

ALTERNATIVES TO IMPRISONMENT

Identification and Exchange of Good Practices

Regulations Guidelines and good practices in
Bulgaria, Spain, Croatia, Italy, The Netherlands and United Kingdom

Edited by Marzia Tosi,
Elisa Corbari, Giuseppe Sandri



FDE Institute Press®

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INTRODUCTION

This Guide Manual is included in the European project *Alternatives to imprisonment: identification and exchange of good practices*, which obtained the co-financing of the European Union about the scientific programme Criminal Justice 2007-2013. This programme was established, as part of the General Programme "Fundamental Rights and Justice", by the Decision of the Council 2007/126/GAI, which states among its specific objectives the promotion of the judicial cooperation in criminal matters with the aim of «promoting measures aiming at effective re-socialisation of offenders». Based on this decision and on the programme mentioned above, the call for proposals JUST/2013/JPEN/AG underlined a number of priorities, where among the others also researches and activities that assume as their focus alternatives measures and sanctions.

Therefore, the idea behind the project was born on this background: it was thought to develop a comparative analysis about existent community sanctions and measures in European Countries marked by a high heterogeneity, to identify good and best practices and to disseminate their knowledge among practitioners and not only, thanks also to events of awareness organised in different national territories. A singularity of the project just mentioned lies in the fact that the alternative measures analysed (and, consequently, the good practices thus identified) refer themselves not only to what we can consider the general group (adult males), but also to what we identified as specific and particularly vulnerable groups: we are talking about women, minors, people affected by psychiatric problems, drug addicted and foreigners.

The network of the partners included these different realities, both public and private, that work in the judiciary field with particular orientations, with the aim of taking into account the groups object of the project:

Project Leader. Libra Onlus Association was born in Mantua in 2010, with the aim to study and develop mediation dynamics, thus with a particular attention to restorative justice, a model which involves victim, offender and society in the attempt to resolve pacifically the conflict caused by the crime. Libra Association therefore develops a number of projects in the field of applied criminology, both in and out the background of the prison, as well as in the field of applied victimology, also thanks to the constant functioning of the Victim Support Centre for the province of Mantua. Libra Onlus Association is member of Victim Support Europe.

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Co-beneficiary partner. Tilburg University is a foundation with five



Faculties. The European project has been developed thanks to the support of the Faculty of Social and Behavioural Sciences, Department of Developmental and Forensic Psychology. This department has a great experience in the conception and management of projects about Justice and Home affairs. Victims and offenders, and in particular, people involved in violent or sexual crimes, are object of research by the staff of the department.

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Co-beneficiary partner. Supporting Victims of Crimes and Combatting Corruption Foundation is a member of Victim Support Europe. This foundation offers support to whom has been victim of a crime, working at the same time in the background of detention and probation, also thanks to the cooperation with the Bulgarian penitentiary Authorities.

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NHS Foundation Trust

Associate Partner. Criminal Justice Service is provided by the National Health Service, and works throughout four London boroughs. SLaM NHS Foundation Trust is a large mental health Trust which works to identify and treat people who have mental problems in the criminal justice system.

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Associate partner. University of Rijeka | Faculty of Human and Social Sciences is a public entity. Particular interest is appointed to the study of antisocial personality disorder and psychopathy, as well as to social and institutional answers reserved to offenders affected by these problematics.

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Collaborator: Federacin Andaluza Enlace unifies more than one hundred non-profit organisations that work in Andalusia, with particular regard to such themes as addictions, social exclusion and criminal justice, offering free legal support to citizens and detainees. The Federacin offers formative paths and services related to the restorative justice area, also inside prisons.

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Associate Partner. The local entity took part in the project with particular regard to the action of awareness addressed specifically to public entities, involving different Municipalities with the attempt to extend the possibility of acceptance of people under measures of Judicial Authority.

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Associate partner. Association prison and territory | ACT Onlus is a non-profit association active since 1997 on the territory of Brescia. It works mostly on the field of detention and community measures, favouring paths of rehabilitation and making researches in collaboration with experts of criminal and penitentiary system.

Since 2011, thanks to the Italian Prisoners Abroad project, a particular focus of the Association regards Italian detainees abroad and the many cases of the phenomenon of detention outside the Country of origin.

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Associate partner. Associazione Italiana Giovani Avvocati| AIGA Mantova is a no-profit organisation gathering Italian Young Lawyers in order to promote, on a local and national level, the discussion and the scientific analysis about ethics and cultural themes related to the Law. For this reason, the Association organizes events and training meetings principally addressed to experts of the forensic field.

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**ISTITUTO DI
CRIMINOLOGIA
DI MANTOVA**

Collaborator. FDE Institute is a company of high training, scientific research and integrated advisory, credited to the Companies Register of Education and Professional Training of Region Lombardia (id.860151/2010). Primary objectives are the promotion of culture and scientific debate, the improvement of the levels of the knowledge among people and the connection between scientific knowledge and world of professions. For this purpose, the Institute promotes and develops several training and research projects, also in partnership with the world of the no-profit.

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PRAP Lombardia

Supporter. The Provveditorato dell'Amministrazione Penitenziaria per la Lombardia | PRAP Lombardia is a Regional Office of the Penitentiary Administration, namely a local office of the Ministry of Justice. It works in the field of penitentiary institutions and services for adults about staff, organisation of services and institutions, detainees and interned, community sanctions and measures area and in relations with the local Authorities.

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Offender Supervision in Europe

COST Action IS1106

Supporter. European Cooperation in Science and Technology | COST is the most important inter-governmental framework for the scientific and technologic cooperation, which is funding scientific projects named COST Actions. The Offender Supervision in Europe is the COST Action 1106.

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The network composed by all the partners described, has developed the project Alternatives to imprisonment: identification and exchange of good practices by the specific actions below:

- Literature review about already existing alternative measures in Bulgaria, Croatia, Italy, The Netherlands, Spain and United Kingdom;
- Study-visits in the partner Countries, aimed at meeting penitentiary Authorities and operators and exchanging good practices;
- Data collection and analysis about the penitentiary background in each Country involved;
- Mapping of existent alternative sanctions and measures focusing on vulnerable groups (women, minors, juveniles, people with psychiatric problems, drug addicted, foreigners, etc.);
- Identification and exchange of good practices, with particular regard to their impact on recidivism and to the balance between costs and benefits;
- Awareness and promotion of a culture which favours the application of alternatives measures and sanctions, thanks to national campaigns organized in Bulgaria, Italy and the Netherlands;
- Publication of this Manual as a project output capable of providing indications to experts and not only;
- Opportunities for scientific study, with particular attention on the organisation of an International Conference in Bulgaria (Sofia) and in Italy (Milan), as further opportunities for the exchange of good practices and for the strengthening of the network composed by the many key-figures of the penitentiary field.

METHODOLOGICAL PREMISE

For a correct development of the research, it was necessary to raise a discussion about some key-concepts and the evaluation of some preliminary scientific issues. The first objective has actually been to look for (rectius: to extrapolate) common and univocal definitions in order to outline a shared theoretical framework. In primis we have had the need to define what is meant, for the purposes of this research, by the terms «alternative sanctions and measures». Apart from the different tools provided by national laws, it has to be noted that they often do not provide an explicit definition of what these terms mean: we have, therefore, decided to refer to the definition contained in the Glossary of Recommendation N° R (92) 16 of the Committee of Ministers to Member States on the European Rules on community sanctions and measures:

The term "community sanctions and measures" refers to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.

The term designates any sanction imposed by a court or a judge, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment. Although monetary sanctions do not fall under this definition, any supervisory or controlling activity undertaken to secure their implementation falls within the scope of the rules.

As regards the classification of different measures, it has been chosen to firstly distinguish them according to the enforcement mechanisms and the trial phase in which they are applicable: so on one hand, we can find the measures – and not penalties, precisely – applicable before the imposition of a sentence (we refer here to the so-called *pre-trial phase*). In practice, these measures respond to *discontinuance* and *diversion* needs: the first term refers to the possibility that the criminal process is stopped, while the second outlines the re-addressing of the offenders to services that even theoretically result more appropriate than what could take place in prison.

Consider the case of a crime committed against property, without using force, by drug addict. Some jurisdictions allow, on fulfillment of certain conditions, the **suspension** of the criminal proceeding if, and only if, the person concerned agrees to undertake a detoxification treatment. A choice of this kind clearly responds to a view both of *discontinuance*, as the criminal trial is suspended and will not prosecute if the treatment ends or continues positively, and of *diversion* as you abandon the criminal response to approach a social and therapeutic one, referring precisely to dedicated services.

On the other hand, we can find the alternative sanctions, and then a number of penalties, that come to light in case of pronouncement of conviction by the competent Judicial Authorities (so-called *post-sentence phase*). The compliance with the perspective of *diversion* is clear.

Returning to the case of the drug addict who has committed a crime against property without using force, imagine that he is prosecuted and **convicted**. If certain conditions are fulfilled, some jurisdictions allow the **admission to the so-called alternative sanctions**. It is, essentially, the possibility to serve the sentence outside

prison, under the imposed conditions. These conditions vary with the national legislation: for example, the length of the sentence and the nature of the crime. The requirements can cover a range of areas including the freedom of movement and certainly the completion (or the ongoing) of a psychological treatment: the *diversion* perspective is evident, given the strong connection with dedicated services.

The *discontinuance* perspective, when it comes to light in this case, certainly concerns the execution phase and not the trial one: as an example there are measures that allow, if determined conditions are fulfilled, the suspension of the enforcement of the sentence.

Furthermore, the alternatives can be distinguished according to their content, in an attempt to bring homogeneity to the framework. Even in this case, the milestone comes from Europe, and in particular, it is provided by Recommendation N° R (2000) 22 of the Committee of Ministers to Member States on improving the implementation of the European rules on community sanctions and measures, which identifies a range of sanctions and measures to be considered as an example:

- *alternatives to pre-trial detention such as requiring a suspected offender to reside at a specific address, to be supervised and assisted by an agency specified by a judicial authority;*
- *probation as an independent sanction imposed without pronouncement of a sentence to imprisonment;*
- *suspension of the enforcement of a sentence to imprisonment with imposed conditions;*
- *community service (i.e. unpaid work on behalf of the community);*
- *victim compensation/reparation/victim-offender mediation;*
- *treatment orders for drug and alcohol misusing offenders and those who suffer from a mental disturbance that is related to their criminal behaviour;*

- *intensive supervision for appropriate categories of offenders;*
- *restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring imposed with observance of Rules 23 and 55 of the European Rules;*
- *conditional release from prison followed by post-release supervision.*

Finally, it seems important to identify alternative sanctions and measures which can be applied, in consideration of the requirements for access, to individuals of particular vulnerability: it was not by chance that we have reported the case of a drug addict offender previously, which could be accompanied by other similar specific groups mentioned above.

Therefore, after establishing what is meant by «alternative sanctions and measures», understanding the legislative framework of the Countries involved, it was considered necessary to consult about the meaning of the term «recidivism».

So, we started from the definition of this concept in various national systems:

As far as **Italy** is concerned, first of all it has to be noted that the Italian Criminal Code (hereinafter c.p.) qualifies recidivism as an aggravating circumstance, so that the penalty imposed for the second offence will be increased. In Italy there are different kinds of recidivism, explicitly listed:

Simple recidivism (art. 99.1 c.p.): when the offender, after a first irrevocable conviction commits another crime. In this case the final penalty is increased up to a third of the sanction to be imposed for the second offence.

Aggravated recidivism (artt. 99.2 and 99.3 c.p.), which in its turn includes several figures: *specific recidivism* (after a first conviction, the offender commits an offence of the same nature of the previous one,

art. 101 c.p.), *five-year recidivism*, and *recidivism during or after the criminal execution*. In these cases the penalty for the second crime can be increased up to a half; however, the penalty is increased for a half only if two or more of the above circumstances occur.

Repeated recidivism (art. 99.4 c.p.): when an individual who is already a recidivist commits a new crime, the penalty is increased for a half. In case of repeated aggravated recidivism, the penalty for the new crime will be increased up to two thirds.

Even in **Bulgaria**, the legislation provides different forms of recidivism:

General recidivism (art. 27 c.p.): when a person already sentenced for a crime commits another one, also of different nature of the previous one, during the period of serving the first sentence.

Special recidivism (art. 28 c.p.): when an offender commits a second crime, of the same kind as the previous one, within five years starting from the execution of the sentence for the first offense. This is the case especially in crimes such as whoredom, hooliganism and bribe. In the evaluation of special recidivism, crimes committed when the person was underage should also be taken into account.

Dangerous recidivism (art. 29 c.p.): is qualified as an aggravating circumstance and it is linked to a different offence, explicitly that established by the law as violent crime, in particular crimes against property and violent crimes (e.g. murder, rape, robbery, fraud, theft). Two types of dangerous recidivism exist: the first one consists in the re-offense after being convicted to five years or more of imprisonment or life sentence, for an intentional crime; the second one regards the offender who commits a new crime after being imprisoned two or more times for intentional offenses.

Also, there are different types of recidivism in **the Netherlands**:

General recidivism: in case of a new valid justice contact as a result of any crime, regardless of the nature and severity of the offences committed.

Serious recidivism: in case of a new valid justice contact following a crime with a legal punishment threat of at least four years, or for which a pre-trial detention may be imposed.

Very serious recidivism: in case of a new valid justice contact following a crime with a legal punishment threat of at least eight years.

Special recidivism: in case of a new valid justice contact following the same kind of crime as in the output case.

Specific recidivism: in case of a new valid justice contact following the crime related to or similar to the law article as in the output case.

In other Countries, such as **Croatia**, the definition of recidivism is not provided by the Criminal Code nor by the Law of enforcement of the prison sentence; however, the Authorities distinguish between two types of recidivism:

the first one refers to prisoners who have been previously convicted to a prison sentence;

the second one concerns prisoners who have been previously convicted to any kind of criminal sanctions, excluding misdemeanours.

Furthermore, for the purpose of risk assessment, general and special recidivism are differentiated by the nature – heterogeneous or homogeneous – of the offences performed.

It is therefore easy to understand that it has been necessary to bring unity to the framework, taking into account the fundamental principles characterizing the criminal justice systems of democratic States and in particular the presumption of not guilty. In the effort to overcome the differences emerging from national definition, for the purposes of this research we have embraced the following concept of recidivism:

Recidivism is when a person, after being definitively sentenced for a first offence, is re-convicted by a judgement which has the force of *res judicata*.

Another issue that deserves to be addressed here is the data collection, for which the timeframe to be considered is constituted from the period 01/01/2008 – 31/12/2013; when the retrieval has been possible, information regarding the following years are provided, in particular highlighting changes in legislation and trends. It is useful to clear from now on that the data collection, and so the data analysis, suffers from some asymmetries due to the detection systems adopted by the various Countries involved. Postponing to the following paragraphs, dedicated to the examination of single Member States, the deep analysis of the research sources and of the data collected, here it seems important to highlight that a range of official data has been gathered, thanks to different tools which can help not only the comparison but also the elaboration of proposals for an homogeneous data detection for the whole European Union. It has been, therefore, referred both to records kept by the Council of Europe (in particular SPACE I e SPACE II), and data collected on a national level, for which, on the one hand, immediately available information was retrieved, and on the other, specific official requests in the framework of this project have been adopted. A valuable support has then been provided by the analysed scientific literature, and by a network of partners, who did not hesitate to highlight similarities and differences in different systems.

Before proceeding to the examination of different national contexts, we should emphasize the general and

unavoidable aspects to whose consideration and knowledge - as we will understand - are called not only experts and policy makers, but also the entire civil society, in the pursuit of far-sighted goal of creating shared policies, which are increasingly taking into consideration the reconciliation of a number of requirements that certainly can not be confined to security-only field.

CHAPTER I

WHAT EUROPE (AND NOT ONLY) IS ASKING US

I.1. RECOMMENDATIONS OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

For an understanding of the following framework, it is considered essential to take as a basis instruments which define the general lines of the penitentiary area at a supranational level. So, here we report some short notes and abstracts of European Recommendations that have followed one another with the intent to relegate the imprisonment to an area of *extrema ratio*.

RECOMMENDATION: is one of the sources of law that lacks a binding force, but with a high value of moral obligation. It is directed to the Member States and includes invitation (rectius: recommends) to conform themselves to a determined behaviour.

Therefore, the following instruments constitute, for all components of the society, an important point of reference in order to direct penitentiary and social policies, which pose themselves as privileged contexts for a correct implementation of alternative mechanisms to imprisonment and custody.

Recommendation N° R (92) 16 of the Committee of Ministers to Member States on the European Rules on community sanctions and measures

These rules, *inter alia*, are intended:

a. to establish a set of standards to enable national legislators and the practitioners concerned (deciding authorities and authorities responsible for implementation) to provide a just and effective application of community sanctions and measures. This application must aspire to maintain a necessary and desirable balance between, on the one hand, the need to protect society both in the sense of the maintenance of legal order as well as the application of norms providing for reparation for the harm caused to victims, and, on the other hand, the essential recognition of the needs of the offender having regard to his social adjustment;

First part – General principles

Chapter III – Respect for fundamental rights

Rule 29 *Where arrangements are made for the provision of help to the implementing authority in the form of appropriate supervising activities carried out against payment by organisations or individuals drawn from the community, responsibility for ensuring that the services provided meet the requirements of the present rules shall rest with the implementing authority. The implementing authority shall decide on the action to be taken if the help so provided does not meet these requirements.*

The implementing authority shall also decide on the action to be taken if the supervising activities reveal that the offender has not complied with a condition or obligation or instruction arising from the community sanction or measure imposed.

Chapter IV – Co-operation and consent of the offender

Rule 30 *The imposition and implementation of community sanctions and measures shall seek to develop the offender's sense of responsibility to the community in general and the victim(s) in particular.*

Third part – Management aspects of sanctions and measures

Chapter VIII – Conditions of implementation

Rule 55 *Community sanctions and measures shall be implemented in such a way that they are made as meaningful as possible to the offender and shall seek to contribute to personal and social development of relevance for adjustment in society. Methods of supervision and control shall serve these aims.*

Rule 67 *Tasks provided for offenders doing community work shall not be pointless, but shall be socially useful and meaningful and enhance the offender's skills as much as possible. Community work shall not be undertaken for the purpose of making profit for any enterprise.*

Rule 68 *Working and occupational conditions of offenders carrying out community work shall be in accordance with all current health and safety legislations. Offenders shall be insured against accident, injury and public liability arising as a result of implementation.*

Chapter IX – Methods of work

Rule 70 *The implementation of community sanctions and measures shall be based on the management of individualised programmes and the development of appropriate working relationships between the offender, the supervisor and any participating organisations or individuals drawn from the community.*

Chapter XI – Research on, and evaluation of, the working of community sanctions and measures

Rule 89 *Research on community sanctions and measures shall be encouraged. They should be regularly evaluated.*

Rule 90 *Evaluation of community sanctions and measures should include, but not be limited to, objective assessment of the extent to which their use:*

- conforms to the expectations of law makers, judicial authorities, deciding authorities, implementing authorities and the community concerning the goals of community sanctions and measures;*
- contributes to a reduction in the rates of imprisonment;*
- enables the offence-related needs of offenders to be met;*
- is cost-effective;*
- contributes to the reduction of crime in the community.*

Appendix – Glossary

1. Community sanctions and measures

The term "community sanctions and measures" refers to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.

The term designates any sanction imposed by a court or a judge, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

Although monetary sanctions do not fall under this definition, any supervisory or controlling activity undertaken to secure their implementation falls within the scope of the rules.

Recommendation N° R (93) 6 of the Committee of Ministers to Member States concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison

It wants to answer to the urgent need of developing policies for combating the diffusion of HIV/AIDS and of other transmissible disease inside the prisons. Reference is made to policies to be developed in close collaboration with national health Authorities which have as their focus prevention, education and information about transmissible diseases and which are addressed to both detainees and prison staff . So it is recommended to Member States to give the availability of voluntary tests and services of counseling dedicated, in addition to supply medical services in accordance with national standards and so to what happen *extra moenia*.

It should be noted that the Recommendation clarifies that, when it is possible, detainees with HIV terminal disease should be granted early release and given proper treatment outside the prison. In addition, view the correlation between the use of injection of drugs and the diffusion of infectious diseases, there are specific rules are addressed to drug addicts as a specific group: in particular, socio-sanitary and treatment paths (both in health or social institution and out-patient service) are suggested as an alternative to detention.

Recommendation N° R (97) 12 of the Committee of Ministers to Member States on staff concerned with the implementation of sanctions and measures

It establishes a number of general principles that Member States are recommended to follow for what concern the selection, training, responsibility, work and ethical requirements of the staff concerned with the implementation of sanction and measures. Particularly in-

interesting is the expressed recommendation that penitentiary workers could be seconded – also temporary – to undertake work in probation field: this situation let to understand the will to create a connection between traditional and alternative system, for better realising projects of continuity.

Recommendation N° R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters

I. Definition

These guidelines apply to any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).

II. General principles

1. *Mediation in penal matters should only take place if the parties freely consent. The parties should be able to withdraw such consent at any time during the mediation.*

2. *Discussions in mediation are confidential and may not be used subsequently, except with the agreement of the parties.*

3. *Mediation in penal matters should be a generally available service.*

4. *Mediation in penal matters should be available at all stages of the criminal justice process.*

5. *Mediation services should be given sufficient autonomy within the criminal justice system.*

III. Legal basis

6. *Legislation should facilitate mediation in penal matters.*

7. There should be guidelines defining the use of mediation in penal matters. Such guidelines should in particular address the conditions for the referral of cases to the mediation service and the handling of cases following mediation.

8. Fundamental procedural safeguards should be applied to mediation; in particular, the parties should have the right to legal assistance and, where necessary, to translation/interpretation. Minors should, in addition, have the right to parental assistance.

IV. The operation of criminal justice in relation to mediation

10. Before agreeing to mediation, the parties should be fully informed of their rights, the nature of the mediation process and the possible consequences of their decision.

11. Neither the victim nor the offender should be induced by unfair means to accept mediation.

12. Special regulations and legal safeguards governing minors' participation in legal proceedings should also be applied to their participation in mediation in penal matters.

13. Mediation should not proceed if any of the main parties involved is not capable of understanding the meaning of the process.

14. The basic facts of a case should normally be acknowledged by both parties as a basis for mediation. Participation in mediation should not be used as evidence of admission of guilt in subsequent legal proceedings.

15. Obvious disparities with respect to factors such as the parties' age, maturity or intellectual capacity should be taken into consideration before a case is referred to mediation.

V. The operation of mediation services

V.1. Standards

19. Mediation services should be governed by recognised standards.

20. Mediation services should have sufficient autonomy in performing their duties. Standards of competence and ethical rules, as well as procedures for the selection, training and assessment of mediators should be developed.

21. Mediation services should be monitored by a competent body.

V.2. Qualifications and training of mediators

22. Mediators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities.

23. Mediators should be able to demonstrate sound judgment and interpersonal skills necessary to mediation.

24. Mediators should receive initial training before taking up mediation duties as well as in-service training. Their training should aim at providing for a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims and offenders and basic knowledge of the criminal justice system.

V.3. Handling of individual cases

25. Before mediation starts, the mediator should be informed of all relevant facts of the case and be provided with the necessary documents by the competent criminal justice authorities.

26. Mediation should be performed in an impartial manner, based on the facts of the case and on the needs and wishes of the parties. The mediator should always respect the dignity of the parties and ensure that the parties act with respect towards each other.

29. Mediation should be performed in camera.

30. Notwithstanding the principle of confidentiality, the mediator should convey any information about imminent serious crimes, which may come to light in the course of mediation, to the appropriate authorities or to the persons concerned.

V.4. Outcome of mediation

31. *Agreements should be arrived at voluntarily by the parties. They should contain only reasonable and proportionate obligations.*

32. *The mediator should report to the criminal justice authorities on the steps taken and on the outcome of the mediation. The mediator's report should not reveal the contents of mediation sessions, nor express any judgment on the parties' behaviour during mediation.*

Recommendation N° R (99) 22 of the Committee of Ministers to Member States concerning Prison Overcrowding and Prison Population Inflation

It is recommended to Member States to provide deprivation of liberty, considered *extrema ratio*, only where any other sanction or other measure are clearly inadequate. The vision is evidently that of promotion of community sanctions and measures as strategy that can (also) reduce the resort to detention. There are also the reference to specific modalities of execution of custodial sentences (*semi-liberty, open regimes, prison leave or extra-mural placements*), that are encouraged with the attempt to take into account the treatment aspects. As can be seen from the text of the Recommendation, they are considered the different phases of the criminal proceeding:

III. Measures relating to the pre-trial stage

Avoiding criminal proceedings – Reducing recourse to pre-trial detention

12. *The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial au-*

thority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

IV. Measures relating to the trial stage

The system of sanction/measures – The length of the sentence

15. *In providing for community sanctions and measures which could be used instead of deprivation of liberty, consideration should be given to the following:*

- suspension of the enforcement of a sentence to imprisonment with imposed conditions,*
- probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,*
- high intensity supervision,*
- community service (i.e. unpaid work on behalf of the community),*
- treatment orders / contract treatment for specific categories of offenders,*
- victim-offender mediation / victim compensation,*
- restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.*

In addition, Member States are recommended to provide, also with regard to the enforcement phase, measures able to impact on the overcrowding, by giving preference to individualised measures over collective measures such as amnesties and collective pardons.

The Recommendation underlines the credibility of alternatives, to be demonstrated also by the constitution of dedicated services and by a careful evaluation about the recidivism risk-prediction.

Recommendation N° R (2000) 22 of the Committee of Ministers to Member States on improving the implementation of European rules on community sanctions and measures

Guiding principles for achieving a wider and more effective use of community sanctions and measures

Legislation

1. *Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples:*

- alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority;*
- probation as an independent sanction imposed without pronouncement of a sentence to imprisonment;*
- suspension of the enforcement of a sentence to imprisonment with imposed conditions;*
- community service (i.e. unpaid work on behalf of the community);*
- victim compensation/reparation/victim-offender mediation;*
- treatment orders for drug or alcohol misusing offenders and those suffering from a mental disturbance that is related to their criminal behaviour;*
- intensive supervision for appropriate categories of offenders;*
- restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring imposed with observance of Rules 23 and 55 of the European Rules;*
- conditional release from prison followed by post-release supervision.*

2. In order to promote the use of non-custodial sanctions and measures, and in particular where new laws are created, the legislator should consider indicating a non-custodial sanction or measure instead of imprisonment as a reference sanction for certain offences.

4. Provision should be made for introducing new community sanctions and measures on a trial basis.

Improving the credibility of community sanctions and measures (with judicial authorities, complementary agencies, the general public and politicians)

14. The widest possible dissemination of Recommendation N° R (92) 16 on the European Rules on community sanctions and measures, in the respective national language, should be ensured.

15. Political and administrative leaders and the general public should receive recurring information on the economic and social benefits accruing from a reduced recourse to imprisonment and an increased recourse to community sanctions and measures. There should be a declared public relations policy concerning local media. The information should emphasise that community sanctions and measures can involve the effective supervision and control of offenders.

16. Judicial authorities and the staff of implementation services should create channels of communication that make for the regular discussion of the practical aspects of recommending and implementing community sanctions and measures.

17. As reintegration into the community is an important aim of community sanctions and measures implementation services should actively co-operate with local communities, e.g. by involving persons drawn from the community in offender supervision or by collaborating in local crime prevention schemes.

18. The introduction of new community sanctions and measures into legislation and practice should be accompanied by vigorous public relations campaigns with a view to winning public support.

