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Short-term solutions for reducing overcrowding in prisons and observance of rights of inmates

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INTRODUCTION

This note was prepared following the request of the Ministry of Justice, to propose prompt effect solutions for reducing overcrowding. The measures presented in this document are based on social and economic situation in Moldova and are only some short-term solutions to decrease the prison population and to bring national legislation in line with the ECtHR case law and Council of Europe recommendations. However, given the legislative similarities between Romania, Russian Federation, Ukraine, and Moldova, we have included examples of good practice from these countries. On the long term NORLAM aims to support Moldova in implementing a system of penalties that would be more and more focused on the rehabilitation of prisoners and prepare them for reintegration into society.

Despite the humanization of criminal legislation through reducing sentences, the prison population rate of Moldova is 215 prisoners per 100,000 inhabitants, which by far exceeds the European average of about 140 inmates[1]. In January 2016, it exceeded the level of the year 2008, 8054 persons were detained, of whom 1720 in pre-trial detention.
We consider that the following factors might have influenced the growth of the prison population:

1) Increase the penalties for certain crimes. Since 2012, most of the amendments to the Criminal Code were focused on the criminalization of some acts and increase of penalties. Although the Justice Sector Reform Strategy was aimed at humanizing criminal penalties, this has not occurred. On the contrary, many acts were criminalized, and some penalties were increased[2].
2) Decrease of the number of prisoners early released from 1174 in 2008 to 243 in 2015. Admissibility of request for release decreased from 73% in 2007 to 33% in 2014. This decrease could be explained by additional criteria for release before term introduced lately.
   In Norway, early release is decided by the prison administration and the rules on early release focus rather on the behaviour of the inmate in the prison, than on the catheogry of the committed offense. In Moldova, the procedure and conditions for early release are strictly regulated, and the decision is taken by the judge. Such a regulation does not allow for individualization of sentence, the judge is bound by meeting certain formal

[1] . http://www.humanrightseurope.org/2015/02/report-annual-european-prison-statistics/ In Romania and Norway this rate is of 150 and 70, respectively.
[2] According to the Impact Evaluation Report of the specific intervention area 2.5.1 of the Action Plan for the Implementation of the JSRS 2011-2016, starting with 2012, 34 amendments of the Criminal Code were done. The majority related to the increase of the limits of penalties and criminalisation of some deeds. An example in this regard is Law no. 119 for amending the Criminal Code of the Republic of Moldova of 23.05.2013.

conditions, which are insufficient for an objective assessment of the change of criminal behaviour.

In such conditions, it can be stated that Moldova is subject to a double pressure. On the one hand, the ECHR repeatedly convicted the country for the inhuman conditions in prisons (Shishanov v. Moldova), on the other hand the authorities do not have sufficient funds to improve the conditions of detention due to the large number of prisoners. Moreover, due to the economic recession the state is forced to reduce public expenditure.

The NORLAM team suggests the following amendments to the criminal legislation of the Republic of Moldova that will bring it in line with the requirements of the ECHR and best European practices. We further refer to the following proposals:

1. Reviewing the conditions for early release of prisoners and bringing them in line with the ECHR jurisprudence.
2. Improving detention regimes through individualization of penalty and stimulating prisoners who are motivated to change their criminal behaviour and to actively participate in the plan for execution of the punishment. At the same time, are addressed violations of the Convention by the provisions of the Enforcement Code.
3. Adjusting the large and especially large proportions by their proportional increase with the devaluation of the Moldovan leu and increase of the average wage.

CONDITIONAL RELEASE/RELEASE ON PAROLE

It is generally recognized that early conditional release "is one of the most effective ways to prevent recidivism and promote placement, planned reintegration, assistance and supervision of the detainee in the community"[3].

To achieve a lasting effect, the most efficient solution is conditional release. This tool allows to achieve several objectives simultaneously:

Reducing the prison population

In the medium and long term, conditional release will lead to significant reduction of the prison population, as long as the penalties will not be increased and the criminality rate will not increase. The government must ensure that early conditional release is not hampered by corruption and abusive practices.

Dynamic security

Prisoners will be more manageable and easier motivated, knowing that they could obtain a substantial reduction of the penalty. This is the basic condition for obtaining dynamic security in prisons. Dynamic security is a precondition for the transfer in open sectors with reduced security.

