Voluntary Contribution
"Reducing use of custodial sentences in line with European standards"
Project in Armenia

Reducing the use of custodial measures and sentences in the Republic of Armenia

ASSESSMENT REPORT

Iuliana Carbunaru and Gerard de Jonge[1]

Yerevan 2013

[1] Parts I-IV are drafted by Gerard de Jonge, emeritus professor of Detention Law at the Maastricht University, The Netherlands. Part V is drafted by Iuliana Carbunaru, Director of the Probation Directorate of the Romanian Ministry of Justice. They both are responsible for the entire text.

Table of contents

List of abbreviations

APC	**Armenian Penitentiary Code**
ASD (ASU)	**Alternative Sanctions Division (Alternative Sanctions Unit) of the Penitentiary Department of the Ministry of Justice**
CC	**Criminal Code**
CCP	**Code of Criminal Procedure**
CoE	**Council of Europe**
ECHR	**European Convention for the Protection of Human Rights and Fundamental Freedoms**
ECtHR	**European Court of Human Rights**
EM	**Electronic Monitoring**
IPC	**Independent Parole Commissions**
MoJ	**Ministry of Justice**
NGO	**Non-governmental Organisation**
OSCE	**Organisation for Security and Co-operation**
PD (CED)	**Penitentiary (Criminal-executive) Department of the Ministry of Justice**
PSRA	**Probation Service of Armenia**
RA	**Republic of Armenia**
SWOT	**Strengths, Weaknesses, Opportunities & Threats**

Executive summary

This report presents an initial assessment of the present use of non-custodial sanctions and measures in the Republic of Armenia in the pre-trial, trial and post-trial phase. The report presents furthermore a number of recommendations addressing the question how the use of the *existing* non-custodial sanctions and measures could be enhanced and what kind of *new* non-custodial measures and sanctions could be introduced in the law. On the institutional level special attention is paid to the planned establishment of a probation service that is expected to play a crucial role in the implementation of non-custodial measures and sentences.

Part I of this report deals with alternatives to **pre-trial detention**. Though this assessment initiative of the Council of Europe seems to focus only on reducing the use of custodial *sentences* for offenders, it is obvious that pre-trial detention as a preventive *measure* more often than not is followed by a custodial sentence. Enhancing the use of alternatives to pre-trial detention may help to reduce the use of custodial measures and sentences (the inflow in the prison system) and should be addressed here as well.

The evidence gathered shows that in Armenia, pre-trial detention, counter to international standards, is not used as a measure of last resort. On the contrary: requesting and ordering pre-trial detention appears to be the rule. It proves almost impossible to end pre-trial detention before the start of the trial, after which it will last until the final verdict. Granting of bail or another non-custodial preventive measure is rare. The present practice partly can be attributed to the lack of viable alternatives for "arrest" in the Code of Criminal Procedure (CCP) and to the absence of a body or organisation (like a probation service) able to monitor the compliance of suspects with non-custodial preventive measures. On the other hand the prosecutors and courts seem not willing or able to bring the practice in line with the judgements of the European Court of Human Rights (ECtHR) concerning the use of pre-trial detention and with the recommendations of the Council of Europe. There are no indications that the present sub-optimal situation will change unless there are strong legal or other incentives to change the course of the responsible criminal justice agencies.

Part II of this report touches on the subjects of **decriminalisation, depenalisation and sentencing policy**. Not only the enhancement of the use of the existing non-custodial sanctions and/or the introductions of new "alternative sanctions" can take the strain off an overburdened prison system. Parallel to this approach decriminalisation of certain offences, lowering maximum sentences, abolishing mandatory minimum sentences and promoting a consistent sentencing policy can help to reduce the use of custodial measures and sentences.

Decriminalisation and depenalisation are stated goals of the *2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia* (henceforth: *Strategic Programme*), but no specific initiatives for realisation of these goals were articulated in the Programme. In the available texts concerning the reform of the Armenian criminal justice system no reference was made of to development of a sentencing policy, although research of the American Bar Association signalled a lack of consistency in sentencing as a "major problem". The recommendations added to this Part urge the authorities to consider these issues in the process of drafting a new Criminal Code and a new Code of Criminal Procedure.

Part III of this assessment concerns **non-custodial sanctions and measures**.

The Criminal Code provides for (some) non-custodial sanctions and provides also for conditional non-execution of imprisonment (probation). The evidence gathered here shows that these options are either not used at all or not fully. This shortcoming is ascribed to the lack of a professional organisation that could implement these non-custodial sanctions and measures, which consequently make the courts reluctant to use these sanctions and measures.

Though the Alternative Sanctions Division of the Penitentiary Department of the Ministry of Justice (ASD) is responsible for the implementation of non-custodial sanctions and the enforcement of "parole" (conditional non-execution of imprisonment), in practice its work is restricted to simply monitoring whether the offenders report regularly at the offices of this division. The ASD, which lacks personnel with training in forensic social work, is not equipped to guide and assist the offenders that are subject to their monitoring.

In **Part IV** the subject of **early release** is discussed. Before 2006 parole was being granted too quickly, but the introduction of so-called "independent" commissions, which seem to be dominated by the police, according to the available statistics has proven to be a real "parole-stopper". The present early release system, wherein deserved or undeserved disciplinary sentences are an important reason *not* to grant parole, gives prison guards the opportunity to manipulate prisoners.

The absence of pre-release programmes and a balanced system of prison leave to prepare convicts for re-entry into free society has a consequence that virtually none of the prisoners are being prepared for the day they can leave the penitentiary.

The present early release system appears so unjust and ineffective that reform of the present three-tier procedure seems to offer no solution. The assessment format used by the prison administrations is arbitrary, the criteria used by the independent commissions are strictly confidential and the courts have no real "say" in whom to release on parole and who not. Unless the now envisaged new Criminal Code (CC) will enter into force soon and will provide for a fair and transparent early release procedure, the present procedure should be replaced by a new one by amending the present Criminal Code, Penitentiary Code, relevant by-laws and decrees. **The introduction of a mandatory early release system as described in the CoE Recommendation Rec(2003)22 on conditional release (parole)[2] offers the best model and should be taken into consideration.**

Part V of this report covers a major element of the intended reform of the penal system: the introduction of a **probation system**, separate from the Prison Service, as an independent organisation under the Ministry of Justice (MoJ). A draft Probation Law has been received by the experts later on in the assessment process and thus cannot be commented in this report. Instead, this report offers a series of detailed recommendations as "food for thought" for the drafters of this law. The key message is that the expectations should be realistic because it takes a lot of planning, time and money to develop a professionally established probation service.

[2] https://wcd.coe.int/ViewDoc.jsp?id=70103&Site=CM

REDUCING THE USE OF CUSTODIAL MEASURES AND SENTENCES IN ARMENIA

INTRODUCTORY REMARKS

Overcrowding of prisons as an incentive for reform of the penal system

One of the major aims of the *2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia* is to reduce the present overcrowding of the prisons by developing community sanctions and measures as alternatives to imprisonment.

A situation of overcrowding can be said to exist when the factual population exceeds the formal (official) capacity of the penitentiary institutions. The degree of overcrowding can be measured by dividing the available personal space (square metres floor space per person) in the cells and dormitories by the total amount of prisoners. If the result is less personal space per prisoner that he/she is formally entitled to, there exists a situation of overcrowding. The degree of overcrowding is the deviance in % of the official norm.

The legal norm of living space for prisoners in Armenia is "at least 4 m^2" (Art. 73 Penitentiary Code)[3]. This norm is repeated in the "*Order nr. 30-N of the Minister of Justice of 28 February 2012 on definition of the types and crowding limits of penitentiary institutions, as well as the minimum living space per one convict or pre-trial detainee*" which states that the defined minimum living space should be 4sq.m.

The statistics provided by the Penitentiary Department of the MoJ show a sharp decrease of the rate of overcrowding since 2009. As of 1 January 2009 the penitentiary institutions were overcrowded by 90%, on the same date in 2010 by 98%, and in 2011 17%, on 1 January 2012 by 3% and on 1 January 2013 the penitentiary institutions a slight increase was noted when the overcrowding rate was 8%.[4]

The sudden drop in the overcrowding rate in 2011 was caused by an incidental, large-scale amnesty in the previous year. This created a temporary relief for the prison system, but the question is whether the reduction of the prison population is sustainable when the criminal justice system keeps on operating like it did before.

According to the Penitentiary Department of the Ministry of Justice (PD) a protocol decree of the Government of RA in 2009 approved the programme of reforms of the infrastructure of penitentiary system, and it is planned to construct new penitentiary institutions by 2018 in order to combat overcrowding. However, where overcrowding of prisons is of a structural and systematic nature, the building of extra penitentiaries may prove to be an expensive, temporary and ultimately an ineffective solution, when the criminal justice system that caused the overpopulation continues to operate in the same manner. It goes without saying that in a situation of overcrowding violations of Article 3 of the ECHR always are predictable. This is why the ECtHR said in its judgement in the case of *Orchowski v. Poland*: "If the State is unable to ensure

[3] This would be 6 m^2 per life-sentenced prisoner (Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 7 December 2011, Strasbourg, 3 October 2012, par. 23.

[4] Data provided by PD in 2013

that prison conditions comply with the requirements of Article 3 of the Convention, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of sentence."[5]

Methodology

The necessary information about the subjects addressed in this report was obtained by a) collecting statistical data[6] on the use of pre-trial detention, sentencing practice, imprisonment and the early release (parole) system; b) studying the relevant national legal and policy documents; c) studying reports of national and international organisations concerning the Armenian criminal justice system and d) interviewing key representatives of the Presidential Administration, Ministry of Justice, the General Prosecutor's Office (the Department supervising the implementation of sanctions and measures), the Judiciary, Police, the Penitentiary Administration, the Bar Association and of two NGOs that are active in the field of criminal justice.[7]

Structure of the report

This assessment report is divided into 5 separate, but interdependent parts: I) Alternatives to pre-trial detention; II) Decriminalisation, depenalisation and sentencing policy; III) Alternatives to custodial measures and sentences; IV) Early release and substitution of sentences and V) Probation.

Parts I - IV have basically the same structure, all of them starting with a description of the legal framework concerning the subject and – where applicable - the plans for legal reform. This is followed by a description of the current practice or situation, as far as this can be deduced from the available statistical data, reports from national and international organisations and the outcome of interviews. Then the related international standards, case law (if any) and (best) practices are being described.

The structure of Part V of this report, which deals with the planned establishment of a Probation Service, which presently does not exist in Armenia, is different from the previous Parts due to the fact there is no current probation service that can be assessed.

All Parts are completed with one or more paragraphs that offer an assessment of the deficiencies of the present legal provisions and practice and present recommendations for reform.

The report is completed with 4 annexes:

- Annex 1. List of recommendations;
- Annex 2. List of persons having been interviewed;
- Annex 3. The standards for evaluations of an inmate and his/her behaviour for the purposes of early conditional release
- Annex 4. Notes on measuring the outcome of the intended reforms.

[5] ECtHR 22 October 2009, *Orchowski v. Poland,* appl. no. 17885/04, par. 153.
[6] With the help of questionnaires, prepared by the authors.
[7] A list of interviewees is added as Annex 2

PART 1. ALTERNATIVES TO PRE-TRIAL DETENTION – INFLOW CONTROL

The *Social Justice* report[8] on creation of a probation service in Armenia describes the situation in Armenia as follows: "Research shows that pre-trial detention of the accused is applied as a preventive measure in the vast majority of cases. (…) It is noteworthy that, when pre-trial detention is ordered, the defendant normally ends up being sentenced to imprisonment (…)." It follows that enhancing the use of alternatives to pre-trial detention may help to reduce the use of custodial measures and sentences (the inflow in the prison system) and should be addressed here as well. A conscious and consequent regulation of the inflow of detainees in remand prisons seems to be a key factor in the battle against overcrowding in the prison system.

1.1 Present legal provisions

1.1.1 Overview of the pre-trial procedure

The relevant Armenian **national legislation concerning pre-trial detention** is conveniently summarised by the ECtHR in §§ 26-41 of its judgement in the case of *Poghosyan v. Armenia*.[9] The relevant Articles of the Code of Criminal Procedure (CCP) are described as follows:

"26. According to Article 65, the accused is entitled, inter alia, to file motions.

27. According to Article 134 §§ 1 and 4, preventive measures are measures of compulsion imposed on the suspect or the accused. They include, inter alia, detention and bail. Bail is considered an alternative preventive measure to detention and is imposed only if a court decision has been issued to detain the accused.

28. According to Article 136 § 2, detention and bail are applied only by a court decision upon the investigator's or the prosecutor's motion or of the court's own motion during the court proceedings. The court can replace detention with bail also upon the motion of the defence.

29. According to Article 137 § 4, when deciding on detention, the court also decides on the possibility of releasing the accused on bail and, if release is possible, sets the amount of bail.

30. According to Article 137 § 5, a court decision imposing detention may be contested before the appeal court.

31. According to 138 § 1, entitled "Detention period", the detention period of an arrested person shall be calculated from the moment of his actual taking into custody or, if he has not been arrested, from the moment of execution of the court decision whereby detention was imposed.

32. According to Article 138 § 3, during the pre-trial proceedings of a criminal case the detention period may not exceed two months, except for cases prescribed by this Code. During the pre-trial proceedings of the criminal case the running of the detention period shall be suspended on the date when the prosecutor transmits the criminal case to the court or when detention is cancelled as a preventive measure.

33. According to Article 138 §§ 5 and 6, during the pre-trial proceedings of a criminal case the accused's detention period cannot exceed one year. No maximum detention period is prescribed during the court proceedings.

[8] OSCE, Creating a probation service in the Republic of Armenia: issues and peculiarities – A baseline study, Yerevan 2012, p. 12. This study was implemented by the Armenian NGO *Social Justice*.
[9] Case of Poghosyan v. Armenia, 20/11/2011, appl. no. 44068/07

34. According to Article 139 §§ 1 and 3, if it is necessary to prolong the accused's detention period, the investigator or the prosecutor must submit a well-grounded motion to the court not later than ten days before the expiry of the detention period. When deciding on the prolongation of the accused's detention period, the court shall prolong the detention period within the limits prescribed by this Code, on each occasion for a period not exceeding two months.

35. According to Article 141 (10), the administration of a detention facility is obliged, inter alia, immediately to release a person kept in detention without a relevant court decision or if the detention period fixed by a court decision has expired.

36. According to Article 285 § 2, a motion seeking to have detention imposed on an accused for whom a search has been declared shall be examined by the court in the presence of the person who has filed the motion and the accused's lawyer, if any.

37. According to Article 288 § 1, the court of appeal shall carry out the judicial review of the lawfulness and validity of decisions imposing or refusing to impose detention, as well as prolonging or refusing to prolong the detention period.

38. According to Article 291, a criminal case received at the court shall be taken over by judges in a procedure prescribed by law. A relevant decision must be adopted.

39. According to Article 292, the judge who has taken over a case shall examine the materials of the case and within fifteen days from the date of taking over the case shall adopt, inter alia, a decision setting the case down for trial.

40. According to Article 293 § 2, the decision setting the case down for trial shall contain, inter alia, a decision cancelling, modifying or imposing a preventive measure.

41. According to Article 381 § 1, an appeal must contain (1) the name of the court to which it is addressed; (2) information about the appellant; (3) the contested judgment or decision and the name of the court which issued it; (4) an indication as to whether the whole or part of the judgment or decision are being contested; (5) the appellant's arguments and complaints; 5^{1}) justifications about the violation of subtsantive or procedureal rights mentioned in the appeal, as well as about the effect of those violation on the outcome of the case, or which are the grounds for revision of the case based on newly emerged circumstances; (6) substantiating evidence, if any; (7) a list of attached materials; and (8) the appellant's signature. According to Article 381 § 2, the court of appeal shall leave an appeal unexamined if it does not comply with the requirements set out in this Article, was lodged by a person who was not entitled to do so, or was lodged out of time."

Looking at the legal grounds for pre-trial detention one will notice that the legal threshold for cases wherein pre-trial detention can be ordered is rather low:

Art. 135 § 2 CCP says: "Arrest and the alternative preventive measure shall be executed in respect to the accused only for his commitment of a crime for which he may be imprisoned for more than a year; *or* (emphasis added) there are sufficient grounds to suppose that the suspect or the accused can commit actions mentioned in the first part of the present Article."

These "actions" are "1) hide from the body which carries out the criminal proceeding; 2) inhibit the pre-trial process of investigation or court proceeding in any way, particularly by means of illegal influence of the persons involved in the proceeding, concealment and falsification of the materials relevant to the case, negligence of the subpoena without any reasonable explanation; 3) commit an action forbidden by Criminal law; 4) avoid the responsibility and the imposed sentence; 5) oppose the execution of the verdict."

1.1.2 Non-custodial preventive measures

The alternatives for pre-trial detention ("arrest") are enumerated in Art. 134, par. 2 CCP:

- **bail**;

  Bail shall be considered a measure alternative to arrest and shall be granted only upon decision of the court about the arrest of the accused (Art. 134 § 4 CCP)

  Bail may consist of money, securities and other valuables posted by one or several persons to the deposit of the court for the release from detention of someone accused of committing a crime classified as minor and medium gravity. Upon permission of the court, real estate may be posted as an alternative measure to bail (Art. 143 § 1 CCP)

  The amount of the bail designated by the court shall not be less than:

  1). the minimum amount of 200 salaries - when the accusation is one of committing a crime classified as minor.

  2). the minimum amount of 500 salaries when a crime is classified as medium (Art. 143 § 4 CCP)

- **a written obligation not to leave a place;**

  An undertaking not to leave a place shall contain a written promise of the suspect or the accused not to move to a new place without permission, or change place of residence, but to appear in court upon receiving a subpoena from the inquiry body, investigator, prosecutor and the court, and to inform them of a change of his place of residence (Art. 144 § 1 CCP).

- **a personal guarantee**

  A personal guarantee shall be given in the form of a written undertaking by trustworthy persons who upon their word and bail posted by them can guarantee an appropriate behaviour of the suspect or the accused, his appearance in court upon receiving a subpoena of the body which carries out the criminal proceeding as well as his fulfilment of other court proceeding responsibilities (Art. 145 § 1 CCP).

- **an organization guarantee**

  An organization guarantee shall be given in the form of written undertaking by a trustworthy legal entity who upon his reputation and bail posted by him can guarantee an appropriate behaviour of the suspect or the accused, his appearance in the court upon receiving a subpoena of the body which carries out the criminal proceeding as well as his fulfilment of other court proceeding responsibilities (Art. 146 § 1 CCP)

- **taking under supervision**

  This measure applies only to minors. Supervision of an under-aged suspect or accused shall be carried out by parents, guardians, trustees or the administration of the institution for children where the minor is kept. The above mentioned persons shall be responsible for the appropriate behaviour of the minor suspect or the accused, his appearance in court upon receiving a subpoena of the body which carries out the criminal proceeding as well as his fulfilment of other court proceeding responsibilities (Art. 148 § 1 CCP)

- **taking under supervision of commander**

Supervision of commander shall be executed in respect to a serviceman or a conscript at the time of drafting. The responsibility of command supervision for appropriate behaviour and appearance in court upon receiving of a subpoena of the body which carries out the criminal proceeding as well as of other court proceeding responsibilities shall be borne by the commanding officer of the military unit or formation, or by the officer of a military establishment where the suspect or the accused serves or is being drafted. (Art. 149 § 1 CCP)

These preventive measures shall not be executed in combination with each other (Art. 134 § 4 CCP).

Legal reform

An important element of the aforementioned *Strategic Programme* is the plan for drafting of a new Code of Criminal Procedure, the text of which was not known to the authors of this report.

1.2 Present practice

1.2.1 Statistical data

According to statistics, provided by the PD as of 1 January 2013, 4756 persons were kept in all the penitentiary institutions of Armenia, out of which 1228 or 26% were in pre-trial detention. This percentage did not vary much over the last 5 years: slightly more than a quarter of the prison population are remand prisoners, waiting for their case to be concluded with a final verdict.

1.2.2 Findings of the Hungarian Helsinki Committee

Recent research of the *Hungarian Helsinki Committee* on the use of pre-trial detention in 16 CCE-FSU countries[10] revealed, among other things, that in all countries participating in this study (Armenia did not participate), the laws require a reasoned decision in order to place someone in pre-trial detention. However, this obligation is often not observed in practice.

The legal threshold for applying pre-trial detention varies strongly in the CEE-FSU countries. In some countries pre-trial detention may be ordered already for persons suspected of having committed an offence, which carries "a" prison sentence; in some countries the prison sentence must be more than one year, two years, four years, or five years.

The Hungarian Helsinki Report sums up: "It is safe to conclude the following: Pre-trial detainees still represent a significant portion of the prison population in Central and Eastern Europe and in the countries of the former-Soviet Union: the exact percentage ranged from 10 to 40% in 2011. *Alternatives to pre-trial detention are underused in the region* (emphasis added), despite the high costs pre-trial detention represents for national budgets. *It is a deeply worrying trend (...) that courts approve the motions of police officers and prosecutors to order pre-trial detention almost automatically, without assessing the individual circumstances of the case* (emphasis added). In every country studied the ratio of these motions approved is higher than 80%, in some cases even 90% or higher. "

[10] Hungarian Helsinki Committee, *Promoting the Reform of Pre- trial Detention in CEE-FSU Countries, Introducing Good Practices*, [no place], 2013

1.2.3 Findings of the American Bar Association

Additional information about the practice of pre-trial detention in Armenia is provided by a study of the *American Bar Association.*[11] The main conclusions of this study concerning the use of pre-trial detention are:

"Courts must decide whether to impose pre-trial detention within 72 hours of apprehension and detention must be ended or extended after two months with a maximum detention of one year before the beginning of trial. Courts are increasingly reviewing the factual basis for and legality of arrest and protecting the rights of arrestees under the RA Constitution and the European Convention. Nevertheless, *pre-trial detention is imposed in the overwhelming majority of cases, and decisions are not well substantiated. Bail and other non-custodial preventive measures are available, but in practice are rarely imposed*. (emphasis added)"

"The detention of persons detained during the pre-trial stage is almost universally continued during the adjudicative process. Defendants may be detained indefinitely once the trial has formally begun."