Setting up effective programmes and interventions

21. *Programmes and interventions for offender reintegration should be based on a variety of methods. When designing programmes and interventions, in the context of community sanctions and measures, special attention should be given to their likely impact on offenders, in particular concerning:*

- basic skills (e.g. basic literacy and numeracy, general problem solving, dealing with personal and family relationships, pro-social behaviour);*
- educational or employment situation;*
- possible addiction to drugs, alcohol, medication and*
- community oriented adjustment.*

22. *The allocation of offenders to specific programmes and interventions should be guided by explicit criteria, such as their capacity to respond to the intervention, their presumed dangerousness to the public and/or to the staff responsible for the programme or intervention, and the personal or social factors which are linked to the likelihood of re-offending. To this end, reliable assessment tools enabling such allocation should be developed and used. Information about these procedures should be made available to interested authorities/persons.*

23. *Special attention should be paid to the development of programmes and interventions for offenders who have relapsed into serious crime or who are likely to do so. In the light of recent research findings, such programmes and interventions should make use, in particular, of cognitive behavioural methods, i.e. teaching offenders to think about the implications of their criminal behaviour, increasing their self-awareness and self-control, recognising and avoiding the situations which precede criminal acts, and providing opportunities to practise pro-social behaviour.*

Research on community sanctions and measures

24. Adequate investment should be made in research to monitor the delivery and evaluate the outcomes of programmes and interventions used in the implementation of community sanctions and measures.

25. Research should seek to identify both the factors that lead of-fenders to desist from further crime and those that fail to do so.

26. Research on the effects of community sanctions and measures should not be limited to the simple recording of post-supervision convictions but should make use of more sensitive criteria. Such research should examine, for example, the frequency and seriousness of re-of-fending together with personal and social indicators of adjustment in the community, and the views of offenders on the implementation of community sanctions and measures.

27. To the greatest possible extent research should enable comparisons to be made of the effectiveness of different programmes.

28. Statistics should be developed that routinely describe the extent of use and the outcomes of community sanctions and measures.

Recommendation N° R (2003) 22 of the Committee of Ministers to Member States on conditional release (parole)

I. Definition of conditional release

1. For the purposes of this recommendation, conditional release means the early release of sentenced prisoners under individualised post-release conditions. Amnesties and pardons are not included in this definition.

II. General principles

3. Conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the communi-

ty through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community.

4.a. *In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.*

4.b. *If prison sentences are so short that conditional release is not possible, other ways of achieving these aims should be looked for.*

5. *When starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period (defined in absolute terms and/or by reference to a proportion of the sentence) and the criteria that will be applied to determine whether they will be granted release ("discretionary release system") or when they become entitled to release as of right by virtue of having served a fixed period defined in absolute terms and/or by reference to a proportion of the sentence ("mandatory release system").*

6. *The minimum or fixed period should not be so long that the purpose of conditional release cannot be achieved.*

7. *Consideration should be given to the savings of resources that can be made by applying the mandatory release system in respect of sentences where a negative individualised assessment would only make a small difference to the date of release.*

8. *In order to reduce the risk of recidivism of conditionally released prisoners, it should be possible to impose on them individualised conditions such as:*

- the payment of compensation or the making of reparation to victims;*
- entering into treatment for drug or alcohol misuse or any other treatable condition manifestly associated with the commission of crime;*

- working or following some other approved occupational activity, for instance, education or vocational training;
- participation in personal development programmes;
- a prohibition on residing in, or visiting, certain places.

9. In principle, conditional release should also be accompanied by supervision consisting of help and control measures. The nature, duration and intensity of supervision should be adapted to each individual case. Adjustments should be possible throughout the period of conditional release.

III. Preparation for conditional release

12. The preparation for conditional release should be organised in close collaboration with all relevant personnel working in prison and those involved in post-release supervision, and be concluded before the end of the minimum or fixed period.

13. Prison services should ensure that prisoners can participate in appropriate pre-release programmes and are encouraged to take part in educational and training courses that prepare them for life in the community. Specific modalities for the enforcement of prison sentences such as semi-liberty, open regimes or extra-mural placements, should be used as much as possible with a view to preparing the prisoners' resettlement in the community.

14. The preparation for conditional release should also include the possibility of the prisoners' maintaining, establishing or re-establishing links with their family and close relations, and of forging contacts with services, organisations and voluntary associations that can assist conditionally released prisoners in adjusting to life in the community. To this end, various forms of prison leave should be granted.

15. Early consideration of appropriate post-release conditions and supervision measures should be encouraged. The possible conditions, the help that can be given, the requirements of control and the possible consequences of failure should be carefully explained to, and discussed with, the prisoners.

IV. Granting of conditional release

Discretionary release system

18. *The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. They should also be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances as well as the availability of resettlement programmes.*

19. *The lack of possibilities for work on release should not constitute a ground for refusing or postponing conditional release. Efforts should be made to find other forms of occupation. The absence of regular accommodation should not constitute a ground for refusing or postponing conditional release and in such cases temporary accommodation should be arranged.*

20. *The criteria for granting conditional release should be applied so as to grant conditional release to all prisoners who are considered as meeting the minimum level of safeguards for becoming law-abiding citizens. It should be incumbent on the authorities to show that a prisoner has not fulfilled the criteria.*

21. *If the decision-making authority decides not to grant conditional release it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner.*

Mandatory release system

22. *The period that prisoners must serve in order to become entitled to release should be fixed by law.*

23. *Only in exceptional circumstances defined by law should it be possible to postpone release.*

24. *The decision to postpone release should set a new date for release.*

X. Information and consultation on conditional release

40. *Politicians, judicial authorities, decision-making and implementing authorities, community leaders, associations providing help to victims and to prisoners, as well as university teachers and researchers interested in the subject should receive information and be consulted on the functioning of conditional release, and on the introduction of new legislation or practice in this field.*

41. *Decision-making authorities should receive information about the numbers of prisoners to whom conditional release has been applied successfully and unsuccessfully as well as on the circumstances of success or failure.*

42. *Media and other campaigns should be organised to keep the general public informed on the functioning and new developments in the use of conditional release and its role within the criminal justice system. Such information should be made speedily available in the event of any dramatic and publicised failure occurring during a prisoner's conditional release period. Since such events tend to capture media interest, the purpose and positive effects of conditional release should also be emphasised.*

XI. Research and statistics

43. *In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.*

44. *In addition to the evaluations recommended above, research into the functioning of conditional release systems should be encouraged. Such research should include the views, attitudes and perceptions on conditional release of judicial and decision-making authorities, implementing authorities, victims, members of the public and prisoners. Other aspects that should be considered include whether*

conditional release is cost-effective, whether it produces a reduction in reoffending rates, the extent to which conditionally released prisoners adjust satisfactorily to life in the community and the impact the development of a conditional release scheme might have on the imposition of sanctions and measures, and the enforcement of sentences. The nature of release preparation programmes should also be subject to research scrutiny.

45. *Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.*

Recommendation N° R (2003) 23 of the Committee of Ministers to Member States on the management by prison administrations of life sentence and other long-term prisoners

Definition of life sentence and long-term prisoners

1. For the purposes of this recommendation, a life sentence prisoner is one serving a sentence of life imprisonment. A long-term prisoner is one serving a prison sentence or sentences totalling five years or more.

The Recommendation proceeds then describing a number of general principles that must guide the management of life sentence and those mentioned of long-term: in particular we refer here to the principle of individualization, standardization, empowerment, security and safety, non-segregation and, finally, to the principle of progression. Just for a greater adherence to these regulations, it is encouraged the planning of what that in concretely will be the expiation of their sentences: in particular, a number of aspects are taken into account, such as par-

ticipation in training, work and rehabilitative activities. In addition, some rules are dictated to mitigate the harmful effects derived from living inside the walls of the prison for long periods, such as the adoption of a series of precautions to preserve family bonds. Finally, it seems interesting noting the reference to those considered as particularly vulnerable categories: specific principles are therefore underlined with reference to elderly detainees, people in terminal stage, mothers and young offenders.

Recommendation N° R (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules

The Recommendation starts with a number of basic principles such as the respect for human rights, the involvement of civil society, the importance of the prison staff, the particular attention that must be reserved to minors and to those who suffer of mental illness and, finally, the prohibition of any discrimination.

Part II is devoted, instead, to the conditions of detention, with particular regard to the admission in the institute, the assignment of detainees to detention cells, hygiene, clothing, diet, legal advice, contacts with the outside world, prison regime, work, recreational activities and sports, education and other issues of fundamental importance. The Recommendation also gives importance to some groups considered particularly vulnerable: women, minors and foreigners, against whom some specific provisions are dictated.

Part III of the Recommendation focuses then on a number of aspects related to the area of health in prison.

It follows a number of provisions dedicated to order, security and control: the Recommendation defines certain special measures of high security or protection, dictates about searches and inspections, states general lines of disciplinary procedures.

Part V defines the role of the Direction and prison staff.

Two dispositions then define some aspects about government inspections and controls carried out by independent bodies.

Part VII focuses instead on untried prisoners and approaches dedicated to them, highlighting the importance of the possibility that they have the same treatment available to those convicted. To sentenced detainees is instead dedicated the Part VIII of Rules, which defines the objective of the scheme reserved to them as the one of behave a life which is responsible and without crime. The Recommendation also emphasises on training and working activities.

Recommendation N° R (2006) 13 of the Committee of Ministers to Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

The Recommendation establishes a number of general principles on the conditions for the application of the pre-trial detention and of the guarantees that must go with it, encouraging the use of alternative measures and recognizing to preventive detention a character of *extrema ratio*, of exception rather than of rule.

Some definitions are indicated below:

I. Definitions and general principles

Definitions

1. [1] *'Remand in custody' is any period of detention of a suspected offender ordered by a judicial authority and prior to conviction. It also includes any period of detention pursuant to rules relating to international judicial co-operation and extradition, subject to their specific requirements. It does not include the initial deprivation of liberty by a police or a law enforcement officer (or by anyone else so authorised to act) for the purposes of questioning.*

[2] 'Remand in custody' also includes any period of detention after conviction whenever persons awaiting either sentence or the confirmation of conviction or sentence continue to be treated as unconvicted persons.

[3] 'Remand prisoners' are persons who have been remanded in custody and who are not already serving a prison sentence or are detained under any other instrument.

2. *[1] 'Alternative measures' to remand in custody may include, for example: undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment; requirements to report on a daily or periodic basis to a judicial authority, the police or other authority; requirements to accept supervision by an agency appointed by the judicial authority; requirements to submit to electronic monitoring; requirements to reside at a specified address, with or without conditions as to the hours to be*

spent there; requirements not to leave or enter specified places or districts without authorisation; requirements not to meet specified persons without authorisation; requirements to surrender passports or other identification papers; and requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.

[2] Wherever practicable, alternative measures shall be applied in the state where a suspected offender is normally resident if this is not the state in which the offence was allegedly committed.

A number of dispositions defines the cases in which it is possible make use of it, among which stands out the risk of recidivism, the relations with the judicial Authority, legal assistance, as well as how it should be possible to proceed both in the case that the person is subsequently condemned (deduction) and in the case he/she is considered innocent (compensation).

Recommendation N° R (2008) 11 of the Committee of Ministers to Member States on the European Rules for juvenile offenders subject to sanctions or measures

Rules aim to ensure rights and safety of young offenders subject to sanctions or measures and to promote their physical, mental and social wellbeing. Some general principles are primarily dictated, such as those of proportionality and individualization, placing into the spotlight the interests of the child. Some definitions are dictated, such as that of young offenders (offender below the age of eighteen) and young adult offenders (offender of an age between eighteen and twenty-one years old).

It is stated that it must be prepared a wide range of alternative measures, privileging the use of those which can have an educational impact on the minor or which can represent a restorative response to the crime committed. Sanctions or alternative measures should be implemented in a way that gives the possibility to let understand the meaning to the young, as well as to contribute to the development of his/her social skills, respecting the constructive pre-existent relations and preserving his/her family relationships.

Part III of the Recommendation focuses instead on the deprivation of the liberty of the young. It seems interesting to note that, after posing the emphasis on youth groups particularly vulnerable (e.g. drug addicts), different possibilities are listed which people can use in fields of detention regime: as example, schooling, vocational training, work, citizenship training, social skills, aggression-management, addiction therapy, individual and group therapies, physical education and sport, programmes of restorative justice and making reparation for the offence, recreational activities, activities outside of the institute and in the community.

Recommendation N° R (2010) 1 of Committee of Ministers to Member States about the Rules of the European Council about Probation

Part I – Scope, application, definitions and basic principles

Definitions

Probation: relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

Probation agency: means any body designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

Community sanctions and measures: means sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

Basic principles

1. Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their

successful social inclusion. Probation thus contributes to community safety and the fair administration of justice.

3. *In all cases where probation agencies deal with issues related to victims of crime, they shall respect their rights and needs.*

12. *Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.*

16. *The competent authorities shall enhance the effectiveness of probation work by encouraging research, which shall be used to guide probation policies and practices.*

17. *The competent authorities and the probation agencies shall inform the media and the general public about the work of probation agencies in order to encourage a better understanding of their role and value in society.*

Part II of the Recommendation is dedicated to organisation and staff of probation services, defining training and quality standards.

Part III – Accountability and relations with other agencies

37. *Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.*

39. *Whether or not probation agencies and the prison service form part of a single organisation, they shall work in close co-operation in order to contribute to a successful transition from life in prison to life in the community.*

Part IV – Probation work

Community service

47. *Community service is a community sanction or measure which involves organising and supervising by the probation agencies of un-*

paid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders.

48. *Community service shall not be undertaken for the profit of probation agencies, their staff or for commercial profit.*

49. *In identifying suitable tasks, the probation agencies shall take into account the safety of the community and of the direct beneficiaries of the work.*

50. *Health and safety precautions shall adequately protect offenders assigned to community service and shall be no less rigorous than those applied to other workers.*

51. *Probation agencies shall develop community service schemes that encompass a range of tasks suitable to the different skills and diverse needs of offenders. In particular, there must be appropriate work available for women offenders, offenders with disabilities, young adult offenders and elderly offenders.*

52. *Offenders shall be consulted about the type of work they could undertake.*

Supervision measures

53. *In accordance with national law, probation agencies may undertake supervision before, during and after trial, such as supervision during conditional release pending trial, bail, conditional non-prosecution, conditional or suspended sentence and early release.*

54. *In order to ensure compliance, supervision shall take full account of the diversity and of the distinct needs of individual offenders.*

55. *Supervision shall not be seen as a purely controlling task, but also as a means of advising,*

Assisting and motivating offenders. It shall be combined, where relevant, with other interventions which may be delivered by probation or other agencies, such as training, skills development, employment opportunities and treatment.

Work with the offender's family

56. Where appropriate, and in accordance with national law, probation agencies, directly or through other partner agencies, shall also offer support, advice and information to offenders' families.

Electronic monitoring

57. When electronic monitoring is used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance.

58. The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety.

It follows a number of disposition dedicated to resettlement and aftercare and to the peculiarity of probation work with offenders who are foreign national and with national sanctioned abroad. Part V of the Recommendation is devoted to the process of supervision, that is not exhausted in the concept of control.

Part VI – Other work of probation agencies

Work with victims

93. Where probation agencies provide services to victims of crime they shall assist them in dealing with the consequences of the offence committed, taking full account of the diversity of their needs.

94. Where appropriate, probation agencies shall liaise with victim support services to ensure that the needs of victims are met.

95. Where probation agencies are in contact with victims and/or seek their views, the latter shall be clearly informed that decisions regarding the sanctioning of offenders are taken based on a number of factors and not only the harm done to a particular victim.

96. Even where probation agencies do not work directly with victims, interventions shall respect the rights and needs of victims and shall aim at increasing offenders' awareness of the harm done to victims and their taking responsibility for such harm.

Restorative justice practices

97. Where probation agencies are involved in restorative justice processes, the rights and responsibilities of the offenders, the victims and the community shall be clearly defined and acknowledged. Appropriate training shall be provided to probation staff. Whatever specific intervention is used, the main aim shall be to make amends for the wrong done.

Part VII focuses on complaint procedures, inspection and monitoring, Part VIII finally highlights the importance of the scientific research, of the evaluation, of the work with the media and the public.

Recommendation N° R (2012) 5 of the Committee of Ministers to Member States on the European Code of Ethics for Prison Staff

It recommends to the governments of Member States to inspire their internal legislation, practices and codes of ethics of the prison staff to the principles established in the text of the European Code of Ethics for Prison Staff attached to the Recommendation. The main purposes of the prison staff are defined, among them it is underlined the protection and the respect of the rights and fundamental freedoms of the person, the safety of detainees and their custody in accordance with international norms and in particular

to the already examined European Prison Rules, the protection of society from criminal activities and the rehabilitation of offenders. The guidelines defined must guide the behavior of prison staff according to responsibility, integrity, respect and protection of human dignity, fairness, impartiality and non-discrimination, cooperation, as well as confidentiality and data protection. For what concern the treatment, it seems important to note that:

19. Prison staff shall be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign nationals, elderly and disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs.

Recommendation N° R (2012) 12 of the Committee of Ministers to Member States concerning foreign prisoners

After the definitions and the application field of the Recommendation, it states a number of basic principles: among them it seems important to underline what sets the non-exclusion of the accused and convicted foreigners from the access to alternative sanctions and measures.

It is then specified that they should not be kept in custody or convicted to custodial sanctions based only to their status, but, as for the other defendants and offenders, only when it is strictly necessary. The dispositions dedicated to the conditions of detention regulate, according to the principle of non-discrimination, aspects concerning the entrance, allocation, housing, hygiene, clothing, diet, legal advice and assistance, contacts with the outside world as well to those with consular representatives, the prison system, work, recreational activities and sports, education and training, and religious freedom. Particular attention is paid to the specific group of the women, as well as newborns of foreign offender mothers.

Recommendation N° R (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders

Part I – Definitions and basic principles

Definitions

1. a. A dangerous offender is a person who has been convicted of a very serious sexual or very serious violent crime against persons and who presents a high likelihood of re-offending with further very serious sexual or very serious violent crimes against persons.

g. Secure preventive detention means detention imposed by the judicial authority on a person, to be served during or after the fixed term of imprisonment in accordance with its national law. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that he or she may commit other very serious offences in the future.

h. Preventive supervision means measures of control, monitoring, surveillance or restriction of movement imposed on a person after he or she has committed a crime and after he or she has served a prison sentence or instead of. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that he or she may commit other very serious offences in the future.

It is then explicitly established that the Recommendation does not apply to children and persons with mental disorders who are not under the responsibility of the prison system.

Part II is dedicated to judicial decision for dangerous offenders: it is established that the judicial decision about the imposition of secure preventive detention should be based on a risk-assessment report provided from experts.

Part II – Judicial decision for dangerous offenders

Preventive supervision

23. Preventive supervision may be applied as an alternative to secure preventive detention, as a condition for release on probation, or after release, and should be reviewed on a regular basis.

24. Such supervision may consist of one or more of the following measures set up by the competent authority:

- i. regular reporting to a designated place;*
- ii. the immediate communication of any change in place of residence, of work or position in the way and within the time limit set out;*
- iii. prohibition from leaving the place of residence or of any territory without authorisation;*
- iv. prohibition from approaching or contacting the victim, or his or her relatives or other identified persons;*
- v. prohibition from visiting certain areas, places or establishments;*
- vi. prohibition from residing in certain places;*
- vii. prohibition from performing certain activities that may offer the opportunity to commit crimes of a similar nature;*
- viii. participation in training programmes or professional, cultural, educational or similar activities;*
- ix. the obligation to participate in intervention programmes and to undergo regular re-assessment as required;*
- x. the use of electronic devices which enable continuous monitoring (electronic monitoring) in conjunction with one or some of the measures above;*

xi. other measures provided for under national law.

The rules that follows are dedicated to the principle of evaluation of the risk during the application of a sentence, evaluation that should be repeated periodically by trained staff. The recommendation continues with Part IV about the risk management and with Part V about the treatment and conditions of imprisonment of dangerous offenders.

Recommendation N° R (2014) 4 of the Committee of Ministers to Member States on electronic monitoring

II. Definitions

"Electronic monitoring" is a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process. The current forms of electronic monitoring are based on radio wave, biometric or satellite tracking technology. They usually comprise a device attached to a person and are monitored remotely.

Depending on the national jurisdictions, electronic monitoring may be used in one or more of the following ways:

- during the pre-trial phase of criminal proceedings;*
- as a condition for suspending or of executing a prison sentence;*
- as a stand-alone means of supervising the execution of a criminal sanction or measure in the community;*
- in combination with other probation interventions;*
- as a pre-release measure for those in prison;*
- in the framework of conditional release from prison;*

- *as an intensive guidance and supervision measure for certain types of offenders after release from prison;*
- *as a means of monitoring the internal movements of offenders in prison and/or within the perimeters of open prisons;*
- *as a means for protecting specific crime victims from individual suspects or offenders.*

In some jurisdictions, where electronic monitoring is used as a modality of execution of a prison sentence, those under electronic monitoring are considered by the authorities to be prisoners.

In some jurisdictions, electronic monitoring is directly managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a service-providing contract with a State agency.

In some jurisdictions, the suspect or offender carrying the device is required to contribute to the costs of its use, while in others the State alone covers the costs of electronic monitoring.

In some jurisdictions electronic monitoring may be used in the case of juvenile suspects and offenders, while in others the measure is not applicable to juveniles.

I.2. TOWARDS AN EUROPEAN CRIMINAL LAW?

The Council of Europe held a special meeting on 15 and 16 October 1999 in Tampere on the creation of freedom, security and justice in the European Union. Among others, it is therefore endorsed the principle of mutual recognition of judicial decision, which is fundamental in the field of the execution of punishments. For the effective implementation of this principle, certainly based on a mutual trust between Member States with characteristics often very inhomogeneous, the conclusion recommends the adoption of a program of measures by the Commission and the Council of Europe. This program, adopted on 29 November 2000, highlights a number of issues that need to be taken into account as a priority if we want to reach an effective recognition of judgments in criminal matters. As it is of relevance here, among them we find:

- the individualization of the sanction, which implies an assessment of the criminal record of the offender and therefore on recidivism;
- the imposition of provisional measures for confiscation or for the restitution to victims;
- the implementation of decisions relating to persons (arrest or non-custodial pre-trial measures);
- the consideration of the decisions to prosecute taken in other Member States;

- the application of prison sentences, fines, confiscation of property or disqualification of driving;
- the transfer of sentenced person for the purpose of facilitating social rehabilitation;
- any decision taken in the post-criminal monitoring field (measures of supervision or conditional release) (Council of Europe, 2001).

The answer to these questions seems really ambitious: basically, it would consist in the creation of mechanisms that can be applied to concrete cases, to be identified through feasibility studies aimed at exploring the (in)existence of standardized instruments facilitating both the exchange of information and the adoption of operating and structural models common and/or central.

Therefore, on this basis the Council adopted a series of framework decisions on which it is worth dwelling.

FRAMEWORK DECISION: legal act which may be adopted by the Council of the European Union for the pursuit of police and judicial cooperation in criminal matters (so-called third pillar). This tool aims at the harmonization of laws, regulations and administrative provisions of Member States. Framework decisions are binding with regard to the result, whilst leaving national authorities the choice of forms and means.

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

This decision allows a Member States to enforce a prison sentence imposed by another one against a person who resides in its territory, describing how European countries recognise and enforce each other's judgments on criminal matters. It sets up a system for the transfer of convicted prisoners back to the EU country of which they are nationals or normally live or to another EU country with which they have close ties so that they serve their prison sentence there.

In order to avoid possible terminological misunderstanding, we report in full the definitions provided by the same framework decision:

CHAPTER I - GENERAL PROVISIONS

Article 1 - Definitions

a) «judgment» shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;

b) «sentence» shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;

c) «issuing State» shall mean the Member State in which a judgment is delivered;

d) «executing State» shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.

The purpose of this Decision is to establish the rules under which a Member State, in order to facilitate the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence. The Decision shall not apply to fines and confiscation orders, which are regulated by other framework decisions. It is important to note that this Framework Decision shall apply when the convicted is in the issuing State or in the executing State.

Chapter II – Recognition Of Judgments And Enforcement Of Sentences

Criteria for forwarding a judgment and a certificate to another Member State are here defined: when the sentenced person is in the issuing State or in the executing State, the judgement together with the certificate may be forwarded to:

- the Member State of nationality of the sentenced person in which he/she lives; or
- the Member State of nationality, to which, while not being the Member State where he/she lives, the sentenced person will be deported, once he/she is released from the enforcement of the sentence on the basis of an expulsion or deportation order linked to the judgment;
- any other Member State, the competent authority of which consents to the forwarding of the judgment.

In all cases, the primary objective is the social rehabilitation, of which real possibilities can be verified through consultations between the issuing and the executing State. The issuing State shall forward the documents to only one executing State at any one time.

In all cases where the sentenced person is still in the issuing State, he/she shall be given an opportunity to state his/her opinion orally or in writing.

The competent authority of the executing State shall recognise a judgment which has been forwarded by the issuing State and

adopts all the necessary measures for the enforcement of the sentence, unless it decide to invoke one of the grounds of refusal laid down by the Decision.

The Decision lists several offences that, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, shall give rise to recognition of the judgment and enforcement of the sentence imposed, also without verification of the double criminality of the act: participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud, laundering of the proceeds of crime, counterfeiting currency, computer-related crime, environmental crime, facilitation of unauthorised entry and residence, murder, grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, organized or armed robbery, illicit trafficking in cultural goods, swindling, racketeering and extortion, counterfeiting and piracy of products, forgery of administrative documents and trafficking therein, forgery of means of payment, illicit trafficking in hormonal substances and other growth promoters, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, arson, crimes within the jurisdiction of the International Criminal Court, unlawful seizure of aircraft/ships, sabotage

Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the

punishment or measure provided for under its own law for similar offences. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence in a set of cases, e.g. when the certificate is incomplete or manifestly does not correspond to the judgment, or when the enforcement of the sentence is statute-barred according to the law of the executing State the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued; or when at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served. Unless grounds for postponement exist, the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

Then we find a set of articles about transfer and transit from the issuing State and the executing State.

Chapter III – Final Provisions

The Framework decision shall apply since 5 December 2011.

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

This Framework Decision was born for seeking common rules for the case that a non-custodial sentence involving the supervi-

sion of probation measures or alternative sanctions has been imposed to a person who has no legal or habitual residence in the sentencing State. It extends the principle of mutual recognition of judicial decisions to the implementation of non-custodial sentences, defining the rules to be followed by each EU country to recognise judgments and supervise probation measures (enabling early release) and alternative sanctions (imposing alternatives to detention) issued by other EU countries. The scope of mutual recognition of the sentences imposing non-custodial penalties is not only to increase the chances of the social reintegration of the offender, allowing the maintenance of familiar, linguistic and cultural bonds, but also to better monitor these measures, in order to prevent recidivism, keeping into account the protection of victims and society. There is a number of probation measures and alternative sanctions common to all Member States and that they may monitor.

