NORLAM
Norwegian Mission
of Rule of Law Advisers to Moldova

Evaluation Report

Action 2.5.1 of the JSRS 2011-2016 Liberalization of criminal proceedings by using sanctions and non-custodial preventive measures for certain categories of persons and certain offenses

Mihaela Vidaicu – USM
Gerhard Ohrband, - ASEM
FOR NORLAM

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Content:

1. Introduction

The Moldovan Parliament adopted the Justice Sector Reform Strategy for 2011- 2016 (JSRS) in 2011. The Action Plan for ISRS implementation was enacted by Law no.231 effective as of November 25, 2012. The JSRS aims at building an affordable, efficient, independent, transparent, professional and accountable justice sector that meets European standards and ensures the rule of law and observance of human rights.[1] The JSRS consists of seven pillars that refer to the following areas: judiciary, criminal justice, access to justice and enforcement of courts' decisions, integrity of the justice sector actors, role of justice for economic development, respect for human rights in the justice sector, a well-coordinated and well-managed justice sector.

The **Norwegian Mission of Rule of Law Advisers to Moldova (NORLAM)** was asked to carry out the evaluation of the specific intervention area 2.5.1. of the **Action Plan for the Implementation of the Justice Sector Reform Strategy 2011-2016 (JSRS)**. The respective section refers to the liberalization of criminal proceedings by using sanctions and non-custodial preventive measures for certain categories of persons and certain offenses. This intervention area under Pillar 2 is the first one included in the activity 2.5. that has the purpose to create a humane criminal policy. The JSRS specifies that these areas are on-going processes that are not consolidated, yet. Moreover, the introduction to activity 2.5., points out that criminal policy humanization is a priority of the Government, which started in 2009 by amending the Criminal Code. This process should continue due to the fact that Moldovan legislation still contains harsh penalties and the prisons are still overcrowded.

The JSRS underlines the Government's goal to humanize criminal policy through the liberalization of criminal proceedings. In comparison, the 2009 humanizing process

[1] http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/SRSJen.pdf

implied a general review and decrease of criminal punishments. In the sense of this intervention area, liberalization means encouraging the use of non-custodial sanctions and preventive measures through reviewing the current mechanisms and practices, and creating appropriate conditions for proper application of non-custodial punishments.

This goal indeed empathizes Government priorities and commitment to continue the humanization process of the criminal policy initiated in 2009. However, the JSRS prescribes the liberalization only for certain categories of punishments or certain categories of persons, without specifying which once are envisioned. Such language is acceptable and appropriate for a policy document but this may lead to misunderstandings if further clarifications are not provided. The need for more comprehensive approach will be explained below. 2. Evaluation methodology

During the months of November and December 2015, the two researchers, a legal expert from Moldova and a social psychologist from Germany, performed desk reviews, made interviews with stakeholders and carried out a small empirical study to assess the implementation of above strategies and its impact

Initial considerations

Several methodological approaches were adopted to meet the above objectives. From the outset, it needs to be underscored that there were several constraints to the evaluation. We enumerate some of them; followed by a presentation and discussion of selected methods.

Obtaining interviews and official information from government institutions requires a considerable amount of time and good standing. Thanks to the support of the NORLAM team the researchers gained access to all requested individuals and institutions.

Due to limited time and personal resources, a comprehensive empirical approach on all stakeholders involved was ruled out. Moreover, for measuring the impact of legal change on particular individuals (e.g., convicts, their families, legal professionals), at least two assessments would have had to be made, using the same indicators *pre* and *post* legal reform. Since there exists no such initial testing (e.g., through standardized

questionnaires), at present, answers rely on subjective recollections of the respondent that is on *post hoc* assessments.

Methods

The following methods were used:

- **Desk review and analysis of official records, reports, legal texts, surveys and others documents;**
- **Interviews with key stakeholders;**
- **A small survey for obtaining quantitative data.**

Most data obtained during interviews is qualitative, that is, it consists of non-numerical information: legal analysis, appraisals, experiences, and suggestions. The data obtained from documents and our small survey contains both, quantitative and qualitative variables.

Participants and sources of information

All interviewees were assured confidentiality as to encourage compliance and veracity of information provided, as well as to discourage effects of social desirability, that is, respondents giving answers they think will please the interviewers and readers.

Thus, we indicate only the stakeholder groups and institutions we included in the study

- **The Department of Penitentiary Institutions (DPI);**
- **Office of the People's Advocate (Ombudsman);**
- **Rusca and Rezina prisons (prisoners and staff, *see below*);**
- **Prosecutor's General Office;**
- **Central Probation Office.**

On-site visits were made to the penitentiaries of Rusca and Rezina, which included the inspection of facilities as well as interviews with inmates, medical staff, guards and educators.

Validity and shortcomings

The expected results cannot claim to fulfill all rigors of scientific research. For example, the two visited penitentiaries cannot be said to be representative of all Moldovan prisons. On the other hand, the Rusca prison for women is the only one designated exactly for one of our target groups, which are women.

Interviews with key officials may not be representative for the experiences of their peers or of their colleagues above or below the professional hierarchy. While for some stakeholder groups the number of respondents was reduced, due also to the limited size of the respective institutions (e.g., the Ombudsman Office), we established contact with more than 40 heads of regional probation offices (via participating in two seminars, in Balti and Chisinau). Nonetheless, the researchers tried to obtain a wide picture from many different perspectives, including some contradictions, all of which will be presented below.

3. Analysis of the § 2.5.1 interventions

3.1. Evaluation scope

The scope of this evaluation report includes (1) to analyze the studies conducted as part of the JSRS; (2) to determine the extent to which the studies respond to the needs specified by the Action Plan for the implementation of the JSRS (whether they meet the initial intentions of the authors), (3) to establish the degree to which the newly adopted legislation is grounded on these studies and (4) to determine the extent to which the newly adopted laws lead to the implementation of the specific intervention area § 2.5.1.