"Periodic review of detention is required by law only prior to the beginning of trial. In practice, once granted, the review of detention is perfunctory and *pre-trial detention is almost always extended upon request* (emphasis added). Once the trial has begun, the defendant has the right to appeal his detention, but there is no automatic review."

1.2.4 Findings of Social Justice / OSCE

In the Baseline Study "Creating a Probation Service in the Republic of Armenia" the authors point out that research shows that pre-trial detention is applied as a preventive measure in the vast majority of cases. It is the view of the authors that "(…) creating a probation service would help to reduce the number of cases (…) in which defendants are detained during pre-trial proceedings, thereby alleviating the problem of overcrowding in penitentiary institutions."

As an important tool to reduce the use of pre-trial detention this study sees the drafting of pre-trial reports by a probation service, recommending the following procedure: "At the pre-trial stage, the prosecutor or judge *may* (emphasis added) file a written request for the Probation Service to issue a pre-trial report on the suspect or accused. (…) The report must be attached to the criminal case file. A pre-trial report *must* be issued in criminal cases in which the body conducting the proceedings intends to request pre-trial detention as a preventive measure ordered by court. It must be *mandatory* (emphasis added) for any case involving juveniles (…)."[12]

1.3 International standards, case law and good practice

1.3.1 International standards

- *CoE Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse*

Article 3 of the General principles of the recommendation says:

[11] American Bar Association, *Detention Procedure Assessment tool for Armenia*, Washington DC, April 2010.
[12] *ibidem* footnote no. 11.

[1] In view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.

[2] There shall not be a mandatory requirement that persons suspected of an offence (or particular classes of such persons) be remanded in custody.

[3] In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons.

[4] In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available.

The "less restrictive measures" mentioned in Art. 3 of this recommendation are the same as "alternative measures" of which the following examples are given in Art. 2 of the same document: undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment; requirements to report on a daily or periodic basis to a judicial authority, the police or other authority; requirements to accept supervision by an agency appointed by the judicial authority; requirements to submit to electronic monitoring; requirements to reside at a specified address, with or without conditions as to the hours to be spent there; requirements not to leave or enter specified places or districts without authorisation; requirements not to meet specified persons without authorisation; requirements to surrender passports or other identification papers; and requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.

This recommendation does *not* set definite limits to the duration of the pre-trial detention but underlines in Art. 22 that its duration shall not exceed, nor be disproportionate to, the penalty that may be imposed for the offence concerned and that in no case remand in custody shall breach the right of a detained person to be tried within a reasonable time. Furthermore it is stressed that at regular intervals the need for continuation of remand custody shall be considered at regular intervals.

- *CoE Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules:*

Supervision measures

53. In accordance with national law, probation agencies may undertake supervision before, during and after trial, such as supervision during conditional release pending trial, bail, conditional non-prosecution, conditional or suspended sentence and early release.

54. In order to ensure compliance, supervision shall take full account of the diversity and of the distinct needs of individual offenders.

55. Supervision shall not be seen as a purely controlling task, but also as a means of advising, assisting and motivating offenders. It shall be combined, where relevant, with other interventions, which may be delivered by probation or other agencies, such as training, skills development, employment opportunities and treatment.

- *EU - COUNCIL FRAMEWORK DECISION 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention*

This Framework decision lists in Article 8 § 1 the following types of supervision measures as alternatives for pre-trial detention: (a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing

or a trial in the course of criminal proceedings; (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

(c) an obligation to remain at a specified place, where applicable during specified times; (d) an obligation containing limitations on leaving the territory of the executing State; (e) an obligation to report at specified times to a specific authority; (f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed. As further monitoring instrument the second paragraph of this article mentions: (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment; (b) an obligation not to drive a vehicle; (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once; (d) an obligation to undergo therapeutic treatment or treatment for addiction; (e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.

1.3.2 Case Law of the European Court of Human Rights

In cases against Armenia the ECtHR has found more than once a violation of Article 5 § 1 because pre-trial detention was not based on a court decision[13] or on a reasonable suspicion.[14] The court found repeatedly that the domestic courts failed to provide reasons for (the continuation of) pre-trial detention, resorting to abstract and stereotyped grounds and not considering seriously the possibility of alternatives like bail seriously, thereby violating Article 5 § 3 of the Convention.[15] The fact that only cases against Armenia are cited here does not imply that it is a typical Armenian problem.[16]

Illustrative are the observations in this respect of the Court in para. 75 of its judgement in the *Malkhasyan* case "that both the District Court and the Court of Appeal limited themselves to repeating these grounds in their decisions in an abstract and stereotyped way, without indicating any reasons as to why they considered to be well-founded the allegations that the applicant could abscond or exert unlawful pressure on witnesses. Nor have they attempted to refute the arguments made by the applicant. A general reference to the serious nature of the offence with which the applicant had been charged cannot be considered as a sufficient justification of the alleged risks. Nor is it clear how the fact that the applicant's co-accused had been detained, relied on by the Court of Appeal when refusing bail (see paragraph 22 above), was relevant to justify the risk of the applicant's absconding."

If the Court holds the opinion that in protracted criminal proceedings involving a deprivation of personal liberty, it is incumbent on the authorities to seek to reduce the duration of pre-trial detention to the possible minimum *and to examine the possibilities of applying less stringent alternatives* (emphasis added).[17]

---

[13] Case of Poghosyan v. Armenia, 20/11/2011, appl. no. 44068/07. Also: Case of Sefilyan v. Armenia, 02/10/2012, appl. no. 22491/08; case of Piruzyan v. Armenia, 26/06/2012, appl. no. 33376/07. In the cases of Muradkhanyan v. Armenia (05/06/2012, appl. no.12895/06) and Asatryan v. Armenia, 09/02/02/2010, appl. no. 24173/06, *the extension of the pre-trial detention had been unlawful*

[14] Case of Khachatryan v. Armenia, 27/11/2012, appl. no. 23978/06

[15] Case of Malkhasyan v. Armenia, 26/06/2012, appl. no. 6729/07

[16] See: Council of Europe, Parliamentary Assembly, Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties, Doc. 13087, 07 January 2013, § 3.2.4. *Unlawful detention and excessive length of detention on remand.*

[17] Case of Baksza v. Hungary, 23/4/2013, appl. no. 59196/08

1.3.3 Good practice

It is difficult to single out specific countries with good practice in terms of pre-trial detention. Indicators for good practice are: the availability of effective alternatives for pre-trial detention, immediate access to legal aid of arrested suspects, effective legal remedies (appeal) against remand orders, minimal extension of remand orders and a speedy trial. The number of remand prisoners compared to the number of convicted prisoners can be an indication to what extent pre-trial detention is used routinely or not.

A way of reducing the use of pre-trial detention or at least guaranteeing a uniform utilisation of this safety measure is the development of guidelines or directives for the prosecutors, indicating in which cases to demand pre-trial detention of a suspect (or not) and on which conditions pre-trial detention can be suspended. Such practice can be found in The Netherlands where the Committee of Prosecutors-General (the top of the prosecutions service) is empowered to issue such guidelines and directives.[18]

1.4 Assessment of the present legal provisions and practice

During the field fact finding mission, the consultants learned that pre-trial detention as a so-called preventive measure, is used too often, due to the interpretation of Article 135, par 3, sub 8 of the CCP. that says that "Whilst considering the issue of necessity and kind of the preventive measure the following shall be taken into account: (the) availability of a permanent residence…" This provision is interpreted by the court that the suspect must avail of a permanent residence in the province where he/she is arrested. Because a lot of people moved from the countryside to the town and the registration of their new addresses is incomplete or lagging behind, quite often suspects; though de facto living permanently in Yerevan; cannot prove this, thus giving the authorities quite often a reason for ordering their pre-trial detention.

Regarding the remark that the threshold of 1 year of imprisonment envisaged for the crime allegedly committed, for ordering pre-trial detention as prescribed in Article 135, para 2 of the CCP might be considered too low, the consultant was informed that this limit would be raised to 3 or 5 years, depending on the crime allegedly committed and the criminal record of the suspect. As viable alternatives for pre-trial detention home-arrest and electronic monitoring were mentioned, which are not available in Armenia.

The problem of excessive use of pre-trial detention has already been noted by the Court of Cassation in 2008 but to no avail. Apparently, there are some 12 complaints about the violation of Article 5, par 3 of the ECHR lodged with the Strasbourg Court. Though time and again the complaints have been upheld, the first instance courts seem to ignore the ECtHR judgements and continue to use pre-trial detention in far too many cases. Alternatives to pre-trial detention (as mentioned in Article 134, par. 2 of the CCP) were almost never granted: 97,7% of all requests to order pre-trial detention were approved by the courts and apparently grounds were never given in writing. The situation prompted a strike of defence lawyers on 11 June 2012. According to the interlocutors met during the field research the law seems to be fine, as it provides for alternatives, but its use in practice is disputable.

[18] For instance: College van Procureurs-generaal, *Aanwijzing voorwaardelijke vrijheidsstraffen en schorsing van voorlopige hechtenis onder voorwaarden* (2013A004), 28 januari 2013, Stcrt. 2013, Nr. 5108 (Directive concerning conditional sentences and conditional suspension of pre-trial detention)

The consultants learned also that the new CCP would solve the present problems by introducing new alternatives to pre-trial detention, like house arrest and administrative supervision/control. However without a proper probation service in place it seems highly unlikely that the court will use those alternatives.

The evidence gathered so far shows that in Armenia, the pre-trial detention, counter to international standards, is not used as a measure of last resort. On the contrary: requesting and ordering pre-trial detention appears to be the rule. It proves almost impossible to end pre-trial detention before the start of the trial, after which it will last until the final verdict. A granting of bail or another non-custodial preventive measure is rare. The present practice partly can be attributed to the lack of viable alternatives for "arrest" in the CCP and to the absence of a body or organisation (like a probation service) able to monitor the compliance of suspects with non-custodial preventive measures. On the other hand the prosecutors and courts appeared not willing or able to bring the practice in line with the ECtHR judgements concerning the use of pre-trial detention and with the CoE recommendations. There are no indications that the present sub-optimal situation will change unless there are strong legal or other incentives to change the course of the responsible criminal justice agencies.

Drafting of a new CCP offers an opportunity to introduce new non-custodial measures that can be requested and ordered during the pre-trial phase. The planned drafting of a Probation Code as announced in the *Strategic Programme* paves the way for a Probation Service that could draft pre-trial[19] reports, that can play a decisive role when a decision has to be made whether a suspect should be remanded in prison or not. It goes without saying that the new CCP should be clear in which cases the prosecutor or the court can or must order the Probation Service to prepare such report. The future Probation Law should specify the way in which probation officers shall monitor and, if necessary, assist and coach their clients in the pre-trial phase.

1.5 Recommendations

- In order to reduce the population of the remand prisons in the short term the release of all pre-trial detainees who are suspected of not very grave crimes should be considered. The prosecution service could initiate this by requesting the court to release these accused persons or by not submitting a request for the extension of the detainment period. If monitoring of these persons - until the trial starts - is deemed, the prosecutor or the court may order a police office in their neighbourhood to report on a regular basis.
- The development of guidelines for the prosecution, that indicate in which cases pre-trial detention is to be demanded and in which cases this is not necessary, should be considered.
- Training sessions should be organised to train prosecutors, judges and lawyers (jointly or separately) in the procedural aspects of pre-trial detention and the present and future non-custodial alternatives for this security measure.
- Workshops should be offered to the judiciary on drafting well reasoned, individualised decisions concerning pre-trial detention.

[19] Well to be distinguished from pre-sentence reports.

- Special seminars should be organised to instruct or inform the prosecution service and judiciary on the consequences of ECtHR case law and CoE Recommendations for their decisions concerning pre-trial detention.
- Unambiguous grounds for pre-trial detention, based on the presumption of innocence, should be incorporated in the new CCP.
- In the new CCP provisions should be introduced concerning the powers of the prosecutor and the court to request or order pre-trial reports to be drafted about the personality and social circumstances of the accused person.
- In the new CCP an obligation for the prosecution and the court should be introduced to substantiate thoroughly all requests and orders for pre-trial detention. When ordering pre-trial detention the court should always motivate why a non-custodial measure was not a viable option in the case concerned.
- An automatic (*ex officio/ex lege*) periodic judicial review of pre-trial detention should be introduced in the new CCP.
- The new CCP should contain more/other non-custodial measures than the present one. Guidance for this can be found in Article 2 of the CoE Recommendation Rec(2006)13 on the use of remand in custody[20].

[20] https://wcd.coe.int/ViewDoc.jsp?id=1041281&Site=CM

PART 2. DECRIMINALISATION, DEPENALISATION AND SENTENCING POLICY

The enhancement of the use of the existing non-custodial sanctions and/or the introductions of new alternative sanctions can take the strain off an overburdened prison system, but it will not be sufficient for a lasting effect. Parallel to these measures a decriminalisation of certain offences, lowering maximum sentences, abolishing mandatory minimum sentences and promoting a consistent sentencing policy can help to reduce the use of custodial measures and sentences and thus to reduce overcrowding in prisons.

Which types of behaviour are labelled as crimes is set down in the Criminal Code (CC). Like all laws, the CC is a living instrument. It can be amended whenever the legislature deems this appropriate: new crimes can be defined[21]; existing crimes can be deleted or reformulated. The same goes for the sentences and measures that can be meted out. Many legislatures have a tendency to add crimes to a criminal code rather than delete offences from the text. Criminalising behaviour seems easier than de-criminalising it. Introducing heavier sentences seems easier to "sell" politically than reducing the severity of the existing ones. Committing prosecutors and judges to a well-considered sentencing policy in some jurisdictions is seen as unacceptable because this would restrict the discretionary powers of the prosecutors and would be incompatible with the independence of the judiciary.

The implementation of the criminal justice part of the *Strategic Programme* offers a unique opportunity to take all these issues into consideration before and during the drafting of a new CC.

2.1 Present legal provisions

Article 9 of the CC offers guidance to the drafters of a new CC concerning what kind of behaviour could (not: "should") be labelled as "criminal" stating: (…) "1. The person is subject to criminal liability only for the socially dangerous action or inaction and its socially dangerous consequences, of which he was found guilty by a competent court." The criterion for *criminalisation* is apparently the "social dangerousness" of behaviour, the definition of which will vary according to time and place.

A special feature of the CC is that the Special Part provides for *mandatory minimum terms of imprisonment* for certain grave and very grave crimes, thus limiting the freedom of the court in determining the appropriate sanction. On the other hand Article 64 of the CC provides an option for the court to use a *milder sentence* than envisaged by law (i.e. the crime convicted for), which seems to leave room for imposing a non-custodial sentence instead of imprisonment. It is unclear whether this provision allows the court to go below a mandatory minimum sentence.

Another corrective mechanism (in the enforcement stage) is the possibility to replace the remaining part of the sentence with a "softer sentence" (Art. 77 CC).

The present CC does not contain any provisions on the development of a *general sentencing policy*. What it *does* offer, however, are factors that must be taken into consideration in

[21] For example, the new crimes that did not exist 15-20 years ago, such as cybercrime.

individual sentencing decisions. These are to be found Chapter 10: "Assignment of sentence". The essential sentencing principles are laid down in Article 61 CC, which stipulates:

(…)

"2. The type and degree of sentence is determined by the extent of social danger of the crime and its nature, by the characteristic features of the offender, including circumstances mitigating or aggravating the liability or the sentence.

3. The strictest sentence for the crime is assigned only when the less strict type cannot serve for the purposes of the sentence."

The mitigating and aggravating circumstances are enumerated in Articles 62 and 63.

Article 358 of the CCP demands that all verdicts of the court must be grounded: "All conclusions and decrees described in the verdict are subject to argumentation." Article 360 CCP adds to this: "1. When adopting the verdict the court resolves the following issues in the following order: (…) 7) what sentence must be given specifically to the defendant; 8) whether the defendant must undergo the sentence; (…)

Consistency of sentencing decisions of the various courts can be promoted by the Court of Cassation by quashing sentencing decisions that are conflicting with the above-mentioned provisions in the CC and CCP. It is important that such decisions be published in juridical journals and be annotated by independent academics.

Legal reform

Paragraph 4.1 of the *Strategic Programme* summarises the effort to be undertaken concerning the issues of decriminalisation and depenalisation in the following manner:

"The criminal law enforcement measures must be avoided also through elimination of imprisonment, as far as possible, from the sanctions defined by the Articles of the Special Part of the forthcoming CC or through providing for shorter terms therefore (depenalisation). The forthcoming CC must introduce decriminalisation of some offences, completely eliminating criminal liability for some of them and transferring the other part to the new Administrative Offences Code (e.g. in case of certain crimes against ownership and economic activities)."

2.2 Present practice

2.2.1 Findings of the American Bar Association

In its report "Detention Procedure Assessment Tool for Armenia" the American Bar Association says[22]:

"Interviewees (…) identified a lack of consistency in sentencing as a major problem. Interviewees contended that often, the length of a sentence does not correspond to the severity of a crime, while similarly situated defendants often do not receive similar sentences. (...) Many interviewees advocated for the adoption of sentencing guidelines, or at least legislative amendments to lessen the span of years in each range of sentence, in order to remedy these issues." And: "Without more clear guidelines for the judiciary, the lack of predictability and

[22] American Bar Association, *Detention Procedure Assessment Tool for Armenia*, Washington DC, 2010, p. 17 and 44.

consistency of judges in imposing sentences was brought up as an issue, especially by advocates. The specific impact that each mitigating and aggravating factor has on the imposition of sentence or how much weight the judges should attach to each factor is not clear. The judges interviewed did not feel that the lack of legislative guidance was a problem, however, stating that each case is treated uniquely."

2.3 International standards, the ECtHR case law and good practice

2.3.1 International standards

There are no recent international documents that give guidance to politicians and lawmakers concerning the issues of decriminalisation, depenalisation and sentencing policy. Two relevant texts, both conceived by the European Committee on Crime Problems of the Council of Europe, date back to the eighties of the last century. They are the *Report on Decriminalisation* (1980) and the study *Disparities in Sentencing: Causes and Solutions* (1989). A third - also older but still valuable – document is the Council of Europe *Recommendation No. (92)17, concerning consistency in sentencing.*

- *CoE - Report on Decriminalisation*[23]

This report still has much relevance for politicians, lawmakers and other professionals working in the sphere of criminal justice, especially in states that are reforming their criminal law. This document not only gives insight in the theoretical and practical meaning of the term *decriminalisation* but also deals with the concept of *depenalisation*.

The authors understand by *decriminalisation* "those processes by which the "competence" of the penal system to apply sanctions as a reaction to a certain form of conduct is withdrawn in respect of that specific conduct. This may be done by act of legislation or by the way legislation is interpreted by the judiciary."

A distinction is made between *de jure* and *de facto* decriminalisation. *De jure* decriminalisation means that certain offences are deleted from the criminal law. One speaks of *de facto* decriminalisation in a situation where certain conduct is still formally punishable but in practice never leads to prosecution or conviction.

The report defines the concept of *depenalisation* as "all forms of de-escalation within the penal system." "In this sense", the report goes on, "the transfer of an offence from the status of a "crime" of "felony" to that of a misdemeanour can be considered a depenalisation. The same is true in so far as custodial penalties are replaced by sanctions with less negative implications or side-effects, such as fines, probation, specific court order etc.". In terms of the Armenian Criminal Code downgrading a crime from "extremely grave" to "grave" or from "grave" to "medium grave" or from "medium grave" to "not very grave" would mean depenalisation. Also reducing maximum sentence and abolishing mandatory minimum sentences as well as replacing custodial with non-custodial sentences would be covered by the term depenalisation.

A concept, not yet encountered in the present discussion about the reform of the Armenian penal system is that of *diversion.* The report defines diversion as "the withholding or discontinuation of criminal proceedings in cases where the criminal justice system is formally competent." In

[23] Council of Europe, European Committee on Crime Problems, *Report on Decriminalisation, Strasbourg*, 1980, 275 p. (citations from pages 13-17).

practice this means that the offender is transferred to an agency like a probation service in order to help him or her to overcome problems that may have led to his or her delinquency. Diversion can have the form of *mediation,* which is positively appreciated in the Strategic Programme, where it says: "When elaborating the forthcoming Criminal Code, it is necessary to study the possibility of providing for alternative measures to the criminal liability, in particular, the mediation."[24]

- *CoE - Disparities in Sentencing: Causes and Solutions*[25]

The subject-matter of this collection of reports of a colloquium devoted to the problem of how to avoid disparities in sentencing is not less relevant today then it was at the time of its publications, especially when read in connection with Recommendation No. (92)17 concerning consistency in sentencing (see below).

It may be self-evident that (as rapporteur Jareborg put forward) unexplainable differences in sentencing in comparable cases will – when it is noticed – disturb the social peace "just as much as the offences which it claims to deal with." Rapporteur Van Duyne said: "(…) that the outcomes of the prosecution and/or the sentencing decision is in many regards a very uncertain happening."

Unjustified differences in sentencing make it hard for convicts to accept their sentences.

Unexplainable sentences can lead to unexpected variations the prison population and unforeseen variations in the workload other agencies that deal with convicts, like probation services. A high degree of predictability of the outcome of prosecution and sentencing can be considered as a precondition for stability and credibility of any criminal justice system.

It was prof. Ashworth (Oxford University) who sketched in his contribution three main techniques for reducing subjective disparity in sentencing: a. the self-regulation of judicial discretion; b. legislative orientation of sentencing policy, and c. guideline systems. Having analysed the "pros and cons" of these techniques he opts for the third one: *guideline systems*, like in use in North America where independent Sentencing Commissions draw up guidelines for all major offences, a technique also adopted in England and Wales (see below).

- *CoE Recommendation No. (92)17, Concerning consistency in sentencing*[26]

This recommendation builds forth on the conclusions of the 8th Criminological Colloquium in particular on Ashworth's work. In the context of this part of this assessment the most important recommendations are:

B. Penalty structure

(…)

3. a. Wherever it is appropriate to the constitution and the traditions of the legal system, some further techniques for enhancing consistency in sentencing may be considered.

b. Two such techniques which have been used in practice are "sentencing orientations" and "starting points".

