions were

<sup>62</sup> Keinänen et al. (2010), p. 36 and 39

<sup>63</sup> The Imprisonment Act, chapter 4, section 9

<sup>64</sup> The Imprisonment Act, chapter 14, section 2

<sup>65</sup> The Imprisonment Act, chapter 14, section 8

<sup>66</sup> In open prisons, electronic monitoring can take place both inside the prison and when offenders are working or studying outside the prison (The Imprisonment Act, chapter 4, section 1)

<sup>67</sup> Pajuja, p. 74–76

breached in 277 cases of the total of 7008, that is, 4.0% of all. In closed prisons, 2057 prison leaves were granted and 94 breached, which is 4.6%.<sup>68</sup>

Because of the short period of time, there is no thorough up-to-date statistical study available concerning the impact of electronic monitoring during prison leave. However, the breaching rate in open prisons using electronic monitoring 24/7 is remarkably low. At the same time, electronic monitoring can possibly lead to a higher approval rate of prison leave.

### What Is the Proportion of Those Prisoners Who Apply for Prison Leave?

There are no up-to-date statistical studies in Finland concerning the proportion of prisoners who apply for or do not apply for prison leave. For this study, this was analysed based on the database of the prison administration.<sup>69</sup> Table 3 shows the number and percentage of those prisoners who have applied for prison leave divided by the length of the sentence. These numbers include all sentenced prisoners who have been released in the years 2009–2018.

The application rate of prison leave is closely connected to the length of the sentence. Of those released prisoners who had served longer than 1 year in prison, 90–93% had applied for prison leave in 2009–2018. If the length of the sentence was between 6 and 12 months, the application rate was 79–85%, and for the sentences between 3 and 6 months, the rate was 66–72%. For the sentences shorter than 3 months, the rate went down to 13–20%. In the last group, the low rate is partly due to the fact that at least 2 months must be served in prison before prison leave based on the length of the sentence can be applied for. However, it is possible to apply for prison leave for an important reason or for a particularly important reason even then.

Among those who applied for prison leave, foreign nationalities were clearly underrepresented. About 13% of the daily average of sentenced prisoners had foreign nationality in 2018.<sup>70</sup> More than half of them did not have a municipality of residence in Finland.<sup>71</sup> Although prison leave may also be granted to foreigners who do not live permanently in the country to travel abroad, this is exceptional. In practice, prison leave to a place outside of Finland has been applied for only to Sweden and Estonia.<sup>72</sup> Based on this data, it is not possible to evaluate whether foreign nationality also had a negative impact on those cases in which the prisoner has a municipality of residence in Finland and he or she applied for the leave within the country.

In a similar way, homeless persons are at risk of being left out of the prison leave system. The lack of permanent accommodation is a practical hindrance for the application of prison leave. In special circumstances, prison leave may be applied and granted for places like hotels, motels or hostels. However, this does not mean that prison staff would actively search and offer this kind of alternative for marginalized and insolvent prisoners.<sup>73</sup>

<sup>68</sup> These percentages differ slightly of those in section 3.1, because here they are counted as a percentage of granted prison leaves, not of used leaves.

<sup>69</sup> The database Vankitietojärjestelmä (VATT)

<sup>70</sup> Rikosseuraamuslaitoksen tilastoja 2018, p. 27 and 35

<sup>71</sup> Rikosseuraamusasiakkaat 1.5.2018, p. 8

<sup>72</sup> Government proposal 263/2004, p. 187, Keinänen et al. (2010), p. 43 and Kotoaro/The Criminal Sanctions Agency, July 11, 2019. In practice, this is a tradition established in Northern Finland, where family relations extend over the Swedish border.

<sup>73</sup> Keinänen et al. (2010), p. 89

**Table 3** Application for prison leave among released prisoners in 2009–2018

	Released prisoners per year		Had applied for prison leave during the sentence		Length of the sentence 0–3 months, % had applied		Length of the sentence 3–6 months, % had applied		Length of the sentence 6–12 months, % had applied		Length of the sentence over 1 year, % had applied	
	N		N	%	N	%	N	%	N	%	N	%
<b>2009</b>	4605		2258	49	272	13	531	68	553	81	902	91
<b>2010</b>	4282		2060	48	253	13	421	66	492	80	894	91
<b>2011</b>	4052		2029	50	265	14	456	71	474	81	834	91
<b>2012</b>	3792		1987	52	251	15	378	71	533	81	825	90
<b>2013</b>	3647		1977	54	244	16	384	67	498	81	851	90
<b>2014</b>	3439		1881	55	254	17	368	72	405	79	854	90
<b>2015</b>	3410		1835	54	233	16	333	68	425	81	844	91
<b>2016</b>	3286		1893	58	266	20	374	72	411	83	842	92
<b>2017</b>	3253		1929	59	261	20	346	71	446	85	876	92
<b>2018</b>	3219		1765	55	212	15	291	66	427	85	835	93

### Prison Leave: Core Findings of an Earlier Research

In their study, Keinänen et al. (2010) analysed the impact of the prison law reform on prison leave. Their data included about 15,000 prison leave decisions which corresponded to the total amount of applications in 2008.<sup>74</sup> The goal of the research was to empirically study the uniformity of prison leave practices. According to the Constitution of Finland, everyone is equal before the law. Prisoners must not be discriminated against, without an acceptable reason, on the basis of their race, national or ethnic origin, colour, language, sex, age, family status, sexual orientation, state of health, disability, religion, social opinion, political or professional activity or any other reason relating to their person.<sup>75</sup>

Keinänen et al. studied how these principles were followed in the practical decision-making of prison leave. They examined which background factors of an individual prisoner had an influence on whether or not prison leave was granted and which factors had an influence on whether or not the conditions of a prison leave were breached. The examination of the prison leave applications of each prison revealed that there were major differences in the probability of granting prison leaves. This was emphasized especially in the case of closed prisons.<sup>76</sup>

The regression analysis of the prison leave data revealed that there are positive and negative factors influencing the granting of prison leave. The impact of a prisoner's age is clear; the older the applicant is, the more likely the permission is granted. In the same way, first timers in prison were granted prison leave more often than recidivists. The approval rate of prison leave was higher for women than for men. In terms of marital status, married applicants had a positive chance on obtaining leave, too.

