

Access to Justice for Prisoners

—

focus on contact to
the outside world

ANETTE STORGAARD

AARHUS UNIVERSITY, LAW DEPARTMENT

AS@LAW.AU.DK

STOCKHOLM SYMPOSIUM 2019

ULLA BONDESON MINDESESSION

Access to Justice (AtJ)

Outside Scandinavia (mainly USA): AtJ is a matter for lawyers and Sociology of law.

Research is mainly concerned with two practical matters:

- *do* people identify their current concerns as fully or partly of legal character, when they are so ?
- *do* people have access to lawyers and/or legal advice (**legal aid**) to a degree that makes it possible to have their case tried in court if they find it relevant ?

In the third world we see many ethnographic studies focusing on specific groups like women in a specific tribe and their (lack of) AtJ.

In Scandinavia we hardly hear the term AtJ. But we often hear the term **Legal aid**. And it seems like legal aid is (more or less) the Scandinavian term for AtJ.

Two theses

On a broader conceptual level, AtJ scholarship can be delineated into two distinct theses

1) *Practical*, entails a focus on the practical means through which people can achieve AtJ (access to courts and legal counselling/legal aid)

2) *Democratic*, which concerns broader questions regarding participation, and ultimately the means to affect justice as an end in itself (Leitch 2013: 229). More directly: Is justice always just ? Or are all legal acts and decisions made by legal authorities always justifiable?

AtJ for Prisoners

First main step might be to focus on prisoners' legal rights to complaint to the courts and/or to a higher administrative level than where the decisions (that they disagree with) was made.

Here only two very tiny elements will be illuminated, though.

- 1) Legal aid for prisoners (the practical thesis)
- 2) Prison leave, transparency and equality in decision making (the democratic thesis)

Legal aid for prisoners

No doubt that prisoners have the right to legal counselling, i.e. see a lawyer or meet a volunteer legal aid person.

European Prison Rules: Article 23.4: "Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential."

Danish Corrections Code (§56) states that correspondence (letters) between a lawyer and a prisoner is confidentialcannot be opened nor read !

Lawyers vs. legal aid offices

Private company vs. State financed legal aid (no salary – often students)

In civil society legal aid is seen as the way to secure AtJ for low income groups

Only few prisoners can afford a private lawyer

Privacy (letters, telephone etc.) is protected in the constitution (but not always for prisoners)

Denmark:

For prisoners privacy in contact with lawyers is protected – but not with legal aid

Decision making

The Corrections Act is only the top of the iceberg – Ministerial Orders, internal instructions etc. contain multiple detailed instructions to be followed

The reception of visitors, sending and receiving letters and contact by telephone are, with certain limitations such as optional monitoring, presented as legal rights, whereas prison leave is a possibility for the prisoners.

Prison leave must be granted based on legal sources and discretionary power

Prison leave – the Corrections Act

- The purpose of the prison leave must be fairly motivated by education, work relation, treatment, family matters or other personal considerations.
- There can be no firm reasons to presume that the prisoner would commit new crime, escape or in any other way misuse the prison leave.
- Prison leave cannot be granted if there is reason to assume that this might lead to loss of public faith in the law enforcement.
- (2014) Prison leave cannot be permitted if the police is of the opinion that a prisoner is connected to a group ('gang'), which is in conflict with another group, and (according to the police) another member of the group has used weapons or explosives.
- (2016) Prison leave cannot be permitted if the prisoner within the most recent three months of imprisonment has been imposed with a disciplinary measurement for illegal possession of a mobile phone. Exceptions to this rule may be made in rare cases.

