Criminal Justice Responses to Prison Overcrowding in Eastern Partnership Countries

Compilation of the Reports on Study carried in Armenia, Georgia, Moldova and Ukraine

2016

Programmatic Cooperation Framework for
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Criminal Justice Responses to Prison Overcrowding in Armenia

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This report describes and comments on the current situation in Armenia in relation to tackling penitentiary overcrowding and improving prisoner rehabilitation. It is part of a project operating in four Eastern Partnership (EaP) countries (Armenia, Georgia, Republic of Moldova and Ukraine) that have agreed to receive advice from the Council of Europe (CoE) in relation to these key aspects of offender management.

In pursuing such reforms, these countries are fulfilling an obligation they undertook when joining the CoE to harmonise their justice legislation and services with European standards. Standards relevant to these issues are set out in official recommendations published by the CoE.

ABBREVIATIONS

As reference will frequently be made in the text of this report to six CoE recommendations, they will be abbreviated as follows:

• EPR: refers to Rec(2006)2 on the European Prison Rules;

• CoE Probation Rules: refers to CM/Rec(2010)1 on the Council of Europe Probation Rules;

• CoE Rec. on Parole: refers to Rec(2003)22 on conditional release (parole);

• CoE Rec. on Prison Overcrowding refers to R (99)22 concerning prison overcrowding and prison population inflation;

• CoE Rec. on EM: refers to CM/Rec(2014)4 on Electronic Monitoring.

• CoE Rec. on Community Sanctions: refers to R(92)16 on the European Rules on community sanctions and measures;

Other recommendations of general relevance to this report are:

• R(99)19 concerning mediation in penal matters;

• Rec(2000)22 on the improvement of implementation of the European Rules on community sanctions and measures;

• Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

• CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures;

• Rec(2012)12 on Foreign Prisoners;

• Rec (2003)23 on the Management of Life-sentence and Other Long-term Prisoners.

In addition, further statements and guidance about offender management are available in the standards published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), judgements of the European Court of Human Rights (ECtHR) and by the United Nations

THE OVERALL PROJECT: PROMOTING PENITENTIARY REFORMS (FROM A PUNITIVE TO A REHABILITATIVE APPROACH)

1. The aims of the Project:

• to combat prison overcrowding and support use of community sanctions and measures;

• to establish regional co-operation and a strategic approach on prison overcrowding;

• to reduce recidivism of former prisoners contributing to a healthier society and less crime.

2. The Project has worked through:

• bilateral work as well as multilateral exchange of experience and cross-interaction;

• holding working meeting with participation of the representatives of the relevant ministries of the target countries through developing a comparative analyses report based on carried study on combating prison overcrowding in target countries;

• establishing a network and a forum for exchange of good practices be-

tween medium and high level representatives of the relevant ministries of the target countries for combating the prison overcrowding; and

• competency development of the trainers from the Training Centres / Academies of the target countries charged with training of prison and probation staff.

3.The Project activities:

• Translate into six languages: Armenian, Azeri, Georgian, Romanian, Russian and Ukrainian the CoE Committee of Ministers recommendations and the extracts from the CPT general reports related to combating prison overcrowding;

• Develop e-compendiums of the Council of Europe documents on combatting prison overcrowding in six target languages and disseminate among the penitentiary and probation agencies and the training centres in charge of training prison and probation staff in target countries;

• Conduct study on prison overcrowding in target countries and develop country specific recommendations;

• Hold a high-level conference to highlight main findings of the study on prison overcrowding, discuss the recommendations provided and define the possible ways for their implementation; and

• Conduct Training of Trainers on Combating Prison Overcrowding for the trainers of the Training Centres / Academies of the target countries charged with training of prison and probation staff.

THE QUESTIONNAIRE

Information was sought from the Ministry of Justice of Armenia (MoJ) about policy and implementation issues that relate to penitentiary overcrowding and prisoner rehabilitation. A total of 80 questions were divided between the following 12 sections:

1. Strategy and legislation;

2. The judiciary;

3. Police and prosecution;

4. Penitentiary service;

5. Prison overcrowding;

6. Prisoner re-socialisation;

7. Early and conditional release;

8. Alternative sanctions and probation;

9. Aftercare;

10. Data and statistics;

11. Crime as a whole community responsibility; and

12. Funding.

Answers to the questions were submitted by the MoJ in November 2015. The CoE is extremely grateful to officials for undertaking the considerable amount of work involved. In the following part of this report, most of the answers are given in full.

Each answer is followed by a series of comments and recommendations, which include reference to relevant CoE standards.

At the end of each of the 12 sections some overall comments and recommendations are provided.

A questionnaire used to carry out the study is attached to the document in the relevant appendix.

SECTION 1. STRATEGY AND LEGISLATION

1. Direction of Policy

1.1 Response from the MoJ

Current government policy in this sector is set out in the Presidential Executive Order "2012 to 2016 Strategic Programme for Legal and Judicial Reforms of Armenia"[1]. This covers a wide range of topics, but in relation to criminal justice, it requires the production of a new Criminal Code; a new Criminal Procedure Code; the establishment of a probation service; and the streamlining of procedures for early conditional release from prison.

In June 2015 the government adopted a Concept Paper giving details of the need for a Probation Service and describing how it would operate.

1.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Introduction): Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

CoE Rec. on Prison Overcrowding (Article 19): Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

1.3 Comments from the review

Both the Strategic Programme and the Concept Paper on Probation are generally consistent with CoE norms. Indeed the CoE is providing practi-

[1] Executive Order of the President of the Armenia No NK-96 A of 30 June, 2012

cal advice and assistance to help with implementing key aspects of these policies including improving healthcare in prisons and establishment of a probation service. However the Strategic Programme and the Concept Paper crucial documents that reveal the quality of thinking and the extent of expectations in relation to penal reform. They merit a detailed analysis that is beyond the scope of this project.

As pointed out in the CoE assessment report prepared by Iuliana Carbunaru and Gerard de Jong: "Reducing the use of custodial measures and sentences in Armenia", dealing prison overcrowding was a key objective of the 2012-2016 strategic plan.[2]

2. Minimum sentences

2.1 Response from the MoJ

Armenian legislation does not prescribe minimum mandatory prison sentences.

2.2 Relevant International Standards

The review has not found a specific standard on minimum sentences, Article 11 of the 1983 CoE Convention on the Transfer of Sentenced Persons (ETS N° 112) makes the following reference to this issue: In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority . . . shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2.3 Comments from the review

While it may be strictly true that legislation does not prescribe minimum mandatory prison sentences, this may be the case for other reasons. Crimes in Armenia are graded as minor, medium, grave and especially grave. The CoE understands that prison sentence ranges are prescribed for each category. The "Concept Paper on the Criminal Code" is not as clear as it might be on this topic. However certain passages imply that minimum sentences will be proposed in the actual Criminal Code. These include ". . . if the half

[2] "Reducing use of custodial sentences in line with European Standards "project funded by the CoE and the Norwegian Ministry for Foreign Affairs, 2013

of the maximum period of the punishment envisaged in the form of deprivation of liberty is less than the minimal period envisaged by the sanction".

Unnecessary imposition of imprisonment can result if an offender is guilty of a very minor example of a crime that carries a minimum sentence. In Armenia there is the safeguard that a court can replace the prison sentence with "conditional release" with the effect that the offender does not serve time in prison.

Penal Reform International (PRI) argues that mandatory minimum sentences reduce the opportunity for judges to give consideration to the mitigating circumstances of a crime. A mandatory minimum can restrict them from awarding a sentence that has the greatest possibility of encouraging rehabilitation and desistance from further criminal behaviour.[3]

3. Changes to criminal legislation

3.1 Response from the MoJ

Changes have been made to the Criminal Code in the last five years recognising the changing trends in crime. This demonstrates the commitment the administration has to ensuring the relevance of its Criminal Code.

However the main initiative has been the formal adoption by the government on 2014 of a new Concept Paper the Criminal Code that is guiding work currently in hand on a complete revision of this key legislation.

3.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Prison Overcrowding (Article 3): Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

[3] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

3.3 Comments from the review

Within the context of the programme "Support to the Establishment of a Probation Service in Armenia", the CoE is providing technical advice in relation to consequent reforms necessary in the Criminal Code, the Criminal Procedural Code and the Penitentiary Code.

In addition to the activity mentioned on the Criminal Code, the CoE is also aware that fundamental revisions to the Criminal Procedure Code are nearing conclusion. It appears that amendments to this Code under consideration have not yet considered amendments likely to be required by the adoption of the Probation Law.

As these significant legislative reform are being prepared for submission to Parlaiment, and although all the state agencies are able in Armenia, to contribute to the process it is often important to provide detailed briefs for all leaders of the justice sector and elected representatives about the principles and purpose of proposed legislative changes. Their support will be necessary, particularly as the changes proposed will challenge traditional approaches to offender management and may, in the short term, involve additional funding.

4. Impact of changes to legislation on the prison population

4.1 Response from the MoJ

The amendments and supplements made to the Criminal Code of Armenia in the course of 2010-2015 were primarily aimed at prescribing new types of offences in the Criminal Code in parallel with the development of social relations, as well as repealing certain acts prescribed in the Criminal Code, which, virtually, have lost the higher degree of danger they pose to the public.

After Articles 135 (Defamation) and 136 (Insult) of the Criminal Code of Armenia, as well as Article 206 (Evading payment of taxes by a citizen) of

the Criminal Code of Armenia of 29 December 2011 were repealed on 18 May 2010, persons having committed offences under these articles are released form criminal liability and punishment, which has also—to some extent— contributed to the reduction of overcrowding in certain penitentiary establishments.

4.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

4.3 Comments from the review

It appears that some aspects of criminal liability have been changed which may reduce numbers in prison. More significant changes to the prison population can be anticipated by potential changes to the Criminal Procedure Code and the adoption of the Probation Law. The additional alternative sanctions of freedom limits, public rights restrictions, the expulsion of foreign citizens and stateless persons and the deprivation of parental rights should also have an impact on prison numbers.

5. Legislation about conditional release from prison

5.1 Response from the MoJ

Under Article 76 of the Criminal Code, courts may release a prisoner before the sentence is complete if it thinks that further time in custody is not necessary for them "to be corrected". Two thirds of the sentence could be discounted for less serious crimes but more time needs to be served before serious offenders are eligible for release. The court can impose supervision or a community penalty as a condition of release. Sanctions are available if a prisoner commits a further crime or does not fulfil the duties imposed. The rules for conditional early release are complex compared to other administrations with differeing percentages of remission allowed for the different gravities of crime.

5.2 Relevant International Standards

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.

5.3 Comments from the review

The process specified by the CCA for considering applications for parole has been criticised by the CoE, OSCE and other donors for being too complex. Certainly an opinion from the penitentiary management is an important part of the decision-making process. But most European jurisdictions believe that primary attention should be given to the prisoner's potential to keep to the requirements of early release rather than basing it on how well she or he has behaved in prison.

The fact that a decision on the prisoner's application must pass through through three separate stages could lead to unnecessary delays:

Firstly a dossier is produced taking into consideration the conclusions of various departments (including security, psychologist, and medical). It will include assessments made during the sentence, as well as general information about the prisoner and his or her compliance with legal requirements during the period of incarceration (incentives, disciplinary sanctions), his/her participation in work, educational, cultural, athletic or other similar activities, involvement in paid and unpaid works, reimbursement of material damage to the victim of the crime committed, communication and ties with the family, existence of persons under his/her custody, health condition, capability and disability.

If the prison administration believes that release is merited, the dossier is passed to an Independent Board. There are three of these in Armenia and each has eight members. A sub-commission of two members cover each penitentiary institution. The membership of these sub-commissions is rotated so that a member does not deal with a penitentiary for longer than three consecutive months. Prior to the Independent Board considering the case, to members conduct a face-to-face interview at the prison. Their report is considered with other documentation by a full Board meeting and a decision is made by secret ballot.

If the Independent Board agrees that the prisoner should be released, the

matter is then referred to a special court for a final decision. These procedures are not subject to appeal.

The key issue should be whether supervision and rehabilitation in the community can help to avoid further crime. However such assessments require the establishment of a probation service with good risk assessment methods, experienced offender supervisors and a range of proven offending behaviour programmes. When a probation service is properly operating it would be advisable for the Criminal Procedure Legislation to be amended to require active and constructive supervision in the community of prisoners who are given early release.

6. Access to legal advice by persons in custody

6.1 Response from the MoJ

Pursuant to point 3 of Article 13 of the Law of Armenia "On treatment of arrested and detained persons", arrested and detained persons shall have the right: "to file — in person, as well as through a defence counsel or a legal representative — with requests and complaints with regard to violations of his or her rights and freedoms to the administration of arrest and detention facilities, the superior authorities thereof, the court, the Prosecutor's Office, the Human Rights Defender, state and local self-government bodies, public associations and parties, mass media, as well as international bodies or organisations for protection of human rights and freedoms". A similar provision is prescribed also by Article 12 of the Penitentiary Code of Armenia which applies to convicts.

Pursuant to point 149 of the Annex "On approving the internal regulation of detention facilities and correctional institutions of the Penitentiary Service of the MoJ of Armenia" approved by Decision of the Government of Armenia No 1543-N of 3 August 2006: "For the purpose of getting legal assistance, convicts are — upon their request — granted with visits of advocates or representatives of human rights organisations without any restriction in the number of visits, on working days, and in the manner prescribed by law or the Regulations for granting a short-term visit to convicts".

6.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison

authorities shall provide them with reasonable facilities for gaining access to such advice.

6.3 Comments from the review

Although suitable legislation may be in place, much depends on the proceedures for requesting such a service. CPT reports on a number of countries draw attention to difficulties encountered by prisoners in making such applications (such as, for example, the report published in relation to the Republic of Ireland[4]). Informal deterrents can easily be applied by staff who fear that the prisoner may be making an unjustified complaint about their treatment.

7. New probation legislation

7.1 Response from the MoJ

Government of Armenia has approved — by Protocol Decision No 19 of 30 April 2015 — the Concept Paper "On introducing probation service in Armenia" which is carried out within the framework of the programme "Support to establishment of probation service in Armenia" implemented jointly with the Council of Europe.

At present, the draft law "On probation service" has already been developed and as a result of the co-operation between the Council of Europe Office in Yerevan and the MoJ of Armenia — within the framework of the programme "Support to establishment of probation service in Armenia" — the legal expert examination of the draft law "On probation service" is carried out by the Council of Europe experts with the financial support of the Government of the Kingdom of Norway.

Two pilot programmes for introducing probation service are currently implemented in two cities of Armenia — in Yerevan and Vanadzor.

7.2 Relevant International Standards

All of the advice contained in the CoE Probation Rules is relevant here, particularly the first of the 18 'basic principles': Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders

[4] See, for example, the CPT Report on the visit to Ireland from September 2014, CPT/Inf (2015) 38, (http://www.cpt.coe.int/documents/irl/2015-38-inf-eng.pdf).

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.

7.3 Comments from the review

A limited set of community sanctions has been implemented by the Alternative Sanctions Division (ASD) of the State Penitentiary Service since 2006. The legislation enables penitentiary staff based in community offices to supervise offenders who have been "conditionally released" from courts or have been granted parole from prison. The ASD employs approximately 90 staff distributed in offices across the country. A limited scheme of community service is also in operation.

With guidance from the CoE, pilot teams covering the city of Vanadzor and part of Yerevan have been testing some core methods used by European probation services in advance of full legislation being available.

The Concept Paper estimates the cost of operating a national probation service to be between €1 million and €2 million per year. Although the MoJ is hoping for a grant from the EU to cover much of the first year cost, as yet it is not certain that Parliament will allocate the remainder of the necessary funding.

8. Legislation to improve cooperation between penitentiary and probation services

8.1 Response from the MoJ

For the reasons given above, this does not apply at present.

8.2 Relevant International Standards

CoE Probation Rules (Rule 12): Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.

CoE Probation Rules (Rule 37): Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.

CoE Probation Rules (Rule 40): Where appropriate, inter-agency agreements shall be arranged with the respective partners setting the conditions of co-operation and assistance both in general and in relation to particular cases.

8.3 Comments from the review

The Strategic Programme for reforms in this sector calls for a Probation Service to be separated from the Penitentiary Service and directly accountable to the Minister of Justice. Such thinking, which was developed some four years ago, is not uniformly accepted by leaders of the justice sector and may become an issue as the adoption of the Probation Law appears to be drawing closer.

It is clearly vital for a good relationship to exist between the penitentiary and probation services. As each agency takes on a new offender, it is likely that the other agency will have had previous contact that can prove helpful in making assessments and plans. A few European countries – such as Sweden and England – fully integrate these two services. Nevertheless, the normal model is for them to operate similar goals in separate agencies within the MoJ, with a strong emphasis on good communication in relation to overall policies and the management of individual offenders.

9. Use of amnesties and pardons

9.1 Response from the MoJ

Pardon has been granted in Armenia in the course of 2012-2014 to:

31 convicts - in 2012;

23 convicts - in 2013;

22 convicts - in 2014.

No data have been maintained on pardons granted to convicts before 2012.

In the course of 2010-2014, amnesty in relation to convicts has been applied twice:

In 2011 amnesty was applied — pursuant to Decision of the National As-

sembly of Armenia No AJO-277-N of 26 May 2011 "On declaring amnesty in connection with the 20th anniversary of the declaration of independence of Armenia" — in relation to 1052 convicts, of which 602 convicts were released from further serving of punishment, and the sentence of 450 convicts was commuted.

In 2013 amnesty was applied — by Decision of the National Assembly of Armenia No AJO-080-N of 3 October 2013 "On declaring amnesty in connection with the 22nd anniversary of the declaration of independence of Armenia" — in relation to 1837 convicts, of which 686 convicts were released from further serving of punishment, and the sentence of 1151 convicts was commuted.

9.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 19): Preference should be given to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

9.3 Comments from the review

According to official figures, Armenia's prisons are not overcrowded. A total of 3,880 prisoners were held in establishments containing 4395 places. However, it must be noted that this is calculated on the basis of Article 73 of the Criminal Code of Armenia, which merely specifies a minimum of $4m^2$ accommodation space per prisoner. A recent legal opinion on the draft Probation Law by the Council of Europe[5] interprets the figures to suggest that Armenia has a serious prison overcrowding problem that is masked by these two forms of executive release.

Furthermore, criminologists generally disprove of amnesties because they are awarded to whole groups of prisoners without properly distinguishing those who most merit it or who can be trusted keep to the conditions of release. The lack of preparation for release, risk assessment, or advice after release, means that the public is put at risk and too many return because of further crime. A properly managed system of parole is a far better alternative. Amnesties are a crude method of dealing with overcrowding and they can undermine confidence amongst civil society in a process of early release.

[5] "Legal Opinion on the Draft Law on State Probation Service of the Armenia" Gerard de Jonge and Peter van der Laan

This is well argued in the report by the Max Planck Institute: "Prison Overcrowding - Finding Effective Solutions Strategies and Best Practices against Overcrowding in Correctional Institutions":[6] "However, the regular use of amnesties as a response to prison overcrowding seems to undermine confidence in the criminal justice system". He goes on to suggest that they may only have a role to play as an instrument to settle large-scale conflicts and to support reconciliation. However, in the example of Georgia, if the amnesties create a 'once and for all' situation, in which modern methods of criminal justice practice have a better chance of success (by the judiciary, the penitentiary service and the probation service), the amnesties may have been worthwhile.

Pardons are generally awarded because either the justice process leading to the conviction was unsound or it was retrospectively decided that the prosecution itself was not in the public interest. However the number of pardons involved is small and not likely to influence public confidence.

10. Community sanctions and measures that are available to courts

10.1 Response from the MoJ

Pursuant to Article 49 of the Criminal Code of Armenia non-custodial punishments are as follows:

(1) Fine;

(2) Deprivation of the right to hold certain positions or to engage in certain activities;

(3) public works;

(4) Deprivation of special or military rank, category, degree or qualification class;

(4.1) Restriction in the military service;

(5) Property confiscation.

[6] Prison Overcrowding- Finding Effective Solutions Strategies and Best Practices Against Overcrowding in Correctional Institutions by Hans Joerg Albrech of the Max Planck Institute for foreign and International Law. Published in March 2011 by the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI).

10.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Prison Overcrowding (Article 15) expands on this with the following list:

• probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,

• high intensity supervision,

• community service (i.e. unpaid work on behalf of the community),

• treatment orders / contract treatment for specific categories of offenders,

• victim-offender mediation / victim compensation,

• restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

10.3 Comments from the review

In addition to these sanctions and measures, courts are able to apply "conditional non-execution of sentence" to offenders where it is believed that a prison sentence is not required. This is applied to approximately 20% of offenders who appear before the courts[7]. Such people are required to report to the ASD where an assessment is made of the level of supervision necessary. Under current legislation the level and type of supervision that is provided is relatively limited. Nevertheless, the CoE project that is supporting the introduction of probation is showing that a number of important aspects of European probation can be introduced under existing legislation. These include risk and need assessment, offence-based counselling, social training courses and family counselling.

[7] Statistics provided by Armenia NGO Civil Society Institute and included in a forthcoming PRI paper "Promoting the use of non-custodial sanctions in Armenia, Azerbaijan and Georgia."

Similarly, the sentence of "public works" (community service) is currently implemented in a limited way that does not achieve its full potential. The EU Advisory Group's policy paper identifies two reasons for this: "There are some underlying causes for this. Firstly, the Criminal Code, in its general part, defines public works as a type of punishment, yet, in the Code's special part, does not envisage that public works functions as a sanction for any crime. Furthermore, public work requires a written application to be made by the convicted person. This means that the convicted person has to be exceptionally committed to being involved in the implementation of a public works sentence. The second issue is a lack of understanding by the public about the differences between the former Soviet sanctions known as 'correction work' and the new concept of public works. Correction works in former times were a compulsory way to maintain a person in employment".[8]

Article 19 of the draft Probation Law contains 27 paragraphs describing the future operation of public works. The CoE Legal Opinion on this law recommends the name of the sanction is changed to Community Service (a point that would require further amendment to the Criminal Code). The opinion also makes the point that the probation service should take over direct supervision of this sanction, rather than, as present, leaving it to 3rd parties such as the Municipal Authorities.

11. Offender/victim mediation

11.1 Response from the MoJ

Article 73 of the Criminal Code allows for a person who has committed a minor offence to be "released from criminal liability where he or she has reconciled with the victim and has compensated or otherwise settle the damage caused to him or her". A large number of further Articles set limits to this approach being used. Proposals in the draft Criminal Procedure Code will result in reconciliation being more comprehensively regulated.

11.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/reparation/ victim-offender mediation.

[8] "Towards Creation of a Probation Service in Armenia", Policy Paper, EU Advisory Group, p 28

11.3 Comments from the review

If "reconciliation" is to be a satisfactory aspect of criminal procedure, it must be carefully supervised and regulated. Otherwise, a powerful offender could force a victim to withdraw a complaint on the basis of very superficial evidence of reconciliation.

Article 12 of the draft Probation Law anticipates a role for the probation service in offender/victim mediation as follows: "The functions of the probation officer related to mediation in penal matters during the trial stage shall be defined by the Criminal Procedure Code of Armenia".

12. Electronic monitoring of home detention as a pre-trial measure

12.1 Response from the MoJ

Currently, electronic monitoring as a home detention in respect of the accused is not applied during the preliminary investigation or the trial in Armenia. But pursuant to point 4 of Article 123 of the draft Criminal Procedure Code of Armenia: "The supervision over the behaviour of the accused may, by the court decision, be exercised through special electronic means. The accused shall be obliged to permanently wear on the means of the electronic control, keep them in the operating condition and respond to the signals of the control by the competent body".

An institution of the electronic monitoring is also prescribed by the draft Law of Armenia "On the probation service".

12.2 Relevant International Standards

CoE Rec. on EM (Preamble): Recognising that electronic monitoring used in the framework of the criminal justice process can help reduce resorting to deprivation of liberty, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime.

12.3 Comments from the review

Currently Armenia has neither the equipment nor the legislation necessary for using electronic monitoring to supervise home detention. However, this option is strongly advocated in the Concept Paper on the Introduction of a Probation Service: "During the full operational phase (starting from

January 2017) it is planned to initiate the implementation of functions, which was not considered possible during the previous phase. In particular, the implementation of electronic monitoring, as well as the implementation of other functions, envisaged by the new Criminal Procedure Code (in case of further delays in the adoption the Code)".

It should be noted that the primary aim of the current CoE advisory project is to provide "technical support to the establishment of a probation service, including introduction of a pilot electronic monitoring system".

Action to reduce reliance of Armenian courts on pre-trial detention was strongly advocated in the recent CoE Legal Opinion on the draft Probation Law: "Furthermore, Armenia seems to have a tradition of extensive and almost automatic use of remand or pre-trial detention for most offenders. There is little or no practice of conditional suspension of remand or pre-trial detention. Bail is possible but the actual use seems limited"[9].

13. Electronic monitoring of home detention as a criminal sentence

13.1 Response from the MoJ

The current legislation of Armenia does not provide for the application of electronic monitoring in respect of convicts. The institute of the electronic monitoring is prescribed by the draft Law of Armenia "On the probation service".

13.2 Relevant International Standards

CoE Rec. on EM (Article 8): 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.

13.3 Comments from the review

Electronic monitoring of home detention has proved to be the most reliable and effective implementation of electronic technology in the penal system and it is currently used in over 20 European countries. Nevertheless, it can be up to twice as expensive per day as other alternative sanctions so its introduction should be staged according to the results of pilot

[9] "Legal Opinion on the Draft Law on State Probation Service of the Armenia" Gerard de Jonge and Peter van der Laan

testing in pilot situations. If the MoJ gets positive results from its current implementation with juvenile offenders this would seem to be encouragement for the method to be tested with adults.

GENERAL COMMENTS ON SECTION 1: STRATEGY AND LEGISLATION

Leadership. A clear policy based on the concept of rehabilitation and coupled with understandable and convincing methods needs to be articulated by those who lead the various sectors of the justice system. Although reforms of this nature may achieve a certain amount of tacit support, vocal opposition can be expected from those who favour a punitive approach.

Systemic issues. Most of the problems in the justice system affect more than one part of it and lasting solutions require negotiation and compromise between agencies that have firm views about what is right. A frequent example is that delays in court proceedings results in pressure on places in pre-trial detention facilities.

Planning and legislation. Pilot projects and innovations by established service providers can pave the way for significant reforms. Nevertheless the need for strategic plans and reform of legislation must be addressed before critics have a chance to stall the process. The financial costs and benefits must be articulated, but it is equally important to raise the wider issues of community safety, a belief that offenders can reform, humanitarian principles and concern for victims.

Evidence-based practice. It is no longer wise or necessary for reforms to be based on assumptions of what will be effective. The study of international literature and results of small-scale pilots can help to avoid well-meaning but counter-productive initiatives.

Evaluation of effectiveness. Baseline statistics, and data about the effect of changes to legislation are necessary for guiding further work. Often an agency in one part of the justice system may be collecting routine information that will be of great help to evaluators elsewhere.

Organisational flexibility. There is no single method of locating a Probation Service within the justice system. Successful examples can be found where probation is fully integrated with the penitentiary service (such as in Sweden and England). Other countries find it preferable to achieve similar

results by separating the two services and running them as independent agencies within the MoJ. Austria is notable for its probation service to be operated by non-governmental organisations under contract to the MoJ.

Pilot projects. It is often easier to establish more liberal penal policies favouring rehabilitation by introducing them with women or juvenile offenders. New methods which have then been proved to be successful can gradually be introduced to male and older offenders.

Mandatory minimum sentences. A study by PRI suggests that mandatory minimum sentences reduce the opportunity for judges to give greater consideration to the mitigating circumstances of a crime. The requirement to pass a custodial sanction can make it difficult for them to impose a community sanction that might have a greater possibility of encouraging rehabilitation and desistance from further criminal behaviour.[10]

RECOMMENDATIONS ON SECTION 1: STRATEGY AND LEGISLATION

Range of alternative sanctions. The list of alternative sanctions presently limiting the choices for judges. It is hoped that the expansion of alternative sanctions in the coming legislation will give the opportunity to expand the decisions for non-custodial sentences. Such new sanctions should focus on their purpose of rehabilitating offenders..

Criminal legislation. The contents of the Criminal Code will need to be adjusted to include new sanctions that have proved effective in tests carried out by the probation service. As such, this Code can be a key tool for justice reform. Attention must be given to frequent review of other legislation (i.e. Probation Law and Criminal Procedure Code) in order that the strategy for change maintains a momentum.

Justice sector integration. The criminal justice system consists of a number of independent agencies with their own history and culture. Structures should be established to promote continuous discussion and problem-solving so that the different parts are encouraged to support overall aims and objectives.

Judges and prosecutors. The reform strategy should seek to involve judges and prosecutors at the heart of its development as they hold the key to

[10] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

creating a greater synergy in the system and a therefore greater success in reducing crime.

Joint operational meetings. There should be regular inter-disciplinary meetings involving all justice professionals. Amongst other things these could promote debate on rehabilitation and the role of sentencing in creating a rehabilitative focus for all criminal justice practice. One possible model would be the "Criminal Justice Board" that meets quarterly in London under the direct chairmanship of the Minister of Justice.

SECTION 2. THE JUDICIARY

14. Proportionate use of prison sentences

14.1 Response from the MoJ

The question asked for the percentage of all criminal cases heard in the courts that resulted in a custodial sentence. The response gives absolute numbers, rather than percentages.

Year	Number of criminal cases heard in the courts	Number of cases that resulted in custodial sentence
2010	3116	377
2011	2216	373
2012	2193	544
2013	2179	424
2014	1775	251

14.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 1): Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.

CoE Rec. on Prison Overcrowding (Articles 18-21): Prosecutors and judges should bear in mind resources available, in particular in terms of prison capacity (prosecuting and sentencing guidelines, in particular with regards to reducing the use of imprisonment and expanding the use of community sanctions and measures, and using measures of diversion such as mediation or the compensation of the victim); particular attention should be paid to the role aggravating and mitigating factors, as well as previous convictions play in determining the appropriate quantum of the sentence.

14.3 Comments from the review

Countries that have inherited the Soviet penal philosophy tend to use imprisonment more often and for longer periods than European countries. However it is difficult to compare these statistics between different coun-

tries because crimes are classified differently. (For example, motoring offences may or may not be included in the data.)

15. Access to justice/legal aid

15.1 Response from the MoJ

In addition to the right an accused has to legal aid set within the Criminal Code, in 2006 an additional clause was added regarding financial assistance. The new Criminal Procedural Code sets out two articles concerning the right to legal assistance (Article 10) and the rights of the victim and witnesses to legal representation and the responsibilities of the conducting body (Article 19).

15.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

15.3 Comments from the review

The right for defendants to have access to free legal representation is frequently implied in CoE standards. It would be interesting to know what proportion of defendants in Armenai were sentenced to imprisonment without having any kind of legal representation.

16. Pre-trial detention

16.1 Response from the MoJ

The question was answered with the figures provided below. However from these figures it is not possible to identify the answer to the question which was in terms of percentage of offenders who are remanded in custody.

2010 - 3434

2011 - 3088

2012 - 2497

2013 - 3011

2014 - 2203

16.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 11): The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation N° R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered[11].

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Community Sanctions (Rule 1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples: - alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority.

The European Court of Human Rights 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 European Convention on Human Rights (hereafter ECHR). The fact that only cases against Armenia are cited here does not imply that it is a typical Armenian problem (Case of *Poghosyan v. Armenia*, 20 November 2011, appl. no. 44068/07; case of *Sefilyan v. Armenia*, 2 October 2012, appl. no. 22491/08; case of *Piruzyan v. Armenia*, 26 June 2012, appl. no. 33376/07). In the cases of *Muradkhanyan v. Armenia* (5 June 2012, appl. no.12895/06) and *Asatryan v. Armenia* (9 February 2010, appl.

[11] Recommendation N° R (99) 22 of the Committee of Ministers to Member States concerning Prison Overcrowding and Prison Population Inflation

no. 24173/06), the extension of the pre-trial detention had been defined unlawful[12].

16.3 Comments from the review

Normally transition countries are associated with a high use of pre-trial detention. The figures supplied does not provide information whether it is lower use of pre-trial detention in Armenia or not than the typical figure of 10% in Western European countries. Comparisons such as this must be done with care because further details would need to be checked to see whether similar calculations are used. For example, the total number of "cases with court decision" may or may not include motoring or administrative offences.

A key potential role for a new Probation Service, that is more or less universal throughout Europe, will be to make assessments on offenders that can then be used by courts to help them make appropriate decisions. A key factor in the assessment process is the assessment of risk both in relation to further offending and the likelihood of breaching conditions of release pending trial.

17. Prison sentence lengths

17.1 Response from the MoJ

The response provided the following statistics on prison sentence lengths, although was stated in actual numbers. It is assumed for the purpose of this Report that these represent newly allocated prisoners dung the specific year. It shows that although prisoners were considerably fewer in 2014, the sentence lengths allocated were similar.

2010: Less than 1 year – 21% (653)

From 1-2 years – 26% (828)

From 2-5 years – 39% (1205)

Over 5 years – 12% (364)

Over 10 years – 2% (54)

[12] European Court of Human Rights case law reports contravention of article 5 of the ECHR

2014: Less than 1 year – 26% (451)

From 1-2 years – 16% (285)

From 2-5 years – 45% (781)

Over 5 years – 11% (216)

Over 10 years – 2% (42)

17.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 14): Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

17.3 Comments from the review

The data provided by the MoJ requires further interpretation and comparisons with Western European figures, which would show that prison sentences are generally longer in Armenia.

18. Types of serious crime

18.1 Response from the MoJ

Crimes are categorised in four levels of gravity. The level of gravity determines the length of prison sentence. Examples of crimes which required a minimum of 5 years included murder of a new-born child by mother, intentional grave harm to health, kidnapping and robbery. Crimes that required a minimum of 10 years included murder, high treason and subversion.

18.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

18.3 Comments from the review

From evidence supplied sentence lengths appear to be getting shorter Crimes that meriti sentences of over five years are unlikely to attract alternative, community-based sanctions. However the offenders involved are the kind that raise particular concern when they are released from prison. Such people should be amongst the priority cases for a probation service as it attempts to develop realistic goals for a period of intense parole supervision.

This area of questioning is particular useful when setting the response within the context of European experiences. Although crime rates in countries such as Armenia are significantly lower than in many western European countries rates on imprisonment are often the same.

Further research would be interesting to undertake in order that more information is known as to the average sentence lengths given to indicative categories of crime to understand whether a crime that warrants a custodial sentence in Armenia warrants the same in western European countries or indeed in EaP countries.

19. Functioning of the courts

19.1 Response from the MoJ

The two main factors identified were a shortage of judges and (presumably in consequence) their overload of work.

19.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (A. Rationales for Sentencing): 9. Delays in criminal justice should be avoided: when undue delays have occurred which were not the responsibility of the defendant or attributable to the nature of the case, they should be taken into account before a sentence is imposed.

19.3 Comments from the review

Pressure on the courts can be reduced to some extent by diverting minor cases out of the criminal justice system. Reforms pioneered in this region by Georgia have shown that informal warnings and mediation in such cas-

es can have satisfactory outcomes for the parties involved and retain the confidence of the general public.

EaP countries have inherited a justice system in which the office of the prosecutor plays a significant part in determining the outcome of criminal cases. Some reform projects, such as those funded by the European Union and the United States government, take the view that the system would be more transparent if control was more in the hands of judges. Methods to improve the selection, training, salaries and discipline of judges are recommended in order to improve their public status.

20. Extent of recidivism

20.1 Response from the MoJ

The figures provided by the MoJ will require further definition. They appear to suggest that the number of persons convicted who had previously been in prison dropped from 560 in 2010 to 264 in 2014. The full set of figures is:

Year number with previous convictions

2010 - 560

2011 - 579

2012 - 514

2013 - 365

2014 - 264

20.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (D. Previous Convictions): 1. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant.

2. Although it may be justifiable to take account of the offender's previous criminal record within the declared

rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence(s).

3. The effect of previous convictions should depend on the particular characteristics of the offender's prior criminal

record. Thus, any effect of previous criminality should be reduced or nullified where:

a. there has been a significant period free of criminality prior to the present offence; or

b. the present offence is minor, or the previous offences were minor; or

c. the offender is still young.

20.3 Comments from the review

Figures provided in response to a later question indicate that approximately 17,500 offenders were convicted by courts in Armenia in 2014. If it is true that only 1.5% of the total received into prison in that year had previously experienced a prison sentence it suggests that prisons are good at deterring reoffending. However, as with other answers to statistical questions, more work might be necessary for these figures to be considered reliable.

21. Use of electronically monitored home detention while waiting for trial

21.1 Response from the MoJ

Electronic monitoring as a home detention in respect of the accused is not applied during the preliminary investigation or the trial in Armenia. But pursuant to point 4 of Article 123 of the draft Criminal Procedure Code of Armenia: "The supervision over the behaviour of the accused may, by the court decision, be exercised through special electronic means. The accused shall be obliged to permanently wear on the means of the electronic control, keep them in the operating condition and respond to the signals of the control by the competent body".

The institute of the electronic monitoring is also prescribed by the draft Law of Armenia "On the probation service".

21.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention. . . . . In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

21.3 Comments from the review

The CoE is currently helping the MoJ to test electronic monitoring in the context of its current project "Support to the Establishment of a Probation Service in Armenia". Reliable equipment is readily available on the international market and staff should be able to operate the system effectively. However, when all costs are taken into account it is an expensive service (about twice as much as basic supervision by a probation officer). A major consideration is therefore whether courts will actually use electronic monitoring in cases in which otherwise the defendant would have been held in custody.

GENERAL OBSERVATIONS ON SECTION 2: THE JUDICIARY

Sentence lengths. Countries that inherited the Soviet penal philosophy still tend to impose longer custodial sentences than in Western Europe. We are not aware of independent research that justifies longer sentences. It would therefore seem appropriate for Armenia to research whether sustaining a policy of longer sentences does reduce crime and protect the public. Of course offenders would prefer shorter sentences. But if unnecessarily long periods of incarceration are reducing their chances of successful reintegration, it is the wider community and further victims who will suffer.

Pre-trial detention. The frequent use of custody at the pre-trial and pre-sentence phases has also been a feature of Eastern European practice. In some Western European countries, as few as 11% of offenders[13] charged with deliberate crimes are held in pre-trial detention whereas the figure in Armenia is over 30%. Although prosecutors will claim that releasing the person will result in the prosecution being compromised it would be instructive to submit such claims to rigorous testing. In European justice systems, unnecessary use of pre-trial detention leads to worse long-term outcomes.

[13] Figures obtained from "Pre-trial detention and its alternatives in Armenia" Penal Reform International, January 2012

Frequent use of custodial sanctions. Although the use of imprisonment has reduced, it is still high compared to European averages of about 10% of all sentences. However, the statistics do show a reduction in 2013, the year of the very large amnesty. Comparing Armenian data to European mean sentence statistics published by SPACE I, Armenia has a lower percentage of sentences over 5 years.

Access to lawyers. Although access to lawyers for pre-trial and pre-sentenced persons has improved, it would be helpful to test the popular assumption that better legal representation leads to more appropriate sentencing.

Risk assessment. The use of detention has been reduced, indicating a gradual shift in the thinking of prosecutors and judges regarding risk. With the use of modern, scientific methods for assessing risk, they should have a better awareness of which defendants will present levels of risk where detention is appropriate. Probation Services in Europe are generally able to undertake these risk assessments and with other information can provide valuable reports for judges. In this way, the process of decision-making becomes more professional and indeed more accurate.

RECOMMENDATIONS ON SECTION 2: THE JUDICIARY

Pre-trial detention. A strategy should be developed, based on CoE rules, to tackle the high levels of pre-trial detention. Such a strategy will need to include electronic monitoring of accused persons pending the trial as well as the introduction of assessment reports that identify the risk of breaching release conditions.

Training for prosecutors and judges in sentencing (including risk assessment and rehabilitation). Training for judges, together with staff of the other criminal justice agencies, should aim to achieve a greater understanding of these basic offender management methods so that more effective choice of sentences can be achieved. Such training should be undertaken in multi-disciplinary groups involving professionals from other parts of the Criminal Justice System in order to develop a greater understanding of corporate responsibility in decision making.

Research. Improved data on recidivism rates should be produced in order that the judiciary has a greater understanding of the effectiveness of its sentencing options.

Legal advice. The take-up and cost of legal aid, and the number of offenders sentenced to prison without legal representation, should be undertaken in order to review the effectiveness of this service.

Electronic Monitoring. Now that the MoJ has actively supported the inclusion of electronic monitoring of adults (and provisions are included in the draft probation law and draft criminal procedural code) there is a strong argument for testing it with pre-trial defendants .

SECTION 3. POLICE AND PROSECUTION

22. Total number of crimes each year

22.1 Response from the MoJ

The MoJ has stated that the number of crimes committed in 2014 was 17,546. This represents a 20% rise compared to 2010.

22.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

22.3 Comments from the review

Official crime rates are normally presented as the number of crimes in a year for every 100,000 population. On the basis of the national population of ap-

proximately 3 million, this gives the official crime rate in Armenia as 548 per 100,000 population. According to the European Source Book on Crime and Criminal Justice Statistics, 5th edition,[14] equivalent figures for other countries were: England and Wales 6,500; Denmark 7,800; Slovenia 4,500 and Lithuania 2,400. This would suggest that the crime rate in Armenia is about one tenth of the crime rate in the larger countries of Western Europe. However, as always, comparisons such as these raise the problem of whether or not a particular type of behaviour is categorised as a crime in the countries being compared.

23. Number of court cases

23.1 Response from the MoJ

The number of cases registered each year for court proceedings has dropped substantially. In 2010 there were 6,314 cases. By 2014 this had dropped by 40% to 3,784.

23.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

[14] European Source Book of Crime and Criminal Justice Statistics, 2014, 5th edition

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

23.3 Comments from the review

It is interesting to note that in the five years from 2010 the number of crimes has risen by 20% yet number of cases referred to courts has dropped by 40%. 2014 only 22% of registered crimes resulted in a court hearing. This is slightly less than a typical European figure of about one crime in three being taken to court. These figures also confirm that overall crime rates appear to be quite low.

24. Supervision of offenders by police and prosecutors

24.1 Response from the MoJ

In relation to supervising released prisoners, the MoJ provided the following information: In accordance with the decision 1254-N, dated 6 November 2014 on procedure for organizing the activities of community police, approved by the Government of Armenia, the community police officers are registering and implementing individual preventing measures towards persons released on parole, as well as toward persons having served the full prison sentence.

In relation to supervising offenders on alternative sanctions, the MoJ provided the following information: Decision of the Government of Armenia No 1561-N of 26 October 2006 "On prescribing the procedure for the activities of the territorial bodies of the Division for Execution of Alternative Punishments of the Penitentiary Department of the MoJ of Armenia" stipulates the functions of the DAS in the course of application of the alternative punishments prescribed by the Criminal Code of Armenia.

24.2 Relevant International Standards

CoE Rec. on EM (Preamble): Ethical and professional standards need to be developed regarding the effective use of electronic monitoring in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and agencies providing equipment or supervising suspects and offenders.

CoE Rec. on EM (Definitions): In some jurisdictions, electronic monitoring is directly managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a serviceproviding contract with a State agency.

24.3 Comments from the review

There has been a long tradition in EaP countries and elsewhere in the former Soviet Union for staff of the Interior Ministry to exercise limited supervision of convicted offenders. The preference in most European countries is that staff employed by police authorities are not involved in supervising offenders because they lack the appropriate training and management. However, police are key stakeholders within the Criminal Justice System and their knowledge of the criminal behaviour, particularly of the more serious offenders, means they will have a valuable contribution to make to discussions about penal reform. In some countries police staff assist probation officers to supervise some of the most dangerous and high risk offenders who have been released from prison.

25. Arrest targets

25.1 Response from the MoJ

Arrest targets have not been specified in Armenia in the last five years.

GENERAL COMMENTS ON SECTION 3: POLICE AND PROSECUTION

The police and prosecutors are key stakeholders within the Criminal Justice System. However, in terms of reform strategies they are sometimes left outside of the plan. In the case of the police this is possibly because they are established in the brief of Ministry of Interior rather than the MoJ. In the case of the prosecutors' office, reasons may include the status the office holds within the system.

RECOMMENDATIONS ON SECTION 3: POLICE AND PROSECUTION

Organisational cooperation. The police and prosecutors should maintain a close relationship with the new Probation Service particularly after the introduction of electronic monitoring.

Joint training. Training in these issues should be provided for police and prosecutors in order that they develop their understanding and share their thinking on risk and needs assessment, and the concept of rehabilitation in criminal justice.

Joint operations. The police should agree cooperation protocols, especially in relation to electronic monitoring and the supervision of dangerous offenders released from prison.

SECTION 4. PENITENTIARY SERVICE

26. Changes in prison population in the last five years

26.1 Response from the MoJ

The total number of prisoners in Armenia in the last five years has declined steadily from 5,142 at the end of 2010 to 3,888 at the end of 2014.

26.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

26.3 Comments from the review

From the information available it is not possible to determine the individual reduction created through amnesties and those through criminal justice reforms.. The reduction created by criminal justice reform may be seen as a more legitimate means of combatting overcrowding.

27. Changed rate of imprisonment

27.1 Response from the MoJ

The total number of prisoners per hundred thousand population in the last five years has steadily decreased from 160 in 2010 to 131 at the end of 2014.

27.2 Comments from the review

The typical imprisonment rate in Western European countries is around 110 per hundred thousand population. Statistics from the Council for Penolog-

ical Co-operation of the CoE (SPACE I[15]) show that the rate in Armenia was 130 in 2014 (its most recent statistics). Thus, it might be thought that the imprisonment rate in Armenia is not very much out of line with the norm. However, it must be remembered from Question 22 that the crime rate in Armenia is one tenth of the crime rate in Western European countries.

28. Pre-trial detention

28.1 Response from the MoJ

1,039 detainees were held in penitentiary establishments in Armenia at the beginning of October 2015.

28.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

Relevant standards are defined in the Coe Committee of Ministers 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.

28.3 Comments from the review

According to figures provided by the International Centre for Prison Studies, detainees awaiting trial or sentence currently represent approximately 26.4% of the penitentiary population in Armenia [16]. This is slightly higher than the European average of approximately 21%.

29. Women prisoners

29.1 Response from the MoJ

[15] http://wp.unil.ch/space/space-i/prison-stock-on-1st-january-2013

[16] http://www.prisonstudies.org/country/armenia

A total of 171 women were held in Armenian penitentiaries; 38 of them were in pre-trial detention.

29.2 Relevant International Standards

EPR (Rule 34):

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

The CoE does not have a collected set of recommendations about female offenders. Relevant advice is available in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16).

29.3 Comments from the review

This represents 4.4% of the total prison population and is consistent with European averages in 2015 which were, for example, France 3.3%, Italy 4.1% and England 4.6%[17].

30. Life sentences

30.1 Response from the MoJ

101 persons sentenced to life imprisonment are currently held in Armenian penitentiaries.

30.2 Relevant International Standards

• CoE recommendations on the subject are contained in the following

[17] See SPACE I. Or for a more simple presentation of the information, similar information is available from the International Centre for Prison Studies: http://www.prisonstudies.org/world-prison-brief.

document: Rec (2003) 23 on the Management of Life-sentence and Other Long-term Prisoners.

30.3 Comments from the review

This number of life sentenced prisoners is low compared to the major European countries. For example, England and Wales has approximately 80 times this number of prisoners serving life sentences from a population only 20 times larger.

31. Foreign nationals in prison

31.1 Response from the MoJ

At the beginning of October 2015 there were 126 foreign citizens in Armenian penitentiaries.

31.2 Relevant International Standards

EPR (Rule 37):

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall

co-operate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

CoE recommendations are included in Rec(2012)12 on Foreign Prisoners.

31.3 Comments from the review

On the basis of the figures supplied, foreign citizens represent 3.2% of the total prison population. This is far less than the proportions experienced in Western European countries in 2015, for example, France 21.7%, Italy 33.0%, Germany 27.1%, and England 12.8%[18]. It is therefore possible that, as they are in such a minority, these foreign citizens do not get the special attention they may need in terms of interpreting facilities and contact with family members in their home country.

32. Juveniles in prison

32.1 Response from the MoJ

Six male juveniles are held in Armenian penitentiary establishments. Two of them are awaiting trial. No female juveniles are held in penitentiary establishments.

32.2 Relevant International Standards

EPR (Rule 35) sets standards in relation to juveniles in prison as follows:

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

[18] http://www.prisonstudies.org/world-prison-brief.

Further relevant standards are contained in CoE CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures.

32.3 Comments from the review

These are commendably low figures of juveniles kept in custody.

33. Young offenders in Armenian prisons

33.1 Response from the MoJ

MoJ does not keep statistics for prisoners in this age range.

33.2 Relevant International Standards

EPR (Rule 18.8): In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain . . . . . young adult prisoners separately from older prisoners. Also (Rule 28.3): Particular attention shall be paid to the education of young prisoners and those with special needs.

Recommendation CM/Rec (2008) 11 European Rules for Juvenile Offenders subject to Sanctions or Measures (Rule 10): Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention. Also (Rule 21.2): "Young adult offender" means any person between the ages of 18 and 21 who is alleged to have or who has committed an offence.

33.3 Comments from the review

In European countries this is a key age group for offenders as it marks the years when relatively impulsive juvenile offenders normally give up crime. Unless effective rehabilitation programmes are available, offenders in the 18 to 21 age group are likely to continue committing crime for at least the following five years.

34. Capacity of prisons

34.1 Response from the MoJ

Prisoner status	Capacity	Actual
Medical	424	424
Open	398	93
Semi open	975	1331
Semi closed	909	795
Closed	947	630
Detention (remand)	940	1039
TOTAL	4,584	3,888

INSTITUTION	Medical	Open	Semi-open	Semi-closed	Closed	Detention /Remand	TOTAL
Nubarashan		20	62	50	138	550	820
Goris		50	10	20	100	35	215
Artik		25	141	42	115	50	373
Sevan		15	483	50	-	-	548
Kosh		25	50	465	100	-	640
Abovyan		29	81	40	15	100	265
Vardashen		200	70	25	10	34	339
Vanadzor		10	15	30	110	80	245
Hospital	424	10	14	5	5	6	464
Hrazdan		-	4	24	187	-	215
Yerevan/Kentron		-	5	3	7	45	60
Armavir		5	40	155	160	40	400
	424	389	975	909	947	940	4584

34.2 Relevant International Standards

EPR (Rule 18.5): Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

In many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m² and 9.5m². The CPT has consistently stated that single-occupancy cells of less than 6m² (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.[19]

[19] Paragraph 59, CPT/Inf (2011) 28

34.3 Comments from the review

The figures from the MoJ indicate that most prisons have sufficient space (according to their disputed interpretation of international standards). However, two large prisons were significantly overcrowded.

Many factors need to be considered before commenting on these figures. A prison may seem to have a reasonable amount of spare space, but it may have disadvantages from an operational point of view (difficult to recruit staff, unsuitable design, expensive to heat, or not near main population centres).

35. Standards for penitentiary services

35.1 Response from the MoJ

The following answers were provided by the MoJ:

• Premises – minimum 4m^2.

• Food – Portions are determined by Government Decree and identify special diets for pregnant women, nursing mothers and ill prisoners.

• Health – There is a special medical institution able to accommodate 424 prisoners. The Penitentiary Code identifies the procedure for organizing the "medical sanitation" and "medical preventative" assistance for both remand and sentenced prisoners. However, there appears little in the legislation that guarantees prisoners access to doctors.

• Regimes – The Penitentiary Code identifies the different status of prisons as open, semi open, semi closed and closed institutions. Most establishments are mixed type prisons (able to accommodate more than one type of prisoner) but where the various types are segregated from each other. For example, Armavir penitentiary establishment includes the following prisons inside the single institution – open, semi open, semi closed and closed as well as being an establishment for remand prisoners.

• Outdoor exercise – This is stated in the legislation as 'daily out of cell walks' being organized in special open spaces designed for that purpose. The duration is defined in the Penitentiary Code as not being shorter than 1 hour per day.

• Visits – the Penitentiary Code allows for 1 short visit per month (up to 4 hours) and 1 long visit per 2 months (up to 3 days). In certain cases, long visits can be replaced by short visits. Additionally, for long term prisoners and those serving life imprisonment an additional 3 short visits (minimum) and 1 long term visit are provided.

• Physical fitness – The response included information that the Penitentiary Code provides the opportunity for offenders serving their punishment in closed and semi closed institutions to practice physical training in the areas specified for that purpose during the "daily out of cell walks". It also states that within the Abovyan penitentiary establishment there is a room furnished with sports equipment.

• "Home Visits" – The response included the opportunity for visits to home for social rehabilitation, as well as for family problems, a natural disaster or serious illness.

35.2 Relevant International Standards

Space does not allow this review to describe all the international standards relating to the issues in this question. A sample is as follows:

Healthcare: The CPT has stated: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[20]

A health check for all prisoners is vital procedure not only to be able to deal with an individual prisoner appropriately but also to safe guard other prisoners from contagious diseases etc. As the CPT says: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments)."

Hygiene: According to EPR (Rule 19.1):

[20] Paragraph 30, CPT/Inf (93) 12

• All parts of every prison shall be properly maintained and kept clean at all times.

• When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

• Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

• Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least

• twice a week (or more frequently if necessary) in the interest of general hygiene.

• Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

• The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

• Special provision shall be made for the sanitary needs of women.

Some of these standards are raised as follows by the CPT[21]:

• A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

• There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/ nurse, etc.).

• A medical file should be compiled for each patient, containing diagnostic information as well as an on-going record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

EPR (Rule 24) has this to say about *visits*:

[21] Paragraphs 38-39, CPT/Inf (93) 12

• 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

• 24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

• 24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

• 24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

35.3 Comments from the review

A detailed assessment of compliance of these Armenian penitentiary standards with international standards is beyond the scope of this review. Neither is it the intention of the review to assess the extent to which these standards are observed in practice. Nevertheless, the European Prison Rules have been very effective in giving guidance to prison administrations.

RECOMMENDATIONS ON SECTION 4: PENITENTIARY SERVICE

Accommodation standards. The method for calculating the capacity of a prison should be based on CPT standards. These cover more factors than simply the space available in dormitories.

Management Information Systems. Providing managers with the ability to collect and interpret operational data from their area of control will improve their ability to direct resources to achieve prison-wide objectives. Simple examples would be: time out of cell, incidents of disobedience, discovery of contraband, etc. In this way targets for improvement can be set and progress can be measured.

Probation services within the penitentiary establishments. Resettlement prospects for prisoners would be improved if probation staff visited prisons to contribute to pre-release courses and the development of individual release plans.

SECTION 5. PRISON OVERCROWDING

36. Overcrowding

36.1 Response from the MoJ

The general living space of penitentiary establishments is sufficient to ensure the minimum 4m^2 defined for each convict by the legislation of Armenia.

Taking into account that distribution of detained persons and convicts is carried out in compliance with the principle of legislative requirements of keeping the detained persons and convicts separate (Article 68 of the Penitentiary Code of Armenia, Article 31 of the Law of Armenia "On treatment of arrested and detained persons"), as well as the considerations for ensuring the cohabitation and safety of detained persons and convicts, a problem of overcrowding at some cells, particularly in the detention facilities, sometimes arises.

Due to the need to reduce the overcrowding at detention facilities, an Order of the Minister of Justice of Armenia No 203-N of 11 May 2015 "On making amendments and a supplement to Order of the Minister of Justice of Armenia No 30-N of 28 February 2012", has been adopted. As a result of this Order a detention facility with a capacity of 40 persons has been set in "Armavir" Penitentiary Establishment. It enabled to reduce, to some extent, the number of the detained persons kept in "Nubarashen" Penitentiary Establishment.

In 2014, 11 auxiliary buildings in new "Armavir" Penitentiary Institution were furnished; auxiliary buildings with a capacity of 400 convicts were put in operation. After completion of construction activities, the institution will have the capacity to receive up to 1,240 persons. Also, reconstruction of other currently existing penitentiary establishments, raising their capacities, and construction of new penitentiary establishments are included in the strategic programmes for improvement of the penitentiary service. In case of implementing the mentioned programmes, it will become possible to fully address the issue of the proportional distribution of the persons deprived of liberty as well as of ensuring the minimum living space defined by the legislation.

36.2 Relevant International Standards

CPT Standards comment on prison overcrowding as follows: "The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe[22].

The CPT felt the need for a rough guideline in this area. The following criterion is currently being used when assessing prison cells: in the order of at least 4m^2, 2 metres or more between walls, 2.5 metres between floor and ceiling.

Elsewhere, the CPT standards[23] state that such a minimum should only apply to persons assigned to a multi-occupancy cell without including the area for a fully-partitioned sanitary facility. For permanent living space for a single-occupancy cell the CPT standard is a minimum of 6m^2 plus the area for sanitary facility.

Living space per prisoner in prison establishments: CPT standards[24]

Introduction

1. Since the 1990s the CPT has developed and applied minimum standards regarding the living space that a prisoner should be afforded in a cell. While these standards have been frequently used in a large number of CPT visit reports, they have so far not been brought together in a single document.

2. At the same time, there is a growing interest in these standards, at the national level (among member states' authorities responsible for the pris-

[22] Paragraph 28, CPT/Inf (2001) 16

[23] www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf

[24] CPT/Inf (2015) 44 | Section: 1/2 | Date: 15/12/2015

on estate, national detention monitoring bodies such as national preventive mechanisms established under OPCAT , domestic courts, NGOs, etc.) and at the international level, not least because of the problem of prison overcrowding and its consequences. Currently, the Council of Europe's Council for Penological Co-operation (PC-CP) is preparing a White Paper on prison overcrowding. For its part, the European Court of Human Rights is frequently being called upon to rule on complaints alleging a violation of Article 3 of the European Convention on Human Rights (ECHR) on account of insufficient living space available to a prisoner.

3. Against this background, the CPT decided in November 2015 to provide a clear statement of its position and standards regarding minimum living space per prisoner; such is the aim of this document.

4. The cells referred to in this document are ordinary cells designed for prisoners' accommodation, as well as special cells, such as disciplinary, security, isolation or segregation cells. However, waiting rooms or similar spaces used for very short periods of time are not covered here.

5. During its monitoring activities, the CPT has frequently encountered situations of prison overcrowding. The consequences of overcrowding have been highlighted repeatedly by the CPT in its visit reports: cramped and unhygienic accommodation; constant lack of privacy; reduced out of cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The CPT considers that the question of minimum living space per prisoner is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.

6. Minimum standards for personal living space are not as straightforward a matter as they might appear at first sight. To begin with, the "minimum living space" standards used by the CPT differ according to the type of the establishment. A police cell for short-term detention of several hours up to a few days does certainly not have to meet the same size standards as a patients' room in a psychiatric institution; and a prison cell, whether for remand or sentenced prisoners, is again an entirely different matter.

7. Secondly, a differentiation should be made according to the intended occupancy level of the accommodation in question (i.e. whether it is a single cell or a cell designed for multiple occupancy). The term "multiple oc-

cupancy" also needs to be defined. A double cell is arguably different from a cell designed for holding for instance six or more prisoners. As regards large-scale dormitories, accommodating dozens and sometimes even up to one hundred prisoners, the CPT has fundamental objections which are not only linked to the question of living space per prisoner, but to the concept as such.

In its 11th General Report the CPT criticised the very principle of accommodation in large-capacity dormitories; frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units.

8. Thirdly, the CPT has also taken into consideration the regime offered to prisoners when assessing cell sizes in light of its standards (see paragraph 21).

The CPT's basic minimum standard for personal living space

9. The CPT developed in the 1990s a basic "rule of thumb" standard for the minimum amount of living space that a prisoner should be afforded in a cell.

• $6m^2$ of living space for a single-occupancy cell

• $4m^2$ of living space per prisoner in a multiple-occupancy cell

10. As the CPT has made clear in recent years, the minimum standard of living space should exclude the sanitary facilities within a cell. Consequently, a single-occupancy cell should measure $6m^2$ plus the space required for a sanitary annexe (usually 1 to $2m^2$). Equally, the space taken up by the sanitary annexe should be excluded from the calculation of $4m^2$ per person in multiple-occupancy cells. Further, in any cell accommodating more than one prisoner, there should be a fully-partitioned sanitary annexe.

11. Additionally, the CPT considers that any cell used for prisoner accommodation should measure at least 2m between the walls of the cell and 2.5m between the floor and the ceiling.

Promoting higher standards

12. Rule 18.5 of the European Prison Rules (2006) states that "Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation." Indeed, in many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m^2 and 9.5m^2. The CPT has consistently stated that single-occupancy cells of less than 6m^2 (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.

13. When devising the standard of 4m^2 of living space, the CPT had in mind on the one hand the trend observed in a number of western European countries of doubling up 8 to 9m^2 cells that were originally designed for single occupancy, and on the other hand the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

14. Although the CPT has never explicitly defined "multiple-occupancy", an analysis of visit reports indicates that cells for two to four prisoners implicitly fall under this notion. Consequently, the CPT has regularly implied that cells measuring 8m^2 were acceptable for two prisoners, cells of 12m^2 for three, and cells measuring 16m^2 were adequate for four prisoners. However, in a non-negligible number of cases, the CPT has also stated that cells of 8m^2 (or 8 to 9m^2) should "preferably" (Slovenia, 2006; Hungary, 2013) or "idéalement" (Belgium, 2009) accommodate only one prisoner; or should be "used to accommodate no more than one prisoner save in exceptional cases when it would be inadvisable for a prisoner to be left alone" (UK, 2003). In the report on its 2011 visit to the Netherlands, the Committee stated that accommodation in double cells measuring between 8 and 10m^2 was "not without discomfort" to the prisoners, and in the report on the 2011 visit to Ireland, it recommended that "efforts be made to avoid as far as possible placing two prisoners in 8m^2 cells".

15. Clearly, the aforementioned examples suggest that the 4m^2 per prisoner standard may still lead to cramped conditions when it comes to cells for a low number of prisoners. Indeed, given that 6m^2 is the minimum amount of living space to be afforded to a prisoner accommodated in a single-occupancy cell, it is not self-evident that a cell of 8m^2 will provide satisfactory living space for two prisoners. In the CPT's view, it is appropriate at least to strive for more living space than this. The 4m^2 standard is, after all, a minimum standard.

16. For these reasons, the CPT has decided to promote a desirable standard regarding multiple-occupancy cells of up to four prisoners by adding 4m² per additional prisoner to the minimum living space of 6m² of living space for a single-occupancy cell:

• 2 prisoners: at least 10m² (6m² + 4m²) of living space + sanitary annexe

• 3 prisoners: at least 14m² (6m² + 8m²) of living space + sanitary annexe

• 4 prisoners: at least 18 m² (6m² + 12m²) of living space + sanitary annexe

17. In other words, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, and a cell of 12m² no more than two prisoners.

18. The CPT encourages all Council of Europe member states to apply these higher standards, in particular when constructing new prisons.

36.3 Comments from the review

The CPT standards, described in detail above, are very challenging for countries that have limited funds for their criminal justice services. The standard that is most often quoted is living space per prisoner in the cell. However the area provided in Armenian legislation of 4 m² only meets 1990 CPT standard for single-occupancy cells, which are rarely found in its prisons. And more recently, the standard has been increased to 6m². This would imply that Armenian prisons are more overcrowded by international standards than would be revealed by its own legislation.

Cell space must not be looked at in isolation. The other standards for the custodial environment are equally important, but not quite so easy to measure.

37. Factors leading to overcrowding

37.1 Response from the MoJ

Overcrowding in the penitentiary establishments in Armenia is mainly a feature of excessive use of pre-trial detention, criminal justice policies that include mandatory minimum sentences, increase in long-term and life sentences, changes of eligibility for early release, and insufficient attention to assisting social integration upon release. Violations of early conditional release and conditional sentence also contribute. Legislation relating to

these issues is being re-conceived in ways that may help to solve some of these problems.

37.2 Relevant International Standards

The CPT makes the following points about prison overcrowding: "To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level".[25]

37.3 Comments from the review

Each of the factors identified in the answer from the Ministry are likely to play a significant part in the current situation. They merit further detailed examination. However, the other points in the United Nations Office on Drugs and Crime (UNODC) list should not be discounted, particularly: poverty and inequality; delays in the criminal justice process; insufficient use of bail; inadequate use of alternative sanctions; and criminal activity associated with drugs. Each is dependent on a network of decisions in separate areas of the justice system.

38. Effects of overcrowding

38.1 Response from the MoJ

The current overcrowding in the penitentiary establishments in Armenia has a negative influence on safety, hygiene of the persons kept in the penitentiary establishments and on providing better conditions for health.

38.2 Relevant International Standards

The CPT has made the following comments in relation to overcrowding: "Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is re-

[25] Paragraph 14, CPT/Inf (97) 10

quired to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint."[26]

38.3 Comments from the review

Overcrowding may not affect all types of prisoner in the same way. In general, psychological thinking tends to suggest that women may suffer from reduced privacy but young men feel more aggressive in their need to assert their position in the group.

39. Distribution of overcrowding

39.1 Response from the MoJ

The information in Sub-section 36 has dealt with this question.

GENERAL OBSERVATIONS ON SECTION 5: PRISON OVERCROWDING

Overcrowding means much more than a prison estate with inadequate cell space. A prison, for example may have adequate space but if the regime lacks activities for rehabilitation, or the area available for visits from relatives is cramped and inadequate, it could be concluded that overcrowding exists. Such an approach to offender management is often referred to as 'warehousing' and does little for the aims rehabilitation.

RECOMMENDATIONS ON SECTION 5: PRISON OVERCROWDING

Re-calculate the capacity of the prisons. Statements about the capacity of the prison estate should be revised according to a calculation based on current CPT recommendations of at least 6m^2 per prisoner in single occupancy cell + sanitary facility and 4m^2 per prisoner in multi-occupancy cell + fully-portioned sanitary facility.

[26] Paragraph 46, CPT/Inf (92)3

Collect regime data. More detailed data should be collected about the impact of overcrowding on things such as health, regime activities and preparing prisoners for a successful release (re-socialisation).

More time out of cell. The minimum standard for time out of cell is one hour for high risk offenders. Although information regarding lower risk offenders indicated that 10 hours was likely, this was not written in terms of a minimum standard. There should be monitoring of all out of cell times for all regimes. Best practice in Europe gives targets for local managers to raise amounts of out of cell times. This is sometimes seen as arduous by staff who need to be more pro-active in their work. Setting targets and measuring performance may be necessary to overcome staff resistance.

