

**STUDY ON
“INDIVIDUALIZATION OF EXECUTION OF
CRIMINAL PUNISHMENTS DEPRIVING OF
LIBERTY: REALITIES AND PERSPECTIVES”**

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Introduction

The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

(United Nations, Standard Minimum Rules for the Treatment of Prisoners, Rule 58)

This study is dedicated to complex and topical issues in the context of reforming the penitentiary system in the Republic of Moldova – individualization of execution of imprisonment punishments. The development of this study is a separate action in the **Strategy for the Justice Sector Reform for 2011-2016**. It derives from the need to continue the reforms initiated in the penitentiary system, in particular, in the area of improving the legal framework by adjusting it to the new requirements set forth in the international recommendations and international acts to which the Republic of Moldova is a party, as well as from the objectives of the national penitentiary system reform listed in the Concept for the Penitentiary System Reform for 2004-2020.

This material includes specifications related to the analysis of the legislative and normative frameworks in the area of individualization of execution of punishments in our country, as well as the framework provided by the international standards in the area, best-practice models for assessment of persons deprived of liberty aimed at changing the detention regime, individualizing the punishment execution along with progressive approaches of punishment execution and further recommendations on individualization of punishment execution. In addition, the study presents the manner in which the prison staff from the national penitentiary system perceives the mechanism of individualizing the punishment execution, its advantages and disadvantages, the difficulty to conduct activities and a number of risks associated with the persons deprived of liberty in the context of different types of detention regimes, etc. By analyzing some successful models in certain European states we also tried to identify in the study perceptions related to the manner in which more permissive detention regimes are associated with the reduction of risks for the prison and the community.

The development of this study was also imposed by the need to adjust the practices and procedures in the penitentiary system and, especially, by the imperative request to provide a proper response to increased community expectations from the institutions ensuring the enforcement of punishments depriving of liberty. We express our confidence that the conclusions and recommendations contained herein will serve as a platform for eventual legislative amendments and changes of practices related to the execution of punishments and social reintegration of convicts.

Chapter 1

Conceptual delimitations regarding the individualization of criminal punishments and individualization of execution of punishments depriving of liberty

Individualization of punishment execution in the penitentiary system of the Republic of Moldova is more than a simple principle of criminal punishment execution; for the post-Soviet territory it is a relatively new and progressive approach with a purely democratic imprint in the spirit of respect for the human rights and fundamental freedoms, which evolved in a reform aimed at changing the repressive penitentiary system inherited from the Soviet period into a progressive one based on principles of social reinsertion and a pro-social behavior approach to prisoners.

The principle of individualization of punishment execution and its application are described in the criminal and enforcement-criminal legislative acts adopted after ratification by the Republic of Moldova of the “European Convention for the Protection of Human Rights and Fundamental Freedoms” and approval of the “Concept for the Penitentiary System Reform for 2004-2020”, where it appears as one of the main objectives¹. Thus, it was integrated in a new model of the penitentiary system with new types of prisons, detention regimes, and forms of treatment of prisoners (Enforcement Code of the RM of 2005).

Following 10 years of activity in compliance with the new enforcement-criminal norms (entry into force of the Enforcement Code of the RM, March, 2005), the individualization of punishment execution remains up till now a not definitely solved dilemma along with partial practical application and clear highlight of certain systems and legislative drawbacks.

At the same time, the amendments implemented during the last years and certain initiatives implemented in order to apply the principles of individualization of punishment

¹ “Ensuring an individual differentiated treatment considering the degree of danger the convicts pose to the society and the pedagogical scrum. Ensuring the priority of social and human values in all spheres of education activity conducted with the convicts, developing the skills of the penitentiary system staff for individual and differentiated work with the convicts depending on the degree of danger they pose to the society and ensuring a benevolent attitude to the convicts based on the principles of equity, humanity and partnership.”

execution lead to the following questions: Is the notion of individualization of punishment execution correctly defined and interpreted? Are the roles of the personnel in the correction process clear? Is the individual differentiated treatment ensured? And most importantly – are the correction goals clearly defined? We set ourselves to reply in this study to these and other questions, while the responses will bring clarity about the “individualized treatment” and the integral application of this principle in the Moldovan penitentiary system.

Prior to starting a comprehensive analysis of the interest subject of this study it is necessary to clarify certain conceptual delimitations related to the notions of **individualization of criminal punishments** and **individualization of execution of punishments depriving of liberty**.

Thus, individualization is an action by which a punishment, an expression of an anti-crime reaction, is adjusted to the abstract and concrete seriousness of the crime and the personality and the conduct of the perpetrator, so that the punishment performs, as efficiently as possible, the functions and goals set forth in the law.

Characterization:

- Chapter VIII of the Criminal Code, General Part called “Individualization of punishments” (art. 75-78) is dedicated to the institution of individualization of punishments,
- individualization of punishments is mandatory in all cases because the law-maker shows us in the text of the law the general limits of the punishments, while the court must adjust these limits to specific cases filed with it.

Forms and manner of individualization:

- individualization of punishments, a complex activity, conducted in different phases by different bodies based on specific criteria,
- there is a distinction in criminal doctrine between the individualization in the phase of developing laws and establishing punishments, in the phase of application of punishments and the individualization in the phase of their execution – depending on these phases, the following three forms of individualization are known:

* legal individualization – performed by the law-maker in the phase of developing the law; it is materialized in:

- establishing the general framework of punishments, the nature and general limits of each punishment in compliance with the principles of setting criminal sanctions,
- setting a punishment for each crime,
- setting the framework and legal means in which the other forms of individualization will be performed by forecasting the effects of the mitigating or aggravating conditions and circumstances on the special limits of the punishment,
- * judicial individualization – performed by the court and materialized through the application of a specific punishment to the perpetrator for the committed crime, and
- * administrative individualization – performed by the administrative bodies in the phase of punishment execution.

A special role in judicial individualization is played by the previous conditions, situations or circumstances concurrent or subsequent to the commission of a crime, which indicate a higher or lower degree of social risk of the act or of the dangerousness of the criminal.

Although the issuance of a conviction sentence is a culmination moment in a criminal proceeding, it shall be mentioned, without undermining the importance or prejudicing in whatsoever manner the act issued by a court, that the existence of a judgment in itself does not constitute the completion of the act of justice.

The reaction of the state and, through it, of the entire society towards the socially dangerous act must be materialized through the effective execution by the convict of a punishment equal to the committed act, which, as it results from the provisions of art. 61 of the Criminal Code of the Republic of Moldova must serve as a tool for correction and reeducation of a convict. Furthermore, the achievement of the corresponding goals represents the efficiency of criminal justice, as the isolation of a person only is not a guarantee of the change of the criminal behavior and of non-commission in future of certain acts incriminated by the criminal law. It is now when the balance occurs between the punitive and permissive measures to be applied in detention in order to model a socially useful behavior of an individual, while the determination of the margin of these measures must be assessed and applied by an authority that ensures the direct supervision over his/her conduct – the institution of detention.

From this perspective, both the criminal and enforcement and criminal legislation use two apparently similar and interdependent notions, while in some cases, the way it is set forth in the

legislation of the Republic of Moldova, they are attributed exclusively to the judicial authority. Thus, distinction must be made between “individualization of criminal punishments” and “individualization of execution of punishments”. In the course of examining these concepts, the goals, constitutive elements and peculiarities of the respective activities along with the rationale and the effect of these activities conducted by the specialized subjects (courts and criminal punishment enforcement authorities) shall be analyzed.

Thus, individualization of the criminal punishment according to art. 75 of the Criminal Code of the Republic of Moldova is defined as application by a court of an equitable punishment within the limits set by the Special Part of the Criminal Code, by determining the category and the term of punishment, taking into consideration the seriousness of the crime committed, its motive, the personality of the guilty person, the circumstances of the case that mitigate or aggravate liability, the impact of the punishment on the rehabilitation and reeducation of the guilty person, as well as the living conditions of his/her family. At the same time, art. 385 of the Criminal Procedure Code of the Republic of Moldova practically determines the issues which a court has to examine before issuing a sentence and setting a punishment (after determining if the act the defendant is accused of was committed, if this act was committed by the defendant, if the act has the elements of a crime and which criminal law applies to it, if the defendant is guilty of the commission of this crime), the most important referring to the following statements: if the defendant must be punished for the crime he/she committed; if there are any circumstances mitigating or aggravating the liability of the defendant; which punishment is to be set for the defendant (considering also the recommendation of the resocialization service, if such an inquiry took place); if the punishment set for the defendant must or must not be executed by the defendant; the type of penitentiary where a punishment of imprisonment is to be served; if material damages must be recovered; if medical treatment for alcoholism or drug addiction must be forced on a defendant found guilty of the commission of a crime; etc. In the context of this study we will refer, in particular, to the aspects related to individualization of execution of punishments depriving of liberty within the penitentiary institution.

Chapter 2

Peculiarities of regulation of the area of individualization of execution of punishments depriving of liberty in the Republic of Moldova

According to the provisions of the Constitution of the Republic of Moldova and the criminal legislation a court is the only authority with the competence to decide on the guilt or innocence of a person after thoroughly examining all the circumstances of the cases along with examining the evidence and hearing the persons involved. Due to rational reasons most decisions related to determining the guilt are referred to the **court**, as no other body, at that stage, has more extensive knowledge about the person and the act committed by him/her. However, from the perspective of the criminal justice efficiency, the competence of the court to establish by a sentence the type of prison where the person will serve the punishment is subject to criticism, because this is an activity exclusively related to the individualization of the execution of punishments as it refers to creating, maintaining and monitoring the interest of a prisoner to changing his/her behavior and taking part in resocialization activities, which are the competence of the criminal punishments enforcement authorities.

First of all, it shall be mentioned that determining the type of the punishment execution institution by a court judgement is a peculiarity characterizing legal systems of post-soviet countries. In the international practice the role of a court is determined by setting the type of punishment and the eventual decisions on conditional pre-term exemption from serving the punishment, while the distribution of prisoners is a duty of the authority ensuring the enforcement of the criminal punishment – the institution of detention.

In this regard, the national regulations related to establishing the type of prison by a court judgment, as well as the subsequent procedures distributing prisoners practically do not comply with the European standards in the area of distribution of prisoners due to the fact that they are dated prior to approval of the Recommendation Rec (2006)2 of the Committee of Ministers of the states members of the Council of Europe on the European Prison Rules. Thus, point 104, para. (2) of the Rules establishes that there shall be “procedures for establishing and regularly reviewing individual sentence plans for prisoners after the consideration of appropriate reports,

full consultations among the relevant staff and with the prisoners concerned who shall be involved as far as is practicable”, in order to distribute various categories of prisoners in different prisons or separate parts of the same prison and in order to facilitate the management of different detention regimes.

The evolution of organization of prisons and operations of detention institutions in the European states did not imply creation of detention institutions specific to a single type of prison only. Thus, the detention institutions have areas corresponding to different types of prisons, which, de facto, represent the detention regimes (high security, closed, semi-open, open regimes) avoiding, thus, the rigidity artificially created by the provisions of the criminal and enforcement legislation of the Republic of Moldova.

The situation on the national level is partially different from the general European practice. Thus, according to art. 72 of the Criminal Code of the Republic of Moldova, the punishment of imprisonment shall be executed in the following prisons: open, semi-closed, closed, for juveniles (where the conditions of detention are equivalent to the semi-closed type of prison considering the provisions of art. 253 of the Enforcement Code) and for women, where, according to art. 255 of the Enforcement Code, the detention regime is equivalent to the regime established for prisons of open, semi-closed or closed types, depending on the category of prison ordered by court sentence.

The rigidity of the created system is highlighted by express provision in the law of the categories of prisoners and the types of prisons they are to serve their punishments, not allowing behavior stimulation or sanctioning of the prisoners through their evolution from one type of prison to another. To this end, art. 72 of the Criminal Code establishes that:

- persons convicted of crimes committed by imprudence shall serve the punishment of imprisonment in **open penitentiaries**.
- persons convicted of minor, less serious and serious crimes committed with intent shall serve the punishment of imprisonment in **semi-closed penitentiaries**.
- persons convicted of extremely serious and exceptionally serious crimes as well as persons who committed crimes deemed as recidivism shall serve the punishment of imprisonment in **closed penitentiaries**.

Considering these conditions it may be practically concluded that the provision related to establishing the type of prison by a sentence may not even have the effect of the individualization of punishment, such as the personality of the convict, the circumstances of commission of the act, the material situation, etc., as by establishing the seriousness of the act (which in fact refers to the maximum limits of the sanction set forth in the law) and the type of guilt, the convict may be automatically referred to execute his/her punishment without any need to make the corresponding statement in the sentence.

The major problem caused by the rigidity of the system of execution of punishments is the impossibility to change the type of prison not even by the court, although there is a provision in para. 7, art. 72 of the Criminal Code as per which any change in the category of penitentiary shall be made by a court in line with the legislation. In practice, this provision may be applied only if a convicted person is convicted in the course of executing the punishment for another more serious act for the commission of which the legislation provides for a punishment in a prison of a more severe category (type). Otherwise, if a convict already executes a punishment in a prison of a certain category and a new sentence setting a milder type of prison is issued, it may not cancel the already existing sentence.

The rigidity of the system created by the imperative provisions of the criminal legislation causes not only a problem for the efficiency of criminal justice, but also, in corroboration with the mandatory nature of creation in each type of prison of three types of detention regimes, in line with the provisions of article 251-254 of the Enforcement Code, a practical problem in terms of creation of the conditions set by the law and observance by the detention institutions of the prison type and regime where a person is to serve his/her punishment. The corresponding regulations, although criticized many times, inclusively in the recommendations of the 2009-2010 Twinning Project in the penitentiary system “Support to Moldova in Prisons System Upgrading and Penal Reform”, remained unchanged up till now, although their strict observance may lead to absurd if in the only prison for women in the Republic of Moldova 12 separate detention regimes are to be created corresponding to each type of prison and detention regime (initial, common and resocialization for each type).

