



## **NORLAM**

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# **NOTE TO THE WORKING GROUP ON THE HUMANISATION OF PENAL POLICY AND STRENGTHENING THE MECHANISM OF COMPENSATION OF VICTIMS OF INHUMAN TREATMENT**

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18 June 2015

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## I. Introduction

This input is structured in two main parts as follows: description of the problems and conceptual proposals. The numbering in the description of the problems part is the same as suggested by the Chairman of the Working Group. While the “vade-mecum” part does not continue the subsequent numbering since these solutions were not finally approved in the group and their order will be different in the end.

## II. Description of the identified problems

The inhumane prison conditions as systemic problems were comprehensively analysed in the Public Policy Proposal: Prison Management for the Benefit of the Rights of Detainees<sup>1</sup>. According to that analysis, overcrowding, poor sanitation, poor quality of the food, increased violence, sub-standard healthcare and extensive unemployment of prisoners are all effects of the inefficient administration (please see the problem tree attached).

NORLAM Advisers believe the causes also could be extended to include the practice of entire penal chain in use of incarceration and a general lack of respect for the right of the individual as described in the CoE’s Prison rules and the CPT standards.

### *Causes*

#### Main causes

#### **31. Limited budget/lack of investments/ is it possible to move to an autonomous budget of obtaining income and redistribution of income???** Should involve economist/Ministry of Finance

In spite of the significant efforts of the government in the last years, the prison conditions are still sub-standard. The government should approve a minimum cost per prisoner and the prisons should have the flexibility and powers to manage the received funds within the frame given by DIP or MoJ.

The above mentioned Public Policy Proposal identified that 2/3 of the state enterprises managed by DIP are inefficient. The fact that they are managed separately from the prisons was mentioned as one cause for inefficiency.

A delegation of authority must also include a new way of management in the DIP. Management by Objectives has been introduced in many other prison- and probation administrations with good results. Currently, in practice, it is not possible to specify a single agency or legal person responsible for the violations of the CPT-rules.

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<sup>1</sup> [http://www.justice.gov.md/public/files/noutati/PPP\\_Penit\\_v\\_7\\_05\\_12\\_2011.pdf](http://www.justice.gov.md/public/files/noutati/PPP_Penit_v_7_05_12_2011.pdf)

The Ombudsman repeatedly raised his concern about the conditions of detention where “organizational measures do not depend that much on financial conjuncture, but on the manner in which the prisons are managed” (Report of the Centre for Human Rights, 2010).

Increasing the budget management autonomy is welcomed.

### **32. Legal framework /complex legal process /possibility to delegate normative competences for lessening the adoption of secondary legislation**

The rigidity of the current legal system and the fact that Moldovan laws are very detailed limits the institution’s flexibility and hampers their capacity to adjust to the modern developments. This slows down the progress in many fields and rules out the possibility to promptly adopt new practices whenever needed.

The limited decision-making powers of the prison governors combined with arduous internal procedures leads to an inefficient management at a range of levels. 57% of the questioned prison governors said their current mandate is insufficient for a good administration of the prison and for improving the prison conditions to the existing standards.

Another example is the standard organizational structure of all Moldovan prisons, in spite of the different infrastructure, size of categories of convicts they detain. Prison management should be allowed to develop the organizational map themselves with DIP’s approval, without going so high up to the Minister of Justice. The Ministry should set the goals to be achieved by the prison system; the prison Department should set the goals and also set the guidelines for the individual prisons, while the prison management should be given the needed flexibility to decide how to organize their work in order to meet those goals.

In order to secure a dynamic yet foreseeable and solid practice, Moldovan laws have to be narrowed down significantly whilst referring to guidelines for a more comprehensive and detailed description of the content.

A decentralization of competences and responsibilities is indispensable, in parallel with trainings of the staff on leadership.

The mandate of probation is also significantly limited in comparison to Norway or Romania. For example, probation officers cannot include a convict in an anti-violence program unless this obligation is set by the court, even though they identify through assessments that this is one of the main causes for the criminal behaviour and would be a crime-preventive intervention. For an effective and individualized enforcement of punishment, the law and the judge should set the frame of the punishment (type and length), while the probation counsellors should establish and adjust the intervention measures depending on the identified criminogenic factors or the changes taking place during the punishment enforcement.

In Norway, after sentencing, the enforcing bodies, - the prison- and probation system – is given the competence to take all the necessary decisions throughout the fulfilment of the sentence.

In the Norwegian correctional services, most of the formal decisions are taken at the local level, which is by the prison governor or probation leader and the respective co-leaders. This

is based on the belief that the staff knowing the individual convict best, will most efficiently make use of power on behalf of the society.

### Secondary causes

#### **33. Penal policy (see below)**

In our opinion, the harsh penal policy is one of the main causes for overcrowding in the prison system.

#### **34. Criminal sub-culture – segregation of the prison population**

Criminal subculture in prisons is both a cause and an effect of the overcrowding and poor conditions in prisons. Subculture appears due to the lack of sufficient staff, poor infrastructure (big dormitories and no separation into sectors for prisoners in the common regime – the largest majority) and lack of meaningful activities for the prisoners during daytime.

Subculture might be causing overcrowding if the criminal leaders choose the best cells and stay in individual rooms, while others have to stay in dorms of 20-40 prisoners. It could be a cause in cases when the group of prisoners which want to be segregated from the rest for security reasons (due to subculture) is growing larger and larger and the prison doesn't have enough space for placement.

However, the most serious consequence of subculture is the ill-treatment of the lower casts of prisoners and the non-intervention of staff.