[24] See further the CoE *Recommendation No. R(99)19 concerning mediation in penal matters.*
[25] Council of Europe, European Committee on Crime Problems, *Disparities in sentencing: causes and solutions*, Reports presented to the eighth Criminological Colloquium (1987), studies in criminological research Volume XXVI, Strasbourg, 1989, 156 p. (citations from pages 55, 92, 103-113)
[26] Council of Europe, *Recommendation No.R (92) 17 Concerning consistency in sentencing*

c. Sentencing orientations indicate ranges of sentence for different variations of an offence, according to the presence or absence of various aggravating or mitigating factors, but leave courts with the discretion to depart from the orientations.

d. Starting points indicate a basic sentence for different variations of an offence, from which the court may move upwards or downwards so as to reflect aggravating and mitigating factors.

(…)

5. a. Custodial sentences should be regarded as a sanction of last resort, and should therefore be imposed only in cases where, taking due account of other relevant circumstances, the seriousness of the offence would make any other sentence clearly inadequate. (…)

(…)

E. Giving reasons for sentences

1. Courts should, in general, state concrete reasons for imposing sentences. In particular, specific reasons should be given when a custodial sentence is imposed. Where sentencing orientations or starting points exist, it is recommended that courts give reasons when the sentence is outside the indicated range of sentence.

2. What counts as a "reason" is a motivation which relates the particular sentence to the normal range of sentences for the type of crime and to the declared rationales for sentencing.

2.3.2 The role of the ECtHR

The case law of the ECtHR on Article 6 of the Convention answers the question what can be considered as a "criminal charge", but leaves it to the national legislators whether to *criminalise or decriminalise* behaviour of persons or legal entities. Only when criminalising of certain behaviour amounts to a violation of the rights and freedoms embodied in the Convention, the Court can set standards in this respect. The same counts for criminal sentences and measures: only when the enforcement of a criminal sanction amounts to a violation of the Convention, the Court will denounce it. So: *depenalisation* as discussed above is not an issue that concerns the ECtHR.

To a certain extent *sentencing policy* as a component of a comprehensive criminal justice policy can be a subject that concerns the Court, where deficiencies in criminal justice lead to the submission of an excessive amount of (repetitive) complaints of suspect and convicts with the Court.[27]

2.3.3 Good practice

The questions a) what constitutes criminal (socially undesirable or dangerous) behaviour and b) whether the criminal justice system is equipped to deal with that kind of behaviour in a sensible way will be answered differently in different countries, depending on the local social and cultural context. For instance: controversial issues like abortion, euthanasia and the trade in and use of drugs will be viewed quite differently in liberal, secular countries than in predominantly religious countries. It is difficult therefore to state what constitutes "good" practice worldwide and even in the European region, speaking about (de-) criminalisation, depenalisation and sentencing policy. The following examples may illustrate that.

[27] Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties, Report1, Doc. 13087, Strasbourg7 January 2013.

Criminalisation

The attacks on the Twin Towers in New York on 11 September 2000 prompted the EU to draft Framework Decision on combating terrorism[28] that obliged all member states to introduce "terrorist offences" in their criminal law and to ensure that those terrorist offences would be punishable by custodial sentences heavier than those imposable under national law for such offences save where the sentences imposable were already the maximum possible sentences under national law. This is an example of successful large-scale criminalisation and penalisation of behaviour that was considered detrimental to society. In some countries (like The Netherlands) this led to the establishment of special prisons for persons suspected of or convicted for terrorist acts. This form of criminalisation was widely supported and met with little criticism in the various member-states.

Decriminalisation

While it seems far easier to add offences to the existing criminal law than to decriminalise behaviour, there are some historical and recent examples of decriminalisation.

Until 1981, abortion in The Netherlands was a punishable offense. Since then criminal liability for abortion was abolished, provided it was performed by a medical doctor in a hospital or clinic that had been certified for that in terms of a special Law on the interruption of pregnancy. How controversial (intended) decriminalisation of abortion can be was demonstrated in Belgium where in 1990 the King refused to ratify a comparable law, leading to a major constitutional crisis.

A much-debated recent example of decriminalisation is the initiative of the Uruguayan government to legalize cannabis. *The Economist* wrote:

> "ON JULY 31st, the lower house of Uruguay's congress narrowly voted to legalise the production, sale and consumption of marijuana (cannabis). The bill has passed to the Senate, where it is expected to be approved with a comfortable margin. (…). Drug-law reformers hailed the bill's progress as "historic". But plenty of other countries, from Portugal to the United States, have loosened up their drug laws in recent years. What makes Uruguay's proposals different? Many countries have decriminalised the consumption of at least some narcotics. Portugal, an early trailblazer, decriminalised the personal possession and use of all drugs, including the nastiest ones, back in 2001. But decriminalisation is not the same as legalisation. Drug users in Portugal may still be stopped by the police, have their stash confiscated and be sent before a finger-wagging "dissuasion commission". The Netherlands has for decades allowed licensed cafes to sell cannabis (…). Last year Colorado and Washington voted to legalise the cultivation, sale and consumption of marijuana." [29]

Depenalisation

A far-reaching plan for depenalisation drug offences has been launched in a recent speech delivered by US Attorney General Holder, addressing the 2013 Annual Meeting of the American Bar Association. He said[30]:

---

[28] Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA).

[29] Source: http://www.economist.com/blogs/economist-explains/2013/08/economist-explains-1 (accessed 19/08/2013)

[30] Source: http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html (accessed 19/08/2013)

"While the entire U.S. population has increased by about a third since 1980, the federal prison population has grown at an astonishing rate – by almost 800 percent. (…) "We will start by fundamentally rethinking the notion of mandatory minimum sentences for drug-related crimes. Some statutes that mandate inflexible sentences, regardless of the individual conduct at issue in a particular case, reduce the discretion available to prosecutors, judges, and juries. Because they often generate unfairly long sentences, they breed disrespect for the system. (…) This is why I have today mandated a modification of the Justice Department's charging policies so that certain low-level, non violent drug offenders who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. They now will be charged with offenses for which the accompanying sentences are better suited to their individual conduct, rather than excessive prison terms more appropriate for violent criminals or drug kingpins. By reserving the most severe penalties for serious, high-level, or violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation – while making our expenditures smarter and more productive."

Sentencing policy

In several jurisdictions sentence planning has become a normal feature of the criminal justice system. Two examples in the European region may underpin that.

England and Wales[31]

For England and Wales a **Sentencing Council** was set up to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The primary role of the Council is to issue **guidelines on sentencing**, which the courts must follow unless it is in the interests of justice not to do so.

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. The Sentencing Council has responsibility for:

- developing sentencing guidelines and monitoring their use;
- assessing the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government; and
- promoting awareness amongst the public regarding the realities of sentencing and publishing information regarding sentencing practice in Magistrates' Court (lower court, where all the criminal proceedings start) and the Crown Court (higher court of first instance in criminal cases).

In addition to the functions above, the Council must:

- consider the impact of sentencing decisions on victims;
- monitor the application of the guidelines, better to predict the effect of them; and
- play a greater part in promoting understanding of, and increasing public confidence in, sentencing and the criminal justice system.

A list of sentencing guidelines for specific offences is published on the website of the Council and is regularly updated. Each guideline presents the factors that should be taken into consideration in determining the type and severity of the sanction by indicating "starting points"

[31] Source: http://sentencingcouncil.judiciary.gov.uk/about-us.htm (accessed 19/08/2013)

and “sentencing ranges”. The following example of a guideline of this Council may make this clear:

Street robbery or “mugging”
Robberies of small businesses
Less sophisticated commercial robberies
Robbery is a serious offence for the purposes of sections 225 and 227 Criminal Justice Act 2003
Maximum Penalty: Life imprisonment ADULT OFFENDERS

Type/nature of activity: The offence includes the threat or use of minimal force and removal of property.

Starting point: 12 months custody

Sentencing Range: Up to 3 years custody

Type/nature of activity: A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.

Starting point: 4 years custody

Sentencing Range: 2-7 years custody

Type/nature of activity: The victim is caused serious physical injury by the use of significant force and/or use of a weapon.

Starting point: 8 years custody

Sentencing Range: 7-12 years custody

The aggravating factors and mitigating factors that have to be taken into account in determining the sentence are:

Aggravating factors: 1. More than one offender involved. 2. Being the ringleader of a group of offenders. 3. Restraint, detention or additional degradation of the victim. 4. Offence was pre-planned. 5. Wearing a disguise. 6. Offence committed at night. 7. Vulnerable victim targeted. 8. Targeting of large sums of money or valuable goods. 9. Possession of a weapon that was not used.

Mitigating factors: 1. Unplanned/opportunistic. 2. Peripheral involvement. 3. Voluntary return of property taken. 4. Clear evidence of remorse. 5. Ready co-operation with the police.

The Netherlands

In the Dutch criminal justice two techniques are used for sentence-planning. They have the form of a) **guidelines** for prosecutors and b) **sentencing orientations** for the judiciary. The guidelines for prosecutors (drafted by a board of prosecutors-general) say first of all under what

circumstances offences should be prosecuted or not[32] and secondly, when cases are brought to trial, they say what kind of sanctions should be demanded. Sentencing orientations (drafted by the judiciary itself) give – for certain types of offences – "sentencing orientations" and aggravating and mitigating circumstances to be taken into consideration by the criminal courts. This system is comparable with that of the British Sentencing Council. All guidelines, starting points and sentencing orientations are via the Internet accessible for the general public.

For comparison with the UK system the Dutch **sentencing orientations for robbery** by adult offenders (which carries a maximum sentence of 12 years or 15 years when a victim dies)[33] are presented below:

- Robbery of shop (bank, gas-station, postal office) with minimal force/threat: 2 years of imprisonment; with significant force: 3 years.
- Robbery of money-transport with minimal force/ threat: 30 months imprisonment; with significant force: 4 years.
- Robbery of truck with minimal force/ threat: 30 months imprisonment; with significant force: 4 years.
- Robbery in private home with minimal force: 3 years of imprisonment; with significant force 5 years.

Aggravating and/or mitigating factors are: the vulnerability of victims; the amount of damage; the nature and seriousness of injuries of the victims; the degree of co-operation between the assailants; the degree of professionalism of the offenders; their rate of recidivism and the kind of weapons used.

2.4 Assessment

During the field fact findings mission, the consultant was told by one interviewee that the idea of developing of sentencing guidelines would not be a popular measure, nor the proposition to abolish the mandatory minimum sentences that presently feature in the Criminal Code.

As said in the introductory paragraph of this part, decriminalisation and depenalisation are stated goals of the Strategic Programme, but no specific initiatives for realisation of these goals were articulated in the Programme. In the available texts concerning the reform of the Armenian criminal justice system no mention is made of the desirability of developing a sentencing policy, though research of the American Bar Association signalled a lack of consistency in sentencing as a "major problem".

2.5 Recommendations

- The drafters of the new CC should consider which offences could be "decriminalised" (deleted from the CC) or could be "depenalised" (be sanctioned by lesser / other sentences or measures than the present ones).
- Mandatory minimum sentences should be abolished in order to give the court ample opportunity to impose sanctions tailored to the offender and the circumstances of the case.

[32] For instance: while possession of cannabis is a punishable offence, possession of up to 5 grammes shall not be prosecuted; the drug can be confiscated, however.
[33] Dutch criminal law does not provide for mandatory minimum or maximum sentences.

- Where imprisonment is kept in the law as a sanction for an offence, the courts should always have the alternative option to impose a non-custodial sanction.
- It should be made legally possible to impose all types of sanctions in a conditional or suspended mode.
- The development of a consistent sentencing policy should be considered. To this end the introduction of guidelines for prosecutors and the introduction of "reference points" for sentencing for the judiciary should be considered.
- Courts should be obliged by law to to motivate in the verdict the concrete reasons for imposing a particular sentence. Specific reasons should be given when a *custodial* sentence is imposed instead of a non-custodial punishment.

PART 3. NON-CUSTODIAL SANCTIONS AND MEASURES

It is believed by many professionals in the field of criminal justice that the introduction of alternative sanctions will reduce the use of imprisonment. The knowledge that an offender can be sentenced to an appropriate non-custodial sanction by the court could even be a reason for the prosecutor not to request the court to remand offenders in custody.

It is commonly held by the various authorities interviewed in the course of this assessment, that the success of the introduction of more and better non-custodial measures and sentences depends for a great deal on the establishing of an independent and professional probation service, which now is lacking in the RA.

3.1 Present legal provisions

All types of sentences – custodial and non-custodial - are listed in Article 49 of the Criminal Code:

3.1.1 Types of sentence:

1) **Fine** (main sentence)

   In case of inability to pay the fine the court shall replace the fine or the unpaid proportion thereof with public works, i.e. five hours of community service against minimum salary. Where the fine or the unpaid proportion of the fine, as a result of calculation made for replacing by public works constitute less than two hundred and seventy hours, two hundred and seventy hours shall be imposed, whereas in case it exceeds two thousand and two hundred hours, two thousand and two hundred hours shall be imposed. (Art. 51, par. 4 CC)

2) **Prohibition to hold certain posts or practice certain professions**. (main *and* accessory sentence).

3) **Public works** ("community service order") (main sentence)

   The character and duration of this sentence is defined in Art. 54 (CC) that says:

   1. Public work is the performance of publicly useful, non-paid works by the convicted person assigned by the court in the place determined by the competent authority.
   2. Community service shall be imposed on persons having committed crimes of minor or medium gravity, having been sentenced to imprisonment for a term of maximum two years.

      Community service shall be imposed for a term of two hundred seventy to two thousand two hundred hours.
   3. Community service shall be imposed as a type of sentence alternative to a fixed-term imprisonment, within a period of twenty days following the receipt of the executive order on the enforcement of the criminal judgment of the court entered into legal force - upon the submission of a written application by the convict as well as in the cases referred to in point 4 of Article 51 of the Code.

      The court shall reject the application, where the prescribed procedure for the submission thereof has not been complied with.
   4. Community service shall not be imposed on first or second degree disabled persons, persons below the age of sixteen at the moment of rendering criminal judgment, persons having reached the pension age, pregnant women and servicemen undergoing compulsory military service.

5. In case of malicious evasion from performing community service the court shall replace the unperformed part of community service with remand detention or fixed-term imprisonment by calculating one day of remand detention or fixed-term imprisonment against three hours of community service.

4) **Deprivation of special titles or military ranks, categories, degrees or qualification class** (accessory sentence)

5) **Confiscation of property** (accessory sentence)

6) **Arrest** (main sentence).

1, Arrest is keeping the convict in a correctional institution in custody in strict isolation from the society. The court assigns arrest for the term of 15 days to 3 months for minor and medium gravity crimes and only in those cases in which arrest was not selected as a measure of restraint (Art. 57, par. CC).

2, Persons under 16 years of age at the time of sentencing, pregnant women and persons caring for children under 8 years of age, are not put under arrest.

7) **Service in a disciplinary battalion** (main sentence).

This means keeping a conscripted serviceman in a disciplinary battalion, **from 3 months to 3 years for minor and medium gravity crimes**, in cases envisaged in the Special Part, as well as in those cases when the court taking into account the circumstances of the case and the personality of the convict, finds it expedient **to replace a maximum three-year imprisonment** with the disciplinary battalion for the same term (Art. 58, par. 1 CC)

8) **Imprisonment for a certain (specific) term** (main sentence).

Article 59 CC:

1. Imprisonment is isolation from the society in the form of keeping the convict in a correctional institution, in custody.

2. Imprisonment can last from 3 months to 20 years.

3. Imprisonment for a crime through negligence can not exceed 10 years.

4. When assigning sentence by aggregate of crimes, in case of complete or partial summation of imprisonment terms, the maximal term can not exceed 25 years, and by aggregate of sentences, 30 years.

9) **Life sentence** (main sentence).

Article 60 CC:

1. Life sentence is isolation of the convict in a form of keeping him imprisoned in a corrective institution without time-limit, which in cases envisaged in this Code can be assigned for particularly grave crimes.

2. Persons under 18 years of age at the time of committal of the crime, and women pregnant at the time of committal of the crime or sentencing, can not be sentenced to life sentence.

Only one basic (main) sentence can be assigned for one crime. One or more supplementary sentence can be added to the basic sentence in cases envisaged in the Special part of the Criminal Code (Art. 50, par. 4 CC).

3.1.2 Modalities of sentence: conditional non-execution, postponement or exemption of sentence

Conditional non-execution of the sentence ("probation")

Custodial (and other) sentences can be set in a **conditional mode**. When the convict during the probation period lives up to the conditions formulated in the sentence he/she need not have to serve the sentence.[34]

The **Criminal Code** says about this:

Article 70. Conditional sentence.

1. When assigning a sentence in the form of arrest, imprisonment or keeping in the disciplinary battalion, the court comes to the conclusion that the correction of the person is possible without serving the sentence, the court can decide not to apply this sentence conditionally.

2. When not applying the sentence conditionally, the court takes into account the features characterising the personality of the perpetrator, liability, mitigating and aggravating circumstances.

3. When not applying the sentence conditionally, the court establishes a **probation period, from 1 to 5 years**. (emphasis added)

4. When not applying imprisonment conditionally, supplementary sentences can be applied, except confiscation of property.

5. **In case of establishing a probation period in the order stipulated by this Code the responsibilities of the person shall be defined by the law. When deciding not to apply the sentence conditionally, the court can also oblige the convict to carry out certain duties like to take a treatment course against alcohol, narcotic drugs, sexually transmitted infections or toxic mania, to support the family financially, which the person should do during the probation period, etc. By a motion or a report by a competent body supervising the convict's behaviour, or without, the court can also impose other duties on the convict or change them. (emphasis added)**

6. If during the probation period the convict commits two or more offences for which he/she is subjected to administrative arrest, or wilfully evades the implementation of the duties imposed by the court, by motion of the body in charge of supervision of his behaviour, as well as, in case of committal of a negligent or not grave crime, the court resolves the issue of **nullification of the conditional sentence**. (emphasis added)

7. In the case of committing a medium-gravity, grave or particularly grave crime by the convict during the probation period, the court can cancel the decision not to apply the sentence conditionally, and assign a sentence under (…).

Postponement of or exemption from sentence

The court can (not: must) postpone the execution of prison sentences imposed on pregnant women and mothers of very young children. Article 78 CC states:

Postponement or exemption from sentence of pregnant women or women with children under 3 years of age.

1. Pregnant women or women with children under 3 years of age, except women imprisoned for grave and particularly grave crimes for more than 5 years, can be exempted from sentence or

[34] In some national jurisdictions (UK, USA) the term *suspended sentence* is used for the same sentencing modality.

the sentence can be postponed by the court for the period when the woman is exempted from work, due to pregnancy, child-birth and until the child reaches the age of 3.

2. If in cases envisaged in part 1 of this Article the convicted person rejects the child or sends the child to an orphanage or evades child-care and rearing, for which she received a written warning from the supervising body, then the court by motion of this body, can send the convict to serve the sentence earlier assigned.
3. When the child has turned 3 years old or in the event of death of the latter, the court, taking into account the convict's behaviour, can exempt her from sentence, or replace the sentence with a softer sentence, or send the convict to serve the unserved part of the sentence. In this case the court can deduct, completely or partially, the unserved part of the sentence from the total term.
4. If a new crime was committed by the convict within the period of exemption from sentence, then the court assigns a sentence to her by the rules envisaged in Article 67 of this Code.[35]

3.1.3 Enforcement of non-custodial and conditional/ suspended sentences

Rules concerning the execution of non-custodial and conditional sentences are to be found in Chapters 5-10 of the *Penitentiary Code* and rules about the supervision of offenders who are sentenced conditionally are to be found in Chapter 22 (Articles 128-132) of the Penitentiary Code (Supervision Of Conditional Non-Execution Of The Sentence). Article 129 of the (recently amended) Penitentiary Code says: "The control over the behaviour of the convict in the cases of conditional sentence shall be carried out by territorial unit of Probation Service of the residence of the convict, and in case of a military servant – the detachment of his military unit."

These rules are elaborated in the *Decree of the Government of Armenia 'On approving the order of activities of territorial bodies of the unit for execution of alternative sentences of the Criminal Executive Department of the Ministry of Justice of RA*, dated October 26, 2006 No 1561-N.

Legal reform

The Strategic Programme says in par. 4.1.2 the following about alternative sanctions and sentences:

"In the future Criminal Code of the Republic of Armenia, the sentence system must be Completely revised to ensure the coherent adherence to the principle of proportionality of criminal sentence, **to impose applicable sentences as an alternative sanction to imprisonment** (emphasis added) and to provide for the possibility of imposing the basic sentences in combination, as well as to provide for other solutions that will allow avoiding the criminal law enforcement measures.

In the forthcoming Criminal Code of the Republic of Armenia it is also necessary to extend the possibility of imposing community service as a sentence. To this end, it is necessary to provide for the community service as a sentence in the sanctions defined by the Articles of the Special Part of the Criminal Code, as well as to widen the possibility to impose the community service when substituting the not served portion of the sentence with a mitigated sentence, making it possible to apply this institute to persons sentenced to graver sentences."

[35] Article 67 CC is about the accumulation of sentences.

"With regard to conditional non-execution of the sentence (Article 70 of the Criminal Code of the Republic of Armenia) the criteria prescribed are much milder than those prescribed for imposing a mitigated sentence, than the one provided for by law (Article 64 of the Criminal Code of the Republic of Armenia). In fact, it results in wider application of the conditional non-execution of the sentence as compared to imposing a mitigated sentence than the one provided for by law." It does not say which of those provisions should be amended, or in what respect (about mitigated sentence see Part IV, below).

3.2. Present practice

3.2.1 Statistics

Community service appears to be the one and only alternative for imprisonment. The court cannot impose this alternative on its own accord. The convict has to apply for it personally within 20 days after the receipt of the executive order on the implementation of the sanction (Art. 54 § 3 CC).

The number of persons sentenced to public works, that have been registered at ASD was[36]:

- In 2009 – 438 offenders (for 89 of which the sentence has been suspended before serving the end date of imprisonment[37]),
- In 2010 – 392 offenders (for 140 of which the sentence has been suspended before serving the end date of imprisonment),
- In 2011 – 454 offenders (for 163 of which the sentence has been suspended before serving the end date of imprisonment),
- In 2012 – 435 offenders (for 201 of which the sentence has been suspended before serving the end date of imprisonment),
- In 2013 (data from the 1st quarter) – 426 offenders (for 207 of which the sentence has been suspended before serving the end date of imprisonment).

During the 1st quarter of 2013 there were 6 offenders to whom the public works were replaced with imprisonment in case of malicious evasion from performing community service.

