

**PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO  
IMPRISONMENT ACROSS EUROPE**

**NON-CUSTODIAL SANCTIONS AND MEASURES  
IN THE MEMBER STATES OF THE EUROPEAN UNION**

**Romania**

Marian Badea  
Ramona Bălăiță



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Marian Badea  
Romanian Probation Directorate and Associate Professor at Bucharest University

Ramona Bălăiță  
Romanian Probation Directorate

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# **Non-custodial sanctions and measures in the Member States of the European Union**

## **Guidelines for national reports**

**Aim:** National reports will contribute to the understanding of how alternatives to imprisonment as a form of punishment (not pre-trial) are applied in the Member States of the European Union, with a particular focus on vulnerable persons and minority groups.

**Structure:** Reports should be drafted according to the outline of the enclosed questionnaire. The questionnaire is divided into four sections:

- I. Legal framework;
- II. Non-custodial sanctions/measures in practice;
- III. Impact of the covid-19 pandemic on the imposition and implementation of non-custodial sanctions and measures;
- IV. Prospects for the future of alternatives to imprisonment.

Each section comprises a set of questions, each followed by subquestions, which are meant to specify the topics that should be addressed under the question.

**Content:** Besides providing information on the law and practice of the subject, please also mention any other information you consider relevant, as well as references to academic debate on the matter. Explaining your personal views is most welcome. Please also cite relevant references (legal instruments, bibliography), including links if available.

**Language:** Reports should be written in English.

**Length:** Reports should have 5,000 to 8,000 words (= approximately 15 pages).

**Deadline for submission of national reports:** 10 September 2021.

**Address for submission of national reports:** Please send national reports to [pri.alt.eur@uc.pt](mailto:pri.alt.eur@uc.pt).

## Outline for the national reports

### I. LEGAL FRAMEWORK

#### **1 – General framework of the national system of penal sanctions**

- What are the general features of the penal sanctions system?

The current Criminal code and Criminal procedural code entered into force in 2014 (see <https://www.legislationline.org/documents/section/criminal-codes/country/8/Romania/show>)<sup>1</sup>.

In comparison with the previous Criminal code, which dates back to 1969, the current code has elements of strong modernity (but sometimes it looks like an assemblage of modern elements borrowed from other penal systems, insufficiently harmonized and hard to implement using a poor infrastructure).

- What are the “reference sanctions”<sup>2</sup> (*i. e.*, the ones prescribed in the legal provisions of criminal offences)?

Adults

The main penalties are:

- a) life imprisonment;
- b) imprisonment;
- c) fine.

(according to art.53, Criminal Code)

The Court can rule to postpone enforcement of a penalty (postponement of the sentence) or may suspend service of a sentence under supervision (the suspension under supervision), and set a time period to be served on probation, in certain conditions.

In case the whole or part of the penalty by fine cannot be served for reasons not attributable to the convicted defendant, with the latter’s consent, the Court can replace the obligation to pay a fine by the obligation to perform community service, except for

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<sup>1</sup> The terms used in report are those from the translated legislation – see the link. Sometimes in our report we indicated the terms in usual English

<sup>2</sup> “Reference sanction”/“sanction de référence” in the sense of Council of Europe Recommendations No. (92) 17 concerning consistency in sentencing (rule B 5 c)) and No. (2000) 22 on improving the implementation of the European Rules on community sanctions and measures (Rule 2).

the case where the person's health precludes them from performing such service. (according to art.64 par.(1), Criminal Code)

#### Underages

1. The non-custodial educational measures are:

- a) civic traineeship (civic education stage);
- b) supervision;
- c) curfew on weekend (consignment during the weekend);
- d) assistance on a daily basis (daily assistance).

2. The custodial educational measures are:

- a) confinement in an educational centre;
- b) confinement in a detention centre.

(according to art.115 par. (1), Criminal Code)

The main penalty applicable to legal entities is represented by fines (according to art. 136 par. (2), Criminal Code).

- What are the limits of the term of imprisonment? What is the maximum limit of imprisonment that allows replacement by a non-custodial sentence?

A prison sentence consists of deprivation of freedom for a determined length of time, comprised between 15 days and 30 years (according to art.60, Criminal Code).

