Promoting the Use of Non-custodial Sanctions in Armenia, Azerbaijan and Georgia

Synthesis Research Report

Tbilisi 2015

The Synthesis Research Report has been produced by Penal Reform International (PRI). The Report is based on research findings undertaken in South Caucasus countries to provide information on the existing situation with regard to current criminal justice policy, legislation and practice in terms of sentencing, use of imprisonment and alternative sanctions, mediation and diversion, length of custodial sanctions and their appropriateness, statistics, operation of parole boards and tackling criminal justice reform problems.

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PENAL REFORM INTERNATIONAL

Promoting the use of non-custodial sanctions in
Armenia, Azerbaijan and Georgia

INTRODUCTION

Most countries are struggling to develop penal systems that combine justice for victims, safety for the public and rehabilitation for offenders. Increasingly the main challenges are to find effective ways to avoid unnecessarily holding mid-range offenders in prison while they wait for their trial; to develop community-based sanctions that will be a better alternative to prison sentences for these offenders; and to make better use of early release schemes if prison is inevitable.

This report is part of a project that aims to increase further the use of these non-custodial approaches to the management of offenders in the three South Caucasus countries. It comments on the issues from three points of view: international approaches; the situation in each country; and recommendations for possible improvements. Statistical information for international comparisons has been averaged from data published by the Council of Europe (CoE)[1] or the Confederation of European Probation (CEP). Scotland, Ireland and Austria were chosen for comparison.

The project "Promoting the Use of Non-custodial Sanctions in Armenia, Azerbaijan and Georgia" is funded by the United Nations Democracy Fund (UNDEF) and is being implemented by Penal Reform International (PRI). Support from the UNDEF has allowed PRI to provide some additional services to strengthen the delivery of alternative sanctions in the three countries of the South Caucasus. These have included organising working group meetings that bring together civil society representatives and academics; roundtable meetings for key stakeholders; regional conferences; training for probation staff; study visits to Georgia; production of items for the print and broadcast media; training for female and juvenile probationers; and commissioning proposals from law students.

PRI is grateful for information and advice received from many organisations and individuals in the preparation of this report. In particular, we received invaluable help from associates in each of the three countries. Although it has not been possible to get comprehensive information for each of these countries we trust that the picture we present does justice to the achievements and enables further developments to be considered.

PRI Office

South Caucasus Region

Tbilisi, November 2015

[1] European Probation Service Systems: a comparative overview by Anton M. van Kalmthout and Ioan Durnescu

Contents

1. INTERNATIONAL APPROACHES

Community Sanctions and Measures

This section describes the main ways that can be used to avoid custody as an offender moves through the system from initial arrest until the sanction has been completed.

1.1 Alternatives to Pre-Trial Detention

When a court needs further time to complete dealing with a case it must decide whether the defendant can be released or should be held in custody. The main concerns are whether the defendant will commit further crime, fail to attend a future hearing or interfere with further enquiries.

It is generally accepted that pre-trial detention should be reserved for the highest risk offenders. Negative long-term consequences can arise from holding people unnecessarily in such prisons, and separating them from family and other positive influences at this time of crisis in their lives. Long periods of isolation and exposure only to other people with similar criminal attitudes appear to increase the likelihood of an eventual custodial sentence and recidivism.

A range of non-custodial methods can be used to ensure that people accused of crimes can be safely released while they wait for their cases to be decided. In rising levels of security these methods are:

- **Recognisance.** This is a simple, solemn promise to keep the requirements and is the main method in low-risk cases. The court can attach specific conditions to this release such as remaining in employment or avoiding alcohol

- **Bail.** This is a stronger form of restraint in which the accused must pay money to the court if he or she fails to keep all the requirements of release.

- **Surety.** This is where an individual who knows the accused person promises to ensure s/he fulfil the requirements of the court. This individual must be prepared to pay money if the person fails to keep to the requirements.

- **Curfew.** In more serious cases the person can be ordered to be at a specific location for set hours each day (possibly with electronic monitoring).

- **Bail Hostel.** The defendant can be required to live at a special hostel supervised by the probation service.

In some jurisdictions probation staff give advice to courts about the level of restraint necessary.

1.2 Diversion from Prosecution

Research in European countries has shown that, in the case of less serious crimes, better results can be obtained if the offender is dealt with informally rather than being convicted and sentenced in a public court. Under such 'diversion' schemes, prosecutors can suspend the prosecution if the accused person admits their guilt, regrets the crime and agrees to undertake a rehabilitation programme. The rehabilitation is usually supervised by a social worker and can often include mediation with the victim of the crime. If the programme is completed successfully the prosecution is terminated and the offence does not result in a criminal record being generated.

1.3 Pre-Sentence Report

The purpose of a Pre-Sentence Report (PSR) is to help the court to select an appropriate sentence when it has convicted a person of a crime. It offers an explanation of why the crime was committed and suggests the likely results of the main sentences that could be imposed by the court. It is normally written by a trained probation officer on the basis of interviews with the offender, meetings with family members and a study of any relevant documents. It can take up to 6 hours to collect the necessary information, apply risk and needs assessment tests and compile the report and recommendations. In the UK approximately 20% of the work of probation officers is devoted to the preparation of such reports.

The reports referred to in this section must not be confused with Pre-Trial Reports. PTRs are prepared before the court has finished examining the evidence and made its final verdict. Human Rights considerations usually mean that PTRs cannot make any assumptions about whether the person is guilty or innocent. They therefore cannot comment on possible sentences. They can only refer to immediate welfare issues and whether the person needs to be held in Pre-Trial Detention.

Full PSRs are normally required in cases were a custodial sentence is likely to be considered or when personal or social factors raise concern. After the court is satisfied that the accused person is guilty of the crime, an adjournment will be necessary to prepare the report. This can vary from a few hours to a few weeks depending on the complexity of the issues and the seriousness of the charge.

The judge, prosecutor or defence lawyer can require the attendance of the author of the report to justify its content and conclusions. Normal practice,

endorsed by the European Probation Rules, encourages probation officers to make specific recommendations. Judges are pleased to have professional, independent assessments of this nature but they are not required to follow the recommendations. However, in European countries it is customary to find that judges agree with the recommendations in over half the cases.

1.4 Basic Probation Order

The Probation Order is the main alternative to a custodial sentence in European countries. It requires a convicted person to stay at a designated address in the community (usually their home) instead of serving a prison sentence. For a period of usually up to three years the offender must make frequent visits to the probation office to discuss recent events and make plans for the future.

A properly-supervised probation order is a successful way to deal with mid-range offenders. Consultations with the probation officer help the offender to solve real problems that could lead to more crime. The offender is made to understand the seriousness of his or her behaviour.

The approach is based on a four-stage treatment process involving:

- **Initial Assessment**. An initial assessment is the foundation for effective supervision of offenders in the community. Structured risk and need assessment systems add scientific rigour to this process. They are widely available internationally but need to be calibrated to local circumstances.

- **Supervision Plan**. This sets out how the problems identified in the initial assessment will be tackled during the course of supervision.

- **Interventions**. A range of actions can be utilized, including counselling, social learning programmes, referral to other agencies and mentoring. They have been described earlier in this section. It is important that evidence is collected over a period of years to decide which methods are most effective with each type of problem.

- **Review**. At regular intervals, normally at least every three months, it is essential to discuss the supervision plan with the offender to consider whether the interventions are having a positive effect. Changes to the plan should be made accordingly. Evidence of non-compliance must be challenged immediately and reported to the court if likely to continue.

In some countries, probation is combined with other sanctions such as keeping to a curfew, undertaking compulsory unpaid work, or attending a rehabilitation course. The court will specify how long the sanctions will remain in force. If the

offender is found to be in breach of any of these duties the court will review the case and may impose a tougher sanction.

1.5 Community Service

This is probably the most popular non-custodial sanction in European countries. It involves offenders being made to work for no pay in their spare time. Their efforts must benefit the communities in which they live and should not replace paid jobs in government service or commercial companies. The normal maximum length of order is approximately 300 or 400 hours. Targets are set for the maximum and minimum number of hours that should be worked each week.

In European countries Community Service is seen as one of the toughest community sanctions and it is therefore reserved for offenders who would otherwise serve a short prison sentence. Because in Europe these people are generally less willing to comply with orders of the court, most of them are assigned to work projects that are supervised directly by probation staff.

- **Central Workshop**. This will have a range of basic facilities so that the competence of individual offenders can be assessed before they are assigned to specific tasks. The workshop needs to be big enough to provide supervised work opportunities for high-risk offenders who cannot be trusted on outside placements. Tasks undertaken in supervised workshops can include: repairing toys for children's hospitals; making simple garden furniture; or making scenery for amateur dramatic productions.

- **Group Tasks**. Community organisations and NGOs often require practical assistance. This can include refurbishing premises, preparing and serving food for a social club for elderly people, or clearing rubbish from public areas. Normally the Probation Service will provide a supervisor to ensure that the offenders behave properly and complete the work assignments. Members of the public are encouraged to send suggestions for work assignments to the Ministry of Justice website.

- **Individual Assignments.** Low-risk offenders can be individually assigned to an NGO or community organisation. In some cases, the offender may have special knowledge or skills that will benefit the organisation. Otherwise they will just provide general assistance where necessary. These assignments usually provide the most rewarding opportunities for the offenders.

- **Special Needs Offenders**. Work assignments for female offenders should not clash with their domestic or parenting responsibilities. Disabled offenders may need special work assignments.

Although community service is mainly seen as a punishment, creative selection of work opportunities can provide opportunities for offenders to change their attitudes and learn new skills.

1.6 Social Training Courses for Offenders

A range of psycho-social learning programmes has been developed internationally to help offenders to avoid crime in the future. The programmes help them analyse their problems, identify strategies that will lead to realistic solutions, develop new skills to achieve their objectives and reflect on the moral dimension of their behaviour to others.

40 years ago Canadian researchers began to introduce a welcome degree of rigour into the development of rehabilitation methods. They measured the impact of new initiatives in terms of future rates of reoffending and were able to identify methods that were effective. Rehabilitation programmes in Europe and North America are now based on components identified by this research: problem-solving activities, social-skills training, self-control training, cognitive restructuring, offending behaviour triggers and self-management.

- Social skills training is designed to deal with routine personal and social challenges that offenders have often mishandled. Typical training sessions could deal with applying for a job, managing money more carefully, reducing consumption of alcohol, or resolving family tensions. A specific set of courses on workplace skills focus on helping participants to accept responsibility and perform more effectively at work.

- Offending behaviour programmes can involve up to 30 group learning sessions of two hours each. The content is carefully structured to highlight the moral dimension of the choices people face and the skills needed to adopt different behaviour. These courses are normally designed for a group of up to 10 offenders with two staff. They have proved to be popular with courts and probation staff. Research indicates that successful completion can reduce the likelihood of reoffending by up to 20%. Courses cover a wide range of criminal behaviours but they are most frequently used to deal with violent behaviour, sexual offending, addictions and general impulsive behaviour. Some have been designed as courses for individuals to work through themselves. Unfortunately, all of the most highly-regarded programs are subject to copyright rules which mean that a significant licence fee must be paid each time they are used. Those that are freely available will not have been developed with such care.

1.7 Restriction of Freedom

It is sometimes necessary to restrict the liberty of wayward offenders if they are to stabilise their behaviour, learn new skills and avoid offending. Probation services and NGOs in European countries operate a range of supervised accommodation facilities for this purpose.

At the higher end of restriction would be a “probation hostel”. This has a residential staff team and fairly strict rules. They typically accommodate up to 20 offenders and up to 10 staff. Residents would go out to work or training commitments during the day but they would eat meals together and spend their leisure time in the hostel. Each resident would have a very clear rehabilitation plan. Individual counselling and group learning sessions would be provided by the hostel staff. Residents would move on to independent accommodation after about a year. Because probation hostels are very expensive to operate, places in them tend to be reserved for offenders with personality problems that suggest they are capable of further serious reoffending. Isolated prisoners who have been released early from a long sentence often resettle more securely in the community if they begin their rehabilitation at one of these hostels.

NGOs provide a very valuable service by operating a large number of smaller hostels for offenders who present fewer risks. The regime in such places would be more relaxed. Although the level of staff supervision would be lower there would remain a strong commitment to rehabilitation and the development of personal responsibility.

1.8 Parole

Parole schemes combine early release from prison with strict supervision in the community. Release can be after one third of the sentence. The prisoner must agree to conditions that are designed to enforce good behaviour and to tackle the reasons for their offending. Face-to-face review meetings can be as frequent as three times per week. The conditions of release remain in force until the end of the sentence. The period of supervision after release depends on the seriousness of the crime but typically is between one and three years.

Parole is popular because it helps to stabilise the behaviour of people who have just left prison. These people are very likely to resume committing crime. Strict supervision is the essential element of parole. The four most common problems for which ex-prisoners need advice are: suitable housing; a source of income; problems with domestic relationships; and resisting approaches from former criminal associates.

Statistics recently produced in the UK show that the likelihood of reoffending

is halved when prisoners are subject to this type of supervision when they are released. Another important advantage of parole is that the prospect of early release encourages good behaviour and the utilisation of the opportunities for rehabilitation provided in the prison.

In most European countries supervision of prisoners after release is undertaken by the same probation agency that supervises alternative sanctions. This is because an offender can move from one group to another.

A reliable parole system requires accurate prediction of risks so that a suitable supervision plan can be devised in advance. It is important that high risk offenders are released early with supervision as these people will present the greatest risk to the communities to which they return.

1.9 Further considerations

Restorative Justice

Restorative justice involves negotiations between the victim and the offender to identify actions that the offender can take to repair the harm that was done. The negotiations can take place at any stage of the justice process, provided the offender accepts his or her guilt. A professional mediator studies the background to the crime and ask victims if they would like to take part in a properly supervised discussion with the offender. This discussion may take place at a probation office or in a pre-trial prison. Ideally this will result in the offender offering to make an apology and offer to help a good cause nominated by the victim.

Restorative justice is not designed to replace criminal justice proceedings - although for more minor offences it can be used as an alternative. When used alongside other sanctions it can deliver benefits that traditional criminal justice cannot. It holds offenders to account directly and personally, gives them an insight into the real impact of their behaviour on the victims, and provides an opportunity to make amends. It gives victims the chance to explain how the crime has affected their lives, to get answers to their questions, to receive an apology, and to move on with their lives.

Juvenile Offenders

Juvenile offenders require a different style of rehabilitation to adults. Many of them need to develop their own self-esteem in order to be able to resist pressure to take part in illegal group activities. Initiatives can include providing juvenile offenders with practical opportunities to contribute to community well-being (such as helping at a lunch club for elderly people) and providing a support group to help parents learn how to advise and control their delinquent children.

Female Offenders

Because male offenders are majority, less attention is given to developing alternative sanctions and prison regimes that are suited to the specific needs of female offenders. Most women who become involved in crime have been suffering because of domestic pressures or bearing discrimination outside the home. In most countries female offenders endure varying degrees of rejection by their families - even if their crime has been committed to provide for a family that has been neglected by other wage earners. Increasingly women in these marginal positions have turned to illegal sex work to maintain an income or drug abuse to escape depression. Rehabilitation programmes must be designed to give appropriate attention to these emotional factors. Alternative sanctions (such as attendance at rehabilitation programmes or undertaking community service) need to be designed to take account of childcare responsibilities.

ORGANISATIONAL FEATURES NECESSARY TO DELIVER ALTERNATIVE SANCTIONS

1.10 Accountability of the Probation Agency

All member states of the Council of Europe are advised to establish their Probation Service within the Ministry of Justice. However, they differ about its accountability within the Ministry. For some the Probation Service is a separate department or agency. For others it is a division within the Penitentiary Service. A third model is to have an overall agency for managing offenders – equally divided between a penitentiary section and a probation section. There are satisfactory examples of each model.

Whichever approach is chosen, it is clearly essential that there should be good communication between the different offender management agencies as it is likely that they will all be dealing with the same cases at some time or other. Also there needs to be good communication with the agencies in the wider justice system (such as police, prosecution and courts).

1.11 Capacity to Deliver Alternative Sanctions

Agencies delivering alternative sanctions must be capable of undertaking a wide range of tasks to high standards. These include: assessing new offenders; giving written advice to courts; planning and delivering preventive supervision; providing rehabilitation services; organising and supervising compulsory work activities; operating electronic monitoring schemes; supervising residential hostels; running day support centres; keeping records of contact; and taking appropriate action when the persons being supervised do not comply with their responsibilities.

In some cases, significant infrastructure is required such as interview rooms, classrooms for group learning and workshops for community service.

1.12 Types of Staff Required

The main group of staff in probation services are Probation Officers. Some will have been selected because of a relevant academic qualification, such as a degree in psychology. Others will have been chosen because they have demonstrated an understanding of the life choices that lead some people to commit crime and a commitment to help people change. All will have completed a special training course – lasting up to one year – and will be approved to undertake all the necessary duties.

However not all tasks involve such a wide range of skills and knowledge. Some specialist tasks such as supervising community service, supervising residential facilities, operating an electronic monitoring scheme, running social learning courses, or operating day support centres are best delivered by staff selected for the purpose. In European probation services, up to 50% of the staff are engaged in an assistant grade. This can be more economical overall.

1.13 Management of Alternative Sanctions Services

An effective management system is necessary to ensure that front-line staff are directed to achieve the goals of the service. Probation services normally do this by dividing their overall workforce into teams of about 10 people. These teams might cover a distinct geographical area or specialise in a particular aspect of the service. Each team will be supervised by a manager, whose task is to ensure that appropriate standards of performance are maintained.

Although unexpected situations will always arise, overall operational efficiency is improved if every staff member knows exactly what contribution is expected from them. Clear operational instructions, ethical standards and job descriptions are essential.

In addition to organising the workforce, managers will work together as the leadership team. They will have the benefit of information systems and financial data to monitor the cost/effectiveness of the service and to propose improvements.

1.14 Logistics

In addition to staff costs, considerable expense is involved in providing suitable local and headquarters offices, as well as office equipment and transport. It is preferable for probation staff to be based in offices that are near to the poor

districts where registered offenders tend to live. This reduces unnecessary travel and encourages the staff to be aware of the strengths and problems of these communities. Some cars need to be available to facilitate visits to prisons and rural locations. Computers with linked databases can help to give probation officers access to the information they need and enables them to record essential information about their meetings with the offenders.

1.15 Partner Organisations

The services provided by NGOs and other government Departments can play an important role in the rehabilitation of offenders. Probation Services should develop working partnerships with all organisations that are active in the fields of education, healthcare, employment and accommodation. In some cases, such organisations can provide a level of expertise not available within the probation service. It is common to find NGOs contracted to the Probation Service to provide specific services. NGOs are usually flexible, innovative and provide services that are very cost-efficient.

THE STRATEGIC OPERATING ENVIRONMENT

Governments have to make difficult choices about the services they can afford to provide within their limited resources. The treatment of offenders usually attracts less sympathy than the services that are more widely used such as health care or education. Alternative sanctions are not easy to understand and they can be seen as a soft response to crime. They will need strong, informed support in order to achieve their rightful place in the penal spectrum. This section considers ways in which a favourable operating environment can be achieved and offers suggestions about possible improvements.

1.16 Government Policies

Positive policy statements by governments about alternative sanctions will give an important message to taxpayers and other key stakeholders. European governments tend to give considerable priority to such statements. "Mission Statements" capture the essence of these policies in ways that can be readily understood by ordinary people. They are commonly found on European government websites and prominently displayed in justice agency offices. They provide managers and staff with a constant reminder about what they are supposed to achieve. By making clear the government's intended objectives they help researchers and external observers to make constructive assessments on the actual results.

The main international justice organisations have published policies they recommend for alternative sanctions. Recommendations from the Council of Europe that are particularly relevant here are the "European Probation Rules", the "European Prison Rules" and other rules concerning conditional release and overcrowding. Two sets of rules from the United Nations are relevant here. The UN Standard Minimum Rules for Non-Custodial Measures (known as the 'Tokyo Rules') were published in 1990. Juvenile justice issues are covered by the 1985 'Beijing Rules' (United Nations Standard Minimum Rules for the Administration of Juvenile Justice).

Although individual countries have adopted different interpretations of these recommendations, there is general agreement about non-custodial sanctions and their purpose. This is to provide courts with the ability to:

- place controls on the behaviour of offenders who do not have to be held in prison;

- rehabilitate offenders;

- impose sanctions (punishments) that do not involve custody;

- restore justice to victims.

1.17 Leadership of the Justice Sector

There are two main reasons why an effective justice system requires strong leadership. Firstly, the general public is quite anxious about crime and prefers to see fairly tough prison sentences given to offenders. In contrast, non-custodial sanctions can seem like weak responses to crime. Leaders of the justice sector need to take opportunities to explain that these sanctions place real responsibilities on offenders and have better long-term results than prison.

The other main reason for leadership in the sector is that the various agencies do not easily work together. Investigators and prosecutors often adopt approaches that conflict with the views of prison or probation chiefs. Strong leadership is necessary to work through these arguments so that all actively support the aims of the government.

1.18 Support from Donors

One of the main expectations of a probation service is that it can safely supervise mid-range offenders and rehabilitate them more effectively than the alternative of a short prison sentence. However, the agency will need adequate resources if it is to be able to do this effectively. General experience in European countries is that 25% of the penal sector budget should be available for alternative sanctions and 75% allocated for prisons. Lower levels of funding for probation result in poorer assessments, inadequate sentence planning and rehabilitation activities that are not convincing. Reoffending rates can be unacceptably high.

Donor interest can be encouraged by an open and collaborative stance from the Ministry of Justice. Funding from these sources can be a valuable way of testing reforms. Nevertheless, the basic tasks of the Probation Service should be covered from the main national budget.

There is considerable interest in Eastern European countries for probation services to charge offenders for certain privileges. A payment can be sought as a contribution towards the cost of electronic monitoring. Sometimes similar payments can result in suspending the requirement to report regularly to the probation office. An application to the probation service for permission to travel abroad while under supervision sometimes requires the payment of a substantial fee. European opinion is resolutely against such payments being sought because they run counter to the important principle that access to justice should not depend on the ability to pay.

1.19 Transparency

The activities of prisons, probation and other parts of the penal services are generally hidden from public view. Any ways in which the public can observe or influence the operation of the penal services must be carefully controlled in order to avoid criminal interference. Nevertheless, it is vitally important that these services are open to public scrutiny and that their managers are aware of the views of the public about them.

Annual published information about the operation and funding of each penal service is a common feature of European justice systems. This information is then available for scrutiny and analysis by human rights organisations, special interest groups and academics.

Each agency within the justice system has its own internal monitoring and inspection system. However they are also subject to tough independent inspection by a separate government service directly accountable to the Minister of Justice.

2. THE CURRENT SITUATION IN GEORGIA

Georgia can rightly be proud of the progress it has made over more than ten years to introduce alternative sanctions and elements of restorative justice in its penal system. Recent reforms include the introduction of diversion and mediation, individual sentence planning, the "halfway house" and improved parole reviews. A 50% increase of funding for probation in 2013 confirms the commitment of the current government to sustain improvement to the delivery of alternative sanctions. The Ministry of Justice welcomes the participation of civil society in discussions about implementing reforms. A rolling 5-year reform plan covers a wide range of issues. This open and forward-looking stance is likely to encourage continuing investment of advice and assistance from international donors.

2.1 Methods in Georgia that are alternatives to Pre-Trial Detention

2.1.1 Methods in Georgia that are alternatives to Pre-Trial Detention

Up to this period bail remains the only significant alternative to pre-trial detention in Georgia. Regrettably, the Supreme Court does not provide detailed data about the other pre-trial measures that are in use. Previous court monitoring by the OSCE showed that placement of a juvenile defendant under supervision and personal guarantee was also used.

2.1.2 Statistics on the use of Alternatives to Pre-Trial Detention in Georgia

Before 2013, pre-trial detention was used very heavily in Georgia. According to a PRI assessment in 2009, the pre-trial prison population in Georgia had peaked at almost 9,000 in 2007. (This was about 2,000 more than the total prison population inherited when the Saakashvili government came to power in 2003.) Under the policy of the current government, these numbers have declined considerably.

According to the data available from the Supreme Court of Georgia[2] in 2014 a total of 13,644 pre-trial measures were used. 32% of these were pre-trial detention but many of the other cases remained in custody because they could not produce the bail payments necessary for release[3].

	Georgia	European Equivalents
% of accused adults held in detention in 2014	32	12*
% of accused adults held in detention in 2014	18	18

* This figure is from the Ministry of Justice for England and Wales. Figures for other countries not easily available.

2 http://www.supremecourt.ge/files/upload-file/pdf/2014w-statistic-7.pdf

3 according to article 200.2 of the Criminal Procedure code of Georgia a court is authorised to use detention to guarantee bail which has been chosen by the same court as a pre-trial measure and the defendant stays detained until he/she pays at least 50% of the bail.

2.1.3 Legislation in Georgia about Pre-Trial Detention

The Criminal Procedure Code (CPC) enacted in Georgia in October 2010 called for the protection of human rights and fair, rapid and effective justice. It set a time limit of 60 days for the investigation of a crime, emphasised the use of non-custodial methods of restraint and reinforced the principle of discretion.

The provisions for pre-trial detention are similar to those found elsewhere in Council of Europe member states. Article 198 of the CPC describes purpose and grounds for applying preventive measures. Article 199 lists the types of preventive measures available including: bail; placement of a juvenile defendant under supervision; personal guarantee; agreement of residence and due conduct. The second paragraph goes on to describe a further set of restraints including "supervision by an agency appointed by the court". Article 205 of the Code restricts the use of detention to circumstances that are widely recognised internationally, i.e. to prevent absconding and obstruction of justice by the defendant; prevent obstruction in obtaining evidence; and to prevent commission of a new crime by the defendant.

When this law was passed, official guidelines were issued to prosecutors encouraging them to consider a wide range of non-custodial measures for juvenile defendants. They recommend that pre-trial detention must only be used in the most serious cases and in very exceptional situations. These restrictions have significantly reduced the number of defendants held in pre-trial detention.

Further details of this legislation can be found in Appendix GE.2.1.3

2.1.4 Official Statements and Published Reports about Pre Trial Detention

Since the change of government in November 2012, prosecutors have been regularly reminded to keep to a minimum the requests for pre-trial detention. The statistical information comparing the recent situation with 2007 indicates that courts are following this guidance.

This evidence is supported by monitoring provided by the Georgian Young Lawyers Association (GYLA) which suggests that in 2013[4], courts approved only 72% of applications from prosecutors for defendants to be held in detention. During previous years, GYLA had not identified a single case where the prosecutor's request for detention had been denied.

[4] GYLA report on Monitoring of Criminal Trials, 2013 http://gyla.ge/uploads/publications/2013/MONITORINGCRIMINALTRIALSINTBILISIANDKUTAISICITYCOURTSJanuary-June2013.pdf

2.2 Diversion from Court Proceedings

2.2.1 Diversion Methods in Georgia[5]

The Ministry of Justice and the Prosecution Service in Georgia worked together to introduce diversion in December 2010. Since then it has become a significant and established part of the way juvenile offenders are managed. An active team within the Crime Prevention Centre under the MoJ is supporting diversion schemes by providing some finance, monitoring their operations, researching their impact, providing training for prosecutors and mediators and presenting information to the public. The National Probation Agency is also actively involved in implementation of diversion and mediation programme through their social workers who assess juveniles and supervise implementation of a contract on diversion.

In October 2011, a modified version of diversion was introduced for adults who have committed a less grave or grave crime. To be eligible the offender must meet one of the following conditions:

- transfers illegally obtained property, or reimburses the value of this property to the state;
- surrenders crime weapons or illegal items;
- fully or partially compensates damage caused by his actions;
- pays to the state budget a certain amount of money, not less than 500 GEL;
- performs community service from 40 to 400 hours;
- in the case of domestic violence attends mandatory course on domestic violence.

2.2.2 Statistics on the use of Diversion in Georgia

Recent statistics from the Ministry of Justice suggest that approximately 50% of eligible juveniles and 12% of eligible adults are diverted from prosecution.

Comparative figures from other countries are not helpful because each uses discretion not to prosecute at different points in the process. For example, in European countries it is normal for at least 20% of minor crimes that are brought to the attention of the police are recorded but not passed to the prosecution service for consideration.[6]

[5] For detailed description of the diversion and mediation programme please visit http://pog.gov.ge/eng/projects/current?info_id=86

[6] See “Attrition in the Criminal Justice System, Home Office Research Study 191.

2.2.3 Legislation about Diversion

The process of diversion from criminal proceedings was introduced in the 2010 Criminal Procedure Code. Article 105 covers the termination of criminal prosecution and preliminary investigation as follows: “In case of reasonable ground that a person has committed a less serious or serious crime and at the time of perpetration of the crime he/she has not reached eighteen years of age, prosecutor is authorized not to initiate criminal prosecution or terminate already initiated criminal prosecution on the ground of non-existence of public interest and by issuing substantiated decree”.

The same law states “If the decision foreseen by section 4 of this article is made, prosecutor is authorized to conclude an agreement with juvenile offender by applying diversion or mediation, conditions of which are determined by the Decree of the Minister of Justice”. The detailed rules for diversion and mediation are approved by the order of the Minister of Justice #216, of 12th November 2010.

Article 168 of the Criminal Procedural Code of Georgia regulates the diversion of an adult person.

2.2.4 Official Statements and Published Reports about Diversion.

In 2010, PRI completed a project entitled “Promoting the use of Juvenile Diversion Programming in Georgia”. This was funded by the US State Department and involved the help of an American expert to draft concept papers and discuss practical policies.