The corresponding issue was analyzed in terms of the initially admitted confusion, when the international experience was taken over and customized to the existing system. The courts

established the type of prison a person was to serve his/her punishment in without considering that the international practice does not make any difference between the type of prison and detention regime. Thus, a court establishing the type of criminal punishment (deprivation of liberty) does not have the competence to set the regime under which a prisoner shall be isolated and re-socialized. Non-involvement of a court in establishing the prison regime does not have to be interpreted as a duty of the punishment enforcement authorities, as the procedures and criteria for establishing and changing the prison regime must be regulated by the legislation. Specialized commissions or specialized subdivisions of the enforcement authority must distribute and accommodate the prisoners and their decision is based on studying the conviction sentence, the committed act, the behavior prior and during detention and the personality of the prisoner. The corresponding commissions must periodically assess the behavior of the prisoner in the course of serving the punishment and may decide to soften (replace by a more favorable regime) or toughen the regime of punishment execution.

Another characteristic feature of rigidity of the national system of enforcement of imprisonment punishment is the provisions of the Enforcement Code related to placement in different detention regimes and transfer from one regime to another during the execution of punishment. In this regard, considering the provisions of articles 249-251 of the Enforcement Code, the only criterion to soften the detention regime is the execution of a punishment during a certain timeframe under a more severe regime, provided that upon its expiry no disciplinary sanctions set by the law are applied.

It shall be mentioned here that the amendments introduced to the Enforcement Code by the Law No. 82 of 29.05.2014 created the possibility to disciplinary influence the behavior of prisoners by applying the sanction of transfer to a more restrictive regime. However, this measure is not sufficient for the purpose of individualization of execution of punishments because toughening the regime must not be exclusively applied as a disciplinary measure. It must be a customary tool in cases when the prisoners do not take part in the set resocialization program.

Having a picture of the national mechanism of determining the regime of execution of the punishment we consider that mostly the provisions set forth in art. 167 of the Enforcement Code related to one of the fundamental principles of the enforcement-criminal legislation, in particular,

the principle related to individualization and planning of execution of criminal punishments, are of a more declarative and not functional nature, as no pertinent mechanisms for its implementation had been created.

Thus, the only provisions in the Enforcement Code set forth in articles 219 and 242 practically mention that: “the education process shall be conducted in a differentiated manner and an individualized plan of education intervention shall be prepared” and refer to the Charter of Execution of Punishments by Convicts in the absence of legal mechanisms with a behavior influence over the prisoners. The fact that the determination of the execution regime is one of the most efficient tools of behavioral stimulation is being totally neglected.

The Charter of Execution of Punishments by Convicts approved by the Government Decision No. 583 of May 26, 2006 also does not determine the prisoners’ behavior influence tools. It only refers to the fact that the plan of execution of a punishment depriving of liberty, including the coordinated interventions of the prison administration in order to reeducate and correct the convict, is prepared at the stage the prisoners are in isolation when arriving to prison. According to the same provision, a plan is prepared for each prisoner separately and is attached to the criminal casefile of the prisoner and each employee of the penitentiary institution works with the prisoner based on that plan. When developing the plan of punishment execution the data in the pre-sentence report on psycho-social assessment of a prisoner’s personality are also taken into consideration, provided that it was prepared prior to the conviction of the person.

The main goals of the penitentiary system, irrespective of the host country, remain: the security of the society and resocialization of persons deprived of liberty. In this context, the reduction of the risk of recidivism is a need and a stable assessment indicator. Considering the aforementioned, we may confidently state that the penitentiary system contributes or at least must contribute to reduction of criminality, recidivism and subsequent social reintegration of a convicted person. We must be aware that it is not only the penitentiary system that influences criminality. The social environment, demographic trends, family relations and general living conditions also play an important role, while the reduction of the level of criminality is a joint work. In other words, a person in custody arrives with his/her own set of knowledge, beliefs, attitudes, moral and social norms, and correction of his/her behavior without knowing the individual peculiarities is practically impossible.

If to slightly simplify this statement, the function of the penitentiary system is to ensure the enforcement of the punishment implying both exercising the required control over its application and motivating the prisoners to live without crimes by providing assistance in their personal, social, professional and educational development. Both **the punishment control** and **the motivation of prisoners** are equally important and, moreover, they became complementary.

Individualization of punishment execution is a principle on which both functions are based: it determines that manner of conducting control over the application of punishment and of ensuring the reduction of recidivism. The work in prison is based on respecting the individuality of a person and his/her rights. The principle of individualization of criminal punishments implies that during the convict's treatment² the personnel must apply methods appropriate to his/her psycho-social and physiological characteristics.

Individualized approach is a need both in case of resocialization of prisoners and of ensuring the security of the prison. Security implies accommodation of a prisoner so that he/she is protected from others and vice versa, resocialization and reduction of the risk of recidivism implies specific interventions depending on the needs and reasons for criminal behavior, while the individualized approach amplifies them.

We will try to further analyze if the principle of individualization is applied in case of security measures and in the course of correction of convicts in the penitentiary system of the Republic of Moldova.

1. Security

Security is the primary responsibility of the personnel of any penitentiary institution and, from a more general perspective, of all the persons involved in the penitentiary universe – ranging from architects to the ones deciding on the regulations governing the daily life of the persons inside the prison walls. Security in prisons means prevention of violent incidents, escapes and maintenance of a relaxed human environment among the prisoners and the staff

² "Treatment" – implies measures required to maintain or recover the physical and mental health of prisoners so that the entire cycle of activities aimed at encouraging and promoting social reinsertion provides the prisoners with the means to have a responsible life in a community and to escape from delinquency.

preventing aggressive and self-aggressive acts. It is not a joke when they say that the most secure prison is the one which the prisoners do not want to leave.³

The measures of security and their efficiency are determined by the conditions in which a convict lives, the forms of supervision and regime. These measures in prisons must be supported by a correct and fair disciplinary system. A good behavior and cooperation may be encouraged by a system of rewards appropriate for different categories of prisoners.⁴

Security measures applied to prisoners should be reduced to the minimum necessary to ensure the security of detention.⁵ It is acknowledged that the observance of these principles leads to:

- The prison staff more efficiently supervising a lower number of prisoners who pose a real danger to the others.
- The prison environment becoming more human and facilitating the observance of human rights.
- Financial resources not being spent to ensure conditions of maximum security for a large number of prisoners⁶.

It is acknowledged that the security of detention depends on a positive environment encouraging the cooperation of prisoners. The security of detention is ensured mostly by developing positive relations between the personnel and the prisoners. The positive relations with the prisoners, the use of the prisoners' energy for labor and constructive activity and a decent and balanced detention regime with individualized programs are part of a dynamic security concept.⁷

In order to complete in good conditions the challenge of encouraging the development of social and personal skills facilitating reintegration of persons deprived of liberty the following is required:

³George Florian "Prison Dynamics", page 84

⁴United Nations Office on Drugs and Crime, Custodial and Non-custodial Measures, The Prison System, Toolkit, New York, 2006

⁵European Prison Rules, Rule 51

⁶United Nations Office on Drugs and Crime, Custodial and Non-custodial Measures, The Prison System, Toolkit, New York, 2006

⁷United Nations Office on Drugs and Crime, Custodial and Non-custodial Measures, The Prison System, Toolkit, New York, 2006

- **Individualization of treatment depending on such factors as: criminogenic needs of the convict**, the risk he/she poses to detention and the community, his/her personal and social resources for social reintegration.
- **Individualization of the detention regime is essential to efficiently meet the requirements for reintegration** specific to every person deprived of liberty⁸.
- **A flexible system of classification of prisoners by categories**, a classification which will consider the risks and the personal needs and resources of the convicts.
- **Proper classification of prisoners based on risks assessment** is one of the most important steps the management of a penitentiary institution must undertake to guarantee the security of detention.

Classification of prisoners is aimed at:

- **Separating the prisoners** from other prisoners who due to their criminal activity or criminal behavior may negatively influence them;
- **Facilitating the treatment** of prisoners for their social reintegration.

Thus, we may conclude that in order to ensure security in the prison environment it is necessary to differentiate between the convicts, to create a classification or categorization in which the prisoners would avail of a regime depending on their personality and their criminal records. It is very important to consider this fair proportionality because even the financial costs in case of regimes with an increased security level will be exaggerated and the human development in such conditions is less efficient due to weak relational connections (less visits by relatives, representatives of the community). This may be easily observed in areas for persons convicted to life imprisonment. They are more limited by the legal provisions than other categories in the right to access certain places, to move, to spend time outside the cell, in contacts, etc.).

Differentiation of convicts implies serving punishments in different detention regimes with different degrees of toughness of conditions of detention in the penitentiary institution. It allows the administration of the penitentiary institution to timely and objectively react to the behavior of the prisoners ensuring the institutional calmness by transferring them from one type of detention conditions to other types of conditions. The perspective to be transferred to milder

⁸ United Nations, Standard Minimum Rules for the Treatment of Prisoners, Rule 63

detention conditions is a stimulating factor for the correction of convicts. This is the way the principles of “individualization and planning of execution of criminal punishments, rational application of the convicts’ correction means” of the criminal and the enforcement legislation of the Republic of Moldova are implemented.

The new provisions introduced in the Enforcement Code and the Law on the Penitentiary System establish that the exclusive duty of the penitentiary system is the enforcement of the punishments depriving of liberty, the preventive arrest measure and the contravention arrest. According to the provisions of art. 72 of the Criminal Code, art. 173-175 of the Enforcement Code and art. 6 (7) of the Law on the Penitentiary System, the corresponding duties shall be executed by the following types of penitentiary institutions:

- a) open prisons;
- b) semi-closed prisons;
- c) closed prisons;
- d) prisons for juveniles;
- e) prisons for women with an area where juvenile girls serve their sentences;
- f) pre-trial detention centers;
- g) arrest houses;
- h) prison hospitals.

As mentioned above, several separate detention sectors corresponding to different types of prisons may be created in a penitentiary institution by observing the peculiarities set forth in the Enforcement Code. Closed prisons are intended for dangerous criminals convicted to imprisonment for especially severe and exceptionally severe crimes, as well as persons who committed repeated crimes. From the point of view of physical security the territory of a closed prison is surrounded by an at least 4.5 m high stone or brick wall and also by a wall separating the regime area from other areas. The convicts are permanently guarded and supervised.

Like in the first case, a semi-closed prison accommodates prisoners who are permanently guarded and supervised; however, it is intended for convicts who committed minor offences, less serious and serious crimes committed with intent.

The last type of prison, open prison with a form of security opposed to the previous ones, has in its custody convicts who committed crimes by imprudence and are detained without guard an, however, under supervision.

The main criterion by which the convicts are accommodated in prisons is the differentiation set forth in the Criminal Code of the RM and the Enforcement Code of the RM. Thus, we suppose that the individualization of punishment is performed, as mentioned above, by the judge at the stage of the criminal proceeding who, in this case, must consider all the aspects of the perpetrator's personality, degree of dangerousness, risk to escape and risk of recidivism. Unfortunately, the criteria a court must observe (requirements of art. 75, para. (1) of the CC) when establishing the category and the term (size) of the punishment are the seriousness of the committed crime, the motive of the crime, the personality of the guilty person, the circumstances of the case mitigating or aggravating the liability, the influence of the applied punishment on the correction and reeducation of the guilty person, the living conditions of the family of the perpetrator.⁹ These factors are very important for a judge and answer certain questions related to the guilt of the perpetrator. However, a court does not reflect on forecasting the behavior of the convict during the execution of the punishment and after the release from detention and, practically, does not offer any perspective in this regard.

On the other hand, the forecast of the behavior in detention provides clarity when establishing the level of security (type of prison, detention regime), while the forecast of behavior after release provides knowledge of the risk factors that may influence recidivism, factors based on which one builds a correction strategy, an intervention that will change the criminal behavior and that is a necessary condition for a pro-social life.

According to the statistical data provided by the DPI, at the beginning of 2015 semi-closed prisons accommodated 1538 convicts, while closed prisons accommodated 3272 convicts. The lowest number of convicts is referred to open prisons, where there are around 68 persons detained in specialized areas within other prisons. Due to the fact that the number of convicts serving their sentence in such a prison considerably decreased during the recent years, they were reorganized in semi-closed prisons (Goian Prison, which is currently a prison for juveniles).

⁹ "Guide on Application of Punishment", Chisinau, 2014, page 12

These figures show that in 99% of cases the prisoners currently detained in prisons are in conditions of increased security implying a high number of restrictions applied to convicts. It shall be mentioned that small number of prisoners in prisons with a milder security system may be a consequence of punishments alternative to detention which have been successfully implemented during the recent years. The statement of G. Florian that “a prison will not disappear as an institution remaining for the time being a privileged means of reaction against serious crimes” remains up-to-date. Meanwhile, the humanity did not invent any forms of reaction to perpetrators who committed serious or exceptionally serious crimes other than deprivation of liberty.

No matter how weird it sounds, the “dilemma of security” applied in political science is also valid for the penitentiary system when the increase of security level has inverse proportionate consequences over the socialization of prisoners. Thus, it would be more reasonable to provide the convicts who do not pose a high risk of recidivism with the possibility to serve their sentence in less secured environments, with fewer restrictions and more possibilities for reintegration. This may be achieved when we differentiate between the conditions specific to the types of prisons and/or conditions specific to regimes in prisons.

A regime reflects the essence and the contents of the punishment because it expresses the totality of restrictions applied to convicts. At the same time, a regime determines the rules of behavior, the rights and obligations for all participants in the legal relations related to the execution of the punishment, a regime implies a set of means and levers of influencing and maintaining the internal order in the institution.

The uniformity of regime will be always dysfunctional at the level of the institution, while an efficient management implies variable levels of security from one sector/section to another in the same institution¹⁰.