The probation measures and alternative sanction that, in principle, is mandatory to monitor includes inter alia instruction related to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change the place of residence for reasons of domestic violence), education and training (such as an obligation to follow a 'safe-driving course'), leisure activities (such as an obligation to cease playing or attending a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment). Where appropriate, it could be used electronic monitoring to supervise the probation measures or alternative sanctions, in accordance with national legislation and procedures. The issuing State may forward a judgment and, where applicable, a probation decision to the Member State in which the sentenced person is lawfully and ordinarily residing, for the purposes of the recognition and supervision of probation measures and alternative sanction included in the judgment. Then the Decision states that a Member State could refuse to recognize a judgment and, where applicable, a probation decision, if the judgment concerned was issued against a person who has not

been found guilty, as in the case of a mentally ill person and the judgement or, where applicable, the probation decision provides for medical/therapeutic care which the executing State cannot supervise in respect of such person under its national legislation. If the probation measures or alternative sanction include community service, the executing State should be entitled to refuse to recognize the judgment and, where applicable, the probation decision if the community services would normally be completed in a period of less than six months.

Even in this case we report in full the definitions provided by the same Framework Decision:

Article 2 - Definitions

1. *«Judgment» shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:*

a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;

b) a suspended sentence;

c) a conditional sentence;

d) an alternative sanction;

2. *«suspended sentence» shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;*

3. *«conditional sentence» shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation*

measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4. «alternative sanction» shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

5. «probation decision» shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:

(a) granting a conditional release; or

(b) imposing probation measures;

6. «conditional release» shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;

7. «probation measures» shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release.

Then it is established a set of probation measures and alternative sanctions that fall under this Framework decision:

a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

c) an obligation containing limitations on leaving the territory of the executing State;

d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

e) an obligation to report at specified times to a specific authority;

f) an obligation to avoid contact with specific persons;

g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;

i) an obligation to carry out community service;

l) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;

m) an obligation to undergo therapeutic treatment or treatment for addiction.

The criteria for the forwarding of the judgement are finally defined: the competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding. The procedure for forwarding judgments and a probation decisions schedules that the standard

certificate, included in the appendix of the Framework Decision, is attached to them. This Decision continues basically tracing the structure of the Decision 909, listing the same offenses as those that give rise to recognition of the judgment and enforcement of the sentence imposed without verification of the double criminality of the act, and establishing the principles that should guide the adaptation of judgments, as well as those that can base the refusal of recognition.

The period within which the verdict on recognition of the judgment or of the probation decision must be taken is shorter than the one scheduled in Decision 909, and so in this case is equal to sixty days.

The executing State is competent to decide upon all the issues related to the execution of the alternative sanction or of the probation measures.

Article 14 – Jurisdiction to take all subsequent decisions and governing law

1. The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

(a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

The deadline within which Member States must be conform to the provisions of the Framework Decision was 6 December 2011.

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

These three important tools aim to contribute to the creation of an European system that, based on the mutual trust between national judicial systems, may reduce the use of custodial sanction and measures and increase the use of alternatives to imprisonment, which are important in the enforcement phase as well as in the pre-trial one. It is so important to know and compare the systems of the different Member States.

As for the actual degree of implementation of the three Framework Decisions recently analysed, useful information are provided by the Report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention.

The deadline for the implementation of the three Framework Decisions – which are binding as to the

result to be achieved but not as to the forms and methods of implementation – had expired respectively since two years (with reference to the framework decision on the transfer of detainees and the one on probation and on alternative sanctions) and one year (with reference to the framework decision the European supervision order) at the time of the drafting of the Report. Despite the established deadlines are now expired, the state of the actual implementation of the Decisions, as photographed by the working document annexed to the Commission report, seems not yet satisfactory: only 18 Member States have implemented Decision on transfer of prisoners, 14 the one on probation and alternative sanctions, and 12 European supervision order (Table I.2.1).

According to the February 2014 Commission report, among the countries involved in our research, only the United Kingdom and Italy have implemented the Decision 909 on the transfer of detainees within the deadline; however, the same countries have not implemented the other two Decisions. Bulgaria has instead implemented only the Decision 947 on probation and alternative sanctions, about four months after the deadline. The Netherlands and Croatia can be considered virtuous countries, as they have implemented all of the analysed instruments, which must be considered components of a strategy to make the alternative measures more accessible to vulnerable groups (in particular, foreigners), at all stages of process.

Table I.2.1. Estate of the art of the implementation of Framework Decisions 2008/909/GAI, 2008/947/GAI e 2008/829/GAI

	FD 2008/909/JHA on transfer of prisoners	FD 2008/947/JHA on probation and al- ternative sanctions	2008/829/JHA on european su- pervision order
	Deadline for implemen- tation: 5.12.2011	Deadline for implementation: 6.12.2011	Deadline for imple- mentation: 1.12.2012
AT	YES (01.01.2012)	YES (01.08.2013)	YES (01.08.2013)
BE	YES (18.06.2012)	YES (23.06.2012)	NO
BG	NO	YES (14.03.2012)	NO
CZ	YES (01.01.2014)	YES (01.01.2014)	YES (01.01.2014)
CY	NO	NO	NO
DE	NO	NO	NO
DK	YES (05.12.2011)	YES (05.12.2011)	YES (01.12.2012)
EE	NO	NO	NO
EL	NO	NO	NO
ES	NO	NO	NO
FI	YES (05.12.2011)	YES (05.12.2011)	YES (01.12.2012)
FR	YES (07.08.2013)	NO	NO
HR	YES (01.07.2013)	YES (01.07.2013)	YES (01.07.2013)
HU	YES (01.01.2013)	YES (01.01.2013)	YES (01.01.2013)
IE	NO	NO	NO
IT	YES (07.09.2010)	NO	NO
LT	NO	NO	NO
LU	YES (01.03.2011)	NO	NO
LV	YES (01.07.2012)	YES (01.07.2012)	YES (01.07.2012)
MT	YES (01.01.2012)	NO	NO
NL	YES (01.11.2012)	YES (01.11.2012)	YES (01.11.2013)
PL	YES (01.01.2012)	YES (01.01.2012)	YES (01.12.2012)
PT	NO	NO	NO
RO	YES (25.12.2013)	YES (25.12.2013)	YES (25.12.2013)
SE	NO	NO	NO
SI	YES (20.09.2013)	YES (20.09.2013)	YES (20.09.2013)
SK	YES (01.02.2012)	YES (01.02.2012)	YES (01.07.2013)
UK	YES (05.12.2011)	NO	NO
TOT.	18 MS	14 MS	12 MS

Source: Commission Staff working document, Table "State of play" and "Declarations" SWD(2014)34 final, 5.12.2014.

As far as drug and alcohol addicts are concerned, *ad hoc* intervention are developed. As we have noted, it would be possible to improve the area of foreigners detention: also foreign national have to be considered a vulnerable groups, with less opportunities to be admitted to alternatives to imprisonment sanction and measures.

The transposition of these instruments is absolutely important because it is the base for an effective real cooperation between Member State. This collaboration could lead us to more reintegration opportunities, thanks to the empowerment of community bonds.

* * *

After the analysis of the European framework, it is evident that the purpose of the European tools is the harmonization of national regulations. This standardization has to follow many guidelines that are the expression of some needs, like societal security, victim restoration, social reintegration of the offender - in the society, with the society.

Moreover, Europe asks us to widen the set of alternative sanction and measures and to provide them at all stages of the criminal proceeding. Alternatives to imprisonment, as they are defined at an European level, have to consider the needs described before, but also be accessible for much many people. Keeping into account the individualization of the offender treatment, we can see the need that Member States would consider several programs and community measures to be addressed to vulnerable groups. Partially anticipating what we will see below, we note that this is what happened, for example, with regard to minors, who have a special position in all the countries analysed. *Ad hoc* interventions are developed with regard to drug and alco-

hol addicts, for which the proper compliance with the requirements assumes legal qualifications different from time to time. As we noted, an area in which it would be possible to make improvements is the one of foreign national imprisonment: they are also considered a specific vulnerable group and with less chance of access to alternative to imprisonment sanction and measures.

CHAPTER II

THE STATE OF THE ART

The current chapter provides a description of the alternatives sanctions and measures in the Member States involved in the project. The following pages also consider specific means of enforcement for vulnerable groups such as youth offenders and special programs for drug addicts. The aim of the chapter is to offer a view of the national probation systems and of the community measures in a comparative perspective. The analysis will also keep into account the factors affecting success or failure in their implementation and their impact on re-offending risk and their relation with recidivism.

II.1. BULGARIA

Thanks to the cooperation of D. Chankova, S. Milusheva, R. Velinova, S. Ivanov and S. Nikolov, SVCCC Foundation (BG)

II.1.1. Prison system in Bulgaria

The legal framework of Bulgarian prison system comes from the following laws:

- Criminal Code (CC);
- Criminal Procedure Code (CPC);
- Law on Execution of Penal Sanctions and Detention in Custody (LEPSDC): it provides basic principles such as exercising control over the behaviour of the convicted, differentiating and individualizing the effects of the execution of the penal sanction; humanism; prohibition of torture and other cruel and inhuman treatments; publicity

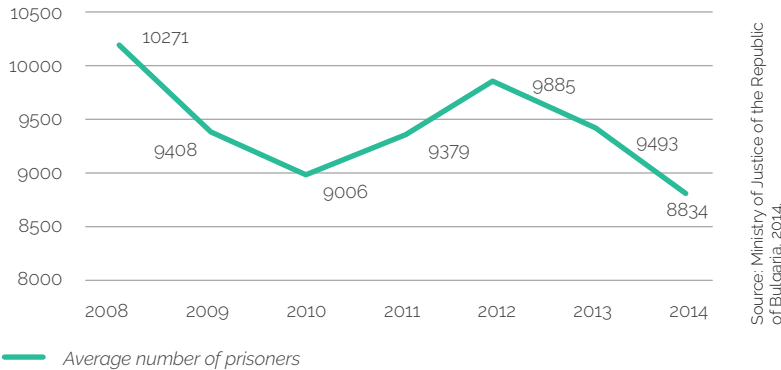
and independent control over the activities of the Authorities; interaction between state bodies and non-governmental organizations, etc. (Yordanova & Markov, 2011);

- Regulation for Application of the LEPSDC (RALEPSDC).

Democratic changes since 1990s and the access to the European Union have been the basis also for the development of penitentiary standards, unfortunately not completely achieved. Therefore, penitentiary issues still exists.

Imprisonment has been the most applied penalty in Bulgaria for years. The Criminal Code provides two custodial sanctions other than imprisonment: **life imprisonment**, introduced in 1995, and **life imprisonment without parole**, introduced after the abolition of the death penalty in 1998: Bulgaria is among the few European Countries where this penal sanction exists. As far as life imprisonment is concerned, the Bulgarian Criminal Code provides a possibility for its commutation to imprisonment for a term of 30 years if the sentenced person has served not less than 20 years. Charts II.1.1 shows the trend of prisoners in Bulgaria in the research timeframe.

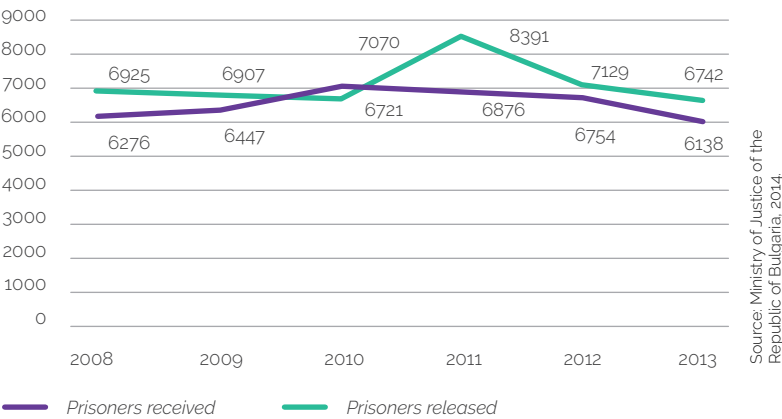
Chart II.1.1. Average number of prisoners in Bulgaria in the period 2008-2013



After a growth in the period 2010-2012, the number of inmates seems to decrease.

Chart II.1.2 shows the trend of entrance in prison facilities and the number of release in the timeframe of the research.

Chart II.1.2. *Number of prisoners received and released in Bulgaria in the period 2008-2013*



Custodial sentence are served at prisons and reformatories, as well as at prison hostels with them. The Court assigns the initial regime of service of the sentence and the type of prison facility: prison, prison hostel or reformatory, at which the sentenced person must be placed initially. In most cases, there are possibilities for an alteration of the regime and for transfer from one prison facility to another (Yordanova & Markov, 2011). The law states that sentenced persons shall be placed at penitentiary facility nearest to the permanent address thereof (art. 56.2 LEPSDC). Despite this provision, the conditions of the Bulgarian penitentiary system do not allow the practical application of this principle in large part of the cases, and in 2010 the Council of Ministers highlighted the negative consequences deriving

from its lack of application. Furthermore, the Bulgarian law provides the principle of differentiation and individualization of the penitentiary treatment, depending on the gender, age, nature of the offence committed and previous convictions. The Court has to respect the following criteria set out by the law:

- any persons sentenced for the first time to a term of imprisonment not exceeding five years for fraudulent offences and any persons sentenced for negligent offences serve their sentences at open prison hostels. There is also the possibility of allocation at closed prison if the sentenced person has gone into hiding from the criminal procedure authorities and has been put on a national wanted list; or if the offender suffers from alcoholism or narcotic addiction or from a serious mental illness;

- any sentenced recidivist and any other sentenced non-recidivists serve their sentences at prisons and closed prison hostels.

Prisons and closed prison hostels apply low-security, medium-security and special-security regime. Open prisons may apply minimum-security and low-security regime.

Remarkable practices in Bulgaria are mainly linked to imprisonment and consist in measures that shorten the detention period. **Voluntary work** is used to shorten the prison sentence, so that it can be considered an alternative to imprisonment. This favourable effect motivates inmates to work.

Also **studying**, vocational training or taking part in professional qualification courses, lead to a reduction of prison sentence. Attending 16 school classes shorten the sentence by three days. If an inmate misses three or more classes per week, or violates the discipline, the weekly reduction of the sentence can be cancelled. Successfully passed bi-

annual, annual or qualification degree exams equal five working days each. For the prisoners who are both studying and working, the days are added together but cannot exceed 22 days per month. In the school year of 2013/2014, there were seven schools and four school branches in the Bulgarian prison system. As of September 2013, the total number of inmates attending school was 1744 (102 inmates more than the previous year) (Graebisch & Burkhardt, 2014).

II.1.2. Alternatives to imprisonment in Bulgaria

The probation service start to be discussed around 1994-1995, within the deep reform of the judicial system. Since 1995, several projects aiming at enhance the prisoners' rights and introducing alternative measures have been developed thanks to the support of experts from other European member States, to the financial aid provided by organizations such as Open Society Foundation, the British Council and the Norwegian Government and to the great cooperation of NGOs. Thus, a series of projects has been developed, and finally probation was introduced in the Bulgarian Criminal Code thanks to the Law for Amendments of 27 September 2002. Then, the Law for Execution of Penalties of 23 November 2004, together with other amendments to the Criminal Code, regulated the nature of probation, the mechanisms for its execution and its implementation (Rusinov, Karaganova & Manolcheva, 2008).

The tasks of the probation services include an assessment of the offending behaviour of the convicted.

A special assessment methodology is implemented in Bulgarian probation services and prisons: the Offender Assessment System (OAS). It is based on the OASys of the United Kingdom, adapted and validated with the support of British experts and is currently being standardized. It investigates 14 factors ("zones") described as crimi-

nogenic, and can lead to three different conclusions (low risk, middle risk and high risk) and qualitative and quantitative information. On this basis, the probation officer in charge of the management of the case prepares a plan for execution of the supervision in cooperation with the offender. This plan includes all aspects of the execution of the measure (which intensity depends on the recidivism risk) (Rusinov, Karaganova & Manolcheva, 2008).

The probation service has not the obligation to provide pre-sentence reports; its main activities are linked to the execution of the penalty.

Bulgarian law provides that the probation services can delegate the execution of particular elements of the probation measures to NGOs or specialists of the field. However, the lack of standards lead to a poor application of this provision (Rusinov, Karaganova & Manolcheva, 2008).

In Bulgaria, the probation service deals with adult offenders but also with juveniles (14-18 years of age), for whom special rules are provided.

Probation is an alternative to imprisonment introduced in the Bulgarian code in 2002 (SG 92/2002).

In Bulgaria, *PROBATION* is set of correctional, educational and prohibitive measures aiming at avoid re-offending, involving certain rights and interests or who committed a crime. Probation consists in the imposition of conditions and obligations, which the sentenced persons has to respect (otherwise, imprisonment can be imposed).

Probation consists in a combination of two or more probation measures indicated in art. 42a CC (analysed below), which can be divided in three groups:

- measures aiming at control the convicted;
- support measures;
- restorative measures.

Specifically, probation measures are:

1. Compulsory address registration. It is a restrictive measure for supervision and control of the convicted.

2. Compulsory periodic meetings with probation officer. Also this measure is a restrictive one, but also including some elements of support.

To require the offender to reside at a specified addressed and to meet the probation officer are measures that shall always included in probation.

3. Restriction in freedom of movement, which can include prohibition of visiting public and entertainment places, prohibition of leaving a specified city/town for more than 24 hours without permission of the probation officer or of the officer/prosecutor, or prohibition of leaving home for a certain period of the night/day. The seriousness of the measure imposed depends from the seriousness of the offence.

Although Bulgarian regulations provide electronic monitoring, its practical implementation is at a first stage. Electronic monitoring can be applied on persons sentenced to probation in order to facilitate the probation measures of compulsory registration by current address and the restriction of movement. Compulsory registration in such cases is controlled by voice recognition software over the telephone. In 2010, the Bulgarian and the British Ministries of Justice jointly implemented a six-month pilot project for electronic monitoring, which unfortunately was not further developed. According to media reports, 10 persons

sentenced to probation have been placed under electronic monitoring within 2014 (Graebisch & Burkhardt, 2014). Data provided by the Ministry of Justice (June 2014) show an increase of the application of electronic monitoring, which remain poor.

4. Participation in vocational training programs, which can promote a law-abiding lifestyle. This is a support measure.

This measure consists in participation in professional qualification courses and/ or programs for corrective influence. These ones can be:

- personal development programs including literacy courses, developing job search skills, positive communication with the social services and the police;

- corrective programs aimed at changing the personal values and behaviour of the offender or to help him/her to overcome an addiction.

During the implementation of these vocational training programs, the probation service can cooperate with state institutions, NGOs and volunteers (Rusinov, Karaganova & Manolcheva, 2008).

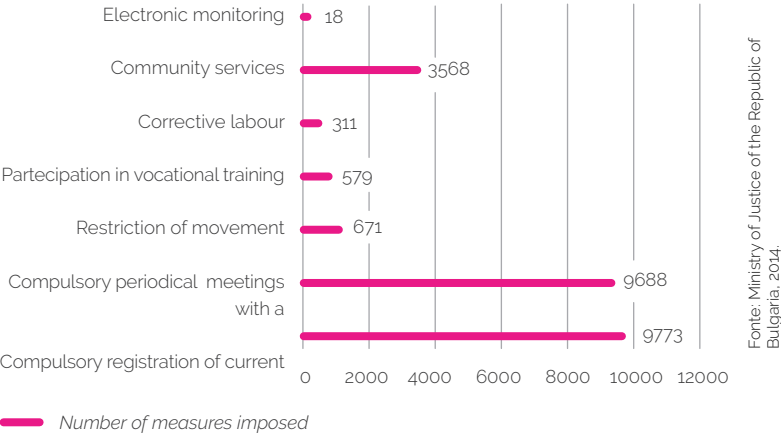
These first four measures can last from six months up to three years.

5. Corrective labour: it is a restorative measure for the reparation of the harm caused by the crime. It is applied when the offender is employed and includes reduction of wages on behalf of the State from 10 to 25%. If the convicted remains unemployed, corrective labour is replaced by community service (one day of remaining corrective labour corresponds to one hour of community service). It can last from three months up to two years.

6. Community service (also without restriction of movement). This measure is not applicable to minors under 16 years of age. It can last from 100 to 320 hours,

but not for more than three consecutive years. Community services may take place according to the Probation Council selection; however the places should not be privately owned, but State or municipal ownership of more than 50% of the capital is required (Rusinov, Karaganova & Manolcheva, 2008). Chart II.1.3. shows the number of the abovementioned measures imposed within probation programs as at June 2014.

Chart II.1.3 *Number of measures imposed within probation programs in Bulgaria as at June 2014*



Probation measures can be imposed on persons who have committed crimes defined by relatively low public impact, for which the Penal Code states the penalty of imprisonment up to three years. They can be imposed as a single penalty, but also as a substitution of imprisonment and a complementary penalty in case of conditional sentencing, or it can be imposed in case of conditional release from prison.

Probation supervision can be imposed to conditionally released prisoners, after they have served half or – in particular serious cases – two

thirds of their period of imprisonment, and if they have demonstrated good behaviour and active participation in training, educational and labour activities (Rusinov, Karaganova & Manolcheva, 2008).

Probation seems to be in increase and more applied than in the past: the Bulgarian Ministry of Justice reported that in the period 2005-2013 the probation has represented approximately the 50% of the total sentences; furthermore data referred to June 2014 show a wide application of the measures, which imposition seems to have overcome the number of effective prison sentences.

Chart II.1.4. *Number of prisoners and number of persons serving a probation sentence in Bulgaria as at June 2014.*



In Bulgaria, probation can be revoked under determined conditions: if the offender commits another crime of general nature (a crime prosecuted *ex officio*) before the expiry of the probationary period and is again sentenced to imprisonment, he/she will serve both the suspended sentence and the new one. If the probationee commits a negligent crime, the Court may order the suspended sentence not to be served in whole or in

part. If the probationee, without good reason, interrupts the treatment imposed by the Court, this one will order him/her to serve the entire suspended prison sentence (Graebisch & Burkhardt, 2014).

Probation seems also to be cheaper than imprisonment, as the Ministry of Justice refers that the cost of a prisoner is 700 BGN (€ 358,09) per month, while the one of a person executing a probation sentence is 220 BGN (€ 358,09) (Ministry of Justice of the Republic of Bulgaria, 2014).

Other alternative measure (other than probation, which can include the above elements) are:

- confiscation of property: consists in confiscation of property on behalf of the State, and so is not applicable if the sentenced is out of property and it cannot impact on the minor necessities for living;
- fine: it is compared to income, property and family obligations of the perpetrator and cannot be lower than 100 BGV (€ 51,16);
- deprivation of the right to hold certain public office, to practice a profession or an activity, disqualification of received honorary titles and awards, loss of military rank and public censure. This last measure consists in publicly reprimand the offender through press or other manner indicated by the Court.

It is important to remember that probation is the most important alternative penalty under the Criminal Code, consisting in separate probation measures. Furthermore, it can be imposed together with adjunctive punishment, such as public censure, disqualification and fine.

In the pre-trial phase, alternatives to imprisonment that can be applied are:

1. Subscription;
2. Bail;
3. House arrest, which is imposed when there is possibilities of another crime or absconding.

The Bulgarian Criminal Code lists in Chapter VII some situation of exemption from serving the sentence imposed:

- Probation sentence;
- Early release;
- Clemency.

II.1.3. Specific and vulnerable groups (of prisoners) in Bulgaria

It seems here important also to investigate the alternative measures and the special penitentiary regimes provided for specific and vulnerable groups.

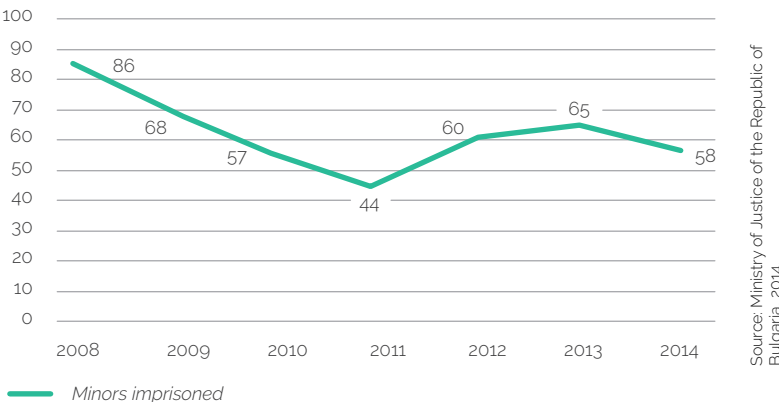
Chapter VII of Bulgarian Criminal Code provides special rules for **minors** who committed an offence. Bulgarian law divides minors into two ranges of age: from 14 to 16 and from 16 to 18 years.

Penalties that can be applied to underage are:

- Imprisonment;
- probation;
- public censure;
- deprivation of the right to practice a profession or activity.

Juveniles deprived of their liberty are placed in reformatories, separately for boys and girls.

Chart II.1.5. *Number of minors imprisoned in Bulgaria in the period 2008-2014*



In comparison with the general group of adult males, juveniles have some additional rights, such as much contact with the outside world, extra stay in open space, more visits by relatives and by non-governmental organisations, etc. This is because their imprisonment is specifically addressed to their rehabilitation and law-abiding life outside prison. The rehabilitation in reformatories is focused primarily on education. Going to school reduces the duration of imprisonment as three days in school deduct one day of the sentence. Juveniles are also entitled to work up to 3 hours per day for those who attend school (Markov, Yordanova, Ilcheva & Doichinova, 2013).

As far as community measures are concerned, minors can be sentenced to probation. They can also be admitted to this measure after the completion of one third of the prison sentence (Graebisch & Burkhardt, 2014).

The Law for Prevention of Juvenile Delinquency, adopted in 1958 (during the beginning of the Communist regime), played a key role in the development of alternative sanctions and measures in Bulgaria. Many parts of this law actually introduce and regulate the use of a wide variety of sanctions and measures towards juveniles – measures that were not imposed by a Court and were executed primarily in the community or in special boarding schools. This law is in force in Bulgaria even now, even if a large part of its texts has been updated (Rusinov, Karaganova & Manolcheva, 2008).

Despite this, probation for youths was firstly experimented thanks to four pilot projects financed by the Norwegian government in cooperation with the United Nations Development Programme, which took place in 2002-2004 in Blagoevgrad, Bourgas, Gabrovo and Vidin (Rusinov, Karaganova & Manolcheva, 2008).

Probation of juveniles is implemented through a special procedure, by a specialized probation officer in cooperation with an inspector from the Child Pedagogic Office. These officers in cooperation with the Child Protection Department and a pedagogical counsellor develop the programs for probation supervision and corrective influence. An individual plan for execution of the imposed probation measures and a program for community corrective influence are elaborated. Anyway, corrective labour cannot be imposed to juveniles under 16 years of age (Rusinov, Karaganova & Manolcheva, 2008).

Women are placed at separate prison and prison hostels. They can be assigned to a special security regime solely at the initial stage of the execution.

The only Bulgarian women prison facilities in Bulgaria is placed in Sliven, and it includes a reformatory for young women offenders and two open dormitories.