3.2. Activities required under §2.5.1.

The JSRS envisioned the following activities to ensure the liberalization of the criminal policy:

1. Evaluation of the applicability of non-custodial preventive measures;
2. Assessing the effectiveness of applying and enforcing custodial and non-custodial criminal penalties;

3. Developing the draft amending the Criminal Procedure Code no. 122XV of 14 March 2003, the Enforcement Code no. 443-XV of December 24, 2004, Criminal Code no. 985-XV of 18 April 2002 and other normative acts;
4. Monitoring the implementation of changes related to the liberalization of criminal proceedings by using non-custodial sanctions and preventive measures for certain categories of persons and certain offenses.

3.2.1. Analysis of the studies conducted under §2.5.1[2]

According to the *2015 Biannual Report on the Implementation of the JSRS (Pillar II)*[3] two studies have been conducted to determine the necessary interventions and legislative amendments for the liberalization of the criminal policy:

A) A study on preventive and other coercive measures with a focus on preventive arrest, house arrest and bail (analysis of the legislation and practice) (study A);[4]
B) A study on the effectiveness of enforcing community sentences (study B).[5]

For the purpose of this evaluation report we will analyze the relevance, effectiveness and efficiency of these two studies.

Relevance[6]

The *Action Plan for the Implementation of the JSRS (Action Plan)*[7] initially envisioned the need for a study on the applied criminal sanctions to determine the appropriate legislative amendments that would lead to the liberalization of the criminal policy. However, during the implementation process two separate studies have been conducted. According to their title, both studies were initiated in order to determine the legal and

[2] *Activity 1* and *Activity 2* of the §2.5.1.
[3] The relevance is established according to the pertinence and value of the studies for the implementation of the further activities.
[4] http://www.justice.gov.md/public/files/file/studii/Studiu_masuri_preventive_neprivative_de_libertate_2.5.1.p.1.Pdf
[5] http://www.justice.gov.md/public/files/file/studii/STUDIU_PRIVIND_EFICIENA_EXECUTRII_SANCIUNILOR_IN_COMUNITATE.Pdf
[6] This report has not been published on the MoJ's website yet.
[7] ttp://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptaten.pdf

practical aspects on the effectiveness of preventive measures and enforcement of community sanctions.

Study A was initially conducted under §6.4.1.[8], however, the study was also reported as a completed activity under §2.5.1. This approach is appropriate as long as the purpose and the content of the study respond to the needs of both interventions areas.

However, *Study A* identifies only the provisions of the international instruments, legislation in other countries and the ECtHR jurisprudence related to the right to liberty and personal security. Even though this study analyzes the positive and negative aspects related to the enforcement of apprehension and preventive arrest, it lacks an analysis of the enforcement of non-custodial preventive measures. The study does not indicate: (1) the legal gaps related to non-custodial preventive measures; (2) the degree of compatibility of national legislation with international standards; and (3) the deficient practices of the national authorities. Unfortunately, the title of this study does not match its content. **Therefore, no relevant study has been performed to accomplish *Activity 1* of §2.5.1.**

On the other hand, *Study B* was reported as a completed activity under §2.5.1, *Activity 2*. This study contains a thorough analysis of the enforcement of community sanctions. In particular, the study identifies (1) the practices related to the issuing of presentence reports; (2) the fulfillment of conditional release; (3) the enforcement of community sentences; (4) the enforcement of release on parole; (5) the efficiency of the probation offices. **Moreover, this study identified the main gaps and deficiencies related to community sanctions, and determined the role of probation officers and public authorities in the enforcement and monitoring of community sentences.**
Although this study successfully reflects the gaps of community service enforcement, no other non-custodial criminal penalties are covered. No separate study was conducted in this sense, either. In addition, this study does not include an analysis of the effectiveness

[8] Specific intervention area 6.4.1: Streamlining the application of procedural coercive and preventive measures for ensuring the right to liberty and personal security.

of custodial criminal penalties enforcement. No separate study was conducted in this sense, as well. Therefore, the study carried out partially accomplished the output indicator under *Activity 2* of § 2.5.1.

Effectiveness[9]

Study A contains several recommendations, which refer to the alternatives to preventive arrest. The authors of the study identified the need to introduce clarification in art. 11 and art. 176 of the *Criminal Procedure Code (CPC).* In particular, they recommend:

1. A new provision to be included in art. 176 CPC according to which the criminal investigation body and the court will have the obligation to consider the application of the alternative non-custodial measures while examining the application of preventive arrest and house arrest;
2. An additional provision to be included in art. 11 CPC according to which preventive arrest and house arrest should be applied as exceptional measures when alternative non-custodial measures are not able to ensure the proper criminal investigation.

However, these amendments were not introduced in the CPC so far. Moreover, the last amendments have been operated to art. 11 CPC in 2008 and to art. 176 CPC in 2012. Since 2012, no amendments have been operated to the CPC provisions on non-custodial preventive measures. Hence, the findings and the recommendations of the *Study A* did not lead to the revision of the CPC provisions on non-custodial preventive measure.

On the other hand, *Study B* contains a wide range of recommendations for both legislative and institutional improvements. As mentioned above, the study indicates the need for both legislative and institutional changes. The main recommendations are as follows:

1. Re-evaluation and diversification of conditions imposed during conditional release and release on parole;

[9] The effectiveness is established based on the nature of the recommendations and their relevance for future legislative amendments.

2. Ensuring proper information/explanation about community service enforcement and consequences that may occur;
3. Strengthening the partnership between probation authorities and other public authorities to ensure the proper enforcement of community service;
4. Strengthening the institutional capacity and the human resources management system of the probation authorities.