Currently the regimes in the penitentiary institutions are based on the process of adjustment of convicts to the prison environment (the researches in the area of dynamics of a personality deprived of liberty describe the crisis periods: at the beginning of the term – the first 3-8 months and before release from detention – the last 3-8 months) and the needs occurring during these periods. However, it does not differentiate and individualize the execution of

¹⁰George Florian “Prison Dynamics”

punishment because studying every individual and assessing the risks and the needs may determine the type of regime without applying the terms for certain types of regimes.

There are three forms of regimes in all prisons: initial, common and resocialization regime. Following an analysis of the detention regimes set in closed and semi-closed prisons it may be established that there is no significant difference between the detention regimes in closed and semi-closed prisons, except for the following:

1) in a closed prison:

- in initial regime the prisoners are detained for up to 6 months from the date of arrival to prison and 2 persons are accommodated in each cell;

- in common regime the prisoners are distributed in isolated rooms intended for 4 persons; they may be involved in labor outside the prison provided that there is permanent guard and supervision; they may move to the living area and common facilities in the regime zone within the timeframe from awakening till bedtime.

- in resocialization regime they may be involved in labor outside the prison under permanent supervision.

2) in a semi-closed prison:

- in initial regime the prisoners are detained for up to 3 months from the date of arrival to prison and are accommodated by 4 in a cell;

- in common regime they are detained in common areas and freely move on the territory of the prison within the limits established by the administration of the prison; they may be involved in labor outside the prison under permanent supervision.

- in resocialization regime the convicts have and use goods of value and money; they may be involved in labor outside the prison without any supervision; they may avail of short-term travels.

3) in an open prison in initial regime the convicts are detained for up to 1 month; they may freely move within the timeframe from awakening till bedtime on the territory of the prison within the limits established by the prison administration, they may have and use goods of value and money. In common regime the convicts may be involved in labor outside the prison without any supervision. In resocialization regime the convicts may avail of the right to live together with their families in premises close to the prison.

Unfortunately these provisions have not been fully implemented even 10 years after they had been introduced in the legislation. Mostly due to the lack of conditions and financial resources in prisons spaces for detention in cell regime were not created. As a result, the initial regime was moved to the pre-trial detention centers, while the minimum number of prisoners per cell was not observed. They were placed in cells depending on the available space. Likewise, there are also problems with the common regime in this type of prisons, which refer to the restrictions applied to the movement of prisoners not differentiated from the ones within semi-closed prisons.

The prison regime depends on the behavior of the convicts; therefore, the conditions of punishment execution may change in the course of serving a sentence depriving of liberty from the toughest to the mildest and vice versa. This principle is also not fully implemented. In most cases, a convict who committed many disciplinary violations may be transferred to initial regime where certain restrictions are applied (for instance, he/she has no right to long-term visits). However, very seldom the transfer to a milder regime is applied as a form of stimulation; transfer to a milder regime is exhaustively described in the enforcement and criminal legislation and, as a rule, is based only on the criterion of time.

We must highlight that mostly the quality of the regime determines the success of reintegration of persons deprived of liberty. Provision of a constructive set of activities respecting human rights and offering possibilities of socialization should encourage a pro-social and independent lifestyle after release. Gaining some vocational skills, work experience and education are essential for social reintegration.¹¹

The European Committee for the Prevention of Torture (CPT) highlights the fact that persons deprived of liberty should spend at least 8 hours daily outside the cells and be involved in diversified and useful activities. This program should be applied to all persons deprived of liberty (except for the isolated ones due to disciplinary sanctions).¹²

Convicts are distributed in sectors in the penitentiary institutions. From 60 to 100 convicts are accommodated in each sector. The sectors are characterized by the fact that the convicts are detained together both during the day- and night-time: they eat together, sleep in common dormitories, and work in common workshops. Of course, such an organization of the

¹¹ United Nations, Standard Minimum Rules for the Treatment of Prisoners, Rule 60

¹² CPT, 2nd General Report on the CPT's activities covering the period 1 January -31 December 1991

regime is less expensive from the economic point of view (buildings, simpler internal facilities, guard, and supervision). From the psychological, moral and social perspectives it is easier to bear as it preserves the elements of social life, the convicts being in permanent contact with each other. However, this regime implies contacts between convicts of different types (first-time convicts and recidivists, dangerous and occasional convicts, violent convicts and the ones with peaceful behavior). Considering the aforementioned, the idea had been supported in specialized literature that detention in common regime is a “school for preparing a crime”. This regime may establish a hierarchy among convicts, relations of domination over weaker convicts, while the established relations may be preserved even after release from the penitentiary institution, they may contribute to systemic development of a criminal subculture. This form of living together makes the punishment management inefficient as compared to the efforts undertaken by the huge number of prison staff. The most serious issue is the fact that it is difficult to control security in such conditions, as prevention of crisis situations, conflicts, consumption of substances, etc. is difficult. Besides, such a situation also implies a series of risks and a higher volume of work for all the staff involved.

Categorization may be based on two aspects. From the security point of view it is necessary to know the degree of danger convicts pose, the risk to escape, and from the point of view of their resocialization we are interested in the risk of their commission of repeated crimes and in the set treatment measures. If we would try to categorize and distribute the prisoners based on these criteria, the deriving categories would be mostly the following:

- persons who may be involved in labor outside the prison (I), who have a prosocial behavior, are aware of the committed acts and are able to live in a supervised freedom (minimum risk to escape);

- persons who may not be taken out of the prison, but who are involved in various activities without special measures of supervision (II), convicts who may cohabit and communicate in a normal manner, however, who do not have the capacity to live, for the time being, in a supervised reality (medium risk to escape);

- increased security measures (III), convicts considered extremely dangerous, who have difficulties to get used to the general rules of cohabitation (high risk to escape).

Beside the described categories, additional categories of convicts with special needs who require certain conditions for the execution of punishment may be introduced (for example, programs based on the principle of therapeutic communities, medical institutions).

The main goal of the regimes in the penitentiary institutions is to ensure the conditions required for a successful treatment. Thus, both the resocialization activities and the regimes must be coordinated, while the established categories must determine the classification of these regimes.

Example:

Categories	Classification of regimes (closed prison)			
	Resocialization	Common	Increased security	Ex: “social therapy”
I	+			+
II		+		+
III			+	

Convicts must be distributed depending both on the need for security (safety) and considering their individual needs.

The goals of the classification must be: a) to prevent prisoners with criminal past or bad habits from negatively influencing other prisoners and b) to divide the convicts into groups in order to ease their treatment for the purpose of their resocialization.¹³

However, the distribution of detained persons is not always compliant with the aforementioned classification. It is limited by the basic distribution requirements established by the legislative and normative framework currently in force. Thus, the characteristic features of certain categories of prisoners are not taken into consideration (personality of the prisoner, motives of the committed crime, guilt, criminal records, etc.). Creation of sectors and distribution of prisoners by such a classification would represent a progressive evolution for the planning of the execution of punishment and reaching the main goal set by the law. Moreover, it will be one of the conditions that would allow a correct practical organization of the prisoners’ correction process, as well as prevent any negative consequences that might occur as a result of common detention of various categories of convicts.

¹³ Standard Minimum Rules for the Treatment of Prisoners adopted on July 31, 1957, point 67

When distributing convicts it shall be considered that upon arrival to prison, irrespective of the name of the regime (sector), a convict shall be mandatorily be placed under initial regime for a limited period of time (other than the one established by the legal framework currently in force), without a specific time-limit being set. However, there is a recommendation that the corresponding timeframe dos not exceed 2 months including the stage of the person's adjustment to the prison environment.

There is, however, a certain classification of prisoners in the penitentiary system of the Republic of Moldova. It helps the staff know and promptly react to any possible risk situations. This categorization is set forth in the Guidelines of the Department of Penitentiary Institutions. It refers only to psychological assistance to convicts from the risk group. It was developed in 2007. The Guidelines regulate the manner of organizing the duties of the Psychological Service in the penitentiary institutions in its relations with the persons deprived of liberty with an increased risk who need special treatment. Thus, the categories of prisoners do not include all prisoners, but only convicts with a high risk behavior. This category includes: dangerous convicts, convicts intending to escape, convicts prone to suicide and self-mutilation, as well as the ones with special needs, such as the convicts consuming drugs or alcohol dependent convicts, etc. Unfortunately, the Guidelines do not provide for psycho-correctional and counseling measures for the aforementioned categories that would be applied by psychologists, while the other aspects related to security, accommodation in special conditions and restriction are not set for these categories of convicts.

Classification, categorization and distribution are the first step in planning the execution of punishment. The initial evaluation performed after the final conviction is based on them.

2. Resocialization

Resocialization of a convict is a reeducation and treatment process (according to the Standard Minimum Rules for the Treatment of Prisoners adopted on July 31, 1957 related to treatment, classification and individualization) applied to criminally convicted persons aimed at changing their behavior in line with the rules and values accepted in the community for the purpose of their social reintegration. This process has the formula of "education work with

convicts” in the Moldovan penitentiary system. The process of resocialization in the penitentiary institutions is conditioned by the staff involved in this process, by the peculiarities of the personality of a prisoner and by the use of the most appropriate social education programs and treatment methods.

This objective is being implemented to a great extent by the education, psychology and social assistance service in the penitentiary institutions. It was created for the purpose of psychosocial rehabilitation and reintegration in the society of the prisoners. The activities conducted by the aforementioned service are focused on mitigating the negative influence of the deprivation of liberty on the personality and behavior of the convicts, as well as on identifying and developing the skills and abilities allowing them to integrate in a normal social life after release from prison.

The prison staff must have a system of complex and dynamic actions oriented towards reinstatement of a convict in his/her rights, redressing the status, health, self-appraisal and appreciation of the others, their development.

The changes that have been taking place in the penitentiary system during the recent years, since the Enforcement Code and the Charter on Execution of Punishments by Convicts took effect, were also the reason for the need to change the methods of work of the education services in prisons. Thus, there was a need for developing and setting a common and clear mechanism of execution of punishments by convicts and methods of intervention that would influence their reintegration in the society and having a prosocial behavior.

Thus, the awareness of the fact that the execution of punishments must be based on rehabilitation of persons coming from prisons becomes more and more obvious. The end results of the process of planning the execution of punishments must develop the prisoners’ sense of responsibility and make them decent citizens observing the social rules and having a prosocial behavior.

The resocialization work must be based on a system of assessment of a convict’s condition, such as the needs that have to be met while being in prison. Experience proves that studying the personality of a prisoner must be a continuous and systematic process. It is determined by the fact that the scientific approach of the organization of a psycho-pedagogical process implies permanent contacts for each prisoner. Knowing the past and the present of the convicts, having analyzed their relations with the punishment, regime, working activity, relations

with the social environment, a psychologist may forecast the behavior of the prisoners after release, as well. These forecasts must be included in the conclusions and recommendations, facilitating thus the process of rehabilitation of the convicted person. Therefore, the process of resocialization needs an individualized planning of the execution of punishments including all the treatment measures for each convict set at the stage of his/her assessment (according to the Minimum Standard Rules for the Treatment of Prisoners adopted on July 31, 1957 related to treatment, classification and individualization).

The plan must include:

- assessment of the level of risk of recidivism / assessment of forecast factors in terms of the compliant behavior in future;
- special treatment and assistance measures;
- behavior in prison;
- attitude towards work;
- resocialization components.

The individual plan of punishment execution must have a continuous and dynamic nature and may be reviewed in case of changes that might occur during detention.

We may speak of an efficient planning when the needs of the prisoners are collated with the resources of the prison for the purpose of preparing a realistic and close to the needs of a convict plan.

The individual plan of punishment execution shall be based on 3 principles (theory of criminal behavior Andrews Bonta, 1994):

- **risk principle** – the intensity of intervention must be proportionate to the risk of recidivism by the convict;
- **need principle** – resocialization (intervention) programs must directly address the factors determining the criminogenic needs;
- **responsivity principle** – resocialization programs must be appropriate to the style and ability to learn (motivation) of a convict.

Currently several programs focused on the convicts' education process are being implemented in the penitentiary institutions. They started to be implemented in the last 7-8 years and are an important step forward in the activity of the penitentiary system due to the fact that

their objectives are the principles of social reinsertion. The main forms of education work with the convicts set forth in the law are: education activities; professional training; creation activities; spiritual (religious) activities; psychological counseling; social assistance; sport activities; attending libraries; leisure activities; individual prophylactic activity. In addition, we may mention such important activities as work, education of legal awareness and civic spirit.

For instance, in 2014 around 1000 convicts were involved in at least 5 basic social and education programs according to the annex.

The analysis of the situation during the last 4 years proves that in the majority of cases the programs implemented in a prison complied with the needs of the convicts in the institutions. These are the programs aimed at adjusting the prison environment, learning the enforcement and criminal legislation (short-term). However, these programs do not comply with the needs a convict will have after serving the punishment and do not guarantee a successful integration in the society and reduction of the risk of recidivism.

Both categories of programs are necessary. However, following the needs assessment, specialists must prioritize a certain type and determine which are necessary to the convict while in the custody of the institution (for example, a convict who is in prison already for a certain period of time or has several conviction sentences may know the specifics of the prison environment, the obligations and rights and the manner of treatment).

Thus, in the current conditions we consider it necessary the mechanism for application of the resocialization process to be determined along with the resources required for the effectiveness of the resocialization process:

- strategy and basic components of the resocialization process;
- staff involved in the process of resocialization of prisoners and their training;
- material resources and needs assessment;
- competences of the institutions.

Currently, following the analysis of the activities determining the process of resocialization of convicts, we may highlight 3 equal components:

General and professional education (vocational and technical) – the Enforcement Code provides for the mandatory organization of general secondary education of convicts. It results from this provision that general education is organized in prisons for all convicts, which is

not rational because education is mandatory only for persons who did not reach the age of 16. To this end, we consider it appropriate to specify the mandatory nature of general education only for juvenile prisoners. At the same time, we need to refer to the educational standards for children detained in prisons, in particular, to the minimum standard that would ensure the possibility for the issuance of the national education certificates. These amendments would release us from the obligation to organize general education in all prisons and would exclude the dissensions related to the minimum standards the prisoners to be secured with. The regulations related to the convicted disabled persons aged over 50 must be excluded in general.