The Court can rule to postpone enforcement of a penalty if the sentence, including for a situation of multiple offenses, is a fine or no more than 2 years of imprisonment. (according to art.83 par. (1) lett. a), Criminal Code)

Enforcing a sentence cannot be postponed if the penalty stipulated by law for the committed offense is no less than 7 years of imprisonment or if the defendant has evaded the criminal investigation or prosecution or tried to obstruct discovery of the truth or

identification and prosecution of themselves or participants in the offense. (according to art.83 par. (2), Criminal Code)

The court may suspend service of a sentence under supervision if the penalty imposed, including in case of multiple offenses, is a term of no more than 3 years of imprisonment. (according to art.91 par. (1) lett (a), Criminal Code)

Suspension of service of a sentence under supervision may not be ordered if:

- a) a fine is the only penalty;
- b) enforcement of the sentence was initially postponed, and such postponement was subsequently revoked;
- c) the defendant has evaded criminal investigation or prosecution or tried to obstruct discovery of the truth or identification and prosecution of themselves or participants in the offense. (according to art.91 par. (3), Criminal Code)

- Does the law provide for the possibility of non-imposition of a sentence (waiver of punishment or diversion) in specific cases?

According to the Criminal procedure code, art.318, the prosecutor has the possibility of *Dropping charges* (see details below, in I.3, our report).

According to art. 80, Criminal Code,

*(1) A Court can waive enforcement of a penalty if the following conditions are met:*

- a) the committed offense has a low degree of seriousness, given the nature and extent of its consequences, means used, manner and circumstances of commission, reason and goal intended;*
- b) considering the person of the defendant, their conduct before committing the offense, their efforts to remove or minimize the consequences of their offense, and their likelihood of rehabilitation, the Court feels that enforcing a penalty would be untimely because of its consequences on the defendant.*

*(2) Enforcement of a penalty cannot be waived if:*

- a) the defendant has a previous conviction, except for the cases stipulated in Art. 42 lett. a) and lett. b) (i.e. acts that are no longer stipulated in criminal law; violations that have been pardoned) or for which rehabilitation has taken place or the deadline for rehabilitation has arrived;*
- b) the same defendant has already had a case of penalty waiver granted to them in the 2 years previous to the commission of the offense for which they are on trial;*
- c) the defendant has evaded criminal investigation or prosecution or tried to obstruct discovery of the truth or identification and prosecution of themselves or participants in the offense;*
- d) the penalty for that offense is more than 5 years of imprisonment.*

*(3) In case of multiple offenses, a waiver of penalty enforcement can be granted if the conditions in par. (1) and par. (2) are met for each of the multiple offenses.*

*\*) According to Art. 239 in Law no.187/2012, the term "conviction" used in Art. 80 par. (2) lett. a) in the Criminal Code also refers to judgments for an educational measure against the defendant when they were underage, except for the case where at least 2*

*years have passed since the date of serving such measure or since the measure was deemed to have been served.*

## **2 – Non-custodial sanctions**

- What types of non-custodial sanctions are available in the criminal justice system? If involving conditions such as supervision, community service, conditional discharge, electronic monitoring or treatment programmes etc. what is their minimum and maximum length? For monetary fines or sanctions are amounts stipulated, and minimum or maximum limits? (Please provide a breakdown of each sanction available with their minimum and maximum lengths or amounts.)

### **A. Postponement of penalty enforcement (postponement of the sentence)**

The probation period is 2 years.

According to art.85, Criminal Code (*Probation measures and obligations*),

*(1) For the duration of the probation period, a defendant who has been granted postponement of penalty enforcement must comply with the following probation measures:*

- a) report to the Probation Service on the dates set by the latter;*
- b) receive visits by the probation officer appointed to supervise them;*
- c) give notice of changing domicile and of any travel longer than 5 days, as well as of their return date;*
- d) give notice of changing jobs;*
- e) provide information and documents of a nature that will make it possible to check into their livelihood.*

*(2) The Court can order a defendant who has been granted postponement of penalty enforcement to comply with one or several of the following obligations to:*

- a) take classes in school or a vocational training;*
- b) perform community service for a duration between 30 and 60 days, in the conditions ordered by the Court, except for the case where their health precludes them from*