3.2.2 Findings of the American Bar Association

Research done by the American Bar Association shows that non-custodial sanctions and probation (conditional non-execution of sanctions) are rarely used in the RA.:

"Imprisonment remains the most frequently used sanction in Armenia. Interviewees said that judges do consider alternative sentencing when possible and appropriate, but there remains a lack of effective means to actually impose and monitor alternative dispositions (…)" (p. 44)

"While a number of non-custodial sentencing options are provided for in law, they are not, in practice, viewed or applied as realistic alternatives." (p. 46)

[36] Data supplied by the Penitentiary Department, Ministry of Justice.

[37] This refers to the situation wherein, together with a prison term, an offender is being sentenced to an additional punishment (e.g. fine). When such a person fails to pay the fine, it can be replaced by public works, but the implementation of public works will be suspended till the completion of the prison term and will be implemented only after that.

Here (again) the absence of a probation service is identified as an important factor preventing the use of alternatives for imprisonment:

"When asked why probation was used so rarely, interviewees stated that problems in enforcement and supervision of conditions, related to the lack of resources for the ASU (Alternative Sentencing Unit; authors) to supervise offenders on probation, deter judges from imposing probation." (p. 48)

"Though the Armenian legal system is attempting to effectively implement procedures associated with alternative dispositions, there is a lack of adequate resources allocated to further these efforts." (p. 48)

"The state of the ASU is severely detrimental to the effectiveness of monitoring and implementation of alternative measures, since the few staff members assigned to the unit are overworked. Most interviewees agreed that the level of supervision of offenders on probation is not as strict as it should be. An advocate stated there was really no meaningful supervision of probationers, as usually courts do not impose any obligations on offenders beyond appearing when asked and signing in at the CED office. **Typically, it was reported that the offender is required to sign in with a CED caseworker at least once per month**. (emphasis added) It was reported that some police departments play a role in supervising probationers and employ a "personal card system" whereby they note new administrative or criminal violations committed by an offender. (…) According to the ASU, there were 2,026 individuals on probation in 2009, and, of that number, 36 committed new crimes and were then sent to prison to serve their sentences. No statistics were available reflecting the total number of probation violations that did not result in the offender's being sent to prison." (p. 50)

3.2.3 Findings of Social Justice/ OSCE

In the Baseline Study "Creating a Probation Service in the Republic of Armenia" the authors point out that it would be justified to set up a specialized organisation (probation service) that would, in cooperation with the professional staff of the institution executing the prison sentence, execute the alternative sentences and safeguard the rehabilitation and reintegration of offenders (p. 11).

3.3 International standards and good practice

3.3.1 International standards

There is plenty of guidance in international documents for legislators, policy makers and professionals in the field of criminal justice who seek to introduce non-custodial measures and sentences or enhance the use of those. World-wide influence has the:

- *United Nations Standard Minimum Rules for Non-custodial Measures 1990 (The Tokyo Rules)*

Part III of these Rules pertains to the trial and sentencing phase. It offers in Rule 8.2 a true catalogue of "alternative" dispositions, saying there:

"Sentencing authorities may dispose of cases in the following ways:

(a) Verbal sanctions, such as admonition, reprimand and warning;

(b) Conditional discharge;

(c) Status penalties[38];

(d) Economic sanctions and monetary penalties, such as fines and day-fines;

(e) Confiscation or an expropriation order;

(f) Restitution to the victim or a compensation order;

(g) Suspended or deferred sentence;

(h) Probation and judicial supervision;

(i) A community service order;

(j) Referral to an attendance centre;

(k) House arrest;

(l) Any other mode of non-institutional treatment;

(m) Some combination of the measures listed above."

Furthermore, this document contains guidelines for the implementation of non-custodial measures ("how to"), but does not stipulate what organisation (e.g. a probation service) would be best equipped to monitor. That is left to the national jurisdictions.

Less well known UN recommendations are presented in the:

- *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*

Part III of these Bangkok Rules is about non-custodial measures for women. Of crucial importance are:

Rule 60:

"Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services."

and

Rule 62:

"The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes."

In the European region the following documents with (minimum) standards concerning (the implementation of) non-custodial interventions stand out:

- *CoE Rec(2000)22 on improving the implementation of the European Rules on Community Sanctions and Measures*, which builds forth on the:
- *CoE Recommendation No. R (92) 16 on the European Rules on community sanctions and measures*

[38] A status penalty (or measure) applies only to a certain group of offenders, like minors and traffic offenders.

The (2000)22 Recommendation defines the following alternatives for custodial sanctions: probation as an independent (main) sanction, imposed without pronouncement of a sentence to imprisonment; suspension of the enforcement of a sentence to imprisonment with imposed conditions; community service (i.e. unpaid work on behalf of the community); victim compensation/reparation/victim-offender mediation; treatment orders for drug or alcohol misusing offenders and those suffering from mental disturbance that is related to their criminal behaviour; restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring.

This recommendation formulates what it sees as the basic requirements for the effective implementation of community sanctions in its Articles 9 and 10, underlining the importance of sufficient resources and a staff of high professional quality, referring to

- *CoE Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures.*

The role of a probation service in implementing non-custodial dispositions like community service is amply described in:

- *CoE Recommendation CM/Rec(2010)1 the Council of Europe Probation Rules*

The significance of this last recommendation for the plan to create a probation service in Armenia will be highlighted in Part V below.

3.3.2 Good practice

Many European countries have (good) experiences with non-custodial or alternative sanctions. These are widely used, not only instead of custodial sanctions but often also in combination with those. A comparative overview of the various forms of proceedings available within 11 European criminal justice systems and of their core features is given by Wade et. al. Their instructive article provides a picture of how far alternative, non-criminal proceedings are used by some of the systems as a different path to imposing a state reaction upon wrongdoers.[39]

In some European countries (short) prison sentences can be executed in the form of "**Electronic Detention"** or ED. ED can be defined as the obligation to serve a custodial sentence at home while being monitored electronically. A survey ("quick scan") of experiences with this modality of enforcement in the European region, commissioned by the Dutch Ministry of Safety and Justice shows that at least 12 European countries and one state of the German Federal Republic are familiar with this type of enforcement of custodial sentences (Sweden almost 20 years; France 16 years). The way ED is executed differs vastly: from applying a simple electronic bracelet (France) to electronic monitoring combined with personal supervision, guidance and assistance (Sweden).[40]

[39] Marianne Wade & Marcelo Aebi & Bruno Aubusson de Cavarlay & Marc Balcells & Gwladys Gilliéron & Hakan Hakeri & Martin Killias & Christopher Lewis & Erika Roth & Paul Smit & Piotr Sobota & Ksenija Turkovic & Josef Zila, When the Line is Crossed... Paths to Control and Sanction Behaviour Necessitating a State Reaction, *Eur J Crim Policy Res* (2008) 14:101–122. Online publication: http://link.springer.com/content/pdf/10.1007%2Fs10610-008-9075-6.pdf (accessed 21/08/2013).

[40] M.H. Nagtegaal, *Elektronische detentie als alternatief voor gevangenisstraf*
Een quickscan naar Europese ervaringen, Ministerie van Veiligheid en Justitie/WODC, Den Haag 7 juni 2013, 78 p. (in Dutch only).

3.4 Assessment

The Criminal Code provides for (some) non-custodial sanctions and provides also for conditional non-execution of imprisonment (probation). The evidence gathered here shows that these options are not used at all or partially used. This shortcoming is ascribed to the lack of a professional organisation that could implement these non-custodial alternatives. This would make the courts reluctant to mete out non-custodial sentences.

The present provision for "public works" or community service contains an extremely high maximum hours (2200) of community service to be performed. This could be viewed as compulsory labour, prohibited by Art. 4 of the ECHR. A far lower maximum should be considered, taking into account of maxima in other countries (UK: 300 hours; The Netherlands: 240 hours). Prior consent of the offender is not free consent when the alternative is imprisonment.

ASD is responsible for the implementation of 3 types of non-custodial sanctions (1) the fine (which can be substituted by public works/ community service), 2) public works/ community service and 3) the deprivation of special titles or military ranks, categories, degrees or qualification class) and the enforcement of parole (conditional non-execution of imprisonment), suspended sentences, early release. In practice its work is restricted to simply monitoring whether the offenders report regularly at the offices of this division. This task could easily (and perhaps cheaper) be performed by the police until a qualified probation service can take over this task. ASD presently counts 83 persons, all of it lawyers and no social workers. The ASD, that lacks personnel with training in forensic social work, is not equipped to guide and assist the offenders that are subject to their monitoring.

During the field fact findings mission, the consultants were informed that the minimal duration of community service, that is 270 hours, needs to be lowered to 3 hours. The maximum term of 2200 hours was not seen as possibly conflicting with Article 4 of the ECHR, which forbids forced labour, as it is the offender who has to request the court to convert a term of imprisonment in a non-custodial sentence, like public works. The idea of introduction of other types of alternative sanctions like house arrest, restriction of certain freedoms and electronic monitoring was welcomed. The supervision of offenders whom the court, as a part of their sentence, has forbidden to occupy certain positions was considered problematic. As regards the wearing of uniforms, which is current practice in the ASD, it is believed that it adds to the authority of his personnel.

Consultants heard critical opinions as well - calling the present system of alternative sentence obsolete and urging for its reform, justifying the opinion with the fact that there is no real community service in place. It appears that the existing legal options are not applied and that it will take long time to settle the new probation system because of the lack of a real will to change.

3.5 Recommendations

- The present maximum of 2200 hours of public works in Article 54 § 2 of the CC should be significantly reduced to avoid possible violations of Article 4 of the ECHR (prohibition of forced labour). The required prior consent of the offender is not to be regarded as *free* consent because the alternative is imprisonment.

- Non-custodial criminal sanctions (measure or sentence) should be applicable for *every* type of crime, whether as a sanction in its own right or in combination with other sanctions.
- The introducing of new non-custodial sanctions in the Criminal Code should be based on expert advice of criminologists as regards their effectiveness.
- After a probation service will be in place, the monitoring and assistance of offenders should gradually be transferred from the ASD lawyers to social workers or other probation practitioners, that are oriented on the criminogenic needs of the individual offenders and have the skills to monitor, assist and guide them.
- Probation should become applicable for all types of crimes.

PART 4. EARLY RELEASE AND SUBSTITUTION OF SENTENCES - OUTFLOW CONTROL

To ensure a smooth flow of prisoners through the prison system and to prevent them "piling up" in the institutions near the end of their prison terms, an effective early release system as a mechanism of outflow control is essential. Substitution of imprisonment by a non-custodial sanction can help to ease the strain on the prison system as well.[41]

4.1. Present legal provisions

Article 76 of the CC describes when a prisoner is eligible for early release, to which conditions he may be bound during his "probation" and under what circumstances the parole can be annulled.

"1. The person sentenced to imprisonment or disciplinary battalion can be released on parole with his consent, if the court finds that for his correction there is no need to serve the remaining part of the sentence. Also, the person can be completely or partially exempted from supplementary sentence. When exempting from sentence on parole, the court also takes into account the fact of mitigation of damage to the aggrieved by the convict.

2. When applying exemption from sentence on parole, the court can impose on the person the obligations envisaged in clause 5 of Article 70 of this Code, which the person will implement during the non-served part of the sentence.

3. Exemption from sentence on parole can be applied only if the convict has actually served:

1) no less than one third of the sentence for not grave or medium-gravity crime;

2) no less than half of the sentence for a grave crime;

3) no less than two thirds of the sentence for a particularly grave crime, except for crimes envisaged by point 4 of this paragraph, also, of the sentence assigned to the person previously released on parole (if the parole was cancelled on the grounds envisaged in part 6 of this Article);

4) no less than three quarters of the sentence for crimes envisaged under clauses two and three of Article 104; clauses two and three of Article 132; clauses two and three of Article 132.2; clause three of Article 138; clause three of Article 139; clause three of Article 175; clauses two and three of Article 217; clause three of Article 218; clauses two and three of Article 221; clause one of Article 222; clause three of Article 266; clause three of Article 269; clause one of Article 299; Article 305; clause two Article 384; clause two of Article 387; clause two of Article 388; Article 389; clauses one and three of Article 390; clause three of Article 391; Articles 392, 393 and 394 of this Code.

4. The actual term of imprisonment served by a person cannot be less than 3 months.

5. A life-server can be released on parole if the convict has actually served no less than 20 years of imprisonment.

6. If during the unserved period of the sentence:

[41] Substitution of punishment is not separately dealt with in this Part IV because this instrument is hardly used at all. The procedure concerning the substitution of imprisonment with a non-custodial sanction is the same as the early release procedure.

1) the convict maliciously evades the obligations imposed on him by court when releasing him on parole, then, by motion submitted by the supervisory body, the court decides to terminate the release on parole and to carry out the non-served part of the sentence;

2) The convict commits a crime through negligence, then the court decides the issue of keeping or cancellation of parole.

3) The convict commits a wilful crime, then the court assigns a sentence based on the rules envisaged in Article 67 of this Code. If a crime through negligence has been committed, the same rules are used to assign sentence and the court cancels the parole.

7. If a life-server wilfully commits a new crime, which is punishable by imprisonment, the period mentioned in part 5 of this Article is suspended until the expiry of the term for the new sentence."

The early release *procedure* is described in the Articles 115-116 of the *Penitentiary Code:*

Article 115. Procedure of Recommending Persons Convicted to Imprisonment for Certain Term or to Life Imprisonment for Early Conditional Release from the Sentence or Substitution of the Remaining Portion of the Sentence with a Lighter Sentence

1. As soon as the legally-prescribed portion of the sentence length expires, the administration of the sentence executing institution is mandated, within one month period, to review the possibility of recommending a convict, who does not have any administrative penalties, for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence.
2. In case of making a decision on submission of a motion for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence for the persons convicted to certain term or life sentence for medium, grave or particularly grave crimes, the sentence executing institution shall submit its decision to the approval of the independent commission for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence.
3. The sentence executing institution may submit a motion for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence for the persons convicted to certain term or life sentence for medium, grave or particularly grave crimes only in cases when the approval of the independent commission for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence exists.
4. Any motion on early conditional release from the sentence or substitution of the remaining portion of the sentence with a lighter sentence to be submitted to the court shall be accompanied with the convict's personal file.
5. If the independent commission for early conditional release, from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence, rejects the decision of the sentence executing institution on submission of a motion for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence, the sentence executing institution, may discuss the issue of early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence only after three months of the rejection, with the exception of cases prescribed by Article 116 of the Penitentiary Code.
6. If the court rejects the motion on early conditional release from the sentence or substitution of the remaining portion of the sentence with a lighter sentence, another court motion on the same

ground may be filed only after six months of the rejection, with the exception of cases prescribed by Article 116 of the Penitentiary Code.

7. The decision of the sentence executing institution administration may be appealed in court. The decisions of the independent commission for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence may not be appealed in court, with the exception of cases, when those decisions contradict the Law, as well as in cases, when the decisions were made with violations of the executive order of the President of RA.

Article 115.1. The procedure for recommending a person sentenced to confinement in a disciplinary battalion for conditional release from the sentence

1. If the part of the term of sentence prescribed by law expires, the commander of the disciplinary battalion shall, within a period of one month, file, on a mandatory basis, a motion with the court on conditional release from the sentence of the person who has no disciplinary penalty.
2. Along with the motion on conditional release from the sentence the personal data file of the convict shall also be submitted to the court.
3. In case the motion is rejected by the court, another motion on the same ground may be filed with the court not earlier than six months after the adoption of the decision on rejection.
4. The failure by the commander of the disciplinary battalion to comply with the requirement prescribed by part 1 of this Article may be appealed in a judicial procedure.

Article 116. Peculiarities of Early Conditional Release from the Sentence of Individuals Convicted to Life Imprisonment

1. An individual convicted to life imprisonment may be recommended for early conditional release from the sentence, if he has not had any penalties for intentional breaches of the sentence serving procedure during the preceding five years and has served at least 20 years of the imprisonment sentence.
2. If the independent commission for early conditional release from the sentence or for substitution of the remaining portion of the sentence with a lighter sentence rejects the decision of the sentence executing institution on submission of a motion on early conditional release from the sentence of a life sentenced person, the sentence executing institution, may discuss the issue of early conditional release from the sentence only after 18 months of the rejection.

   If the court rejects the motion on early conditional release from the sentence, another court motion on the same ground may be filed only after three years of the rejection.

Since 2006 these articles must be read together with a special Presidential Decree that defines the role and powers of the present parole commissions. Three of these "interagency" commissions have been installed, each composed of 8 members: representatives of: police force, national security, national health service, Penitentiary department, the Ombudsman's office, public council, presidential office, state university (representatives of general public may also be involved).

Legal reform

The *Strategic Programme* stresses the need for reform of the parole procedure, stating:

"4.4.3 Establishing an effective procedure for examining cases on early conditional release and on substituting the unserved portion of the sentence with a mitigated sentence."

"The international practice shows that three forms of mechanisms are differentiated as regards the issue of early conditional release and the substitution of the unserved portion of the sentence with a mitigated sentence:

1. Judicial - the issue of early conditional release and substitution of the unserved portion of the sentence with a mitigated sentence shall be resolved by the court. Prior to the amendments made to the 2006 Penitentiary Code of the Republic of Armenia such a regulatory arrangement was also established in the Republic of Armenia.
2. Mixed - there is an interim unit between the administration of the penitentiary establishment and the court that gives an opinion on the fact that the convict has been corrected;
3. Extrajudicial - the issue of early conditional release and substitution of the unserved portion of the sentence with a mitigated sentence is resolved by relevant independent commissions that are independent bodies provided for by law and do not function within the structure of any state body.

As a result of the 2006 legislative amendments, Armenia passed from the judicial mechanism of early conditional release and substitution of the unserved portion of the sentence with a mitigated sentence to mixed form. The latter may be viewed as an action aimed at raising the public awareness about the issues relating to the correction of the convicts and their early conditional release or substitution of the unserved portion of the sentence with a mitigated sentence. However, the activities of these commissions, the efficiency of the mechanisms of the early conditional release and substitution of the unserved portion of the sentence with a mitigated sentence is still problematic. It is necessary to improve the operation principles of the commissions, the standards of decision - making, as well as to define by law complete rules for examination of cases on the early conditional release and substitution of the unserved portion of the sentence with a mitigated sentence.

The implementation of such amendments will, on the one hand, enhance the effectiveness of the activity of the independent commissions and eliminate the deficiencies available in the mechanisms of the early conditional release and substitution of the unserved portion of the sentence with a mitigated sentence in the Republic of Armenia, and on the other hand, will ensure the participation of the society and the representatives thereof in the solution of such issues."

4.2 Present practice

4.2.1 Statistics

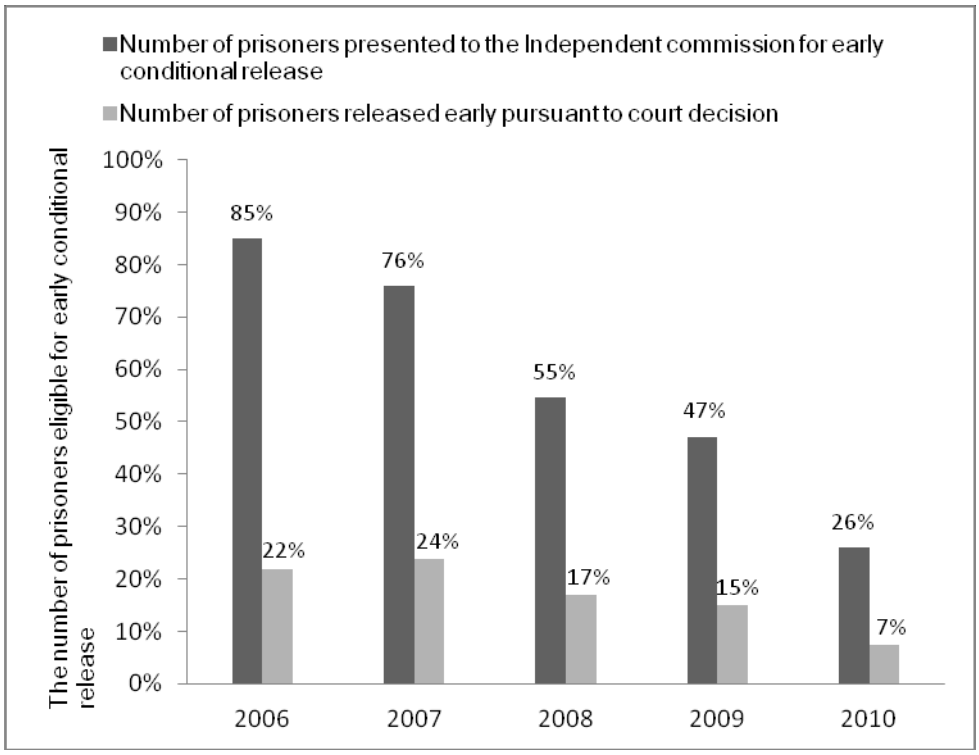
Only scant data were provided on the part of the questionnaire concerning the early release procedure.[42] The MoJ did provide the following: "During 2012 343 petitions on early conditional

[42] a) Are prisoners informed in a timely manner about their right to apply for parole?; b) How many applications for parole are submitted to the courts yearly? c) How many applications were granted?; d) Which were the (main) reasons to deny parole applications?; d) Is the description of the parole system and procedure as presented in the report The System Of Early Conditional Release in the Republic of Armenia: Main Issues and Ways of Development, Civil Society Institute.
Article 76, par. 5 says that also life prisoners can be paroled after having served at least 20 years. a) What made the legislator chose 20 years to serve as a minimum? b) How many life-sentenced prisoners are

release or on substitution of the sentence with a milder sanction were submitted to the courts; 295 of the mentioned 343 petitions were approved by the court during 2012."

4.2.2 Findings of the Civil Society Institute

More statistical data are presented in the report "*The System of Early Conditional Release in The Republic of Armenia*" of the Civil Society Institute.[43]



This diagram shows that very few prisoners who are eligible for parole will be granted early release and that this percentage has been declining steadily from 2006 (the year the "independent commissions" were introduced) to 2010.