In addition, we consider it necessary to refer to the procedure of organizing the general education: in prisons where juveniles are detained mandatorily general education classes affiliated to gymnasiums, lyceums from the circumscription of the penitentiary institutions are organized. The education programs and the subjects must be established by the Ministry of Education depending on the type of prison (pre-trial detention facility or prison for juveniles) and the duration of the juveniles' detention.

An important segment in resocialization of convicts is the vocational and technical training. The professional training of the convicts is a complex and difficult problem as, on the one hand, this qualification is provided in prison which offers a limited range of professions and competent mentors and, on the other hand, the issue is about the convicts who serve a sentence and who cannot properly take care of their professional qualification, as they also have to work "at the expense" of their punishment. In addition, a convict impelled to get professional qualification must be also known from the perspective of his/her mental capacity (level of intelligence), abilities, and inclinations, in order to know what professional orientation to select for him/her.

It is necessary to establish the procedure of organizing the vocational-technical training of the prisoners in prisons, in particular, the creation of classes / centers of vocational-technical training affiliated to professional schools in the circumscription of the prisons shall be mentioned; then it is worth referring to the operations of professional schools in prisons. Besides, it is necessary to mention that both the classes and the schools are under subordination of the Ministry of Education, while the prison is responsible for the creation of technical conditions and

formulates proposals related to the professions the prisoners to be trained in during the school year.

Another component of the resocialization process must be the *Social education* – any form of education aimed at developing the personality of a convict, developing the skills and abilities and providing information that will allow a person to live in the community in a more constructive manner.

The social education programs imply the development of skills and abilities in the following areas:

- occupational therapies (ergo-therapy (greenhouses, growing flowers), art therapy (applications, moulding, poetry, drawing), music therapy (music), library).
- education and psycho-social trainings / workshops,
- activities for the development of physical and moral and spiritual skills (pro-sport, pro-social, work with civil society),
- involvement in work (remunerated and not remunerated). It would be advisable to establish the mandatory nature of the work of prisoners.
- programs of religious education;
- self-education sources (availability of libraries in prisons).

The third component of the resocialization process may be: *Behavior change* – a set of activities with the objective to help the convicts think and act in a socially accepted manner, so that they do not commit repeated crimes. This is a series of structured interventions during a certain period of time that result in the change of attitudes, beliefs and behavior of a prisoner:

- psycho-social programs focused on addressing problems that could have influenced the previous delinquent behavior;
- programs based on the principle of therapeutic communities;
- development of social skills (development of communication skills, problem-solving skills).

Implementation of the individual program for punishment execution in the penitentiary system of the Republic of Moldova

Discussions related to the implementation of the individual program for punishment execution were initiated in 2006-2007 on the initiative of the Division for Education, Psychology and Social Assistance of the DPI. It is important to mention that the specialists of the Department of Penitentiary Institutions undertook the first step in this area in 2008 within a project implemented jointly with a Lithuanian prison. The end goal of the project was to develop a new concept of the resocialization process.

The developed concept described for the first time the principles of a resocialization model that referred to the following postulates:

1. “The process of resocialization must be organized from the first day of detention”. – this principle describes the need to involve the prisoner in resocialization activities as of the first day.
2. “To meet the needs of the prisoners in order to reduce recidivism”. The needs of the prisoners will determine the programs the prison staff will offer; the programs will be focused in general on their successful reinsertion in the society.
3. “An efficient program and control must be organized for the entire duration of the punishment”. The program must be directly related to the needs of the prisoners and be aimed at the evolution of behavior, beliefs and attitudes in order to ensure the sustainability of the behavior change. This monitoring was to be performed within the individual program for punishment execution.

Likewise, the Concept described the components of the resocialization process: social education and behavior change. The new model also included the evolution of the convict during the execution of the punishment, the steps to be undertaken for his/her resocialization in the society after release. Here the individualized program for punishment execution (“Personalized intervention plan of the convict”) was described. It was based on three principles: risk – needs – responsiveness. Another essential aspect was passing through all the stages of the punishment being supervised by an Assessment Commission – initial, continuous and final, aimed at assessing and selecting as correctly as possible the means and methods of correction and social reintegration. Unfortunately, this concept was not developed, and only some of its fragments were implemented in the penitentiary system.

Likewise, in 2008 the individualized program for punishment execution was introduced in two prisons. Subsequently, it was implemented in all prisons. According to the authors, while

explaining the contents of the program, they described the goal of the planning process, which consisted of *motivation and involvement of prisoners in settling problems that could be related to their criminal acts*, the change of mentality of prisoners by developing the capacity to imply the consequences of their own actions and to undertake the responsibility for their own choices. We may say that currently the individualized program for punishment execution is aimed at motivating the prisoners to avail of the facilities provided during detention, considering the actual resources of the prison. The question remains: does this program settle the problems of the prisoners related to their criminal act and does it contribute to their social reintegration?

Transformation of the behavior, as a rule, differs from one convict to another and we cannot guarantee that the activities conducted with all prisoners, without individualizing the treatment, will reduce the risk of recidivism. For instance, if we will plan programs on reducing violent behavior for all convicts, they will have resonance only in case of criminals who committed violent crimes or who are aggressive. Those who are not characterized by aggressiveness will gain new knowledge; however, they will not change their criminal behavior.

The individual program for punishment execution is implemented now in all prisons based on an order of the DPI. It is prepared for each prisoner, irrespective of the punishment execution term, the committed crime or other peculiarities of the prisoner. The person responsible for preparing the program is the sector chief. The program includes seven sections. The first three sections include social and demographic data, information about criminal records and data on the skills and physical parameters, in other words, information characterizing a prisoner. This information is being included both considering the data from the persons case file of the prisoner and from the individual discussions with him/her. The fourth section represents the interventions planned for the prisoner during one year performed together with him/her. The objectives included in the fourth section are the tasks of the prisoner ensuring a positive influence on his/her behavior and, subsequently, his/her resocialization. The fifth section is a short summary of the successes and failures of the convict, the incentives or sanctions applied to him/her. Sections 6-7 are aimed at interventions of specialized staff – psychologist and social assistant, who take part in the activities for his/her resocialization. This summary of the program does not highlight the problems and actually narrates a correct and logical succession of the punishment execution. Why then the resocialization process is troublesome? Is the content of the

sections correct? Is the information included in these sections relevant for the change of the criminal behavior? These are the questions arising when we analyze this process.

It is obvious that we may speak of an efficient planning when the needs of the prisoners are confronted with prison resources in order to establish a plan which is realistic and is close to the needs of the convict.

Resocialization work must be based on a system of assessment of a convict's situation, as well as on the needs that have to be met while in custody. Experience proves that studying the personality of prisoners must be a continuous and systematic process. This is determined by the fact that the scientific approach of the organization of a psycho-pedagogical process implies permanent contacts for every prisoner. Knowing the past and the present of convicts, analyzing their relations with the punishment, the regime, the working activity, the relations with the social environment, the staff may forecast the behavior of the prisoners after release. These forecasts must be included in the conclusions and recommendations. This will facilitate the process of rehabilitation of the convict. Thus, the process of resocialization needs an individualized planning of punishment execution, which must refer to all the measures of treatment for each convict established at the stage of his/her assessment.¹⁴

In order to analyze the convict's individual program for punishment execution we must refer to the models of countries with good practices in terms of planning.

The planning of punishment execution starts from a prisoner entering the prison and implies an initial assessment performed by all staff. It shall be mentioned that the Recommendations of the Committee of Ministers of the Council of Europe No. @2006(2) on the European Prison Rules bring clarity to the process of initial assessment: Rule No. 16 – “As soon as possible after admission:

- a. Information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
- b. the appropriate level of security for the prisoner shall be determined in accordance with Rule 51, which describes that: as soon as possible after admission, prisoners shall be assessed to determine: a. the risk that they would present to the community if they were to escape and b. the

¹⁴ Minimum Standard Rules for the Treatment of Prisoners adopted on July 31, 1957 related to treatment, classification and individualization

risk that they will try to escape either on their own or with external assistance. Each prisoner shall then be held in security conditions appropriate to these levels of risk;

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

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

e. In the case of sentenced prisoners the necessary steps shall be taken to implement programs in accordance with Part VIII of these rules. According to the rules from Part VIII: the regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner. As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release. Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans. Such plans shall as far as is practicable include: work, education and other activities”.¹⁵

These aspects essential for the achievement of the basic goals imply studying the convicts at the initial stage, after they receive the sentence for execution. Thus, once admitted to prison a prisoner is isolated for 15 days during which he/she is visited by several specialists of the prison services, including the doctor, educators, psychologist and social assistant. According to the DPI Regulation on organizing and conducting education, psychological and social assistance activities, which describes the procedure of initial assessment, the specialists in these areas formulate a certain conclusion about the personality of the convict and recommendations related to further work with him/her. This activity as a product differs from one specialist to another, as it is set forth what questions this assessment process answers to. It is also noticed that their conclusions are mostly recommendations on the communication with the convict and less refer to the manner of treatment appropriate for him/her.

The psycho-social assessment and the preparation of the individual plan of the punishment execution are described in point 32 of the Charter of Punishments Execution by the Convicts. However, the law-maker does not describe the principles and main aspects to be considered in the program. Unfortunately, this assessment is taken into consideration neither

¹⁵Recommendations of the Committee of Ministers of the Council of Europe No.R2006(2) on the European Prison Rules

when a prisoner is distributed to the penitentiary institution nor when he/she is distributed to its sectors.

However, mostly the information included in the assessment is a good resource for the development of the individual program for punishment execution according to point 32 of the CPEC.

Thus, the staff responsible for the preparation of the convicts' individual programs for punishment execution study the aspects related only to their involvement into work or educational programs. Even the assessment of the psychologist is not taken into consideration. Very seldom the activities conducted by a psychologist are included in the annual program. This fact also displays lack of cooperation between specialists. However, the most serious issue is that once a convict reviews the program activities and there are no psycho-social programs, he/she does not know that he/she needs to take part in such activities.

At the same time, we must mention that neither the Enforcement Code nor the Charter on the Punishment Execution provide for the contents of the program, unlike the German Code, art. 7 very clearly specifying the aspects to be covered by the program. Let's try to analyze these conditions in the German legislation and see if we find them in our model. Thus, the first measure of treatment included in the execution plan for a German prisoner is his/her accommodation in an open or closed prison. This measure may not be included in the convict's individual program for punishment execution because the type of prison is established by a court in the Republic of Moldova. Another measure is the transfer to a social therapy institution, when for the purpose of their resocialization therapeutic and special social assistance means are recommended. Again, our legislation does not provide for the availability and, correspondingly, accommodation in such an institution. A common activity for us is the involvement in labor, as well as measures of professional training or development. One may find in a German plan such treatment measures as participation in professional development activities, special measures of assistance or treatment, which, however, are not described in the individual programs. Referral to accommodation groups or treatment groups is an activity which is not practiced, although the legislation does not exclude the possibility to apply such a measure. The plan includes measures to relieve the execution (movement without escort, short-term departures) and measures necessary for preparation for release, so that a convict can create an image of his/her future and

conduct all the activities included in this document. Unfortunately, following the initial assessment of a convict, the individual program does not describe the actions preparing for release. They are described only at the end of the execution of punishment, six months prior to release from detention. Thus, from the point of view of its structure our convict's individual program for punishment execution does not include a sufficient number of objectives necessary and useful to a prisoner for his/her subsequent reintegration or relevant during the entire period of punishment execution. To a great extent, the treatment measures refer only to education, self-development activities, leisure and less to measures related to regime (security), such as the conditions the prisoners will be accommodated in, leisure or their distribution.

The planning of punishment execution is a complex system by which the prison administration supports a convict in gaining the skills and knowledge required for social reinsertion through a process of assessment-intervention-reassessment.

The assessment of a convict does not have any sense unless it leads to an individualized intervention, while planning depends on the quality of assessment. Therefore, we may state that planning is moving the focus from defining the problem to identifying solutions for the settlement of the problem.

If we follow the first three sections of an individualized program, which is a source of information about a prisoner, we may synthesize all these data and draw certain conclusions related to the personality of the convict, risk behavior and his/her needs. Thus, the information about education may reveal the skills of the convict and the need for training, the criminal records – the criminal experience or the criminal lifestyle (annex to the individual program for punishment execution), etc. Another question arises: how well is a prisoner assessed and are the problems and his/her needs related to the criminal behavior correctly identified? Are these needs correlated with the offer of prison programs?

Currently, several convicts' education programs are being implemented in the penitentiary institutions. The main forms of education work with the convicts set forth in the legislation are: education activities; professional training; creation activities; spiritual (religious activities); psychological counselling; social assistance, sport activities; attending libraries; leisure time activities; individual prophylactic activities. In addition, we may also mention such important activities as: labor activity, legal awareness training, campaign and explanation work.

Very frequently the programs implemented in a prison comply with the needs the convicts have in the institutions. These are the programs aimed at adjusting to the prison environment, learning the enforcement and criminal legislation (short-term). However, in fact they do not comply with the needs a convict will have after serving the sentence. They do not guarantee a successful integration in the society and reduction of the risk of recidivism.

Both categories of programs are necessary. However, after assessing the needs, specialists must determine which type to prioritize and which of them are necessary to the convict while in custody (for example, a convict who has been in prison for a certain time period or had been convicted several times, may know the specifics of the prison environment, the obligation and rights, manner of treatment).

In order to identify the most efficient programs correlated with the needs of a prisoner a comprehensive analysis and assessment of these needs is required. The information to be analyzed implies knowledge in various areas, in particular, psychology, criminology, sociology, etc. Practically, it will be difficult for one single specialist to achieve such goals. Most frequently, he/she does not have knowledge in all areas, while the development of a plan for punishment execution will be based on this information. Currently, an individual program for punishment execution is developed by one specialist – the sector chief. This task is difficult for him/her due to the lack of training allowing him/her to cover all the areas necessary for him/her to be able to formulate a forecast and a correct diagnosis. The experience of other countries shows that the planning of punishment execution is a task of a multidisciplinary team.

