ANALYTICAL NOTE

IMPLEMENTATION OF POLICIES TO REDUCE OVERCROWDING IN PRISONS IN THE REPUBLIC OF MOLDOVA IN THE CONTEXT OF THE COVID-19 PANDEMIC

Promo - LEX
Advancing democracy and human rights

Soros Foundation Moldova

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CONTENTS

ABBREVIATIONS

NAP	National Administration of Penitentiaries
NAPH	National Agency for Public Health
Art.	Article
ECHR	European Convention on Human Rights
NEPHC	National Extraordinary Public Health Commission
CoE	Council of Europe
CC	Criminal Code
CPC	The Criminal Procedure Code
CPTM	Council for the Prevention of Torture Moldova
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CES	Commission for Extraordinary Situations
ECtHR	European Court of Human Rights
GD	Government Decision
IASC	Inter-Agency Standing Committee
MJ	Ministry of Justice
MHLSP	Ministry of Health, Labor and Social Protection
PAO	People's Advocate Office
OHCHR	The Office of the High Commissioner for Human Rights (UN Human Rights)
WHO	World Health Organization
UN	United Nations
UNAIDS	United Nations Program on HIV/ AIDS
UNODC	United Nations Office on Drugs and Crime

EXECUTIVE SUMMARY

The present analytical note evaluates the implementation of policies to reduce overcrowding in prisons in the Republic Moldova in the context of the COVID-19 pandemic. Taking into account the impact of the COVID-19 pandemic on the penitentiary system, the authors analyzed potential solutions to develop effective public policies to reduce overcrowding in prisons.

The document describes international standards on the prevention of prison overcrowding in the context of the COVID-19 pandemic, the current state of affairs in the penitentiary system of the Republic of Moldova, the risks and ismpact of overcrowding in prisons on the prisoners' health, the national public policies adopted for the purpose of reducing overcrowding in penitentiary facilities and criminal justice policies aimed at reducing overcrowding in prisons applied at the national level.

Starting from the areas mentioned above, the document presents the following findings:

- With the onset of the global pandemic, the United Nations, the Council of Europe and others international organizations recommended the states to extensively promote policies aimed at reducing the population of national penitentiary facilities, to resort to alternatives of incarceration and to humanize the criminal policies. Despite these recommendations and efforts undertaken to improve the detention conditions in the penitentiary facilities of the Republic of Moldova, overcrowding of the penitentiaries remains a current issue that requires immediate solutions. Even though several measures have been taken to prevent and control the infection of COVID-19 in prisons, the latter are still overcrowded places, where epidemiological health standards are difficult to maintain. According to the findings of the People's Advocate Office, in 2020, over 4200 prisoners of 6,500 were held in overcrowded penitentiary institutions.

- Prison population rate remains stably high in the Republic of Moldova and no prisoner has been released as a measure to prevent the spread of COVID-19. The authorities failed to develop and adopt policies to reduce the overcrowding of penitentiary institutions by applying mechanisms

to release prisoners from detention due to the COVID-19 pandemic. In particular, the authorities did not apply measures to release from detention people from vulnerable prisoner groups (such as prisoners with chronic diseases, prisoners aged over 60 years, etc.) to reduce overcrowding in prison facilities and, respectively, the risks associated with COVID-19

- According to the SPACE I 2021 report, the number of prisoners in the Republic of Moldova is slightly decreasing. However, Moldova is among the group of states with a very high level of population rate in penitentiary facilities. The prison population rate in the RM is over 25% higher than the European average.

- Structural problems related to the provision of medical assistance in the penitentiary system aggravate the phenomenon of prison overcrowding. Subsequently, overcrowded environment of penitentiaries affects the security of prisoners by provoking conflicts between them, there are numerous suicide and self-mutilation attempts. For example, in 2021, there was registered an 18% increase in cases of self-mutilation and a 42% increase in suicide attempts compared to the previous year.

- Currently, there is no public policy document adopted by the Government that would provide a clear vision on reducing overcrowding of the penitentiary system. However, the legislation in force regulates alternatives to detention that could be applied more effectively and which would have an impact (e.g., art. 91, 92, 93 CC). Only the institution of early parole would be of considerable practical importance in reducing prisoners' population. There are other alternatives to imprisonment, including other forms of parole, the instrument of amnesty and pardon, which are not fully exploited in the Republic of Moldova.

- The government has a potential for more effective adjustment and application of humanization of criminal policy: compliant application of human rights standards and preventive measures, decriminalization of some criminal acts, extending the application of non-custodial sanctions, more effective application of mediation in criminal cases.

INTRODUCTION

The COVID-19 pandemic has set on a significant alteration of fundamental rights and freedoms internationally, including in the Republic of Moldova. In the context of the COVID-19 pandemic, people detained in the penitentiary facilities were the most affected from the perspective of respect for human rights.

The COVID-19 pandemic has reiterated the need to advance in the implementation of policies to reduce overcrowding in prisons and humanizing the legislation and criminal justice.

Humanizing criminal law and criminal justice and promoting a justice system based on respect for human rights is among the key priorities of the reforms in the justice sector of the Republic of Moldova. Efforts made to humanize criminal law can be noted since 2002, when the current Criminal Code was adopted.

Efforts continued with numerous interventions and revisions of the Criminal Code, the most important being those made in 2009, 2013 and in the period of 2016–2017. Additionally, the 2011-2016 Reform Strategy for the Justice Sector, in the specific Area of intervention 2.5.1 of the Action Plan, provided for the liberalization of criminal procedures through the use of sanctions and non-custodial prevention measures for certain categories of persons and certain crimes. The recently approved National Human Rights Action Plan for the period of 2018-2023 provides, within Objective II, activities aimed at reviewing the policy on punishment and deprivation of freedom, social reintegration of detained persons and alternative sanctions. The Strategy for Ensuring the Independence and Integrity of the Justice Sector for 2021-2024 provides, within Objective 2.1, promoting a criminal justice system based on respect for human rights.

One of the traditional tools for humanizing criminal law and reducing overcrowding in prisons is to reduce the harshness of sanctions and maintain their proportionality depending on the purpose pursued and the seriousness of the crime.

Several studies and reports suggest that despite the numerous efforts and changes frequently brought to the legislation, there is still work to be done on the decriminalization and humanization of criminal legislation.

Another pertinent issue of the Republic of Moldova seems to be the length of custodial sentences. Furthermore, frequent changes in legislation could diminish legal security in terms of predictability and consistency of jurisprudence. In addition to reducing sanction harshness, the rehabilitation of prisoners and their reintegration into society contribute directly to humanizing criminal law and the criminal justice system.

Despite the existence of a wide range of alternatives to imprisonment and non-custodial sanctions available in the general part of the Criminal Code of the Republic Moldova, in practice, these alternatives are not used adequately, the prison sentence remaining the prevailing trend. In the long term, a direct consequence of harsh sentencing (imprisonment) and inappropriate use of alternatives to punishment with imprisonment and non-custodial sanctions is the overcrowding of penitentiary institutions from the Republic of Moldova. Overcrowding determined the European Court of Human Rights to ascertain numerous violations of the ban on the application of inhumane and degrading treatments to prisoners in the Republic of Moldova.

In the above context, the authors of the analytical note analyzed potential solutions for the development of public policies to reduce overcrowding in prisons. The challenges that the Republic of Moldova is facing in order to prevent the spread of COVID-19 in places of detention can be overcome by urgent implementation of policies to reduce the population of penitentiary facilities. Reducing the overcrowding in prisons by means of alternatives to imprisonment, putting in place alternatives to preventive detention will enable an essential reduction of overburdening the qualified healthcare system for people in custody of the state. Additionally, the risks associated with the COVID-19, as well as other infections associated with a penal policy that is not in line with human rights, will be substantially reduced.

The present analytical note provides a description of international standards regarding the prevention of overcrowding in prisons, followed by an analysis of the de facto situation regarding prison overcrowding in the Republic Moldova. Chapter II provides potential solutions regarding the promotion and implementation of efficient policies to reduce overcrowding in prisons.

METHODOLOGY

This present document is based on findings obtained by documentary research and interviews with relevant authorities. The documentary research is based on the review of the legal framework of criminal justice, official data obtained from several institutions, policy documents and various civil society reports available as of March 2020 on the situation related to COVID-19 in the penitentiary system, humanization, resocialization and restorative justice in the Republic of Moldova.

The authors interviewed representatives of the following target groups and institutions:

- National Administration of Penitentiaries;
- Lawyers;
- Ministry of Justice;
- People's Advocate Office;
- General Prosecutor's Office;
- Judges;
- NGOs.

It should be noted that this document should not be considered as empirical research in the sense of a qualitative or quantitative research.

The findings on the state of affairs in the Republic of Moldova were analyzed in the light of CoE standards and other international standards on reducing overcrowding in prisons in the context of the COVID-19 pandemic, humanization, resocialization and restorative justice. To this end, various international policy documents have been consulted. The jurisprudence of the European Court of Human Rights (named hereinafter „ECtHR") was also an important source that the authors consulted.