Study B assesses the powers of the probation offices in respect to the enforcement of community sanctions, and provides a list of useful recommendations on the optimization and efficiency of their work. Moreover, this study reflects the need for post-detention integration programs and efficient public awareness measures. **However, the study does not specify the amendments to the national legislation that should be considered in order to liberalize criminal policy. Even though the study is relevant to a further improvement of the probation offices' work, the recommendations of the study, being mostly conducted on the operational level, do not contain concrete amendments.**

Efficiency[10]

The *Action Plan* prescribes the following timeline for the completion of these activities: from the third quarter of 2012 to the second quarter of 2013. In accordance with meetings' agenda of the working group for monitoring Pillar II, these two actions have been discussed at two meetings held on December 29, 2012[11] (the minutes do not reflect the discussion of these activities) and October 16, 2013[12] (the minutes are not published on the MoJ's web-site). Due to the lack of information about the working group discussions regarding these two studies, it is difficult to determine if all members of the working group had the opportunity to review the studies or if members of the working group agreed on their relevance for the further implementation of the §2.5.1.

[10] Efficiency is established based on the implementation period and actions carried out in this regard.
[11] http://justice.gov.md/public/files/file/reforma_sectorul_justitiei/agenda_sedinte/Agenda_Pilon_II_2012_12_19.pdf
[12] http://justice.gov.md/public/files/file/reforma_sectorul_justitiei/agenda_sedinte/Agenda_16_octombrie_2013_pilon_II.pdf

However, according to the *2013 Annual Report on the Implementation of the JSRS*[13] and the *2013 Annual Report of the Ministry of Justice,*[14] both activities were reported as completed. According to these reports, *Activity 1* was discussed with representatives of the Prosecutor's General Office (PGO). As a result of the consultations, it was established that the PGO carried out the study on ensuring the right to liberty and personal security while applying the coercive and preventive measures under §6.4.1., which afterwards was reported also under §2.5.1. As mentioned above, this study is not relevant for this intervention area as it does not analyze non-custodial preventive measures. In this sense, it is not clear why the same study was reported twice and why the working group did not manage to identify the relevance of this study for *Activity 1*.

Regarding *Activity 2*, the *2013 Annual Reports* specify that the expert contracted by the Central Probation Office conducted the study[15]. The reports do not reflect the relevance of the study for further implementation of §2.5.1., even if the scope of the study is narrower than the study envisioned by the *Action Plan*. In this sense, the opinion of the working group regarding the study carried out for the completion of the *Activity* 2 is unclear. No reasons are presented in the annual reports.

Therefore, according to the available information, the studies were timely completed, however, their relevance was not considered by the working group.

3.2.2. Analysis of the amendments to the Criminal Code, the Criminal Procedure Code and the Enforcement Code[16]

As mentioned above, the recommendations of the studies either have not been considered for amending the legislation or did not identify specific amendments to be introduced. Even though amendments have been operated to the national framework.

[13] http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/rapoarte/2013/Raport__ENG_print_05_aprilie.pdf
[14] http://justice.gov.md/public/files/file/planurirapoarte/RAPORT_MJ_pentru_2013_din_10-01-2014.pdf
[15] Allocated: 49,4 thousand lei; Spent:46,9 thousand lei.
[16] *Activity 3* of §2.5.1.

According to the *2013 Annual Report on the Implementation of the JSRS*[17], the Moldovan Parliament adopted Law no. 315/20.12.2013 on amending the Criminal Code (CC) through introducing one additional paragraph (3^1) in art. 64 CC (according to which the convicted person has the right to pay 50% of the fine imposed by the court during 72 hours from the moment the decision is enforceable). However, Law no. 315/20.12.2013 refers to the abrogation of art. 104^1 CC (chemical castration). Indeed, art. 64 CC was amended later by Law no 82/29.05.2014. On the other hand, the *2013 Annual Report of the Ministry of Justice*[18] presents as *Activity 3* the adoption of Law no 82/29.05.2014. These reports contain different data as outcome indicator for *Activity 3*.

1) Amendments to the Criminal Code from 2012 to 2015

The main purpose of the interventions under § 2.5.1. is to liberalize the penal policies, however, reports above-mentioned do not reflect all amendments operated to the national legislation since the adoption of the JSRS. Since 2012, no amendments have been operated to the non-custodial preventive measures prescribed by the CPC.

At the same time, since 2012, the Parliament adopted 34 laws to amend the Criminal Code (CC). However, the MoJ's reports on the JSRS's implementation progress do not specify how many of these laws were adopted to accomplish the liberalization of the penal policies. Moreover, the progress reports on JSRS and the MoJ's annual reports contain different data, and report different draft laws as an outcome of *Activity 3* of §2.5.1.

Indeed, the liberalization/humanization of punishments is one of the tendencies of the penal policy expressed by the authorities since the current Criminal Code was adopted. However, the evolution of the amendments operated over this period show different examples.

[17] http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/rapoarte/2013/Raport__ENG_print_05_aprilie.pdf
[18] http://justice.gov.md/public/files/file/planurirapoarte/RAPORT_MJ_pentru_2013_din_10-01-2014.pdf

In 2008, the Criminal Code was fully revised and amended. The 2008 revision process[19], aiming at humanizing the Code, was in particular focused on reducing the minimum and maximum term of criminal punishments. Moreover, the custodial punishments were re-evaluated and reduced (for example, in imprisonment: the minimum term was reduced from 6 months to 3 months, and the maximum term was reduced from 25 years to 20 years). As a result, 80% of the Criminal Code provisions were amended.

Although, since 2009, the Criminal Code provisions were sporadically reviewed, in 2011, the Parliament adopted the JSRS which requires under § 2.5.1 specific interventions for the liberalization of criminal policies through the use of non-custodial penalties and preventive measures for certain categories of persons and certain offences. Since 2012, the main amendments to the Criminal Code were focused on the criminalization of specific acts and increasing the punishments for specific offences. A general overview of these amendments shows the specific focus of yearly interventions.