Thus, in order to individualize the treatment, a convict who received a sentence for execution must be assessed by specialists with knowledge in psychology, pedagogy, sociology and criminology. They will make a classification and establish a regime most appropriate for the identified treatment. This assessment and planning team will analyze the crime, the motives for the commission of the crime, the peculiarities of the personality, the social environment the convict originates from, the possibilities for application of the treatment and the eventual difficulties.

Three basic components describing the process of resocialization: training, social education and behavior change, depending on the needs of every prisoner, must guide him/her during the entire duration of detention. These very activities influence the factors that determined

the criminal behavior, while the involvement of the prisoner in programs requires planning of their implementation, so that by the end of detention we discover a person undertaking responsibility over his/her own life and able to cohabitate in a society where rules are observed.

The program for punishment execution establishes standard programs, such as: involvement in labor, general education or professional training, education or psycho-social programs, attending libraries, interest clubs or religious assistance activities; all these are specified annually for every prisoner. Following the analysis of the convicts' individual programs, a certain formality in their preparation is noticed. Most frequently, beside planned activities, the programs incorporate physical training and sport programs or attending libraries and almost never there will be records about psycho-social programs or treatment programs, such as, for example, are those for drug consumers. No activities preparing for release are organized even for the prisoners to be released.

All these drawbacks are explained by the fact that the person responsible for preparing the individual program for punishment execution is the sector chief, the one who implements a certain number of education programs he/she includes in the annual resocialization actions. In conclusion, it shall be mentioned that this problem may be settled by creating a team of specialists who will prepare the convict's individual program for punishment execution, which will include a wider range of activities and, most importantly, will include activities meeting the criminogenic needs of the prisoners – those who determine indeed the change of the criminal behavior.

The following programs are currently being implemented in the penitentiary institutions:

General education – is a component which is applicable only to juvenile convicts in Goian Prison No.10 and in pre-trial detention centers. Currently, classes affiliated to lyceums or gymnasiums in the territorial circumscription of prisons are open, teachers from these gymnasiums conduct the classes based on a joint order of the Ministry of Justice, Ministry of Education and Ministry of Finance. Unfortunately, lyceum education is not provided in any of these prisons; however, according to the new provisions of the Education Code, it is mandatory.

Professional training – a basic component in resocialization of convicts organized both for juvenile and adult convicts. There is a wide range of courses for different professions: locksmith, hairdresser, cook, miner, shoemaker, plasterer, boiler house supervisor, etc. Like the

general education, it is organized based on education programs of the Ministry of Education. Classes affiliated to professional schools in the territorial circumscription of the penitentiary institutions are organized in prisons. Around 600 prisoners get a new profession annually.

Creative and cultural programs – is another area where it is impossible to involve many prisoners. However, the talented ones are very motivated and very often need a moderator being inspired to produce artistic shows for holidays or important events in the penitentiary institution. To this end, the Department of Penitentiary Institutions organizes annually the Inter-Penitentiary Festival called Art Saves the World, which provides many prisoners with the possibility to develop competences in this area and more productively spend time while in detention.

Physical training and sport programs – is a component involving the highest number of prisoners. The program allows them not only gain muscle mass, but also is aimed at maintaining a proper physical and mental tonus along with an adequate health condition. As a rule, the sport programs are applied individually or in groups and, of course, are completed by competitions in different areas: football, volleyball, chess, draughts, table tennis, weightlifting, etc.

Social skills development programs or *social therapy* – are of general nature and are adjusted to the basic needs of all persons deprived of liberty. The programs include such activities as: drawing, technological education (skillful hands, wood carving), cultural events (poetry, theatre, music, choreography, other), social skills (communication, life skills, other), editing the newspaper of the institution. A good accomplishment is the fact that social therapy programs are developed by the staff of the penitentiary institutions, so that they are aware of the contribution to the process of resocialization of prisoners. Thus, such programs have the best chances for successful implementation.

Religious education programs – are implemented with the support of priests regularly visiting the penitentiary institution, as well as of the representatives of religious cults. These programs involve ... prisoners.

Behavior change programs are, in particular, programs based on criminogenic needs of the prisoners. They cover violent behavior, dependence on substances, sexual disorders, etc. Such programs need a better training of staff, as well as better conditions for implementation. Most frequently they are applied to small groups, up to 10 prisoners, and cover a certain number of interrelated meetings following well-determined objectives and goals.

Programs preparing for release – are activities conducted by the specialized social assistance and probation counselors at the end of the detention period, when the prisoners prepare for pre-term conditional release, and the information and competences necessary at the first stage after release are learnt within these programs.

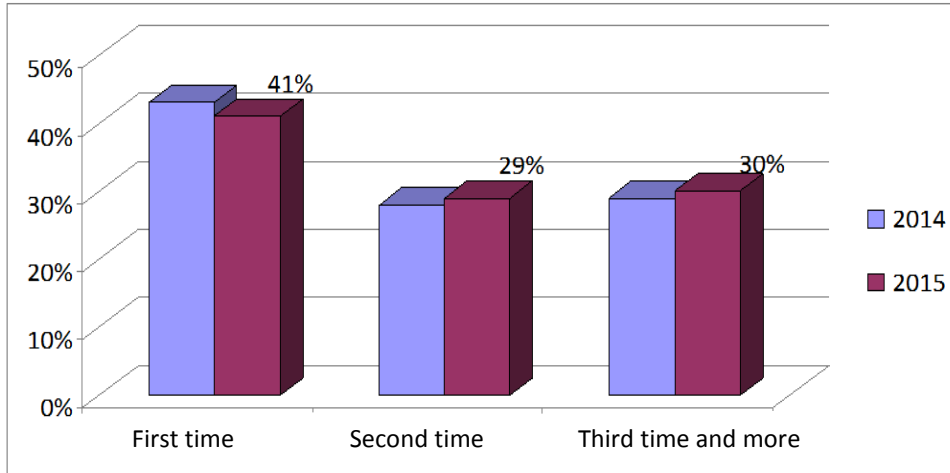
A component that is least implemented is labor in prison. If in the majority of European countries labor is mandatory for prisoners, the national legislation does not provide for the mandatory character of this action. This is due to the lack of workplaces in the penitentiary system and of production units which were not restored after the soviet period. The number of convicts willing to work is much higher than the offer of the prisons, while the lack of the possibility to work makes the prisoners spend their time in prison in a non-constructive and inefficient manner. As long as prisoners are not involved in activities, they are dissocialized to a great extent, while the process of reintegration in the society is doomed to failure.

Factors influencing the individualization of punishment execution

Practical experience of the penitentiary systems refers to a series of conditions having a decisive role in successful implementation of the process of resocialization of convicts, and namely:

1. availability of a concept of treatment and human improvement;
2. good training of staff;
3. the most appropriate programs of social education and treatment methods;
4. a well-designed organizational structure for human support and progress, etc.

Following the analysis of the basic principles of the concept of resocialization of prisoners, treatment and programs implemented together with them are necessary and efficient. However, the assessment of the risk of recidivism of the prisoners, which decreased during the last years and accounts for 59%, leads to the question – are the education and treatment programs well-structured and is the intervention individualized?



Thus, even if there are activities aimed at resocialization of prisoners, we need to adjust these activities as closely as possible to the individual needs of the prisoners. Following and analyzing the contents of the individual programs for punishment execution, it may be concluded that there are few actions meeting the individual needs and those directly related to the criminogenic ones.

2. A significant role in the efficient implementation of the convict’s individual program for punishment execution is played by the prison staff that must be trained and prepared to assess the needs of the prisoners, develop strategies and the individual plan and, of course, implement these strategies. During the recent years the prison staff availed of a number of training programs covering: diagnosis and forecast of the criminal behavior, development of the punishment execution plans, and development of social therapy programs.

To a great extent these are or were programs provided within foreign projects, while the risks of such projects are the high flow of staff, high number of tasks an educator or a psychologist is responsible for, high specialist-prisoner ratio, etc. It shall be mentioned that the notions related to evaluation and planning are necessary not only for psychologists, but also for other specialists contributing to the implementation of the individual program for punishment execution. Their training must also be taken into consideration.

In order to ensure a better functioning of the training programs, they need to be included in the continuous training programs within the Training Center as a mandatory condition for all

newly employed specialists and in the professional development programs for staff with work experience in the system.

The system needs an identification of competences of the education and psycho-social services and of the regime service by involving their staff in actions that will be aimed at security and resocialization of prisoners. Currently, the staff directly involved in work with prisoners (regime officers, sub-officers) are not involved at all in the activities related to the resocialization of convicts, while the sector chiefs very often have obligations related to the observance of the detention regime ranging from visit requests to issuing decisions to apply disciplinary sanctions. A reorganization of these services is required by separating the specialized staff (psychologists, social assistants) from sector chiefs who will take over the common competences of the regime service staff. “Employees wearing uniform (“guards” / sergeants / prison officers) must work only in the area of ensuring order and security. They must be also trained in cooperation in terms of treatment in prisons and, correspondingly, work as assistants in living blocks, during education measures and leisure activities (handicraft, sport, discussion groups and other)”¹⁶.

Of course the efficiency of the process of resocialization of prisoners is conditioned by many factors and problems.

Criminal subculture and hierarchy – it is a well-known fact that the existence of subculture negatively influences the process of resocialization of prisoners. From the psychological point of view the asocial subculture is a network of direct relations among prisoners. It is characterized by informal standards of conduct, intra- and inter-group relations and an unwritten value and normative system influencing an individual in a closed environment. Participation in subculture leaves a negative mark on the personality of a prisoner, as he/she is imposed to accept a set of rules or norms of conduct conflicting with prosocial rules and values.

Thus, we may state that the resocialization process is influenced by two categories of factors: on the one hand, social environment factors promoted by the penitentiary institutions staff, mass-media, family, etc., and on the other hand, criminal subculture deeply rooted in the prison environment in the RM. Considering the results of researches, it is important to highlight that the influence of prison subculture on individual and group behavior is more intense and stronger than the influence of formal organizations and social institutions. Creation of these

¹⁶ German expert, Dr. Best, TWINING Project: Support to Moldova in Prisons System Upgrading and Penal Reform

groups is based on certain principles of psychological compatibility, interests, age, values, territory. Very often adherence to these groups is due to a psychological pressure or is dictated by the trend to dominate over other prisoners. In some cases it is characterized by a pseudo-romanticism and development due to which it is easier perceived by the prisoners.

Reform of the organizational and education entities in penitentiary institutions could contribute to the process of socialization of relations between the administration and the prisoners. It would reduce the number of interpersonal or intergroup conflicts and the influence of the criminal subculture.

Several management styles may be highlighted as contributing to escalation of pressure and launch of destructive processes: lack of clear criteria of assessment of the individual or group behavior, which implies in fact individualization of punishment execution, inconsistency of actions and requirements to the administration, focus on application of threats and punishments, switch from the assessment of a prisoner's behavior to his/her personality, privileges to certain groups and their delegation in settling certain categories of problems, ignoring opinions and interests of prisoners in settling individual or group problems, etc.

One of the practices studied in other systems that had been most effective is the credit system for persons deprived of liberty applied for education, psychological and social assistance activities and programs, production activities, as well as in situations of risk. Such a system was implemented in the Romanian penitentiary system. It means that convicts involved in every conducted activity or program avail of a number of credits (awards, bonuses) depending on the nature and complexity of activity or program. Should prisoners have disciplinary violations, they are penalized by deducting the number of credits depending on the seriousness and nature of committed violations. After the assessment of the situation of each prisoner depending on the value of the accumulated points-credits prisoners with the highest number of credits may avail of awards according to the legal provisions.

This model may be taken over and implemented in the Moldovan penitentiary system considering that the national legislation currently in force allows such an approach. It is necessary only to develop a methodology for the aforementioned system. No significant financial and organizational resources are required to implement the credit system. An efficient bonuses system is already implemented in the penitentiary system from Romania. Thus, according to

Romanian legislation, the system of awards and incentives for convicts who prove to be correcting their behavior is a set of measures aimed at encouraging prisoners in their efforts of reeducation and social reintegration. Thus, a good behavior offers chances inclusively for conditional release. Hypothetically these awards are applied to prisoners who had a good behavior and displayed arduousness in work and education, cultural, therapeutic activities, psychological counseling and social assistance, school education and professional training.

The awards include: assigning a task during educational, cultural, therapeutic, psychological counseling and social assistance activities; cancelling disciplinary sanctions applied earlier; allowing more visits and parcels; providing materials for occupational activities; permission to leave the prison for maximum 10 days and not more than 30 days per year. The right to leave the prison is regulated in the form of a permission to leave the prison, which in fact is a privilege of a prisoner who meets the legal conditions. Thus, there are five special situations for a convict to be allowed to leave the prison: application by a convict for employment after release from prison, a convict taking an exam, preserving family relations of the person, preparation for social reintegration of the convict, his/her participation in the funeral of a family member: husband/wife, child, parent, grandfather, sister/brother. The permission to leave the prison is limited from one to ten days, as well as for convicts serving their sentence in closed prison. Most awards are provided by the commission for individualization of the detention regime, upon proposal of the chief of section in which the prisoner is located, while the permission to leave the prison for up to 5 or 10 days is issued by the Director General of the PGA, upon proposal of the aforementioned commission.

Chapter 3

Individualization of punishment execution – good practices on the international level

The mechanism of individualizing the punishment execution is widely applied in the majority of penitentiary systems of the states of the European Union, including the Baltic States. The information presented in this chapter refers to several models of good practices in several penitentiary systems in the European Union states. The analysis includes the experience of 4 European states and is structured by the following categories: types of detention and treatment regimes, criteria and indicators for classification and reclassification of prisoners, tools used to assess the behavior of prisoners and assessment of risks of recidivism. Several models have been selected for the analysis. They could be areas of interest for the penitentiary system of the Republic of Moldova.