Reducing recidivism

The possibility of conditional release stimulates inmates to participate in activities designed to reduce criminality, for example cognitive programs. Early release can be adapted to individual needs by deciding on additional conditions to early conditional release.

In the Republic of Moldova in order to reduce the prison population amnesty is often used, which, of course, in the short term is an effective measure in this regard. There are two ways to carry out amnesty:

a) Amnesty of convicts who have served a certain part of the penalty, or who have a number of years/months left

This is the simplest method of selecting and brings quick results. The disadvantage is the high probability that those set free might commit new serious crimes shortly after release, which would put it in a bad light the prison system and the legislature.

b) Amnesty based on the risk of reoffending

[3] Recomendation Rec(2003)22 of the Council of Ministers of the Council of Europe.

To reduce the risk mentioned above, release might be applied only to prisoners who were estimated with a low or medium risk of reoffending. Such an approach would greatly delay the releases from prisons and could lead to the current situation - very few releases.
Both solutions could involve conditions during release.

The disadvantage of amnesty is that the effects are not long lasting. As long as the entry in prison rate exceeds releases, overcrowding will proliferate in a short period of time.

Notwithstanding the aforementioned, during the last years, the conditional release in Moldova has become increasingly complicated. The Penal Code in force[4] was amended several times being introduced new conditions to be met in order to benefit from conditional release. Some changes include conditions to be met to qualify for release or circumstances that exclude early release. We believe that these changes have increased the prison population, reducing from the beginning the eligibility of the majority of the prisoners without an analysis of the judge. Many of these conditions are imperative, leave no room for individualization and, often, do not serve the purpose of conditional release.

Conditional release is governed by art. 91 of the Criminal Code, containing nine criteria that must be met in order to be applied. We will further address the conditions that we believe have to be amended, in the light of the purpose of this mechanism and the Council of Europe recommendations:

a) **full compensation for the damage caused by the crime they are convicted of under art. Article 91 (1) of the Criminal Code - this condition of early conditional release attempts to substitute civil enforcement of debts mechanisms by constraining the prisoners to pay damages to qualify for early release. Such an approach has several shortcomings:**

Recommendation Rec (2003) 22 of the Council of Europe[5] provides:
„ The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. They should also be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances as well as the availability of resettlement programmes."

According to the Enforcement Code, art. 165, paragraph (3) "If there are inconsistencies between the provisions of international treaties on human rights and fundamental freedoms to which Moldova is a party and this Code, priority have international treaties." Or, the

[4] According to the old Criminal Code of 24.03.1961, which was replaced by the Criminal Code adopted by Law no. 985-XV of 18.04.2002, conditional release was ordered by the judge if "the court considers that for correcting this, there is no need of full execution of the punishment". Conditional release was excluded only if they were committed new crimes during the probation period, or the persons were convicted for two or more times for intentional crimes.
[5] Ibid. p. 8 of the Recommendation.

requirement of full payment of damages caused by the crime does not take into account the situation of the prisoner or his effort to pay damages. At the same time, from this perspective the norm it is contrary to the principle of equality of convicts, set out in art. 167 para. (7) because it favours convicts with a good financial situation.

Another problem is the difficulty of identifying the needed resources to pay damages within the prison. In 2014, approximately 11% of prisoners could carry out paid work in the prison. Thus, the state makes it impossible to release before term, even in cases where the convict wants to compensate for the damage caused. Furthermore, in case of life prisoners who have no access to paid employment, early release is unenforceable. As long as the state cannot provide prisoners with work to pay for the damages, this condition only increases costs for keeping prisoners in prisons.

The solution could be that early release is conditioned on remedies, which is provided by art. 91 para. (2). Thus, the convict shall be given the opportunity and be encouraged to pay damages within the term of punishment remained unexecuted.

In Norway, early conditional release is only conditioned by the behaviour of the prisoner and the prospects for reintegration. The state will pay for the damage caused to the victim and then will seek to recover money from the convicted.

Another approach is found in the Romanian legislation, which conditions early release with the full payment of the damage caused, but in the case of failure to pay, the convict can be released if he proves that he did everything possibly to pay for the damage[6].