Chart II.1.6. *Number of women imprisoned in Bulgaria in the period 2008-2014*

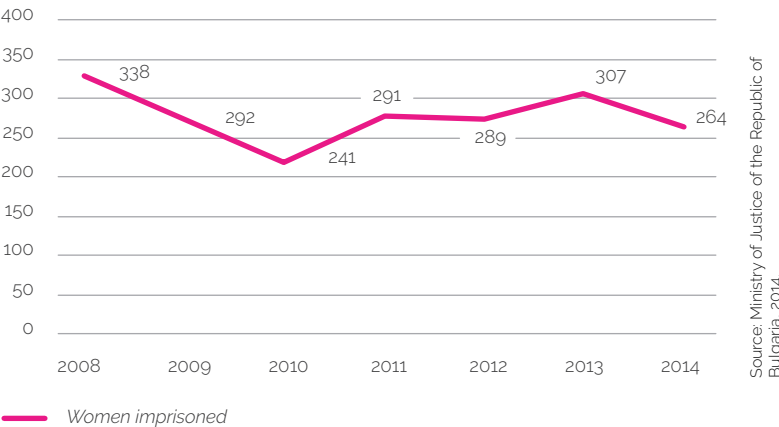
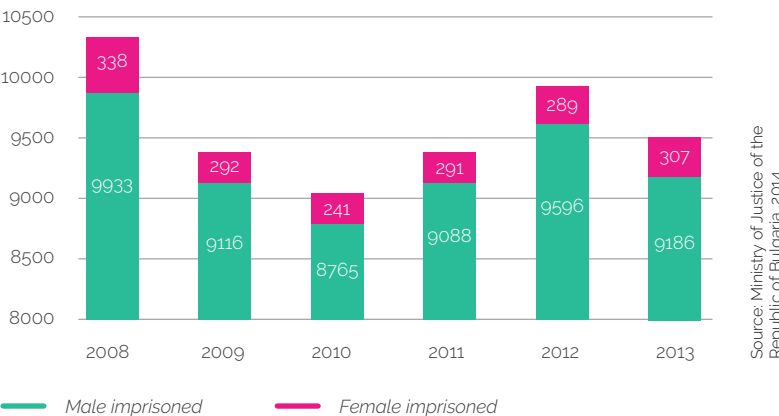


Chart II.1.7. *Number of men and women imprisoned in Bulgaria in the period 2008-2013*



Furthermore, as expression of humanism, Bulgarian law provides exception for vulnerable persons who are assigned to special security regime: **pregnant or**

breast-feeding women and seriously sick offenders

may be placed under a medium-security regime with a decision of the prison or reformatory Director. These vulnerable subjects have the right to stay in open areas at last two hours per day (one hours per day in winter). The Bulgarian law recognizes to the mother the opportunity to postpone the execution of a prison sentence up to one year of age of the child. If this provision is not applicable, the children of the imprisoned mother can stay with her in the nursery of the prison until they become one year old.

Foreign nationals who do not reside permanently in Bulgaria must serve custodial sentence in specifically designated prison or prison hostel: this is a provision aiming at protect them from adverse effects who may derive from their status of foreigners. In fact, they are particularly vulnerable because of the lack of knowledge of the Bulgarian language and system, isolation from families and communities, discrimination, etc. Anyway, it has to be noted that the principle of the allocation to the closest prison facilities to the inmate's permanent address cannot often be implemented (Markov, Yordanova, Ilcheva & Doichinova, 2013).

In Bulgaria, the expulsion can take place if a foreign offender is convicted and the Court decides that upon serving his/her sentence this person cannot stay in the country. The Ministry of Interior runs special facilities for temporary accommodation of foreigners who have been issued a deportation or expulsion order. Foreign national may be held in these facilities for a period of six months, which can be extended up to twelve months in exceptional cases (Graebisch & Burkhardt, 2014).

The number of foreign national prisoners fluctuated between 165

and 262 persons in a period of ten years (2003-2013) (Markov, Yordanova, Ilcheva & Doichinova, 2013).

As said before, special rules are also provided with regard to **offenders suffering from drug or alcohol addiction or mental illness**: the Court may decide to hold them in a closed prison or hostel instead of an open one, even if they are sentenced for the first time for a period not exceeding five years or for negligent offences. Furthermore, Bulgarian Criminal Code expressly requires the provision of appropriate medical care of sentenced persons with severe psychopathy or suffering from a mental disorder, as well as of sentenced drug addicts (art. 40.4 CC). Persons suffering from these problems should so be placed in special and separate units, which may facilitate these treatments (Yordanova & Markov, 2011). However, Bulgarian criminal justice system does not provide specific alternative measures for those who suffer from drug addiction. Prisoners addicted to drugs are around 20% (Ministry of Justice of the Republic of Bulgaria, 2014). According to the law, drug-addicted offenders can be treated in prison hospital inside psychiatric units, but the distinction of psychiatric patients and inmates is often unclear. The prison psychiatrist and a social worker decide what program the inmate has to undergo for drug treatment. In addition, compulsory treatment for drug or alcohol addiction may be applied in prison.

Compulsory treatment is a coercive measure that the Court imposes together with the sanction and it does not replace the penalty. It is imposed for a determined duration and the specific measure depends on the type of sanction imposed. The persons under compulsory treatment are subject to periodic evaluation of their conditions, even because if the measure is not more necessary, it lasts (Graebisch & Burkhardt, 2014).

The Ministry of Justice reports that in 2013, seven rehabilitation programs for drug addicts have been implemented in Bulgarian prison, involving 82 inmates. These programmes were short-term ones, due to the workload of psychologists and social workers and to the technical requirements for their implementation.

Narcotic drugs or medications with narcotic effect are provided to those in need only within the prescribed daily dose. This rule also applies to methadone treatment of drug-addicted inmates. Substitute treatment is available in prisons and is provided by the state via the National Narcotics Centre. Substitution programmes are also available within the framework of NGOs projects, which combine drug substitution with psychological and harm-reduction methodologies. Unfortunately, they do not seem to be sustainable (Markov, Yordanova, Ilcheva & Doichinova, 2013).

It has to be noted that Bulgarian law does not provide specific alternative measures for drug-related offence: all of them are punished with imprisonment or fine, and not with probation. Probation may substitute imprisonment in less serious cases. However, there is a great number of suspended sentences (Graebisch & Burkhardt, 2014).

Prisoners with mental disease are transferred to the prison of Lovech, where is placed the specialised psychiatric hospital: here the psychiatrist and the psychologist perform tests helpful for the diagnosis. If the suspicion of mental illness is confirmed, the inmate is sent to the psychiatric clinic in Lovech prison (Markov, Yordanova, Ilcheva & Doichinova, 2013).

When the drug addict is sentenced with probation, a specific program for overcoming the addiction can be imposed. This one may be implemented also thanks to NGOs cooperation, support and involvement (Graebisch & Burkhardt, 2014).

II.1.4. Focus on... Victims' perspective

The Bulgarian Probation system does not deal with victims of crime, although reparation to them is a milestone of the action plans adopted. Since 1999 the possibility of terminating criminal procedure by signing an agreement has been applied. Statistics show that during 2007-2008 approximately 6500 cases or more than one fourth of the criminal procedures have ended with an agreement. This proceeding (which contains some mediation elements) allows to be better observe the interests of the victim: e.g., when damage to property has been done, agreement is allowed only if the damages are repaired (CPC).

It should be mentioned that in Bulgaria there is a Mediation Law that defines mediation as an alternative method for solving legal and non-legal disputes (Rusinov, Karaganova & Manolcheva, 2008).

II.1.5. Focus on... Recidivism

As described in the Methodological premise, according to the Bulgarian Law recidivism is when there is an offender sentenced for a crime, who makes another crime independently from the previous one.

There are three main types of recidivism:

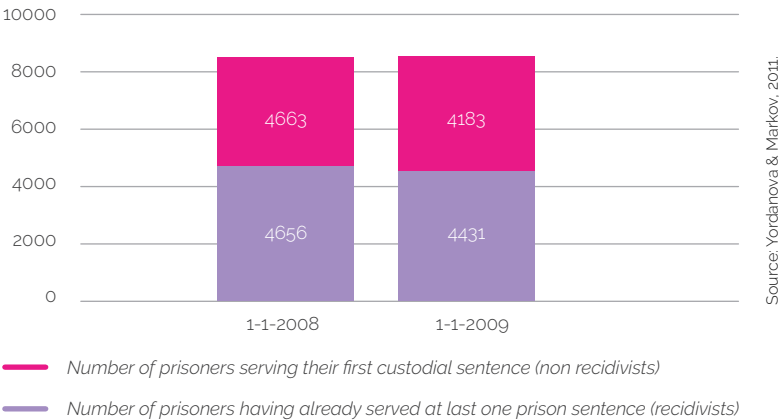
1. General,
2. Special,
3. Dangerous.

The qualification of "dangerous recidivist" also has adverse effects, such as a decrease of the rehabilitation field (art. 30) and an initial regime for serving the sentence only strict or rigorous, after which general but not light. There is also a special regime for recidivists including six

months isolation cell. Furthermore, although the offender turns back or replaces the stolen property, the sentence is not reduced. The institute of parole is not applicable if the offender is a dangerous recidivist.

Recidivism is an important indicator of the effective resocialisation of the offender, and so of the effectiveness of the sanction. As we can see in Chart II.1.8, the number of recidivists in prison seems to be high.

Chart II.1.8. *Number of recidivist prisners in Bulgaria in the period 2008-2009*



II.2. SPAIN

Thanks to the cooperation of C. Martinez and J. Ollero, Federación Andaluza Enlace (ES)

II.2.1. Spanish prison system

Spanish penitentiary system is based on the following laws and regulations:

- Spanish Constitution;
- Spanish Criminal Code, emended more times, among them also in 1995 and in 2015 (CC);
- General Penitentiary Law (LOGP) of September 1979;
- Royal Decree 190/96 of 9 February, named Prison Regulations (PR).

These laws describe Spanish prison system as inspired to criteria of individualization and degree progression. Individualization means that the criminal history and the personality of the offender are kept into account for his/her assignment to the appropriate prison regime.

Progression underlights the flexibility of the system: every inmates can progress to the so-called third degree (open regime) but also worsen his regime in case of negative behavior. Usually, at the beginning of the execution, the Assessment Board assigns the prisoners to the second degree; only in exceptional cases (e.g. if he/she shows violent behavior) he/she is placed under first degree (Ministerio del Interior - Secretaría General Técnica, 2014).

In Spain, we can distinguish:

- **Ordinary prisons:**

- **Social Integration Centers (SIC).** These centres are for inmates serving their sentence in open regime or are in an advanced process of reintegration. Through the SIC are also managed alternative sanctions that do not require admission to prison, including Community Service, the conditional suspension of the enforcement of the sentence and home arrest. They also carries out monitoring of probations. The SIC are located in urban or semi-urban areas, whenever possible, next to social environments that are familiar to the convicts in order to make their integration into the social life of free people easier. The open environment requires the voluntary acceptance of the applicant and is based on the principle of trust since prisoners are free to meet their work commitments and treatments outside the centre. The SIC play a basic residential role but they also offer intervention and treatment activities, social work and production workshops. All are equipped with security systems. Technology offers a choice of remote control of the mobility of prisoners and therefore the possibility of combining both greater freedom and social integration of convicts while meeting the social demands of security (bracelet or anklet linked to a telephone detector, personal marker via GPS, personal identification voice detectors, etc.);

- **Mother units;**

- **Prison psychiatric hospitals;**

- **Dependent units** (Ministerio del Interior - Secretaría General Técnica, 2014).

As Spanish prison system is inspired to individualization, treatment is assigned taking into account a global assessment of the offender's personality, of the nature of the crime, etc. Some important programs are described in Table II.2.1.

Table II.2.1. Important programs for specific target groups implemented in Spanish prison

Aggressors in the family	<i>Inmates who have committed crimes of intimate partner violence (IPV)</i>	<i>It is done in a group and therapy continues over a year.</i>	<i>Implemented in 41 prison (2010)</i>
Control of sexual assault	<i>Inmates who have committed sexual offenses against women or children.</i>	<i>Psychotherapeutic intervention continues for two years.</i>	<i>Implemented since 2005, is conducted in 29 centres</i>
Foreign prison population	<i>Foreign national prisoners</i>	<i>Includes three major areas of intervention: the education (regulated teaching, language skills, vocational training and health education); basic knowledge of legal matters, socio-cultural characteristics of Spain and cross-cultural activities; education in values and cognitive skills.</i>	<i>Implemented in 20 institutions.</i>
Suicide prevention	<i>Prison population (at risk of suicide)</i>	<i>It aims prevent suicidal attempts. It is a comprehensive protocol, used by technicians to identify the social or personal situations that may pose a high risk of suicide. It is complemented with the figure of "assigned inmate support" (peer-to-peer support)</i>	<i>In three years it has achieved good results, reducing by almost half the number of deaths. It is implemented in all prisons.</i>

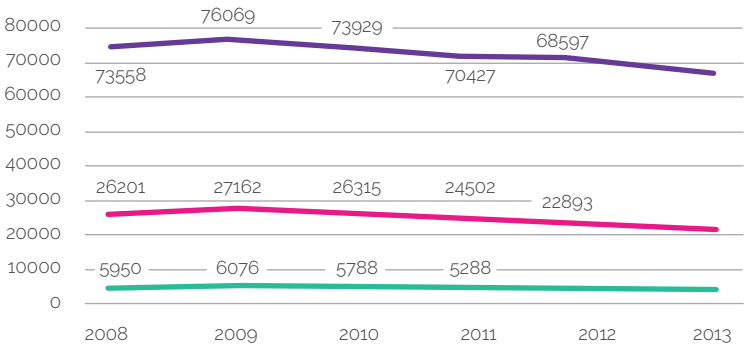
People with physical, sensory or intellectual disability.	<i>People with disabilities</i>	<i>It includes early detection of cases, allocation to departments or centres without architectural constraints and the processing of official certificates. In the case of mentally handicapped inmates the intervention is oriented to basic skills training to achieve autonomy.</i>	<i>Introduced in 35 centres. Program for mental disabilities is in cooperation with FEAPS . Federation of Organizations for Persons with Intellectual Disabilities</i>
Internal departments closed regime	<i>Persons imprisoned in closed regime</i>	<i>It aims to integrate the inmate into an ordinary system of regular living. It conducts formative, leisure and sports and therapeutic treatment</i>	
Intervention with youth.	<i>Youth imprisoned</i>	<i>Comprehensive intervention including academic training and employment, leisure, culture and sport, hygiene and health education. It also deals with social and family aspects of youth. It contains a specific program called Pro Social Thought, based on cognitive strategies.</i>	<i>Introduced in 2007, it is implemented in 23 centres in which this type of population exists.</i>

Source: Ministerio del Interior - Secretaría General Técnica, 2014.

Another important tool in Spanish prison system is work: the Autonomous Agency for Prison Work and Training for Employment (OATPFE) is responsible for making the necessary resources available to inmates to improve their job training. All prisons have workshops where inmates can carry out paid productive work. This activity is considered a special employment relationship by the Workers' Statute (Law 8/1980, 10 March). In 2010 more than 12300 inmates worked in the production workshops in prisons. This means that 40.5% of the population performs work inside the centres. The productive activity in prison workshops is self-financing to the extent that it is not subsidized by the State Budget (Ministerio del Interior - Secretaría General Técnica, 2014).

NGOs and voluntary work play an important role in the Spanish prison system, both when the offender is in prison and when he/she is serving an alternative sanction. In 2009, more than 581 organizations participated in this task and about 6000 collaborators entered prisons to develop training programs for job placement, social integration, health and drug treatment or education, etc. (Ministerio del Interior - Secretaría General Técnica, 2014).

Chart II.2.1. Prison population (general, women, foreigners) in Spain in the period 2008-2013



Source: INE | Instituto Nacional de Estadística

— General prison population — Foreign national prisoners
 — Women imprisoned

As Chart II.2.1 shows, the prison population has decreased of about 10000 units from 2009 to 2013. Women imprisoned are a greater percentage, in comparison with other European Member States. In addition, foreign nationals represent almost a third of the imprisoned population: they, together with women, drug addicts, psychiatric patients and minors, can be considered vulnerable subjects. Thus, in consideration of their specific needs, the following pages will focus also on these target groups. Anyway, we should remember the programs described in Table II.2.1, addressed to subject in vulnerable situations. Table II.2.2 shows the prison population broken down by Region.

Table II.2.2 *Prison population in Spain in the period 2008-2013, broken down by Region*

REGION	2008	2009	2010	2011	2012	2013
Andalucía	16635	17495	17215	16174	15767	15190
Aragón	2557	2644	2587	2478	2239	2273
Asturias	1623	1547	1537	1444	1437	1385
Baleares	2090	1937	1865	1771	1790	1715
Canarias	3297	3198	3029	3567	3708	3587
Cantabria	780	724	682	671	649	644
Castilla y León	7431	7021	6877	5757	5414	5299
Castilla La Mancha	2353	2227	2185	1968	1967	1885
Cataluña	10041	10531	10526	10497	10041	9797
Comunidad Valenciana	7205	8240	7768	7397	7185	6940
Extremadura	1437	1408	1427	1317	1263	1213
Galicia	5084	4904	4410	3701	3639	3688
Madrid	9379	10515	10341	9503	9161	8916
Murcia	979	967	886	1610	1656	1637

Navarra	265	250	235	251	317	313
País Vasco	1405	1472	1436	1441	1404	1377
Rioja, La	414	405	366	371	369	372
Ceuta y Melilla	583	594	557	554	591	534
TOTAL	73558	76079	73929	70472	68597	66765

Source: INE | Instituto Nacional de Estadística

The penitentiary population is mainly composed of persons aged 31-40, that represents almost one third of the total imprisoned: in 2013, there were 22517 persons between 31 and 40 in Spanish prison, and 3117 of them were in pre-trial imprisonment (INE | Instituto Nacional de Estadística).

With regard to the offences committed by prison population, data provided by the National Institute of Statistic (INE) show in the first place crimes against property and social-economic order (2008:22354; 2009:23015; 2010:22779; 2011:22302; 2012:20762; 2013:20927), followed by crimes against public health (2008:14752; 2009:16349; 2010:16227; 2011:14903; 2012:14520; 2013:13808).

Spanish General Secreteriat of Prison estimates the daily cost for each prisoner of 53,00 € in 2013; after the pick of 2011 (64,99 €), it seems to be decreasing. The cost might be higher in Catalonia: here data are available only for 2009 and 2010 and there is an important difference in comparison with what happens in the State Administration (2009: Catalonia: 88,29 €; State Administration: 50,27 €; 2010: Catalonia:76,43 €, State Administration: 49,97 €).

II.2. Alternative sanctions in Spain

Spanish legal system indicates several alternative sanctions, analyzed below, which can only be imposed after a final criminal sentence. The Court may grant the convict any of these alternatives, if all requirements of the law are met. In addition, once granted, the offender must comply with the obligations imposed by the judge, otherwise he may order the original prison sentence to be fulfilled.

Chart. II.2.2. provides the number of alternative measures in Spain (general population and women) in the timeframe of the research, while Table II.2.3 shows the alternative measures broken down by Region.

As far as the age of offenders under alternative measures is concerned, most of the prison population is aged 21-30 (2013: 17362) and 31-40 (2013: 17280).

Chart II.2.2. *Number of alternative measures (total and women) in Spain the period 2008-2013*

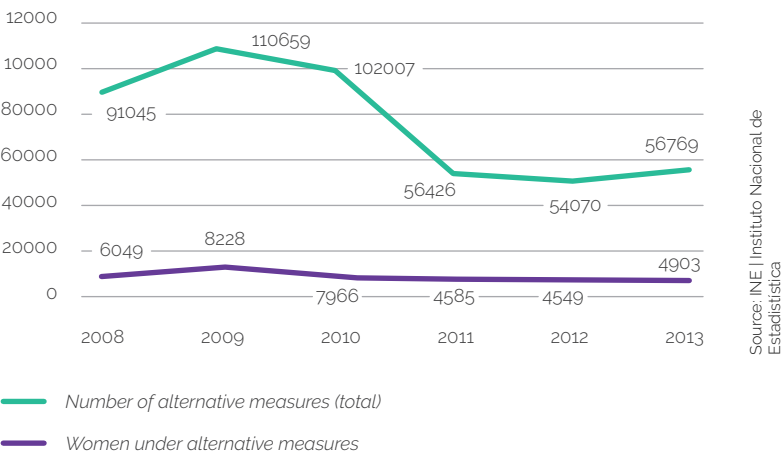


Table II.2.3. *Alternative measures in Spain the period 2008-2013, broken down by Region*

REGION	2008	2009	2010	2011	2012	2013
Andalucía	17826	20567	16970	9608	9726	10084
Aragón	2416	2767	2613	1690	1712	1623
Asturias	1985	2474	2426	1388	1261	1174
Baleares	3408	4302	3910	2682	2412	2316
Canarias	7294	8402	6399	4708	4578	5110
Cantabria	1459	1804	1454	892	820	708
Castilla y León	2743	3621	4293	2346	2289	2291
Castilla La Mancha	2822	4459	4119	2008	2189	2094
Cataluña	12505	14279	13254	7062	5763	6581
Comunidad Valenciana	11399	14759	14562	10460	9904	10325
Extremadura	1666	2343	2272	1524	1548	1623
Galicia	5498	6868	6718	3804	3570	3842
Madrid	8474	10093	9942	1687	1584	2287
Murcia	5616	6745	5667	2753	2525	2556
Navarra	1540	1609	1528	641	653	589
País Vasco	3624	4646	4781	2590	2982	3102
La Rioja	537	612	768	498	451	385
Ceuta	16	51	120	41	79	55
Melilla	217	258	211	44	24	24
TOTAL	91045	110659	102007	56426	54070	56769

Source: INE | Instituto Nacional de Estadística

Suspended sentence (art. 80-86 CC). Generally, it only applies to those who have committed a crime for the first time and have been sentenced to no more than two years of imprisonment. Furthermore, it is necessary the sentenced persons to performs the civil

obligations arising from the crime. Exceptionally, it can be applied also to who is already convicted, only if he/she had repaired the damage caused by the offence. The suspension period can last from two to five years. During this period, the subject is obliged to comply with the obligations imposed by the judge, which are meant to avoid further crimes and promote rehabilitation. If the offender fails to comply with these obligations, he or she will have to serve the original sentence. If instead the deadline passes without infractions, the court shall declare the definitive termination of the original prison sentence.

No particular requirements are provided for the suspension of the sentence against **offenders who suffer of serious and incurable mental disease**.

Suspended sentence for drug addicts in treatment for detoxication has less stringent requirements, so it can be applied to recidivist offenders with long sentences. On the other hand, it is very strict about the obligations that the offender shall fulfill. Moreover, although it can be applied to sentences of up to five years, many people with the profile of drug addicts who have committed crimes because of their addiction (petty crimes of retail drugs) cannot access this possibility. In addition, the period of suspension will be from three to five years, so the minimum is higher than expected for the generic suspension. In addition to the obligations provided for generic suspension, the drug addict offender also will be engaged in a specific treatment, which is the condition for the prosecution of the suspension period: if he/she leaves the detoxification treatment, he/she will have to serve the original sentence.

The suspended sentence may be subject to the following prohibitions and obligations (artt. 82-84 CC):

- Prohibition of approaching the victim, his/her family or persons specified by the Court
- Prohibition of dealing with determined persons;
- Prohibition of entering in specified places;
- Obligation to reside at a specified address;
- Prohibition of residing at a specified address;
- Obligation to attend a training or vocational program (educational, working, cultural, focused on sexual or traffic education, etc);
- Other obligations, which the Judge may deem necessary for re-socializing the offender;
- Implementation of an agreement, as a result of mediation;
- Payment of a fine;
- Engagement in community service.

We can say that the new Spanish Criminal Code has unified in art. 80 the measure before investigated in artt. 80 (generic suspension), 87 (suspension of the sentence for drug-addicts) and 88 (substitution of sentence).

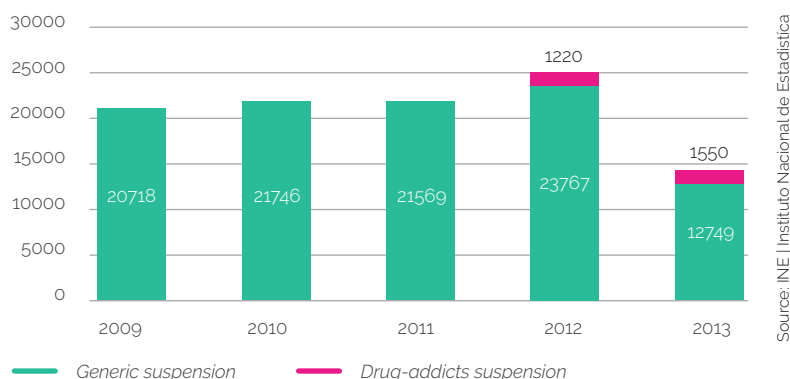
The **substitution of sentence (art. 88 old CC)** was applicable to sentences of up to one year (exceptionally up to two) and the convict could not be habitual offender (having committed three or more offences of the same type, and have been convicted for them, within a period not exceeding five years). Furthermore, the prison sentence can be replaced by a fine or by community ser-

vices. The Court might impose a number of obligations as well as in the case of a suspension. In case of default the judge would order the implementation of the original sentence, discounting the time already served of the alternative sanction.

The **generic suspension of the penalty (art. 80 old CC)** was the alternative measure most applied until July 2015. Judges or Courts might suspend the execution of imprisonment not exceeding two years where it was reasonable to expect that the execution of the sentence was not necessary to prevent the further commission of new crimes. In reaching this decision the judge or Court should assess the circumstances of the crime, the personal circumstances of the offender, his background, his behaviour after the fact, his/her efforts to repair the damage, their family and social circumstances, etc. The necessary conditions to suspend the execution of the sentence were as follows: that the person was first offender, that the penalty or the sum of the imposed ones did not exceed two years and that the civil obligations arising from the crime were satisfied.

Special suspension for drug addicts consisted in the replacement of punishment with a drug addiction treatment. The Court might order the suspension of the execution of imprisonment not exceeding five years if the convicted had committed the crime because of their dependence on narcotics, and he/she decide to undertake an addiction treatment.

Chart II.2.3. *Number of suspended sentences (generic and for drug addicts) in Spain in the period 2009-2013*



Community service (art. 49 CC). This sanction is provided for minor criminal offenses and as a substitute for imprisonment for misdemeanors with a duration of up to one year (exceptionally, up to two years). It consists on the engagement of tasks of social interest or, where applicable, participation in various workshops and educational or therapeutic programs.

As it is regulated, this penalty is hardly applicable to the crime traditionally associated with the problems of drug addiction.

This measure requires the previous consent of the prisoner. It has worth of symbolic reparation and consists in doing activities useful for the society.

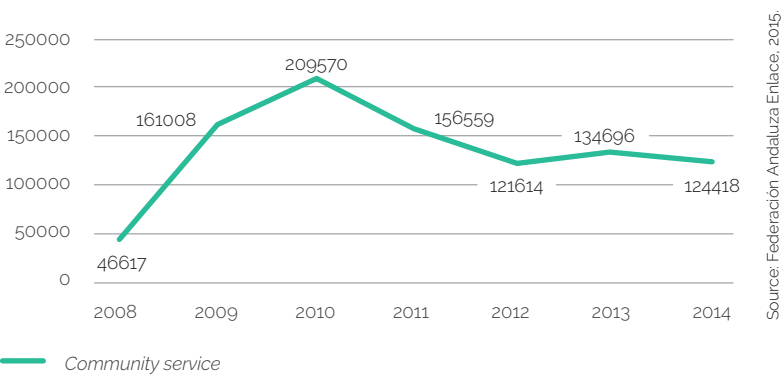
Community works are provided by the state, regional or local authority that, to this end, establish appropriate agreements among themselves or with public or private entities that perform activities of public utility. In this field, the contribution of the community with human and financial resources is basic. The pen-

itentiary administration coordinates the judicial system and the community resources; furthermore, it is in charge of supervising and controlling the enforcement of sentences, while organizations provide tasks and places. In 2008, there were 305 organizations collaborating in this field. The Collaboration Agreement signed with the Spanish Federation of Local and Provincial Administrations (*Federación Española de Municipios y Provincias* | *FEMP*) has been an important achievement, because this one promotes and coordinates task with local administrations offering places for the enforcement of community services. The action areas are: drug-dependency treatments; intervention with the mentally ill; intervention with domestic violence offenders; support to conditionally released persons; community jobs offer, etc. (Espartero, 2008). The convict may propose to the Prison Service to engage himself in a specific activity. The execution of this sentence will be inspired to a principle of flexibility to reconcile, as far as possible, the normal development of the daily activities of the convicts with the execution of the sentence.