BELGIUM

Types of detention and treatment regimes

Belgium penitentiary units may be divided into two categories:

- Pre-trial detention units for persons under preventive arrest
- Detention units for persons convicted to punishments or measures depriving of liberty

Detention units are divided into 3 categories:

- open institutions – with limited security systems. Prisoners from these institutions voluntarily accept an education regime along with minimum coercion means
- semi-open institutions – where the prisoners spend the nights in cells and work outside or in workshops during the day¹⁷
- closed institutions – equipped with all the necessary supervision means and increased security systems (fence walls, bars, detection systems, etc.). Prisoners who do not meet the criteria to be referred to open or semi-open institutions are detained here.

¹⁷ The term workshop is widely used in the European penitentiary systems, including by the CPT, and means both professional training workshops and workshops where the prisoners work (produce / create goods)

Criteria and indicators used to classify and reclassify prisoners

The Belgian law describes the standard detention regime (ensuring an increased access to community activities), as well as the disciplinary regimes and the security regimes. However, there are no scientific criteria to change the individual detention regime. These changes are made based on the individual behavior of a convict and the need to protect order and security. The Belgian law does not provide for any specific criteria for accommodation in open institutions.

At the same time, the following criteria derived from practice:

- prisoners close to the possibility for release
- prisoners not posing an increased risk of escape
- prisoners able to live in community and those attending a training or employment program.

The main indicator to assess the criteria mentioned above is the behavior of the convict. The administration of the prison (prison commission) assesses the behavior on a case to case basis.

Tools used to assess the behavior of the prisoners

A number of general tools are used to assess the behavior of the prisoners:

- WISE-3 or RAVEN to assess intelligence
- MMPI during personality inquiry
- RORSCHACH or TAT tests as a projective material

More specific tools, depending on the studied issue, are used along with these tools.

- Assessment of the risk for recidivism
- Assessment of the risk of recidivism prior to release is conducted to assess violent behavior.

The following tools are used in principle:

- HCR-20 assessing the risk of future violent behavior based on a systemic clinical analysis;
- SVR-20 assessing the risk of violent sexual behavior based on a systemic clinical analysis;
- SARA assessing the risk of violent behavior towards a partner based on a systemic clinical analysis;

- VRAG and STATIC-99 are predictive tools for violence and sexual violence based on actuarial analysis.

The aforementioned tools were scientifically validated by universities for the prison population.

BULGARIA

Types of detention and treatment regimes

- Closed prisons and detention centers:
 - general regime
 - special regime
 - restrictive regime
- Open detention centers:
 - general regime
 - permissive regime

Criteria and indicators used to classify and reclassify prisoners

A court initially determines the detention regime:

- special regime – for persons convicted to life imprisonment;
- restrictive regime – for persons convicted and referred to closed prisons and detention centers;
- general regime – for persons convicted and referred to open detention centers.

Initial regime may be replaced with the following more permissive regime after serving one fourth of the punishment (work days are also considered), however, not less than 6 months, if the person:

- has a good behavior;
- proves he/she makes progresses.

The replacement of a regime with a more permissive one is allowed 6 months after the previous change.

A regime may be replaced with a more restrictive one if the person:

- seriously or repeatedly violates the rules of the institution;
- repeatedly misses work;

- negatively influences the other prisoners.

A regime may be replaced with more permissive one minimum 6 months after the previous change.

Individuals suffering from severe diseases referred to special or restrictive regime and pregnant or breastfeeding women referred to restrictive regime by an order of the director of the institution are transferred to general regime for the period their condition remains unchanged.

When determining and changing the detention regime the following is taken into account:

- the period of served sentence;
- worked days;
- risk of recidivism;
- risk of commission of a severe crime.

Tools used to assess the behavior of prisoners

The Rules on Assessment of Criminals regulate the assessment of the behavior of prisoners, the risk of recidivism and the risk of serious crimes.

The assessment of the risk of recidivism – when a prisoner is proposed for conditional release the risk of recidivism and the risk of serious crimes is being assessed.

ESTONIA¹⁸

Types of detention and treatment regimes

- Closed prisons
- Open prisons

Criteria and indicators used to classify and reclassify prisoners:

A prisoner may be transferred from a closed prison to an open one if:

- he/she consents such a transfer;

¹⁸ Some of the practices described here were presented to the staff of the national penitentiary system in 2008 during a study visit to Estonia organized by the Council of Europe

- it is obvious based on the individual treatment program that it is not practical that the prisoner serves his/her sentence in a closed prison;
- the term of sentence is less than 1 year or the remaining sentence term to be served is less than 18 months;
- there are grounded reasons to believe that the prisoner will not commit other crimes.

A prisoner may be transferred from an open prison to a closed one if:

- he/she does not observe the provisions of the law on execution of punishments or the prison internal order regulations or if he/she committed new crimes;
- the transfer is required to achieve the objectives of punishment execution.

In order to determine which detention regime is the most appropriate for a prisoner, the needs and risks related to the commission of a new crime or to causing severe bodily injuries to other persons are assessed.

Tools used to assess the behavior of prisoners

In order to assess the behavior of prisoners and to determine the appropriate detention regime a structured questionnaire on risks and needs assessment is used. This tool was validated on the prison population. The behavior of prisoners is assessed annually and the changes occurring within a short period of time since the previous assessment are being observed.

Assessment of the risk of recidivism:

Prior to conditional release the risks and the needs of a prisoner that may influence his/her integration in the society are assessed. The same structured questionnaire as mentioned above is used for the assessment.

POLAND

Types of detention and treatment regimes

The types of units and prisons include:

- closed prisons;
- open prisons;

- semi-open prisons.

Criteria and indicators used to classify and reclassify prisoners

Prisoners are classified taking into consideration in particular the following criteria:

- sex;
- age;
- previous convictions;
- premeditation of the crime;
- remaining period of unserved sentence;
- physical and mental condition, level of dependence on alcohol and drugs;
- level of risk to the society (level of social danger);
- type of the committed crime.

In order to ensure a proper classification and determination of the conditions of an efficient intervention program the following shall be performed:

- psychological and psychiatric testing of the prisoners;
- explanation of behavior psychological and social processes;
- diagnosis of potential psychological disorders;
- specification of a possible medical treatment and rehabilitation.

A convict is referred to a semi-open regime if:

- he/she serves the punishment within a program of intervention (provided there are no special circumstances justifying the referral to a closed prison);
- he/she is convicted for a crime committed without premeditation or serves a substitutive punishment or an arrest punishment (provided there are no special circumstances to justify the referral to a prison of another type).

A convict is referred to a closed regime if:

- he/she poses a serious danger to the society and security of the prison;
- he/she is convicted for a crime committed in an organized group or in an association created in order to commit crimes (provided there are no special circumstances justifying the referral to a prison of another type);
- he/she is convicted to life imprisonment or imprisonment for 25 years;

- there are elements which make the execution of a punishment in an isolated and protected environment advisable;
 - *certain personal characteristics and conditions;*
 - *he/she had a certain lifestyle prior to committing the crime;*
 - *he/she behaved in a certain way after committing the crime;*
 - *he/she had attitudes and behavior that were negatively evaluated during the preventive arrest period;*
 - *arguments related to security of detention or other special circumstances;*
 - *he/she seriously violated the internal order rules and discipline in prison or under preventive arrest;*
- he/she serves the sentence in open or semi-open regime and his/her behavior and attitude were negatively evaluated and if there are security reasons for detention which make the execution of the punishment in a more isolated and protected environment advisable;
- he/she committed an especially serious crime and his/her attitude makes referral to a closed regime advisable.

A prisoner may be transferred from a closed to a semi-open or open prison depending on his/her attitude and behavior. The transfer of a prisoner from an open prison to a semi-open or closed prison or from a semi-open prison to a closed prison may be determined by:

- a negative evaluation of the attitude and behavior
- security reasons
- abuse of the rights granted by the detention regime (exercise of the rights may not violate prison security or order).

A person convicted to life imprisonment may be transferred to a semi-open prison after serving at least 15 years and to an open prison – after serving at least 20 years of punishment.

During the periodic assessment of the resocialization progress the following are considered in particular:

- attitude to the committed crime;
- degree of observance of order and discipline;
- attitude to work;

- nature of contacts with the family and execution of the obligation to provide financial means to support it;
- behavior with the other prisoners and the staff of the prison;
- changes in behavior since the previous assessment.

Indicators used during periodical assessments showing progress of the prisoners:

- failure to return following the permission to leave the prison without supervision;
- number of conditional releases;
- number of special events, types of crimes during the events and circumstances of their commission;
- number of persons taking part in school and professional training programs and persons who successfully completed the courses in a school year;
- number of programs and number of prisoners taking part in resocialization programs preparing for social rehabilitation;
- number of prisoners taking part in specialized programs (therapeutic programs for alcohol or drug addicts, persons with mental non-psychotic disorders, mentally sick persons, persons convicted for sexual crimes committed due to sexual behavior disorders) and of persons who successfully completed the corresponding programs, conditions in which the specialized programs are conducted, analysis of methods and procedures, involved staff.

Disciplinary sanctions for violation of the order or interdictions established in prison by the law, regulations or other provisions. Should the corresponding violation have the nature of a crime and be not committed outside the prison, a prisoner is subjected to a disciplinary sanction.

In case of certain disciplinary violations, when establishing the guilt, individualizing the punishment and executing the disciplinary sanctions, the following are considered:

- type and circumstances of the act;
- attitude to the committed act;
- previous attitude;
- personal characteristics and health condition of a prisoner;
- education objectives.

Tools used to assess the behavior of prisoners

The prisoners are assessed for the purpose of their classification based on the personality tests and other psychological or psychiatric tests. The record of disciplinary sanctions is also used to assess the behavior of the prisoners.

The assessment of the risk of recidivism – a criminal and social forecast is used to evaluate the risk of recidivism.

SPAIN

Types of detention and treatment regimes

Regimes for treatment of prisoners in prisons

1. Closed regime
2. Normal regime
3. Open regime

Criteria and indicators used to classify and reclassify prisoners:

Referral to a closed regime is not a punishment and the objective is to achieve as soon as possible the placement of the prisoner under normal regime.

Characteristics of application of a closed system:

- Exceptional character: applied when no other mechanisms are available;
- Transitory character: the time spent by a prisoner in closed regime is essential for redirection of the prisoner's behavior and attitudes;
- Alternative character: its application implies exclusion of severe mental pathologies.

Criteria of classification in closed regime

- Prisoners with a high level of danger or incapacity to adjust to the general norms of usual cohabitation;
- Commission of crimes indicating an aggressive, violent and antisocial personality;
- Membership in criminal organizations or armed gangs;

- Active participation in strikes, physical aggressions, threats, coercions;
- Introduction or possession of weapons in prison, possession of drugs intended for drug trafficking.

Criteria of classification in normal regime

- Normal regime is applied to persons under preventive arrest or persons with a final sentence who display respect to the order and rules of cohabitation;
- Assessment of available criminal data in the card/case file of the person;
- Assessment of behavior while in custody and of significant incidents;
- Assessment of participation of prisoners in treatment activities and programs;
- Assessment of recidivism forecasts in terms of the criminal behavior.

Criteria of classification in open regime

The open environment is configured as an important support tool for resocialization of persons who have sufficient responsibility to justify withdrawal of rigorous control in the course of serving the punishment. Conditions:

- Commitment by prisoners to complete the treatment activities facilitating their personal and social development;
- He/she previously availed of leaves. It is an orientation and not an indispensable criterion.
- When the duration of the punishment imposes by law a security period in such a regime.
- Performance of civil responsibilities or availability of a commitment by a prisoner that such responsibilities will be executed in particular by taking advantage of the opportunities and facilities the open regime offers;
- Need for treatment in the community;
- Availability of a valid and testable plan in order to have an honest life in freedom;
- It is necessary that the candidates are not characterized by significant factors of maladjustment: membership in criminal organizations, psychopathic features of personality, maladjustment to the prison environment and continuing criminal activities.

Indicators to be considered when replacing the closed regime with the normal regime:

- Lack of sanctions described as very serious and serious for a timeframe of 3 to 6 months prior to the assessment;
- Lack of significant negative incidents in the behavior of prisoners;

- Positive assessment following active participation in the activities from the program specific to the closed regime;
- Family and social support;
- Participation in offered and agreed upon by the prisoner activities included in the Individualized Treatment Program;
- Prisoner displaying at the meetings with professionals an attitude of respect and observance of the elementary rules of cohabitation.

Indicators considered when replacing the normal regime with the open regime

- Lack of sanctions at the moment of revision of the classification;
- Lack of incidents during leaves from prison;
- Participation in treatment activities and specific programs;
- Social and family support relations;
- Labor contract or a treatment activity in the community;
- Meeting classification criteria mentioned earlier for the open regime.

Tools used to assess the behavior of prisoners

- Assessment of variables specified in the Planning and Classification Protocol (PCD).
- Following the personal, social, family and labor records;
- Revision of the documents related to the criminal acts;
- Reports used by different professionals-members of the treatment team to review the classification;
- Report on assessment of leave permissions he/she availed of (VPD);
- Application of the scale of assessment of the risk of escape (TVR).
- Development of models to allow leaves;
- Model of assessing scheduled leaves (M-SPR3);
- Card of assessment of Subordinated Units;
- Assessment card in line with art. 182 of the RP (placement in a detention center for dependence and in a special education center; both are not part of the penitentiary system);
- Form to register objective indicators for prison behavior;

- Record of punishable acts;
- Computerized record of the use of telematics means;
- Computerized record of the program of prisoners with telematic control;
- Individualized Treatment Program Register (PIT);
- Register of activities organized for prisoners;
- Computer register of activities;
- Card for monitoring the individual support program for social inclusion and integration.