2.3 Pre-Sentence Reports

2.3.1 Methods in Georgia

Advisers who have been asked to comment on the Criminal Procedure Code have drawn attention to the circumstance that it does not allow courts to consider professional assessments by probation officers before selecting an appropriate sentence. Such reports are an essential component of almost all European probation services and are much valued by judges when having to make difficult sentencing decisions. In the early days of the Georgian Probation Service its staff lacked the experience and credibility to produce such reports. However, the service is now much more firmly established and it is time for this activity to be enabled in the legislation.

2.3.2 Statistics about the production of Pre-Sentence Reports in Georgia

A small number of reports are produced for courts that are dealing with offenders previously supervised by the Probation Agency.

2.3.3 Legislation about Pre-Sentence Reports

The Juvenile Justice Code of Georgia[7] adopted in 2015 introduces the pre-sentence report as one of the new reports specified in Article 27.4.b. The report shall be prepared by the National Probation agency of the Ministry of Corrections. According to the same code, article 102.4 the service should commence on 1 March 2016. The detailed procedure for implementation and respective forms will be approved by the ministerial decree.

2.3.4 Official Statements and Published Reports about Pre-Sentence Reports

Apart from the new legislation, no other official statements appear to have been made about the introduction of these reports.

2.4 Basic Probation Order

2.4.1 Probation (Conditional Sentence) Methods in Georgia

Probation is the main community sanction in Georgia and has been developed to include a growing number of the features that are accepted as international standards. Now that caseloads have been reduced to a more manageable maximum of 80 per officer it has been possible to commence the supervision of all new cases by making an assessment of risks and needs. This becomes the basis of an "individual sentence plan" that focuses attention on key rehabilitation issues when the offender reports for regular consultations at the probation office. Further improvements to the quality of rehabilitation programmes – both individual and group work - are resulting from the appointment of an additional 33 social worker positions and 11 psychologists that started to come on stream during 2014.

Initial assessments of the offenders are based on a method that was piloted in 2014. This categorises offenders into low, medium or high-risk groups according to their likelihood of reoffending or causing serious harm. A probation officer supervises low risk offenders. Medium risk offenders are supervised by a probation officer with assistance from a social worker. If high risk is identified, a psychologist will oversee development of the supervision plan. For all levels of risk, the probation officer remains the case manager.

7 Juvenile Justice Code of Georgia, 12 June 2015

The Rehabilitation Programmes Unit developed six sets of rehabilitative interventions which are divided into mandatory or optional programmes. These cover: psycho-social rehabilitation (mandatory); addiction management (mandatory); pro-social behaviour development (mandatory); educational programmes (optional); employment programmes (optional) and health recreation programmes (optional). This structure has been approved by a Ministerial Order in 2014. A mandatory programme is selected for each offender based on his/her individual assessment and this becomes an integral part of his/her probation supervision regime.

2.4.2 Statistics about the use of Basic Probation in Georgia

Figures from the Ministry of Corrections show that in 2013 "conditional sentence" is used on 14% of all convicted offenders. This is similar to the proportion who are subject to probation supervision in European countries. However, the fact that offenders in Georgia are still more likely to receive a custodial sentence than their European counterparts, indicates that probation is not having the same degree of impact on reducing the use of short prison sentences in Georgia.

The Supreme Court of Georgia provides the following statistical data on convictions in Georgia in 2014[8]

	2014 Georgia	2013 Europe Comparison
% convicted who receive immediate custody	35.5 %	10%
% who receive community service	3.1%	8%
% who receive probation (or "conditional sentence")	45%	13%
% who receive a financial penalty	16.2%	60%

2.4.3 Legislation on Basic Probation in Georgia

The Probation Law and related legislation concerning alternative sanctions in Georgia has been revised several times since the "Law of Georgia on Enforcement of Non-Custodial Sentences and Probation" was originally passed by parliament in 2003 (several months before the Rose Revolution deposed the Shevardnadze government). In 2007 the probation law was revised and

[8] Statistical data on convictions in Georgia in 2014, available in Georgian http://www.supremecourt.ge/files/upload-file/pdf/2014w-statistic-4.pdf

the service became an agency within what is now known as the Ministry of Corrections. The Ministry fixes its budget, appoints its senior staff and approves its policies. In pursuance of its aim to achieve international standards, Georgia was accepted as a member of the Confederation of European Probation in 2011 (the CEP).

The current Criminal Code of Georgia, introduced in 1999, does not include the sanction of probation. The full list of sanctions is:

- Fine;
- Deprivation of a right to hold office or pursue an activity;
- Community service;
- Correctional work;
- Service restriction for military personnel;
- Restriction of freedom;
- Fixed-term imprisonment;
- Life imprisonment;
- Expropriation.

Supervision of offenders in the community in Georgia operates under the concept of "conditional sentence", as specified in Chapter XII of the Criminal Code. To impose this sanction, the court must first decide that the person is guilty and that a sanction should be applied. It can then make the implementation of the sanction conditional. This means that the offender will be obliged to keep certain requirements under the supervision of the National Probation Agency. If the court was considering a non-custodial sentence, the period of probation can be up to three years. If the conditional sentence is an alternative to imprisonment, the maximum probation period can be six years (article 64 of the Criminal Code[9]).

9 "Article 64 (Probation Period) In the existence of the basis prescribed under Article 50.5 and Article 63 of this Code, the court shall award a probation period throughout which the convict must not commit any new crime and must comply with the obligation assigned. In case of awarding a sentence lighter then imprisonment the probation period must be no less than one year and not in excess of three years; in case of awarding imprisonment - no less than one and not in excess of six years...". But at present there is no practice of having conditional sentence for non-custodial sentences. As the code prescribes that conditional sentence is used in case of plea- bargaining and on the other hand there is minimal limit in terms of crimes on which plea-bargaining can be arraigned, according to the current legislation there is no limit for having conditional sentence in case of murder as a result of plea-bargaining agreement.

Normally a conditional sentence is used in case of plea-bargaining agreement with an offender. Article 63 of the Criminal Code states the circumstances when a conditional sentence cannot be used. These include if the offender has committed an intentional grave and especially grave crime, or if the offender has a record for two and more intentional crimes. In case of juveniles a conditional sentence can be applied to the first time offence if it is not an especially grave crime. This approach is found in some European countries and is not discouraged by the European Probation Rules.

The new Juvenile Justice Code introduces the new sanction of Home Arrest (article 66.b). This comes into force on 1 September 2015 and will be executed by the National Probation Agency (article 44[8] of the Law on Execution of Non-Custodial Measures and Probation). Execution of this new sanction involves e-monitoring of a juvenile offender; the procedure for e-monitoring is regulated by an Order of the Minister of Corrections.

2.4.4 Official Statements and Published Reports about Probation in Georgia.

The current government which was elected in 2013 promised major reforms in the penal system to address human rights deficits. Planned initiatives were detailed in the "Criminal Justice Reform Strategy" published the following year. This covers plans for each justice agency, including the National Probation Agency. It has backed these promises with significant additional investments in the system of community sanctions.

2.5 Community Service in Georgia

2.5.1 Community Service methods in Georgia

Community Service was envisaged in the current Criminal Code, which was adopted in 1999. The implementation of the sanction in Georgia has gradually improved since 2010 when a new concept paper was agreed by the Ministry of Justice, the National Probation Agency and the Municipal Authorities. Designated probation officers specialise in assessing the competencies of the offenders and they identify suitable work opportunities. In most cases the agency providing the work takes responsibility for supervising the offenders. The probation officer will make a regular check of the offender's performance and will take action if this is unsatisfactory. This approach is suitable for relatively compliant offenders. However European probation services have found that it is necessary to provide their own trained supervisors to achieve satisfactory results with offenders who cannot be trusted to the same extent.

The Probation Agency in Georgia does not yet provide workshops for its

Community Service operations. However, it wishes to increase the proportion of work assignments that have constructive rehabilitation effects. One example of this nature in Tbilisi involves offenders serving meals in a day centre for elderly people and those with disabilities. These offenders receive considerable appreciation for their efforts, which improves their self-esteem and shows them the satisfaction that can be achieved from helping others.

2.5.2 Statistics about Community Service

According to statistical data from the Supreme Court of Georgia, Community Service as a sanction has been used in a total of 484 cases (involving 515 individual persons) in 2014. This is 3.2% of the total judgements of the courts.

Statistical data from the National Probation Agency shows that probation bureaus completed a total of 1228 cases of community service[10] in 2014. This is an average of about 200-250 cases of community service for each bureau, both as main sanction and as additional sanction. Regrettably, statistics are not recorded as to the gravity of the crime committed.

	2014 Georgia	2014 Europe Comparison
% who receive community service (compulsory work)	3.2 %	8%

As can be seen from these figures, European courts use community service over twice as often as the courts in Georgia. Also it must be noted that the proportion of offenders who receive a prison sentence is higher than in Europe, a fact which could indicate that community service is not being used as an alternative to prison.

2.5.3 Legislation on Community Service in Georgia

According to the Criminal Code of Georgia, Community Service is unpaid work by an offender that is determined by a probation bureau (Article 44). It can be used as a main sanction or to supplement another sanction. The number of hours that can be ordered range from 40 up to 800. This maximum can be exceeded as a result of plea-bargaining. No more than eight hours can be completed in a single day. If an offender does not comply with the requirements of the community service order the sanction can be changed to another sanction by court.

[10] Annual report of the National Probation Agency 2014, available only in Georgian http://probation.gov.ge/cms/site_images/pdf/2014_angarishi.pdf

The rules for carrying out Community Service as a community sanction or a condition of early release are stipulated in Chapter VIII of the Law on the Execution of Non-Custodial Measures and Probation. According to this law, a probation bureau contracts an employer to carry out the community service order. The contract also defines the rights and duties of the offender and the employer. The employer is responsible for supervising the offender at the place of work a probation officer pays random visits. The working hours and working days are agreed together with the offender. If necessary, the National Probation Agency provides food for the offender (or money to buy food). The Agency ensures that suitable insurance is provided.

2.5.4 Official Statements and Published Reports about Community Service in Georgia.

The government's objectives for Community Service are included in the "Criminal Justice Reform Strategy" published in 2014.

2.6 Social Training Courses

2.6.1 Social Training Courses for offenders in Georgia

Various donors and service provider NGOs have worked with the Probation Agency to develop rehabilitation and social skills courses. In order to build these into the mainstream work of the agency a Rehabilitation Programmes Unit was created in January 2014. It has a particular responsibility to ensure that these services are available in all regions. Extra staff have been recruited to supplement the social workers and psychologists that are already employed. The Rehabilitation Programmes Unit has developed a pool of mandatory and optional rehabilitation programmes for the offenders.

Some examples of mandatory programmes are: training on domestic violence, therapeutic work with violent perpetrators and victims, crisis management, cognitive and social skills programme, programme on managing gambling addiction, support groups for people with addictions, communication, conflict management, assertive behaviour, being a team leader, social integration programme: anger management, anxiousness, stress management etc. The mandatory programmes are intended to be implemented by psychologists or jointly by a psychologist and a social worker.

Examples of optional rehabilitation programmes are: individual educational course, peer education, development of knowledge and skills needed for employment/professional orientation, training on healthy lifestyle, preparation for independent life (the Natakhtari programme) for youth, etc. These programmes are mainly run by social workers.

2.6.2 Statistics about the use of Social Training Courses in Georgia.

The number of probationers who participated in rehabilitation, educational and social-cultural programmes and events for 2014 is 4,025[11]. Of these 1,349 participated in rehabilitation programmes, which include mandatory and optional programmes described in sub-sections 2.4.3 and 2.6.3. In addition, as a result of efforts of the staff of the National Probation Agency, 143 probationers have found employment.

2.6.3 Legislation relating to Social Training Courses in Georgia.

The Law on Execution of Non-Custodial Sentences and Probation empowers a probation officer to oblige an offender to attend certain rehabilitation course identified based on his/her risks and needs assessment (article 12.1[1]). The same law defines that also at the Liberty Restriction Establishment beneficiaries are obliged to follow rehabilitation programmes when it is needed (article 44[1].2).

2.6.4 Official Statements and Published Reports about Social Training Courses.

The "Criminal Justice Reform Strategy" published in 2014 does not specifically refer to this aspect of probation work.

2.7 Restriction of Freedom

2.7.1 Methods used to Restrict Freedom in Georgia

Article 47 of the Criminal Code enables the court to direct an offender to live for a specified length of time at a designated residential institution. For many years the requirement had not been used because there were no suitable residential facilities. However, in 2014 the probation service in Georgia converted a large industrial building on the edge of Tbilisi into a semi-secure institution. The project is variously known as "Halfway House" or "Liberty Restriction Establishment". Up to 100 offenders can be ordered to live there as a condition of early release. For a period of up to one year they participate in psycho-social rehabilitation programs and learn vocational skills. A range of short courses provide an introduction to possible employment in such occupations as electrician, baker, carpenter, building worker, computer operator or hairdresser. The offenders contribute to cleaning and preparing food but all activities take place within the secure perimeter and the regime is controlled by the staff. Once an offender has shown responsibility and commitment to the programme they are allowed to go home at weekends.

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[11] The Annual report of the National Probation Agency, available only in Georgian http://probation.gov.ge/cms/site_images/pdf/2014_angarishi.pdf

A facility of this nature can be found in a number of post-soviet penal systems, notably in the Russian Federation and Ukraine. However, in European countries, restriction of freedom rarely appears as a sentence in its own right – preference being given to include this as a condition of a probation order.

Although this is a welcome and much-needed facility, European penal thinking would normally place such an institution within a penitentiary establishment. It would be called a "Pre-release Centre". In Europe, halfway houses have a different operating philosophy to pre-release centres. They are normally operated by NGOs in smaller buildings within a residential part of a city. About 15 offenders would be required to live there for about six or nine months. The emphasis would be on helping them to learn the skills needed to survive when they leave. Staff would supervise the house but the offenders would be expected to do their own washing, cooking and cleaning; go out to work or to training courses during the day; and to attend responsible social activities during their leisure time. Ideally such projects should be available in the regional towns and cities of Georgia as a follow-on from the centralised Halfway House.

2.7.2 Statistics on the use of Restriction of Freedom in Georgia

The Restriction of Liberty Establishment (see below) has operated for male adult offenders in Georgia since June 2014. It has a capacity of up to 100 residents, though the highest number in the first year of operation was 36. During 2014, the parole boards of the Ministry of Corrections ordered 41 inmates to reside at the institution.

2.7.3 Legislation relating to Restriction of Freedom.

According to Article 47 of the Criminal Code of Georgia, restriction of freedom means "the placement, without isolating from the society, of the convict who has attained fourteen years by the moment of delivering a sentence, into a liberty restriction establishment with the view to undertake supervision." Despite this formulation, Georgian criminologists consider restriction of freedom a non-custodial punishment. The maximum length of Restriction of Freedom for first time offenders is five years; but if Restriction of Freedom is used by an Early Release Commissions as a substitute to other sanctions (deprivation of liberty, community service or correctional labour) it can last no more than one year.

Current legislation limits the use of Restriction of Freedom to offenders who have been serving a prison sentence. Regulations that will enable it to be used as a sanction by the courts have been suspended until January 1st 2017. So the existing regulation of the Restriction of Freedom restricts it to being the last stage of serving a custodial sentence.

The National Probation Agency of Georgia is responsible for implementing Restriction of Freedom. Internal Rules and Regulations of the Liberty Restriction Establishment are presented in the Charter of the Establishment, approved by the Minister of Corrections (Order #373, 30.12.2013). According to this charter the Liberty Restriction Establishment is a territorial unit of the National Probation Agency, managed by the Chief of the Establishment. The main personnel of the establishment consist of officers, executive officers, security officers and rehabilitation service officers. Executive officers are case managers of the residents and rehabilitation service unit officers provide planned services to beneficiaries.

2.7.4 Official Statements and Published Reports about Restriction of Freedom in Georgia.

The Ministry of Corrections supports the idea of opening more Liberty Restriction Establishments and according to the Action Plan of the National Probation Agency another establishment has to be open by 2017 when, according to the law, courts will be also authorised to use this sanction.

2.8 Parole

2.8.1 Parole methods in Georgia

The parole system that has been developed in Georgia has many of the operational features seen in more established judicial systems. However, the system has yet to have its full impact. The proportion who are given parole is not high and the amount of sentence deducted is quite small. As confidence in the quality and assertiveness of supervision given to parolees increases it should be possible for the local Parole Boards to be more courageous in their decisions.

The following proposals may assist:

Prisoners who have been sentenced for less grave crimes can apply for release when half their sentence has expired. More serious offenders have to wait for up to ¾ of their sentence to be completed. A new application can be made six months after the rejection – or more frequently in the case of female or juvenile prisoners.

When assessing an application, Parole Boards must consider reports from respective penitentiary establishments about the risk of reoffending, the nature of the crime; the behaviour of the offender during the period of imprisonment; previous criminal and behavioural history of the offender; the domestic situation to which she/he will return; and the personality of the prisoner. Probation officers contribute to this kind of report only in case of juveniles at this stage.

Each Parole Board meeting must include representatives from the Ministry, the probation service, an NGO, a local self-government entity and a representative of the High Council of Justice.

The operation of the parole scheme is one of a number of offender management issues that were greatly affected by the large-scale amnesty in which over half the country's prisoners were released at the beginning of 2013. The new arrangements stabilised later that year and applications are now being made at a rate of almost 10,000 per year. Less than 10% of the applications are approved by the parole board.

If the prisoner is released on parole, he/she must agree to be supervised by a probation officer and take part in rehabilitation activities. The Probation Service is attempting to implement a Council of Europe recommendation on parole (Rec 2003[22]) that probation staff should participate in preparing the prisoner for release. Logistic problems make this very difficult. In practice their first contact with the case is initiated when documents are received at the Probation Agency. At this point a probation officer is assigned to the case, a risk assessment is made, and a plan will specify action necessary to help parolee avoid further crime and comply with supervision.

In May 2014 the number of parole boards was increased to five. Three of them consider the cases of adult male prisoners and there is one each for women and juveniles. Each board meets at least once in a month. Three options are available to the boards: to grant Early Conditional Release, to commute the remaining term of a sentence into a less grave punishment, or to substitute Community Service for the remaining term of a sentence.

A system of Presidential Pardon provides a second mechanism by which any prisoner can ask for early release. Applications are considered by a Pardoning Commission, which submits an opinion to the President for a final decision.

A third mechanism allows consideration to be given to releasing prisoners before the end of their sentence, or postponing the date when they will start their sentence, because of poor health. These procedures are managed jointly by the two ministries of Corrections, and Healthcare and Labour.

2.8.2 Statistics on parole in Georgia

	2014 Georgia	2013 Europe Comparison
Total number of prisoners released in 2014	4,192	N/A
Total number given parole	894	N/A
% given parole	21.3%	20%
Executive release	2,637	N/A
Prisoners released as a result of pardoning and amnesty	572	
Proportion of all ex-prisoners reconvicted within the three years of release	1.7%*	50%

* The reconviction rate for Georgia is given only for 2014

The data available from the penitentiary department is rather limited, so it is not easy to identify and analyse the proportion of inmates that have been released without supervision. It is most likely that a majority who have been given executive release have fully served their sentence and they can only count on voluntary aftercare provided by the Crime Prevention Centre of the Ministry of Justice.

2.8.3 Legislation on Parole in Georgia

Chapters XIV and XV of the Criminal Code give the main legal grounds for early conditional release from prison. The 2010 Code of Imprisonment contains the primary legislation relevant to parole.

- Article 41 describes the membership and constitution of parole boards.
- Article 42 describes the procedures for reviewing each case and what evidence the board should consider. Rejections can be appealed by application to the court and a repeat application can be made every six months (or every three months in the case of a juvenile).
- Article 43 explains that the board can substitute community work for the remaining part of the prison sentence.
- Article 44 describes the membership and duties of the Standing Commission on Parole that ensures the proper operation of the scheme.
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- Article 40 briefly states that parolees will be supervised by the probation service and that they could be recalled to prison if they commit further crime or misbehave in other ways. (Some revisions of the Criminal Procedure Code recognise the transfer of responsibility from courts to parole boards.)

Further details are provided in Orders issued by the Ministry of Corrections. Thus #185 issued on 27 December 2010 approves the Statute of the Standing Commission on Parole. #151 issued on 28 October 2010 approves the Statute of Local Parole Boards.

At the request of the government, this legislation in draft form was submitted for expert assessment by the Council of Europe in 2012. A small number of amendments were made as a result but nevertheless the general approach conforms to international standards.

2.8.4 Official Statements and Published Reports about Parole in Georgia.

The first evidence of the emergence of a modern approach to parole in Georgia came with the recommendation of the Presidential Working Group on Justice Reform in 2004. This proposed that responsibility for awarding early conditional release from prison should be transferred from courts to the penitentiary service. Decisions should be made by a "parole reviewing board" whose members were drawn from persons with "relevant education and professional experience, as well as business and moral qualities in order to perform the duties".

The decision to transfer this responsibility from the judiciary to the executive might have been controversial but it has parallels in many other countries. Parole Boards became incorporated in the Code of Imprisonment and Penal Execution Code by 2010. However, although over half of the prison population was released by government amnesty in 2013, the number remaining is still higher than the number of prisoners before zero tolerance commenced.

The Ombudsman's Office published a report in March 2014 on early conditional release in Georgia. It criticised the efficiency of the mechanism and the decision making process. It claimed that parole board decisions lack proper reasoning and the percentage of positive decisions is still very low[12].

The Ministry of Corrections of Georgia has submitted draft amendments to the Parliament of Georgia concerning certain structural changes of the Ministry and the Penitentiary Department. During the committee discussions at the parliament it was mentioned that work should start on reforming early conditional release from prison to increase its efficiency.

[12] To see the report please visit http://www.ombudsman.ge/en/reports/specialuri-angarishebi/human-rights-of-convicts-upon-early-conditional-release.page

2.9 Further Considerations

Juvenile Justice in Georgia

Development of the special approaches necessary to be effective with young offenders was undertaken by UNICEF, which introduced to Georgia the concept of “children in conflict with the law”. Funding from the European Union enabled UNICEF to employ 12 specialist social workers that were seconded to the probation service. By 2010 the value of their contribution had been generally accepted and the UNICEF social workers became integrated into the mainstream probation structure, where they still concentrate on supervising the juvenile offenders.

The number of juveniles held in pre-trial detention is decreasing. The 14 – 18 age group now represent less than 3% of the pre-trial prison population. The proportion of accused juveniles held in detention has reduced from 22% in 2012 to just over 11% in 2013. Male juveniles in pre-trial detention are held in a separate section of the juvenile prison. In 2014 no female juveniles have been held in PTD.

A working group on juvenile justice is convened by the Ministry of Justice and supported by UNICEF. With the support of UNICEF and EU, the Ministry of Justice elaborated a draft Code of Juvenile Justice in 2014 which was adopted in June 2015 and introduces child-friendly approaches in the justice for children sector.

Female Offenders in Georgia

In December 2013, PRI published a report on the “Needs and priority issues facing women prisoners in Georgia”. This offers insights into the social and personal problems experienced by women who offend. It is quite common for women who are convicted in public courts to be rejected by their families and consequently, as the report noted, they face particular problems in finding accommodation and a source of income.

Although 5% of women prisoners have committed murder or serious crimes of violence, a significant number are imprisoned for economic crimes. They are unlikely to present a threat to the community and it is probable that many could be saved from the harm of a custodial sentence if suitable alternative sanctions were available. For this reason, the Probation Service gives special attention to women offenders, who are normally supervised by women officers. In the Tbilisi Probation bureau there is a specialised unit of officers working only with women probationers. Among the psycho-social rehabilitation programs offered by the probation service in 2014 was one aiming to provide training, mentoring and entrepreneurship advice for women on probation. Later that year a training programme on domestic violence was introduce

ORGANISATIONAL FEATURES OF ALTERNATIVE SANCTIONS IN GEORGIA

2.10 Accountability of the Probation Agency in Georgia

The responsibility for supervising offenders in Georgia rests with the National Agency of Execution of Non-Custodial Sentences and Probation – usually known as the National Probation Agency. Key aspects of this agency are described as follows in Article 4 of the 2007 "Law on Procedure of Execution of Non-Custodial Penalties and Probation":

a) The National Probation Agency is a legal entity of public law under the jurisdiction of the Ministry of Corrections of Georgia. The authority of the National Probation Agency is defined by the statute that is approved by the Minister of Corrections of Georgia (hereinafter - the Minister of Corrections and Legal Assistance).

b) The National Probation Agency is managed by the Head of the Agency who is appointed to and dismissed from his/her position by the Minister of Corrections.

c) The Deputy Head of the National Probation Agency is appointed to and dismissed from his/her position by the Head of the National Probation Agency by agreement with the Minister of Corrections.

d)The staff list and the budget of the National Probation Agency is approved by the Head of the National Probation Agency by agreement with the Minister of Corrections.

e) The National Probation Agency is funded from the State budget of Georgia and other incomes defined by the legislation of Georgia.

f) Other officers of the National Probation Agency are appointed to and dismissed from their positions by the Head of the National Probation Agency

g) The Head of the National Probation Agency approves internal regulation of the establishment and rehabilitation programmes.

2.11 Capacity to Deliver Services

Most of the tasks involved in providing basic probation services are currently covered in Georgia by the Probation Agency. Specialists have recently been recruited to improve rehabilitation services. A small pilot of electronic monitoring is in operation and some written reports are being submitted to courts. The provision of residential facilities for rehabilitation and day activity centres has

been absent but the opening of Halfway House is a significant step towards filling these gaps.

2.12 Types of Staff in the Probation Agency in Georgia

Salary levels for probation officers have improved significantly over the years but they still may not be high enough to attract the best kind of candidates. The courses provided at the Penitentiary and Probation Training Centre (the PPTC) of the Ministry of Corrections cover the necessary range of topics. Staff with additional social work training have been appointed to concentrate on supervising the juvenile offenders. There are now a higher proportion of qualified psychologists working in the Probation Agency than in most European services.

2.13 Management of the Alternative Sanctions Division

The Probation Agency in Georgia is a legal entity under public law with the formal title of National Agency for the Enforcement of Non-Custodial Sentences and Probation. The current Director is widely experienced in the functions of government and the operation of alternative sanctions. Three Deputy Directors cover general fieldwork standards, rehabilitation programmes and overall finances. This management team is responsible for the work of the local bureaus and the major resettlement project at Gldani. An international unit is particularly active and recent cooperation arrangements have been agreed with Bulgaria and Moldova. This overall management arrangement is similar to many found in European countries.

2.14 Agency Logistics in Georgia

The service map[13] published on the National Probation Agency website shows the operational structure of the Probation Bureaus. The largest probation bureau of the agency - Tbilisi Probation Bureau - has only one office in the city centre. In regions, probation bureaus in the major cities are located in the districts to provide sufficient access to residents of rural areas. Still some poor families cannot afford to travel from villages, particularly from mountainous areas, to the district centres.

Each probation bureau has a service car and the majority of offices in rural areas are equipped with computers and access to the Probation Database. The Probation Database has been operating since 2009. It has an integrated fingerprint recognition system, which ensures that the correct person is attending for registration at the probation bureau.

[13] The service map of the National Probation Agency http://probation.gov.ge/index.php?action=page&p_id=121&lang=geo

2.15 Partner Organisations

Georgian society benefits from a lively NGO sector. Some organisations have provided rehabilitation services for offenders for many years. For example, some of these NGOs – Women in Business, Women's Club Peoni, Global Initiative on Psychiatry - Georgia - have been providing training and support for women in prison for 7 - 10 years. More recently these NGOs have directed their attention to assisting offenders who have been given non-custodial sanctions.

International donors, such as the EU, PRI and some national embassies have provided funds to enable NGOs to develop support services and rehabilitation programmes that are made available to the probation service. In 2014, 13 special services of this nature across the country were provided by NGOs using funds from the probation service. In addition, the Crime Prevention Centre in the Ministry of Justice has commissioned a further range of social support services that are made widely available to people in need and these frequently include offenders subject to probation orders.

In addition to this, other NGOs continue to monitor the justice system and provide advocacy for individuals. Monitoring of criminal trials in Tbilisi and Kutaisi by Georgian Young Lawyers Association (GYLA) has provided valuable information about the management of offenders during the pre-trial phase. GYLA's reports cover issues concerning the adjudication of specific cases in court and focus on the appropriateness of the measure of pre-trial restraint.

Government agencies provide many services that can help former offenders to turn away from crime. However, some people have difficulty accessing their services. An example of good cooperation is the special arrangement between the Ministry of Corrections and the Ministry of Education in which School #123 provides teachers for the juvenile custodial centres.

STRATEGIC OPERATING ENVIRONMENT IN GEORGIA

2.16 Policy commitment by the Government of Georgia

The first comprehensive attempt by the Georgian government to set out its policies for the justice sector came in the 2005 Criminal Justice Reform Strategy that was published in accordance with Presidential Decree No. 591. The strategy was revised by the current government in July 2014 and now starts with a strong policy statement:

"Criminal Justice Reform in Georgia is a comprehensive initiative with the overall goal to strengthen the rule of law, protect human rights, prevent crime and ensure safe environment for the community. Criminal Justice Reform is one of the major priorities of the Government of Georgia. The Government remains strongly committed to create a system that is focused on crime prevention and protection of human rights, creation of independent and fair judiciary as well as development of impartial, accountable and efficient criminal justice system."