#### *II.1 Overcrowding*

A definition of what is overcrowding in Moldova must be given. According to the Council of Europe Annual Penal Statistics Report, overcrowding is measured by looking at the prison population density, the number of prisoners (including pre-trial detainees) per 100 places of the regular capacity.

Then, it becomes a matter of defining what acceptable capacity is. In countries where prisons have mostly individual cells, capacity is counted in cells. In Moldova we suspect that capacity is counted in square meters. This explains why Moldova is not in the list of European countries with prison population overcrowding (more than 100 prisoners per 100 places).

We believe that placement in large dormitories in two level beds should be considered overcrowding by default, even though the total surface of the room is not less than 4 m<sup>2</sup> per prisoner.

#### **36. The increasing/decreasing number of arrested persons/convicted persons**

The total number of entries to Moldova penal institutions in 2012 was 15 461, of which 25.5% were entries before final sentence. In the same year, the total number of entries in Romanian prisons was 15 295 and entries in Norwegian prisons – 10 306.

This means that Moldova's rate of entries to penal institutions (434.4 per 100 000 inhabitants) is twice above the average in Europe ( which is 214.5)<sup>2</sup>.

### **38. Lack of practices for applying alternatives to pre-trial detention**

According a report by the Legal Resource Centre, 80% of the prosecutor's motions for applying pre-trial arrest are accepted by the instructional judges<sup>3</sup>.

Given this high rate of applying pre-trial arrest in Moldova, we recommend rephrasing this problem as "excessive use of pre-trial detention" and analyse it as a form of human rights abuse<sup>4</sup>.

### **39. Non-functionality of the alternative measures – judicial control, home arrest – lack of resources invested in ensuring the alternatives**

### **40. Difference in regimes and do they influence on the overcrowding**

Moldovan prisons do not have separate sectors or units with progressive levels of security like other countries do. The only separation is done between initial regime (the first 3-6 months of the sentence), the common regime (the middle part) and the re-socialization regime (the last 6 months of the sentence. Knowing that the average length of a served prison sentence is 5 years, this means that for the largest part of the sentence there is no differentiated treatment between prisoners who behave well and prisoners who are a bad influence.

In other words, the separation of prisoners is not based on any assessments of risks, is not a consequence of their behaviour or motivation for changes, this is strictly regulated in the Enforcement Code and it just depends on the length of time passed.

In some prisons which are one of the kind, like the one for women and the one for juveniles, there should be three sectors (for the 3 regimes) for the closed type of prison, three sectors for the semi-closed type and correspondingly three types of regimes for the open type of prison, if the separation demand should be fully respected. Knowing the infrastructure of these prisons, this separation demand is irrational and should be revised, especially that it doesn't have any grounding whatsoever. Moreover, this separation should be respected while on escort, while working in the agricultural fields, etc and this creates a huge burden on the human resources and a waste of economic resources in the prison.

The prisons should be given the mandate to create separate sectors with differentiated regimes and they should be entitled to decide (through the prison board) moving a prisoner

<sup>2</sup> Source: Council of Europe Annual Penal Statistics: SPACE I – 2013

<http://wp.unil.ch/space/files/2015/02/SPACE-I-2013-English.pdf>

<sup>3</sup> Reforma instituției judecătorești de instrucție în Republica Moldova, Vladislav Gribincea, Ion Guzun, Sorina Macrinici <http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf>

<sup>4</sup> Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk

<http://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf>

from one section to the other depending on the assessments done, the progress in the sentence, the change in behaviour, motivation etc.

#### **41. Early Release on Conditions (flow-inflow)**

*Please consider moving no.41 “releases” up, immediately after no. 36. “entries”, since the two indicators should be analysed in comparison.*

The total number of releases from Moldovan penal institutions in 2012 was 3 030, of which 52.8% were releases before final conviction and rest are finally sentenced prisoners released. Moldova’s rate of releases from penal institutions per 100 000 inhabitants is twice below the average in Europe (85.1 and respectively 177.3)<sup>5</sup>.

Out of the total 1 430 final sentenced prisoners released during 2012, 27.2% were released on parole, 22.8% - unconditionally released at the end of the sentence, and 50% - other releases of final sentenced prisoners (amnesties, pardons, replacing the unexecuted part of the sentence with a milder punishment or a fine, releases due to illness, conditional release after serving the sentence with a privileged calculation of the worked days). In most of the western European countries the flow is releases is approximatively the same as the flow of entries into the penal institutions. For example, in Norway the total number of releases in 2012 was 10443, in Romanian – 13 944.

The ratio between effective exits and potential exists in Moldova in 2012 was 13.9 to per 100, , which was the lowest in Europe according to Council of Europe Annual Penal Statistics, SPACE I – Prison Populations. The mean turnover ratio in Europe is 53.8 to 100. Hence, we can conclude that Moldova is having the fastest speed of prison population growth.

In 2014, only 260 priosners were released on parole out of 770 applications examined in Court In 2008, the number of prisoners released on parole exceeded 1000.

#### **42. Probation – efficiency and impact**

Probation’s mandate and mission is to execute non-custodial sanctions and to facilitate the reintegration of probation subjects into community, reducing the risk of re-offending and by this contributing to a safer society.

There are some striking differences between Moldovan practices for non-custodial sanction:

- the follow up period of suspended sentences and release on parole is very long in Moldova.
- the intensity of supervision is very low, - most often the Probation only sees the offender once a month.

The re-offending rate among probation clients is rather low. Only 3% of probation subjects committed a new crime during 2014 (while on probation).