Prison leave – supplementary sources

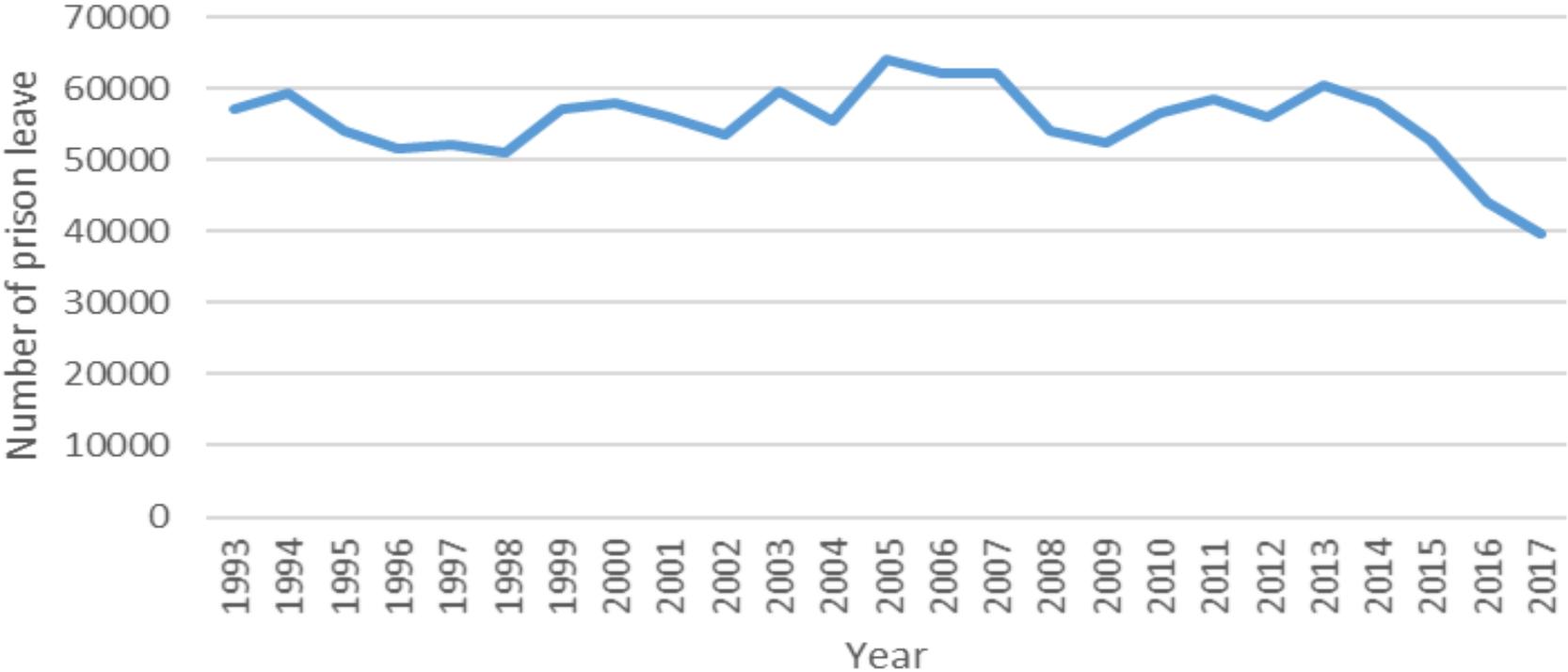
Detailed regulation on:

Division of decisive power (one staff member, the institution, the region, the department)

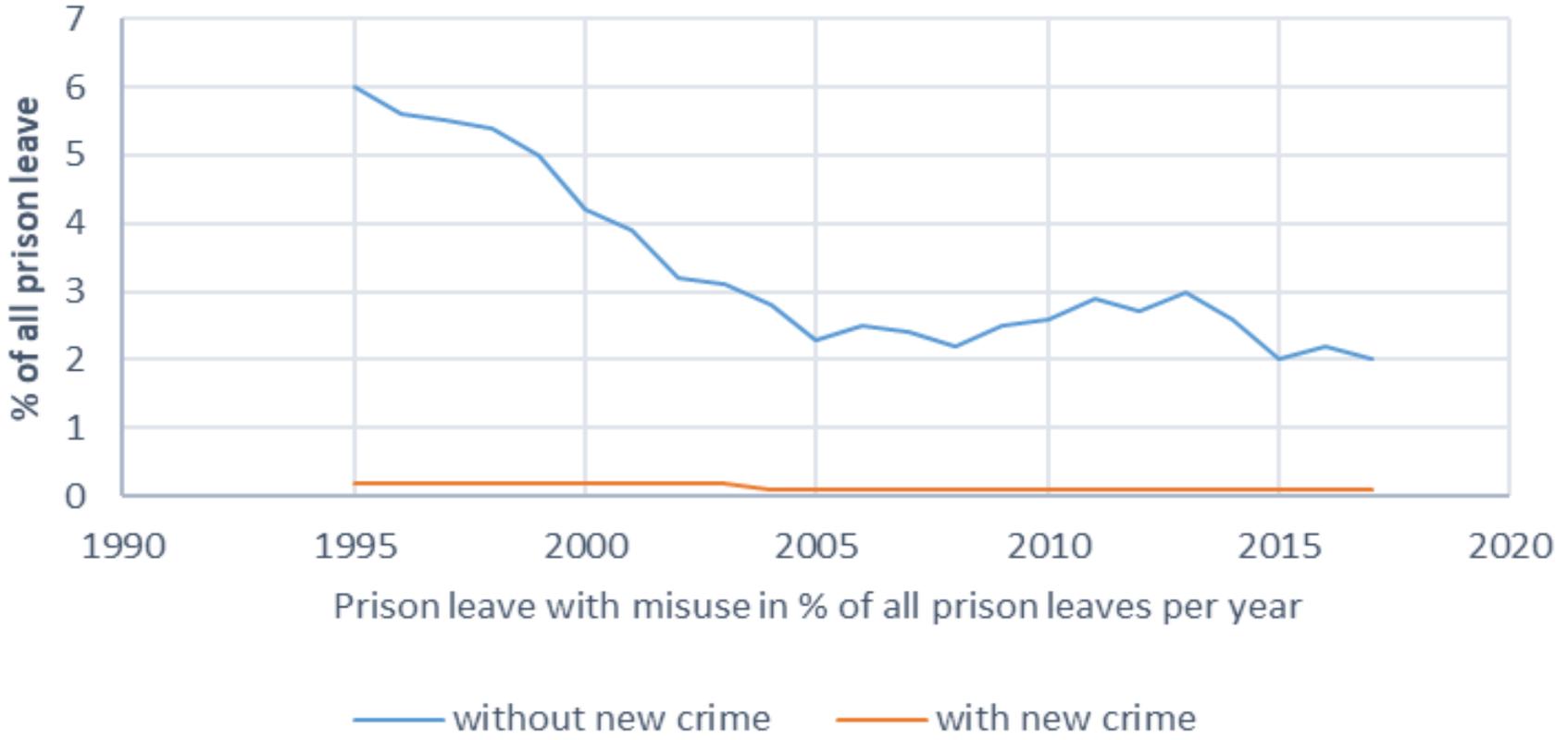
Hearing of the Commissioner of Police and consequences of negative answers