For instance, the 2012 main amendments aimed at: (1) criminalization of inhumane/degrading treatment; (2) increasing of the punishment for torture; (3) introducing chemical castration as a security measure [20]; and (4) reviewing the punishment for certain categories of crimes.[21] On the other hand, the 2013 amendments were focused, in particular, on: (1) criminalization of using the results of the human trafficking victims' labour/service (2) increasing the punishment and aggravating the criminal liability for the crime of forced labor; (3) increasing the punishment for trafficking in children and for pimping; (4) introducing the prohibition to apply amnesty, pardon and reconciliation to persons that committed specific crimes against minors; (5) reviewing the elements of crimes against humanity and of war crimes; and (6) increasing the punishment for specific crimes against person, property, public security, state security, and public authorities (7) criminalization of the intentional obstruction of mass-

[19] Explicative Note to the Law no. 277 /18.12.2008.
[20] Chemical castration was declared unconstitutional by the Decision of the Constitutional Court No. 18/04.07.2013. As a result this article was abrogated.
[21] Categories of crimes: corruption crimes and related to corruption crimes, tax evasion, constraint to make statements, etc.

media activity, and of the intimidation for criticism, as well as criminalization of censorship.

The 2014 amendments' main features include: (1) increasing the maximum limit for the fine; (2) introducing extended confiscation as a security measure; (3) increasing the punishment for corruption crimes and for crimes related to corruption; (4) criminalization of illicit enrichment; (5) reviewing the elements of some economic crimes, and criminalization of other economic offences. In 2015, the amendments referred to the criminalization of the crime of illegal political party funding or illegal campaign finance, financial mismanagement of political parties or of election funds.

Several of these amendments fall under other Pillars of the JSRS (for example, severe punishment for corruption crimes[22] and for torture and inhuman/degrading treatment[23]) and are differently justified, or reflect the commitments of Moldova based on ratified international documents. At the same time, the language of the §2.5.1 is vague and unclear, as the *Action Plan* does not specify the meaning of "certain categories of offences" and "certain categories of persons". As we mentioned above, for certain crimes the punishment was even increased over this period of time. Obviously, at the drafting stage this was not an issue. However, in the process of implementation, it has led to different confusions. Most likely, the purpose of the JSRS drafters was to encourage the use of non-custodial punishment in the criminal justice system. It is really difficult to identify the "certain" categories of crimes and persons as long as no assessments have been conducted to determine how the national courts apply criminal punishment and to what extent the non-custodial ones are considered by the judge in the process of individualization the punishment in a particular case.

On the other hand, the purpose of §2.5.1. is to liberalize the criminal policy by the use of non-custodial punishments, which not necessary implies the reduction of the exiting punishments. From this perspective, the baseline studies carried out under §2.5.1 did not

[22] Pillar 4: intervention area 4.1.3.
[23] Pillar 6: intervention area 6.4.5.

identify the major barriers in using the existing non-custodial punishments, excepting community sanctions. No data is available regarding the existing obstacles in using non-custodial preventive measures, either.

2) Analysis of Law no. 82/29.05.2014 on amending the Criminal Code, the Criminal Procedure Code, the Enforcement Code and the Contravention Code

Activity 4 of §2.5.1. implies monitoring the changes related to the liberalization of criminal proceedings by using non-custodial punishments and preventive measures for certain categories of persons and certain offenses. According to the MoJ's *Table of Priorities for 2016,*[24] the timeline for the implementation is the second quarter of 2014 to IV quarter of 2016. No monitoring activities have been carried out so far. The main reasons presented by the MoJ are: (1) no experienced and skilled persons, able to conduct monitoring of the penal policy implementation; (2) insufficient expertise at the MoJ, and complexity of the activity, and (3) lack of financial resources to cover the experts' salaries. Therefore, *Activity 4* is not completed and the MoJ currently lacks human and financial resources to ensure its completion.

Law no. 82/29.05.2014, reported by the MoJ in its 2013 annual report as an output indicator for *Activity 3*, contains specific amendments regarding non-custodial punishments**. However, the two studies carried out as part of the §2.5.1 intervention area do not envision these amendments. Moreover, even though the *Explicative Note* of the MoJ to this Law explains that these amendments are part of the JSRS implementation process, it does not specify which concrete intervention area they refer to.** Additionally, according to the same document, these amendments are part of the state policy oriented towards European integration and harmonization of national legislation with EU standards. Therefore, the focus of this law was initially broader than the §2.5.1 purpose (liberalization of penal policy through using non-custodial punishments/preventive measures).

[24] This table is not available on the MoJ's website.

As the MoJ has not started the monitoring process, yet, it is difficult to establish the impact of this Law. However, as part of this evaluation report, we tried to determine the level of implementation of the Law even though it has come into effect for 1 year and 2 months only (as of 24.10.2014) and the Charter regarding the fulfillment of criminal punishment by the inmates was amended in March 2015.[25] We analyzed specific aspects regarding both custodial and non-custodial punishments. However, due to the time frame and limited interventions this short assessment should not be considered as replacing the monitoring process requested by *Activity 4.*

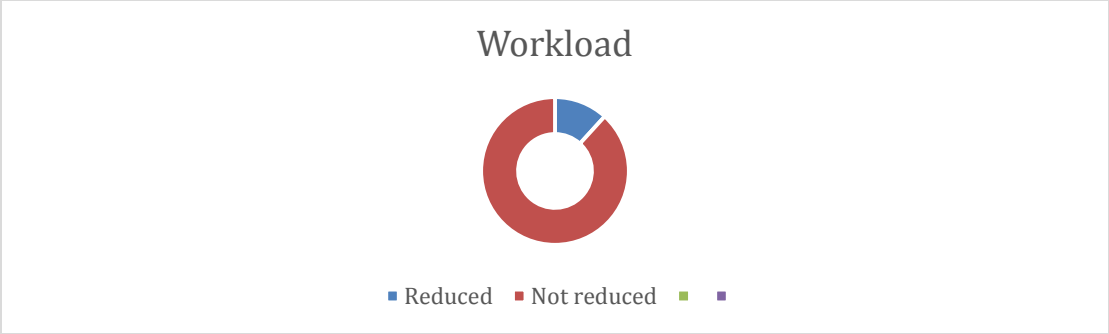
Authorities of the Probation Offices and Community Service

According to the provisions of Law 82/29.05.2014 the proceedings regarding the fulfillment of several non-custodial punishments were simplified through the amendments operated to the Enforcement Code[26]:

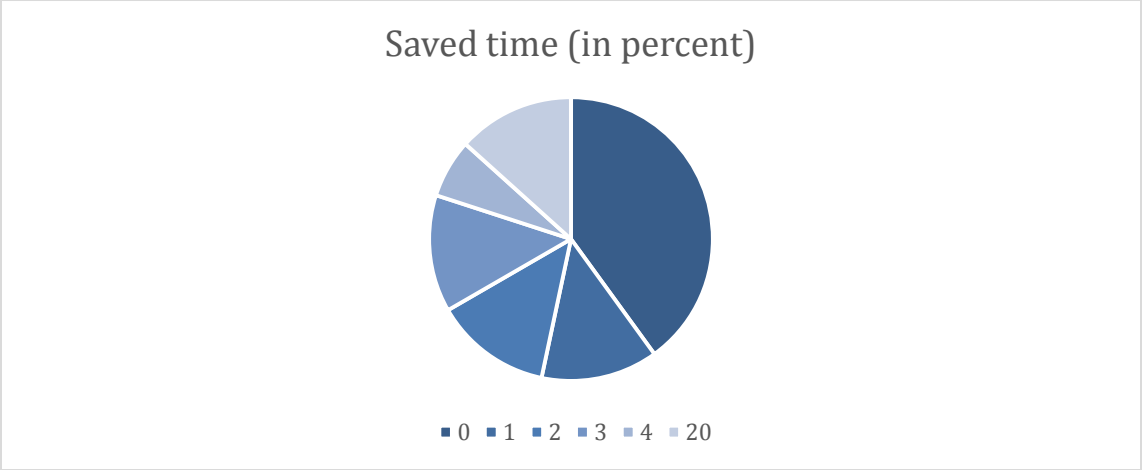
1. the powers of the probation officers have been reduced. The withdrawal of special or military rank, special title or qualification (classification) title and state awards, was transferred from the competence of probation officers to the relevant authorities who have the right to offer these ranks, titles, etc., with the purpose to reduce the probation officers' workload;
2. the application of such contravention sanctions, as the withdrawal of driving licenses or the deprivation of the right to have a gun, were deferred to the police;
3. the law introduced a person's right to serve up to 8 hours of community service per day in order to facilitate his/her re-habilitation.

In our small survey, 25 probation officers completed a questionnaire, designed to assess the impact of these legal changes on their daily work. Key questions were if their workload had been reduced by the changes introduced in 2014, which deferred certain activities to other authorities, and on the introduction of the option to work eight hours a day for the community.

[25] Government Decision no.71 from 09.03.2015 // http://lex.justice.md/md/357358/
[26] Art. 188, 190, 194, 316 of the Enforcement Code

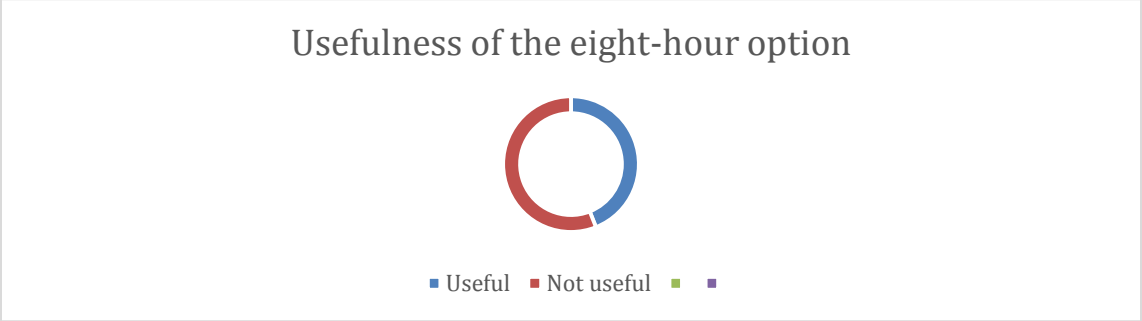


On the questions whether their workload had been reduced, only 6 out of 25 responded in the affirmative (24%). Out of the 17 who responded to have worked before 2014 in probation, only 2 (12%) said their workload had actually diminished. These results should be treated cautiously. Although the objective of the survey was explicitly stated, respondents may have feared that reporting lower workload would make them susceptible for receiving more work, or even for being laid off, later on. However, the difference between those probation officers that had only been employed recently and those that already worked there before the reform shows that, nonetheless, the ones with longer work experience did not perceive significant workload decreases due to the reform.



Consequently, only 15 respondents answered to the question about what percentage of their time had been spared through the reform. Two said 20% of their time was saved, while no one else indicated more than 4%, five respondents said 0% of their time had been saved.

Another set of questions related to the new possibility of serving up to eight hours a day of community service (instead of formerly four), which permits convicts to finish their probation period earlier than it would have taken them before the reform. Probation officers were asked what percentage of overall clients chose the eight-hour-option. It turned out the answers were extremely varied: from 3% to 90%, with a mean of 58%. This information is contradictory to the one obtained in interviews with the administration of the Central Probation Office, which yielded the result that only very few clients choose the eight-hour-option.



Only 44% of respondents believed, the new option will be conducive to a successful re-socialization of the offender.

What were arguments invoked against and for the eight-hour option? Those in favor mentioned that

- It permits the offender to return quicker to his family than before;
- The shameful experience of community work will pass quicker, and will have a less damaging effect on his employment chances;
- He will be able to become employed faster and thus be able to sustain his family.

Those against it argued that

- If the time is shortened, the offender does not become conscious of the punishment;
- He does not take it seriously:
- He does not have actually opportunities to work eight hours a day straight, and will thus actually work less

- There is not enough time to supervise the offenders correctly and there is not enough time for an effective re-socialization.

Asked about general comments on the justice reform, while many made unspecific positive or negative appraisals, a repeated statement was that taking away drivers licenses should be a task of the National Patrol Inspectorate, not of the Probation Office. We should mention that Law no. 82/29.05.2014 introduced such a provision in art.316 of the Enforcement Code.