*performing that service. The daily number of hours to be performed shall be established as under the Law on the Service of Penalties;*

*c) attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities;*

*d) comply with medical checkups, treatment or care;*

*e) not communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or to not go near such persons;*

*f) not be in certain locations or attend certain sports events, cultural events or public gatherings established by the Court;*

*g) not drive certain vehicles established by the Court;*

*h) not own, use and carry any category of weapons;*

*i) not leave Romanian territory without securing agreement from the Court;*

*j) not take or exercise the position, profession, occupation or activity they used in the commission of the offense.*

*(3) To order the obligation stipulated at par. (2) lett. b), the Court shall consult the information made available periodically by the Probation Service concerning the actual compliance possibilities the Probation Service and the community can provide.*

*(4) When ordering the obligation stipulated at par. (2) lett. e) -g), the Court is specifically customizing the contents of that obligation in consideration of the circumstances of the case.*

*(5) The defendant on probation must comply in full with their civil obligations as ordered in the Court judgment, no later than 3 months before expiry of the probation period.*

## **B. Suspension of service of a sentence under supervision (suspension under supervision)**

The term of suspension of a sentence under supervision shall be the convict's supervision period, which ranges from 2 to 4 years, but may not be shorter than the term of the sentence enforced.

According to art.93, Criminal Code (*Supervision measures and obligations*),

*(1) During the supervision period, a convict shall comply with the following supervision measures:*

*a) report to the Probation Service on the dates set by the latter;*

*b) receive visits by the probation officer appointed to supervise them;*

*c) give notice of changing domicile and of any travel longer than 5 days, as well as of their return date;*

*d) give notice of changing jobs;*

*e) provide information and documents of a nature that will make it possible to check into their livelihood.*

*(2) The Court can order a defendant to comply with one or several of the following obligations to:*

*a) take classes in school or a vocational training;*

*b) attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities;*

*c) comply with medical checkups, treatment or care;*

*d) not leave Romanian territory without securing agreement from the Court;*

*(3) During the supervision period, a convict shall perform community service for a period between 60 and 120 days, under the terms set out by Court, unless their health prevents*



them from performing such work. The daily number of hours shall be determined by the Law on the Service of Penalties.

(4) In determining the content of the obligation set out in par. (3), the Court shall consult the information provided periodically by the Probation Service on the existing concrete capacities to serve at the level of the Probation Service and the community institutions.

(5) The convict must comply in full with their civil obligations as ordered in the Court judgment, no later than 3 months before expiry of the probation period.

#### C. Serving the penalty by fine by performing community service

According to art.64, Criminal Code,

(1) In case the whole or part of the penalty by fine cannot be served for reasons not attributable to the convicted defendant, with the latter's consent, the Court can replace the obligation to pay a fine by the obligation to perform community service, except for the case where the person's health precludes them from performing such service. One fine-day is equal to one day of community service.

(2) If the fine that was replaced as under par. (1) was accompanying a penalty by imprisonment, the obligation to perform community service shall be served after the end of the term of imprisonment.

(3) The Probation Service shall be in charge of supervising performance of the community service.

(4) Performance of community service as under par. (1) shall cease once full payment is received for the number of fine-days not yet served.

(5) The Court shall replace fine-days that were not served as community service by a corresponding number of days of imprisonment if:

- a) the convicted defendant fails to perform community service as ordered by the Court;
- b) the convicted defendant commits a new offense which is discovered before full performance of community service. The fine-days that were not served in the form of community service at the date of final conviction for the new offense, replaced by days of imprisonment, shall be added to the penalty for the new offense.

(6) If a convicted defendant who is in the situation stipulated at par. (1) does not consent to perform community service, the amount of fine not paid shall be replaced by a penalty by imprisonment as under Art. 63.

According to art.61, Criminal Code (Establishing the amount of fine),

(1) A fine consists of the amount of money a convicted individual is compelled to pay to the State.

(2) The amount of the fine shall be established in the system of fine-days. The amount for one fine-day ranges from 10 RON and 500 RON, and will be multiplied by the number of fine-days, which ranges from 30 and 400.