Community work is a complementary activity, unpaid, which does not replace job or compete with the labour market. It also has a restorative purpose. Community services are mainly used for crime related to the road safety (Ministerio del Interior - Secretaría General Técnica, 2014). The community service can be imposed as the main penalty for some offences, or more frequently, as a substitute for a fine penalty. The daily duration cannot exceed eight hours and it cannot be imposed for more than 180 days (Espartero, 2008).

Community works have a public benefit purpose, and may consist on repairing the damage or providing support and assistance to the victim; and participation in workshops or training, work, cultural programs, etc. Who is serving this measure is required to invest a certain time in the development of the task assigned. Among the many advantages of this type of sanction, there is the promotion of values such as solidarity, responsibility and the common good.

Chart II.2.4. *Number of community services in the period 2008-2013*



Conditional release (artt. 90-93 CC and 192-201 Penitentiary Rules). Conditional release means that the offender serves the last part of the sentence outside prison, but he/she has to comply several obligations. The conditional release can be granted to the offenders who have been classified in third grade, who have expired at last three fourth of their sentence and who have demonstrated good behavior. The conditional release cannot be applied if the convicted has not satisfied the civil obligations arising from the crime. Moreover, the

judge may decide to admit to conditional release also prisoners who have expired at last two thirds of their penalty and that during the imprisonment period have participate in working, cultural, vocational, training activities, who are in third grade and have demonstrated good behavior. Exceptionally, the conditional release can be granted to offenders who are in prison for the first time and for a sentence up to three years, who have expired at last an half of their sentence, who are in third grade and have shown good behavior. Other subjects who may be admitted to conditional release are particularly vulnerables.

If the offender commits a new crime or does not meet some of its obligations, he/she will be imprisoned back. The offender whose conditional release has been revoked will serve in prison the whole of his/her sentence, since the conditional release was granted (he/she will "lose" the time spent in conditional release).

Third degree (art. 72 of the General Penitentiary Law and art. 80-88, 100 and 182 of the Penitentiary Rules). Together with conditional release, is known as option within the prison system. This is the less severe regime of imprisonment, also known as open regime. It includes different levels of flexibility, ranging from day or weekend releases to longer releases into detoxification centers. To obtain this regime it is necessary prior to serve a minimum period in prison, which varies depending on the specific case.

II.2.3. Vulnerable groups

Offenders with serious mental disorders represent one of vulnerable groups. The Spanish Criminal Code

provides **security measures** for those offenders, which have been judicially declared not responsible of their actions. Therefore, they cannot serve prison sentences in a normal regime but should be imposed a security measure. The Criminal Code includes custodial measures (as internment in a psychiatric hospital) and non custodial measures (as medical treatment). The permanence of a patient in the prison psychiatric hospital cannot exceed, in any case, the maximum penalty established by the sentence. We should remember that psychiatric problems are an important issue also in prison, where we find persons that the judge have deemed able to understand the consequence and the illegality of the crime. In fact, in 2009, 25.6% of the prison population was diagnosed with some type of psychiatric disorders (Ministerio del Interior - Secretaría General Técnica, 2014).

Prison psychiatric hospitals are special centres for offenders diagnosed with mental disorders who have been imposed a safety measures. The judge has considered these people not criminally responsible because of their mental illness, which not allow them to understand the illegality and the consequences of the crime. In these centers, health care is the primary task and is managed by a multidisciplinary team (psychiatrists, psychologists, social workers, educators, etc.) responsible for the offender's rehabilitation process under the bio-psychosocial model of intervention. The main goal of these hospitals is the psychopathological stabilization of the patients and reduction of their dangerousness. To achieve this goal, in addition to an extensive program of rehabilitative activities - psychiatric and psychological care, occupational therapy, educational and training activities, sports, outdoor therapeutic outings, assistance to families, etc. - it is essential the cooperation with health and social institutions who are responsible for continuing the treatment and monitoring of mental illness.

The General Secretary of Prisons has two prison psychiatric hospitals located in Alicante and Seville (Ministerio del Interior - Secretaría General Técnica, 2014).

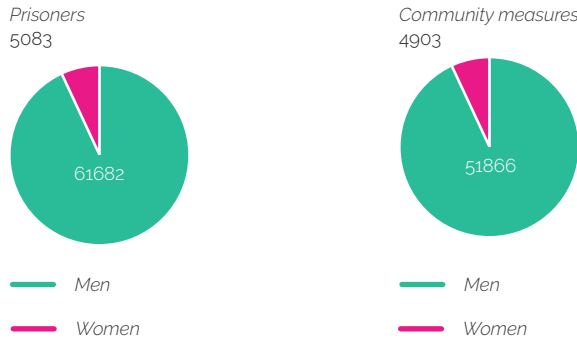
Drug addicted offender can be sentenced to some of these measures, if the Court deems that he/she was not responsible due to his/her addiction. Therefore, they could be sentenced to internment in a detoxication center or to follow a rehabilitation treatment. As said before, the suspended sentence has less strict requirements for addicted offenders. Further details about this specific group will be offered in following paragraph.

There are also vulnerable subjects who, in consideration of their specific situation, may have access to conditional release: we refer to **elder offenders** (over seventy years) and **serious and incurable sick persons**.

It is well known that **women** are a minority of the entire prison population, and that their needs cannot often find the right answer in the penitentiary environment.

Charts II.2.3 provide a comparison of the number of women imprisoned and of the ones serving their penalty in community measure: if compared with the first year of the research timeframe, we can see a slight decrease of the percentage of females in Spanish prisons (2008:8,1%; 2013:7,6%), while for what concerns alternative measures this percentage is increasing (2008:6,6%, 2013:6,8%).

Chart II.2.5. *Women imprisoned and under alternative measures in Spain in 2013*



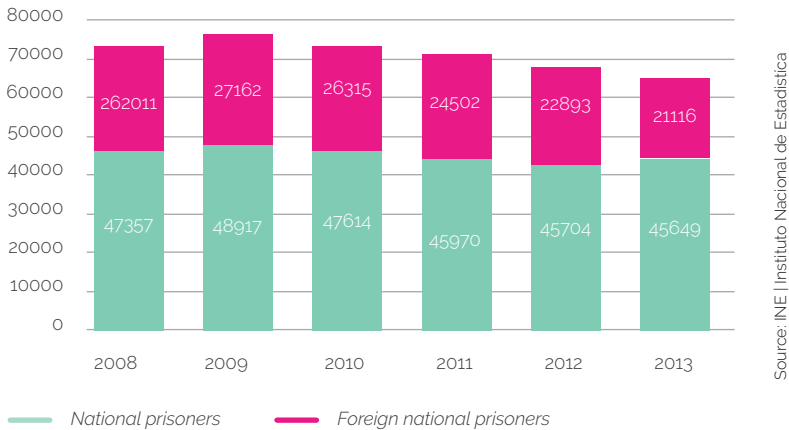
Source: INE | Instituto Nacional de Estadística

Among women, **mothers of underages** represent a particularly vulnerable group with specific and fundamental needs. Spanish laws allow the mother to keep her children with her until they become three years old.

In December 2005, Spanish Government adopted the Plan of Creation and Amortization of Prisons from 2006 to 2012 and decided the construction of five new prison facilities dedicated to mothers of minors. The design and the equipment of these institutions have been realized for responding to the particular rights and needs of children and their mothers: they have breakfast together, children can attend school, there are areas for outdoor games, etc. In Madrid IV Prison, there is also a **family unit**, for cases where both parents of the underage are imprisoned: here we can live together until the child become three years old (Ministerio del Interior - Secretaría General Técnica, 2014).

An important issue is related to **foreigners**. From 2000 to 2009, foreign national imprisoned in Spain increased of 302.3% (Fernández Arévalo, 2015). The penalty imposed to the foreign national may be replaced with the expulsion. As we can see in Chart II.2.4, the number of foreign inmates is decreasing since 2009.

Chart II.2.6. Foreign national prisoners and Spanish prisoners in Spain in the period 2008-2013

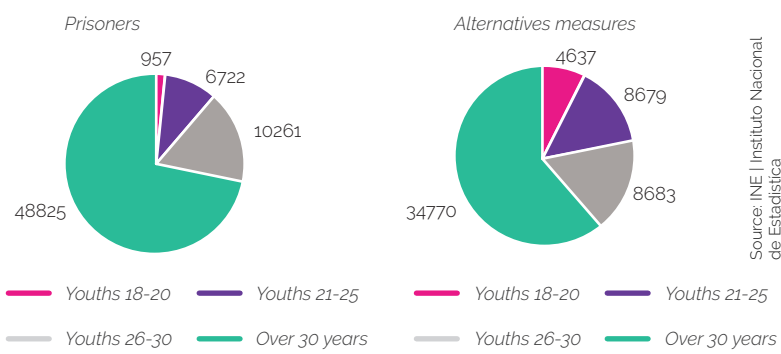


Youths represent another vulnerable group: Spanish regulations state that they have to be kept separated from older prisoners, but in the practice may happen that they live together (Aranda Ocaña, 2013).

Chart II.2.5 shows the number of young offenders in prison and serving an alternative sanction in 2013: youths between 18 and 20 years of age represent the 1,4% of the prison population, while youths between 21 and 25 and between 26 and 30 years of age are, respectively, the 10% and the 15,3%. Regarding alternative measures, we can see an higher number of the persons aged 18-20 (8,1%) and 26-30 (15,2%). In comparison with the first year of the period considered by this research (2008), we can see some changes: youths of 18-20 years in prison have passed from 2,4% to 1,4%, while the ones under alternative measure have had a slight increased (from 7,7% to 8,1%). The number

of young adults between 21 and 25 and between 26 and 30 is decreasing both in prison than in alternative measures.

Chart II.2.7. *Number of youths (aged 18-20, 21-25, 26-30) in prison and in alternative measure in Spain in 2013*



Therefore, if we consider young adults as a vulnerable group, we have to pay even more attention to **minors** who have committed a crime. In Spanish system, minors may be charged of a criminal offence since they are 14 years old. When the Court imposes a measure, the Social Welfare Institution is responsible for its implementation.

With regard to underages, Spanish regulations provide several possibilities. If the judge deems insufficient other measures, the custody may be imposed. In this case, the loss of freedom vary depending on the kind of custody: in fact, it may take place in a closed center, in a half-open center or in an open one. Moreover, if the young offenders is a drug addict or suffers from psychiatric diseases, he/she can be imposes a

therapeutic custody (Rechea Alberola & Fernández Molina, 2004). Then, there are measures that can be considered as intermediate between custodial and community ones: they are the weekend custody (juveniles have to stay in their home or in a center for 36 hours during the weekend), the community therapeutic treatment (which requires the consent of the offender) and the attendance at a day center. The most important alternative sanction that can be imposed to juveniles is probation. The judge decides its duration, usually not exceeding two years, and indicates the conditions that the offender has to comply with: e.g. attending school, participating in a training or vocational course, not going on certain places, etc. custody (Rechea Alberola & Fernández Molina, 2004).

Another community measure applied to minors is community service: if possible, the offender has to perform the unpaid activity during his/her free time, and this restorative tool is particularly helpful in order to enhance responsibility of the minor. Moreover, the measure imposed can consist in living with another person, another family or educative group. Finally, there are some restrictive measures, such as deprivation of driving license or of the right to have weapons.

As we can note, these measures are almost the same as the ones provided for adults as conditions for the suspension of the sentence.

Charts II.2.8 and II.2.9 shows respectively the number of minors in prison and the one of underages serving their sentence in alternative sanction, broken down by age. Chart II.2.10 compares the number of minors in prison and in alternative sanction.

Chart II.2.8. Minors imprisoned in Spain in the period 2008-2013, broken down by age (aged 14, aged 15, aged 16, aged 17)

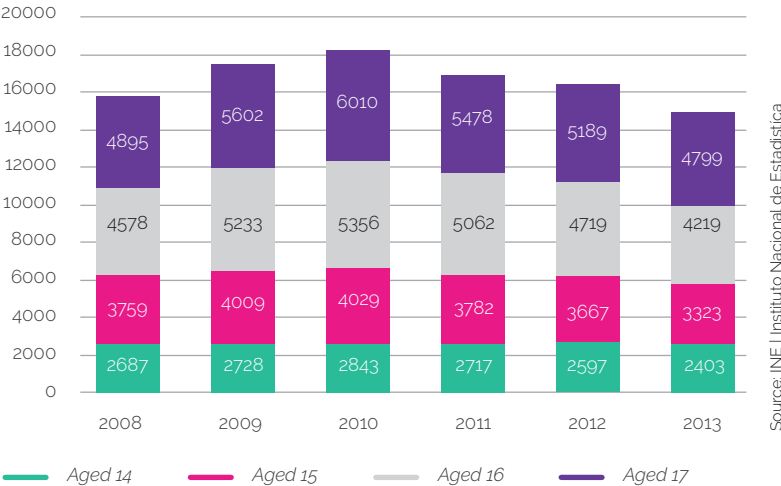


Chart II.2.9. Minors serving alternative measures in Spain in the period 2008-2013, broken down by age (aged 14, aged 15, aged 16, aged 17)

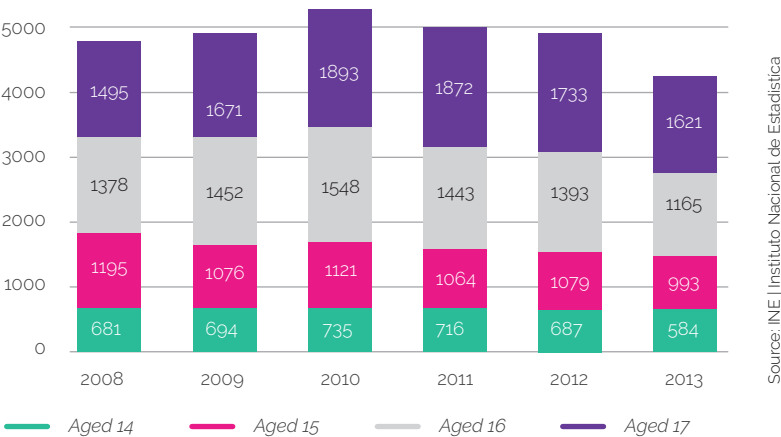
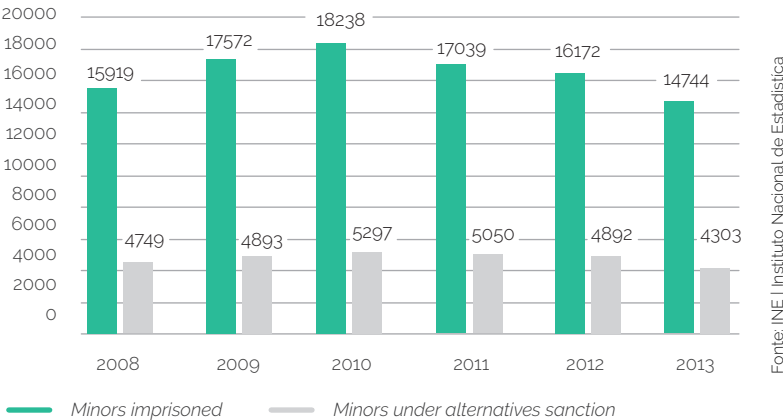


Chart II.2.10. *Minors imprisoned and minors serving an alternative sanction in Spain in the period 2008-2013*



II.2.5. Focus on... Drug addicts as a vulnerable group

Drug addicts are a vulnerable group with specific needs related to their addiction, who often commit drug-related offenses. In Spain, inmates suffering from drug dependence are a large number, as Chart II.2.6 shows: in 2013 the 64,9% of the inmates were addicted to drugs. In these years, the number of these vulnerable persons in prison seems to decrease. In fact, the percentage of drug addicts in prison remained 69,9% from 2008 to 2010, and in 2011 begun to decrease.

Chart II.2.11. *Number of drug addicts in prison in Spain in 2013*

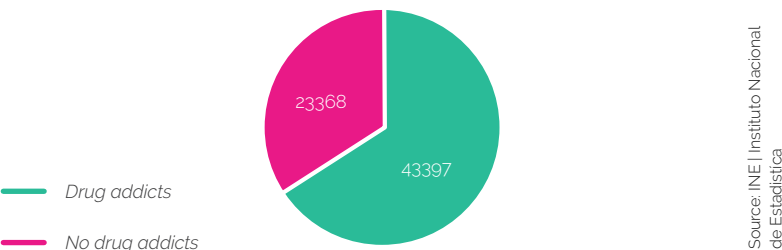
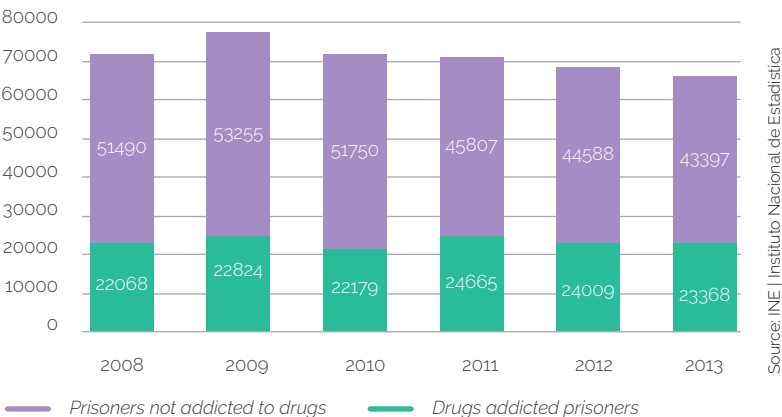


Chart II.2.12. Number of drug addicts and of persons not addicted to drugs in prison in Spain in the period 2008-2013



If we talk about drug addiction problems, we can say that the early treatment of the person from a bio-psycho-social point of view reduces the chances of drug-related offender to maintain addiction. Similarly, to intervene on the causes that have led people to commit a crime reduces the recidivism rate. In this sense, institutions and professionals in the field of drug addiction have been demanding for decades that the best way to prevent crime and reduce recidivism related to the abuse of illegal drugs is to focus on education and social and health services, as well as alternatives to prison.

It is important to note that almost 80% of the imprisoned offenders come from poverty and exclusion backgrounds, lacking primary schooling or other training or work experience. Moreover, these people are deprived of their liberty mainly due to property crimes (more than half of the total) and small drug dealing offenses (more than 20% of the total). To focus on the resocialization of those who

have committed crimes means to prevent future criminal reiterations. In this reflection, we must bear in mind the need to maximize human, institutional and even budgetary efforts within the treatment of people with addiction problems

In Spanish prisons, there are also harm reduction interventions, such as injection equipment exchange (in order to prevent transmissible diseases) and methadone dispensing (Aranda Ocaña, 2013).

Dependent units are, together with CIS, open facilities used by prison authorities to achieve the objective of social reintegration of the offender. These are residential units placed outside of prisons, in urban areas, without any sign distinguishing their nature. These units have a dual function. On the one hand, they complement the rehabilitation work started in prison with activities that promote empowerment and solidarity, and on the other hand, they allow the inmates to acquire or reinforce family ties and work habits. They provide to the offender access to education and training and, when needed, to medical and psychological treatments. The management of these centres is carried out preferentially and directly by associations and collaborating NGOs under the supervision of the Prison Service (Ministerio del Interior - Secretaría General Técnica, 2014).

Alternatives to prison, with a high re-socializing potential, are the best and more cost effectiveness instrument for addressing the functional crime. They can lead in savings of around 1000 € per month per person, in the most expensive case (probation with drug treatment in closed center) or about 2000 € per month when the prison sentence is substituted by fine. Spanish system provides **alternatives to pre-trial detention for drug addicts (before sentence)**: art. 508.2 CPC states that, when the Court considers the necessity to establish pre-trial detention, there is the possibility of replacing imprisonment with the admission to a drug treatment center. The requirements are:

- that the accused was under detoxification or dishabituation treatment to narcotics;
- that the imprisonment might frustrate the outcome of such treatment;
- that the facts in the proceedings occurred before the start of such treatment;
- that the defendant enters into an official center or a legally recognized organization to continue his/her treatment.

As a condition, who is under this alternative measure cannot leave the center without the authorization of the Court.

As we said, most of the alternatives to imprisonment available for drug addicts are related the post-trial phase.

II.3. CROATIA

Thanks to the cooperation of L. Malatesti, Rijeka University (HR), M. Barić, D. Todosiev and J.Špero, Ministry of Justice of the Republic of Croatia (HR)

II.3.1. Prison and *probation* system in Croatia

Croatia entered into the European Union on 1st July 2013 and Croatian Criminal Justice System was engaged in a series of reforms within the Accession. There is not extensive international literature on the topics of our research, also, because the probation service has been recently instituted. It seems therefore even more important to provide a framework that keeps into account also the prison system in this Member State.

The legislative basis of the Croatian Criminal Justice System was modified from a series of reform, and in particular:

- the Criminal Code (CC) of 2011 (with changes in 2012 and 2015);
- the Criminal Procedure Act of 2008 (with changes in 2009 and 2011);
- the Law on the Execution of Prison Sentence of 1999 (with changes in 2000, 2001, 2002, 2003, 2007, 2008, 2009, 2011, 2013);
- the Misdemeanors Act of 2007;
- The Law on Probation of 2009.

Prison system

The Croatian prison system includes the Head Office, 12 prisons, 8 penitentiaries (one of which is a prison

hospital), 2 juvenile correctional institutions, one diagnostic centre and one training centre. The main responsibilities of the Head Office of the prison system directorate can be resumed as follows:

- deciding on the allocation of inmates in different prison or penitentiary (on the proposal of Diagnostic Centre in Zagreb);
- deciding on transfer/reallocation of inmates from one penal institution to another (on the proposal of prison director);
- establishing necessities for the training of prison staff;
- organization of implementation of special treatment programs for various groups of inmates;
- unification of work and treatment in penitentiaries, prisons and juvenile correctional institutions;
- supervision and inspection of work in penitentiaries, prisons and juvenile correctional institutions and of treatment of inmates and juveniles.

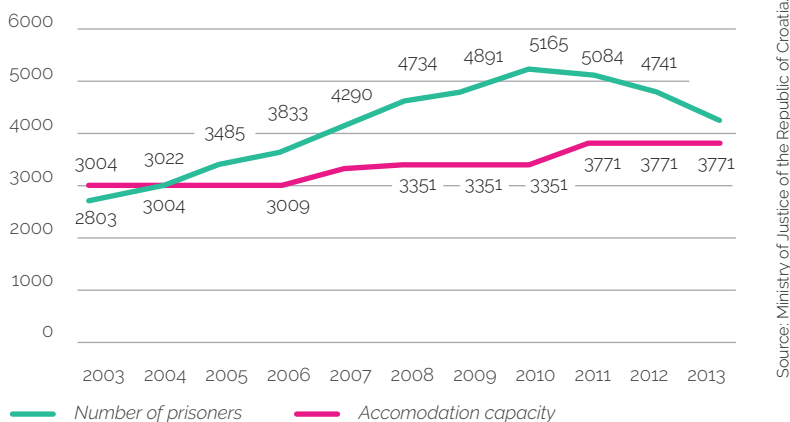
Penitentiaries and prisons differ in the population that can be admitted: in particular; prisons are designated for the enforcement of pre-trial detention (remand custody), for prison sentence imposed in criminal proceedings up to six months, in misdemeanors or other court proceedings and also for the enforcement of a fine substituted with a prison sentence. Prisons can be only closed, but they also can have semi-open or open wards. Penitentiaries are designated for the execution

of prison sentence longer than six months and of security measures imposed by courts together with a prison sentence (e.g. mandatory treatment for alcohol and/or drug addicts and mandatory psychiatric treatment). According to security level and limitation of movement, penitentiary can be closed (4), semi-open (3) or open (1). A juvenile prison sentence is enforced in a special ward of Požega Penitentiary while the enforcement of juvenile correctional measure takes place in the two Juvenile Correctional Institution.

Every prisoner sentenced to more than six months is admitted to the Diagnostic Centre, which is responsible for diagnostics, risk assessment, the proposal of prison or penitentiary and proposal of individual sentence program. Psychologists, social workers, social pedagogues, lawyers, criminologists and physicians are the experts engaged in these activities.

Overcrowding in penal institutions was one of the major problems of Croatian Prison System for almost a decade, but the number of prisoners is slowly decreasing since 2011. Data collected on February 2015 reveal occupancy less than 100%, but one penitentiary and eleven prisons are still full (occupancy from 103,14% to 175,45%). On 24th February 2015, the legal capacity was of 3900 places, and the prisoners were 3863. The juvenile correctional institution does not suffer overcrowding (122 available places and 66 juveniles detainees, occupancy of 54,1%) (Barić M., 2015)

Chart II.3.1. *Some prisoners and accommodation capacity in Croatia 31st December 2003 – 31st December 2013.*



Croatian penitentiary system follows the **rehabilitation concept**. The Law of Enforcement of the prison sentence has the objective to lead the offender towards life in freedom according to law and social rules. Rehabilitation is based on individualization of punishment. The general treatment program includes work, education and organization of the leisure time. Also specific treatment programs are provided for vulnerable groups:

- drug addicts (Modified therapeutic community and CB program PORTOs);
- alcohol addicts;
- persons suffering from PTSD;
- sex offenders (CB program PRIKIP);
- violent offenders (ART);

- offenders in traffic;
- prisoner as a parent.

Summarizing, the individual program of enforcement of a prison sentence can include: accommodation at the ward, work, free time activities, special procedure (e.g. mandatory psychiatric/drug and alcohol addiction treatment, social, psychological and psychiatric help, group and individual work, special treatment programs addressed to needs of the offenders), educational and vocational training, contacts with the outside world, incentives and benefits, special security measures, preparation for release and after release assistance. It can be changed according to prisoner's behavior, risk assessment and his achievement during a prison sentence. Work is not an obligation, but a right of detainees, who are encouraged to work on acquiring and maintaining professional knowledge, as well as for the satisfaction of their needs. Prisoners can work inside or outside the prison, according to their physical capabilities and acquired knowledge as well as the available opportunities. Vocational training is organized during prisoner work and certified acknowledging the work and acquired experience. Verified educational programs (e.g. elementary and high school) are provided thanks to the cooperation with an educational institution in the local community, and inmates can also attend high education after a risk assessment (Barić M., 2015).

Probation service in Croatia

The Probation service in the Republic of Croatia is a young service. The Law on Probation of 2009 defines probation as «conditional and supervised freedom of criminal offender during which probation officers perform activities aimed at reducing the criminal risk of reoffending» (Šimpraga, Maloić, & Ricijaš, 2014, p. 7). This law was enacted for the purpose of protecting the community from criminal offenders, to resocialize criminal offenders

and to reintegrate them into the community. Full professionalization of the probation system started in 2009 but the first probation offices started opening in 2011. Probation service is under the jurisdiction of Ministry of Justice. At first, they were called Directorate for probation; then, in March 2010, it was renamed to Directorate for Probation and Victims and Witnesses support and today is the Sector for Probation under the Directorate for criminal law and probation. In 2013, a wider reform of criminal laws (sanctions and procedures) was made, with the implementation of a new Criminal Code, a new Criminal Procedure Act, and a new Law on Probation.