Time to be spent in prison before different types of prison leave can be granted

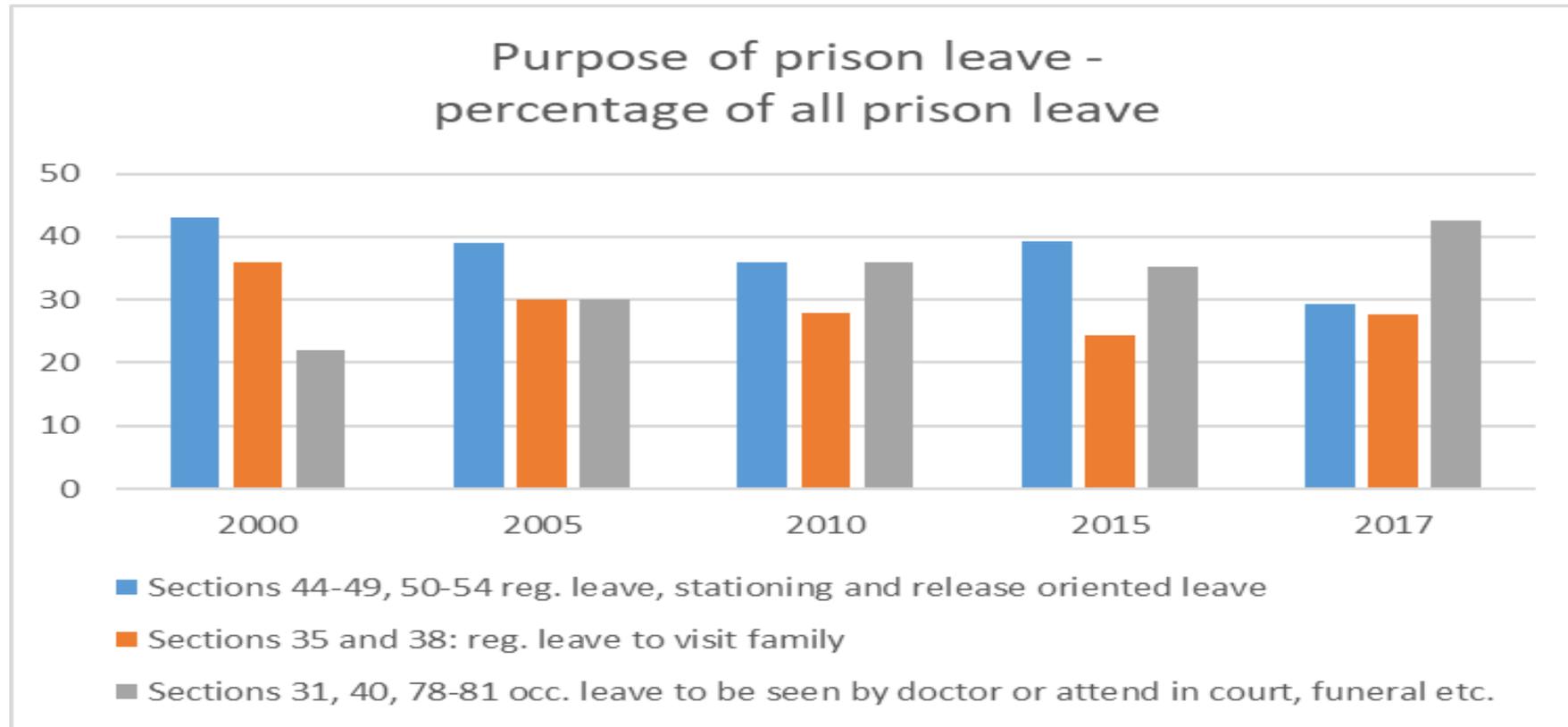
Prison leave



Misuse of prison leave



The rationales: Prepare for the release and discipline in prison



Access to Justice

Convicted persons and prisoners are relevant groups to include in AtJ-studies

The legal regulation and the practices concerning contact to the outside world is one example – both the practical thesis and the democratic thesis

The combination of discretionary power and strict legal regulation is demanding – sudden political intervention disturbs the balances and puts AtJ at risk.