1 INTERNATIONAL STANDARDS TO PREVENT OVERCROWDING IN PRISONS IN THE CONTEXT OF THE COVID-19 PANDEMIC

Penitentiary systems are recognized as environments with an increased risk of the spread of airborne diseases, such as the novel coronavirus infection (COVID-19), caused by the SARS-CoV-2 virus. People deprived of their liberty in prisons or other places of detention are much more vulnerable to the infection caused by the novel coronavirus (COVID-19) compared to the general population. This vulnerability is caused by the conditions of detention, overcrowding, as well as by the reduced capacity of the healthcare service in the penitentiary system to provide adequate medical assistance.

With the emergence of COVID-19 in the national penitentiary system, international human rights organizations have developed recommendations for the states. The recommendations include specific solutions on the application of alternatives to detention, commutation of sentences, etc., which are primarily aimed at reducing prison population and preventing the aggravation of the pandemic. The main recommendations are described below.

A. The UN Office on Drugs and Crime (UNODC), in the Act on the prevention of infection with COVID-19 in prisons, issued on March 31, 2020[1], recommends commuting or temporarily suspending the execution of certain sentences as alternatives to detention.

* Prison personnel and prisoners are at-risk groups for COVID-19. States are to reassess the need to serve a prison sentence and identify situations where people in custody are at increased risk of being affected by COVID-19 and therefore, accelerate the release of certain categories of prisoners. Among the main factors with the potential to condition the resolution of this situation are the judges, who could apply alternative measures to custodial sentences in the sentencing decision-making process.
* Particularly relevant for minor offences, including non-violent and non-sexual offences, release mechanisms will be relevant for prisoners who present individual risks – such as the elderly and those affected by

1 UNODC, COVID-19 preparedness and responses in prisons, dated march 31, 2020, https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf

chronic or other illnesses and other categories of prisoners, including pregnant women, women with minor children, prisoners who have served most of their sentences and those who have been convicted of minor crimes. Tools such as early parole, pardon or amnesty could be considered as immediate measures that do not require substantial legislative efforts.

A. The UN Office on Drugs and Crime also has an opinion on the risks to which prisoners are exposed in the context of COVID-19.[2] The UN agency recommended:

* Priority application of non-custodial criminal justice procedures at all procedural stages, including in the application of preventive measures;
* Use of alternative measures to criminal conviction or transforming prison sentences into non-custodial sentences;
* Early release, temporary release, pardons or amnesties for convicted prisoners;
* In the case of application of bail or of penalty in the form of a fine, it should not disadvantage those living in poverty.

A. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published, on March 20, 2020, the Statement of Principles regarding the treatment of persons deprived of their liberty in the context of the coronavirus pandemic (COVID-19)[3].

According to the Statement, if close contact promotes the spread of the virus, according to the 5th principle, the authorities must resort to alternatives to deprivation of liberty. This approach is imperative, in particular, in conditions of overcrowding in prisons. According to the CPT, the authorities should make greater use of:

* alternatives to pre-trial detention;
* commutation of sentences;
* early release and probation;
* reassess the need to continue involuntary placement of psychiatric patients;

2 UNODC, Guidance Note. Ensuring Access to Justice in the Context of COVID-19, May 2020, https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf

3 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic. (CPT/Inf (2020) 13, 20 March 2020, https://rm.coe.int/16809cfa4b

* discharge or release to community care, wherever appropriate, residents of social care homes;
* refrain, to the maximum extent possible, from detaining migrants.

A. The Inter-Agency Standing Committee (IASC)[4], in March 2020, developed the Interim Guidance on persons in detention under conditions of COVID-19[5].

According to the guidelines, public authorities must take immediate measures to combat prison overcrowding. Certain categories of people pose increased risks and are to be released, with the following priority:

* juvenile prisoners with poor health;
* prisoners with infection risk profiles;
* prisoners who have committed light and less serious crimes;
* those who fall under probation;
* persons detained for crimes not recognized by international law.

The IASC suggests that the authorities apply non-custodial measures in particular for:

* the elderly;
* the sick and/or those with specific risks of health impairment related to COVID-19.

At the same time, to ensure good management of the pandemic situation, the following measures are encouraged:

* application of non-custodial measures during the criminal investigation stage;
* application of non-custodial sentences such as probation, fines, community service.

4 The Inter-Agency Standing Committee (IASC) is an inter-agency forum of UN and non-UN humanitarian partners, founded in 1992, to consolidate humanitarian assistance https://interagencystandingcommittee.org/

5 Inter-Agency Standing Committee (IASC),Interim Guidance on persons in detention under conditions of COVID-19, March 2020, https://interagencystandingcommittee.org/system/files/2020-11/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty_0.pdf

Therefore, the recommendations of international organizations regarding the need to implement the policies of the states on reducing overcrowding in prisons in the context of COVID-19 are unanimous. These boil down to:

- application of non-custodial preventive measures;
- application of alternative punishments or commutation of prison sentence;
- early release, temporary release, pardon or amnesty for convicts;
- identifying the risk group in custody for the application of non-custodial measures.

International organizations systematically formulate recommendations to states on the need to urgently adapt penal policies to reduce prison overcrowding.

2 OVERCROWDING OF PRISONS IN THE REPUBLIC OF MOLDOVA – THE STATE OF AFFAIRS

2.1 Overcrowding of prisons in the Republic of Moldova – the state of affairs

Despite the efforts of the Republic of Moldova to improve prison detention conditions, overcrowding remains an unresolved issue that requires the authorities to provide immediate solutions. Although several measures have been taken to prevent and control the infection of COVID-19 in penitentiary facilities[6] prisons in the Republic of Moldova are overcrowded places, where personal hygiene is difficult to maintain. Overcrowding in penitentiary facilities seriously affects the quality of detention conditions, healthcare, which has negative effects on health and leads to a dangerous environment, including for prison personnel.

High prison population rate

To measure the effects of the pandemic on prisoners in CoE member states, the University of Lausanne and the Council of Europe launched the SPACE I – COVID-19 project. This special report[7] analyzes the trends of the European prison population in the first nine months of 2020. The main findings with reference to the situation in the Republic of Moldova are:

- prison population rate remains stable in the Republic of Moldova; no prisoner has been released to prevent the spread of COVID-19;
- authorities failed to develop and adopt policies to reduce overcrowding in prisons by applying release mechanisms due to the COVID-19 pandemic;
- authorities failed to apply measures to release from detention vulnerable groups of prisoners (such as prisoners with chronic diseases, prisoners over 60 years old, etc.) to reduce overcrowding in prisons and respectively, the COVID-19 associated risks.

6 NOTE. The problems faced by the healthcare service in the penitentiary system have been described by the Promo-LEX Association in Report no. 2 Monitoring the management of the COVID-19 pandemic in the penitentiary system. Monitoring period: December 1, 2020 – December 1, 2021.

7 Annual Report on Criminal Statistics of the Council of Europe, SPACE I – 2020 (Prison Populations), 11 April 2021, https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf

The findings made by experts in the 2020 report remain actual in the monitoring period of 2021. According to the SPACE I-2021 report, the number of prisoners is slightly decreasing. However, the Republic of Moldova ranks in the group of states with a very high level of the population rate in penitentiary facilities. Prison population rate is over 25% higher than the European average[8].

According to the findings of the People's Advocate Office for 2020, more than 4,200 prisoners out of about 6,500 were held in overcrowded penitentiary institutions. Living conditions remain below the permissible level, deplorable and/or inhumane. During the quarantine period, penitentiary institutions adjusted some cells, housing sectors (changing their regime from open to closed/semi-closed) or meeting rooms to keep newly placed or escorted people in isolation[9].

The statistical data provided by the National Administration of Penitentiaries for 2020 and 2021 confirm the findings of the People's Advocate, as well as those of the SPACE I-2021 report, related to the high rate of prison population and the maintenance of prison overcrowding.

As of January 1, 2021, 6,429 people were detained in the penitentiary facilities of the Republic of Moldova, of which:

Convicts – 5444;
Pending trial – 983.

There is a decrease in the number of convicted persons in penitentiary facilities compared to 2021 (by 193 persons less). The positive dynamic is explained by the application of the national remedy for ascertaining the substance of the violation of the provisions of art. 3 of the European Convention on Human Rights (ECHR). According to the official data on the release of prisoners from detention facilities, pursuant to art. 473/2, para. (3) CPC (compensated, conditions of detention), 297 people[10] were released as of October 1, 2021.