The Russian Federation has a similar provision obliging the convict to pay all or part of the damage caused by the offense. Moreover, the Supreme Court of Justice of the Russian Federation through "Explanatory decision on judicial practice of early conditional release and replacing the unexecuted part by a milder punishment" **notes that the judge has no right to refuse release before the term, even if, for objective reasons, only an insignificant part of damage caused to the victim was paid**[7]**.**

Therefore, we propose to amend Article 91 paragraph (1) and include the possibility of conditional release if the inmate proves that he tried to pay damages, but had no opportunity to do so. The continuation of payment can be ensured by conditioning the release with repairing the damage caused within the deadline set by the court, which may be imposed by

[6] Art. 100 Criminal Code of Romaniei, Law no. 286/2009 http://lege5.ro/en/Gratuit/gezdmnrzgi/codul-penal-din-2009/1110?pid=65083807&d=2016-01-31#p-65083807, visited on 31.01.2016.

7 Paragraph 7 of the Decision of the Plenum of the Supreme Court of Justice of the Russian Federation on judicial practice of early conditional release and replacing the unexecuted part by a milder punishment of21.04.2009, http://www.consultant.ru/document/cons_doc_LAW_87192/, accesat la 31.01.2016.

corroborating art. 91 para. (2) and 90 para. (6) lit. e). It is also necessary to impose a grace period after release, so the detainees can have time for employment.

b) who participated in the enforcement and have not refused enforcement, in accordance with art.234 of the Enforcement Code, of paid or unpaid work for maintaining the prison nad the territory, improving living and medical and sanitary detention conditions[8] **-**

The involvement of prisoners in activities can facilitate rehabilitation and reintegration into society. In Norway, according to the Enforcement Code, prisoners finally convicted are required to participate in activities during the enforcement of the punishment, and the correctional system is required to provide prisoners with this possibility. However, mandatory participation in activities may be suspended in case of illness or incapacity for work. However, the systematic refusal to take part in activities, allows the administration to apply administrative sanctions.

The Enforcement Code of the Republic of Moldova also requires mandatory participation of convicts in unpaid work[9]. At the same time, the inmate who ungrounded refuses to meet the legitimate demands of the prison staff may be disciplinary punished[10]. In this context, it is to mention that the Prison commission, in case of systematic refusals to carry out unpaid work, may recommend the judge not to apply conditional release. At the same time, art. 91 of the Criminal Code par. (6^2) states that early release cannot take place if the detainee has in force disciplinary sanctions, which would make it impossible to release prisoners who oppose to participate in activities in the prison.

At the same time, it is about a double sanctioning on the same facts, which is prohibited both by the Enforcement Code of the Republic of Moldova in art. 247 par. (3) and the recommendation of the Committee of Ministers of the Council of Europe on the European Prison Rules Rec (2006) 2: "*A prisoner shall never be punished twice for the same offense or for the same conduct*."

Moreover, the refusal to provide unpaid work shall not constitute grounds for refusal of conditional release for prisoners who are not able to work or for the elderly; the Criminal Code does not provide for such exceptions[11].

Another problem is the lack of proportionality between the offense committed and the punishment. A single act of disobedience to lawful requests of the prison administration shall take effect throughout the enforcement of the punishment, without being provided a period of redemption of these punitive measures, which does not comply with the principle of proportionality.

[8] Condition introduced by Law no. 387-XVI for amending and completing some legislative acts of 08.12.2006
[9] Art. 234 para. (3) Enforcement Code of the RM.
[10] Art. 245^1 corroborated with art. 242^1.
[11] Enforcement Code, art. 234, para. (1), provides for exceptions.

De lege ferenda: we propose to exclude the phrase "who participated in the enforcement and have not refused the enforcement in accordance with Art.253 of the Enforcement Code, of paid or unpaid work for maintaining the prison nad the territory, improving living and medical and sanitary detention conditions." This condition must be part of the issues to be discussed by the Prison commission, the Commission is entitled "to propose convicts for early conditional release to the court [12]". In addition, this characterization must be presented to the judge who will assess the case file of each individual inmate.

c) "which proved correction and re-education during the enforcement of the punishment[13]" and "the court will agree on the possible correction of the convict without the full enforcement of the punishment" – the Council of Europe in paragraph 18 of Recommendation highlights the following:

"The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit."