Routine management information. More modern methods of compiling and evaluating operational information should be employed. These include the collection of data on 'time out of cell', number of family visits, completion of sentence plans, etc. Information of this type will enable managers to set targets for improvement and encourage local teams to perform better by finding new solutions to old problems.

SECTION 6. PRISONER RESOCIALISATION

40. Induction routine for prisoners

40.1 Response from the MoJ

A Ministerial Order (by law) No 1543-N specifies that new prisoners are held in a "quarantine unit" for the first seven days. They have a medical check. Routines, work and training opportunities are explained. Required standards of behaviour are clarified. Rights and responsibilities are discussed. Formal and informal assessments are made in order to decide which of the prison's units each new prisoner should be assigned to.

40.2 Relevant International Standards

EPR describes recommended admissions procedures in the Rules 14 to 16:

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

a) information concerning the identity of the prisoner;

b) the reasons for commitment and the authority for it;

c) the day and hour of admission;

d) an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;

e) any visible injuries and complaints about prior ill-treatment; and

f) subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

a) information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;

b) the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;

c) the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;

d) any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and

e) in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

40.3 Comments from the review

A careful, managed induction to the prison is an essential part of safe custody and is right in principle. However, the quality of the actual experience will depend on details that could only be appreciated through actually examining such a unit. Pressure from other prisoners could be a factor if only a small number are held in quarantine at any time.

41. Prisoners with special needs

41.1 Response from the MoJ

Article 68 of the Penitentiary Code and Article 31 of the "Law on Treatment of Arrested and Detained Persons" specifies 12 different categories of prisoner that should be kept separately. These include women; minors; law enforcement officials; dangerous individuals; and foreign nationals.

41.2 Relevant International Standards

International standards in relation to the issues raised by this question are to be found at many points throughout the sets of advice and recommendation listed at the beginning of this Report. For example, in relation to nutrition, EPR states in Rule 22: Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

41.3 Comments from the review

Most of these categories for separate accommodation seem straightforward. However, separating negligent criminals from those who have committed intentional crimes could be an arbitrary distinction. Likewise separating recidivists from those in prison for the first time is not necessary a helpful distinction. European countries would usually make sophisticated assessments of risk and need. They would not normally differentiate prisoners on the basis of one particular characteristic or classification.

One of the first effects of overcrowding is the pressure it places on the ability of penitentiary administrations to maintain necessary services to potentially vulnerable groups. The policies set out by the MoJ in its answer, confirms that it intends to avoid any harmful outcomes.

42. Individualised rehabilitation programmes for prisoners

42.1 Response from the MoJ

Pursuant to Order of the Minister of Justice of Armenia No 44-N of 30 May 2008 "On approving the procedure for the activities of structural subdivisions carrying out social, psychological and legal activities with detained persons and convicts", activities carried out in relation to convicts by structural subdivisions (carrying out social, psychological and legal activities in penitentiary establishments of the MoJ of Armenia) include study of social and psychological characteristics, diagnosis and needs assessment, after which corrections programme for each convict is drawn up. The programme is drawn up in the course of one to three months after placing convicts in the penitentiary establishment.

The programme contains the actions and/or measures which are planned to be carried out for convicts in the course of serving the punishment. A release preparation plan for convicts is drawn up three months before the convict is granted early conditional release, the unserved part of the punishment is replaced by a milder punishment or the term of punishment is fully served, and activities envisaged by the plan are carried out aimed at their smooth reintegration into the society after the release

42.2 Relevant International Standards

The CPT has strong views on this subject[27]: "A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organization of regime activities in such establishments - which have a fairly rapid turnover of prisoners - is not a straightforward matter. Clearly, there can be no question of individualized treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable."

EPR (Rule 28) sets standards that are unlikely to be fully met in Armenian prisons for some years. For example:

• Regimes shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

• Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

• Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

• As far as practicable, the education of prisoners shall be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

[27] Paragraph 47, CPT/Inf (92)3

42.3 Comments from the review

The policies indicated by the MoJ are consistent with CoE advice. The big problem for countries with limited penal sector budgets (as indicated before) is their ability to provide good quality services called for by the policies.

43. Number of prisoners with individual sentence plan

43.1 Response from the MoJ

The corrections programme and the release preparation plan for convicts referred to in Sub-section 42 are drawn up for all convicts (criminal judgement entered into legal force), thus 100% are involved.

43.2 Relevant International Standards

See Sub-section 42.2.

43.4 Comments from the review

It may be useful in undertaking a specific review as to the detail given to the process of corrections planning and the release programme.

44. Number of prisoners who have accessed regime activities

44.1 Response from the Moj

Measures carried out in 2014 include educational programmes, in which 3,8% of persons deprived of liberty were involved, work programmes in which 10,3% of persons deprived of liberty were involved as well as programmes on the fight against narcotic drugs. HIV/AIDS prevention, harm reduction, voluntary counselling and testing, syringe-exchange, condom availability and methadone substitute treatment programmes were continued to be implemented by the Medical Service Unit of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia among detained persons and convicts.

One of the goals of the Programme implemented has been the provision of contemporary and scientifically substantiated treatment, rehabilitation

and harm reduction services to persons using narcotic drugs and psychotropic substances. During 2014, 5958 brochures were distributed among persons using narcotic drugs and psychotropic substances, 3332 persons received counselling on prevention of HIV/AIDS and drug addiction. As of 31 December 2014, in penitentiary establishments 131 detained persons and convicts were undergoing methadone substitute treatment.

44.2 Relevant International Standards

See Sub-section 42.2.

44.3 Comments from the review

No doubt the Moj would like to improve the proportion of prisoners who access work and education courses. Lack of specialist staff in the adult prisons (such as teachers, social workers and psychologists) mean that such courses may need to be redesigned so that they can be delivered by the guards who supervise the accommodation units.

The impact on successful rehabilitation of the other programs mentioned – drug treatment, employment and education – is unlikely to be disputed. However new methods for implementing them will also need to be developed as it is unlikely that sufficient mainstream funding will be available to increase participation numbers above these rather disappointing levels.

GENERAL COMMENTS ON SECTION 5: PRISONER RESOCIALISATION

Emphasis on rehabilitation. In Western Europe, throughout the final 30 years of the twentieth century, the work of prisons in re-socializing offenders grew in importance. Regimes had previously lacked any activities designed for preparation for release. Education and work training were seen as essential for many offenders, whose poor skills were shown to have contributed to their offending.

Scope of education. Education is conceived more widely in Western Europe than in the EaP countries and it is common to see prisoners involved in classes where they are exploring new social and life skills and learning how they can benefit from an appreciation of literature. Unfortunately, prison overcrowding and reduced budgets in these countries have limited the availability of these essential activities.

Rehabilitation services. As stated above, one of the key objectives of a prison system is to rehabilitate prisoners in order that they will not continue with a life of crime. There is no single reason why individuals will return to their former criminal life. However causes include: lack of socialisation, lack of employment and training, a feeling of rejection by society, antisocial attitudes, restlessness, association with other criminals impulsiveness, lack of education, and neglect or abuse by parents or guardians. There are many ways to reduce recidivism and among the most cost-effective are social training and education courses.

Health needs. This has been made a particular priority and the administration has been pro-active in introducing schemes that seek to screen for priority health issues and provide good quality treatment.

RECOMMENDATIONS ON SECTION 5: PRISONER RESOCIALISATION

Resocialisation methods. The Penitentiary Code should designate a specific senior member of its headquarters team to be responsible for the rehabilitation aspects of penitentiary regimes.

Cooperation between penitentiaries and probation. Although the plan for the Probation Service is to make it independent from the Penitentiary Service, it is essential that a close working relationship between the two organisations should exist. In this way the transition from prison to community can be more effectively managed.

Operational data. The Penitentiary Service should assure the collection and analysis of reoffending rates of prisoners released with or without supervision. Similarly, data should be collected in relation to participation in rehabilitation activities in prisons.

Pre-release programmes. Programmes dealing with pre-release issues are not expensive to organise and can make an important difference. They should be seen as an essential part of the objectives of all prisons. Other programmes should be developed to respond to the criminogenic needs of prisoners.

SECTION 7. EARLY AND CONDITIONAL RELEASE

45. Conditional release

45.1 Response from the MoJ

Articles 76 and 77 of the Criminal Code and Articles 114 to 116 of the Penitentiary Code make provision for early conditional release. Further details were published in bylaw No 1304-N in August 2006. This legislation prescribes whether one half or more of the sentence must be served (depending on the gravity of the crime) before release can be considered. A group of prison managers does the first screening and will automatically disallow applications from prisoners with disciplinary infringements on their record or who lack "positive characteristics".

Files of any applicants thought to be suitable for early release are passed to an Independent Board. Two members of this Board will interview the applicant and if the full Board agrees that early conditional release is appropriate the case will be submitted for a court hearing. If the court agrees to release the person it can attach special conditions or substitute a milder punishment. If the application has not been agreed the prisoner can try again after six months. The two conditions normally applied to those given early release are not to commit further crime and to report at specified intervals to the Alternative Sanctions Division of the Penitentiary Service.

45.2 Relevant International Standards

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community;

CoE Rec. on Parole (General principles 4.a): In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

CoE Rec. on Prison Overcrowding (Article 25): In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

CoE Rec. on Parole (Articles 16 to 21): These paragraphs describe recommended approaches to conditional early release.

45.3 Comments from the review

Release on parole should encourage prisoners to make full use of the opportunities available for rehabilitation during their sentence and to provide extra control on release while they adapt to freedom. The main criticism of this type of parole system is that it is based on past behaviour (e.g. disciplinary infringements), it gives too much responsibility to prison staff to assess the character of the prisoner and is not informed by professional assessments of whether the prisoner can overcome – with the help of probation supervision – the personal and social challenges they all will inevitably face.

46. Reduction of sentence under early release

46.1 Response from the MoJ

No statistics are kept to reveal the average amount of time not served.

46.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

46.3 Comments from the review

In order to protect the public and make best use of limited resources, prison managers should have access to a wide range of practical operational information, such as this. Although this information will be recorded some-

where in relation to each individual prisoner, the lack of statistical analysis represents a handicap to managers and strategic planners.

Not many governments collect these figures but they would be extremely useful for managing the system and assessing its effectiveness. Informal impressions, while referring to the information provided in the following sub-section, are that more than half of prisoners are granted conditional release but the normal amount is no more than a few months.

47. Proportion of prisoners granted early conditional release

47.1 Response from the MoJ

The total number of prisoners eligible for parole in any year is not recorded. From 2010 approximately 280 were given early conditional release each year. In 2014 the figure suddenly dropped to 184.

47.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 23): The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

47.3 Comments from the review

Although no statistics were asked or given, regarding the number of prisoners released from prison each year, an informal calculation which uses the prison population and sentence lengths may result in a figure of 2000 prisoners being released in Armenia each year. Releasing only about 10% of them on parole - and then with practically no supervision - suggests that the scheme is not the significant aspect of offender management that is found in European countries. As CoE Rec. on Parole confirm, general opinion is that the substantial period of parole – linked to effective supervision by the probation service – is strongly in the interests of safe release and lower levels of reoffending.

48. Proportion of prisoners granted early conditional release

This appears to be the same as the information in Sub-section 47.

49. Support from probation for ex-prisoners

49.1 Response from the MoJ

No probation service currently exists in Armenia, but the draft law on the probation service has already been developed.

Meanwhile, the DAS operates in Armenia based on points 5-7 of Article 6 of the Law of Armenia "On penitentiary service", and on Decision of the Government of Armenia No 1561-N of October 2006 "On prescribing the procedure for the activities of the territorial bodies of the Division for Execution of Alternative Punishments of the Penitentiary Department of the MoJ of Armenia", which registers the persons having benefited from early conditional release, whose conduct is under the court's supervision.

49.2 Relevant International Standards

EPR (Rule 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.

49.3 Comments from the review

Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[28]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

50. Other support for ex-prisoners

50.1 Response from the MoJ

In Armenia, persons having benefited from conditional early release may

[28] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

be rendered aid by non-governmental organisations, which is of voluntarily and individual nature.

50.2 Relevant International Standards

EPR (Rule 107.4): Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

EPR (Rule 26): Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.

50.3 Comments from the review

Informal observations confirm that there are some excellent services provided for ex-prisoners by civil society organisations. However, they are limited in number and struggled to respond to the great level of need the experience. Development of NGO services has proved to be a cost-effective way of delivering help and avoid reoffending.

51. Re-conviction of conditionally released prisoners

51.1 Response from the MoJ

During 2010 the total of 393 parolees were supervised by the DAS and 40 committed further offences. This 10% reconviction rate has remained steady ever since. In 2014 there were 97 parolees on the register, of which nine committed new offences.

51.2 Relevant International Standards

CoE Rec. on Parole (Article 43): In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these sys-

tems and their effectiveness in achieving the basic aims of conditional release.

51.3 Comments from the review

In order to compute the rate of reconviction it will be necessary to know the total numbers of prisoners released in those years.

We understand that the statistics refer only to new crimes committed while the period of supervision is in force. The normal standard for reconviction rates in European countries is to collect statistics for a period of two years from when the person first becomes at risk. Presumably, this test would reveal a higher reconviction rate. Information given in relation to other questions suggests that reoffending rates are commendably low. Publication of these statistics could improve public and judicial confidence in parole.

52. Reconviction rates for prisoners who complete their full sentence

52.1 Response from the MoJ

No statistics on recidivism by persons released after having fully served their punishment and deprived of liberty thereafter is kept by the MoJ of Armenia.

52.2 Relevant International Standards

As mentioned in above Sub-section, CoE Rec. on Parole (Article 43), recommends that statistics such as this are compiled.

52.3 Comments from the review

Statistics of this nature enable the effectiveness of parole decision-making and post-release supervision to be measured and policy reforms to be evaluated.

GENERAL OBSERVATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Benefits of parole. Supervised release on parole benefits the community, the prisoner and the penitentiary service itself. Providing an incentive for

early conditional release encourages more co-operative behaviour during sentences of the vast majority of prisoners. This allows for better offender management whilst in prison but also aids successful rehabilitation after prison. Research on recidivism rates for example, demonstrate that they are much lower amongst offenders given early conditional release. However, this may be because such offenders have a more positive attitude towards desisting from crime anyway.

Rehabilitation programmes. Prisoners provided with the opportunity to address their offending behaviour and to develop a positive attitude to release allows for a greater chance of rehabilitation. Normally there exists in the community support and monitoring activities, which are commonly the responsibility of a Probation Service.

Community perspective necessary. In recent years, the number of prisoners released on parole is approaching European averages. However, the participation of the Probation Service in the process is more limited than would be ideal. Proper assessments, which focus on what would need to be done to help an individual complete a period of parole satisfactorily, require the kind of risk and need assessment best done by an agency experienced at supervising offenders in the community. Unfortunately, penitentiary staff can be over concerned with behaviour in the custodial environment, which is not a good predictor of behaviour released.

RECOMMENDATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Reform of parole. A greater priority must be given to the reform of the early conditional release system within the MoJ, which brings together the work of the new Probation Service and the methods used in many other European countries to better identify prisoners who pose limited risk to communities and are less likely to reoffend. Greater priority in parole decisions should be given to the assessment of risk and plans to mitigate it.

Training. A training programme should be developed and all the actors in the early conditional release system should undergo such training in order to adopt new standards and skills.

Statistics. Relevant statistics on reoffending rates and average reduction in sentences should be developed on a regular base and analysed.

SECTION 8. ALTERNATIVE SANCTIONS AND PROBATION

53. New alternative sanctions

53.1 Response from the MoJ

Alternative punishment imposed in the form of correctional work has been abolished after the entry into force of the Law of Armenia No HO-119-N of 26 June 2006 "On making amendments to the Criminal Code of Armenia".

53.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2 (3) provides that: "In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non- custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible."

Tokyo Rule 2 (4) states that: "The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated."

53.3 Comments from the review

Correctional Work required offenders to undertake paid employment and give part of their wages to the court as a penalty for their crime. In its time it was a good alternative to prison, but the sentence fell into disrepute as economic circumstances reduced the necessary work opportunities. (This sanction is not to be confused with Community Service.)

Further consideration about the appropriateness of the term "conditional sentence" may encourage the adoption of the more normal European term of "probation order".

54. Purpose of alternative sanctions

54.1 Response from the MoJ

The DAS executes non-custodial punishments and exercises supervision over persons having benefited from conditional non-application of punishment, who have been conditionally early released from punishment, and for whom serving the punishment has been postponed.

54.2 Relevant International Standards

The first principle of the CoE Probation Rules is the following: Probation agencies shall aim to reduce reoffending 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 / reintegration. Probation thus contributes to community safety and the fair administration of justice.

54.3 Comments from the review

The new Concept Paper on the Criminal Code, which was officially adopted in 2015, states that "We [Government of Armenia] need to review the system of punishment and practical types of punishment alternative to deprivation of liberty; to improve the existing ones; to envisage means that are alternatives to criminal liability that would enable to save the criminal-legal coercion"[29].

55. Range of alternative sanctions

55.1 Response from the MoJ

The answer provides details of the following alternative sanctions: community service; conditional release from serving a custodial sentence; fine; exclusion from certain jobs or activities; restrictions on military service; confiscation of property. Together with the sanction a judge can require an offender to have certain treatments or be monitored by a psychiatrist.

55.2 Relevant International Standards

CoE Rec. on Community Sanctions Point 1 of the "Guiding principles for

[29] CONCEPT OF NEW CRIMINAL CODE OF THE ARMENIA (Appendix to RA Government Protocol Decision N 25 Dated June 4, 2015)

achieving a wider and more effective use of community sanctions and measures" states: Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples:

• alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority;

• probation as an independent 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 a mental disturbance that is related to their criminal behaviour;

• intensive supervision for appropriate categories of offenders;

• restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring imposed with observance of Rules 23 and 55 of the European Rules;

• conditional release from prison followed by post-release supervision.

The main international bodies have strong, clear messages about the need for alternative sanctions. The United Nations, in its "Standard Minimum Rules for Non-custodial Measures" (The Tokyo Rules) 91 Rule 2 (3)[30] states that: "In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non- custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible."

55.3 Comments from the review

Notable points from the information provided include that the maximum

[30] The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2 (3)

order for community service is 2,200 hours. This is approximately 10 times the maximum in European countries. The sanction of conditional release can include specific conditions of a surveillance or rehabilitation nature.

56. Diversion schemes

56.1 Response from the MoJ

Such schemes are not available in Armenia.

56.2 Relevant International Standards

CoE Rec. on Community Sanctions (Guiding principles for achieving a wider and more effective use of community sanctions and measures): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/ reparation/ victim-offender mediation.

56.3 Comments from the review

Diversion is an increasingly important aspect of a modern penal system. Fortunately there are some good lessons to be learned from the way it has developed in neighbouring Georgia.

57. Plans to introduce new alternative sanctions

Response from the MoJ

Expanding the list of types of punishments and introduction of effective mechanisms for their application is one of the key issues defined in the concept of the new Criminal Code of Armenia. Application of alternative punishment has, in effect, a punitive character but is not related to isolating a person having committed criminal offence from the society and breaking his or her social ties. Consequently, in addition to types of alternative punishment defined in the acting Criminal Code of Armenia the concept of the new Criminal Code of Armenia provides the following types of alternative punishment:

(1) limitation of freedom;

(2) limitation of public rights;

(3) extradition of a foreign national or a stateless person from the territory of Armenia;

(4) house detention;

(5) deprivation of parental rights.

57.2 Relevant International Standards

The information provided in relation to Sub-section 55.2 is relevant to this item.

57.3 Comments from the review

The proposal to limit "public rights" could be alarming but no further details are available. Commentators routinely propose that a specific sentence of probation should be available in the Criminal Code[31] and that Armenian formulation of "conditional non-application of punishment" is flawed.

58. Percentage use of alternative sanctions

58.1 Response from the MoJ

During the year of 2014 the DAS has registered 2,227 convicts. Fines have been imposed on 62, and public works have been imposed on 288 of them, with regard to 154 of whom punishment has been suspended since they are under imprisonment, and 399 convicts have been deprived of the right to hold certain positions or to engage in certain activities.

58.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

58.3 Comments from the review

[31] E.g. "Probation: a European Perspective" unpublished paper produced in 2012 by Randel Barrows for a CoE project in Ukraine.

We can assume that the remaining 59% (903 persons) were supervised under conditional release.

A more typical figure for European countries would be 10%. Further comparison would require more details to be provided, such as the gravity of the crimes involved and the number of previous convictions. European probation services tend to focus their efforts on a smaller number of high risk offenders who would otherwise attracted a custodial sentence.

59. Use of "conditional sentence"

59.1 Response from the MoJ

Actual numbers of persons given "conditional sentence" were provided for the five years from 2010:

920 - in 2010

541 - in 2011

762 - in 2012

818 - in 2013

834 - in 2014

59.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

59.3 Comments from the review

The final number of 834 for the year 2014 is not the same (903) as was given for Sub-section 58 (This may be because of an error or different criteria for allocating cases). Taken together with the information provided in the Sub-section 58 (Percentage use of alternative sanctions), these figures suggest that the vast majority of alternative sanctions were conditional sentence.

It would be interesting to know what proportion of offenders sentenced to "conditional sentence" were actively supervised by probation staff. Accord-

ing to European experience – which may not be relevant – most convicted offenders who are not sent to prison do not require active supervision. Financial penalties or community service are the favoured sanctions for this group. The efforts of the probation service would normally be concentrated on a troublesome minority, perhaps no more than 20% of those not sent to prison.

60. Success of supervised alternative sanctions

60.1 Response from the MoJ

2,227 convicts were registered during the year of 2014 in the DAS, from which 2,185 convicts have not committed any new crime.

60.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

Tokyo Rule 2 (4) states that: The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

60.3 Comments from the review

In a busy office that lacks electronic data systems, it is difficult to collect statistics. However, without such information it is impossible to manage resources or understand how to improve effectiveness.

61. Imposition of conditional sentence

61.1 Response from the MoJ

Conditional non-application of punishment was terminated on the ground of committal of a new as follows:

for 7 convicts during the year of 2010;

for 18 convicts during the year of 2011;

for 13 convicts during the year of 2012;

for 11 convicts during the year of 2013;

for 7 convicts during the year of 2014.

61.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

61.3 Comments from the review

These figures provided by the MoJ appear to refer to offenders given "conditional release" from prison. The proportion that have been recalled to prison is extremely low. Likely explanations could include the fact that a significant proportion of offenders given immediate custodial sentences are no risk and not particularly delinquent. Perhaps it indicates that most of these people could be given an alternative sanction instead of a custodial sentence.

62. Electronic monitoring

62.1 Response from the MoJ

No electronic monitoring currently exists in Armenia.

62.2 Relevant International Standards

CoE Rec. on EM (Article 8): When electronic monitoring will be used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance.

62.3 Comments from the review

Requiring someone to stay in their home for part or whole of the day is an effective punishment and in many cases would be preferable to a prison sentence. However, on its own it is unlikely to help the offender to understand why he or she got into trouble or the changes in attitudes and behaviour required to live a crime-free life. Research evidence from the utilisation of electronically monitored curfews in European countries confirms that the sanction does not affect reoffending. For this reason the CoE Rules on Electronic Monitoring recommend that the sanction should be coupled with rehabilitation services.

63. Success of electronic monitoring

63.1 Response from the MoJ

No electronic monitoring currently exists in Armenia.

63.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

63.3 Comments from the review

It is recognised that it requires resources to collect and analyse statistical information. However, without this kind of data it is not possible to monitor service standards for the effectiveness of policies.

GENERAL OBSERVATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Lack of public support. Support for Alternative Sanctions is not universal across all members of society in European countries. In most cases, this can be attributed to lack of understanding about offender management.

Separating or integrating penitentiary and probation. In some EaP countries, such as Ukraine and Azerbaijan, the department within the Penitentiary Service that has inherited the Soviet-style supervision of released prisoners is in the process of transforming itself into a modern Probation Service. Other countries have preferred probation to be established separately from the penitentiary service.

Effectiveness of community sanctions. There is good evidence to show that community supervision combined with rehabilitation programmes perform better than imprisonment for most mid-range offenders. Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[32]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

RECOMMENDATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Strategic support. The introduction of the Probation Service should be given the appropriate support through the staging of a range of round tables that involve key stakeholders such as judges, politicians and MoJ officials in order that the role and responsibilities of the modern Probation Service are understood.

Training standards. Work should be undertaken with national education and training institutions in order to make probation officer training as high a quality of that which exists in other European countries.

New sanctions. Additional sanctions should be designed to promote a greater range of services for the rehabilitation of offenders.

Data. The collection of statistical data should be improved in order that the all sanctions can be compared for effectiveness.

Probation activities in penitentiary establishments. The level of rehabilitation activity in penitentiary establishments is limited. When established, the probation service should plan to play a role in developing and staffing pre-release courses in all penitentiary establishments.

[32] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

SECTION 9. AFTERCARE

64. After-care organisations

64.1 Response from the MoJ

"Rehabilitation Centre for Offenders" State Non-Commercial Organisation of the MoJ was established upon Decision of the Government of Armenia No 2118-N of 3 December 2005. The essential mission of the Centre is to promote the correction, social rehabilitation and reintegration of offenders, prevention of recidivism and to increase the level of security of the society through cultural, educational, training, sports and social-psychological programmes and services.

Beneficiaries of the "Rehabilitation Centre for Offenders" are the following:

• persons (particularly minors) serving their punishment in penitentiary establishments;

• persons serving alternative punishment;

• persons released from punishment, and those taken under supervision;

• families of persons serving their punishment, particularly children.

The Rehabilitation Centre for Offenders renders the following services:

1. Educational: Educational courses in penitentiary establishments for persons serving alternative punishment, released from punishment, taken under supervision (in particular minors), as well as for the members of their families.

2. Cultural: Courses aimed at developing creative abilities of persons in penitentiary establishments (miniature and design, pottery and art of jewellery making, ceramics, wood crafts and glass painting). Organising in penitentiary establishments events for persons serving alternative punishment, released from punishment, taken under supervision, as well as for members of their families and particularly children (theatrical performances, movie screening, art exhibitions, as well as exhibitions of items prepared by convicts, fairs, etc.).

3. Sports: Organising sports programmes and events aimed at maintaining

the physical health of persons under supervision, promoting healthy lifestyle, as well as ensuring the harmonious physical development of minor convicts in penitentiary establishments.

4. Psychology: Activities in penitentiary establishments relating to individual consulting and group psychology with persons serving alternative punishment, released from punishment, taken under supervision, members of their families, especially children. (Attach the pictures of psychological activities)

5. Social. Social assistance provided to persons serving their punishment in penitentiary establishments or in an alternative form, those under supervision, and their families, oriented at persons serving their punishment, aimed at solving the social issues of their families, their reintegration into the society, finding employment.

6. Research: Organising conferences, creating information and statistics databases, carrying out analyses and surveys, preparing informational and analytical materials and literature.

64.2 Relevant International Standards

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

The UNODC report suggests that recidivism in many European countries might be significantly reduced if prisoners were better prepared to make the transition back into their communities. And also, if the communities to which they were returning were more responsive to their resettlement needs. Clearly finding employment is a priority because ex-prisoners meet significant barriers in finding work. However, other needs include the re-establishing social and family ties and possibly avoiding the temptations of drugs.

64.3 Comments from the review

The work of the Rehabilitation Centre is impressive. The services it provides are a good template for replication elsewhere in the country. Unfortunately, the contribution of NGOs is very limited and this should be an issue for the MoJ to examine closely. General experience in European countries is

that a diverse NGO sector can provide very good services more cheaply than government departments.

65. Formal aftercare agreements

65.1 Response from the MoJ

Pursuant to Annex 14 of Decision of the Government of Armenia No 534-N of 14 April 2014, persons having returned from the place of imprisonment are considered to be non-competitive in the labour market. Pursuant to Annex 15 of the aforementioned Decision, in case of employment of non-competitive persons in the labour market upon the recommendation of the territorial centres of the State Employment Agency of the Staff of the Ministry of Labour and Social Affairs of Armenia, a partial reimbursement of salary is provided to the employer.

The provision of the support is aimed at promoting employment of non-competitive persons in the labour market through partial reimbursement of the salary given to non-competitive persons by the employer and thus, ensuring stable employment.

The State Employment Agency of the Ministry of Labour and Social Affairs of Armenia, the Penitentiary Department of the MoJ of Armenia and "Social Justice" non-governmental organisation signed a Memorandum "On cooperation and mutual support" stressing the importance of issues related to crime prevention and — within that context — reintegration of persons having returned from the places of imprisonment into the society. Within the scope of the Agreement the parties have agreed to cooperate in the following directions:

• provision of consultation on vocational guidance and information on state guarantees of employment prescribed by the legislation and job opportunities for convicts kept in the penitentiary establishments, registered in the units for the execution of alternative punishments and those serving their punishment;

• referral of persons released from punishment to the relevant units;

• organisation of joint conferences and meetings with the participation of organisation and state bodies concerned;

• provision of information on labour market on a regular basis.

65.2 Relevant International Standards

EPR (Rule 107) contains relevant standards in relation to after-care:

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5 Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

65.3 Comments from the review

Whilst the activities described are of vital importance and should be applauded it is unlikely that such activity is sufficient to meet the needs of what may be more than 1000 offenders completing their sentences each year. It also appears that much of the work of the NGO is with offenders who are still serving their sentences.

However, a wider range of services that can support offender rehabilitation are potentially available from the statutory agencies. These include education, employment and healthcare. Formal agreements need not necessarily involve the transfer of funds. Often initiatives taken by the probation service can help offenders to gain access to services that are available to them by right as citizens but which they do not feel comfortable to approach.

66. Other aftercare initiatives

66.1 Response from the MoJ

Initiatives aimed at correction of criminal offender may be undertaken by non-governmental organisations.

66.2 Relevant International Standards

CoE Probation Rules, in the section in which it defines the terms, offers the following definition of aftercare: Aftercare: means the process of re-

integrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In these rules, the term is distinguished from the term "resettlement" which refers to statutory involvement after release from custody.

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

66.3 Comments from the review

Continuing support for the most vulnerable ex-prisoners can be an effective way of helping them to avoid further crime and problems for the community. Official government services have an important part to play, but NGOs can provide the flexibility and approachability that is important for ex-prisoners, who are often very suspicious of official organisations Grants towards their operating costs by government usually result in good quality support at attractive overall costs.

67. Re-offending after release

67.1 Response from the MoJ

The penitentiary service does not keep statistics on recidivism of persons released after having served the full punishment.

67.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

67.3 Comments from the review

European countries are accustomed to over half of their prisoners being convicted of a further crime within two years of release. For young adult offenders the proportion is much higher. For older offenders guilty of more

serious crimes the reoffending rates are low. It is very interesting to note that, in general, officially recorded reoffending rates are very much lower in EaP countries.

RECOMMENDATIONS ON SECTION 9: AFTERCARE

Government support. The Government must seek the means of supporting both the statutory organizations and the NGO community in their will to support released offenders after the Criminal Justice System has completed its work.

Partnership agreements. The MoJ should develop partnership agreements with the Social Welfare Department, Health Department and the Education Department, in order that the statutory services are better able to reach ex-prisoners.

Social re-integration centres. Special centres should be developed for the social re-integration of offenders. The more informal approaches that NGOs can offer will be more attractive to ex-prisoners, who have mostly come to mistrust the official agencies of the government. NGOs are more able to adapt their approaches in the light of experience than government services that may require changes in legislation.

SECTION 10. DATA AND STATISTICS

68. Overcrowding statistics

68.1 Response from the MoJ

The MoJ of Armenia does not keep statistics reflecting the level of overcrowding in the penitentiary establishments of Armenia.

68.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

68.3 Comments from the review

It is likely that the MoJ retains detailed figures about prisoner numbers which can be matched to the certified number of available places in each penitentiary establishment. This is clearly an essential tool for assisting population management.

69. Re-offending statistics

69.1 Response from the MoJ

Every year the DAS prepares quarterly, semi-annual, nine-month and annual reports. The reports include information on how many persons were registered in terms of the type of punishment or supervision, whether it was a new crime and whether or not a new judgement has been delivered with regard thereto.

69.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

69.3 Comments from the review

The collection of data has grown in priority over the past 20 years. It is now universally accepted that collecting data on reoffending rates is one of the most important methods of understanding the effectiveness of a countries Criminal Justice System. The response from Armenia indicates that data collection is significantly under-developed.

It is necessary to record and analyse criminal justice statistics so that agencies can gauge the effectiveness of their services. As justice systems seek to reduce reoffending rates, and find an appropriate balance between punitive and rehabilitative regimes, data collection and analysis is vital. However, it is always difficult to find the resources that this requires.

In some countries, examination of data has indicated that short prison sentences for mid-range offenders can often make them more criminally minded. Such conclusions can be drawn, for example, from a careful analysis of the criminal statistics published by the Ministry of Justice for England and Wales[33].

70. Statistics on re-offending

70.1 Response from the MoJ

The penitentiary service does not keep statistics on the recidivism for different groups.

[33] https://www.gov.uk/government/collections/proven-reoffending-statistics

70.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28) states: Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

70.3 Comments from the review

With the introduction of a Probation Service, the collection of data on breach during sentence and reoffending rates after completion will be essential to appreciate the service's effectiveness. It will also be essential in order to compare Probation Service data on reoffending rates and the rates for released prisoner, both full term and early conditional release.

71. Other data relevant to overcrowding

71.1 Response from the MoJ

Any other statistics important for reduction of overcrowding in the penitentiary establishments is not kept in the MoJ of Armenia.

71.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

71.3 Comments from the review

The 2010 report of the International Statistics on Crime and Justice stated: "Another, even more disturbing observation that has been made repeatedly is that many member states continue to be unable to answer the

questionnaire produced by the United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS), or are only able to provide a partial response. This state of affairs is in part due to a very basic reason: some or all of the required data are not available. However, less excusable is the situation for many other countries that are known to possess the required data but do not respond."[34]

It is difficult for this review to judge whether further investment by the MoJ in data processing is likely to assist with the decisions they need to take in relation to the management of the prison population.

72. Use of data for informed policy

72.1 Response from the MoJ

Pursuant to sub point 2 of point 8 of Annex 1 approved by Decision of the Government of Armenia No 1917-N of 28 November 2002 "On establishing "Staff of the MoJ of Armenia" state administration institution, approving the Statute and the structure of the staff of the MoJ of Armenia", policy development and methodological guidance for the activities of the penitentiary service are carried out by the MoJ of Armenia.

72.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

[34] The UNOCD in their report 'International Statistics on Crime and Justice (European Institute for Crime Prevention and Control, Affiliated with the United Nations(HEUNI) P.O.Box44 and United Nations Office on Drugs and Crime(UNODC) POBox5 1400Vienna Austria - HEUNI Publication Series No. 64 2010

72.3 Comments from the review

Although this answer locates the responsibility for the use of data to inform policy, it does not describe the current scope of what is collected. Informal observations suggest that a considerable amount of data is collected and transmitted manually but that systems for recording and analysing it on computers are very limited.

GENERAL OBSERVATIONS ON SECTION 10: DATA AND STATISTICS

Computer systems. More reliable data, and sophisticated analysis, will allow improvement targets to be set for each part of the penal system. The introduction of computers to automate this work will require a significant investment in suitable software.

RECOMMENDATIONS ON SECTION 10: DATA AND STATISTICS

Data policy. The MoJ is recommended to discuss and agree a whole range of methods for data and statistical collection in order that there is an understanding of effectiveness in the different methods of offender and sentence management. Countries in Western Europe and the CoE can provide examples of best practice in order that Armenia can develop its own approach.

Measuring effectiveness. A standard system, readily understandable to all, should be agreed for measuring the effectiveness of penitentiary sentences and community sanctions. This is necessary for making key decisions about justice reform in the allocation of resources. It would be preferable if the factors involved were similar to those that are prominent international – such as the proportion of offenders who avoid further offending for two years following the completion of the sanction.

SECTION 11. CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

73. Community crime prevention initiatives

73.1 Response from the MoJ

Pursuant to Decision No 1254-N, dated 6 November 2014 on the procedure for organizing the activities of community police, approved by the Government of Armenia, the residents of district, on voluntary basis, are forming community council and are actively cooperating with NGOs, presenting petitions regarding issues of concern to the state government and local government bodies.

73.2 Relevant International Standards

CoE Probation Rules (Rule 98): Where provided by national law, the expertise and experience of probation agencies shall be used in developing crime reduction strategies. This may include making use of joint interventions and partnerships.

CoE/CM Rec(2003)21 concerning partnership in crime prevention (Article 1): Nationally, governments should commit themselves and co-ordinate their initiatives to develop and implement policies and strategies for crime prevention and community safety (for example, by way of creating national crime prevention councils, adopting national crime prevention programmes etc.).

73.3 Comments from the review

The development of community organizations to debate crime is in their infancy. The MoJ can take a lead in encouraging community-based schemes related to tackling crime alongside the police. Across Europe there is much to be celebrated as best practice and examples (i.e. the UK the 'Neighbourhood Watch Schemes') in which volunteers from the community take an interest in the general safety and security of their neighbourhood and liaise with the police.

It may be that this is a topic for a future donor projects. At present, it would be difficult to justify mainstream investment in community crime prevention. Naturally, any effective initiatives of this type would have widespread value, but careful experimentation would be necessary in order to make decisions about what approaches would be cost-effective.

74. Civil society monitoring of prisons

74.1 Response from the MoJ

Pursuant to Article 21 of the Criminal Executive Code of Armenia, public supervision in penitentiary establishments and bodies of the MoJ of Armenia is carried out by a Group of public observers, which is a monitoring body dealing with issues of protection of the rights and freedoms of persons kept in penitentiary establishments The composition and competence of the Group is prescribed by Order of the Minister of Justice of Armenia No KH-66-N of 18 December 2005. The Group may consist of no less than seven and no more than twenty one persons. Each non-governmental organisation may have one representative in the Group.

Pursuant to Article 47 of the Law of Armenia "On treatment of arrested and detained persons", "Public supervision over the activities of the police holding facilities and detention facilities shall be carried out by a Group of public observers formed by the head of the respective authorised body. The procedure for exercising public supervision over police holding facilities and detention facilities, as well as the composition and competence of the Group of public observers shall be established by the head of the respective authorised body. The number of members of the Group of public observers may not exceed twenty one. The term of office of a member of the Group of public observers shall be three years". Apart from this group, civil society organisations exercise supervision over places of detention in the frames of the National Preventative Mechanism created under the Optional Protocol to the UN Convention against Torture (OPCAT). A number of experts from NGOs are engaged and work together with the staff of the Ombudsman.

74.2 Relevant International Standards

EPR (Rule 93.1): The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.

EPR (Rule 93.2): Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

74.3 Comments from the review

The arrangements for public accountability of prisons and police are set within legislation. They are a valuable means of safeguarding human rights within environments that are often challenging. This system could be used to provide information and opinions on the performance of the whole justice sector in its move from a punitive to a rehabilitative focus.

Prisons inevitably are closed institutions and even the most effective management and supervision cannot guarantee that appropriate standards of behaviour by staff and prisoners will always apply. Civil monitoring should stand alongside a proper system of management inspections and the ability for staff and prisoners to make complaints that will be properly investigated.

75. Publicity for crime reduction

75.1 Response from the MoJ

Pursuant to Decision No 1254-N, dated 6 November 2014 on the procedure for organizing the activities of community police, approved by the Government of Armenia, during the meetings with the residents the issue regarding police jurisdiction and the issues of concern of public are discussed, once every quarter the report on the activities carried out is presented to the population of the community, using mass media and other means of public information.

75.2 Comments from the review

Community police often thought to be in a good position to encourage crime reduction activities in residential neighbourhoods. However, they may have their limitations as direct providers because of their close association with the justice system. Additional approaches should be borne in mind that emphasise strengthening communities with social activities – particularly aimed at high risk groups such as young adults experimenting with drugs - to provide constructive alternatives and routes into employment or further education.

76. Encouraging reform of offenders

76.1 Response from the MoJ

Pursuant to point 3 of Annex of Order of the Minister of Justice of Armenia No 44-N of 30 May 2008 "On approving the procedure for the activities of structural subdivisions carrying out social, psychological and legal activities with detained persons and convicts", the objective of subdivisions of the penitentiary service, carrying out social, psychological and legal activities (hereinafter referred to as "the subdivisions") is the social rehabilitation of detained persons and convicts kept in penitentiary establishments of the MoJ of Armenia and contribution to the correction of convicts.

Point 4 of the above mentioned Annex defines that the tasks of social, psychological and legal activities, carried out by the structural subdivisions carrying out social, psychological and legal activities with detained persons and convicts are the following:

1. establishment, maintenance and development of socially useful ties and contacts of detained persons and convicts with the external world;

2. maintenance and strengthening of mental health of detained persons and convicts;

3. contribution to the legal, psychological and social protection of detained persons and convicts;

4. contribution to the development of working, educational, cultural, sporting, creative activities of detained persons and convicts;

5. contribution to satisfying the spiritual needs of detained persons and convicts;

6. contribution to demonstration of law-abiding behaviour, increasing legal consciousness of detained persons and convicts;

7. contribution to the formation of respectful attitude of detained persons and convicts towards coexistence rules and traditions of the society;

8. creation of conditions for social rehabilitation and early conditional release of convicts;

9. contribution to the reintegration of convicts into the society.

76.2 Relevant International Standards

CoE Probation Rules makes reference to this matter:

(Preamble): Considering that the aim of probation is to contribute to a fair criminal justice process, as well as to public safety by preventing and reducing the occurrence of offences;

(Rule 76): Interventions shall aim at rehabilitation and desistance and shall therefore be constructive and proportionate to the sanction or measure imposed.

76.3 Comments from the review

The MoJ describes a worthwhile list of services. Nevertheless, compared to European practice, it seems to emphasise ways of giving help to individuals. Recent developments in European countries show a preference for training offenders to manage their own affairs more effectively. It would be useful to explore the extent to which Armenia is ready to develop approaches such as offending behaviour programmes and social skills training.

GENERAL OBSERVATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community responsibility. Traditionally the subject of crime and punishment has been seen by the general public as only something that involves offenders and criminal justice agencies. The concept of crime prevention as something all living in a community should consider, is a relatively new concept. Alongside this can be put the subject of the rehabilitation of offenders. This must involve communities and support agencies within those communities, in order that re-socialisation and rehabilitation can operate. Many alternative sanctions including community service, are reliant on community support. The greater visibility in for certain sanctions such as community service, the greater understanding develops amongst the community.

Restorative justice. New methods of conflict resolution are developing in communities, which bring together statutory and voluntary organisations. Mediation is increasing in use and the idea of restorative justice provides opportunities for responses to be made outside the criminal justice system.

Diversion. Schemes including restorative justice and mediation are now gaining credibility throughout criminal justice services and civil society alike in many countries.

RECOMMENDATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community-based crime reduction. To develop a strategy on community based crime reduction that involves the main social agencies, civil society and local people in the most at-risk communities.

Sector-wide monitoring. To create an additional Monitoring Group consisting of civil society representatives, to observe the way the Justice process in its entirety is moving from a punitive to a rehabilitative regime. Such a group may have its sole purpose as being the monitor of change.

SECTION 12. FUNDING

77. Investment in penitentiary system

77.1 Response from the MoJ

From the State Budget of 2015 funding is provided to the Criminal-Executive Department of the MoJ under two programmes:

a. Under 03.05.01 "01. Maintenance of penitentiary system" programme AMD 10,746,466.4 thousands (approximately €20m) has been allocated;

b. Under 07.01.01 «01. Provision of medicine to natural persons receiving outpatient-polyclinic and in-patient medical aid and those included in special groups" programme — AMD 43,000.0 thousands (approximately €80,000).

Funds allocated from the State Budget of Armenia are spent pursuant to the budget estimate based on the amount of sums provided for in the items of economic classification.

No contributions are made to the Criminal-Executive Department of Armenia from sources other than the means of the State Budget of Armenia.

77.2 Comments from the review

This review does not have the means to make an assessment of the appropriateness of this level of funding.

78. Funding for future strategy

78.1 Response from the MoJ

In some cases, due to the lack of material resources, the funding fails to be sufficient for the full-fledged implementation of the envisaged programmes.

78.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 19): Criteria of effectiveness should be laid down so as to make it possible to assess from various perspectives the costs and benefits associated with programmes and inter-

ventions with the aim of maximising the quality of their results. Standards and performance indicators for the execution of programmes and interventions should be established.

78.3 Comments from the review

It is not appropriate for the review to comment on this answer.

79. Sufficient resources

79.1 Response from the MoJ

Measures in the penitentiary field are constantly taken in Armenia aimed at solving the existing problems, however, the insufficiency of resources sometimes prevents from effectively addressing the exiting problems. In particular, additional financial resources are necessary to be attracted for ensuring the continuous implementation of reforms in the penitentiary system, as well as for having new infrastructures in place.

79.2 Relevant International Standards

We are not aware of international standards concerning the resources necessary for running penitentiary and probation services. Nevertheless CoE Rec. on Community Sanctions (Rule 42) has some relevance: The implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

79.3 Comments from the review

Governments in Western European countries rarely operate their penitentiary services with anything like this shortfall in the necessary funding.

On average, governments in Western European countries divide their penal sector budget so that 75% is spent on their penitentiary service and 25% on their probation service. These figures can be deduced by analysing figures about finance and financial accountability in "Probation in Europe" by Kalmthouth and Durnescu[35]. Experience has shown that a substantial investment in community sanctions and measures at this kind of level is necessary if they are to have a suitable impact on sentencing patterns. If the split of funding is any more in favour of the penitentiaries, the proba-

[35] Probation in Europe, A.M. van Kalmthout & I. Durnescu (eds.) ISBN: 978-90-5850-450-0. Published by aolf Legal Publishers (WLP) 2008

tion service will not have enough cash to attract suitable numbers of staff to provide properly supervised rehabilitation services.

GENERAL COMMENTS ON SECTION 12: FUNDING

Importance of coordination. Funding is often given as the reason for the poor conditions that exist in the prison estate. The general message within this report is that although finance is important, of greater importance is the co-operation and co-ordination of each part of the Criminal Justice System, in order that they complement each other in their pursuit of a common mission.

Inappropriate sentencing. The start of a future strategy should involve all actors in the Criminal Justice sector in understanding how resources can be wasted in inappropriate sentencing - and how they can be harnessed more effectively for crime reduction and offender rehabilitation.

Organisational efficiency. Not all reforms are dependent on additional funds. Often significant improvements can be achieved through a radical re-evaluation of management systems and operational practice.

RECOMMENDATIONS ON SECTION 12: FUNDING

Balanced budget. A long-term target should be established for the relative resourcing of penitentiary and probation services within the overall corrections budget. It may be that the 75% – 25% split commonly found in European countries would be appropriate.

Cost-centred budgeting. Serious consideration should be given to determining the realistic unit costs of delivering each community sanction so that informed judgements about their relative value can be made. This might show, for example, that a new form of directly-supervised Community Service is achieving better reconviction rates than electronically monitored home detention – or vice versa.

80. Additional comments

80.1 There are no additional comments regarding the Questionnaire.

CONCLUSIONS

The CoE is pleased with the interest that has been shown by the MoJ of Armenia for further cooperation to improve its penal services. The effort it has made to provide a great deal of information about the current situation and future plans indicate a willingness to explain problems as well as successes.

Reforms are being driven by a clear strategy that seeks to achieve international standards. The prison population is falling and the recent opening of a large new prison will be further encouragement to the process of developing regimes that can have a stronger, constructive impact on the prisoners. This sense of optimism is shared by the Alternative Sanctions Division of the State Penitentiary Service that supervises existing alternative sanctions. A new Law on Probation is in the final stages of drafting and the MoJ hopes to submit it to Parliament during the first quarter of 2016. A small group of NGOs active in the justice sector have helped to keep international standards in the public eye through conferences and publications.

This review has highlighted some of the challenges that face the MoJ. Although the rate of imprisonment has dropped to European levels, it should be lower still because crime rates are low. A transfer of funding from penitentiaries to alternative sanctions would allow far more middle range offenders to attend community-based rehabilitation programmes. Direct supervision of community service projects would enforce higher standards of work and behaviour that would impress judges when they are looking to divert an offender from prison. Whilst the level of use of pre-trial detention is not particularly high, efforts to provide courts with alternatives are known to have better long-term outcomes than custodial restraints. There is interest to introduce modern electronic improvements to community supervision but these will need to be used with care as they are more expensive than traditional methods and will only be of value if they really are targeted on offenders who would otherwise be in prison.

Perhaps the biggest challenge to be highlighted by this enquiry concerns parole. In European countries substantial period of early release, often measured in years rather than weeks, are a major part of offender management strategy. Persuading judges and prosecutors of the all-round benefits of parole will be a gradual process on which the Alternative Sanctions Division / Probation Service will need to work hard in close partnership with the Penitentiary Service to prepare prisoners for early release and

to supervise them effectively when they are back in the community. Evidence of a higher quality than is currently being collected will be needed to demonstrate the positive impact this will undoubtedly have.

As the Probation Law starts to influence the sentencing of offenders, the MoJ should consider the possibility of making the probation order the cornerstone of its penal system, completely replacing imprisonment for middle range crimes. The recognition it would thus gain with justice professionals and the general public would help to reduce the unnecessary and harmful use of imprisonment for offenders who are not a threat to the well-being of the community.

The CPT sets some very high demands through its country inspections and general standards. Armenia wishes to follow this route and the CoE will join with the justice agencies and civil society to provide as much help as possible.

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Criminal Justice Responses to Prison Overcrowding in Georgia

Criminal Justice Responses to Prison Overcrowding in Georgia

This report describes and comments on the current situation in Georgia in relation to tackling penitentiary overcrowding and improving prisoner rehabilitation. It is part of a project operating in four Eastern Partnership (EaP) countries (Armenia, Georgia, Republic of Moldova and Ukraine) that have agreed to receive advice from the Council of Europe (CoE) in relation to these key aspects of offender management.

In pursuing such reforms, these countries are fulfilling an obligation they undertook when joining the CoE to harmonise their justice legislation and services with European standards. Standards relevant to these issues are set out in official recommendations published by the CoE.

ABBREVIATIONS

As reference will frequently be made in the text of this report to six CoE recommendations, they will be abbreviated as follows:

• EPR: refers to Rec(2006)2 on the European Prison Rules;

• CoE Probation Rules: refers to CM/Rec(2010)1 on the Council of Europe Probation Rules;

• CoE Rec. on Parole: refers to Rec(2003)22 on conditional release (parole);

• CoE Rec. on Prison Overcrowding refers to R (99)22 concerning prison overcrowding and prison population inflation;

• CoE Rec. on EM: refers to CM/Rec(2014)4 on Electronic Monitoring.

• CoE Rec. on Community Sanctions: refers to R(92)16 on the European Rules on community sanctions and measures;

Other recommendations of general relevance to this report are:

• R(99)19 concerning mediation in penal matters;

• Rec(2000)22 on the improvement of implementation of the European Rules on community sanctions and measures;

• Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

• CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures;

• Rec(2012)12 on Foreign Prisoners;

• Rec (2003)23 on the Management of Life-sentence and Other Long-term Prisoners.

In addition, further statements and guidance about offender management are available in the standards published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), judgements of the European Court of Human Rights (ECtHR) and by the United Nations

THE OVERALL PROJECT: PROMOTING PENITENTIARY REFORMS (FROM A PUNITIVE TO A REHABILITATIVE APPROACH)

1. The aims of the Project:

• to combat prison overcrowding and support use of community sanctions and measures;

• to establish regional co-operation and a strategic approach on prison overcrowding;

• to reduce recidivism of former prisoners contributing to a healthier society and less crime.

2. The Project has worked through:

• bilateral work as well as multilateral exchange of experience and cross-interaction;

• holding working meeting with participation of the representatives of the relevant ministries of the target countries through developing a comparative analyses report based on carried study on combating prison overcrowding in target countries;

• establishing a network and a forum for exchange of good practices be-

tween medium and high level representatives of the relevant ministries of the target countries for combating the prison overcrowding; and

• competency development of the trainers from the Training Centres / Academies of the target countries charged with training of prison and probation staff.

3. The Project activities:

• Translate into six languages: Armenian, Azeri, Georgian, Romanian, Russian and Ukrainian the CoE Committee of Ministers recommendations and the extracts from the CPT general reports related to combating prison overcrowding;

• Develop e-compendiums of the Council of Europe documents on combatting prison overcrowding in six target languages and disseminate among the penitentiary and probation agencies and the training centres in charge of training prison and probation staff in target countries;

• Conduct study on prison overcrowding in target countries and develop country specific recommendations;

• Hold a high-level conference to highlight main findings of the study on prison overcrowding, discuss the recommendations provided and define the possible ways for their implementation; and

• Conduct Training of Trainers on Combating Prison Overcrowding for the trainers of the Training Centres / Academies of the target countries charged with training of prison and probation staff.

THE QUESTIONNAIRE

Information was sought from the Ministry of Corrections (MoC) in Georgia about policy and implementation issues that relate to penitentiary overcrowding and prisoner rehabilitation. A total of 80 questions were divided between the following 12 sections:

1. Strategy and legislation;

2. The judiciary;

3. Police and prosecution;

4. Penitentiary service;

5. Prison overcrowding;

6. Prisoner re-socialisation;

7. Early and conditional release;

8. Alternative sanctions and probation;

9. Aftercare;

10. Data and statistics;

11. Crime as a whole community responsibility; and

12. Funding.

Answers to the questions were submitted by the MoC in November 2015. The CoE is extremely grateful to officials for undertaking the considerable amount of work involved. In the following part of this report, most of the answers are given in full.

Each answer is followed by a series of comments and recommendations, which include reference to relevant CoE standards. At the end of each of the 12 sections some overall comments and recommendations are provided. A questionnaire used to carry out the study is attached to the document in the relevant appendix.

SECTION 1. STRATEGY AND LEGISLATION

1. Direction of Policy

1.1 Response from the Ministry of Correction

The "Criminal Justice Reform Strategy and Action Plan" can be identified as the document providing a future direction of Georgian Criminal Justice System, according to which the overall objective of Criminal Justice Reform is strengthening the rule of law and protection of human rights. The Strategy and Action Plan were updated and approved on 17th Session of the Criminal Justice Reform Interagency Coordination Council (CJRICC) on July 18 2015.

Criminal Justice System Reform is among top priorities of the Government of Georgia (GoG). GoG stands ready to create a system that will be focused on prevention of crime, protection of human rights, establishment of fair and independent judiciary and ensuring accountability, objectiveness and efficiency of the participants of the Criminal Justice System. The Strategy defines major priorities of the GoG within Criminal Justice System Reform:

• Liberalization of the criminal legislation, ensuring its modernization and compliance with international and European standards;

• Ensuring compliance of the juvenile justice system with the international standards, protection of best interests of child at every stage of administering justice;

• Effective prevention of crime, reduction of crime, ensuring public order and safety;

• Ensuring independence, efficiency, transparency and accountability of the Prosecutor's Office;

• Ensuring independence of the Legal Aid Service and increase trust before judiciary;

• Improving prison conditions and reforming healthcare in the penitentiary;

• Reform of probation system for effective rehabilitation / reintegration purposes;

• Ensuring effective work of the Ombudsman's Office;

• Introducing, implementing and further promoting individual approaches focusing on rehabilitation, re-socialization and crime prevention;

• Improving and developing legal education system, increasing access to legal education.

Criminal Justice System Reform Strategy includes the following strategic directions: Criminal Legislation; Police Reform; Reform of the Prosecutor's Office; Legal Aid Service; Reform of Judiciary; Penitentiary System Reform; Probation Reform; Juvenile Justice; Legal Education Reform; Efficient Ombudsman; Re-socialization and Rehabilitation in Criminal Justice System.

The overall implementation of the Criminal Justice Reform process is monitored by the CJRICC. In order to achieve objectives foreseen by this Strategy it is important to ensure active civil society participation and support of the international partners. Nine Working groups are set up within the framework of the CJRICC on respective 9 strategic directions. The Secretariat of the CJRC operates within the Ministry of Justice of Georgia (Analytical Department of the Ministry of Justice) with the responsibility to facilitate and coordinate Criminal Justice System Reform. Support monitoring of the implementation of the CJR Strategy and its Action Plan is among the functions of the Secretariat.

1.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Introduction): Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

CoE Rec. on Prison Overcrowding (Article 19): Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view

to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

1.3 Comments from the review

The Criminal Justice Reform Strategy and Action Plan - referred to in the answer – was originally drafted in October 2004 and at the time was a significant move towards the establishment of a modern policy on criminal justice. The strategy has been subject to several revisions and current version was adopted by the CJRICC in July 2014. The strategy encapsulates the thinking of nine separate working groups, whose task has been to develop "a comprehensive set of guiding principles which would support the reform of criminal procedure in a systematic manner, taking into account international and European standards".

Although the professionals in the working groups have usually been aware of international standards, and have developed policies accordingly, at times the operation of the justice system has been taken over by policies imposed by GoG for other reasons. The most significant of these was the imposition for much of the next five years of the highly controversial "Zero Tolerance" policy on crime introduced in 2006. This resulted in a welcome reduction in everyday crime levels but at the same time the prison population more than tripled.

By 2010, uneasy stakeholders in the working groups had "identified as a priority to achieve an appropriate balance, maintaining Georgia's successful fight against criminality while ensuring the justice system remains fair and meets European standards"[36]. The report continued its rather critical assessment: "Prisons are also overcrowded because the system remains quite punitive, with long sentences for crimes which are perceived as relatively minor. Overcrowding is often resolved by parliamentary amnesty that has released prisoners early, rather than through use of early release programmes. Thus observers regularly lament that the length of time served does not necessarily correlate to the severity of the crime, nor to the ability or preparedness of the prisoners to reintegrate into society".

This liberalisation of justice policy was given a major impetus two years after being called for in that report when a new government was elected in 2012. However, the fact that the prison population is still significantly

[36] "Criminal Justice Reform Assessment and Formulation of Follow-Up SPSP" EU Working Paper, Pfluger and Ehrlich, April 2010.

higher than it was before "Zero Tolerance" was introduced shows that there is no room for complacency.

The creation of the CJRICC provides an additional and important impetus to widen ownership of criminal justice. The balance of membership of the Councils is a key consideration for ensuring that proper debate can flourish and concerns can be expressed in order that the GoG officials can be steered accordingly. In some cases, such Councils can merely provide for a passive audience for the expression plans.

When changes are made in primary and secondary legislation it is important that there can be some evaluation regarding the effectiveness of such change. Research by monitoring crime statistics, recidivism rates, sentence lengths etc. can be an important means of understanding whether new legislation and legislative changes are working to create a safer society.

2. Minimum sentences

2.1 Response from the Ministry of Corrections

The Criminal Code of Georgia (CCG) applies different legislative approaches with regard to sanctions. The CCG provides for alternative sanctions for most minor offences and does not normally include minimum mandatory prison sentences for such crimes. However, minimum mandatory prisons sentences are usually provided for grave and especially grave offences, since the code was first published in 1999. For example, homicide is punished by deprivation of liberty for 8 to 15 years and cannot be replaced with less severe sanction, unless plea bargaining is achieved between the parties (Article 55).

2.2 Relevant International Standards

Article 11 of the 1983 CoE Convention on the Transfer of Sentenced Persons (ETS N° 112) makes the following reference to this issue: In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority . . . shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2.3 Comments from the review

The retention of minimum sentences in the CCG is potentially a serious issue which merits further attention. It is quite possible for a person to be convicted of a very minor example of a crime that is officially graded as "grave". The only safeguard against automatically imposing the minimum prison sentence required by the CCG is the extremely un-transparent method of "plea-bargaining"[37]. Article 58 of the CCG takes this further by requiring recidivists to be sentenced for even longer than would be merited by the crime. Specifically it states: "While imposing imprisonment for recidivism, a term of the imprisonment shall exceed at least by one year the minimum term provided for the crime by a relevant article or a section of the article of the present Code".

Penal Reform International (PRI) argues that mandatory minimum sentences reduce the opportunity for judges to give consideration to the mitigating circumstances of a crime. A mandatory minimum can restrict them from awarding a sentence that has the greatest possibility of encouraging rehabilitation and desistance from further criminal behaviour.[38]

The current Concept Paper on the revision of the CCG (not provided for this review) apparently includes as a proposal the "removal of regulation on minimum length of imprisonment from the Code"[39].

3. Changes to criminal legislation

3.1 Response from the Ministry of Corrections

The answer received lists 130 Articles of the CCG that had been amended in the last five years, some of which covered major issues such as rape and making a public call for violence. Others covered more technical matters such as "storing of goods requiring a government stamp". The JJCG recently implemented, was noted by the MoC as being particularly important. There is an acceptance that more changes are planned to deliver Georgia's reform strategy.

3.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): "In order to devise a coher-

[37] Article 50, paragraph 2 of the Criminal Code of Georgia.

[38] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

[39] Concept of Revision of the Criminal Code of Georgia, Section III, 2013

ent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices".

CoE Rec. on Prison Overcrowding (Article 3): Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

3.3 Comments from the review

As changes are made in future to primary and secondary legislation it is important that an evaluation is attempted about the effectiveness of the changes. Research on crime statistics, recidivism rates, sentence lengths etc. can be an important means of understanding whether new legislation and legislative changes are working to create a safer society.

As legislative changes take place, it is important to brief leaders of the justice sector and parliamentarians about the principles and purpose of the proposals. Their support will be necessary, particularly as the changes proposed will challenge traditional approaches to offender management and may, in the short term, involve additional funding.

4. Impact of changes to legislation on the prison population

4.1 Response from the Ministry of Corrections

The abolition of consecutive sentencing reduced the overal length of sentences. The principle of concurrent sentencing currently used by the court helps to reduce the overall length of imprisonment and subsequently prison overcrowding. This is also demonstrated by the average length of sentences according to years as shown in the informastion provided in Sub-section 17.

Liberalisation of the criminal justice policy and the adoption of the JJCG has reduced the number of sentenced juveniles. The JJCG incorporates more lenient sanctions for offences which rarely result in prison sentences for adult offenders, contributing to the reduction of the number of juveniles entering the penitentiary system.

Moreover, according to amendments to articles 260 and 273 of the CCG circumstances leading to criminal responsibility of drug abusers were narrowed. Subsequently circle of persons eligible for criminal responsibility on drug related crimes was narrowed.

Introduction of diversion has also reduced the number of both juvenile and adult offenders in the penitentiary system.

The fact that, the prison population has not increased for over 3 years since the large scale amnesty suggests that a combination of shorter sentences, more effective early conditional release system operating and lower crime rates may be having an impact.

4.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

4.3. Comments from the review

The maintenance of lower prison numbers is welcomed. The collection and examination of data to understand what system changes are creating these impacts is important in order that strategy can be managed.

5. Legislation about conditional release from prison

5.1 Response from the Ministry of Corrections

In answer to this question, the MoC response provided extracts from the CCG that gave full details of the circumstances in which a prisoner can be released before the sentence expires. These depend on a combination of the gravity of the crime, mathematical calculations of the time served, and

assessments of behaviour. Any one of the following illustrative requirements could be grounds for conditional release to be approved:

• The initial sentence of imprisonment by the court to be conditional for first offenders, or when agreements have been reached in plea bargaining.

• A specified part of the sentence has been served, or the prisoner has pleaded guilty, discloses other participants and has co-operated.

• After a good behaviour is demonstrated after a misdemeanour, a court can replace part of the sentence with a less severe sentence. The commutation of the discharged term can only operate after a third of the sentence has been served. With offenders charged with more serious crimes this is extended to a half for 'grave' crimes and two thirds for 'especially grave crimes.'[40]

Early conditional release is decided by, 5 parole boards (3 for adult male, 1 for juveniles and 1 - for female offenders). They review on monthly basis cases for early conditional release and commutation of remaining term of a sentence into a less grave punishment. All early conditional release mechanisms have a diverse membership, which in addition to the MoC officials include representatives of relevant NGOs, Judicial organs and local universities. The early conditional release criteria are linked with the results of the individual sentence planning.

According to the Code of Imprisonment, the eligibility to conditional release of a convict depends on the gravity of crime, time served, and behavior assessments. The behaviour includes, but is not limited to compliance to regime, invovlvement into various re-socialisation and rehabilitation programmes, etc.

The term factually served by a convict shall not be less than 6 months. The parole boards automatically review cases of each eligible convicted person in every 6 month (3 month for juveniles). During last 6 month of sentence the cases are reviewed every month. The decisions of the boards can be appealed in the court.

5.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention.

[40] Article 73, para 4 of the CCG

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.

5.3 Comments from the review

Most of the legislation for conditional release appears to be consistent with CoE recommendations. However, the way in which the procedures are implemented does cause concern. The fact that decisions on early release are based on whether there is any further need "to be corrected" can be problematic. Most European jurisdictions believe it is important that primary attention is given to the prisoner's potential to keep to the requirements of early release rather than basing the decision on how well she or he has behaved in prison. The key issue should be whether supervision and rehabilitation in the community can help to avoid further crime.

However, such assessments require a probation service with good risk assessment methods, supervisors that are experienced in advising on the problems faced when prisoners are released and a range of proven offending behaviour programmes. We understand that the National Probation Agency (NPA) has adopted the following policies and operational procedures intended to improve its effectiveness in this work:

1. Risk assessment and individual sentence planning guidelines for National Probation Agency for working with adults were adopted on 7 April 2011 (Order #56) and with minors on 18 January 2012 (Order #9);

2. These Orders recently were replaced by new ones, particularly: Order #39 (5 June 2015) for adults and Order #67 (3 July 2015) for minors;

3. Additionally, Order #179 adopted on 31 December 2015 established risk and needs assessment for families and social environment for minors to be released from prison.

(These are Orders issued by the Minister of Corrections)

These changes should have a significant impact on releasing larger numbers of prisoners for more substantial parts of their sentence. Reforms of this nature are normally viewed as being in the interests of justice as well as public safety[41].

[41] See the 'general principles' in the CoE Rec(2003)22 on conditional release (parole)

6. Access to legal advice by persons in custody

6.1 Response from the Ministry of Corrections

The Code of Imprisonment of Georgia (Article 14) provides any remanded or convicted person with a right to free legal aid and legal consultations. Article 18 of the Code regulates the terms of legal aid to the prisoners as follows:

• An accused/convicted person has the right to meet with his/her defence lawyer without any limitations or interference. The staff of the penitentiary establishment may monitor the meeting with a defence lawyer visually and without listening, using remote surveillance and visual recording equipment.