8 Council of Europe, Annual Report on Criminal Statistics, SPACE I – 2021 (Prison Populations), 19 April 2022, https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022__SPACE-I_2021_FinalReport_220404.pdf

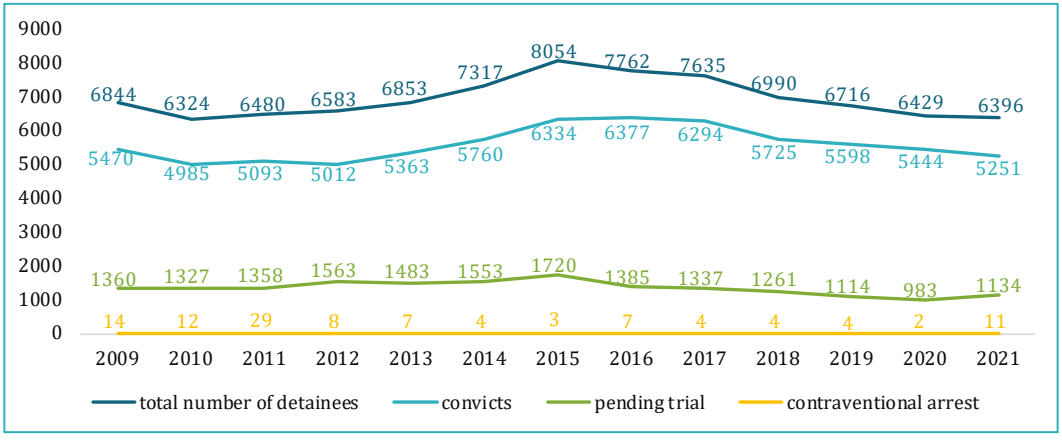
9 People's Advocate, Report on the observance of human rights and freedoms in the Republic of Moldova in 2020, http://ombudsman.md/wp-content/uploads/2021/04/Raport-2020-FINAL-RED.pdf

10 National Administration of Penitentiaries, statistical data on the release of prisoners from penitentiaries as of 01.10.2021, https://drive.google.com/file/d/1iZagbzsGTSH5ePjazmT16j3xOeAZu6GQ/view

Starting from 2015, there is a decrease in the application of pretrial detention. However, in 2021, the number of people to whom the preventive measure was applied again shows an increase by 151 people more than in the previous year (1134 people). If we are to compare the official data regarding exceeding the detention capacity of Penitentiary no. 13 starting from 2019, we note in 2021 an overpopulation of 378 people held above the detention capacity.

The evolution of the prison population in the period of 2009–2021[11]

The number of detainees in the penitentiary system



Source: NAP

According to the rules of accommodation and material security of prisoners, each prisoner must be provided with an accommodation space of at least 4 square meters, which must have natural and artificial lighting, heated and properly ventilated[12]. However, the data presented by the National Administration of Penitentiaries per institution in the years 2020, 2021 and 2022 show that the detention capacity is exceeded in several penitentiaries of the Republic of Moldova[13].

11 Ministry of Justice, National Administration of Penitentiaries, Report on the activity of the penitentiary system for 2020, https://drive.google.com/file/d/1zuBbV3TEARTkZPHBsU9zVgE2aTlrk3er/view

12 Government of the Republic of Moldova, Decision no. 583 of 26.05.2006 regarding the approval of the Statute for the execution of the sentence by convicts, https://www.legis.md/cautare/getResults?doc_id=110142&lang=ro#

13 Statistical data of the NAP regarding the dynamics of persons deprived of liberty, https://drive.google.com/file/d/1F_e-o1CMbrxFRibWgX2xPG3oQGlJ3j5W/view (2020); https://drive.google.com/file/d/1ozsvXpWmuG-Y2QLz71rEGD2t7u761a4_/view (2021); https://drive.google.com/file/d/1gIN7UvE5OWq2gikclRbpE1g-lH9XfgME/view (2022).

Penitentiary facility	Detention capacity	No. of detainees as of 01.01.2020	No. of detainees as of 01.01.2021	No. of detainees as of 01.01.2022
Penitentiary facility no. 1 Taraclia	336	316 (-20)	345 (+9)	357 (+21)
Penitentiary facility no. 2 Lipcani	286	322 (+36)	352 (+66)	289 (+3)
Penitentiary facility no. 3 Leova	307	319 (+12)	362 (+55)	360 (+53)
Penitentiary facility no. 4 Cricova	713	790 (+77)	748 (+35)	695 (-18)
Penitentiary facility no. 6 Soroca	693	727 (+34)	724 (+31)	679 (-14)
Penitentiary facility no. 7 Rusca	231	301 (+70)	289 (+58)	287 (+56)
Penitentiary facility no. 9 Pruncul	467	502 (+35)	513 (+46)	453 (-14)
Penitentiary facility no. 11 Balti	258	395 (+137)	314 (+56)	315 (+57)
Penitentiary facility no. 13 Chisinau	570	842 (+272)	773 (+203)	948 (+378)
Penitentiary facility no. 15 Cricova	470	495 (+20)	512 (+42)	483 (+13)
Penitentiary facility no. 18 Branesti	652	668 (+16)	693 (+41)	622 (-30)

Reduced dynamics of examination of convicts' files subject to the application of art. 91 and 92 of the CC

According to Recommendation no. R (99)22 of the Committee of Ministers on prison overcrowding and prison population inflation[14], investing considerable sums in prison infrastructure is not a solution. Rather, the legislation and its application practices in matters of provisional detention (pretrial detention), sentencing, the application of non-custodial sanctions, early release, pardons, and other instruments that would ensure the depopulation of penitentiaries should be revised.

State policies are more focused on maintaining a high rate of prison population than on depopulating prisons or reducing prison terms. For example, pretrial detention, which should be applied in exceptional cases, continues to be a problem for the justice system of the Republic of Moldova, as well as one of the causes that lead to overcrowding in detention facilities. Contrary to international recommendations, we find an extremely low dynamic of application of the existing legal mechanisms. According to an analysis made by the Council of Europe regarding the application of criminal sanctions in the Republic of Moldova, it is found that the exemption from criminal liability is not widely used[15].

From 2010 to 2020, the standardized rate of prison population in the Republic of Moldova shows fluctuating figures, but since 2016, a slight decrease of prison population has been recorded. However, in 2020–2021, which are pandemic years, the response of the authorities in terms of leveraging convict release mechanisms to unload overcrowded prisons was somewhat anemic.

If we are to conduct a comparative analysis of the statistical data provided by the NAP, we find that there is no difference in approach, on the contrary, since 2018, there is a tendency to decrease the number of people released under articles 91, 92 of the Criminal Code, and on due to serious illness, the same low level of releases is maintained.

14 Compendium of Council of Europe documents on the prevention of prison overcrowding, 2015, https://rm.coe.int/romanian-compendium-2015/16806ab9b7

15 Council of Europe, Report on the application of criminal sanctions in the Republic of Moldova, December 2021, https://rm.coe.int/report-criminal-sanctions-rom/1680a1c6f1?fbclid=IwAR2vwPU-IFudcrsaekVeDV8umllr2x4daAf3aa_kCHhbm0dcupL_9Lo20TA

Release of detainees from penitentiary institutions (2017–2022[16])

Year	No. of detainees on early conditional release (art. 91 CC)	No. of detainees with the replacement of an unexecuted part of the sentence by a milder sentence (art. 92 of the CC)	No. of detainees released due to illness (art. 95 CC)
2017	263	10	1
2018	573	301	7
2019	425	211	2
2020	203	293	2
2021	269	252	8
2022 (6 months)	93	83	4

With regard to the application of art. 91 CC and 92 CC, it should be noted that the number of applications examined by the Penitentiary Commission, as well as by the courts, is decreasing compared to previous years. Examination of these applications by the courts remains the biggest issue. The NAP reports that the procrastination of these examinations by the courts endangers the activity of detention facilities with the status of criminal prosecution isolation, aggravating the problem of overcrowding[17].

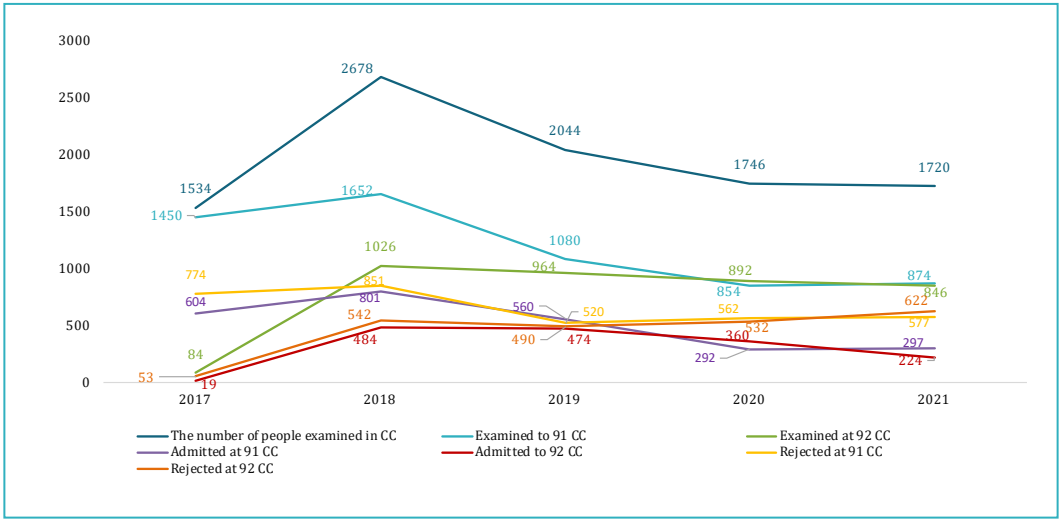
In 2021, the number of applications examined by the Penitentiary Commission, as well as by the courts, remains unchanged compared to the previous year[18]. The NAP explains that these difficulties are due to the epidemiological situation, although we note that the dynamics have been decreasing since 2019.