This Strategy goes on to define the Government's key reform objectives as follows: Ensure liberalization and modernization of criminal legislation as well as bring it in compliance with international and European standards and principles;

- Bring juvenile justice fully in line with international standards; ensure protection of the best interest of the child at all stages of criminal proceedings;
- Ensure effective crime prevention, reduction of crime rate and community safety;
- Transform the Prosecution Service into an independent, effective, transparent and accountable institution;
- Ensure full independence of the Legal Aid Service and ensure access to legal aid;
- Increase judicial independence and trust towards Judiciary;
- Improve conditions for inmates and reform the existing prison healthcare system;
- Reform probation system in a way to ensure full rehabilitation and reintegration of the convicts;
- Introduce individualized and prevention-oriented evidence-based policy approaches in criminal justice;

- Enhance and further develop legal education system, as well as ensure access to legal education;

- Ensure effective functioning of the Public Defender's Office.

Action Plan. The associated Action Plan is a comprehensive document that locates practical action within the following specific statements of policy:

- ***Criminal Legislation Reform***. The main objective of this component is to reform the criminal legislation of Georgia in light of the new criminal policy of 'liberalization' and bring it in line with the international and regional human rights standards. This objective is to be achieved through the improvement of the legislative framework by the revision of the Criminal Code and Code of Administrative Offenses. Strengthening the adversarial principle throughout the criminal proceedings is planned, together with an overhaul of the plea agreement mechanism, further protection of victims' rights, enhanced jury trial system and bringing operative-investigative activities in line with international standards.

- ***Police.*** The objective of Police Reform is to improve the standards for effective crime prevention and investigation, as well as ensure transparency and bring police work in line with international standards. Particular attention shall be paid to the establishment of human rights protection procedures and monitoring mechanisms in order to effectively prevent and address human rights violations. In addition, it is significant to ensure highquality of service provided by police, adhere to integrity rules and increase personnel qualification.

- ***Prosecution.*** The objective of the Prosecution Reform is to transform the Prosecution Service into an independent, effective, transparent and accountable institution. It is crucial to ensure that all prosecutors possess adequate professional qualifications necessary for the accomplishment of their functions in a fair and impartial manner. Furthermore, it is essential to ensure that the prosecution service is being carried out in line with the liberalization policy. Particular emphasis shall be made on human rights protection and engagement of community members as well as increasing public trust.

- ***Juvenile justice.*** In the framework of the Juvenile Justice Reform, the core priority of the Government of Georgia is to make the juvenile justice system comply with international standards, prevent juvenile offending and reduce reoffending through individual rehabilitation programs. In the framework of this initiative, the Code of Juvenile Justice has been developed and adopted, alternatives to criminal prosecution and custodial sentences will

be introduced, special attention will be focused to crime prevention and development of rehabilitation and prevention programs. Therefore, close cooperation with service provider organizations is of utmost importance.

- ***Penitentiary.*** The objective of Penitentiary Reform is to improve living conditions of inmates and the existing infrastructure in the penitentiary establishments, develop adequate educational and vocational training programs, as well as expand employment opportunities. Particular emphasis shall be made on the provision of adequate health care service to all inmates based on their individual needs. Furthermore, it is essential to develop effective rehabilitation and reintegration activities, strengthen legal guarantees of prisoners, and enhance conditional release system as well as to ensure continuous professional development of the personnel.

- ***Probation.*** Along with the offender supervision functions one of the main directions of the activities of the National Probation Agency is resocialization and rehabilitation of conditionally sentenced persons and prevention of crimes. One of the priorities of the Ministry of Corrections is a complete reformation of the probation system. Reforms are aimed at strengthening of probation system, support for intensive and effective application of non-custodial sentences and rehabilitation and reintegration of probationers.

- ***Rehabilitation***. The objective of efforts to rehabilitate convicts and former convicts is to gain their support in realization of their potential and their development as full citizens. This will ensure public safety through reduction of reoffending.

- ***Restorative justice***. Elements of restorative justice concerning juveniles in conflict with the law currently exist in Georgian legislation. The Juvenile Justice Code advocates restorative justice measures when an offence is committed by a juvenile (article 44 of the Juvenile Justice Code).

2.17 Leadership in the Justice Sector in Georgia

Overall leadership over the justice sector reforms is exercised by the Ministry of Justice of Georgia as an agency in charge of the Criminal Justice Reform Interagency Coordination Council, which coordinates efforts of all ministries, and agencies concerned.

2.18 Support from Donors

In 1997 the Council of Europe agreed to provide a programme of cooperation to assist the Georgian government to bring its penal system into line with European standards. Action since then has taken the form of seminars, study tours, expert advice and detailed scrutiny of all new legislation.

The European Union has provided active support to justice reform in Georgia. In 2002 it focused on support for human rights NGOs. The following year it provided policy and technical advice to the probation service and the prosecution service. Several other technical advice projects followed and are continuing. In recent years the EU has provided substantial financial support in recognition of the growing number of reform milestones that have been achieved by the Georgian government.

UNICEF has provided strategic advice and practical assistance towards the development of the juvenile justice system.

The Swedish International Development Agency has provided expertise and practical support for the establishment of the Penitentiary and Probation Training Centre.

At several stages over the last 12 years, proposed reforms in legislation relating to parole have been subject to expert evaluation by the Council of Europe.

2.19 Transparency of Penal Services in Georgia

The national Crime Surveys, first launched in Georgia in 2010, have provided valuable information for the government and agency managers from the point of view of victims. Initiatives such as this help to ensure that policy is revised in the light of wide experience at the point where it is delivered to the public. This leads to more effective services.

A Human Rights Monitoring Unit was established within the penitentiary service at the beginning of 2013. Its purpose is to protect the rights of those in custody and to determine the causes of any legislative violation or misconduct by penitentiary department staff that affect these rights. Each penitentiary establishment must be visited every six months and in addition unit staff respond to individual complaints.

The General Inspection Department of the Ministry acts as a watchdog for misdemeanours, especially when linked to administrative malfeasance.

The National Preventive Mechanism is currently embedded in the Ombudsman's Office of Georgia. Civil society organisations continue to discuss the need for an alternative monitoring mechanism.

Annual reporting to public is not a common practice among state agencies. The National Probation Agency is an exception and for several years it has produced mid-term and annual reports. Also in the framework of the Criminal Justice Reform Strategy all respective justice institutions produce progress reports about implementation of their respective action plans. These are periodically presented to respective donor and NGO community and to media.

3. THE CURRENT SITUATION IN ARMENIA

In 2006 the Alternative Sanctions Enforcement Division (ASED) was established within the State Penitentiary Service with responsibility to supervise offenders who had been conditionally released by courts without serving a prison sentence or who had been released early from the penitentiary. Almost 80 staff members now work in this Division.

In recent years it has been recognised that current legislation does not allow the staff of this division to implement the full range of supervision activities that characterise a modern probation service. Consequently, the President of the Republic issued an "executive order" on the 2012-2016 Strategic Program for Legal and Judicial Reforms in 2012, which contained a commitment, amongst other things, to establish a probation service within the Ministry of Justice before 2016.

The following sections describe progress that has been made and the current situation in Armenia.

3.1 Alternatives to Pre-Trial Detention

3.1.1 Methods in Armenia that are alternatives to Pre-Trial Detention

For more serious crimes it is automatically assumed that the defendant will be detained. In the rare occasions when courts are asked to review this treatment, less than 5% are released on bail. According to court monitoring, defence lawyers rarely challenge the evidence offered to support detention.

A written obligation not to leave a place is the second type of most commonly applied measures of restraint. However, it is mostly applied to persons who are accused of committing low gravity or medium gravity crimes.

3.1.2 Statistics on the use of Alternatives to Pre-Trial Detention in Armenia

Although there is far less crime in Armenia than in European countries, people charged with criminal offences are more likely to be held in detention while they wait for their trial to be heard. Relevant conclusions from available statistics are:

The crime rate in Armenia is far lower than in similar-sized European countries (see line 1 in Table 1 below).

Far fewer people in Armenia are charged with crimes than in European countries (see line 2 in Table 1 below).

The number of persons charged with crimes each year in Armenia has doubled in the last six years.

The rate of imprisonment in Armenia is similar to European comparisons, despite crime being apparently much lower (see line 3 in Table 1 below).

The proportion of un-convicted persons held in Armenian prisons is similar to the European average (line 4 in Table 1).

Table 1. Statistics on the number of people deprived of liberty in Armenia and Scotland[14]

	2007 Armenia	2013 Armenia	2013 Scotland
1. Total crimes reported per 100k population	260	548	5,111
2. Persons convicted per 100k citizens	168.5	379	1,996
3. Prison population per 100k citizens	95	130*	145

** The prison population as of 1 January 2014.*

According to the Judicial Department of Armenia, in 2014 the courts of first instance reviewed 2331 motions on application of arrest as a measure of restraint. Out of 2331 motions 2203 (94.5%) were granted and only 122 (5.2%) motions were dismissed. The courts also reviewed 572 motions to replace arrest by release on bail and granted only 99 (17.3%) of them.

In 2013 the courts reviewed 3172 motions on application of arrest as a measure of restraint. Out of 3172 motions 3011 (94.92%) were granted and only 153 (4.82%) motions were dismissed. In 2013 the courts also reviewed 576 motions to replace arrest by release on bail and granted only 129 (22.4%) of them.

To compare, in 2012 the Armenian courts reviewed 2621 motions to apply arrest, and granted 2497 (95.27%) of them dismissing only 114 (4.35%). In the same period the courts reviewed 441 motions to replace arrest by release on bail. The courts granted 134 (30.3%) of them and dismissed 273 (62%). Though in comparison to the previous years, in 2013 the percentage of rejected motions to apply arrest has increased slightly, excessive use of prolonged and unjustified pre-trial and preventive detention continues to be a serious issue in Armenia. Pre-trial detention appears to be the norm rather than exception.[15]

14 This is based on the population of Armenia being 3,017,100 at the start of 2014

15 See Official statistics per year, available at www.court.am

As we can see, though there is a slight decrease in the number of arrest motions, the overall rate of granted motions remains very high. At the same time the share of motions to replace arrest with bail decreased in 2014. This is a very alarming situation.

3.1.3 Legislation about Pre-Trial Detention

The Criminal Procedure Code (CPC) defines the preventive measures that can be imposed on a person accused of a crime. Reasons for imposing a custodial restraint are similar to those found in European countries (e.g. risk of absconding, interfering with the investigation, absconding etc.). However, legislation makes detention possible only if the charge relates to a crime that can be punished with more than imprisonment for one year or on the abovementioned grounds.

The procedure for replacing detention with bail appears to be unnecessarily complex. First the court must be satisfied that detention is necessary. Once this has been established it can go on to consider reasons why detention is not necessary. Bail cannot be simply applied as an independent measure of restraint.

The CPC sets time limits on periods of detention that are similar to European standards. However, there appeared to be fewer controls on the ability of courts to grant extensions – particularly once the trial has formally commenced.

(Further details about this legislation are found in Appendix AM.3.1.3.)

3.1.4 Official Statements and Published Reports about Pre Trial Detention.

- The 2012-2016 “Strategic Program for Legal and Judicial Reforms” refers to the problem of overuse of pre-trial detention and the need to introduce effective alternatives.

- In February 2014 a “Concept Note on Creation of Probation Service in Armenia” said supervision would reduce the number of cases in which defendants are detained during pre-trial proceedings. This was included in the Law on Probation drafted early in 2015, together with the task of producing pre-trial reports to recommend measures of restraint and sanctions.

- A draft New Criminal Procedure Code is awaiting adoption by parliament. It expands the list of possible alternative measures of restraint and reduces the conditions when a measure of restraint may be applied.

- A Council of Europe report[16] in 2013 was concerned that pre-trial detention is not used as a measure of last resort.

- An OSCE supported report[17] in 2014 noted that the introduction of more and better non-custodial measures and sentences depends on establishing an independent and professional probation service.

(These publications – and others produced by local NGOs and international bodies – are described in more detail in Appendix AM.3.1.4a and AM.3.1.4b.)

3.2 Diversion

3.2.1 Diversion methods in Armenia for juvenile offenders

If a juvenile is 'in conflict with law' a police officer records the matter and the juvenile becomes under supervision for one year. No sustainable rehabilitation programs are provided by the state for these juveniles. However, in 2010-2013 PRI, with its local implementing partners, supported the work of rehabilitation day centres for juveniles in conflict with law where social workers and psychologists assisted the juveniles in question. Similar community centres were run by "Project Harmony International" across the country. All centres were funded by donors. The added value of such centres was highly appreciated by police. Fruitful cooperation was established and juveniles who were first time offenders were diverted by police officers to these centres. However, when the project ended, the work of these centres was endangered. Community rehabilitation centres ceased operating in January 2014. Only in very few locations the authorities managed to support the rehabilitation centres by providing a place, not funding.

At the same time, because of the gaps in legislation, diversion to such rehabilitation centres is fragile. It is based on a Memorandum of Understanding signed with Police rather than on the law.

At the pre-trial stage juveniles suspected or accused of committing a crime may be handed over to their parents, guardians, municipal authorities for supervision as a measure of restraint. There is also a similar sanction in the Criminal Code (see below). However, the problem of lack of rehabilitation or assistance programs delivered to juveniles remains an issue. Prior to piloting two probation offices, those released on probation were neither properly supervised nor assisted. At the moment the ASED tries to work on rehabilitation of juvenile offenders more.

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16 "Reducing the use of custodial measures and sentences in the Republic of Armenia", Assessment report, Council of Europe Office in Yerevan, 2013

17 "Practice of the Use of Measures of Restraints in the Republic of Armenia", "National Centre for Legal Researches" NGO, 2014

Following training workshop organized by a PRI funded project, one of the judges identified a solution. He ordered an educational measure and handed over the juvenile to the municipal authority for supervision and tasked the municipal body to refer the juvenile to a rehabilitation centre run by a PRI implementing partner.

As a result of projects undertaken in the field of Juvenile Justice, including some funded by PRI, the attitude towards depriving juvenile offenders of liberty has changed. There is more understanding among the relevant authorities that it is important to keep juveniles from penal and penitentiary systems as well as it is important to assist them through rehabilitation programmes. However, apart from nominating one judge in every court to deal with cases involving juveniles, little was done by the Armenian authorities.

The Armenian law envisages a range of educational measures for juveniles. Restitution as an educational measure is imposed taking into account the social conditions and working capability of the juvenile. Another type is restricting leisure time and imposing certain conditions on behaviour of the juvenile. These may include a ban on attending certain places, or spending rest time in certain way, including ban to drive a mechanical transport, a curfew, or a ban to travel to other places without permission of the municipal body. The law also envisages a possibility to request a juvenile to return to the educational institution or upon the request of the municipal authority to start working.

3.2.2 Statistics on the use of Diversion in Armenia

The number of juveniles in detention pending trial or serving custodial sentence has decreased in the recent years in Armenia. Only those who are accused of grave and particularly grave crimes or who have reoffended while on probation for the first crime, are being detained during pre-trial phase. In November 2015 there were only 10 juveniles in custody, where as three of them were convicts and the rest in pre-trial detention.

The analysis of the official data shows that reoffending rate among juveniles decreased in 2013 in comparison to previous years. There is a strong opinion that one of the main causes for that is good preventive work carried out by community rehabilitation centres for juveniles in conflict with law where the latter are diverted by police. Thus, in 2012-2013 the number of crimes committed by juveniles was around 100 instances less than in 2010-2011 (452 crimes in 2010 against 352 crimes in 2013).

(Statistical information about juvenile offending is included in Appendix AM.3.2.2.)

3.2.3 Legislation about Diversion

No special legislation is in place to ensure diversion of juveniles before court proceedings. However, there are provisions applicable to all offenders which allow them to be exempted from criminal liability before the court proceedings.

However, if the juvenile regularly absconds from fulfilling imposed measures, upon a motion of municipal body or the body implementing supervision over the behaviour of the juvenile in question the case file is sent to the court with a request to cancel the measure and rule on subjecting the juvenile to criminal liability.

Notably, if the juvenile reoffends, then he/she is not considered subject to criminal liability for the first crime if the educational measures were applied to him/her. According to Art. 92 of the Criminal Code, when a juvenile is handed over for supervision, the person/body responsible for that is under the obligation to ensure behaviour control and educational impact.

(Further details of the relevant legislation are included in Appendix AM.3.2.3.)

3.2.4 Official Statements and Published Reports about Diversion for Juvenile Offenders

*"*Police continue our preventative work with juveniles in conflict with law, regardless of the lack of rehabilitation centres, the question is how effective we are." Deputy Head of the Police Department on Dealing with Protection of the Child's Rights and Combating Domestic Violence, Arthur Vardanyan.[18]

The Draft CPC contains more provisions related to juvenile justice. It envisages that cases where juvenile defendants are involved would be dealt differently taking into account their particularities and vulnerability.

"Juvenile Justice in Armenia: legislative analysis", Report, Civil Society Institute (CSI), 2012

"Presently, there is no legislative basis in the Republic of Armenia for substituting criminal liability with alternative measures: In the Republic of Armenia, a juvenile who has committed a crime – is not substantively different from adult criminals, consequently there is no autonomous system of juvenile justice. The range of measures applied in early stages of criminal – proceedings is very limited: in contrast, many countries have created numerous community programs such as community service, intensive educational programs, family counselling, and other methods of restorative justice, including damage restitution and victim compensation." (p.8-9)

[18] Speaking at a conference on Juvenile Justice and the Role of Rehabilitation Centers. See more at *http://www.hra.am/hy/point-of-view/2014/03/17/rehabilitation*

"Assessment of Juvenile Justice Reform Achievements in Armenia", Report, UNICEF, 2010

"Six Community Justice Centres have been established by Project Harmony, in accordance with the National Programme for the Prevention of Crime. The Centres have a dual purpose, both prevention and diversion. Some beneficiaries are children referred by schools for truancy or other antisocial behaviour, or children too young to be prosecuted who have been involved in criminal activity. Others are children aged 14 years or older involved in offences referred by the police. The services provided to the former part of the caseload constitute prevention; the services provided to the latter constitute diversion because the referral is made before the case is forwarded to the prosecutor.

The minimum age for referral is nine years. Upon referral, the child and his/her parent(s) must sign an agreement regarding participation. The duration of participation depends on the progress made, typically from two to five months. Services provided include victim-offender mediation, crafts (especially pottery), computer literacy, recreational activities and informal counselling. Agreement of the victim to participate in mediation is not a prerequisite for referral. The participation of the victim is sought after referral has been made, and services are provided even if the victim does not agree to participate (about one third do). Cases in which the victim is not a physical person (e.g., defacing a public monument, theft from the railroad) are also accepted." (p.20-21)

3.3 Pre-Sentence Reports

3.3.1 Methods in Armenia

According to the proposed concept of the probation service, upon request of the court a probation officer would draft a report assessing the risk of reoffending and the needs of the defendant and recommend a type of punishment and measures/conditions necessary for rehabilitation and supervision. Notably, the court is not obligated to ask for such a report. The court is not bound by this report. It is consultative in nature but is intended to assist the judge in decision making. It is assumed that when the new CPC is adopted, a two-phase adjudication procedure would be introduced. It is expected that such report would be prepared before the second phase of the adjudication procedure, once the guilty verdict is delivered.

3.3.2 Statistics about the production of Pre-Sentence Reports in Armenia

Pre-sentence reports are not prepared in Armenia at the moment. It is expected that preparation of pre-sentence reports will be one of the functions of the Probation Service to be established. In practice, the judges heavily rely on the suggestion of the Prosecutor on the sanction.

3.3.3 Legislation about Pre-Sentence Reports

No legislation is in place yet. A package of draft amendments to the relevant legislation, including the Criminal Code, Criminal Procedure Code, Criminal Executive, or Penitentiary Code as well as a Draft Law on Probation Service is being prepared.

3.3.4 Official Statements and Published Reports about Pre-Sentence Reports.

The Presidential Executive Order of 2012 setting out the strategy for criminal justice reform over the next four years makes a brief reference to the possibility that a new probation service would advise courts on alternatives to imprisonment.

The Concept Note on Probation approved by the President's Decree in February 2015 also speaks about this function of the Probation Service, i.e. preparation of pre-sentence reports.

"Reducing the use of custodial measures and sentences in the Republic of Armenia", Assessment report, Council of Europe Office in Yerevan, 2013

"The Criminal Code does not specify a clear text about the necessity to draft pre-sentence reports before sentencing for an accused person by a specialised entity but offers sufficient room for creativity in accordance with Article 61 (2). The type and degree of sentence is determined by the extent of social danger of the crime and its nature, by the characteristic features of the offender, including circumstances mitigating or aggravating the liability or the sentence."

"According to the information received from the Armenian authorities it is envisaged that the Criminal Code will be amended and Article 61 (2) will be extended to provide a possibility to request a report/recommendation from the authorised body such as the Probation service." (p.54)

"Creating a Probation Service in the Republic of Armenia: Issues and Peculiarities" - A Baseline Study, Social Justice NGO, funded by OSCE, 2012

"The report should contain detailed information about the person, including, at a minimum, information on the social and family situation, former convictions (if any) or relations with law-enforcement bodies, inclinations, health condition, possible dependencies, education, employment history, property status, and the like. When preparing it, probation officers must follow certain defined criteria. In order to obtain the necessary information, he may regularly meet and speak with the defendant, as well as his family, relatives, friends, and other related persons. If the defendant wishes, his defence counsel may be present in such meetings, as well. When preparing the report, probation officers may also request the case

materials from the relevant prosecutor or judge. When collecting and processing personal data, probation officers must respect the privacy and confidentiality of personal information. As a result of the collected information and the interview with the defendant, the probation officer must issue the objective social-psychological description of the person. To safeguard the credibility of the report, the probation officer must substantiate the information and facts presented in the report." (p.23)

"Towards the Creation of a Probation Service in Armenia", EU Advisory Group, Policy Paper

"Within the scope of the Criminal Execution Department, there are no tasks related to preparing the pre-trial report (social inquiry report) and pre-sentence report. The Department does not have the resources nor the experience needed to develop social inquiry or pre-sentence reports, which provide the offender's social psychological and criminal description. Probation services assist the work of prosecutors and judges by providing social inquiry reports and help the court to choose the proper sanction preparing pre-sentence reports." (p.29)

"However, the new draft Criminal Procedure Code of the Republic of Armenia does not regulate any probation activity in the different stages of criminal procedure. The reason for this is the lack of material legislation on probation in Armenia. The drafters of the Criminal Procedure Code are reluctant to provide regulations on probation activities until they have a clear picture of the criminal-legal status of the probation scheme in Armenia. This means the scope and regulation of probation activities in the pre-trial and trial phase of the criminal procedure are still pending. These include: preparing of social enquiry reports, presentence reports, organising mediation before the courts and many other activities. If the new Criminal Procedure Code of the RA is adopted earlier than the material legislation (the Criminal Code and the Law on Probation), then the incorporation of the regulations of the probation activities in different stages of criminal procedure will be possible by amending the RA Criminal Procedure Code" (p.30)

3.4. Basic Probation

3.4.1 Probation (Conditional Sentence) Methods in Armenia

Custodial sentences can be set in a conditional mode with a probation period from one to five years. When the convict during the probation period lives up to the conditions formulated in the sentence he/she need not have to serve the sentence. In some national jurisdictions (UK, USA) the term *suspended sentence* is used for the same sentencing modality.

Within three days of receiving the official notification from the court, the officer of the ASED opens a file to contain key information on the offender. Relevant data is supplied to the police. Thereafter supervision mainly consists of monthly meetings with the officer to check basic compliance with the court order. Officers have the right to visit the offender's workplace or place of residence. If other conditions are imposed, such as to undergo treatment for drug addiction, the relevant authorities are informed. The local manager can submit a motion to a court and ask to impose additional sanction if it appears they will assist compliance with the order. If the offender fails to abide by any of the conditions breach procedures are implemented. When the supervision is completed the court and the police are notified.

(Additional details of the supervision are given in Appendix AM.3.4.1.)

3.4.2 Statistics about the use of Basic Probation in Armenia

In 2014, 3440 offenders were convicted, 1775 (51.6%) of them were given an immediate custodial sentence and 834 (24.2%) were given conditional non-execution of the sentence (i.e. probation).

In 2013, 3829 offenders were convicted. 2179 (57%) were given an immediate custodial sentence and 818 (21.4%) were given conditional non-execution of the sentence (i.e. probation)[19]. For comparison, six years previously the proportion given 'probation' was 30% (See Table 2 below).

The proportion of offenders who received non-custodial sanctions is lower than European averages.

Table 2. The proportion of convicts and those who received immediate custody in 2007 and 2013 in Armenia

	2007 Armenia	2013 Armenia	2013 Europe Comparison
Total convictions per 100,00 population	90	127	5,111
% convicted who receive immediate custody	42.7	57	1,996
% who receive probation (conditional release)	30.5	21.4	145

[19] Information available at http://www.court.am/files/news/2864_am.pdf

3.4.3 Legislation on Basic Probation Order in Armenia

New legislation has been drafted which is intended to be the basis of a European-style Probation Service. The text has been circulated for comment by the justice agencies and the Ministry of Justice hopes to submit it to Parliament in spring 2016.

In the meantime, the implementation of the existing conditional sentence is regulated by the Criminal Code, the Penitentiary Code and a 2006 Decision of the Government on Establishment of Alternative Sanctions Division under the Penitentiary Department (Section 5).

(Details of the relevant articles can be found in Appendix AM.3.4.3.)

3.4.4 Official Statements and Published Reports about Basic Probation Order in Armenia.

The government recognises the need to reduce reliance on prisons sentences for mid-range offenders. It plans to establish a professional probation service in order to strengthen and increase the use of community-based sanctions.

In June 2012 the State President issued the 2012-2016 Strategic Program for Legal and Judicial Reforms in the Republic of Armenia and the List of Measures Deriving from the Programme. This document recognises the need to increase the effectiveness of the system of criminal punishments. In particular, it criticises the fact that courts, when imposing a punishment, do not currently have "a real alternative to imprisonment." It proposes a new Criminal Code in which prison sentences would be available for fewer crimes and the lengths of sentences would be shorter. A Probation Service would be established "to support the social rehabilitation of persons who have committed crimes." This service would also provide expert advice to help courts decide on a suitable sentence in individual cases. The probation service would commission civil society organisations to provide specialist services.

According to the Strategic Programmer, "with regard to conditional non-execution of the sentence (Article 70 of the Criminal Code of the Republic of Armenia) the criteria prescribed are much milder than those prescribed for imposing a mitigated sentence, than the one provided for by law (Article 64 of the Criminal Code of the Republic of Armenia). In fact, it results in wider application of the conditional non-execution of the sentence as compared to imposing a mitigated sentence than the one provided for by law."

Following detailed discussions, supported by international experts, a concept note on a probation service for Armenia was published by the Ministry of

Justice early in 2015. The proposals have been supported by the Presidential Administration, the National Security Council and the judiciary. These proposals appear to contain the necessary elements of a modern penal system. They will enable courts to pass effective sentences on mid-range offenders that do not use imprisonment. This is important preparatory work. However, if these new sentences are to be used appropriately, prosecutors and judges will need to change their approach to sentencing. It will be necessary for the government to state that its responsibility to reduce risk to the community means that more mid-range offenders should be made subject to alternative sanctions.

"Reducing the use of custodial measures and sentences in the Republic of Armenia", Assessment report, Council of Europe, 2013

"The Criminal Code provides for (some) non-custodial sanctions and provides also for conditional non-execution of imprisonment (probation). The evidence gathered here shows that these options are not used at all or partially used. This shortcoming is ascribed to the lack of a professional organisation that could implement these non-custodial alternatives. This would make the courts reluctant to mete out non-custodial sentences. (p.37)

"An advocate stated there was really no meaningful supervision of probationers, as usually courts do not impose any obligations on offenders beyond appearing when asked and signing in at the CED office." (p.33)

"Towards the Creation of a Probation Service in Armenia", Policy Paper, EU Advisory Group

"For the probation service to be established in Armenia there is a need for legislation that provides an adequate range of community sanctions, as well as the expansion of the scope of traditional alternative sanctions to imprisonment. It is expected that Armenia will widen the scope of non-custodial sanctions in the new criminal justice legislation and involve the probation service in their implementation" (p.30

"Factors contributing to re (offending) in Armenia: qualitative and quantitative study", CSI, funded by the Council of Europe, 2014

"It was stressed on numerous occasions that alternative sanctions should be used more broadly, especially in case of the first offence as they have positive impact both from educational point of view and crime deterrence. Such type of punishment shall also be coupled with purposeful activities carried out with an offender by various specialists (a psychologist, social worker, social pedagogue, lawyer, etc.)." (p.47)

"Creating a probation service in the Republic of Armenia: issues and peculiarities", a baseline study, implemented by Social Justice NGO, funded by the OSCE, Yerevan 2012

3.5 Community Service

3.5.1 Community Service methods in Armenia

According to the Criminal Code, sentences of unpaid work can be up to a maximum of 2200 hours. Although staff of the Division will make an initial assessment and check on the work being done, the responsibility for ensuring that it is performed properly is delegated to the work provider, which is usually the municipal authority. Menial work is normally involved and there is limited supervision. It is therefore only suited to lightly convicted offenders.

(A detailed description of the methods used to implement Community Service in Armenia is contained in Appendix AM.3.5.1)

3.5.2 Statistics about Community Service

Community Service is only available for crimes of low or medium gravity. This is normally taken to mean crimes where the maximum sentence could be two years of imprisonment.

As was noted above, 3,829 offenders were convicted in Armenia in 2013 but only 24 were ordered to undertake community service as a penalty for their crime (See Table 3 below). A further 484 were placed on Community Service at the request of the ASD because of inability to pay fines. Also in that year, 14 other offenders were ordered to undertake community service having successfully appealed against a more serious sentence.