• Every penitentiary establishment has special meeting rooms assigned to meetings with the lawyer.

6.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

6.3 Comments from the review

Although suitable legislation may be in place, much depends on the procedures for requesting such a service. CPT reports on a number of countries draw attention to difficulties encountered by prisoners in making such applications (such as, for example, the report published in relation to the Republic of Ireland[42]). Informal deterrents can easily be applied by staff who fear that the prisoner may be making an unjustified complaint about their treatment.

7. New probation legislation

7.1 Response from the Ministry of Corrections

On January 1, 2010 state sub-department - Non-custodial Punishments and Probation Service was liquidated and established as a Legal Entity of Public Law - National Probation Agency.

[42] See, for example, the CPT Report on the visit to Ireland from September 2014, CPT/Inf (2015) 38, (http://www.cpt.coe.int/documents/irl/2015-38-inf-eng.pdf).

The Law on "Procedure of Execution of Non-custodial Penalties and Probation" was adopted on 19 June 2007. National Probation Agency supervises execution of all alternative sanctions.

7.2 Relevant International Standards

CoE Probation Rules (Definition Section): Probation agency means any body designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

7.3 Comments from the review

It seems from the answer that the legislation enacted in 2007 covers the delivery of the main alternative sanctions available in the CCG. (The spearate Bailiff Service remains responsible for the collection of fines and confiscation of property.) The legislation in 2010 was primarily intended to deal with organisational matters.

It is likely that the CoE has reviewed the current legislation in relation to the Council of Europe Probation Rules but a full assessment of its compatibility is not possible within the scope of this project. Nevertheless some reservations are made later in Section 7 in relation to early conditional release of prisoners.

8. Legislation to improve cooperation between penitentiary and probation services

8.1 Response from the Ministry of Corrections

Based on the legislation in force, employees of the Penitentiary Service and NPA actively work in the process of release of offenders. The case-file of the offender is forwarded to the probation service upon his/her release in order to further provide social and psychological rehabilitation services in accordance with the needs of the beneficiary. The probation officers also work with the family of the prisoner in order to prepare them to receive

him/her back. It was stated that as the two institutions are under the same Ministerial management, legislation to improve their working relationship was not considered to be necessary.

8.2 Relevant International Standards

CoE Probation Rules (Rule 12): Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.

CoE Probation Rules (Rule 37): Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.

CoE Probation Rules (Rule 40): Where appropriate, inter-agency agreements shall be arranged with the respective partners setting the conditions of co-operation and assistance both in general and in relation to particular cases.

8.3 Comments from the review

It is clearly vital for a good relationship to exist between the penitentiary and probation services. As each agency takes on a new offender, it is likely that the other agency will have had previous contact that can prove helpful in making assessments and plans. A few European countries – such as Sweden and England – fully integrate these two services but the normal model is for them to operate to similar goals under independent management and with strong emphasis on good communication in relation to overall policies and the management of individual offenders.

9. Use of amnesties and pardons

9.1 Response from the Ministry of Corrections

There were no amnesties reported in the years immediately before 2013. That year marked a major amnesty by the incoming government involving a total of 17,729 prisoners. Among these 8729 (45.1%) were released immediately or during course of the year and 9,000 (46.5%) saw their sentences shortened.

The following year 17 prisoners were released and in 2015 a further seven were amnestied.

Pardons have been given to an unusually high proportion (9.5%) of the prison population in 2012. However, the number typically averages about 6% of the prison population.

9.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 19): Preference should be given to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

9.3 Comments from the review

The extensive use of pardons and amnesties can be an emotive subject within criminal justice circles and indeed beyond into the realms of the general public. In certain cases, the rigid checks such as risk assessments that are implemented for early conditional release can often be waived. There is a view that such management of offenders does little to solve the longer-term issues of overcrowding as places are quickly filled again.

This is well argued in the report "Prison Overcrowding - Finding Effective Solutions Strategies and Best Practices against Overcrowding in Correctional Institutions":[43] "However, the regular use of amnesties as a response to prison overcrowding seems to undermine confidence in the criminal justice system". He goes on to suggest that they may only have a role to play as an instrument to settle large-scale conflicts and to support reconciliation. However, in the example of Georgia, if the amnesties create a 'once and for all' situation, in which modern methods of criminal justice practice have a better chance of success (by the judiciary, the penitentiary service and the probation service), the amnesties may have been worthwhile.

Pardons are generally awarded because either the justice process leading to the conviction was unsound or it was retrospectively decided that the prosecution itself was not in the public interest. The number of cases given pardons in Georgia is sufficiently high to cause concern about the normal operation of justice.

[43] Prison Overcrowding- Finding Effective Solutions Strategies and Best Practices Against Overcrowding in Correctional Institutions by Hans Joerg Albrech of the Max Planck Institute for foreign and International Law. Published in March 2011 by the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI).

10. Community sanctions and measures that are available to courts

10.1 Response from the Ministry of Corrections

In Articles 42 to 47 and 52 of the CCG, the following non-custodial sanctions are deemed to be available to courts:

• Fine

• Deprivation of the right to occupy a position or pursue an activity

• Socially useful labour (community service)

• Corrective labour

• Restriction of service in the military

• Restriction of freedom

• Property confiscation

It is also noteworthy that home arrest has been introduced in a new JJCG. Plans are to introduce it for adults as well.

10.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

10.3 Comments from the review

In addition to these sanctions and measures, courts are able to apply a "conditional sentence" to offenders where it is believed that a prison sentence is not required. For example, Article 45 of the Law on "Procedure of Execution of Non-custodial Penalties and Probation" refers to "conditionally sentenced probationers" in the following terms: "conditionally sentenced or early released probationers shall have obligation to appear at time and place fixed by the probation officer once a year".

The list of Alternative Sanctions may seem limited when seeking to offer an attractive range of non-custodial sanctions to judges. However, a degree of flexibility is provided by means of "conditional sentence", allowing courts to assign an offender to individually based supervision by the probation service. However, commentators usually propose that a specific sentence of probation should be available in the CCG[44] and that the Georgian formulation of "conditional sentence" is flawed.

11. Offender/victim mediation

11.1 Response from the Ministry of Corrections

Diversion and mediation as an alternative to criminal prosecution was introduced in Georgia in November 2010 to increase the use of alternatives in criminal prosecution in relation to first-time offender juveniles and to insure individualised approaches for young offenders. The programme started as a pilot in four cities of Georgia and in since of 2013 it has covered the whole of the country.

According to Article 105(2) of the Criminal Procedural Code of Georgia (CPCG), if a Person has not attained the age of criminal responsibility which is drawn up, a prosecutor is obliged not to commence or terminate criminal prosecution due to the absence of public interest in prosecution. In this case the prosecutor can enter into the agreement with the juvenile about diversion and mediation, conditions of which are determines by the Decree of the Minister of Justice. Prosecutor consults with the victim about possible diversion. Victim's participation in the process of mediation is voluntary and happens after the prosecutor has explained the content of mediation and the victim has a time to think about it and receive the informed decision. Details of this process are prescribed under Decree N120 of the Minister of Justice on "Minor diversion / mediation programme agreement between the parties and the rules for using basic conditions".

11.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/reparation/ victim-offender mediation.

[44] E.g. "Probation: a European Perspective" unpublished paper produced in 2012 by Randel Barrows for a CoE project in Ukraine.

11.3 Comments from the review

European countries that are keen to introduce a component of mediation into their criminal justice process have not found it easy to identify the most effective point at which to do it. Georgia entrusts prosecutors with the responsibility of identifying whether to call on a mediator when diverting a case from the courts. Statistical information about its effectiveness would be helpful.

Diversion was extended to adult first offenders in 2011.

12. Electronic monitoring of home detention as a pre-trial measure

12.1 Response from the Ministry of Corrections

Electronic monitoring is not used for home detention as a pre-trial measure.

12.2 Relevant International Standards

CoE Rec. on EM (Preamble): Recognising that electronic monitoring used in the framework of the criminal justice process can help reduce resorting to deprivation of liberty, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime.

12.3 Comments from the review

Electronic monitoring of pre-trial defendants is used in over 15 European countries and is thought by them to be a significant asset in reducing the unnecessary use of custodial detention by providing an additional degree of control and assurance that offenders will attend court.

13. Electronic monitoring of home detention as a criminal sentence

13.1 Response from the Ministry of Corrections

In accordance with the JJCG, when applying home detention of juvenile offenders, offenders are controlled using electronic monitoring. In addition, if legal representative agrees, electronic monitoring may be applied for juvenile offenders as well in other sanction process. Currently 3 juveniles are already under electronic monitoring.

13.2 Relevant International Standards

CoE Rec. on EM (Article 8): 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.

13.3 Comments from the review

Electronic monitoring of home detention has proved to be the most reliable and effective implementation of electronic technology in the penal system and it is currently used in over 20 European countries. Nevertheless, it can be up to twice as expensive per day as other alternative sanctions so its introduction should be staged according to the results of pilot testing in pilot situations. If the Ministry gets positive results from its current implementation with juvenile offenders this would seem to be encouragement for the method to be tested with adults. In general, experience shows that adult offenders are more willing to comply with electronically monitored home detention curfews than juveniles.

GENERAL COMMENTS ON SECTION1: STRATEGY AND LEGISLATION

Leadership. A clear policy, coupled with understandable and convincing methods, needs to be articulated by those who lead the various sectors of the justice system. Although changes in the way a country deals with its offenders may achieve a certain amount of tacit support, vocal opposition can be expected from those who favour a punitive approach.

Planning and legislation. Pilot projects and innovations by established service providers can pave the way for significant reforms. Nevertheless the need for strategic plans and reform of legislation must be addressed before critics have a chance to stall the process. The financial costs and benefits must be articulated, but it is equally important to raise the wider issues of community safety, faith in the belief that people can change, humanitarian principles and concern for victims.

Working groups. The Criminal Justice Reform Inter-Agency Coordination Council (CJRICC) is an excellent example of widening the ownership of criminal justice reform. The membership and balance of such councils must be given attention in order to ensure that proper debate can flourish and concerns are appropriately expressed.

Mandatory minimum sentences. Information provided by PRI suggests that mandatory minimum sentences reduce the opportunity for judges to give greater consideration to the mitigating circumstances of a crime. The requirement to pass a custodial sanction can make it difficult for them to impose a community sanction that might have a greater possibility of encouraging rehabilitation and desistance from further criminal behaviour.[45]

Evaluation of effectiveness. Baseline statistics, and data about the effect of changes to legislation are necessary for guiding further work. Often an agency in one part of the justice system may be collecting routine information that will be of great help to evaluators elsewhere.

Organisational flexibility. There is no single method of locating a Probation Service within the justice system. Successful examples can be found where probation is fully integrated with the penitentiary service (such as in Sweden and England). Other countries find it preferable to achieve similar results by separating the two services and running them as independent agencies within the Ministry of Justice. Austria is notable for its probation service being operated by non-governmental organisations under contract to the Ministry of Justice.

Pilot projects. It is often easier to establish more liberal penal policies favouring rehabilitation by introducing them with women or juvenile offenders. New methods which have then been proved to be successful can gradually be introduced to male and older offenders. This approach was used to widen the scope for diversion from custody in Georgia.

Coordination. If the different agencies work more closely together there will be more confidence about national crime strategy among the media and the general public.

RECOMMENDATIONS ON SECTION 1: STRATEGY AND LEGISLATION

Criminal Legislation. Attention must be given to the review of other legislation (i.e. Probation Law and CPCG) in order that the strategy for change maintains a momentum.

Reform strategy. Judges and prosecutors should prominently represented in the planning of reforms because of the key roles in the system and their overview of its operation.

[45] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

Joint operational meetings. The purpose of the CJRICC (mentioned above) focuses on reforming policies and procedures across the criminal justice system. It may be advantageous, in addition, for there to be regular inter-disciplinary meetings featuring the personal participation of the leaders of the main parts of the justice system to solve immediate, short-term practical operational problems. In addition to the Ministers of Justice, Corrections and the Interior the membership should include the heads of the relevant judicial sectors, police, prosecution, penitentiary, probation, education and healthcare services. European examples of this approach - such as the Criminal Justice Board in England and Wales - would normally also include senior representatives of the business, local government and academic sectors.

SECTION 2. THE JUDICIARY

14. Proportionate use of prison sentences

14.1 Response from the Ministry of Corrections

In 2010, 45.8% of conviction resulted in a custodial sentence. According to figures provided by the MoC this reduced slightly in the following two years and significantly down to 28.1% in 2013. The proportionate use of imprisonment has once again risen to 35.5% in 2014 but was showing another reduction in 2015 to around 28%.

14.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 1): Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.

CoE Rec. on Prison Overcrowding (Articles 18-21): Prosecutors and judges should bear in mind resources available, in particular in terms of prison capacity (prosecuting and sentencing guidelines, in particular with regards to reducing the use of imprisonment and expanding the use of community sanctions and measures, and using measures of diversion such as mediation or the compensation of the victim); particular attention should be paid to the role aggravating and mitigating factors, as well as previous convictions play in determining the appropriate quantum of the sentence.

14.3 Comments from the review

By international standards, the proportionate use of imprisonment in recent years has been extremely high. The impact of "Zero Tolerance" was still evident in 2010, but from that point on it was beginning to decline.

In the larger Western European countries, the proportion of offenders appearing in court who receive an immediate custodial sentence is in the region of 10%. However, a full analysis of this indicator would require comparing the respective crime rates, as well as the different ways in which crimes are defined and categorised. This task is outside the scope of this enquiry.

15. Access to justice/legal aid

15.1 Response from the Ministry of Corrections

According to the Code of Imprisonment of Georgia, every prisoner has a right to meet with lawyer without any limitation or intervention. The staff of custodial establishments may observe and record the meeting visually through the remote visual surveillance equipment, but without listening. Prisoners with foreign nationality meet with the representatives from the diplomatic missions of their countries. Every establishment has a special rooms assigned for the legal visitations.

In 2013, Georgian Law on "Legal Aid" entered into force and the service was separated from the supervision of the Ministry of Corrections. The Unit was formed as the independent legal entity under public law that is not subordinated to any State body and is accountable only to the Parliament of Georgia.

The bill provided handing over management tools to the specially designed Legal Aid Board and assured institutional independence of the Public Attorney, prohibited any kind of pressure sanctions or other threat while performing official duties under the law and in good faith.

The above mentioned institutional changes guaranteed safeguards for the impartiality of the Legal Aid Unit and performing tasks assigned to it without any influence.

Legal aid service carries out legal aid through its bureaus, consultation centres and contracted public lawyers' register and entails the following: Legal consultations on any legal problems; Drafting of legal documents (applications, motions and other legal documents) and Legal representation in court on criminal, civil and administrative cases.

Generally, According to CPCG, when a person has been arrested on suspicion of having committed an offence or anyone who has been accused of a crime, must be informed that he/she has the right to defend him/herself, or to obtain a lawyer of his/her own choosing to defend him in court. If the accused does not have enough money to pay for legal assistance, the State should provide this service in the interests of justice.

The accused has the right to refuse the services of a lawyer to defend him/herself independently, for which he/she should be given enough time and opportunity.

A suspect or accused person in criminal proceedings has a right of access to a lawyer from the time they are aware, that they are suspected or accused of having committed a criminal offence.

15.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

15.3 Comments from the review

The right for defendants to have access to free legal representation is mentioned in several places in CoE standards. It is therefore reasonable to expect that proper legal representation would reduce mistaken or unnecessary use of imprisonment. It is appropriate to monitor the proportion of defendants who make use of free legal advice. It would also be relevant to know what proportion of defendants in Georgia is sentenced to imprisonment without having any kind of legal representation.

16. Pre-trial detention

16.1 Response from the Ministry of Corrections

The answer from the MoC showed the proportion of accused persons held in detention prior to their sentence:

2010: 54.2%

2011: 49.3%

2012: 41.9%

2013: 26.8%

2014: 32.0%

16.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 11): The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure

that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation N° R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Community Sanctions (Rule 1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples: - alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority.

The European Court of Human Rights 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 European Convention on Human Rights (hereafter ECHR). The fact that only cases against Armenia are cited here does not imply that it is a typical Armenian problem (Case of *Poghosyan v. Armenia*, 20 November 2011, appl. no. 44068/07; case of *Sefilyan v. Armenia*, 2 October 2012, appl. no. 22491/08; case of *Piruzyan v. Armenia*, 26 June 2012, appl. no. 33376/07). In the cases of *Muradkhanyan v. Armenia* (5 June 2012, appl. no.12895/06) and *Asatryan v. Armenia* (9 February 2010, appl. no. 24173/06), the extension of the pre-trial detention had been defined unlawful[46].

16.3 Comments from the review

The heavy use of pre-trial detention – which can be an informal punitive sanction in its own right – has attracted criticism from the CoE and others for many years.

It would be highly desirable for the NPA to make assessments on offenders that can then be used by courts to help them make decisions. A key factor in the assessment process concerns risk of reoffending. This can assist judg-

[46] European Court of Human Rights case law reports contravention of article 5 of the ECHR

es to make appropriate decisions about who should be held in detention pending the trial. When such methods are available in Georgia, extensive training of judges and prosecutors should be organised to develop their understanding and eventual trust in such approach.

17. Prison sentence lengths

17.1 Response from the Ministry of Corrections

The median length of custodial sentences in Georgia was in the range 2 to 5 years. Data supplied by the MoC indicates that between 2010 and 2014. The proportion of offenders given sentences longer than this declined considerably and the proportion receiving shorter sentences (up to 2 years) increased comparably. The specific figures were:

	2010	2014
Less than 1 year	32.5%	42.0%
1-2 years	14.2%	19.7%
2-5 years	24.4%	24.2%
Over 5 years	18.7%	12.3%
Over 10 years (including life-sentenced prisoners)	10.2%	1.8%

17.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Rule 14): Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

17.3 Comments from the review

Using data from the Annual Penal Statistics of the CoE (known as SPACE 1[47]) it is possible to confirm that in the period 2010 to 2014 Georgia has a relatively low use of longer sentences compared to the European average:

	Georgia	European average
Less than 1 year	42%	20.6%
1-2 years	19.7%	26% (shown as 1-3 years)

[47] Council of Europe SPACE 1 data 2010-2015

2-5 years	24.4%	18.5% (shown as 3-5 years)
Over 5 years	12.3%	20%
Over 10 years	1.8%	15.4%

On first reading these statistics look favourable, however, it must be remembered from Sub-section 14 (Proportionate use of prison sentences) that the overall proportion of convicted offenders given custodial sentences remained significantly higher than European averages, even though some of the sentences given may be relatively short. Another factor that should be included is a comparison of the overall crime rate, which in Georgia is less than European averages.

18. Types of serious crime

18.1 Response from the Ministry of Corrections

The response from the MoC indicated that "grave crimes" carry a sentence of over five years' imprisonment and "especially grave crimes" carry a sentence of over 10 years' imprisonment.

Some examples were given as follows:

Burglary (5-7) (8-12)

Theft, larceny (1-3) (6-10)

Robbery (7-11)

Sexual assault (4-6) (15-20)

Murder, assassination (7-15)

Torture (7-10)

Inhumane treatment (1-3) (4-6)

Trade with human organs (4-6) (11-15)

Trafficking (7-12)

Extortion (6-9)

Misappropriation and embezzlement (7-11)

18.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

18.3 Comments from the review

There seems to be nothing remarkable in these answers. However, it would also be interesting to know the average sentence lengths (not just of the maximum lengths available) given to indicative categories of crime. This issue is complicated by the answer to Sub-section 2 (Minimum sentences) in which it was indicated that the crime of homicide can result in sentences of between 8 and 15 years. This would seem to indicate that some forms of homicide are not considered "especially grave crimes".

19. Functioning of the courts

19.1 Response from the Ministry of Corrections

The three factors mentioned in the answer related to the factors that presently impact on the functioning of the courts were: 1) shortage of judges; and 2) an overload of cases for judges. Further information as to reasons were as follows:

A zero tolerance policy of 2006-2012 mounted a significant pressure on the judiciary system. One way to address the pressing issue was to refer to the excessive use of plea-bargaining which eventually led to the abuse of this system. An agreement between the prosecutor and the defendant shortened the time required to issue a verdict on a case and helped to avoid an imminent bottleneck situation. Transparency International Georgia also referred to plea-bargaining as a tool used by the Georgian Judiciary System against the overload.[48]

The change of criminal policy and reduction of plea bargaining agree-

[48] Transparency International Georgia 2010; page 11.
http://www.transparency.ge/sites/default/files/post_attachments/Plea%20Bargaining%20in%20Georgia%20-%20Negotiated%20Justice.pdf

ments lead to shortage of judges and material recourses such as court rooms.

19.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (A. Rationales for Sentencing): 9. Delays in criminal justice should be avoided: when undue delays have occurred which were not the responsibility of the defendant or attributable to the nature of the case, they should be taken into account before a sentence is imposed.

19.3 Comments from the review

Pressure on the courts can be reduced to some extent by diverting minor cases out of the Criminal Justice System. Reforms pioneered in this region by Georgia have shown that informal warnings and mediation in such cases can have satisfactory outcomes for the parties involved and retain the confidence of the general public.

EaP countries have inherited a justice system in which the office of the prosecutor plays a significant part in determining the outcome of criminal cases. Some reform projects, such as those funded by the European Union and the United States government, take the view that the system would be more transparent if control was more in the hands of judges. Methods to improve the selection, training, salaries and discipline of judges are recommended in order to improve their public status.

20. Extent of recidivism

20.1 Response from the Ministry of Corrections

Data provided for 2013 indicated that 7.2% of offenders received into prison had previously served a prison sentence. The following year, the proportion was 6.1%.

20.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (D. Previous Convictions): 1. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant. 2. Although it may be justifiable to take account

of the offender's previous criminal record within the declared rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence(s). 3. The effect of previous convictions should depend on the particular characteristics of the offender's prior criminal record. Thus, any effect of previous criminality should be reduced or nullified where:

a. there has been a significant period free of criminality prior to the present offence; or

b. the present offence is minor, or the previous offences were minor; or

c. the offender is still young.

20.3 Comments from the review

There are various indicators of recidivism. The figures provided by the MoC refer to the most serious form, which concerns offenders who go back into prison for a second or further period in custody. Presumably a higher figure would apply in relation to those received into prison who had previously received any previous type of sanction.

As with other answers to statistical questions, more work might be necessary for these figures to be a reliable basis for international comparisons.

21. Use of electronically monitored home detention while waiting for trial

21.1 Response from the Ministry of Corrections

Although legislation allows for such use no such activity has been recorded.

21.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention. . . . . In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

21.3 Comments from the review

Young people in the juvenile age group tends to behave more impulsively

than adults. It is often thought that it is more difficult for such people to abide by the strict conditions implied in electronic monitoring orders. For this reason, European countries have tended to establish this new type of restraint with adult offender's first. It should be hoped that rates of defaulting will not be sufficiently high as to deter the method being tested with older people.

GENERAL COMMENTS ON SECTION 2: THE JUDICIARY

Sentence lengths. Countries that inherited the Soviet penal philosophy still tend to impose longer custodial sentences than in Western Europe. We are not aware of independent research that justifies longer sentences. It would therefore seem appropriate for Georgia to research whether sustaining a policy of longer sentences does reduce crime and protect the public. Of course, offenders would prefer shorter sentences. Nevertheless, if unnecessarily long periods of incarceration are reducing their chances of successful reintegration, the wider community and further victims will suffer.

Pre-trial detention. The frequent use of custody at the pre-trial and pre-sentence phases has also been a feature of Eastern European practice[49]. In some Western European countries, as few as 11% of offenders charged with deliberate crimes are held in pre-trial detention whereas the figure in Georgia is over 30%. Although prosecutors will claim that releasing the person will result in the prosecution being compromised it would be instructive to submit such claims to rigorous testing. In European justice systems, unnecessary use of pre-trial detention leads to worse long-term outcomes.

Frequent use of custodial sanctions. Although the use of imprisonment has reduced, it is still high compared to European averages of about 10% of all sentences. However, the statistics do show a reduction in 2013, the year of the very large amnesty. Comparing Georgia data to European mean sentence statistics published by SPACE I, Georgia has a lower percentage of sentences over 5 years.

Access to lawyers. Although access to lawyers for pre-trial defendants and pre-sentenced offenders has improved, it would be helpful to test the

[49] Figures obtained from "Pre-trial detention and its alternatives in Armenia" Penal Reform International, January 2012

popular assumption that better legal representation leads to more appropriate sentencing.

Risk assessment. The use of detention has been reduced, indicating a gradual shift in the thinking of prosecutors and judges regarding risk. With the use of modern, scientific methods for assessing risk, courts should have a better awareness of which defendants will present levels of risk when detention is appropriate. Probation Services in Europe are generally able to undertake these risk assessments and with other information can provide valuable reports for judges. In this way, the process of decision-making becomes more professional and indeed more accurate.

Electronic Monitoring. Now that this measure is available in the legislation, there is a strong argument for testing it with pre-trial defendants.

RECOMMENDATIONS ON SECTION 2: THE JUDICIARY

Pre-trial detention. A strategy should be developed to tackle the high levels of pre-trial detention. Such a strategy will need to include Electronic Monitoring of accused persons pending the trial as well as the introduction of assessment reports that identify the risk of breaching release conditions.

Training for prosecutors and judges in sentencing (including risk assessment and rehabilitation). Training for judges, together with staff of the other criminal justice agencies, should aim to achieve a greater understanding of these basic offender management methods so that more effective choice of sentences can be achieved. Such training should be undertaken in multi-disciplinary groups involving professionals from other parts of the Criminal Justice System in order to develop a greater understanding of corporate responsibility in decision making.

Research. Improved data on recidivism rates should be produced in order that the judiciary has a greater understanding of the effectiveness of its sentencing options.

SECTION 3. POLICE AND PROSECUTION

22. Total number of crimes each year

22.1 Response from the Ministry of Corrections

The following data was provided by the MoC:

2010 – 34,741

2011 – 32,261

2012 – 38,736

2013 – 43,028

2014 – 36,526

22.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural con-

text of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

22.3 Comments from the review

It should be noted that the crime rate in Georgia is generally thought to be very much lower than the crime rate in the larger countries of Western Europe.

Official crime rates are often presented as the number of crimes in a year for every 100,000 population. On the basis of the national population in 2015 of approximately 3.7 million[50], the official crime rate in Georgia is 987 per 100,000 population.

According to the European Source Book on Crime and Criminal Justice Statistics, 5th edition,[51] equivalent figures for other countries were: England and Wales 6,500; Denmark 7,800; Slovenia 4,500 and Lithuania 2,400 crimes recorded per 100,000 population.

However, comparisons such as these raise the problem of whether or not a particular type of behaviour is categorised as a crime in the countries being compared. A further complication is the major differences between individual countries about the proportion of different crimes that are reported to the authorities.

23. Number of court cases

23.1 Response from the Ministry of Corrections

Figures provided by the MoC indicate that the number of "cases reported" in the last five years. Normally "investigation" has started on about 98% of "cases reported".

2010 - investigation started on 48 220 cases; 15 766 received by the court.

2011 - investigation started on 43 412 cases; 14 264 received by the court.

2012 - investigation started on 47 771 cases; 9 120 received by the court.

[50] "Number of Population as of January 1, 2015 — National Statistics Office of Georgia" (PDF). Retrieved 1 May 2015.

[51] European Source Book of Crime and Criminal Justice Statistics, 2014, 5th edition

2013 - investigation started on 50 050 cases; 13 794 received by the court.

2014 - investigation started on 45 126 cases; 16 335 received by the court.

23.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

23.3 Comments from the review

Differing use of terminology - such as "cases reported" and "cases in which investigation has started" - in different countries makes comparison of the statistics difficult. At first glance such a high rate of investigation of reported cases seems surprising. But it would be necessary to know how the activity of "investigation" is defined and this may reveal that it does not imply that statements have been taken or evidence has been sought.

24. Supervision of offenders by police and prosecutors

24.1 Response from the Ministry of Corrections

No information was available on this subject.

24.2 Relevant International Standards

CoE Rec. on EM (Preamble): Ethical and professional standards need to be developed regarding the effective use of electronic monitoring in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and agencies providing equipment or supervising suspects and offenders.

CoE Rec. on EM (Definitions): In some jurisdictions, electronic monitoring is directly managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a serviceproviding contract with a State agency.

24.3 Comments from the review

There has been a long tradition in EaP countries and elsewhere in the former Soviet Union for staff of the Interior Ministry to exercise limited supervision of convicted offenders. The preference in most European countries is that staff employed by police authorities is not involved in supervising offenders because they lack the appropriate training and management. However, police are key stakeholders within the Criminal Justice System and their knowledge of the criminal behaviour, particularly of the more serious offenders, means they will have a valuable contribution to make to discussions about penal reform. In some countries police staff assists probation officers to supervise some of the most dangerous and high risk offenders who have been released from prison.

25. Arrest targets

25.1 Response from the Ministry of Corrections

No information was provided on this subject.

RECOMMENDATIONS ON SECTION 3: POLICE AND PROSECUTION

Joint training. Training should be provided for police and prosecutors in order that they develop their understanding and share their thinking on risk and needs assessment, and the concept of rehabilitation in criminal justice.

Joint operations. The police should agree cooperation protocols, especially in relation to electronic monitoring and the supervision of dangerous offenders released from prison.

SECTION 4. PENITENTIARY SERVICE

26. Changes in prison population in the last five years

26.1 Response from the Ministry of Corrections

The total number of prisoners in Georgia in the last five years has declined dramatically from 23,684 at the end of 2010 to less than half of that (10,372) at the end of 2014. At the end of October 2015 the number was 10,281.

26.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

26.3 Comments from the review

Although there were important changes to criminal justice procedures during this period (including a strengthening of the parole system) almost the whole of this remarkable decline can be attributed to the amnesty of 2013. This issue has been commented on in answer to Sub-section 9 (Use of amnesties and pardon).

27. Changed rate of imprisonment

27.1 Response from the Ministry of Corrections

The total number of prisoners per 100,000 population in the last five years has dramatically decreased from 533 to 230. An additional comment by the MoC regarding the change of the number of population in Georgia from 4.5 to 3.7 million showed, that the timing of statistics on the population in Georgia sometimes lags behind the statistics on prison population. This can sometimes give an inaccurate picture.

27.2 Comments from the review

Although the amnesty of 2013 greatly reduced the prison population, the number has held steady since then. It is reassuring to note that the number has not immediately started to rise again. This suggests that some of the previous inflation mechanisms have been removed.

The typical imprisonment rate in Western European countries is around 110 per 100,000 population. Statistics from the Council for Penological Co-operation of the CoE (SPACE I[52]) show that in Europe generally the median Prison Population Rate (i.e. the number imprisoned per 100,000 of the population) was 134 in 2013 (its most recent statistics) and 521 in 2012.

Despite the commendable efforts to reduce the excessive use of imprisonment, the rate in Georgia is sufficiently higher than European norms to raise concern. In addition, it must be remembered from Sub-section 23 (Number of court cases) that the crime rate in Georgia is very much lower than in Western European countries so the rate of imprisonment ought to be commensurately lower.

28. Pre-trial detention

28.1 Response from the Ministry of Corrections

1,438 pre-trial detainees were held in penitentiary establishments in Georgia at the end of September 2015.

28.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

Relevant standards are defined in the Coe Committee of Ministers 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.

[52] http://wp.unil.ch/space/space-i/prison-stock-on-1st-january-2013

28.3 Comments from the review

Pre-trial detainees currently represent approximately 14% of the penitentiary population in Georgia. This is lower than the European average of approximately 21%.

29. Women prisoners

29.1 Response from the Ministry of Corrections

A total of 318 women were held in Georgian penitentiaries by September 2015; 52 of them were in pre-trial detention.

29.2 Relevant International Standards

EPR (Rule 34):

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

The CoE does not have a collected set of recommendations about female offenders. Relevant advice is available in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16).

29.3 Comments from the review

This figure represents 3.1% of the total prison population and is consistent with European averages in 2015 which were, for example, France 3.3%, Italy 4.1%, and England 4.6%[53].

[53] See SPACE I. Or for a more simple presentation of the information, similar information is available from the International Centre for Prison Studies: http://www.prisonstudies.org/world-prison-brief.

30. Life sentences

30.1 Response from the Ministry of Corrections

77 persons sentenced to life imprisonment are currently held in Georgian penitentiaries.

30.2 Relevant International Standards

CoE recommendations on the subject are contained in the following document: Rec(2003)23 on the management of life-sentence and other long-term prisoners.

30.3 Comments from the review

This number of life sentenced prisoners is low compared to the major European countries. For example, England and Wales has approximately 80 times this number of prisoners serving life sentences from a population 20 times larger.

31. Foreign nationals in prison

31.1 Response from the Ministry of Corrections

At the end of September 2010 there were 382 foreign nationals in Georgian penitentiaries. Five years later, at the end of September 2015 number had dropped slightly to 368.

31.2 Relevant International Standards

EPR (Rule 37):

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall

co-operate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

CoE recommendations are included in Rec(2012)12 on Foreign Prisoners.

31.3 Comments from the review

Bearing in mind the length of Georgia's international borders, this might seem to be an unusually low figure.

32. Juveniles in prison

32.1 Response from the Ministry of Corrections

49 male juveniles are held in Georgian penitentiary establishments, 35 being convicted (September 2015). No female juveniles are held in penitentiary establishments.

32.2 Relevant International Standards

EPR (Rule 35) sets standards in relation to juveniles in prison as follows:

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

Further relevant standards are contained in CoE CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures.

32.3 Comments from the review

The review assumes that the numbers provided refer to young people between the ages of 14 and 18.

33. Young offenders in Georgian prisons

33.1 Response from the Ministry of Corrections

MoC does not keep statistics for prisoners in this age range for the period covered by the questionnaire. However from 2016 the MoC intends to collect such statistics.

33.2 Comments from the review

In European countries, this is a key age group for offenders as it marks the years when relatively impulsive juvenile offenders normally give up crime. Unless effective rehabilitation programmes are available, offenders in the 18 to 21 age group are likely to continue committing crime for at least the following five years.

34. Capacity of prisons

34.1 Response from the Ministry of Corrections

The MoC does not have a specific number of cells or institutions assigned to pre-trial detainees. According to Georgian Legislation, the remand population shall be placed in the cells isolated from convicted prisoners, in the way that the contact among them is impossible.

34.2 Relevant International Standards

EPR (Rule 18.5): Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

In many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m^2 and 9.5m^2. The CPT has consistently stated that single-occupancy cells of less than 6m^2 (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.[54]

34.3 Comments from the review

The information provided for Sub-section 36 (Overcrowding) gives details about the capacity of each prison in Georgia and its current occupancy rate. Since some of the prisons have more than one function (e.g. pre-trial defendants and sentenced convicts) it is not possible to deduce the actual number of prisoner types each prison.

35. Standards for penitentiary services

35.1 Response from the Ministry of Corrections

The following answers were provided by the MoC regarding prisoners' accommodation, food provision, healthcare, prison regime, time out of cell/dormitory, visits, physical exercise and home visits:

35.1.1 Accommodation. Every cell of the penitentiary establishments of the MoC is equipped with a bed and a closet per each prisoner. The cells have toilets inside, while there are special rooms assigned for shower. The 4 m^2 living space is guaranteed for convicted prisoners and 3 m^2 for pre-trial. However, due to lack of appropriate infrastructure, the standard is not fully ensured in all penitentiary establishments. Upon opening the establishment №6 (Rustavi) and later a new facility in Laituri (whereas the space requirement is strictly resolved), the problem of space will be resolved.

35.1.2 Food. A new food standard has been developed and implemented in 2013 and upgraded in 2014 by the MoC. It provides 12 different types of ratios to the substantial target groups among prisoners, including breastfeeding mothers, prisoners with diabetic or other diseases and those with religious needs.

[54] Paragraph 59, CPT/Inf (2011) 28

35.1.3 Healthcare. Preliminary medical examination is conducted at smart reception unit for all prisoners without exemption. Upon intake prisoners are examined externally by the medical personnel and their medical files are created/updated. All observed injuries are recorded in an adequate manner (in accordance with the Istanbul Protocol) and the final document is handed to the administration of the facility, who is obliged to pass it to the Prosecutor's Office. Electronic Queue Management System and Prison Electronic Health Record have been developed and put into operation. Electronic Queue Management ensures transparent, equal and effective handling of planned medical care; also calculates average waiting time to access specialized medical service (the period varies from 25 to 55 days depending on the type of services and geographical location); cases that need emergent or immediate response, don't fall under the waiting list and are addressed without delay. Prison hospitals and primary healthcare services have been licensed following the public health system accreditation standard.

35.1.4 Prison regime. In the framework of the recent reforms package the MoC has implemented, the penitentiary establishments are classified (semi open, closed and high security etc.) to hold the following classification of prisoners: as low, medium, increased and high risk prisoners. With the new classification system in place, the prisoners will be distributed according to their behaviour based risk assessment methodology. Every prisoner will be subjected to Individual Sentence Planning. The penitentiary system is gradually transforming on the described model. The low risk penitentiary establishment №16 (Rustavi) has already been activated with about 50 prisoners currently hosted there. Penitentiary Establishment №6 (Rustavi) will be activated in nearest future (currently being under renovation) where the high risk prisoners will be housed. Each institution regime is defined by their exclusive internal regulation providing different rights and restrictions in accordance to the level of security.

35.1.5 Time out of cell/dormitory. The period of time spent out of the cell by an prisoner is regulated by internal regulations of the penitentiary establishments and differ respectively to the security level of the facility. The minimum time spent outside the cell in high risk institution is defined to be 1 hour per day (for remand and convicted prisoner as well), while in low risk establishments is about 10 hour daily for convicts.

35.1.6 Visits. The pre-trial detainees can have 4 short-term visits per month, subject to the permission of the investigator or prosecutor. There is no restriction over the visits by the defense counsel.

Sentenced prisoners in low-risk establishment can have 4 short-term (2 additional) visits per month and 6 long-term (3 additional) visits per year. Sentenced prisoners in semi-open type establishment can have 2 short-term (1 additional) visits per month and 3 long-term (2 additional) visits per year. Prisoners housed in closed type establishment can have 1 short-term (1 additional) visit per month and 2 long-term (1 additional) visits per year, while population in high-risk establishment can have 1 short-term (1 additional) visits per month.

According to article 87 of the JJCG (entering into force in January 2016) juvenile convicts can have 4 short-term visits per month with 2 extra visits as a measure of encouragement and 4 long-term visits per year with additional 6 long-term visits as a measure of encouragement. 4 video calls per month with 2 more video calls as a reward. Female prisoners can have 3 short-term (1 additional) visits per month and 1 family (1 additional) visit per month.

35.1.7 Physical exercise. The right to physical exercise is given to every prisoner, but it differs according to the type and risk of establishments. In Closed-type institutions prisoners have minimum one hour access to open air, during which they can perform physical activities, but there is no special infrastructure like gym or courts available to the prisoners. In semi-open type establishments there are football and basketball courts established within the territory, some include gyms. In the newly-opened Low risk establishment N16 of Rustavi, there is a both indoor and outdoor courts and gym also. In addition, with the assistance of Ministry of Sport and Youth Affairs, various tournaments are being held in the penitentiary systems, which are further discussed below in the Question 66.

35.1.8 Home visits. Home visits are available only for the prisoners housed in Liberty Deprivation Establishment (Halfway House) under the auspice of National Probation Agency which has been introduced since 2014. Eligible convicts that are left with less than 12 months of sentence are sent by the Parole Boards to the Halfway House, which offers access to education and work opportunities; also prisoners are allowed to leave the establishment for a weekend.

35.2 Relevant International Standards

Healthcare is a significant problem in most prisons. As the CPT has stated: "An inadequate level of health care can lead rapidly to situations falling

within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[55]

A health check for all prisoners is vital procedure not only to be able to deal with an individual prisoner appropriately but also to safe guard other prisoners from contagious diseases etc. As the CPT says: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments)."

Hygiene. According to EPR (Rule 19.1):

• All parts of every prison shall be properly maintained and kept clean at all times.

• When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

• Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

• Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least

• Twice a week (or more frequently if necessary) in the interest of general hygiene.

• Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

• The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

• Special provision shall be made for the sanitary needs of women.

[55] Paragraph 30, CPT/Inf (93) 12

Some of these standards are raised as follows by the CPT[56]:

• A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

• There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/ nurse, etc.).

• A medical file should be compiled for each patient, containing diagnostic information as well as an on-going record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

EPR (Rule 24) has this to say about visits:

• 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

• 24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

• 24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

• 24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

35.3 Comments from the review

[56] Paragraphs 38-39, CPT/Inf (93) 12

The ability of prisons to accommodate prisoners of several different categories provides a degree of flexibility that will assist the management of overcrowding.

The MoC has stated that the minimum time out of cell is one hour per day. In overcrowded prisons this requirement may not always been met.

Prison services vary considerably internationally, with the better regimes providing assessment, individual planning and treatment programmes, and suitable recreational activities for all offenders. However, overcrowding reduces a prison's ability to provide appropriate services.

The EPR has been very effective in giving guidance to prison administrations. They are the subject of a variety of training initiatives and their use in the Penitentiary and Probation Training Centre (PPTC) for the MoC staff demonstrates the progress that has been made in the reform agenda.

Clearly the priority given by Georgia to this function has produced successful results.

RECOMMENDATIONS ON SECTION 4: PENITENTIARY SERVICE

Accommodation standards. The method for calculating the capacity of a prison should be based on CPT standards. These cover more factors than simply the space available in dormitories.

Management Information Systems. Providing managers with the ability to collect and interpret operational data from their area of control will improve their ability to direct resources to achieve prison-wide objectives. Simple examples would be: time out of cell, incidents of disobedience, discovery of contraband, etc. In this way targets for improvement can be set and progress can be measured.

Probation services within the penitentiary establishments. Resettlement prospects for prisoners would be improved if probation staff visited prisons to contribute to pre-release courses and the development of individual release plans.

SECTION 5. PRISON OVERCROWDING

36. Overcrowding

36.1 Response from the Ministry of Corrections

Before 2012 Georgian Correctional System was overcrowded, having 23,684 prisoners at its maximum. The load was so huge that in some fecilities there was not enough beds in the cells; plus, the general living conditions used to been poor.

Alongside with the liberalization of the criminal policy and the introduction of the law on Amnesty, due to the efficient work of the revised Parole Boards and the renewed Joint Permanent Commission of the MoC and the Ministry of Labor, Health and Social Affairs of Georgia (MoH), prison overcrowding issue was effectively addressed. The effective work of the Parole Boards made possible to guarantee 4m^2 living space for convicts and minimum 3m^2 for pre-trial detainnes, as provided by European standards (*MoC interpretation*). The prison population has decreased from 23,684 (as of 2012) to 10,523 as of October 26, 2015. The 4m^2 living space is guaranteed in most of establishments for convicted prisoners and 3m^2 for pre-trial. However, due to lack of appropriate infrastructure, the standard is not fully ensured in some facilities. Upon opening the establishment №6 (Rustavi) and later a new facility in Laituri (whereas the space requirement is strictly observed), the problem of space will be resolved.

In the framework of the Reforms package, the MoC closed down 8 penitentiary establishments in total. Penitentiary establishments №1 (Tbilisi) and №4 (Zugdidi) have been closed permanently, while Prisons №3 (Batumi), №18 (Central Prison Hospital, Tbilisi) and №19 (Rehabilitation Centre for prisoners with TB, Ksani), Juvenile Rehabilitation Establishment №11 (Tbilisi) and Low Risk Facility №16 (Rustavi) opened after full reconstruction. Penitentiary establishment №6 (Rustavi) was re-opened and high-risk offenders are gradually transferred from other establishments (including the establishment №7) based on the individual risk assessment and classification methodology. The Establishment №16 (Rustavi) currently hosts about 50 prisoners (8% population load) and it is gradually filled with convicts classified as low risk prisoners. In addition, new High Risk Facility is being built in Laituri and new facility complex for 14-22 aged young offenders is planned to be built, all in compliance with international standards. These infrastructural projects will dramatically improve the living conditions of

the prisoners along with opportunity to close down old facilities (as mentioned above, the MoC has already closed down 2 establishments permanently, while has reconstructed and re-opened 5 facilities).

The response proposed that the information for Sub-section 39 should also be read in conjunction with this response.

36.2 Relevant International Standards

CPT Standards comment on prison overcrowding as follows: "The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe[57].

Elsewhere, the CPT standards[58] state that such a minimum should only apply to persons assigned to a multi-occupancy cell without including the area for a fully-partitioned sanitary facility. For permanent living space for a single-occupancy cell the CPT standard is a minimum of 6m^2 plus the area for sanitary facility.

Living space per prisoner in prison establishments: CPT standards[59]

Introduction

1. Since the 1990s the CPT has developed and applied minimum standards regarding the living space that a prisoner should be afforded in a cell. While these standards have been frequently used in a large number of CPT visit reports, they have so far not been brought together in a single document.

[57] Paragraph 28, CPT/Inf (2001) 16

[58] www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf

[59] CPT/Inf (2015) 44 | Section: 1/2 | Date: 15/12/2015

2. At the same time, there is a growing interest in these standards, at the national level (among member states' authorities responsible for the prison estate, national detention monitoring bodies such as national preventive mechanisms established under OPCAT , domestic courts, NGOs, etc.) and at the international level, not least because of the problem of prison overcrowding and its consequences. Currently, the Council of Europe's Council for Penological Co-operation (PC-CP) is preparing a White Paper on prison overcrowding. For its part, the European Court of Human Rights is frequently being called upon to rule on complaints alleging a violation of Article 3 of the European Convention on Human Rights (ECHR) on account of insufficient living space available to a prisoner.

3. Against this background, the CPT decided in November 2015 to provide a clear statement of its position and standards regarding minimum living space per prisoner; such is the aim of this document.

4. The cells referred to in this document are ordinary cells designed for prisoners' accommodation, as well as special cells, such as disciplinary, security, isolation or segregation cells. However, waiting rooms or similar spaces used for very short periods of time are not covered here.

5. During its monitoring activities, the CPT has frequently encountered situations of prison overcrowding. The consequences of overcrowding have been highlighted repeatedly by the CPT in its visit reports: cramped and unhygienic accommodation; constant lack of privacy; reduced out of cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The CPT considers that the question of minimum living space per prisoner is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.

6. Minimum standards for personal living space are not as straightforward a matter as they might appear at first sight. To begin with, the "minimum living space" standards used by the CPT differ according to the type of the establishment. A police cell for short-term detention of several hours up to a few days does certainly not have to meet the same size standards as a patients' room in a psychiatric institution; and a prison cell, whether for remand or sentenced prisoners, is again an entirely different matter.

7. Secondly, a differentiation should be made according to the intended

occupancy level of the accommodation in question (i.e. whether it is a single cell or a cell designed for multiple occupancy). The term "multiple occupancy" also needs to be defined. A double cell is arguably different from a cell designed for holding for instance six or more prisoners. As regards large-scale dormitories, accommodating dozens and sometimes even up to one hundred prisoners, the CPT has fundamental objections which are not only linked to the question of living space per prisoner, but to the concept as such.

In its 11th General Report the CPT criticised the very principle of accommodation in large-capacity dormitories; frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units.

8. Thirdly, the CPT has also taken into consideration the regime offered to prisoners when assessing cell sizes in light of its standards (see paragraph 21).

The CPT's basic minimum standard for personal living space

9. The CPT developed in the 1990s a basic "rule of thumb" standard for the minimum amount of living space that a prisoner should be afforded in a cell.

- 6m^2 of living space for a single-occupancy cell
- 4m^2 of living space per prisoner in a multiple-occupancy cell

10. As the CPT has made clear in recent years, the minimum standard of living space should exclude the sanitary facilities within a cell. Consequently, a single-occupancy cell should measure 6m^2 plus the space required for a sanitary annexe (usually 1 to 2m^2). Equally, the space taken up by the sanitary annexe should be excluded from the calculation of 4m^2 per person in multiple-occupancy cells. Further, in any cell accommodating more than one prisoner, there should be a fully-partitioned sanitary annexe.

11. Additionally, the CPT considers that any cell used for prisoner accom-

modation should measure at least 2m between the walls of the cell and 2.5m between the floor and the ceiling.

Promoting higher standards

12. Rule 18.5 of the European Prison Rules (2006) states that "Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation." Indeed, in many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m^2 and 9.5m^2. The CPT has consistently stated that single-occupancy cells of less than 6m^2 (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.

13. When devising the standard of 4m^2 of living space, the CPT had in mind on the one hand the trend observed in a number of western European countries of doubling up 8 to 9m^2 cells that were originally designed for single occupancy, and on the other hand the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

14. Although the CPT has never explicitly defined "multiple-occupancy", an analysis of visit reports indicates that cells for two to four prisoners implicitly fall under this notion. Consequently, the CPT has regularly implied that cells measuring 8m^2 were acceptable for two prisoners, cells of 12m^2 for three, and cells measuring 16m^2 were adequate for four prisoners. However, in a non-negligible number of cases, the CPT has also stated that cells of 8m^2 (or 8 to 9m^2) should "preferably" (Slovenia, 2006; Hungary, 2013) or "idéalement" (Belgium, 2009) accommodate only one prisoner; or should be "used to accommodate no more than one prisoner save in exceptional cases when it would be inadvisable for a prisoner to be left alone" (UK, 2003). In the report on its 2011 visit to the Netherlands, the Committee stated that accommodation in double cells measuring between 8 and 10m^2 was "not without discomfort" to the prisoners, and in the report on the 2011 visit to Ireland, it recommended that "efforts be made to avoid as far as possible placing two prisoners in 8m^2 cells".

15. Clearly, the aforementioned examples suggest that the 4m^2 per prisoner standard may still lead to cramped conditions when it comes to cells for a low number of prisoners. Indeed, given that 6m^2 is the minimum amount of living space to be afforded to a prisoner accommodated in a single-oc-

cupancy cell, it is not self-evident that a cell of 8m² will provide satisfactory living space for two prisoners. In the CPT's view, it is appropriate at least to strive for more living space than this. The 4m² standard is, after all, a minimum standard.

16. For these reasons, the CPT has decided to promote a desirable standard regarding multiple-occupancy cells of up to four prisoners by adding 4m² per additional prisoner to the minimum living space of 6m² of living space for a single-occupancy cell:

• 2 prisoners: at least 10m² (6m² + 4m²) of living space + sanitary annexe

• 3 prisoners: at least 14m² (6m² + 8m²) of living space + sanitary annexe

• 4 prisoners: at least 18 m² (6m² + 12m²) of living space + sanitary annexe

17. In other words, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, and a cell of 12m² no more than two prisoners.

18. The CPT encourages all Council of Europe member states to apply these higher standards, in particular when constructing new prisons.

36.3 Comments from the review

The CPT standards, described in detail above, are very challenging for countries that have limited funds for their criminal justice services. In one regard – living space – the CPT standards considerably exceed the standards set by the GoG of a "minimum 3m² for pre-trial prisoners". In fact they specify a minimum living space for those being held before their trial is 4m². The various extracts in Sub-section 36.2 specify larger spaces for other groups of prisoner.

Because of the way the question has been answered it is not possible to say which specific prisons, if any, are overcrowded if correct CPT standards were applied. No doubt future inspection visits by the CPT will decide whether current provision is tolerable when other factors are taken into consideration.

37. Factors leading to overcrowding

37.1 Response from the Ministry of Corrections

The response identified three of the United Nations Office on Drugs and Crime (UNODC) causes of prison overcrowding:

• Excessive use of pre-trial detention;

• Inefficient ways of promoting social integration;

• Delayed court hearing.

It suggested in terms of the use of pre-trial, its excessive use was a part of the zero tolerance policy and a punitive Criminal Justice System. This resulted in frequent and longer term imprisonment. Additionally, the Early Conditional Release mechanisms as well as the work of the joint MoC and MoH commission on early release of terminally ill prisoners were ineffective, contributing to overcrowding.

Inefficiency of rehabilitation and re-socialisation activities was in itself a consequence of a punitive criminal justice policy and subsequent overcrowding. Excess number of prisoners and difficulties associated with their control made it virtually impossible to implement effective rehabilitation programmes and successfully support re-integration of the released prisoners into the society. Detailed statistics concerning the number of prisoners involved in various rehabilitation activities is provided in an answer for Sub-section 42.

Finally a number of new penitentiary facilities were constructed between 2006 and 2012 but proved to be highly insufficient in terms of capacity.

37.2 Relevant International Standards

The CPT makes the following points about overcrowding: "To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level".[60]

[60] Paragraph 14, CPT/Inf (97) 10

37.3 Comments from the review

The answer identifies important causes that are not easy to eradicate. Each is dependent on a network of decisions in separate areas of the justice system. Georgia has the consultative mechanisms (via the CJRC) to make progress on these difficult challenges.

International thinking suggests that the use of amnesties is not an acceptable method of managing prison numbers. It is essential to seek solutions within the process that the Criminal Justice System operates.

38. Effects of overcrowding

38.1 Response from the Ministry of Corrections

Health and hygiene in prisons were identified as effects of overcrowding with the addition that such conditions were the subject of most of the cases sent to the ECHR.

In addition to the impact on the health of prisoners the response included the following:

1) Unsafe conditions for prisoners and staff that had led to allegations of ill -treatment and in some cases of torture;

2) Staff working on extended shifts and a high prisoner/staff ratio;

3) Limitations on activities for prisoners, such as the provision of 1 hour out of cell time were not available to some prisoners and limitations on sporting activities.

The MoC is undertaking significant efforts to implement the minimum living space standard of 4m^2 in all establishments. Currently the only overcrowded penitentiary establishment is the facility №7 which accommodates high risk prisoners.

38.2 Relevant International Standards

The CPT has made the following comments in relation to overcrowding: "Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate;

the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint."[61]

38.3 Comments from the review

Overcrowding may not affect all types of prisoner in the same way. In general, psychological thinking tends to suggest that women may suffer from reduced privacy but young men feel more aggressive in their need to assert their position in the group.

39. Distribution of overcrowding

39.1 Response from the Ministry of Corrections

This question had already been addressed in the Sub-section 36 (Overcrowding).

GENERAL COMMENTS ON SECTION 5: PRISON OVERCROWDING

Overcrowding means much more, than a prison estate with inadequate cell space. A prison, for example may have adequate space but if the regime lacks activities for rehabilitation, or the area available for visits from relatives is cramped and inadequate, it could be concluded that overcrowding exists. Such a state of offender management is often referred to as 'warehousing' and does little for the aims rehabilitation.

RECOMMENDATIONS ON SECTION 5: PRISON OVERCROWDING

Re-calculate the capacity of the prisons. Statements about the capacity of the prison estate should be revised according to a calculation based on current CPT recommendations of at least 6m^2 per prisoner in single occupancy cell + sanitary facility and 4m^2 per prisoner in multi-occupancy cell + fully-portioned sanitary facility.

[61] Paragraph 46, CPT/Inf (92)3

Collect regime data. More detailed data should be collected about the impact of overcrowding on things such as health, regime activities and preparing prisoners for a successful release (re-socialisation).

More time out of cell. The minimum standard for time out of cell according to the response in the Questionnaire is 1 hour for high risk offenders. Although information regarding lower risk offenders indicated that 10 hours was likely, this was not written in terms of a minimum standard. There should be a close monitoring of all out of cell times for all regimes. Best practice in Europe employs a system for setting targets local managers to raise levels of out of cell times. In many examples ensuring maximum time out of cell is seen as arduous by staff who have to be more pro-active in their work. Setting targets and measuring performance may be necessary to overcome staff resistance.

Routine management information. More modern methods of offender management should be developed by senior management and employed within present structures. These include the collection of data on 'time out of cell', number of family visits, completion of sentence plans, etc. Information of this type will enable managers to set targets for improvement and encourage local teams to perform better by finding new solutions to old problems.

SECTION 6. PRISONER RESOCIALISATION

40. Induction routine for prisoners

40.1 Response from the Ministry of Corrections

To place an accused person in the pre-trial detention establishment, the decision of the court on application of pre-trial detention as a preventive measure, identity card or other identification document with photograph is required. Upon admission of an accused to the pre-trial detention establishment an accused shall be photographed and fingerprinted. Photos and their film negatives, as well as fingerprint file, a sketch based on the file is kept in personal files of an accused. The administration of the establishment sends an accused person's fingerprint file to the central or respective regional service or unit of the National Bureau for Forensic Examination within 7 days after fingerprinting.

Upon admission to the pre-trial detention establishment an accused person and his/her personal belongings is thoroughly checked and the respective report drawn up. An accused shall be checked by an employee of the same sex of the pre-trial detention establishment. A person shall undergo medical examination by doctor of pre-trial detention establishment and relevant report drawn up. If bodily injuries are discovered with an accused the administration shall immediately inform the prosecutor thereof. A competent person of the pre-trial detention establishment shall immediately inform an accused about his/her rights and obligations in a language which he/she understands.

In the case of female prisoners a medical examination is carried out in line with the Istanbul Agreement.

A 'Smart' Reception Unit operates in intake facilities (remand prisons) based on dynamic security principles. Multidisciplinary approach to the prisoner's needs has been introduced; Preliminary medical examination has been re-introduced and is conducted at the 'Smart' Reception Unit for all prisoners without exemption.

40.2 Relevant International Standards

EPR describes recommended admissions procedures in Rules 14 to 16.

40.3 Comments from the review

A careful, managed induction to the prison is an essential part of safe custody. However, the quality of the actual experience will depend on environmental features and operational procedures that could only be appreciated through actually examining such a unit.

41. Prisoners with special needs

41.1 Response from the Ministry of Corrections

The main points covered by a full answer to this question provided by the MoC are:

• TB infected prisoners are treated at the Central Correctional Hospital №18 or the prison Tuberculosis №19 if their initial health check reveals they suffer from this condition. All these prisoners are treated against the same Anti-tuberculosis National Programme available in the sector.

• HIV/AIDS treatment is available to every prisoner according to civil sector standards.

• Prisoners with psychiatric disorders are treated in a specialised medical facility if they have severe symptoms. Psychiatric health care throughout the system is based on trained staff, multidisciplinary treatment teams and the suicide prevention programme.

• Hepatitis C is now the subject of a special treatment programme activated in 2014 again equivalent to the national government programme (using the new medication Sofosbuvir).

• Prisoners with physical disabilities are held in a special 57 bed unit at the Central Correctional Hospital which has special equipment and treatment regimes. In certain prisons cells have been specially adapted for disabilities.

• Drug dependent prisoners have the benefit of a new treatment regime developed jointly by the Ministry of Corrections and Health Ministry in 2015. The treatment includes motivational training, psycho-social rehabilitation, drugs education and referral to post penitentiary care.

• Foreign nationals with language problems are offered Georgian language

courses. Basic information about the prison is available in the five most commonly spoken languages. A concept paper to enhance tolerance amongst prisoners of various ethnicities is awaiting approval.

• Pregnant women receive enhanced diets.

• Women with young children are housed in a special "mother and child unit" until their child is three years of age.

• Juvenile prisoners are held at a special youth prison where their treatment is supervised by a Multidisciplinary Board comprising social workers, psychologists, teachers, doctors and security officials. The Ministry of Education and Science provides academic education and vocational training and a variety of sport is available with the support of the Ministry of Sport and Youth Affairs.

41.2 Relevant International Standards

International standards in relation to the issues raised by this question are to be found at many points throughout the sets of advice and recommendation listed at the beginning of this report. For example, in relation to nutrition, EPR states in Rule 22:

• Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

• The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

• Food shall be prepared and served hygienically.

• There shall be three meals a day with reasonable intervals between them.

• Clean drinking water shall be available to prisoners at all times.

• The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

41.3 Comments from the review

One of the first effects of overcrowding is the pressure it places on the ability of penitentiary administrations to maintain necessary services to potentially vulnerable groups. The policies set out by the MoC in its answer

confirm that it intends to avoid any harmful outcomes. The recent developments using the 'Smart' induction demonstrate the priority the administration is now placing on identifying individual prisoner needs.

42. Individualised sentence plans for prisoners

42.1 Response from the Ministry of Corrections

Individual sentence planning has been introduced in №11 Juvenile Rehabilitation Establishment (Tbilisi) in 2011. In 2015 the practice has been extended over the Penitentiary Establishment №5 for Women (Rustavi) and the Low Risk Penitentiary Establishment №16 (Rustavi). The individual sentence planning aims to assess the needs of a prisoner as well as the risk of the recidivism he/she possesses in order to reduce the probability of a new crime, to create healthy environment within the penitentiary establishment for the individuals and to engage prisoner into relevant rehabilitation programmes. A multidisciplinary team consisting of social worker (coordinator of the group), psychologist, doctor and a regime officer plans the individual sentence. Specialists from other fields like psychiatrist, teacher, etc. may also be invited if necessary. The individual sentence plan is made for one-year period.

Following the legislative amendments of 2015 the MoC has introduced an objective classification system based on offender's risks and needs assessment methodology. The process should be finalized by the end of 2016.

42.2 Relevant International Standards

The CPT[62] has strong views on this subject: "A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organization of regime activities in such establishments - which have a fairly rapid turnover of prisoners - is not a straightforward matter. Clearly, there can be no question of individualized treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells and this regardless of how good material conditions might be within the

[62] Paragraph 47, CPT/Inf (92)3

cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable."

EPR (Rule 28) sets standards that are unlikely to be fully met in Georgia for some years. For example:

• Regimes shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

• Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

• Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

• As far as practicable, the education of prisoners shall be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

42.3 Comments from the review

It appears that the MoC appreciates the need for individualised rehabilitation of prisoners. The Juvenile Rehabilitation Institution has the numbers of specialists to enable it to sustain this attention to measuring the needs of these young people and plan services accordingly. This has also been applied to female establishments. Hopefully the MoC would wish to extend this approach into the prisons for adult male offenders, in which current staffing levels may not be adequate.

43. Percentage of prisoners who access regime activities

43.1 Response from the Ministry of Corrections

Less than 40% of the overall prison population in Georgia take part in education or similar rehabilitation activities.

43.2 Relevant International Standards

The information provided in relation to Sub-section 42.2 is relevant to this item.

43.3 Comments from the review

NGOs have pioneered the introduction of rehabilitation activities in the prisons but resourcing and travel limitations mean that the coverage is limited. Increasingly this is seen as the responsibility of the mainstream prison administration, but the answer indicates there is more scope to reach a wider proportion of the prison population with these vital services.

44. Number of prisoners who have accessed regime activities

44.1 Response from the Ministry of Corrections

Education programmes – 15 %

Employment programmes – 8.7%

Drug treatment programmes - 0.25%

Pre-release programmes - 3,8%

Individual activity records provided the following data

	2011	2012	2013	2014	2015
Vocational/professional trainings	105	305	777	625	302
Training-educational programmes	53	260	85	335	775
Computer courses			63	343	377
Intellectual/cognitive meetings				208	692
Psycho-social programmes/therapy			87	72	152
Psycho-social trainings	22	54	277	1110	1113
General Education			105	192	467
Total	180	619	1394	2885	3578

44.2 Relevant International Standards

The information provided in relation to Sub-section 42 is relevant to this item.

44.3 Comments from the review

No doubt the MoC would like to improve the low proportion of prisoners who access pre-release courses. Lack of specialist staff in the adult prisons (such as teachers, social workers and psychologists) mean that such courses may need to be redesigned so that they can be delivered by the guards who supervise the accommodation units.

There has been an increase in rehabilitative based regime activities over the past 5 years. The impact on successful rehabilitation of the other programmes mentioned – drug treatment, employment and education – is unlikely to be disputed. However new methods for implementing them will also need to be developed as it is unlikely that sufficient mainstream funding will be available to increase participation numbers.

GENERAL COMMENTS ON SECTION 6: PRISONER RESOCIALISATION

In Western Europe, throughout the final 30 years of the twentieth century, the work of prisons in re-socializing offenders grew in importance. Regimes had previously lacked any activities designed for preparation for release. Education and work training were seen as essential for many offenders, whose poor skills were shown to have contributed to their offending. Education is conceived more widely there than in the EaP countries and it is common to see prisoners involved in classes where they are exploring new social and life skills and learning how they can benefit from an appreciation of literature. Unfortunately, prison overcrowding and reduced budgets in these countries have limited the availability of these essential activities.

As stated above, one of the key objectives of a prison system is to rehabilitate prisoners in order that they will not continue with a life of crime. There is no single reason why individuals will return to their former criminal life. However causes include: lack of socialization, lack of employment and training, a feeling of rejection by society, antisocial attitudes, restlessness, association with other criminals impulsiveness, lack of education, and neglect or abuse by parents or guardians. There are many ways to reduce recidivism and among the most cost-effective are social training and education courses.

Health needs of prisoners have been made a particular priority and the

administration has been pro-active in introducing schemes that seek to screen for priority health issues and provide good quality treatment.

RECOMMENDATIONS ON SECTION 6: PRISONER RESOCIALISATION

Pre-release programmes. Programmes dealing with pre-release issues are not expensive to organize and can make an important difference. They should be seen as an essential part of the objectives of all prisons. Pre-release programmes should be made a top priority with support from the National Probation agency. Other programmes should be developed that respond to the criminogenic needs of prisoners.

Prison regime. Prison regimes must have a greater priority in the future and should figure more within the strategic plan of the country.

SECTION 7. EARLY AND CONDITIONAL RELEASE

45. Conditional release

45.1 Response from the Ministry of Corrections

The Local Council of the MoC ('the Council') is a body that reviews issues related to the release on parole and commutation of sentences. The number and territorial jurisdiction of the Councils and the procedure for discussing and deciding the release on parole are determined by an order of the Minister. The Council consists of five members, representing any structural subdivision of the Civil Service of the MoC; National Probation Agency; High Council of Justice, non-governmental organizations; and general and higher educational institutions.

If a convicted person has actually served the term established by law for the release on parole, the administration shall immediately file a relevant application with the Council and notify the convicted person about it. If an additional time is required to obtain and process the necessary information, the administration may file this application within seven days. A convicted person, his/her defence lawyer/legal representative and close relatives may submit additional information to the Council.