We certify the absence of clear definitions of the concepts of correction and rehabilitation of the convicted. These terms must be defined so that convicts know in advance which will be conditions that will ensure early conditional release.

De lege ferenda: We suggest defining the phrases "they showed correction and re-education during the enforcement of punishment" and "the court will agree on the possible correction of the convict without the full enforcement of the punishment ". These notions should be detailed in the Enforcement Code internal regulations of the Department of Penitentiary Institutions.

d) **Early conditional release does not apply to the convict that was previously conditionally released and committed another crime during the time of conditional release[14].**
The exclusion of conditional release for the convict who committed a new crime during the conditional period without taking into account the gravity of the committed offense, if the crime was committed recklessly or with intent and other aspects related to the personality of the offender, is contrary to the purpose of conditional release. Thus, the convict will not be motivated to behave correctly and to re-educate, because the punishment to be enforced could not be revised.

De lege ferenda: We propose to exclude these conditions or at least conditional release before the term of a longer duration. For this category, we propose to increase the minimum length of detention in order to benefit from the right to early conditional release, as provided by the legislation of the Russian Federation.

[12] Decision no. 583 on approving the Status of enforcement of the punishpment by convicts, of 26.05.2006, p. 445-449.
[13] Condition introduced by Law no. 138 for amending and completing some legislative acts of 03.12.2015.
[14] Condition introduced by Law no. 82 for amending and completing some legislative acts of 29.05.2014.

e) Early conditional release shall not apply to the convict who during detention: harmed himself or had attempted suicide.

Self-harm and risk of suicide is more common among the prison population. Convicts and persons in pre-trial detention and are subjected to enormous stress during the first period of detention, the risk of suicide attempt is very high. Suicidal attempts and self-mutilation are directly linked with lack of self-esteem and can be a way to ask for help or may be caused by different mental illnesses[15]. Moreover, according to the ECtHR case law, the authorities have a positive obligation to protect persons who are in their custody[16].

Excluding the right to early release under these grounds is discriminatory against people suffering from mental disabilities. What is more, there is no correlation between the risk of reoffending and suicide attempt or self-harm.

It should be mentioned that within six months from the adoption of the amendments to the legislation, according to the Department of Penitentiary Institutions, the number of self-mutilation has not essentially changed.

However, this provision may be considered contrary to art. 8 of the ECHR, thus, in the case of Pretty v United Kingdom, the Court stated:

62. The Government have argued that the right to private life cannot encapsulate a right to die with assistance, such being a negation of the protection that the Convention was intended to provide. The Court would observe that the ability to conduct one's life in a manner of one's own choosing may also include the opportunity to pursue activities perceived to be of a physically or morally harmful or dangerous nature for the individual concerned. The extent to which a State can use compulsory powers or the criminal law to protect people from the consequences of their chosen lifestyle has long been a topic of moral and jurisprudential discussion, the fact that the interference is often viewed as trespassing on the private and personal sphere adding to the vigour of the debate. However, even where the conduct poses a danger to health or, arguably, where it is of a life-threatening nature, the case-law of the Convention institutions has regarded the State's imposition of compulsory or criminal measures as impinging on the private life of the applicant within the meaning of Article 8 § 1 and requiring justification in terms of the second paragraph (see, for example, concerning involvement in consensual sado-masochistic activities which amounted to assault and wounding, Laskey, Jaggard and Brown, cited above, and concerning refusal of medical treatment, Acmanne and Others v. Belgium, no. 10435/83, Commission decision of 10 December 1984, Decisions and Reports (DR) 40, p. 251).

At the same time, this punishment is rigid, it does not take into account the reasons for self-harm or attempted suicide. Moreover, it is disproportionate to the committed infringement. For persons sentenced to long sentences or life imprisonment, self-harm or attempt suicide

[15] Studies in this field show that people suffering from mental illness have very high risk of suicide and self-harm

[16] ECHR judgement Keenan v. the UK, especially para. 52 http://hudoc.echr.coe.int/eng?i=001-59365.

excludes the right to be early released, even if committed in the first years of detention. This may have an adverse effect from the one intended upon the introduction of these changes.