The report presents a critical, in depth study of the Armenian early release system and concludes that the current early conditional release system in Armenia needs serious reforms. These reforms should ultimately lead to a situation where a probation service prepares – in co-operation with the penitentiary – an assessment concerning the risk of reoffending of candidates for early release. "In the case of the probation service reaching a positive conclusion, which also contains recommendations on conditions, the prisoner decides himself whether or not he wants to be released on such conditions. If the answer is "yes," he requests the penitentiary to send a motion to a court. If the prisoner does not agree to the recommended conditions or types of supervision, he can request the penitentiary to send the case to a court, where he can question both the conditions and the types of supervision in an adversarial hearing.[44]

---

there presently? c) How many life prisoners have been paroled (after having served how many years) over last 5 years?

[43] Civil Society Institute, *The System of Early Conditional Release in the Republic of Armenia - Main Issues and Ways Of Development*, Yerevan 2012. (reproduced diagram on p. 10).

[44] Civil Society Institute, op.cit., p. 45-46.

In the case of the probation service reaching a negative conclusion, the prisoner decides himself whether or not to question the parts of the conclusion he disagrees with in a court. If the prisoner decides to go to a court, the final decision is made by the court, and it can be appealed in a court of appeals." In this model there is no role for the "independent commissions".

4.2.3 Findings of the American Bar Association

In its report *Detention Procedure Assessment Tool for Armenia*[45] the American Bar Association report has drawn the following conclusions concerning the Armenian early release system:

"The structure of the Armenian parole system was modified in 2006 with the creation of independent parole commissions (IPCs), without the approval of which requests for parole cannot be presented to the competent court even when the prison administration has recommended it. Since the creation of the IPCs, parole has reportedly been granted infrequently, leading to higher prison populations and related problems. Many observers believe the intent of the IPCs is to reduce parole."

"Consideration of parole by the prison administration is automatic, as is reconsideration following the IPC's denial of parole. There are no legally-established criteria for the IPC's decision to recommend or deny parole. The IPC's decisions are not transparent, and serious doubts exist as to their objectivity. In cases where the IPC's recommendation for parole is referred to a court, the courts are generally perceived to be fair and thorough in making the ultimate decision to grant or deny parole."

"Although Armenian law provides for the supervision of parolees with conditions adaptable to each individual case, in practice, effective supervision of parolees is non-existent."

This report presents the following statistics concerning parole:

CONSIDERATION OF PAROLE IN ARMENIA, 2008-2009				
Year	**Cases considered by prison administration**	**Cases considered by IPCs**	**Cases referred to courts**	**Percent of all cases ultimately heard by courts**
2008	**3,289**	**1,798 (54.7%)**	**586 (32.6%)**	**17.8%**
2009 (through October 1)	**2,617**	**1,334 (50.9%)**	**483 (36.2)**	**18.4%**

Source: MoJ

Reportedly, the courts deny about 15-20% of cases where the IPC has recommended paroles, such that, in total, an estimated 85% of eligible prisoners are denied parole.

4.2.4 Findings of the Social Justice NGO/OSCE

In its baseline study on the creation of a probation service in Armenia, Social Justice describes the role of such a service once it has been established. "An important function of the Probation Service will be the preparation and submission of reports and social-psychological profile assessments on the person in case of recommending early conditional release of the convict from serving the sentence or recommending substitution of the remainder of the sentence with a more

[45] American Bar Association, *Procedure Assessment Tool for Armenia,* Washington DC, 2010, p. 61-64.

lenient type of sentence." In the post-penitentiary stage "the Probation Service should supervise, support, and help persons (…) released early from the sentence."[46]

4.3 International standards, case law and best practices

4.3.1 International standards

- *United Nations Standard Minimum Rules for Non-custodial Measures 1990 (The Tokyo Rules)*

Part IV of these Rules pertain to post-sentencing phase, mentioning – next to parole -various other mechanisms to usher prisoners smoothly back to free society, stating:

"9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalisation and to assist offenders with their early re-integration into society.

9.2 Post-sentencing dispositions may include: (a) Furlough and half-way houses; (b) Work or education release; (c) Various forms of parole; (d) Remission; (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

- *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*

These Bangkok Rules hold a special provision regarding early release of women, saying in Rule 63:

"Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social re-integration needs."

- *CoE Rec(2003)22 on conditional release (parole)*

Though this entire recommendation is relevant for the plans to reform the early release procedure only the following Articles are cited here:

"5. When starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period (defined in absolute terms and/or by reference to a proportion of the sentence) and the **criteria that will be applied** to determine whether they will be granted release ("discretionary release system") or when they become entitled to release as of right by virtue of having served a fixed period defined in absolute terms and/or by reference to a proportion of the sentence ("mandatory release system")."

"13. Prison services should ensure that prisoners can participate in appropriate **pre-release** programmes and are encouraged to take part in educational and training courses that prepare them for life in the community. Specific modalities for the enforcement of prison sentences such as semi-liberty, open regimes or extra-mural placements, should be used as much as possible with a view to preparing the prisoners' resettlement in the community."

"14. The preparation for conditional release should also include the possibility of the prisoners' maintaining, establishing or re-establishing links with their family and close relations, and of forging contacts with services, organisations and voluntary associations that can assist conditionally released

[46] Social Justice, op. cit., p. 25-26.

prisoners in adjusting to life in the community. To this end, various forms of prison leave should be granted."

Discretionary release system

(…)

17. The relevant authorities should initiate the necessary procedure to enable a decision on conditional release to be taken as soon as the prisoner has served the minimum period.

18. The **criteria** that prisoners have to fulfil in order to be conditionally released should be **clear and explicit**. They should also be realistic in the sense that they should take into account the prisoners' personalities, their social and economic circumstances as well as the availability of resettlement programmes.

(…)

20. The **criteria** for granting conditional release should be applied so as to grant conditional release to all prisoners who are considered as meeting the minimum level of safeguards for becoming law-abiding citizens. It should be incumbent on the authorities to show that a prisoner has not fulfilled the criteria.

21. If the decision-making authority decides not to grant conditional release it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner.

Mandatory release system

(…)

23. Only in exceptional circumstances defined by law should it be possible to postpone release.

24. The decision to postpone release should set a new date for release.

- *CoE Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules*

The drafters of the new Criminal Code and the future Probation law especially should take account of the following Articles of the recommendation:

"45. Depending on the national legal system, probation agencies may produce the **reports** required for decisions to be taken by the competent authorities. They shall include advice on:

a. the feasibility of the offender's release in the community;

b. any special conditions that might be included in the decision regarding the offender's release;

c. any intervention required to prepare the offender for release"

(…)

"59. Where probation agencies are responsible for supervising offenders after release they shall work in co-operation with the prison authorities, the offenders, their family and the community in order **to prepare their release** and reintegration into society. They shall establish contacts with the competent services in prison in order to support their social and occupational integration after release.

60. Probation agencies shall be afforded all necessary access to prisoners to allow them to assist with preparations for their release and the planning of their resettlement in order to ensure continuity of care by building on any constructive work that has taken place during detention.

61. **Supervision** following early release shall aim to meet the offenders' resettlement needs such as employment, housing, education and to ensure compliance with the release conditions in order to reduce the risks of re-offending and of causing serious harm.

(…)

66. When required before and during **supervision**, an assessment of offenders shall be made involving a systematic and thorough consideration of the individual case, including risks, positive factors and needs, the interventions required to address these needs and the offenders' responsiveness to these interventions."

4.3.2 The ECtHR case law

With regard to the early release of life-sentenced prisoners the ECtHR has delivered a few standards-setting judgments.

In the case of *Léger v. France*[47] the Court reiterated that States have a duty under the Convention to take measures for the protection of the public from violent crime. The Court therefore considers that the punitive element inherent in the tariff approach (setting the earliest date at which conditional release may be granted) does not in itself give rise to a breach of Article 3. Once the sentence element of the sentence has been satisfied, the grounds for the continued detention must be considerations of risk and dangerousness. When a life-sentence prisoner *de jure* and *de facto* is not deprived of all hope of obtaining an adjustment of his sentence his continued detention as such, long as it may be, does not constitute inhuman or degrading treatment.

The same position was taken in the case of *Kafkaris v. Cyprus*[48], where the Court observed:

"98. In determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. An analysis of the Court's case-law on the subject discloses that where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3. The Court has held, for instance, in a number of cases that, where detention was subject to review for the purposes of parole after the expiry of the minimum term for serving the life sentence, it could not be said that the life prisoners in question had been deprived of any hope of release (...). It follows that a life sentence does not become "irreducible" by the mere fact that in practice it may be served in full. It is enough for the purposes of Article 3 that a life sentence is de jure and de facto reducible."

4.3.3 Best practice

It is very difficult to identify European countries with best practices concerning early release because some have adopted mandatory (like The Netherlands) and others a discretionary system (like Belgium). The minimum term to serve is different everywhere and in some jurisdictions the court fixes the minimum tariff to be served (like in the UK). In its decision in the case of *Vinter v. the United Kingdom*[49] a comparative oversight of life-sentence systems was given in § 68:

"D. Life sentences in the Contracting States

[47] 11/04/2006, appl. no. 19324/02
[48] 12/02/2008, appl. no. 21906/04.
[49] ECtHR (Grand Chamber) *Vinter and others v. The United Kingdom*, 09/07/2013, Applications nos. 66069/09, 130/10 and 3896/10.

68. On the basis of the comparative materials before the Court, following practices in the Contracting States may be observed.

First, there are currently nine countries where life imprisonment does not exist: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. The maximum term of imprisonment in these countries ranges from twenty-one years in Norway to forty-five years in Bosnia and Herzegovina. In Croatia in a case of cumulative offences, a fifty-year sentence can be imposed.

Second, in the majority of countries where a sentence of life imprisonment may be imposed, a mechanism exists for reviewing the sentence after the prisoner has served a certain minimum period fixed by law. Such a mechanism, integrated within the law and practice on sentencing, is foreseen in the law of thirty-two countries: Albania (25 years), Armenia (20), Austria (15), Azerbaijan (25), Belgium (15 with an extension to 19 or 23 years for recidivists), Bulgaria (20), Cyprus (12), Czech Republic (20), Denmark (12), Estonia (30), Finland (12), France (normally 18 but 30 years for certain murders), Georgia (25), Germany (15), Greece (20), Hungary (20 unless the court orders otherwise), Ireland (an initial review by the Parole Board after 7 years except for certain types of murders), Italy (26), Latvia (25), Liechtenstein (15), Luxembourg (15), Moldova (30), Monaco (15), Poland (25), Romania (20), Russia (25), Slovakia (25), Slovenia (25), Sweden (10), Switzerland (15 years reducible to 10 years), the former Yugoslav Republic of Macedonia (15), and Turkey (24 years, 30 for aggravated life imprisonment and 36 for aggregate sentences of aggravated life imprisonment).

In respect of the United Kingdom, the Court notes that, in Scotland, when passing a life sentence, a judge is required to set a minimum term, notwithstanding the likelihood that such a period will exceed the remainder of the prisoner's natural life: see the Convention Rights (Compliance) (Scotland) Act 2001.

Third, there are countries which make no provision for parole for life prisoners, such as Iceland, Lithuania, Malta, the Netherlands and Ukraine. These countries do, however, allow life prisoners to apply for commutation of life sentences by means of ministerial, presidential or royal pardon. In Iceland, although it is still available as a sentence, life imprisonment has never been imposed.

Fourth, in addition to England and Wales, there are six countries which have systems of parole but which nevertheless make special provision for certain offences or sentences in respect of which parole is not available. These countries are: Bulgaria, Hungary, France, Slovakia, Switzerland (…) and Turkey."

The Court observes in §120 of this judgment that the comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter.

Good practice can be said to be promoted by:

a) introducing in the law scientifically validated criteria for the assessment of the eligibility for parole;

b) entrusting the assessment to specially trained professionals;

c) giving prisoners effective legal remedies for contesting denial or postponement of parole;

d) giving prisoners access to free legal aid to assist them in parole procedures.

4.4 Assessment

The early release system is one of the most debated issues of criminal justice in Armenia. The vast majority of interviewees criticised the present early release procedure and the way the Independent early release committees operated. Mostly they claimed that the early conditional release system is unjust and ineffective. The main reason was the fact that the Independent commissions consider the submissions for early release from the penitentiary institutions and accept those or not without substantiating their decisions. This practice makes the appeal difficult if not impossible. Administrative courts have no legal competence to handle complaints about parole decisions of the prison administration or parole committees. The Constitutional Court only accepts complaints about alleged violations of the parole procedure. The assessment format used by the prison administrations[50] is arbitrary, the criteria used by the independent commissions are strictly confidential and the courts have no real "say" in whom to release on parole and who not. The preparation of prisoners for early release is difficult. An assessment of the prisoner is made on admission and after that every 3 months, but not much can be done with those assessments because sentence planning and early release programmes do not exist. Prison leave (from 3 days up to 1 month) *could* be used as a tool to prepare a prisoner for his return to free society. The result of the foregoing is that the right of prisoners to early release is impaired in the present situation.

Unless the envisaged new Criminal Code will enter into force soon and will provide for a fair and transparent early release procedure, the present procedure should immediately be replaced by a new one by amending the present Criminal Code, Penitentiary Code and relevant by-laws and decrees.

4.5 Recommendations

- Programmes to prepare prisoners for parole should be developed as a high priority. These programmes should be developed by the (future) probation service in close co-operation with the Penitentiary Department.
- The legislation concerning early release should be amended in such a way as to provide for a fair and transparent parole procedure. The provision(s) in the Criminal Code concerning parole should be formulated in such a way that granting parole is the norm and not granting parole as an exception. The Criminal Code should also indicate which authority has to initiate the parole procedure and which authority(ies) can or must give advise on the risk of reoffending of the parole candidates. In secondary legislation (by-laws, Ministerial decrees etc.) the early release procedure should be spelled out in detail, including all positive and negative criteria that determine the decision whether or not (yet) to grant parole.
- Any decision not to grant parole or to postpone it should be open to full appeal to the court. The appropriate appeals procedure should be introduced in the Code of Criminal Procedure. The appellants shall have access to free legal aid.

[50] *Standards for evaluations of an inmate and his/her behaviour for the purposes of early conditional release* - Added to this report as Annex 3.

- The assessment format used presently by the prison administration to determine the eligibility for parole (see Annex 3 to this report) should be replaced by a scientifically validated risk-assessment tool[51] to be by operated by the future probation service.
- Before making a definite choice for a specific early release procedure *a mandatory parole system* – seemingly the most fair and transparent one - should be tried out by way of a pilot. Such a pilot project should imply that every prisoner who has served his/ her mandatory term is granted parole by the Minister of Justice, unless objective contra-indications (to be substantiated by the Prosecution Service) justify refusing or postponing parole. The prosecutor should submit requests to the court for not granting or postponement of parole after the prisoner concerned has been heard. The present - dysfunctional - "independent early release commissions" should play no role in these pilots.

PART 5. **PROBATION**

Similar with other countries in the region the Armenian authorities have taken a decision to enhance *the effectiveness of the criminal justice and criminal sentences systems* through a large reform of criminal legislation including the *establishment of the probation service independent and separate from the penitentiary service under the Ministry of Justice of the Republic of Armenia (Objective 2.3, Annex 2 of the Executive Order of the President of the Republic of Armenia 30 June 2012 NK96-A regarding the Strategy on Legal and Judicial Reforms 2012 - 2016).* This objective is also one out of four included in the European Union Action Plan for Armenia in relation to the justice system which states the revision of the CC and promotion of the alternative sentence system to decrease the level of incarcerated persons in line with the international standards *(Annual Action Programme 2012 for Armenia, Support for Justice Reform in Armenia – Phase II[52]).*

In this respect the report will cover under this section the current institutional framework and arrangements of the system of implementation of non-custodial sentences and measures, together with a set of recommendations in order to set-up the Probation Service of the Republic of Armenia (PSRA) based on the initial findings during the field mission organised in Yerevan, between 9 and 11 July 2013. Bearing in mind the Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules and best practices from other countries, the process of establishing the probation service in Armenia has been analysed on the following sub-sections: Policy and Advocacy, Law reform, Administrative reform, Training and Capacity Building, Accountability Mechanism, Coordination, Data collection and Analysis.

Brief state of play about the probation service in Armenia

According with the CC and as mentioned in Part III of this report, there are the following types of non-custodial sanctions and measures: fine, deprivation of the rights to occupy certain positions or to engage in certain types of activities, public works, conditional sentence, postponement of sentence for pregnant women or women with children under 3 year of age, early conditional release from prisons[53].

[51] Like the one used – for instance – in The Netherlands.
[52] http://ec.europa.eu/europeaid/documents/aap/2012/af_aap_2012_arm.pdf
[53] Art. 49, Art. 70, Armenian Criminal Code

These sanctions and measures are implemented by the ASD within the Criminal Executive Department[54] – a central structure of the Prison Service. As mentioned by the officials of ASD the activity of this department is performed by 83 employees, graduates in law , currently in relation with 1876 convicted persons with non-custodial sanctions and measures.

5.1 POLICY AND ADVOCACY

5.1.1 Current situation

As mentioned above there is a clear written objective in terms of policy about establishing the probation service in Armenia, separate from the Prison Service, as an independent organisation under the Ministry of Justice in accordance with the *Strategy on Legal and Judicial Reforms 2012 - 2016* and its Action Plan. The strategy is approved by the President of the Republic of Armenia.

The experts received the draft law on probation, planned by the strategy and its action plan, in the second stage of writing this report which is why its provisions have not been analysed from the perspective of compliance or non-compliance with the international standards but general comments and recommendations regarding the amendments of this draft law were addressed in this section.

In terms of advocacy there are several voices in the Armenian society and international organisations supporting the creation of the probation service as a measure to fulfil international standards in terms of alternatives to incarceration, reflected in several documents developed or supported by these stakeholders.

The EU, by approving the Action Plan 2012 for Armenia, plans to allocate 20mln EUR[55] as budgetary support to Armenia with few preconditions, among others: creation of a Probation Service and promotion of alternative sanctions in line with international standards. It is anticipated that CoE will continue providing technical support to the Government in this area. Meantime, the EU Advisory Group prepared a Policy Paper about creation of PSRA.

The Organisation for Security and Co-operation in Europe (OSCE) by the Programme in the Human Rights[56] works to promote reform regarding the legislation and policy at the institutional level. OSCE supported two very important studies: first prepared by Social Justice NGO related to creation of the Probation Service in the Republic of Armenia; and second developed by Civil Society Institute NGO on Early Conditional Release System in Armenia. The first study offers a model of probation service for the Republic of Armenia, describing the mission and future attributions. Our interview sources confirmed that in broader perspective this proposed model is very much in line with the vision of the authorities from MoJ.

The American Bar Association, Rule of Law Initiative developed during 2010 a very comprehensive Detention Procedure Assessment Tool for Armenia and underlined the need for a

[54] Decree no 1561–N of the Republic of Armenia Government on approving the order of activity of territorial bodies of Division for Execution of Alternative Punishments of Criminal Executive Department of the Republic of Armenia Ministry of Justice

[55] *Annex 1 – Annual Action Programme 2012 for Armenia, Support for Justice Reform in Armenia – Phase II*

[56] http://www.osce.org/yerevan

framework regarding the implementation and supervision of alternatives to detention in order to encourage the practical application of the legal provisions[57].

The Hungarian Helsinki Committee performed a research in 2013[58] regarding the Pre-trial Detention in CEE-FSU Countries and in accordance with its findings from section 6.3, it recalls the value of international standards about "a reasoned decision behind any deprivation of liberty" including the fact that this written obligation is not often implemented in the countries observed.

Last but not least, with the support of the Norwegian Ministry of Foreign Affairs, the Council of Europe developed the project "Reducing use of custodial sentences in line with the European standards", and under its actions the current report is produced.

Even if there are some differences between the views of the policy makers and representatives from the civil society about the "profile" of the future probation service, there is a clear positive movement toward the establishment of the probation service in the Republic of Armenia. As some of the interviewees mentioned there is also a risk that this objective will remain only on paper with no chance to be materialised in the next years. Some plans of the authorities regarding the next steps in developing the probation service are only for internal use while the probation concept itself is for the benefit of the entire community and citizens. Members of parliament have to be aware about the future action in this field. In order to keep the momentum and to move forward in terms of policy and advocacy, other measures need to be planned in a structured manner as suggested in the following recommendations.

5.1.2 Recommendations

The MoJ is encouraged to reflect that if starting from the strategic objectives established in the *Strategy on Legal and Judicial Reforms 2012 – 2016,* a comprehensive Action Plan for the development of the PSRA needs to be developed. This Action Plan has to be drafted at the MoJ level and discussed together with representatives from all the stakeholders involved in this process: police, prosecutors, judges, lawyers, prison service, ASD, different ministries, NGOs, donors, in order to create an ownership for the establishment of PSRA.

An impact study is recommended. It should be drafted together with the Action Plan for the development of the PSRA in order to determine the expected impact at the level of legislation, human resources, administrative and financial resources. All these actions have to be translated in funds available and the source of funding has to be identified (state budget and funds from donors). In order to be sustainable the impact study has to be approved by the Finance Ministry of the Government of Armenia and supported by the identified donors.

The Ministry of Justice is encouraged to determine if it is feasible to establish a Steering Committee involving members among the officials in charge with the implementation of the Action Plan recommended at point 1. Quarterly meetings should be held in order to assess the progress achieved in relation to the Action Plan recommended at point 1.

Indicators:

- Action Plan for the development of the PSRA developed;

[57] http://apps.americanbar.org/rol/publications/armenia_dpat_final_04_2010_english.pdf p, 2
[58] Hungarian Helsinki Committee, *Promoting the Reform of Pre- trial Detention in CEE-FSU Countries, Introducing Good Practices*, 2013

- Impact study of legislation, human resources, administrative and financial resources performed.

International best practices:

Many European countries during their development process of probation services adopted policy documents in order to express the support of the governments and/or Parliament for a sustainable implementation of non-custodial sanctions. Three examples can be analysed. The Norwegian[59] approach regarding the White Paper adopted in 2008 with the aim to integrate several principles like *reintegration guarantee* and *normalisation* in the correctional practice. Also the US[60] experience to ensure a successful transition of the inmates from prisons to community by adopting in 2008 the Second Chance Act can serve as reference for a strategic approach to address re-offending. Lastly, a recent policy document has been published in Ireland in May 2013 regarding a Joint Irish Prison Service and Probation Service Strategic Plan 2013-2015 to establish an inter-agency plan for the two organisations to continue delivering services together with other stakeholders within the community[61].