However, effect and efficiency of non-custodial sanctions should not only be assessed from reoffending rates. Variables that should be assessed are of course also related to the society

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<sup>5</sup> Source: Council of Europe Annual Penal Statistics: SPACE I – 2013  
<http://wp.unil.ch/space/files/2015/02/SPACE-I-2013-English.pdf>

as a whole, the offender himself and his family and network. These variables must in turn be related to the obvious alternative; a prison sentence and the total cost for the society to impose and execute such a punishment.

Impact of probation on the individuals is undoubtedly more positive than prison, given the fact that the convicts are not isolated from the society; continue to be useful for their communities, and families, etc. On the other hand, imprisonment means that society takes the responsibility for the costs of the convict as long as the sentence lasts. In some cases the society also has to provide for their families. Some of those serving a prison sentence will not be able to provide for themselves for rest of their lives. Some get connections in criminal organisations, finding this the only source of income after release.

Compared to the other European countries, Moldova is excessively using both prisons and probation. The number of prisoners per 100 000 inhabitants is 212<sup>6</sup> based on an estimated national population of 3.56 million at beginning of April 2015 (from Eurostat figures). According to the same source, Romania registered a rate of 149, Bulgaria – 138, Norway – 71. The rate of probation population per 100 000 inhabitants is 224 in Moldova, 110 in Norway, 35 in Romania<sup>7</sup>.

The largest proportion of convictions issued in a year is the conviction to suspended enforcement of the penal punishment (art 90 CC), in other words - conditional imprisonment. In Moldova, in case of a breach, the convict is sent to prison for the full, original term of imprisonment, while in other countries the convict will be sent to prison to serve the rest of the period. Even though the percentage of convicts sent to prison for breaching article 90 is low, taking into account that in the majority of cases the original sentence was from 2 to 5 years, we believe it could contribute to overcrowding.

The numerous interventions that the convict to article 90 is exposed to (regular visits to probation office, programs, eventually electronic monitoring, etc) should be considered as a form of executing the punishment in the community not an “exemption from punishment” (liberare de pedeapsa).

#### **43. Should the judge take into account the general context and the prison population when applying pre-trial arrest?**

The judges should definitively take into account the conditions in the prisons, the suffering and the consequences on the life of the individual. The social and economic impact of pre-trial detention is often overlooked. Pre-trial detainees may lose their jobs and homes; contact and spread disease; be asked to pay bribes to secure release or better conditions of detention; and suffer physical and psychological damage that last long after their detention ends<sup>8</sup>.

#### **44. Transfers/Escorting, lack of resources**

<sup>6</sup> The International Centre for Prison Studies, <http://www.prisonstudies.org/country/moldova-republic>

<sup>7</sup> Statistica Penală Anuală, Consiliul European, [http://wp.unil.ch/space/files/2011/02/Council-of-Europe\\_SPACE-II-2013-E\\_Final\\_150205.pdf](http://wp.unil.ch/space/files/2011/02/Council-of-Europe_SPACE-II-2013-E_Final_150205.pdf)

<sup>8</sup> <http://www.opensocietyfoundations.org/sites/default/files/socioeconomic-impact-pretrial-detention-02012011.pdf>



The current practice of detaining a prisoner in high security (closed type of prison) for the whole length of the sentence is against European prison rules<sup>9</sup>. We believe that the procedure and possibilities for transfers from one prison to another should be simplified.

Firstly, it is important that every prisoner is given the possibility to progress from high security to low security throughout the sentence provided that he/she is motivated to change and has shown good behaviour. Secondly, the decision of transfers from one type of prison to another should be taken by the prison system.

In other countries, the transfers from one prison to another are often used to spread the gang members and to prevent manipulation from informal leaders and the creation of subculture.

#### **45. Delayed court examination/criminal investigation with arrested/convicted in appeal/recourse/re-examination**

One of the main obstacles in justice system in Moldova is that the trials are fragmented and not conducted in a continuous way. There are numerous postponements and the time elapsed before the final sentence is passed, may take years. This affects adversely the prisoners.

#### **47. Penal policy – length in general/ average length of imprisonment punishment**

70% of Moldovan prisoners serve 5 or more years in prisons (situation as of 2013). 34% serve sentences of 10 years and more. In both cases, only Greece has a higher percentage than Moldova in Europe<sup>10</sup>. In Germany the cumulated length of 10 years and more represents only 1%, in Norway – 8.7%, in Romania – 17.9%.

According to DIP's calculations, the average length of punishment (from the incoming sentences during 2013) was 7 years and the number of years *de facto* served (average from total releases during 2013) was 5 years. In Norway, the time spent in prison is in average 173 days.

#### **48. Closed regimes in prisons / Liberalization of the punishment enforcement**

Judges in Moldova should not decide the type of prison especially that the convicts have to serve the full term in the same type of prison. This system doesn't give any room for an individualized enforcement of imprisonment since there is no progression during enforcement.

The Department of Prison Institutions ("DIP") should be given the decision-making power to create different, progressive security levels inside a prison (regimes). Furthermore, DIP should be given the competence to transfer a prisoner from one prison to another also progressively (please see in relation to point 32). For example, almost every prisoner committing serious crimes starts in closed type of prison, after "climbing up" through the

<sup>9</sup> Recommendation Rec(2006)2 of the Committee of Ministers to the member states on the European Prison Rules, 51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

<sup>10</sup> Please see CoE Annual Penal Statistics, SPACE I- 2013, pages 116, 117.

different security levels inside the prison (regimes), he/she should be given the possibility to apply for a transfer to a semi-open or open type of prison, etc. Given the increased mobility of such a system, the decision power should be at the DIP level or prison board level, not to overload the courts. Another advantage of such a system would be that the complaints from prisoners related to transfers will automatically decrease, if you have proper guidelines, the criteria for transfer are clear and the prison staff is competent to make risk assessments.