Custodial Punishments: Imprisonment and Life Detention

Detention conditions and disciplinary sanctions

Law no. 82 / 2905.2014 introduced some changes related to conditions of detention. The most relevant refer to the following aspects:

1. *Obligation of the administration to deliver incoming mail within 24 hours;*
2. *20 minutes of phone conversation once per week;*
3. *Conditions for delivering parcels;*
4. *Extensive meetings with relatives or other persons;*
5. *Up to 5 days outside visit of family/other persons per year for certain prisoners;*
6. *Accommodation conditions (including at least 4 square meters per person);*
7. *Detention conditions for minors.*

The majority of the prisoners interviewed mentioned that the detention conditions improved over the last years. They appreciated that, compared to the previous period, since 2014, they have the opportunity to speak with their relatives 20 minutes per week on the phone. None of them complained that this right would be somehow endangered.

Additionally, the two prisons we visited have special rooms designed for phone conversations, as well as rooms for extended encounters with relatives (one prison is refurbishing this space to accommodate children, as well). We received no complaints

from prisoners regarding the safety of their correspondence or parcels delivered on their name.

Similar feedback we received from the interviewed prosecutors. They mentioned that even though the detention conditions, including food quality, have improved in the last years, the prisons' buildings are very old and need to be repaired. Only several prisons are in a better shape. Lipcani and Taraclia prisons were mentioned as favorable examples, while penitentiary No. 13 in Chisinau as a negative one. Moreover, these conditions improved in the last years and are not directly related to the adoption of Law no. 82/29.05.2014.

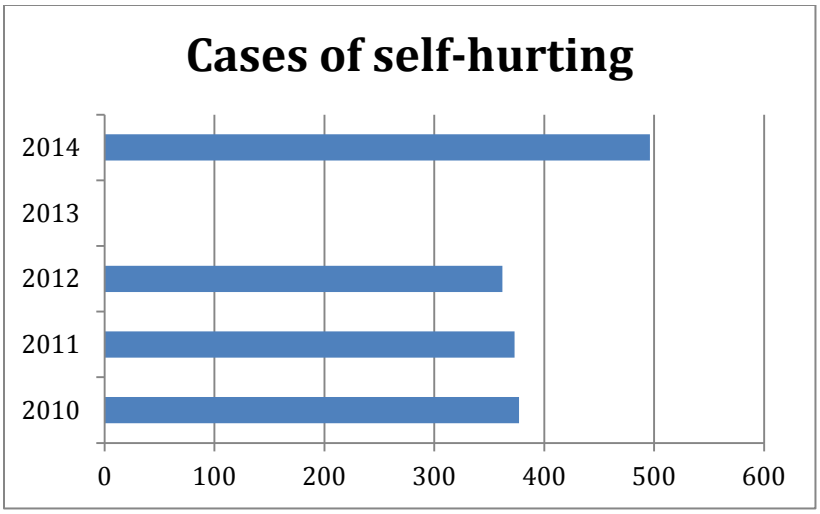
All persons interviewed (prosecutors, probation officers, prison staff, prisoners, and Ombudsman's Office representatives) mentioned that punishments for criminal offences are too harsh and that, in the last years, they have become even more severe.

Furthermore, this Law amended the Criminal Code and prohibited conditional release beforehand if the prisoner: (a) committed self-mutilation; (b) committed attempts at suicide or (3) violated the detention regime, or is fulfilling a disciplinary sanction.

Both, prisoners and prison staff, mentioned that this provision encouraged the prisoners to have a better behavior and to abstain from committing self-mutilation or attempts at suicide. Interviewed prosecutors also confirmed this fact. Moreover, prison staff mentioned that this works better than deprivation of the right to receive parcels as a disciplinary sanction.

The Department of Penitentiary Institutions (DIP) provided the researchers with the *Regulations on the way of applying to prisoners disciplinary sanctions and offering stimulating measures*,[27] as well as statistical reports on disciplinary practice in penitentiaries for the years 2010 to 2014 each.

[27] Annex to the Order no. 205 of the DIP from the October 23, 2008.

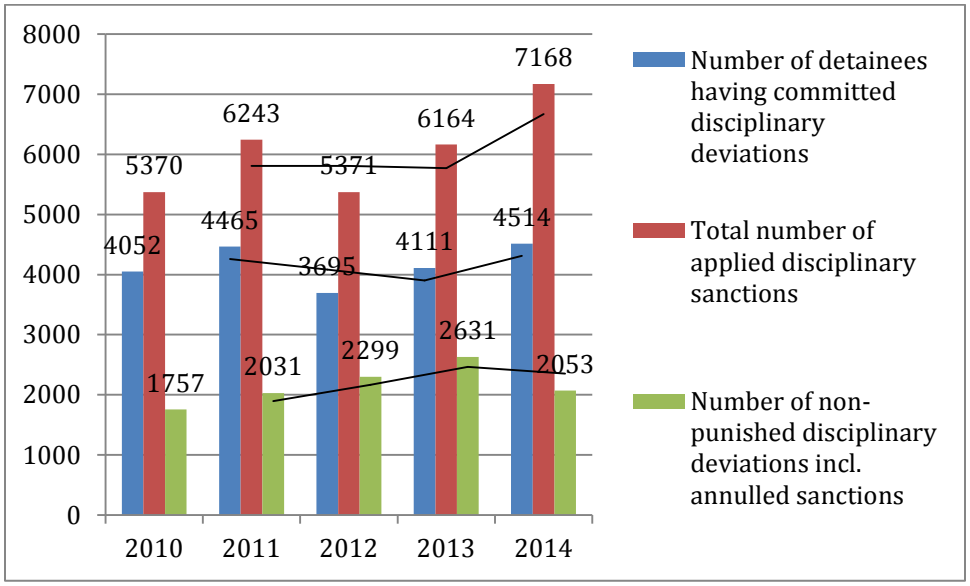


The number of reported self-hurting has remained constant, if not increased in 2014. Other than for the remaining years, for 2013, the respective statistical report does not have a separate category for self-hurting. Instead, the latter where included into a general category named *"Interpersonal violence: convict to convict, convict to staff, self-hurting"*. It is impossible to disaggregate the total number. Thus, we did not include in our time series. The observed may correspond with the overall increased prison population. Also, comparability of the data may be questionable, since in the interview it was mentioned that staff adopted different reporting strategies in different years.