5.2 LAW REFORM

5.2.1 Current situation & recommendations

As a result of the first legislative reform after the independence of the Republic of Armenia new Codes have been adopted. The CCP comes into force in 1999 and the CC in 2003. Currently another significant reform, it is assumed by the Armenian authorities according to the *Strategy on Legal and Judicial Reforms 2012 – 2016.* It is envisaged that at the end of 2013 or beginning of 2014[62] a new CCP will be adopted, and near the end of 2015 a new CC will be sent by the Government for adoption to the National Assembly of the Republic of Armenia[63].

In the following section the provision of the Armenian CC and CCP will be analysed based on their relevance for the probation service intervention.

Having in view the Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules (in this report Council of Europe Probation Rules) we can identify the main features[64] of the probation work:

5.2.1.1 Pre-sentence reports[65]

5.2.1.2 Other advisory reports

5.2.1.3 Community service

5.2.1.4 Supervision measures

[59] http://www.cepprobation.org/uploaded_files/Summary%20information%20on%20Norway.pdf
[60] https://www.bja.gov/ProgramDetails.aspx?Program_ID=90
[61] http://www.justice.ie
[62] According to the source of the interview
[63] Annex 2 to the Executive Order of the President of the Republic of Armenia 30 June 2012 NK-96 A List of measures deriving from *Strategy on Legal and Judicial Reforms 2012 – 2016, objective 2.1*
[64] Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, part IV
[65] The sintagma "pre-sentence report" is used under this section both for pre-trial and pre-sentence reports as per definition from the Council of Europe Probation Rules - Rule 42

5.2.1.5 Work with the offender's family

5.2.1.6 Electronic monitoring

5.2.1.7 Resettlement

5.2.1.8 Aftercare

The Armenian legal framework comprises certain provisions, which, in an innovative way of thinking, can offer the possibility to exercise the probation work even under the current Law. Recommendations for each of the eight features mentioned above are presented below.

5.2.1.1 Pre-sentence reports

Rule 42[66] specifies the following:

> *"...probation agencies may prepare pre-sentence reports on individual alleged offenders in order to assist, where applicable, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures..."*

The CC does not specify a clear text about the necessity to draft pre-sentence reports before sentencing for an accused person by a specialised entity but offers sufficient room for creativity in accordance with Article 61 (2).

> *"The type and degree of sentence is determined by the extent of social danger of the crime and its nature, by the **characteristic features of the offender**, including circumstances mitigating or aggravating the liability or the sentence."*

According to the information received from the Armenian authorities it is envisaged that the CC will be amended and Article 61 (2) will be extended to provide a possibility to request a report/recommendation from the authorised body such as the Probation service.

Of course the main questions will remain which institutions should provide this service and is the ASD the right organisation to perform those activities or another new one has to be created?

Possible answers and options will be recommended under the *sub-section 5.4 (Training and capacity building).*

Recommendation

In order to get the courts familiar with the possibility to order/receive certain information from a specialised body and before the amendments made to the CC take effect, the Armenian authorities are encouraged to analyse the possibility to establish some pilot centres where mixed teams of representatives from ASD and NGOs could prepare special inquires for the benefits of the courts. The activities of these teams can be triggered by a ministerial order with the aim to ensure a proper implementation of the legal provisions about gathering ***characteristic features of the offender*** for the benefits of the courts as envisaged in the above cited Article 61 (2) of the CC.

International best practices:

The Romanian experience in the establishment of pilots when planning to introduce new practices was successful and resulted in the creation of the national probation service. This

[66] Ibidem

approach is still embraced even today in order to test the feasibility of new practices in the probation activity.

5.2.1.2 Other advisory reports

Rule 45[67] :

> *"...probation agencies may produce the reports required for decision to be taken by the competent authorities. They should include advice on: a. the feasibility of the offender's release in the community; b. any special conditions that might be included in the decision regarding the offender's release; c. any intervention required to prepare the offender for release."*

When analysing the content of the Armenian Penitentiary Code (APC) Article 117 regarding the procedure for postponement of serving of the sentence and for releasing from the sentence we can observe that in accordance with point (5)

> *"...**the Subdivision for Execution of Noncustodial Sentences shall file a motion** with the court requesting to release the offender from the unserved part of the sentence, or to replace the unserved part of the sentence with a lesser sentence, or execute the sentence imposed upon by a judgment of conviction, **taking into account the offender's behaviour, the nature of and the degree of social danger of the committed crime, the offender's attitude towards the issue of child upbringing, and the unserved part of the sentence**."*

The provisions of the Decree No 1561-N do not comprise any provisions about a certain inquiry needed to be performed by the ASD in order to gather specific information about personal characteristics, behaviour or attitudes of the convicts.

According to some of our interviewees, there is an intensive debate among practitioners within the justice system about the procedure for granting early conditional release and especially about lack of criteria when deciding about one convict or another.

Recommendations

Besides the approach of drafting a set of objective criteria to support the process of all actors involved in the chain of conditional release, the Armenian authorities are encouraged to reflect on the possibility to amend provisions of the APC and CC in order to open the possibility of gathering information about the characteristics of offenders including their resettlement perspectives. Before the establishment of the PSRA this activity can be tested by the same mixed teams mentioned above.

Indicator:

- Amendments to APC and CC to include the possibility of gathering information about the characteristics of offenders including their resettlement perspectives.

5.2.1.3 Community service

Rule 47[68]:

[67] Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, part IV

"Community service is a community sanction or measure which involves organising and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders."

Within the CC we can identify in Article 49 (3) the sentence of *public work* an equivalent of the most common used term in the literature - *community service.* Article 54 of the CC defines the nature of Public works as:

"Public work is the performance of socially useful, non-paid works by the convicted person assigned by the court in the place determined by the competent authority. "

Chapter 4 of the Decree no. 1561–N of the Republic of Armenia Government on approving the order of activity of territorial bodies of Division for Execution of Alternative Sentences of Criminal Executive Department of the Republic of Armenia Ministry of Justice (here and after Decree no. 1561-N) details the execution procedure of this sentence. We can observe a theoretical congruence between the general international provisions[69] and the domestic law but there is a significant lack of correlation between Rule 51[70] and the CC and other domestic regulations.

Recommendations

The Armenian authorities are encouraged to explore the possibility to amend Decree no. 1561–N or to include in the probation draft law more comprehensive provisions about the connection between the following factors: offence, characteristics of the offender, assessment of the offender, other non-custodial interventions, places for serving public works.

Indicator:

- Provisions about the specialised intervention of the probation service targeting the criminal behaviour included within the Probation draft Law.

International best practices:

The practices integrated in the work of the probation services from The Netherlands gather a structured approach in terms of diagnosis and advice and also structured interventions to address different aspects of the offender's behaviour like addiction, aggression, housing and other crimonogenic factors. Community service is also very well represented in the statistic data of the Dutch Probation Service and the implementation of this alternative sanction is arranged depending on the characteristics of the offenders[71].

5.2.1.4 Supervision measures

Rule 53

---

[68] Ibidem
[69] Ibidem
[70] Probation agencies shall develop community service schemes that encompass a range of tasks suitable to the **different skills and diverse needs of offenders**. In particular, there must be appropriate work available for women offenders, offenders with disabilities, young adult offenders and elderly offenders.
[71] http://www.cepprobation.org/uploaded_files/Netherlands_The.pdf

"In accordance with national law, probation agencies may undertake supervision before, during and after trial, such as supervision during conditional release pending trial, bail, conditional non-prosecution, conditional or suspended sentence and early release."

… and

Rule 55

"Supervision shall not be seen as a purely controlling task, but also as a means of advising, assisting and motivating offenders. It shall be combined, where relevant, with other interventions which may be delivered by probation or other agencies, such as training, skills development, employment opportunities and treatment"

According to the Armenian current national legislation supervision can be enforced in case of conditional sentence and early conditional release from prisons by ASD[72]. There is also a possibility to exercise a certain supervision in case of a fine, deprivation of the rights to occupy certain positions or to engage in certain types of activities and postponement of sentence for pregnant women or women with children under 3 years of age. However, these types of sentences cannot be considered to be in the spirit of the Rules 53 and 55. There is a strong administrative part of those 3 sentences as in theory, the aim the supervision of executing some measures should lead to reducing re-offending chances.

The purpose of the community sanctions and measures which are the responsibility of the probation service must take into account the assurance of a balance between the protection of society by maintaining law and order, preventing new offences and maintaining in society the person who committed one or more offences, thus leading to the implementation of Principle 1 of the European Probation Rules:

"Probation agencies shall aim to reduce re-offending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice."[73]

Recommendations

Armenian authorities are encouraged to analyse the possibility, now, at the time of the creation of the probation law to orient ASD/future probation service's prerogative of enforcement of the sentences that include offenders' rehabilitation component. The sentences, where enforcement involves more administrative interventions (e.g. fine) than criminal behaviour oriented interventions, could be allocated to other institutions such as the police or fiscal bodies.

Indicator:

- The provisions of the probation draft law comprise clear responsibilities for the probation service as a specialised body addressing the criminal behaviour.

If we extend the discussion about the community sanctions, we can also identify some modern provisions for juvenile offenders in Armenian national laws and clearly much more advanced than the provisions about the adults, as provided in Article 91, points 2.2 and 2.4 of CC:

[72] Armenian Criminal Code, art. 70 & art. 76

[73] Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, part I

"Article 91. Exemption from criminal liability by application of enforced disciplinary measures.

1. The minor who committed for the first time a not grave or medium-gravity crime can be exempted from criminal liability by the court, if the court finds that his correction is possible by application of enforced disciplinary measures.

2. The court can assign the following enforced disciplinary measures in relation to the minor:

…

***2) handing over for supervision to** the parents, persons replacing the parents, local self-government bodies, or **competent bodies supervising the convict's behaviour** for up to 6 months;"*

…

***4)** restriction of leisure time and establishment of special requirements to the behaviour, for up to 6 months."*

The same Article in its point 2. 3) contains some elements of restorative justice *imposing the obligation to mitigate the inflicted damage, within a deadline established by the court.*

As we can observe, the national legislation offers multiple possibilities for the enforcement of some sanctions and community measures for adults as well as for juveniles. In this context, the problematic aspect lies rather in their weak enforcement than in the lack of regulation.

Recommendations

Taking into consideration the current legal provisions and until the modification of the new codes in criminal area and adoption of the Probation Law, the Armenian authorities are encouraged to analyse the legal framework and to develop a more efficient enforcement of the community measures already in place.

This recommendation must be analysed in close connection with the previous one.

Indicator:

- Guidance from the MoJ on the implementation of the community measures.

5.2.1.5 Work with the offender's family

Rule 56[74]

"Where appropriate, and in accordance with national law, probation agencies, directly or through other partner agencies, shall also offer support, advice and information to offenders' families."

The national legislation does not stipulate special provisions for conducting some specific activities regarding the offender's families.

Recommendations

[74] Ibidem

The Armenian authorities are encouraged to include in the new probation legislation special provisions regarding the juveniles' families' involvement when they come to the attention of the probation service. During the enforcement of the measures, the connection between the juvenile, family and community, the free development of the juvenile's personality has to be maintained and strengthened and also his involvement in the on-going programmes, in order to be formed in the spirit of responsibility and respect for other's freedom and rights.

Indicator:

- Provisions about the involvement of the families in the execution of the sentences related to juveniles included in the Probation Draft Law.

International best practices:

Regarding the involvement of the families in cases related to juveniles two practices can be observed by the Armenian authorities:

The Irish approach[75] based on restorative justice principles when families of young offenders are involved in the execution of the sentence through a family conference in order to offer support for the offender to take responsibility towards the victim of the offence and to avoid future criminal behaviour; and

The French approach[76] regarding the placement of the juvenile offender within a support family (*famille d'accueil*) with the aim to support the rehabilitation process of the young person and under the coordination of the Protection Judiciaire de la Jeunesse[77].

5.2.1.6 Electronic monitoring

Rule 57[78]

"When electronic monitoring is used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance."

Currently, national legislation does not stipulate the possibility of using ways of electronic monitoring (EM) in any of the phases of criminal process (pre – trial, as alternative sanction itself or as a part of an alternative sanction). However, there is a wide expectation for representatives of the law enforcement system, of judges, and also from representatives of the civil[79] society, that EM would become either an alternative to pre-trial detention or an obligation associated to an alternative sanction.

Recommendations

In the context of the legislative reform in Armenia and the possibility of including electronic monitoring in enforcing community sanctions and measures which will be responsibility of the probation service, it is recommended to accompany this way of using technology with

[75] http://www.probation.ie/pws/websitepublishingdec09.nsf/Content/Facilitation+of+Family+Conferences
[76] http://www.justice.gouv.fr/justice-des-mineurs-10042
[77] Specialised service of the French Ministry of Justice to deliver the work with juveniles both in criminal and civil matters
[78] Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, part I
[79] Creating a probation service in the Republic of Armenia: Issues and Peculiarities, A Baseline Study, OSCE, Office in Yerevan.

counselling programmes so that the person to be monitored understands the causes and the consequences of wearing the EM devices.

In cases of EM integration in probation system and other related processes, it has to be accompanied by a set of ethical standards in order to avoid infringement of the right to private life of the offender under EM. It is also recommended to the Armenian authorities take into account the principles from the new Council of Europe Recommendation regarding the electronic monitoring, which is now in elaboration stage at the European Committee on Crime Problems – Council for Penological Cooperation[80] level and it is expected to be adopted by the end of the year.

Indicator:

- In the case of integrating EM into the probation activity, a clear policy document has been developed in this area.

5.2.1.7 Resettlement and 5.2.1.8 Aftercare

Rule 59[81]

> *"Where probation agencies are responsible for supervising offenders after release they shall work in co-operation with the prison authorities, the offenders, their family and the community in order to prepare their release and re-integration into society. They shall establish contacts with the competent services in prison in order to support their social and occupational integration after release."*

Under the current legislation, limited provisions can be identified regarding the cooperation between the penitentiary and other authorities in order to prepare the offenders for their release. This lack of regulation is reflected in a reduced cooperation between the structures of the same institution, such as ASD and Division for Legal, Psychological and Social Issues within the Penitentiary Department.

Analysing Article 121 and 122 of APC, it can be observed that the community institutions' support is targeted only in case of the persons released after serving the sentence and not in the case of those early released. In a similar way, in the context of special[82] provisions enforced in early release cases, there are missing the provisions that facilitate, in practice, the connections between representatives of the enforcement institutions (ASD, Division for Legal, Psychological and Social Issues) and the community in which the offenders would eventually return to.

Recommendations

To facilitate the training for release and community re-integration process for the offenders, the Armenian authorities are encouraged to introduce in the legal framework clear provisions on the information exchange and mutual support. This will involve the prisons administration and ASD, or the future probation service, as well as other institutions in the community, when dealing with

[80] Draft recommendation on Electronic Monitoring, http://www.coe.int/t/dghl/standardsetting/prisons/Documents_en.asp

[81] Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, part I

[82] Decree no 1561–N, chapter 5 and chapter 6

release on parole or early release, as provided by the rule 61[83]. The new legislation should provide the possibility for offenders to be included, at their request, in aftercare programmes and when the conditions imposed for early release were fully enforced.

Indicator:

- Provisions about establishing an interagency cooperation mechanism included within the Probation Draft Law.

International best practices:

In the area of resettlement the Swedish Probation Service can be analysed as a model of intervention having in view the communication with the prison staff for continuation of the plans of the released person and also the management of the transition from prison to community based on the risk principle[84].

*****

As a conclusion to this sub-chapter on Law Reform, we can observe from the above mentioned, that the current domestic legislation contains various provisions which support the principles promoted in European Probation Rules. There are various areas that need improvement, but it has to be underlined that at least at the legislation level there is enough space for developing a probation service, even in a short period of time.

In the current legal context, to the extent that the Armenian authorities will make the decision of piloting some probation elements before promoting the legislative reform which will contain the probation law and the actual establishment of the probation service, the piloting can aim toward the following activities:

a. Drafting the assessment reports. Its content may be stipulated through a Ministerial Order taking into account the experimental character of these activities,
b. Drafting some orientation reports for the early release commission,
c. Public works reflecting the needs and abilities of the convicted person,
d. Conditional suspended sentence,
e. Early conditional release.

It is preferred that the last two measures be implemented along with interventions towards the causes which generated the criminal behaviour, so that the risk of re-offending could be reduced.

Recommendations

In the context of penal reform and elaboration of the probation law, it is recommended to have different dates for entering into force of those provisions, so that the provisions regarding the organisation of the new probation service enter into force at least 6 months before the date of the new provisions regarding the attributions of the probation service. This is necessary for reasons of institutional development, for smooth transition from the current organisation to the new service and at the same time for preparing the ground related to new activities.

[83] Supervision following early release shall aim to meet the offenders' resettlement needs such as employment, housing, education and to ensure compliance with the release conditions in order to reduce the risks of reoffending and of causing serious harm.
[84] http://www.cepprobation.org/uploaded_files/Summary%20information%20on%20Sweden.pdf

Armenian authorities are encouraged to create a balance between the probation service's attributions and those allocated to other institutions/organisations involved in the area of alternative sanctions enforcement in order to ameliorate the risk of overloading the future PSRA if insufficiently prepared to face such a large responsibility.

Indicator:

- Impact study of legislation, human resources, administrative and financial resources performed and an implementation plan developed.

Recommendations

It should be taken into consideration that a legislative process can take some time, depending on the complexity of the promoted legislation. To that extent, and assuming that legislative reform cannot be done in the terms assumed in *Strategy on Legal and Judicial Reforms 2012 – 2016*, it is recommended to start a process of elaboration of bylaws. Its purpose would be for the provisions mentioned above, regulations of involvement of the civil society and other organisations in the probation activity and staff related acts.

Indicator:

Secondary regulations drafted based on the impact study mentioned above.

In this section, we referred to the current legislative stage regarding the probation activity, offering in the same time some recommendations for the hypothesis of the development of a probation service, as well as for the hypothesis of maintaining the current situation. The recommendations regarding the elaboration of some provisions about organising the probation section will be given below.

Recommendations

The New CCP should specify the role of the probation function in the pre-trial phase, during the trial and for the implementation of the community sanctions and measures and these roles should be detailed in the Draft Probation Law.

The Probation Law has to address the organisation and functions (probation work) of the PSRA and its cooperation with other institutions within the judicial chain and with the community by addressing the risks and needs of the offenders in order to avoid re-offending. These should be reflected in the Probation Draft Law analysed by the experts.

Indicator:

- Probation draft Law comprises both the organisation of the service and the description of the main activities of the probation service.

5.3 ADMINISTRATIVE REFORM/RESTRUCTURING AND ALLOCATION OF RESOURCES

5.3.1 Current situation

According to the Armenian authorities "the probation service is in an elaborational phase and is not operational. The unit for the execution of alternative sanction has not yet been replaced by a

probation service. This unit presently implements certain components of probation service"[85] The current administrative organisation implies that ASD realise some components of the probation service. From the same assertion, we can infer that the Armenian authorities' plan is to replace the activity of ASD with the one of the future probation service. This objective is clearly mentioned also in the *Strategy on Legal and Judicial Reforms 2012 – 2016*[86].

The question that naturally emerges is – when is it envisaged that the PSRA will be operational? The answer is closely related to the recommendations given and depends on the reality of this vision.

An administrative process reform as is estimated for the establishment of PSRA depends upon: political will for reform; of the achievement, ability and expertise of specialists responsible for the development of the reform strategy; resources allocated to the reform; and the generated benefits, which often are achieved in the medium and long term.

Even if one assumes that the political will exists and that the reform will take place, the reform strategy and the resources allocated remain unknown.

Reform requires responsibility and accountability associated with the people who can objectively relate to this process. This reform can be regarded as a project of the judicial system in which a project manager is responsible of achieving all the benchmarks from the "project fiche". Naturally, the project manager does not work alone, but along with an implementation team. The usefulness of designating a project manager emerges from the need of associating a "champion" to this reform and benchmarks for all those involved in the project stages.

In this context, the following recommendations are outlined:

5.3.2 Recommendations

The MoJ is encouraged to set up a (small) interdisciplinary expert steering committee that monitors and guides the reform process that is led by a full time project manager of the Ministry.

Subsequent to the establishment of the Steering Committee, some questions that will track the **general features of PSRA** have to be answered.

When establishing the details regarding organisation of PSRA - coordination structure both nationally and locally – the Armenian MoJ has to take into account Rule 18[87] of the European Probation Rules and answer to the following questions:

WHAT does PSRA do? – What are the attributions of PSRA? Is the profile created in Social Justice NGO's study the one necessary for the Armenian community?

WHY should those attributions be made? What is the expected result for the judiciary and for the Armenian Community? How is PSRA financed?

In any situation the responsibility to establish a national probation service has to fall under the responsibility of the state and involves the state authority, even in case of delegating probation functions to non-governmental organisations. The executive structure at central and local level of

[85] Source - response to the questionnaire applied by authors of this report

[86] Action 4.3, p. 22

[87] The structure, status, and resources of probation agencies shall correspond to the volume of the tasks and responsibilities they are entrusted with and shall reflect the importance of the public service they implement.

the future institution has to be determined. It is recommended to have a multidisciplinary team of professionals with different backgrounds from social sciences in order to cover all the aspects of the probation work, at the central and local level. Also, it needs to be established how the staff's managerial and executive positions would be defined. The principles of professional competency should be a priority in this case and an open competition is recommended in order to ensure equal opportunities.

The answer to the question "BY WHOM" should contain references to the staff profile from PSRA based on the job descriptions for each position: who works within PSRA, what is their background, and what is the staff's statute, rights, obligations, incompatibilities and interdictions. Again the European Probation Rules can be guides by the content of Rule 21[88] and 22[89].

A distinction has to be made between probation staff (specialist in working with offenders) and support staff for the probation work (administrative work).

Along with the answers to these questions, it is necessary to identify also the outcome of ASD – how will the transition from the current organisation form to the future PSRA be achieved?

Indicators:

- Steering committee established and a project manager appointed within the MoJ with the aim to establish the PSRA,
- General characteristics of the PSRA established within the Probation draft Law.