#### **49. Prison sectors**

As mentioned, currently in Moldova, there is not separation and little difference between sectors (in common regime). This system is a favourable ground for expanding and strengthening the subculture.

The proper prison management implies division of a unit (bloc) into small and easier to manage section/sectors. In this way, you can have a continuous monitoring through permanent and close interaction between the staff and the detainees. For the purpose of direct supervision the staff should be located in the units to be more aware of the daily state of affairs, communication styles and to be able to immediately react, to promote communication and prevent conflicts and to consolidate the cooperation of the prison administration in terms of hygiene, security, training, labor, legal assistance and other issues inherent to the rights of detainees.

This implies that the responsibility and authority is decentralized at the first level line based on the philosophy “walking and talking” of dynamic security, as different from the periodic patrols and distance observation.

It also implies some infrastructure adjustments and costs. The current barrack type of dormitories should be changed and re-constructed into cells for 2-6 detainees.

#### *II.2 Poor material conditions*

#### **56. Obligation to work for the arrested/convicted persons.**

One of the biggest problems of the prison system is the limited possibilities given to prisoners for meaningful activities.

We would suggest rephrasing this as the prison administration’s obligation to provide opportunities for socially-useful activities at least 4 hours a day.

In Norway, the finally sentenced prisoners are obliged to participate in activities during the enforcement of their sentence and the prison is obliged to give prisoners this possibility. Please see this paragraph from the Norwegian legislation on punishment enforcement:.

*“Condamnatul are obligația de a participa la activități în timpul executării pedepsei și a reacțiilor speciale de pedepsire penală. Obligativitatea participării la activități se referă la muncă, servicii utile societății, activități educaționale, programe și alte măsuri menite să împiedice noi infracțiuni. Obligativitatea participării la activități poate fi suspendată în caz de boală sau incapacitate de muncă”.*

When it comes to pre-trial detainees – work and other activities are offered voluntarily.

### *II.3 Food of low quality*

[...]

### *II.4 Healthcare*

Poor sanitation, poor cell conditions, bad quality of the food etc have a significant impact on the detainee's health. Therefore, please consider adding point 64 as follows:

#### **64. Proportionality of pre-trial detention due to the detainee's health condition and cell conditions**

There should be awareness of the fact that if a detainee does not have the medical support he or she needs at all time or if the conditions in the cell put his/her health or life at risk, this will not only be a violation of the proportionality principle but also easily become a violation of Art. 3 of the ECHR<sup>11</sup>. If the situation calls for it, tailor-made solutions must be established, which means everything: from having extra access to a doctor to being detained in a hospital under constant medical surveillance. This is the responsibility of the prosecutor dealing with the concrete case. If the prosecutor cannot make the necessary adjustments and the detainee suffers, release from detention is the only solution.

The Evaluation of the practical use of templates as motions for pre-trial detention<sup>12</sup> found that health conditions of the detained are concretely assessed in most of the motions studied. This uniform practice deserves a compliment. On the other hand, it was noticed that cell conditions are not being mentioned as a challenging factor for the detainees' health. As we understand it, the commonly accepted opinion seems to be that the prosecutor cannot be responsible for the standards of the cell conditions. This may be correct. However, the prosecutor has responsibility for the situation of the detainee in the case for which he/she was appointed, ensuring that the detainee's situation does not make detention a disproportional measure, because, if so, the detention itself becomes unlawful.

The NORLAM experts who made this assessment have not seen examples of motions addressing health problems which would be due to poor material conditions in the cell, yet the prosecutor's responsibility is very strict in this domain. The debate on this issue has been somewhat confusing, it seems that no distinction is made between the prison conditions, in general, and the conditions for the concrete detainee with his/her distinctive features in question.

#### **65. Transfer of the health personnel to the Ministry of Healthcare ...**

The inmates are not deprived of their rights as citizens, and are entitled to the same healthcare services as they had before they were sentenced and brought to prison. Prisoners can be ensured healthcare services of the same standard as outside the prison only if this service is imported from the community.

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<sup>11</sup> Cf. the case of *Becciev v. Moldova* (App. No. 9190/03), paragraphs 40 to 47.

<sup>12</sup> Evaluation Report: Evaluation of the practical use of templates as motions for pre-trial detention, page 24 <http://www.norlam.md/doc.php?l=ro&idc=282&id=847>

### III. “Vade-mecum” and conceptual proposals

This part is structured as follows:

- sustainable solutions for reducing the number of inmates in III.1, III.2, III.3 and III.4;
- solutions to ensure an improved treatment of prisoners and detention condition in III.5.

Importantly, these solutions are not alternative options, but rather preconditions and inter-dependent measures to tackle the systemic problems in prisons.

#### III.1 Alternatives for pre-trial detention

##### III.1.1 Concept proposal

When pre-trial detention has been imposed, e.g. for 30 days, and there is no longer the need of such a harsh regime to secure the investigation, to stop reoffending, or absconding, alternative less coercive measures should substitute the detention according to the legislation. These may be compulsory attendance of the suspect reporting himself at fixed times, or a decision of ban of visit, a prohibition to stay at certain places, house arrest, electronic monitoring etc. – We don’t recommend the bail-system.

Further on, alternatives to pre-trial detention can be found sufficient right from the start when the suspect is apprehended, in this case the typical a decision is compulsory attendance to the police.