Tools used to assess criminal behavior

Assessment of gender-based violence is conducted through the specific program of gender-based violence and, practically, by studying the variables potentially leading to violence. For gender violence the scales include: social and demographic, family and social data, questionnaires on control techniques and jealousy, QMI Scale (partner), questionnaire on consumption of alcohol and drugs, McClean Borderline Personality Scale (BPD), Levenson Psychopathy Scale, AQ Behavior and Emotions Scale (Agression Questionnaire), STAXI Scale, Barratt Impulsiveness Scale. The assessment of variables leading to a sexually aggressive behavior is conducted by applying the Specific Program for Sexual Aggressors. Two questionnaires are used for sexual aggressors: EPAS and EPAS-A/V

The validation of the used tools is currently ongoing.

Assessment of the risk of recidivism – the risk of commission of crimes is assessed prior to release and refers to gender violence and sexual aggression. There are no tools to also assess the risk of recidivism after release.

Chapter 4

Perception by the prison staff of the individualization of punishment execution

During the recent years the international organizations specialized in the area of monitoring the respect for the human rights in prisons increasingly highlight the fact that the interaction between the staff and the prisoners is essential for social recovery of prisoners.

To this end, the staff must properly solve the problem that they have to concurrently ensure the supervision and control of the prisoners and the positive change and their treatment. According to the CPT rules, the cornerstone of a humane prison system will always be properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners and see their work more as a vocation than as a mere job. Building positive relations with prisoners should be recognized as a key feature of that vocation.¹⁹ Establishing constructive and positive relations between the staff and prisoners will not only reduce the risk of ill-treatments, but will also intensify the control and security in the prison environment and will contribute to a better social reinsertion.

Considering the aforementioned, CPT encourages widening the range of extra-regime activities, including the programs and activities focused on social reintegration of prisoners, vocational orientation, cultural development, etc. – inherent elements of the mechanism of individualization of punishment execution.

The international practice proves that more permissive regimes are perceived as offering conditions for an easier application of social and educational programs involving prisoners who observe the orders and regulations, have a less aggressive behavior and better chances for social reintegration.

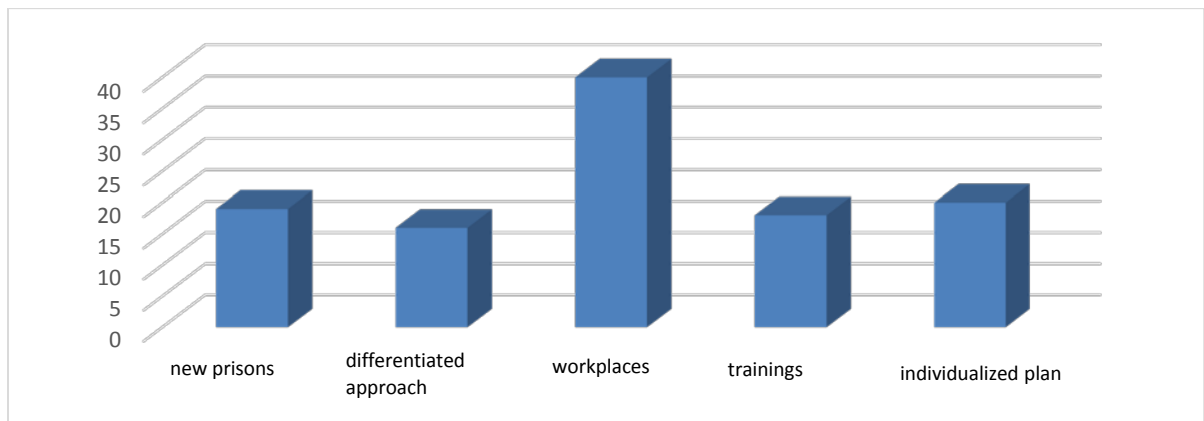
The manner the prison staff in the Republic of Moldova perceives the current structure of the system of distribution of prisoners by detention regimes, the encountered difficulties, including the advantages and disadvantages of the individualized program of punishment execution in the form it is currently implemented within the penitentiary system is presented in this study.

¹⁹ Excerpt from the 11th General Report [CPT/Inf (2001) 16] Relations between staff and prisoners

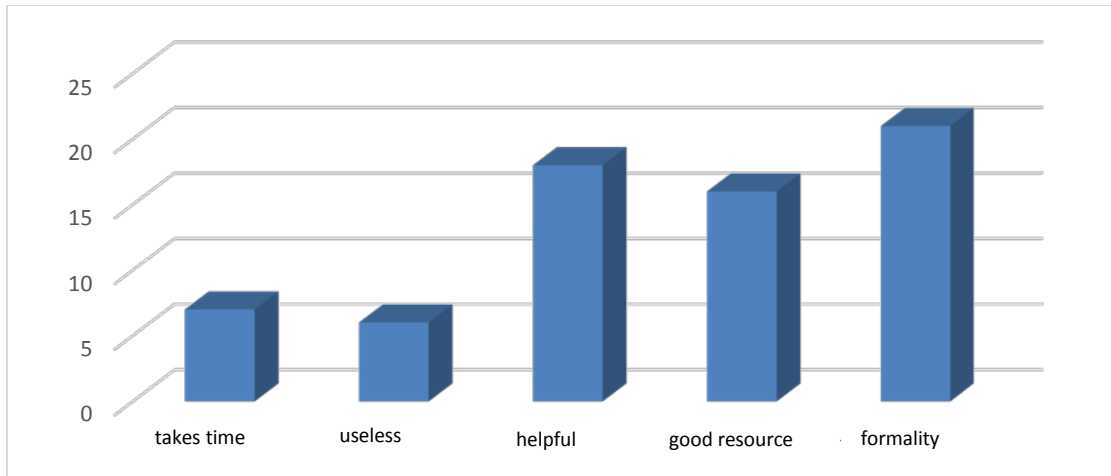
Employees of four prisons took part in the discussions. Mostly, they were specialists from the education service, psychologists, social assistants and officers from the regime and security service.

Practically, the term of individualization of punishment is perceived by them, to a great extent, as a differentiated manner of work with the convicts and as an individual program of executing the punishment. They consider that the purpose of individualization of punishment execution is resocialization of convicts and preparation of an efficient daily program in prison.

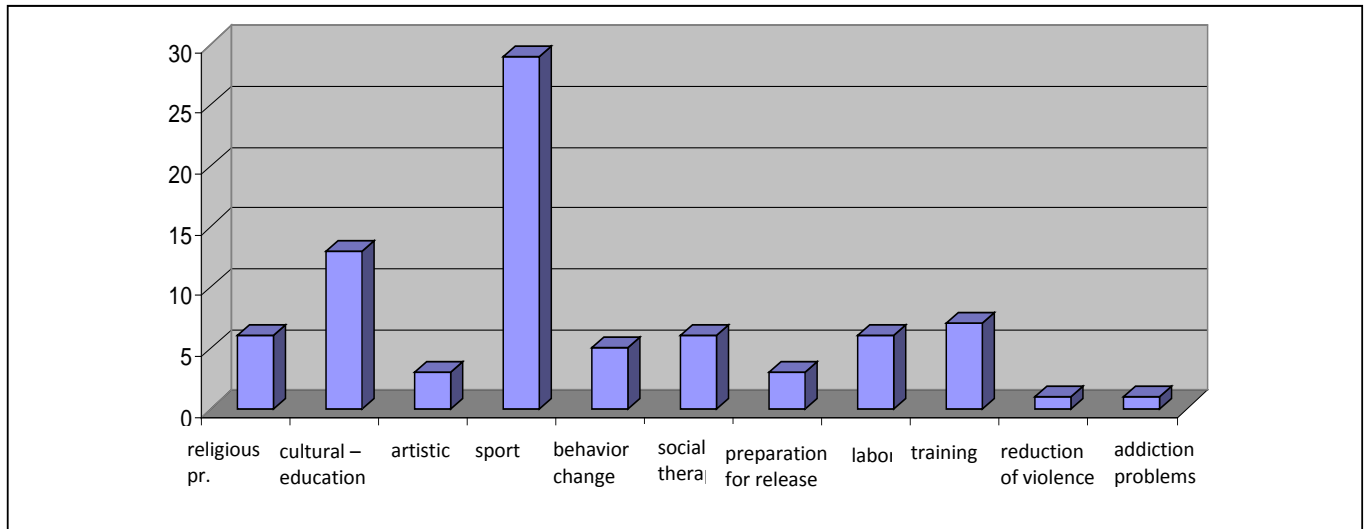
An important action related to resocialization of prisoners and reduction of the risk of recidivism is to provide the convicts in custody with workplaces. Over 80% of specialists who took part in the study mentioned it. It is encouraging that 40% of specialists mentioned about the need for a resocialization plan for every prisoner.



However, when asked about the implementation of the individual program of punishment execution, even if they recognized it was a document helping both the employee and the prisoner establish goals for the future, being a resource helping them know the needs of the convict, 50% consider it is prepared formally.



The interviewed staff from the penitentiary institutions mentioned that the programs the prisoners most frequently take part in are sport and cultural and education programs, which very often do not meet the criminogenic needs of the convicts.



The training of staff dealing with social and education activities involving prisoners, including the activities related to individualization of punishment execution is a cardinal aspect within this process.

We may conclude from the interviews with the specialists in the area of psychology, social assistance and education that factors preventing from applying the individualization of punishment execution are objective conditions, such as lack of material conditions (specific feature of prison premises), lack of budget to conduct certain activities with the convicts, and the

“prevalence of certain approaches based on prejudices of the staff”, superficial involvement or even non-involvement, formalization of activities included in the implemented programs, including the program of individualization of punishment execution. Many of the interviewees directly mentioned that the change of attitude and motivation of staff and prisoners would contribute to an efficient implementation of the programs of individualization of punishment execution.

The quality of knowledge, skills and attitudes of the staff will determine the success of the activities aimed at social reintegration of the convicts and their high-quality training is mandatory. A significant attention must be paid to the initial training and the continuous training of the employees of services with competences related to the activity of individualization of punishment execution. A first step in this regard was undertaken in 2009-2010 by conducting trainings and workshops within the Twinning Project with the German expert, Silvie Hawliczek, Chief of the Department for Psychological Assessment from Mohabit Prison (Berlin). During these trainings the psychologists, social assistants and staff of the education service attended trainings in assessing the risk of recidivism, planning the execution of punishment, etc. Continuous training of psychologists in diagnosing and forecasting the criminal behavior, as well as correctly developing the convicts’ individual plans of punishment execution are conducted annually with the support of IRZ. In addition, continuous trainings of this category of employees are periodically organized with the support of the Council of Europe, NORLAM Mission, Institute for Penal Reforms ONG and other relevant entities. Thus, these institutions contribute to a great extent to specialized trainings, including practical ones, covering also the individualization of punishment execution. The staff directly referred to appreciation of these trainings during the discussions we had with the specialists in the course of developing this study.

CONCLUSIONS

Following the analysis of the legislative and normative framework, the practices in the national penitentiary system and the experience at the European level we may conclude that the penitentiary system and the society in Moldova came up with many initiatives aimed at implementing the mechanism of the convicts' individualization of punishment execution and have an increased interest for the introduction of a system based on individualization of execution of punishments.

10 years after the Enforcement Code had been applied there is an acute need to revise many priorities related to the security of prisoners and, in particular, to the social reintegration of convicts. The development of education, psychological assistance and social assistance programs at the stage of detention is an ongoing process. Consolidation of implementation and, as the case may be, revision is required of the education, psychological assistance and social assistance programs and activities and working methodologies along with continuing the process of implementing official procedures for the activities. There is a lack of a coherent social and professional reintegration policy adjusted to the needs of persons deprived of liberty and the demands of the labor market that would allow their access to a diversified offer of professional training programs and employment.

Recovery programs intended for persons deprived of liberty in the custody of the penitentiary system conducted in an optimal manner is an essential prerequisite for a successful social intervention aimed at facilitating social reintegration and preventing recidivism. In order to achieve this objective the persons deprived of liberty need to be prepared from the educational, psychological and social perspectives for their social and professional reintegration or, as the case may be, for their inclusion in the post-detention assistance activities.

To this end, individualization of punishment execution in the penitentiary institutions had been long ago identified as a determining factor in the successful resocialization of prisoners. It provides a wide range of tools applied to each individual separately without generalizing the applied methods and tactics and offering, thus, the possibility to avoid applying methods to all prisoners (when it may have an impact on a limited number of beneficiaries). In other words, any

intervention of resocialization applied to all prisoners and their involvement in such activities without considering the peculiarities of each person does not necessarily have the same impact on everyone; in case of some individuals it may have phenomenal consequences and unexpected results, while in other cases the individuals remain indifferent and unaffected even partially by the set objectives.

If to analyze the importance of individualization of execution of criminal punishments in prison, we obviously come to the conclusion that the consequences, both future and present, are beneficial. Application of the mechanism of individualization of punishment execution excludes a part of the tension specific to imprisonment of any person, leads to a clear awareness of the committed acts and highlights the difficulties and internal destabilizing factors that led to an anomaly in behavior and to the commission of crimes. The advantages on the social and political levels become clearer (observance of the European legislation, community and international law, image of the country in a sensitive sector such as the human rights and fundamental freedoms), individualization of punishment offers social advantages when a prisoner has the possibility to identify himself/herself with an honest person who was punished by being placed in prison; detention is a way to resocialization and acquiring new skills of interrelation with the members of society and not a daily repeated punishment for the fact that he/she is in the custody of prison.

Generally speaking, the advantages of individualization of punishment execution are:

- A prisoner understands the role of the criminal punishment and the purpose of detention (to gain, assimilate and learn new behavior and skills that would allow his/her to efficiently integrate in the society after release);
- Procedures improper for certain situations and invalid for some prisoners are not applied saving resources, means and forces of the penitentiary system and, at the same time, preventing reactions of disobedience, rejection and disagreement with the events taking place in the prison environment of each beneficiary;
- Resocialization tasks are performed more rapidly and with a higher efficiency;
- Obvious advantages in the social and political area for the state system and the area of respecting the human rights for the penitentiary system and the system of application of the law in the Republic of Moldova;

- Economic advantages (the state spends less money to support individuals who were repeatedly in custody due to reduction of the risk of recidivism and efficient reintegration of former prisoners).