5.3.1.1 Budgets planning

Even if the probation service is not as expensive as the penitentiary system, an increased attention has to be given to the allocation of resources, especially in the first 3 years that follow its establishment. In the medium term, the establishment of probation service will reduce the expenses generated by the incarceration, the economic ones that can be quantified, as well as the social costs, which are difficult to be quantified in a fixed amount, but can be calculated in changed lives.

Recommendations

On the basis of the strategy mentioned at sub-chapter on Law Reform, a multi annual planning of resources necessary for the probation system is required.

A multi annual budget plan has to contain expenses regarding:

Staff – The highest expenses of most organisations are the ones for the staff, and this aspect applies also to the probation system. The staff expenses should reflect the salary expenses as well as the expenses regarding the professional training and travel of the staff, taking into account the specificity of the probation work that requires the presence in the community. The

[88] Probation agencies shall act in a manner that earns the respect of other justice agencies and of civil society for the status and work of probation staff. The competent authorities shall endeavour to facilitate the achievement of this aim by providing appropriate resources, **focused selection and recruitment, adequate remuneration of staff and good management.**

[89] Staff shall be recruited and selected in accordance with approved criteria which shall place emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work they are required to do.

human resources necessary have to be established depending on the future attributions of the probation service determined by the new probation law.

Infrastructure

a. offices – Establishing the locations/spaces for the activity of local probation services is necessary. An inventory of the spaces that are foreseen to be used, whether free or rented, along with all the maintenance expenses of those spaces has to be included in the above mentioned planning.

b. furniture – Along with the field activity, the probation counsellors need to have proper conditions for organising meetings with the offenders at the probation offices. The furniture for the local offices should be established according to a minimum standard.

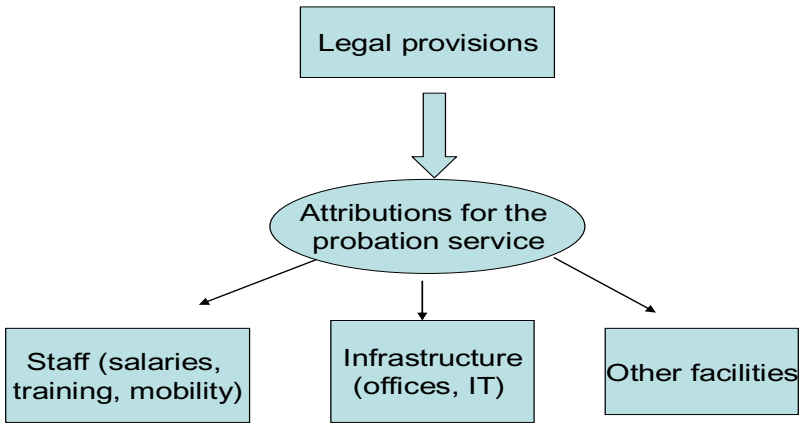
c. IT – Taking into account the technology level registered in current society, it has to be reflected also into the probation activity. In that direction, the IT equipment inventory should be directly proportional to the number of persons that will work in the probation service.

d. other facilities – As mentioned above, the probation activity is realised in the community and the probation staff require mobility within the community assured either through the public transportation, if all the areas are covered, or through the usage of a motor car or cars allocated for the local probation service.

Other utilities, such as landlines and mobile phones, are also necessary for the assurance of communication between the probation staff and offenders or community representatives.

For establishing administrative details it is necessary first to establish the legislative details from sub-section B (law reform). Thereafter, the resources establishing an algorithm should be determined through correlation.

The connection between the above mentioned sub-sections is represented in the flow chart below.



Indicator:

- Multi annual budget planning approved by the Government for the continuous development of PSRA.

5.4 TRAINING AND CAPACITY-BUILDING

5.4.1 Current situation & recommendations

As shown above, the activities similar to the probation area are currently implemented in Armenia by ASD, mainly by personnel with legal background. Taking into account that the Armenian authorities objective is to set a new probation service separate from the penitentiary system and, by default, separate from ASD, we will concentrate in what follows on the actions that should be taken at training and capacity - building levels starting with a probation service built from scratch.

We are referring again to the European Probation Rules that in Rule 23 provides that *"All staff shall have access to education and training appropriate to their role and to their level of professional responsibilities."*

5.4.1.1 Recommendations before recruitment

After establishing the attributions which will be incurred to the probation service and the profile of the specialist who will have to fulfil these attributions, the identification of the recruitment areas for future specialists is necessary.

If the Armenian authorities will consider that the probation teams should be multi disciplinary and should come from university graduates, then the cooperation between the probation service and targeted universities is necessary. This collaboration may be useful for preparing students in advance who may acquire, during their academic period, the basic knowledge that may be used in their future career. Furthermore, the cooperation between probation and universities can be materialised through the realisation of curricula for initial professional training together with academics.

Indicators:

- Profile of the future probation employee established;
- Cooperation protocols with universities signed.

5.4.1.2 Recommendations after recruitment – initial training

An initial professional training session for the staff has to be organised after the recruitment and induction process. The training should be focused on the professional values of probation, criminology and understanding criminal behaviour. In addition, as a part of the initial training, an intensive training about the main attribution of the probation service and the procedure for implementation should be held. Such training will ensure a minimum understanding of the specificity of probation work by the probation staff, and it will also provide a basis for a unified practice.

All the probation staff will follow a required common module of initial professional training but with no special emphasis on the specifics of working with juveniles. Subsequently it is necessary

to organise a special training programme related to work with juveniles. There will also be a need for separate professional training sessions for the managerial staff.

Indicator:

- Curricula for induction/initial training developed and approved.

5.4.1.3 Recommendations after recruitment – continuous training and capacity building for working with adults

In relation to the probation service work with adult offenders, it is recommended to elaborate training curricula for this type of activity. In the first phase, the probation service should be concentrated on understanding, as clearly as possible, the responsibilities regarding the offender's assessment, supervision and support.

In a second phase, the probation service should concentrate on the capacity building in order to deliver specialised programmes to offenders. These programmes should have a substantial scientific support, should be proven as efficient in other jurisdictions and should be adapted to the specific needs of the Armenian community. The specialised programmes may be executed during the individual work with the offender as well as the group work and they may have roots either in cognitive behavioural theories or in a more recent theory of desistance. An analysis should be made on "what works in the Armenian community". Naturally, the probation staff should participate in the elaboration of those programmes.

Indicators:

- Curricula for induction/initial training developed and training for trainers programmes developed;
- Annual assessment of the staff training needs performed by the central structure of the probation service/Law Training Academy;
- Evidence based practice interventions developed;
- Continuous training sessions delivered in accordance with the training needs and the priorities of the organisation.

5.4.1.4 Recommendations after recruitment – continuous training and capacity building in cases with juveniles

Activities concerning juveniles, if placed within the probation service responsibility, should present a specialised approach given the nature of the intervention with the juvenile as well as with his family and those in charge of his/her care.

The juvenile's intervention should follow the line determined by the measures imposed on the juvenile by the court, and the objective of the probation service action should have a profound educational character, focused on the ongoing development of the juvenile's personality.

Any initiative should involve the school, family and the supporting staff of the juvenile. The role of NGOs should not be neglected in the rehabilitation process of the juveniles, taking into consideration that, currently, they are the only ones active in this area of intervention.

Indicator:

- Specialised teams to provide activities for juveniles established in the local units of the probation service.

- Specialised training organised for the staff assigned for juvenile work.

5.4.1.5 Recommendations - Managerial staff

Special attention should be paid to the managerial staff which will comprise either the central management structure, or the local one. The need for training focused on organisational management is self-evident. The training should be orientated towards a creation of an organisational culture based on the strategic management principles, in which the major objectives were known, internalised, pursued, monitored and assessed by all levels of the managers.

The managerial staff has to assimilate knowledge through the training sessions, along with a sound knowledge of current legislative framework, and to develop abilities in the following areas: organisation of probation services, financial and human resources management/development (recruitment, training, and assessment), strategic planning, communication and networking, decision making process, and negotiation.

Indicator:

- Management Development training sessions delivered to all the managers in the areas mentioned above.

5.4.1.6 Recommendations – training strategy

As we underlined above a coordinated process (strategy or action plan) for the staff training at all levels should be established and a structure designated for its implementation. According to the information obtained during interviews this attribution will fall under the responsibility of the Law Institute. It is even envisaged that this institution will be integrated into the Justice Academy. Furthermore, the training of the probation staff is an assumed priority within the *Strategy for Legal and Judicial Reforms 2012 – 2016*[90] which is why the priority will be the implementation of subsequent actions as we described above for each category of staff and in accordance with their respective roles.

Besides the Law Institute/Justice Academy who will be responsible for the implementation of the training of the probation staff, the central structure of the probation service should be involved in drafting the training action plan and making the connection with other organisational processes.

Indicator:

- Training action plan drafted, budgeted and approved for each year.

International best practices:

All the probation organisations have a priority in delivering the best training opportunity for their staff. Depending on the structure of the probation service we can analyse various best practices in this area:

[90] Action 4.3.2, p. 22

- Probation services with a specialised academy for initial and continuous training, such as the Correctional Service of Norway Staff Academy (KRUS) for training for prison and probation staff[91].

- Probation services with a specialised team of trainers approved by the organisation to train the probation staff. This model is adopted by many Eastern European countries including Romania when the trainers are also probation practitioners with special tasks assigned in their job descriptions for delivering training in areas such as general probation work or specific interventions (Motivational Interview, Cognitive Behavioural Programmes etc).

5.5 ACCOUNTABILITY MECHANISMS

5.5.1 Current situation

Bearing in mind that the probation service has not been established in Armenia yet, we will approach this section in a theoretical manner because the accountability mechanisms for the ASD / PSRA are unknown to the experts at the date of writing this version of the report. We can assume that ASD and accordingly the future PSRA will be accountable in to the Minister of Justice.

5.5.2 Recommendations

The accountability should be described at all levels in the draft Probation Law: executive staff to managers of the local structures, local structures to the central structure, and central structure (the head of the central structure) to the Minister of Justice.

In this respect, the same Law should envisage an inspection and monitoring mechanism: either an independent body under the authority of the Minister of Justice in charge to perform inspections of prisons and probation units, or an inspection unit within the central structure of the probation service with sufficient decision making autonomy. Regardless of which mechanism is used, the regular reports should be drafted to the head of the probation service and to the Minister of Justice.

At the same time a decision should be taken about the supervisory role of prosecutors over the implementation of sanctions and other measures by PSRA. It is crucial also to detail a very clear accountability mechanism for practitioners within a local unit, between the local unit and central unit, and between the central unit and other departments/persons within the judicial system and other agencies.

The PSRA shall regularly submit general reports and feedback information regarding their work to the competent authorities.[92]

The Probation Law should also regulate the general principles of involving other institutions, NGOs and volunteers in the probation work. Bylaws should prescribe a specific procedure and the mechanism of cooperation between the probation service and other agencies of the justice system, support agencies and civil society.

Indicator:

- Clear provisions about the accountability mechanism included in the draft Probation Law.

[91] http://www.krus.no/en/
[92] European Probation Rules, Part III

International best practices:

In terms of monitoring, inspection and transparency for the public, the United Kingdom is a well-known model in this area. Having an independent inspection structure funded by the MoJ (Her Majesty's Probation Inspection)[93] the British practice inspired several probation services by the structured and comprehensive inspection methodology with the aim of supporting the activities of the probation practitioners.

5.6 COORDINATION

5.6.1 Current situation

Similar with the previous sub-section we will approach this sub-section on coordination, at a theoretical level having in view that the PSRA is not yet established.

Besides the accountability and inspection procedures, the coordination process has to be very clear at every level of the probation organisation and the roots of the coordination can be identified in the strategies and policies mentioned under the sub-section 5.1 on policy and advocacy.

5.6.2 Recommendations

Starting from the action plan for the entire probation system, yearly action plans should be drafted for each probation unit at the local level addressing their strategic objective in a practical approach. These action plans have to be approved by the local structure in order to ensure a connection between the objectives of the probation service, the activities performed by practitioners, and the needs of the community.

In order to ensure a proper implementation of the local action plans, a monitoring process should be arranged by the central structure based on monthly or quarterly reports prepared by the local units. In this respect the central structure can offer periodic feedback regarding the work presented by the local units and support the practice with the aim of providing a unified practice and intervention within the local units.

In the first 3 years of implementation of the PSRA twice yearly coordination meetings between the central and local units would be welcomed, in order to ensure a unified understanding about the direction of the development of the service. These meetings could be useful for creation of a culture of ownership about the PSRA where each employee should be aware about his/her role in the organisation, and mostly his/her role in relation with the success or failure of the probation organisation.

At the same time within the PSRA or at the level of the MoJ, an open and clear procedure to investigate and respond to complaints regarding the probation service should to be established.

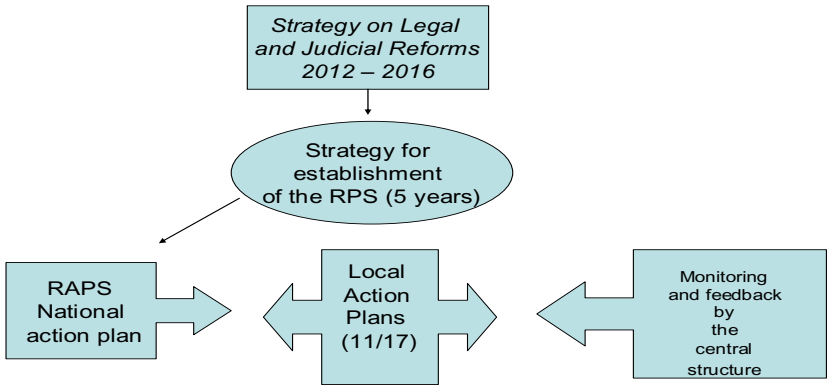
These recommendations should be read jointly with the ones from the sub-section 5.1 (Policy and advocacy) and sub-section 5.5 (Accountability mechanisms) taking into account the inter dependence between policy, accountability and coordination.

Indicators:

[93] http://www.justice.gov.uk/about/hmi-probation

- Management instruments such as action plans, reports, minutes of the meetings developed periodically at the central and local level;
- Complaint procedure established and available to the probationers.

A possible graphical representation of the mechanism proposed above.



5.7 DATA COLLECTION AND ANALYSIS.

5.7.1 Current situation

Data registration is necessary for an organisation to recognise the events of the past and to plan an evidence based future. In the current state of play of society, data needs to be collected in real time in order to support the authorities to make fast, accurate decisions in matters about public protection. Also the PSRA should be one of the organisations able to offer information about the registered persons and the types of intervention developed with them.

5.7.2 Recommendations

Similar with the objective 3.11 within the *Strategy for Legal and Judicial Reforms 2012 – 2016* it is recommended that the strategy of developing the PSRA should have an objective for involving technology in the probation work. An electronic case file can be established with a possibility to generate reports about the probation activity in real time. All these advanced solutions have to take into account the regulations about confidentiality and personal data protection. A cooperation with the CoE Annual Penal Statistics (SPACE II) should be taken into consideration when establishing the content of this data base.

The features of the data base of the PSRA have to be compatible with other databases within the justice system like courts and prisons for the sharing of pertinent information.

The central structure of the PSRA together with research teams have to analyse regularly the trends of the probation work and offer public reports and internal instructions based on the findings of the researches.

Indicator:

- Items for data collection established in cooperation with other judicial institutions and with the National Statistics Authority,
- Software developed, piloted and integrated in the probation activity.

International best practices:

Most of the countries with established probation service developed mechanisms for data collection as a starting point to researches on evidence based practice. These mechanisms are developed according to their needs but also in line with the level of technology existing in the respective country in order to achieve an "easy to use" system for the staff. A good example regarding a simple but efficient way to collect and analyse the data is available in Ireland[94].

5.8 SWOT analysis

The main findings from the seven sub-sections are collected in a "Strengths, Weaknesses, Opportunities and Threats" (SWOT) analysis in order to offer a snapshot regarding the process of establishing the PSRA. This analysis as well as the content of the probation section is not an exhaustive one but can be a starting point of the Armenian authorities when planning the important details of the reform to establish the PSRA

	Strengths
Policy and Advocacy Law reform Administrative reform Training and Capacity – Building Accountability Mechanism Coordination Data collection and Analysis	The decision to establish the Probation Service of the Republic of Armenia (PSRA) - *the Action Plan of the Strategic Program of Legal and Judicial Reform;* Positive expectation about creation of the PSRA within the judiciary and the civil society; Clear provisions in the legislation which can serve as a base for new developments specific to the probation service (e.g. supervision, reports, CS orders); The possibility to integrate a training curricula for the staff of the new APS in the training plans of the Law Institute/Justice Academy; Support of the civil society;

Policy and Advocacy Law reform Administrative reform Training and Capacity – Building Accountability	**Weaknesses** The absence of PSRA; The absence of a specific strategy tailored to the development of the probation service, including a strategy to involve the local community in this process (interagency cooperation); Lack of communication with courts and prosecutors and between the ASD and other departments within the Prison Administration; Insufficient legal provisions regarding alternatives to pre-trial detention;

[94] http://www.probation.ie/pws/websitepublishingdec09.nsf/Content/Information+and+Statistics

Mechanism Coordination Data collection and Analysis	Limited experience in assessment and carrying out specialised interventions programmes in order to reduce re-offending;

	Opportunities
Policy and Advocacy Law reform Administrative reform Training and Capacity – Building Accountability Mechanism Coordination Data collection and Analysis	New legislative reform in accordance with European standards; Building on the experience of ASD – not starting from zero; Support of several donors and international organisations; Lack of regulation can provide a positive context for innovation; You have the opportunity to create history!

	Threats
Policy and Advocacy Law reform Administrative reform Training and Capacity – Building Accountability Mechanism Coordination Data collection and Analysis	A range of different views about the establishment of the probation service: from "Nothing works" – "Probation has to work for everything"; Delays in approving the laws; Economic context and limited funds available from state budget; An imbalance between involving funds from the state budget and attracting funds from other donors – probation has to be under the responsibility of the state!

5.9 Recommendations about observing other probation services

PSRA should be unique and tailored to the needs of the Armenian citizens, Armenian judiciary and Armenian reality. However some principles of developing a probation service can be similar from one jurisdiction to another. In this respect, the Armenian authorities are encouraged to observe probation services with different experiences: probation services with a century of history and probation services with decades of experience.

Irish Probation Service

In this report we referred often to the Irish Probation Service as a model in several areas of intervention. The Irish Probation Service[95] has been established as a public service under the authority of the Department of Justice and Equality (Ministry of Justice) with more than 100 years of experience. The probation activity is focussed on drafting assessments reports on offenders before the sentence and also on implementing the probation sentence or community service orders. The Irish Probation Service works both with juveniles and adults and integrates a range of activities with the prison service and other community agencies. Taking into account that Ireland has a number of the population close to the one registered in Armenia, we suggest a study visit to be organised to the Irish Probation Service.

Romanian Probation Service

Established in 2001 the Romanian Probation Service[96] is organised within the Ministry of Justice with a central directorate and at the local level with 42 probation services nearby each county court. Dealing both with juvenile cases and adults the Romanian Probation Service supervise at the date of drafting this report more than 16.000 convicted people with suspended sentences under the supervision and drafted at the end of 2012 more than 7000 pre-sentence reports. Similar with other European probation services the Romanian Probation Service developed structured interventions programmes to address the criminal behaviour, with the aim to reduce the re-offending, the number of victims and better protect the citizens. Based on the cultural similarities, history and geographical proximity, a study visit can be organised for the Armenian authorities to the Romanian Probation Service and facilitated by one of the authors of this report.

Few persons, even professionals working in the penal field, seem aware of the fact that preparation of prisoners for their *reintegration into free society is a fundamental right*. This right is laid down in Article 10, par. 3 of the International Covenant on Civil and Political Rights(CCPR),[97] that goes: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.…".

[95] www.probation.ie
[96] http://www.just.ro/
[97] Accessed by Armenia in 1993.

Concluding observations

Start with what you have and start immediately

As major reforms of the Armenian penal system are under way, hopes of all involved in this process are high that in the near future most of the present problems will be solved. Much depends, almost all interviewees said, on the speedy establishment of a probation service that can take care of the enforcement of non-custodial measures and penalties and that give expert advice to prosecutors and courts on how to deal best with offenders.

New, state of the art, laws should offer the legal basis of the new approach that was announced in the 2012 - 2016 Strategic Programme For Legal And Judicial Reforms which aim at far more than the reform of the criminal justice system only. Looking at these plans and projects as an outside observer one could wonder how quickly so many, sometimes radical, changes can be "absorbed" by the Armenian legal system and its key actors.

It should not be overlooked that even without major changes in the present *laws* and regulations changes of the penal *practice* could be effected by making a more creative use of the existing legal possibilities. What is needed for that in the first place is *a clear criminal justice policy* formulated by the Ministry of Justice that is shared by the professionals that have to enforce the law. Much progress can also be made by immediate targeted training of criminal justice personnel. For instance: when it is seen as a problem that procurators do not substantiate demands for pre-trial detention and courts do not correct that practice, special training of prosecutors and judges seems more effective than only changing the law. When the early release procedure is shown to be deficient, it must; even within the present legal context; be possible to correct it by replacing the present non-validated risk-assessment tool as used presently by the prison administration, by a validated one and by obliging the independent early release commissions to be transparent about their decision-making process. More examples of how to use the existing legal space in a creative way could easily be given. This does not mean that the intended reforms are not necessary, but new laws will not produce overnight new practices and new attitudes of the key actors of the criminal justice system. For instance: a modern probation service can only be developed step by step because nobody has any experience yet of setting up or leading such a complicated institution. Qualified personnel have to be recruited and trained and working methods have to be developed and preferably tested in pilot projects. This process easily can take 5-10 years.

Don't simply copy-paste

The Armenian authorities have access to all international standards and can acquaint themselves with good (and bad) practices in other countries. Not all of this will fit into the Armenian (legal) culture and it makes no sense simple to copy concepts or institutions that are found in other jurisdictions. For instance: probation services in US states are very different from those in EU member states and even European probation systems (in EU and non-EU countries) vary significantly because they are tailored to the local legal and social context.

Sometimes reform plans meet with ingrained habits or attitudes, some of them perhaps a heritage from Soviet times. For instance: abolishing the wearing of uniforms by officers of the ASD was not debatable. Doing away with this attire was thought to be leading to a loss of respect for the officers involved.