16 Half-yearly/annual balance reports, , National Administration of Penitentiaries http://www.anp.gov.md/rapoarte-de-bilant-semestriale-anuale

17 Ministry of Justice, National Administration of Penitentiaries, Report on the activity of the penitentiary system for 2020, https://drive.google.com/file/d/1zuBbV3TEARTkZPHBsU9zVgE2aTlrk3er/view

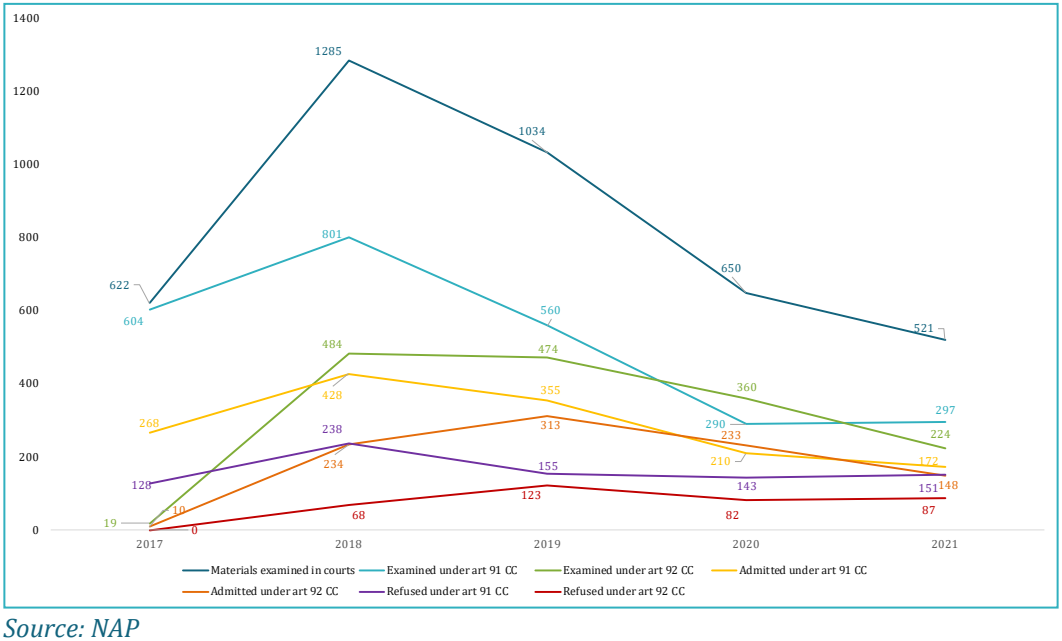
18 Ministry of Justice, National Administration of Penitentiaries, Report on the activity of the penitentiary system for 2021, https://drive.google.com/file/d/1ltu2_qZ8BYQznVTuSEvjVPPfO0j67MOr/view

Dynamics of the applications examined by the Penitentiary Commission regarding the application of art. 91 and 92 CC in 2017–2021



Source: NAP

Dynamics of the applications examined by the courts regarding the possibility to apply art. 91 and 92 CC in 2017–2021



Source: NAP

Reduced number of pardoned persons (art. 108 of the Criminal Code)

Although international organizations recommend adapting criminal justice policies to reduce the prison population through various means, including individual pardons, the latter is very poorly implemented in the Republic of Moldova.

Year	Number of pardoned detainees[19]
2019	1
2020	1
2021	4
2022	1

According to publicly available information, as of October 11, 2021, 197 people who requested pardons were registered at the Presidency[20]. A total of 4 people was released through the application of pardon.

2.2 Prison overcrowding: risks and impact on prisoners' health

To face the challenges and future developments of the COVID-19 pandemic, as well considering the state of the healthcare service of the penitentiary system (defective organization and acute insufficiency of medical personnel in relation to the number of sick prisoners), its reform has become a strict necessity, which should be a priority for the future public policies[21].

19 State register of legal documents of the Republic of Moldova, https://www.legis.md/cautare/getResults?document_status=0&emitent%5B%5D=39346&nr_doc=&datepicker1=&publication_status=+-+TOATE+-+&nr=&publish_date=&search_type=1&search_string=gra%C8%9Biere

20 Media article: "Natalia Ursachi will return to her children. Sandu pardoned her and ordered her release from prison. She signed the decree", https://realitatea.md/doc-natalia-ursahi-va-reveni-la-copiii-ei-sandu-a-gratiat-o-si-a-dispus-eliberarea-din-inchisoare-a-semnat-decretul/

21 *Note: The problems faced by the healthcare service in the penitentiary system have been described by the Promo-LEX Association in Report no. 2 Monitoring the management of the COVID-19 pandemic in the penitentiary system. Monitoring period: December 1, 2020 – December 1, 2021.*

In conditions of overcrowding, all services and activities in a penitentiary facility will be negatively affected. An overcrowded prison implies unsanitary spaces, insufficient and inadequate medical services, a constant lack of privacy and safety in the penitentiary institution. This list is far from being complete.

Compared to the community outside the penitentiary system, people held in prisons are subject to a higher risk of infection with communicable diseases, as well as contracting other diseases, including chronic ones. In addition to the higher risk of contracting COVID-19, overcrowding makes prisoners more medically vulnerable.

According to official data, the share of infectious diseases in the penitentiary system is increasing. Parasitic infectious diseases (including tuberculosis):

- **in 2020 – 901 (cases);**
- **in 2021 – 1684 (cases).**

According to Article 3 of the ECHR (prohibition of inhuman or degrading treatment), the health of persons deprived of liberty sometimes requires humanitarian measures, especially when keeping in detention a person whose condition is incompatible with prison environment, especially with that of overcrowding and the risks associated with this environment. Although the penitentiaries in the Republic of Moldova are not suitable for holding and caring for prisoners with serious health problems, elderly people and, therefore, those with special needs or with terminal illnesses, humanitarian release on the grounds of illness, based on Article 95 of the Criminal Code, is extremely rare.

Thus, the analysis of official statistical data found that in 2020 there was a decrease in the number of people released due to illness[22].

In 2020, 8 patient-detainees faced the Special Medical Commission under the NAP, after which they were all presented to court, of them:

- **6 died before the court decision;**
- **2 were awaiting the court's decision.**

22 Ministry of Justice, National Administration of Penitentiaries, Report on the activity of the penitentiary system for 2020, https://drive.google.com/file/d/1zuBbV3TEARTkZPHBsU9zVgE2aTlrk3er/view

In 2021[23], 14 patient-detainees faced the Special Medical Commission under the NAP, after which they were all presented to court, of them:

- **3 were released;**
- **9 died before the court decision;**
- **2 were awaiting the court's decision.**

Overcrowding in prisons leads to an increased prevalence of communicable and chronic diseases, mental illnesses, substance abuse, violence, self-mutilation and suicide. These risks affect not only prisoners and their families, but also prison personnel.

Overcrowded environment in prisons affects the security of prisoners by causing conflicts between them, existence of suicide and self-mutilation attempts. This fact is noted both by the People's Advocate Office in its special reports[24] and by the National Administration of Penitentiaries in their activity reports. In 2021, several problematic aspects and critical situations were recorded in the penitentiary system related to the safety of prisoners[25]:

- *bodily injuries*: 1153 cases recorded in prisoners' environment. There is an increase of 11.18% compared to 2020. Most cases of violence among prisoners are recorded in Penitentiary facility no. 13, which denotes a direct causal link between overcrowding level of the penitentiary and the lack of security in this penitentiary facility;

- *hunger strike*: 711 cases of hunger strike. There is an increase of 6.89%, the most frequent cases being registered in the most populated penitentiaries: no. 3 Leova (67 cases), no. 6 Soroca (77 cases), no. 11 Balti (77 cases), no. 13 Chisinau (70 cases) and no. 17 Rezina (63 cases);

23 Ministry of Justice, National Administration of Penitentiaries, Report on the activity of the penitentiary system for 2021, https://drive.google.com/file/d/1ltu2_qZ8BYQznVTuSEvjVPPfO0j67MOr/view

24 The People's Advocate, Report on preventive visit of Penitentiary no. 18 in Branesti, housing sector no. 10, block "b" and the box for prisoners on hunger strike, March 16, 2021,http://ombudsman.md/wp-content/uploads/2021/03/Raport_P18_16.03.21_FINAL_pe-site.pdf

25 Ministry of Justice, National Administration of Penitentiaries, Report on the activity of the penitentiary system for 2021, https://drive.google.com/file/d/1ltu2_qZ8BYQznVTuSEvjVPPfO0j67MOr/view

- *self-mutilation*: 839 cases. There is an increase of 11.44%, the most frequent cases were registered in penitentiaries no. 3 Leova (70 cases), no. 5 Cahul (69 cases), no. 6 Soroca (108 cases), no. 13 Chisinau (168 cases) and no. 17 Rezina (107 cases).

In 2021, there is an 18% increase in cases of self-mutilation and a 42% increase in suicide attempts, compared to the previous year.

	2020	2021
Suicide	7	6
Suicide attempt	18	31
Self-mutilation	658	800

The increase of this indicator can be explained by several factors, one of which would be the environment in which people are kept in overcrowded conditions and the consequences that this environment causes. If we analyze the penitentiaries where this indicator is higher, we will find a causal link between overcrowding and the increase of this indicator.

3 NATIONAL PUBLIC POLICIES TO REDUCE OVERCROWDING IN PRISONS

A. **The national human rights action plan for 2018-2022**[26] (NHRAP), in section III, formulates the problem of ill-treatment in places of detention in the Republic of Moldova, which have been the permanent focus of international human rights monitoring organizations, as well as of the relevant national institutions. Bad conditions of detention and overcrowding, inadequate medical assistance, conditions of detention not accommodating for prisoners with disabilities, limitation of contact with family and close people, violence among prisoners and the inaction of the prison administration in relation to the submitted complaints constitute the subject of the complaints on the sentencing decisions of the Republic Moldova at the ECtHR, as well as the content of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Office of People's Advocate (OPA) and the Council for the Prevention of Torture.