Moreover, self-mutilation is provided by the Enforcement Code as a very serious disciplinary violation leading to disciplinary sanctions provided for in Art. 246^1. According to paragraph 63 of the Recommendation of the Committee of Ministers of the Member States on the European Prison Rules Rec (2006) 2:

"A prisoner shall never be punished twice for the same act or conduct."

The same prohibition can be found in art. 247 par. (3) of the Enforcement Code. However, de facto, the convict will be punished twice, first by the prison authorities directly and indirectly, the second time by having his right to conditional released denied.

That said, such provision is unnecessary because conditional release is, anyway, subject to the extinction of punishment. According to art. 91 para. (6^2) the person cannot be conditionally released if he/she is under disciplinary sanction, which is out of force within one year of the enforcement of the last sanction[17].

De lege ferenda: Exclusion of this norm from the Criminal Code.

f) **Early conditional release does not apply to the convict who violated the detention regime and is under disciplinary sanction during detention[18]**

The Enforcement Code provides 39 obligations and prohibitions that may lead to application of disciplinary sanctions. Some are not clearly regulated, for example: "convict is obliged to show a respectful attitude towards any person that comes into contact with him/her". Misbehaviours are of three types: very serious, serious and easy. The action of disciplinary sanction is of one year, regardless of the degree of the offense or other circumstances. Therefore, the introduction of this rule in the Criminal Code, without taking into account the peculiarities mentioned above, does not seem to take into account the individualisation of the sentence depending on the offense committed by each convicted.

It is worth mentioning that upon the conditional release, the judge and the Prison commission must take into account the prisoner's behaviour throughout the detention period.

De lege ferenda: We propose to exclude this condition and include it in the Enforcement Code or the Status of enforcement of punishment, as one of the issues to be discussed by the Prison commission and included in the report/characterization of the convict, which is presented to the judge who will make the decision on early conditional release, the Commission being entitled "to propose the convicts for early conditional release to the court"[19].

[18] Conditions introduced by Law no. 82 for amending and completing some legislative acts of 29.05.2014.

[19] Decision no. 583 on approving the Status of enforcement of the punishpment by convicts, of 26.05.2006, p. 445-449.

Examples of conditions that must be met for conditional release from Romania, Germany and the Russian Federation

State	Minimum length for keeping in detention in order to qualify for release:	Conditions for applying release
Romania	Conditional release may be applied: 1) two-thirds of the length of the penalty in case of imprisonment not exceeding 10 years or 2) at least three quarters of the length of the penalty, but not more than 20 years, in case of imprisonment exceeding 10 years	b) the convict is serving the sentence in open or semi-open regime c) the convict has fully complied with his civil obligations established by the sentence, except for the case when he/she proves that he/she had no opportunity to do d) the court is convinced that the convicted person corrected and can reintegrate into society.
	If the convicted is over the age of 60 years conditional release may be applied, after the effective enforcement of half of the penalty in case of imprisonment not exceeding 10 years, or at least two thirds of the penalty in case of imprisonment exceeding 10 years	If the above-mentioned conditions are fulfilled.
Germany	The court **shall grant conditional early release** [...], if 1. two thirds of the imposed sentence, but not less than two months, have been served;	2. The release is appropriate considering public security interests; and 3. The convicted person consents.
	2) **The court may also suspend execution of the remainder** of the prison sentence after half of a fixed-term of imprisonment has been served, but not less than six months thereof	1. The convicted person is serving his/her first term of imprisonment, such term not exceeding two years. 2. A comprehensive evaluation of the offence, the personality of the convicted person and his/her development while in custody show that special circumstances exist
Russian Federation	1) In case of minor crimes or less serious one third of the sentence 2) At least half for serious crimes 3) Two-thirds of the sentence provided for very serious crimes, as well as two thirds of the	1. The judge determines that for correcting the person it is not necessary to serve the integral sentence set by the court. 2. Fully or partially repaired the damage caused, in the amount set by the court.

	sentence in case of the offender for who conditional release has been cancelled. 4) Three-fourths of the sentence determined for the sexual crimes against minors, crimes of illegal circulation of drugs, psychotropic substances or their analogues, as well as crimes related to terrorism and creating and leading a criminal group. 5) Not less than four-fifths for sexual crimes against minors who have not reached the age of 14. In all cases mentioned above, conditional release can only be applied after serving at least six months of the sentence set by the court.	