On the other hand, the interviewed psychologist mentioned that using self-hurting as a criterion is unjustified because the prisoner could have committed such kind of acts under the influence of other prisoners. This measure does not have any psychological foundations and, most probably, was introduced only to reduce the number of self-mutilations. The same point of view was supported by the representative of the Ombudsman Office, who mentioned that it is unfair to condition the release based on attempts at suicide.

In these circumstances, it is indeed very unclear how such kind of measures would contribute to the education of prisoners once the reason was to decrease the number of self-mutilations.

We should mention that this Law also aimed at the clarification of disciplinary sanctions and proceedings applied to prisoners. The statistical reports offer information on the number of prisoners having committed disciplinary deviations, total number of applied disciplinary sanctions, as well as the number of non-punished disciplinary deviations, incl. annulled sanctions. The graph below illustrates the time series for the respective variables; with a trend line superimposed, calculated using the moving average method for two consecutive periods.

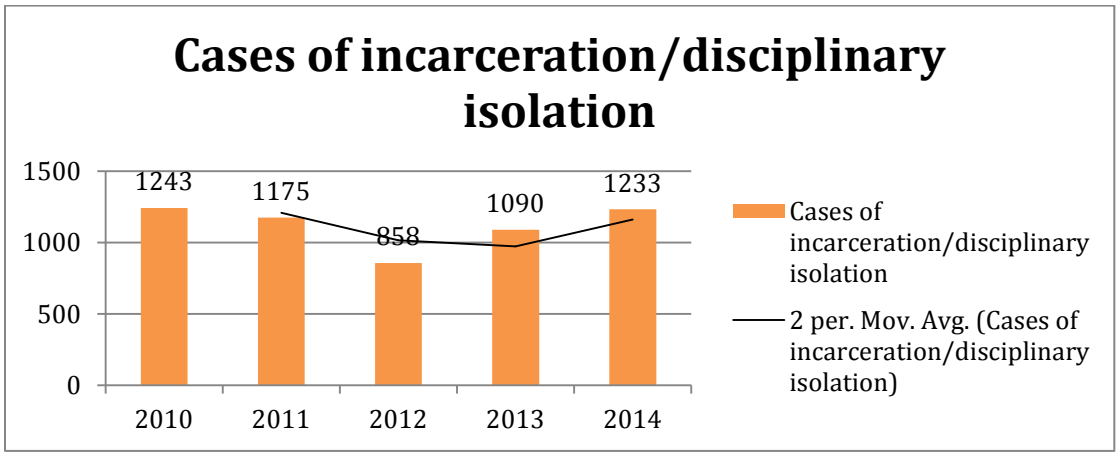


It shows upward trends for number of prisoners having committed disciplinary deviations and total number of applied disciplinary sanctions. However, the trend for non-punished disciplinary sanctions, incl. annulled sanctions, is downward. Taken into consideration increasing prison populations, this could serve as an indicator of more severe sanctioning, or, at least, of the absence of a softening in sanctioning.

We analyzed also the trend regarding application of isolation as disciplinary sanction. The Law no. 146/14.06.2013[28] replaced the incarceration as disciplinary sanction with disciplinary isolation. That is why the terms incarceration or disciplinary isolation are

[28] http://lex.justice.md/md/348899/

used alternatively in the statistical reports, in the 2013 report even concomitantly. We used them for designating the same category of sanctioning.



The data shows an upward trend for the use of incarceration. Whereas this can be explained, again, by larger prison populations, it is no indicator for leaner sanctioning practices.

During the interviews some prison staff and one prosecutor mentioned that Moldovan prisons do not have appropriate facilities for disciplinary isolation. Even though according to the law incarceration was replaced with isolation, *de facto* prisoners are detained in the same cells as before. On the other hand, some prisons do not use these facilities. For instance, during our visit to Rusca the prison staff mentioned that the facility for isolation in under renovation, but, even so they do not use it very often. The reason invoked is that communication is more important for prisoners than isolation.

Life imprisonment

Regarding life imprisonment, the Law introduced three types of detention regimes. However, it seems that these three regimes are not really working or that it is too early to measure the impact of these provisions. Both, DPI representatives and prosecutors confirmed this fact.. Moreover, DPI representatives mentioned that, since 2004, the number of "lifers" has increased. One interviewed prosecutor mentioned that there is no

need for three types of detention regime as two is enough to ensure the proper serving of this punishment. To some extent, the new provisions worsened the detention conditions for inmates, even though the law introduced three detention regimes.

Moreover, the Law excluded the "lifers" form the list of prisoners, which may use the system of privileged compensation of the working days[29]. Even so inmates complained they do not have proper conditions for work and very few opportunities are available.

Medical assistance

In order to ensure proper medical assistance and to prevent torture and inhuman treatment, this Law introduced free guaranteed medical assistance and mandatory medical examination within 24 hours from the moment the offender was placed in the penitentiary institution. Additionally, the obligation of the doctor to inform the prosecutor and ombudsman regarding alleged torture or inhuman treatment was also included.

The prison staff and the prisoners confirmed that this provision is respected. Moreover, they mentioned that the conditions for medical assistance improved in the last years. It seems that this specific Law only contributed to maintaining the same level of medical assistance. The medical staff of the prisons we visited confirmed that in case of emergencies they cooperate with a hospital located nearby.

Education Programs

In order to facilitate the social reintegration of prisoners, this Law clarified the forms of education activities, which should be introduced in the prisons. Both prisons we visited have developed different education programs for prisoners. The education staff of both prisons mentioned that some of these programs were developed in partnership with different organizations. The programs include: religious, cultural and sport activities,

[29] Privileged working days are a compensatory mechanism for the work in prison, which allows for a reduction in punishment for the detainees that work. Not according any compensation for work in prison is not in accordance with point 26.10 of the Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules *'In all instances there shall be equitable remuneration of the work of prisoners.'*.

vocational training, language courses, etc. Prisoners confirmed their involvement in such activities during the detention period. However, all of them mentioned that existing education programs are insufficient.