NHRAP includes specific actions related to:

* remedying deficiencies and ensuring effective protection against ill-treatment in places of detention by consolidating the capacity and ensuring the functionality of the Council for the Prevention of Torture;

* improving the procedure for complaining about the violation of human rights in detention and increasing the level of knowledge of rights and obligations among detainees;

* improving the mechanism for investigating complaints regarding abuses that take place in detention institutions; prevention and protection against discrimination of prisoners belonging to vulnerable groups;

* improving medical services for persons deprived of liberty and improving conditions of detention.

26 Published in the Official Gazette no. 295-308 of August 10, 2018, Parliament Decision no. 89 of May 24, 2018 regarding the approval of the National Human Rights Action Plan for 2018–2022.

The 2018–2022 NHRAP does not contain any objective related to reducing the overcrowding in prisons, the application of alternatives to detention, humanization of criminal justice policy and the decriminalization of some crimes.

Point 1.27 of the **2020-2023 Government Plan**[27], establishes the objective:

> *Guaranteeing the rights of persons deprived of liberty, eradicating torture and evils treatments, including through the construction of a new penitentiary facility.*

This objective includes 2 specific sub-objectives:

* promoting the progressive system of execution of punishments;
* identification of the company that will build the new penitentiary in the municipality of Chisinau, signing the contract and starting the construction work.

Other specific actions are not included.

B. 2016-2020 Penitentiary System Development Strategy[28] included two specific objectives relevant to the subject of depopulation of penitentiary institutions.

> *1. Improvement of detention conditions, which refers in particular to the reconstruction of existing penitentiaries.*

To execute the objective set until 2020 inclusively, it was planned to achieve the following result indicators:

* increasing the accommodation capacity by 40%, providing for at least 4 m2 for one person, by organizing the construction of a new penitentiary in the municipality of Chisinau, a detention center in the municipality of Balti and new detention sectors in penitentiaries no. 3 in Leova, no. 5 in Cahul, no. 10 in Goian and no. 17 in Rezina;

27 Published in the Official Gazette no. 378-379 of December 13, 2019, Decision of the Government of the Republic of Moldova no. 636, of December 11, 2019, regarding the approval of the 2020-2023 Government Action Plan.

28 Published in Official Gazette no. 50-59 of February 17, 2017: 2016-2020 Penitentiary System Development Strategy.

* modernizing by the end of 2020 a minimum number of 2,000 accommodation places, taking into account current standards;

* the total occupancy index will register a value below the 100% threshold compared to the national standard;

* the transport capacity of the penitentiary system will increase by 20% by 2020;

* improving the quality of food for persons deprived of liberty.

According to the assessment of the Promo-LEX Association, the first three indicators were not achieved.

> *2. Development of healthcare services, equivalent to those in the community, for all persons deprived of liberty by ensuring professional independence and accreditation of medical services.*

The issue of healthcare in penitentiary system, including the execution of this objective, has been described above.

C. „Moldova 2030" National Development Strategy[29] does not contain objectives regarding the proposal of alternative instruments to pretrial detention and prison sentences or measures to reduce overcrowding in prisons.

D. The strategy on ensuring independence and integrity of the justice sector for 2021–2024 and the Action Plan for its implementation[30], adopted by the Parliament of the Republic of Moldova by the Law of November 26, 2020, which is not published in the Official Gazette of the Republic of Moldova. The strategy, within Strategic Direction II - „Access to justice and the quality of the justice act", includes objective 2.1 „Improving access to justice and the system of human rights protection in the justice sector".

29 Published in Official Gazette no. 153-158 of June 26, 2020, Decision of the Government of the Republic of Moldova no. 377 of June 10, 2020 regarding the approval of the draft law for the approval of the "Moldova 2030" National Development Strategy.

30 Law for the approval of the Strategy on ensuring the independence and integrity of the justice sector for 2021–2024 and the Action Plan for its implementation, adopted on November 26, 2020, http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5296/language/ro-RO/Default.aspx.

This objective contains the following relevant activities in the field of reducing the prison population:

2.1.2. Ensuring stability and clarity of criminal law:

a) Elaborating a concept for amending the criminal law, in order to establish a unique long-term policy, through which the shortcomings of the institutions of the Criminal Code will be analyzed with the identification of remedial measures.

b) Amending the Criminal Code based on the recommendations formulated in the Concept.

c) Establishing the criteria to analyze the information regarding the application of preventive measures depriving of liberty and the periodic analysis of information regarding the application of these measures in order to ensure the effective respect of the right to liberty.

2.1.5. Improving the mechanisms for the execution of criminal sentences and conditions of detention:

a) Developing probation programs aimed at changing behavior and preventing recidivism among people.

b) Creating a penitentiary industry in order to involve convicts in work and their resocialization.

The analysis of the current public policies revealed the lack of a single vision related to the humanization of criminal justice policy, the application of alternatives to punishment and detention, etc.

4 CRIMINAL JUSTICE POLICIES TO REDUCE OVERCROWDING IN PRISONS. THEIR IMPLEMENTATION AT THE NATIONAL LEVEL

4.1 Criminal justice policy and legislative framework

Policy development and implementation, assessment of the impact of regulations and other contemporary tools of policy development and execution are mandatory for all public sectors[31], including justice in general and criminal justice, in particular. Standardization documents of the CoE Committee of Ministers in the field of criminal justice (hereafter „CM"), starting from one of the first, Resolution (67), emphasize the need for „research to evaluate the results of new criminal justice policy measures and, especially, undertaking investigations when changes are made or foreseen in the criminal justice policy".

Due to their complex and multidimensional character, reforms in the justice sector, including its penal component, are usually managed through multi-layered policy frameworks, comprising sub-sector-specific sectoral instruments that are usually interdependent and institutional. Some jurisdictions proceed on a sub-sectoral basis, including by adopting criminal justice strategies and action plans.

Regarding the legislative framework, the principle of legality is considered the cornerstone of criminal law. This means that any interference with a person's rights and freedoms should have a legal basis. In terms of ECtHR jurisprudence, this requirement is usually expressed in terms such as „lawful" arrest in the context of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter „ECHR") or „in accordance with the law" in the context of Article 8 or 10 of the ECHR. The principle of legality also implies the principle of legal certainty, which requires that the legal basis be clear in terms of accessibility and predictability.

31 Glossary of key terms in evaluation and results-based management, OECD, 2002, http://www.oecd.org/development/peer-reviews/2754804.pdf ; United Nations Rule of Law Indicators, Implementation Guide and Project Tools, UN, 2011 http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf

ECHR standards[32]

Article 5, para (1), letter (c) of the ECHR describes the conditions under which arrest or detention is lawful. This means, first of all, that any arrest or detention has a legal basis in national law. Domestic law itself must be in accordance with the ECHR, including the general principles expressed or implied therein. To this end, the law providing legal grounds for pre-trial detention must also meet the requirements of „quality of law", which means that it must be sufficiently accessible, precise and predictable in its application to avoid any risk of arbitrary application. A deprivation of liberty may be legal under domestic law, but arbitrary and therefore contrary to the Convention. As a rule, a person accused of a crime must always be released pending trial, unless the state can demonstrate that there are relevant and sufficient reasons to justify continued detention. In this sense, alternative preventive measures must be considered before deciding on preventive detention, especially in the context of the pandemic. Continued detention can only be justified if there are considerations of public interest which, despite the presumption of innocence, override the rule of respect for individual liberty.

In addition to the legality requirement, Article 5, para (1), letter (c) of the ECHR requires that a reasonable suspicion of a crime be a conditio sine qua non for the justification of pre-trial detention. ECtHR jurisprudence has evolved towards the direction that the existence of a reasonable suspicion is sufficient for the initial detention. However, after a certain period of time has passed, which may be relatively short – a few days, reasonable suspicion will not be sufficient to justify continued detention. Other reasons must be presented by the authorities to continue to justify the detention.

Reasonable suspicion includes information or facts that would convince an objective observer that the person may have committed the crime. Reasonable suspicion should exist throughout the duration of pre-trial detention. The reasonable suspicion requirement does not mean that the authorities obtained sufficient evidence to bring charges either at the time of the arrest or during the defendant's detention. Nor is it necessary that the detainee has ultimately been charged or brought before a court for trial. The purpose of the

32 The standards referred to in this section are those established by ECtHR jurisprudence. Recommendation Rec (2006)13 of the Committee of Ministers is also relevant to the issue under discussion. However, the Recommendation follows ECtHR jurisprudence and is therefore mentioned here only for reasons of completion.

criminal investigation is to confirm or remove the reasonable suspicions that constitute the basis of the detention. The fact that a suspicion is held in good faith is insufficient. The detention of a person must never be imposed for the purpose of making them confess or testify against others or to obtain facts or information which may serve to establish a reasonable suspicion against them.

Pre-trial detention cannot exceed a reasonable period of time, even if the reasons discussed above are present. For this purpose, the authorities must examine all the facts that support or are against the existence of the above-mentioned public interest claim that justifies a deviation from the norm in Article 5 of the ECHR. If the departure from the basic rule is no longer justified, then national courts must state the relevant facts in their decisions on requests for release.