There are Central Office and 12 local Probation Office. The Central Office carries out the administrative and technical tasks related to probation duties, human resources, planning and scheduling of equipment and funds required for work, planning, investments, international co-operation, drafting of regulations, enforcement and administrative inspection, while the local probation offices work with offenders.

The probation service carries out probation work in cooperation with the community, to protect society from offenders and to reduce the risk of recidivism of perpetrators through reintegration into the community.

The probation in Croatia is different from what is considered in the Anglo-Saxon system. Croatia was engaged in a series of reform within its accession to the European Union, and this has been the base for a professional Probation System built according to best European and International practices and Recommendations made by the Council of Europe (Špero, 2015).

Probation service is involved in each phase of the criminal justice system, with different tasks. In the pre-trial phase, it is responsible for the supervision of fulfilling obligations arising from the decision of the Prosecutor and reporting to the Prosecutor. During the criminal trial, the probation service provides the pre-sentence report to the Court. Its main tasks are related to the enforcement phase, both of prison and of alternative sanctions. It can be involved in protective supervision ordered by the Court, and it plays an important role in the implementation of community work, acquiring consent for replacing a prison sentence with community work, organizing the activities and supervising them. Other tasks are related to the enforcement of a prison sanction, such as a report for prisons and penitentiaries and courts when deciding on the termination of the sentence and conditional release, or supervision ordered with the conditional release or upon the end of the prison sentence (Špero, 2015).

Over a short period, the Croatian Probation Service has become an effective organization with an established structure, supervising a growing number of offenders in the community and increasingly recognized by the public.

II.3.2. Community measures in Croatia

One of the community measures in Croatia is defined by the Criminal Procedure Act and Law on Probation obligations that the public prosecutor (in Croatian legislation: state attorney) may impose on a suspect as a restrictive alternative to further criminal charges (conditional waiver). They are always imposed with a suspect's consent, given the presumption of innocence at this stage in the pro-

cess. Community sanctions are, according to the Criminal Code, either an alternative to or suspension of a monetary sanction or a prison sentence (up to one year). They also function as a form of conditional release from prison (Sučić, Ricijaš & Glavak-Tkalić, 2014).

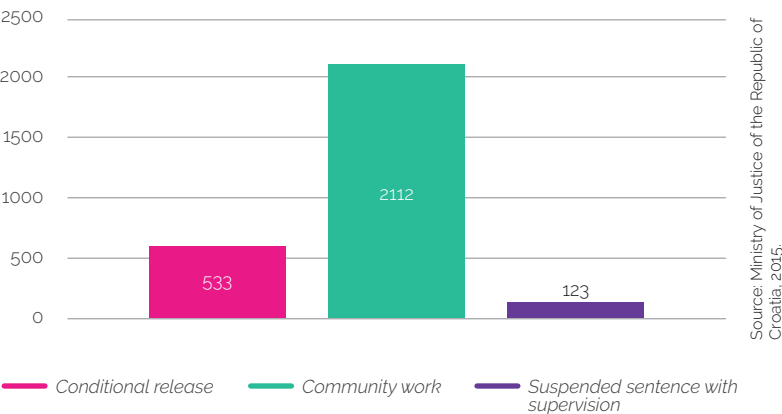
Croatian Criminal Code considers these community sanctions:

- Suspended sentence. This unsupervised suspension is not within the jurisdiction of the Probation service.
- Suspended sentence with supervision (this is probation). The supervision shall be imposed if Court estimated that the convicted person needs help guidance. It is usually spoken of offenders who have committed crimes against marriage, family and youth, and offenses under the Law on Protection of domestic violence.

The Criminal Procedure Act (art. 457) states that after pronouncing a verdict of a suspended sentence (with or without protective supervision and/or special obligations), the judge must warn the convicted person about the meaning of the sentence and the obligations he/she must fulfil. The judge also informs all parties of their right to appeal (Sučić, Ricijaš & Glavak-Tkalić, 2014).

Community work. It is an alternative sanction to prison sentences (in particular up to one year in prison). It can be applied only with the specific consent of the offender. One day of prison is replaced by 2 hours of community work, so the maximum hours of community work is 730. Community work is free and must not be used for gaining financial profit.

Chart II.3.2. Community measures in Croatia as at February 2015



In addition to community service, the court may order protective supervision or special obligations. When the Court orders a **suspended sentence**, the offender can avoid the execution of a prison sentence if during the probation period does not commit a crime and fulfill specific obligations. Probation can last from one to a maximum of five years. With a suspended sentence, the Court may order protective supervision and special obligations supervised by Probation service. **Conditional release** is the release of prisoners from prison before the full completion of the sentence.

According to the Law on Probation, a person can only be included in probation sanctions based on personal consent (Rule 6), because both suspended sentence (with or without supervision) and community work represent an alternative to prison sanctions or fines (Simpraga, Maloić, & Ricijaš, 2014, p. 19). A community sanction or measure shall only be imposed when it is known

what conditions or obligations might be appropriate and whether the offender is prepared to co-operate and comply with them (Sučić, Ricijaš & Glavak-Tkalić, 2014).

Community service / community work. As we can see in Charts II.3.3 and II.3.4, the application of community services is increasing over the years. The Criminal Code explicitly states that community service can be done only with the consent of the convict (art. 43.2, 55.4 CC). The consent of the convict is also important to ensure his cooperation with the probation officer responsible for supervision during the execution of community service.

The community service is performed in institutions, associations, and public bodies whose primary activity is humanitarian or ecological, or who acting in the general public and local interest, on behalf of the community and of the Republic of Croatia.

Chart II.3.3. *Number of community services (stock: 31 December) in the period 2009-2013*

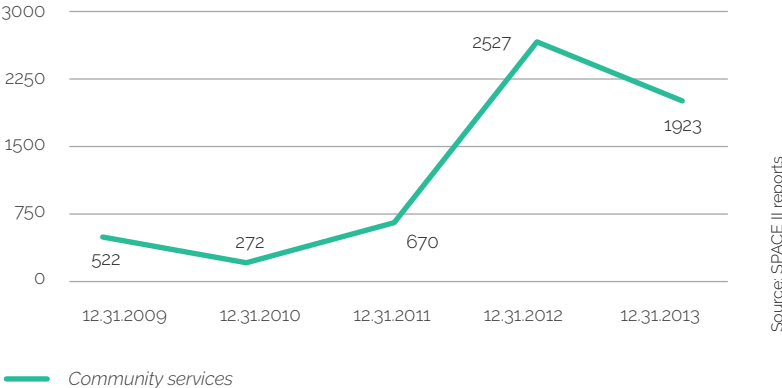
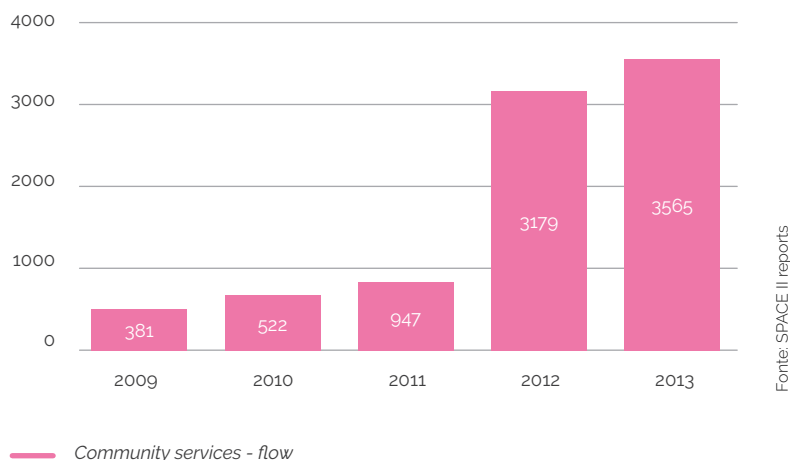


Chart II.3.4 *Number of community services (flow: whole year) in the period 2009-2013*



A penalty may be replaced with community service in two cases:

1. If the Court decides to replace immediately the penalty of incarceration with community service (art. 55 CC):

The Court may replace a sentence of up to three hundred and sixty daily amounts or a penalty of incarceration up to one year with community service. A sentence of incarceration up to six months will be usually replaced by the Court of community service; an exception can be made if the community sanction seems not to achieve the purpose of punishment. When the Court replaces the fine with community service, the criterion set out consists in replacing of the one-day amount to four hours of work; when incarceration is replaced with community service, a day in prison corresponds to four hours of work.

2. If the monetary penalty is not executed (insolvency of the convicted), it can be replaced by the enforcement of community service work up to three months (art. 43 CC):

If the fine is not paid or forcibly collected within three months, the Court with the consent of the convicted can substitute the fine with community service, so that one daily amount is replaced with four hours of work; anyway community service should not exceed seven hundred and thirty hours.

After the consent of the convict, if also the competent Authority has given consent to the replacement, community service can be executed taking into account the capabilities of the offender, with particular regard to his personal circumstances and employment, skills and expertise. The duration of community service work cannot be less than one month and cannot exceed two years. If the offender does not carry out fully community service without reasonable grounds (e.g. health reasons), the judge determines the execution of the original penalty.

Conditional release / Parole with probation. The Criminal Code, the Act on the Enforcement of Prison Sentences and the Probation Act regulate conditional release and the supervision of conditionally released prisoners. Early release is possible during the second half of the sentence. The prisoner can start the proceeding of conditional release by appealing to the warden of the prison and proposing early release (Šimpraga & Vukota, 2010). This measure can last from one up to five years. The supervision can also be shorter according to the court assessment. The judge can impose a different set of obligations to the offender. These provisions may basically consist in doing works according to personal, professional competencies, in engaging an addiction treatment (specifically for drug and alcohol addicts); in engaging a medical treatment (for psychiatric problems); in participating in a psychosocial treatment for violent behavior, in regularly reporting to the probation service about

the circumstances that may elicit future criminal behavior (Šimpraga, Maloić, & Ricijaš, 2014). The aims of such obligations are the continuation of treatment, follow-up and supervision, as well as the prevention of criminal recidivism. Supervision during conditional release carried out by a probation officer means better security for the community and the most successful reintegration of the offender.

From June 2009 to March 2010, a pilot project of supervised conditional release in two penitentiaries took place within the SPF project of support for the introduction of a probation service in the Republic of Croatia in collaboration between the Prison System Administration and the Administration of Probation and Support to Victims and Witnesses, together with English partners. Within this project, the application form for the procedure of conditional release was amended, reports on the social environment to which the prisoners are released were collected from probation officers, and the tools of the Offenders Assessment System were applied on a sample of 29 prisoners in two penitentiaries (Šimpraga & Vukota, 2010).

Now the conditional release is used much more frequently than in the previous years (1649 cases followed in 2013). Probation service is responsible for the supervision of the person on conditional release, and together with the offender (former prisoner) conduct, an individual program of his/her supervision and obligations that are imposed on conditional release. This program will take into account the personality of the perpetrator, his previous life, especially the previous convictions, the family situation, the circumstances of the commission of the offense and his/her behavior after the commission of the crime, particularly on the relationship of the perpetrator to the victim and the attempt to repair the damage to the injured party.

Suspended prison sentence with probation. The judge can attach conditions to the suspension of a sentence during a given period. The person has been sentenced to incarceration, but the enforcement of the sanction is suspended, and the person remains under the obligation to conform to the conditions imposed (art. 56 CC).

The Law on Probation and the Ordinance on Methods to Conduct Probation Work define procedures for creating individual treatment programmes in detail:

- this programme has to be based on risk assessment and must be written within 30 days from the offender's first reporting to the probation service;
- it will define the frequency of contacts and reporting to the probation service (minimum frequency: once every 14 days in the first year, and once per month after that);
- the probation officer will inform the offender about the aims of the programme in a simple and understandable way;
- the offender will receive a summary of the programme;
- the programme is regularly evaluated and changed if necessary;
- the offender must sign the programme as proof of his/her consent (Sučić, Ricijaš & Glavak-Tkalić, 2014).

In cases where offenders do not agree with the content of the programme or they do not want to comply with all the obligations, the probation service must inform the court of this circumstance, which will evaluate the possible imposition of a prison sentence.

Chart II.3.5. Number of suspended prison sentence with probation (stock: 31 December) in Croatia in the period 2009-2013

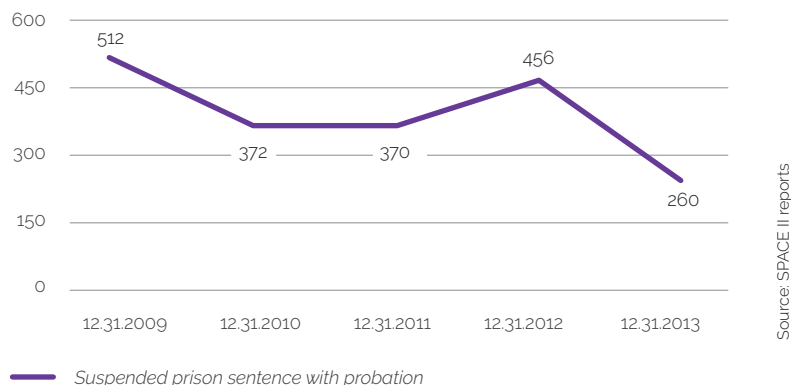
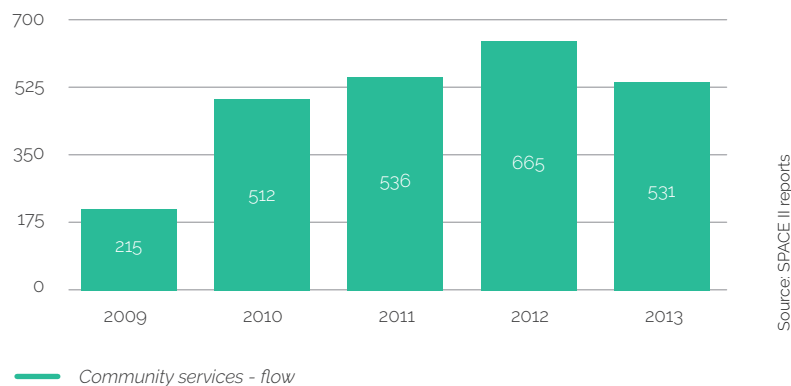


Chart II.3.6. Number of suspended prison sentence with probation (flow: whole year) in Croatia in the period 2009-2013



II.3.3. Specific group: juvenile offenders

Croatian legal system keeps in particular accounts the needs of young, as it is recommended to impose protective supervision for all offenders younger than 25, who are

initially sentenced to prison sentences of more than six months.

The law differs three age groups of young offenders:

- younger juveniles (from 14 to 16 years);
- older juveniles (from 16 to 18 years);
- Younger adult (from 18 to 21 years).

In Croatia, Juvenile prisons are only for older juveniles, for a maximum of 5 years (or 10 years in serious and exceptional cases); furthermore, the young can stay in juvenile prison until he turns 23 years. Younger juveniles can only be sentenced to educational measures, which can also be imposed on older juveniles.

Probation is based on the minor's participation in the process of transformation of his social behaviour from unacceptable to acceptable for and in society.

Minors mostly commit crimes against property and drug-related offences; a minor percentage regards violent offences. Other crimes are against public order, the authenticity of documents, safety in traffic, etc. (Ricijaš).

Educational measures include:

- **measures of warning** (judicial admonition, special obligations for maximum one year, assignment to disciplinary center from 15 days to 3 months);
- **measures of probation** (increased supervision and surveillance, with or without daily reporting to a correctional institution, from 6 months to 2 years);

- **institutional measures** (assignment to correctional institution / rehabilitation center, from 6 months – 2 years; assignment to a special correctional institution for maximum three years) (Ricijaš).

Juvenile probation

As far as minor offenders are concerned, the Republic of Croatia has a long history of conducting measures similar to probation measures. For juveniles, release from prison under probation has been established in 1918 and juvenile probation has been instituted as a regular sanction in 1959. Juvenile probation represents 50% of all sanctions for juvenile offenders, and it is a very effective sanction in Croatia. The Social Welfare Centres is responsible for the implementation of this sanction and the Juvenile Court for the supervision. The juvenile probation can last from 6 months to 2 years, and during the paths, special obligations play an important role, as they are oriented on a specific risk factor that contributed to the offence or of dynamic risk factors that predict recidivism.

Specific obligation that can be included in the juvenile probation programme can be:

- to apologize to the victim,
- to restitute the damage from the criminal offence in the way juvenile can (the Law prescribes that juvenile cannot work more than 60 hours, and he has to restitute the damage within three months),
- to go to school regularly,
- to go regularly to his workplace,
- to take vocational training he prefers and has capabilities for,

- to accept the job and to be persistent in it,
- to do the community work (the Law prescribe that juvenile cannot work more than 120 hours, and he has to finish it within six months),
- to avoid some places (bars and locals) and some persons;
- to undertake some medical procedure or a drug rehabilitation program (this obligation can only be realized with the acceptance of his parents or legal representative),
- to join individual or group counseling,
- to undertake seminars for some qualification,
- restriction of leaving his place of residence without special approval of his Center for Social Care,
- to go to driving school to test his knowledge of traffic rules (Ricijaš).

The Social Welfare Centre has tasks similar to the ones of the Probation Service for Adults. It is responsible for the assessment, makes individual treatment program, provides monthly reports, delivers reports to the Court every three months, works individually with the juvenile, involves the parents, supervises school, work, leisure time activities, peers, drug use and other risk factors for recidivism. At the end of the probation period, the Social Officer provides the final report to the Court. If the juvenile has fulfilled obligations, probation finishes, and he do not have an official criminal record.

II.4 ITALY

Thanks to the cooperation of A. Centuori, Libra Onlus Association (IT)

II. 4.1. The Prison and Probation System in Italy

The prison and probation system in Italy is based on the following standards:

- The Constitution of the Republic of Italy of 1948;
- The Criminal Code of 1930, the text of which has been extensively modified by various reforms implemented over the years;
- The Code of Criminal Procedure of 1988, which has also undergone many changes;
- Law 354/1975, the Penitentiary Law (OP), has the merit of introducing alternative measures to imprisonment; it too has repeatedly been amended (Law 663/86, Law 168/98, Law 67/2014)
- Prison Regulations 230/2000, which defines certain aspects of the enforcement of sentences in detail;
- Law 67/2014, which recently introduced *probation* during the pre-sentencing period as well.

The overcrowding in correctional facilities that characterized the years 2009-2012 began to ease in 2012-2013. The number of prisoners in Italy has continued to decrease, even after the timeframe considered by the present study.

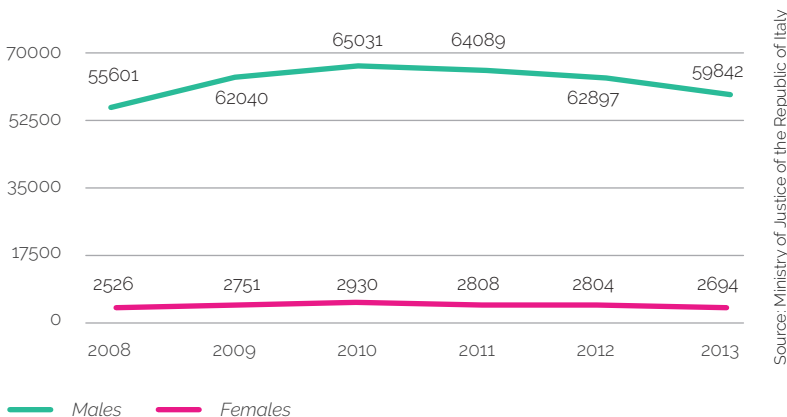
Official data show that in Italy the percentage of women in the total prison population has remained stable

throughout the period studied, but is smaller in comparison to other European countries (2013: 4.3%).

As we shall see when we address the issue of vulnerable groups, the question of foreign nationals, who make up approximately one third of the incarcerated, is of relevance here.

The Italian prison system is based on a range of tools for the treatment of offenders: religion, education and work, leisure and sports activities, contacts with family and the outside world.

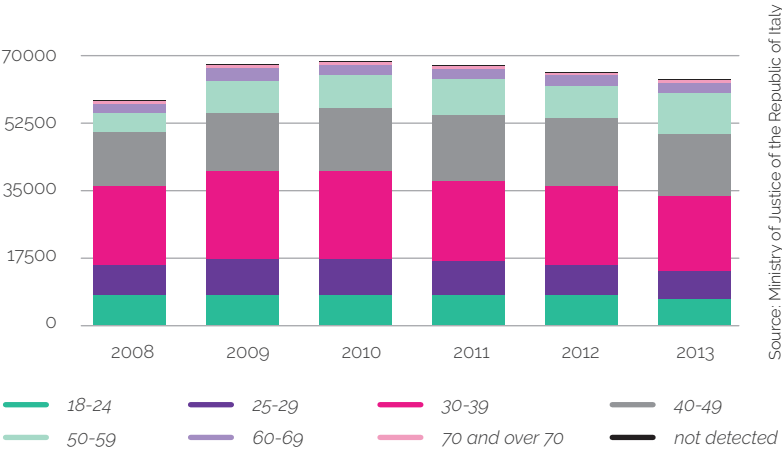
Chart II.4.1. *Prison population in Italy in the period 2008-2013*



With regard to the age of detainees, adults aged 30-39 years, followed by adults aged 40-49, are the two largest age groups represented, and together account for over 50% of the total prison population. Whilst the percentile value of the 30-39 year old age group has decreased slightly (2008: 32.7%; 2013: 31.2%), that of the 40-49 year old

group has increased (2008: 22.4%; 2013: 25.5%). The number of 18-24 year old detainees in Italian penitentiary facilities is decreasing both in absolute terms and in percentile value. See Chart II.4.2 for the breakdown of prisoners by age during the time period covered by the present study.

Chart II.4.2. Prisoners broken down by age in Italy in the period 2008-2013



In the intramural context too, there are tools with the potential to re-educate detainees and to facilitate re-socialization, together with the alternative measures to incarceration. One of these is certainly **Art. 21 (External) OP**. It defines a modality of serving the prison sentence that allows the prisoner to leave the penitentiary institution for work or training. Offenders who have received a definitive sentence for common crimes, with no limitations as to the length of the period spent in prison, can request inclusion in the program; only when the crimes committed are of a particularly serious nature is there the proviso that one-third of the sentence must

have been served before the offender may request it (in the case of life imprisonment, the convicted person must have served at least 10 years of his sentence). The measure is granted by the Director and approved by the Surveillance Judge.

II. 4.2. Alternative Measures in Italy

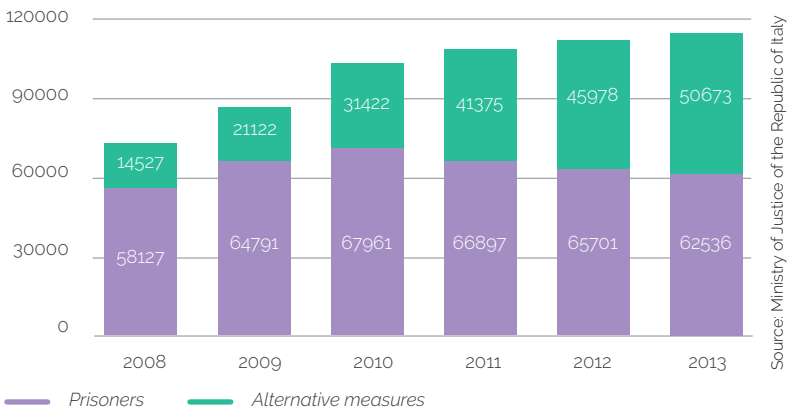
Through its provisions for alternative measures to detention, first introduced in 1975 and since then gradually applied in a growing number of cases, the Penitentiary Law aims to emphasize the rehabilitative goal of punishment (art. 27 Cost.).

The services responsible for managing community-based sentences are the probation agencies (*Uffici Esecuzione Penale Esterna* | UEPE), established in 1975 as part of the Department of Prison Administration of the Ministry of Justice. These probation services have a number of mandates, including promoting the social rehabilitation of convicts serving their sentences through alternative measures to detention.

It is important to note that the tasks of the UEPE was significantly broadened after the entry into force of Law 67/2014, as the latter introduced the possibility for the defendant to request that his or her sentence be suspended in view of a probation project undertaken under the supervision of the UEPE. For the first time in Italy the Office is also responsible for those who have not been sentenced, even by a court of the first instance. It is basically a form of judicial *probation*, already known in other countries and in the juvenile system.

As can be seen in Chart II.4.3, the number of prisoners is declining in Italy, whilst the number of those serving their sentences under an alternative measure is increasing.

Chart II.4.3. Number of prisoners and persons serving their sentences in alternative measures (probation, home detention, day release) in Italy in the period 2008-2013



It should be noted that today alternative measures can be accessed both from prison, and from outside, so as to enable the sentenced person to avoid the negative effects of the intramural prison environment (Fossa & Gatti, 2011).

Italian regulations differentiate between **alternative measures** on the one hand, and **substitute sanctions** on the other, although for the purposes of this research we will consider both as being *alternative (community) sanctions*.

Substitute sanctions were introduced by the Law on Decriminalization 689/1981. They are real penal sanctions, applied directly by the sentencing judge at the time of sentencing as a substitute for incarceration (D'Onofrio & Sartori, 2004). The sanctions, applied in lieu of short prison terms, are:

Semi-detention: the individual, sentenced to a period of imprisonment not exceeding two years, is required to spend at least 10 hours per day inside the correctional facility;

Parole: parole leaves more freedom to the individual in cases where they have been sentenced to a period of incarceration not exceeding one year. The individual is required to remain in their municipality of residence and to report to the Public Authorities at least once a day;

Substitutive fine: this replaces a sentence of imprisonment not exceeding six months;

Substitutive community service (art. 105 L. 689/1981). It replaces fines that cannot be paid due to the offender's insolvency;

Expulsion of foreign nationals, which will be analyzed in our discussion of specific measures relating to vulnerable groups.

The **alternative measures or penalties** that currently exist under Italian law are governed by the Penitentiary Law.

Probation under social services supervision is a particularly important alternative measure (Art. 47.1 OP): until the law enabling it to be applied to the pre-sentencing phase came into force, this was the only form of *probation* known in the adult criminal justice system in Italy. This is an alternative measure that permits the individual to serve his sentence, not exceeding three years, outside the correctional facility. Probation is granted when it has been noted that it will contribute to the rehabilitation of the offender and there is no danger that the offender will commit

other crimes. In particular cases it may also be applied to those sentenced to up to four years' imprisonment. In any case, the measure is not granted to anyone who is dangerous to society. Probation takes place completely in the community and it aims to prevent the damage to the individual that may result from contact with the prison and from being deprived of freedom.

Basically, the measure consists in serving the sentence (or the residue of the sentence) under a regime of monitored and assisted freedom. The UEPE, in collaboration with the person concerned, drafts a treatment plan: it sets out the activities the offender must carry out, the requirements that must be followed, the monitoring procedures to be complied with, and how to repair the damage caused by the crime. A successful outcome of the probation period cancels out the sentence, while a negative outcome (non-compliance with requirements, commission of further offences, etc.) will lead to the measure revocation and to being revoked and (re-)application of the penalty of imprisonment.

As mentioned earlier, this is the alternative measure that most closely resembles the Anglo-Saxon *probation (post-sentence)*, whilst the new model allowing for adult probation while proceedings are stayed can be assimilated to *pre-trial probation*. Besides being the least afflictive measure, it can be modulated to fit specific cases, and thus individualizes treatment, so much so that since it was introduced it has been termed the «flagship» of the Penitentiary Law (Bricola, 1976).