Approximately a third of these people did not complete their hours because, for various reasons, they were sent to prison.[20]

Table 3. Use of Community Service

	2013 Armenia	2013 Europe Comparison
% who receive community service	0.6 *	8

* *If we consider only those who benefited from Community Service as an alternative to a prison term.*

As can be seen from Table 3, European courts use of community service much more frequently than the courts in Armenia.

[20] See, Study on Cost Efficiency and Social Impact of Non-Custodial Sentences and Probation, Social Justice NGO, 2014, p. 17.

3.5.3 Legislation on Community Service in Armenia

Community service is regulated by Criminal and Penitentiary Codes. The duties of the ASED staff related to supervision of this type of penalty are regulated by the Government Decree on ASED.

According to Article 54 of the Criminal Code, community service is a penalty, assigned by the court, when a convict is supposed to do unpaid socially useful work and served in a place identified by the relevant authority. This type of punishment may be imposed on persons have been convicted to imprisonment of maximum 2 years for committing low or medium gravity crimes. It can involve works from 270 to 2200 hours.

According to Article 49 of the Criminal Code, community service is a type of sanction. It can be assigned only as the main punishment, not additional. However, the court cannot impose this alternative on its own accord. The convict has to apply for it personally in writing within 20 days after the receipt of the executive order on the implementation of the sanction (Art. 54 § 3 of the Criminal Code).

Article 51(4) of the Criminal Code also provides an opportunity for having another type of penalty - fine - being replaced with community service by a court if the convict is not able to pay it. In such a case 5 hours of community service equates to the minimal wage (1000 AMD for the purposes of calculation in the Criminal Code). It is noteworthy that according to the Criminal Code, if in case of calculation it appears that a person should serve less than 270 hours, then the convict is supposed to serve 270 hours. On the contrary, if the amount of the fine recalculated appears to exceed 2200 hours, then 2200 hours of community service is assigned.[21]

Notably, community service cannot be assigned to persons with disability (1st and 2nd category), minors under 16 years old at the moment of delivering judgment, retired persons, pregnant women and conscripts doing military service. If the convict fails to comply with the conditions of the penalty maliciously, then ASED is entitled to submit a motion to the court to replace the remaining, unserved part of the punishment with imprisonment or arrest as a penalty. In such a case one day of deprivation of liberty is calculated for 3 hours of community work (Art. 54 §5).

[21] However, the Constitutional Court of Armenia on 23.04.2013 in its decision ՍԴՈ-***1082*** ruled the provision of the Criminal Code unconstitutional and contradictory to Art. 18 of the Constitution as much as Art. 51 §4 does not proportionally provide for a legal opportunity to the convict whose recalculated fine is less than 270 hours and who are not able to pay the fine thus preventing them from enjoying the right to effective remedy. It also considered unconstitutional that the provision does not ensure differentiated approach to those convicts who are not able the fine and those who maliciously escape doing so.

3.5.4 Official Statements and Published Reports about Community Service in Armenia

2012-2016 Strategic Programme for Legal and Judicial Reforms speaks about the need to make community service a more effective sanction and to expand its application. To do that, the Strategy argues that it is necessary to explicitly envisage community service as a sanction for specific crimes in the Special Part of the Criminal Code. It also states it should be made applicable to persons convicted of grave crimes.

- *"Factors contributing to re-offending in Armenia: qualitative and quantitative study",* CSI, funded by CoE, Yerevan 2014

- "When a defendant is sentenced to community service there is also a challenge. In most cases the sentenced offender does not have a possibility to get another, paid job while serving this sentence and earn money to provide for the family. As a result, the sentenced offender and his family find themselves in a difficult social situation and the risk of reoffending increases." (p.47)

- *"Reducing the use of custodial measures and sentences in the Republic of Armenia",* Assessment report, Council of Europe, 2013

- The present provision for "public works" or community service contains an extremely high maximum number of hours (2,200) to be performed. This could be viewed as compulsory labour, prohibited by Art. 4 of the ECHR. A far lower maximum should be considered, taking into account of maxima in other countries (UK: 300 hours; The Netherlands: 240 hours). Prior consent of the offender is not free consent when the alternative is imprisonment**."** (p. 38)

- *"Towards the Creation of a Probation Service in Armenia"*, Policy Paper, EU Advisory Group

"The public works scheme (community service) is currently implemented inefficiently. There are some underlying causes for this. Firstly, the Criminal Code, in its general part, defines public works as a type of punishment, yet, in the Code's special part, does not envisage that public works functions as a sanction for any crime. Furthermore, public work can be assigned when written applications are made by a convicted person. This means that the convicted person has to be exceptionally committed to being involved in the implementation of a public works sentence. The second issue is a lack of understanding by the public about the differences between former work sentences and the new concept of public works. Correction works in the socialist era were aimed at

maintaining compulsory employment." (p. 28)

Study on Cost Efficiency and Social Impact of Non-Custodial Sentences and Probation, Social Justice NGO, 2014

"Probation Service is expected to produce financial and non-financial benefits at the expense of decreasing the number of prisoners and detainees in Penitentiary institutions (thus decreasing the overcrowding of Penitentiary institutions), and increasing community sanctions (public works) for future offenders." (p. 25)

3.6 Social Training Courses

3.6.1 Social Training Methods for offenders in Armenia

Enforced treatment against drug addiction takes place in institutions that have relatively poor long-term success rates. No other social training courses are available to offenders on probation (those with suspended sentence). ASED is not staffed with social workers or psychologists and does not a mechanism for referring offenders for such treatment.

Every penitentiary institution has a unit dealing with social, psychological and legal issues established *in accordance with the Order N44-N issued by the Minister of Justice of Armenia on 30 May 2008.* According to the legislation, such units are supposed to engage inmates in some activities on voluntary basis. However, Penitentiary institutions are understaffed. The effectiveness of social and psychological work carried out by these units is not subject to sufficient monitoring for its impact to be assessed.

3.6.2 Legislation relating to Social Training Courses for offenders in Armenia.

According to Article 27 (2) of the Criminal Code, if a crime was committed by an alcohol or drug addict, together with the sanction, a court may assign enforced measures of medical nature, if there is a risk of reoffending because of the addiction. According to Article 97(4), enforced measures of medical nature may be assigned to an offender who was recognized as the one in need of treatment against alcohol or drug addiction. The court rules on this issue when delivering judgment.

3.6.3 Official Statements and Published Reports about Offending Behaviour Programmes in Armenia

"Factors contributing to re(offending) in Armenia: qualitative and quantitative study", CSI, funded by CoE, Yerevan 2014

"Serious concerns were raised in regard to the quality of activities carried out towards offenders, including aimed at rehabilitation and re-socialisation of ex-prisoners, as well as supervision and continuous impact when serving non-custodial sentences."

"It was stated that activities of staff of penitentiary institutions are rather aimed at keeping the regime than rehabilitation of inmates. The experts believe that inspectors can only watch that inmates do not violate internal rules of the regime, do not commit a breach." (p.59)

"When speaking about the role of prison psychologist, the experts stated that one single psychologist is not able to assist effectively to all inmates kept in the penitentiary institution. There are instances when a person who does not have educational background of a psychologist work at that position after undergoing a course on psychology." (p.60)

"The vast majority of experts were quite positive in regard to the role of probation service in case of early conditional release and conditional non-execution of the sentence as well as serving non-custodial services. All experts agreed that when a person is released from prison there is a need to continue exercising supervision over the person concerned and provide assistance as well as a complex of services. " (p.64)

"Reducing the use of custodial measures and sentences in the Republic of Armenia", Assessment report, Council of Europe Office in Yerevan, 2013

"Armenian authorities are encouraged to analyse the possibility, now, at the time of the creation of the probation law to orient ASED/future probation service's prerogative of enforcement of the sentences that include offenders' rehabilitation component." (p.57)

"Creating a probation service in the Republic of Armenia: issues and peculiarities", a baseline study, implemented by Social Justice NGO, funded by the OSCE, Yerevan 2012

"The goals of the Probation Service of the Republic of Armenia are to reduce crime by supervising, guiding, and supporting offenders and facilitating their effective re-socialization, and to contribute to public safety and the administration

of justice. The main objectives of the Probation Service are proposed as the following:

- To contribute to the reduction of offending and reoffending;
- To contribute to the offloading of penitentiary institutions;
- To contribute to more informed and impartial decision making in the choice of preventive measures and in sentencing;
- To contribute to more informed and impartial decision making in the early conditional release of convicts or substitution of the sentence remainder with a more lenient sentence;
- To contribute to the correction of the offender in the community;
- To re-socialize the offender;
- To restore social justice." (p.15)

3.7 Restriction of Freedom

3.7.1 Methods used to Restrict Freedom in Armenia

There is no such sanction as restriction of freedom in the Armenian penal system. However, there is a similar regime in prisons, so called open type prisons. This section will present particularities of serving sentence in an open type prison.

A prisoner serving his custodial sentence in such type of prison is allowed to leave the penitentiary unaccompanied on his/her own expense generally from 8 am to 8 pm to go to work upon permission of the prison governor. But he/she is supposed to be back by 8 pm and spend night time and non-working days, including weekends and public holidays in the territory of the penitentiary institutions.

In order to be allowed to leave the prison during the working hours, the prisoner is supposed to have a contract with an employing organisation. From time to time (but very rarely) the prison staff and at times prosecutors would do unannounced visits to the workplace to check whether the prisoner is indeed at work. No other regular supervision mechanisms apart from reporting from the employer is not in place. Under current reform plans, the penitentiary service hopes to introduce electronic monitoring over such prisoners to ensure better supervision.

In practice, transfer to an open type prison is a privilege and it is mostly available to those who serve the last months of their sentence.

3.7.2 Legislation relating to Restriction of Freedom.

The Penitentiary Code of Armenia sets out rules for serving custodial sentence in open-type prison. According to Art. 100 of the Penitentiary Code, offenders who committed a crime by negligence shall serve their custodial sentence in open type prisons. At the same time, the Code envisages a possibility of changing the type of isolation regime in prison also towards softening it up. It means that a person serving a sentence in semi-open type prison may be transferred to the open type prison. Thus, a prisoner who committed a low or medium gravity crime or a first time offender convicted for a grave crime may be transferred to the open type prison from a semi-open one after serving at least 1/3 of the sentence.

Art. 103 of the Code defines conditions of serving sentence in open type prison. A prisoner is kept in a dormitory envisaged for up to 10 persons. The prisoner is allowed to move freely on the specified territory of the prison even at night time, and during the day time unrestricted on the territory of the prison, and with a permission of the Head of the PI to leave its territory.

The rest rules are defined by Internal Statutes and Instructions of a PI.

3.7.3 Official Statements and Published Reports about Restriction of Freedom

"Reducing the use of custodial measures and sentences in the Republic of Armenia", Assessment report, Council of Europe Office in Yerevan, 2013

3.8 Parole

3.8.1 Parole methods in Armenia

The Criminal Code specifies the proportion of a custodial sentence that must be served before a prisoner can apply in writing for early release. Depending on the crime committed this can range from one third to three quarters of the sentence.

The process has three distinctive stages.

Stage 1: Administrative Board in the Prison

Prisoners who have "positive characteristics" and who have not breached the discipline are first considered by an Administrative Board consisting of the staff of the prison. The Board is required to consider a wide range of issues from behavioural changes, to the attitude of the family, to the results of any rehabilitation work with the prisoner. If the Board decides not to recommend the prisoner for early release the law states when a new application can be made, i.e. in 3 months. The decision is subject to appeal.

The issue is discussed in the presence of the prisoner in question, if he so wishes. Consideration is also given to social, psychological and legal work done with the prisoner and the results of correctional measures. Activities carried out with an inmate should prepare him/her for release and law-obedient behaviour in the community. A plan of activities shall be developed by relevant specialists, be of individual nature, standardized and measureable. If the results of activities undertaken are not measurable, then it is not possible to use them to assess the behaviour of the inmate concerned. The group leader writes up characteristics of every prisoner, taking into consideration the conclusions of various departments (security, material/technical support, medical). Such characteristics should contain information on the results of assessments made in course of serving the sentence, as well as general information about the inmate: prisoner's compliance with legal requirements during the period of incarceration (incentives, disciplinary sanctions), his/her participation in work, educational, cultural, athletic or other similar activities, involvement in paid and unpaid works, reimbursement of material damage to the victim of the crime committed, communication and ties with the family, existence of persons under his/her

custody, health condition, capability and disability. A report of the psychologist on behaviour of the inmate, his/her temper, psychological peculiarities, and their dynamics shall be also presented. In addition, the report of the social worker shall contain information on social security related issues of the inmate: availability of housing, work, material conditions, and plans for after release. If the administration of the penitentiary decides to recommend for early conditional release a prisoner sentenced to a determinate term or to life imprisonment for a moderately serious, serious or particularly serious offence, the commission's chairman sends the decision, within three days, to the Independent Board for approval and attaches the characteristics. It considers files on persons who committed crimes of medium gravity, grave and particularly grave crimes. This is composed of representatives from the police, government departments and an independent expert, a psychologist.

Stage 2: Independent Board

Then, the Independent Board reviews the motion and either grants it or rejects it. Prior to that, a subcommittee of two members visit the prisoner and interview him/her. A report is considered together with other documentation by a full Board meeting and a decision is made by secret ballot. The decisions adopted by the Independent Board do not contain any grounding for the decision. They are not subject to appeal in the court on merits. If the Board refuses to approve parole, then the prisoner must wait for three months before making a further application to the Administrative Board.

There are three territorial Independent Boards covering certain prisons . Every Board has eight members. The sub-commissions comprised of two members are set up and cover a certain penitentiary institution. The members of these sub-commissions are supposed to be changed on rotation basis so that a member of the IB does not deal with the penitentiary for longer than three consecutive months.

Stage 3: Court Hearing

If the Independent Board approves the aforementioned decision, the administration of the penitentiary sends a motion to a court within five days requesting early conditional release of the person or replacement of the remaining part of the sentence with a softer penalty.

In rare cases the court may dismiss the motion. In vast majority of cases approved by the Independent Board the court approves parole.

However, prisoners who have not paid damage caused by the crime are most often rejected. It is very rare for parole to be granted to prisoners who have committed crimes such as murder, robbery, trading drugs, etc. though no restrictions of this kind are provided in the legislation. Such practice creates serious tensions.

Conditions of release

Although early release in Armenia is called early conditional release, in practice the conditions are nominal. Upon the first visit to the subdivision the parolee fills out a registration card and is informed about rights and obligations, the consequences of failure to meet them and the requirement to visit the subdivision at least once a month. If the parolee does not attend the subdivision within seven days a summons is issued. The supervising officer has the right to visit the parolee's work place or place of residence.

Consequences of default

In case the parolee does not comply with the regulations or commits a new offence the head of the subdivision may file a motion to the court to cancel the parole and return the person to prison. Alternatively, arrangements could be made to increase the level of supervision and submit a request to the court to impose additional obligations or limitations upon the convict.

(Further details about the implementation of parole are included in Appendix AM.3.8.1.)

3.8.2 Statistics on parole in Armenia

In practice, depending on a type of the case, a prisoner may be released on parole after serving 1/3 of the sentence if the conviction was for a crime of low or medium gravity. Normally such release on parole will only be a few months before the end of the sentence.

In Armenia, all prisoners released on parole are supervised by the ASED. No deductions are made from the length of the sentence so a person remains under supervision until the end of the sentence period. However, that supervision in practice is limited to visiting the ASED and signing up. Table 4 presents an overview in regard to the use of parole in Armenia in 2007 and 2013 as well as provides with insight on how many of the parolees are actually supervised after early release.

Table 4. Statistics on parole in Armenia

	2013	2013
Total number of prisoners released each year per 100,000 population	15	8.7
% given early conditional release	22	5
% Given early conditional release with supervision (out of total released on parole)	n/a	35%
Proportion of all ex-prisoners reconvicted within three years of release.	n/a	n/a

According to the data provided by the PD of MoJ 261 prisoners were released on parole in 2013[22] and 485 prisoners in 2007.

ASED dealt with 178 offenders who were supervised while being early conditionally released. Notably, case-files to only 92 of them were received in 2013, the rest continued to be supervised since 2012.

Unfortunately, it is not possible to present reoffending rate among ex-prisoners in the next three year after their release, as Armenia has only limited statistics on reoffending rates. Police have statistics only for reoffending within one year.

3.8.3 Legislation on Parole in Armenia

The system of early conditional release is regulated by Article 76 of the Armenian Criminal Code, Article 434 of the Criminal Procedure Code, Articles 114 to 116 of the Penitentiary Code, as well as the President's Decree NH-163-N of July 31, 2006, the RA Government's Decision 1304-N of August 24, 2006, and the Minister of Justice Order QH-46-N of September 8, 2005.

According to Article 76 of the Criminal Code, a prisoner serving a custodial sentence may be released early, if a court finds that he/she does not need to serve the remaining part of the sentence in order to be corrected. When granting early conditional release, the court also takes into consideration the fact of the prisoner making reparation to the victims of his crime.

According to the first part of Article 115 of the Penitentiary Code, when a

[22] Data provided by the PD of MoJ; According to the official data, the population of Armenia as of 1 January 2014 was 3 017 100. To compare, the population of Armenia at the beginning of 2008 was 3 230 100 persons available at http://www.armstat.am/file/doc/99489458.pdf.

prisoner has served a specific part of his sentence, as determined by law, the administration of the penitentiary is required to consider, within a month, the possibility of recommending the prisoner concerned for early conditional release, provided that he has not received any disciplinary sanctions. Procedures for the administration of the penitentiary to discuss issues related to recommending a prisoner for early conditional release or for replacement of his remaining sentence with a softer sentence are defined in accordance with the Government's Decree 1304-N of August 24, 2006.

The following conditions are required in order to discuss the issue of early conditional release of a prisoner:

a) the prisoner is supposed to have served the minimum time required by law;

b) the prisoner has provided his written consent;

c) the prisoner has positive characteristics;

d) the prisoner has not been subjected to disciplinary sanctions[23].

3.8.4 Official Statements and Published Reports about Parole in Armenia

The 2012-2016 Strategic Programme for Legal and Judicial Reforms in the Republic of Armenia and the List of Measures Deriving from the Programme (approved by Presidential decree on 2 July 2012) refers to the need to reform the system of early conditional release and to establish clear criteria for assessment and decision-making.

The Concept Note on Creation of Probation Service envisages that one of the functions of the Service would relate to early conditional release, that is preparation of risk and need assessment reports on inmates eligible for release to facilitate decision making.

In a number of statements, the Minister of Justice of Armenia and the Deputy Minister of Justice in charge of Penitentiary System stated that the current system of ECR is not effective and that the Ministry is working on legislative amendments aimed at reforming the system. Thus, Aram Orbelyan stated that the MoJ hopes that the establishment of a Probation Service would allow to make the mechanism of early conditional release more effective"[24].

In his welcome speech Norayr Balayan, Head of the Department of Legal Support to the Staff System of the Ministry of Justice, stated that they had received

[23] The Minister of Justice Order QH-46-N, para. 5.

[24] See more at: http://www.moj.am/article/800#sthash.igBR0B89.dpuf

many applications and complaints from prisoners and the Ombudsman of RA regarding ECR. According to Balayan, the Constitutional Court in 2008 ruled there were no clear criteria for ECR in Armenia. Given these points, the Ministry of Justice is preparing a draft concept note on establishing the criteria for ECR. Once finalized it would be circulated and sent to the relevant stakeholders[25]. The same position was confirmed by Deputy Minister of Justice Qrmoyan.

New Early Conditional Release Mechanism,[26] Policy paper, CSI, 2014

Criteria for risk assessment of inmates and new model of early conditional release is proposed in the paper.

Annual report of the Public Monitoring Board over Penitentiary institutions 2013, Yerevan, 2014.

Issues related to gaps and challenges in ECR were emphasized as one of the most serious problem in the penitentiary system.

Research report on the problems in the system of early conditional release, Public Monitoring Board over Penitentiary institutions, Yerevan, 2013

"Factors contributing to re(offending) in Armenia: qualitative and quantitative study", CSI, funded by CoE, Yerevan 2014

"The System of Early Conditional Release in the Republic of Armenia", Report, CSI, 2012.

In 2012 a report commissioned by the OSCE - and produced by the Civil Society Institute – made a number of reasoned recommendations for reform of the system of early release. These included the need for:

- a statement of the purpose of early release;
- simplification of the procedures for granting early release;
- better preparation of prisoners for release;
- expert assessment of risks and needs presented by each prisoner;
- conditions to be attached to supervision after release.

The pilot projects being planned by the Council of Europe in preparation for the introduction of a probation service will include supervision of prisoners released early on parole.

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25 Available at http://www.moj.am/article/1067#sthash.26qYFodf.dpuf

26 Available at http://www.hra.am/en/point-of-view/2014/11/14/CSI

3.9 FURTHER CONSIDERATIONS

3.9.1 Restorative Justice

Unfortunately, this method is not in use in Armenia yet. Some elements are present in legislation but no really restorative justice mechanisms. As it was discussed in the part related to Diversion, the Criminal Code and the Criminal Procedure Code allows for discontinuation of the criminal prosecution if the offender and the victim reconciled. Though no procedure or mechanism is in place to facilitate that.

In the Concept Note on Probation a possibility of delegation of some functions to NGOs is discussed. As one of the possible openings, mediation is discussed. However, at the moment there are no NGOs in Armenia delivering mediation services in criminal cases.

3.9.2 Juvenile Offenders

As it was stated in the Council of Europe Report on the Promotion of the Use of Non-Custodial Sanctions, “the Armenian authorities are encouraged to include in the new probation legislation special provisions regarding the juveniles’ families’ involvement when they come to the attention of the probation service. During the enforcement of the measures, the connection between the juvenile, family and community, the free development of the juvenile’s personality has to be maintained and strengthened and also his involvement in the on-going programmes, in order to be formed in the spirit of responsibility and respect for other’s freedom and rights.”

In the recent years there is a debate in the country on the need to establish a juvenile justice system in Armenia. However, despite of the undertaken reforms, this issue has not been properly and thoroughly addressed yet. Some elements are introduced in the Draft CPC.

Consideration should be given to developing a separate Juvenile Justice Service. This would be staffed by secondments from the main agencies of police, probation, education, social protection and penitentiary. It would develop services specially designed with the interests of young people in mind. The probation leadership also wishes to tackle the relative lack of such services outside the main cities.

ORGANISATIONAL FEATURES OF ALTERNATIVE SANCTIONS IN ARMENIA

The Penitentiary Service in Armenia is responsible for implementing the non-custodial sanctions described in the Criminal Code that require a degree of supervision. In 2012 the president issued an order requiring the establishment of a probation service under the Ministry of Justice. Legislation to this effect maybe submitted to Parliament in the spring 2016.

3.10 Situation in Armenia

The Alternative Sanctions Enforcement Division is a division within the Penitentiary Department. In 2013 it employed around 80 officers who supervised 1,676 offenders who had been released early from prison and offenders who had been given conditional release from court. In addition, the same officers also monitored compliance with alternative sanctions (for instance the payment of fines) in relation to a further 1,975 offenders.[27]

It is expected that the proposed new National Probation Service would employ around 200 employers. The target would be for probation officers to have an average workload of 50 offenders requiring supervision.

3.11 Capacity to Deliver Alternative Sanctions

According to the Government Decree on the Establishment of the Alternative Sanctions Enforcement Division, the staff have two main tasks. Firstly, they must monitor the implementation of certain non-custodial sanctions including fines, community service, and prohibition to hold certain posts or engage in certain activities. In addition, they must supervise offenders over whom conditional non-execution of imprisonment was applied by a court, those early conditionally released, pregnant women or women who have children under 3 years old or convicts who suffer from serious medical diseases in relation to whom the implementation of punishment has been postponed.

To implement these sanctions, the staff carryout the following functions:

- maintaining case files on every convict under their supervision;
- organising and supervising compulsory work activities;
- keeping records of contact;
- keeping records of payment of fine as a non-custodial sanction;

and taking appropriate action when the persons being supervised do not comply with their responsibilities

[27] See Study on Cost Efficiency and Social Impact of Non-Custodial Sentences and Probation, Social Justice NGO, 2014. P. 12.

3.12 Types of Staff

In 2013 the Division had around 80 staff. Eight were in the headquarters office, 21 covered the various sub-divisions of Yerevan and 54 worked in the regions. They are all officers of the penitentiary service. The total number of staff decreased slightly in January 2014, due to structural changes.

Most of the staff of the Division have qualifications in law whereas some of them have experience of working in penitentiary institutions. No social workers or psychologists are employed.

3.13 Management of Alternative Sanctions Services

The work of the ASED is coordinated by the Head of the Division. The Head is assisted by two deputies.

Between two and four officers are assigned to each subdivision, depending on the workload and geographical area involved. The work of the officers in each subdivision is supervised by a manager. This person specialises in management tasks and does not supervise any offenders.

The staff members have access to a database run by police only upon lodging written inquires and receiving written replies and their own database.

3.14 Logistics

The Head Quarters office of the ASED is in Yerevan. The whole country is divided into 17 territorial subdivisions, 7 in Yerevan and 10 in the regions of Armenia. All together there are 38 offices across the country.

The ASED has 11 passenger vehicles, of which 9 are not fit for use.

Offices in regions of Armenia are rather poorly equipped and cover quite large areas. Many convicts belong to socially vulnerable groups and have to travel long distances to report to their local office. The ASD does not have funds to cover this transportation.

The ASD has 11 passenger vehicles, of which 9 are not fit for use.

ASED is equipped as follows: 25 computers, 2 copy machines, 1 scanner.

Under proposals prepared as part of planning for the National Probation Service it is envisaged that the technical capacity of the Probation Service would be strengthened. 26 passenger vehicles, a bus and a van would be purchased. 185 computers, 15 copiers, 45 printers, 15 scanners, 1 server would be provided.[28]

[28] See, Study on Cost Efficiency and Social Impact of Non-Custodial Sentences and Probation, Social Justice NGO, 2014. P. 9

3.15 Partner Organisations

Some NGOs have made significant contributions to the development of alternative sanctions.

'Penal Reform International' has operated a 'small grants scheme' since 2010. This has supported practical initiatives including counselling and temporary accommodation.

The 'Civil Society Institute' is mainly a research and advocacy NGO. Recently it has conducted a detailed survey of offenders in prison and on community sanctions. This was commissioned by the Council of Europe as part of preparatory work for the establishment of a probation service. CSI is also an implementing partner of PRI in its project "Promoting of the use of non-custodial sanctions in Armenia, Azerbaijan and Georgia" in 2014-2015.

The NGO 'Social Justice' has provided a number of service activities for juvenile and adult offenders. It has provided detailed advice about the establishment of a probation service and published its proposals.

The NGO 'Project Harmony' has run a range of services for children in conflict with the law since 2006. Since then over 700 delinquents aged between 11 and 17 have taken part in restorative justice programs with a high rate of successful completion. The NGO has provided training for police officers and teachers.

There are few examples of government ministries commissioning work or services from NGOs. (The only example that came to our attention was the Centre for Youth Development. This is a state non-profit organisation established by the Ministry of Sport. It has the power to give grants to civil society organisations that provide services which support its aims.) There is no tradition in Armenia of financial support being provided to NGOs by the general public or the business sector.

Churches and faith based organizations provide some help to offenders. In all penitentiaries on the territory of Armenia the religious personnel visit and do service. Meetings in private also available to prisoners upon their request.

A number of government departments - such as health, education and social protection – provide services that are needed by juvenile offenders. There are opportunities to develop more effective partnership projects between the ASED and these agencies.

3.16 Policy Commitment by the Government of Armenia

In the recent years, Penal system reform has been one of the priorities of the Government of Armenia. According to the Strategy on Justice Reform for 2012-2016,[29] new Criminal Procedure and Criminal Codes are to be drafted and other relevant laws and by-laws related to criminal justice system are to be amended/ adopted. The Strategy sets an objective to raise effectiveness of penal justice and the system of penal sanctions as one of the priorities. The Government justifies the need to adopt a new Criminal Code with a number of issues arising in the area of penal sanctions. Thus, the flaws and gaps in the current Criminal Code in the system of penalties lead to a situation when in practice the courts do not have a real alternative to imprisonment and a possibility to apply a non-custodial sanction.

All this negatively affects the effectiveness of the served penalty and leads to overuse of imprisonment as a sanction and as a consequence, overcrowding in prisons. The Strategy requires radically revising the system of sanctions in the Criminal Code to ensure proportionality of sanctions and introduce effective alternative sanctions. It also speaks about the need to reconsider the grounds for application of community service, list it in the articles containing crimes and sanctions for them, allow courts to apply it on its own accord or to replace the remaining part of the harsher sanction with community service, extending this possibility also to those prisoners who were convicted for grave crimes. In addition, the need to envisage alternatives to criminal justice, including mediation mechanism, is stressed in the Strategy. Importance of depenalization of certain crimes and non-application of imprisonment as a sanction to a number of crimes is also emphasized in the paper. The Strategy prioritizes the reform in the system of early conditional release and development of objective assessment criteria. Despite the fact that the Draft CPC was submitted to the Parliament in 2012, to-date it has not been adopted yet. At the same time, the Draft CPC does not contain relevant provisions on the role and functions of the Probation Service.