WORK AND PRISON ACTIVITIES

According to p. 26 para. 1 of the European Prison Rules Rec(2006)2 „Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment." What is more, in para. 10 it is mentioned that: „In all instances there shall be equitable remuneration of the work of prisoners".
The ECtHR, in case Floroiu v. Romaniei[20], concludes that as long as there is a fair remuneration, be it non-pecuniary, non-financial paid work is not a violation of Article 4[21].

The Enforcement Code of the Republic of Moldova sets the obligation of prisoners to participate in paid and unpaid work, in Articles 234 and 235.

Article 238 provides for the compensation regime of the privileged days only for convicts who take part in paid work; only 11% of prisoners were employed at various jobs in 2015. These regulations are discriminatory for prisoners that provide unpaid work, who are required to provide it upon the request of the administration. On the one hand, they are not paid for their work, on the other hand, they do not benefit from the reduction of criminal sentence.
As provided in the ECtHR case law, any form of remuneration for work performed in prison is mandatory, failure to remunerate represents a violation of the Convention and the European Prison Rules Rec (2006) 2.

„35. In the present case, the Court observes that under domestic law, prisoners are able to carry out either paid work or, in the case of tasks assisting the day-to-day running of the prison, work that does not give rise to remuneration but entitles them to a reduction in their sentence. Prisoners are able to choose between the two types of work after being informed of the conditions applicable in each case.
36. In the applicant's case, the Court observes that in return for his 114 days' work maintaining the prison's vehicle fleet, he was granted a significant reduction in the time remaining to be served, amounting to thirty-seven days. Accordingly, the Court considers that the work carried out by the applicant was not entirely unpaid."[22]

20 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiZpbjUgOHKAhUHhiwKHWSkAzIQFggcMAA&url=http%3A%2F%2Fwww.csm1909.ro%2Fcsm%2Flinkuri%2F19_03_2014__66074_ro.doc&usg=AFQjCNHxZl_PTRQvenxgMQgu5Y-ky1dFsQ&sig2=VNjD7d7s1EgXFtEWMKQdEw&bvm=bv.113370389,d.bGg

22 Ibid. Floroiu v. Romania, see also GUIDE ON ARTICLE 4 OF THE CONVENTION http://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf

However, to comply with the European Prison Rules Rec (2006)2, it is mandatory to introduce privileged compensation for days spent by prisoners in which they are trained, be it compulsory secondary education, professional or educational work.

"From the point of view of the prison regime schooling should be as important as work, and prisoners should not be disadvantaged financially or otherwise, to participate in educational activities".

Thus, is case the educational activities will not be in any way compensated, work to the detriment of education shall be promoted, which is against the mentioned rules. It should not be neglected the importance of participation of convicts to training and other educational activities to facilitate their rehabilitation and correction.
In this regard, the example of Romania is pertinent, which introduced privileged days for unpaid works, training and paid work. However, unpaid work has a higher coefficient of privileged days in the benefit of the convicted privileged than unpaid work.

Excerpt from the Law no. 254/2013 on enforcement of punishments and custodial measures applied by judicial bodies throughout the criminal proceedings[23].
Art. 96.
(1) The punishment which is deemed as served based on work performed or school and professional training in order to grant conditional release is calculated as follows:
a) if paid work is performed, 5 executed days are considered for 4 days of work performed;
b) if unpaid paid work is performed, 4 executed days are considered for 3 days of work performed;
c) if work during night is performed, 3 executed days are considered for 2 nights of work performed;
d) in case of participation in general education for compulsory general education, 30 executed days are considered for completing a school year;
e) in case of participation in training courses or retraining, 20 executed days are considered for completion of a qualification or requalification course;
f) when drawing up scientific published papers or patented inventions and innovations, 30 executed days are considered for each scientific paper or patented invention and innovation.

It is to be mentioned that in 2012[24] the number of privileged days was reduced, without a sufficient reasoning of the need of the amendment, please see the Informative note[25].