According to ECtHR jurisprudence, confirmed once again and advanced by the Grand Chamber in the Buzadji v. Republic of Moldova case,[33] house arrest is considered, by its degree and intensity, equivalent to deprivation of liberty within the meaning of Article 5 of the Convention. All its requirements and standards apply accordingly. Although the ECtHR considers the nature of the restrictions in the case of house arrest to be significant, it stated that in most cases, this measure involves fewer restrictions and a lower degree of suffering or inconvenience for the prisoner than ordinary detention in prison. Consequently, the derived standards, including Recommendation no. R (99) 22 of the CM to the member states regarding prison overcrowding and prison population inflation, considers it an alternative to actual detention.

Application of international standards at national level

Policy initiatives mentioned above and some of the legislative developments regarding preventive custodial measures were conceived and, respectively, took place in the context of a series of unfavorable judgments of the ECtHR against the Republic of Moldova. The subject of violations is addressed within the execution of general measures in the Muşuc, Guţu and Şarban case groups. The first two were concerned with illegal arrest and pre-trial detention in criminal proceedings that are not based on a reasonable suspicion that the arrested have committed a crime and other ECHR-related violations. The rest of the issues regarding the general measures required have been merged with the Şarban group cases, which address various violations of Article 5, including the lack of relevant and sufficient reasons in court decisions ordering

33 Buzadji v. Moldova, Decision of the ECtHR [GC] of July 5, 2016, app. no. 23755/07, par. 87 et seq.

or extending pre-trial detention. The CM took note of the legal changes that specifically provide for the obligation of the criminal investigation body and the court to carry out a „proportionality test" when requesting and deciding on pre-trial arrest, in the process of verifying the existence of a reasonable suspicion.

However, it is indicative that the execution of this group of judgments is still kept under „increased supervision". It appears that the Court continues to receive new similar complaints. The CM emphasized that it is essential that the strict application of the new legislation is properly ensured and monitored by the authorities and is complemented by continuous training of judges and prosecutors. It is also indicative that the authorities were invited to provide additional information regarding the impact of the adopted measures and the development of judicial practice.

According to Article 177 of the CPC, both the prosecutor and the court issue a reasoned order, respectively a decision. In general, both the court's decision and the prosecutor's order should be motivated and contain information about the crime, the grounds and necessity of applying the concrete measure, the fulfillment of the criteria set out in Article 176, etc. Regarding pre-trial detention, Article 185 of the CPC states that pre-trial detention is an exceptional measure and is ordered only when it is proven that other measures are insufficient to eliminate the risks that justify the application of the arrest. Pre-trial detention is applied only on the basis of a decision that includes the reasons justifying the insufficiency of other preventive measures to eliminate the risks that were the basis of the application of pre-trial detention. Article 185 establishes three other conditions for the application of pre-trial detention, in addition to those provided for in Article 176 described above. Consequently, pre-trial arrest can be applied if the accused, the defendant does not have a permanent residence in the Republic of Moldova and if they refuse to provide information regarding their place of permanent residence; violated the conditions of other preventive measures applied to them or violated the protection order in cases of family violence; there is sufficient evidence that the defendant, being at large, poses an imminent risk to public security and order.

The CPC provides, in article 186, that the pre-trial arrest shall not exceed a reasonable term established according to the complexity of the investigations necessary to find out the truth and considering the obligation of promptness in the resolution of criminal cases in which the accused or the defendant is in custody. Pre-trial detention may not exceed 30 days and may be extended

only if the initial conditions for applying pre-trial detention are still valid. In addition, the judge must examine whether, in order to eliminate the risks that led to the application of the measure of pre-trial detention, the application of other non-custodial measures is sufficient or if there are relevant and sufficient grounds for extending the pre-trial detention. Detention may be extended for a period not exceeding 30 days each time, and the total duration of detention may not exceed 12 months.

Although the basic elements of the law on preventive custodial measures have been improved in terms of meeting the requirements of the ECHR, there are still practical problems of application. Almost all institutions and interest groups shared the view that pre-trial detention is used excessively or, at least, that additional measures are needed to ensure that it is applied in accordance with the ECHR and other international standards.

Moreover, previous and more recent findings of the Committee for the Prevention of Torture (hereinafter referred to as „CPT") suggest that the same level of enforcement of pre-trial detention leads to overcrowding of Penitentiary no. 13 and other detention facilities. This exacerbates the issue of conditions of detention considered to be a structural problem due to a series of ECtHR judgments against the Republic of Moldova, leading until recently to an almost automatic violation of Article 3 of the ECHR for all pre-trial detainees and many convicted.

In terms of numbers, the authorities provided statistical data, synthesized by the General Prosecutor's Office, which shows that the number of people arrested and detained by the police for up to 72 hours and of those remanded in custody has decreased[34].

	2017	2018	2019	2020
Number of persons detained (up to 72 hours)	4 410	3 363	2 956	2 694
Number of persons for whom pre-trial arrest was requested by prosecutors	2 843	1 936	1 600	1 401
Number of persons placed under pre-trial arrest	2 430	1 592	1 403	1 174

34 General Prosecutor's Office, Public activity reports of the Prosecutor's Office of the Republic of Moldova, http://procuratura.md/md/d2004/

In 2020, pre-trial detention (including house arrest) was applied to 1,401 people, which is 8.08% of the total number of people accused of a crime. About 16.2% of prosecutors' requests for detention were rejected by domestic courts. Of the total number of those accused of a crime, 5.1%, i.e., 767 persons, were sent to court while being in pre-trial detention. Most of these cases involved serious, extremely serious and exceptionally serious offences.

In 110 cases, the prosecutor's office challenged the revocations of the investigating judges for the application or extension of pre-trial detention, of which 22.7% were admitted by the court of appeal. The defense challenged the decisions of the investigating judges in 360 cases, of which 13.6% were accepted by the courts of appeal.

In 2021, prosecutors requested the application of pre-trial arrest in respect of 1429 people (compared to 2843 in 2017, 1936 in 2018, 1600 in 2019 and 1401 in 2020), i.e., in respect of 49% of those detained. Of the total number of people detained, 1207 people were placed in pre-trial detention (compared to 2430 in 2017, 1592 in 2018, 1403 in 2019 and 1174 in 2020), and in 222 cases arrests were rejected. Thus, in 2021, 41.4% (compared to 55.1% in 2017, 47.3% in 2018, 47.5% in 2019 and 43.5% in 2020) of the detained persons were preventively arrested.

However, the interviewees believe that pre-trial detention is still being applied abusively. There are several reasons for the frequent application of pre-trial detention. The most common reason stated by almost all interest groups is the pressure that judges experience in different ways. Civil society and lawyers claim there is a fear among judges induced by several cases where judges have been sanctioned due to reluctance to accept the prosecutor's motions for pretrial detention. Article 307 of the Criminal Code provides for judges' criminal liability for the deliberate pronouncement of a sentence, judgment, conclusion or decision contrary to the law. This provision has been used to prosecute judges for rejecting the request or extending the pretrial detention. The case of investigating judge Dorin Munteanu is illustrative in this case. He was prosecuted under art. 307 of the Criminal Code after rejecting the prosecution's request for an extension of pretrial detention, as no justifications were given for the application of detention.

CoE standards

The general principle is that the relevant offenses and penalties must be clearly defined by law, where the person concerned can know from the wording of the legal provision and, if necessary, with the help of its interpretation by the courts, what actions and omissions will make them criminally liable. In addition to this, the international legal framework, the ECHR, ECtHR jurisprudence and the derived standards of the CoE, as advanced and relevant standards regarding the formal prohibition of certain categories of criminal sanctions, explicitly provide for the prohibition of death penalty, of the irreducible penalty of life imprisonment and corporal punishment. At the same time, the severity of criminal sanctions, the state's criminal policy, including sentencing, parole criteria were left outside the scope of ECtHR supervision.

In terms of the range, types of criminal sanctions, length of imprisonment and criminal justice policies, like alternative punishments, they are guided primarily by the general requirement of reconciliation of interests and considerations of restoring social equity, general prevention and individual, public protection and rehabilitation, the latter being formally introduced into the core of international human rights standards by Article 10.3 of the International Covenant on Civil and Political Rights[35].

Starting from the United Nations Standard Minimum Rules for the Treatment of Prisoners (1957[36]) to the most recent set of standards adopted by the CoE, in particular, Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures, the severity of criminal sanctions should be proportionate to the seriousness of the offense for which the persons were convicted and should accordingly take account of the individual circumstances of the case. Sentencing reasons should be consistent with CoE standards, particularly as regards the reduction of the use of prisons, the expansion of the use of community sanctions and measures, the implementation of decriminalization policies, the use of mediation.

35 International Covenant on Civil and Political Rights of December 16, 1966, ratified by the Decision of the Parliament of the Republic of Moldova no. 217-XII of July 28, 1990.

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

Application of international standards at national level

The Criminal Code complies with the outlined international standards, which prohibit specific types of punishment, including life imprisonment without a significant prospect of reduction. In accordance with Articles 71 and respectively, 91 (paragraph 5), for the commission of exceptionally serious crimes and convicted thereof, persons are subject to early parole after serving at least 30 years of imprisonment. The last provision was not applied in practice for various reasons.

The overall analysis suggests that the Criminal Code provides life imprisonment for a large number of offences, compared to other jurisdictions.