To promote the use of alternative sanctions and measures and to reduce prison population of the country the Government intends to establish a Probation Service. A Concept Note on Establishment of a Probation Service was signed by the Armenian President in February 2014. The Concept Note addresses the need to promote alternative measures and sanctions in Armenia. Unfortunately, the Government is quite behind the schedule set in the Strategy on Justice Reform for drafting the relevant legislation and establishment of the Probation Service. A draft Law on Probation Service was developed but subsequently removed because of significant discrepancies. At the moment, a new draft law on a Probation Service has been drafted by the MoJ and circulated among relevant stakeholders for comments.

[29] The Strategy and the Action Plan for 2012-2016 was approved by the President on 30 June 2012 by the Order ՆԿ-96-Ա (available in Armenian).

At various meetings the Minister of Justice and his Deputies have reemphasized the commitment of the Government to reform the penal system, in particular in the field of alternative sanctions and early conditional release.[30]

3.17 Leadership of the Justice Sector

The Government issues strategy papers or national actions plans in this field. In addition, public discussions are organized when key laws are adopted or being introduced. The Government presents the reforms at parliament public hearings, conferences, expert meetings, press conferences and by TV. Consultations with civil society organizations are conducted. In addition, legislative reforms are discussed at the meetings of Public Council under the Ministry of Justice.

In 2014-2015, CSI, in the frames of the project jointly implemented with PRI, organized a number of expert meetings and a conference on the topic of the use of alternative sanctions and early conditional release system. The MoJ supported a series of meetings and participated on the level of Deputy Minister who stressed a strong commitment of the Government to carry on the undertaken reforms in this field.

In addition, representatives of the relevant authorities and institutions participate in study tours aimed at studying the experience of other states in establishing and operating Probation Service.

3.18 Support from Donors

Some significant initiatives have been taken by donors to support the establishment of a Probation Service in Armenia:

EU: By approving the Action Plan 2012 for Armenia, the EU allocated 20mln EUR as budgetary support to Armenia. Among the conditions attached was the creation of a fully-functioning Probation Service and promotion of alternative sanctions in line with international standards. The EU Advisory Group prepared a Policy Paper about the creation of a Probation Service in Armenia.[31]

Council of Europe: In April 2014, the Council of Europe completed a two-year project **"Reducing the Use of Custodial Sentences in Line with European Standards."**

[30] See the Statement of the Minister of Justice Hrayr Tovmasyan "Imprisonment is not the best option", Parliament hearings on the problems of the Alternative Service in legislation and practice, 2013, available in Armenian at *http://www.moj.am/press/view/article/691;* Interview with the First deputy Minister of Justice Grigor Muradyan, "Pre-trial detention should not be a widespread used measure of restraint", 2012, available in Armenian at *http://www.moj.am/article/465#sthash.JdFGLseh.dpuf*; Interview with the Deputy Minister of Justice Aram Orbelyan on the role of Probation Service and use of alternative sanctions "We have to improve our record to be a leader, a best practice example", 2013, available in Armenian at: http://www.moj.am/press/view/article/806#sthash.R1j3pQ2n.dpuf"

[31] Annex 1 – Annual Action Programme 2012 for Armenia, Support for Justice Reform in Armenia – Phase II

The project brought international experts to Armenia, produced assessments of the current situation and contributed to the development of detailed proposals. A number of study torus were organized for the representatives of the judiciary, MoJ, Penitentiary department, the Office of the Prosecutor and NGO with the expertise I this field to learn the experience of operating Probation Service in European states.

At the same time the CoE launched a new two-year project **"Support to the Establishment of Probation Service in Armenia."** The project aims at introducing a probation service in two pilot regions of Armenia using the Council of Europe standards and best European practices. Specific objectives of the project are:

technical support to the establishment of probation service, including introduction of a pilot electronic monitoring system; and

training of probation service staff and other related professionals in two pilot regions.

The objectives will be achieved through development of a training curricula on probation, organisation of training-for-trainers (ToT) on probation for national trainers from different training institutions and universities, facilitation of follow-up cascade trainings, including initial, in-depth and in-service training courses, study visits to CoE member states, as well as development of pre-release and post-release re-integration programmes for offenders. Two pilot probation offices were launched in June 2015 on the basis of two ASED's subdivisions in Shengavit (Yerevan) and Lori respectively. They have taken up more functions, including focus on rehabilitation of offenders and cooperation with relevant institutions in this regard.

OSCE: The OSCE Office in Yerevan funded a number of research projects related to the issue of Probation Service and the practice of the use of measures of restraints:

Evaluation of the possible impact of the Probation Service. The study is conducted by "Protection of Rights Without Borders" NGO, 2014

Creating a Probation Service in the Republic of Armenia: Issues and Peculiarities - A Baseline Study. It was carried out by the NGO Social Justice with support of the OSCE Office in Yerevan serves as the basis for relevant state bodies to develop policies and strategies to introduce a probation service in Armenia, in line with the state programme of 2012-2016 legal and judicial reforms, 2012.

Practice of the Use of Measures of Restraints in the Republic of Armenia. The study was conducted by "National Centre for Legal Researches" NGO, 2014

Each of these reports are published, presented to the public and discussed with stakeholders at the workshops. In addition, the OSCE co-organized together with CSI a workshop on "Probation: Standards and Lessons Learned" in 2012.

US Embassy: In September 2014 the US Ambassador and the Minister of Justice of Armenia signed an amendment to the Letter of Agreement on Narcotics Control and Law Enforcement between the governments of the United States and Armenia. The assistance provided through the new agreement will continue supporting overall judicial and legislative reforms, including by assisting in the development of a new corrections and probation system.

US embassy supports the Government in the Penitentiary Reform. The Corrections Reform Program partnership between the Wisconsin Department of Corrections and Armenia started in April 2012. A number of study visits were organized Wisconsin Department of Corrections provided expertise to the Penitentiary Department and trained the staff recruited to work in the new prison. The US embassy provided technical assistance to the newly opened prison "Armavir" with the aim to improve prison conditions in Armenia. It also aims at implementation of unit management concepts and the use of multi-disciplinary teams consisting of social workers, security, and medical staff to effectively manage a prison population

3.19 TRANSPARENCY

The Alternative Sanctions Enforcement Division does not publish annual reports or report publicly on its activities in any other way. However, on issues of particular public interest, such as for example, amnesty, it does publish regular reports. In addition, they issue news items on rehabilitation activities or training workshops organized for offenders.

The MoJ publishes an annual activity report. It also publishes progress reports on the implementation and compliance with the Action Plan of the Strategy on Justice Reform and other initiatives and reforms undertaken.

The Penitentiary Department does not publish an annual report. However, in 2014 the Penitentiary Department launched its own website www.ced.am where information, on issues of interest, is posted regularly.

The Judicial Department annually and bi-annually publishes analysis of the judicial practice.

Public Monitoring of the Penitentiary Institutions under the Ministry of Justice has been intermittently carried out since 2004. Currently the Public Monitoring Board consists of 11 member organizations. These are NGOs with expertise in

the penal system. The members of the Board have unrestricted access to any of 12 Penitentiary in Armenia, the right to visit any facility, to interview prisoners and detainees in private, monitor the conditions and access to services of persons deprived of liberty, etc. Moreover, the mandate of the Board extends to any institution or body under the MoJ dealing with the penitentiary system, including the Alternative Sanctions Enforcement Division.

4. THE CURRENT SITUATION IN AZERBAIJAN

The government of Azerbaijan recognises the need to reduce reliance on prisons sentences for mid-range offenders. In June 2012 the State President issued an executive order setting out proposals for legal and judicial reforms over the following four years. This document - the Strategic Programme for Legal and Judicial Reforms - recognises the need to increase the effectiveness of the system of criminal punishments. In particular, it criticises the fact that courts, when imposing a punishment, do not currently have "a real alternative to imprisonment". It proposes a new Criminal Code in which prison sentences would be available for fewer crimes and the lengths of sentences would be shorter. A Probation Service would be established "to support the social rehabilitation of persons who have committed crimes". This service would also provide expert advice to help courts decide on a suitable sentence in individual cases. The probation service would commission civil society organisations to provide specialist services.

Although a considerable amount of preparatory work has been undertaken, the necessary legislation has not yet been submitted to Parliament. In the meantime, the bailiff service in the Ministry of Interior undertakes a limited amount of supervision of offenders in the community.

4.1 Pre-Trial Detention

4.1.1 Methods in Azerbaijan that are alternatives to Pre-Trial Detention

In Azerbaijan, pre-trial detention is the preferred means of dealing with accused people charged with crimes. Though alternatives such as home arrest, bail, and police supervision exist, pre-trial detention is overwhelmingly preferred, especially for those charged with grave crimes.

On the basis of trial monitoring undertaken in 2010, the OSCE made the following observation:

According to Azerbaijan's domestic legislation, home arrest and release on bail are alternative restrictive measures of detention on remand. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. In order to decide whether to apply alternative measures to remand detention, the judges must assess the actual danger of escape with reference to a number of other relevant factors which may either confirm the existence of such a danger or make it appear so slight that it cannot justify keeping the accused in custody pending the beginning of trial proceedings.

In a landmark decision issued in November 2009, the Supreme Court requested

lower instances courts to restrict the use of pre-trial detention as restrictive measure pending the beginning of trial proceedings. According to that decision, judges shall consider the possibility of applying other restrictive measures in accordance with the provisions in the CPC, including cases where the accused does not pose a threat to victims, witnesses or the public at large and when there is no risk of interfering with ongoing investigations. Judges need to be satisfied that the accused will appear for trial and, if released, will no pose a danger to any victim, witness or other person. To that end, they may impose such conditions upon the release of the accused as they may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.[32]

The report goes on to say: *Despite Azerbaijan's Supreme Courts important guidance in this regard, advising judges to apply detention on remand in exceptional cases and in a reasoned manner, the findings of the trail monitoring show that courts commonly practice the systematic application of pre-trial detention as a restrictive preventive measure against the accused without sound legal reasoning. The Project Team reported that in some cases judges disregard defence motions seeking the application of alternative measures, failing to take into account all relevant factors in every case, such as the accused's lack of past criminal records and the likelihood that they may interfere with ongoing investigations or pose a threat to witnesses, in order to determine whether the accused should be kept in custody. During the reporting period, the Project Team reported that in approximately a quarter of the court hearings monitored, the courts selected other preventive measures, such as restriction of movement or supervision by police. The Office has observed similar negative trends reflecting the systematic use of pre-trial detention as restrictive measure through its previous trial monitoring programmes.*[33]

4.1.2 Statistics on the use of Alternatives to Pre-Trial Detention in Azerbaijan

The Committee of Ministers of the Council of Europe recommends limitations on the use of detention on remand, encouraging the use of alternative measures to custody wherever possible.

According to the statistical data provided by the Azerbaijan Prosecutor's Office, in 2011 detention was used in 37.92% of circumstances when preventive measures were necessary. The comparative figure from the UK is about 10%.

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32 *(OSCE Trial Monitoring report, page 19, @OSCE Office in Baku, 2010 - http://www.osce.org/baku/88211?download=true*

33 *(OSCE Trial Monitoring report, page 19-20, @OSCE Office in Baku, 2010 - http://www.osce.org/baku/88211?download=true*

In relation to Article 5(1) concerning Delays of Hearings, recent statistics for Azerbaijan show that 56% hearings were conducted with delay and 44% were held in time.

	2014 Georgia Azerbaijan	2013 Europe Scotland
1. Total crimes reported per 100,000 citizens	241	5,111
2. Persons convicted per 100,000 citizens	159	1,996
3. Prison population per 100,000 citizens	139	145
4. Proportion of defendants held in detention	38%	10%
5. % prisoners who are awaiting trial	572 25%	20%

4.1.3 Legislation about Pre-Trial Detention

According to the Criminal Procedure Code, during the Pre-Trial Detention period the following restrictive measures can be applied with the intention to prevent unlawful behaviour by the suspect or accused during criminal proceedings and to ensure the execution of the sentence:

- arrest;
- house arrest;
- bail;
- restraining order;
- personal surety;
- surety offered by an organisation;
- police supervision;
- supervision;
- military observation;

removal from office or position.

Arrest, house arrest or bail may be applied only to an accused person. Only minors may be placed under supervision. Military observation may be applied

only to military personnel or to a person undergoing military training on a course for officers. The restrictive measures prescribed for in Article 154.2.1-154.2.9 of this Code shall be the principal restrictive measures and may not be combined. Removal from office or position may be applied as a principal restrictive measure or combined with another restrictive measure. House arrest and bail shall be alternatives to arrest and, after a court decision to arrest the accused, may be applied instead of arrest.

According to Azerbaijani legislation, judges should not extend unreasonably the detention of an accused person if it is no longer justified. Thus, upon having duly considered all circumstances and arguments put forward in connection to each case, judges may decide to replace detention on remand by home arrest and release on bail as alternative restrictive measures to remand in custody. The ECtHR has recognised four reasons as relevant for continuing keeping accused in remand detention, namely the risk of evading justice, interfering with the cause of justice, the need to prevent the commission of a crime and the need to preserve public order.

4.1.4 Official Statements and Published Reports about Pre Trial Detention.

The Presidential Order of 2012 setting out the strategy for criminal justice reform over the next four years makes a brief reference to the possibility that a new probation service would advise courts on alternatives to detention. A Presidential Instruction in November 2013 called for a review of the use of custodial pre-trial measures.

A concept paper on the reform of the Criminal Procedure Code refers to the need to reduce the use of pre-trial detention. A wider range of alternative measures are proposed including reporting to a police station, home arrest and bail. Currently it is proposed that supervision of these alternatives will be undertaken by police staff.

The ECHR provides that everyone has the right to personal liberty and security. Further, according to Article 5(3), everyone arrested or detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release pending trial shall be subject to certain guarantees in order to ensure accused persons' appearance at trial proceedings.

The findings of the trial observation (OSCE Trail Observation Report/Azerbaijan 2011) show that courts do not always justify applications of pre-trial detention as a restrictive measure. The Project Team did not observe any significant positive development compared to the court proceedings observed in 2010 regarding the extension of detention orders at preliminary hearings without assessing the reasonableness of such an exceptional measure. During the reporting period,

judges often did not properly assess defence motions seeking the application of alternative measures and related arguments. Generally, in the observed preliminary hearings, the courts appeared as deciding to extend detention on remand without properly examining the specific situation of the accused and analysing possible grounds for continuing restricting the accused's liberty pending the beginning of the trial.

4.2 Diversion from Court Proceedings in Azerbaijan

4.2.1 Diversion from Court Proceedings in Azerbaijan

In Azerbaijan, the police will almost always refer to the prosecutor cases in which the evidence shows that a crime has been committed. Similarly, prosecutors will almost always prosecute when evidence indicates that a suspect is guilty of a crime. However, in some cases the investigation of a crime may be discontinued if the suspect shows remorse, has pled guilty, has reconciled with and compensated the victim, or no longer represents a danger to society. Discontinuance is allowed, in any of these circumstances, only for first offences and for crimes that do not represent a significant danger to the public. The prosecutor may desist in the prosecution of a case after proceedings have begun, on the same grounds. In addition, a court may discontinue a criminal case if the victim and offender are reconciled. The same prerequisites apply to the decisions of a prosecutor or court to desist or discontinue.

A project for diverting children into non-custodial alternatives started in 2007 and included a diversion centre, legal clinic and police child room components. Initially the project targeted only one district of Baku (Narimanov). Recently it was expanded to cover 7 districts of Baku. The staff of the diversion scheme includes social workers, pedagogue, psychologist, lawyer and managements staff. Juveniles are being referred to the diversion scheme by commissions on minors, police departments, Ombudsman Institute and even courts. Specially trained staff of the centre provide psychological counselling for children and their parents/extended family members, social work with family, sport rehabilitation, psychotherapy (individual and group) for parents and children, and game-therapy.

According to the report, to date 102 children – mostly boys – have been referred to the Diversion Centre. Most children had been referred following the commission of an offence or for dropping out of or fighting at school. It appears that the Centre has been working with targeted children – that is, children who require and would benefit from more intensive interventions than mere supervision by a juvenile justice body, in order to respond to their offending or anti-social behaviour.

As part of the process for reform, UNICEF Azerbaijan, in partnership with the NGO Alliance on Children's Rights, and with technical assistance from UK-based NGO The Children's Legal Centre, developed the Diversion Centre and Legal Clinic in Narimanov District, Baku, for children who are in conflict with the law or at risk of coming into conflict with the law. The project provides a range of services to children and their families and the primary purpose of the project is to implement the recommendations of the UN Committee on the Rights of the Child by developing and piloting a model for effective community-based alternatives to custody to which law enforcement bodies (Police, Prosecutors and Courts) and the Commission on Minors can refer children. The purpose was to develop and refine a model that could ultimately be integrated into the national criminal justice system and replicated throughout the country.

The report by UNICEF made the following conclusions:

On the whole, referring institutions were very positive with their feedback on the effectiveness of the Diversion Centre. In most cases they felt that the Centre helped children to get their 'normal lives' back. The feedback demonstrates that, among some referring bodies, the Centre is a unique project that is playing an integral part within the juvenile justice system – it is filling a gap in that it is providing an effective, intensive, non-institutional measure in the referring districts; a service that was not available prior to the establishment of the Centre.

To date, the Legal Clinic has received 414 case referrals, including 59 criminal cases involving juvenile offenders and 355 civil matters. Civil matters in which the Clinic provides advice and representation have included: securing alimony for separated parents / children; securing identity documents, including birth certificates; and securing accommodation for children who do not have parental care.

Lawyers at the Legal Clinic have presented assessments of children made by the psychologist to help in sentence mitigation. The Clinic staff see their role, in part, to gather evidence to be used in sentence mitigation for their child clients. In order to do this, they work with the staff of the Diversion Centre and receive recommendations from the Centre's psychologist, social workers, pedagogue and also collect information from the child's school, family and neighbours.

The Clinic's staff also present evidence before the Commission of Minors to encourage the COM, where appropriate, to refer children to the Diversion Centre.[34]

[34] Evaluation report 2010 Azerbaijan: Azerbaijan Juvenile Justice System Consultation: Evaluation of Rehabilitation Centre and Legal Clinic http://www.unicef.org/evaldatabase/index_67773.html

Diversion of children in conflict with the law:

Data obtained from the Ministry of Justice and the Ministry of Education shows a decline in the use of institutionalisation of children in conflict with the law and children at risk of coming in conflict with the law since the Project was established. It is unclear whether the establishment of the Project caused or was significant in contributing to a decrease in the number of children placed in these institutions, but it can be said that there may be a statistical correlation between the establishment of the Project and the decline in the number of children institutionalised[35]. Recommendations from that project are:

Establishment of community based Specialized Rehabilitation Centre (hereinafter referred as "Centre") is recommended to avoid punitive trends in relation to minors and to provide their referral to social rehabilitation. The Centre shall provide correction of minors who committed a crime or an administrative offence through application of social rehabilitative and educational measures to them instead of sentencing them to penalties such as imprisonment and abridgment of freedom as a last resort;

Competence of the relevant state bodies, as regard to the referral while making final decision in relation to minors who committed a crime or an administrative offence, shall be reflected in the national legislation. Decisions, concerning minors who commit a crime or an administrative offence, are made by courts or Commission on Minors. Therefore, special provisions reflecting competence of these bodies, as regards referral to the Centre, shall be defined clearly in the Code of Criminal Procedure and Regulation on Commissions, respectively;

Having taken into consideration current workload, necessary changes, as regard the need to increase number of regular employees of the Commission, shall be made, by relevant bodies, both in legislation and in practice;

Certain circumstances defining when cases of minors may be referred to such Centres shall be envisaged in existing relevant legislation (say, Criminal Procedure Code, The Code of Administrative Offences and Regulation of the Commission);

Necessary measures shall be taken to strengthen belief of judges or other bodies who make decisions on cases of minors (such as Commission) in effectiveness of referral of minors to the Centres or application of forced measures of educational influence in lieu of application of imprisonment or sentencing to criminal penalty[36].

[35] Evaluation report 2010 Azerbaijan: Azerbaijan Juvenile Justice System Consultation: Evaluation of Rehabilitation Centre and Legal Clinic http://www.unicef.org/evaldatabase/index_67773.html

[36] (Kirsten Anderson, The Children's Legal Centre, June 2010, Azerbaijan Juvenile Justice System Consultation Evaluation of Rehabilitation Centre and Legal Clinic JUNE 2010, page 5, http://www.unicef.org/evaldatabase/files/2010_Azerbaijan_-_Evaluation_of_rehabilitation_center_and_legal_clinic_eng.pdf)

4.2.2 Statistics on the use of Diversion in Azerbaijan

Official statistics about the use of diversion are not generally available.

4.2.3 Legislation about Diversion

There is no specific mandatory provision in Azerbaijani legislation about diversion. However, in practise, the diversion method is in use. The prosecutor is the person who, in accordance with his powers and with the CPC leads the investigation into the criminal case or acts as a public prosecutor upholding public or semi-public charges in court. Existing criminal-procedure Legislation provided several discretionary powers both to prosecutors leading the investigation into the criminal case and acting as a public prosecutor upholding public or semi-public charges in court. According to the CPC, prosecutor leading the preliminary investigation into the criminal case while supervising preliminary investigation and investigation on criminal case executes these rights:

1) To discontinue the criminal prosecution against the accused or refrain from prosecution in circumstances provided in articles 39, 40 of the CPC.

Article 39 of the CPC gives a strict list of circumstances which exclude beginning of a criminal prosecution. In such circumstances the law defines as an imperative norm that a criminal prosecution may not start or shall be discontinued (and the criminal case may not be begun or proceedings in the criminal case shall be discontinued).

The article 10 of the CPC also defines the circumstances where criminal prosecution may not be started or dismissed. The powers of prosecution under such circumstances are considered his discretionary powers. Thus, in the following circumstances defined in articles 72 – 74 of the Criminal Code a person may be released from criminal responsibility when:

- the person evinces sincere remorse;
- the person is reconciled with the victim;
- situation has changed;
- time runs out.

The same powers are given to preliminary investigator and investigator along with prosecutor, and the sole condition that, their decision on rejection of criminal prosecution and its discontinuation are agreed with prosecutor.

2) To confirm the indictment and the decisions of the preliminary investigator or investigator in the circumstances provided for in this Code or if not, to refer the criminal case to the investigator with mandatory instructions.[37]

4.2.4 Official Statements and Published Reports about Diversion.

In 2006, the UN Committee on the Rights of the Child conducted its periodic review of the State of Azerbaijan. During its Concluding Observations on Azerbaijan, the UN Committee expressed its concern at the over-use of detention and long periods of detention to which children in conflict with the law are exposed. It also found that community-based alternatives to deprivation of liberty are not sufficiently used on children[38].

In order to bring the juvenile justice system in line with international standards, the Committee recommended that the government: "Take all necessary measures to ensure that persons below 18 are only deprived of liberty as a last resort and for the shortest appropriate period of time, in particular by developing and implementing alternatives to custodial sentences." These observations were also made during the Committee's earlier periodic review of Azerbaijan in 1997.

4.3 BASIC PROBATION ORDER

In Azerbaijan, this is referred to as a "conditional sentence". The government recognises that it is currently implemented in a limited manner.

4.3.1 Probation (Conditional Sentence) Methods in Azerbaijan

The Penitentiary Department of the Ministry of Justice is responsible for supervising conditional sentences. This sanction has few of the features of equivalent sentences in European countries. In particular, little attention is given to the main forms of rehabilitation such as problem solving, social training or help with practical problems. The staff who provide the service lack the kind of training provided in European countries.

4.3.2 Statistics about the use of Basic Probation (conditional sentence) in Azerbaijan

According to the figures of the Statistic Committee 12,980 offenders were found guilty of crimes in 2013. Under 10% of these offenders (1,147) were given a 'conditional sentence'.

[37] Council of Europe, Support to the Anti-corruption strategy of Azerbaijan, Technical paper of plea bargaining, PC-TC (2008) 52, page 22.

[38] (UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 67.)

This is similar to the proportion sentenced to probation in European countries. However, a major difference needs to be pointed out. In Azerbaijan, 53% of offenders (6,916 persons) were given custodial sentences. The similar figure in a comparative European country - Scotland - is 13%. It is clear that the proportion of offenders diverted from custody to community sanctions is much lower than European averages.

4.3.3 Legislation on Conditional Sentence (i.e. Probation Order) in Azerbaijan

Article 70 of the Criminal Code describes the implementation of the Conditional Sentence:

- ***70.1***. If the court intends to impose corrective works, restriction on military service, maintenance in disciplinary military unit, restriction of freedom or imprisonment it can decide not to impose punishment and order a "conditional sentence" instead.

- ***70.2***. At assignment of conditional sentence, the court takes into account nature and a degree of public danger of committed crime, sentenced person, and also circumstances mitigating and aggravating fault.

- ***70.3***. Conditional sentences are imposed for a fixed period of time. During this term the offender should prove his behaviour for correction. The suspension period shall be appointed for the term from six months up to five years.

- ***70.4.*** Additional punishments can be applied to the conditional sentence.

- ***70.5***. Additional duties attached to a conditional sentence can include: not change a permanent residence, study, work without notice to the supervising agency, not attend certain place, compete a course of treatment from alcoholism, narcotics, glue sniffing or venereal disease, and provide material support to family. The court can assign other duties promoting his correction.

- ***70.6***. Military units can carry out the control of conditionally sentenced members of the armed services.

- ***70.7.*** During a trial period the court on presentation of the state body which is carrying out the control over behaviour of conditionally sentenced person can cancel in full or in part or add earlier established for sentenced duties.

Alternatives sanctions for juveniles:

The court may also decide not to impose a custodial sentence on a juvenile convicted of a less serious crime if it considers that the purposes of punishment can be achieved by other means.

A fine may be imposed only when the offender has independent earnings or property on which the fine may be levied. A fine may amount to between 30 and 300 times the minimum wage fixed by law.

Pursuant to Article 85 of Criminal Code of Republic of Azerbaijan, the amount of fines imposed on juveniles contrary to that of adults cannot exceed 600 MAN.

Correctional work may be imposed on juvenile offenders for between two months and one year.

4.3.4 Official Statements and Published Reports about Basic Probation Order in Azerbaijan

The government recognises the need to reduce reliance on prisons sentences for mid-range offenders. It plans to establish a professional probation service in order to strengthen and increase the use of community-based sanctions.

In June 2012 the State President issued an executive order setting out proposals for legal and judicial reforms over the following four years. This document - the Strategic Programme for Legal and Judicial Reforms - recognises the need to increase the effectiveness of the system of criminal punishments. In particular, it criticises the fact that courts, when imposing a punishment, do not currently have “a real alternative to imprisonment”. It proposes a new Criminal Code in which prison sentences would be available for fewer crimes and the lengths of sentences would be shorter. A Probation Service would be established “to support the social rehabilitation of persons who have committed crimes”. This service would also provide expert advice to help courts decide on a suitable sentence in individual cases. The probation service would commission civil society organisations to provide specialist services.

These proposals appear to contain the necessary elements of a modern penal system. They will enable courts to pass effective sentences on mid-range offenders that do not use imprisonment. This is important preparatory work. However, if these new sentences are to be used appropriately, prosecutors and judges will need to change their approach to sentencing. It will be necessary for the government to state that its responsibility to reduce risk to the community means that more mid-range offenders should be made subject to alternative sanctions.

4.4 COMMUNITY SERVICE (KNOWN AS 'PUBLIC WORKS')

4.4.1 Community Service Methods in Azerbaijan

European countries invest heavily in providing good quality community service schemes in which proper standards of behaviour are enforced. Professional supervisors ensure that all work is done to suitable standards. Naturally this has financial implications but even so schemes of this nature cost significantly less than custodial sanctions. The approach currently used in Azerbaijan is likely to be considerably cheaper, but will not be as attractive to judges and prosecutors.

Rules for execution of punishment in the form of public works:

Prompt start: Convicts sentenced to punishment in the form of public works are involved to execution of the punishment within five days since the execution officer received the copy of the judgment of the court on execution of the legally enforced judgment and the appropriate instruction of the court.

Registration: The execution officer (from Execution Department of the Ministry of Justice) conducts registration of the convicts, explains them rules and conditions of execution of punishment, agrees the list of places where the public works will be conducted with the appropriate executive authority, implements control over behaviour of the convicts, tracks the record of hours worked out.

Behaviour: Convicts should observe the internal disciplinary rules at places where they implement the public works, work diligently, work at the places determined for them and in the period provided in the judgment and inform the execution officer in case of changing the place of residence. Granting annual leave to the convict at the main place of work does not stop execution of the punishment in the form of public works.

Duration: The period of the punishment in the form of public work is calculated in hours. As a rule, the period of the punishment is determined as not less than twelve hours per week. The execution period of this type of punishment may not exceed two hours per day for convicts up to fifteen years old and three hours a day for convicts in the age from fifteen to sixteen years old. When there is reasonable excuse, the execution officer may allow to the convict to work less than it was determined during the week.

Obligations: During execution of the punishment a member of staff monitors implementation of the works provided to the convicts, tracks the hours they worked and informs the execution officer about instances of evasion of works.

Violation and default: In cases when the convict violates the execution office officially informs him/her about the responsibility. When the convict deliberately evades serving the sentence, the execution officer makes a presentation to the court for replacing the punishment with imprisonment for the certain period in accordance with the Criminal Code of the Azerbaijan Republic.

Deliberate evasion: The following persons are considered deliberately evading the sentence of public works:

- persons not coming to the place of public work without reasonable excuse for more than two times a month;
- persons violating the labour discipline at the place of serving the sentence for more than two times a month;
- persons hiding with the purpose to evade serving the sentence.

Juvenile offenders: Community service, which may be ordered for a period of between 40 and 160 hours, consists of work suited to the offender's capabilities performed in his free time from school or main occupation. The duration of this kind of sentence may not exceed two hours a day for persons aged up to 15 or three hours a day for persons aged 15 to 16.