Another widely-applied alternative measure is **ordinary home detention** (art. 47ter OP). In this case, an individual sentenced to a term of imprisonment not exceeding four years, serves it inside their home or in another private place

of residence. In comparison to *probation*, home detention is a less structured treatment modality, although in practice the distinction between probation and home detention has been lessening, since allowing home detainees to leave their places of residence because of the requirements of work or study has been more and more often recognized as well. Law 199/2010 allows access to alternative measures by offenders serving a term of incarceration of not more than eighteen months, a period that extends to time remaining to be served as well, unless the offences cause particular concern, such as terrorism, criminal association, prostitution of minors, kidnapping for ransom, etc., or there is a danger of escape or a risk of recidivism.

As we shall see later, ordinary home detention may be granted to individuals for whom prison would have particularly negative effects: young people, the elderly and mothers of children under the age of 10. The latter, as we shall see, benefit from a special type of home detention.

Chart II.4.4. *Males and females under alternative measures (detention and probation) in Italy in the period 2008-2013*

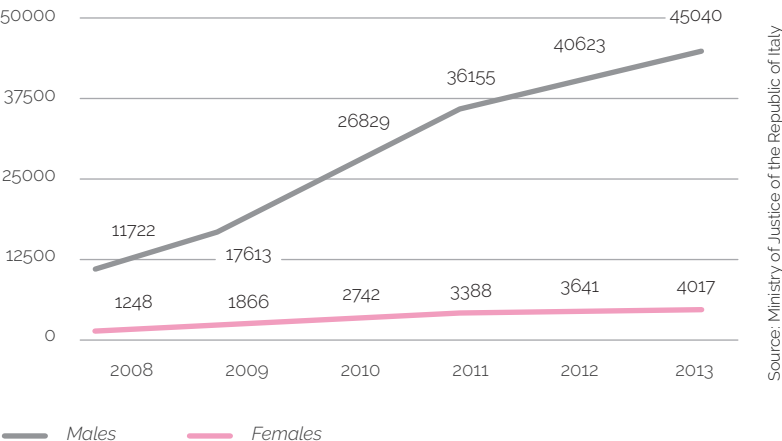
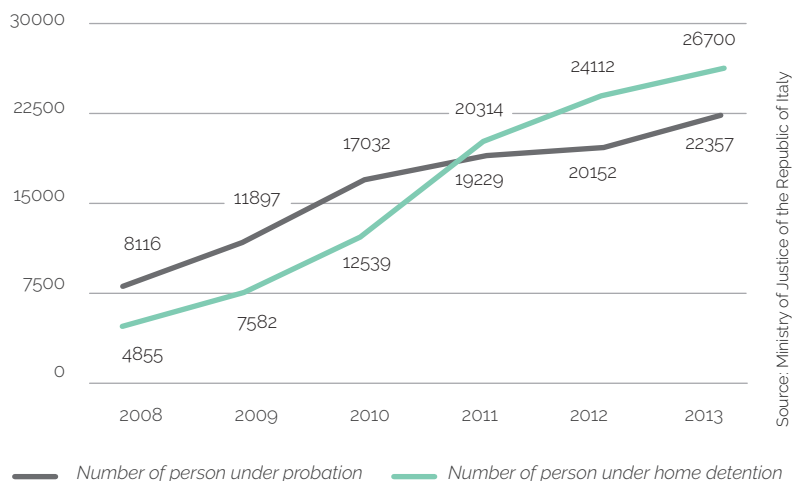


Chart II.4.5. *Number of persons under home detention or on probation under social services supervision in Italy in the period 2008-2013*



Day release (art. 48 OP) is much less frequently applied. Day release grants the sentenced offender permission to spend part of the day outside the prison to carry out work or training activities that will be useful to his social reintegration, under a treatment program supervised by the director of the facility. It is one of the measures that mitigate incarceration, as it is less restrictive than classic detention and enables individuals in the program to pursue interests and activities outside the prison for part of the day. Those with a sentence not exceeding six months may request the measure, as may all sentenced offenders who have already served half of their sentences in prison (or two-thirds in the most serious cases), as well as those sentenced to a term of up to three years, even before having served half of the sentence.

Compared to the prison population, the percentage of women in the total number of people subject to alternative measures is high, although it is decreasing: according to data provided by the Ministry of Justice, the percentage of women dropped from 12.3% of the total number of home detainees in 2008 to 8.6% in 2013. The percentage of women in day release is smaller (2008: 3.5%; 2013: 3%).

As regards the age of people subject to alternative measures, even in this case we see that adults aged between 30 and 40 years represent the highest number; the percentages are difficult to compare to those concerning incarcerated prisoners, because the two systems use different age ranges and the number of people under community measures varies over the period.

The application of **community services** has been increasing recently. It consists in carrying out an unpaid work activity for the community through a public or private entity approved by the court of jurisdiction. Given the importance of the measure in the Italian context, a separate section has been devoted to it. We would just point out here that community service may be termed a substitute sanction or an alternative measure; or it may be part of another alternative measure (e.g. probation under the supervision of social services) or even of a prison sentence.

As has already been mentioned, the **suspension of the criminal trial with probation for adults (*judicial probation*)** was only introduced into Italian law very recently. In this case, the defendant submits a request

to the judge to stay the proceeding, pledging to work together with authorities to implement the measure. It consists in carrying out, under the supervision of the UEPE, behaviors and actions aimed at repairing the harmful or dangerous consequences of the offence: compensation for the damage caused to the victim, mediation with the victim of the crime, volunteer activities, compliance with the requirements regarding residence permits, freedom of movement, avoidance of designated places, and carrying out community services, which are the necessary condition to receive access to the measure. An individual may be granted access to the measure if the crimes of which he is accused are punishable with up to four years' imprisonment or other specified offences have been committed (such as grand larceny, receiving stolen goods, violence or threats to public officials). The measure may only be granted once, and in any case not to habitual offenders or to those whose probation has already been revoked.

II.4.3. Vulnerable groups

Foreign nationals, who represent a substantial proportion of the prison population in Italy, are certainly one of the vulnerable groups. We have already briefly mentioned an *ad hoc* alternative measure – the **expulsion of the foreign national** (art. 16 D.Lgs. 286/1998). The judge, in sentencing a foreign national without a residence permit for a non-culpable crime, may, if the requirements for a conditional suspended sentence are not met, replace a term of imprisonment not exceeding two years with the measure of expulsion for a period of not less than five years. The law then sets out a number of exclusion criteria.

Drug and alcohol addicts are also considered vulnerable, and thus **special probation** has been designed for them: this measure may be granted to a convicted drug or alcohol addict if it is for the purpose of undertaking or pursuing a course of treatment. This is an alternative measure to a term of imprisonment of up to six years. This measure cannot be granted to the person more than twice. Another modality of special probation that can be accessed by people in conditions of particular vulnerability is set out with reference to **people suffering from AIDS or severe immunodeficiency** who are in treatment or plan to go into a care and assistance program (art. 47^{quater} OP). They may also be granted **home detention** in certain cases. The latter is an alternative measure that may be granted for humanitarian reasons to people with specific needs — **seniors** (over 60) and **youth** (under 21) for reasons of health, study, work and family.

Ordinary home detention also includes the special case of **pregnant women or mothers of children under the age of ten**. This measure consists in enabling the offender to serve their sentence inside their own home, in another private residence, or in a care and treatment facility in order to provide healthcare and support for the children. In addition, Article 47 *quinquies* gives convicted mothers of children under the age of ten, the possibility of **special home detention** when the requirements for access to ordinary home detention are not met. In any case there must be no risk of recidivism, and the mother must have served at least one-third of her sentence.

The mother may serve that part of her sentence in a penitentiary facility for mothers or, if there is no danger of escape and recidivism, in her home or in a private residence or other care and assistance facility.

If this is not possible, the sentence may be served in a protected family home setting. However, this possibility is excluded in cases of particularly serious offences such as terrorism, criminal association, prostitution of minors, kidnapping for ransom, etc.

It is important to remember that access to this measure is recognized for the **father** as well when the mother has died or is otherwise absolutely unable to care for the children.

II.4.4. Focus on... Community Service

As has already been mentioned, there are several forms and legal characterizations of community service work in Italy. In all cases, the aim is to provide unpaid activities for the good of the community, to be carried out for the State, regions, provinces, municipalities, or for welfare or voluntary service bodies or organizations. The activity takes place in the province in which the offender resides. Let us examine it more closely:

A) Community service work as a substitute for fines that cannot be paid due to the insolvency of the offender (art. 105 L. 609/1991)

It may also be carried out for organizations or bodies working in the fields of education, civil defense, protection of the natural environment or forestation. Organizations must sign an agreement with the Ministry of Justice or, by delegation, with the surveillance judge. Service may be carried out one working day per week, unless the offender asks to be allowed to carry it out with greater frequency.

B) Community service work as an accessory penalty for crimes of discrimination, hatred or violence for racial, ethnic or religious reasons (L. 205/1993)

It may be carried out for public or private organizations, up to a maximum of twelve hours per week. The unpaid activity may consist of the cleaning and restoration of buildings damaged by the slogans, emblems or symbols associated with organizations, associations, movements or groups, which incite to hatred or violence for racial, ethnic or religious reasons. Moreover, unpaid activities may also be carried out for organizations that work with particularly vulnerable groups such as the disabled, the elderly, immigrants, or drug addicts; finally, it may consist of work for purposes of civil protection, protection of the environment and cultural heritage, and for other purposes of public welfare.

C) Community service work as an accessory penalty for conviction for illegally carrying weapons or objects designed to harm, outside the offender's home, as well as for participating in public events wearing protective helmets or with faces covered, using any means to make it difficult to recognize the person, and for crimes committed during or because of sporting events (L. 41/2007).

D) Community service work as a main penalty, applicable by the Justice of the Peace (Article 54 D. Lgs. 274/2000)

The defendant must apply to the Court to be granted the measure.

The work period may last from ten days to six months and be carried out for up to six hours per week, unless the convicted person makes a specific request to the judge (up to forty hours per week). The activity must respect the sentenced person's work, study, family, and health obligations.

According to the Ministerial Decree of 26 March 2001, work activities may include the following:

- activities in favor of drug addicts, HIV-infected persons, the disabled, the ill, the elderly, minors, ex-convicts or immigrants;

- activities for the purposes of civil protection and aid to the population in case of natural disasters, environmental and cultural heritage protection, fire prevention, protection of forests, forest lands or land used for special agricultural production, conservation of the coast and coastal waters, guardianship of museums, galleries or art galleries;
- activities for the protection of flora and fauna and the prevention of straying;
- activities in hospital and nursing home maintenance, or maintenance of State property and assets, including gardens, houses and parks, excluding property used by the armed forces or the police;
- Other works of public utility specifically relevant to the offender's profession.

Article 54, D. Lgs. 274/2000 and the subsequent Ministerial Decree dated 26 March 2001 are important reference points for all subsequent regulations concerning community service work based on those rules...

E) Community service work as a prerequisite for the conditional suspension of a sentence (art. 165 CC)

F) Community service work as an alternative penalty for so-called minor drug-related crimes (art. 73 co. V *bis* DPR 309/90)

The crime must be a drug-related misdemeanor committed by a drug addict or narcotics user. The offender must apply for the measure, and the duration of the unpaid activities must correspond to the term of imprisonment. The activities may also be carried out for therapeutic communities.

Community service work may only substitute for detention twice. If the person violates the obligations inherent in the activity, the substitute penalty will be revoked and the sentence of imprisonment applied.

G) Community service work as an accessory administrative sanction for non-culpable violations of the Highway Code (art. 224-bis D.Lgs. 205/1992)

In such a case, the work period may be from one to six months in duration; if the individual is a repeat offender, the duration must not be less than three months. The maximum daily work period must not exceed eight hours.

H) Community service work as an alternative penalty for arrest or fine for driving under the influence of alcohol (art. 186 paragraph 9 bis D.Lgs. 205/1992)

I) Community service work as an alternative penalty for arrest or fine for driving while in an altered psychophysical state as a result of drug use (art. 186 paragraph 8 bis D.Lgs. 205/1992)

The latter two alternatives were introduced by L. 120/2010, which modified the Highway Code. This legislation has thus led to a rapid increase in the application of the alternative measure, which in fact was not often used before.

In these cases, the defendant must not oppose the substitution, and the main focus of the activity must be on education and road safety (this is the legislative provision, but in practice is hardly applied). In addition, the activity may also take place at centers specializing in fighting addiction.

As happens in other countries too, jurisdiction plays an important role: the unpaid activities may be carried out with local authorities and private organisations. The latter must sign an agreement with the Ministry of Justice or with the President of the Court in order to accept people sentenced to community service work.

The duration of the activity is determined by assigning two hours of community service work for each day of the sentence. For fines, € 250.00 equals two days of community service work in the public interest.

A successful outcome of the activity period cancels out the sentence, and there is no mention of it in the individual's record. If, on the contrary, the individual refuses to carry out the activities, or does not comply with the requirements, the substitutive measure will be revoked and the original penalty will apply.

L) Community service work as a substitute punishment for all crimes committed by drug addicts, with the exception of murder, serious types of robbery, extortion and kidnapping for extortion (art. 73 paragraph V ter DPR 309/1990)

M) Community service work as an opportunity for detainees and internees (art. 21 paragraph IV ter OP)

During their term of imprisonment or while they are under security measures, they may be assigned to carry out unpaid volunteer work on projects of public interest for the benefit of the community.

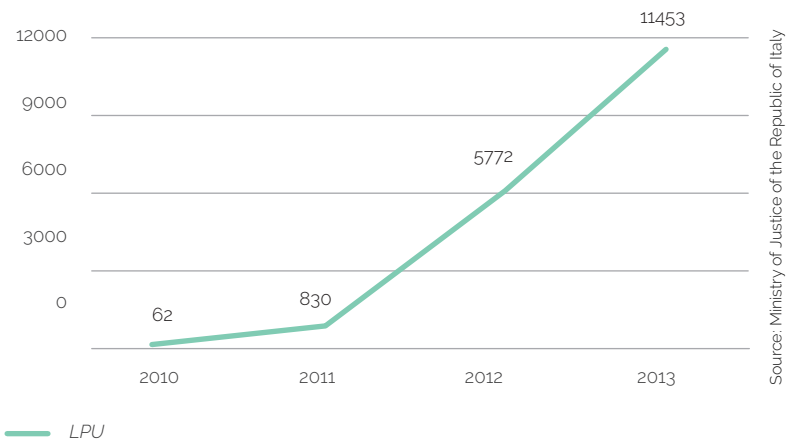
N) Community service work as a prerequisite for the suspension of criminal trial with probation for adults (Law 67/2014)

As Chart II.4.6 shows, community service work has expanded rapidly since 2010, thanks to the reform of the Highway Code. The data for previous years are not recorded.

Compared to other alternative measures, there is a higher percentage of women serving community service work, standing at 9.8% in 2013. This may be explained

by the fact that driving under the influence of alcohol is an offence that weighs preponderantly in the number of these measures imposed and it is committed by women in greater proportion than other offences.

Chart II.4.6. *Number of persons serving community service work*



II.5. THE NETHERLANDS

A large part of the information in this document is retrieved and translated from the Dutch websites www.kinderbescherming.nl, www.rijksoverheid.nl and www.reclassering.nl

Thanks to the cooperation of S. Bogaerts and J.D. Schilder Tilburg University (NL)

II.5.1. Development, functioning and task of the Probation Service in the Netherlands

The Probation Service was founded in 1823 on a voluntary basis. It was named Society for the Moral Improvement of Prisoners (*Genootschap tot zedelijke verbetering dergevangenen*) and initially engaged in providing them education and religious guidance, considered as factors potentially affecting on reoffending. In 1910, after the introduction of the suspended sentence with probation, the Dutch Government began its formal relationship funding the Service. Several organizations doing probation-related work on a national level started to co-operate, and in 1913 formed the Society of Probation Services (*Vereniging van Reclasseringsinstellingen*). Professionalism in probation work was been introduced thanks to the Probation Act of 1947, demanding probation officers to be trained as social workers. Major reorganizations of the Probation Service took place in 1986, 1995 and in 2004: this last gave the Ministry of Justice a more coordinating and controlling function, also instituting the ministry's commissioning practice. This means that the Probation Service may only perform its duties when commissioned by the institutions that purchase those products: the judiciary, the Public Prosecution Service (*Openbaar Ministerie*) and the Custodial Institutions Service (*Dienst Justitiële Inrichtingen*). Outside of the judicial framework, the Probation Service also performs activities on a contract basis for municipal governments (Van Kalmthout and Tigges, 2008).

The Service's aim during the past few years has been to make demonstrable contributions to a safer society. One objective derived from that is the reduction of recidivism: the interventions by the Probation Service change the offender so that he no longer wants to reoffend (Poort and Eppink, 2008).

The Probation Service performs the following tasks:

diagnosis and advice;

- supervision (*toezicht*) of conditional sanction modalities (e.g., the suspended prison sentence, suspension of pre-trial detention under conditions and detention under hospital orders with conditions);
- performing behavioural interventions (*gedragsinterventies*);
- performing task penalties, in particular community service.

The probation activities are carried out by several private foundations: they are subsidized and need to be formally recognized by the Ministry of Justice. Recognition is granted when the organization has declared itself willing to bear responsibility for carrying out the work defined by the statutory authorities.

The legislative framework of the Dutch Probation Service is included in the 1995 Probation and After-Care Order (*Reclasseringsregeling*) as well as in a number of laws dealing with specific sanctions involving the Probation Service. The Probation and After-Care Order specifies that the probation institutions recognized by the Minister of Justice are responsible for the execution. Probation can be used with any offender, regardless of

the offence they are suspected of having committed, or for which they have been convicted (Van Kalmthout and Tigges, 2008).

Delinquent behaviour and preventing its repetition form the central scope of the Probation Service. This is a judicial task. That is why the Probation Service concentrates on criminogenic factors, that is, problems that lie at the bottom of the delinquent behaviour. However, not all problems are criminogenic. In many cases, a complex of factors is involved that results in an integrated approach being desirable. One example that could be mentioned is (addicted) persistent offenders. In increasingly more cases, it is emerging that mental limitations in combination with other problems result in a lifestyle that includes criminal behaviour. In those cases, there is often already involvement by a Mental Healthcare institution. The added value of the Probation Service in those cases is the attempt to proceed further with the existing process, with the judicial deterrent available as extra motivation. Improving the situation of an individual client contributes to the reduction of nuisance or recidivism in these groups of people subject to certain jurisdiction.

The core of the work of the Dutch Probation Service is the prevention of recidivism of known offenders. As such, tertiary prevention is the aim of the Probation Service. It plays an important role aimed at stopping the violence, and changing the beliefs and attitudes of the perpetrator (Van Kalmthout and Tigges, 2008).

Three Dutch organizations are engaged in managing probation tasks, **supervisioning** and monitoring offenders:

- the Probation Department of the Salvation Army (*Reclassering Leger des Heils*). This one has defined a number of specific vulnerable target groups, such as homeless and juveniles;

- the Netherlands Rehabilitation Organisation (*Stichting Verslavingsreclassering* or *SvG*). This probation organization deals in particular with addicted persons who committed a crime directly related to the addiction to alcohol, drugs or other substances.
- the Dutch Probation Foundation (*Reclassering Nederland* or *RN*), that is the largest of the three probation organizations. This one focuses in particular on preventing recidivism and resocialisation.

SUPERVISION usually consists of supervision and monitoring: frequent meetings with supervision agency, aimed to check the client behaviour. Supervision is particularly individualized. There are specific target groups, such as drug addicts, who receive also special care and clinical treatment. Supervision is presently provided at the earliest possible stage. The monitoring and welfare activities to be used are determined at the start of supervision. Research shows that part of the supervision is impossible after the start and is therefore halted (12% of supervision cases were written off in 2004, mostly for not being able to reach the clients, or for his inability to keep appointments). An even larger part of the supervision programmes is started but prematurely ended (26% of supervision programmes were written off in 2004). In nearly one third of the dossiers that were ended prematurely a new offence has been committed. The frequency of supervision activities is highest in the programmes that were ended prematurely, because clients with a high risk of repetition are checked more frequently (Abraham, Van Dijk & Swan, 2007).

II.5.2. Alternatives to imprisonment for adults in the Netherlands

Task Sentence. This is now a principal penalty, included in the Penal Code. Task sentence consists of a community service (*werkstraf*), a training order or a combination thereof.

In contrast to the law for youth, there is no learning task for adults, which is replaced by a behavioral change training.

Community service

With a community service, the perpetrator is obliged to do unpaid work. This is typically work for non-commercial institutions such as municipalities, hospitals or nursery homes comparable to those of young people. Community service takes a maximum of 240 hours. There is a maximum of 480 hours for a behavioral training order (or a combination of work and training order). Community service can also be combined with a fine or imprisonment. Community service may be imposed when the prison sentence is maximum six months.

Behavioral training

The learning sentence for adults is replaced by several behavioral training to reduce criminal behavior in the future. The aim of these training is that the perpetrator receives an insight into the origin of the criminal behavior and cognition to avoid recidivism. The workouts are scientifically based and an independent Accreditation Commission reviews evaluates the methodologies and results For an overview of behavioral trainings in the Netherlands see Table II.5.1.

Fine. For all offenses a fine can be imposed. The category of the offense determines the maximum fine. The judge or the prosecutor determines the actual amount of the fine. In some cases, the convict is sentenced to compensate the damages caused by the offense to the victim.

Confiscation of property. Criminal gained power can be taken away from criminals. Examples include money, but also cars or houses. Justice can do this under the Pick - them - laws (*Pluk-ze regeling*).

Restraining order. Someone who causes serious inconvenience can get a restraining order. For example, a football vandal may get a stadium prohibition. Also, the perpetrator of domestic violence can get a restraining order so that they cannot approach former victims.

Special treatment for repeating offenders. The ISD measure (*Maatregel Inrichting Stelselmatige Daders*) is intended for adults who have been convicted at least 3 times in the past 5 years. Offenders have to serve their sentence in a special facility for recidivists. These offenders often have a substance abuse or a psychiatric disorder. The ISD measure must break the pattern of conviction, release and recidivism. They receive special treatment for their problems during a period of 2 years, for example a motivational training.

TBS measure. Some offenders are held (partially) unaccountable for the offense because of a mental or personality disorder and can be sentenced to the TBS measure (*Ter Beschikking Stelling*). To protect society from these people, they can be obligated to undergo a compulsory treatment in a forensic psychiatric centre or they can get a TBS measure with conditions. In that case, confinement is not necessary, but treatment is obliged. To determine whether someone needs a TBS-order, one should participate in an investigation by behavioral scientists such as psychologists and psychiatrists. Without this examination, the judge cannot impose TBS. TBS lasts as long as needed until there is a small chance of recurrence.

Table II.5.1. Behavioral change programs for adults in the Netherlands

TOPIC	NAME	CONTENT	HOURS
Employment	Training Employment skills	Learn skills to increase the chance of successful job applications	64
Aggression	Training Ending Domestic Violence		30
	Training Aggression control ART Wiltshire-NL	Learn how to avoid risky situations and take responsibility for own behavior. Learn to recognize bodily signals of aggression and how to regulate in a more effective way.	63
Addiction and Substance abuse	Training Alcohol and Aggression	Learn how to regulate behavior when there is a problem with alcohol. Learn how to recognize behavioral patterns and learn how to behave alternatively.	-
	Life style training short	Offenders learn how to prevent recidivism because of substance abuse. Training is based on the change model of Prochaska & DiClemente and the relapse prevention model of Marlatt and Gordon.	42
	Life style training	Same as the life style training short but in comparison to the short training more focus on prevention and controlling of criminal behavior related to substance abuse.	61

TOPIC	NAME	CONTENT	HOURS
Additional			-
		<i>A voluntary training which focus on the life after a short time of detention. Making a plan for the future to re-integrate in society</i>	-
Cognition	<i>Training cognitive skills for mentally disabled (CoVa+)</i>	<i>Cognitive skills training for mentally disabled or people with a language deficiency. Learn how to solve problems in an effective way with among others; thinking patters, assertiveness training, and emotion recognition.</i>	94
	<i>Training cognitive skills (CoVa)</i>	<i>'Think first, and act consequently' is the slogan of this training. In this training offenders receive an insight in their thinking process to better understand their behavior and to prevent this behavior in the future. Focus is on problem solving, perspective taking, empathy, impulse control, moral reasoning, and critical thinking.</i>	80
Housing	<i>Training in housing</i>	<i>Finding a place to live, learn about practical skills such as insurances, contact with the land lord, and coping with stress.</i>	15
Economical	<i>Training in budgeting</i>	<i>Learns practical skills, for example how to make a budget plan, avoid impulsive buying behavior, and learn about institutions who help dealing with these problems.</i>	17,5

Concluding, the law enforcement in the Netherlands, for both youth and adults, has several ways to provide incentives for obedience with the law besides regular imprisonment. Behavioral change measurements are applied for a variety of committed offenses and trainings are specified per conviction. There is a great variety among measures in the Netherlands but all have the common goal to avoid recidivism and change behavior to improve participation in society.

II.5.3. Target group: addicts.

Drug addicts are target group because of their needs of clinic treatment and special care. As it can be seen in Table II.5.1 specific programs are addressed to offenders who committed a crime related to substance use or gambling and who have problem with substance misuse. One of these programs is the Lifestyle training, a cognitive behavioural intervention accredited in 2009 by the Dutch Accreditation Committee for Behavioural Interventions of the Ministry of Security and Justice. It was evaluated thanks to a research of 2013-2014, that studied 12 trainings, both intramural and extramural, given by the probation departments of six different organizations. Of the 107 registered participants, 91 started the training and 64 completed the training (i.e. 60% of the applications and 70% of the entrants).

The main selection tool for the Lifestyle Training is the Recidivism Assessment Scale (RISc) that assesses various criminogenic factors and provides an indication of the risk of recidivism. The RISc advises the Lifestyle Training when the combination of drug use and risk of recidivism meet the inclusion criteria for the Lifestyle Training. The most important exclusion criteria are: cognitive disabilities, mental disorders, dominant behaviour, negative attitude to the sanction, and when the offense involves a sex offense.

The regular Lifestyle Training differs from the Short Lifestyle Training in that it is more intensive (more sessions) and is therefore more suitable for individuals with a higher risk of recidivism (medium, high) and for individuals who have to deal with more serious substance problems (risky use with complaints, addicted).

The Lifestyle Training is a coercive measure. As a result, participation has positive consequences for those involved, or refusal has negative consequences (Barendregt, Wits, Van der Wall, Gelder & Scholten, 2014).

II.5.4. Target group: minors. Alternatives to imprisonment for youth in the Netherlands

Young people between 12 and 18 who commit an offense can be punished according to the juvenile justice system. The judge may also apply juvenile law to adults up to an age of 23. Children under 12 years old cannot be prosecuted.

For minor offenses (e.g., vandalism or theft), the police will often take contact with their parents to discuss the committed offence and to search for solutions. The police can send them to the Youth Care Agency (*Bureau Jeugdzorg*). They help and supervise children in solving their problems or send them to other professionals when specialized mental health care is necessary. If there are major concerns related to the welfare of the child, a family guard will be appointed by the judge.

In some cases, offenders between the ages of sixteen and seventeen may be referred to the adult Service. This may happen in the case of particularly serious offences or when the young person in question is a recidivist (Van Kalmthout and Tigges, 2008).