The Council reviews a case by oral hearing and/or without oral hearing, in compliance with administrative procedures. The decision to deny a parole, or to admit the case for oral hearing or to release a convicted person on parole is taken by the Council without oral hearing, according to the assessment criteria determined by the Minister. The decision shall include the main circumstances of the case and details of the convicted person. When reviewing an application, the Council takes into account the conduct of the convicted person during his/her imprisonment, the criminal acts committed by him/her in the past; his/her character family status, the nature of the crime committed and other circumstances that may influence the decision of the Council.

The Council conducts an oral hearing if it considers that it is necessary to obtain additional information from the convicted person to decide his/her release on parole. By oral hearing, the Council decides to deny or grant parole to the convicted person. The decision of the Council denying parole to the convicted person may be administratively appealed to a court.

If the Council decides to deny parole to the convicted person, an application with the same request may be considered only after six months, except when the outstanding sentence does not exceed six months and/or if there are special circumstances. The issue of the release on parole of convicted persons of minor age shall be considered every three months, and the issue of the release on parole of other convicted persons shall be considered every six months.

Five Councils (3 for adult male, 1 for juveniles and 1 - for female offenders) review on monthly basis cases for early conditional release and commutation of remaining term of a sentence into a less grave punishment. All early conditional release mechanisms have a diverse membership, which in addition to the MoC officials include representatives of relevant NGOs, judicial organs and local universities. The early conditional release criteria are linked with the results of the individual sentence planning.

45.2 Relevant International Standards

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community;

CoE Rec. on Parole (General principles 4.a): In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

CoE Rec. on Prison Overcrowding (Article 25): In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

CoE Rec. on Parole (Articles 16 to 21): These paragraphs describe recommended approaches to conditional early release.

45.3 Comments from the review

The procedures described in the information provided by the MoC are consistent with the advice given in paragraphs 16 to 21 of the CoE Rec. on Parole. The multi-agency composition of the Local Councils (a subject on which the Rules unfortunately appear not to give guidance) is most encouraging. Although the judiciary is represented in these decision-making bodies, the process does not award the final decision about conditional release to a court (which many would say does not have the expertise to make important judgements about the success of rehabilitation or how the prisoner is likely to respond to the circumstances that face him or her if given conditional release).

46. Reduction of sentence under early release

46.1 Response from the Ministry of Corrections

The MoC does not keep statistics to indicate the average sentence lengths reduction granted for conditional release.

46.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

46.3 Comments from the review

Not many governments collect these figures but they would be extremely useful for managing the system and assessing its effectiveness. Informal impressions, while referring to the information provided in the following sub-section, are that more than half of prisoners are granted conditional release but the normal amount is no more than a few months.

47. Proportion of prisoners granted early conditional release

47.1 Response from the Ministry of Corrections

The percentage given early conditional release from all the prisoners eligible for parole varied considerably as follows:

2010 - 7.7%

2011 - 9.6%

2012 - 18.5%

2013 - 17.3%

2014 - 8.4%

Percentages for all years are calculated from a total number of cases reviewed by that year. Penitentiary establishments are obliged to automatically send eligible cases to relevant boards.

47.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 23): The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

47.3 Comments from the review

It is not easy to interpret the figures provided. It is possible that they take the number of prisoners who apply to a Council in any year and calculate the proportion of applications that were successful. However an individual adult prisoner can reapply every six months and a juvenile prison can reapply every three months. The cumulative success rate may mean that significantly more than these figures indicate get some kind of reduction from their sentence.

As the Rules confirm, general opinion is that the substantial period of parole – linked to effective supervision by the probation service – is strongly in the interests of safe release and lower levels of reoffending.

48. Proportion of prisoners granted early conditional release

This appears to be the same as the information in Sub-section 47.

49. Support from probation for ex-prisoners

49.1 Response from the Ministry of Corrections

National Probation Agency provides control and aid to the offenders during the period of conditional release. Risks are assessed against these offenders, their needs are defined and on this background individual sentence plan is drawn and implementation supervised.

After the risk of harm has been identified for the probationer, his/her risk assessment and individual sentence plan is elaborated by the multidisciplinary team comprising of social worker, probation officer and psychologist.

The personal case-file of the offender is forwarded to the probation service upon his/her release in order to further provide social and psycho-rehabilitation services in accordance with the needs of the beneficiary. As a first step, the Multidisciplinary team reviews the likelihood of reoffending.

The second stage encompasses elaboration of individual sentence plan and involvement in rehabilitation programmes. Rehabilitation programmes are reflected on the individual sentence plan and each topic of the plan has certain responsible person assigned. A probationer gets involved in mandatory or/and voluntary rehabilitation programmes according to their needs. After the individual sentence plan is completed, relevant specialist assesses the risks and needs of a probationer and either continues with the plan or precedes him/her to the monitoring stage of the sentence.

The probation officers also work with the family of to-be-released offender in order to prepare them to receive him/her back. In addition, probation officers collect information about the offender`s family, living environment and other related circumstances for the Council case review.

49.2 Relevant International Standards

CoE Probation Rules (Rule 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.

49.3 Comments from the review

Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[63]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

50. Other support for ex-prisoners

50.1 Response from the Ministry of Corrections

In addition to NPA, LEPL Centre for Crime Prevention (CCP) under the Ministry of Justice of Georgia has been put into operation since 2012. The mission of the CCP includes promotion of the prevention of recidivism in Georgia, working with risk groups and implementing projects related to primary crime prevention. NPA and the CCP closely cooperate and develop some joint programmes for ex-offenders and for probationers as well.

The CCP's basic programmes and directions include the rehabilitation and re-socialisation programme for former prisoners, which were established in December 2012. Under the programme, along with other supplementary services, special focus is made on former prisoner's physical and mental health problems, promotion of vocational education and employment support in the appropriate direction. The programme aims, on the one hand to protect the society from recidivism and on the other hand the former prisoner's to return to full-fledged citizenship; management and development of the Juvenile Diversion Programme; and working with groups at risk of committing crime, creating a referral system and finding an appropriate support in the frames of already existing programme.

50.2 Relevant International Standards

[63] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

EPR (Rule 107.4): Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

EPR (Rule 26): Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.

50.3 Comments from the review

It is well known that a thriving NGO sector in Georgia has provided services for ex-prisoners for several decades. When the CCP of the Ministry of Justice surveyed the availability of help from these sources in advance of the substantial amnesty of 2013, they announced that over 100 NGOs operating in all regions of the country had registered to be included in the voluntary after-care strategy.

51. Re-conviction of conditionally released prisoners

51.1 Response from the Ministry of Corrections

Statistics regarding the re-conviction rates of early conditionally released persons are not available for 2010 to 2012. Figures for the subsequent years were:

Year	Released conditionally	Re-conviction among early release prisoners the same year / (% from total)	Total number of re-convictions among early released prisoners (disregarding the year of release)
2013	1579	50 (3.1%)	98
2014	894	35 (3.9%)	189
2015 (October)	763	26 (3.4%)	181

51.2 Relevant International Standards

CoE Rec. on Parole (Article 43): In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

51.3 Comments from the review

In order to compute the rate of reconviction it will be necessary to know the total numbers of prisoners released in those years. The normal standard set by criminologists for reoffending is the number of proven crimes during two years following release from prison or completion of a community sanction. In European countries about 40% of prisoners are reconvicted within this period.

52. Reconviction rates for prisoners who complete their full sentence

52.1 Response from the Ministry of Corrections

Statistics regarding the reconviction rates of persons released after serving their full sentence were only kept since 2014. In that year 711 prisoners who completed their sentence have been convicted.

52.2 Relevant International Standards

CoE Rec. on Parole (Article 43): In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

52.3 Comments from the review

Statistics of this nature enable the effectiveness of parole decision-making and post-release supervision to be measured and policy reforms to be evaluated.

GENERAL COMMENTS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Supervised release on parole benefits the community, the prisoner and the penitentiary service itself. Providing an incentive for early conditional release encourages more co-operative behavior during sentences of the vast majority of prisoners. This allows for better offender management whilst in prison but also aids successful rehabilitation after prison. Research on recidivism rates for example, demonstrate that they are much lower amongst offenders given early conditional release. However, this may be because such offenders have a more positive attitude towards desisting from crime anyway.

Prisoners provided with the opportunity to address their offending behavior and to develop a positive attitude to release allows for a greater chance of rehabilitation. Normally there exists in the community support and monitoring activities, which are commonly the responsibility of a Probation Service.

In recent years, the number of prisoners released on parole is approaching European averages. However, the participation of the Probation Service in the process is more limited than would be ideal. Proper assessments, which focus on what would need to be done to help an individual complete a period of parole satisfactorily, require the kind of risk and need assessment best done by an agency experienced at supervising offenders in the community. Unfortunately, penitentiary staff can be over concerned with behaviour in the custodial environment, which is not a good predictor of behaviour released.

RECOMMENDATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Risk assessment and individual sentence planning. Greater priority in parole decisions should be given to the assessment of risk and plans to mitigate it.

Training. A training programme should be developed and conducted for all the actors in the early conditional release system in order that new techniques can be included.

SECTION 8. ALTERNATIVE SANCTIONS AND PROBATION

53. New alternative sanctions

53.1 Response from the Ministry of Corrections

No new alternative sanctions have been introduced since 2005. However, even though the liberty restriction as an alternative sanction has been available for judges since 1999, it has never been applied actually. In 2011, amendment has been made in the Law on "Procedure of Execution of Non-custodial Penalties and Probation", according to which the concept of the Halfway House (limited liberty establishment) has been introduced. In 2014 Liberty Deprivation Establishment was opened for adult liberty deprived men. It is planned to open Limited Liberty Establishment for adult female liberty deprived persons as well.

According to the legislation, offenders can be housed in the Halfway house by the decision of the Councils. The right for judge to decide upon sentencing Halfway House as a sanction is postponed until January 2017.

Home arrest will be available for Juvenile offenders from 2016, implemented by the National Probation Agency. The MoC has already purchased electronic monitoring system (including 200 electronic bracelets) for juveniles. Later, the measure will be expended on adult offenders.

53.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (Rule 2 (3)): "In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible."

The Tokyo Rules (Rule 2 (4)): "The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated."

53.3 Comments from the review

Probation legislation was first enacted in 2003. The legislation has been substantially revised since then but presumably the basic sanctions it contained have not been altered.

Further consideration about the appropriateness of the term "conditional sentence" may encourage the adoption of the more normal European term of "probation order".

54. Purpose of alternative sanctions

54.1 Response from the Ministry of Corrections

The main goals of the NPA include: execution of sentences, prevention of recidivism and re-socialization/reintegration of convicted offenders. In order to encourage offenders to desist from crime emphasize is made on the rehabilitation, re-socialization of the probationers and on introduction/ implementation of various individualised and prevention-oriented approaches as well. The NPA aims to increase the number of rehabilitation, educational and vocational programmes and expand them more broadly countrywide.

54.2 Relevant International Standards

The first principle of the CoE Probation Rules is the following: Probation agencies shall aim to reduce reoffending 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 / reintegration. Probation thus contributes to community safety and the fair administration of justice.

54.3 Comments from the review

It is likely that a fuller explanation of the aims of the service is available in most recent legislation or various concept notes and Ministerial Orders.

55. Range of alternative sanctions

55.1 Response from the Ministry of Corrections

The MoC provided the following list of alternative sanctions:

• Community Service/Public Works;

• Deprivation of the right to occupy a position or pursue an activity

• Corrective Labour

• Restriction of Service in Military

• Restriction of freedom

• Property confiscation

• Home arrest (juveniles only)

55.2 Relevant International Standards

CoE Rec. on Community Sanctions, Point 1 of the "Guiding principles for achieving a wider and more effective use of community sanctions and measures" states:

Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples:

• alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority;

• probation as an independent 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 a mental disturbance that is related to their criminal behaviour;

• intensive supervision for appropriate categories of offenders;

• restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring imposed with observance of Rules 23 and 55 of the European Rules;

• conditional release from prison followed by post-release supervision.

55.3 Comments from the review

European probation services have developed a wide range of supervised "interventions" to provide courts with sentencing options more relevant for the particular crime and the particular offender. As the National Probation Agency develops more experience, the answer in relation to juveniles in Question 57 indicates that it can be expected to broaden its services from the list currently sanctioned by legislation for adults and juveniles.

56. Diversion schemes

56.1 Response from the Ministry of Corrections

Liberalization of criminal justice policy in Georgia resulted in introduction of diversion mechanism initially for juveniles (in November 2010) and subsequently for adults (in November 2011). In 2012, 10,367 crimes committed by adults were reported, out of which 1247 persons (12%) were diverted from criminal prosecution. In 2013, 13,324 crimes committed by adults have been reported, out of which 1,678 persons (12.6%) were diverted from prosecution.

56.2 Relevant International Standards

CoE Rec. on Community Sanctions (Guiding principles for achieving a wider and more effective use of community sanctions and measures): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/ reparation/ victim-offender mediation.

56.3 Comments from the review

Georgia has pioneered diversion of juveniles in the South Caucasus and the scheme it currently operates has received much attention and praise. To begin with it focused only on juveniles guilty of relatively minor first-

time offences. As experience has grown, diversion has been extended to adults and to juveniles who may have already received diversion on a previous occasion.

57. Plans to introduce new alternative sanctions

57.1 Response from the Ministry of Corrections

Home arrest became available for Juvenile offenders from 2016 and is being implemented by the NPA. The MoC has purchased electronic monitoring system (including 200 electronic bracelets) yet for juveniles. Later, the measure will be expended on adult offenders.

57.2 Relevant International Standards

The information provided in relation to Sub-section 55.2 is relevant to this item.

57.3 Comments from the review

UNICEF has been supporting the development of effective policies for juvenile offenders for many years. It is likely that reforms achieved with this age group of offenders will have a positive impact on work with older offenders.

58. Percentage use of alternative sanctions

58.1 Response from the Ministry of Corrections

The MoC gave the following statistics for all alternative sanctions. This does not include the numbers of offenders subject to "liberty deprivation".

2010 - 54.2%

2011 - 58.9%

2012 - 59.7%

2013 - 71.9%

2014 - 64.5%

58.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

58.3 Comments from the review

These figures seem to imply that about 40% of convictions result in a custodial sentence. A more typical figure for European countries would be 10%. Further comparison would require more details to be provided, such as the gravity of the crimes involved and the number of previous convictions. European probation services tend to focus their efforts on a smaller number of high risk offenders who would otherwise attracted a custodial sentence.

59. Use of "conditional sentence"

59.1 Response from the Ministry of Corrections

The figures provided by the MoC were as follows:

2010 - 47.6%

2011 - 52.3%

2012 - 48.6%

2013 - 57.0&

2014 - 45.2%

59.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

59.3 Comments from the review

Taken together with the information provided in the Sub-section 58 (Percentage use of alternative sanctions), these figures suggest that the vast majority of alternative sanctions were conditional sentence. It would be interesting to know what proportion of offenders sentenced to "conditional sentence" was actively supervised by probation staff. According to European experience – which may not be relevant – most convicted offenders who are not sent to prison do not require active supervision. Financial penalties or community service are the favoured sanctions for this group. The efforts of the probation service would normally be concentrated on a troublesome minority, perhaps no more than 20% of those, not sent to prison. Further discussion with the Probation Agency about these figures and their implications would be useful.

60. Success of supervised alternative sanctions

60.1 Response from the Ministry of Corrections

The following statistics were provided by the MoC:

Year	Successfully completed	Sentence terminated by Councils (Parole Boards)	Pardon	Amnesty	Total
2013	6165	738	8632	17887	**33422**
2014	4179	157	3188		**7514**
2015	6127	129	4		**6260**

Number of offenders who successfully completed their sanctions in the Liberty Deprivation establishment (Halfway House) is of 91%. As for percentage of offenders who remain law abiding citizens for up to 2 years after the end of their sanction (alternative sanction) period, the MoC does not keep statistics.

60.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

Tokyo Rule 2 (4) states that: The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

60.3 Comments from the review

The statistics provided whilst useful, are not designed to show the long-term effectiveness of the criminal justice responses. The reduction in the use of pardons and amnesties must be welcomed and future data will benefit from the inclusion of information about whether offenders leaving the system reduce their offending behaviour after their sentence has expired. Certainly, use of such initiatives as 'Halfway' house is excellent in helping in the rehabilitation of offenders.

61. Imposition of conditional sentence

61.1 Response from the Ministry of Corrections

The MoC gave the following statistics:

2011 - 3.94%

2012 - 4.8%

2013 - 13%

2014 - 4.14%

2015 (October) - 0.42%

61.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

61.3 Comments from the review

By European standards, these are very low figures (despite the strange increase in 2013). Likely explanations could include the fact that most offenders given conditional sentence have committed very minor crimes and are not particularly delinquent. Perhaps it indicates that more serious offenders could be given this sanction instead of a custodial sentence if failure rates (reoffending rates) are so low.

62. Electronic monitoring

62.1 Response from the Ministry of Corrections

As for juveniles, if legal representative agrees, electronic monitoring may be applied in line with alternative sanctions. It will be implemented by the NPA. The MoC has already purchased electronic monitoring system (including 200 electronic bracelets) for juveniles. Later, the measure will be expended on adult offenders.

62.2 Relevant International Standards

CoE Rec. on EM (Article 8): 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.

62.3 Comments from the review

Requiring someone to stay in their home for part or whole of the day is an effective punishment and in many cases would be preferable to a prison sentence. However on its own it is unlikely to help the offender to understand why he or she got into trouble or the changes in attitudes and behaviour required to live a crime-free life. Research evidence from the utilisation of electronically monitored curfews in European countries confirms that the sanction does not affect reoffending. For this reason the Council of Europe rules on Electronic Monitoring recommend that the sanction should be coupled with rehabilitation services.

63. Success of electronic monitoring

63.1 Response from the Ministry of Corrections

Until now the MoC does not keep statistics, as applicable legislation is effective from September 2015.

63.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

63.3 Comments from the review

It is recognised that it requires resources to collect and analyse statistical information. However, without this kind of data it is not possible to monitor service standards for the effectiveness of policies.

GENERAL COMMENTS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Support for Alternative Sanctions is not universal across all members of society in European countries. In most cases, this can be attributed to lack of understanding about offender management.

In some EaP countries, such as Ukraine and Azerbaijan, the department within the Penitentiary Service that has inherited the Soviet-style supervision of released prisoners is in the process of transforming itself into a modern Probation Service. Other countries have preferred probation to be established separately from the penitentiary service.

There is good evidence to show that community supervision combined with rehabilitation programmes performed better than imprisonment for most mid-range offenders. Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[64]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

[64] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

Georgia has successfully introduced a full National Probation Service, which now supervises around 50% of all sanctions, the majority of which are conditional sentence. The level of reoffending is encouragingly low, indicating that it should be possible for them to deal similarly with more serious offenders.

RECOMMENDATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Probation intervention in penitentiary establishments. The level of rehabilitation activity in penitentiary establishments is limited. As the Probation Service gathers expertise in rehabilitation it should play a role in developing and staffing pre-release courses in all penitentiary establishments.

Monitoring. Monitoring methods, to show the longer term impact of alternative sanctions need to be improved. Offenders where possible, need to be monitored for at least two years after the completion of their alternative sentence in order that the effectiveness of the Probation Service can be appreciated by the wider general public, as well as the Criminal Justice System itself.

Role of probation in parole. The National Probation Service should work with the parole Councils to develop risk assessments for those being considered for early conditional release.

SECTION 9. AFTERCARE

64. After-care organisations

64.1 Response from the Ministry of Corrections

The Rehabilitation Programs Division of the NPA implements rehabilitation and re-socialization activities for the offenders released conditionally. Rehabilitation programs are adopted on the base of the Division, delivered to the offenders according to their individual risks and needs, both individually and in groups.

In addition to NPA, CCP has been put into operation since 2012. The mission of the CCP includes the promotion of the prevention of recidivism in Georgia, working with risk groups and implementing projects related to primary crime prevention.

64.2 Relevant International Standards

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

64.3 Comments from the review

Georgia is clearly moving ahead with a focus on crime prevention as well as maintaining more traditionally penal programmes. Traditionally in many countries in Eastern Europe offenders on conditional release programmes had little supervision although research suggests that without interventions such offenders become the prisoners of the future. Working with this client group on preventative programmes is of key importance.

The UNODC report suggests that recidivism in many European countries might be significantly reduced if prisoners were better prepared to make the transition back into their communities. And also, if the communities to which they were returning were more responsive to their resettlement needs. Clearly finding employment is a priority because ex-prisoners meet significant barriers in finding work. However, other needs include the re-establishing social and family ties and possibly avoiding the temptations of drugs.

65. Formal aftercare agreements

65.1 Response from the Ministry of Corrections

There are number of Government and Non-governmental organisation with whom the MoC and the NPA has signed the Memorandum of Understanding concerning the aftercare of offenders. For example there are several colleges in the auspice of Ministry of Education and Science (Iberia, Mermisi, Ikaros, Specter, LEPL Modus, Blacks and Gldani Vocational Training Centre) that provide various trainings, including driving license, small business, tourism, web design, etc.

65.2 Comments from the review

A wider range of services that can support offender rehabilitation are potentially available from the statutory agencies such as those responsible for education, employment and healthcare. Formal agreements need not necessarily involve the transfer of funds. Often initiatives taken by the probation service can help offenders to gain access to services that are available to them by right as citizens but which they do not feel comfortable to approach.

66. Other aftercare initiatives

66.1 Response from the Ministry of Corrections

A variety of ancillary rehabilitation programmes are implemented in the penitentiary establishments by the NGOs:

• **The Centre for Information and Counselling on Reproductive Health "Tanadgoma"** implements straining/educational program "Sustaining and scaling up HIV/AIDS and STI Prevention Programs for MARPs - FSWs, MSM and prisoners".

• **The Georgian Centre for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT)** provides trainings for social workers and psychologists of the Penitentiary Department in order to raise their qualification as a facilitator of various psycho-social programs. GCRT also holds consultative individual and group meetings with offenders.

• **Georgian Association "Women in Business"** implements vocational

and professional courses in the penitentiary establishments, such as stylist, masseur, computer, etc. "Women and Business" also provides training for "Development of Small Business" and Bangkok Rules. It also provides group psychological assistance to the offenders.

• **National Museum** in coordination with the MoC provides the delivery of lectures and holds informational meetings on various topics.

66.2 Relevant International Standards

CoE Probation Rules, in the section in which it defines the terms, offers the following definition of aftercare: Aftercare: means the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In these rules, the term is distinguished from the term "resettlement" which refers to statutory involvement after release from custody.

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

66.3 Comments from the review

These activities are mostly taking place within prison and are not so much related to after-care activities. Perhaps the same NGOs operate with many of the offenders upon release. However for offenders released to diverse destinations after release support can be difficult to provide. The number and quality of NGOs operating to help the rehabilitation of offenders is a key part of any successful Criminal Justice System. In many countries the Ministry of Justice aids their growth and impact through funding and other support.

67. Re-offending after release

67.1 Response from the Ministry of Corrections

Statistics on prisoners who were released after serving full sentences and their reconviction are available since 2013 but the data on reconviction was not kept until late 2013 and therefore is inaccurate.

Now statistics are being collected for prisoners released after a full sentence and specifically for those reconvicted in the year they are released. For example in 2014, 4.3% of prisoners released in that year were reconvicted.

67.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

67.3 Comments from the review

European countries are accustomed to over half of their prisoners being convicted of a further crime within two years of release. For young adult offenders the proportion is much higher. For older offenders guilty of more serious crimes the reoffending rates are low. The startlingly low rate of reconviction require further examination in relation to issues such as: over what period of time were further offences recorded; who provides the reoffending figures and how reliable are they; and do they vary between different types of prisoners?

GENERAL COMMENTS ON SECTION 9: AFTERCARE

Prisoner and offender rehabilitation is not popular in most of civil society. Not surprisingly there is more sympathy for addressing the needs of those who have not committed crimes.

The Crime Prevention Centre that is operated by the Ministry of Justice is well known for initiatives it takes in providing services for socially excluded people, including ex-prisoners.

RECOMMENDATIONS ON SECTION 9: AFTERCARE

Government support. The Government must seek the means of supporting both the statutory organizations and the NGO community in their will

to support released offenders after the Criminal Justice System has completed its work.

Partnership agreements. The Ministry of Justice should develop partnership agreements with particularly the Social Welfare Department, Health Department and the Education Department, in order that the statutory services can play an expanded role with offenders.

Social re-integration centres. Special centres should be developed for the social re-integration of offenders. The more informal approaches that NGOs can offer will be more attractive to ex-prisoners, who have mostly come to mistrust the official agencies of the government. NGOs are more able to adapt their approaches in the light of experience than government services that are reliant on legislation.

SECTION 10. DATA AND STATISTICS

68. Overcrowding statistics

68.1 Response from the Ministry of Corrections

The percentage of the prison population load per facility is kept by the MoC related to the prison overcrowding and in particular the number of prisoners in relation to the capacity of each establishment. Capacity of each establishment is defined by the Ministerial Order #106. The order is currently out-dated and new standards will be approved by the Minister in 2016, which will calculate 4m^2 space per offender.

68.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

68.3 Comments from the review

It is likely that the MoC retains detailed figures about prisoner numbers which can be matched to the certified number of available places in each establishment. This is clearly an essential tool for assisting population management.

69. Re-offending statistics

69.1 Response from the Ministry of Corrections

The number of re-offending for a reporting period (persons who were released during the previous year and re-entered the penitentiary establishments) is kept regarding the rates of reoffending for different sections of the Criminal Justice System, as well as the number of re-entering for a reporting period (persons who were released in a reporting period and re-entered the penitentiary establishments).

69.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

69.3 Comments from the review

It is necessary to record and analyse criminal justice statistics so that agencies can understand the effectiveness of their services. As justice systems seek to reduce reoffending rates, and find an appropriate balance between punitive and rehabilitative regimes, data collection and analysis is vital. However, it is always difficult to find the resources that this requires.

In many countries, examination of data has indicated that short prison sentences for mid-range offenders can often make them more criminally minded.

70. Statistics on re-offending

70.1 Response from the Ministry of Corrections

Statistics on re-offending are kept in relation to convicts/probationers who were released either conditionally or after serving their full sentence. The MoC is able to provide total numbers of all previous convictions concerning any of these groups for every year, as well as re-offending committed in the calendar year of their release. The statistics is broken down by gender and age.

70.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28) states: Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

70.3 Comments from the review

The answer confirms that information is kept in relation to different types of offender. No doubt it is routinely consulted and analysed in order to inform decisions about the methods that are being used and the differential allocation of resources across the whole caseload.

71. Other data relevant to overcrowding

71.1 Response from the Ministry of Corrections

No additional information was provided regarding any other data that is important in assessment of the extend of overcrowding in Georgia.

71.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibil-

ity, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

71.3 Comments from the review

It is difficult for this review to judge whether further investment in data processing is likely to assist.

72. Use of data for informed policy

72.1 Response from the Ministry of Corrections

The date for the statistics to be presented is collected by Analytical Department of the MoC and is defined by an individual order of the Minister of Corrections of Georgia, which includes daily, weekly, monthly, quarterly and annual reports. The data is made available to CJRICC for general policy planning.

In addition, MoC efforts to further enhance existing data system to elaborate special software capable of comprehensive data analyses. Currently, MoC is developing software which will include information about classification and risk assessment of the offenders.

72.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

72.3 Comments from the review

It is likely that sufficient data is available internally as part of the exceedingly difficult task of overall population management that has to bear in mind keeping prisoners as near as possible to their home area; separating groups that might be in conflict; planned closure of units for repairs and refurbishment; etc.

GENERAL COMMENTS ON SECTION 10: DATA AND STATISTICS

More reliable data, and sophisticated analysis, will allow improvement targets to be set for each part of the penal system. The introduction of computers to automate this work will require a significant investment in suitable software.

Each year the CoE and the UN publish statistics about the penal system in most countries. The UN International Statistics on Crime and Justice 2010 reported: "Another, even more disturbing observation that has been made repeatedly is that many member states continue to be unable to answer the UN CTS questionnaire at all, or are only able to provide a partial response. This state of affairs is in part due to a very basic reason: some or all of the required data are not available. However, less excusable is the situation for many other countries that are known to possess the required data but do not respond"[65].

RECOMMENDATIONS ON SECTION 10: DATA AND STATISTICS

Data collection. Data should be collected about reoffending within two years of release from prison. This should distinguish between those receiving compulsory supervision as a condition of release and those who have served their full terms.

[65] UNOCD report 'International Statistics on Crime and Justice (European Institute for Crime Prevention and Control, Affiliated with the United Nations(HEUNI) P.O. Box44 and United Nations Office on Drugs and Crime(UNODC) POBox5 1400Vienna Austria - HEUNI Publication Series No. 64 2010

SECTION 11. CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

73. Community crime prevention initiatives

73.1 Response from the Ministry of Corrections

None of schemes on community based crime reduction initiatives operating in the communities in Georgia in recent years (for example neighbourhood watch schemes or whistle blowing schemes) are in operation.

The Prosecutors Office of Georgia introduced the "Community Prosecutor" programme in 2006 in various regions of the country. The programme aims to enhance the effectiveness of the crime-prevention capabilities of the Office, to increase in transparency and to strengthen ties with the society.

Within the frames of the programme, sport, cultural intellectual-educational and charity events are held countrywide. The target groups for the programme are generally juveniles and young people. Special attention is taken to juvenile offenders and probationers

According to the recent surveys, the public awareness about the Criminal Justice System and trust in Prosecutors Office has increased.

73.2 Relevant International Standards

CoE Probation Rules (Rule 98): Where provided by national law, the expertise and experience of probation agencies shall be used in developing crime reduction strategies. This may include making use of joint interventions and partnerships.

CoE/CM Rec (2003) 21 concerning partnership in crime prevention (Article 1): Nationally, governments should commit themselves and co-ordinate their initiatives to develop and implement policies and strategies for crime prevention and community safety (for example, by way of creating national crime prevention councils, adopting national crime prevention programmes etc.).

73.3 Comments from the review

It may be that this is a topic for a future donor projects. At present it would be difficult to justify mainstream investment in community crime prevention. Naturally any effective initiatives of this type would have widespread

value, but careful experimentation would be necessary in order to make decisions about what approaches would be cost-effective.

74. Civil society monitoring of prisons

74.1 Response from the Ministry of Corrections

Public Defender of Georgia (Ombudsman) and the National Preventive Mechanism under its auspice have the unimpeded access to all penitentiary establishments. Recently, the Ombudsman was granted the right to photo-recording during the monitoring visits, in accordance to the Georgian Law on Personal Data Protection.

In addition, the International Committee of the Red Cross **(**ICRC) and the United Nations High Commissioner for Refugees (UNHCR) have unrestricted access to all penitentiary establishments for the purpose of monitoring the detention conditions; they also have right to retrieve any information from the records office and to meet with any prisoner according to their will and conduct interview with them in private

Since 2013 some NGOs periodically conducted researches in the penitentiary establishment (rights of sexual minorities, past facts of torture and ill-treatment and current treatment practice).

The last legislative amendments to the Imprisonment Code included the creation of Special Consultative Board. Experts and the representatives of civil society are participating in the working process of the board.

74.2 Relevant International Standards

EPR (Rule 93.1): The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.

EPR (Rule 93.2): Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

74.3 Comments from the review

Prisons inevitably are closed institutions and even the most effective management and supervision cannot guarantee that appropriate standards of

behaviour by staff and prisoners will always apply. Civil monitoring should stand alongside a proper system of management inspections and the ability for staff and prisoners to make complaints that will be properly investigated.

75. Publicity for crime reduction

75.1 Response from the Ministry of Corrections

One of the main tasks of the Ministry of Internal Affairs is to ensure public order and safety of the citizens, reduction of number of crime and offences. Considering that the Ministry is focused on prevention and not on the punishment, therefore Public Relations Department carried out a number of social campaigns on various topical issues.

From 2015 Ministry of Internal Affairs is implementing informational and educational programme "Maintenance of law and crime prevention programme for public schools". Programme also involves pupils from non-Georgian public schools. The programme aims to raise awareness among young people on organized crime, particularly regarding cybercrime, membership of the criminal world, trafficking, etc.

Within the frames of the programme educational-informative meetings are held on the topic of organized crime at private and public schools by the representatives of the Main Division against the Fight with Organized Crime under the Central Criminal Police Department.

With the view of organized crime prevention and in order to raise social awareness, the following activities have been implemented:

• Auto-radio aired weekly radio programme -"In Frames of Law" dedicated to the issues of the organized crime. Ministry of Internal Affairs representatives provided comprehensive answers to the questions raised by the citizens on radio live programme.

• Fiction-documentary film series – "Identification" were created. Each episode was based on the actual facts, covering activities conducted by the Ministry of Internal Affairs units to fight various forms of crime.

75.2 Comments from the review

The range of initiatives described in this answer is quite promising. However they do tend to emphasise warning people about the consequences of committing crime. Another approach that should be borne in mind involves strengthening communities with social activities – particularly aimed at high risk groups such as young adults experimenting with drugs - to provide constructive alternatives and routes into employment or further education.

76. Encouraging reform of offenders

76.1 Response from the Ministry of Corrections

The MoC is moving from a Punitive to a Rehabilitative approach. In order to encourage offenders to desist from crime, MoC aims to develop adequate educational and vocational training programmes in the penitentiary establishments as well as to expand employment opportunities. Particular emphasis is made to the reform of health care service that will be tailored to the needs of individual offenders. It is essential to develop effective rehabilitation and reintegration activities at the state policy level, strengthen legal guarantees of prisoners, and enhance conditional release system as well as to ensure continuous professional development of the personnel.

In the pursuit of the above mentioned objective, NPA is largely focused on rehabilitation, re-socialisation, and introduction/implementation of individualised and prevention-oriented approaches. NPA aims to increase the number of rehabilitation, educational and vocational programmes and expand them more broadly countrywide.

Among top priorities of the GoG within the framework of the Juvenile Justice Reform is to comply with international standards, to prevent crime among juveniles and through individual rehabilitation programmes reduce recidivism. Within the framework of this reform, JJCG was adopted. Implementation of the JJCG pays special focus on the prevention and development of the rehabilitation programmes. Cooperation with the service delivery organisations is especially important in this regard.

76.2 Comments from the review

The NPA is fulfilling an important task on behalf of the community of at-

tempting to reduce the likelihood that known offenders will commit further crime. The group of "known offenders" are likely to include those who will present most risk to the community. An effective Probation Service will be attempting to identify those at most risk and presenting supervision packages to courts or the parole Local Councils intended to engage with their offending behaviour.

GENERAL COMMENTS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Traditionally the subject of crime and punishment has been seen by the general public as only something that involves offenders and criminal justice agencies. The concept of crime prevention as something all living in a community should consider is a relatively new concept; alongside this, can be put the subject of the rehabilitation of offenders. This must involve communities and support agencies within those communities, in order that re-socialisation and rehabilitation can operate. Many alternative sanctions including community service are reliant on community support. The greater visibility in for certain sanctions such as community service, the greater understanding develops amongst the community.

New methods of conflict resolution are developing in communities, which bring together statutory and voluntary organisations. Mediation is increasing in use and the idea of restorative justice provides opportunities for responses to be made outside the criminal justice system.

Development of community organisations to debate crime are useful to ensure that the responsibilities for crime and offender are hared across the wider community. It has great advantages in helping communities deal with offender's rehabilitation. The MoC should take a lead in encouraging community-based schemes related to tackling crime alongside the police. Across Europe there is much to be celebrated as best practice and examples from which to take good ideas for Georgia.

Diversion schemes including restorative justice and mediation are now gaining credibility throughout criminal justice services and civil society alike in many countries. Georgia should expand this provision in order to continue to emphasise its support for the rehabilitation focus it has begun.

RECOMMENDATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community-based crime reduction. To develop a strategy on community based crime reduction that involves the main social agencies, civil society and local people in the most at-risk communities. The CJRICC should consider whether a national crime reduction strategy would be a proper reform for it to support.

SECTION 12. FUNDING

77. Investment in penitentiary system

77.1 Response from the Ministry of Corrections

	2015	2014	2013	2012	2011	2010
Central apparatus of the MoC	8815000	4650100	8864040	3372700	3286900	4615550
Penitentiary Department	117578513	124801100	143740696	119715557	97036800	109627750
Medical Department	13650670	14936400	11958060	7587043	5936600	5540400
LEPL – National Probation Agency	9464817	7222300	5342190	2919400	2168460	1812800
LEPL – Penitentiary and Probation Training Center	991000	1102700	2142300	1111000	870500	813600
Legal Aid			2965500	3121400	3303500	2949000
Total budget in GEL	150500000	152712600	175012786	137827100	112602760	125359100

Note: *the budget of central apparatus is increased due to merger of apparatus of Penitentiary Department into MoC.*

Through 2009-2015 period MoC managed the budget of its Central Apparatus and the Medical Department. The Penitentiary Department had budgetary autonomy from the MoC. Since July 1 2015, within the framework of the structural reform package, Penitentiary Department has been abolished as an autonomous body and has been fully integrated into the MoC, inluding its budget.

NPA has got two financing sources, assignees of state budget and own (not budget depending) incomes. Budget and own funds were used for repair and rehabilitation works of administrative office of the NPA and its equipment; for procurement of software; financing of installation of electronic monitoring system; operation costs of establishment, including provision of food for offenders; financing of educational programmes for the purpose of re-socialization, re-integration and offense prevention; costs for provision of relevant working conditions in regional offices; to purchase fuel/lubricant materials, maintenance, operation and insurance and other office costs.

Name	2010 year	2011 year	2012 year	2013 year	2014 year	2015 year
Costs for National Probation Agency in GEL	1 678 052	1 994 138	2 880 854	5 312 394	7 040 196	9 472 937
Salary	1 219 628	1 288 126	2 227 082	3 194 182	4 918 443	4 840 000
Goods and service	416 002	565 906	627 476	969 079	1 038 651	1 235 329
Social security	2 236	10 000	17 586	19 809	60 752	50 000
Other costs	440	3 248	21	15 474	17 681	27 256
Non-financial assets	39 746	126 858	8 689	1 039 303	929 936	3 316 292
Grant				74 547	74 733	4 060

As mentioned above, NPA has additional (not budget) income, including fees for the agency service. This (not budget) income is spent according to the advance estimates, approved by authorities. Gained amounts are spent for material incentives, financing of business projects in order to provide re-socialization and rehabilitation of probationers, to arrange sport

activities from them, development of material and technical and computer base and improvement of serving offenders.

77.2 Comments from the review

It is not possible for the review to assess the appropriateness of this funding. However general opinion in European justice circles is that the treatment a person on probation receives should not depend on their ability to pay. Thus the established system in Georgia, whereby probationers can pay for permission to leave the country for a temporary holiday, has been criticised by the Council of Europe.

78. Funding for future strategy

78.1 Response from the Ministry of Corrections

Policy formulation and implementation is funded with 8.815.000 GEL (approximately 3.390.000 Euros).

78.2 Comments from the review

It is not possible for the review to assess the appropriateness of this funding.

79. Sufficient resources

79.1 Response from the Ministry of Corrections

At the present stage MoC is in compliance with current demands, both in the fields of penitentiary and probation. Though, realisation of planned infrastructural projects (such as juvenile offender complex for 14-22 aged offenders) will need sufficient funding.

While the MoC manages current system with available resources, more support is necessary to ensure formation of fully staffed and trained penitentiary service. In addition, more funding is needed for international projects in order to provide full compliance with all relevant standards.

79.2 Relevant International Standards

We are not aware of international standards concerning the resources nec-

essary for running penitentiary and probation services. Nevertheless CoE Rec. on Community Sanctions (Rule 42) has some relevance: The implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

79.3 Comments from the review

Governments in Western European countries rarely operate their penitentiary services with anything like shortfall in the necessary funding. On average, governments in Western European countries divide their penal sector budget so that 75% is spent on their penitentiary service and 25% on their probation service. These figures can be deduced by analysing figures about finance and financial accountability in "Probation in Europe" by Kalmthouth and Durnescu[66]. Experience has shown that a substantial investment in community sanctions and measures at this kind of level is necessary if they are to have a suitable impact on sentencing patterns. If the split of funding is any more in favour of the penitentiaries, the probation service will not have enough cash to attract suitable numbers of staff to provide properly supervised rehabilitation services.

GENERAL COMMENTS ON SECTION 12: FUNDING

Funding is often given as the reason for the poor conditions that exist in the prison estate. The general message within this report is that although finance is important, of greater importance is the co-operation and co-ordination of each part of the Criminal Justice System, in order that they complement each other in their pursuit of a common mission.

Georgia is clearly competent in the way it realistically plans budgets and costs out strategy. As the whole justice system works toward greater synergy, resources become far more effectively used.

The start of a future strategy should involve all actors in the Criminal Justice sector in understanding how resources can be wasted in inappropriate sentencing - and how they can be harnessed more effectively for crime reduction and offender rehabilitation.

[66] Probation in Europe, A.M. van Kalmthout & I. Durnescu (eds.) ISBN: 978-90-5850-450-0. Published by aolf Legal Publishers (WLP) 2008

RECOMMENDATIONS ON SECTION 12: FUNDING

Balanced budget. A long-term target should be established for the relative resourcing of penitentiary and probation services within the overall corrections budget. It may be that the 75% – 25% split commonly found in European countries would be appropriate.

Cost-centred budgeting. Serious consideration should be given to determining the realistic unit costs of delivering each community sanction so that informed judgements about their relative value can be made. This might show, for example, that a new form of directly-supervised Community Service is achieving better reconviction rates than electronically monitored home detention – or vice versa.

80. Additional comments

80.1 The question was included in the event that the individual country wanted to add information not previously requested. The MoC added additional data which has been used in the response of other questions (Sub-sections).

CONCLUSIONS

The CoE is pleased with the interest that has been shown by the MoC of Georgia for further cooperation to improve its penal services. The effort it has made to provide a great deal of information about the current situation and future plans indicate a willingness to explain problems as well as successes.

For many years, reforms in Georgia have been driven by strategic thinking and wish to achieve international standards. It was the first country in the region to establish a probation service. Since it is temporarily inflated prison population was reduced to regional norms a growing number of education and rehabilitation programmes are being delivered. The Halfway House is a bold experiment to train and support offenders who are not quite ready to fend for themselves in the community. At the other end of the justice spectrum Georgia has pioneered the important innovation of diverting less serious offenders from the justice system and implementing restorative solutions instead. As always a lively civil sector is supporting this work and calling for further reforms.

Clearly the MoC monitors the impact of its services and the various working groups that are tasked with identifying further reforms of the system will be well aware of the issues raised by the questionnaire. The prison population is still too high, particularly bearing in mind the relatively low crime rate in the country. The numbers in prison on pre-trial detention have halved in the last five years but there is always more that could be done to reduce this harmful measure. Although the proportion of juveniles in custodial institutions is much lower than European levels, the rate is still amongst the highest in the region. Community Service does not yet have the clout to inspire judges that it is a reasonable alternative to a short custodial sentence. Rehabilitation programmes operate in the prisons but they are not yet reaching enough prisoners to make a real difference to reconviction rates. A further issue identified by the questionnaire that possibly should find a place on the reform agenda is better financial monitoring so that the real comparative cost of all penal sanctions could be accurately compared so that limited budgets can achieve the best impact.

The CPT sets some very high demands through its country inspections and general standards. Georgia has shown that it wishes to follow this route and the CoE will join with the justice agencies and civil society to provide as much help as possible.

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Criminal Justice Responses to Prison Overcrowding in Moldova

Criminal Justice Responses to Prison Overcrowding in Moldova

This report describes and comments on the current situation in Moldova in relation to tackling penitentiary overcrowding and improving prisoner rehabilitation. It is part of a project operating in four Eastern Partnership (EaP) countries (Armenia, Georgia, Republic of Moldova and Ukraine) that have agreed to receive advice from the Council of Europe (CoE) in relation to these key aspects of offender management.

In pursuing such reforms, these countries are fulfilling an obligation they undertook when joining the CoE to harmonise their justice legislation and services with European standards. Standards relevant to these issues are set out in official recommendations published by the CoE.

ABBREVIATIONS

As reference will frequently be made in the text of this report to six CoE recommendations, they will be abbreviated as follows:

• EPR: refers to Rec(2006)2 on the European Prison Rules;

• CoE Probation Rules: refers to CM/Rec(2010)1 on the Council of Europe Probation Rules;

• CoE Rec. on Parole: refers to Rec(2003)22 on conditional release (parole);

• CoE Rec. on Prison Overcrowding refers to R (99)22 concerning prison overcrowding and prison population inflation;

• CoE Rec. on EM: refers to CM/Rec(2014)4 on Electronic Monitoring.

• CoE Rec. on Community Sanctions: refers to R(92)16 on the European Rules on community sanctions and measures;

Other recommendations of general relevance to this report are:

• R(99)19 concerning mediation in penal matters;

• Rec(2000)22 on the improvement of implementation of the European Rules on community sanctions and measures;

• Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

• CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures;

• Rec(2012)12 on Foreign Prisoners;

• Rec (2003)23 on the Management of Life-sentence and Other Long-term Prisoners.

In addition, further statements and guidance about offender management are available in the standards published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), judgements of the European Court of Human Rights (ECtHR) and by the United Nations.

THE OVERALL PROJECT: PROMOTING PENITENTIARY REFORMS (FROM A PUNITIVE TO A REHABILITATIVE APPROACH)

1. The aims of the Project:

• to combat prison overcrowding and support use of community sanctions and measures;

• to establish regional co-operation and a strategic approach on prison overcrowding;

• to reduce recidivism of former prisoners contributing to a healthier society and less crime.

2. The Project has worked through:

• bilateral work as well as multilateral exchange of experience and cross-interaction;

• holding working meeting with participation of the representatives of the relevant ministries of the target countries through developing a comparative analyses report based on carried study on combating prison overcrowding in target countries;

• establishing a network and a forum for exchange of good practices between medium and high level representatives of the relevant ministries of the target countries for combating the prison overcrowding; and

• competency development of the trainers from the Training Centres / Academies of the target countries charged with training of prison and probation staff.

3. The Project activities:

• Translate into six languages: Armenian, Azeri, Georgian, Romanian, Russian and Ukrainian the CoE Committee of Ministers recommendations and the extracts from the CPT general reports related to combating prison overcrowding;

• Develop e-compendiums of the Council of Europe documents on combatting prison overcrowding in six target languages and disseminate among the penitentiary and probation agencies and the training centres in charge of training prison and probation staff in target countries;

• Conduct study on prison overcrowding in target countries and develop country specific recommendations;

• Hold a high-level conference to highlight main findings of the study on prison overcrowding, discuss the recommendations provided and define the possible ways for their implementation; and

• Conduct Training of Trainers on Combating Prison Overcrowding for the trainers of the Training Centres / Academies of the target countries charged with training of prison and probation staff.

THE QUESTIONNAIRE

Information was sought from the MoJ of Moldova (MoJ) about policy and implementation issues that relate to penitentiary overcrowding and prisoner rehabilitation. A total of 80 questions were divided between the following 12 sections:

1. Strategy and legislation;
2. The judiciary;
3. Police and prosecution;
4. Penitentiary service;

5. Prison overcrowding;

6. Prisoner re-socialisation;

7. Early and conditional release;

8. Alternative sanctions and probation;

9. Aftercare;

10. Data and statistics;

11. Crime as a whole community responsibility; and

12. Funding.

Answers to the questions were submitted by the MoJ in November 2015. The CoE is extremely grateful to officials for undertaking the considerable amount of work involved. In the following part of this report, most of the answers are given in full.

Each answer is followed by a series of comments and recommendations, which include reference to relevant CoE standards. At the end of each of the 12 sections some overall comments and recommendations are provided. A questionnaire used to carry out the study is attached as an appendix.

SECTION 1. STRATEGY AND LEGISLATION

1. Direction of Policy

1.1 Response from the MoJ

The reform measures, stipulated by the Strategy for Justice Sector Reform for the years 2011-2016, approved by the Decision of the Parliament no. 6 of 16 February, 2012 are the following:

I. Justice system;

II. Criminal justice;

III. Access to justice and enforcement of court decisions;

IV. Integrity of the justice sector actors;

V. Role of justice for the economic development;

VI. Respect for human rights in the justice sector;

VII. Well-coordinated, well-managed and accountable justice sector.

1.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Introduction): Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

CoE Rec. on Prison Overcrowding (Article 19): Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of com-

munity sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

1.3 Comments from the review

The titles of these reform measures cover the whole range of criminal justice. Nevertheless it would be necessary to study the individual documents – and any associated action plans – to identify their relevance to prison overcrowding and whether there are any divergences from Council of Europe (CoE) standards.

2. Minimum sentences

2.1 Response from the MoJ

The Criminal Code of the Republic of Moldova includes minimum mandatory prison sentences. In accordance with article 70 (2) of the Criminal Code of the Republic of Moldova (2002), imprisonment shall be set for a term of from 3 months.

The Criminal Code of the Republic of Moldova stipulates in the special part imprisonment for all offences except the articles: 160 (1); 161; 162(1); 177; 178(1); 180^{1}; 180^{2}; 185^{1} (1) and (2); 185^{2} (1), (2), (2^{1-3}), (3)-(6); 185^{3}; 192^{2}; 194; 196(1); 197(1); 199(1); 2141(1); 216(1); 217(1); 217^{5}(1); 221; 241; 245^{5}(1); 245^{6}(1); 245^{7}(1); 245^{8}(1); 245^{9}(1); 245^{11}(1); 245^{12}(1); 249; 250; 256(1); 257(1) and (2); 258; 264^{1}(1), (2) and (3); 310(1); 313; 315; 330^{1}; 347(1); 352(1); 352^{1}; 353; 355; 357; 359; 363; 372(1); 374(1); 376(1); 381(1).

2.2 Relevant International Standards

The review has not found a specific standard on minimum sentences. Article 11 of the 1983 CoE Convention on the Transfer of Sentenced Persons (ETS N° 112) makes the following reference to this issue: In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority . . . shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2.3 Comments from the review

It seems that if a Moldovan court wishes to sentence an offender to imprisonment, the minimum period must be three months. This is against general penal thinking in European countries, where shorter periods of imprisonment - sometimes just a few weeks - might be appropriate if a non-custodial sanction cannot be contemplated.

Penal Reform International (PRI) argues that mandatory minimum sentences reduce the opportunity for judges to give consideration to the mitigating circumstances of a crime. A mandatory minimum can restrict them from awarding a sentence that has the greatest possibility of encouraging rehabilitation and desistance from further criminal behaviour.[67]

3. Changes to criminal legislation

3.1 Response from the MoJ

The Ministry of Justice (MoJ) has provided an exensive list of the legislation that have redefined crimes. In the last five years over 35 new crimes have been created, more than 10 crimes have been removed from the statute book and over a hundred crimes have been reclassified.

3.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Prison Overcrowding (Article 3): Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of com-

[67] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

munity sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

3.3 Comments from the review

No comment at this stage.

4. Impact of changes to legislation on the prison population

4.1 Response from the MoJ

The MoJ does not have information that would make a connection between criminalization, decriminalization or reclassification of the abovementioned facts and the increase or decrease of the prison population. Nevertheless it should be mentioned that evidently, once the criminalization and reclassification of offences with regard to the situation's aggravation are more often in the last 5 years, the prison population will also inevitably increase.

4.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

4.3 Comments from the review

The MoJappears to imply that changes in the legislation to which it has referred are more likely to result in an increase in the prison population. This may be deliberate, but it could also be an unintended consequence of examining individual offences in isolation without due regard to a modern, overall penal philosophy.

5. Legislation about conditional release from prison

5.1 Response from the MoJ

The MoJ has given a detailed answer (available separately) covering the

conditions under which a court can suspend the execution of a prison sentence of up to 5 years (or up to 7 years for negligent crimes).

Article 90 of the Criminal Code (CCM) specifies the conditions to be complied with by the offender. These include not committing another crime, being of good behaviour, undertaking honest work, taking part in treatment for addiction or aggressive behaviour, or compensating the victims. These conditions can be in place from between one and five years. The legislation states that the supervision of these conditions shall be exerted by the "competent body".

Article 92 of the CCM describes similar conditions that can be imposed when a court decides to release a prisoner before their full term has expired.

5.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention.

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.

5.3 Comments from the review

The two Articles of the CCM – 90 and 92 – are important statements about the requirements attached to community sanctions in Moldova. Article 92 covers parole (or conditional release) and therefore refers to the specific issues raised by this question. Not surprisingly, the CCM does not provide full details of how the parole system should operate. This would be included in the Criminal Procedure Code (CPCM). Nevertheless it is disappointing to find that one of the requirements for agreeing to release on parole is that the "convict must not have violations of the regime". This is typical of unreformed penal thinking.

A more modern approach, emphasised by the CoE standards, is that decisions about release on parole should mainly be made in the basis of a professional assessment about the prisoner's ability to behave appropriately in the community (with advice and supervision from a probation service). The key issue is whether supervision and rehabilitation in the community can help to avoid further crime. However such assessments require the es-

tablishment of a probation service with good risk assessment methods, experienced offender supervisors and a range of proven offending behaviour programmes. As experience grows, new services such as these can be added for the benefit of the wider penal system.

6. Access to legal advice by persons in custody

6.1 Response from the MoJ

A thorough response to this question (available separately) has been provided by the MoJ. It refers to Article 169 of the Executive Code of the Republic of Moldova and Article 19 of the CPCM.

6.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

6.3 Comments from the review

The specific reference to legal assistance is in sub-section 1(d) of Article 169 of the Executive Code and states that the convict is guaranteed: "the right to legal assistance on a basis of agreement from behalf of lawyers, as well as other authorized people, to offer such assistance". The section of the CPCM quoted protects the right of any person to have their case "examined and settled in an equitable manner". The legislation does not reveal whether legal advice is available free of charge in certain circumstances.

Although suitable legislation may be in place, much depends on the proceedures for requesting such a service. CPT reports on a number of countries draw attention to difficulties encountered by prisoners in making such applications (such as, for example, the report published in relation to the Republic of Ireland[68]). Informal deterrents can easily be applied by staff who fear that the prisoner may be making an unjustified complaint about their treatment.

[68] See, for example, the CPT Report on the visit to Ireland from September 2014, CPT/Inf (2015) 38, (http://www.cpt.coe.int/documents/irl/2015-38-inf-eng.pdf).

7. New probation legislation

7.1 Response from the MoJ

The Law on Probation was passed by parliament in December 2008. It regulates the organization and work of the probation service, its competence is set in order to prevent crime recidivism. Assistance and guidance is regulated in order to reintegrate the subjects of probation into the community.

Also, the Government's Decision no. 827 of 10 September 2010 regulated the organization and work of probation bodies, thus creating the Central Probation Office with its territorial subdivisions.

7.2 Relevant International Standards

The CoE Probation Rules, extensively referred to throughout this document as by the short form "CoE Probation Rules", contain a wide range of advice about the organisation and activities of a probation service. The Rules cover basic principles, organisation, staffing, accountability, implementation of alternative sanctions, methods of supervision, complaints and inspection, research, evaluation, relations with the media and the public.

7.3 Comments from the review

A well-constituted and properly resourced probation service is an essential feature of a modern penal system. We trust that the MoJ of Justice has made use of advice from the CoE and elsewhere as the probation service tackles the difficult job of giving confidence to the courts and the public that community sanctions are preferable to imprisonment for most mid-range offenders.

8. Legislation to improve cooperation between penitentiary and probation services

8.1 Response from the MoJ

In the period from September 2010 until January 2013 the probation bodies have been under the direct rule of the Penitentiary establishments Department, being in a permanent cooperation.

Also, after the transfer of the probation bodies under the direct rule of the MoJ, the Central Probation Office further cooperates with the Penitentiary

establishments Department. This covers early release of prisoners and the supervision of offenders "exempted from prisons". (References to the relevant legislation have been provided).

8.2 Relevant International Standards

CoE Probation Rules (Rule 12): Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.

CoE Probation Rules (Rule 37): Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.

CoE Probation Rules (Rule 40): Where appropriate, inter-agency agreements shall be arranged with the respective partners setting the conditions of co-operation and assistance both in general and in relation to particular cases.

8.3 Comments from the review

It is clearly vital for a good relationship to exist between the penitentiary and probation services. As each agency takes on a new offender, it is likely that the other agency will have had previous contact that can prove helpful in making assessments and plans.

A few European countries – such as Sweden and England – fully integrate these two services. But the normal model is for them to operate to similar goals in separate agencies within the MoJ with a strong emphasis on good communication in relation to overall policies and the management of individual offenders.

Keeping the two services under the supervision of the MoJ, such as is the case in Moldova, can avoid blocks in communication. However, both services are likely to be very busy and may not have modern electronic databases and communication systems. It is therefore quite possible that information is not exchanged to an ideal level.

9. Use of amnesties and pardons

9.1 Response from the MoJ

The most recent amnesty was approved in July 2008 and as a result 299 people were freed of punishment, and for 162 people the term was reduced, and 147 people were refused.

Article 108 of the CCM explains that pardons can be granted by the President of Moldova when considering individual cases. In 2010, pardons were granted to 15 people. In the following years this gradually reduced so that none were granted in 2014 and one in 2015.

9.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 19): Preference should be given to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

9.3 Comments from the review

Moldova appears to make amongst the lowest use within EaP countries of amnesties and pardons. They certainly do not appear to be an artificial method of regulating the prison population.

10. Community sanctions and measures that are available to courts

10.1 Response from the MoJ

According to article 62 of the CCM the following punishments may be applied to individuals who commit crimes:

a) fines;

b) deprivation of the right to hold certain positions or to practice certain activities;

c) annulment of military rank, special titles, qualification (classification) degrees, and state distinctions;

d) community service;

f) imprisonment, with the possibility of suspension of the punishment's execution applied for the guilty person, according to the legislation in force.

Also, according to article 53 of the CCM, a person who committed an act characterized by evidence of a criminal component may be exempted from criminal liability by a prosecutor during a criminal investigation or by a court during a case hearing in the following cases:

a) juveniles;

b) administrative liability;

c) voluntary abandonment of a crime;

d) active repentance;

e) situation change;

f) probation;

g) criminal liability limitation period.

10.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Prison Overcrowding (Article 15) expands on this with the following list:

• probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,

• high intensity supervision,

• community service (i.e. unpaid work on behalf of the community),

• treatment orders / contract treatment for specific categories of offenders,

• victim-offender mediation / victim compensation,

• restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

10.3 Comments from the review

A wide range of well-conceived and well-supervised alternative sanctions is necessary to help courts avoid inappropriate imposition of custodial sentences. Unfortunately, the range of sanctions provided for by the CCM is quite limited.

In particular, it is disappointing that the CCM does not include a specific sanction of probation. The alternative legal formulation in Moldova, in which a court first has to decide that the prison sentences necessary and then find reasons for not implementing it, is not satisfactory. Presumably many criminal cases come to court for which the possibility of a custodial sentence is totally unrealistic. Nevertheless, such people may require advice and supervision in order to reform their lives and avoid future crime. The imposition of a probation order should be the default option most mid-range crimes.

Further details, presumably in the CPCM, would throw light the way in which Community Service implemented. European countries have made this a very credible alternative to a custodial sentence by investing in high levels of professional supervision to ensure that the work is done to a suitable standard. The tradition in the former Soviet countries is to assign offenders on the sanction to assist the regular workforce of the local Municipal Authority in menial tasks such as sweeping the streets. Such an approach is unlikely to be seen as a realistic alternative to a prison sentence.

Other alternatives to imprisonment can also be invoked by prosecutors during a criminal investigation in certain cases (defined in Article 53 of the CCM).

11. Offender/victim mediation

11.1 Response from the MoJ

The MoJ has provided detailed extracts from Article 109 of the CCM describes the concept of "reconciliation", which presumably can result in the termination of criminal proceedings (this is not available in relation to crimes committed against juveniles).

The legislation states that reconciliation may be obtained "via mediation". Article 35 of the 2015 Law on Mediation (No. 137) describes the scope for mediation in criminal cases.

11.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/reparation/ victim-offender mediation.

11.3 Comments from the review

The Law on Mediation lists those persons who cannot act as mediators, presumably because this may compromise any future litigation. However, since mediation can be a very effective method of resolving criminal cases without imposing a prison sentence it would be useful if the task was assigned to the probation service, which should be able to appoint and train suitable professionals.

12. Electronic monitoring of home detention as a pre-trial measure

12.1 Response from the MoJ

According to the MoJ, legislation in Moldova does not allow pre-trial or pre-sentenced offenders to be placed on electronic monitoring as a home detention.

12.2 Relevant International Standards

CoE Rec. on EM (Preamble): Recognising that electronic monitoring used in the framework of the criminal justice process can help reduce resorting to deprivation of liberty, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime.

12.3 Comments from the review

Currently Moldova has neither the equipment nor the legislation necessary for using electronic monitoring to supervise home detention. Although such technology must be carefully tested and evaluated, the majority of European countries now believe that strength and supervision of home detention by this means provides courts with valuable opportunities to avoid unnecessary incarceration.

13. Electronic monitoring of home detention as a criminal sentence

13.1 Response from the MoJ

By the Law enacted in July 2015, there were modified and supplemented the CCM, Executive Code and the Law on probation, by which it was proposed that the it should be possible for people exempted from criminal punishment to apply as obligation the electronic monitoring system which consists of supervision by GPS systems, fixed-line or mobile phone equipment. The subject of probation, which is electronically monitored, shall be set the following:

a) boundaries of the circulation zone;

b) boundaries of the zone or/and place where he/she is interdicted to circulate;

c) period of time when he/she is interdicted to leave his/her place of dwelling or residence.

The assurance of electronic monitoring of all the categories of monitored people shall be performed by the probation bodies. If the obligation is violated repeatedly, the probation counsellor shall submit to the court a request for the annulment of exemption from punishment and sending the person to the penitentiary.

The expenses for the use and attendance of the electronic equipment shall be borne by the state budget. If the person which is electronically monitored damages the electronic equipment, he/she shall reimburse the cost of this equipment. If there is established an intentional damage, the probation counsellor shall submit to the court a request on the annulment of exemption from punishment and sending the person to the penitentiary, as well as the financial compensation for the damaged goods.

13.2 Relevant International Standards

CoE Rec. on EM (Article 8): 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.

13.3 Comments from the review

The legislation quoted enables the probation service to use electron-

ic equipment into distinct ways. Firstly it can monitor a curfew order in which an offender is required to remain in their home for specified hours of the day. Secondly, "GPS systems" enable the probation service to track the movements outside the home of a person being supervised.

Experience in European countries is that monitoring home curfew orders electronically is more than twice as expensive as traditional probation supervision. In some cases it can be an attractive option for courts but on its own it is unlikely to reform the offender or reduce reoffending. For this reason, the CoE recommends that it is linked with other forms of rehabilitation and support.

Using satellite technology to track the movements of persons convicted of crimes is very attractive to justice professionals. But European experience shows that this is a very expensive sanction and should be reserved for a small number of the most-high risk offenders.

GENERAL COMMENTS ON SECTION 1: STRATEGY AND LEGISLATION

Leadership. A clear policy of rehabilitation, coupled with understandable and convincing methods, needs to be articulated by those who lead the various sectors of the justice system. Although reforms of this nature may achieve a certain amount of tacit support, vocal opposition can be expected from those who favour a punitive approach.

Planning and legislation. Pilot projects and innovations by established service providers can pave the way for significant reforms. Nevertheless the need for strategic plans and reform of legislation must be addressed before critics have a chance to stall the process. The financial costs and benefits must be articulated, but it is equally important to raise the wider issues of community safety, a belief that offenders can reform, humanitarian principles and concern for victims.

Evaluation of effectiveness. Baseline statistics, and data about the effect of changes to legislation are necessary for guiding further work. Often an agency in one part of the justice system may be collecting routine information that will be of great help to evaluators elsewhere.

Organisational flexibility. There is no single method of locating a Probation Service within the justice system. Successful examples can be found

where probation is fully integrated with the penitentiary service (such as in Sweden and England). Other countries find it preferable to achieve similar results by separating the two services and running them as independent agencies within the MoJ. Austria is notable for its probation service to be operated by non-governmental organisations under contract to the MoJ.

Pilot projects. It is often easier to establish more liberal penal policies favouring rehabilitation by introducing them with women or juvenile offenders. New methods which have then been proved to be successful can gradually be introduced to male and older offenders.

Mandatory minimum sentences. A study by PRI suggests that mandatory minimum sentences reduce the opportunity for judges to give greater consideration to the mitigating circumstances of a crime. The requirement to pass a custodial sanction can make it difficult for them to impose a community sanction that might have a greater possibility of encouraging rehabilitation and desistance from further criminal behaviour.[69]

Coordination. If the different agencies work more closely together there will be more confidence about national crime strategy among the media and the general public.

RECOMMENDATIONS ON SECTION 1: STRATEGY AND LEGISLATION

Strategic review. Review and reform the criminal justice process as a whole from arrest to release and invest in crime prevention and reduction Imprisonment comes at the end of a long chain of decisions involving legislators and policymakers, the police, prosecutors and courts. The extent to which prison is used reflects a range of factors including levels of inequality and investment in social policy as well as levels of crime. Reducing prison numbers is not simply a question of establishing measures which can act as direct alternatives to pre-trial detention or sentences, although these are important. It involves the development and use of a wide range of methods to prevent crime through social and situational measures and of ways to resolve harms and disputes without recourse to criminal law, for example by using informal and restorative justice approaches

Minimum prison sentences. Consideration should be given to removing the requirement that prison sentences should be at least three months in length.

[69] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

Range of alternative sanctions. The list of alternative sanctions should be reviewed to ensure that there is sufficient scope for judges to pass sentences that are less punitive and have more rehabilitation content.

Probation service development. The MoJ should seek advice from other countries about the development of a wider range of alternative sanctions and the particular contribution that can be made by electronic monitoring.

Justice sector integration. The criminal justice system consists of a number of independent agencies with their own history and culture. Structures should be established to promote continuous discussion and problem-solving so that the different parts are encouraged to support overall aims and objectives.

Judges and prosecutors. The reform strategy should seek to involve judges and prosecutors at the heart of its development as they hold the key to creating a greater synergy in the system and therefore greater success in reducing crime.

Joint operational meetings. There should be regular inter-disciplinary meetings involving all justice professionals. Amongst other things these could promote debate on rehabilitation and the role of sentencing in creating a rehabilitative focus for all criminal justice practice. One possible model would be the "Criminal Justice Board" that meets quarterly in London under the direct chairmanship of the Minister of Justice.

SECTION 2. THE JUDICIARY

14. Proportionate use of prison sentences

14.1 Response from the MoJ

The table below shows the percentage of all cases heard in the courts that resulted in a prison sentence which shows a marked reduction year on year.