In the Republic of Moldova, the minimum term that must be served by prisoners sentenced to life imprisonment before being eligible for conditional release is regulated by the Criminal Code and is 30 years. However, the minimum term has changed over time. The Criminal Code of 24.03.1961[37] (the Old Criminal Code) provided for the condition that prisoners sentenced to life imprisonment could benefit from parole after serving 25 years in prison. The Criminal Code adopted in 2002 increased the minimum term from 25 to 35 years, and later, in 2009, reduced it to 30 years. To date, no prisoner sentenced to life imprisonment has been paroled.

While the appropriateness of the range of alternatives to imprisonment is discussed below, it is worth noting that the range of sanctions applicable to individuals includes fines; deprivation of the right to hold certain positions or to exercise certain activities; cancellation of military rank (as a complementary punishment), special titles, qualification ranks and state awards; community service; prison and life imprisonment. With the exception of the latter two sanctions, the remaining ones can be applied as complementary punishments or in certain combinations, including community service for the supervision period or, as the case may be, for the probationary period (art. 62 of the Criminal Code)[38].

The criminal justice system of the Republic of Moldova, the Criminal Code, classifies crimes according to their nature and degrees, distinguishing less serious, serious, grave and exceptionally grave crimes, which are punishable by up to 2, 5, 12 years inclusively, by more than 12 years and, respectively, by

37 Criminal Code, art. 52, para. 7.
38 Criminal Code, art. 62.

life imprisonment (art. 16 of the Criminal Code[39]). This classification does not involve specific concerns, respecting, in general terms, the relevant provisions regarding the classification of crimes in degrees of seriousness and other basic requirements of Recommendation R (92) 17 of the CM[40].

The prison sentence, including the forced isolation of the person from its usual living environment and placement in a penitentiary facility for a certain term (Article 70 of the Criminal Code), is the most frequent punishment, provided for in 615 components regulated in the Criminal Code. This ranges from 3 months to 20 years and 25 years as the final sentence in the case of a cumulative offence. The maximum prison sentence (20 years) is provided for in 34 cases, with the most common lower level being 12 years, corresponding to the general classification of the mentioned offences, which occasionally starts from 10, 15 and 16 years, depending on the seriousness of the offences and other considerations.

Recent general statistics show that for years the prison population in the Republic of Moldova remains around 220 detainees per 100,000 inhabitants. These indicators suggest that, among other factors, the severity of prison-related and overall criminal sanctions, their range, types, enforcement, actual imprisonment need to be reviewed.

One of the most visible toughening of criminal sanctions was introduced by the Law amending the Criminal Code of the Republic of Moldova no. 119 of 23.05.2013, which aimed to increase the prison sentence for murder, kidnapping and other violent crimes in general.

There was no regular review of the adequacy of criminal penalties and the effectiveness of their effective application to ensure preventive and security considerations. Overall, there is a need to advance analytical efforts, disaggregation of sentencing statistics, and the overall criminal justice system. Research should be carried out regularly to accurately measure the effectiveness of the application of criminal penalties with reference to specific offences, number of people convicted and procedures followed.

In accordance with relevant standards, research results should be used to initiate legislative changes where necessary and to adjust policies in the field and emphasize rehabilitation and humanization.

39 Criminal Code, art. 16.
40 Recommendation R (92) 17 of the Committee of Ministers to the member states, para. A.6.

While previous statements could be seen as suggesting an ancillary remedy to ensure appropriate sentencing and avoid undue harshness of sanctions in specific cases, the existing range of individualization tools provided by the Criminal Code is considerably deficient in terms of compatibility with international standards and best practices on setting minimum sentences. In accordance with Recommendation R (92) 17, States should ensure that minimum sentences, where applicable, do not prevent the court from taking into account the particular circumstances of individual cases. Currently, the minimum prison term of 3 months established by the Criminal Code excludes the possibility of applying shorter period of imprisonment, where only a few weeks could be sufficient if a non-custodial sanction cannot be considered. Moreover, the Criminal Code has introduced formal limitations on the application of mitigating circumstances with regard to specific sanctions, including fines, imprisonment of up to 10 years, life imprisonment (Article 78), in conjunction with Article 79 of the Criminal Code, which establishes specific rigid criteria, considered exceptional circumstances, for the application of a lighter punishment than the sanction provided for the crime in question, which equals the introduction of legal and practical obstacles to the application of less severe sanctions and therefore should be reviewed.

4.4 Decriminalization

CoE standards

The very nature of public policy, legislation, including the sphere of criminal justice, requires that the relevant areas of regulation, including criminological and other factors and the state of affairs be under constant monitoring, research suggesting the necessary practical adjustments and, if necessary, legislative changes. In addition, the humanization and related considerations that constitute the rationale for outlined international standards and good practices require States to consider the possibility of decriminalizing or reclassifying certain types of offenses so that they do not attract custodial sentences[41].

Application of international standards at national level

Seventy-one sets of amendments have been introduced to the Criminal

41 Recommendation CoE Rec (99) 22 regarding prison overcrowding and prison population inflation, para. 4.

Code since its re-publication in 2009, which consolidated all previous amendments incorporated after its adoption in 2002. Many amendments aimed at introducing new corpus delicti (more than 50), some of which have been determined by international commitments, e.g., Article 135/1 "Crimes against humanity", Article 166/1 "Torture, inhuman and degrading treatment", by certain economic, public or country-specific developments, as well as by criminological developments, e.g., article 245/11 "Breach of the legislation on the activity of non-state pension funds, etc.", article 164/1 "Abduction of the minor by close relatives").

In terms of decriminalization, since 2009, there have been some insignificant developments regarding the removal of certain corpus delicti concerning the evasion of submitting income and property declarations or deliberate indication of incorrect data, including by high-ranking officials.

The most visible elimination of certain elements of remaining corpus delicti, which would have affected the relevant statistics, including the number of prosecutions and convictions, concerned the changes to the domestic violence framework, which, among other things, eliminated psychological violence from its scope of application. Thus, in order to ensure the adequate use of the humanizing potential of criminal justice system, it would be necessary to carry out (and subsequently periodically repeat) substantial research to identify and subsequently implement legislative and related interventions aimed at decriminalization.

4.5 Application of non-custodial sanctions

The international standards for humanization and rehabilitation/ resocialization regarding non-custodial sanctions have recently been consolidated in Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member states on European norms, sanctions and community measures, previously consolidated in Recommendations CM/ Rec (2010) on the Probation Rules of the Council of Europe and CM/Rec (2003) 22 on parole. In general, they pursue the rationale of humanizing and increasing the effectiveness of criminal justice policies, reconciling preventive, security and other considerations involved, and require states to ensure the appropriate use of alternatives to imprisonment. Given the nuanced and partially overlapping scope of these and other relevant sets of international standards and the

notions they operate, the terms "non-custodial sanctions" and "alternatives to imprisonment", used herein, include and refer to criminal penalties that not relate to deprivation of liberty, as well as appropriate alternatives to the execution of prison sentence.

In addition to non-custodial sanctions, the range of alternatives provided by Moldovan legislation includes: sentencing with conditional suspension of sentence execution; early parole; replacing the unexecuted part of the prison term with a lighter sentence; release from punishment of minors; release from punishment due to change of situation; release from sentence execution of seriously ill persons, postponement of sentence execution for pregnant women and persons who have children aged up to 8 years. Since December 2015, the Criminal Code and related legislation have been supplemented with elements specific to probation. In particular, instead of "conditional" the term "trial period" is used.

Recently, the Criminal Code has been supplemented with art. 90/1, "Conviction with partial suspension of the execution of prison sentence", and art. 91/1, "Release from criminal punishment in case of committing the offense for the first time and repairing the damage".

The conditions applicable in the case of suspension of prison sentence execution and early conditional release from the sentence included the obligation not to change one's domicile or place of residence without the consent of the competent body; not to attend certain places; to undergo certain treatment for addiction to alcohol, drugs, toxic substances or treatment for a venereal disease; to provide financial support to the victim's family; to pay compensatory damages, were duly supplemented by participation in probation programs, (unpaid) community service, and electronic monitoring. The introduction of these new conditions increases the potential of criminal justice system and, in particular, the role of probation services in fulfilling the dual objective of rehabilitation/resocialization of offenders along with prevention of recidivism and ensuring the safety of society. These rules correspond to the above-mentioned international standards, including those included in paragraph 8 of Recommendation Rec (2003) 22 on parole.

The gap in the existing range of non-custodial sentences that needs to be addressed is the absence of probation/parole as an independent sentence separate from imprisonment, as provided for by international standards, in particular CM/Rec (2017) 3 on the norms of European regulations on sanctions and community measures.

CoE standards

Council of Europe, Recommendation no. R (99) 19 of the Committee of Ministers to the Member States on mediation in criminal matters, promotes mediation in criminal matters and establishes guidelines for the victim-offender mediation process. The Guidelines set out the principles of mediation, the main of which is the free consent of the parties to participate in mediation (Article 1). Other principles guiding the mediation process include confidentiality of mediation proceedings and general autonomy of mediation from criminal proceedings (Articles 2, 5). The possibility to refer the case for the assistance of the mediator shall be available at all stages of the criminal procedure (Article 4). In all cases, mediation process is ensured by all available fundamental guarantees applicable to fair criminal proceedings, such as assistance of a lawyer or an interpreter, or assistance for minors (Article 8). Under no circumstances can participation in mediation be recognized as evidence of admission of guilt in criminal proceedings (Article 14).