The core use of alternatives are the less serious crimes that still qualify for imprisonment, and crimes that are on the border of imposing pre-trial detention. There must be an understanding of the fact that violations may appear from the accused, which will be undertaken resolute, and such incidents should not put the system of alternatives under discredit. Serious criminals that with a high degree of probability will violate the duties for the release should not be given the option of alternatives.

The prosecution should guard the legal demands; make the decisions, which can be appealed by the charged to the court/instructional judge.

##### III.1.2 Preconditions for applying alternatives for pre-trial detention

###### III.1.2.1 According to existing legislation

Moldovan CPC Art. 175 para 3 no. 1 to 11, - alternatives.

Moldovan CPC Art. 176 para 3, no. 5 and no. 8, Art. 189, no. 1, Art 477 – proportionality principle

###### III.1.2.2 The need for amendments in the legislation

[ to be elaborated further with the consensus of the WG?]

###### III.1.2.3 Implementation issues

The non-existent practice to release due to the fact that it is not strictly necessary to prolong, or the non-existent practice to apply less coercive measures as alternatives as the further solution, leads to the conclusion that the practice today is not in compliance with

national legislation and ECHR. A basic principle like the proportionality principle in Section § 176, paragraph 3 seems to have no impact.

The unfortunate perception of release from pre-trial detention after being applied for some time, is that it illustrates that the initial use of custody was unfounded. This is not the case.

Statements that alternatives to pre-trial detention cannot be used because of the many severe hard core criminals in pre-trial detention is a perception of generalizing and not an individualization of each inmate according to law. It is a fact that many inmates should not be released, but many first-time offenders for minor crimes and offenders on the border for being subject for pre-trial detention, they could very well be released on less coercive measures. To prolong their detention for convenient reasons pending trial is unlawful.

It should be the prosecution's competence to assess and eventually take the decision of less coercive measures, with the right for the charged to appeal it to the instructional court under its duration. Subsequently the prosecution benefits from this system because there are no need to spend time for prolongations in the court in less important cases, because the alternative measure can simply be prolonged by own competence. Moreover, it should be the competence and duty of the prosecution to immediate release before the court's established time, e.g. 30 days, if there is no longer need for detention or if the detention could be replaced with a substitute.

Today there exist no public intuitions or cooperation with the police to facilitate the protocol for compulsory attendance of the suspect when reporting himself at fixed times, or to supervise a decision of ban of visit, a prohibition to stay at certain places, house arrest, electronic monitoring etc. However, as a starting point NORLAM recommends establishing a protocol system in the existing Probation Service for compulsory attendance at fixed times proving not to be under influence of alcohol/drugs, etc. Hence, the operating costs would be low.

It is crucial that the released on less coercive measures are fulfilling their obligations. A violation will give the prosecution arguments to impose pre-trial detention, which is justified and likely to happen. To further encourage the released to take responsibility for his duties, he must be compensated the time spent under such alternative regime. We suggest that the full time under compulsory attendance and house arrest will be withdrawn day by day from the sentence he will serve later on in case of conviction.

### III.1.3 Potential impact

According to our estimation, the potential reduction of the number of inmates in pre-trial detention is 30 % if the law is applied correctly and if alternatives are implemented as a regular practice in line with the established approach applied in many progressive systems.

## III.2 Increase the use of non-custodial sanctions

*The Council of Europe uses the terms "Community sanctions and measures" for any punishment or sanctioning measure enforced outside of prison. One of the preconditions for*

*effective delivery of criminal justice is that correctional systems effectively reduce offenders' criminal behaviour.*

### III.2.1 Concept proposal

- For offences defined as light and less serious, alternative sanctions should always be considered. The written sentence must include reasoning why non-custodial sanction is not sufficient.
- For offenders under the age of 18, alternative sanctions should be the main rule. Use of imprisonment should be applied only as a last resort in exceptional cases. If prison is applied; justification must be explained in the judge's reasoning why non-custodial sanctions are not applicable.
- Legislation on non-custodial sanctions should be more flexible and adaptable to criminogenic factors. Court must of course, decide the sentence. Probation may decide whether crime preventive measures, such as consultations, behavioural programs or treatment, should be applied as a part of the sentence.
- Revisions of the punishment with unpaid work for the benefit of the community by introducing a "community punishment", so that in addition to the hours of unpaid work there might be included hours of program, treatment, counselling, assistance and other crime preventive activities meant to change the criminal behaviour.

### III.2.2 Preconditions for increasing the number of non – custodial sanctions

#### III.2.2.1 According to existing legislation

Currently Moldovan Criminal Code provides for six main criminal punishments (fine, deprivation of the right to hold certain positions, withdrawal of the special or qualification ranks, community service, prison and life-imprisonment) and a wide range of measures applied as an "exemption from criminal punishment". This term gives the wrong impression that when court decides to use non-custodial sanctions, they are in fact exempting him from penal reaction (e.r. punishment).

To justify an increased use of non-custodial sanctions, the term "exemption from punishment" in the Criminal code must be replaced with "Exemption from prison punishment". In that way, non-custodial punishment can be perceived as a viable alternative to prison.

#### III.2.2.2 The need for amendments in the legislation

- The current legal framework does not provide for a sufficient individualization of the enforcement of non-custodial penal punishments and sanctions. The penal reaction is most often not targeted at tackling the cause of the criminal behavior.
- The rigidity of the legislation does not allow probation officers to set and adjust intervention measures depending on the identified criminogenic factors. Recent legal amendments allow the judge to apply unpaid work for the community as an obligation under the conditionally suspended (imprisonment) punishment. We suggest that probation should set (or propose) the obligations and conditions set in art. 90, paragraph (6).