2010	21.2%
2011	20.3%
2012	20.4%
2013	19.4%
2014	19%

14.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 1): Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.

CoE Rec. on Prison Overcrowding (Article 16): Prosecutors and judges should bear in mind resources available, in particular in terms of prison capacity (prosecuting and sentencing guidelines, in particular with regards to reducing the use of imprisonment and expanding the use of community sanctions and measures, and using measures of diversion such as mediation or the compensation of the victim; particular attention should be paid to the role of aggravating and mitigating factors such as recidivism).

14.3 Comments from the review

Countries that have inherited the Soviet penal philosophy tend to use imprisonment more often and for longer periods than Western European countries. Section 10 of this report explores the reasons why collecting and analysing information of this nature is essential for the design and operation of an effective penal system.

There has been a reduction in the number of cases heard in the courts that

have resulted in a prison sentence. This is a positive trend and the factors leading to this should be examined and further pursued.

15. Access to justice/legal aid

15.1 Response from the MoJ

By the Law no. 112 of 18 May, 2012, which modifies and adds the Law no. 198 of 26 July, 2007 on legal assistance guaranteed by the state, there are created new categories (people which are suspected of committing contravention actions) which get legal assistance guaranteed by the state:

a) People which are suspected of committing a contravention crime for which it is stipulated a sanction of contravention arrest;

b) People, with regard to which there is a risk of applying the sanction of dismissal within the framework of contravention procedures;

c) People, with regard to which it is requested the substitution of the sanction of fine or community service with imprisonment or contravention arrest.

At the same time, since 2012 the Supreme Court of Justice has launched a new web-page, which is available for the wide audience: justice seekers, lawyers and other specialists from the judicial field.

It makes available the jurisprudence of the Supreme Court of Justice, the jurisprudence of the ECtHR, recommendations, advisory proceedings and explicative rulings of the Court Plenum, which standardize the legal practice. Methodical materials are also available.

15.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

15.3 Comments from the review

The right for defendants to have access to free legal representation is frequently implied in CoE standards. Further study would be necessary in order to decide whether the amendments described by the MoJ produce a legal representation system that ensures courts and defendants are properly advised before criminal sanctions are imposed.

It would be interesting to know what proportion of defendants in Moldova were sentenced to imprisonment without having any kind of legal representation.

16. Pre-trial detention

16.1 Response from the MoJ

According to the information of the Penitentiary establishments Department (DPI), the percentage of people which are under preventive arrest is indicated in the chart below:

Period	Total number under preventive arrest	Percentage under preventive arrest
2010	1,339 people	21,1%
2011	1,387 people	21,4%
2012	1,571 people	23,8%
2013	1,490 people	21,7%
2014	1,553 people	21,2%

16.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 11): The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation N° R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered.

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Community Sanctions (Rule1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples: - alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority.

The European Court of Human Rights 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 European Convention on Human Rights (hereafter ECHR). The fact that only cases against Armenia are cited here does not imply that it is a typical Armenian problem (Case of *Poghosyan v. Armenia*, 20 November 2011, appl. no. 44068/07; case of *Sefilyan v. Armenia*, 2 October 2012, appl. no. 22491/08; case of *Piruzyan v. Armenia*, 26 June 2012, appl. no. 33376/07). In the cases of *Muradkhanyan v. Armenia* (5 June 2012, appl. no.12895/06) and *Asatryan v. Armenia* (9 February 2010, appl. no. 24173/06), the extension of the pre-trial detention had been defined unlawful[70].

16.3 Comments from the review

It is likely that the figures provided by the DPI represent a "snapshot" of the proportion of persons in custody on any day that year who were under preventative arrest. Presumably the Prosecution Service would have figures on the percentage of accused persons who are held in pre-trial detention (the DPI is unlikely to be able to answer this question as they will not know the total number of persons prosecuted in any year).

In European countries approximately 10% of accused persons are held in detention.

Prolonged pre-trial detention is unacceptable and creates major problems for the penitentiary service. The situation in another EaP country was reported in a document published by the CoE in 2013 (reducing the use of custodial measures and sentences in Armenia by Iuliana Carbunaru and Gerard de Jonge) in which the following recommendations were noted: *"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".*[71] This key recommendation was followed by a number of recommendations proposing training initiatives for judges and prosecutors in methods more widely used in CoE member states.

A key potential role for a new Probation Service, that is more or less universal throughout Europe, will be to make assessments on offenders that can

[70] European Court of Human Rights case law reports contravention of article 5 of the ECHR

[71] Reducing the use of custodial measures and sentences in the Armenia – Assessment Report – Iuliana Carbunaru and Gerard de Jong 2012

then be used by courts to help them make appropriate decisions. A key factor in the assessment process is the assessment of risk both in relation to further offending and the likelihood of breaching conditions of release pending trial.

17. Prison sentence lengths

17.1 Response from the MoJ

According to information from the DPI:

Terms of punishment		% of punishments
Year 2010	Less than 1 year	79 people - 1,2%
	1 - 2 years	420 people - 6,6%
	2-5 years	968 people - 15,3%
	More than 5 years	1,505 people - 23,7%
	More than 10 years	2,013 people - 31,8%
Year 2014	Less than 1 year	63 people - 0,8%
	1-2 years	533 people - 7,2%
	2-5 years	987 people - 13,4%
	More than 5 years	2,040 people - 27,8%
	More than 10 years	2,137 people - 29,2%

17.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 14): Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

17.3 Comments from the review

The figures provided seem to imply that between 2010 and 2014 there was a 15% increase in the number of persons sentenced to immediate imprisonment (however, such limited statistics would not enable conclusions to be drawn about trends in the use of custody).

It is not clear why the percentage figures given in both years add up to less than 80%.

The profile of sentence lengths appears to have been roughly stable between the two years selected for comparison. However, the larger proportion of longer sentences in Moldova appears to be significant. The figures imply that in 2014 less than 10% of prison sentences in Moldova were for two years or less. Data provided for the review shows that the equivalent figure in Armenia for 2014 was 38%.

18. Types of serious crime

18.1 Response from the MoJ

The MoJ has provided an extensive list of crimes that can attract sentences of over five years and of over 10 years.

18.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

18.3 Comments from the review

The main factor that currently impacts on the functioning of the courts is the overload of cases assigned to the judges. One of the explanations of case overload of judges could be legislation brought in during 2015 to clarify the operation of mediation. However, since this law was so recently introduced its impact cannot yet be measured accurately.

In popular imagination, similar crimes in European countries attract shorter custodial sentences than in Moldova. Further evidence for this is that the rate of imprisonment in Moldova about twice the rate for European countries although, as mentioned in the information provided in the Sub-section 22, the crime rate in Moldova appears to be very much lower (one fifth the rate of typical European countries).

19. Functioning of the courts

19.1 Response from the MoJ

The case overload of judges was given as the main reason affecting the functioning of the courts.

One of the explanations of case overload of judges can be the mediation institution's inefficiency, that is, the alternative solution of court litigations. Although by the Law no. 137 of 14 July, 2015 on mediation, it was created a new concept of work of the mediation institution, however due to the fact that the Law is in force for 3 months, its impact upon the judicial system cannot be appreciated.

At the same time, it should be mentioned that in the first level courts judges do not have field specialization (except criminal investigation judges), thus the case overload of judges in the civil field also brings on the fast solution of criminal cases.

19.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (A. Rationales for Sentencing): 9. Delays in criminal justice should be avoided: when undue delays have occurred which were not the responsibility of the defendant or attributable to the nature of the case, they should be taken into account before a sentence is imposed.

19.3 Comments from the review

EaP countries have inherited a justice system in which the office of the prosecutor plays a significant part in determining the outcome of criminal cases. Some reform projects, such as those funded by the European Union and the United States government aim to improve the recruitment, training and method of appointment and removal of judges, thus improving their public status.

20. Extent of recidivism

20.1 Response from the MoJ

According to the information of the DPI**:**

Period	Number convicted twice or more	Total number of people convicted to imprisonment	Previously convicted people %
2010	2,912	4,985	58,4%
2011	2,951	5,093	57,9%
2012	2,984	5,012	59,5%
2013	3,099	5,363	57,7%
2014	3,361	5,760	58,3%

20.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (D. Previous Convictions): 1. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant.

2. Although it may be justifiable to take account of the offender's previous criminal record within the declared

rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence(s).

3. The effect of previous convictions should depend on the particular characteristics of the offender's prior criminal

record. Thus, any effect of previous criminality should be reduced or nullified where:

a. there has been a significant period free of criminality prior to the present offence; or

b. the present offence is minor, or the previous offences were minor; or

c. the offender is still young.

20.3 Comments from the review

There is no single method agreed by European countries to measure recidivism. However, it is normally calculated on the basis of the number of offenders given any particular sanction who are convicted of a further crime that was committed within two years of the sanction being imposed (or their release from prison).

Nevertheless the figures provided by the MoJ are very interesting. They indicate that approximately 60% of offenders received into prison had at least one previous conviction. This represents a fairly high rate of recidivism and should be enough to focus the attention of the leaders of the justice sector on how recidivism could be reduced.

21. Use of electronically monitored home detention while waiting for trial

21.1 Response from the MoJ

This sanction is not available in Moldova.

21.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention. . . . . In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

21.3 Comments from the review

Reliable equipment is readily available on the international market and staff should be able to operate the system effectively. However, when all costs are taken into account it is an expensive service (about twice as much as basic supervision by a probation officer). A major consideration is therefore whether courts will actually use EM in cases in which otherwise the defendant would have been held in custody.

GENERAL OBSERVATIONS ON SECTION 2: THE JUDICIARY

Sentence lengths. Countries that inherited the Soviet penal philosophy

still tend to impose longer custodial sentences than in Western Europe. We are not aware of independent research that justifies longer sentences. It would therefore seem appropriate for Moldova to research whether sustaining a policy of longer sentences does reduce crime and protect the public. Of course offenders would prefer shorter sentences. But if unnecessarily long periods of incarceration are reducing their chances of successful reintegration, it is the wider community and further victims who will suffer.

Pre-trial detention. The frequent use of custody at the pre-trial and pre-sentence phases has also been a feature of Eastern European practice. In some Western European countries, as few as 11% of offenders[72] charged with deliberate crimes are held in pre-trial detention whereas the figure in Armenia is over 30%. Although prosecutors will claim that releasing the person will result in the prosecution being compromised it would be instructive to submit such claims to rigorous testing. In European justice systems, unnecessary use of pre-trial detention leads to worse long-term outcomes.

Frequent use of custodial sanctions. Although the use of imprisonment has reduced, it is still high compared to European averages of about 10% of all sentences.

Access to lawyers. Although legislation about access to lawyers for pre-trial and pre-sentenced persons may have improved, it would be helpful to test the popular assumption that better legal representation leads to more appropriate sentencing.

Risk assessment. Modern, scientific methods for assessing risk can help courts to make better judgements about whether detention is appropriate. Probation Services in Europe are generally able to undertake these risk assessments and with other information can provide valuable reports for judges. In this way the process of decision-making becomes more professional and indeed more accurate.

RECOMMENDATIONS ON SECTION 2: THE JUDICIARY

Strategy. Divert minor cases out of the criminal justice system and continue to reduce the number of people in custody both remand and sentenced prisoners by way of alternatives to custody

[72] Figures obtained from "Pre-trial detention and its alternatives in Armenia" Penal Reform International, January 2012

Pre-trial detention. A strategy should be developed, based on CoE rules, to tackle the high levels of pre-trial detention. Such a strategy will need to include Electronic Monitoring of accused persons pending the trial as well as the introduction of assessment reports that identify the risk of breaching release conditions.

Training for prosecutors and judges in sentencing (including risk assessment and rehabilitation). Training for judges, together with staff of the other criminal justice agencies, should aim to achieve a greater understanding of these basic offender management methods so that more effective choice of sentences can be achieved. Such training should be undertaken in multi-disciplinary groups involving professionals from other parts of the Criminal Justice System in order to develop a greater understanding of corporate responsibility in decision making.

Research. Improved data on recidivism rates should be produced in order that the judiciary has a greater understanding of the effectiveness of its sentencing options.

Legal advice. The take-up and cost of legal aid, and the number of offenders sentenced to prison without legal representation, should be undertaken in order to review the effectiveness of this service.

SECTION 3. POLICE AND PROSECUTION

22. Total number of crimes each year

22.1 Response from the MoJ

According to the information of the MoJ of Internal Affairs:

	Total number of registered crimes	Sent to the prosecutor
2010	29,891	21,186
2011	31,282	20,543
2012	32,996	21,386
2013	35,226	21,689
2014	38,755	23,616

22.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

22.3 Comments from the review

There has been a significant rise in the number of registered crimes in the last five years.

Official crime rates are normally presented as the number of crimes in a year for every 100,000 population. On the basis of the national population of approximately 3.5 million, this gives the official crime rate in Moldova in 2014 as 1,107 per 100,000 population.

According to the European Source Book on Crime and Criminal Justice Statistics, 5th edition,[73] equivalent figures for other countries were: England and Wales 6,500; Denmark 7,800; Slovenia 4,500 and Lithuania 2,400.

This would suggest that the crime rate in Moldova in 2014 was about one fifth of the crime rate in the larger countries of Western Europe. However, as always, comparisons such as these raise the problem of whether or not a particular type of behaviour is categorised as a crime in the countries being compared.

23. Number of court cases

23.1 Response from the MoJ

According to the information of the Ministry of Internal Affairs:

	Sent to court
2010	10,291
2011	9,796
2012	10,080
2013	9,566
2014	10,741

[73] European Source Book of Crime and Criminal Justice Statistics, 2014, 5th edition

23.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

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4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

23.3 Comments from the review

It seems that in the five-year period under review, crime rates have remained fairly stable and about half of the cases referred to prosecutors have been submitted to courts. This is similar to the proportion submitted to courts in European countries. These figures also confirm that overall crime rates appear to be quite low.

24. Supervision of offenders by police and prosecutors

24.1 Response from the MoJ

In the past five years, there have been no changes to the way police and

prosecutors operate in relation to supervising released prisoners, supervising offenders on alternative sanctions, or working with other parts of the criminal justice system.

24.2 Relevant International Standards

CoE Rec. on EM (Preamble): Ethical and professional standards need to be developed regarding the effective use of electronic monitoring in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and agencies providing equipment or supervising suspects and offenders.

CoE Rec. on EM (Definitions): In some jurisdictions, electronic monitoring is directly managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a serviceproviding contract with a State agency.

24.3 Comments from the review

There has been a long tradition in EaP countries and elsewhere in the former Soviet Union for staff of the Ministry of Internal Affairs to exercise limited supervision of convicted offenders. The preference in most European countries is that staff employed by police authorities are not involved in supervising offenders because they lack the appropriate training and management.

However, police are key stakeholders within the Criminal Justice System and their knowledge of the criminal behaviour, particularly of the more serious offenders, means they will have a valuable contribution to make to discussions about penal reform. In some countries police staff assist probation officers to supervise some of the most dangerous and high risk offenders who have been released from prison.

25. Arrest targets

25.1 Response from the MoJ

Arrest targets have not been specified in Moldova in the last five years.

GENERAL COMMENTS ON SECTION 3: POLICE AND PROSECUTION

The police and prosecutors are key stakeholders within the Criminal Justice System. However, in terms of reform strategies they are sometimes left outside of the plan. In the case of the police this is possibly because they are established in the brief of the Ministry of Internal Affairs rather than the MoJ. In the case of the prosecutors' office, reasons may include the status the office holds within the system.

RECOMMENDATIONS ON SECTION 3: POLICE AND PROSECUTION

Organisational cooperation. The police are encouraged to maintain a close relationship with the new probation service particularly after the introduction of electronic monitoring.

Joint training. Training in these issues should be provided for police and prosecutors in order that they develop their understanding and share their thinking on risk and needs assessment, and the concept of rehabilitation in criminal justice.

Joint operations. The police should agree cooperation protocols, especially in relation to electronic monitoring and the supervision of dangerous offenders released from prison.

SECTION 4. PENITENTIARY SERVICE

26. Changes in prison population in the last five years

26.1 Response from the MoJ

On 1 October 2015 the total number of prisoners was 7,813. Among these were 6,179 convicted and 1,634 subject to preventive measure of arrest.

26.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

26.3 Comments from the review

Approximately 20% of those held in penitentiaries are awaiting trial. This is a typical figure for European countries.

27. Changed rate of imprisonment

27.1 Response from the MoJ

Period	Average number of prisoners per 100,000 population
2010	177 people
2011	182 people
2012	184 people

27.2 Comments from the review

The typical imprisonment rate in Western European countries according to statistics from the Council for Penological Co-operation of the CoE (SPACE I[74])

[74] http://wp.unil.ch/space/space-i/prison-stock-on-1st-january-2013

is around 110 per hundred thousand population. Thus the imprisonment rate in Moldova is significantly higher. This might lead the government and leaders of the justice sector to question whether their penal policies are appropriate.

28. Pre-trial detention

28.1 Response from the MoJ

Currently 850 people are kept in isolation wards of preventive arrest.

28.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

Relevant standards are defined in the Coe Committee of Ministers 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.

28.3 Comments from the review

This figure does not seem compatible with the figure provided by the MoJ for Sub-section 26.

Using figures from the MoJ, the independent organisation 'International Centre for Prison Studies' states that detainees awaiting trial or sentence currently represent approximately 21.5% of the penitentiary population in Moldova [75]. On the basis of those figures, the pre-trial population is similar to the European average of approximately 21%.

[75] http://www.prisonstudies.org

29. Women prisoners

29.1 Response from the MoJ

A total of 487 women were held in Moldovan penitentiaries. 131 of them were in pre-trial detention.

29.2 Relevant International Standards

EPR (Rule 34):

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

The CoE does not have a collected set of recommendations about female offenders. Relevant advice is available in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16).

29.3 Comments from the review

This represents 8.5% of the total prison population and is higher than European average of approximately 5%.

30. Life sentences

30.1 Response from the MoJ

106 persons sentenced to life imprisonment are currently held in Moldovan penitentiaries.

30.2 Relevant International Standards

CoE recommendations on the subject are contained in the following document Rec (2003) 23 on the Management of Life-sentence and Other Long-term Prisoners

30.3 Comments from the review

This number of life sentenced prisoners is low compared to the major European countries. For example, England and Wales has approximately 80 times this number of prisoners serving life sentences from a population only 20 times larger.

31. Foreign nationals in prison

31.1 Response from the MoJ

At the beginning of October 2015 there were 86 foreign citizens in Moldovan penitentiaries.

31.2 Relevant International Standards

EPR (Rule 37):

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall

co-operate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

CoE recommendations are included in Rec(2012)12 on Foreign Prisoners.

31.3 Comments from the review

On the basis of the figures supplied, foreign citizens currently represent approximately 1.5% of the total prison population. It is possible that, because they are in such a minority, these foreign citizens do not get the special attention they may need in terms of interpreting facilities and contact with family members in their home country.

This number of foreign nationals appears to be decreasing and is far less than the proportions experienced in Western European countries. For example, in 2015 the figures were: France 21.7%; Italy 33.0%; Germany 27.1%; and England 12.8%[76].

32. Juveniles in prison

32.1 Response from the MoJ

One female offender under the age of 18 is held in a Moldovan prison, while 24 male offenders under the age of 18 are held in penitentiary establishments and a further 46 are in pre-trial detention.

32.2 Relevant International Standards

EPR (Rule 35) sets standards in relation to juveniles in prison as follows:

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

[76] http://www.prisonstudies.org/world-prison-brief.

Further relevant standards are contained in CoE CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures.

32.3 Comments from the review

The response does not give the minimum age at which persons in Moldova can be held responsible for crimes.

33. Young offenders in Moldovan prisons

33.1 Response from the MoJ

According to the information of the DPI, on 1 October 2015, 23 young people between the ages of 18 and 21 were kept in penitentiaries.

33.2 Comments from the review

In European countries this is a key age group for offenders as it marks the years when relatively impulsive juvenile offenders normally give up crime. Unless effective rehabilitation programmes are available, offenders in the 18 to 21 age group are likely to continue committing crime for at least the following five years.

34. Capacity of prisons

34.1 Response from the MoJ

According to the information of the DPI, until 1 October, 2015 there are kept in penitentiaries the following number of prisoners:

	P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P11	P12	P13	P15	P16	P17	P18
Capacity	400	220	520	850	350	800	310	315	700	60	520	255	1000	600	540	510	704
Real number of prisoners	408	171	409	756	289	847	335	118	682	25	515	133	1207	650	272	363	633
Including according to categories																	
Preventive arrest for males	-	-	-	-	103	-	-	-	-	-	320	-	884	-	-	69	-
Preventive arrest for females	-	-	-	-	6	-	-	-	-	-	42	-	77	-	22	4	-
Preventive arrest for male juveniles	-	-	-	-	2	-	-	-	-	-	11	-	28	-	1	5	-
Preventive arrest for female juveniles	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Male convicts	408	171	409	756	178	847	-	118	682	2	142	133	218	650	249	285	633
Female convicts	-	-	-	-	-	-	334	-	-	-	-	-	-	-	-	-	-
Male juvenile convicts	-	-	-	-	-	-	-	-	-	23*	-	-	-	-	-	-	-
Female juvenile convicts	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-

Note: According to the bylaw of the Penitentiary no. 10 from Goian and court decisions, it is a penitentiary for juveniles. Nowadays 23 prisoners are kept here, 15 of which are under the age of 18, and 8 prisoners aged 18 and older.

The MoJ has given the official capacity of 18 separate penitentiary establishments and the current number for prisoners they are holding. Five of are holding more than the official capacity, with the most heavily overcrowded having an occupancy rate of 120%.

The overall occupancy rate, presumably at 1 October 2015 was 90.3%

The numbers have been further broken down both for preventative arrest and custodial sentence for adult and juvenile male and female prisoners.

34.2 Relevant International Standards

EPR (Rule 18.5): Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

In many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m^2 and 9.5m^2. The CPT has consistently stated that single-occupancy cells of less than 6m^2 (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.[77]

34.3 Comments from the review

The figures from the MoJ indicate that most prisons have sufficient space (according to their interpretation of international standards). However, many factors need to be considered before commenting on these figures. A prison may seem to have a reasonable amount of spare space, but it may have disadvantages from an operational point of view (difficult to recruit staff, unsuitable design, expensive to heat, or not near main population centres).

35. Standards for penitentiary services

35.1 Response from the MoJ

The MoJ has provided a link the extract from Articles 224 and 225 of the Criminal Execution Code. These are available separately.

35.2 Relevant International Standards

Space does not allow the review to describe all the international standards relating to the issues in this question. A sample is as follows:

Healthcare: The CPT has stated: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and de-

[77] Paragraph 59, CPT/Inf (2011) 28

grading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[78]

A health check for all prisoners is vital procedure not only to be able to deal with an individual prisoner appropriately but also to safe guard other prisoners from contagious diseases etc. As the CPT says: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment." Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments)."

Hygiene: According to EPR (Rule 19.1):

• All parts of every prison shall be properly maintained and kept clean at all times.

• When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

• Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

• Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least

• twice a week (or more frequently if necessary) in the interest of general hygiene.

• Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

• The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

• Special provision shall be made for the sanitary needs of women.

[78] Paragraph 30, CPT/Inf (93) 12

Some of these standards are raised as follows by the CPT[79]:

• A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

• There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/ nurse, etc.).

• A medical file should be compiled for each patient, containing diagnostic information as well as an on-going record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

EPR (Rule 24) has this to say about *visits*:

• 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

• 24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

• 24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

• 24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

35.3 Comments from the review

A detailed assessment of compliance of these Moldovan penitentiary stan-

[79] Paragraphs 38-39, CPT/Inf (93) 12

dards with international standards is beyond the scope of the review. Neither is it the intention of the review to assess the extent to which these standards are observed in practice. Nevertheless, the European Prison Rules have been very effective in giving guidance to prison administrations.

GENERAL COMMENTS ON SECTION 4: PENITENTIARY SERVICE

Importance of healthcare. The CPT advises as follows: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[80]

Contact with the outside world. On this subject the CPT advice is as follows: "It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations."[81]

RECOMMENDATIONS ON SECTION 4: PENITENTIARY SERVICE

Offender Management. More modern methods of offender management should be developed by senior management and employed within present structures. These include the introduction of data collection such as establishing 'out of cell' data and data on the expansion of visits. In this way the setting of targets for prison management and by prison management to make improvements, can be achieved. In particular, it will encourage innovation in which prisons themselves explore some of the answers to the on-going problems.

[80] Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002, revised 2015

[81] *Ibid* Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002, revised 2015
Ibid Penal Reform International website www.penalreform.int - 10 point plan

Prison Healthcare. Healthcare is a major problem for many countries enduring issues of prison overcrowding and where prison accommodation is inadequate. More information would be required on this subject to make useful comments. However, it is a subject relevant to the issues of overcrowding and indeed rehabilitation. Offenders, whose health significantly deteriorates whilst in prison, will have major rehabilitation problems upon release.

Accommodation standards. The method for calculating the capacity of a prison should be based on CPT standards. These cover more factors than simply the space available in dormitories.

Management Information Systems. Providing managers with the ability to collect and interpret operational data from their area of control will improve their ability to direct resources to achieve prison-wide objectives. Simple examples would be: time out of cell, incidents of disobedience, discovery of contraband, etc. In this way targets for improvement can be set and progress can be measured.

Probation services within the penitentiary establishments. Resettlement prospects for prisoners would be improved if probation staff visited prisons to contribute to pre-release courses and the development of individual release plans.

SECTION 5. PRISON OVERCROWDING

36. Overcrowding

36.1 Response from the MoJ

In 2010 there were held 6,324 prisoners, in 2014 were held 7,317, and on 1 October 2015 there were held – 7,813 prisoners, with a ceiling of 8,654 places with 4 m^2.

In the last five years the number of detainees held in prison has increased. Given that the number of prison population is increasing, while the number of accommodation places remains the same, there are situations when there are no available places to organize the placement of prisoners separately by category, at the same time complying with the national standard of 4 m^2.

In the current situation, we consider it necessary to elaborate proposals on revising the placement standards applied in prisons depending on the detention regime.

36.2 Relevant International Standards

CPT Standards comment on prison overcrowding as follows: "The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe[82].

[82] Paragraph 28, CPT/Inf (2001) 16

Living space per prisoner in prison establishments: CPT standards[83]

Introduction

1. Since the 1990s the CPT has developed and applied minimum standards regarding the living space that a prisoner should be afforded in a cell. While these standards have been frequently used in a large number of CPT visit reports, they have so far not been brought together in a single document.

2. At the same time, there is a growing interest in these standards, at the national level (among member states' authorities responsible for the prison estate, national detention monitoring bodies such as national preventive mechanisms established under OPCAT , domestic courts, NGOs, etc.) and at the international level, not least because of the problem of prison overcrowding and its consequences. Currently, the Council of Europe's Council for Penological Co-operation (PC-CP) is preparing a White Paper on prison overcrowding. For its part, the European Court of Human Rights is frequently being called upon to rule on complaints alleging a violation of Article 3 of the European Convention on Human Rights (ECHR) on account of insufficient living space available to a prisoner.

3. Against this background, the CPT decided in November 2015 to provide a clear statement of its position and standards regarding minimum living space per prisoner; such is the aim of this document.

4. The cells referred to in this document are ordinary cells designed for prisoners' accommodation, as well as special cells, such as disciplinary, security, isolation or segregation cells. However, waiting rooms or similar spaces used for very short periods of time are not covered here.

5. During its monitoring activities, the CPT has frequently encountered situations of prison overcrowding. The consequences of overcrowding have been highlighted repeatedly by the CPT in its visit reports: cramped and unhygienic accommodation; constant lack of privacy; reduced out of cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The CPT considers that the question of minimum living space per prisoner is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.

[83] CPT/Inf (2015) 44 | Section: 1/2 | Date: 15/12/2015

6. Minimum standards for personal living space are not as straightforward a matter as they might appear at first sight. To begin with, the "minimum living space" standards used by the CPT differ according to the type of the establishment. A police cell for short-term detention of several hours up to a few days does certainly not have to meet the same size standards as a patients' room in a psychiatric institution; and a prison cell, whether for remand or sentenced prisoners, is again an entirely different matter.

7. Secondly, a differentiation should be made according to the intended occupancy level of the accommodation in question (i.e. whether it is a single cell or a cell designed for multiple occupancy). The term "multiple occupancy" also needs to be defined. A double cell is arguably different from a cell designed for holding for instance six or more prisoners. As regards large-scale dormitories, accommodating dozens and sometimes even up to one hundred prisoners, the CPT has fundamental objections which are not only linked to the question of living space per prisoner, but to the concept as such.

In its 11th General Report the CPT criticised the very principle of accommodation in large-capacity dormitories; frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units.

8. Thirdly, the CPT has also taken into consideration the regime offered to prisoners when assessing cell sizes in light of its standards (see ArticleArticle 21 below).

The CPT's basic minimum standard for personal living space

9. The CPT developed in the 1990s a basic "rule of thumb" standard for the minimum amount of living space that a prisoner should be afforded in a cell.

- 6m^2 of living space for a single-occupancy cell
- 4m^2 of living space per prisoner in a multiple-occupancy cell

10. As the CPT has made clear in recent years, the minimum standard of liv-

ing space should exclude the sanitary facilities within a cell. Consequently, a single-occupancy cell should measure 6m² plus the space required for a sanitary annexe (usually 1 to 2m²). Equally, the space taken up by the sanitary annexe should be excluded from the calculation of 4m² per person in multiple-occupancy cells. Further, in any cell accommodating more than one prisoner, there should be a fully-partitioned sanitary annexe.

11. Additionally, the CPT considers that any cell used for prisoner accommodation should measure at least 2m between the walls of the cell and 2.5m between the floor and the ceiling.

Promoting higher standards

12. Rule 18.5 of the European Prison Rules (2006) states that "Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation." Indeed, in many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m² and 9.5m². The CPT has consistently stated that single-occupancy cells of less than 6m² (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.

13. When devising the standard of 4m² of living space, the CPT had in mind on the one hand the trend observed in a number of western European countries of doubling up 8 to 9m² cells that were originally designed for single occupancy, and on the other hand the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

14. Although the CPT has never explicitly defined "multiple-occupancy", an analysis of visit reports indicates that cells for two to four prisoners implicitly fall under this notion. Consequently, the CPT has regularly implied that cells measuring 8m² were acceptable for two prisoners, cells of 12m² for three, and cells measuring 16m² were adequate for four prisoners. However, in a non-negligible number of cases, the CPT has also stated that cells of 8m² (or 8 to 9m²) should "preferably" (Slovenia, 2006; Hungary, 2013) or "idéalement" (Belgium, 2009) accommodate only one prisoner; or should be "used to accommodate no more than one prisoner save in exceptional cases when it would be inadvisable for a prisoner to be left alone" (UK, 2003). In the report on its 2011 visit to the Netherlands, the Committee stated that accommodation in double cells measuring between 8 and 10m² was "not without discomfort" to the prisoners, and in the report on

the 2011 visit to Ireland, it recommended that "efforts be made to avoid as far as possible placing two prisoners in 8m² cells".

15. Clearly, the aforementioned examples suggest that the 4m² per prisoner standard may still lead to cramped conditions when it comes to cells for a low number of prisoners. Indeed, given that 6m² is the minimum amount of living space to be afforded to a prisoner accommodated in a single-occupancy cell, it is not self-evident that a cell of 8m² will provide satisfactory living space for two prisoners. In the CPT's view, it is appropriate at least to strive for more living space than this. The 4m² standard is, after all, a minimum standard.

16. For these reasons, the CPT has decided to promote a desirable standard regarding multiple-occupancy cells of up to four prisoners by adding 4m² per additional prisoner to the minimum living space of 6m² of living space for a single-occupancy cell:

• 2 prisoners: at least 10m² (6m² + 4m²) of living space + sanitary annexe

• 3 prisoners: at least 14m² (6m² + 8m²) of living space + sanitary annexe

• 4 prisoners: at least 18 m² (6m² + 12m²) of living space + sanitary annexe

17. In other words, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, and a cell of 12m² no more than two prisoners.

18. The CPT encourages all Council of Europe member states to apply these higher standards, in particular when constructing new prisons.

36.3 Comments from the review

The CPT standards, described in detail above, are very challenging for countries that have limited funds for their criminal justice services. The standard that is most often quoted is living space per prisoner in the cell. However, the area provided in Moldovan legislation of 4 m² only meets 1990 CPT standard for single-occupancy cells, which are rarely found in its prisons. And more recently, the standard has been increased to 6 m². The CPT standard for multi-occupied cells is even higher. This would imply that Moldovan prisons are more overcrowded by international standards than would be revealed by its own legislation.

Cell space must not be looked at in isolation. The other standards for the custodial environment are equally important, but not quite so easy to measure.

37. Factors leading to overcrowding

37.1 Response from the MoJ

The factors leading to overcrowding that were identified by the MoJ are as follows:

Improper use of alternative sanctions. Referring to the persons who have committed minor and less serious felony offences, a non-custodial measure could be applied instead of a preventive detention.

Inadequate infrastructure and capacity of prisons. The prisons' infrastructure is outdated and the financial resources are insufficient. The prison system, according to the balance sheet, comprises 550 buildings and security edifices, of which 21 buildings and premises are in a damaged condition. About 55% of real estate can be characterized by a high degree of amortization, and thus imply the need for financial resources for maintenance.

The premises for food supply within the prisons lack the necessary equipment and inventory. In the majority of prisons, the food is prepared using solid fuels boilers (wood, charcoal).

Also, the precarious state of the security buildings, for all the subdivisions of the DPI, implies a high risk of detainees' escape from prisons.

37.2 Relevant International Standards

The CPT makes the following points about overcrowding: "To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level".[84]

37.3 Comments from the review

Each of the factors identified in the answer from the MoJ are likely to play a significant part in the current situation. They merit further detailed ex-

[84] Paragraph 14, CPT/Inf (97) 10

amination. However, the other points in the UNODC list should not be discounted, particularly: poverty and inequality; delays in the criminal justice process; insufficient use of bail; inadequate use of alternative sanctions; and criminal activity associated with drugs. Each is dependent on a network of decisions in separate areas of the justice system.

38. Effects of overcrowding

38.1 Response from the MoJ

a) Health and hygiene in prisons - Due to overcrowding, it is difficult to ventilate the buildings; also the natural lighting is limited. The lack of sun light and ventilation can be dangerous from eDPIemiological aspect (increase the incidence of contagious diseases, of dermatologic and venereal diseases, acute viral respiratory infections, tuberculosis etc.).

b) Safety and security in prisons - regarding the ensuring of safety and of security in prisons, according to article 206 from the Execution Code of Republic of Moldova, for the entire prison system, there was registered a decrease of approximately of 1 % of convicts who were provided with personal security. Thus, the number of this category decreased from 338 prisoners, registered on 29 December 2014, to 315 prisoners registered on 28 September 2015. In this section, it is also important to mention that increase of number of prisoners who are provided with personal security according to art. 206 from Execution Code of Republic of Moldova, is largely due to increase of total number of prisoners held in prisons.

c) *The impact on the prison personnel* – The disparity between the expectations and reality (some categories of specialists carry out an extra volume of work, -ex. The quality and efficiency of services provided by a doctor, educator, psychologist, supervisor or sentinel, which are directly proportional to the number of beneficiaries consulted per day); over demand (in some cases, including hours over working program); overtime; exhaustion; chronic fatigue; superficial fulfillment of obligations; professional distortion; abandonment of employment (particularly worrying is the resignation of young employees, with a working period of up to 3 years, that represents 35% of total resignations).

d) *The impact on felons* - Is irrelevant.

e) *Less positive regime activities* – Is irrelevant.

f) *Less activities for re-socialising of prisoners* – Indeed this is consequence of overcrowding, and as a result not all the prisoners can be assigned to a paid jobs and professional trainings.

38.2 Relevant International Standards

The CPT has made the following comments in relation to overcrowding: "Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint."[85]

38.3 Comments from the review

Although we would not agree that the "impact on felons" and "fewer positive regime activities" is irrelevant, it is pleasing to note the concern that working in overcrowded conditions places on staff and managers. The high resignation rate is costly to the system and means that staff who have gained valuable experience are no longer contributing.

39. Distribution of overcrowding

39.1 Response from the MoJ

Currently the prisons facing overcrowding are No. 1 (Taraclia), No. 6 (Soroca), No 7 (Rusca), No. 13 (Chisinau), and No. 15 (Cricova).

GENERAL OBSERVATIONS ON SECTION 5: PRISON OVERCROWDING

Overcrowding means much more than a prison estate with inadequate cell space. A prison, for example may have adequate space but if the regime lacks activities for rehabilitation, or the area available for visits from relatives is cramped and inadequate, it could be concluded that overcrowding exists. Such an approach to offender management is often referred to as 'warehousing' and does little for the aims rehabilitation.

[85] Paragraph 46, CPT/Inf (92)3

RECOMMENDATIONS ON SECTION 5: PRISON OVERCROWDING

Re-calculate the capacity of the prisons. Statements about the capacity of the prison estate should be revised according to a calculation based on current CPT recommendations of at least 6m^2 per prisoner in single occupancy cell + sanitary facility and 4m^2 per prisoner in multi-occupancy cell + fully-portioned sanitary facility.

Collect regime data. More detailed data should be collected about the impact of overcrowding on things such as health, regime activities and preparing prisoners for a successful release (re-socialisation).

More time out of cell. The minimum standard for time out of cell is one hour for high risk offenders. Although information regarding lower risk offenders indicated that 10 hours was likely, this was not written in terms of a minimum standard. There should be monitoring of all out of cell times for all regimes. Best practice in Europe gives targets for local managers to raise amounts of out of cell times. This is sometimes seen as arduous by staff who need to be more pro-active in their work. Setting targets and measuring performance may be necessary to overcome staff resistance.

Routine management information. More modern methods of compiling and evaluating operational information should be employed. These include the collection of data on 'time out of cell', number of family visits, completion of sentence plans, etc. Information of this type will enable managers to set targets for improvement and encourage local teams to perform better by finding new solutions to old problems.

SECTION 6. PRISONER RESOCIALISATION

40. Induction routine for prisoners

40.1 Response from the MoJ

The MoJ has provided a link to the extract covering this subject. It is taken from section 4 of Government Decision No 583 from May 2006, ArticleArticles 9 to 36. This text is available separately.

40.2 Relevant International Standards

EPR describes recommended admissions procedures in Rules from 14 to 16.

40.3 Comments from the review

A careful, managed induction to the prison is an essential part of safe custody and is right in principle. However, the quality of the actual experience will depend on details that could only be appreciated through actually examining such a unit.

41. Prisoners with special needs

41.1 Response from the MoJ

The MoJ has provided the following observations:

1. *Prisoners with significant health needs* – For prisoners with significant health needs, the appropriate conditions of detention in dependence of seriousness of health issues. For example seriously ill prisoners who are bedridden receive medical care and hospitalisation, prisoners with locomotive disabilities are provided with wheelchairs, while they are placed on the 1st (ground) floor, where special ramps are in-situ to ease their movement during access and egress.

2. *Prisoners who could be considered vulnerable* – Vulnerable prisoners are provided with humanitarian aid (seasonal clothes, food and other help as needed);

3. *Foreign citizens who do not speak Romanian* – At the moment, there is no such category of prisoners with special needs;

4. *Pregnant women* – For this category of prisoners, appropriate detention conditions are created, at the same time supplement to the food ration, daily walks;

5. *Women with small children* – According to the provisions of art. 126 of *the Statute of punishment execution by convicts*, the detention regimen for women prisoners corresponds to the detention regimen in open, semi-open or closed prisons. Pregnant women and women with children under age of 3, condemned to prison, the sentence being served in a closed type prisons, at the decision of prison administration, carry out their sentence in conditions foreseen for open and semi-open prison, depending on the severity of the committed offense, social danger they represent, the behavior of prisoner, age and health condition of the child and mother etc. In this sense, for this category of prisoners, appropriate detention conditions are created, at the same time supplement to the food ration, daily walks, children are ensure with everything necessary for a harmonious development. Also, it is to be mentioned that women with small children are held in "Department of Mother and Children" from the prisons no. 7 – Rusca and no. 16 – Pruncul.

6. *Juveniles of male and female gender* - At the moment, there is no such category of prisoners with special needs.

41.2 Relevant International Standards

International standards in relation to the issues raised by this question are to be found at many points throughout the sets of advice and recommendation listed at the beginning of this report. For example, in relation to nutrition, EPR states in Rule 22: Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

41.3 Comments from the review

One of the first effects of overcrowding is the pressure it places on the ability of penitentiary administrations to maintain necessary services to potentially vulnerable groups. The policies set out by the MoJ in its answer suggests that there are special services for different categories of prisoner,including those with significant health needs and those with limited physical ability.

42. Individualised rehabilitation programmes for prisoners

42.1 Response from the MoJ

Prisoners are involved in activities meant to satisfy the needs stated within the framework of initial evaluations.

42.2 Relevant International Standards

The CPT has strong views on this subject[86]: "A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organization of regime activities in such establishments - which have a fairly rapid turnover of prisoners - is not a straightforward matter. Clearly, there can be no question of individualized treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable."

EPR (Rule 28) sets standards that are unlikely to be fully met in Moldovan prisons for some years. For example:

• Regimes shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

• Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

• Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

• As far as practicable, the education of prisoners shall be integrated with

[86] Paragraph 47, CPT/Inf (92)3

the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

42.3 Comments from the review

It would be useful for the MoJ to expand on their answer indicate some of the rehabilitation activities that are available.

43. Percentage of prisoners who access regime activities

80% of prisoners have access to regime activities.

43.2 Relevant International Standards

Relevant standards are provided in Sub-section 42.2.

43.3 Comments from the review

NGOs have often pioneered the introduction of rehabilitation activities in the prisons but resourcing and travel limitations mean that the coverage is usually limited. Increasingly providing regime activities is seen as the responsibility of the mainstream prison administration.

44. Number of prisoners who have accessed regime activities

44.1 Response from the MoJ:

The MoJ provided the following percentage figures for access by prisoners to regime activities.:

1. Educational programs - 75%

2. Employment programs - 30%

3. Treatment against drugs programs - 6,5%

4. Re-socialisation programmes. Implementation of therapeutic communities

44.2 Relevant International Standards

Relevant standards are provided in Sub-section 42.2.

44.3 Comments from the review

The proportion of prisoners who have accessed education programs is quite high, but it would be necessary to know how much teaching time and average prisoner gets in each week.

No doubt the MoJ would like to improve the low proportion of prisoners who access employment programmes, but this is a structural problem throughout European prisons.

Lack of specialist staff in the adult prisons (such as teachers, social workers and psychologists) mean that rehabilitation and pre-release courses may need to be redesigned so that they can be delivered by specially-trained guards chosen from the staff who supervise the accommodation units, as is the case in the UK and Ireland.

GENERAL COMMENTS ON SECTION 5: PRISONER RESOCIALISATION

Emphasis on rehabilitation. In Western Europe, since the 1970's, the work of prisons in re-socializing offenders has grown in importance. Regimes had previously lacked any activities designed for preparation for release. Education and work training were seen as essential for many offenders, whose poor skills were shown to have contributed to their offending.

Scope of education. Education is conceived more widely there than in the EaP countries and it is common to see prisoners involved in classes where they are exploring new social and life skills and learning how they can benefit from an appreciation of literature. Unfortunately, prison overcrowding and reduced budgets in Moldova have limited the availability of these essential activities.

Rehabilitation services. As stated above, one of the key objectives of a prison system is to rehabilitate prisoners in order that they will not continue with a life of crime. There is no single reason why individuals will return to their former criminal life. However causes include: lack of socialization, lack of employment and training, a feeling of rejection by society, antisocial attitudes, restlessness, association with other criminals impulsiveness, lack of education, and neglect or abuse by parents or guardians. There are many ways to reduce recidivism and among the most cost-effective are social training and education courses.

Health needs. This has been made a particular priority and the administration has been pro-active in introducing schemes that seek to screen for priority health issues and provide good quality treatment.

RECOMMENDATIONS ON SECTION 5: PRISONER RESOCIALISATION

Individual Sentence Plan. Prisoners' individual programmes /sentence plans need to be designed to meet their needs and to help them to resettle in communities after release. The behaviour of prisoners should be stimulated through programs of differentiated correctional influence taking into account their behaviour, physical condition and degree of social neglect. Programs of differentiated correctional influence on prisoners must take into account correctional capacity of the imprisonment regime, general education and vocational training, incentives and sanctions imposed on prisoners, amateur organisations of prisoners, public, charity and religious organisations, and involvement of prisoners to be self-motivated.

Regime. Prison regimes must have a greater priority in the future and should figure more within the strategic plan of the country. Systems should be developed to ensure better rehabilitation methods are used, particularly with the probation service. 'Offending Behaviour Programmes', should be developed jointly by the penitentiary service and the probation service in order that both services can work with a similar rehabilitation culture.

Joint activities. Engaging with other statutory agencies, including the 'probation service' and the community and voluntary sector, the prison service will be able to develop a system of joined up care from pre to post imprisonment in order to improve outcomes for prisoners.

Vulnerable categories of prisoners. There is a need to devise specific treatment programmes for younger prisoners, women, older prisoners, sex offenders, prisoners in protective custody, violent prisoners and those suffering from mental illness.

Educational activities. There is a need to build on and enhance the current programmes and services, including accredited education and vocational training.

Operational data. The Penitentiary Service should sure the collection and analysis of reoffending rates of prisoners released with or without supervi-

sion. Similarly, data should be collected in relation to participation in rehabilitation activities in prisons.

Pre-release programmes. Programmes dealing with pre-release issues are not expensive to organize and can make an important difference. They should be seen as an essential part of the objectives of all prisons. Other programmes should be developed to respond to the criminogenic needs of prisoners.

SECTION 7. EARLY AND CONDITIONAL RELEASE

45. Conditional release

45.1 Response from the MoJ

The answer provided by the MoJ refers to article 266 of the Penal Execution Code. This describes the conditions under which a prisoner can ask for "pre-term release". Extracts from Article 91 of the CCM then describe the conditions that can be applied to this form of release.

45.2 Relevant International Standards

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community;

CoE Rec. on Parole (General principles 4.a): In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

CoE Rec. on Prison Overcrowding (Article 25): In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

CoE Rec. on Parole (Articles 16 to 21): These Articles describe recommended approaches to conditional early release.

45.3 Comments from the review

As is typical with such legislation in former soviet countries, the whole emphasis of this type of early release is on rewarding a prisoner for good be-

haviour. For example, to be eligible the candidate must not have "violated the prison regime". More worrying, prisoners who have been so distressed that they have "mutilated themselves" or "attempted suicide" must serve their full terms.

The main criticism of this type of parole system is that it is based on past behaviour (e.g. disciplinary infringements), it gives too much responsibility to prison staff to assess the character of the prisoner and is not informed by professional assessments of whether the prisoner can overcome – with the help of probation supervision – the personal and social challenges they all will inevitably face.

46. Reduction of sentence under early release

46.1 Response from the MoJ

As of now, this kind of statistics has not been registered for the prison system. Thus, we present just the number of persons that benefited from conditioned release during the period 2010 – 2014.

Period	No. of persons
2010	541 persons
2011	382 persons
2012	389 persons
2013	290 persons
2014	271 persons

46.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

46.3 Comments from the review

In order to protect the public and make best use of limited resources, prison managers should have access to a wide range of practical operational

information, such as this. Although this information will be recorded somewhere in relation to each individual prisoner, the lack of statistical analysis represents a handicap to managers and strategic planners.

Not many governments collect these figures but they would be extremely useful for managing the system and assessing its effectiveness.

47. Proportion of prisoners granted early conditional release

47.1 Response from the MoJ

Period	% Prisoners released conditionally
2010	8,5%
2011	5,8%
2012	6,0%
2013	4,4%
2014	4,0%

47.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 23): The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

47.3 Comments from the review

Releasing less than 10% of prisoners on parole - and then with practically no supervision - suggests that the scheme is not the significant aspect of offender management that is found in European countries. As the European rules on prison overcrowding and prison population inflation confirm, a substantial period of parole – linked to effective supervision by the probation service – is strongly in the interests of safe release and lower levels of reoffending.

48. Proportion of prisoners granted early conditional release

This appears to be the same as the information in Sub-section 47.

49. Support from probation for ex-prisoners

49.1 Response from the MoJ

In case people who are registered for conditional release within the probation authority meet any problems or necessities, then a probation officer interferes in order to provide assistance.

Under the Law on social adaptation of persons released from detention no. 297 from 1999 the probation body has jurisdiction to help prisoners released from detention.

In this regard, the probation body provides assistance to persons with an earlier release from prison or persons who executed the entire imprisonment sentence but are in need of help due to certain necessities and problems.

Thus, the probation body concludes partnership agreements with private and public organizations in the community in order to target and guide the former prisoners to an organization specialized in providing required assistance.

Moreover, the probation body monitors the degree of assistance provided by specialized organizations and the behaviour of the beneficiary in his orientation for help.

49.2 Relevant International Standards

EPR (Rule 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.

49.3 Comments from the review

The response from the MoJ seems to suggest that the Probation Service offers advice and assistance to prisoners who have been given early release. However, it does not appear to suggest that these people are formally su-

pervised and that they would be returned to prison if they failed to comply with instructions given by a probation officer aimed at helping them to achieve results agreed in a rehabilitation plan.

Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[87]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

50. Other support for ex-prisoners

50.1 Response from the MoJ

Prisoners released from detention facilities benefit from the support of Local Public Administration that provides them with assistance in finding a temporary place to live, finding a job, social assistance, as well as other facilities, stipulated by legislation, meant to reintegrate the prisoner into the society.

50.2 Relevant International Standards

EPR (Rule 107.4): Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

EPR (Rule 26): Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.

50.3 Comments from the review

it is recognised that Local Public Administration provides important services that can help people in difficulty to solve their social problems. However, the lives of previous lives of ex-prisoners tend to show that, for one

[87] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

reason or another, they have not accessed these services successfully in the past. Experience in European countries suggests that these people need special social training before they can cope with discussions with authority. Government agencies need to be more flexible in their approach if they are to reach out from behind their bureaucratic offices.

Another feature of European approaches is that excellent services can be provided by specially-created NGOs dedicated to assisting people, including offenders, who are on the margins of society. However they are limited in number and struggled to respond to the great level of need the experience. Development of NGO services has proved to be a cost-effective way of delivering help and avoid reoffending.

51. Re-conviction of conditionally released prisoners

51.1 Response from the MoJ

The MoJ does not provide information about reconviction rates for conditionally released prisoners.

51.2 Relevant International Standards

CoE Rec. on Parole (Article 43): In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

51.3 Comments from the review

The figures provided in relation to Sub-section 36 suggest that Moldova has a fairly high rate of recidivism. Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[88]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

[88] *Ibid*

52. Reconviction rates for prisoners who complete their full sentence

52.1 Response from the MoJ

No statistics on recidivism by persons released after having fully served their punishment and deprived of liberty thereafter is kept by the MoJ.

52.2 Relevant International Standards

As mentioned in above item, CoE Rec. on Parole (Article 43), recommends that statistics such as this are compiled.

52.3 Comments from the review

Statistics of this nature enable the effectiveness of parole decision-making and post-release supervision to be measured and policy reforms to be evaluated.

GENERAL OBSERVATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Benefits of parole. Supervised release on parole benefits the community, the prisoner and the penitentiary service itself. Providing an incentive for early conditional release encourages more co-operative behaviour during sentences of the vast majority of prisoners. This allows for better offender management whilst in prison but also aids successful rehabilitation after prison. Research on recidivism rates for example, demonstrate that they are much lower amongst offenders given early conditional release. However, this may be because such offenders have a more positive attitude towards desisting from crime anyway.

Rehabilitation programmes. Prisoners provided with the opportunity to address their offending behaviour and to develop a positive attitude to release allows for a greater chance of rehabilitation. Normally there exists in the community support and monitoring activities, which are commonly the responsibility of a Probation Service.

Community perspective necessary. It is important that the Probation Service participates in the process of assessing prisoners for early conditional release. Proper assessments, which focus on what would need to be done to help an individual complete a period of parole satisfactorily,

require the kind of risk and need assessment best done by an agency experienced at supervising offenders in the community. Without this unique perspective, decisions about early release can focus too much on the prisoners passed behaviour in the custodial environment, which is not a good predictor of behaviour if released.

RECOMMENDATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Partnership agreements. The MoJ should develop partnership agreements with particularly the Social Welfare Department, Health Department and the Education Department, in order that the statutory services can play an expanded role with offenders.

New centres should be developed for the social re-integration of offenders. These may be linked with the new probation service centres that need to lead on, monitor and encourage such activities

Data. Maintain statistics regarding the re-conviction rates of prisoners released after serving their full sentences for up to two years after completion of their sentence.

Social re-integration. New centres should be developed for the social re-integration of offenders. These may be linked with the new Probation Service centres that need to lead on, monitor and encourage such activities.

Reform of parole. A greater priority must be given to the reform of the early conditional release system within the MoJ, which brings together the work of the Probation Service and the methods used in many other European countries to better identify prisoners who pose limited risk to communities and are less likely to reoffend. Greater priority in parole decisions should be given to the assessment of risk and plans to mitigate it.

Training. A training programme should be developed and all the actors in the early conditional release system should undergo such training in order to adopt new standards and skills.

SECTION 8. ALTERNATIVE SANCTIONS AND PROBATION

53. New alternative sanctions

53.1 Response from the MoJ

No changes have been made to the list of alternative sanctions available to judges in Moldova since 2005.

53.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2 (3) provides that: In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non- custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

Tokyo Rule 2 (4) states that: The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

53.3 Comments from the review

Courts have to deal with a wide range of crimes committed by a wide range of offenders. Alternative sanctions should be available which also cope with these differences. The normal European approach is to have a basic form of offence-focused social counselling (known as a Probation Order) to which additional sanctions can be attached. The most popular additional sanctions are community service, home detention, addiction rehabilitation, restorative justice, and skills training.

54. Purpose of alternative sanctions

54.1 Response from the MoJ

The probation service in Moldova has the following official tasks:

• Restorative justice development;

• Keeping the delinquent in the community while imposing certain obligations;

• Mitigation of the relapse risk;

• Providing assistance and counseling of probation subjects;

• Savings to the state budget by applying the alternative sanctions at the reintegration of convicts into the community;

• The economical factor that will benefit the society as a result of implementing alternative methods at detention.

54.2 Relevant International Standards

The first principle of the 2010 CoE Probation Rules[89] reads as follows: Probation agencies shall aim to reduce reoffending 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 / reintegration. Probation thus contributes to community safety and the fair administration of justice.

54.3 Comments from the review

The tasks set for the probation service in Moldova are generally consistent with European equivalents.

55. Range of alternative sanctions

55.1 Response from the MoJ

The MoJ indicated that the following specific alternative sanctions are provided by the probation service:

[89] Council of Europe CM/REC (2010)1 on Probation Rules

• Community Service/Public Works

• Special programmes that may include anger management, employment, etc.

• Educational Orders

• Conditional/suspended sentence

55.2 Relevant International Standards

CoE Rec. on Community Sanctions Point 1 of the "Guiding principles for achieving a wider and more effective use of community sanctions and measures" states:

Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples:

• alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority;

• probation as an independent 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 a mental disturbance that is related to their criminal behaviour;

• intensive supervision for appropriate categories of offenders;

• restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring imposed with observance of Rules 23 and 55 of the European Rules;

• conditional release from prison followed by post-release supervision.

The main international bodies have strong, clear messages about the need for alternative sanctions. The United Nations, in its "Standard Minimum

Rules for Non-custodial Measures" (The Tokyo Rules), Rule 2 (3)[90] states that: In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non- custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

55.3 Comments from the review

The review would be interested to see specific details about the alternative sanctions provided; for instance the maximum number of hours for community service or the contents of an educational order.

56. Diversion schemes

56.1 Response from the MoJ

Diversion schemes, such as restorative justice, mediation and reparation are not available in Moldova.

56.2 Relevant International Standards

CoE Rec. on Community Sanctions (Guiding principles for achieving a wider and more effective use of community sanctions and measures): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/ reparation/ victim-offender mediation.

56.3 Comments from the review

Diversion is an increasingly important aspect of a modern penal system. Fortunately, there are some good lessons to be learned from the way it has developed in nearby Georgia.

[90] The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2 (3)

57. Plans to introduce new alternative sanctions

Response from the MoJ

The MoJ proposes to introduce a new "Community Sentence". This is described in a document "Increase of quality and individualization of community sanctions execution". Development work will be assisted by Norwegian Rule of Law Mission to Moldova (NORLAM) during the period 2015 – 2017.

57.2 Relevant International Standards

The standards defined in the Sub-section 55.2 is relevant to this item.

57.3 Comments from the review

The CoE stands ready to provide and legal expertise on the proposed "community sentence" to check its compatibility with European standards, should the Moldovan authorities make this request.

58. Percentage use of alternative sanctions

58.1 Response from the MoJ

No information is available from the MoJ about the percentage use of alternative sanctions by the courts.

58.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

58.3 Comments from the review

In European countries, supervised alternative sanctions (such as probation order, community service or home detention) tends to be reserved for mid-range offenders who otherwise would receive a custodial sentence. This normally amounts to about 10% of the cases before the court.

59. Use of "conditional sentence"

59.1 Response from the MoJ

The use of conditional sanctions imposed as an alternative to imprisonment appears to have declined in the last five years:

2010 – 61,1%

2011 – 57,6%

2012 – 54,0 %

2103 – 52,3 %

2014 – 49,1 %

59.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

59.3 Comments from the review

It would be important to know what proportion of offenders sentenced to "conditional sentence" were actively supervised by probation staff. According to European experience – which may not be relevant – most convicted offenders who are not sent to prison do not require active supervision. Financial penalties or community service are the favoured sanctions for this group. The efforts of the probation service would normally be concentrated on a troublesome minority, perhaps no more than 20% of those not sent to prison.

60. Success of supervised alternative sanctions

60.1 Response from the MoJ

Information is not available on the success rate of alternative sanctions. This would normally be provided in relation to the rate of reconviction after the sanction has been completed compared to the rate of reconviction after release from prison.

60.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

Tokyo Rule 2 (4) states that: The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

60.3 Comments from the review

The capital investment necessary to install a computerised data management system may not be available to the MoJ at this stage. Nevertheless, the collection and analysis of data about the operations of the penal system will allow strategic judgements to be made that could have very significant economic consequences as well as improvements to community safety.

61. Imposition of conditional sentence

61.1 Response from the MoJ

The following proportions of offenders on conditional sentence were called to prison because of their failure to keep to the requirements of the suspension:

2010 – 3,01 %

2011 – 3,13 %

2012 – 2,80 %

2013 – 3,26 %

2014 – 3,54 %

61.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

61.3 Comments from the review

The proportion that have been called to prison is extremely low. This may reveal that a significant proportion of offenders given this sanction present fewer risks and are not particularly delinquent. Before making further assessment it would be important to know what level of supervision, if any, these people received from the probation service.

62. Electronic monitoring

62.1 Response from the MoJ

Under the Law adopted on 3 July 2015, that is to be published in Official Gazette, a mechanism of electronic monitoring is established. Therefore, according to article 271 from the Execution Code of Republic of Moldova:

1. The persons exempted from criminal punishment may be imposed, as an obligation, to an electronic monitoring system, consisting of surveillance through GPS systems, fixed or mobile telephone equipment.

2. In case of electronic monitoring application, a special bracelet is installed on the foot or hand of the probation subject.

3. The probation offender, subject to electronic monitoring, is acquainted with:

a) Travel zone boundaries;

b) Zone boundaries and / or the place where it is forbidden to move;

c) The period during which he is forbidden to leave home or residence.

4. Electronic monitoring of all categories of monitored persons is carried out by probation bodies.

5. In the case the obligation is repeatedly infringed, the probation officer submits a request to the court for cancellation of punishment release and sending the person to prison.

6. The electronic monitoring system can be applied to prisoners who move without escort or accompanying person and / or to those who move for a short period of time outside the prison, according to art. 216 and 217.

7. The operational and maintenance expenses for electronic equipment are borne by the state budget.

8. In case the electronic equipment is damaged by the person, subject to electronic monitoring, the cost of the equipment will be refunded by this person.

9. In case an intentional damage was established, the probation officer submits to the court a a demarche on cancellation of the release from criminal punishment and sending the person to prison.

62.2 Relevant International Standards

CoE Rec. on EM (Article 8): 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.

62.3 Comments from the review

The limited legislation quoted above describes the basic operation of electronic monitoring. In order to assess it like effectiveness, further details would need to be known. These will include the maximum number of hours each day that a person can be monitored and the maximum length in months of the monitoring period.

Electronic monitoring is an attractive sanction to policy-makers but it needs to be carefully managed if it is to become an effective part of the penal system. One significant issue is that, in the experience of European countries, it is at least twice as expensive as basic supervision by a probation officer.

Requiring someone to stay in their home for part or whole of the day is

an effective punishment and in many cases would be preferable to a prison sentence. However, on its own it is unlikely to help the offender to understand why he or she got into trouble or the changes in attitudes and behaviour required to live a crime-free life. Research evidence from the utilisation of electronically monitored curfews in European countries confirms that the sanction does not affect reoffending. For this reason, the CoE recommendation on Electronic Monitoring recommends that the sanction should be coupled with rehabilitation services.

63. Success of electronic monitoring

63.1 Response from the MoJ

No electronic monitoring currently exists in Moldova.

63.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

63.3 Comments from the review

The CoE strongly advocates that plans are made to study and evaluate the impact of electronic monitoring when it becomes operational. It is recognised that it requires resources to collect and analyse statistical information. However, without this kind of data it is not possible to monitor service standards for the effectiveness of policies.

GENERAL OBSERVATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Lack of public support. Support for Alternative Sanctions is not universal across all members of society in European countries. In most cases, this can be attributed to lack of understanding about offender management.

Separating or integrating penitentiary and probation. In some EaP countries, such as Ukraine and Azerbaijan, the department within the Penitentiary Service that has inherited the Soviet-style supervision of released prisoners is in the process of transforming itself into a modern Probation

Service. Other countries have preferred probation to be established separately from the penitentiary service.

RECOMMENDATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Additional non-custodial sanctions. Introduction of additional non-custodial sanctions designed to promote a greater degree of activity in the rehabilitation of offenders.

Promoting probation service. The Probation Service must be given the appropriate support through the staging of a range of round tables that involve key stakeholders such as judges, prosecutors, politicians and MoJ officials in order that the role and responsibilities of the modern probation service is understood and enhanced.

Diversion. Explore the introduction of 'diversion' schemes such as restorative justice, mediation or reparation in operation at this time in other countries.

Data. The collection of statistical data should be improved in order that the all sanctions can be compared for effectiveness. As mentioned in subsection 63, in England and Wales reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[91]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015. Research should be undertaken to see whether similar benefits can arise in Moldova.

Probation activities in penitentiary establishments. The level of rehabilitation activity in penitentiary establishments is limited. When established, the probation service should plan to play a role in developing and staffing pre-release courses in all penitentiary establishments.

[91] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

SECTION 9. AFTERCARE

64. After-care organisations

64.1 Response from the MoJ

The organizations mentioned in this section provide support to probation bodies in employment of ex-prisoners, as well as the professional training in a certain field of activity.

64.2 Relevant International Standards

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

64.3 Comments from the review

Unfortunately, it appears from the MoJ answer that the contribution of NGOs to assist prisoners after release is very limited. General experience in European countries is that a diverse NGO sector can provide very effective services to ex-prisoners more cheaply than government departments. This issue should be closely examined by the MoJ.

The UNODC report suggests that recidivism in many European countries might be significantly reduced if prisoners were better prepared to make the transition back into their communities, but also, if the communities to which they were returning were more responsive to their resettlement needs. Clearly, assistance in finding employment is a priority because ex-prisoners meet significant barriers in finding work. However, other needs include the re-establishing social and family ties and possibly avoiding the temptations of drugs.

65. Formal aftercare agreements

65.1 Response from the MoJ

Collaboration agreement have been made between the probation bodies and:

• the Public Association "Miracol" in regard to professional training of former prisoners.

• the Friendly HealthCare Center "Neovita" in regard to providing medical assistance to former prisoners.

65.2 Comments from the review

Whilst such agreements are encouraging, it is likely that a wider range of partnerships with civil society could be achieved. The experience of the Ministry of Corrections of Georgia might be useful. In advance of a large-scale prison amnesty, it found over 100 NGOs across the country willing to provide advice and services to ex-prisoners.

In addition, a wide range of services that can support offender rehabilitation are potentially available from the statutory agencies. These include education, employment and healthcare. Formal agreements need not necessarily involve the transfer of funds. Often initiatives taken by the probation service can help offenders to gain access to services that are available to them by right as citizens but which they do not feel comfortable to approach.

66. Other aftercare initiatives

66.1 Response from the MoJ

No other initiatives are mentioned by the MoJ.

66.2 Relevant International Standards

CoE Probation Rules, in the section in which it defines the terms, offers the following definition of aftercare: Aftercare: means the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In these rules, the term is distinguished from the term "resettlement" which refers to statutory involvement after release from custody.

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

66.3 Comments from the review

Continuing support for the most vulnerable ex-prisoners can be an effective way of helping them to avoid further crime and problems for the community. Official government services have an important part to play, but NGOs can provide the flexibility and approachability that is important for ex-prisoners, who are often very suspicious of official organisations. Grants towards their operating costs by government usually result in good quality support at attractive overall costs.

67. Re-offending after release

67.1 Response from the MoJ

The MoJ does not keep statistics on recidivism of persons released after having served the full punishment.

67.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

67.3 Comments from the review

European countries are accustomed to over half of their prisoners being convicted of a further crime within two years of release. For young adult offenders the proportion is much higher. For older offenders sentenced for more serious crimes the reoffending rates are low. It is very interesting to note that, in general, officially recorded reoffending rates are much lower in EaP countries.

RECOMMENDATIONS ON SECTION 9: AFTERCARE

Partnership agreements. The MoJ should develop partnership agreements with particularly the Social Welfare Department, Health Department and the Education Department, in order that the statutory services can play an expanded role with offenders.

Social re-integration. New centres should be developed for the social re-integration of offenders. These may be linked with the probation service centres that need to lead on, monitor and encourage such activities.

Data. Maintain statistics regarding the re-conviction rates of prisoners released after serving their full sentences for up to two years after completion of their sentence.