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23 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwiHp8ePyNbKAhUC1ywKHfrhCjkQFggiMAE&url=http%3A%2F%2Fwww.justice.gov.md%2Fpublic%2Ffiles%2Ffile%2FProiecte%2520de%2520acte%2520normative%2520remise%2520spre%2520coordonare%2FNota_informativa_la_proiect.doc&usg=AFQjCNFR27tcMVINyi6Z81NbfandWmkiuQ&sig2=JMpUx8zL5AfDOQt9Z46YuA&bvm=bv.113034660,d.bGg&cad=rja

24 Law no. 213 for amending some legislative acts of 12.10.2012.

De lege ferenda:
- Establish a mechanism to compensate the privileged days for unpaid work. Also regulate the conditions for distinguishing between inmates when there are insufficient jobs for all interested. In such cases, prisoners who have good behaviour might be privileged, those who have mental problems in order to have a facilitated integration, those who have successfully completed training courses, etc.
- Stimulating unpaid work in prison by providing an increased number of privileged days.

However, educative activities aimed at familiarizing them with social and human values, observance for the law, development of socially useful skills, raising awareness of their cultural level and thus motivate inmates to participate in these activities is vital for their social reintegration.

25 http://www.dreptonline.ro/legislatie/legea_254_2013_executarea_pedepselor_masurilor_privative_de_libertate_organele_judiciare_cursul_procesului_penal.php

INCREASING QUANTUM FOR DETERMINING AND ESTABLISHING A MECHANISM FOR ADJUSTMENT

The purpose of the criminal law, as stated in art. 2 of the Criminal Code is, inter alia, to protect against crime, the person, his/her rights and freedoms, property, environment, constitutional order, sovereignty, independence and territorial integrity of Moldova, peace and security of mankind, and the whole legal order.

In case of offenses against property, economic crimes, crimes against well-administration of the public sphere, crimes of corruption in the public sphere and other crimes, the legislator has used aggravating circumstances based on the value of goods stolen, obtained, received, manufactured, destroyed, transported, stored, sold, transported across the customs border, which set new limits for the punishment.

According to art. 16 of the Criminal Code, aggravated theft is a minor crime, theft in considerable proportions is a less serious crime and theft in large and extremely large proportions is a serious crime. We can therefore understand the correlation between the severity of the crime, which increases proportionally with the quantum of embezzled goods and significance to the victim. Thus, when setting large and very large proportions in 2007[26] the legislator quantified the monetary value of social good to be protected – the property in that case. The value of ratios is established in conventional units, a conventional unit being equivalent with 20 lei. Large proportions equate to 2500 c.u. and especially large proportions to 5000 c.u. Establishing an aggravating variant of an offense based on monetary quantification allows for unifying jurisprudence, but makes it difficult to apply the principle of equality before the law, because money is subject to annual depreciation and the protected social value will not be reflected in the established penalty.

In Moldova, the medium salary, according to the National Bureau of Statistics increased from 2065 lei in 2007 to 4172 lei in 2015. The Moldovan leu has devalued by over 62% compared to the reference currency, the dollar. And inflation, according to World Bank data for the years 2007-2014[27] and the aggregated inflation according to the National Bank for 2015[28], was 210%. In other words goods that cost 100 lei in 2007, now worth 210 lei.

Thus, the proportions determined by the legislature no longer reflect the social value of the property which has been given greater value. At the same time, establishing alternative aggravating circumstances to crimes based on the monetary value of the property leads to inconsistencies in law enforcement. Theft of a good worth 48,000 lei in 2007, was qualified based on its value, according to art. 186 par. (1) or Article. 186 par. (2) that is a minor or less

[26] Amendments were carried out by Law no. 292 on the amendment of some legislative acts of 21.12.2007, the proportions were increased from 500 to 2500 c.u. and especially large proportions from 1500 to 5000 c.u.
[27] http://databank.worldbank.org/data/reports.aspx?source=2&country=MDA&series=&period=
[28] http://www.bnm.org/ro/content/evolutia-ratei-inflatiei-luna-decembrie-2015

serious crime, the offender could be have been sentenced to a fine, community service or imprisonment for a maximum of 2 and 4 years, respectively. However, taking into account monetary depreciation, the same good is worth 100800 lei in 2016, so the qualification will be done according to art. 186 (5), for which the punishment is from 7 to 12 years imprisonment.