### III.2.2.3 Implementation issues

- An increase in workload on Probation must be accompanied by increased funding. In the past five years, the number of recorded crimes went up by 45%, which increased the total number of persons convicted by 22%. Given that, in general, approx. 75% of recorded offenses are minor or less serious; these trends have already led to an increase in the number of probation clients by nearly 50 % last four years. The number of sentences to unpaid work increased by 40% and those convicted to conditional imprisonment – by 32%. During 2014, as many as 16 289 individuals were on probation, of which 8 651 in records at the beginning of the year. The number of probation counsellors is approximately the same while the workload has risen considerably. Such high case-load hampers the individualization in the execution of sentences and jeopardizes the social reintegration of convicts.

- To avoid an extreme increase in case-load for the Probation service, the length of the execution of non-custodial sentences should be reduced.

### III.2.3 Potential impact

- Estimated impact of this suggestion must, of course, be related to what level of ambition the government decides. A mere increase of 300 sentences yearly, with an average of three year-sentences will reduce the prison population by 900 persons. The cumulative effect would be greater if this rule is applied. .

## **III.3 Release on parole**

### III.3.1 Concept proposal

We suggest that Moldova implement new rules for conditional releases which include release on parole as a general rule, if no evident facts state the opposite. Criteria for refusal of release should be limited. Refusal of release should be reasoned in concrete events, which clearly shows that release at this stage is not advisable. Decision should be made by a parole board where person with a judge's competence, prison governor, probation service are represented. Case should be prepared and presented by social worker in the prison. Mandatory condition for release is of course no new crimes and supervision by probation service. In addition to that, a set of quality criteria for the supervision by Probation service should be implemented.

### III.3.2 Preconditions for release on parole

#### III.3.2.1 According to existing legislation

Decisions on early release in Moldova are currently made by court. In some countries decisions on early release are made by the prison governor in cooperation with probation. To avoid biased decisions and speculations of corruption, many countries have introduced a parole board consisting of governor, judge, probation, social-worker etc. Currently, the court sets certain conditions as listed in art. 90, paragraph (6), such as mandatory counselling, follow up by probation, probation (behavioural) programs and movement restrictions. .

### III.3.2.2 The need for amendments in the legislation

For an effective management of early release cases, we suggest this solution to be introduced in the Moldovan legislation. There will be a need to change the legislation in order to delegate this decision to the parole board. Also, a normative framework to regulate the competence, composition and the functioning of this board must be done. Additional regulations for the use of conditions are needed. Probation must be delegated competence to decide on type of supervision. Criteria for early release must be very clear.

### III.3.2.3 Implementation issues

The suggested reform does, of course, primarily target overcrowding. Similar reforms have been done in other European countries and have also targeted many core problems brought to light in the ECtHR jurisprudence.

- Prospect of early release will facilitate a closer cooperation with the offender to prepare the release. This will reduce criminal elements power over prison environment.
- Direct contact with prisoners will improve the dialogue and dynamic security.
- Early release will improve work environment in prisons.
- Early release will give us legal opportunity to put restrictions on the offender, after release.
- Different countries have of course, different criteria for exemption from release. High risk reoffenders are not released and many countries see this in relation to organized crime. Gang members or gang related crimes are not released. If good behaviour while serving the sentence is a criteria one should focus mainly on the last part of sentence. Good cooperation on preparation for release may be a criterion, as well as the fact that there are no pending cases against the prisoner in the justice system.
- Currently in Moldova, prisoners who work while serving their sentences could hypothetically get a substantial reduction in the sentence (3 worked days equals 4 days of imprisonment). However, given that only 10% of the prisoners are actually working, the impact of this solution is modest.
- Currently, there are many such requests pending in court. Issuing a decision currently takes a long time and most of the cases are turned down.

### III.3.3 Potential impact

Even though the Criminal Code of the Republic of Moldova provides for the possibility of release on parole after serving 1/2, 2/3 or 3/4 depending on the crime committed, in practice, very few are actually released. Therefore, release on parole will have an impact only provided that criteria for accepting the conditional release are simplified and only if this decision power is given to an interdisciplinary board for release on parole.

## III.4 Reform of the sentencing system

### III.4.1. Amendments to the Criminal Code

The sentencing level in Moldova is still out of line compared with most European countries. The imposed imprisonment time surpassing the average European level with more than 5 times (figures from 2013). The sentencing reform in 2008 reduced the maximum sentences



in the legislation, the minimum sentences were reduced or removed, the culpability levels simplified and aggravating and mitigating circumstances harmonized. The re-examine of criminal cases in relation to the amendments of the Criminal Code led to a reduction in punishment or to a change of imprisonment to a milder punishment in 37% of the re-examined cases. However, it seems obvious that the impact on the sentencing level has not reached desirable goals and the current situation registered minor changes in the number of inmates and the application of pre-trial detention remains excessive. This may indicate that the leeway judges are trusted in meeting out the sentencing not focusing mitigating circumstances sufficiently and not applying non-custodial sentencing in all the eligible cases. This again depends on the defence attorneys' and prosecutors' knowledge and skills to individualize the mitigating circumstances and request other solutions than imprisonment.