Government support. The Government must seek the means of supporting both the statutory organizations and the NGO community in their will to support released offenders after the Criminal Justice System has completed its work.

SECTION 10. DATA AND STATISTICS

68. Overcrowding statistics

68.1 Response from the MoJ

No information about the extent of overcrowding is available on this subject from the MoJ.

68.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

68.3 Comments from the review

It is likely that the MoJ retains detailed figures about prisoner numbers which can be matched to the certified number of available places in each penitentiary establishment. This is clearly an essential tool for assisting population management.

69. Re-offending statistics

69.1 Response from the MoJ

The following figures were provided by the MoJ in response to the question about rates of reoffending for different sanctions of the criminal justice system:

2010 – 7,080, relapse – 202

2011 – 8,080, relapse – 228

2012 – 8,990, relapse – 250

2013 – 9,815, relapse – 240

2014 – 9,197, relapse – 241

69.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

69.3 Comments from the review

Further clarification about the numbers provided would be necessary. It may be that these are the number of prisoners who commit further offences within a specific period.

The collection of data has grown in priority over the past 20 years. It is now universally accepted that collecting data on reoffending rates is one of the most important methods of understanding the effectiveness of a countries Criminal Justice System. The response from Moldova indicates that data collection is significantly under-developed.

It is necessary to record and analyse criminal justice statistics so that agencies can gauge the effectiveness of their services. As justice systems seek to reduce reoffending rates, and find an appropriate balance between punitive and rehabilitative regimes, data collection and analysis is vital. However, it is always difficult to find the resources that this requires.

70. Statistics on re-offending

70.1 Response from the MoJ

The MoJ does not keep statistics on the recidivism for different groups.

70.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

70.3 Comments from the review

With the introduction of a Probation Service, the collection of data on breach during sentence and reoffending rates after completion will be essential to assess the service's effectiveness. It will also be essential in order to compare Probation Service data on reoffending rates and the rates for released prisoners, both full term and after early conditional release.

71. Other data relevant to overcrowding

71.1 Response from the MoJ

The MoJ provided the following information:

1. Cases reviewed by the ECtHR under joint titles of Ciorap Group, Becciev Group and Paladi Group (CM/Del/Dec(2013)1186 from 6 December 2013. Link: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2013)1186&Language=lanEnglish&Ver=immediat&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679#P1845_118809); and

2. The ECtHR case, Șișanov v. Republic of Moldova.

71.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

71.3 Comments from the review

The information provided refers to the 1186th meeting of the CoE Ministers' Deputies on 3 December 2013. The cases raised mainly concerned poor material conditions of detention, including lack of adequate access to medical care, and lack of effective remedies (Articles 3 + 13 of ECHR), as well as the non-compliance with an interim measure on medical assistance (Article 34 of ECHR).

The 2010 report of the International Statistics on Crime and Justice stated: "Another, even more disturbing observation that has been made repeatedly is that many member states continue to be unable to answer the UN CTS questionnaire at all, or are only able to provide a partial response. This state of affairs is in part due to a very basic reason: some or all of the required data are not available. However, less excusable is the situation for many other countries that are known to possess the required data but do not respond."[92]

72. Use of data for informed policy

72.1 Response from the MoJ

The information collected during the operational activity of the probation institutions is used in the elaboration of the policy documents that have the goal to improve the institution and the functions attributed to it by law.

72.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, ad-

[92] The UNOCD in their report 'International Statistics on Crime and Justice (European Institute for Crime Prevention and Control, Affiliated with the United Nations(HEUNI) P.O.Box44 and United Nations Office on Drugs and Crime(UNODC) POBox5 1400Vienna Austria - HEUNI Publication Series No. 64 2010

dressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

72.3 Comments from the review

Although this answer locates the responsibility for the use of data to inform policy, it does not describe the current scope of what is collected. Informal observations suggest that a considerable amount of data is collected and transmitted manually but that systems for recording and analysing it electronically are very limited.

GENERAL OBSERVATIONS ON SECTION 10: DATA AND STATISTICS

Computer systems. More reliable data, and sophisticated analysis, will allow improvement targets to be set for each part of the penal system. The introduction of computers to automate this work will require a significant investment in suitable software.

RECOMMENDATIONS ON SECTION 10: DATA AND STATISTICS

Data policy. The MoJ is recommended to discuss and agree a whole range of methods for data and statistical collection in order that there is an understanding of effectiveness in the different methods of offender and sentence management. Countries in Western Europe and the CoE can provide examples of best practice in order that Armenia can develop its own approach.

Performance standards. Data should be collected about reoffending within two years of release from prison. This should distinguish between those receiving compulsory supervision as a condition of release and those who have served their full terms.

SECTION 11. CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

73. Community crime prevention initiatives

73.1 Response from the MoJ

The MoJ provided the following list of titles of four pieces of draft legislation for the following community-based crime reduction initiatives:

• on the obligation to report acts of corruption and acts related to corruption, corruption behaviour.

• on declaration of wealth and personal interests.

• on amendments and additions to certain legal acts (professional integrity testing).

• on amendments and additions to certain legal acts (preventing and combating corruption).

73.2 Relevant International Standards

CoE Probation Rules (Rule 98): Where provided by national law, the expertise and experience of probation agencies shall be used in developing crime reduction strategies. This may include making use of joint interventions and partnerships.

CoE/CM Rec(2003)21 concerning partnership in crime prevention (Article 1): Nationally, governments should commit themselves and co-ordinate their initiatives to develop and implement policies and strategies for crime prevention and community safety (for example, by way of creating national crime prevention councils, adopting national crime prevention programmes etc.).

73.3 Comments from the review

The initiatives referred to by the MoJ relate to the use of criminal sanctions to encourage law-abiding behaviour. Whilst this is important, the more recent approach to community crime reduction involves strengthening communities so that citizens are less inclined to resort to crime. Practical action can involve neighbours in high crime communities being more observant and reporting concerns to the police for an informal "neighbour-

hood watch" organisation. On the more positive side, it has promoted initiatives to stop young people at-risk drifting into crime by providing them with constructive activities such as sport, leisure, and training for work.

Naturally, any effective initiatives of this type would have widespread value, but careful experimentation would be necessary in order to make decisions about what approaches would be cost-effective.

74. Civil society monitoring of prisons

74.1 Response from the MoJ

The following articles from the Criminal Execution Code referred to civil society monitoring of prisons:

Article 179. Control carried out by national and international organizations

National and international organizations that protect the fundamental human rights and freedoms can control the implementation of decisions with criminal aspect according to the measures established in the national and/or international acts.

Article 180. Civil control

Monitoring Committees, which are permanent bodies, without a status of legal entities, carry out civil control (monitoring) of human rights protection in the institutions, where the persons are detained.

Article 181. Visiting the detention institutions

(1) During the process of carrying out the duties, the right to visit the detention institutions, without a special permission, is granted to:

a) The President of the Moldovan Parliament;

b) The President of the Republic of Moldova;

c) The Prime Minister of the Republic of Moldova;

d) Member of the Parliament;

e) Ombudsman, the Ombudsman for Children's Rights, the officials of the Ombudsman Office, members of the Council for the prevention of torture

and other persons accompanying them in their duty to prevent torture;

[Art.181 ArticleArticle (1), e) in editorial LP166 of 31.07.15, OM267-273/02.10.15 art.508]

f) The General Prosecutor of the Republic of Moldova, the prosecutor who oversees the execution of the criminal decisions in the respective territory;

g) The person with official competencies of the body that is hierarchically superior than the institution or body that executes the sentence;

h) The judge that examined or examines the criminal case, under the territorial jurisdiction;

i) The representative of international organization which, according to national and / or international treaties to which Moldova is part, has that right;

j) Member of the monitoring committee.

(2) Detention institutions can be visited by other persons with a special permission issued by the administration of these institutions or by persons representing bodies that is hierarchically superior or based on the court decision, while in the case of preventions, the visits can be carried out based on the decision of the prosecution institution or the court, in the procedure of which the criminal case is handed.

(3) Video recording and photography in the institutions that enforce the sentence to prison or life imprisonment, with exception of persons mentioned in the ArticleArticle (1) of the present article, are permitted with a written notice issued by administration of the respective institution.

(4) Audio, video recording or photography of the convicts is done with their written consent, except the cases stipulated by law.

74.2 Relevant International Standards

EPR (Rule 93.1): The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.

EPR (Rule 93.2): Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

74.3 Comments from the review

Although this legislation can empower the civil society monitoring of prisons, the approaches adopted in most other European countries establish a more specific and purposeful structure for doing this. They are a valuable means of safeguarding human rights within environments that are often challenging. Prisons inevitably are closed institutions and even the most effective management and supervision cannot guarantee that appropriate standards of behaviour by staff and prisoners will always apply. Civil monitoring should stand alongside a proper system of management inspections and the ability for staff and prisoners to make complaints, that will be properly investigated.

75. Publicity for crime reduction

75.1 Response from the MoJ

In accordance to the information provided by the Ministry of Internal Affairs:

During 6 months of the current year, there were organized a total of 9 special operations, as well as 21 complex measures targeted to prevent and combat crime.

The carried out actions targeted activities for protection of consumers and domestic producers, the combat of illegal traffic of excised goods, ensuring road safety on public roads, activities of searching criminals, complex measures to fight certain categories of crimes, prevention and combat of crimes with a cross-border crime, complex actions regarding verification of currency exchange activities, prevention and combat of gambling frauds, prevention and fighting of illegal human transportation, increased control over carrying out special and banking transportation, prevention and deterring of organized beggardom cases, prevention and deterring poaching and illicit fishing, prevention and deterring frauds in the field of public alimentation etc.

Moreover, the National Center for Anticorruption carried out several public information operations in order to prevent corruption in the field of medicine, local and center public administration etc.

75.2 Comments from the review

Initiatives described by the MoJ appear to be based on warnings about the

consequences of crime. Additional approaches should be borne in mind that emphasise strengthening communities with social activities – particularly aimed at high risk groups such as young adults experimenting with drugs - to provide constructive alternatives and routes into employment or further education.

76. Encouraging reform of offenders

76.1 Response from the MoJ

No additional information was provided by the MoJ.

76.2 Comments from the review

Recent developments in European countries show a preference for training offenders to manage their own affairs more effectively. It would be useful to explore the extent to which Moldova is ready to develop approaches such as offending behaviour programmes and social skills training.

GENERAL OBSERVATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community responsibility. Traditionally the subject of crime and punishment has been seen by the general public as only something that involves offenders and criminal justice agencies. The concept of crime prevention as something all living in a community should consider, is a relatively new concept. Alongside this can be put the subject of the rehabilitation of offenders. This must involve communities and support agencies within those communities, in order that re-socialisation and rehabilitation can operate. Many alternative sanctions including community service, are reliant on community support. The greater visibility in for certain sanctions such as community service, the greater understanding develops amongst the community.

Restorative justice. New methods of conflict resolution are developing in communities, which bring together statutory and voluntary organisations. Mediation is increasing in use and the idea of restorative justice provides opportunities for responses to be made outside the criminal justice system.

Diversion. Schemes including restorative justice and mediation are now gaining credibility throughout criminal justice services and civil society alike in many countries.

RECOMMENDATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community-based crime reduction. To develop a strategy on community based crime reduction that involves the main social agencies, civil society and local people in the most at-risk communities.

Sector-wide monitoring. To create an additional Monitoring Group consisting of civil society representatives, to observe the way the Justice process in its entirety is moving from a punitive to a rehabilitative regime. Such a group may have its sole purpose as being the monitor of change.

SECTION 12. FUNDING

77. Investment in penitentiary system

77.1 Response from the MoJ

The MoJ provided detailed budget information for the years 2010 to 2015. The approved budget for the penitentiary system for 2015 was 407.875,6 thousands MDL. The forecast for 2016 is 546.235,9 thousand MDL; for 2017 is 810.925,5 thousand MDL and for 2018 is 955.882,5 thousand MDL.

The budget for the year 2015 of the Central Probation Office was approved in the amount of 26.101,0 thousand MDL which includes:

• 22.802,8 thousand MDL – the basic activity of the Central Probation Office;

• 3.298,2 thousand MDL – allocated for the implementation of the justice sector Reform.

This has grown from an expenditure of 16,117 thousand MDL in 2012.

77.2 Comments from the review

It is not possible for the review to assess the appropriateness of this level of funding.

78. Funding for future strategy

78.1 Response from the MoJ

On 2 September 2013 a Government Decision No. 669 on approval of the Financing Agreement between the Government of the Republic of Moldova and the European Union regarding the Programme for Support of justice reform, signed in Brussels on 14 June 2013, , was adopted. The mentioned document has the goal to provide support within the framework of implementing the objectives of the Strategy on reforming the justice sector for the years 2011 – 2016.

78.2 Comments from the review

It is reasonable to assume that the "budget support" agreement referred

to as involved the MoJ setting out achievable, costed, development plans for the coming years.

79. Sufficient resources

79.1 Response from the MoJ

Probation:

• For personnel expenditure, the Central Probation Office (CPO) is provided with financial resources.

• Regarding infrastructure, even though was facing over the years with the problems related to ensuring the establishment of residencies of regional subdivisions, the CPO had settled these issues positively.

• For operational and maintenance expenditures of subdivisions, the CPO plans their expenses, which are included in the institution's budget.

• The expenses of the infrastructure, operational, maintenance, investments are limited because the institution's budget itself is planned in accordance with the spending limits set by the MoJ of Finance each year.

Penitentiary system:

It is to be mentioned that the funds allocated annually for the DPI partially cover the needs for personnel, infrastructure, operating costs, maintenance. Lack of funds can be seen in the information provided in the Sub-section 77, where details are provided on the budget for the prison system for the period of years 2010-2015.

General mention:

It is to be mentioned that the wages of the personnel (penitentiary system and probation), as well as other financial benefits are established in accordance to law, while other expenditures for infrastructure, operational and maintenance costs are established within the allocated budget.

79.2 Relevant International Standards

We are not aware of international standards concerning the resources necessary for running penitentiary and probation services. Nevertheless CoE

Rec. on Community Sanctions (Rule 42) has some relevance: The implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

79.3 Comments from the review

Governments in Western European countries rarely operate their penitentiary services with anything like this shortfall in the necessary funding.

On average, governments in Western European countries divide their penal sector budget so that 75% is spent on their penitentiary service and 25% on their probation service. These figures can be deduced by analysing figures about finance and financial accountability in "Probation in Europe" by Kalmthouth and Durnescu[93]. Experience has shown that a substantial investment in community sanctions and measures at this kind of level is necessary if they are to have a suitable impact on sentencing patterns. If the split of funding is any more in favour of the penitentiaries, the probation service will not have enough cash to attract suitable numbers of staff to provide properly supervised rehabilitation services.

GENERAL COMMENTS ON SECTION 12: FUNDING

Importance of coordination. A lack of adequate funding is often given as the reason for the poor conditions that exist in the prison estate. The general message within this report is that although finance is important, of greater importance is the co-operation and co-ordination of each part of the Criminal Justice System, in order that they complement each other in their pursuit of a common mission.

Inappropriate sentencing. The start of a future strategy should involve all actors in the Criminal Justice sector in understanding how resources can be wasted in inappropriate sentencing - and how they can be harnessed more effectively for crime reduction and offender rehabilitation.

[93] Probation in Europe, A.M. van Kalmthout & I. Durnescu (eds.) ISBN: 978-90-5850-450-0. Published by aolf Legal Publishers (WLP) 2008

RECOMMENDATIONS ON SECTION 12: FUNDING

Balanced budget. A long-term target should be established for the relative resourcing of penitentiary and probation services within the overall corrections budget. It may be that the 75% – 25% split commonly found in European countries would be appropriate.

Cost-centred budgeting. Serious consideration should be given to determining the realistic unit costs of delivering each community sanction so that informed judgements about their relative value can be made. This might show, for example, that a new form of directly-supervised Community Service is achieving better reconviction rates than electronically monitored home detention – or vice versa.

80. Additional comments

80.1 There are no additional comments regarding the Questionnaire.

CONCLUSIONS

The CoE is pleased with the interest that has been shown by the MoJ of Moldova for further cooperation to improve its penal services. The effort it has made to provide a great deal of information about the current situation and future plans indicate a willingness to explain problems as well as successes.

Moldova's commitment to reform was made clear by the current national strategy. Establishment of a probation service in 2015 is clear evidence of a desire to refresh the approach to middle-range offenders for whom prisons struggled to provide a solution. The plans to introduce a new "community sanction" for juvenile offenders is most welcome.

The country's penitentiaries may not be overcrowded by local standards but the proportion of its citizens confined in this way is still too high when the low rate of crime in the country is considered. Sentence planning is in place and this can be the basis for structured approaches to prisoner rehabilitation. But as the probation service develops its range of interventions it would clearly be a great benefit if judges increasingly saw community sanctions as an effective means of satisfying justice with fewer of the unwanted negative effects of imprisonment.

In addition to the policy initiatives Moldova is now working on, including the introduction of electronic curfew monitoring, more subjects will need to be tackled. The proportion of prisoners who are waiting for their cases to be decided has remained relatively static in recent years. Finding alternatives to keep such people out of detention is known to have better long-term outcomes. Community Service needs to be modernised with direct supervision by probation staff enabling higher standards of work to be achieved, together with better punctuality and discipline. Some of the responses were lacking in detail in a way that indicated that more thought and investment might be necessary to perfect the management information system that will be required to guide further reforms.

The CPT sets some very high demands through its country inspections and general standards. Moldova wishes to follow this route and the CoE will join with the justice agencies and civil society to provide as much help as possible.

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Criminal Justice Responses to Prison Overcrowding in Ukraine

Criminal Justice Responses to Prison Overcrowding in Ukraine

This report describes and comments on the current situation in Ukraine in relation to tackling penitentiary overcrowding and improving prisoner rehabilitation. It is part of a project operating in four Eastern Partnership (EaP) countries (Armenia, Georgia, Republic of Moldova and Ukraine) that have agreed to receive advice from the Council of Europe (CoE)in relation to these key aspects of offender management.

In pursuing such reforms, these countries are fulfilling an obligation they undertook when joining the CoE to harmonise their justice legislation and services with European standards. Standards relevant to these issues are set out in official recommendations published by the CoE.

ABBREVIATIONS

As reference will frequently be made in the text of this report to six CoE recommendations, they will be abbreviated as follows:

• EPR: refers to Rec(2006)2 on the European Prison Rules;

• CoE Probation Rules: refers to CM/Rec(2010)1 on the Council of Europe Probation Rules;

• CoE Rec. on Parole: refers to Rec(2003)22 on conditional release (parole);

• CoE Rec. on Prison Overcrowding refers to R (99)22 concerning prison overcrowding and prison population inflation;

• CoE Rec. on EM: refers to CM/Rec(2014)4 on Electronic Monitoring.

• CoE Rec. on Community Sanctions: refers to R(92)16 on the European Rules on community sanctions and measures;

Other recommendations of general relevance to this report are:

• R(99)19 concerning mediation in penal matters;

• Rec(2000)22 on the improvement of implementation of the European Rules on community sanctions and measures;

• Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

• CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures;

• Rec(2012)12 on Foreign Prisoners;

• Rec (2003)23 on the Management of Life-sentence and Other Long-term Prisoners.

In addition, further statements and guidance about offender management are available in the standards published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), judgements of the European Court of Human Rights (ECtHR) and by the United Nations

THE OVERALL PROJECT: PROMOTING PENITENTIARY REFORMS (FROM A PUNITIVE TO A REHABILITATIVE APPROACH)

1. The aims of the Project:

• to combat prison overcrowding and support use of community sanctions and measures;

• to establish regional co-operation and a strategic approach on prison overcrowding;

• to reduce recidivism of former prisoners contributing to a healthier society and less crime.

2. The Project has worked through:

• bilateral work as well as multilateral exchange of experience and cross-interaction;

• holding working meeting with participation of the representatives of the relevant ministries of the target countries through developing a comparative analyses report based on carried study on combating prison overcrowding in target countries;

• establishing a network and a forum for exchange of good practices be-

tween medium and high level representatives of the relevant ministries of the target countries for combating the prison overcrowding; and

• competency development of the trainers from the Training Centres / Academies of the target countries charged with training of prison and probation staff.

3. The Project activities:

• Translate into six languages: Armenian, Azeri, Georgian, Romanian, Russian and Ukrainian the CoE Committee of Ministers recommendations and the extracts from the CPT general reports related to combating prison overcrowding;

• Develop e-compendiums of the Council of Europe documents on combatting prison overcrowding in six target languages and disseminate among the penitentiary and probation agencies and the training centres in charge of training prison and probation staff in target countries;

• Conduct study on prison overcrowding in target countries and develop country specific recommendations;

• Hold a high-level conference to highlight main findings of the study on prison overcrowding, discuss the recommendations provided and define the possible ways for their implementation; and

• Conduct Training of Trainers on Combating Prison Overcrowding for the trainers of the Training Centres / Academies of the target countries charged with training of prison and probation staff.

THE QUESTIONNAIRE

Information was sought from the MoJ of Ukraine (MoJ) about policy and implementation issues that relate to penitentiary overcrowding and prisoner rehabilitation. A total of 80 questions were divided between the following 12 sections:

1. Strategy and legislation;

2. The judiciary;

3. Police and prosecution;

4. Penitentiary service;

5. Prison overcrowding;

6. Prisoner re-socialisation;

7. Early and conditional release;

8. Alternative sanctions and probation;

9. Aftercare;

10. Data and statistics;

11. Crime as a whole community responsibility; and

12. Funding.

Answers to the questions were submitted by the MoJ in November 2015. The CoE is extremely grateful to officials for undertaking the considerable amount of work involved. In the following part of this report, most of the answers are given in full.

Each answer is followed by a series of comments and recommendations, which include reference to relevant CoE standards. At the end of each of the 12 sections some overall comments and recommendations are provided. A questionnaire used to carry out the study is attached as an appendix.

SECTION 1. STRATEGY AND LEGISLATION

1. Direction of Policy

1.1 Response from the MoJ

By the decree of President of Ukraine from May 20, 2015 № 276/2015 the "Strategy for reformation of judiciary, legal proceeding and contiguous legal institutes" was approved for the period 2015 – 2020. This included the plan of actions in relation to achieve the strategy and the government was ordered to define the mechanism for its implementation.

In June 2015 the Prime Minister (Order № 21358/1/1-15, 16 June 2015) ordered ministers and heads of central organs of executive power to report annually on 1 April to the Presidential Administration and the Cabinet of Ministers of Ukraine about the state of fulfilling the plan of actions.

One of main goals of the reforms is to increase efficiency in preventing crimes, rehabilitation of offenders and improving the penitentiary system. These were among 72 specific tasks in the strategy.

1.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Introduction): Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

CoE Rec. on Prison Overcrowding (Article 19): Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

1.3 Comments from the review

The Government of Ukraine, an initiative coordinated by the MoJ (MoJ), is pursuing a broad and challenging programme of reform. It has accepted advice from the European Union, the Council of Europe and bilateral donors (for example the Norwegian and Swiss governments and the current project on juvenile justice reform supported by the Canadian government). Of particular relevance to these current reforms is attention to the prevention of crime, the individualised rehabilitation of offenders and reform of the penitentiaries.

2. Minimum sentences

2.1 Response from the MoJ

No information was provided about whether Ukrainian legislation prescribes minimum mandatory prison sentences.

2.2 Relevant International Standards

The review has not found a specific standard on minimum sentences. Article 11 of the 1983 CoE Convention on the Transfer of Sentenced Persons (ETS N° 112) does make the following reference to this issue: In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority . . . shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

2.3 Comments from the review

Countries that have inherited the Soviet penal philosophy often either prescribe minimum and maximum sentences for the more serious crimes or grade them assignment grades of seriousness for which the maximum and minimum sentences are assigned. Under such systems, unnecessary imposition of imprisonment can result if an offender is guilty of a very minor example of a crime that carries a minimum sentence.

In Eap countries there is the safeguard that a court can replace the minimum prison sentence with "conditional release" with the effect that the offender does not serve time in prison. However, as pointed out in the reference from the rules overcrowding, this is an unsatisfactory formulation. For mid-range offenders, for whom mitigating circumstances mean the court does not intend to impose a custodial sanction, probation ought to be a clear sentence in its own right. It should not be an unclear adjunct to a suspended prison sentence that was never going to be imposed.

Penal Reform International (PRI) argues that mandatory minimum sentences reduce the opportunity for judges to give consideration to the mitigating circumstances of a crime. A mandatory minimum can restrict them from awarding a sentence that has the greatest possibility of encouraging rehabilitation and desistance from further criminal behaviour.[94]

3. Changes to criminal legislation

3.1 Response from the MoJ

The MoJ has explained that significant changes to administrative offences were incorporated into the Criminal Code (CCU) in 2012.

Also in 2012, a new Criminal Procedure Code (CPCU) came into force. This introduced changes to the conduct of cases in court and established new safeguards to avoid unnecessary use of pre-trial detention. Other changes to criminal procedures are said to have been designed to "humanise the system".

The most significant development in this period was the adoption in February 2015 by the Ukraine Parliament of the law on probation.

The full response to this question is available separately.

3.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

[94] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

CoE Rec. on Prison Overcrowding (Article 3): Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

CoE Rec. on Prison Overcrowding (Article 20): Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

3.3 Comments from the review

This review is particularly interested in the introduction of a Probation Law and limits being attached to the use of pre-trial detention. However it is clear that for these initiatives to be successful there must be consequent changes in the CCU and the Criminal Executive Code. We are aware that the MoJ has sought and received specialist advice from the CoE about these matters.

Information provided in response to Sub-section 28 suggests that the number of people in pre-trial detention has increased significantly in the last year.

Currently Ukrainian legislation lacks convincing community sanctions. This results in mid-range offenders being sent to prison when, as European experience shows, better results can be obtained from supervised rehabilitation programmes in the community. The introduction of a probation law will provide a framework within which effective services of this nature can be developed.

As these significant legislative reform are being prepared for submission to parlaiment, it is important to make every effort to brief leaders of the justice sector and elected representatives about the principles and purpose of proposed legislative changes. Their support will be necessary, particularly as the changes proposed will challenge traditional approaches to offender management and may, in the short term, involve additional funding.

4. Impact of changes to legislation on the prison population

4.1 Response from the MoJ

No information has been provided about the impact on the prison population of changes to legislation that have already come into effect.

4.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

4.3 Comments from the review

It appears that some aspects of criminal liability have been changed but that they were not intended to reduce the number of prisoners. More significant changes to the prison population can be anticipated by potential changes to the CPCU and the adoption of the Probation Law.

5. Legislation about conditional release from prison

5.1 Response from the MoJ

The MoJ provided the following information from Articles 81 and 82 of the CCU which govern conditional release from prison or the replacement of a custodial sentence with an alternative sanction.

Article 81 explains that release on parole can be granted if the prisoner has served half of the sentence for a minor or medium grave offence. For the most serious crimes, or if the prisoner had committed a crime during a previous period of parole, three quarters of the prison term must be served before parole can be considered. Articles 71 and 72 of the CCU describe the sanctions available to courts if the prisoner does not comply with the requirements of release.

Article 82 explains that a custodial sentence may be replaced by another sanction earlier in the sentence than the points at which parole becomes available. Eligibility for "commutation of the remaining part of the sentence" could be after one third of the prison term if it is a minor or medium grave offence and it is even available after two thirds of the term if the crime was especially grave. Unfortunately, the extracts from the legislation quoted by the MoJ do not give details of the "other sanctions" that would be imposed in these cases, nor which agency is responsible for supervising them.

5.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention.

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.

5.3 Comments from the review

The extract quoted above from the CoE rules on parole draws attention to the strategic position in European offender management of conditional release from prison. The thinking behind this is that prisoners face many problems on release that often lead to a high likelihood of reoffending. Firm supervision coupled with rehabilitation programmes as a condition of early release can reduce these risks. On the other hand, keeping an offender in prison until the sentences has expired will not provide any leverage over their behaviour after they are released. On the other hand, properly-managed release at an earlier stage can act as an incentive for good behaviour in prison and a degree of control while the prisoner learns to cope with the realities of life back in the community.

The key issue should be whether supervision and rehabilitation in the community can help to avoid further crime. An assessment of the procedure in Ukraine would need to check the criteria on which judgements about early release are based. Traditionally in former soviet countries a large part of the decision is based on the behaviour of the offender in prison. European approaches give more attention to the likely future behaviour of the offender and what additional rehabilitation programmes or restrictions are likely to achieve safe release. However such assessments require the establishment of a probation service with good risk assessment methods, experienced offender supervisors and a range of proven offending behaviour programmes. When a probation service is properly established and operating it would be advisable for Criminal Procedure Legislation to be amended to require active and constructive supervision in the community of prisoners who are given early release.

6. Access to legal advice by persons in custody

6.1 Response from the MoJ

The MoJ has gven full information about the possibility of providing legal advice for convicted offenders and accused persons held in detention.

Article 20 of the CPCU ensures that a criminal suspect or sentenced person has various rights including the right to use a legal aid defender. Explanations about their right for skilled legal help must be provided by the investigator, public prosecutor, investigation judge and court. Regulations required by the CPCU will determine whether the cost of the legal advice will be paid by the state. Persons who have already been sentenced by a court, whether in prison or in a secure hospital, are allowed access to special lawyers.

6.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

6.3 Comments from the review

Although suitable legislation may be in place, much depends on the proceedures for accessing such a service. CPT reports on a number of countries draw attention to difficulties encountered by prisoners in making such applications (such as, for example, the report published in relation to the Republic of Ireland[95]). Informal deterrents can easily be applied by staff who fear that the prisoner may be making an unjustified complaint about their treatment.

7. New probation legislation

7.1 Response from the MoJ

On February 5, 2015 the Ukrainian Parliament adopted a law "On probation" (№160-VIII). This came into force on August 27, 2015.

7.2 Relevant International Standards

[95] See, for example, the CPT Report on the visit to Ireland from September 2014, CPT/Inf (2015) 38, (http://www.cpt.coe.int/documents/irl/2015-38-inf-eng.pdf).

All of the advice contained in the CoE Probation Rules is relevant here, particularly the first of the 18 'basic principles': Probation agencies shall aim to reduce reoffending 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.

7.3 Comments from the review

Prior to the adoption of the law on probation, a limited set of alternative sanctions had been supervised by inspectors accountable to the Director of Alternative Sanctions in the State Department for the Execution of Punishments. Over 3,000 Criminal Executive Inspectors undertook this work from a network of offices across the country. In November 2008, the Cabinet of Ministers of Ukraine published a paper on the "Concept on the State Target Programme for the Reform of the State Criminal Sentence Implementation Service for the period to 2017". It called for the creation of "a probation service under the jurisdiction of the MoJ". This was a welcome development, although the concept of probation was not fully described in the document.

From 2011 to 2013 the CoE provided technical advice to the MoJ as it made preparations for transforming its Inspections Service into a European style probation service. To assist focusing supervision on those offenders who most needed it, a risk and needs assessment system was developed. Rehabilitation programs were tested and a new approach to Community Service was piloted. In one oblast (region), assessment reports were prepared at the request of the presiding judge to assist decisions about the feasibility of alternative sanctions in individual cases.

Donor support for technical advice programmes of this nature was suspended following the civil disturbances and the revolution of 2013. But since 2015 a wider range of technical advice has been provided to assist the new government with a comprehensive reform of the penal services. The development of probation is a primary feature of these reforms.

8. Legislation to improve cooperation between penitentiary and probation services

8.1 Response from the MoJ

In June 2015 the Cabinet of Ministers agreed Decree №456 "About making changes in Statute on State Penitentiary Service of Ukraine". Amongst other things, this requires the State Penitentiary Service (SPS) to ensure that the public is made aware of the existence of the probation service.

8.2 Relevant International Standards

CoE Probation Rules (Rule 12): Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.

CoE Probation Rules (Rule 37): Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.

CoE Probation Rules (Rule 40): Where appropriate, inter-agency agreements shall be arranged with the respective partners setting the conditions of co-operation and assistance both in general and in relation to particular cases.

8.3 Comments from the review

The CoE understands that formal accountability structures for the probation and penitentiary services within the MoJ have not been finalised. However, whatever structure is eventually agreed, it is clearly vital that a good relationship should exist between the two services. When one agency takes on a new offender, it is likely that the other agency will have had previous contact with him or her that can prove helpful in making assessments and plans.

A few European countries – such as Sweden and England – fully integrate these two services. Nevertheless, the normal model is for them to operate similar goals in separate agencies within the MoJ, with systems to ensure good communication about overall policies and the management of individual offenders.

9. Use of amnesties and pardons

9.1 Response from the MoJ

In the last five years, prisoners have been released on amnesty on two occasions, in 2011 and 2014. Only offenders convicted of low or medium gravity crimes were considered unless special factors were apparent such as persons with children, persons with oncology diseases, patients with tuberculosis, and persons sentenced for certain economic crimes.

Persons released on amnesty:

Year	Amount of sentenced persons to imprisonment	Released from the places of imprisonment	Reduced term of punishment
2011	115,000	3,190	501
2014	100,000	16,624	5,414

Persons given pardons:

Year	Number of Decrees	Out of them:		
		released	reduced term	released under probation
2011	2	1	3	0
2012	3	15	6	0
2013	4	11	3	0
2014	1	1	0	0
2015	2 +1	7 +5	23 +15	

9.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 19): Preference should be given to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

9.3 Comments from the review

The information provided does not explain whether the amnesties mentioned, were prompted by overcrowding or other factors, including polit-

ical considerations. However, pressure on prison places has been a problem in Ukraine in the past. In 2005, according to the International Centre for Prison Studies, Ukraine had an extremely high prison population rate (400 prisoners per hundred thousand population compared with typical Western European figures of a quarter of that amount)[96]. The same source indicated that the occupancy level in 2013, based on the "official capacity", was 120.4%. Nevertheless, the amnesty of 2011 involved releasing less than 3% of the total population and would not have had a particularly significant impact on overcrowding. The amnesty of 2014 released over 16% of the prison population so this possibly did combine a political dimension (following the establishment of a new government) as well as a need to improve conditions in the prisons.

Criminologists generally disprove of amnesties because they are awarded to whole groups of prisoners without properly distinguishing those who most merit it or who can be trusted keep to the conditions of release. The lack of preparation for release, unscientific risk assessment, and few sources of advice after release, means that the public is put at risk and too many amnestied prisoners return because of further crime. A properly managed system of parole is a far better alternative. Amnesties are a crude method of dealing with overcrowding and they can undermine confidence in civil society for the important notion of early release.

The large-scale release of prisoners in 2014 may be one reason for the substantial increase in numbers in pre-trial detention soon after (see information provided for Sub-section 28.)

These points are well argued in the report by the Max Planck Institute: "Prison Overcrowding - Finding Effective Solutions Strategies and Best Practices against Overcrowding in Correctional Institutions":[97]"However, the regular use of amnesties as a response to prison overcrowding seems to undermine confidence in the criminal justice system". The report goes on to suggest that amnesties may only be useful as an instrument to settle large-scale conflicts and to support reconciliation. However, in the example of Georgia, if the amnesties create a 'once and for all' situation, in which modern methods of criminal justice practice have a better chance of suc-

[96] Statistics provided by the International Centre for Prison Studies http://www.prisonstudies.org/country/ukraine

[97] Prison Overcrowding - Finding Effective Solutions Strategies and Best Practices Against Overcrowding in Correctional Institutions by Hans Joerg Albrech of the Max Planck Institute for foreign and International Law. Published in March 2011 by the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI).

cess (by the judiciary, the penitentiary service and the probation service), the amnesties may have been worthwhile.

Pardons are generally awarded because either the justice process leading to the conviction was unsound or it was retrospectively decided that the prosecution itself was not in the public interest. However, the number of pardons involved is small and not likely to influence public confidence.

10. Community sanctions and measures that are available to courts

10.1 Response from the MoJ

The answer provides extracts from Article 51 of the CCU, which specifies the following non-custodial sanctions:

Deprivation of the right to occupy certain positions or engage in certain activities. This can be applied if a court, having regard to the nature of the offense committed by a person in office or in connection with a certain activity, the character of the person convicted, and other circumstances of the case, decides that such person should be deprived of the right to occupy certain positions or engage in certain activities. Where this is imposed as additional punishment together with the arrest, restraint of liberty, custody of military servants in a penal battalion, or imprisonment for a determinate term, it shall extend through all the term of the primary punishment, and also for a term specified in a judgment of court that came into effect.

Social Work (known more widely as Community Service) involves being assigned to work determined by the Municipal Authority for a period of between 60 and 240 hours. The work can be "labour intensive and not prestige work. Mainly, that work must not humiliate honour and dignity of sentenced".

Correctional Work is covered by Article 57 of the CCU. The offender must work with designated for between six months and two years and submit to the court between 10 and 20% of his or her earnings.

A Criminal Executive Inspector supervises these orders.

10.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use

should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Prison Overcrowding (Article 15) expands on this with the following list:

• probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,

• high intensity supervision,

• community service (i.e. unpaid work on behalf of the community),

• treatment orders / contract treatment for specific categories of offenders,

• victim-offender mediation / victim compensation,

• restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

10.3 Comments from the review

The three community sanctions described by the MoJ are standard methods inherited from Soviet times. Community Service is a very popular sanction in European countries but it tends to be implemented very passively in the EaP countries. Sending offenders to the Municipal Government to undertake menial work to employ such people.

It appears that much work needs to be done in order to develop a modern range of community sanctions that will give courts and the public confidence that they can deal more effectively than imprisonment for most mid-range offenders.

11. Offender/victim mediation

11.1 Response from the MoJ

The MoJ provided details from decrees and legislation introduced in relation to the subject in recent years. The following is a brief summary.

In May 2008 the President issued a decree "About a concept of justice reform in order to achieve accord with European standards"[98]. Among the tasks involved was the development of alternative methods of dispute resolution and mediation; the introduction of reconciliation between victims and offenders; a new system of juvenile justice; and the introduction of a probation service.

An important development has been the introduction of a new CPCU in 2012. Article 468 now covers agreements about reconciliation between a victim and an offender monitored by a public prosecutor.

A decision of the Supreme Court of Ukraine in December 2005 covers releasing a person from criminal responsibility if reconciliation has been achieved with the victim (with certain necessary safeguards).

11.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 1): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/reparation/ victim-offender mediation.

11.3 Comments from the review

The introduction to the CCU in 2012 of the concept of reconciliation between a victim and a suspect could be a positive development. Such methods of dispute resolution can be preferable to court proceedings but the concern is that the victim will have been pressured to agree to reconciliation. Certain safeguards are described towards the end of the answer provided by the MoJ. It would be important to know who is eligible to be the "legislator" who supervises and monitors these agreements.

12. Electronic monitoring of home detention as a pre-trial measure

12.1 Response from the MoJ

Ukraine legislation allows for pre-trial and pre-sentenced accused persons to be placed on electronic monitoring of home detention or home arrest. This can be for all or part of the day.

[98] Decree of President of Ukraine № 311/2008 from 08.04.2008

The court ordering this measure will instruct a member of the Ministry of Interior (MoI) to implement the measure and immediately inform the investigator or the court that the measure of restraint has been applied. The information provided by the MoJ appears to suggest that the measure of restraint can also be ordered by the investigator.

12.2 Relevant International Standards

CoE Rec. on EM (Preamble): Recognising that electronic monitoring used in the framework of the criminal justice process can help reduce resorting to deprivation of liberty, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime.

12.3 Comments from the review

Although this measure is available in law, it is not clear whether or to what extent it operates in practice. Although reliable electronic equipment can be obtained on the international market, local arrangements for installing it and providing continuous monitoring are not easy to implement. Communication difficulties can arise if the person being monitored lives in a rural location or in a large apartment block. In European implementations, staffing and management costs far outweigh the cost of the equipment. Overall, the method is about twice as expensive as normal supervision provided by a probation service.

Nevertheless, any method to avoid defendants being held unnecessarily in detention is to be welcomed. Over 27 European countries make use of this option and much advice will be available about overcoming operational problems.

The CoE recommendations on Electronic Monitoring (see extract above) incorporate the general view that this method of supervision should be operated by the probation service, rather than the police. However it recognises that many successful schemes are operated by the police.

13. Electronic monitoring of home detention as a criminal sentence

13.1 Response from the MoJ

Current Ukrainian legislation does not provide for the application of electronic monitoring in respect of convicted offenders.

13.2 Relevant International Standards

CoE Rec. on EM (Article 8): 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.

13.3 Comments from the review

Electronic monitoring of home detention has proved to be the most reliable and effective implementation of electronic technology in the penal system and it is currently used in over 20 European countries.

GENERAL COMMENTS ON SECTION 1: STRATEGY AND LEGISLATION

Leadership. A clear policy based on the concept of rehabilitation and coupled with understandable and convincing methods needs to be articulated by those who lead the various sectors of the justice system. Although reforms of this nature may achieve a certain amount of tacit support, vocal opposition can be expected from those who favour a punitive approach.

Systemic issues. Most of the problems in the justice system affect more than one part of it and lasting solutions require negotiation and compromise between agencies that have firm views about what is right. A frequent example is that delays in court proceedings results in pressure on places in pre-trial detention facilities. Reform of the system needs to look at the whole process from arrest to release and to examine alternative approaches at each stage. Policies need to recognise the part that can be played by wider social policy in reducing crime and strengthening communities. Attention to preventing crime through social and situational measures, and negotiations to resolve harms and disputes and restore justice without recourse to criminal law can result in better long-term outcomes.

Planning and legislation. Pilot projects and innovations by established service providers can pave the way for significant reforms. Nevertheless the need for strategic plans and reform of legislation must be addressed before critics have a chance to stall the process. The financial costs and benefits must be articulated, but it is equally important to raise the wider issues of community safety, a belief that offenders can reform, humanitarian principles and concern for victims.

Evidence-based practice. It is no longer wise or necessary for reforms

to be based on assumptions of what will be effective. The study of international literature and results of small-scale pilots can help to avoid well-meaning but counter-productive initiatives.

Evaluation of effectiveness. Baseline statistics, and data about the effect of changes to legislation are necessary for guiding further work. Often an agency in one part of the justice system may be collecting routine information that will be of great help to evaluators elsewhere.

Constructive interventions. Many understandable fears have been expressed in relation to this surveillance technology and many European probation services have been concerned of the need to emphasize that the technology should never be used as a replacement for constructive professional relationships with suspects and offenders by competent staff dealing with them in the community.

Electronic Monitoring. Electronic monitoring has been used in Europe since the 1990s and continues to expand. It is predominantly been used to enforce curfews and home detention but newer technologies are emerging (e.g. GPS) which can monitor the behaviour and movements of suspects and offenders as well as help create and monitor exclusion zones. Different countries have developed their own legislation and policy on electronic monitoring and this has been coordinated by the Confederation of European Probation (CEP).

Organisational flexibility. There is no single method of locating a Probation Service within the justice system. Successful examples can be found where probation is fully integrated with the penitentiary service (such as in Sweden and England). Other countries find it preferable to achieve similar results by separating the two services and running them as independent agencies within the MoJ. Austria is notable for its probation service to be operated by non-governmental organisations under contract to the MoJ.

Pilot projects. It is often easier to establish more liberal penal policies favouring rehabilitation by introducing them with women or juvenile offenders. New methods which have then been proved to be successful can gradually be introduced to male and older offenders.

Mandatory minimum sentences. A study by PRI suggests that mandatory minimum sentences reduce the opportunity for judges to give greater consideration to the mitigating circumstances of a crime. The requirement to pass a custodial sanction can make it difficult for them to impose a com-

munity sanction that might have a greater possibility of encouraging rehabilitation and desistance from further criminal behaviour.[99]

RECOMMENDATIONS ON SECTION 1: STRATEGY AND LEGISLATION

Range of alternative sanctions. The list of alternative sanctions should be reviewed to ensure that there is sufficient scope for judges to pass sentences that are less punitive and have more rehabilitation content. In particular, serious consideration should be given to establishing probation is a unique penal sanction with its own place in the Criminal Code. It should be available for use instead of a prison sentence for a moderately serious instance of any crime except murder.

Criminal legislation. The contents of the CCU will need to be adjusted to include new sanctions that have proved effective in tests carried out by the probation service. As such, this CCU can be a key tool for justice reform. Attention must be given to frequent review of other legislation (i.e. Probation Law and CPCU) in order that the strategy for change maintains a momentum.

Justice sector integration. The criminal justice system consists of a number of independent agencies with their own history and culture. Structures should be established to promote continuous discussion and problem-solving so that the different parts are encouraged to support overall aims and objectives.

Judges and prosecutors. The reform strategy should seek to involve judges and prosecutors at the heart of its development as they hold the key to creating a greater synergy in the system and a therefore greater success in reducing crime.

Joint operational meetings. There should be regular inter-disciplinary meetings involving all justice professionals. Amongst other things these could promote debate on rehabilitation and the role of sentencing in creating a rehabilitative focus for all criminal justice practice. One possible model would be the "Criminal Justice Board" that meets quarterly in London under the direct chairmanship of the Minister of Justice.

[99] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

SECTION 2. THE JUDICIARY

14. Proportionate use of prison sentences

14.1 Response from the MoJ

Year	The total number of persons, whose court decision have entered into force	Including the number of convicted persons (*1 group*)		The number of persons sentenced for deprivation of liberty	
		Total	*% of group #1*	Total	*% of group #2*
	Column 1	Column 2	Column 3	Column 4	Column 5
2010	192124	168774	*87,8*	40920	*24,2*
2011	183295	154356	*84,2*	44246	*28,7*
2012	184900	162881	*88,1*	42990	*26,4*
2013	146913	122973	*83,7*	30532	*24,8*
2014	124942	102170	*81,8*	20896	*20,5*

14.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 1): Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.

CoE Rec. on Prison Overcrowding (Article 16): Prosecutors and judges should bear in mind resources available, in particular in terms of prison capacity (prosecuting and sentencing guidelines, in particular with regards to reducing the use of imprisonment and expanding the use of community sanctions and measures, and using measures of diversion such as mediation or the compensation of the victim; particular attention should be paid to the role of aggravating and mitigating factors such as recidivism).

14.3 Comments from the review

Countries that have inherited the Soviet penal philosophy tend to use imprisonment more often and for longer periods than European countries. However it is difficult to compare these statistics about Ukraine because the categories included in the table need more explicit definition. There is also the problem that types of crime are classified differently in different countries (for example, motoring offences may or may not be included in the data).

15. Access to justice/legal aid

15.1 Response from the MoJ

Access by suspected persons and convicted offenders was improved in 2011 by the introduction of a new law "On free legal aid".

15.2 Relevant International Standards

EPR (Rule 23.1): All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

15.3 Comments from the review

In order to serve the high ideals of a modern justice system it is necessary for persons accused of crimes to have proper legal advice. General legislation can enable this to happen and to enable it to be paid by the state under certain circumstances. But much depends on the procedures involved, which can act as a means of controlling overall costs.

No doubt human rights advocates in civil society will monitor the new system.

It would be interesting to know what proportion of defendants in Ukraine were sentenced to imprisonment without having any kind of legal representation.

16. Pre-trial detention

16.1 Response from the MoJ

The proportion of accused persons being remanded in custody pre-trial/ pre-sentence by the court is now less than half the proportion remanded five years ago. This is a positive step in the journey towards introducing rehabilitation across the justice system.

Year	Cases with court decision	The number of persons who are under the trial (as a result of judicial review)	
		Total	% of group #1
2010	164,700	8,767	5,32
2011	160,763	8,626	5,37
2012	161,409	8,585	5,32
2013	135,793	6,676	4,92
2014	103,639	4,119	3,97

16.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 11): The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation N° R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered.

CoE Rec. on Prison Overcrowding (Article 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision.

CoE Rec. on Community Sanctions (Preamble): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples: alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified ad-

dress, to be supervised and assisted by an agency specified by a judicial authority.

The European Court of Human Rights 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 European Convention on Human Rights (hereafter ECHR). The fact that only cases against Armenia are cited here does not imply that it is a typical Armenian problem (Case of *Poghosyan v. Armenia*, 20 November 2011, appl. no. 44068/07; case of *Sefilyan v. Armenia*, 2 October 2012, appl. no. 22491/08; case of *Piruzyan v. Armenia*, 26 June 2012, appl. no. 33376/07). In the cases of *Muradkhanyan v. Armenia* (5 June 2012, appl. no.12895/06) and *Asatryan v. Armenia* (9 February 2010, appl. no. 24173/06), the extension of the pre-trial detention had been defined unlawful[100].

16.3 Comments from the review

The headings of the table supplied would benefit from further definition since it is not clear what is meant by "persons who are under the trial (as a result of judicial review)".

Normally transition countries are associated with a high use of pre-trial detention. The figures supplied suggest a significantly lower use than the typical figure of 10% in Western European countries. Comparisons such as this must be done with care because further details would need to be checked to see whether similar calculations are used. For example, the total number of "cases with court decision" may or may not include motoring or administrative offences.

A potential role for the new Probation Service, one that is more or less universal throughout Europe, would be to make professional assessments about the likelihood of defendants breaching conditions of release while they are waiting for their trial to commence.

[100] European Court of Human Rights case law reports contravention of article 5 of the ECHR

17. Prison sentence lengths

17.1 Response from the MoJ

Year	Population of penal establishments	The number of persons sentenced to deprivation of liberty for certain term						
		up to 1 year	1 to 2 years	2 to 3 years	3 to 5 years	5 to 10 years	10 to 15 years	Life imprisonment
2010	168,774	3,247	6,485	9,898	14,192	6,168	829	101
% of convicted persons		1,92	3,84	5,86	8,41	3,65	0,49	0,06
2014	102,170	1,781	3,220	4,950	7,364	3,207	350	24
% of convicted persons		1,74	3,15	4,84	7,21	3,14	0,34	0,02

17.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 14): Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

17.3 Comments from the review

It is interesting to note the significant reduction in prison population in the last five years.

However, the figures provided in the table by the MoJ require further definition. The percentages do not add up to one hundred.

18. Types of serious crime

18.1 Response from the MoJ

The MoJ was not able to identify crimes that would carry a sentence of five years or more or crimes that would carry a sentence of 10 years or more.

18.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

18.3 Comments from the review

It is common, in countries that have inherited Soviet justice principles, that each crime is assigned to one of a small number of categories from minor to very severe. Further definition of the current system in Ukraine would be helpful.

Of course, crimes that merit sentences of over five years are unlikely to attract alternative, community-based sanctions. However, the offenders involved are the kind that raise particular concern when they are released from prison. Such people should be amongst the priority cases for a probation service to target as it attempts to develop realistic goals for a period of intense parole supervision.

However, it would also be interesting to know the average sentence lengths given to each of the categories of crime. In popular imagination, similar crimes in European countries attract shorter custodial sentences than in Ukraine. Further evidence for this is that the rate of imprisonment in Ukraine (see the information to Sub-section 27), although steadily and dramatically reduced in recent years, is still 50% higher than the rate in Western European countries (for a detailed analysis, see the CoE statistics in the updated digests "SPACE I"[101]).

[101] http://wp.unil.ch/space/space-i

19. Functioning of the courts

19.1 Response from the MoJ

The MoJ has not identified factors that currently impacts on the functioning of courts.

19.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (A. Rationales for Sentencing): 9. Delays in criminal justice should be avoided: when undue delays have occurred which were not the responsibility of the defendant or attributable to the nature of the case, they should be taken into account before a sentence is imposed.

19.3 Comments from the review

Pressure on the courts can be reduced to some extent by diverting minor cases out of the criminal justice system. Reforms elsewhere (for example in Georgia) have shown that informal warnings and mediation in such cases can have satisfactory outcomes for the parties involved and retain the confidence of the general public.

EaP countries have inherited a justice system in which the office of the prosecutor plays a significant part in determining the outcome of criminal cases. Some reform projects, such as those funded by the European Union and the United States government, take the view that the system would be more transparent if control was more in the hands of judges. Methods to improve the selection, training, salaries and discipline of judges are recommended in order to improve their public status.

20. Extent of recidivism

20.1 Response from the MoJ

The following table shows the percentage of offenders that had also been convicted on a previous occasion.

Year	Population of penal establishments	The number of convicted persons who have committed a crime, not serving a sentence of deprivation or restriction of liberty		The number of convicted persons who have committed a crime during the period of arrest or serving a sentence in the places of deprivation or restriction of liberty	
		Total	***% of group #1***	**Total**	***% of group #1***
	Column 1	Column 2	Column 3	Column 4	Column 5
2010	168,774	1,320	*0,78*	380	*0,23*
2011	154,356	1,287	*0,83*	375	*0,24*
2012	162,881	1,497	*0,92*	496	*0,30*
2013	122,973	1,370	*1,11*	385	*0,31*
2014	102,170	1,264	*1,24*	261	*0,26*

20.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (D. Previous Convictions): 1. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant.

2. Although it may be justifiable to take account of the offender's previous criminal record within the declared

rationales for sentencing, the sentence should be kept in proportion to the seriousness of the current offence(s).

3. The effect of previous convictions should depend on the particular characteristics of the offender's prior criminal

record. Thus, any effect of previous criminality should be reduced or nullified where:

a. there has been a significant period free of criminality prior to the present offence; or

b. the present offence is minor, or the previous offences were minor; or

c. the offender is still young.

20.3 Comments from the review

The figures provided appear to focus on convicted offenders who have been received into prison. The fact that column 3 shows that only about one in every hundred prisoners had committed a previous crime requires some explanation.

If it is true, as indicated by column three, that only 1.5% of the total received into prison in that year had previously experienced a prison sentence, it suggests that prisons are good at deterring reoffending. However, as with other answers to statistical questions, more work might be necessary for these figures to be interpreted properly.

21. Use of electronically monitored home detention while waiting for trial

This issue was covered in the answer to Sub-section 12.

GENERAL COMMENTS ON SECTION 2: THE JUDICIARY

Sentence lengths. Countries that inherited the Soviet penal philosophy still tend to impose longer custodial sentences than in Western Europe. We are not aware of independent research that justifies longer sentences. It would therefore seem appropriate for Ukraine to research whether sustaining a policy of longer sentences does reduce crime and protect the public. Of course offenders would prefer shorter sentences. But if unnecessarily long periods of incarceration are reducing their chances of successful reintegration, it is the wider community and further victims who will suffer.

Pre-trial detention. The frequent use of custody at the pre-trial and pre-sentence phases has also been a feature of Eastern European practice. In some Western European countries, as few as 11% of offenders[102]

[102] Figures obtained from "Pre-trial detention and its alternatives in Armenia" Penal Reform International, January 2012

charged with deliberate crimes are held in pre-trial detention whereas the figure in Ukraine is over 30%. Although prosecutors will claim that releasing the person will result in the prosecution being compromised it would be instructive to submit such claims to rigorous testing. In European justice systems, unnecessary use of pre-trial detention leads to worse long-term outcomes.

Frequent use of custodial sanctions. Although the numbers in penitentiaries have reduced dramatically, they are still high compared to European equivalents.

Access to lawyers. Although access to lawyers for pre-trial and pre-sentenced persons is safeguarded to some extent by legislation, it would be helpful to look at this positively and test whether better legal representation leads to more appropriate sentencing.

Risk assessment. The use of detention has been reduced, indicating a gradual shift in the thinking of prosecutors and judges regarding risk. With the use of modern, scientific methods for assessing risk, they should have a better awareness of which defendants will present levels of risk where detention is appropriate. Probation Services in Europe are generally able to undertake these risk assessments and with other information can provide valuable reports for judges. In this way, the process of decision-making becomes more professional and indeed more accurate.

RECOMMENDATIONS ON SECTION 2: THE JUDICIARY

Pre-trial detention. A strategy should be developed, based on CoE rules, to further reduce the levels of pre-trial detention. Such a strategy will need to include electronic monitoring of accused persons pending the trial as well as the introduction of assessment reports that identify the risk of breaching release conditions.

Training for prosecutors and judges in sentencing (including risk assessment and rehabilitation). Training for judges, together with staff of the other criminal justice agencies, should aim to achieve a greater understanding of these basic offender management methods so that more effective choice of sentences can be achieved. Such training should be undertaken in multi-disciplinary groups involving professionals from other parts of the Criminal Justice System in order to develop corporate responsibility in decision making.

Research. Improved data on recidivism rates should be produced in order that the judiciary has a greater understanding of the effectiveness of its sentencing options.

Legal advice. The take-up and cost of legal aid, and the number of offenders sentenced to prison without legal representation, should be undertaken in order to review the effectiveness of this service.

SECTION 3. POLICE AND PROSECUTION

22. Total number of crimes each year

22.1 Response from the MoJ

Information was not provided.

22.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

22.3 Comments from the review

Official crime rates are normally presented as the number of crimes in a year for every 100,000 population. The analysis about overcrowding in prisons should take account of the basic level of crime in any country. Further comments will be made when the information becomes available.

23. Number of court cases

23.1 Response from the MoJ

Information was not provided.

23.2 Relevant International Standards

CoE/CM Recommendation R (92) 7 concerning Consistency in Sentencing (J. Statistics and Research):

1. Sentencing statistics should be officially established. They should be compiled and presented in a way which is informative to judges, particularly in respect of sentencing levels for relatively quantifiable offences (for example drunk driving, thefts from supermarkets).

2. Statistics should be compiled so as to ensure that they give sufficient details to measure and to counter inconsistency in sentencing, for example by linking the use of particular penalties to types of offence.

3. Research should be done regularly to measure accurately the extent of variations in sentencing with reference to the offences punished, the persons sentenced and the procedures followed. This research should pay special attention to the effect of sentencing reforms.

4. The decision-making process should be investigated quantitatively and qualitatively for the purpose of establishing how courts reach their decisions and how certain external factors (press, public attitudes, the local situation, etc.) can affect this process.

5. Ideally, research should study sentencing in the wider procedural context of the full range of decisions in the criminal justice system (for example investigations, decisions to prosecute, the defendant's plea, and the execution of sentences).

22.3 Comments from the review

Official crime rates are normally presented as the number of crimes in a year for every 100,000 population. Figures published by the State Committee of Statistics of Ukraine state that 529,139 crimes were detected in 2014. On the basis of the reduced national population of approximately 43.0 million, this gives the official crime rate in Ukraine as 1,230 per 100,000 population.

According to the European Source Book on Crime and Criminal Justice Sta-

tistics, 5th edition,[103] equivalent figures for other countries were: England and Wales 6,500; Denmark 7,800; Slovenia 4,500 and Lithuania 2,400.

This would suggest that the crime rate in Ukraine is about one fifth of the crime rate in the larger countries of Western Europe. However, as always, comparisons such as these raise the problem of whether or not a particular type of behaviour is categorised as a crime in the countries being compared.

Nevertheless the statistics have implications for assessing the appropriateness of sustaining an imprisonment rate in Ukraine that is similar to the rate in Western Europe when the crime rate is significantly lower.

24. Supervision of offenders by police and prosecutors

24.1 Response from the MoJ

Information has not been provided.

24.2 Relevant International Standards

CoE Rec. on EM (Preamble): Ethical and professional standards need to be developed regarding the effective use of electronic monitoring in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and agencies providing equipment or supervising suspects and offenders.

CoE Rec. on EM (Definitions): In some jurisdictions, electronic monitoring is directly managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a serviceproviding contract with a State agency.

24.3 Comments from the review

There has been a long tradition in EaP countries and elsewhere in the former Soviet Union for staff of the MoI to exercise limited supervision of convicted offenders. The preference in most European countries is not to employ police in supervising offenders because they lack the appropriate training and management. However, police are key stakeholders within the Criminal Justice System and their knowledge of the criminal behaviour, particularly of the more serious offenders, means they will have a valuable contribution

[103] European Source Book of Crime and Criminal Justice Statistics, 2014, 5th edition

to make to discussions about penal reform. In some countries, police staff assist probation officers to supervise some of the most dangerous and high risk offenders who have been released from prison.

25. Arrest targets

25.1 Response from the MoJ

Information has not been provided.

GENERAL COMMENTS ON SECTION 3: POLICE AND PROSECUTION

Participation in reform discussions. Police and prosecutors are one of key stakeholders within the Criminal Justice System. However, they seem to play a less prominent role in the development of reform strategies and can be left to react to decisions made elsewhere. In the case of the police, this is possibly because they are organisationally located within the MoI rather than the MoJ. In the case of the prosecutors' office, reasons may include the status the office holds within the system.

Accommodating the probation service. The establishment of a modern agency to strengthen the impact of community sanctions and measures has implications for the police and prosecution services. Although this may mean sharing some of their control with a significant new component in the system, overall improvements will require new forms of cooperation to be established.

RECOMMENDATIONS ON SECTION 3: POLICE AND PROSECUTION

Organisational cooperation. The police and prosecutors should maintain a close relationship with the new Probation Service particularly after the introduction of electronic monitoring.

Joint training. Training in these issues should be provided for police and prosecutors in order that they develop their understanding and share their thinking on risk and needs assessment, and the concept of rehabilitation in criminal justice.

Joint supervision. The police should agree cooperation protocols with the probation service to improve the supervision of dangerous offenders released from prison.

SECTION 4. PENITENTIARY SERVICE

26. Changes in prison population in the last five years

26.1 Response from the MoJ

The total number of prisoners in Ukraine at the end of each year has declined steadily and dramatically in the last five years:

2010 – 154,027 persons

2011 – 154,029 persons

2012 – 147,112 persons

2013 – 126,935 persons

2014 – 73,431 persons

2015 – 70,873 persons (at the beginning of November 2015)

26.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

26.3 Comments from the review

Although the size of the population and territory of Ukraine has been affected by recent conflicts, the fact that the numbers in prison has halved in the last five years is extremely significant. No doubt there are a range of theories about why this has happened.

27. Changed rate of imprisonment

27.1 Response from the MoJ

The total number of prisoners per hundred thousand population in the last five years has steadily decreased from 335 in 2010 to 160 at the end of 2014.

2010 – 335 persons

2011 – 336 persons

2012 – 322 persons

2013 – 278 persons

2014 - 160 persons

27.2 Comments from the review

The typical imprisonment rate in Western European countries is around 110 per hundred thousand population (see the statistics from the Council for Penological Co-operation of the CoE [SPACE I[104]]). The equivalent figure for Ukraine given by the MoJ was 160 at the end of 2014 and would presumably be even lower now).

Thus, it might be thought that the imprisonment rate in Ukraine is not very much out of line with the norm. However, this must be considered in relation to the overall crime rate in the country, figures for which have not yet been made available for this study (see Sub-section 23).

28. Pre-trial detention

28.1 Response from the MoJ

The number of pre-trial and pre-sentenced prisoners in prisons and other secure establishments has risen significantly during 2015:

1 January 2015 – 7,537 persons

1 November 2015 – 9,350 persons

[104] http://wp.unil.ch/space/space-i/prison-stock-on-1st-january-2013

28.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 12): The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

Relevant standards are defined in the Coe Committee of Ministers 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.

28.3 Comments from the review

A precise definition of the figures provided would be helpful. Information given to Sub-section 16 seemed to indicate that the number of pre-trial and pre-sentenced prisoners at the end of 2015 was 4,119.

The higher figure represented in this answer of pre-trial and pre-sentenced prisoners amounts to just under 13% of the total prison population. This is significantly lower than equivalent figures in Western European countries where the average is about 20%[105].

The recent rise in the number of accused persons in pre-trial detention may be related to the large-scale release of prisoners the previous year.

29. Women prisoners

29.1 Response from the MoJ

A total of 2,898 sentenced women offenders and 961 female remand prisoners were held in Ukraine's penitentiaries at the end of 2015.

29.2 Relevant International Standards

EPR (Rule 34):

34.1 In addition to the specific provisions in these rules dealing with wom-

[105] http://www.prisonstudies.org/country/ukraine

en prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

The CoE does not have a collected set of recommendations about female offenders. Relevant advice is available in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16).

29.3 Comments from the review

This represents 5.3% of the total prison population and is consistent with European averages in 2015 which were, for example, France 3.3%, Italy 4.1%, and England 4.6%[106].

30. Life sentences

30.1 Response from the MoJ

1,523 persons were held on life sentences in Ukrainian prisons at the beginning of November 2015.

30.2 Relevant International Standards

CoE recommendations on the subject are contained in the following document: Rec (2003) 23 on the Management of Life-sentence and Other Long-term Prisoners.

30.3 Comments from the review

This number of life sentenced prisoners in Ukraine is 3.5 per hundred thousand of the country's overall population. This is significantly lower than the number of life sentenced prisoners in Western Europe. For example,

[106] See SPACE I. Or for a more simple presentation of the information, similar information is available from the International Centre for Prison Studies: http://www.prisonstudies.org/world-prison-brief.

in England and Wales, life sentenced prisoners amount to 17 per hundred thousand population.[107]

31. Foreign nationals in prison

31.1 Response from the MoJ

At the beginning of September 2015 there were 1,464 foreign citizens in Ukrainian penitentiaries. Five years previously the number was almost double at 2,331 prisoners.

31.2 Relevant International Standards

EPR (Rule 37):

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall

co-operate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

CoE recommendations are included in Rec(2012)12 on Foreign Prisoners.

31.3 Comments from the review

[107] See details in the 'Bromley Briefing' available on this website: www.prisonreformtrust.org.uk

On the basis of the figures supplied, foreign citizens currently represent just under 2% of the total prison population. It is possible that, because they are in such a minority, these foreign citizens do not get the special attention they may need in terms of interpreting facilities and contact with family members in their home country.

This number of foreign nationals appears to be decreasing and is far less than the proportions experienced in Western European countries. For example, in 2015 the figures were: France 21.7%; Italy 33.0%; Germany 27.1%; and England 12.8%[108].

32. Juveniles in prison

32.1 Response from the MoJ

A total of 579 young people are held in secure facilities including correctional institutions, pre-trial detention facilities and child correctional institutions:

Females:

3 pre-trial detention

14 sentenced minors

13 sentenced juveniles

14 detained in child corrections institutions

Males:

188 pre-trial detention

196 sentenced minors

129 sentenced juveniles

22 detained in child corrections institutions

32.2 Relevant International Standards

EPR (Rule 35) sets standards in relation to juveniles in prison as follows:

[108] http://www.prisonstudies.org/world-prison-brief.

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

Further relevant standards are contained in CoE CM/Rec(2008)11 on European Rules for Juvenile Offenders subject to Sanctions and Measures.