The Armenian authorities have now the historical opportunity to create a genuine, robust and sustainable probation service based on the lessons learned by other countries, and thus being able to avoid some of the start-up problems encountered in other jurisdictions.

Donors don't stay forever

Introducing new alternatives for custodial sanctions will possibly lead to a decrease of the prison population and reduce the costs of the prison administration. But creating a probation service demands huge investments in personnel, offices and other equipment. Perhaps various donors will be prepared to provide funds for the start-up phase, but one must reckon with discontinuation of financial support at a (un)certain moment. This is an extra argument to start a project like this on a scale that will be sustainable after donors opt out.

Optimism

To end with a positive note: almost all interviewees seemed eager to participate in the reform process, which – of course – is the most important precondition for success.

ANNEX 1. LIST OF RECOMMENDATIONS

Pre-trial detention

- To reduce the population of the remand prisons it should be considered that pre-trial detainees, who are suspected of petty crimes and/or are first offenders, are released pending their trial or are monitored by way of a non-custodial security measure.
- The development of guidelines for the prosecution that indicate in which cases pre-trial detention is to be demanded and in which cases this is not necessary should be considered.
- Training should be organised to train prosecutors, judges and lawyers (jointly or separately) in the procedural aspects of pre-trial detention and non-custodial alternatives.
- Workshops should be offered to the judiciary on how to draft reasoned, individualised decisions concerning pre-trial detention.
- Special seminars should be organised to inform the prosecution service and judiciary of the consequences of the ECtHR case law and of CoE Recommendations for their decisions concerning pre-trial detention.
- Unambiguous grounds for pre-trial detention, based on the presumption of innocence, should be incorporated in the new CCP.
- In the new CCP provisions should be introduced concerning the powers of the prosecutor and the court to request or order pre-trial reports about the person of the suspect.
- Introducing in the new CCP an obligation for the prosecution and the court to substantiate requests and orders for pre-trial detention can prevent excessive use of pre-trial detention. Decisions ordering pre-trial detention should substantiate why a non-custodial measure was not an option.
- An "automatic" (ex officio/ex lege) periodic judicial review of pre-trial detention should be introduced in the new CCP.
- The new CCP should contain more/other non-custodial security measures than the present one. Guidance for this can be found in Article 2 of the CoE Recommendation on the use of remand in custody.

Decriminalisation, depenalisation and sentencing policy

- The drafters of the new CC should consider which offences could be decriminalised (deleted from the CC) or could be depenalised (be sanctioned by lesser/ other sentences or measures than the present ones).
- Mandatory minimum sentences should be abolished to give the court ample opportunity to impose sanctions tailored to the offender and the circumstances of the case.
- Where imprisonment is kept in the law as a sanction for an offence, the courts should always have the alternative option to impose a non-custodial sanction.

- It should be made legally possible to impose all types of sanctions in a conditional or suspended mode.
- The development of a consistent sentencing policy should be considered.
- The introduction of guidelines for prosecutors should be considered.
- The introduction of "reference points" for sentencing for the judiciary should be considered.
- Courts should be obliged by law to state concrete reasons for imposing sentences. In particular, specific reasons should be given when a custodial sentence is imposed.

Alternatives to custodial sanction

- The present maximum of 2200 hours of public works in Article 54 § 2 of the CC should be significantly reduced to avoid violations of Article 4 of the ECHR (prohibition of forced labour). The required prior consent of the offender is not to be regarded as *free* consent because the alternative is imprisonment.
- Non-custodial criminal sanctions (measure or sentence) should be applicable for every type of crime, whether as a sanction in its own right or in combination with other sanctions.
- The introducing of new non-custodial sanctions in the CC should be based on expert advice of criminologists on their effectiveness.
- Once a probation service is in place, the monitoring and assistance of offenders should gradually be transferred from the ASD lawyers to social workers or other probation practitioners that are oriented on the criminogenic needs of the individual offenders and can help and guide them.
- Probation should become applicable for all types of crimes.

Early release

- Programmes to prepare prisoners for parole should be developed with a high priority.
- The primary and secondary legislation concerning early release should be amended in such a way as to provide for a fair and transparent parole procedure.
- Before making a definite choice for a specific early release procedure a mandatory parole system should be tried out by way of a pilot. Such a pilot project should imply that every prisoner who has served his/ her mandatory term is granted parole by the Minister of Justice, unless objective contra-indications (to be substantiated by the Prosecution Service) justify refusing or postponing parole. The prosecutor should submit requests to the court for not granting or postponement of parole that decides after having heard the prisoner concerned. The "independent early release commissions" have no role in these pilots.
- The present assessment format used by the prison administration by a scientifically validated risk-assessment tool[98] should, as soon as possible, be replaced by pre-release advisory reports to be drafted by a probation service.

[98] As in use – for instance – in The Netherlands.

PROBATION SERVICE:

Policy and advocacy

- The MoJ is encouraged to develop a comprehensive Action Plan for the establishment of the PSRA. This Action Plan should be drafted at the MoJ level and discussed with representatives from all the stakeholders involved in this process.
- An impact study should be drafted together with the Action Plan for the development of the PSRA in order to determine the expected impact at the level of legislation, human resources, administrative and financial resources.
- The MoJ is encouraged to establish a Steering Committee involving members among the officials charged with the implementation of the Action Plan.

Law reform

- The authorities are encouraged to analyse the possibility to establish some pilot centres where, before the establishment of the PSRA, mixed teams of representatives from ASD and NGOs, will prepare special inquiries about gathering characteristic features of the offender for the benefit of the courts.
- To reflect on the possibility to amend provisions of the APC and CC in order to open the possibility of gathering information about the characteristics of the inmates including their resettlement perspectives.
- The authorities are encouraged to amend Decree no. 1561–N or to include in the Probation draft Law more comprehensive provisions about the connection between the following factors: offence, characteristics of the offender, assessment of the offender, other non-custodial interventions, and places for serving public works.
- The authorities are encouraged to include offenders' rehabilitation component within the ASD/future probation service. The sentences, involving administrative interventions (e.g. fine) rather than criminal behaviour oriented interventions could be allocated to other institutions such as police or fiscal bodies.
- To enhance the legal framework to ensure better enforcement of the community measures for both adults and juveniles already in place.
- To include in the new probation legislation special provisions regarding the juveniles' families involvement when they come to the attention of the probation service.
- In the context of introduction of electronic monitoring in enforcing the sanctions and community measures, it is recommended that this process is accompanied by counselling programmes so that the inmate understands the consequences of wearing the EM devices, as well as by a set of ethical standards in order to avoid violation of the right to a personal life. It is recommended that Armenian authorities take into account the principles from the new CoE Recommendation regarding the electronic monitoring, which is now in elaboration stage.
- To introduce clear provisions on information exchange and mutual support between prisons administration and ASD/the future probation service, as well as other institutions.

- To create a balance between the probation service's jurisdiction and those allocated to other institutions/organisations involved in the area of alternative sanctions enforcement.
- It is recommended to elaborate bylaws for the enforcement of the new legislation.
- The new CCP should specify the role of the probation in the pre-trial phase, during the trial and for the implementation of the community sanctions and measures and these roles should be detailed in the Draft Probation Law.

Administrative reform/restructuring and allocation of resources

- The MoJ is encouraged set up and lead a (small) inter disciplinary expert steering committee that monitors and guides the reform process.
- On the basis of the strategy mentioned at sub-section 5.1, a multi annual planning of resources necessary for the probation system is required.

Training and capacity building

- To establish cooperation between the probation service and the targeted universities is necessary.
- To perform initial professional training focused on probation, criminology and understanding criminal behaviour.
- To conduct intensive training for the incumbents of the main functions of the probation service and detail the procedure for its implementation.
- To conduct special training for the probation staff working with juveniles, paying particular attention to the work with families, to educational measures, development of juvenile's personality, involving the schools, families and other relevant staff working with the juvenile.
- Professional management development training should be organised for the managerial staff (both at central and the local levels) in order to enhance their skills and knowledge in the following areas: organisation of probation services, financial and human resources management/development (recruitment, training, and assessment), strategic planning, communication and networking, decision making process, and negotiation.
- As well as the Law Institute of MoJ/Justice Academy which will be responsible for implementing the provisions of the action plan for the training of the probation staff; the central structure of the probation service should be involved in drafting the training action plan.

Accountability mechanisms

- The accountability has to be described in the draft Probation Law at all levels: executive staff to managers of the local structures, local structures to the central structure and central structure (the head of the central structure) to the Minister of Justice.
- The same Law should envisage an inspection and monitoring mechanism; either as an independent body under the authority of the Minister of Justice charged with performing

inspections in prisons and probation units, or an inspection unit within the central structure of the probation service with sufficient decision autonomy.

- A decision should be taken about the role of prosecutors.
- PSRA should draft regular reports for the public and the bodies to whom they are responsible in implementing the principles from the international standards.
- It is recommended to set general principles for the involvement of other institutions, NGO`s and volunteers in the probation work.

Coordination

- Yearly action plans should be adopted for each probation unit at the local level.
- A monitoring process should be arranged by the central structure based on monthly or quarterly reports prepared by the local units for proper implementation of the local action plans.
- During the first 3 years it is recommended to hold twice yearly coordination meetings between the central and local units.

Data collection and analysis

- It is recommended to develop a database with case files in an electronic version, which will facilitate report generation about the probation activities in real time. CoE Annual Penal Statistics (SPACE II) can be taken into consideration when establishing the content of this data base. This database should be compatible with other databases within the justice system like courts and prisons.
- The central structure of the PSRA together with research teams have to analyse on a regular basis trends of the probation work and offer public reports and internal instructions based on the findings of the researches.

ANNEX 2. LIST OF PERSONS INTERVIEWED

- Mr. Nikolay Arustamyan Adviser to the Minister of Justice
- Mr. Davit Avetisyan, Chairman, Criminal Chamber, Cassation Court
- Mr. Levon Avetisyan, Head of the Alternative Sanctions Division (ASD) of the Penitentiary Department.
- Mr. Vardan Avetisyan, Head of the Department for Supervision of the implementation of sanctions and other measures and Mr. Zakar Stepanyan, prosecutor, General Prosecutors' Office
- Mr. Lyova Baghdasarian, Director Erebuni penitentiary institution, Mr. V. Poghosyan, Deputy-Director and Mr. G. Simonyan, Head of Social, Psychological and Legal Issues Department of the same institution.
- Mr. Arman Danielyan & Ms. Tatevik Gharibyan – Civil Society Institute.
- Mr. Suren Mnoyan, Judge, Court of general jurisdiction, Aragatsotn marz (region).
- Mr. Arshak Gasparyan, Social Justice NGO
- Mr. Baniamin Harutyunyan, Head of the Division for Legal, Psychological and Social Issues of the Penitentiary Department and Ms. Gayane Hovakimyan, senior social worker of that division.
- Mr. Ashot Hayrapetyan, Director of the Law Institute of the Ministry of Justice
- Mr. Hovhannes Hunanyan, Deputy Head of Police, Head of the Commission for Early Conditional Release, Mr. Tatul Petrosyan, Head of the Legal Issues Department, Police HQ, and Mr. Armen Sedrakyan, Head of the International Police Cooperation Unit, Police HQ
- Mr. Mnatsakan Martirosyan, Judge, Court of general jurisdiction, Kentron-Nord Marash District Yerevan.
- Mr. Ruben Sahakyan, President of the Chamber of Advocates of the Republic of Armenia
- Ms. Siranush Sahakyan, Assistant, Administration of the President of the RA
- Mr. Grigor Sargsyan, Director prosecutors' school.

ANNEX 3: THE STANDARDS FOR EVALUATIONS OF AN INMATE AND HIS/HER BEHAVIOUR FOR THE PURPOSES OF EARLY CONDITIONAL RELEASE

N	Criterion	Condition (for each criterion only one relevant condition with the highest point is evaluated	Points (underline)
1	Age	a) juvenile or 65 years old or older	2
		b) adult but younger than 65	0
2	Education prior to conviction	a) higher education or PhD	4
		b) secondary education (high school or secondary professional education)	3
		c) secondary education (secondary school or preliminary professional (crafts) school)	1
		d) no minimal secondary education (secondary school)	0
3.	Persons under custody	a) the only breadwinner or has a child under 3 years old	2
		b) there is a person under his/her custody	1
		c) there is no one under his/her custody	0
4	Previously convicted (no regard to the type of sentence or the fact of serving it or not)	a) has never been convicted before	4
		b)in case of one previous conviction for an unpremeditated crime and has not been convicted for at least 3 years after serving the previous sentence	3
		c) if convicted no more than twice and does not have criminal record[99]	2
		d) there are previous convictions but no more than two	1
		e) there are three and more convictions	0
5.	Ground for exempting from the previous sentence	a) no previous convictions	3
		b) fully served previous sentence and does not have criminal record	1
		c) previous sentence vacated upon amnesty, pardon or by partially serving it	0
6.	Gravity of committed crime	a) committed a not grave crime or a crime of medium gravity	4
		b) committed grave crime	2
		c) committed a particularly grave crime	0
7.	Mitigating circumstance(s) taken into account when convicted	a) present	4
		b) absent	0
8.	Aggravating circumstances taken into	a) present	4
		b) absent	0

[99] A person is regarded as one with a criminal record from the day when an accusatory sentence came into legal force until the day of quashing or expunging the criminal record, art. 84, CC.

	account when convicted		
9.	Type of correctional institution	a) serving prison term in open type of correctional institution	5
		b) serving prison term in not open type of correctional institution	0
10.	Participation in educational or awareness raising activities while serving prison term	a) is obtaining or have obtained higher education or PhD	5
		b) is obtaining or have obtained secondary education (high school and/or secondary professional education)	4
		c) has organised at least 3 additional educational or awareness raising events or is/has been directly involved in implementation of at least 3 educational or awareness raising programmes or obtained secondary education (secondary school) or obtained preliminary professional (crafts) education	3
		d) is enrolled or has participated in at least 2 additional educational programmes , or is taking part in the activities of the amateur performing units created by inmates or is obtaining secondary education (secondary school) or preliminary professional (crafts) education	2
		e) has not participated in any educational or awareness raising programmes or events or has not demonstrated interest it obtaining education	0
11.	Participation in cultural activities while serving prison term	a) has organized at least 3 cultural events, has been directly involved in at least 3 cultural programmes (not as a spectator)	4
		b) is taking part in the activities of the amateur cultural unites created by the inmates	2
		c) has organized 1-2 cultural events, has been directly involved in 1-2 cultural programmes (not as a spectator)	1
		d) has not participated in any cultural programmes of events	0
12.	Participation in sports activities while serving prison term	a) has organized at least 3 sports events or has been directly involved in at least three sports programmes (not as a spectator)	4
		b) is taking part in the activities of the amateur sports units created by the inmates	2
		c) has not participated in at least 3 sports activities and events	0
13.	Employment while serving prison term	a) prior to the date of issuing this conclusion has been engaged in unpaid work at least for 6 preceding months or while serving prison term engaged in unpaid or paid work for at least 2 years	4
		b) prior to the date of issuing this conclusion has been engaged in unpaid work at least for 3 preceding months or while serving prison term engaged in unpaid or paid work for at least 1 year	3

		or has disability	
		c) has not been employed or has no occupation	0
14.	Rewards	a) while serving prison term has been rewarded 3 times and more	4
		b) while serving prison term has been rewarded once or twice	2
		c) has not been rewarded at all	0
15.	Disciplinary sanctions	a) while serving prison term has not been disciplinary punished	4
		b) while serving prison term has been disciplinary punished not more than twice and is considered inmate without disciplinary sanctions or has not been disciplinary punished for four years prior to the date of this conclusion	2
		c) while serving prison term has deliberately committed violations 3 or more times and was disciplinary punished or has been disciplinary punished within a year prior to the date of this conclusion.	0
16.	Level of implementation of individual correctional plans	a) individual correctional plan fully implemented	4
		b) individual correctional plan partially implemented	2
		c) individual correctional plan not implemented	0
17.	Playing prohibited games while serving prison term	a) has not played prohibited games	3
		b) has played prohibited games	0
18.		a) was never the case	3
		b) was the case in the past but has not been anymore at least for a year prior to the date of this conclusion	1
		c) has been the case for a year prior to the date of this conclusion	0
19.	Any mental or infectious illness obstructing to serving the sentence	a) no such illness or in case of such illness the inmate is willing to undergo treatment when released	4
		b) there is such illness and the inmate is not willing to undergo treatment when released	0
20	Recommendation letters issued by politicians or civil servants	a) there are three or more recommendation letters	4
		b) there are one or two recommendation letters	2
		c) No recommendation letters	0
21.	Any damage caused by crime or compensation of such damage	a) no damage caused by crime or the entire damage established by the verdict in force has been compensated	5
		b) at least half of the damage established by the verdict in force has been compensated	2
		c) the victim or victim's representative did not claim damage	1
		d) damage caused by crime has not been compensated or prisoner was recognised broke	0

22.	Relations with the victim(s) or victim's successor(s)	a) the convict has reconciled with the victim(s) or victim's successor(s) and is in good relations with the victim	4
		b) no relations between the convict and the victim(s) or victim's successor(s)	1
		c) the convict is in hostile relations with the victim (s) or victim's successor(s)	0
23.	Relations with the family	a) has good relations with an adult member(s) of his/her family or does not have a family	3
		b) has bad relations with his/her family	0
24.	Remorse for committed crime	a) fully repents for committing the crime	4
		b) partially repents for committing the crime	2
		c) does not repent for committing the crime	0
25.	Written agreement of the victim(s) or victim's successor(s) re not objecting for prisoner's return to the society	a) there is a written agreement	5
		b) there is no written agreement	0
26.	Place of residence after release	a) there is a permanent place of residence together with prisoner's family	4
		b) there is a temporary place of residence together with prisoner's family or place of residence separately from the family	2
		c) there is a place of residence and no family	1
		d) there is no place of residence	0
27.	Employment guarantees after release (in case of juvenile obtaining education or doing military service may be taken into account)	a) there is a possibility to continue working after release or a guarantee from a possible employer for employing the prisoner, or in case of a juvenile – instead of employment there is a written confirmation from a relevant educational institution re obtaining education or committed to do military service	5
		b) committed to register at public or private employment agency	2
		c) no will to work (in case of a juvenile offender – no will to obtain education or do military service)	0

Conclusion:

1. Taking into account the results of inmates' evaluation and that it is necessary to score at least 70 points, the prisoner_____ should or should not be considered for early conditional release.
2. Taking into account the results of the inmate's evaluation and that it is necessary to score at least 65 points, the prisoner_____ should or should not be considered for replacing the unserved part of sentence with a lighter type of sentence.

ANNEX 4: NOTES ON MEASURING THE OUTCOME OF THE INTENDED REFORMS

If everything goes on as planned, the Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia will result in various reform projects, each of which will hopefully be evaluated. To this end it is essential that *before* any reform project is launched the intended or expected outcome of it be laid down in quantitative and qualitative terms (indicators). This means that before the start of a reform project an appropriate *evaluation design* must be drafted, a specialised task that should be entrusted to a team of experienced *independent* criminologists that are supported by a mixed committee of academics and government officials that are responsible for the implementation of the reform project.

Generally the first thing that is done is *analysing the reform programme* (is there an articulated and validated theory that supports the reform-plan? If so, what are the presumptions concerning the expected effects of the reform? If not, what would be reasonable expectations according to the evaluators?). Then generally a *baseline measurement* is made (what is the situation at the start of the project? This is necessary to detect any changes). A next phase is a *process-evaluation* (an analysis of the way the reforms are being implemented by the responsible actors; is the integrity of the programme maintained by all actors?). The last phase of an average evaluation is the measurement of the outcome (the effects) of the project, using the indicators that were preferably set down at the start of the reform project.

Without any prejudice to evaluation designs to be drafted by professional criminologists the following is suggested about *possible indicators for success of failure* of reform projects, focusing on pre-trial detention, non-custodial penalties and measures and on early release (parole) and the set-up of a probation service.

If **alternatives for pre-trial detention** would be introduced in the new Code of Criminal Procedure *and* more stringent legal obligations for the courts to substantiate their decisions regarding the imposition of pre-trial detention, the most important indicator for success will be a relative decrease of the number of pre-trial detainees (a quantitative indicator), provided a causal relation between the new alternatives and the decrease can be proved. If the introduction of alternatives does not result in a decrease of the use of pre-trial detention but the related court decision are better grounded than they were before (a qualitative indicator), then the reform would be only a partial success.

If more and/or other **non-custodial penalties and measures** would be introduced in the new Criminal Code *and* more stringent legal obligations to substantiate the imposition of custodial criminal sanctions would be introduced in the Code of Criminal Procedure, a major indicator for success or failure will be the effects on recidivism of the offender (a quantitative indicator). This calls for a very sophisticated evaluation design, e.g. how to construct control groups? How to define recidivism? etc.

If **sentencing or orientation guidelines** would be part of the reform an analysis of sentencing decisions must show whether sentencing decisions are better grounded than before or not (qualitative indicator).

If a **probation service** would have been set up and would have gotten the task to prepare pre-sentencing reports the question to be answered is whether this practice enhances the use of non-

custodial sanctions or not (quantitative indicator) and to what extent this influences the quality of sentencing decisions (qualitative indicator).

Lastly: if the **early release procedure** would be reformed an essential indicator for success or failure of the reform seems to be the relative amount of paroles granted yearly (quantitative indicator). The real indicator for success however, seems to be the effect of a new procedure on the rate and character of recidivism (part quantitative, part qualitative indicator). If **programmes for preparation for early release** would be part of the reform and involvement of a probation service in preparation for parole and monitoring of the parolees, additional indicators for success could be the amount of prisoners participating in pre-release programmes (quantitative indicator) and the content of these programmes (qualitative indicator).

Indicators for success or failure of a **probation service** will be many. Quantitative indicators are, for instance, the amount and type of reports written yearly, the case-load of the probation officers. Qualitative indicators could be the effects of monitoring and guidance on the behaviour of suspects and convicts. Other qualitative indicators are: the degree of acceptance of their work by the prosecutors and courts as expressed in their written decisions.

This being said it might be clear that a sound evaluation of all intended reforms will require a great effort in terms of human and financial resources. If comprehensive evaluation research is not affordable, criminologists could be asked to identify only key indicators for success or failure to provide government, parliament and the general public a reasonably reliable picture of the effects of the reforms.