(3) A court shall establish the number of fine-days according to the general criteria for customization of sentencing. The amount that corresponds to one fine-day shall be

*calculated on the basis of the financial status of the convicted defendant and their legal obligations towards persons they are supporting.*

*(4) The special thresholds for fine-days range between:*

- a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offense;*
- b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years;*
- c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years.*

*(5) If the committed offense was intended to provide a material gain, and the penalty stipulated by law is only a fine or the court chooses to only sentence to that penalty, the special thresholds for fine-days can be increased by one-third.*

*(6) Increments established by law for mitigating or aggravating circumstances shall apply to the special thresholds for fine-days stipulated at par. (4) and par. (5).*

#### **D. Non-custodial educational measures**

*According to art.121 par.1, Criminal Code (Obligations imposed on a juvenile), During the service of non-custodial educational measures, the court may impose on a juvenile one or more of the following obligations:*

- a) take classes in school or a vocational training;*
- b) not to cross the territorial limit set by the Court, without the Probation Service's approval;*
- c) not to be in certain places or at certain sporting cultural events or other public meetings indicated by the Court;*
- d) to stay away from and not communicate with the victim or members of their family, the participants in the offense or other persons indicated by the Court;*
- e) to report to the Probation Service on the dates set by the latter;*
- f) to comply with medical control, treatment or care measures.*

##### **D.1. Civic traineeship (civic education stage)**

*According to art.117, Criminal Code,*

*(1) The educational measure of civic traineeship consists of a juvenile's obligation to participate in a program not exceeding 4 months, which would help them understand the legal and social consequences they are exposed to when perpetrating offenses and would make them accountable for their future behavior.*

*(2) The Probation Service shall coordinate the organization, the juvenile's participation and the supervision during such civic traineeship, without affecting the juvenile's school or professional program.*

##### **D.2. Supervision**

*According to art.118, Criminal Code,*

*The educational measure of supervision consists of controlling and guiding a juvenile throughout their daily program, for a time period between two and six months, under the supervision of the Probation Service, in order to ensure their participation in school or*

*vocational courses and to prevent them from engaging in certain activities or from contacting certain persons that might affect their reformation process.*

#### D.3. Curfew on weekend (consignment during the weekend)

According to art.119, Criminal Code,

*(1) The educational measure of curfew on weekend consists of a juvenile's obligation not to leave their domicile on Saturdays and Sundays, for a time period between 4 and 12 weeks, unless, in this period, they are required to participate in certain programs or to carry out certain activities imposed by the court.*

*(2) Supervision is performed under the coordination of the Probation Service.*

#### D.4. Assistance on a daily basis (daily assistance)

According to art.120, Criminal Code,

*(1) The educational measure of assistance on a daily basis consists of a juvenile's obligation to follow a schedule set by the Probation Service, which contains the timetable and conditions for conducting activities as well as the prohibitions imposed on the juvenile.*

*(2) The educational measure of assistance on a daily basis is enforced for a period between 3 and 6 months and supervision is performed under the coordination of the Probation Service.*

- Are non-custodial sentences imposed directly, or is a prison sentence necessarily imposed first, then replaced by a non-custodial sentence?

For adults:

If the Court rule to postpone enforcement of a penalty or suspend service of a sentence under supervision, a prison sentence it is necessarily imposed first, then replaced by the one of the two mentioned non-custodial sentence.

Penal fine is a main penalty and in certain conditions the Court can replace the obligation to pay a fine by the obligation to perform community service.

For juveniles:

The non-custodial educational measures are imposed directly.

- What are the legal requirements for the imposition of each type of non-custodial sentence? Is the consent of the offender required?