4.4.2 Statistics about Community Service

Although the Criminal Code (2014) provides for a form of Public Works (Community Service) that is similar to versions found in European countries, the sentence is used far less frequently. In Scotland, for example, community service and sentences of imprisonment are applied in equal numbers. In Azerbaijan, in 2013, public works is imposed only once for every 15 times a custodial sentence is passed.

- The most frequently used sanctions in Azerbaijan in 2013 were:
- Custodial sentence – 6,916 cases
- Financial penalty – 2,295
- Public works – 454
- Corrective works – 2,168
- Restriction of freedom – 1,147

4.4.3 Legislation about Community Service (Public Works) in Azerbaijan.

Legislation about when Public Works can be ordered is contained in Article 47 of the Criminal Code:

47.1. Public works shall consist of performance by the offender in free from the basic work or study time of free-of-charge socially useful works. The appropriate bodies of the executive power shall determine such kind of works.

47.2. Public works shall be established for the term from sixty up to two hundred forty and cannot be more than four hours per day.

47.3. In case of malicious evasion by the offender from serving public works they shall be replaced with restriction of freedom or imprisonment with the certain term. Time during which the offender performed public works, shall be taken into account at definition term or imprisonment on the certain term at the rate one day of restriction of freedom for eight hours of public works, or one day of imprisonment on the certain term for twelve hours of public works.

47.4. This specifies the normal groups who are excluded from compulsory work.

4.5 Offending Behaviour Programmes

4.5.1 Offending Behaviour Programmes in Azerbaijan

According to a presentation by Professor Carolyn Hamilton, such a programme was introduced for juvenile offenders in Azerbaijan as part of a regional initiative by NGOs. Following assessment, individual programmes were developed based on the needs and interests of each child (counselling, remedial education, legal assistance, vocational training, arts and cultural activities, sports etc.) Parents, and other caregivers and guardians were viewed as key partners, in supporting the rehabilitation of the child. Particular focus on improving the child's self-esteem, developing understanding of their behaviour and return to school. A child's time in the programme typically lasted from around 3-6 months. It is not known whether aspects of this program continue.

4.5.2 Statistics about the use of Offending Behaviour Programmes in Azerbaijan.

No significant statistics are available.

4.6 Restriction of Freedom

This sanction is currently not available to courts because there are no approved premises to which offenders can be directed to reside. In the past it has been a popular sanction and in 2013 it was used for approximately 20% of all non-custodial sanctions:

- Financial penalty – 2295 cases
- Public works – 454
- Corrective works – 2168 cases
- Restriction of freedom -1147

Offenders who were serving this sentence at the time it was suspended at the sanction converted to a fine or corrective works

4.7 PAROLE

4.7.1 Parole methods in Azerbaijan

Release on parole is governed by Article 76 of the Criminal Code of Azerbaijan. When applying conditional release from a sentence, the court may impose on the convicted person duties outlined in Article 70.5 of the Criminal Code. According to this article, the court can require the released offender not change their permanent place of residence, study, or work without notice to appropriate body which is carrying out control of behaviour, not to attend certain place, to complete a course of treatment from alcoholism, narcotics, glue sniffing or venereal disease, and render material support to family. The court can assign certain other duties promoting his correction.

Under Article 10 of the Criminal Code on Execution of Punishments, appealing for parole is a right of the convicted person. Also in accordance with Article 178, control over persons released on parole is performed by the bailiff of the convicted person's place of residence.[39]

4.7.2 Statistics on parole in Azerbaijan

Only limited information has been obtained abut early conditional release in Azerbaijan. Figures for Scotland could be a relevant comparator.

[39] Council of Europe website, http://www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/AZERBAIJAN%20Transfer%20of%20sentenced%20persons.pdf

	2013	2013 Scotland
Number of prisoners released each year per 100,000 population		226
% given early conditional release	5%	40%
% given early conditional release with supervision	139	40%
Proportion of all ex-prisoners reconvicted within three years of release.		50%

4.7.3 Legislation on Parole in Azerbaijan

Article 76. Conditional - prescheduled release from serving a punishment – contains the following regulations:

76.1. If the court will come to a conclusion that a person, who is serving time in corrective works, restrictions of freedom, maintenance in disciplinary military unit, restrictions on military service or imprisonment on certain term, does not need to serve full punishment, it can conditionally - prescheduled release a given person from serving punishment. Thus a person can be fully or partly released from serving additional punishment.

76.2. Applying on conditional - prescheduled release from serving punishment, a court can assign on the offender duties provided by article 70.5 of the present Code, which should be executed by them during deserved part of punishment.

76.3. Conditional - prescheduled release from serving punishment can be applied only after actual serving time by the offender:

*76.3.*1. not less than half of term of the punishment appointed for commitment of a crime, not representing big public danger or less serious crime;

76.3.2. not less than two thirds of term of the punishment appointed for grave crime;

76.3.3. not less than three quarters of term of the punishment appointed for serious crime, and also three quarters of term of the punishment, appointed to the person earlier conditionally - prescheduled released, if conditional - prescheduled release was cancelled on the bases provided by article 76.6 of the present Code.

76.4. Actually served term in imprisonment by the offender cannot be less than

six months.

76.5. The control over behaviour of a person released conditionally - prescheduled shall be carried out by appropriate state bodies, and concerning military men - command of military units and establishments.

76.6. If during the deserved part of punishment the offender:

76.6.1. is malicious has evaded from execution of duties assigned to him by court at application of conditional - prescheduled release, or has made infringement of a social order for which the official penalty was imposed on him, court on presentation of bodies provided by article 76.5 of the present Code, can decide about a cancellation of conditional - prescheduled releases and execution of deserved part of punishment;

76.6.2. has committed a crime on imprudence, the question on a cancellation or on preservation of conditional - prescheduled release shall be solved by court;

76.6.3. has made a deliberate crime, a court appoints to him punishment by a rules provided by article 67 of the present Code. Punishment shall be appointed by the same rules in case of commitment of a crime on imprudence if the court cancels conditional - prescheduled release.

Article 77 covers replacement of deserved punishment by mitigating kind of punishment:

77.1. To the person, who is serving time in imprisonment on certain term for a crime, which do not represent big public danger or for less serious crime, court in view of his behaviour during serving punishment can replace deserved part of punishment with mitigating kind of punishment. Thus the person can be fully or partly released from serving and from additional punishment.

77.2. The deserved part of punishment can be replaced with mitigate kind of punishment after serving by the offender of punishment term which is not less than one third part of it.

77.3. At replacement of deserved part of punishment, a court can select any mitigate kind of punishment according to the kinds of punishments provided in article 42 of the present Code, in the limits provided by the present Code for each kind of punishment.

Article 78 deals with release from punishment in connection with illness

78.1. The person, who after commitment of a crime was deceased by mental

illness, depriving his opportunity to realize actual nature and public danger of the act (action or inaction) or to supervise over this act, shall be released from punishment or from its deserved part. Concerning such person by court can be applied forced measures of medical character, which are provided by the present Code.

78.2. The person, which is deceased after commitment of a crime to other serious illness interfering serving of punishment, can be released by the decision of court from serving punishment.

78.3. The military men, serving the maintenance in disciplinary military unit, shall be released from the further serving punishment in case of disease, which becomes as reason of their unsuitability to military service. In such cases a court can replace deserved part of punishment to mitigate kind of punishment.

78.4. The persons specified in articles 78.1 and 78.2 of the present Codes, in case of their recovery, can be instituted to the criminal liability and punishment, if time limits have not expired as articles 75 and 80 provide it in the present Codes.

Article 79 covers delay from serving punishment to pregnant women and women having juvenile children

79.1. To pregnant women and women having children in the age up to eight years, except an offender who is imprisoned for the term from above five years for minor serious and serious crimes against the individual, a court can defer serving of punishment before achievement by the child of age 8.

79.2. In case if women provided in article 79.1 of the present Code, have refused from child or continue to evade from education of the child after the warning of the appropriate state body, which is carries out control over behaviour of convicted persons, a court can cancel a delay of serving a punishment on presentation of this body and direct an offender for serving punishment to a place appointed by a decision of court.

79.3. After achievement by a child of age eight a court releases a convicted woman from serving deserved part of punishment, or replaces deserved part of punishment with mitigate kind of punishment, or directs a convicted woman to appropriate establishment for serving the rest of punishment.

79.4. At commitment by a convicted woman, during a delay from serving punishment of a new crime a court appoints to her punishment by according to article 67 of the present Code.

Article 80 covers release from serving punishment in connection with expiration

of time limits for decision on accusation

80.1. The convicted person shall be released from serving punishment if a decision of court was not executed in the following terms from the date of its introduction into validity:

80.1.1. two years at conviction for a crime which is not representing big public danger;

80.1.2. seven years at conviction for less serious crime;

80.1.3. twelve years at conviction for minor serious crime;

80.1.4. fifteen years at conviction for serious crime.

80.2. Current time limits stops, if the convicted person evades serving punishment. In this case current of time limits renews from a moment of detention or giving himself up and confess.

80.3. The question on application of time limits to a person sentenced to life imprisonment shall solve court. If the court will not consider possible to apply on time limits, this kind of punishment shall be replaced with imprisonment with a certain term.

80.4. Circumstances of present article shall not apply to a person who have made crimes against the peace and safety of mankind, terrorism, financing of terrorism and war crimes provided by appropriate articles of the Especial part of the present Code.

4.7.4 Official Statements and Published Reports about Parole in Azerbaijan.

No relevant documents have been identified.

5. PROPOSALS FOR DEVELOPING SERVICES

Section 1 describes the operational methods, organisational features and the operating environment that can be found in effective European probation services. The following section suggests some practical actions that may help to take things forward in the South Caucasus countries.

5.1 Developing Alternatives to Pre-Trial Detention

It is generally recognised that defendants should not be held in pre-trial detention if suitable alternative restraints are available. Although most of these methods are cheaper than detention they nevertheless involve additional costs for the community agencies that will take on these responsibilities. Any new initiative should be based on a sound analysis of the current situation and involve careful monitoring that will show whether or not its impact is cost-effective.

There is usually evidence of scope for reducing still further the numbers held in pre-trial detention. However, it is likely that any alternative would have to involve some degree of supervision if courts were willing to release them. A comprehensive approach could involve these options:

a) Develop and communicate a concept paper about pre-trial restraint. The paper should emphasize the benefits of keeping offenders out of detention and the methods by which this could be achieved. It would need to be negotiated with senior figures in each part of the justice sector. It should include the statement that all defendants should be released pending the trial unless there are clear grounds that the defendant will not keep to the normal conditions.

b) Individual assessment. All defendants should be eligible for conditional release and their cases should be considered on their individual merits. Under the normal principle of “innocent until proven guilty” detention should not be arbitrarily imposed merely because of the gravity of the charge.

c) Reasons for detention should be stated in court. When a court is planning to place a defendant in detention it should state the reasons in open court. The prosecution or defence should be able to challenge these reasons at a higher court.

d) Bail information schemes. In some jurisdictions, courts will request that the defendant is interviewed about their suitability for release on bail. Checks would be made at the home address or with the employer to confirm information provided by the defendant. The validity of this information can be improved by the development of a scientific risk assessment tool. Normally the service would be provided by the Ministry of Justice, but NGOs can recruit and train volunteers

who would check the information. Where the assessment is submitted in writing it is usually known as a Pre-Trial Report. (This is not to be confused with a full Pre-Sentence Report.)

e) Custodial restraint assessment. In some jurisdictions a member of staff at each pre-trial prison is trained to interview each new detainee on arrival. Any factors in favour of release that have not been previously revealed will be drawn to the attention of the court.

f) Permission to reapply for release. Many jurisdictions allow defendants to request release if there has been a significant change in their circumstances. The request would be considered by a court hearing. A change in circumstances could include the availability of suitable alternative accommodation or the completion of prosecution enquiries.

g) Automated reporting to the police or probation. Requiring a defendant to report daily – or more frequently – to a police station discourages plans they may have to abscond in order to avoid a future court appearance. Modern bio-recognition technology (such as fingerprint readers or iris checks) can automate the process and ensure that a substitute has not been sent.

h) Mentor schemes. Courts will be concerned that some defendants might get into more trouble during the stressful period of waiting for their judgement at court. NGOs can recruit and train mature volunteers who would agree to meet such a person at frequent intervals to advise them on how to deal with their immediate problems. Knowing that such a service is available can encourage a court to release someone for whom they might otherwise order detention.

i) Bail hostels. NGOs are particularly suited to providing a network of small accommodation units that cater for a changing population of two or three people who are waiting for their cases to be dealt with at court. Bail hostels, such as these, that accommodate two or three low-risk defendants are much cheaper than holding them in pre-trial prisons. A supervisor would oversee a number of such units, give advice to the residents and deal with any problems that arise. Hostels that are designed to cater for defendants with a moderate degree of risk may need staff who apparently present throughout the day and night.

j) Electronic Curfew Monitoring. Offenders can be required to remain at a specified place for certain periods (between two and 12 hours in any one day). In the UK the maximum length of a Curfew Order is six months. Staff install the equipment in the home of the offender and attach the electronic bracelet to the offender's ankle. They monitor routine compliance, deal with any infringements and institute court proceedings if specified compliance standards are breached.

k) Scientific information. The whole subject of pre-trial detention should be the subject of careful study. Profiles of the type of offenders who are being held in detention should be made. Assessments should be made of the factors that contribute to the violation of the conditions of their release.

l) Training for judges, prosecutors and police. This whole subject should be considered in expert seminars for officials who make these decisions.

5.2 Developing Diversion Schemes

The main challenge involved in introducing diversion is to persuade key figures in the justice sector – such as prosecutors and judges – that it is appropriate to use it on more serious offenders. International experience suggests that the following activities can assist.

a) Monitor the justice system. In particular, it would be important to assess how minor crimes of type suitable for diversion are currently dealt with by prosecutors and the courts.

b) Produce a profile of minor offenders. This will provide basic information on which to develop local criteria for eligibility for diversion and the kind of informal rehabilitation that should be offered.

c) Pilot project. A partnership between the Ministry of Justice and a local NGO is likely to attract donor funding because diversion is seen as a constructive development in the management of offenders.

5.3 Introducing Pre-Sentence Reports

Pre-sentence reports are valued by judges in European courts because the information they provide improves the selection of an appropriate sentence. It takes time before new probation services develop the necessary credibility for their recommendations to be acceptable in court. Progress towards establishing such a system could be assisted by the following:

a) Develop and communicate a concept paper about pre-sentence reports. The paper should emphasize the benefits of providing impartial, expert advice to courts at the time when they must decide what sentence to impose. It should identify the content of the reports and how they would be produced.

b) Continue to develop the risk and needs assessment system. Courts are keen to know whether the offender they are sentencing is likely to commit more crime if released. The existing method to assist making these important judgements should be the subject of continuing refinement.

c) Sentencing exercises. Joint training sessions for judges, prosecutors and probation staff can be based on deciding the most suitable sentence for a selected sample of mid-range offenders. Profiles of these offenders would include key facts relevant to sentencing. Participants would make their individual decisions and then seek to justify them in the group discussions. Exercises such as this help to build confidence and pave the way for the introduction of pre-sentence reports.

d) Monitoring small-scale pilots. Care should be taken to obtain feedback from judges about the content and quality of reports submitted.

5.4 Introducing Probation

The following recommendations may assist the introduction of probation as a viable alternative to a short custodial sentence.

a) Probation should be presented as a mainstream penal sanction. International advisers recommend that probation should be a clear, easily-understood sentence in its own right. It should be the default option for mid-range crimes.

b) Preparation of a draft probation law. The production and circulation of a draft law would convey a sense of urgency and prompt the necessary detailed discussions.

c) Implement pilot projects: Within existing legislation it should be possible to enhance the work currently undertaken by Ministry of Justice staff who supervise the “conditional sentence”. Basic approaches found in established probation services – such as risk and need assessment; treatment plans; task-centred casework; social skills training; etc – could be applied to the more serious cases.

d) Build on recent initiatives with juvenile offenders. The projects sometimes run by UNICEF in partnership with government ministries show that supervision in the community can be a viable alternative to a custodial sentence for mid-range youthful offenders. Similar approaches could be tested for the slightly older “young adult” sector.

e) Integrated Offender Management. This is a process of ensuring that all the agencies able to assist offenders work together for maximum impact. Partners in the process include other government departments and organisations in civil society. It would be normal for probation staff to coordinate this approach.

f) Develop a Risk and Need Assessment System. The probation Agency is gathering a growing amount of valuable information about the results of its risk and needs assessments. This will enable the predictive instruments to be re-

calibrated to improve their accuracy.

g) Higher tariff impact: As confidence of the courts in the use of probation increases it should be possible to set targets for reducing the number of custodial sentences imposed by courts.

h) Day support centres. Socially isolated women or men, who may have been rejected by their families because of addictions or mild personality problems, often appear repeatedly before the courts for minor crimes that do not merit a prison sentence. They rarely have specific problems that can be solved. A popular response by probation services is to provide a simple day centre in an anonymous urban setting where cheap food and practical advice is available daily. Very often this service is provided by an NGO that receives some funding from the Ministry of Justice. Apparently there is a need for more such centres in the smaller cities of Armenia.

i) Basic skills training. Most offenders are not good at making decisions about the everyday problems that arise in their life at home or at work. Simple courses that provide information about the options available, and teach the skills needed to access them, have usually shown good results in reducing reoffending. NGOs can specialise in this work and produce the courses and provide the staff needed to deliver them.

j) Electronic Monitoring. European countries are experimenting with technical methods of supervising adherence to community sanctions. The value of electronic bracelets can be over-estimated, but a small pilot project can test their effectiveness. It will also attract considerable attention from the media and the judiciary to the underlying issue of alternatives to prison.

k) Mentoring. Offenders on probation are interviewed by their probation officer at regular intervals. However, some of them will benefit from more frequent informal advice from a trained volunteer. Mentors such as this might agree to meet the person for a few minutes every day on their way home from work. They will want to talk about small problems that could otherwise build into something bigger. NGOs can recruit and train suitable people and provide the service under contract to the Ministry of Justice.

l) Outreach work. Some persistent offenders are deeply embedded in their particular social network. This applies to street sex workers, homeless alcoholics, and young men on the fringes of the drug culture. Although they can be made to report to official Ministry offices, it is often possible to understand their lives better if they are met in their own familiar surroundings. NGOs are particularly good at running projects that deploy staff into these poor neighbourhoods, often during the night and at weekends. The Ministry of Justice is likely to be willing to support the cost of work of this nature.

m) Small hostels for offenders. Some offenders who are given a community sanction will fail if they are allowed to return to their own home. They need an opportunity to learn self-reliance and break away from harmful relationships and activities. Small hostels run by NGOs can provide respite for up to six months during which time the staff will provide training, advice and encouragement.

n) Minimum standards for supervision. Published statements about how probation works and the standards that apply give confidence to courts and the general public. These standards cover such things as to the frequency of supervision meetings, the type of help that should be available, and sanctions for failure to comply.

5.5 Proposals for Introducing Community Service

Community Service must be seen by courts as a credible alternative to a short prison sentence. In order to make this a more convincing sanction the following suggestions should be considered:

a) Develop and communicate a concept paper about Community Service. The paper should emphasize the value of this sanction for dealing with midrange offenders.

b) Workshops. A simple central workshop in each region will allow offenders to be carefully assessed before they are assigned to external working groups or individual agencies. Practical tasks that can be undertaken by offenders in the workshop could include assembling garden furniture for hospitals and repairing toys for orphanages.

c) Community Service Supervisors. In order to provide an assured level of control with more serious offenders it is recommended that supervision of the workshop and individual work groups are undertaken by staff directly employed for this purpose by the Probation Service.

d) Rehabilitation. As far as possible, work placements should involve direct contact with beneficiaries. This gives the workers direct, personal feedback which confirms the value of their contribution. For someone who has made many mistakes in their life, receiving thanks for a simple task well done can build self-esteem and confidence.

e) Skills training. The Ministry of Justice should agree with the courts that up to 20% of the hours ordered could be used to train offenders in the skills they will need to tackle more demanding tasks. These will enhance the possibilities of finding paid employment at the end of the order.

f) Available work register. Official organizations, or individual members of the public, should be invited to register potential work opportunities on the Ministry of Justice website.

g) Publicity. Photographs and descriptions of work completed by offenders are a great help towards developing an enlightened penal system.

5.6 Developing Social Training Courses

These courses offer concentrated, high-impact methods that tackle the attitudes and behaviour of more serious offenders. Progress towards establishing them could include the following steps:

a) Produce a Concept Paper about Social Training Courses. This paper should emphasise the need for strong interventions when more offenders are given alternative sanctions. The underlying causes of their crimes must be deal with if they are not to resume offending.

b) Develop social skills courses. These are less sophisticated than for offending behaviour programmes but they use some of the same methods. They usually involve a series of 60-minute sessions for a group of about 10 offenders. Interactive methods enable the members to explore solutions to everyday problems on the basis of shared experience.

c) Offending Behaviour Programmes. Local psychologists and offender supervisors should develop these higher-level programmes once experience has been gained with social skills methods. International examples can be modified on the basis of this experience to produce effective approaches.

d) Effectiveness monitoring. It is important to know whether any new initiative is having the desired results. The immediate impact of an initiative can be judged by comparing knowledge, behaviour and attitudes before and after the course. Long term it will be necessary to assess whether the initiative has resulted in reduced reoffending.

e) International standards. Countries that have monitored the implementation of offending behaviour courses over a long period of time have identified the components that contribute to effectiveness. Official standards that have been set in those countries are a useful guide when new courses are being developed.

f) Specially recruited staff. It is wrong to assume that probation officers are necessarily the most suitable people to deliver Offending Behaviour Programmes. Experience in the UK has suggested that some prison guards can perform this task better than qualified psychologists. Most Probation Services recruit special

people for this task on the basis of classroom skills similar to those required of a schoolteacher.

5.7 Recommendations for Restriction of Freedom

Unsatisfactory accommodation is frequently associated with further offending. It can be very difficult for offenders to leave crime behind if they live in an area where there is a concentration of others involved in crime or where family members are not giving good advice. Legislation to compel an offender to stay for a temporary period with restricted freedom is considered a useful option by European probation services. It can be used in the pre-trial phase, as an alternative to prison or as a condition of early release.

a) Probation hostels. Accommodation units that can cater for about 15 offenders with a resident staff team provide support and intensive social training. Residents are expected to find work and are encouraged to develop responsible leisure activities. The overall cost for each offender can be quite significant so it is essential to only select offenders who really need this level of supervision. After about six months they would normally be moved on to more independent accommodation in order to free the place for other candidates.

b) NGO hostels. For homeless offenders requiring only minimal supervision, small units of up to three or four places can be provided at low cost by NGOs. Most cities and large towns should be able to sustain a project such as this. It would not normally be necessary to have a resident staff team but one social worker should be available during the day to give advice and provide basic social training.

c) Halfway Houses. Larger resettlement units are a feature in a number of former Soviet countries. Unlike the examples described above, these facilities have a higher level of staff control. Good quality training courses are provided and most residents are given permission to go home at weekends if they have satisfactory domestic arrangements. However, the imposed discipline of the institutional regime means there are fewer opportunities for the residents to learn how to make their own decisions. European experience favours establishing units like this within every penitentiary as a preparation for release.

5.8 Recommendations for Developing Parole

Some form of early release from prison is available in most countries. However, these schemes often lack the strict supervision necessary to achieve substantial discount from the sentence and to reduce the level of reoffending. Action to develop the capacity of parole can include the following components.

a) Develop and communicate a concept paper about Parole. The paper should emphasize the value of this sanction both in motivating prisoners to put together good release plans and providing tough supervision after release.

b) Better Release Plans. Compared to international practice, the assessments for early release can place too much emphasis on past behaviour and not enough attention on the offender's prospects of "safe release". Guidance provided to early release boards should direct attention to the prisoner's prospects of keeping to the requirements of release. In this regard it would be helpful if more could be done within the penitentiary establishments to improve the quality of individual assessment and sentence planning.

c) Rehabilitation courses before release. The training courses that were described in relation to alternative sanctions are equally relevant to offenders while they are in prison and after they are released on parole. Rehabilitation courses covering such issues as violent behaviour, addictions, family relationships, finding work and managing money are likely to be particularly relevant.

d) Pre-release courses. Most prisoners have unrealistic expectations about life after release need help to face up to the problems they will encounter. In European countries it is customary to provide a week-long collection of training sessions that cover the main social and personal problems that prisoners are likely to face. Where possible the sessions should involve representatives from community-based agencies who will travel to the prison to explain how their services can be accessed.

e) Family support services. Research studies often conclude that at least half the people in prison have no realistic contact with their families at the start of their sentence. This reduces to a quarter by the end of the sentence. Visiting a relative in prison can be a stressful and intimidating experience for people who are not familiar with such places. However, it is well known that maintaining contact between family and prisoner is one of the best indicators of success for resettlement. For many years NGOs in European countries have operated family support centres near each prison. These small café-like facilities are staffed by volunteers who provide suitable refreshments and an opportunity for the visitors to share anxieties they may have.

f) Prison visitors. NGO schemes can recruit and train volunteers who will correspond with prisoners and visit them personally. Such schemes have a significant impact on the likelihood that the prisoner will qualify for early release and make a successful return to the community.

g) General post-release support. Services described in the previous section about alternative sanctions can also improve the effectiveness of parole

supervision. These include mentoring schemes, outreach work and compulsory work schemes. Small hostels are particularly important because they can provide increased supervision for offenders who are likely to encounter particular problems and temptations on return to the community.

h) Rehabilitation courses after release. The training courses that were described in relation to alternative sanctions are equally relevant to offenders released on parole. Rehabilitation courses covering such issues as violent behaviour, addictions, family relationships, finding work and managing money are likely to be particularly relevant. These are an excellent preparation for release for high-risk prisoners. They can also be offered to prisoners who are being supervised after release.

5.9 Restorative Justice, Juvenile Offenders, and Female Offenders

Restorative justice is proving to be an effective way of resolving the consequences of a criminal offence. However, because it differs from traditional approaches (in which the victim tends to be ignored and the offender is punished) it requires careful presentation. Pilot projects are a good way to start but it is preferable to begin with less controversial cases such as juvenile offenders or women with children. Experience from European countries can be helpful, but it should be possible for the basic concept – seeking ways in which the offender and victim can agree a mutually-satisfying resolution – to be articulated in ways that are congruent with local culture and traditions.

Because adult male offenders are very much in the majority, most alternative sanctions are initially developed with them in mind. Although the structure of each of these methods (such as community service, social learning programmes, and diversion schemes) may be relevant, the content needs to be thoroughly reviewed to ensure that it engages with the very different experience of these other groups. Different crimes, different social circumstances and different life opportunities will all affect the way these methods should be implemented.

ORGANISATIONAL FEATURES NECESSARY TO DELIVER ALTERNATIVE SANCTIONS

Recommendations aimed at improving the agencies that deliver probation services or alternative sanctions are described in this section.

5.10 Organisational Accountability

Different approaches to locating accountability for probation within the government structure were listed in the section reviewing international methods. These decisions will be influenced by the views of the current government on managing

its services. Nevertheless, whatever structure is chosen, consideration must be given to the way in which the probation service itself is governed. Strict bureaucratic control, in which the head of the probation service reports upwards to more senior government officials, might not provide the breadth of insights necessary for such a diverse service. Interest is being shown in European countries for establishing an Advisory Board for the probation service. This is similar to that found suitable for governing medium or large size commercial companies.

In this approach a small number of well-regarded representatives of community interests would meet with the senior managers every three months to comment on current operations and future developments. Such representatives might include a senior academic, the financial controller of a large company, someone from the faith community, entertainer and a sporting personality. A Board of this kind can raise the profile of probation work.

5.11 Sufficient Capacity to Deliver

Innovations of the following type may improve the effectiveness of the Probation Service.

a) Appropriate Resources: The cost of delivering these tasks is significant. But providing prison places to international standards is not cheap either. For alternative sanctions to make a significant impact on the numbers sent to prison they must be resourced at an appropriate level. Typical European countries spend about a quarter of their penal sector budget on alternative sanctions and the remainder on prisons. This might be a target for future negotiations.

b) National Standards. For each of the tasks involved in delivering probation services it is helpful for realistic standards to be published. Examples might be the frequency with which office interviews should take place, the length of time in which a community service order should be completed, or the number of sessions included in an offending behaviour programme. Standards such as these enable managers to ensure that the quality of service is maintained. They give confidence to courts and the public that alternative sanctions involve definite commitments from offenders.

c) Partnerships. NGOs are one of the actors who can contribute services to offenders. National coordination of these efforts could lead to great benefits.

d) Subcontracting. It may be that some tasks currently provided by Probation Agency staff could be provided more effectively by contracts with commercial or not-for-profit organisations as well as NGOs. For example, the tasks involved in the electronic monitoring of offenders are frequently contracted in this way.

5.12 Types of Staff Required

Probation agencies normally start by providing an office-based monitoring service. However, to develop their effectiveness they will need to provide a range of more specific services such as compulsory work, temporary accommodation and electronic monitoring. A review of the growing range of tasks involved may reveal the need for a more diverse staff team.

a) Probation Service Assistants. Greater efficiency may be achieved by employing assistant probation staff. Under the direction of probation officers these assistants would specialise in specific tasks that do not require the attention of fully qualified probation officers. Supervising a residential hostel or delivering basic social skills training in a day centre can often be better done by people who want to concentrate on that type of work. It is also more economical to employ assistants of this type.

b) High-level Specialists. It may be advisable to appoint some particular specialists. Thus in order to monitor the quality of the services being provided, or to develop high-level rehabilitation courses, it may be desirable to employ a qualified psychologist. An experienced industrial supervisor could be an asset in managing the community service scheme. It may be necessary to employ an experienced business executive to lead the administrative work of the Agency.