Considering the aforementioned, it shall be stated that currently the individualization of punishments in the penitentiary system of the Republic of Moldova, based on the legal framework, the available material conditions in the majority of penitentiary institutions in the country, is more like a formalized program which is not based on a fundamental system of assessment and distribution of prisoners. Nevertheless, a positive aspect is that the initiative to implement this program during more than 7 years already allows some assessments and conclusions. In case of introduction of a proper legal framework and of an efficient system of individualization of punishment execution, it will not be applied from the scratch. In conclusion we have to mention that there is no legal mechanism that would facilitate transition from a penitentiary system to another based on certain tools of assessment and individualization application to prisoners. The criteria of assessment of persons deprived of liberty to establish and change detention regimes are not clearly specified in the law and regulations. The only criterion for transition from a regime to another, as mentioned above, is the elapse of a period/timeframe under a certain regime. The possibility of transferring prisoners from restrictive regimes to more permissive regimes is positively perceived by the prison staff being associated with an increase of satisfaction and labor and a decrease of its difficulty. We may conclude from the discussions with the staff that the open regime is associated with the low level of aggressiveness of prisoners to the staff and aggressiveness among prisoners along with greater chances for social reintegration.

The current system with the three regimes (according to art. 327 of the Criminal Code – initial, common, resocialization) is inefficient and must be eliminated. The three phases of incarceration are obstacles for individualized classification and do not provide sufficient possibilities for a corresponding planning of the sentence. Individual plans for punishment execution (risk assessment, diagnosis and planning) are necessary along with transition to two types of prisons: closed and open prisons. Sectors must be created in prisons that would comply

with the criteria of categorization of prisoners²⁰, an opinion suggested by many experts in the field of prisons.

Resocialization work must be a system of assessment of the situation of a convict, as well as of the needs to be met while he/she is in custody. Experience proves that studying the personality of a prisoner must be a continuous and systematic process. It is determined by the fact that the scientific approach of organization of the psycho-pedagogical process implies permanent contacts for each prisoner. By knowing the past and the present of a convicted person, analyzing his/her relations with the punishment, regime, labor activity, relations with the social environment, a psychologist may forecast the behavior of the prisoner also after release. These forecasts must be included in the conclusions and recommendations, which will facilitate the process of rehabilitation of the convicted person. Thus, the resocialization process needs an individualized planning of punishment execution that will contain all measures of treatment for each convict established at the stage of his/her assessment (according to the Standard Minimum Rules for the Treatment of Prisoners adopted on July 31, 1957 related to treatment, classification and individualization).

The detention regime defines the degree to which the persons deprived of liberty have access to labor, professional or vocational training, education, programs for changing the criminal behavior, counseling, group therapy, physical training, religious or spiritual guidance, social and cultural activities and preparation for release. The penitentiary regime should be focused on reducing any difference between the life in prison and the life in freedom. These differences reduce:

1. the capacity of the prisoners to undertake responsibilities;
2. the respect of human dignity of persons deprived of liberty;
3. the quality of the regime determines the success of reintegration of persons deprived of liberty. Provision of a range of constructive activities respecting human rights and offering socialization possibilities should encourage a prosocial and independent lifestyle after release. Gaining certain vocational skills, work experience and education are essential for social reintegration.
4. The results of counseling programs and programs addressing criminal behavior must be measured and these programs must be integrated into the individual assessment and in the

²⁰ Conclusions from the Report on Assessment of the Penitentiary System, TWINNING Project: Support to Moldova in Prisons System Upgrading and Penal Reform in the Republic of Moldova.

planning of the management of the execution of imprisonment punishment (correspondingly, when determining and changing the detention regime). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) highlights the fact that the persons deprived of liberty must spend at least 8 hours daily outside the cells and be involved in various and useful activities. This program should be applied to all persons deprived of liberty (except for those isolated for disciplinary violations).

5. Provision of the persons deprived of liberty with the possibility to spend the largest part of the day outside the cells and to be involved in different activities has an impact on the manner in which prisons are managed.

Another identified systemic problem refers to the sufficient number of staff and the training of staff able to cope with the requirements of application of a program for individualization of punishment execution. On the other hand, it is encouraging that the interviewed prison staff perceives the system of individual planning of punishment execution as being efficient and display openness to its implementation. This efficiency is, however, limited to the aspects related to the activities inside the prison (such as difficulty of labor and level of aggressiveness) and to the chances of social reintegration of persons deprived of liberty and it is not related to the protection of community from the risk that the persons deprived of liberty will commit criminal acts in future. The prison staff does not have tools of assessing prisoners they consider adequate; they are not standardized and used in a uniform manner at the level of the entire penitentiary system.

The obtained data related to the 4 penitentiary systems from the European Union, which have detention regimes applied in a differentiated manner to different categories of prisoners, show us that the level of formalization of the system of assessment of persons deprived of liberty to be distributed by different detention regimes differs from one country to another. The range of possibilities varies from systems where the criteria and tools of assessment are stricter and more clearly defined to systems where the criteria are mostly discretionary and the assessment is clinical based on the professional opinion of the persons conducting the assessment. The methods and tools used in different penitentiary systems to assess persons deprived of liberty vary from clinical interviews to psychological tests. It shall be mentioned that not only the countries from the Western Europe, but also the penitentiary systems of the former communist

countries developed specific criteria and tools of assessment of persons deprived of liberty, for example, Estonia. The analysis of the current situation in these four states could serve as a model for the penitentiary system of Moldova in the course of applying these successful experiences.

RECOMMENDATIONS

at the level of amendments to the enforcement and criminal legislation

Undoubtedly the advantages of an assessment system for distribution and individualization of punishment execution to the current dispositional, restrictive and rigid system are obvious and its implementation is not only a challenge, but also a need for many penitentiary systems, including the national one. Nonetheless, at the current stage, some aspects may be highlighted. They are related to the need to reevaluate the legislation in terms of implementing the institution of individualization of punishment and, correspondingly, complying with the current international practices and standards in the area.

It shall be mentioned that the implementation of the new system may not be reduced to simple exclusion by abrogation, which is indispensable, of the provisions of art. 72 of the Criminal Code establishing the types of prisons, categories of persons serving their sentences in a certain type of prison and the competence of a court to change their type, as well as the provisions of point 9), para. (1), art. 385 of the Criminal Procedure Code imposing on the courts the obligation to establish the prison type when issuing the sentence. The eventual new provisions must be related mostly to the exclusion of the term of type of prison, which shall be unified under a common term of detention regime. The punishment of imprisonment is the only form (type) of criminal punishment and it is not clear what the arguments are to have several types of institutions for the execution of the same type of punishment. The entity enforcing the punishment is the prison and distinct regimes of execution shall be created there and the prisoners shall be distributed based on their personality, the committed act and the behavior during the execution of the punishment. Considering the essence of these provisions they must be the object of the enforcement legislation and not of the Criminal Code.

Here we could highlight the introduction in the Enforcement Code of the competences, rules and procedures of assessment of the personality of prisoners and of the danger they pose by specialized entities of the authority enforcing the punishment, as well as the amendment of the provisions of articles 249-256 and para. (1) of art. 257 of the Enforcement Code in terms of unifying the notions of regime and type of prison and creating detention regimes that would

comply, de facto, with the needs of the process of resocialization of prisoners and other goals of the criminal punishment, which to our mind, could be the following:

- **Initial regime of punishment execution** – regime where a prisoner shall start serving the sentence in the prison (the duration of the pre-trial detention shall not be included here) and where the specialized commissions or services shall assess the personality of a prisoner and the committed act, so that he/she is subsequently referred to the actual punishment execution regime. The corresponding regime is sufficiently restrictive, the rules comply with a closed regime, where the relief measures are strictly regulated by the legislation. The initial regime shall not exceed 6 months followed by an assessment of the prisoner, and any violation of the regime, prison program or refusal to cooperate to plan the execution must lead to further determination of a more restrictive regime of serving the punishment.
- **Open regime** – immediately after the initial regime, persons who during the initial regime were assessed as being not dangerous may be placed in this regime; they conscientiously wish to re-socialize, the committed act is not serious and the remaining term of the punishment does not exceed 2 years. At the same time, persons who executed the punishment in other detention regimes, observed the prison regime and the punishment execution plan and whose remaining term of punishment execution is not exceeding 2 years may be transferred to this regime.
- **Semi-open regime** – immediately after the initial regime, the following persons may be placed in this regime: they comply with the criteria set for the open regime, but the execution term exceeds the one set for the open regime; as well as persons who were assessed as non being dangerous, the committed act is not especially serious, but they did not cooperate with the prison authority in terms of assessing their personality and only formally accepted the punishment execution plan. A person who has dangerous, especially dangerous or prison recidivism records may not be directly placed in this regime.
- **Closed regime** – persons convicted for commission of all types of crimes, except for exceptionally serious crimes and who were assessed as being dangerous.

- **Maximum security regime** – will be the punishment execution environment for the persons: who were assessed as being dangerous; committed exceptionally serious crimes; prisoners not willing to re-socialize, violating the prison regime, refusing to participate in labor, violating the legal requirements of the prison administration and who repeatedly committed crimes, etc.

The presented description is far from being final; the respective criteria may be described in more detail during the development of the corresponding amendments. An important aspect to be regulated by the enforcement legislation would be the determination at the legislative level of the criteria of appraising a prisoner as being “dangerous” not only based on the committed act, but also considering the peculiarities of his/her personality, predictability of his/her behavior, degree of violence, recidivism records, adherence to criminal hierarchy and/or criminal world, availability to cooperate with the prison administration, social services, conscious participation in prison programs, involvement in labor and training/education programs, etc.

It shall be mentioned in this regard that the legislative amendments must refer to wider and more competences and greater decisional autonomy of the penitentiary institution:

1. More **autonomy on the local level (penitentiary institutions)** and greater decision-making power of the prison governors. This change must be introduced concurrently with the amendment of the requirements for the recruitment competition or promotion to the position of prison governor and with comprehensive trainings in management, treatment of prisoners, etc.;

2. **Authority of the Director General or the Prison Governor** to decide on the transfer of prisoners from one prison to another (from a prison of one type to another) would allow a progressive transfer of prisoners from stricter conditions (closed prisons) to milder conditions (semi-closed prisons) and, correspondingly, a better transition to liberty (possibility to serve the last one third of the punishment term in open prisons) and involvement into socially useful activities;

3. **Creation of a Center for Assessment and Distribution of Convicts** (Service for Diagnosing and Planning Punishment Execution by Convicts).

4. **Development of a multi-organizational approach** in order to achieve the objectives of social reintegration by reorganizing educational, psychological and social assistance services

and the regime service to ensure their compliance with the principles of individualization of punishment execution.

5. **Introduction of a “progressive system” for treatment of prisoners.** This system must include different rewards and preferential treatment when a prisoner behaves well, is diligent and performs prosocial actions. Such a “progressive system” provides adequate opportunities, such as accommodation in a less restrictive regime, additional rewards for hard and assiduous work, closer and more frequent contacts with the family and relatives, more telephone calls, more leisure time (sports, arts), labor outside the prison and other bonuses. It is important that a number of rewards in the progressive system do not mandatorily require financial expenses. On the contrary, the progressive system could bring economic benefits to the prison and the individual.

At the level of infrastructure

Changing the infrastructure of penitentiary institutions by replacing large rooms (of dormitory type) by cells or rooms for maximum 8 persons. Obviously, reconstruction or construction implies significant expenses. However, considering the fact that a new prison is to be built in Chisinau mun., the specifics of its building must take into account the approaches of the mechanism of individualization of punishment execution and encourage creation of detentions spaces for these activities.

At the level of the prison staff

Training and continuous professional development of the staff responsible for application of the program for individualization of punishment execution need to be focused on subjects related to the components of the program: avoiding risks, identifying needs, developing behavior forecasts, etc. There must be sufficient prison staff adequately trained to guarantee order and security and to supervise the activities.

On the other hand, it is important that the Ministry of Justice and the Department of Penitentiary Institutions, in particular, allocate sufficient financial resources to stimulate the employment in prisons of qualified specialists in psychology, sociology, social assistance and pedagogy. The deficit of personnel the detention units in our country currently face prevents from conducting the elementary education and psycho-social programs and reduces, thus, the chance of the prisoners to correct their behavior and to orient themselves towards a prosocial lifestyle. Beside the professional competences of the staff, there is a stringent need for an autonomy at the local level (penitentiary institutions) and, correspondingly, for a greater decision-making power of the prison governors and prison commission. This change must be introduced concurrently with increasing the employment or promotion requirements to the position of a governor along with comprehensive trainings in management, including the management of criminal punishments. Besides, additional tasks for certain categories of staff must be assigned along with the revision or exclusion of certain current tasks.²¹

At the level of external cooperation and information of society

Implementation of an individual program for punishment execution is a unique opportunity to create certain partnerships with non-governmental organizations, private companies, international profile organizations that could contribute to a number of activities aimed at social reintegration of convicted persons: professional training, creation of workplaces, cognitive and training activities, art and sports, etc. Cooperation with donors and international organizations specialized in the area of penitentiary reform and the rights of prisoners could provide assistance for a number of initiatives related to the implementation of the individualized program for punishment execution (training of staff, study visits to countries where such a system efficiently functions, providing methodical materials, providing financial support for reconstruction or design of detention spaces or performing resocialization activities).

In order to promote good practices and inform the public about the obtained results it is necessary to communicate and cooperate with mass-media. Certain activities of information and communication could directly involve the convicts (editing newspapers, producing radio

²¹ Comments on the Justice Sector Reform Strategy 2011-2015 made by the experts of NORLAM Mission

programs, preparing certain publications) – these activities undoubtedly contribute to a more positive perception of the prisoners and could facilitate their social reintegration and would also encourage the prison staff to be more motivated both to ensure transparency and promote successful practices, which, in their turn will contribute to a positive climate in the entire society and to a human image of the penitentiary system and the convicts.

Attachment: Individual Program for Punishment Execution