Another issue is the qualification for considerable proportions, which are not defined by law through predefined fixed amounts. The judicial practice qualifies under art. 186 para. (2) d) damages ranging from 1,200 lei to 44,000 lei without reasoning the considerable damage to the victim [29].

De lege ferenda:

A short term solution would be amending legislation by increasing large and especially proportions in Article 126 CP, from 2500 and 5000 c.u. to 7500 and 15000 c.u.

For remedying the inconsistencies in the application of art. 186 par. (2) d) we propose that some minimum limits are imposed by law, similar to the ones in the Ukrainian legislation.

Ukraine[30] used the same method to establish the aggravated circumstances of the crimes, depending on the value of the goods. However, the value is determined annually, depending on the minimum untaxed salary. Regardless of the chosen mechanism, it should take into consideration that the neighbouring country, with a per capita income similar to that of Moldova, established much higher amounts for the aggravating circumstances. Thus, as can be seen in the table below, the amounts for the aggravating circumstances of theft are up to three times higher. We propose to exclude considerable amounts as aggravating circumstances or

[29] See the database of the Court of Appeal Chișinău, decisions : 02-1a-14568-24072015, 02-1a-14099-20072015, 02-1a-16403-21082015

[30] 1. Тайное похищение чужого имущества (кража) - наказывается штрафом до пятидесяти необлагаемых минимумов доходов граждан или исправительными работами на срок до двух лет, или лишением свободы на срок до трех лет.
2. Кража, совершенная повторно или по предварительному сговору группой лиц, -
карасгься ограничением свободы на срок до пяти лет или лишением свободы на тот же срок.
3. Кража, соединенная с проникновением в жилье, другое помещение или хранилище или причинившая значительный ущерб потерпевших-лому, -
наказывается лишением свободы на срок от трех до шести лет.
4. Кража, совершенная в крупных размерах, -
наказывается лишением свободы на срок от пяти до восьми лет.
5. Кража, совершенная в особо крупных размерах или организованной группой, -
наказывается лишением свободы на срок от семи до двенадцати лет с конфискацией имущества.
совершение с причинением значительного ущерба потерпевшему (значительный ущерб определяется с учетом материального положения потерпевшего в пределах от 100 до 250 необлагаемых минимумов доходов граждан, что на 01.01.15 составляет от 121 800 грн. до 304 500 грн.);
- совершение кражи в крупных размерах (от 250 до 600 необлагаемых минимумов доходов граждан, что на 01.01.15 составляет от 304 500 грн. до 730 800 грн.);
- совершение кражи в особо крупных размерах (от 600 необлагаемых минимумов доходов граждан, что на 01.01.15 составляет 730 800 грн. и более);

approving of reference amounts for judges, for example: all that exceeds the monthly income of the victim.

Damage	Moldova	Ukraine[31]
Considerable	**Minimum 500 lei** (Art. 18 Contraventional Code) + (2) The significant or essential character of the damage caused is determined taking into account the quantity, value and significance of the goods to the victim, its wealth and income, existence of dependents, other circumstances that essentially influence the welfare of the victim, and in case of violating rights and interests protected by law – the degree of the violation of the human rights and fundamental freedoms. **Punishment:** fine from 300 to 2.000 conventional units or unpaid community work from 180 to 240 hours or imprisonment of up to 5 years.	**Value 48805.26 lei 122013.15** + the material situation of the victim should be taken into account. **Punishment:** 3-6 **years imprisonment**
Large proportions	**Value** 50.000 **lei** – 100.000 lei **Punishment: 5-10 years imprisonment**	Value **122013.15–292831.56** lei **Punishment: 5-8 years imprisonment**
Especially large proportions	Exceeds **100.000 lei** **Punishment: 7-12 years imprisonment**	Exceeds **292831.56 lei** **Punishment: 7-12 years imprisonment**

[31] http://timlawyer.com.ua/stati/nalogovaya-socialnaya-lgota, the equivalent for a hrivna is set in lei according to the exchange rate of the National Bank of Moldova on 01.02.2016