Negative factors included the type of crime. Those sentenced for drunk driving were granted less prison leave than other groups, or more widely, all those crimes that were connected to acute substance abuse had a negative impact. Those unable to work were granted less prison leave, which at least partly was due to acute addiction. The amount of disciplinary

<sup>74</sup> Keinänen et al. (2010), p. 71

<sup>75</sup> The Constitution of Finland, section 6 and the Imprisonment act, chapter 1, section 5

<sup>76</sup> Keinänen et al. (2010), p. 36 and 39

punishments was a negative factor, too. Foreign nationality had a negative impact compared to Finnish citizens.<sup>77</sup>

The type of prison leave was also relevant. Prison leave for a particularly important reason was most often granted, and prison leave based on the length of the sentence had a high approval rate, too. On the other hand, prison leave for an important reason had a lower approval rate. One reason for this is the fact that the last-mentioned leave is not connected to the time already served in prison, and it can be applied for even at the beginning of the sentence.

Keinänen et al. examined which characteristics of a prisoner were statistically connected to the breaching of prison leave conditions. Negative factors predicting the breaching of prison leave conditions were the amount of previous prison terms, sentence for drunk driving or a narcotics offence, use of alcohol and drugs and previous breaches that had led to disciplinary measures during the current prison term. Successful factors were the prisoner's age being over 50 years, marriage as marital status, social ties and the possibility to get a prison leave based on the length of the sentence term.

There was variation between prisons regarding when prison leave was considered breached. Some prisons had zero tolerance in regard to substance use or being late, whereas other prisons allowed short delays or slightly positive substance test results. The disciplinary punishments imposed for breaching prison leave conditions varied between prisons, too. The most often used official disciplinary punishments were caution and solitary confinement. However, in practice, supplementary sanctions such as the change of prison from an open to a closed institution are considered the most significant. In a similar way, breaching of prison leave conditions leads to the stricter consideration of a prison leave in the future.

According to the prison staff, the legislation on prison leave was considered adequate on the whole. However, there was a wish for more detailed directions on the criteria of an important reason, which would contribute to the elimination of the differences between prisons.<sup>78</sup>

## Conclusion

When the total reform of prison legislation came into force in 2006, the most common ground for prison leave was the length of the sentence. From a legal point of view, its structure is old-fashioned compared to other permissions which make it possible for prisoners to take part in activities in civil society. Civilian work, education, probationary liberty under electronic monitoring, etc. are possible at all stages of the prison sentence without requirements considering the length of served time.

During the past 10 years, prison leave based on an important reason has grown into the most common type of prison leave. This indicates a structural change from the rigid legal rules to a more flexible practice. In the same way as the aforementioned permissions, prison leave granted for an important reason is not connected to the time already served in prison. The legal challenge here is the fact that prison leave based on an important reason is not included in the sentence plan. This is problematic, because adjustment to society can be improved by this kind of prison leave especially. It may be granted for a prisoner to attend an outside event concerning his or her family, healthcare, subsistence, work, education, social welfare or

<sup>77</sup> Keinänen et al. (2010), p. 71–76

<sup>78</sup> Keinänen et al. (2010), p. 91–95 and 110–113

housing. Another legal challenge is the fact that there are differences in granting criteria between prisons. However, it is difficult to react directly to these because an administrative review or a judicial appeal of these decisions may not usually be requested.

At the same time as the number of inmates has decreased, the amount of applied, granted and used prison leaves has increased. These numbers indicate that the role of prison leave has become more central after the total reform of prison law. Also, the percentage of breached prison leaves has gone down, and only a few prisoners have committed a crime during their prison leave. The breaching rate of prison leave has been exceptionally low in the open prisons which use electronic monitoring 24/7. Because of the short period of time – the new law came into force in 2015 – it is too early to evaluate the impact of electronic monitoring during prison leave.

Besides these positive trends, it is important to study the coverage of prison leave. The application rate of prison leave rose over 90% among those prisoners who served longer than 1 year in prison. From this high level, the application rate gradually goes down in shorter sentences, and for the sentences under 3 months, it has been less than 20%. In any case, especially those serving long sentences seem to be well aware of the prison leave system and taking into account the high percentage of granted prison leaves, the system is functioning quite widely among them, too.

There are no up-to-date studies concerning those prisoners who do not apply for or are not granted prison leave although they fulfil the requirements defined in law. However, it seems that prisoners of foreign nationality and homeless persons belong to risk groups. Another risk factor is the fact that there have been major differences in the probability of granting prison leave in different prisons. This has been emphasized especially in closed prisons.

**Funding Information** Open access funding provided by University of Eastern Finland (UEF) including Kuopio University Hospital.

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