To initiate a full revision of the penal code, subsequently actualizing the retroactive effect principle, should be the signs given by the Working Group if suggested improved general principles in the Criminal Code not found emphasized by the courts according to the explicit purposes of diminishing the sentencing level and invoking alternatives [of course provided such articles being suggested/introduced]

III.4.2 Give indicators of the new sentencing levels of types of crime in the explanatory attachment to the law passing through Parliament, and which are made public

All amendments in the law should be understood, interpreted and applied according to the objectivities of the amendments. In the criminal field the punishable deed described in a section must cover an almost endless diversity of factual offences committed if it's broken down to the lowest detailed level. Moreover, no perpetrator has the exact same personal references. For this reason the leeway for the judges' meeting out the concrete sentencing must be respected. However, with the explicit reservation that sentencing should not be standardized and un-individualized there are good reasons to give examples of typified cases that should be solved with a certain sentencing level, and typified cases for non-custodial sentencing, in the explanatory work enclosed to the suggested law that passes parliament. If the explanatory work is made public, the chances will increase substantially to have the law invoked and applied with a much greater concern by the defence attorneys, prosecutors and judges, securing a more uniform sentencing practice, especially when adapted by the Supreme Court's practice in a line of cases. Furthermore, The Supreme Court may include obiter dicta statements in addition to their *ratio decidendi* in concrete cases to uniform the practice even more. This method with typified cases from the lawmaker is in the recent years been used to a great extent in Norway, but at the same time it is stressed that it is only a starting point for the concrete sentencing in each case.

### III.5 Humanization of the execution of the sentences

Provided an incipient reduction of inmates as a result of the above-mentioned solutions, the budget for the prison system should be kept at the same level, in order to allow the prison authorities to improve the food quality, prison infrastructure and the re-socialization programs.

However, a reduced prison population is not a guarantee for improved detention conditions and treatment of inmates, therefore measures to reform the system and increase the efficiency should be considered equally important.

The subculture and the existing hierarchy between the inmates is not sufficiently prevented by the prison governors and DIP, which means that inmates in a weak position suffer from exploitation and ill-treatment from other inmates. This may cause alleged violation of ECHR Art. 3 caused by lack of sufficient protection measures.

Therefore, improving the prison conditions (physical facilities) should be done in parallel with a change of attitudes for a more humane treatment of prisoners. The following solutions we recommend being implemented:

- Ensuring an individualized enforcement of the punishment by reforming current regimes into progressive security levels;
- Decentralization of decision process and delegation of authority so that general decision concerning large groups of inmates are taken at the central (MoJ, DIP) level, and all decision concerning individuals (staff or prisoner) are taken at the prison level;
- Demilitarization by making the prison staff civil servants and keeping or increasing the wages of the staff.
- Re-organizing the prison staff – to have more employees working directly with prisoners;
- Reforming the prison workshops and the prison enterprises in order to link the vocational education with practice and work. One solution could be to have the state enterprises managed by the prison governor; Eradicating the criminal sub-culture in prisons;
- Increased interaction with the society outside the prison, by adopting the so called import model of service. For example, teachers, doctors, library should be hired by the public institutions outside. More access should be given to theatre troops, musicians, journalists, painters, artists, etc;
- Extending the length of re-socialization regime from 6 months to 1 year and creating the possibilities for serving this last period in open prisons. This would facilitate the gradual adaptation to freedom and reintegration into society.

#### **IV. Final remarks**

There is a demand for new thinking, change in tradition, and all professions in the justice system must contribute to achieve the objectives of humanization and to cease further Art 3 convictions in ECtHR.

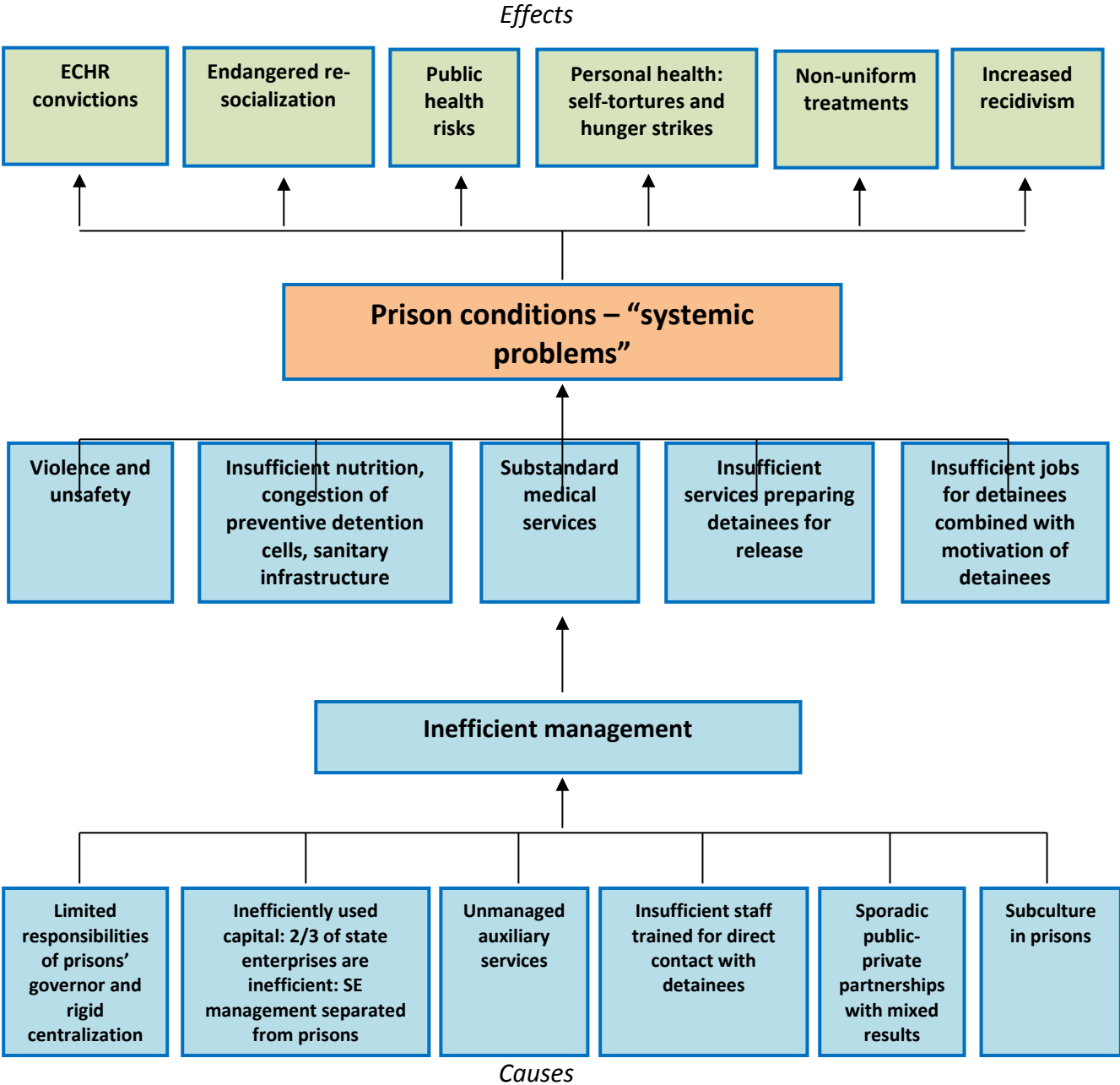
From our point of view convictions in the ECHR are just consequence of the numerous problems in the prison system. Reducing the prison population should be done in parallel with a humanization of the penal policy and humanization of the punishment enforcement.