32.3 Comments from the review

Excluding the young people detained in child corrections institutions, the proportion of young people under the age of 18 are held in Ukraine penitentiaries was 0.74%. This is similar to European averages in 2015 which were, for example, France 1.2%, Italy 0.6%, and England 0.8%[109].

However, comparisons must be treated with care because each country can have very different ways of defining these categories and the methods of detention.

33. Young offenders in Ukrainian prisons

33.1 Response from the MoJ

MoJ does not keep statistics for prisoners in this age range 18 to 21 years.

33.2 Relevant International Standards

EPR (Rule 18.8): In deciding to accommodate prisoners in particular pris-

[109] See SPACE I. Or for a more simple presentation of the information, similar information is available from the International Centre for Prison Studies: http://www.prisonstudies.org/world-prison-brief.

ons or in particular sections of a prison due account shall be taken of the need to detain . . . . . young adult prisoners separately from older prisoners. Also (Rule 28.3): Particular attention shall be paid to the education of young prisoners and those with special needs.

Recommendation CM/Rec (2008) 11 European Rules for Juvenile Offenders subject to Sanctions or Measures (Rule 10): Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention. Also (Rule 21.2): "Young adult offender" means any person between the ages of 18 and 21 who is alleged to have or who has committed an offence.

33.3 Comments from the review

In European countries this is a key age group for offenders as it marks the years when relatively impulsive juvenile offenders normally give up crime. Unless effective rehabilitation programmes are available, offenders in the 18 to 21 age group are likely to continue committing crime for at least the following five years.

34. Capacity of prisons

34.1 Response from the MoJ

The MoJ has provided details of the official capacity and the current numbers held in each penitentiary establishment.

The relevant legislation governing calculations about capacity is contained in Articles 64 and 115 of the Criminal Executive Code. The official capacity is calculated on the basis of $4m^2$ space for each prisoner in their cell.

The date to which these figures refer is not specified but we could assume it is sometime in 2015. The full details provided by the MoJ for this review are available separately.

34.2 Relevant International Standards

EPR (Rule 18.5): Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

In many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m² and 9.5m². The CPT has consistently stated that single-occupancy cells of less than 6m² (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.[110]

34.3 Comments from the review

In some prisons in Ukraine the occupancy rate is twice the official capacity. Some establishments have very low numbers. Nationally the overall occupancy is 110%.

Many factors need to be considered before commenting on these figures. A prison may seem to have a reasonable amount of spare space, but it may not be possible to operate a proper regime in it because of difficulties in recruiting staff in that locality, unsuitable design, expensive to heat, or not near main population centres.

Very great opportunities and challenges face the penitentiary administration now that the numbers it has been accommodating have dropped by 50% in the last five years. Although some prisons may have closed during that time it does indicate that levels of overcrowding in recent memory have been extremely severe.

35. Standards for penitentiary services

35.1 Response from the MoJ

The following answers were provided by the MoJ:

Accommodation. Living area per one prisoner is not be less than 4m², and in treatment facilities of correctional colonies, in correctional colonies intended for detention and treatment of prisoners with tuberculosis and in-patient treatment facilities living area per one prisoner must be at least 5m². It should be noted that the CPT standards relating to living space per prisoner was updated in December 2015 (CPT/Inf(2015) 44). The living space recommended by CPT has been reduced.

Food Standard. For each per person each day 3026,2 kcal. Is ratified by the decision of Government of Ukraine from 16.06.1992 № 336. The normal rations per person, employed in establishments of the SPS, pre-trial

[110] Paragraph 59, CPT/Inf (2011) 28

detention facilities of the temporal holding, accept-distributors and other accept of MoI.

Healthcare. Every separate pathology is regulated by separate certain standards. Standards are established by the separate orders of Ministry of Health Care of Ukraine, including the establishments of health protection that directs to jurisdiction of SPS.

Regime in colonies and key requirements related to it and penal and correctional colonies means the order of execution and service of punishment established by law and other applicable regulations, which ensures the isolation of prisoners and the on-going supervision of prisoners. Regime in colonies is aimed to bring to the minimum level the difference between living conditions in the colony and out of the prison, which should contribute to increased responsibility of prisoners for their behaviour and to their better understanding of human dignity. The regime shall create proper background for socially useful work of prisoners, general education and vocational training, social educative work and public influence.

In the colonies prisoners shall wear standard clothes. The uniforms shall be designed by the MoJ.

Prisoners, their belongings and clothes, and colony premises and territory shall be subject to search and check. Persons of the same gender shall carry out frisk of prisoners. The procedure for conducting searches and checks shall be established by applicable regulations of the MoJ.

In the existence of relevant grounds for this, administration of the colony may check citizens who are in the territory of the colony, including their belongings and vehicles, and withdraw any prohibited things and documents. The procedure for conducting searches and checks shall be established by applicable regulations of the MoJ.

The list and quantity of items and things that prisoners may keep shall be defined by applicable regulations of the MoJ.

Prisoners may not keep any things or items prohibited for use in colonies. Any things or items prohibited for use in colonies that are found on prisoners shall be withdrawn, and the authorised officer of the colony shall execute a protocol on this. Upon motion of the penitentiary facility the investigative judge shall consider the confiscation of such things and items or their transfer for storage until the prisoner's release pursuant to Section VIII of the CPCU. Storage of money and securities shall be provided by the administration of the colony.

Visits of relatives, attorneys and other persons to prisoners. Telephone conversations. Prisoners may receive short-term visits lasting for up to four hours and long-term visits lasting for up to three days. Short-term visits shall be allowed for relatives or other persons and shall take place in presence of a colony employee. Long-term visits shall be allowed only for close relatives (spouses, parents, children, adoptive parents, adoptive children, brothers and sisters, grandparents and grandchildren) who may stay with the prisoner. Use of rooms for short-term and long-term visits shall be paid by prisoners or their relatives or other persons. Long-term visits shall be allowed extra in case of marriage registration.

Prisoners may, including during their stay in in-patient healthcare facilities, have telephone conversations (including with the use of mobile connection) without limitation of the quantity of such conversations under control of the administration, and may use the Internet. Telephone conversations shall be paid from personal money of prisoners. Telephone conversations between prisoners are prohibited. Telephone conversations and use of the Internet shall be paid from personal money of prisoners.

Long-term visits may be substituted for short-term visits at the prisoner's request.

The procedure for organization of visits and telephone conversations shall be defined by applicable regulations of the MoJ.

Leave. Authorisation for a short-term leave of the prisoner shall be given by the head of the colony with due regard to the identity and behaviour of the prisoner. The duration of the prisoner's stay outside the colony shall be included into the overall term of imprisonment. Travel expenses of the prisoners shall be paid by prisoner or his/her relatives.

Female prisoners whose children are kept in children's houses at correctional colonies may be allowed to leave the penal colony in the territory of Ukraine for a short time for bringing their children to relatives, guardians or orphanages, provided that such leave shall last not more than ten days not including travel time (not more than three days).

Prisoners who work and stay in correctional colonies of low security level with benign imprisonment conditions may have an annual short-term leave outside the colony lasting 14 calendar days.

The procedure for short-term visits of prisoners shall be defined by applicable regulations of the MoJ.

35.2 Relevant International Standards

Space does not allow this review to describe all the international standards relating to the issues in this Sub-section. A sample is as follows:

Healthcare: The CPT has stated: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[111]

A health check for all prisoners is vital procedure not only to be able to deal with an individual prisoner appropriately but also to safe guard other prisoners from contagious diseases etc. As the CPT says: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combating the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments)."

Hygiene: According to EPR (Rule 19.1):

• All parts of every prison shall be properly maintained and kept clean at all times.

• When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

• Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

• Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least

• twice a week (or more frequently if necessary) in the interest of general hygiene.

• Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

[111] Paragraph 30, CPT/Inf (93) 12

• The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

• Special provision shall be made for the sanitary needs of women.

Some of these standards are raised as follows by the CPT[112]:

• A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

• There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

• A medical file should be compiled for each patient, containing diagnostic information as well as an on-going record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

EPR (Rule 24) has this to say about *visits*:

• 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

• 24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

• 24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

• 24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

[112] Paragraphs 38-39, CPT/Inf (93) 12

35.3 Comments from the review

A detailed assessment of compliance of these Ukrainian penitentiary standards with international standards is beyond the scope of this review. Neither is it the intention of the review to assess the extent to which these standards are observed in practice. Nevertheless, the European Prison Rules have been very effective in giving guidance to prison administrations.

GENERAL COMMENTS ON SECTION 4: PENITENTIARY SERVICE

Importance of healthcare. The CPT advises as follows: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[113]

Contact with the outside world. On this subject the CPT advice is as follows: "It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations."[114]

RECOMMENDATIONSON SECTION 4: PENITENTIARY SERVICE

Accommodation standards. The method for calculating the capacity of a prison should be based on CPT standards. These cover more factors than simply the space available in dormitories. Thus a prison could be considered "overcrowded" if pressure to use all available spaces for cells or dormitories means that the rest of the prison could be characterised

[113] Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002, revised 2015

[114] *Ibid.* Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002, revised 2015
Ibid. Penal Reform International website www.penalreform.int - 10 point plan

as overcrowded because of "cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff, etc" as described in paragraph 13 of the CPT standards.

Management information systems. Providing managers with the ability to collect and interpret operational data from their area of control will improve their ability to direct resources to achieve prison-wide objectives. Simple examples would be: time out of cell, incidents of disobedience, discovery of contraband, etc. In this way targets for improvement can be set and progress can be measured.

Probation services within the penitentiary establishments. Resettlement prospects for prisoners would be improved if probation staff visited prisons to contribute to pre-release courses and the development of individual release plans.

SECTION 5. PRISON OVERCROWDING

36. Overcrowding

36.1 Response from the MoJ

The MoJ already provided information about occupancy levels in the Sub-section 34.

36.2 Relevant International Standards

CPT Standards comment on prison overcrowding as follows: "The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in CoE Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe[115].

The CPT felt the need for a rough guideline in this area. The following criterion is currently being used when assessing prison cells: in the order of at least 4m^2, 2 metres or more between walls, 2.5 metres between floor and ceiling.

Elsewhere, the CPT standards[116] state that such a minimum should only apply to persons assigned to a multi-occupancy cell without including the area for a fully-partitioned sanitary facility. For permanent living space for a single-occupancy cell the CPT standard is a minimum of 6m^2 plus the area for sanitary facility.

[115] Paragraph 28, CPT/Inf (2001) 16

[116] www.cpt.coe.int/en/working-documents/cpt-inf-2015-44-eng.pdf

Living space per prisoner in prison establishments: CPT standards[117]

Introduction

1. Since the 1990s the CPT has developed and applied minimum standards regarding the living space that a prisoner should be afforded in a cell. While these standards have been frequently used in a large number of CPT visit reports, they have so far not been brought together in a single document.

2. At the same time, there is a growing interest in these standards, at the national level (among member states' authorities responsible for the prison estate, national detention monitoring bodies such as national preventive mechanisms established under OPCAT , domestic courts, NGOs, etc.) and at the international level, not least because of the problem of prison overcrowding and its consequences. Currently, the Council of Europe's Council for Penological Co-operation (PC-CP) is preparing a White Paper on prison overcrowding. For its part, the European Court of Human Rights is frequently being called upon to rule on complaints alleging a violation of Article 3 of the European Convention on Human Rights (ECHR) on account of insufficient living space available to a prisoner.

3. Against this background, the CPT decided in November 2015 to provide a clear statement of its position and standards regarding minimum living space per prisoner; such is the aim of this document.

4. The cells referred to in this document are ordinary cells designed for prisoners' accommodation, as well as special cells, such as disciplinary, security, isolation or segregation cells. However, waiting rooms or similar spaces used for very short periods of time are not covered here.

5. During its monitoring activities, the CPT has frequently encountered situations of prison overcrowding. The consequences of overcrowding have been highlighted repeatedly by the CPT in its visit reports: cramped and unhygienic accommodation; constant lack of privacy; reduced out of cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The CPT considers that the question of minimum living space per prisoner is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.

[117] CPT/Inf (2015) 44 | Section: 1/2 | Date: 15/12/2015

6. Minimum standards for personal living space are not as straightforward a matter as they might appear at first sight. To begin with, the "minimum living space" standards used by the CPT differ according to the type of the establishment. A police cell for short-term detention of several hours up to a few days does certainly not have to meet the same size standards as a patients' room in a psychiatric institution; and a prison cell, whether for remand or sentenced prisoners, is again an entirely different matter.

7. Secondly, a differentiation should be made according to the intended occupancy level of the accommodation in question (i.e. whether it is a single cell or a cell designed for multiple occupancy). The term "multiple occupancy" also needs to be defined. A double cell is arguably different from a cell designed for holding for instance six or more prisoners. As regards large-scale dormitories, accommodating dozens and sometimes even up to one hundred prisoners, the CPT has fundamental objections which are not only linked to the question of living space per prisoner, but to the concept as such.

In its 11th General Report the CPT criticised the very principle of accommodation in large-capacity dormitories; frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units.

8. Thirdly, the CPT has also taken into consideration the regime offered to prisoners when assessing cell sizes in light of its standards (see paragraph 21).

The CPT's basic minimum standard for personal living space

9. The CPT developed in the 1990s a basic "rule of thumb" standard for the minimum amount of living space that a prisoner should be afforded in a cell.

- 6m^2 of living space for a single-occupancy cell
- 4m^2 of living space per prisoner in a multiple-occupancy cell

10. As the CPT has made clear in recent years, the minimum standard of living space should exclude the sanitary facilities within a cell. Consequently, a single-occupancy cell should measure 6m^2 plus the space required for a sanitary annexe (usually 1 to 2m^2). Equally, the space taken up by the sanitary annexe should be excluded from the calculation of 4m^2 per person in multiple-occupancy cells. Further, in any cell accommodating more than one prisoner, there should be a fully-partitioned sanitary annexe.

11. Additionally, the CPT considers that any cell used for prisoner accommodation should measure at least 2m between the walls of the cell and 2.5m between the floor and the ceiling.

Promoting higher standards

12. Rule 18.5 of the European Prison Rules (2006) states that "Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation." Indeed, in many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m^2 and 9.5m^2. The CPT has consistently stated that single-occupancy cells of less than 6m^2 (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one prisoner.

13. When devising the standard of 4m^2 of living space, the CPT had in mind on the one hand the trend observed in a number of western European countries of doubling up 8 to 9m^2 cells that were originally designed for single occupancy, and on the other hand the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

14. Although the CPT has never explicitly defined "multiple-occupancy", an analysis of visit reports indicates that cells for two to four prisoners implicitly fall under this notion. Consequently, the CPT has regularly implied that cells measuring 8m^2 were acceptable for two prisoners, cells of 12m^2 for three, and cells measuring 16m^2 were adequate for four prisoners. However, in a non-negligible number of cases, the CPT has also stated that cells of 8m^2 (or 8 to 9m^2) should "preferably" (Slovenia, 2006; Hungary, 2013) or "idéalement" (Belgium, 2009) accommodate only one prisoner; or should be "used to accommodate no more than one prisoner save in exceptional cases when it would be inadvisable for a prisoner to be left alone" (UK, 2003). In the report on its 2011 visit to the Netherlands, the Committee

stated that accommodation in double cells measuring between 8 and 10m² was "not without discomfort" to the prisoners, and in the report on the 2011 visit to Ireland, it recommended that "efforts be made to avoid as far as possible placing two prisoners in 8m² cells".

15. Clearly, the aforementioned examples suggest that the 4m² per prisoner standard may still lead to cramped conditions when it comes to cells for a low number of prisoners. Indeed, given that 6m² is the minimum amount of living space to be afforded to a prisoner accommodated in a single-occupancy cell, it is not self-evident that a cell of 8m² will provide satisfactory living space for two prisoners. In the CPT's view, it is appropriate at least to strive for more living space than this. The 4m² standard is, after all, a minimum standard.

16. For these reasons, the CPT has decided to promote a desirable standard regarding multiple-occupancy cells of up to four prisoners by adding 4m² per additional prisoner to the minimum living space of 6m² of living space for a single-occupancy cell:

• 2 prisoners: at least 10m² (6m² + 4m²) of living space + sanitary annexe

• 3 prisoners: at least 14m² (6m² + 8m²) of living space + sanitary annexe

• 4 prisoners: at least 18 m² (6m² + 12m²) of living space + sanitary annexe

17. In other words, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, and a cell of 12m² no more than two prisoners.

18. The CPT encourages all Council of Europe member states to apply these higher standards, in particular when constructing new prisons.

36.3 Comments from the review

The CPT standards, described in detail above, are very challenging for countries that have limited funds for their criminal justice services. The standard that is most often quoted is living space per prisoner in the cell. However, the area provided in Ukrainian legislation of 4 m² only meets 1990 CPT standard for single-occupancy cells, which are rarely found in its prisons. And more recently, the standard has been increased to 6m². This would imply that Ukrainian prisons are more overcrowded by international standards than would be revealed by its own legislation.

Cell space must not be looked at in isolation. The other standards for the

custodial environment are equally important, but as they relate to human services rather than mathematical calculations, they are more difficult to assess.

37. Factors leading to overcrowding

37.1 Response from the MoJ

The MoJ has not provided a response to this question.

37.2 Relevant International Standards

The CPT makes the following points about prison overcrowding: "To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places. For its part, the CPT is far from convinced that providing additional accommodation will alone offer a lasting solution. Indeed, a number of European States have embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. By contrast, the existence of policies to limit or modulate the number of persons being sent to prison has in certain States made an important contribution to maintaining the prison population at a manageable level".[118]

37.3 Comments from the review

The United Nations Office on Drugs and Crime (UNODC) has highlighted a range of factors that contribute to overcrowding and excessive use of prison: poverty and inequality; delays in the criminal justice process; insufficient use of bail; inadequate use of alternative sanctions; and criminal activity associated with drugs. Each is dependent on a network of decisions in separate areas of the justice system.

38. Effects of overcrowding

38.1 Response from the MoJ

The MoJ has not provided information in response to this question.

38.2 Relevant International Standards

[118] Paragraph 14, CPT/Inf (97) 10

The CPT has made the following comments in relation to overcrowding: "Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint."[119]

38.3 Comments from the review

Please see comments in Sub-section 36.

39. Distribution of overcrowding

39.1 Response from the MoJ

The information in Sub-section 36 has dealt with this question.

GENERAL COMMENTS ON SECTION 5: PRISON OVERCROWDING

Overall regime standards. Overcrowding means much more than a prison estate with inadequate cell space. A prison, for example may have adequate space but if the regime lacks activities for rehabilitation, or the area available for visits from relatives is cramped and inadequate, it could be concluded that overcrowding exists. Such an approach to offender management is often referred to as 'warehousing' and does little for the aims of rehabilitation.

Revise use of existing prisons. The major reduction in the number of prisoners in Ukraine provides a unique opportunity to rethink the role of each establishment within a revised overall structure.

CPT statement. "Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in

[119] Paragraph 46, CPT/Inf (92)3

a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint."[120]

RECOMMENDATIONS ON SECTION 5: PRISON OVERCROWDING

Re-calculate the capacity of the prisons. Statements about the capacity of the prison estate should be revised according to a calculation based on current CPT recommendations of at least 6m^2 per prisoner in single occupancy cell + sanitary facility and 4m^2 per prisoner in multi-occupancy cell + fully-portioned sanitary facility.

Collect regime data. More detailed data should be collected about the impact of overcrowding on things such as health, regime activities and preparing prisoners for a successful release (re-socialisation).

More time out of cell. The minimum standard for time out of cell is one hour for high risk offenders. Although information regarding lower risk offenders indicated that 10 hours was likely, this was not written in terms of a minimum standard. There should be monitoring of all out of cell times for all regimes. Best practice in Europe gives targets for local managers to raise amounts of out of cell times. This is sometimes seen as arduous by staff who need to be more pro-active in their work. Setting targets and measuring performance may be necessary to overcome staff resistance.

Routine management information. More modern methods of compiling and evaluating operational information should be employed. These include the collection of data on 'time out of cell', number of family visits, completion of sentence plans, etc. Information of this type will enable managers to set targets for improvement and encourage local teams to perform better by finding new solutions to old problems.

[120] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards 2002/revised 2015

SECTION 6. PRISONER RESOCIALISATION

40. Induction routine for prisoners

40.1 Response from the MoJ

This issue is regulated by Articles 86 to 101 of the Criminal Executive Code. Full extracts from the Code have been provided and the key features are summarised here:

Penal colonies shall receive new prisoners into the "quarantine, diagnostics and distribution unit". During the following 14 days they will have a comprehensive medical examination for any infectious, somatic and psychical diseases, and a primary psychological and pedagogical examination. An individual program of social corrective work will be prepared for every prisoner based on the results of the medical examination, primary psychological and pedagogical examination and forensic and legal characteristics. The programme will be approved by the head of the penitentiary.

Disruptive or disturbed prisoners will be transferred to a "increased control" unit. This is only for male prisoners.

40.2 Relevant International Standards

EPR describes recommended admissions procedures in the Rules 14 to 16:

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

a) information concerning the identity of the prisoner;

b) the reasons for commitment and the authority for it;

c) the day and hour of admission;

d) an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;

e) any visible injuries and complaints about prior ill-treatment; and

f) subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

a) information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;

b) the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;

c) the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;

d) any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and

e) in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

40.3 Comments from the review

A careful, managed induction to the prison is an essential part of safe custody. However, the quality of the actual experience will depend on details that could only be appreciated through actually examining such a unit. Pressure from other prisoners could be a factor if only a small number are held in quarantine at any time.

41. Prisoners with special needs

41.1 Response from the MoJ

Regulations concerning prisoners with special needs are specified in Chapter 21 of the Criminal Executive Code. Details have been provided and the following are the key features:

Article 19 of the Code gives details in respect of juvenile prisoners.

Article 141 specifies separate accommodation for women with children up to the age of three years.

A multi-functional hospital is contained in the Sofiivskoy correctional institution (№ 45) in the Dnepropetrovsk area. It provides in-patient facilities for prisoners who need permanent medical supervision and rehabilitation.

41.2 Relevant International Standards

International standards in relation to the issues raised by this question are to be found at many points throughout the sets of advice and recommendation listed at the beginning of this Report. For example, in relation to nutrition, EPR states in Rule 22: Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

41.3 Comments from the review

The legislation quoted provides special facilities for female, juvenile and sick prisoners. In view of the overall level of crowding that remains, despite the reduction in the total population, it is likely that it is difficult to provide appropriate regimes for all categories of prisoner.

One of the first effects of overcrowding is the pressure it places on the ability of penitentiary administrations to maintain necessary services to potentially vulnerable groups.

42. Individualised rehabilitation programmes for prisoners

42.1 Response from the MoJ

In accordance with Article 123.3 of the Criminal Executive Code, the lawful behaviour of prisoners shall be encouraged through individualised correctional programmes taking into account their behaviour, psychical condition and degree of social neglect. Such programmes must acknowledge the contribution of the overall prison regime to rehabilitating prisoners, together with specific programs such as: general education and vocational training; incentives and sanctions imposed on prisoners; amateur organisations of prisoners; and public, charity and religious organisations.

In 2014, a working group was created to improve individualised education programs available to prisoners.

42.2 Relevant International Standards

The CPT has strong views on this subject[121]: "A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organization of regime activities in such establishments - which have a fairly rapid turnover of prisoners - is not a straightforward matter. Clearly, there can be no question of individualized treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable."

EPR (Rule 28) sets standards that are unlikely to be fully met in Ukrainian prisons for some years. For example:

• Regimes shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

• Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

• Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

• As far as practicable, the education of prisoners shall be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

[121] Paragraph 47, CPT/Inf (92)3

42.3 Comments from the review

The standards quoted above have been established because of a general recognition, presumably endorsed by the Minister of Justice, that an essential responsibility of a penitentiary service is to offer rehabilitation programmes so that prisoners are less likely to commit crime on release. A combination of education, social training and attitude development should be a major part of any regime. Further information will be necessary to assess how far these reforms have progressed in Ukraine.

43. Number of prisoners with individual sentence plan

43.1 Response from the MoJ

The MoJ has not provided information on this issue.

43.2 Relevant International Standards

Relevant standards are provided in the Sub-section 42.2.

43.4 Comments from the review

Rehabilitation will be more effective if the services offered are adapted to the strengths and needs of each individual. Although a sentence plan cannot meet every need, it provides a structure within which available rehabilitation opportunities can be organised and monitored.

44. Access by prisoners to regime activities

44.1 Response from the MoJ

The MoJ has provided an extensive answer to this question (available separately). In summary it contains the following information:

Three months before the end of the sentence, prisoners are interviewed about welfare issues they expect to encounter on release. Contact is made with the local department within the MoJ of Internal Affairs responsible for registering the person's address. Further communications are sent to the local office of the MoJ of Employment. If the prisoner is under the age of 28 notification is also sent to the social services department of the Municipal Authority. Meanwhile the prisoner's attendance at a pre-release course is scheduled.

In the academic year 2015/2016, 7,600 prisoners pursued courses to complete their secondary education.

Vocational courses are provided for prisoners in order to obtain the knowledge and skills for working in professions which have demand at the labour market. There are many vocational-educational institutions at penal establishments. 69.4% of the 10,000 unqualified prisoners took part in these courses. The courses bring in staff from the local employment centre, district and city departments of education and science, supervisory commissions and executive committees at city, district departments of Justice departments of labour and social protection of city and district councils as well as teaching staff and masters of industrial training vocational education in penal establishments.

In order to provide career guidance to juveniles a cooperative program with the Ministry of Education and Science and the Ministry of Labour and Social Policy has been established.

Higher education correspondence courses involved 29 adults and seven juveniles.

44.2 Relevant International Standards

CoE Recommendation No R(89) 12 deals with Education in prison. The first of its 17 paragraphs is as follows: All prisoners shall have access to education, which is envisaged as consisting of classroom subjects, vocational education, creative and cultural studies, physical education and sports, social education and library facilities.

EPR (Rule 28): This contains seven subsections describing standards for education. The first subsection is as follows: Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

EPR (Rule 107): this contains five important subsections concerned with preparation for release:

107.1 Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.

107.2 In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.

107.3 This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5 Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

44.4 Comments from the review

It seems like the SPS is making an effort to provide regime activities. A great deal of development and research has been undertaken in a growing number of countries and the services described appear likely to benefit from exposure to some of this new thinking. For example, most countries would provide intensive pre-release courses occupying at least a full week before the prisoner is released. Vocational courses are moving away from the notion of teaching pure qualifications (because it is very difficult for prisoners to find skilled employment on release). Attention is moving to the need to train all prisoners in "basic workplace skills" so that they might be seen as an asset to an employer whilst performing semi-skilled or unskilled jobs.

The legislation referred to describes the formal link with the community-based staff of the MoI. The CoE is advising the MoJ to include a new duty for the Probation Service to provide advice and assistance to prisoners after they have been released. The training received by their staff would prepare them better for this work than MoI staff.

GENERAL COMMENTS ON SECTION 6: PRISONER RESOCIALISATION

Emphasis on rehabilitation. In Western Europe, throughout the final 30 years of the twentieth century, the work of prisons in re-socializing offenders grew in importance. Regimes had previously lacked any activities designed for preparation for release. Education and work training were seen as essential for many offenders, whose poor skills were shown to have contributed to their offending.

Scope of education. Education is conceived more widely in Western Europe than in the EaP countries and it is common to see prisoners involved in classes where they are exploring new social and life skills and learning how they can benefit from an appreciation of literature. Unfortunately, prison overcrowding and reduced budgets in these countries have limited the availability of these essential activities.

Rehabilitation services. As stated above, one of the key objectives of a prison system is to rehabilitate prisoners in order that they will not continue with a life of crime. There is no single reason why individuals will return to their former criminal life. However causes include: lack of socialisation, lack of employment and training, a feeling of rejection by society, antisocial attitudes, restlessness, association with other criminals impulsiveness, lack of education, and neglect or abuse by parents or guardians. There are many ways to reduce recidivism and among the most cost-effective are social training and education courses.

Health needs. This has been made a particular priority and the administration has been pro-active in introducing schemes that seek to screen for priority health issues and provide good quality treatment.

RECOMMENDATIONS ON SECTION 6: PRISONER RESOCIALISATION

Cooperation between penitentiaries and probation. Although the plan for the Probation Service is to make it independent from the Penitentiary Service, it is essential that a close working relationship between the two organisations should exist. In this way the transition from prison to community can be more effectively managed.

Outcome data. The SPS should assure the collection and analysis of reoffending rates of prisoners released with or without supervision.

Regime monitoring. Data should be collected in relation to participation in rehabilitation activities in prisons.

Pre-release programmes. Programmes dealing with pre-release issues are not expensive to organise and can make an important difference. They should be seen as an essential part of the objectives of all prisons. Other programmes should be developed to respond to the criminogenic needs of prisoners.

SECTION 7. EARLY AND CONDITIONAL RELEASE

45. Conditional release

45.1 Response from the MoJ

The MoJ has provided the following information: The governor of each prison considers applications from prisoners for early conditional release having studied the opinions of the managers of each service department. If the governor is in favour of such an application the case is submitted to a special court for a final decision.

45.2 Relevant International Standards

CoE Rec. on Parole (Preamble): Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community;

CoE Rec. on Parole (General principles 4.a): In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence.

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

CoE Rec. on Prison Overcrowding (Article 25): In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

CoE Rec. on Parole (Articles 16 to 21): These paragraphs describe recommended approaches to conditional early release.

45.3 Comments from the review

The opportunity of release on parole encourages prisoners to behave well

and make full use of the opportunities available for rehabilitation during their sentence. The supervision provided by the probation service after release is an important element of extra control while they adapt to freedom.

The main criticisms of the decision-making system for release on parole in Ukraine are that: it is based on past behaviour such as disciplinary infringements, which are not necessarily a good indicator of behaviour after release; it gives too much responsibility to prison staff to assess the character of the prisoner; and is not informed by professional assessments of whether the prisoner can overcome – with the help of probation supervision – the personal and social challenges they all will inevitably face.

46. Reduction of sentence under early release

46.1 Response from the MoJ

The maximum reduction of sentence possible under current legislation is three years and six months. The MoJ does not keep statistics on the average reduction.

46.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

46.3 Comments from the review

Not many governments collect and analyse these figures. But knowing whether the average amounts discounted from sentences are increasing or decreasing can be coupled with information about reoffending rates to decide whether parole could be used more or less liberally.

47. Proportion of prisoners granted early conditional release

47.1 Response from the MoJ

The following figures show the proportion of eligible prisoners who were

granted early conditional release in the following years.

2010 – 21,237 persons or 50,4% of a total amount of eligible prisoners;

2011 – 19,325 persons, or 43,4%;

2012 – 19,108 persons, or 43%;

2013 – 21,639 persons, or 47,3%;

2014 – 18,047 persons, or 50,8%.

47.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 23): The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

CoE Rec. on Prison Overcrowding (Article 24): Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

47.3 Comments from the review

The numbers quoted show a high level of early conditional release. However, we do not know how often an application normally has to be made before it is successful. Nor do we know the average number of months that are discounted.

The fact that release is not linked to compulsory, active supervision from the probation service suggests that the scheme is not the significant aspect of offender management that is found in European countries. As CoE Rec. on Parole confirms, general opinion is that a substantial period of parole – linked to effective supervision by the probation service – is strongly in the interests of safe release and lower levels of reoffending.

48. Proportion of prisoners granted early conditional release

This appears to be the same as the information in Sub-section 47.

49. Support from probation for ex-prisoners

49.1 Response from the MoJ

According to MoJ, the probation service does not provide support to ex-prisoners. A limited form of checking is undertaken by community police employed by the MoI. These officials register the addresses of prisoners if there early release was coupled with a supervision order.

49.2 Relevant International Standards

CoE Probation Rules (Rule 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.

49.3 Comments from the review

Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[122]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

50. Other support for ex-prisoners

50.1 Response from the MoJ

No information has been provided on this subject.

50.2 Relevant International Standards

EPR (Rule 107.4): Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

EPR (Rule 26): Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidi-

[122] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

vism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.

50.3 Comments from the review

Informal observations confirm that some excellent services are provided for ex-prisoners by civil society organisations. For example, the NGO "Light of Hope" operates an impressive, informal residential resettlement centre in Poltava. Furthermore, it has assisted a CoE project in Ukraine between 2011 and 2013 to help MoJ staff to develop their skills in the design and delivery of cognitive-behavioural rehabilitation programmes. However, in general NGOs are limited in number and cannot respond to the great level of need associated with a large number of prisoners released across the country each week. Development of NGO services has proved to be a cost-effective way of delivering help and avoid reoffending.

51. Re-conviction of conditionally released prisoners

51.1 Response from the MoJ

The following reconviction rates were provided by the MoJ:

2010 – 441 person or 2,1%;

2011 – 127 persons or 0,7%;

2012 – 277 persons or 1,4%;

2013 – 160 persons or 0,7%;

2014 – 213 persons or 1,2%.

51.2 Relevant International Standards

CoE Rec. on Parole (Article 43): In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

51.3 Comments from the review

The statistics quoted are extremely low. Western European countries expect much higher failure rates. The normal standard form measuring reoffending is to show what proportion of convicted offenders commit further crime within two years of completion of the previous section. By that standard it is not unusual to find up to a half of released prisoners being convicted within that period.

It is possible that the figures provided by the MoJ concern the recall of prisoners who have been given early release. These numbers will be much lower. For instance, in England and Wales, out of just over 30,000 prisoners given supervised early release in 2013, a total 1,000 were recalled to serve the rest of their term in prison[123]. For half of them, the recall was because of further offending and the remainder failed to keep other requirements[124].

Publication of the low failure rates in Ukraine could improve public and judicial confidence in parole.

52. Reconviction rates for prisoners who complete their full sentence

52.1 Response from the MoJ

No statistics on recidivism by persons released after having fully served their punishment and deprived of liberty thereafter is kept by the MoJ.

52.2 Relevant International Standards

As mentioned in above Sub-section, CoE Rec. on Parole (Article 43) recommends that statistics such as this are compiled.

52.3 Comments from the review

Statistics of this nature enable the effectiveness of parole decision-making and post-release supervision to be measured and policy reforms to be evaluated.

[123] https://www.gov.uk/government/collections/proven-reoffending-statistics

[124] https://www.gov.uk/government/publications/the-parole-board-for-england-and-wales-annual-report-2014-to-2015

GENERAL COMMENTS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Benefits of parole. Supervised release on parole benefits the community, the prisoner and the penitentiary service itself. Providing an incentive for early conditional release encourages more co-operative behaviour during sentences by the vast majority of prisoners. This allows for better offender management whilst in prison but also aids successful rehabilitation after prison. Research on recidivism rates for example, demonstrate that they are much lower amongst offenders given early conditional release. However, this may be because such offenders have a more positive attitude towards desisting from crime anyway.

Rehabilitation programmes. Prisoners provided with the opportunity to address their offending behaviour and to develop a positive attitude to release allows for a greater chance of rehabilitation. Normally there exists in the community support and monitoring activities, which are commonly the responsibility of a Probation Service.

Staged release. Open prisons, halfway houses, supervised hostels and other supervised accommodation can provide an effective pathway to full independence for prisoners before and after release.

Community perspective necessary. In recent years, the number of prisoners released on parole is approaching European averages. However, the participation of the Probation Service in the process is more limited than would be ideal. Proper assessments, which focus on what would need to be done to help an individual complete a period of parole satisfactorily, require the kind of risk and need assessment best done by an agency experienced at supervising offenders in the community. Unfortunately, penitentiary staff can be over concerned with behaviour in the custodial environment, which is not a good predictor of behaviour released.

RECOMMENDATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Reform of parole. Greater priority must be given to the reform of the early conditional release system within the MoJ now that the probation service is being established. Improved assessment of risks each individual will present in the community will enable plans to be developed in

advance that will contribute to safe release. Parole should not be seen as a reward for good behaviour in prison. Rather it should be seen as a way of controlling and adjusting the behaviour of those who would otherwise present highest risk when released.

Training. A training programme should be developed and all the actors in the early conditional release system should undergo such training in order to adopt new standards and skills.

Statistics. Relevant statistics on reoffending rates and average reduction in sentences should be developed on a regular base and analysed.

SECTION 8. ALTERNATIVE SANCTIONS AND PROBATION

53. New alternative sanctions

53.1 Response from the MoJ

There have been no changes to the list of available alternative sanctions in the last five years.

53.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be]an independent sanction imposed without the pronouncement of sentenced to imprisonment.

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2 (3) provides that: In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non- custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

Tokyo Rule 2 (4) states that: The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

53.3 Comments from the review

The sanction of Correctional Work remains in the legislation in many EaP countries. It requires offenders to undertake paid employment and give part of their wages to the court as a penalty for their crime. In its time, it was a good alternative to prison, but the sentence fell into disuse as economic circumstances reduced the necessary work opportunities. It also has the disadvantage that it can be confused with the much more constructive sanction of Community Service.

Consideration should be given to introducing a full range of alternative sanctions, such as those described in Sub-section 55.

The appropriateness of the term "conditional sentence" should also be reviewed and consideration given to the adoption of the more normal European term of "probation order".

54. Purpose of alternative sanctions

54.1 Response from the MoJ

The MoJ has supplied the following statement: The objective of probation is to ensure public security through correction of convicted person, prevention of commitment of repeat criminal offences by them and providing the court with the information about accused person in order to take the decision on their liability.

54.2 Relevant International Standards

The first principle of the CoE Probation Rules is the following: Probation agencies shall aim to reduce reoffending 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 / reintegration. Probation thus contributes to community safety and the fair administration of justice.

54.3 Comments from the review

The Probation Service in Ukraine is the object of a considerable amount of international advice. Apart from developing the effectiveness of existing community sanctions and measures it would be helpful if the Service could include a new responsibility for the compulsory supervision of prisoners released on parole.

55. Range of alternative sanctions

55.1 Response from the MoJ

In addition to the information supplied in the Sub-section 10, the MoJ adds that the probation service provides the following services:

• prepare pre-trial reports about the accused person;

• supervise offenders under the following sanctions: restriction of the right to take certain positions or perform certain work; community service or correctional labour; prisoners released with a supervision requirement; pregnant woman or mothers with children under the age of three whose prison sentence has been suspended;

• send convicts to correction centres to serve their sentence;

• implement probation programs in respect to the individuals released on probation;

• provide social and educational activities for offenders;

• prepare for the release of offenders sentenced to restriction of liberty or deprivation of liberty;

• implement other measures aimed at correction of convicted person and prevention of repeat criminal offences.

55.2 Relevant International Standards

CoE Rec. on Community Sanctions Point 1 of the "Guiding principles for achieving a wider and more effective use of community sanctions and-measures" states: Provision should be made for a sufficient number of suitably varied community sanctionsand measures of which the following are examples:

• alternatives to pre-trial detention such as requiring a suspected offender to reside at a specifiedaddress, to be supervised and assisted by an agency specified by a judicial authority;

• probation as an independent sanction imposed without pronouncement of a sentence toimprisonment;

• 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 a mentaldisturbance that is related to their criminal behaviour;

• intensive supervision for appropriate categories of offenders;

• restriction on the freedom of movement by means of, for example, curfew orders or electronicmonitoring imposed with observance of Rules 23 and 55 of the European Rules;

• conditional release from prison followed by post-release supervision.

The main international bodies have strong, clear messages about the need for alternative sanctions. The United Nations, in its "Standard Minimum Rules for Non-custodial Measures" (The Tokyo Rules), Rule 2 (3)[125] states that: In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non- custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

55.3 Comments from the review

Presumably, the answer provided by the MoJ reflects a broadening of the range of alternative sanctions since the introduction of probation legislation. The new list covers most of the types of service expected of probation in the modern era. High-quality, reliable and intensive basic supervision is at the heart of probation but the other specialist activities enable it to cater for a variety of offenders with a variety of problems.

It will take several years for these services to mature. At some point consideration should be given to including specialist rehabilitation programmes for offenders addicted to drugs or alcohol; offenders who need to be stabilised by residing in supervised accommodation; and those who have committed offences of violence.

56. Diversion schemes

56.1 Response from the MoJ

Diversion schemes are not available in Ukraine.

[125] The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2 (3)

56.2 Relevant International Standards

CoE Rec. on Community Sanctions (Guiding principles for achieving a wider and more effective use of community sanctions andmeasures): Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples . . . . victim compensation/ reparation/ victim-offender mediation.

56.3 Comments from the review

Diversion is an increasingly important aspect of a modern penal system. Fortunately, there are some good lessons to be learned from the way it has developed in nearby Georgia.

57. Plans to introduce new alternative sanctions

Response from the MoJ

The MoJ currently has no plans to introduce additional alternative sanctions.

57.2 Relevant International Standards

The information provided in relation to Sub-section 55.2 is relevant to this item.

57.3 Comments from the review

As the probation service is in its infancy it seems reasonable to establish good standards of delivery for the current sanctions before new responsibilities are adopted.

58. Percentage use of alternative sanctions

58.1 Response from the MoJ

The MoJ provided the following figures for the proportion of criminal convictions resulting in alternative sanctions:

2010 – 71%

2011 – 70%

2012 – 70,3%

2013 – 70,3%

2014 – 77%

58.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

58.3 Comments from the review

In view of the information provided in the Sub-section 59, it seems that the figures above referred to all cases, in which the sanction did not involve the offender being committed to prison. However, it would be helpful to clarify whether all of them, or just a proportion, were supervised by the probation service. Further comparison would require more details to be provided, such as the gravity of the crimes involved and the number of previous convictions.

A more typical figure for supervised alternative sanctions in European countries would be 10%. European probation services tend to focus their efforts on a smaller number of high risk offenders who would otherwise attracted a custodial sentence.

59. Use of "conditional sentence"

59.1 Response from the MoJ

Actual numbers of persons given "conditional sentence" were provided for the five years from 2010:

2010 – 57,2%

2011 – 53,8%

2012 – 54,5%

2013 – 52,9%

2014 – 56,9%

59.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 15): Probation [should be] an independent sanction imposed without the pronouncement of sentenced to imprisonment.

59.3 Comments from the review

It would be interesting to know what proportion of offenders sentenced to "conditional sentence" were actively supervised by probation staff. Unless it was only a very small proportion, the workload that these numbers would place on probation staff would be immense.

According to European experience – which may not be relevant – most convicted offenders who are not sent to prison do not require active supervision. Financial penalties or community service are the favoured sanctions for this group. The efforts of the probation service would normally be concentrated on a troublesome minority, perhaps no more than 10% or 15% of those not sent to prison.

60. Success of supervised alternative sanctions

60.1 Response from the MoJ

According to the MoJ, 95% of offenders who were sentenced to a community sanction completed it without further crime.

No figures are available for the proportion of offenders who remain law abiding citizens for up to 2 years after the end of their sanction (this is the normal standard in European countries for measuring reoffending rates).

60.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible ex-

tent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

Tokyo Rule 2 (4) states that: The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

60.3 Comments from the review

In a busy office that lacks electronic data systems, it is difficult to collect all the statistics that are desirable. However, without such information it is impossible to manage resources or understand how to improve effectiveness.

61. Imposition of conditional sentence

61.1 Response from the MoJ

Conditional non-application of punishment was terminated on the ground of committal of a new offence as follows:

2010 – 1,5%

2011 – 1,5%

2012 – 1,6%

2013 – 1,5%

2014 – 1,1%

61.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 27): To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

61.3 Comments from the review

The proportion that have been recalled to prison is extremely low. Likely explanations could include the fact that a significant proportion of offenders given immediate custodial sentences are no risk and not particularly delinquent. Perhaps it indicates that most of these people could be given an alternative sanction instead of a custodial sentence.

62. Electronic monitoring

62.1 Response from the MoJ

No electronic monitoring currently exists in Ukraine.

62.2 Relevant International Standards

CoE Rec. on EM (Article 8): When electronic monitoring will be used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance.

62.3 Comments from the review

Requiring someone to stay in their home for part or whole of the day is an effective punishment and in many cases would be preferable to a prison sentence. Electronic systems have now brought cheap and reliable monitoring of offender's adherence to a home curfew.

However, on its own, a curfew is unlikely to help the offender to understand why he or she got into trouble or to make the changes in attitudes and behaviour required to live a crime-free life. Research evidence from the use of electronically monitored curfews in European countries confirms that the sanction does not affect the likelihood of reoffending. For this reason, the CoE Committee of Ministers Recommendation on Electronic Monitoring recommends that the sanction should be coupled with rehabilitation services.

63. Success of electronic monitoring

63.1 Response from the MoJ

The statistics are not available because no electronic monitoring currently exists in Ukraine.

63.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28): Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

63.3 Comments from the review

It is recognised that collecting and analyse statistical information takes time that could be used for other important activities. However, without this kind of data it is not possible to monitor service standards or the effectiveness of policies.

GENERAL COMMENTS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Lack of public support. Support for Alternative Sanctions is not universal across all members of society in European countries. In most cases, this can be attributed to lack of understanding about offender management.

Separating or integrating penitentiary and probation. In some EaP countries, such as Ukraine and Azerbaijan, the department within the Penitentiary Service that has inherited the Soviet-style supervision of released prisoners, becomes the basis for a modern Probation Service. Other countries have preferred probation to be established separately from the penitentiary service.

Effectiveness of community sanctions. There is good evidence to show that community supervision combined with rehabilitation programmes perform better than imprisonment for most mid-range offenders. Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[126]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

[126] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

RECOMMENDATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Strategic support. The introduction of the Probation Service should be given the appropriate support through the staging of a range of round tables that involve key stakeholders such as judges, prosecutors, politicians and MoJ officials in order that the role and responsibilities of the modern Probation Service are understood.

Training standards. Work should be undertaken with national education and training institutions in order to make probation officer training as high a quality of that which exists in other European countries.

New sanctions. Additional sanctions should be designed to promote a greater range of services for the rehabilitation of offenders.

Data. The collection of statistical data should be improved in order that the all sanctions can be compared for effectiveness.

Probation activities in penitentiary establishments. The level of rehabilitation activity in penitentiary establishments is limited. The probation service should plan to play a role in developing and staffing pre-release courses in all penitentiary establishments.

SECTION 9. AFTERCARE

64. After-care organisations

64.1 Response from the MoJ

The following is information supplied by the MoJ:

According to the Criminal Executive Code, the influence of the public on sentenced offenders has the most impact on their correction and resocialisation. Associations of citizens, religious and charitable organizations, and individuals can assist the process of correction and resocialisation of offenders. They can help with social education and other services during the prison sentence.

During the first half of 2015, over 3,000 visits from representatives of public organisations took place. About 4,000 meetings were conducted covering social education, legal aid and charitable help, lectures, cultural and sporting measures, counselling, finding accommodation, preparation for release and social contacts in the community. Other activities included advice on hygiene, medical issues and avoiding dangerous diseases.

64.2 Relevant International Standards

CoE Probation Rules (Rule 62): Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

The UNODC report suggests that recidivism in many European countries might be significantly reduced if prisoners were better prepared to make the transition back into their communities. And also, if the communities to which they were returning were more responsive to their resettlement needs. Clearly finding employment is a priority because ex-prisoners meet significant barriers in finding work. However, other needs include the re-establishing social and family ties and possibly avoiding the temptations of drugs.

64.3 Comments from the review

The range of services described are clearly an important supplement to statutory support and supervision of prisoners during their sentence and after release. However, for civil society organisations to be reliable partners in the difficult work of offender rehabilitation it will be necessary for the SPS to ensure that there is appropriate to provide vetting, training and management

of the individuals who are involved.

Continuing support for the most vulnerable ex-prisoners can be an effective way of helping them to avoid further crime and problems for the community. Official government services have an important part to play, but NGOs can provide the flexibility and approachability that is important for ex-prisoners, who are often very suspicious of official organisations. Grants towards their operating costs by government usually result in good quality support at attractive overall costs.

65. Formal aftercare agreements

65.1 Response from the MoJ

By July 1, 2015 with penitentiary establishments of SPS cooperated 202 associations of citizens in the area of resocialisation of convicts, 23 from which are international non-governmental charitable organisations, 35 organisations all-Ukrainian and 140 – regional level. Almost 74% from them (149 organizations) work on the basis of agreements concluded with the SPS. Over 1000 representatives of these organizations directly visit establishments and conduct measures with convicted persons.

65.2 Relevant International Standards

EPR (Rule 107) contains relevant standards in relation to after-care:

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5 Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

65.3 Comments from the review

Whilst the activities described are of vital importance and should be applauded, it is unlikely that such activity is sufficient to meet the needs of what may be more than 10,000 offenders who complete their sentences each year.

A further range of supplementary services that can support offender rehabilitation are potentially available from the statutory agencies. These include

education, employment and healthcare. Formal agreements need not necessarily involve the transfer of funds. Often initiatives taken by the probation service can help offenders to gain access to services that are available to them by right as citizens but which they do not feel comfortable to approach.

66. Other aftercare initiatives

66.1 Response from the MoJ

There are no other after-care initiatives other than described in the two previous sub-sections.

66.2 Relevant International Standards

CoE Probation Rules, in the section in which it defines the terms, offers the following definition of aftercare: Aftercare: means the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In these rules, the term is distinguished from the term "resettlement" which refers to statutory involvement after release from custody.

CoE Probation Rules (Rule 62): "Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives."

67. Re-offending after release

67.1 Response from the MoJ

The penitentiary service does not keep statistics on recidivism of persons released after having served the full punishment.

67.2 Relevant International Standards

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditionalrelease in relation to eligibility, the length of the sentences and the offences involved, the proportionof time served before the granting of conditional release, the number of revocations, reconvictionrates and the criminal history and socio-demographic background of conditionally releasedprisoners.

67.3 Comments from the review

European countries are accustomed to over half of their prisoners being convicted of a further crime within two years of release. For young adult offenders the proportion is much higher. For older offenders guilty of more serious crimes the reoffending rates are low. It is very interesting to note that, in general, officially recorded reoffending rates are very much lower in EaP countries.

GENERAL COMMENTS ON SECTION 9: AFTERCARE

Informal social support. A substantial proportion of people leaving prison have difficulty in managing basic social issues such as managing a limited budget, sustaining relationships, avoiding intoxicating substances and resisting invitations to commit petty crime. High-level social counselling is unlikely to help such people move to a more planned lifestyle. However much success has been achieved in European countries by establishing informal support centres run by volunteers that provide cheap food, recycled clothing and a sympathetic volunteer to listen to problems. These "day centres" significantly help to reduce reoffending.

RECOMMENDATIONS ON SECTION 9: AFTERCARE

Government support. The Government must seek the means of assisting the statutory organizations and the NGO community to provide continuing support to released prisoners after the Criminal Justice System has completed its work.

Partnership agreements. The MoJ should develop partnership agreements with the Social Welfare Department, Health Department and the Education Department, in order that the statutory services are better able to reach ex-prisoners.

Social re-integration centres. Special centres should be developed for the social re-integration of offenders. The more informal approaches that NGOs can offer will be more attractive to ex-prisoners, who have mostly come to mistrust the official agencies of the government. NGOs are more able to adapt their approaches in the light of experience than government services that may require changes in legislation.

SECTION 10. DATA AND STATISTICS

68. Overcrowding statistics

68.1 Response from the MoJ

The MoJ does not keep statistics reflecting the level of overcrowding in the penitentiary establishments of Ukraine.

68.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

68.3 Comments from the review

It is likely that the MoJ retains detailed figures about prisoner numbers which can be matched to the certified number of available places in each penitentiary establishment. This is clearly an essential tool for assisting population management.

69. Re-offending statistics

69.1 Response from the MoJ

The MoJ does not keep statistics about the rates of reoffending for different sanctions in its justice system.

69.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent

strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

69.3 Comments from the review

The collection of data has grown in priority over the past 20 years. It is now universally accepted that collecting data on reoffending rates is one of the most important methods of determining the effectiveness of a Criminal Justice System. The response from Ukraine suggests that data collection and analysis could be further improved.

It is necessary to record and analyse criminal justice statistics so that agencies can gauge whether they are achieving their objectives. As justice systems seek to reduce reoffending rates, and find an appropriate balance between punitive and rehabilitative regimes, data collection and analysis is vital. However, it is always difficult to find the resources that this requires.

In some countries, examination of data has indicated that short prison sentences for mid-range offenders can often make them more criminally minded. Such conclusions can be drawn, for example, from a careful analysis of the criminal statistics published by the MoJ for England and Wales[127].

70. Statistics on re-offending

70.1 Response from the MoJ

The SPS does not keep statistics on the recidivism for different groups of offenders.

70.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 28) states: Statistics should be

[127] https://www.gov.uk/government/collections/proven-reoffending-statistics

developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

70.3 Comments from the review

With the introduction of a Probation Service, the collection of data on breach during sentence and reoffending rates after completion will be essential to measure the effectiveness of current methods and new approaches that may be introduced.

71. Other data relevant to overcrowding

71.1 Response from the MoJ

No other statistics relevant to the reduction of overcrowding in the penitentiary establishments is kept in the MoJ.

71.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

71.3 Comments from the review

The 2010 report of the International Statistics on Crime and Justice stated: "Another, even more disturbing observation that has been made repeatedly is that many member states continue to be unable to answer the questionnaire produced by the United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UN-CTS), or are only able to provide a partial response. This state of affairs is in part due to a very basic reason: some or all of the required data are not available. However, less excusable is the situation for many other countries that are known to

possess the required data but do not respond."[128]

It is difficult for this review to judge whether further investment by the MoJ in data processing is likely to assist with the decisions they need to take in relation to the management of the prison population.

72. Use of data to inform policy

72.1 Response from the MoJ

The MoJ answer to this question concentrated on the following information it provided to the media and other organisations to inform them about its work and policies:

As a result of activity during six months of 2015, a total of 18,044 information bulletins were published. Most of these were sent to news agencies and Internet websites. 1,448 articles and notes were placed in printed editions (460 from which were in central newspapers and magazines. 938 videos have been shown on television (105 of which on central TV channels). 1,538 reports have been broadcast on radio.

72.2 Relevant International Standards

CoE Rec. on Prison Overcrowding (Article 5): In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing practices.

CoE Rec. on Parole (Article 45): Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

72.3 Comments from the review

The current answer suggests the MoJ has an energetic public relations pol-

[128] The UNOCD in their report 'International Statistics on Crime and Justice (European Institute for Crime Prevention and Control, Affiliated with the United Nations(HEUNI) P.O.Box44 and United Nations Office on Drugs and Crime(UNODC) POBox5 1400Vienna Austria - HEUNI Publication Series No. 64 2010

icy. This is entirely commendable as the penal services are normally isolated from public view. Although these communications do not directly influence agency policy, the act of producing and approving them will remind managers of fundamental information and will assist in remembering the need to maintain public support.

GENERAL COMMENTS ON SECTION 10: DATA AND STATISTICS

Computer systems. More reliable data, and sophisticated analysis, will allow improvement targets to be set for each part of the penal system. The introduction of computers to automate this work will require a significant investment in suitable software.

Value of operational data. Recording and analysing statistics across the criminal justice field allows administrations to have a better understanding of what works – and more importantly, what does not work as justice systems seek to reduce recidivism and find an appropriate balance between punitive and rehabilitative regimes, operational data collection becomes more important.

RECOMMENDATIONS ON SECTION 10: DATA AND STATISTICS

Data policy. The MoJ is recommended to discuss and agree a whole range of methods for data and statistical collection in order that there is an understanding of effectiveness in the different methods of offender and sentence management. Countries in Western Europe and the CoE can provide examples of best practice in order that Ukraine can develop its own approach.

Measuring effectiveness. A standard system, readily understandable to all, should be agreed for measuring the effectiveness of penitentiary sentences and community sanctions. This is necessary for making key decisions about justice reform in the allocation of resources. It would be preferable if the factors involved were similar to those that are prominent international – such as the proportion of offenders who avoid further offending for two years following the completion of the sanction.

SECTION 11. CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

73. Community crime prevention initiatives

73.1 Response from the MoJ

No details of community crime prevention programmes are available.

73.2 Relevant International Standards

CoE Probation Rules (Rule 98): Where provided by national law, the expertise and experience of probation agencies shall be used in developing crime reduction strategies. This may include making use of joint interventions and partnerships.

CoE/CM Rec(2003)21 concerning partnership in crime prevention (Article 1): Nationally, governments should commit themselves and co-ordinate their initiatives to develop and implement policies and strategies for crime prevention and community safety (for example, by way of creating national crime prevention councils, adopting national crime prevention programmes etc.).

73.3 Comments from the review

The development of community organizations to debate crime is in their infancy. The MoJ can take a lead in encouraging community-based crime prevention schemes in partnership with the police. Across Europe there are good examples such as 'Neighbourhood Watch Schemes' in which volunteers from the community take an interest in the general safety and security of their neighbourhood and liaise with the police.

It may be that this is a topic for a future projects. At present, it would be difficult to justify mainstream investment in community crime prevention. Naturally, any effective initiatives of this type would have widespread value, but careful experimentation would be necessary in order to make decisions about what approaches would be cost-effective.

74. Civil society monitoring of prisons

74.1 Response from the MoJ

The MoJ has not provided any details of civil society monitoring of prisons in Ukraine.

74.2 Relevant International Standards

EPR (Rule 93.1): The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.

EPR (Rule 93.2): Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

74.3 Comments from the review

The arrangements for public accountability of prisons and police are set within legislation. They are a valuable means of safeguarding human rights within environments that are always isolated and often challenging. This system could be used to provide information and opinions on the performance of the whole justice sector in its move from a punitive to a rehabilitative focus.

Prisons inevitably are closed institutions and even the most effective management and supervision cannot guarantee that appropriate standards of behaviour by staff and prisoners will always apply. Civil monitoring should stand alongside a proper system of management inspections and the ability for staff and prisoners to make complaints that will be properly investigated.

75. Publicity for crime reduction

75.1 Response from the MoJ

The main answer to this question has been provided in Sub-section 72.

Additional information provided by the MoJ concerns a National Conference on Juvenile Justice that was held on 24 and 25 June, 2015 with participation from the MoJ, Supreme Court, Higher specialized court of

consideration of civil and criminal cases, MoI, Ministry of Social Policy, the Prosecutors Office, SPS and international experts. The conference was organised as part of a Canadian technical advice project with the topic "Probation programs for minors in the context of new legislation".

75.2 Comments from the review

Relevant information was provided in Sub-section 72.

76. Encouraging reform of offenders

76.1 Response from the MoJ

No additional information was provided by the MoJ.

76.2 Relevant International Standards

CoE Probation Rules makes reference to this matter (Preamble): Considering that the aim of probation is to contribute to a fair criminal justice process, as well as to public safety by preventing and reducing the occurrence of offences.

CoE Probation Rules (Rule 76): Interventions shall aim at rehabilitation and desistance and shall therefore be constructive and proportionate to the sanction or measure imposed.

76.3 Comments from the review

Other answers provided to this questionnaire indicate a commitment towards reform of offenders. Nevertheless, compared to European practice, they seem to emphasise ways of giving help to individuals. Recent developments in European countries show a preference for training offenders to manage their own affairs more effectively. It would be useful to explore the extent to which Ukraine is ready to develop approaches such as offending behaviour programmes and social skills training.

GENERAL COMMENTS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community responsibility. Traditionally the subject of crime and punishment has been seen by the general public as only something that involves offenders and criminal justice agencies. The concept of crime prevention as something all living in a community should consider, is a relatively new concept. Alongside this can be put the subject of the rehabilitation of offenders. This must involve communities and support agencies within those communities, in order that re-socialisation and rehabilitation can operate. Many alternative sanctions including community service, are reliant on community support. The greater visibility in for certain sanctions such as community service, the greater understanding develops amongst the community.

Restorative justice. New methods of conflict resolution are developing in communities, which bring together statutory and voluntary organisations. Mediation is increasing in use and the idea of restorative justice provides opportunities for responses to be made outside the criminal justice system.

Diversion. Schemes including restorative justice and mediation are now gaining credibility throughout criminal justice services and civil society alike in many countries.

RECOMMENDATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community-based crime reduction. To develop a strategy on community based crime reduction that involves the main social agencies, civil society and local people in the most at-risk communities.

Sector-wide monitoring. To create an additional Monitoring Group consisting of civil society representatives, to observe the way the Justice process in its entirety is moving from a punitive to a rehabilitative regime. Such a group may have its sole purpose as being the monitor of change.

SECTION 12. FUNDING

77. Investment in penitentiary system

77.1 Response from the MoJ

The 2015 state budget allocated 2,773.9 million UAH (approximately €95.9m) to the penitentiary service. This represents a 2.6% increase on the previous year.

The actual requirement operating the SPS in 2015 was 6,423 million UAH, leaving a shortfall of 43.2%. The individual components of the budget are as follows:

• payment of labour and extra charge on payment of labour (salaries) – 1,957.6 million UAH (percent of providing of requirement in charges – 61,1 %);

• medicines are 50,4 million UAH (percent of providing – only 28,0 %), reduced in comparing to 2014 year on 5,1 million UAH, or on 9,1 %;

• food are 382,9 million UAH (percent of providing – 52,8 %);

• payment of communal utilities and energy facilities – 308,7 million UAH (percent of providing – 43,6 %);

• objects, materials, equipment and inventory, are 38,1 million UAH (percent of providing – only 7,6 %);

• payment of services (except for communal) (services of connection, maintenance of motor transport, bank services and others like that) – 20,4 million UAH (percent of providing – only 9,6 %);

• charges on a service trips are 6,8 million UAH (percent of providing – 41,4 %);

• charges on the special measures are 1,0 million UAH (percent of providing – only 2,4 %), reduced in comparing to 2014 year on 0,2 million UAH, or 13,0 %;

• charges on social provision are 5,5 million UAH (percent of providing – 49,1 %), reduced in comparing to 2014 year on 1,8 million UAH, or on 21,1 %;

• other current outlays (payments for studies, taxes) are 2,6 million UAH (percent of providing – 35,2 %).

• Capital charges are not foreseen in general (at a calculation necessity of 824,0 million UAH).

77.2 Comments from the review

This review does not have the means to make an assessment of the appropriateness of this level of funding.

78. Funding for future strategy

78.1 Response from the MoJ

By the decree of President of Ukraine from 8 November, 2012 № 631/2012 Conception of public policy was approved in the field of reformation of SPS of Ukraine (farther is Conception). The purpose of Conception is determination of priorities and ways of reformation of SPS of Ukraine, activity of which must be based on principles of legality, humanism, observance of human and citizen rights, international standards of conduct with sentenced and persons, taken under a custody.

Measures on reformation of SPS of Ukraine was foreseen to carry out during 2012–2017:

Realization of Conception was aimed to provide:

1) bringing terms of convicts holding conditions in accordance with the European standards and introduction of procedure of pre-trial probation;

2) creation:

• systems of grant convicts of medical care of the proper quality;

• the mechanism of social rehabilitation of sentenced and returning of them to the independent generally accepted socially normative life in society;

• conditions bringing sentenced persons to labour and compensation losses inflicted by crime, and implementation of other property obligations;

• probation service;

3) formation of personnel policy in accordance with European penitentiary rules.

78.2 Relevant International Standards

CoE Rec. on Community Sanctions (Rule 19): Criteria of effectiveness should be laid down so as to make it possible to assess from various perspectives the costs and benefits associated with programmes and interventions with the aim of maximising the quality of their results. Standards and performance indicators for the execution of programmes and interventions should be established.

78.3 Comments from the review

It is not appropriate for the review to comment on this answer.

79. Sufficient resources

79.1 Response from the MoJ

During the last years organs and establishments, which belong to the sphere of management of SPS of Ukraine, function in difficult terms, related to the limited financing from the general fund of the state budget a level of which is 34-43 % from a calculation necessity (2010 – 46,4%, 2011 year – 49,0%, 2012 – 35,4 %, 2013 – 37,0 %, 2014 – 34,4 %).

79.2 Relevant International Standards

We are not aware of international standards concerning the resources necessary for running penitentiary and probation services. Nevertheless CoE Rec. on Community Sanctions (Rule 42) has some relevance: The implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

79.3 Comments from the review

Governments in Western European countries rarely operate their penitentiary services with anything like this shortfall in the necessary funding.

On average, governments in Western European countries divide their penal sector budget so that 75% is spent on their penitentiary service and 25% on their probation service. These figures can be deduced by analysing figures about finance and financial accountability in "Probation in Europe" by Kalmthouth and Durnescu[129]. Experience has shown that a substantial investment in community sanctions and measures at this kind of level is

[129] Probation in Europe, A.M. van Kalmthout & I. Durnescu (eds.) ISBN: 978-90-5850-450-0. Published by aolf Legal Publishers (WLP) 2008

necessary if they are to have a suitable impact on sentencing patterns. If the split of funding is any more in favour of the penitentiaries, the probation service will not have enough cash to attract suitable numbers of staff to provide properly supervised rehabilitation services.

GENERAL COMMENTS ON SECTION 12: FUNDING

Importance of coordination. Funding is often given as the reason for the poor conditions that exist in the prison estate. The general message within this report is that although finance is important, of greater importance is the co-operation and co-ordination of each part of the Criminal Justice System, in order that they complement each other in their pursuit of a common mission.

Inappropriate sentencing. The start of a future strategy should involve all actors in the Criminal Justice sector in understanding how resources can be wasted in inappropriate sentencing - and how they can be harnessed more effectively for crime reduction and offender rehabilitation.

Organisational efficiency. Not all reforms are dependent on additional funds. Often significant improvements can be achieved through a radical re-evaluation of management systems and operational practice.

RECOMMENDATIONS ON SECTION 12: FUNDING

Balanced budget. A long-term target should be established for the relative resourcing of penitentiary and probation services within the overall corrections budget. It may be that the 75% – 25% split commonly found in European countries would be appropriate.

Cost-centred budgeting. Serious consideration should be given to determining the realistic unit costs of delivering each community sanction so that informed judgements about their relative value can be made. This might show, for example, that a new form of directly-supervised Community Service is achieving better reconviction rates than electronically monitored home detention – or vice versa.

80. Additional comments

80.1 There are no additional comments regarding the Questionnaire.

CONCLUSIONS

The CoE is pleased with the interest that has been shown by the MoJ of Ukraine for further cooperation to improve its penal services. The effort it has made to provide a great deal of information about the current situation and future plans indicate a willingness to explain problems as well as successes.

Ukraine's commitment to justice reform was made clear by the current national strategy and the great deal of work that is going into revising and updating the related action plan. Since the enactment of the probation law in 2015, developments that have been underway in reinforcing alternative sanctions for several years are gathering pace. The prison population has dramatically reduced by over a half in the last few years and this gives welcome scope for hard pressed penitentiary staff to make rehabilitation a reality in their regimes.