The Guidelines also define the role of criminal justice authorities in the mediation process. Consequently, authorities have the right to decide to send a criminal case for mediation, as well as to evaluate the outcome of the mediation procedure (Article 9). Criminal justice authorities must be informed of the outcome of the mediation process within a reasonable time (Article 16). Before referring the case to mediation, the judicial authorities shall fully inform all parties of their rights, the nature of the mediation process and possible consequences of the mediation (Article 10).

Another purpose of the Guidelines is to determine some general standards on how mediation services should operate, including the autonomy of mediation bodies that may be subject to monitoring by competent bodies (Articles 20, 21). Mediators must conduct the mediation process impartially, be based on the facts of the case and be guided by the interests of the parties (Article 26). Before taking up their mediation duties, mediators must receive initial training, which will ensure that on-duty mediators possess all the necessary skills to work with victims and have a basic knowledge of the criminal justice system (Article 24). Upon reaching an agreement (which can only be reached voluntarily with the full consent of both parties (Article 31)), the mediator

will report to the mediation authorities on the steps taken and the outcome of the mediation (Article 32). However, the outcome of the mediation remains confidential (Article 32).

The basic principles regarding the use of restorative justice programs in criminal matters, adopted by the Economic and Social Council (ECOSOC), represent one of the main documents adopted by the United Nations in order to regulate the victim-offender relationship beyond the criminal procedure. The core principles aim primarily at formulating global standards in the field of mediation and restorative justice. Member States are recommended to consider formulating national strategies and policies aimed at developing restorative justice and promoting a culture conducive to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities. Paragraph 6 states that restorative justice programs should generally be available at all stages of criminal justice process. The main standard of restorative justice programs requires free consent of both parties to participate in such a program. Such participation should not be used as an admission of guilt or any other evidence in criminal proceedings. Fundamental procedural guarantees are an inherent and inalienable part of a restorative justice program, including the right to consult a legal expert and to be informed of the rights of the parties, the nature of the trial, and the consequences of the trial. Other principles include confidentiality of proceedings and judicial oversight of the process, where results of the reconciliation process can be incorporated into decisions resulting from criminal proceedings.

Application of international standards at national level

The CPC provides for the possibility to request mediation and conciliation in criminal cases at different stages of the procedure through a wide range of rules, starting with those that establish rights of the parties and duty of the prosecutor. Mediation Law no. 137 of July 3, 2015 regulates the profession of mediator and their operation. The legislative framework is in line with the CoE and international standards mentioned above. All the standards and principles mentioned above are reflected in the legal framework. However, the fact-finding mission revealed that, despite the legislative framework in force, mediation in criminal matters in the Republic of Moldova is almost non-existent. Mediation law is quite recent.

The same applies to the legal framework required by the CPC, which was introduced in 2016. Until then, the CPC provided (in articles 52, 57, 219, 276)

only for the obligation of the prosecutor or the criminal investigation officer to inform the accused about the possibility of mediation for the settlement of civil claims within the framework of the criminal procedure and criminal prosecution open at victim's complaint. Law no. 211 of 29.07.2016 introduced into the CPC article 344/1 and a set of related provisions regarding the settlement in the trial stage of a case the mediation or conciliation procedure of the parties.

Currently, mediation and conciliation are possible only for specific offenses.

Paragraph 6 of the Basic Principles suggests that, within a criminal justice system, there are four main points at which a restorative justice process can be successfully initiated: (a) at police (pre-charge) level; (b) at the prosecution level (after indictment, but usually before the trial), (c) at the court level (either pre-trial or sentencing); and (d) probation (as an alternative to incarceration, during incarceration or on release from prison). In some countries, remedial interventions are possible in parallel with criminal prosecution. At any of these points, an opportunity can be created for officials to use their discretionary powers and refer an offender to a restorative justice program.

Therefore, consideration may need to be given to broadening the scope of mediation and other restorative justice tools and programs, including their introduction during the criminal process. In addition, the role of the judge in mediation in the criminal process can be further reviewed.

CONCLUSIONS

Given that imprisonment has a number of serious disadvantages, the consensus represented by CoE standards and United Nations norms is to urge Member States to use alternatives to imprisonment to reduce prison populations. These standards have become more burning during the COVID-19 pandemic. United Nations and Council of Europe standards and norms support the use of incarceration only as a last resort and that its use should be as rare as possible.

Alternatives to incarceration are often more effective in achieving important public safety goals, such as greater safety for the public. Properly designed and implemented, they can help reduce human rights abuses while providing little cost in the medium and long term. In this document, we have highlighted the need to apply alternatives to incarceration throughout the criminal justice process, which are consistent with UN and CoE standards and norms.

The first strategy is to place, to the possible extent, people who have committed offenses outside the criminal justice system. Not all socially undesirable behaviors need to be classified as a crime or go through the criminal justice process. Decriminalization legally redefines conduct that was once considered a crime so that it is no longer classified as a crime.

In some cases, it is more effective to divert convicted persons to treatment or other rehabilitative programs than to have them go through the criminal justice system and be incarcerated.

For each stage of criminal justice process, the Government needs to initiate policies detailing types of alternatives available, identifying the infrastructure needed to make these alternatives a realistic option, including the key actors who need to act for these changes to take place.

During the case trial stage, arrest of presumed innocent persons may represent a violation of the right to liberty and security. Such a measure is justified only in extremely limited circumstances. The prosecution must emphasize alternatives to pretrial detention that address both public safety and human rights concerns.

At the sentencing stage, courts must carry out a careful examination of each case to determine whether a custodial sentence is necessary and justified.

If so, the Government needs to adjust its criminal sentencing policies, particularly with reference to the minimum prison sentence.

Early parole is also of considerable practical importance in reducing prison population. In this sense, there are options for alternatives to incarceration, including various forms of conditional release, amnesty and pardon, which are not fully exploited.

Finally, the document represents an approach addressed to public authorities with the aim of initiating development of a coherent strategy to reduce prison population.

RECOMMENDATIONS

The national criminal justice policy could be humanized by introducing several changes that can contribute to reducing the harshness of criminal sanctions and, consequently, to promoting effective policies to reduce population in the penitentiary system, in line with human rights standards. To this end, the general recommendation is to review the severity of criminal penalties related to imprisonment. However, the following more specific interventions are also needed:

- Reducing overcrowding in penitentiary institutions by applying mechanisms for release from detention due to the COVID-19 pandemic, resorting to alternative measures to preventive detention.
- Applying provisions of international recommendations on COVID-19 in prisons and amnesty/pardon of vulnerable categories of prisoners.
- Implementation of the CAT recommendation on the transfer of responsibility for the health of prisoners from the Ministry of Justice/ NAP to the Ministry of Health.
- Implementation of UNODC, CPT and IASC recommendations on the application of alternatives to deprivation of liberty in the context of COVID-19.
- Revising provisions of the Criminal Code and the Code of Criminal Procedure that create legal and practical obstacles to the application of less severe criminal penalties.
- Examination by the courts, in a priority mode, of the cases related to the application of art. 91, 92 and 95 of the Criminal Code.
- Implementation of effective regulatory measures to ensure that life imprisonment sentence is both de jure and de facto reducible, as stipulated by ECtHR jurisprudence.
- The legal framework on alternative sanctions could also be revised to conform to international standards. Probation/parole should be introduced as a separate sentencing modality. In addition, probation/

parole could be more effective by further lifting or relaxing formal requirements related to crime, emphasizing the detainee's ability to refrain from recidivism, comply with probation conditions, and overall criminal justice goals through the use of reliable risk assessment methods, with an emphasis on probationary programs.

Expanding the scope of mediation and other restorative justice tools and programs, including their introduction into the criminal justice system. The role of judge in mediation in the criminal process can be further reviewed.

Implementation of measures by widening the scope of alternatives during prosecution, in particular, conditional suspension of prosecution.

Government should intensify research reports on the application of alternatives to incarceration and humanization of penal policy. Depending on the outcome of the research, additional legislative measures or awareness campaigns could be proposed, e. g:

a. a periodic review of courts' practice in the application of preventive measures and their substantiation with reference to relevant factual circumstances;

b. developing a comparative study between different CoE countries on the offenses for which pre-trial detention is allowed and which may lead to a review of practice or legislation, as appropriate;

c. detailed research to suggest decriminalization-oriented interventions. This should, of course, be accompanied by subsequent implementation of legislative interventions;

d. studying the practice of applying provisions of art. 91, 92, 93, 94, 95 of the Criminal Code of the Republic of Moldova.

Continuation of the implementation of specialized training with reference to the ECHR standards regarding the application of preventive detention.

Consolidating the capacity of judges and prosecutors regarding the possibilities offered by electronic monitoring, not only with reference to house arrest, but also with reference to other alternative preventive measures. This can be combined with a series of specific capacity-building activities for relevant members of the judiciary, as well as prosecutors and other legal professionals on probation issues, its actual and potential effectiveness and the general framework of alternatives in detention.

Continuation of the implementation of training courses for judges, prosecutors, prosecution officers and lawyers on the procedural aspects of mediation, as well as organization of awareness campaigns on its benefits.

Consolidating the mechanism for collecting and processing statistical data on the criminal justice system in general, sanctioning and pre-trial detention, in particular. Regarding the sanctioning and pre-trial detention system, a unified data collection methodology needs to be developed.

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