The main problem identified by both, prisoners and prison staff, is the lack of job opportunities. Unfortunately, even though the majority of prisoners are very much willing to work, the administration of prisons is limited in its possibilities to offer these opportunities. Sometimes, prisons participate in seasonal agricultural work. The benefits of having a job were empathized by prison staff, prisoners and prosecutors.

Additionally, the interviewed prosecutors underlined the problem of criminal subculture that still exists in Moldovan prisons. As they mentioned, in many cases this subculture is encouraged by the prisons' staff in order to control the prisoners and to ensure the prison's safety.

Personal searches of the inmates

In order to ensure the security and safety of penitentiary institutions, the Law introduced searches of prisoners' cavities. The persons interviewed for this evaluation did not specify any issue related to these searches. One representative of the DPI mentioned that these searches are very rare as the prison staff already succeeds to convince prisoners to show everything they have.

However, one security problem was revealed during the interviews with prison staff, prosecutors and representatives of DPI. They mentioned that security staffs of the prisons (guards) do not understand properly the differences between the forms of violence they may use to ensure the order or to defend themselves and the violence that is classified as torture. They lack knowledge and no training is provided in this sense. Moreover, after 4 conviction cases of guards for torture applied towards prisoners they are more afraid to act when appropriate.

4. Conclusions

The main purpose of this evaluation report is to determine the implementation level of intervention area 2.5.1. of the JSRS. In this regard, we assessed all four activities envisioned and designed by the *Action Plan* to lead to liberalization of penal policy through the use of non-custodial preventive measure and criminal punishments.

In our view these activities partially accomplished the initial goal of this intervention area. Firstly, the language used to define the intervention area is vague as it is difficult to determine the meaning of "certain categories of persons and certain categories of crimes". Neither of the activities included in the *Action Plan* clarified the meaning of this expression. We believe this fact made more difficult the execution of the prescribed actions.

Secondly, even though one of the purposes of the JSRS is to humanize the penal policy, over the last 4 years many laws adopted to amend the Criminal Code aimed at increasing the punishments for specific crimes. In our view the shifts in the criminal justice strategies affects the penal and sentencing policy of the country.

The findings of our evaluation report in respect of completion the four activities are as follows:

1. The studies conceived as *Activity 1* and *Activity 2* were conducted timely. However, the first study does not contain any analysis on the application of non-custodial preventive measures and was initially conducted under a different intervention area, being reported twice. The second study covers only the community sanctions. No additional studies were conducted to determine the issues related to non-custodial preventive measures and custodial/non-custodial criminal punishments. In this sense, limited baseline was established for the future amendments. Moreover, the working group created to monitor the implementation of the Pillar II did not consider the relevance of these studies for further activities for unclear reasons. Further, MoJ did not include the recommendations emphasized in the studies in the draft laws;

2. The *2013 Annual Report of the MoJ* and the *2013 Progress Report on the Implementation of the JSRS* contain different data as outcome indicator for *Activity 3*. This shows a poor communication among agencies and superficial attitude toward reporting process. Law no. 82/29.05.2014 reported as completed activity by the MoJ contains a wide range of amendments that refer to the enforcement of custodial and no-custodial criminal punishments. However, none of them were reflected in the two studies previously conducted.
3. *Activity 4* is reported as not completed due to lack of human and financial resource. However, the deadline for its completion is IV quarter of 2016.

For the purpose of this evaluation report we conducted a small assessment on implementation of the Law no. 82/29.05.2014. We should mention that it is too early to determine the level of its enforcement as the law is in force only for 1 year and 2 months. We noticed positive trends, however, many of the practices existed in the prisons before the law was adopted. Our findings are based on the perception of prisoners, prison staff, prosecutors, representatives of PGO and Ombudsman Office. The main findings are as follows:

1. Even though the law aimed at reducing the workload of probation officers through differing some of their authorities to other agencies, the majority of them mentioned they do not feel/see any changes;
2. Detention conditions, including quality of food, improved in the last years;
3. Even though the Criminal Code prohibits the conditional release of prisoners who committed self-mutilations and attempt at suicide statistical data show that the level of self-mutilation is still high, even increased;
4. The law replaced incarceration with disciplinary isolation; however, prisons do not have adequate facilities for this purpose. That is why old incarcerations cells are still used;
5. Prisoners are satisfied that since 2014 they have the opportunity to talk to their relatives 20 minutes per week and the can receive extensive visits. Some prisons started to build/renovate special facilities for visits;

6. Lack of job opportunities during detention is one of the big issues emphasized by all interviewed persons;
7. Education programs exist, however, they are not sufficient and cannot ensure social re-integration of all prisoners;
8. Prisons' security staff lacks knowledge regarding the differences between the forms of violence they may use for safety insurance/to defend themselves and the violence that is classified as torture.

As noted earlier, this small assessment should not replace the monitoring process required by *Activity 4*.

In line with the above mentioned findings, the following recommendations should be considered:

I. To ensure the liberalization of the criminal policy:

1. An extensive assessment should be conducted to identify the existing practices and deficiencies that impede the use and enforcement of non-custodial preventive measures and criminal punishments No such studies have been conducted and very limited statistical data is available in this sense.;
2. If appropriate, the Criminal Code, Criminal Procedure Code and Enforcement Code as well secondary legislation should be revised in order to establish appropriate mechanisms encouraging the use of non-custodial punishments and preventive measures. The Law no.82/29.05.2009 contains very few amendments regarding non-custodial criminal punishments and none regarding non-custodial preventive measures;
3. To create suitable conditions, to allocate both financial and human resources, for appropriate enforcement of the new legislation.

II. To improve the Government's strategic development process:

4. To determine the need for specific interventions before drafting policy papers;

5. To use suitable terms or to clarify them through appropriate interventions while drafting policy papers;
6. To strengthen the monitoring and evaluation mechanisms.