5.13 Management of Services

A number of factors should be considered when developing an effective management system for an alternative sanctions agency:

a) Strategic Objectives: The vision of the service must be clearly defined, with priorities and a plan for action that includes how the actions will be funded. Policies must be developed in consultation with key stakeholders, regional benchmarking and a thorough analysis of possible options for improvement. Objectives should be developed in consultation with other parts of the justice sector such as police and the courts.

b) A Culture of Improvement: A sense of purpose must pervade the organisation. Staff must understand that their task is not just to punish offenders but to make them into better people. They must seek opportunities to provide advice and training in the basic skills of life.

c) Organisation structure: The structure and systematisation of the agency should provide the most efficient and effective way of functioning. This might require reconfiguring existing staff roles.

d) Pro-Active Management: The quality of the managers and their ability to provide leadership to their staff is crucial in an organisation that is seeking to deliver new services with limited budgets. Managers should welcome ideas for improvement and reward initiative. Training and support for managers will help them to remain positive despite comparatively low salaries.

e) Effective allocation of resources: In order to gain the maximum impact from limited resources it is necessary to know the cost of each activity and its effectiveness in relation to achieving the overall objectives. A proper Management Information System can operate without computer technology but a modest investment in modern data systems will greatly improve the ability of managers to allocate resources to maximum effect.

f) Donor co-ordination and support: If properly presented, the development of alternative sanctions can be one of the more attractive causes for donor investment. To maintain their support over a period of time it is vital to provide them with honest accounts of successes and plans to mitigate failures.

g) Management Information System: Over the last three months, the Prison System has developed a simple system to collect basic operational information about prisoners, staff and use of budgets. This is a significant step forward on which further improvements can be built. Managers will need to be trained to provide and interpret this information.

5.14 Logistics

Resources are likely to be very limited during the early development stages of an alternative sanction system. Capital expenditure should be kept to an absolute minimum to favour employing the best staff at the best possible salaries. However low cost does need to be balanced against quality of service:

a) Report centres. Although it can be economical to cover the whole of a large city from one central probation office, this does create problems for poor offenders who may have to travel long distances from their home for their regular reporting. Small “report centres” in the remote districts could be staffed at specified times of the week. It may be possible to rent a room for this purpose from another government agency. Centres such as this can enable better contact with informal community leaders such as those from the faith organisations.

b) Flexible rental arrangements. Balancing the infrastructure costs, such as office buildings, furniture, office technology and cars requires constant revision as workload patterns fluctuate. In European countries most of this infrastructure is rented and approaches of this nature may be relevant in the South Caucasus countries.

5.15 Partner Organisations

The probation service is the primary agency involved in delivering alternative sanctions but important contributions are made by civil society. NGOs are gaining experience and delivering services more effectively but through further help they could become stronger partners for change within the justice system. Probably the justice agencies do not realise the full benefits of working with civil society. NGOs could do more to present themselves as reliable, transparent, secure organisations capable of delivering high quality services. Training seminars delivered by local or national experts could cover the following topics:

a) Strengthened Governance of NGOs. In European countries, NGOs that provide social services work hard to attract senior representatives from their specialist area or the wider community to join a management board. The involvement of such people (they are not paid for their contribution) gives confidence that the NGO will conduct its affairs according to the highest standards. The management board is responsible for appointing staff, monitoring all financial matters and approving overall work plans.

b) New Sources of Funding for NGOs. NGOs in the region tend to rely on grants from international donor organisations. It might be possible for them to improve the local fundraising techniques they use. The time may be right for NGOs to find new ways of attracting funds from within the country through membership schemes, fundraising activities and corporate sponsorship.

c) Training for staff and managers of NGOs. A series of training seminars could draw on the existing expertise of in-country NGOs. Occasional participation from international consultants may be useful.

d) Improved profile of partner agencies in probation offices. A popular method in European countries for making the services of government agencies more accessible to offenders is to run “surgeries” at probation offices or day centres. Representatives of these agencies, chosen because of their communication skills, would attend at regular, published times to explain the help their agency can provide and solve specific problems brought to their attention.

STRATEGIC OPERATING ENVIRONMENT

5.16 Government Policies

Most policy development will result from special advisers in the Ministry of Justice or the Presidential Administration researching international methods and customising them to the social, legislative and economic circumstances of their country. However, these advisers are likely to welcome any well-meaning

advice about reforming the way offenders are dealt with by the justice system. This is particularly the case in relation to mid-ranger offenders. For many years, human rights NGOs have rightly challenged governments about cases in which individuals or groups of offenders have been badly or unfairly treated.

However, governments are more likely to accept advice about the need to introduce alternative sanctions if it is based on constructive experience gained by independent organisations that have developed effective approaches themselves. Projects that have succeeded in providing services such as personal counselling, emergency accommodation, or training in life skills will find that policy-makers will show interest. If evidence has been collected to show overall effectiveness – as well as individual examples of where success has been achieved – this will have added impact.

5.17 Recommendations concerning leadership

a) National Criminal Justice Board. As found in European countries, a body such as this this could improve the ability of all parts of the system to work together to achieve government objectives. Chaired by the Minister of Justice, this brings together for regular coordination and planning discussions the most senior executives of each criminal justice agency.

b) Stakeholder awareness: For alternative sanctions to flourish it is necessary to develop and sustain informed support from key stakeholders. These include political representatives, justice professionals, the general public and potential donors. PRI would be pleased to offer assistance with this.

c) Leadership Round Tables. These will involve a small number of high-level officials and other interested parties meeting privately and informally to explore options for reform. They could be run at a national or regional level. Careful preparatory work is required to achieve the desired attendance. An international expert may be an asset. Suitable topics for such roundtables are the strength and weaknesses of the current sanctions; or gaining the support of prosecutors and judges for new penal sanctions that do not involve custody.

d) Public Conferences. Provided there is sufficient agreement between the justice agencies, a public conference can be a good way to get support for reforms. Care must be given to selecting suitable keynote speakers, including representatives from abroad. Presentations should cover the purpose of alternative sanctions and the methods they will involve. Proper opportunities should be provided for those attending to ask questions or make contributions.

e) Study tours. This is a familiar method for building a team of change agents from different parts of the justice system. It is important to ensure that attention

is given to identifying the most suitable representatives and choosing a relevant destination.

5.18 Donors

Alternative sanctions will necessarily be under resourced in poor countries. But even middle-income, developing economiesnot yet have the political will to invest in reforms to their justice system. Reform programs funded by donors have played a vital part in kick-starting initiatives that would otherwise have been delayed by years.

a) Improve donor coordination. It is useful to organise occasional events to improve two-way communication. Donors need to be made aware of the overall state of the sector and current development plans. NGOs need to know about the current priorities of the donors and how their funds can be accessed.

b) Feedback about results. The difficulty of implementing projects funded by donors can mean that insufficient attention is paid to providing them with realistic and accurate information about the successes and failures of the work. Resourcing this important activity should be built into the management of the project.

5.19 Transparency

a) Independent monitoring. Most countries in this region are members of the Council of Europe and as a result are aware of the encouragement it provides for monitoring of penal services by civil society. There is strong mechanism for public monitoring of prisons in Armenia by approved NGOs. However, though they have the mandate to monitor the work of ASED in enforcing alternative sanctions, little is done.It would help if such monitoring is also applied in practice to the conduct of alternative sanctions.

b) Consumer studies. The official agencies often give insufficient attention to learning from the consumers of their service. For example, a survey of current prisoners can show how big gains can be made from relatively minor improvements to regimes. A survey of people who have recently left prison can show how post-release support could be improved. Such surveys get better results if the questions are put by people who are independent of the management. However, NGOs and university students are often keen to undertake the important but time-consuming work involved.

c) Inspection service. It is rare that the government does not have its own organisation charged with inspecting all aspects of the statutory penal service. More confident governments are willing to publish the reports of their findings.

d) Role of the media. When TV or radio crews have been allowed access to interview staff and offenders within the penal systems of European countries the resulting programs have often been uncomfortable for the authorities. Nevertheless, opening the services to properly-managed public scrutiny in this way can provide the general public with a good opportunity to hold the authorities to account. Abuses have been stopped in this way. Although alternative sanctions interfere less with civil liberties, it is equally important that the public can see that they are operated to good standards.

6. CONCLUSIONS

This paper has attempted to review the implementation of criminal sanctions that are an alternative to prison in the three South Caucasus countries. The democratic governments that have evolved in Georgia, Armenia and Azerbaijan since they achieved independence from the Soviet Union are seeking to re-define society through combining their cultural inheritance with harsh economic realities and a need to address international practice. General approaches and specific methods that have been found to be effective in European countries may provide some useful templates that can be adapted to local needs.

It is hoped that the recommendations presented in this report will contain some suggestions that can be made relevant in each country. Difficulty in obtaining comparative information and statistics mean that precise proposals cannot be attempted in the context of this document. The wider project of which it is a part has addressed this limitation in a number of ways including visits and conferences that bring together key representatives from each of the countries.

It was inevitable that the government in these three countries would need to give most of their attention to economic survival, law and order and their relations to other countries in a complex international environment. Fine tuning the penal system to improve justice, safety and the rehabilitation of offenders will not have achieved the prominence some would have liked. Although Presidential statements and government policies in all three countries have clearly stated the importance of establishing a probation service within wider justice reforms, progress has varied.

With these important provisos, the following limited conclusions are offered.

Georgia

Georgia was the first post-Soviet country to establish a probation service. A combination of commitment to improvement by its leadership over the last 11 years, and advice given in a series of significant donor projects, have enabled it to develop an organisational structure that is able to sustain a comparatively high level of service delivery. Its current leadership strives to maintain an awareness of international best practice and it is introducing new approaches and improving established methods.

These gradual improvements are most impressive. However, three questions can arise in relation to their overall impact:

a) Alternative Sanctions: Has the community achieved the benefit that would arise from applying these constructive new community sanctions to mid-range

offenders instead of imposing harmful prison sentences? Statistical evidence available to this research indicates that community service, for instance, is used much less frequently than in European countries and imprisonment is used more often.

Parole: One of the cornerstones of European penal systems is providing firm but constructive supervision of each person who leaves prison. Could this approach be advocated more confidently to the general public and the government?

Advice to Courts: Judges and prosecutors tend to claim the final right to determine appropriate sentences for offenders. However, few of them have been properly trained in criminology and most are relatively unaware of the methods or effectiveness of alternative sanctions. Is enough being done to persuade the government to introduce legislation enabling the Probation Agency to submit Pre-Sentence Reports to courts?

Armenia

Although some of the key leaders of the justice system in Armenia understand and support the role that alternative sanctions should play in a modern penal system, the general justice establishment is not particularly enthusiastic for change. The current situation, in which the Penitentiary Service mainly checks the compliance of offenders with certain community-based sanctions, fall short of providing victims with justice, the public with safety and offenders with rehabilitation.

In recent years some significant donor projects have supported the efforts of local reformers both in government and in the independent sector. NGOs have continued to advocate the need for punitive approaches to be rethought. Services that they have operated on the basis of limited international funding have achieved worthwhile results. But although legislation has been drafted and submitted to the Parliament to enable a probation service to be created, it was shelved. The new methods it will need to employ will not suddenly become acceptable to a sceptical judicial establishment. Small-scale, well-conceived pilot projects must continue to demonstrate enlightened approaches within existing legislation. If they can be shown to achieve positive results, the challenge they could present to justice leaders could be significant.

Azerbaijan

The reform of the justice system in Azerbaijan has recently focused on improving the status of judges and promoting the role of courts in solving the problems of crime. New court buildings have been designed to be more welcoming to the general public. Computerised case management systems are reducing the

inclination of influential offenders to interfere with the course of justice.

Against this background, the development of the penal system has attracted less support and attention. Physical conditions in prisons, which fell short of international standards, have improved considerably in recent years with the construction of new cellblock penitentiaries to replace the old-style penal colonies. However, the penal system maintains a focus on humane containment and lacks the essential component of rehabilitation.

A series of donor projects and the persistence of local NGOs has meant that a focus has been maintained on rehabilitation. Not surprisingly the most promising developments have come in the juvenile sector. Nevertheless, it is disappointing that community-based interventions pioneered by UNICEF for children in conflict with the law were not taken over by the official ministries when donor funding expired. For the time being it looks like civil society will need to maintain its advocacy of a liberalised penal policy until leaders of the justice sector are able to offer victims and the public more effective resolution of crime problems.

PRI South Caucasus Regional Office Regional Office

November 2015

APPENDICES TO THE REPORT

On Georgia

Appendix GE.2.1.3: Statistics relating to Pre-Trial Detention

According to the Armenian Police, the total number of crimes reported in 2013 is 18 333[40]. According to the official data, the population of Armenia as of 1 January 2014 was 3 017 100[41]. 11 446 persons were held liable in 2013[42] but only 4353 of them faced trial, in relation to 3894 a verdict was delivered, whereas 3829 (98.3% of all defendants) were convicted and 65 defendants (1.7%) were fully acquitted. Notably, in 2013 the court of general jurisdiction (first instance courts) dealt with 4039 criminal cases and delivered verdicts in 3204 of them (79.3%).

As of 10 January 2014 there were 3922 prisoners in Armenia[43]. As of 1 January 2014 there were 1035 remand prisoners in the PIs of Armenia[44]. As we can see, more than a quarter of all persons deprived of liberty in PIs are remand prisoners.

It is noteworthy that in October 2013 a general amnesty was granted to a large number of prisoners and persons serving non-custodial sentences. However, it has mostly affected already convicted persons and only slightly remand prisoners. To compare, as of 1 October 2013, before the amnesty act was adopted, there were 4686 persons deprived of liberty in PIs[45].

In 2013 Police of Armenia instituted and investigated 16552 criminal cases[46].

- Hence, the rate of crimes reported per 1000 population is 6, the rate of persons prosecuted per 100k citizens is 379[47].
- The prison population per 100k citizens is 130.
- The percentage of prisoners who are detained awaiting trial is 26%.
- Number in detention per100 prosecutions in the year is 6.3.

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40 See statistics provided by the Armenian Statistical Service, available at www.armstat.am.

41 See statistics provided by the Armenian Statistical Service, available at http://www.armstat.am/file/doc/99489458.pdf.

42 Data provided by the Armenian Police

43 Official statistics available at http://www.moj.am/article/861.

44 Official reply of the PD 40/7-192 on 26 January 2015.

45 Ibid.

46 Information available at http://www.armstat.am/file/article/soc_13_52-53.pdf

47 The number of persons prosecuted is the number of those who were held criminally liable but not necessarily convicted by a court.

In 2013 11446 persons were charged with criminal offences during pre-trial investigation, 1035[48] persons were in remand custody. Hence, the percentage of persons charged with criminal offences who are detained in custody is 9%.

Out of 65 fully acquitted persons only 6 were in remand custody for periods ranging from 6 days to 9 months. Therefore, out of 1035 remand prisoners only 6 were acquitted (0.6%).

At the same time the number of juveniles in pre-trial detention has been decreasing. As of 1 January 2014 there were 8 male juveniles in pre-trial detention facility versus in total 1035 remand prisoners. The 14 – 18 age group represent less than 0.8% of the pre-trial prison population. Male juveniles in pre-trial detention are held in a separate section of the only juvenile prison.

There have been very few female juveniles awaiting trial or serving custodial sentences in Armenia in the recent years. Thus, as of 1 January 2014 there was only 1 female juvenile remand prisoner[49].

The number of women in pre-trial detention has been increasing. If on 1 January 2008 there were 19 women kept in pre-trial detention, on 1 January 2014 there were 49 female remand prisoners. This trend is also confirmed by the data provided by police on the number of crimes committed where perpetrators were female.

To compare, the population of Armenia at the beginning of 2008 was 3 230 100 persons. In 2007 in total 8 428 crimes were reported and 5 443 persons were held liable[50]. 2909 persons were convicted in 2007, 179 of them were juveniles. 42.7% of them were convicted to imprisonment, and 30.5% of the convicts got suspended sentence. 6.8% of the convicts had a previous criminal record.

The prison population as of 1 January 2007 was 3083 persons[51] with 617 of them being remand prisoners (as of 1 January 2008)[52] with 26 of the remand prisoners being juveniles. To note, as of 1 April 2008 the prison population was 3694 persons. In 2007 4127 persons faced trial, 2909 persons were convicted for committing criminal offences, including 179 juveniles whereas 10 defendants were acquitted[53]. Out of 2909 convicts, in relation to 886 persons the verdict was suspended, and 2211 persons served a custodial sentence[54].

48 Note, that the number of persons in remand custody is not fixed, the data provided by the PD of the MoJ reflects the number of persons in pre-trial detention as of 1 January 2014, not the total number of all persons who were in pre-trial detention during 2013. The latter data is not available.

49 Statistics provided by the Penitentiary Department of the MoJ by Letter 40/7-192 on 26 January 2015.

50 www.armstat.am

51 Information available at http://prosecutor.am/am/news/4056/

52 Information provided by the PD of MoJ

53 Statistics available at http://www.armstat.am/file/doc/99456318.pdf.

54 Information provided by the Judicial Department by letter N DD-1 E-387 on 5 February 2015.

In 2007 Police of Armenia investigated 8216 criminal cases[55].

- Hence, the rate of crimes reported per 1000 population is 2.6.
- The rate of persons prosecuted per 100k citizens is 168.5[56].
- The prison population per 100k citizens was 95. The percentage of prisoners who are detained awaiting trial is 20%.
- Number in detention per 100 prosecutions in the year is 7.5.

As there were 5443 persons prosecuted and 617 persons in remand custody, the percentage of persons charged with criminal offences who are detained in custody is 11%.

As for administrative detention, persons who are charged with administrative offenses are not kept in custody in Armenia. The longest period a person charged with an administrative offense may be kept in police is 3 hours.

55 Information available at http://www.armstat.am/file/article/soc_07_29.pdf

56 The number of persons prosecuted is the number of those who were held criminally liable but not necessarily convicted by a court.

APPENDICES TO THE REPORT ON ARMENIA

Appendix AM.3.1.3: Legislation about Pre-Trial Restraint

Application of measures of restraint is regulated by the Criminal Procedure Code (CPC) of Armenia. As mentioned above, Article 134 lists available measures of restraint.

According to the Armenian legislation (Art. 134 CPC), the following measures of restraint are available:

1) pre-trial detention (arrest),

2) bail (only as a replacement for pre-trial detention),

3) a written obligation not to leave a place,

4) a personal guarantee,

5) an organization guarantee,

6) taking under supervision (for juveniles only),

7) handing over to the military commander's supervision (for military personnel only).

According to Article 134 §1, preventive measures are "measures of compulsion imposed on the suspect or the accused to prevent the latter's inappropriate behaviour during pre-trial investigation and to ensure enforcement of the judgment."

Pre-trial detention

According to Article 135 § 2 of the CPC, "Arrest and its alternative may be applied in respect to the accused only if he/she is accused of committing a crime for which he/she may be imprisoned for more than one year; **or** there are sufficient grounds to assume that the suspect or the accused can commit actions presented below:

a) abscond from the body which carries out the criminal prosecution;

b) hinder pre-trial investigation or court proceeding by means of illegal influence on the persons involved in the proceeding, concealment and falsification of the materials relevant to the case, failure to appear before the body carrying out investigation upon receiving the summons without any reasonable explanation

or by other means;

c) commit an act prohibited under the Criminal Code;

d) abscond from the criminal liability and serving the imposed penalty;

e) hinder the execution of the verdict.

When opting for a measure of restraint and selecting its type, the following circumstances shall be taken into account: nature and degree of danger of the incriminated act, personality of the suspect/accused, his/her age, sex and health condition, occupation, family situation and existence of persons in his/her custody, material conditions, existence of a permanent residence and other significant circumstances.

According to the legislation, a suspect may be detained for 72 hours without judicial review of the lawfulness of his detention. Therefore, if the investigator considers that there is a need to arrest the suspect, then the investigator or the prosecutor has to apply to the court with a motion asking to authorize pre-trial detention of the accused person. The CPC requires the motion to be well-founded. However, in practice, in the motions to authorize arrest, the investigator refers to the gravity of the crime incriminated and the fact that the only type of penalty for such crime stipulated in the Criminal Code is imprisonment. The investigator formally lists the grounds stipulated in Art. 135 of the CPC and fails to substantiate these grounds with circumstances of the case.

If the court grants the motion, it may also replace detention with a bail. The court may replace detention with bail also upon the motion of the defence. Legislation in place creates a strange situation. First, the investigator has to submit a grounded decision why the accused has to be detained and if the motion is granted, it means that the court agrees with the necessity of detention as a measure of restraint. On the other hand, at the same time the court has to consider the possibility of releasing the same accused on bail once it granted the motion to arrest a person assuming that if the bail is paid, then it could remedy the situation and decrease the risk of the person. Such approach has been extensively criticized in Armenia. Though the law requires decisions on pre-trial detention to be well-founded, Armenian courts routinely fail to provide relevant and sufficient reasoning in support of detention, limiting themselves to *in abstracto* and stereotypical restatements of legal grounds of detention or repeating the grounds stated in the investigator's motion, rather than referring to the circumstances of the case. Meantime, in practice courts do not seriously consider bail, as an alternative to detention. In some instances, even if the 1st instance court has replaced detention with bail, the Appeal Court often quash it upon a motion of the investigator and rules that the 1st instance court's decision

in regard to release on bail was ungrounded.

Bail cannot be applied as an independent measure of restraint. According to Article 137 § 4 of the CPC, if release on bail is possible, the court sets the amount of bail. Later on, the court may reconsider the issue of impossibility of bail or its amount upon the motion of the defence.

According to Article 137 §5, a court decision imposing detention may be challenged before the appeal court. Notably, in practice, defence lawyers do not always challenge court decisions on granting motions to arrest the accused.[57]

Pre-trial detention shall not exceed two months (Art. 138 CPC). However, the CPC allows that in some cases due to complexity of the case it may be extended to 6 months whereas in exceptional cases of grave or particularly grave crimes the maximum period of detention may be up to 12 months. However, from the moment the prosecutor sends the case file to the court, the calculation of detention period is stopped and no maximum detention period is prescribed during the court proceedings. Monitoring demonstrates that in a vast majority of cases investigators ask to arrest the accused for 2 months, the longest period allowed by law.

According to Article 139 of the CPC, if it is necessary to prolong the accused's detention period, the investigator or the prosecutor must submit a well-grounded motion to the court not later than ten days before the expiry of the detention period. When deciding on the prolongation of the accused's detention period, the court shall prolong the detention on each occasion for a period not exceeding two months. Every time extending the period of detention, the court has the right, but not an obligation, to rule on the possibility of releasing the accused on bail (Art. 139). In practice, the courts review this issue mostly upon a motion of the defence counsel.

In general, most investigations are not completed within two months. Investigators apply to a court and ask for extension of the detention. In such a case, references to the need to conduct more investigatory activities or to receive the pending conclusions of forensic examinations, etc. are made. In practice, when seeking prolongation of detention period, investigators again fail to ground the motion. While the law provides for a periodic review of detention, in practice it has only a perfunctory character: once detention is authorised, its extension is almost universally granted upon request and on the same grounds, without due regard to the fact that those grounds might have become less compelling with the passage of time.

In its case-law, the Court of Cassation, the highest judicial instance in Armenia,

[57] See Detention Procedure Assessment tool for Armenia, American Bar Association, Washington DC, 2010. P. 6

stated that in order for pre-trial detention to be prolonged, the following two conditions should be met cumulatively:

a) the grounds for keeping the accused in remand custody are still valid or new grounds have come up, and

b) the body in charge of investigation has shown necessary due diligence to ensure proper process of investigation on the case.

In practice, the courts authorize prolongation with the same reasoning as in the previous decision on arrest failing to address any change of circumstances or developments in the case.

Detention of persons who were remand prisoners is almost universally continued during the adjudicative process. Defendants may be detained indefinitely once the trial has formally begun to the very end of the proceedings. At this stage at the first hearing in vast majority of cases the court rules that the measure of restraint was applied correctly and there is no need to change it, the decisions on measure of restraint at this stage are not grounded at all. The defendant has the right to appeal his detention, however no automatic regular judicial review is in place at this stage.

The period spent in pre-trial detention facility is calculated as 1 day of pre-trial detention equates to 1 day in prison. Though, the conditions for remand prisoners are harsher and there are more limitations on them then on convicted persons (meetings with family members, time allocated for a walk, right to work, etc.).

Alternative measures:

As for the non-custodial measures of restraint, the regulations are as follows:

Bail. As it was stated above, bail is not an independent alternative measure of restraint but shall be applied only as an alternative to arrest and shall be granted only upon decision of the court about the arrest of the accused (Art. 134 § 4 of the CPC). According to Art. 143 § 4 of the CPC, the amount of the bail designated by the court shall not be less than:

1) the minimum amount of 200 salaries - when the accusation is one of committing a crime classified as low gravity (where the harshest penalty maybe up to 2 years of imprisonment).

2) the minimum amount of 500 salaries when a crime is classified as medium gravity (where the harshest penalty maybe up to 5 years of imprisonment).

A written obligation not to leave a place. If such measure of restraint is applied it means that the accused is not supposed to move to a new place without permission, or change place of residence, but is obligated to appear in court upon receiving a summons from the authority in charge of the case, investigator, prosecutor and the court, and to inform them of a change of his place of residence (Art. 144 § 1 of the CPC).

Handing over for supervision. This measure of restraint is applicable only to juveniles. According to Art. 148 of the CPC, supervision of an under-aged suspect or accused shall be carried out by parents, guardians, trustees or the administration of the closed institution for children where the minor is kept. The above mentioned persons shall be responsible for the appropriate behaviour of the juvenile suspect or the accused, his appearance in court upon receiving a summons of the authority in charge of the case as well as his fulfilment of other procedural responsibilities.

The further measures of restraint listed below are rarely used:

A personal guarantee. According to Art. 145 of the CPC, a personal guarantee shall be given in the form of a written undertaking by trustworthy persons who upon their word and bail posted by them can guarantee an appropriate behaviour of the suspect or the accused, his appearance in court upon receiving a summons of the authority in charge of the case as well as his fulfilment of other court proceeding responsibilities.

***An organization guarantee*.** A similar measure to the previous one, with one difference. According to Art. 146 of the CPC, an organization guarantee shall be given in the form of a written undertaking by a trustworthy legal entity who upon its reputation and bail posted by it can guarantee an appropriate behaviour of the suspect or the accused, his appearance in the court upon receiving a summons of the authority in charge of the case as well as his fulfilment of other court proceeding responsibilities.

Appendix AM.3.1.4: Official statements and published reports about pre-Trial Detention

1. The 2012-2016 Strategic Program for Legal and Judicial Reforms in the Republic of Armenia (RA) and the List of Measures Deriving from the Programme, approved by Presidential decree on 2 July 2012 (Strategic Program). The Strategic Program speaks about the problem of overuse of pre-trial detention and the need to tackle the problem by introducing effective measures alternative to detention.

2. In February 2014 Concept Note on Creation of Probation Service in Armenia

was adopted (Concept Note).[58] When justifying the need to establish a probation service in Armenia, it was stated that it would contribute to increased use of alternative (non-custodial) measures of restraint. creating a probation service would help to reduce the number of cases in which prison sentences are unnecessarily imposed by courts, as well as the number of cases in which defendants are detained during pre-trial proceedings, thereby alleviating the problem of overcrowding in penitentiary institutions. In the present, persons in pre-trial detention and convicted to imprisonment are held in the overcrowded penitentiary institutions. Moreover, all forms and models of the probation service have proven to be cost efficient. It is expected that expenditures on a person who is under "supervision" of the probation service would be much less than to hold a person in a penitentiary institution. According to the Concept Note, a law on "Probation service" is to be adopted, which would regulate principles of its activity, jurisdiction, structure, state guarantees of legal and social security of probation officers as well as material and financial support and supervision issues, including in pre-trial stage.

3. A draft law on Probation service was developed, however it was withdrawn for a number of reasons. Currently, a working group of national and international experts work on a package of legislative amendments necessary to ensure effective functioning of the Probation Service. According to the draft amendments, Probation Service would work in different phases: pre-trial, trial, penitentiary and post-penitentiary. It will be tasked not only to ensure supervision but also to draft pre-trial reports upon the request of the judiciary recommending measures of restraint and sanctions (custodial/non-custodial). It is expected that the Draft will be finalised by Spring 2015 and submitted to the Parliament.

4. According to the Prosecutor General of Armenia, in November 2013 the President of Armenia instructed them to review legislation on grounds of application of pre-trial detention and consider a possibility of introducing effective alternative measures with certainty and predictability of the grounds of application of such measures.[59]

5. Since 2012 a draft New Criminal Procedure Code was introduced. At the moment it is pending adoption by the parliament. The draft CPC presents a new concept of the ground for measures of restraint and extends the list of possible non-custodial measures. It does not only expand the list of possible alternative measures of restraint, but also reduces the conditions when a measure of restraint may be applied. First of all, it requires that there is a reasonable doubt that the accused has committed the incriminated crime. Then, it allows to apply a measure of restraint in order to:

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58 Concept Note on Introduction of Probation Service in Armenia approved by the Council of National Security on 25 February 2014, available in Armenian only.