The challenges revealed by answers to the questionnaire will be already well-known to the MoJ. A one-off, large-scale amnesty will not in itself tackle the underlying factors in the justice system that cause population inflation in the penitentiaries. The three main ways to tackle this are diversion for low risk offenders, community sanctions for those in the middle range and a much stronger system of parole for offenders who must receive custodial sentences. Diversion does not yet feature in the plans revealed by the questionnaire. The creation of the probation service will clearly boost the delivery of community sanctions (for which Community Service is perhaps the most deserving of a new image). The third area – parole – could have a major impact on offender management if the probation service can demonstrate firm but constructive supervision techniques that would be at the centre of the agreement for early release.

Ukraine is known to have mixed feelings about probation terminology. Thus the agency responsible for implementing the probation law is known by the unclear title of the State Criminal Executive Inspection Service. But it will need to overcome this diffidence and seek a high profile in the justice system if it is going to fulfil its purpose and take responsibility for mid-range offenders away from the penitentiary service.

The CPT sets some very high demands through its country inspections and general standards. Ukraine wishes to follow this route and the CoE will join with the justice agencies and civil society to provide as much help as possible.

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8. The Council Of Europe DRAFT White Paper on Prison Overcrowding, 2015
9. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment CPT/Int/E 2002 – rev 2015
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15. European Source Book of Crime and Criminal Justice Statistics 2014 – 5th Edition
16. Prison Overcrowding - Finding Effective Solutions Strategies and Best

Practices Against Overcrowding in Correctional by Hans Joerg Albrech of the Max Planck Institute for Foreign and International Law

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Criminal Justice Responses to Prison Overcrowding in Eastern Partnership Countries

(General Report)

Criminal Justice Responses to Prison Overcrowding in Eastern Partnership Countries

This report describes and comments on the current situation in relation to tackling penitentiary overcrowding and improving prisoner rehabilitation. It is part of a project operating in four Eastern Partnership (EaP) countries (Armenia, Georgia, Republic of Moldova and Ukraine) that have agreed to receive advice from the Council of Europe (CoE) in relation to these key aspects of offender management.

In pursuing such reforms, these countries are fulfilling an obligation they undertook when joining the CoE to harmonise their justice legislation and services with European standards. Standards relevant to these issues are set out in official recommendations published by the CoE.

THE OVERALL PROJECT: PROMOTING PENITENTIARY REFORMS (FROM A PUNITIVE TO A REHABILITATIVE APPROACH)

1. The aims of the Project:

• to combat prison overcrowding and support use of community sanctions and measures;

• to establish regional co-operation and a strategic approach on prison overcrowding;

• to reduce recidivism of former prisoners contributing to a healthier society and less crime.

2. The Project has worked through:

• bilateral work as well as multilateral exchange of experience and cross-interaction;

• holding working meeting with participation of the representatives of the relevant ministries of the target countries through developing a comparative analyses report based on carried study on combating prison overcrowding in target countries;

• establishing a network and a forum for exchange of good practices between medium and high level representatives of the relevant ministries of

the target countries for combating the prison overcrowding; and

• competency development of the trainers from the Training Centres / Academies of the target countries charged with training of prison and probation staff.

3. The Project activities:

• Translate into six languages: Armenian, Azeri, Georgian, Romanian, Russian and Ukrainian the CoE Committee of Ministers recommendations and the extracts from the CPT general reports related to combating prison overcrowding;

• Develop e-compendiums of the Council of Europe documents on combatting prison overcrowding in six target languages and disseminate among the penitentiary and probation agencies and the training centres in charge of training prison and probation staff in target countries;

• Conduct study on prison overcrowding in target countries and develop country specific recommendations;

• Hold a high-level conference to highlight main findings of the study on prison overcrowding, discuss the recommendations provided and define the possible ways for their implementation; and

• Conduct Training of Trainers on Combating Prison Overcrowding for the trainers of the Training Centres / Academies of the target countries charged with training of prison and probation staff.

INTERNATIONAL STANDARDS

The CoE and other international organisations active in the field of penal reform, has produced a range of standards to assist member states to develop modern, effective services that can be called on when an offender has been convicted of a crime. The six standards most relevant to this Report are from the CoE:

• European Prison Rules - Rec(2006)2

• European Probation Rules - CM/Rec(2010)1

• Recommendations on Conditional Release (Parole) - Rec(2003)22

• Recommendations on Prison Overcrowding and Prison Population Inflation - R(99)22

• Electronic Monitoring - CM/Rec(2014)4

• European Rules on Community Sanctions and Measures - R(92)16

Other recommendations of general relevance to this Report are:

• Recommendations concerning mediation in penal matters - R(99)19

• Recommendations on the improvement of implementation of the European Rules on Community Sanctions and Measures - Rec (2000)22

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

• European Rules for Juvenile Offenders subject to Sanctions and Measures - CM/Rec(2008)11

• Recommendations on Foreign Prisoners - Rec(2012)12

• Recommendations on the Management of Life-sentence and Other Long-term Prisoners - Rec(2003) 23

In addition, further statements and guidance about offender management are available in the standards published by: the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); judgements of the European Court of Human Rights (ECtHR); and by the United Nations.

THE QUESTIONNAIRE

Information was sought from the Ministry of Justice (MoJ) of Armenia, Moldova and Ukraine and Ministry of Correections (MoC) of Georgia about policy and implementation issues that relate to penitentiary overcrowding and prisoner rehabilitation. A total of 80 questions were divided between the following 12 sections:

1. Strategy and legislation;

2. The judiciary;

3. Police and prosecution;

4. Penitentiary service;

5. Prison overcrowding;

6. Prisoner re-socialisation;

7. Early and conditional release;

8. Alternative sanctions and probation;

9. Aftercare;

10. Data and statistics;

11. Crime as a whole community responsibility; and

12. Funding.

Answers to the questions were submitted by the MoJs and MoC of respective EaP countries in November 2015. The CoE is extremely grateful to officials for undertaking the considerable amount of work involved. In the following part of this report the answers are summarised.

Each answer is followed by a series of comments and recommendations, which include reference to relevant CoE standards. At the end of each of the 12 sections some overall comments and recommendations are provided. A questionnaire used to carry out the study is attached in the relevant appendix.

The Report ends with a series of discussion points arising from the questionnaire responses.

RESPONSES TO SECTION 1: STRATEGY and LEGISLATION

1. **Justice Reform Policy.** All four countries have a current national policy guiding reform of the justice system.

2. **Minimum sentences.** Georgia's Criminal Code sets maximum and minimum sentences for the more serious crimes in its Criminal Code (for example, the sentence for murder ranges from 8 to 15 years). The other countries place crimes in categories of seriousness for which maximum and minimum sentences apply.

3. **Changed crimes.** All the countries have listed a large number of changes to their Criminal Code but only a few of these crimes that were added were of the common, mainstream type that fills the prisons.

4. **Prison population variables.** None of the countries were able to quote statistical evidence about the impact of the changes in legislation on the prison population. However, it was notable that the prison population in Ukraine had steadily reduced by over half in the last five years. The Georgian prison population was dramatically halved by an amnesty in 2013. The prison population, according to the Armenian response, has been reduced by legislation changes; as is the case in Georgia. Although Georgia's prison population was significantly reduced by the action of the amnesty, it has maintained a much more stable level since 2013.

5. **Early release process.** All countries had fairly similar legislation that allows prisoners to be considered for release after they had served a certain portion of their sentence. They vary in relation to the procedure for granting early release. The decision rested more on past behaviour in prison than a scientific assessment of how well the prisoner might manage the problems to be faced on release. Armenia has the lengthiest process (prison management, independent board, court) that could be a reason for delays. Apart form Georgia the other countries are still developing plans and action for the close supervision of early conditionally released prisoners, based on European best practice.

6. **Legal advice.** All of the countries guarantee access by persons in custody to legal advice - both convicted and awaiting trial. One drew attention to special legal resource documents in prison libraries. Unfortunately, the answers did not explain whether free access to lawyers (paid by the state)

is available, although this appears to be the case to some extent in Georgia and Armenia.

7. **Probation legislation.** It is well known that Georgia's probation legislation goes back to 2003. Moldova passed its probation law in 2008. Ukraine adopted the law on probation at the beginning of 2015. The Ministry of Justice in Armenia is expecting to submit full probation legislation to Parliament in the first quarter of 2016. Each country has asked for and responded to advice from the CoE before submitting its legislation to Parliament.

8. **Cooperation.** Georgia described healthy cooperation between penitentiary and probation staff, particularly as the release date approaches. They suggest that this is aided by both organisations being under the same management (Ministry of Corrections).

9. **Amnesty and pardon.**

Armenia: Amnesty was granted to 1,052 prisoners in 2011 and to a further 1,837 prisoners in 2013. Most were immediately released but some remained in prison for shorter terms. Approximately 20 prisoners receive pardons each year.

Georgia: Pardons tend to be awarded each year at the rate of about 6% of the total prison population. A major amnesty in 2013 saw the release of almost 18,000 prisoners.

Moldova: A small number of pardons have been granted but there have been no amnesties in the last five years.

Ukraine: Almost 17,000 prisoners were released in 2014 and a further 5400 had their term of imprisonment reduced. Pardons are very infrequent, the largest number being 21 in 2012.

10. **Community sanctions.** The four countries all seem to operate within the traditional former Soviet framework of non-custodial that are: fine; restrictions on jobs or activities; socially useful work; some additional restrictions for military staff; and corrective labour. The supervision of offenders who are not given an immediate custodial sentence is administered under a "conditional sentence". Various requirements can be attached to this such as reporting to a supervisor or undertaking drug treatment.

None of these countries described having a distinctive sentence of proba-

tion in their Criminal Code. Most of them operate "socially useful work" (or Community Service) by assigning offenders to undertake tasks supervised by the municipal authority. Georgia has more recently, developed initiatives designed to provide greater variety for community based offender management. This is best demonstrated by the establishing of a 'Half-way' house which is designed to provide support whilst reducing the liberty of certain offenders.

11. **Diversion /mediation.** Georgia introduced a carefully-managed diversion/mediation scheme for juveniles, which in 2011 was expanded to adults. This has become popular with prosecutors and courts. The participation of victims in the mediation part of the process scheme depends on their consent and is mediated by trained social workers

The other three countries described a system in which criminal proceedings can be terminated if reconciliation has been achieved between the victim and the alleged offender. This is fundamentally different from the Georgian scheme because trained mediators are not involved.

12. **Electronic monitoring.** Use of electronically monitored home detention for pre-trial or presentenced accused:

Armenia has included provision for this in its draft Criminal Execution Code and plans to start testing the necessary equipment in March 2016.

Georgia is not operating EM as a measure for pre-trial offenders.

Moldova does not have this provision within its legislation.

Ukraine draft legislation proposes to allow prosecutors and courts to order electronically monitored home detention for pre-trial and pre-sentenced accused persons.

13. **Electronic monitoring**. Use of electronic monitoring of sentenced offenders:

Armenia has included this provision in its draft Probation Law.

Georgia is presently using electronic monitoring for a small number of juveniles.

Moldova passed legislation in July 2015 enabling this measure to be used.

Ukraine has no provision for this service.

GENERAL COMMENTS ON SECTION 1: STRATEGY AND LEGISLATION

Leadership. A clear policy based on the concept of rehabilitation and coupled with understandable and convincing methods needs to be articulated by those who lead the various sectors of the justice system. Although reforms of this nature may achieve a certain amount of tacit support, vocal opposition can be expected from those who favour a punitive approach.

Systemic issues. Most of the problems in the justice system affect more than one part of it and lasting solutions require negotiation and compromise between agencies that have firm views about what is right. A frequent example is that delays in court proceedings results in pressure on places in pre-trial detention facilities. Reform of the system needs to look at the whole process from arrest to release and to examine alternative approaches at each stage.

Planning and legislation. Pilot projects can pave the way for significant reforms. It is no longer wise or necessary for reforms to be based on assumptions of what will be effective. The study of international literature and results of small-scale pilots can help to avoid well-meaning but counter-productive initiatives.

Electronic Monitoring. Electronic monitoring has been used in Europe since the 1990s and continues to expand. It is predominantly been used to enforce curfews and home detention but newer technologies are emerging (e.g. GPS) which can monitor the behaviour and movements of suspects and offenders as well as help create and monitor exclusion zones. Different countries have developed their own legislation and policy on electronic monitoring and this has been coordinated by the Confederation for European Probation (CEP).

Organisational flexibility. There is no single method of locating a Probation Service within the justice system. Successful examples can be found where probation is fully integrated with the penitentiary service (such as in Sweden and England). Other countries find it preferable to achieve similar results by separating the two services and running them as independent agencies within the MoJ. Austria is notable for its probation service to be operated by non-governmental organisations under contract to the MoJ.

Pilot projects. It is often easier to establish more liberal penal policies favouring rehabilitation by introducing them with women or juvenile offenders. New methods which have then been proved to be successful can gradually be introduced to male and older offenders.

Mandatory minimum sentences. A study by Penal Reform International (PRI) suggests that mandatory minimum sentences reduce the opportunity for judges to give greater consideration to the mitigating circumstances of a crime. The requirement to pass a custodial sanction can make it difficult for them to impose a community sanction that might have a greater possibility of encouraging rehabilitation and desistance from further criminal behaviour.[130]

RECOMMENDATIONS ON SECTION 1: STRATEGY AND LEGISLATION

Criminal legislation. The contents of the Criminal Code will need to be adjusted to include new sanctions that have proved effective in tests carried out by the probation service. As such, this Code can be a key tool for justice reform. Attention must be given to frequent review of other legislation (i.e. Probation Law and Criminal Procedure Code) in order that the strategy for change maintains a momentum.

Justice sector integration. The criminal justice system consists of a number of independent agencies with their own history and culture. Structures should be established to promote continuous discussion and problem-solving so that the different parts are encouraged to support overall aims and objectives.

Judges and prosecutors. The reform strategy should seek to involve judges and prosecutors at the heart of its development as they hold the key to creating a greater synergy in the system and therefore a greater success in reducing crime.

Joint operational meetings. There should be regular inter-disciplinary meetings involving all justice professionals. Amongst other things, these could promote debate on rehabilitation and the role of sentencing in creating a rehabilitative focus for all criminal justice practice. One possible model would be the "Criminal Justice Board" that meets quarterly in London under the personal chairmanship of the Minister of Justice.

[130] Penal Reform International, "Promoting fair and effective justice", 2014 (www.penalreform.int)

RESPONSES TO SECTION 2: THE JUDICIARY

14. **Use of prison.** The following information concerned the proportion of court cases that resulted in a prison sentence. It was not clear that each country calculated their answers on the same basis.

Armenia: Numbers had increased slightly from 12% to 14% in the last five years.

Georgia: Numbers had reduced from 45% to 28% in the last five years.

Moldova: Numbers had reduced from 21.2% to 19% in the last five years.

Ukraine: Numbers had reduced from 24.2% to 20.5%.

15. **Legal aid.** The following information concerns improvements in the access to justice/legal aid for offenders in the last 5 years:

Armenia: Improvements on its use was reported.

Georgia: In 2013 the law on Legal Aid came into operation using an independent legal aid unit to support the legal needs of offenders.

Moldova: Legislation was adapted in 2012 to add new categories of offender eligible for free legal advice.

Ukraine: A new law "on Free Legal Aid" was passed in 2011.

16. **Pre-trial detention.** The percentage of accused persons remanded in custody pre-trial/pre-sentence by the court is as follows (again, it seems that not all countries use the same method of making this calculation):

Armenia: The MoJ reports that the levels of pre-trial detention are now only 50% of what it was 5 years ago.

Georgia: The numbers have reduced from 54% to 32% in the last five years.

Moldova: Figures have remained fairly constant at around 21%.

Ukraine: The percentage held in detention has reduced from 5.3% to 4.0%.

17. **Fixed sentences.** Information received about the proportion of prison sentences in various length bands was difficult to analyse. Generally it

shows a small reduction in sentence lengths.

18. **Long sentences.** Information about crimes attracting sentences of 5 years or more and 10 years or more was difficult to analyse.

19. **Court delays.** The most frequently mentioned factor that impacts on the functioning of the courts was the lack of a sufficient number of judges. Georgia also identified a zero tolerance policy to crime of 2006-2012.

20. **Recidivism.** The percentage of prisoners who had been convicted on a previous occasion was probably interpreted differently by each country:

Armenia stated that the number of convicted persons who had previously been in prison dropped from 560 to 264 in the last five years.

Georgia gave a figure of 6.1% for the proportion of offenders received into prison in 2014 who had previously served a prison sentence.

Moldova stated that 58% of new prisoners in 2014 had previously served a prison sentence.

Ukraine did not answer this question.

21. **Electronic monitoring.** There is only a limited use of electronic monitoring with pre-trial and pre-sentenced persons:

Armenia proposes to introduce this.

Georgia can use this for juveniles.

Moldova does not have this in its legislation.

Ukraine can use this with juveniles and adults.

GENERAL OBSERVATIONS ON SECTION 2: THE JUDICIARY

Pre-trial detention. The frequent use of custody at the pre-trial and pre-sentence phases has also been a feature of Eastern European practice. In some Western European countries, as few as 11% of offenders[131] charged with deliberate crimes are held in pre-trial detention whereas the figure in EaP countries is higher. Although prosecutors will suggest that

[131] Figures obtained from "Pre-trial detention and its alternatives in Armenia" Penal Reform International, January 2012

releasing the person will result in the prosecution being compromised it would be instructive to submit such claims to rigorous testing. In European justice systems, unnecessary use of pre-trial detention leads to worse long-term outcomes.

Sentence lengths. Countries that inherited the Soviet penal philosophy still tend to impose longer custodial sentences than in Western Europe. We are not aware of independent research that justifies longer sentences. It would therefore seem appropriate to research whether sustaining a policy of longer sentences does reduce crime and protect the public. Of course offenders would prefer shorter sentences. But if unnecessarily long periods of incarceration are reducing their chances of successful reintegration, it is the wider community and further victims who will suffer.

Frequent use of custodial sanctions. Although the numbers in penitentiaries have reduced dramatically they are still high compared to European equivalents.

Access to lawyers. Although access to lawyers for pre-trial and pre-sentenced persons is safeguarded to some extent by legislation, it would be helpful to look at this positively and test whether better legal representation leads to more appropriate sentencing.

Risk assessment. Modern, scientific methods for assessing risk will help to identify defendants for whom detention is appropriate. Probation Services in Europe are generally able to undertake these risk assessments and combine them with other information to provide valuable reports for judges. In this way, the process of decision-making becomes more professional and more accurate.

RECOMMENDATIONS ON SECTION 2: THE JUDICIARY

Pre-trial detention. A strategy should be developed, based on CoE standards, to further reduce the levels of pre-trial detention. Such a strategy may need to include electronic monitoring of accused persons pending the trial as well as the introduction of assessment reports that identify the risk of breaching release conditions.

Training for prosecutors and judges in sentencing (including risk assessment and rehabilitation). Training for judges, together with staff of

the other criminal justice agencies, should aim to achieve a greater understanding of these basic offender management methods so that more effective choice of sentences can be achieved. Such training should be undertaken in multi-disciplinary groups involving professionals from other parts of the criminal justice system in order to develop corporate responsibility in decision making.

Research. Improved data on recidivism rates should be produced in order that the judiciary has a greater understanding of the effectiveness of its sentencing options.

Legal advice. The take-up and cost of legal aid, and the number of offenders sentenced to prison without legal representation, should be assessed in order to review the effectiveness of this service.

SECTION 3. POLICE AND PROSECUTION

22. **Crime statistics.** The following statistics refer to the total annual crimes.

Armenia reported 17,546 crimes in 2014 – a 20% drop in the last five years.

Georgia reported 36,526 crimes in 2014.

Moldova reported a slight annual increasing crime up to 38,755 in 2014.

Ukraine did not have information on this question.

23. **Prosecution rates.** Clearly these answers on the number of investigated cases referred to a court were based on different methods of calculation:

Armenia: The number of cases registered each year for court proceedings has dropped substantially. In 2010 there were 6,314 cases. By 2014 this had dropped by 40% to 3,784.

Georgia: Figures provided by the MoC indicate that the number of "cases reported" in the last five years has varied between a low of 44,106 and a high of 51,494 without any overall trend being evident.

Moldova: The figure of 10,741 cases in 2014 has remained fairly stable.

Ukraine did not answer this question.

24. **Supervision of ex-prisoners**. None of the countries reported any changes in the last 5 years to the way police and prosecutors operate in relation to released prisoners and offenders on alternative sanctions.

25. **Arrest targets.** None of the countries reported using arrest targets.

GENERAL COMMENTS ON SECTION 3: POLICE AND PROSECUTION

Participation in reform discussions. The police and prosecutors are key stakeholders within the Criminal Justice System. However, they seem to play a less prominent role in the development of reform strategies and can be left to react to decisions made elsewhere. In the case of the police, this is possibly because they are organisationally located within the Ministry of

Interior rather than the MoJ. In the case of the prosecutors' office, reasons may include the traditional status the office holds within the system.

Accommodating the probation service. The establishment of a modern agency to strengthen the impact of community sanctions and measures has implications for the police and prosecution services. Although this may mean sharing some of their control with a significant new component in the system, overall improvements will require new forms of cooperation to be established.

RECOMMENDATIONS ON SECTION 3: POLICE AND PROSECUTION

Organisational cooperation. The police and prosecutors should maintain a close relationship with the Probation Service particularly after the introduction of electronic monitoring.

Joint training. Training in probation methods and prison regime reforms should be provided for police and prosecutors in order that they develop their understanding and share their thinking on risk and needs assessment and the concept of rehabilitation in criminal justice.

Joint supervision. Police should agree cooperation protocols with the probation service to improve the supervision of dangerous offenders released from prison.

SECTION 4. PENITENTIARY SERVICE

26. **Prison population.** Apart from Moldova, the other three countries have seen substantial reductions in their prison populations between the end of 2010 and the end of 2015.

Armenia numbers have reduced from 5,142 to 3,888.

Georgia numbers have reduced from 23,684 to 10,281.

Moldova has 7,813 prisoners currently but previous figures were not provided.

Ukraine: numbers have dropped from 154,027 to 70,873.

27. **Imprisonment rates.** The average number of prisoners per 100,000 of the population has dropped as follows in the years from 2010-2014:

Armenia: The rate has dropped from 160 to 131.

Georgia: The rate has dropped from 533 to 230.

Moldova: The latest figure available was 184 in 2012.

Ukraine: The rate has dropped from 335 to 160.

28. **Unsentenced Prisoners.** The current number of pre-trial and pre-sentenced prisoners in prisons is as follows:

Armenia: The number is 1,039.

Georgia: 1,438 pre-trial detainees.

Moldova: 850 in investigatory isolators.

Ukraine: The number is 9,350.

29. **Women prisoners.** The current number of women in prison:

Armenia: 133 convicted and 38 pre-trial.

Georgia: 266 convicted and 52 pre-trial.

Moldova: 356 convicted and 131 pre-trial.

Ukraine: 2,898 convicted and 961 awaiting trial.

30. **Life-sentenced prisoners.** The current number of life-sentenced prisoners:

Armenia: 101.

Georgia: 77.

Moldova: 106.

Ukraine: 1,523.

31. **Foreign nationals.** The current number of foreign nationals in prisons:

Armenia: 126

Georgia: 307

Moldova: 86

Ukraine: 1,464

32. **Juveniles.** The current number of juveniles (under 18 years) in prison:

Armenia: 6 male and no female juveniles in prison.

Georgia: 49 male and no female juveniles in prison.

Moldova: 24 sentenced males and 46 in pre-trial detention. No females.

Ukraine: 44 female and 535 male juveniles.

It is likely that the different countries operate with different definitions of custody for juveniles.

33. **Young offenders.** None of the countries keep statistics on young offenders (18-21) in prison.

34. **Total prison capacity.** Each country gave full details of the capacity of each prison establishment, based on cell area per prisoner. However, these calculations do not equate to the current standards set by the CPT.

35. **Prison standards.** Each country gave details of standards they apply in relation to food, health care, visits, and similar regime issues. The individual country reports compare these to accepted international standards.

GENERAL OBSERVATIONS ON SECTION 4: PENITENTIARY SERVICE

Importance of healthcare. The CPT advises as follows: "An inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment". Further, the health care service in a given establishment can potentially play an important role in combatting the infliction of ill-treatment, both in that establishment and elsewhere (in particular in police establishments). Moreover, it is well placed to make a positive impact on the overall quality of life in the establishment within which it operates".[132]

Contact with the outside world. On this subject the CPT advice is as follows: "It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations."[133]

RECOMMENDATIONS ON SECTION 4: PENITENTIARY SERVICE

Accommodation standards. The method for calculating the capacity of a prison should be based on CPT standards. These cover more factors than simply the space available in dormitories.

Management information systems. Providing managers with the ability to collect and interpret operational data from their area of control will improve their ability to direct resources to achieve prison-wide objectives. Simple examples would be: time out of cell, incidents of disobedience, discovery of contraband, etc. In this way targets for improvement can be set and progress can be measured.

Probation services within the penitentiary establishments. Resettlement services for prisoners should be improved by probation staff contributing to pre-release courses and the development of individual release plans.

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[132] Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002, revised 2015

[133] *Ibid.* Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002, revised 2015
Ibid. Penal Reform International website www.penalreform.int - 10 point plan

SECTION 5. PRISON OVERCROWDING

36. **Prison occupancy rates.** Using the current CPT definition, respondents indicated current occupancy rates:

Armenia: The current overall occupancy rate is 85%.

Georgia: Current occupancy rates of individual prisons vary between 40% and 98%, with a small number of prisons being practically empty.

Moldova: The current overall occupancy rate is 90.3%.

Ukraine: gave a general average occupancy rate of 100%. However there was a large variation between establishments with some declaring a rate far beyond the average.

37. **Overcrowding causes.** The factors leading to overcrowding that were mentioned most frequently were improper use of alternative sanctions; mandatory minimum sentences; unsatisfactory early release policy, outdated infrastructure and a zero rated justice policy operating from 2006 to 2012 in Georgia

38. **Overcrowding effects**. Health and hygiene were the most frequently identified effects of overcrowding. Moldova drew attention to the effect on staff, whilst Georgia also included the threat to safety and security and limitations on activities.

39. **Overcrowding.** No further details were given about overcrowding in specific parts of the prison estate.

GENERAL OBSERVATIONS ON SECTION 5: PRISON OVERCROWDING

Overall regime standards. Overcrowding means much more than inadequate cell space. For example a prison may have adequate space but if the regime lacks activities for rehabilitation, or the area available for visits from relatives is cramped and inadequate, it could be concluded that overcrowding exists.

Revise use of existing prisons. The major reduction in the number of prisoners in EaP countries provides a unique opportunity to rethink the role of each establishment within a revised overall structure.

CPT statement. "Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint."[134]

RECOMMENDATIONS ON SECTION 5: PRISON OVERCROWDING

Re-calculate the capacity of the prisons. Statements about the capacity of the prison estate should be revised according to a calculation based on current CPT recommendations of at least $6m^2$ per prisoner in single occupancy cell + sanitary facility and $4m^2$ per prisoner in multi-occupancy cell + fully-partitioned sanitary facility.

More time out of cell. The minimum standard for time out of cell is one hour for high risk offenders. Although information regarding lower risk offenders indicated that 10 hours was likely, this was not written in terms of a minimum standard. There should be monitoring of all out of cell times for all regimes.

Routine management information. More modern methods of compiling and evaluating operational information should be employed. These include the collection of data on 'time out of cell', number of family visits, completion of sentence plans, etc. Information of this type will enable managers to set targets for improvement and encourage local teams to perform better by finding new solutions to old problems.

[134] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards 2002/revised 2015

SECTION 6. PRISONER RESOCIALISATION

40. **Prison reception routines.** Normal reception routines involve prisoners being held in a "quarantine unit", usually for the first 14 days. Here they have medical checks and assessments by regime specialists. These determine in which part of the prison they will be held and what health treatment and rehabilitation should be provided (if any).

41. **Special needs prisoners.** Catering for special needs was covered by each country in their Criminal Executive Code. Such things were mentioned as the categories of prisoner that should be held separately and special health care for prisoners infected with TB, HIV and hepatitis C. Georgia indicated that it had created special cells for prisoners with disabilities in certain prisons.

42. **Sentence plans.** In relation to whether prisoners follow individual sentence plans to meet their needs after release, each country described regulations concerning the assessment of behavioural and social problems and the need to plan appropriate responses.

43. **Regime participation.** In relation to the percentage of prisoners who take part in planned regime activities, answers ranged from 100% to 40% of prisoners taking part in regime activities. However, it is not likely that the same standards were applied in calculating these amounts.

44. **Regime activities.** Education was the most popular regime activity with different countries reporting between 15% and 75% take-up rates. Vocational training undertaken by between 30% and 9% in the different countries and drug treatment between 6% and 0.25% of the total prison population.

No doubt different standards are used for counting "access to regime activities". The lower figures in each case might indicate sustained engagement.

Where a probation service has been established such as in the case of Georgia, there has been improvements in the way prisoners are prepared for release and supported after release.

GENERAL COMMENTS ON SECTION 6: PRISONER RESOCIALISATION

Emphasis on rehabilitation. In Western Europe, throughout the final 30 years of the twentieth century, the work of prisons in re-socialising offenders grew in importance. Regimes had previously lacked any activities designed for preparation for release. Education and work training were seen as essential for many offenders, whose poor skills were shown to have contributed to their offending.

Scope of education. Education is conceived more widely in Western Europe than in the EaP countries and it is common to see prisoners involved in classes where they are exploring new social and life skills and learning how they can benefit from an appreciation of literature. Unfortunately, prison overcrowding and reduced budgets in these countries have limited the availability of these essential activities.

Rehabilitation services. As stated above, one of the key objectives of a prison system is to rehabilitate prisoners in order that they will not continue with a life of crime. There is no single reason why individuals will return to their former criminal life. However causes include: lack of socialisation, lack of employment and training, a feeling of rejection by society, antisocial attitudes, restlessness, association with other criminals impulsiveness, lack of education, and neglect or abuse by parents or guardians. There are many ways to reduce recidivism and among the most cost-effective are social training and education courses.

Health needs. This has been made a particular priority and the administration has been pro-active in introducing schemes that seek to screen for priority health issues and provide good quality treatment.

RECOMMENDATIONS ON SECTION 6: PRISONER RESOCIALISATION

Cooperation between penitentiaries and probation. It is essential that a close working relationship between the two organisations should exist. In this way, the transition from prison to community can be more effectively managed.

Outcome data. The Penitentiary Service should collect and analyse reoffending rates of prisoners released with or without supervision.

Regime monitoring. Data should be collected in relation to participation in rehabilitation activities in prisons.

Pre-release programmes. Programmes dealing with pre-release issues are not expensive to organise and can make an important difference. They should be seen as an essential part of the objectives of all prisons. Other programmes should be developed to respond to the criminogenic needs of prisoners.

SECTION 7. EARLY AND CONDITIONAL RELEASE

45. **Conditional release.** Methods operate as follows:

Armenia: The suitability of prisoners for early release is initially considered by the senior managers of the penitentiary. Favourable decisions are reconsidered by an Independent Commission that will interview each candidate. Candidates thought suitable by the Commission are then referred for a final decision by a special court.

Georgia: Local Councils cover a group of prisons and study documentation and hold interviews with eligible candidates. If they decline to approve conditional release the request is reviewed again automatically after 6 months. Appeals on a decision of the Local Council to an Administrative court can be made in certain circumstances.

Moldova and Ukraine: Each section of the prison submits reports to the governor. Those considered suitable for release are submitted to a court for a final decision.

46. **Sentence discounts.** None of the countries were able to provide information about the average sentence length reduction granted for conditional release.

47. **Conditional release.** From all the prisoners eligible for conditional release, the following percentage were granted conditional release in 2014:

Armenia: 4.7%

Georgia: 8.4%

Moldova: 4%

Ukraine: 50%

48. **Conditional release.** This question yielded similar information to Question 47.

49. **Post-release supervision.** These are the arrangements made for supporting prisoners granted conditional release:

Armenia: Some minimal checking is made by Interior Ministry staff.

Georgia: Supervision is provided by the National Probation Agency according to a sentence plan.

Moldova: The Probation Service can provide assistance if asked by the ex-prisoner.

Ukraine: Some minimal checking is made by Interior Ministry staff.

50. **Government services.** Released prisoners can access normal local government services. In some parts of some of the countries NGOs have an official agreement with the Penitentiary Service to provide informal assistance.

51. **Conditional release recidivism**. Reconviction rates for conditionally released prisoners as follows:

Armenia: A steady reconviction rate of approximately 10% has been maintained for the last five years.

Georgia: Statistics for 2013 and 2014 showed this at 3.1% and 3.9% respectively

Moldova: No information was provided.

Ukraine: Since 2010 the reconviction rate has been approximately 1%.

52. **Full sentence recidivism.** Georgia reported a 7% reconviction rate in 2014 for prisoners who serve their full sentences but similar statistics were not provided by the other countries.

GENERAL OBSERVATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Benefits of parole. Supervised release on parole benefits the community, the prisoner and the penitentiary service itself. It encourages more co-operative behaviour which assists offender management whilst in prison but also aids successful rehabilitation after prison. Research indicates that proper supervision provided as a condition of early release can have a substantial effect on reoffending.

Rehabilitation programmes. Providing prisoners with the opportunity to address their offending behaviour and to develop a positive attitude to

release, achieves better rehabilitation rates. Community rehabilitation and supervision normally is the responsibility of a Probation Service.

Staged release. Open prisons, halfway houses, hostels[135] and other supervised accommodation can provide an effective pathway to full independence for prisoners before and after release.

Community perspective necessary. In recent years, the number of prisoners released on parole is approaching European averages. However, the participation of the Probation Service in the process is more limited than would be ideal. Proper assessments, which focus on what would need to be done to help a prisoner to complete a period of parole satisfactorily, require the kind of risk and need assessment best done by an agency experienced at supervising offenders in the community. Unfortunately, penitentiary staff can be too concerned with behaviour in the custodial environment, which is not a good predictor of behaviour released.

RECOMMENDATIONS ON SECTION 7: EARLY AND CONDITIONAL RELEASE

Reform of parole. Greater priority must be given to the reform of the early conditional release systems. Improved assessment of risks each individual will present in the community will enable plans to be developed in advance that will contribute to safe release. Parole should not be seen as a reward for good behaviour in prison. Rather it should be seen as a way of controlling and adjusting the behaviour of those who would otherwise present highest risk when released.

Training about parole. A training programme should be developed for staff and managers from all agencies involved in conditional release systems.

Statistics. Relevant statistics on reoffending rates and average reduction in sentences should be developed on a regular basis and analysed.

[135] Typically large houses in which between 10 and 20 offenders can live under supervision while they learn to live independently.

SECTION 8. ALTERNATIVE SANCTIONS AND PROBATION

53. **New community sanctions.** The only change reported to available sanctions in these countries since 2005 was the removal of Correctional Work from Armenian legislation in 2006. In Georgia Home Arrest for juveniles is now within the Juvenile Justice Code and will be operational in 2016.

54. **Purpose of probation.** The stated purpose of the Alternative Sanctions/Probation Service is as follows:

Armenia: The relevant legislation has not been finalised.

Georgia: "Alternative sanctions/probation aims re-socialisation and rehabilitation of probation, to avoid new offences and keep society safe."

Moldova: A long list was provided starting with: Restorative justice development; keeping the delinquent in the community while imposing certain obligations; mitigation of the relapse risk.

Ukraine: "The objective of probation is to ensure public security through correction of convicted person, prevention of commitment of repeat criminal offences by them and providing the court with the information about accused person in order to take the decision on their liability."

55. **Community sanctions.** Ukraine and Georgia probably provided the most detailed list of available sanctions between them noting the following: deprivation of the right to occupy certain positions or engage in certain activities; Community Service; Correctional Work; prepare pre-trial reports about the accused person; supervise offenders under a variety of special sanctions; send convicts to correction centres to serve their sentence; implement probation programs in respect to the individuals released on probation; provide social and educational activities for offenders; prepare for the release of offenders sentenced to restriction of liberty or deprivation of liberty; implement other measures aimed at correction of convicted person and prevention of repeat criminal offences.

56. **Restorative justice.** Georgia is unique in providing restorative justice, mediation and reparation programmes.

57. **Planned community sanctions.** The following plans for introducing new alternative sanctions were disclosed:

Armenia: The Concept Paper on the future Probation Service describes a full range of European-style alternative sanctions except pre-trial reports and parole supervision.

Georgia: A new, comprehensive Juvenile Justice System has been introduced in Georgia. This will provide for 'Home Arrest'. It is planned that this measure will be available for adults in the future.

Moldova: With advice made available by the Norwegian Rule of Law Mission, fully-revised "community sentence" is about to be introduced.

Ukraine: No plans have been made to introduce new alternative sanctions.

58. **Use of community sanctions.** The percentage of convictions that resulted in alternative sanctions is as follows:

Georgia: 64.5%

Ukraine: 77%

Armenia: It has not been possible to calculate a comparative figure from the statistics provided.

Moldova: These statistics are not available.

59. **Use of conditional sentence.** In 2014, the following proportion of criminal convictions resulting in conditional sentence:

Georgia: 45%

Moldova: 49%

Ukraine: 57%

Armenia: It has not been possible to calculate a comparative figure from the statistics provided.

60. **Success rate of community sanctions.** The proportions who completed an alternative sanction in 2014 without further crime were as follows:

Armenia: 91%

Georgia: 91%

Ukraine: 95%.

Moldova: Information not available.

61. **Failure rate of conditional sentence.** The typical proportion of offenders given conditional sentence who were called to prison during their sentence varied between 1% and 3%.

62. **Electronic monitoring.** Armenia and Ukraine do not use electronic monitoring as alternative sanction. It is available for juveniles in Georgia and has been in the law in Moldova since July 2015.

63. **Electronic monitoring.** No statistics were available to show the success or otherwise of introducing electronic monitoring to aid the management of offenders in the community.

GENERAL OBSERVATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Lack of public support. Support for alternative sanctions is not universal across all sections of society in European countries. In most cases, this can be attributed to lack of understanding about offender management.

Separating or integrating the penitentiary and probation services. In some EaP countries, such as Ukraine and Azerbaijan, the department within the penitentiary service that has inherited the Soviet-style supervision of released prisoners is in the process of transforming itself into a modern Probation Service. Other countries have preferred probation to be established separately from the penitentiary service as an independent part of the MoJ/MoC.

Effectiveness of community sanctions. There is good evidence to show that community supervision combined with rehabilitation programmes perform better than imprisonment for most mid-range offenders. Research undertaken by the MoJ for England and Wales shows that reoffending is significantly lower if prisoners are given compulsory supervision for at least 12 months after release[136]. Expenditure on such a service is judged to be good value for money and was a key factor in widespread reforms introduced there at the beginning of 2015.

[136] Ministry of Justice (2013) 2013 Compendium of re-offending statistics and analysis, London: Ministry of Justice

RECOMMENDATIONS ON SECTION 8: ALTERNATIVE SANCTIONS AND PROBATION

Strategic support. The introduction of the Probation Service should involve round tables for key stakeholders such as judges, politicians and justice sector leaders in order that its role and responsibilities are understood.

Training standards. Work should be undertaken with national training institutions in order that training of the highest quality is provided.

New sanctions. Additional sanctions should be designed to promote a greater range of services for the rehabilitation of offenders.

Probation activities in penitentiary establishments. The level of rehabilitation activity in penitentiary establishments is limited. When established, the probation service should plan to play a role in developing and staffing pre-release courses in all penitentiary establishments.

SECTION 9. AFTERCARE

64. **Civil society organisations.** Each country was able to describe a large number of civil society organisations that either visited penitentiaries or provided services for released prisoners.

65. **Formal agreements.** Each country was able to identify a range of formal agreements and memorandums of understanding with statutory and non-statutory organisations to support the after-care of prisoners.

66. **After-care.** No further information about the prisoner after-care initiatives was provided.

67. **Recidivism.** Georgia claims that only 4.3% of prisoners released in 2014 have committed further offences. Other countries do not keep these statistics.

RECOMMENDATIONS ON SECTION 9: AFTERCARE

Government support. The Government must seek the means of assisting the statutory organizations and the NGO community to provide continuing support to released prisoners after formal supervision blended.

Partnership agreements. The MoJ/MoC should develop partnership agreements with the Social Welfare Department, Health Department and the Education Department, in order that the statutory services are better able to reach ex-prisoners.

Social re-integration centres. Special centres should be developed for the social re-integration of offenders. The more informal approaches that NGOs can offer will be more attractive to ex-prisoners, who have mostly come to mistrust the official agencies of the government. NGOs are more able to adapt their approaches in the light of experience than government services that may require changes in legislation.

SECTION 10. DATA AND STATISTICS

68. **Occupancy statistics.** Each country keeps statistics about the occupancy rate of each prison based on standards specified in its legislation. Generally these standards are less generous than CPT recommendations.

69. **Prisoner recidivism.** Each country keeps statistics about reoffending by released prisoners. Georgia and Armenia also keep these statistics in relation to community sanctions.

70. **Differential reoffending.** Statistics about reoffending by different offender groups are not generally available.

71. **Other statistics.** No other information was identified to assist assessment of overcrowding.

72. **Published statistics.** Georgia's Analytical Department produces a series of reports from weekly to annual which inform the public and assist policy reviews. The other countries did not provide such information.

GENERAL OBSERVATIONS ON SECTION 10: DATA AND STATISTICS

Computer systems. More reliable data, and sophisticated analysis, will allow improvement targets to be set for each part of the penal system. The introduction of computers to automate this work will require a significant investment in suitable software.

Value of operational data. Recording and analysing statistics across the criminal justice field allows administrations to have a better understanding of what works – and more importantly, what does not work.

Evaluation of effectiveness. Baseline statistics, and data about the effect of changes to legislation, are necessary for guiding further work. Often an agency in one part of the justice system may be collecting routine information that will be of great help to evaluators elsewhere.

RECOMMENDATIONS ON SECTION 10: DATA AND STATISTICS

Measuring effectiveness. A standard system, readily understandable to all, should be agreed for measuring the effectiveness of penitentiary sentences and community sanctions. This is necessary for making key decisions about justice reform and the allocation of resources. It would be preferable if the factors involved were similar to those that are prominent internationally – such as the proportion of offenders who avoid further offending for two years following the completion of the sanction.

SECTION 11. CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

73. **Crime reduction.** Community-based crime reduction initiatives were rare in EaP countries. Georgia in 2006 started a crime prevention initiative operated by the Prosecutors Office.

74. **Civil society.** Most of these countries are known to have agreements for civil society organisations to monitor the prisons.

75. **Police.** Armenia requires community to police to provide regular information about crime topics to local residents. Moldova has initiatives on consumer protection and anticorruption. In Georgia the Interior Ministry runs a variety of educational programmes on the media and in schools.

76. **Desistance.** The criminal justice services in some countries are encouraging offenders to desist from crime. Ukraine is concentrating on keeping juvenile offenders from drifting into crime. The MoJ in Armenia has had legislation on the subject since 2008 but current activities were not described.

GENERAL OBSERVATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community responsibility. Traditionally the subject of crime and punishment has been seen by the general public as something that only involves offenders and criminal justice agencies. The idea that crime prevention is something all living in a community should consider is relatively new. The rehabilitation of offenders must involve communities and support agencies within those communities, in order that re-socialisation and rehabilitation can develop. Some alternative sanctions, including community service, are reliant on community support. If sanctions such as community service have greater visibility, they will be understood better.

Restorative justice. New methods of conflict resolution are developing in communities, which bring together statutory and voluntary organisations. Mediation is increasing in use and the idea of restorative justice provides opportunities for responses to be agreed outside the criminal justice system.

RECOMMENDATIONS ON SECTION 11: CRIME AS A WHOLE COMMUNITY RESPONSIBILITY

Community-based crime reduction. To develop a strategy on community based crime reduction that involves the main social agencies, civil society and local people in the most at-risk communities.

SECTION 12. FUNDING

77. **Penal sector funding.** The following figures were provided about investment in 2015 for prisons and probation:

Armenia: Penitentiary service: 10,746,466,400 AMD (= €20m) has been allocated;

Medical services: 43,000,000 AMD (= €80,000).

Georgia: Penitentiary and Probation: 128,034,330 GEL (=€46m)

Medical Department: 13.650.670 GEL (=€4.9m)

Moldova: 407,875,600,000 MDL (= €18m)

Ukraine: 2,773,900,000 UAH (= €123m)

78. **Future reforms.** The following figures were provided about investment in 2015 for future reforms:

Armenia: The MoJ does not expect to receive additional funding.

Georgia: €3.4m has been identified to implement planned reforms.

Moldova: Budget support from the European Union has been agreed in relation to the implementation of a series of planned reforms.

Ukraine: A reform strategy is been developed but funding details were not provided.

79. **Underfunding.** Each of these countries reports the need to operate within limits imposed each year by the Finance Ministry.

GENERAL COMMENTS ON SECTION 12: FUNDING

Importance of coordination. Funding is often given as the reason for the poor conditions in the prison estate. However, although finance is important, so is the need for co-operation and co-ordination between all parts of the criminal justice system so that their resources can work together.

Organisational efficiency. Not all reforms are dependent on additional funds. Often significant improvements can be achieved through a radical re-evaluation of management systems and operational practice.

RECOMMENDATIONS ON SECTION 12: FUNDING

Balanced budget. A long-term target should be to balance the relative resourcing of penitentiary and probation services within the overall corrections budget. It may be that the 75% – 25% split commonly found in European countries would be appropriate.

Cost-centred budgeting. Serious consideration should be given to determining the realistic unit costs of delivering each community sanction so that informed judgements about their relative value can be made. This might show, for example, that a new form of directly-supervised community service is achieving better reconviction rates than electronically monitored home detention – or vice versa.

80. **Additional Comments**. The question was included in the event that the individual country wanted to add information not previously requested. Only Georgia added additional data, which has been used in the response of other questions (Sub-sections).

CONCLUSIONS

The thoughtful answers provided by the four countries of the Eastern Partnership have stimulated discussion in the Council of Europe and will be given further consideration at a Regional Conference in Tbilisi, Georgia on 18 February 2016.

The questionnaire consisted of 80 separate issues organised into 12 sections. In the main section of this report, detailed comments have been made on the information provided for each of the 80 issues. At the end of each section, broader observations and recommendations have been made.

The report now ends with some overall conclusions about opportunities for reducing overcrowding and moving from a punitive to a rehabilitative approach in offender management.

1. Strategy and legislation

Strategies for reforming a penal system must draw on international standards and evidence of effectiveness, adapted to national traditions and contemporary concerns. A range of approaches should be tested but their relevance must be assessed by the leadership of all sectors of the criminal justice system, whose support will be needed when any of them are introduced practice. Legislation should be as permissive as possible so as not to limit the ability of practitioners to develop new implementation methods.

2. The judiciary

Penal reforms are likely to introduce new concepts such as risk assessment, alternatives to custodial restraint of pre-trial defendants, requirements for prisoners to complete rehabilitation courses before release, a wider range of challenging community sanctions, and proposals for strongly-supervised conditional release from prison. Judges will have a major role in determining whether and how they would be used. Their leading representatives must be closely involved in decisions about these reforms and training about the methods and their implementation must reach all members of their profession.

3. Police and prosecution

Police and prosecutors are an equally important part of the criminal justice system and they must be involved in planning reforms alongside judges and others. In addition there will be new roles for the police in working closely with the developing probation service. Joint supervision by police and probation staff of high risk offenders who have completed a prison sentence is one example. Also to be considered will be the need for a close working relationship in relation to the operation of electronically monitored curfews or offender tracking.

4. Penitentiary service

The growing need for transition countries to achieve international standards has significant financial implications. Healthy prisons involve more than providing sufficient space around each bed. Standards of healthcare, education, rehabilitation and contact with the outside world will be difficult to achieve when imprisonment rates are high compared to the basic crime rate. New partnerships between penitentiary and probation staff offer opportunities to improve rehabilitation before and after release.

5. Prison overcrowding

Overcrowding is caused by too many prisoners and too few buildings. Neither of these factors are within the control of the Penitentiary Service. Nevertheless improvements could be made if penitentiary managers had more scope to reconfigure the available establishments, move prisoners within the system according to risk assessments, and be encouraged to look harder for finding suitable candidates for early release.

6. Prisoner re-socialisation

New methods of assessing risks and needs allow more effective rehabilitation courses to be developed and targeted. Trends in penal reform are encouraging a wider concept of education. Instead of being seen as restoring academic learning missed from schooling it focuses on helping prisoners to understand and cope more effectively with the everyday challenges of

social and personal life. New partnerships between penitentiary and probation staff will assist the design and delivery of social skills training and the more intensive offending behaviour programmes. By these means, preparation for release can become a real focus of life in prison.

7. Early and conditional release

Parole (or conditional release) is a vital part of the penal systems in Western European countries. It couples substantial discounts from a prison service with tough supervision on release. It encourages prisoners to make use of rehabilitation programmes in prisons, it encourages better behaviour, and the evidence shows that it reduces levels of recidivism after release.

Nevertheless it is a challenging concept for police, prosecutors and judges who often see that sending someone to prison is the culmination of their efforts. Further development of parole will require careful negotiation and the presentation of evidence of effectiveness.

8. Alternative sanctions and probation

Although community sanctions are gradually achieving a higher profile in the transition countries, they are yet to have their potential influence on offender management. The Council of Europe advocates a prominent role for a range of well-supervised sanctions designed to meet the risks and needs of offenders. They should be the default option for mid-range crimes.

Judges will not be helped to impose the sentences if they continue to be seen as a gentle response to crime. Published standards for community sanctions should make clear the efforts expected from offenders and the consequences of default. Research conclusions about their effectiveness are likely to be positive and should be carefully publicised.

9. Aftercare

Although most prisoners are pleased to be released they quickly encounter personal and social problems they had been trying to ignore. It is not

right to give such people better social support services than would be available to other citizens. Nevertheless the availability of simple spontaneous advice and practical help can avoid recidivism and the costs this implies for victims and the community.

Civil society organisations can play a prominent role in this work but they will be more effective if given operational advice and support from the statutory penal service.

10. Data and statistics

Effective service management requires information about whether practical activities are achieving overall objectives. It is not easy or cheap to collect reliable data but without it the funding and support necessary to develop services will not be available.

National standards for statistics are necessary. One very popular standard concerns the proportion of offenders who commit further crime within two years of the completion of a custodial or community sanction. Consistency with international standards will give greater authority to the results.

11. Crime as a whole community responsibility

Although the main weight of responsibility for tackling crime rests with the official agencies of the justice system, they cannot operate in isolation. New approaches mentioned in this Report, such as diversion, community service, restorative justice and civil monitoring of prisons require an active contribution from community members. The justice agencies need to reach out beyond their slightly isolated environments and find ways to provide information and practical opportunities for participation.

12. Funding

Governments have far more deserving causes for the limited funds are available. The penal services must strive for efficiency. Because of accounting systems inherited from the Soviet era it is not easy for them to know accurately and reliably how much each justice service is costing. Such in-

formation is essential if the value of existing policies and proposed reforms is to be measured.

European countries have decided that improved overall efficiency requires transferring a substantial proportion of the penitentiary budget to the community sanctions sector.

It is also necessary to appreciate that precious resources can be wasted if the various parts of the justice system are not working to the same objectives. And partnerships with flexible, inventive civil society organisations can often achieve better results more cheaply.

APENDIX 1

QUESTIONNAIRE

SECTION 1. The Strategy and Legislation (criminal code, criminal procedural code and criminal executive code)

Question 1. Does your country have a document that provides for a future direction of your criminal justice system?

NO/YES

If YES, please identify the nature of the document, the period of time the document covers and whether it includes reform measures.

If YES please give details of the reform measures

Question 2. Does the criminal legislation (criminal code, criminal procedural code and criminal executive code) include minimum mandatory prison sentences?

NO/YES

If YES, please state the nature of any mandatory sentences and when these clauses were first included in the legislation.

Question 3. Have there been any amendments or changes made to the criminal legislation (criminal code/criminal procedural code/criminal executive code) in the last 5 years, in order to redefine certain crimes? (please include any criminalisation, decriminalisation and reclassification of crimes)

NO/YES

If YES, please state the nature of the amendments and when they were undertaken.

Question 4. Please state any results that these amendments have had on sentencing and prison population.

Question 5. What does your legislation state about conditional release from prison or the replacement of custodial sentences by alternative sanctions?

Question 6. Within the existing legislation is there the facility to provide access to justice/legal aid to all persons in custody?

NO/YES

If YES, please state the legislation.

Question 7. Has there been any new legislation to create a probation service (as defined in the Council of Europe Probation Rules 2010)?

NO/YES

If YES, please say when this occurred.

If NO, do you have any other organization, which undertakes the supervision of alternative sanctions and please describe this organization

Question 8. (*For countries with a probation service only).* Has there been any new legislation to improve the co-operation between the existing penitentiary service and probation service?

NO/YES

If YES, please describe the impact of this legislation on co-operation.

Question 9. Has your country used 'amnesties' and 'pardons' in the last 5years to reduce the prison population?

NO/YES

If YES, Please provide information as to when the amnesties/pardons were carried out and for how many prisoners (please also show the number of prisoners as a percentage of the prison population)

Question10. What alternative sanctions/non-custodial sanctions and other criminal measures exist in your legislation and are available to judges?

Question 11. Does your legislation allow for offender/victim mediation?

NO/YES

If YES, please explain how this works

If NO please state whether there are plans to introduce such legislation

Question 12. Does your legislation allow for pre-trial and or pre-sentenced accused to be placed on electronic monitoring as a home detention?

NO/YES

If YES, please explain the detail of its uses for this purpose.

Question 13. Does your legislation allow for the use of electronic monitoring of sentenced offenders

NO/YES

If YES please provide information on its application

SECTION 2. The Judiciary

Question 14. What percentage of all cases heard in the courts resulted in a prison sentence in the following years?

2010

2011

2012

2013

2014

Question 15. Has there been any improvements in the access to justice/ legal aid for offenders in the last 5 years?

NO/YES

If YES, please state the nature of the improvement and any results that have been identified.

If NO, please state the present situation on access to justice/legal aid.

Question 16. From court records what percentage of accused persons are remanded in custody pre-trial/pre-sentence by the court?

Percentage remanded in 2010

Percentage remanded in 2011

Percentage remanded in 2012

Percentage remanded in 2013

Percentage remanded in 2014

Question 17. From your court records, what percentage of prison sentences fell in the categories stated below in 2010 and in 2014?

In 2010

Less than 1 year

From 1-2 years

From 2-5 years

Over 5 years

Over 10 years

and in 2014

Less than 1 year

From 1-2 years

From 2-5 years

Over 5 years

Over 10 years

(if you keep your records in different groupings please use alternatives for the 2010 and 2014 years requested.)

Question 18. Please list the offences, in accordance with the national legislation, that would carry a sentence of 5 years or more and 10 years or more

5 years or more

10 years or more

Question 19. Are there any factors that presently impact on the functioning of the courts

Please tick

Shortage of lawyers

Shortage of judges

Extended court proceedings

Case overload of judges

Others please state…….

For those you have ticked please provide explanations

Question 20. What percentage of convictions is with offenders that have had a previous prison sentence?

2010

2011

2012

2013

2014

Question 21. Do you use electronic monitoring as a means of allowing pre-trial and pre-sentenced prisoners to remain in their homes before sentencing?

NO/YES

If YES please state what system (satellite /radio frequency) is used and with which groups of offenders.

Please state its usage since the adoption of legislation.

SECTION 3. Police and Prosecution

Question 22. What do your crime statistics state as the total annual crimes (reported crimes) in the following years?

2010

2011

2012

2013

2014

Question 23. What was the number of investigated cases referred to a court?

2010

2011

2012

2013

2014

Question 24. In the last 5 years have there been any changes in how the police/prosecutors operate regarding;

a) supervising released prisoners ?

b) supervising offenders on alternative sanctions?

c) working with other parts of the criminal justice system?

NO/YES

If YES, please explain the nature of these changes, the date when the change(s) were introduced and why they were made.

Also if YES please state any identified impact/results that can be attributed to the changes

Question 25. Are there or has there been in the last 5 years, any arrest targets?

NO/YES

If YES, please describe the nature of such targets and for how long they have operated during the last 5 years.

SECTION 4. Penitentiary Service

Question 26. What is the present prison population (total to include pre-trial/pre-sentence and convicted)?

How has this figure changed over the last 5 years? Please state the official figure for the following years

2010

2011

2012

2013

2014

Question 27. What was the average number of prisoners in the years from 2010-2014 per 100,000 of the population?

2010

2011

2012

2013

2014

Question 28. What is and has been the number of pre-trial and pre-sentenced prisoners in prisons tor other secure establishments today?

Question 29. What is the number of women in prison today?

Remand Sentenced

Question 30. What is the number of 'lifer's' in prison establishment today?

Question 31. What was and what is the number of foreign nationals in your prison?

2010

2015

(please choose statistics from 1 month of 2010 September and use the same month for 2015)

Question 32. What is the number of juveniles (under 18 years) in prison today?

Male Female

(please make a note, if the age for juvenile status is different to 'under 18 years of age' in your country)

Question 33. What is the number of young offenders (18-21) in prison today?

Question 34. Please provide details of capacity and actual prisoner numbers for EACH INDIVIDUAL prison and for each of the different prisoner types housed in the individual prison.

Please use the definition of individual prisoner space used by the CPT.

PRISONER TYPE	CAPACITY	ACTUAL TODAY
Remand male		
Remand female		
Remand juvenile male		
Remand juvenile female		
Sentenced male		
Sentenced female		
Sentenced juvenile male		
Sentenced juvenile female		

Question 35. What standards do you use for the following prisoner requirements?

	Category	**Standard**
a)	accommodation	
b)	food	

c) health care

d) prison regime

e) time out of cell/dormitory

f) visits

g) physical exercise

h) home visits

i) others, please specify

please give as much information as possible.

SECTION 5. Prison Overcrowding

Question 36. Using the definition by the CPT detailed in the last section, please describe what you believe to be the present state of your prison establishments and to what extent overcrowding applies to your prison estate?

How has this situation changed in the last 5 years?

Question 37. The list below represents research by the UNODC as to the causes of prison overcrowding. Please comment on any of the statements that you feel to be relevant in creating overcrowding in your prisons, providing evidence where possible.

1) The rise / reduction in crime rates in the country

2) The expansion of poverty generally and greater inequality within the country

3) Obstacles and delays in the criminal justice system

4) Excessive use of pre-trial detention

5) Punitive `criminal justice policies, including mandatory minimum sentences, increase in longer and life sentences and changes of ineligibility for early release

6) Insufficient use of bail

7) Inadequate use of Alternative Sentences

8) Inappropriate use of imprisonment

9) Drug control and new policies on drug crimes incl. mandatory imprisonment

10) Inefficient ways of promoting social integration upon release

11) Crisis overcrowding as a result of law changes or exceptional happenings

12) Breaches in early and conditional release and probation orders

13) Inadequate prison infrastructure and capacity

Question 38. Below are the areas often stated to be the affects of overcrowding. Please provide any evidence you have as to their relevance in your country

a) Health and Hygiene in prisons

b) Safety and Security in prisons

c) Impact on prison staff

d) Impact on offenders

e) Less opportunities for positive regime activities

f) Less activities designed to rehabilitate prisoners

g) others please state

Question 39. Does overcrowding exist in any parts of your prison estate?
NO/YES

If YES, please explain which part of your estate is overcrowded and which prisoners are affected.

SECTION 6. Prisoner Resocialisation

Question 40. When prisoners are first received into your prison system describe the induction routine that operates.

Question 41. How are the following prisoners with special and specific needs, dealt with in your prison system?

- o Prisoners with significant health needs
- o Prisoners that may be considered vulnerable
- o Foreign nationals with language problems
- o Pregnant women
- o Women with young children
- o Juvenile prisoners (male / female)
- o others

Question 42. Do prisoners follow individual programmes/sentence plans designed to meet their needs and to help them to resettle in communities after release?

NO/YES

If YES describe the nature of the regimes available to prisoners

Question 43. What percentage of prisoners has undertaken the regime described in Question 42?

please circle:

- o 100% of all prisoners
- o 80% of all prisoners
- o 60% of all prisoners
- o 40% of all prisoners
- o less than 40%

Question 44. What percentage of all prisoners have accessed the following regime activities in 2014

Education programmes…

Employment programmes…

Drug treatment programmes…

Pre-release programmes…

Others please specify

SECTION 7. Early and Conditional release

Question 45. If your country operates a conditional release system please describe how this operates and which institution is responsible for making the decision for the conditional release of prisoners.

Question 46. What was the average sentence length reduction granted for conditional release in the following years?

2010

2011

2012

2013

2014

Please show as a percentage using all sentence lengths (for example, for all those granted parole the average percentage of sentence reduction was 15%)

Question 47. From all the prisoners eligible for conditional release what percentage were granted a conditional release in the following years;

2010

2011

2012

2013

2014

Question 48. What percentage of prisoners eligible for parole/conditional release have been given conditional release in the following years (percentage of successful applications)?

2010

2011

2012

2013

2014

Question 49. Is the Probation Service providing support for prisoners granted conditional release?

NO/YES

If YES, please describe the Service's responsibility

If NO please state which institution is responsible

Question 50. In addition to the work of the Probation Services, what other support exists for conditionally released prisoners in the community?

Question 51. Do you keep statistics regarding the re-conviction rates of conditionally released prisoners?

NO/YES

If YES, please state what the reconviction rates were for the following years:

2010

2011

2012

2013

2014

Question 52. Do you keep statistics regarding the re-conviction rates of prisoners released after serving their full sentences?

NO/YES

If YES, please state what these were in the following years and where possible for 2 years after the end of the sentence for those years before 2013:

2010

2011

2012

2013

2014

If you do not keep statistics for up to 2 years after the end of the sentence, please supply what you have, noting the criteria used.

SECTION 8 Alternative Sanctions and Probation

Question 53. Have there been any changes to the list of Alternative Sanctions available to judges in your country since 2005?

NO/YES

If YES describe the changes and particularly note the new sanctions

Question 54. What is the stated purpose of the Alternative Sanctions/Probation Service in your country?

Question 55. If you use any of the following alternative sanctions (most commonly used in Europe) please provide details.

- Community Service/Public Works
- Treatment Orders for drug, alcohol and mental health problems
- Home curfews
- Supervision by probation Service normally called a Probation Order

- o Special programmes that may include anger management, employment, etc.
- o Educational Orders
- o Conditional/suspended sentence
- o Please note any others commonly used in your country

Question 56. Do you use any diversion schemes such as restorative justice, mediation or reparation?

NO/YES

If YES please provide details

Question 57. Are there any plans to introduce new alternative sanctions in the future?

NO/YES

If YES, please give details

Question 58. What percentage of all sanctions awarded in the courts, were Alternative Sanctions in the following years

2010

2011

2012

2013

2014

Question 59. What percentage of all sanctions were conditional sentence?

2010

2011

2012

2103

2014

Question 60. What is the success rate of your alternative/probation service for those offenders allocated an alternative sanction and who were subject to a period of supervision?

Success rates should be stated in the following 2 ways:

a) percentage of offenders who successfully complete their sanction(alternative sanctions) without further offences

b) percentage of offenders who remain law abiding citizens for up to 2 years after the end of their sanction(alternative sanction)period.

Question 61. What percentage of offenders given conditional sentence, are called to prison during their sentence?

2010

2011

2012

2013

2014

Question 62. Is electronic monitoring used as/ or alongside an alternative sanction?

NO/YES

If YES please describe its use

Question 63. Have you any statistics to show the success or otherwise of introducing electronic monitoring to aid the management of offenders in the community?

NO/YES

If YES, please state your research findings

SECTION 9. Aftercare

Question 64. Are there any organisations providing aftercare arrangements for offenders ?

NO/YES

If YES, please describe their work

Question 65. Are there any formal agreements operating between statutory /non statutory organisations and the Criminal Justice Services, to support the aftercare of offenders?

NO/YES

if YES please describe

Question 66. Are there any other initiatives operating as aftercare for offenders not previously noted?

NO/YES

If YES please describe

Question 67. Do you keep statistics regarding the re-conviction rates of prisoners released after serving their full sentences?

NO/YES

If YES, please state what these were in the following years and where possible for 2 years after the end of the sentence for those years before 2013:

2010

2011

2012

2013

2014

If you do not keep statistics for up to 2 years after the end of the sentence please supply what you have, noting the criteria used.

SECTION 10. Data and Statistics

Question 68. What statistics do you keep that indicate the extent of overcrowding? (please state the type of data and results)

Question 69. What statistics do you keep regarding rates of reoffending for different sanctions of your criminal justice system? (please state the type of statistics and the results)

(Sanctions include imprisonment, alternative sanctions and others not included in these 2 sanctions.)

Question 70. What statistics do you keep regarding the reoffending rates for different offender groups? (please state the type of statistics and the results)

- o adult male offenders
- o adult female offenders
- o male juveniles
- o female juveniles

Question 71. Do you keep any other relevant data that you believe is important in your assessment of the extent overcrowding exists in your country?

NO/YES

If YES, please note such data below (please state the type of data and the results)

Question 72. How do you use data to inform policy and strategy in your service?

SECTION 11. Crime as a whole community responsibility

Question 73. Have there been any community based crime reduction initiatives operating in the communities of your country in recent years (for example neighbour watch schemes or whistle blowing schemes)?

NO/YES

If YES, please describe these initiatives and their impact.

Question 74. Do you have a system that allows the civil society to assess prisons and the conditions for prisoners?

NO/YES

If YES please describe your system

Question 75. Are there or have there been any public information campaigns aimed at reducing crime in the community?

NO/YES

If YES please provide the details

Question 76. How does your criminal justice service encourage offenders to desist from crime?

SECTION 12. Funding

Question 77. What level of investment is given to the Penitentiary Service (prison and probation) and how is it used?

(please state the budget for 2015 and comment as to any changes in this experienced in this budget since 2010)

Question 78. Has funding for your policy and strategy plans been identified?

Question 79. Do you have all the resources necessary for running your present criminal justice (penitentiary and probation) services?

a) Staffing

b) Infrastructure

c) Operational costs

d) Maintenance

Please provide full information on the areas listed above and other areas you have identified

Question 80. Have you have any additional comments you would like to make to ensure we have all information applicable to your criminal justice service?