Halt. Halt is an alternative penalty on a voluntary basis: young offenders who have committed, for example, vandalism, shoplifting, firework offences or truant may chose between the criminal justice system and an alternative punishment (*Het ALTerntief*) aiming at make these juveniles aware of their behaviour and to give them the chance to right their wrongs (Abraham, Buysse & Nauta 2013). When young perpetrators between 12 and 18 years old participate in this program, it allows them to avoid a criminal record. In addition to the police and the Dutch Public Prosecution Service (OM), special investigating officers (BOAs) with special powers can refer juveniles to the Halt programme.

Research in 2006 has shown that the Halt measure is not effective to reduce recidivism (Ferwerda, Leiden, Van Arts, & Hauber, 2006). Following this evaluation the Halt programme was deeply updated: the young offenders has to offer apologies and a closer parental involvement is required. The work assignment (*werkstraf*), has no longer centrality, as now it is imposed only if the Halt programme involves a significant number of hours or in the case of a firework offence.

The **standard updated Halt programme** consists of an initial meeting, a follow-up meeting and a final meeting and involves a time period from 6 hours (minimum) to 20 hours (maximum). Juveniles are in any case given offence-related or behaviour-related learning assignments and will have to apologise (in person or by letter). Parents are involved in the Halt programme. The total number of hours of the programme is determined using the sentence and depends on the offence committed and the age of the juvenile.

The **short Halt programme** lasts for between 2 hours (minimum) and 6 hours (maximum) and consists of an initial meeting, a final meeting and a learning assignment. A firework offence is a special

type of short Halt programme and consists of an initial meeting and a work assignment (Abraham, Buysse & Nauta 2013).

The new version of Halt has been implemented since 2010 and in 2012-2013 has been evaluated. The results suggest that in 94% of cases the Halt programme was successfully completed. The 6% failure (transferred back to the police or Public Prosecutor) can be divided up as follows: 4% ended because the juveniles did not agree with the Halt proposal and 2% ended later or in the Halt process as the juveniles did not adhere to the agreements (Abraham, Buysse & Nauta 2013). The evaluation shows in particular that the actual offering of an apology to the victim is an effective part of the Halt programme and that it has an effect on recidivism. Although apologies are a key-point of the updated Halt, only in 68% of cases this requirements was met: this percentage can be explained also because there is a certain number of offences without direct victim, but there is also a number of unknown reasons. Although the Halt is expected to show good results, it could be more effective by a better ensuring that apologies are made and damage is compensated (Abraham, Buysse & Nauta 2013).

Task sentence. Community service consists of a community service, a learning sentence or a combination of both. This can also be combined with a detention (maximum three months) or a fine.

Community service

With a community service offenders are engaged voluntary work without being paid. They typically work for non-commercial institutions such as municipalities, nursery homes or hospitals.

Learning Sentence

Youngsters under 18 can get a learning sentence. They must follow a course that confronts them with their behavior and its consequences. For example, social skills training, courses dealing with money, or an aggression control training. For a full overview of learning sentences in the Netherlands see Table II.5.2.

Juvenile Detention. Youths who are convicted for juvenile detention stay in a young offenders' institution. Juvenile detention lasts up to two years for people aged between 16 or 17 years. For young people between 12 and 15 years detention can take up to one year maximum. Young people in detention have to go to school and they are taught in social skills and dealing with anger when needed.

PJJ measure. Some young people need intensive treatment and supervision to prevent recurrence of the crime. For example, because they have a severe conduct disorder. Often they are youngsters suffering from a mental disorder that has been associated with the offense. With a so-called PJJ measure (*Plaatsing in een Inrichting voor Jeugdigen* - Placement in a Youth Institution), they can accommodate and treat a youngster in a youth offender institution. This may take three years minimum but can be extended up to seven years. The youngster are allowed to go outside under certain conditions in the last year of their detention to gradually reintegrate back into the community.

Night detention. Youngsters go to school during daytime and go to the youth offender institution outside school hours. That way, they can continue their education or profession.

Behavioral change measure. If juvenile detention is too heavy and unproportioned for the convicted crime, but a suspended sentence or a learning sentence is too light, then the person can get a behavioral measure (*Gedrags beïnvloedende maatregel*). A behavioral measure consists of one or more trainings or treatments. The young person must then follow for example an aggression training or a training to stay off drugs or alcohol. The juvenile probation oversees the process of the behavioral measure.

Other sanctions and measures in the juvenile justice system

- confiscation of property (e.g., scooters) and illegally obtained goods (e.g., by fencing stolen or obtained goods)
- a fine or compensation.

Adolescents Criminal Law for youth 16 to 23 years.

Since April the 1st 2014, young people aged 16 to 23 years can be tried as a juvenile or as an adult. This is called the adolescent criminal law. In this way, court can take greater account of the development of a juvenile. Some young people will have greater gain from a tough approach while others gain more from counseling, depending on their developmental stage.

Table II.6.2 Behavioral Change trainings for convicted juveniles in the Netherlands

NAME	CONTENT	FREQUENCY	HOURS
<i>Respect limits regular</i>	<i>Training sexual deviant behaviour</i>	<i>10 sessions/ 1 parent session</i>	<i>20</i>
<i>Respect limits regular plus</i>	<i>Training sexual deviant behaviour</i>	<i>10 sessions/ 3 parent session</i>	<i>20</i>
<i>Respect limits extended</i>	<i>Training sexual deviant behaviour</i>	<i>15 sessions/ 1 parent session</i>	<i>30</i>
<i>Respect limits extended plus</i>	<i>Training sexual deviant behaviour</i>	<i>15 sessions/ 3 parent sessions</i>	<i>30</i>
<i>Respect limits extra</i>	<i>Training sexual deviant behaviour</i>	<i>20 sessions/ 1 parent session</i>	<i>40</i>
<i>Respect limits extra plus</i>	<i>Training sexual deviant behaviour</i>	<i>20 sessions/ 3 parent sessions</i>	<i>40</i>
<i>So-cool regular</i>	<i>Cognitive social skills training for mentally disabled youngsters</i>	<i>16 sessions/ 1 parent session</i>	<i>40</i>
<i>So-cool extended</i>	<i>Cognitive social skills training for mentally disabled youngsters</i>	<i>22 sessions/ 1 parent session/</i>	<i>50</i>
<i>Stay-a-way short</i>	<i>Training substance abuse</i>	<i>8 sessions/ 3 parent sessions/ 5 parent-child sessions</i>	<i>20</i>
<i>Stay-a-way regular</i>	<i>Training substance abuse</i>	<i>13 sessions/ 4 parent sessions/ 6 parent-child sessions</i>	<i>30</i>

NAME	CONTENT	FREQUENCY	HOURS
<i>Stay-a-way plus</i>	<i>Training substance abuse for mentally disabled youngsters</i>	<i>10 sessions/ 4 parent sessions/ 9 parent-child sessions</i>	<i>30</i>
<i>TACT group</i>	<i>Aggression regulation training</i>	<i>20 sessions/ 1 parent session/ 3 parent-child sessions</i>	<i>50</i>
<i>TACT individual</i>	<i>Aggression regulation training</i>	<i>20 sessions</i>	<i>35</i>
<i>Tools4U regular</i>	<i>Cognitive social skills training</i>	<i>8 sessions</i>	<i>20</i>
<i>Tools4U regular plus</i>	<i>Cognitive social skills training</i>	<i>8 sessions/ 2 parent sessions/ 2 parent-child sessions</i>	<i>25</i>
<i>Tools4U extended</i>	<i>Cognitive social skills training</i>	<i>12 sessions</i>	<i>30</i>
<i>Tools 4U extended plus</i>	<i>Cognitive social skills training</i>	<i>12 sessions/ 2 parent sessions/ 2 parent-child sessions</i>	<i>35</i>

II.5.4. Focus on... The community service in the Netherlands

In the Netherlands, the community service was introduced in 1989 and added in the Dutch Criminal Code. In the first edition of the Code in 1989, the measure was still a voluntary alternative measure. The suspect had to agree in advance with the alternative measure to perform 'unpaid work in the public interest', which he also could refuse.

In 2001, the community service changed in an alternative sanction and received the status of an independent sentence without taking into account the consent of the suspect.

There are three types of community services:

(1) a community service whereby the adult offender must perform unpaid labor;

(2) a learning sanction for youngsters (- 18 years old) to follow a training course, for example to improve their social skills where they are faced with their unacceptable behavior and the consequences of the behavior for the victim and/or society. A behavioral training intervention is a special condition, which is anchored in the Dutch Criminal Code since 2010. For minors (12-18 years), the community service exists as an independent principal penalty since 1995;

(3) a combination of both.

A learning sanction as mentioned in the Dutch Criminal Code cannot be imposed to adults, only minors below 18 years old can get a learning sanction that is imposed by the Court. The public prosecutor cannot impose a learning sanction to a minor. However, in the context of a special condition, an alternative judicial measure with a leaning/training character can be imposed on an adult.

The duration of community service is maximum 240 hours, and maximum 480 hours for a learning or training sanction (or a combination of community service and a training punishment). A community service can also be combined with a fine or imprisonment (maximum six months for adults and maximum three months for minors).

During a community service, the convicted person performs voluntary work mostly in public services, such as public parks, and in non-profit organizations, such as hospitals in his/her free time. The community service is an alternative punishment in order to recover the broken relationship with society that has been affected caused by the committed offense. If possible, there is a connection between the location and content of the community service and the offence committed. For example, someone who was drunk and caused an accident with bodily injuries, can perform his community service in a rehabilitation center.

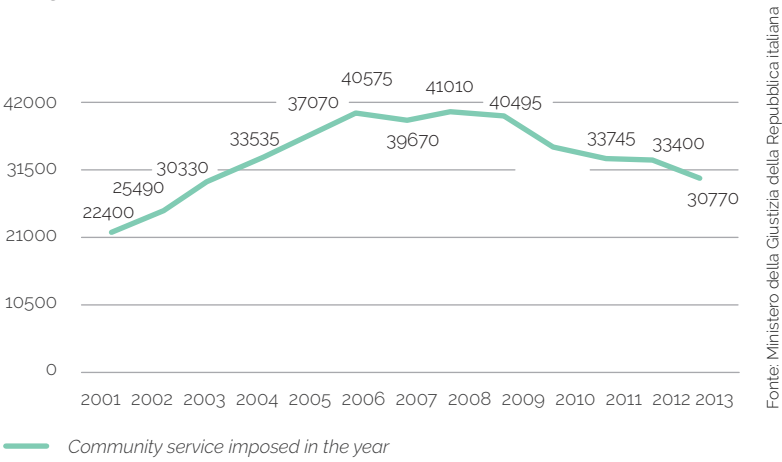
A community service has the primary goal to regulate perpetrators by normalizing their daily life, and teaching them how to deal with colleagues, managers and society. In addition, the community service has also the advantage that individuals can keep their home and work while performing the alternative measure, what is totally different when a perpetrator is incarcerated.

Since 2012, only a community service is no longer possible for serious sexual offences and violent crimes. In addition to the community service, the judge must also impose a substitute custodial sentence (for example detention). The judge also has to motivate the imposition of the community service in that case. When the offender does not perform the community service well or not at all, he should still be incarcerated. For how long he should go to jail depends on the duration of the community service. For example, a community service of 240 hours is approximately equal to 120 days incarceration. In the case of some minor offences, such as spraying graffiti on walls, the prosecutor

can also propose a community service. This gives the accused the advantage that he does not have to appear in court and that there will be no criminal case. The prosecutor determines whether the community service has been performed well.

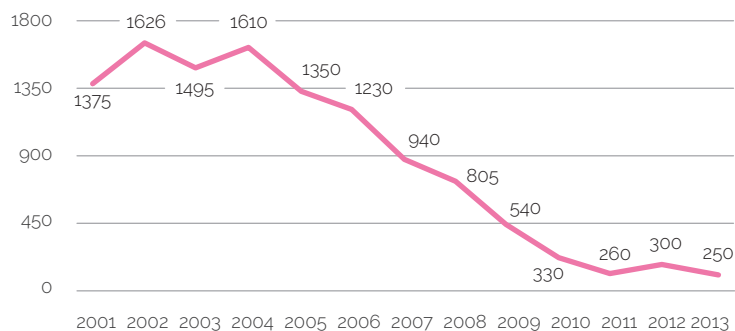
Between 2001 and 2013, approximately 450.000 community services were imposed, with a peak in 2008 of 41.040 community services.

Chart II.5.1. *Number of community services imposed to adult offenders in The Netherland in the period 2008-2013*



For young people, approximately 12.000 learning sanctions were imposed between 2001 and 2013.

Chart II.5.2. *Number of community services imposed to juvenile offenders in The Netherland in the period 2008-2013*



Fonte: Ministero della Giustizia della Repubblica italiana

— Learning sanction imposed to juvenile offenders

According to the Dutch Ministry of Security and Justice, the community service has advantages for both society and for the accused. These advantages are:

1. The accused is more likely to return successful into society; through the community service and the voluntary work, the accused stays in touch with society and learns what self-discipline is because society expects this of him;
2. Community services are relatively easy and quick to implement in society;
3. The accused makes himself useful to society; he (symbolically) repairs the damage he has caused to society and victims;
4. The accused is likely to reoffend slower and less frequently after a community service although the dif-

ference in reoffending between a community service and incarceration is not large;

5. Individuals who received a community service are less at risk to become criminal contaminated by other criminals;

6. A community service is cheaper compared to incarceration and juvenile detention.

The Dutch probation service is responsible for the execution of the community service. Also in the implementation of a community service, the probation service fulfills a crucial role as soon as the public prosecutor or the judge has imposed the community service to an individual.

After the judge has imposed a community service, the accused is invited for an interview at the office of the probation service. In this meeting, the rules of the community service are explained and together with the accused, plans are made when and how the offender can perform his community service, and suggestions are made of which workplace could be possible. There are several project sites where the accused can perform the community service. This can be for example, working in the woods or in landscaping or working in nursing homes, revalidation centers, hospitals, community centers, etc. Community service is often physical work such as kitchen work, cleaning, and working in the garden.

After the interview with the probation service, a placement interview at the project site is organized. There are different types of community service projects. After that, a community agreement can be signed. In that agree-

ment, the number of days and hours of work spent at the project site are explicitly included. If the accused does not comply with the agreement, a warning from the probation service will be given and a conversation at the office of the probation service will be planned. For a second violation of the agreement, or when the accused commits a new offense, the probation service will stop the community service and will contact the prosecutor who will take a decision of the further direction what can mean that the offender has to go to jail. The accused can make objection against the decision within two weeks.

The effect of the community service in terms of crimes and recidivism?

Within the current palette of punishment modalities, community services takes an important place. As mentioned before, the accused performs the community service next to his or her regular work. In general, a community service seems to prevent future crime and recidivism. Comparison of figures shows that the recidivism rate after a community service is lower than after a prison sentence. Research by the WODC reveals, for example, that of the perpetrators convicted to community service, about 50 percent reoffends again (Wartna, Tollenaar, & Blom, 2005b), while of the offenders who were discharge from a correctional facility, more than 70 percent reoffended again (Wartna, Kalidien, Tollenaar, & Essers, 2005a).

However and as mentioned by Wermink, Blokland, Nieuwbeerta and Tollenaar (2009), the studies of Wartna et al. (2005a, 2005b) do not take into account selection effects. Perpetrators convicted to a community service are often first offenders; they have been convicted for the first time or have been convicted for less serious crimes. Perpetrators convicted to imprisonment are more often recidivists and committed more often serious, violent crimes compared to offenders who received community service. That means that both groups are not comparable and that selection criteria can be responsible for differ-

ences in recidivism rates. Because of different selection criteria, detainees are more likely to have a higher risk of repeated criminal behavior than persons who received community services. To examine the effect of criminal sanctions on recidivism, it is necessary to check for such selection processes.

In the study of Wermink (2009), recidivism rates of offenders who received a community service were compared to the recidivism rate of inmates. They made use of a large-scale data base with detailed information of all persons residing in 1997 who were sentenced for the first time to community service or imprisonment. They used matching methods to control for selection processes.

The researchers found that offenders (males and females) who received a community service reoffended 47% less often compared to the short term prisoners (Wermink, Blokland, Nieuwbeerta, & Tollenaar, 2009). More than 7,000 perpetrators between 18 and 50 fifty years old imposed to a community service in 1997 were examined after a time at risk period of eight years (follow-up period), and compared to a matched group of 3,500 offenders who were sentenced to a prison sentence of up to six months. Sjef van Gennip, CEO of the Probation Netherlands concludes: «This research shows that community service is an effective sanction to reduce crime». Figures from the probation show that the relapse rate of sentenced prisoners is higher compared to offenders who received community service (<http://www.reclassering.nl/>).

Success and fail factors of the community service

Success and failure factors of the community service for adult offenders were examined (Lünnemann, Beijers, Wentink, Junger-Tas, Oomens, & Tan, 2005). The researchers examined adults who were imposed to a community service. They examined factors that contribute to the success of community services and factors that may affect the successful completion of community services. The overall

average percentage of completed community services is about 75 percent. This is 10 percent lower than ten years before (85 percent). The fact that less community services were completed is caused by the fact that there is a change in the population of offenders who were convicted for a community service. In the beginning of the community service, especially young first-offenders of minor crimes were selected for community service, nowadays, community services is also imposed to offenders with more severe crimes and people who have already previous convictions in the past.

Several personal characteristics are related to the completion of the community service. More women (82 percent) than men (74 percent) finished a community service successful; more elder people (average of 34 years) than younger people (average of 31 years) completed the community service; more unsuccessful completers were born in Morocco (58 percent), Netherlands Antilles (69 percent) and Suriname (72 percent). The most successful completers are born in Netherlands, Turkey and Asia (successful completion of about 75 percent) (Lünnemann, Beijers, Wentink, Junger-Tas, Oomens, & Tan 2005).

There are also differences in completing a community service successfully with regard to several living conditions of the perpetrator. Individuals with a permanent and regularly job, have a greater chance to finalize their community service successful (87 percent), compared to people who are unemployed (average of 70 percent). This is also the case for students (85 percent), as well as for people with semi-solid work (83 percent). The researchers also found that completers (88 percent) compared to non-completers (73 percent), more often had a

partner and children. The educational level did not differ between completers and non-completers, but the degree of education differed: 83 percent for people with a diploma compared to 75 percent for people without a diploma or degree (Lünnemann et al., 2005)

Addiction and mental health problems influence the completion of a community service. Individuals with psychiatric problems are less successful in accomplishing a community service (73 percent) than those who don't suffer from psychiatric problems (81 percent). Individuals with hard drug addiction (52 percent) and soft drugs addiction (70 percent), are also less likely to complete the community service successfully. Also people with physical complaints are less successful to accomplish the community service (67 percent) and finally, alcohol addiction does not influence the completion of the community service (Lünnemann et al., 2005).

The more contacts individuals had in the past with the judicial system, the more chance for early drop-out during performing a community service. Individuals who perform community service for the first time were more likely to finish the community service successfully. People who uncompleted a previous community service are more at risk to incomplete a future community service. Also the type of offence differentiates between completers and non-completers. Individuals who have been convicted for a simple theft are less successful to complete the community service successfully compared to individuals who have been convicted for driven a vehicle under influence of alcohol. Also people who were sentenced to imprisonment more than once, are less successful in completing a community service (Lünnemann et al., 2005).

Another important success factor is a rapid implementation of the community service. A rapid implementation is more often the case when the public prosecutor imposes the community service. In that case, the convicted has completed his community service within six months, what means that he can start faster with the community service than when the penalty is imposed by the Court (Lünnemann et al., 2005).

Motivation of the individual is an important factor. This motivation can be intrinsic because the convicted person is convinced that he or she has deserved the community service. The motivation can also be external, for example when the individual can keep his regular job or doesn't lose other important things in his life, such as his relationship and the daily contact with his children, wife and friends. Furthermore, it appears also that the longer a community service lasts, the more likely it is to fail. Individuals who perform community services in a group project are slightly less successful at completing the community service compared to individuals who are placed in an external project or a non-profit institution, such as a nursing home (Lünnemann et al., 2005; <http://www.reclassering.nl/>).

We can conclude that there exists no single independent factor that explains whether a community service will be completed successfully or not. There are always combinations of factors which are responsible for the (in) completion of a community service. Important to mention is that individuals with steady work and a diploma, individuals who have had no previous justice contacts and individuals who received community service from the prosecutor, have more chance to complete the com-

munity services successful (more than 90 percent), than unemployed individuals with more than six juridical contacts in the past and individuals suffering from hard drugs addiction. Only 41% of this group finished their community services successful (<http://www.reclassering.nl/>).

II.6. UNITED KINGDOM

In England & Wales, Scotland and Ireland we have similar, but distinct prison and probation systems, which have been developed in parallel.

II.6.1. ENGLAND AND WALES

The National Probation Service is the competent authority for the probation sector, which recently underwent deep changes. These changes were based on the fact that around half of crime is committed by people who have already been through the criminal justice system (Home Office & Ministry of Justice, 2015) and the cost of recidivism fluctuates between 9.5 and 13 billion pounds. Government policy 2010-2015 is focused on reducing recidivism, thereby reducing the number of victims and lowering costs.

To achieve this aim, various strategies were adopted:

- using a reward-based approach to implement effective ways of rehabilitating offenders and rewarding providers that devise and deliver the most effective programmes;

- providing effective community-based punishments, such as the wider use of electronic monitoring;
- providing more meaningful and productive work and training for prisoners;
- preventing drug abuse inside prisons and providing drugs counselling after release, or when serving a community sentence;
- engaging early with drug-misusing offenders, from drug testing on arrest through to post-release care;
- supporting offenders to resettle in their communities and find work;
- on behalf of victims, establishing a clearer basis for restorative justice

In England and Wales, several community sentencing measures are in place.

Community Order.

The Criminal Justice Act 2003, which came into force in April 2005, made considerable changes to community sentencing. The Community Rehabilitation Order (formerly Probation Order) and Community Punishment Order (formerly Community Service Order) were abolished and replaced by a single Community Order, which can last up to three years. In this case, supervision by the probation service can be combined with additional requirements from a possible eleven.

Community sentencing requirements that can be combined with supervision are as follows:

1. Unpaid work

For adults, community service can range from 40 to 300 hours, while for young offenders (under 25) the

maximum cannot exceed 160 hours. This measure can also be applied to minors, but not until their 16th birthday.

2. Activity
3. Programme
4. Prohibited Activity
5. Curfew
6. Exclusion
7. Residence
8. Mental Health Treatment
9. Drug Rehabilitation
10. Alcohol Treatment

11. Attendance Centre (House of Commons Justice Committee, 2011)

A Community Order can be imposed jointly with fines, but not with custodial or suspended sentences (Mair, Cross & Taylor, 2008).

Early Release for good behaviour. It can be granted when prisoners are serving the minimum sentence or are approaching the end of a long custodial sentence. In each case, the offender must have served at least a third of their sentence.

Probation. It has been introduced in England and Wales by the Probation Act of 1907. The judge, after

finding the defendant guilty, may suspend custody and grant a Probation Order, with the offender's consent. This measure often also entails a driving ban and requires the offender to pay compensation. It can last from six months to three years.

Home Detention. In this case, the offender serves the sentence at home or another approved address. This release on licence applies to offenders serving a sentence to imprisonment between three months and four years. Prisoners are assessed prior to release and then electronically monitored to ensure that they do not violate the terms of their licence. To be eligible, prisoners must have served at least a quarter of their sentence. Prisoners serving sentences of twelve months or more are also subject to supervision by a probation officer.

Suspended Sentence. In the case of a brief custodial sentence (no longer than one year), the sentence can be suspended. This means that the court establishes a period of supervision during which the offender must abide by certain conditions. This measure can be imposed together with a requirement to pay compensation, but not with a custodial or community sentence.

Deferred Sentence. Refers to a sentence suspended until the offender has completed a probationary period, to allow assessments of their behaviour to be made. This cannot be combined with other sentences.

II.6.2 IRELAND

In Ireland, the competent body for community sentences is the Probation Board for Northern Ireland.

This Probation Service has established a dedicated department for young offenders, called Young Persons' Probation. Minors are usually deemed criminally responsible from the age of twelve, except for certain crimes for which they can be prosecuted from the age of ten.

With reference to existing alternative sentencing, we note that in the pre-trial phase, young offenders can be placed on a diversion programme operated by the police. Otherwise, there is scope for alternative punishment once the offender has been found guilty, that is, once the probation service becomes involved (O'Donovan, 2008).

Community Service (Criminal Justice Act 1983) is an alternative to detention which can be imposed when a custodial sentence is being considered. Community Service work can range from 40 to 240 hours. Community Service is organised in one of two ways: the first consists of small groups supervised directly by the Probation Service; the second involves individual placements where the host organisation agrees to supervise. Unpaid community service work must be performed within a year of the date of the court order.

Supervision for drug addicts. This provision is governed by the Misuse of Drugs Act 1977. It includes

supervision and support, and in each case is used with the offender's consent.

Probation. An important alternative sentence that can be imposed by the court once an individual has been found guilty for an offence. While the sentence is in effect, the court can alter its conditions or duration if so advised by the probation officer.

Partially Suspended Sentence. Introduced in the Criminal Justice Act of 2006, this allows the court to suspend part of the sentence. A combination of custodial sentence and probation may therefore be found within a single judgment.

Temporary Release with Conditions of Supervision. This measure consists of a conditional release granted by the Minister of Justice for a specified period.

Post Release Supervision Order. Since 2001, judges can sentence sex offenders to a period of post-release supervision.

11.6.3 SCOTLAND

Probation duties are performed by the 32 Scottish Local Authorities' Criminal Justice Social Work teams. These prepare reports for the courts, provide alternatives to custody and undertake supervision of offenders in the community post-release.

Alternatives to custodial sentences in Scotland are as follows:

Community Payback Order. It is alternative measure consisting of unpaid work with benefits for the community, and other requirements which, like the number of hours to be worked, are set out in the court judgement. The Criminal Procedure Scotland Act of 1995 was amended by the Criminal Justice and Licensing Scotland Act of 2010, which came into force on 1 February 2011. Under this reform, the order in question replaced the Community Service Order, Probation Order, Supervised Attendance Order and Community Reparation Order. However, this law did not affect the Drug Treatment and Testing Order or the Restriction of Liberty Order. This order cannot be imposed together with a custodial sentence for the same offender; the regulations provide rather for a Community Payback Order to be combined with other community sentences, such as treatment for drug dependency, restriction of liberty, or a fine.

Release on Parole. This is a form of conditional release. There is no specific list of conditions; terms of release are specified and enforced on a case-by-case basis by the Parole Board for Scotland.

Home Detention Curfew. A type of planned release, for which prisoners can be eligible towards the end of their sentence. The measure is granted to offenders deemed low-risk, between six months and two weeks before the end of their sentence. The of-

fender is electronically monitored for at least twelve hours each day for the remainder of their sentence period.

Restriction of Liberty with Electronic Monitoring.

This was first introduced in 1997 with the Crime and Punishment (Scotland) Act. In Scotland, this is mostly used as a standalone measure and not as part of other alternatives to custodial sentences. ■

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This volume summarises the results of a two-year-project “**Alternatives to imprisonment: identification and exchange of good practices**”. The degree of effectiveness and successful application of alternatives to imprisonment sanctions and measures appears to be closely related to the participation of the community to their actual implementation: therefore this manual seeks to provide guidelines on testing good practices acknowledged from different territories, highlighting aspects such as individualisation of treatment, meeting of security needs, victim support and social reintegration of offenders, taking into account the characteristics that may make them especially vulnerable..



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Lombardy Region



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