Knowing that the Department of Penitentiary Institution’s is working now on a Strategy for Prison system reform, it is important that solutions to improve the prison conditions in and solutions to improve the treatment or prisoners and increase the efficiency of prison management are incorporated.

V. Annexes:

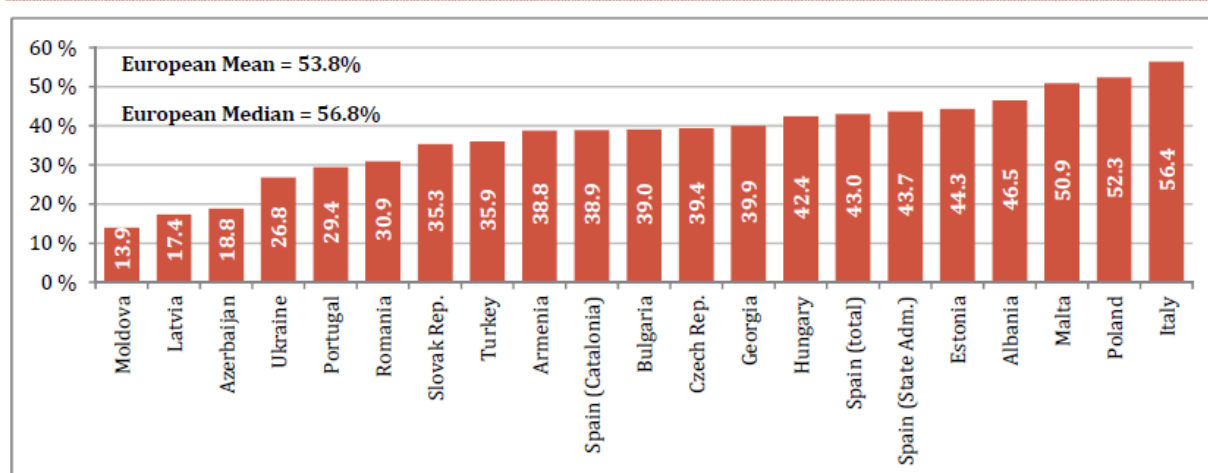
1. Problem tree

Public Policy Proposal: Prison Management for the Benefit of the Rights of Detainees (2011), pg 35



## 2. Council of Europe, Annual Penal Statistics, SPACE I – 2013, pg. 133

FIGURE 4: COUNTRIES WITH LOWEST TURNOVER RATIOS IN 2012



In 2012, Moldova recorded the slowest turnover in Europe. The Turnover ratio is defined as the ratio between the number of prisoners released during a year and the number of prisoners held in prisons during that whole year. The latter can be estimated by adding the “stock” of inmates at the beginning of the year and the total flow of entries. The calculation formula can be found in the same report at page 19.

A high rate implies a fast turnover, while a low rate – a slow turnover.

## 3. Number of final sentenced prisoners released during one year, statistics of DIP

	2008	%	2009	%	2010	%	2011	%	2012	%	2013	%	2014	%
Released prisoners:	2702	100	2053	100	1792	100	1404	100	1428	100	1483	100	1549	100
after executing full term	773	29	801	39	707	39	596	42	601	42	692	47	709	46
with privileged calculation of the working days	286	11	348	17	332	19	368	26	326	23	316	21	277	18
released on parole	1147	42	755	37	541	30	382	27	389	27	290	20	271	17
pardoning			10	0	15	1	12	1	6	0	4	0	0	0
amnesty			38	2	14	1	6	0	6	0	2	0	2	0
health reasons (illness)			3	0	1	0	0	0	6	0	7	0	5	0
milder punishment for the non-enforced part of sentence	76	3	44	2	39	2	25	2	29	2	25	2	19	1
fine for the non-enforced part of sentence	22	1	15	1	17	1	11	1	6	0	14	1	10	1
other			39	2	126	7	4		4	0	144	10	176	11