59 See press release of the Office of the Prosecutor General on pre-trial detention of Vardan Petrosyan, available at www.hra.am

- prevent escape of the accused,
- prevent reoffending of the accused,
- ensure implementation of obligations by the accused imposed by law or by a court.

At the same time, it is not required to meet the abovementioned conditions in the following two cases:

- if some of the alternative measures are applied,
- application of initial arrest or an alternative measure of restraint to a person accused of committing a grave or particular grave crime.

Importantly, the Draft CPC requires that one or more of the pre-conditions mentioned above to be well-founded by circumstances of the case in a motion of investigator and court decision granting arrest.

The Draft CPC offers the following alternatives to detention:

- house arrest,
- administrative supervision,
- bail as an independent measure,
- ban on absence,
- suspension from duty,
- warranty
- educational supervision
- military supervision.

Notably, alternative measures may be applied also in combination. Only house arrest and administrative supervision may be applied only by a court. The rest may be applied also by an investigator.

The Draft CPC aims to decrease the use of pre-trial detention and tackle the issue of overcrowding in pre-trial detention facilities.

According to the Head of the Working Group drafting the New Code, “the new draft Code differs from the current one fundamentally and principally in terms

of its philosophy, ideology, regulatory system, goals and structure. The overall goal was to balance the protection of public and private interests in the field of criminal justice. The code suggests principally new solutions for the measures of restraint, such as arrest and detention. As for detention, it should be used only in extreme situations, as a preventive measure; other alternative means should be used as preventive measures."

According to the Minister of Justice, introduction of new types of alternative measures of restraint will unload penitentiary institutions and pre-trial detention will be chosen as a measure of restraint only in those cases when all the others measures are insufficient and may not be applied.

According to the Advisor to the Minister of Justice in charge of the Penitentiary reform, "the Probation Service at the pre-trial stage means assistance to decision makers, assistance to judges during their decision making on applying pre-trial detention as a measure of constraint. The prevention measures to be used at the pre-trial stage are especially important, such as home arrest and oversight, which are defined in the new Criminal Procedure Code."[60]

Appendix AM.3.1.4b: Publications relating to Alternative Measures.

1. "Reducing the use of custodial measures and sentences in the Republic of Armenia", Assessment report, Council of Europe Office in Yerevan, 2013

"The evidence gathered so far shows that in Armenia, the pre-trial detention, counter to international standards, is not used as a measure of last resort. On the contrary: requesting and ordering pre-trial detention appears to be the rule. It proves almost impossible to end pre-trial detention before the start of the trial, after which it will last until the final verdict. A granting of bail or another non-custodial preventive measure is rare. The present practice partly can be attributed to the lack of viable alternatives for "arrest" in the Criminal Code and to the absence of a body or organisation (like a probation service) able to monitor the compliance of suspects with non-custodial preventive measures." (p.17)

"It is commonly held by the various authorities interviewed in the course of this assessment, that the success of the introduction of more and better non-custodial measures and sentences depends for a great deal on the establishing of an independent and professional probation service, which now is lacking in the RA." (p.29)

60 See Interview with the Advisor to the Minister of Justice, available at www.hra.am

2. "Practice of the Use of Measures of Restraint in the Republic of Armenia", Report, National Centre for Legal Researches NGO, funded by the OSCE, Yerevan, 2014 (in Armenian)

"It is a common practice that the courts grant the motions of investigators on application of arrest as a measure of restraint and ground their decisions only by simple reference to legal provisions failing to mention any fact(s) of the case which would substantiate the grounds for pre-trial detention. As a result of the monitoring numerous cases were identified when the court decisions on application of arrest as a measure of restraint or prolongation of detention were not grounded at all or the only reasoning was a copy-paste of the references to the relevant legal provisions in the investigator's motion." (p.8).

3. "Factors contributing to re(offending) in Armenia: qualitative and quantitative study", CSI, funded by CoE, Yerevan 2014

"Work of the probation service will also contribute to solving the problem of overcrowding of prisons. However, it is noteworthy that concerns were raised about the role of the probation service in pre-trial stage. It was assessed as limited as there are doubts that it would be possible to draft a comprehensive and objective report within such a limited period of time, when a person is brought before a court to decide on lawfulness of his arrest and application of arrest as a measure of restraint. A part of other respondents believes that there is no need for such a report at that stage. Concerns about increasing corruption risks were also raised. It was stressed that efficient organization of the work of probation service in marzes (provinces) of Armenia is a challenge. Everyone making a part of the community over there knows each other. It would be quite hard for a probation officer to make an objective report given the fact that the community may put pressure on the officer." (p.64)

4. EU Annual Action Programme 2012 for Armenia, Support for Justice Reform in Armenia – Phase II

It states the revision of the Criminal Code and promotion of the alternative sentence system to decrease the level of incarcerated persons in line with the international standards.

5. "Creating a probation service in the Republic of Armenia: issues and peculiarities", a baseline study, implemented by Social Justice NGO, funded by the OSCE, Yerevan 2012

" The draft Criminal Procedure Code of the Republic of Armenia prescribes home arrest, placement under police supervision, and bail as preventive measures that are alternatives to pre-trial detention. However, according to

the draft, alternative preventive measures such as home arrest and placement under police supervision will be executed by the police. This approach needs to be revised in light of the creation of the Probation Service of the Republic of Armenia, the criminal procedure reforms underway in the country, and the new concepts of restorative justice." (p.21)

6. "Towards Creation of a Probation Service in Armenia", EU Advisory Group, Policy paper

" Theoretical debates exist as to whether probation can be: imposed as a preventative measure; imposed on juveniles; or become a temporary restraining order. This could be clarified in the new Criminal Procedure Code. These preventive measures will save the government money and will be less harmful to individuals. The police will execute home arrest and placement under police supervision in accordance with the draft Criminal Procedure Code. When a probation service is established in Armenia, the execution of alternative measures can be entrusted to the probation service." (p.31)

7. "Detention Procedure Assessment tool for Armenia", American Bar Association, Washington DC, April 2010

8. Joint Statement concerning the application of detention as a measure of restraint in Armenia by CSI and FIDH, 2014

"In Armenia, courts routinely omit making reference to any factual circumstances to support their decisions to apply measures of restraint. Court decisions on these issues typically contain *in abstracto* assumptions about the risk of absconding and/or creating obstacles to an investigation, but fall short of providing any specific facts or explanations as to why the law applies to the individual circumstances at hand."

Appendix A3.2.2: Statistics relating to diversion from prosecution.

In total, 352 juveniles were subjected to criminal liability in 2013[61]. Only 83 of them faced trial in 2013. Out of 83 juveniles who were brought before a court, 12 were of the age of 14-16, and 71 were 16-18 years old. Only 1 of them was female.

As a result of the court proceedings, 69 juvenile defendants were convicted to imprisonment. Notably, 8 of them were convicted to a sentence longer than 1 year up to 2 years of imprisonment, 18 juveniles were sentenced to imprisonment terms of between two and three years, 26 of the defendants in question were sentenced to a term from 3 to 5 years of imprisonment and 9 were convicted to

[61] Official statistics provided by the Police of the Republic of Armenia.

imprisonment from 5 to 8 years. At the same time, in regard to 44 juveniles the sentence was suspended.

Respectively, 14 juveniles were convicted to alternative, non-custodial sanctions.

Courts applied enforced educational measures to 11 juveniles[62]. 10 out of 11 were convicted for crimes against property, in particular, theft.

Only 3 of the defendants had previous criminal record (had reoffended). Their first sentence was deferred. Some of the convicted juveniles were subject to amnesty, so they did not serve the sentence.

There is no comprehensive procedure for diversion in place in Armenia. However, there are some provisions in the legislation that somehow address the issue.

If a juvenile is suspected of committing a crime, then a criminal case is instituted. If he/she is in conflict with law, then a police officer dealing with juveniles creates records on his behaviour. Such juvenile is under supervision for one year.

No sustainable state run rehabilitation programs are available for juveniles in conflict with law. In 2010-2013 PRI with its local implementing partners supported the work of rehabilitation day centres for juveniles in conflict with law where social workers and psychologists assisted the juveniles in question. Similar community centres were run by "Project Harmony International" across the country. All centres were funded by donors. The added value of such centres was highly appreciated by police. Fruitful cooperation was established and juveniles who were first time offenders were diverted by police officers to these centres. However, when the project ended, the work of these centres was endangered. Only in very few locations the authorities managed to support the rehabilitation centres by providing a place, not funding. The analysis of the official data shows that reoffending rate among juveniles decreased in 2013 in comparison to previous years. There is a strong opinion that one of the main causes for that is good preventive work carried out by community rehabilitation centres for juveniles in conflict with law where the latter are diverted by police. Thus, in 2012-2013 the number of crimes committed by juveniles was around 100 instances less than in 2010-2011 (452 crimes in 2010 against 352 crimes in 2013).

At the same time because of the gaps in legislation, diversion to such rehabilitation centres is fragile. It is based on Memorandum of Understanding signed with Police rather than on the law. Community rehabilitation centres stopped operating in January 2014.

62 Statistics available at www.court.am

As it was noted above, at pre-trial stage juveniles suspected or accused of committing a crime may be handed over to their parents, guardians, municipal authorities for supervision as a measure of restraint. There is also a similar sanction in the Criminal Code (see below). However, the problem of lack of rehabilitation or assistance programs delivered to juveniles remains an issue. Those released on probation are neither properly supervised nor assisted.

At the same time, it is important to stress that as a result of projects undertaken in the field of Juvenile Justice, including funded by PRI, the attitude towards depriving juvenile offenders of liberty has changed. There is more understanding among the relevant authorities that it is important to keep juveniles from penal and penitentiary systems as well as it is important to assist them through rehabilitation programmes. However, apart from nominating one judge in every court to deal with cases involving juveniles, little was done by the Armenian authorities.

The number of juveniles in detention pending trial or serving custodial sentence has decreased in the recent years in Armenia. Only those who are accused of grave and particularly grave crimes or who have reoffended while on probation for the first crime, are being detained during pre-trial phase.

Appendix AM.3.2.3: Legal provision associated with diversion from prosecution.

The legal provisions related to the issue may be grouped in two categories:

- specifically aimed at juveniles,

- general provisions, applicable to all accused persons, including juveniles.

Non-punitive educational compulsory measures, which are applicable only to juveniles, can be applied only in the stage of court proceedings.

According to Art. 85 §2 of the Criminal Code, a juvenile who committed a crime may be subject to criminal punishment or enforced educational measures of may be assigned.

According to Art. 91 of the Criminal Code, a juvenile is a first time offender who committed a low (up to 2 years of imprisonment) or medium gravity (up to 5 years of imprisonment) crime may be released from criminal liability by a court, if the court finds that the juvenile's rehabilitation is possible by means of application of the enforced educational measures.

Such measures include:

1) warning,

2) handing over to parents, guardians, municipal or other authority implementing supervision over the behaviour of the juvenile for the period up to 6 months,

3) imposing an obligation to restore damage caused by the crime by the deadline specified by a court,

4) restrictions on the freedom for rest time and imposing special requirements for behaviour up to 6 months.

Other measures may be assigned upon a motion of the body implementing supervision over a juvenile. Notably, several measures may be applied to the juvenile in question.

However, as it was mentioned *supra*, there is no mechanism in place to directly divert the juveniles to rehabilitation centres assisting juveniles in conflict with law. Following training workshop organized in the frames of the PRI funded project, one of the judges came up with a solution. He applied educational measure and handed over a juvenile to the municipal authority for supervision and tasked

the municipal body to refer the juvenile to a rehabilitation centre run by a PRI implementing partner.

If the juvenile regularly absconds from fulfilling the imposed measures, then upon a motion of municipal body or the body implementing supervision over the behaviour of the juvenile in question the case file is sent to the court with a request to cancel the measure and rule on subjecting the juvenile to criminal liability.

Notably, if the juvenile reoffends, then he/she is not subject to criminal liability for the first crime if the educational measures were applied to him/her.

According to Art. 92 of the Criminal Code, when a juvenile is handed over for supervision, the person/body responsible for that is under the obligation to ensure behaviour control and educational impact.

Restitution as an educational measure is imposed taking into account the social conditions and working capability of the juvenile. Whereas restricting the freedom of the rest time and imposing certain conditions on behaviour of the juvenile may constitute a ban on attending certain places, or spending rest time in certain way, including ban to drive a mechanical transport, a curfew, or a ban to travel to other places without permission of the municipal body. The law also envisages a possibility to request a juvenile to return to the educational institution or upon the request of the municipal authority to start working.

In the pre-trial stage there are no special provisions applicable to juveniles ensuring a possibility for diversion. There are general grounds (see below). In such a case, the important factors are gravity of the crime, admitting guilt, reconciling with the victim (see below).

Thus, according to Art. 36 of the CPC, if a person suspected or accused of committing a crime where prosecution is based on a victim complaint (so called private prosecution cases) has reconciled with the victim, the prosecution shall be discontinued.

In addition, the Criminal Code sets a list of circumstances when a person, including a juvenile, may be exempted from criminal liability at the stage of pre-trial investigation.

Thus, Art. 72 of the Criminal Code allows to discontinue criminal prosecution of the accused person who is a first time offender and committed a crime of low or medium gravity, if the latter voluntarily reports to the police, has assisted investigation, compensated or repaired the damage caused by a crime in any other way (*sincere repentance*).

Art. 73 stipulates that a person who committed a crime of low gravity may be exempted from criminal liability if he/she has reconciled with the victim, compensated or repaired the damaged caused by a crime in any other way.

The last possibility for discontinuing the criminal prosecution against a person is so called “change of situation.” According to Art. 74, a first time offender who committed a low or medium gravity crime may be exempted from criminal liability if it appears that as a result of the change of situation the person concerned or act committed by him/her is no longer dangerous to the public.

The procedure is set out in Art. 37 of the CPC. According to Art. 37 of the CPC, the court, prosecutor as well as the investigator upon the consent of the prosecutor, are entitled to discontinue criminal prosecution against a person in cases stipulated in Art. 72-74 of the Criminal Code. Moreover, in such cases the prosecutor or the investigator upon the consent of the prosecutor have the discretion not to institute criminal case and not to proceed with prosecution.

Notably, in case the suspect or the accused objects to discontinuation of the criminal prosecution on the grounds stipulated in Art. 72 (*sincere repentance*) or Art. 74 (“change of situation”) it is not allowed to discontinue investigation and proceedings.

Appendix AM.3.4.1: Probation (Conditional Sentence) Methods in Armenia

When the judgment enters into force, the case file is sent to the ASD which is supposed to ensure supervision. Within 3 days after receiving the final judgment, the ASD officer is supposed to create a case-file on the offender. It contains info on the personal data of the offender, place of residence workplace as well as other details essential for implementation of the punishment. Notably, within 3 days after registering an offender, the officer in charge of his/her supervision notifies police about that.

Upon his/her first visit to the subdivision a sentenced offender fills out a registration card and is informed on his/her rights and obligations, the responsibility for failure to perform this obligation as well as on the obligation to visit the subdivision at least once a month. In case the sentenced offender does not present him/herself before the subdivision within 7 days summons to do so are sent.

If a person is recruited to do military service, his case is sent to the Military Commissariat for supervision.

In case the offender is obliged by a court decision to undergo medical treatment for alcohol addiction, drug addiction, substance abuse or sexually transmitted diseases the subdivision sends a referral to the respective medical institution. If

other conditions are imposed, then the officer notifies about that fact the relevant authority. Subdivision's officer is authorized to visit the respective institution in order to get clarifications from their administration on the compliance with the requirements of the court decision. Every such visit is documented.

Officers of the subdivision also have the right to visit anytime the sentenced offender's work place or place of residence as well as to request from the sentenced offender to present to the subdivision monthly notices from the medical institutions on the medical treatment he/she receives.

In case the sentenced offender violates Article 132 §1 of the Penitentiary Code, i.e. absconds from fulfilling conditions imposed by the court or commits acts punishable under Administrative Code or military disciplinary code for the military personnel, or fails to report on the date indicated in the summons, then the officer within 10 days sends a summons to the offender with a request to report to the territorial office of the ASD in order to clarify the reasons for committing a breach, and if necessary, also requests to present relevant documents. All this is documented. If there were no justifiable reasons for violating the rule, then the offender is notified in writing about the possibility to cancel the conditional non-execution of sentence.

If there is a need to enhanced supervision over the offender, the Head of the Territorial Office files a motion with a court asking to impose additional conditions or restrictions on the offender in question.

If a sentenced offender during his probation period regularly or maliciously neglects his/her duties under the court decision or tries to abscond supervision, or does not appear at the subdivision on two or more occasions, then the head of the subdivision files a motion to the court with the request to cancel conditional non-execution of sentence/conditional release and to order the sentenced offender to serve his/her original punishment. The ASD has to present evidence supporting the allegation of a violation on part of the offender and a proof that the offender was warned. References given at the offender's workplace or education institution he/she attends, as well as from his place of residence may be attached to the motion.

Breach of the obligations is considered to be regular when the sentenced offender during one-year period for two or more times commits prohibited actions or does not perform his/her duties or for more than 30 days does not comply with the obligations imposed upon him/her by the court.

A sentenced offender is considered to have absconded supervision when during 30-day period his/her location is not known. If the mentioned breaches take place as well as if the sentenced offender does not appear after a summons is

sent, he/she is invited to the subdivision to clarify the reasons of the breaches.

When the supervision is completed, the officer issues a reference confirming the expiration of the parole period and the period of serving the punishment as well as notifies police about that.

Appendix AM.3.4.3: Legislation governing the implementation of "conditional sentence".

According to Article 70 of the Criminal Code, if the court does sentence a person to imprisonment but at the same time believes that rehabilitation and achievement of the purposes of the punishment is possible without deprivation of liberty, then the imprisonment is replaced conditionally for the period from 1 to 5 years. In such a case, the court may, but not necessarily, impose certain conditions on the convicted person, such as not to change place of residence, to undergo treatment against alcoholism, drug addiction, toxicomania or sexually transmitted diseases, as well as to provide the family with material support.

"Article 70. Conditional sentence.

1) If when assigning a sentence in the form of arrest, imprisonment or keeping in the disciplinary battalion, the court comes to the conclusion that the correction of the person is possible without serving the sentence, the court may rule not to apply this sentence conditionally.

2) When not applying the sentence conditionally, the court takes into account the features characterizing the personality of the perpetrator, circumstances mitigating and aggravating liability and punishment.

3) When not applying the sentence conditionally, the court establishes a probation period, from 1 to 5 years.

4) When not applying imprisonment conditionally, supplementary sentences can be applied, except for confiscation of property.

5) When deciding not to apply the sentence conditionally, the court may also impose certain conditions or obligations on the convict such as not to change a place of residence, to undergo a treatment course against alcohol or drug addiction, sexually transmitted diseases or toxic mania, to support the family financially, which the person should do during the probation period, etc. Upon the request of the body ensuring supervision over the convict or without it the court may also impose other conditions aimed at his/her rehabilitation or change them.

If during the probation period the convict maliciously absconds from fulfilling the obligations imposed on him by a court, upon a motion of the supervising authority as well as in case of committing a crime by negligence or deliberate low gravity crime, the court decides on the issue of cancelling conditional sentence.

6) In the case of committing a medium-gravity, grave or particularly grave crime by the convict during the probation period, the court can cancel the decision not to apply the sentence conditionally, and assign a sentence under Art. 67 of the Code. The same rules are applicable in case a probationer commits a crime by negligence or a low gravity crime if the court rules to cancel the decision not to apply the sentence conditionally."

7) Rules concerning the execution of non-custodial and conditional sentences and supervision of offenders who are sentenced conditionally are to be found in Chapter 22 (Articles 128-132) of the Penitentiary Code (Supervision of Conditional Non-Execution of the Sentence).

Article 129 of the Penitentiary Code says: "The control over the behaviour of the convict in the cases of conditional sentence shall be carried out by territorial unit of the Division supervising implementation of non-custodial sanctions at the place of residence of the convict, and in case of a military servant – the detachment of his military unit."

These rules are elaborated in the Decree of the Government of Armenia "On approving the order of activities of territorial bodies of the Division for Execution of Alternative Sanctions of the Criminal Executive Department of the Ministry of Justice of RA, dated October 26, 2006 No 1561-N.

The Government Decree provides the functions of the *Division for Execution of Alternative Sanctions* or Alternative Sanctions Division (ASD) in regard to supervision over convicts with suspended sentence. According to it, the office located next to the place of residence of the offender is in charge of the supervision. If a person does not have a permanent residence or is a foreigner, then supervision is carried out by the territorial office located next to the 1st instance court which has convicted the person concerned.

During the period under supervision the convict is obligated to visit the Alternative Sanctions Division for a check.

In case a convict violates either the schedule for visits or does not comply with the imposed conditions, ASD is entitled to apply to the court with a motion to cancel the conditional sentence. In case if a crime was not deliberate or deliberate but of low gravity, then the court may do it on its own initiative.

Notably, if the person concerned reoffends during probation period and commits a deliberate crime of medium gravity, grave or particularly grave crime, then the court removes conditional sentence and adds it up to the new sentence. Whereas if a person commits a not deliberate crime or deliberate crime of low gravity, then it is up to the court to decide whether to remove conditional sentence or not.

Appendix AM.3.5.1: Procedure for implementing Community Service

When a convict is sentenced to community service the penalty is supposed to be enforced within 2 years after the judgment enters into force. According to the Criminal Executive Code, within 7 days from the date when the sentence came into effect the sentenced offender is obliged to present him/herself before the ASD's territorial subdivision's officer for registration. Here the terms and conditions of the serving this type of sanction, his/her rights and obligations, as well as the responsibility for failure to perform these obligations are explained to him by the officer. In case the sentenced offender does not present him/herself before the subdivision he is sent a summons.

Subdivision's officer sends a notice requesting the sentenced offender to appear before the administration of the assigned workplace where community service is to be performed as soon as he/she receives his/her work schedule. Offenders sentenced to community service serve their punishment within two years after the sanction comes into effect. Sentenced offender may be given an opportunity to choose from the available community service locations. The profession and place of residence of the sentenced offender are taken into account when he/she is being assigned to a particular community service job. If the sentenced offender's retirement age is reached; or he/she is recognized as a disabled person of the first or the second degree; or he/she suffers from a serious disease preventing from serving the sentence the head of the subdivision files a motion to the court requesting to release the person from punishment. When during the community service term the sentenced offender gets pregnant or takes responsibility to take care of a child under the age of 3 the head of subdivision applies to the court for the suspension of the punishment. When the sentenced offender breaches terms and conditions of the sanction he/she is summoned to the subdivision in order to give explanations on the reasons of the violation.

- The following actions are considered to be a violation of the terms and conditions of this kind of sanction:

- Not appearing at the work place within 7 days from the date when the work schedule is received from the subdivision;

Not appearing without a valid excuse at the subdivision when summoned.

The convict is supposed to report back to the officer of the ASD on the process of serving the punishment. The employer also has the right to notify the officer on the implementation of the punishment, problems related to it or failures of the convict to comply.

In the absence of a valid excuse the sentenced offender is warned about the possibility of a motion to the court for substitution of the community service sanction to other kinds of punishment. In case of malicious non-compliance with the conditions of the sanction and within 15 days after the violation became known to the subdivision's personnel the head of the subdivision lodges a motion to the court requesting the substitution of the community service for a custodial punishment and informs about that the sentenced offender and the administration of the workplace.

A person is considered having committed a malicious violation when:

- During a one-month period without valid excuse carried out less than 90% of the assigned community service duties provided by his/her registration card;

- During a one month period committed more than two serious breaches of the Code of Conduct of the organization where he serves his sentence;

- Twice in succession not appearing at the subdivision when summoned or obliged to do so by law.

APPENDIX AM.3.8.1: Procedures for implementing parole in Armenia

The Criminal Code specifies the proportion of a custodial sentence that must be served before a prisoner can apply in writing for early release (depending on a crime type from 1/2 to 3/4 of the sentence).

The procedure is three-layered:

- Administrative (prison) Board,
- Independent Board,
- The Court.

First, inmates who have "positive characteristics" and who have not breached the discipline are first considered by an Administrative Board consisting of the staff of the prison. The Board is required to consider a wide range of issues from behavioural changes, to the attitude of the family, to the results of any rehabilitation work with the prisoner. If the Board decides not to recommend the prisoner for early release the law states when a new application can be made, i.e. in 3 months. The decision is subject to appeal.

The issue is discussed in the presence of the prisoner in question, if he so wishes. Consideration is also given to social, psychological and legal work done with the prisoner and the results of correctional measures. Activities carried out with an inmate should prepare him/her for release and law-obedient behaviour in the community. A plan of activities shall be developed by relevant specialists, be of individual nature, standardized and measureable. If the results of activities undertaken are not measurable, then it is not possible to use them to assess the behaviour of the inmate concerned.

The group leader writes up characteristics of every prisoner, taking into consideration the conclusions of various departments (security, material/technical support, medical). Such characteristics should contain information on the results of assessments made in course of serving the sentence, as well as general information about the inmate: prisoner's compliance with legal requirements during the period of incarceration (incentives, disciplinary sanctions), his/her participation in work, educational, cultural, athletic or other similar activities, involvement in paid and unpaid works, reimbursement of material damage to the victim of the crime committed, communication and ties with the family, existence of persons under his/her custody, health condition, capability and disability.

A report of the psychologist on behaviour of the inmate, his/her temper,

psychological peculiarities, and their dynamics shall be also presented. In addition, the report of the social worker shall contain information on social security related issues of the inmate: availability of housing, work, material conditions, and plans for after release.

If the administration of the penitentiary decides to recommend for early conditional release a prisoner sentenced to a determinate term or to life imprisonment for a moderately serious, serious or particularly serious offence, the commission's chairman sends the decision, within three days, to the Independent Board for approval and attaches the characteristics. It considers files on persons who committed crimes of medium gravity, grave and particularly grave crimes. This is composed of representatives from the police, government departments and an independent expert, a psychologist.

Then, the Independent Board reviews the motion and either grants it or rejects it. Prior to that, a subcommittee of two members visit the prisoner and interview him/her. A report is considered together with other documentation by a full Board meeting and a decision is made by secret ballot. The decisions adopted by the Independent Board do not contain any grounding for the decision. They are not subject to appeal in the court on merits. If and only if the Independent Board approves the aforementioned decision, the administration of the penitentiary sends a motion to a court within 5 days requesting early conditional release of a person sentenced to imprisonment or replacement of the remaining part of the sentence with a softer sentence. If the Board refuses to approve parole, then the prisoner in question may be reviewed by the Administrative Board only in 6 months.

In rare cases the court may dismiss the motion. In vast majority of cases approved by the Independent Board the court approves parole.

There are three Independent boards created covering certain territory. Every Board has eight members. The sub-commissions comprised of two members are set up and cover a certain PI. The members of these sub-commissions are supposed to be changed on rotation basis so that a member of the IP does not deal with the PI longer than three months in a row.

In practice, persons who have not paid damage caused by the crime are rejected. Then, again in practice persons committed such crimes as murder, robbery, trading drugs, etc. are not granted early conditional release though no restrictions of such kind are provided in the legislation. Such practice creates serious tensions.

Though early release in Armenia is called early conditional release, in practice no conditions are imposed on a prisoner. He/she is supposed to visit the ASD on a bi-weekly basis and meet with the supervising officer.

If the person in question fails to show up, the ASD applies to the court with a motion to cancel ECR. In such a case, the person concerned shall return to prison and continue serving his custodial sentence.

If the convict released on parole reoffends, then the term of the unserved sentence is added to the new penalty.

Supervision

Supervision of persons to whom conditional non-execution of sentence is applied and supervision of persons on early conditional release

Upon his/her first visit to the subdivision a sentenced offender fills out a registration card and is informed on his/her rights and obligations, the responsibility for failure to perform these obligations as well as on the obligation to visit the subdivision at least once a month. In case the sentenced offender does not present him/herself before the subdivision within seven days he is summoned to do so. In case he/she is obliged by a court decision to undergo medical treatment for alcohol addiction, drug addiction, substance abuse or sexually transmitted diseases the subdivision sends a referral to the respective medical institution.

Subdivisions officer is authorized to visit the respective institution in order to get clarifications from their administration on the compliance with the requirements of the court decision. Officers of the subdivision also have the right to visit anytime the sentenced offender's work place or place of residence as well as to request from the sentenced offender to present to the subdivision monthly notices from the medical institutions on the medical treatment he/she receives.

In case the sentenced offender does not comply with his/her obligations or commits an act punishable under administrative law the subdivision notifies him/her in writing about the possibility to cancel the conditional non execution of sentence/ early conditional release. If a sentenced offender during his parole period regularly or maliciously neglects his/her duties under the court decision or tries to abscond supervision, or does not appear at the subdivision on two or more occasions, then the head of the subdivision files a motion to the court with the request to cancel conditional non-execution of sentence/conditional release and to order the sentenced offender to serve his/her original punishment.

Breach of the obligations is considered to be regular when the sentenced offender during a one-year period for two or more times commits prohibited actions or does not perform his/her duties or for more than 30 days does not comply with the obligations imposed upon him/her by the court. A sentenced offender is considered to have absconded supervision when during a 30-day period his/her location is not known. If the mentioned breaches take place as well as if the sentenced offender does not appear after being summoned, he/she is invited to the subdivision to clarify the reasons of the breaches.

In case the subdivision's officer is of the opinion that there is a need to increase the supervision over the concerned sentenced offender the head of the subdivision files a request to the court to impose additional obligations or limitations upon the convict.

According to the Decree on establishment of the ASD, the same rules apply as for those convicts to who conditional non-execution of sentence was applied.