According to the Criminal Code, art.89 par.1, lett. c) and d), the Court can rule to postpone enforcement of a penalty and set a time period to be served on probation, if the following conditions are met (alongside the above mentioned conditions):

*c) the defendant has consented to perform community service;*

*d) considering the person of the defendant, their conduct before committing the offense, their efforts to remove or minimize the consequences of their offense, and their likelihood of rehabilitation, the Court feels that enforcing a penalty immediately is not necessary,*

*but it is nevertheless mandatory to have their conduct supervised for a determined period.*

According to the Criminal Code, art.91 par.1, lett. b), c) and d), the court may suspend service of a sentence under supervision if the following conditions are met (alongside the above mentioned conditions):

*b) the offender was not previously convicted to imprisonment for a term exceeding one year, except as under Art. 42, when rehabilitation has taken place or the deadline for rehabilitation has arrived;*

*c) the offender agreed to perform community service;*

*d) by considering the offender's person, the offender's conduct prior to the commission of the criminal offense, their efforts to eliminate or mitigate the consequences of such criminal offense and their means of reformation, the court feels that the penalty is sufficient, even without service thereof, that the convict will not commit other offenses, but that it is necessary to monitor their behavior for a limited period of time.*

The consent of the offender is required for serving the penalty by fine by performing community service.

According to the Criminal Code, art. 114 (*Consequences of criminal liability*),

*(1) A juvenile who, at the time of the offense, is aged between 14 and 18, shall be subject to a non-custodial educational measure.*

*(2) The juvenile referred to in par. (1) may be subject to custodial educational measures in the following cases:*

*a) the juvenile committed another offense for which an educational measure was taken and served or the service of which started before the commission of the offense for which the juvenile is subject to trial;*

*b) the penalty required by law for the committed offense is a term of imprisonment of seven years or more, or life imprisonment.*

- Are there circumstances (of the offence and/or the offender) for which a non-custodial sentence cannot be imposed? For instance, foreign nationals, unemployed people, or people with no fixed abode (homeless)? Do prior convictions preclude the imposition of a non-custodial sentence?

See the above mentioned specifications regarding the conditions/circumstances.

- Are there also ancillary penalties (penalties imposed cumulatively with the main sentence)? How are they applied?

According to art. 67 par.1, Criminal code, `the ancillary penalty of a ban on the exercise of certain rights can be enforced if the main penalty is imprisonment or a fine and the

Court finds that, considering the nature and seriousness of the offense, the circumstances of the case and the person of the offender, such penalty is necessary. Some details regarding to serving the ancillary penalty are specified in the art.68, Criminal code:

*(1) Serving the ancillary penalty of a ban on the exercise of certain rights begins:*

*a) as of the date the sentence to a fine penalty remains final;*

*b) as of the date the sentence remains final that ruled the defendant shall serve their penalty on probation;*

*c) after the prison sentence is served, after total pardon or a pardon for the remainder of the penalty, after serving a sentence has come under the statute of limitations or after expiry of the duration of probation.*

*(2) In case a penalty is to be served on probation, the ban for a foreign citizen to be on Romanian territory shall begin as of the date of release.*

*(3) If serving a sentence on probation is revoked, or a penalty by fine is replaced by a penalty by imprisonment, for reasons other than the commission of a new offense, the remainder of the ancillary sentence banning the exercise of certain rights that has not yet been served at the date of revocation or replacement shall be served after completion of the prison sentence.*

### **3 – Rationale for sentencing: determining the type and term of a non-custodial sentence**

- Is there a sentencing phase in the criminal procedure, autonomous from the guilt phase?

In our view, the specification regarding the possibility of dropping charges are very similar to a sentencing phase.

According to the Criminal Procedure code, art.318 (Dropping charges), par. (1)-(4),

*(1) In the situation of offenses for which the law requires the penalty of a fine or a penalty of imprisonment of no more than 7 years, the prosecutor can drop charges when, considering the contents of the offense, the modus operandi and the instruments used, the goal of the offense and the concrete circumstances of its commission, the consequences that occurred or could have occurred, they find that a public interest is not served in prosecuting.*

*(2) When the offender is identified, weighing the public interest aspect also involves the person of the suspect or defendant, their conduct previous to the offense and the efforts they made in removing or minimizing the consequences of the offense.*

*(3) After consulting with the suspect or defendant, the prosecutor can order that they comply with one or several of the following obligations:*

*a) remove the consequences of the criminal offense or make redress, or agree with the civil party on an avenue of redress;*

*b) make a public apology to the victim;*

*c) perform community service for a time span of no less than 30 and no more than 60 days, except for the case where their health precludes them to provide such community service;*

*d) enlist in a counseling program.*

*(4) In case the prosecutor orders the suspect or defendant to comply with the obligations at par. (3), they shall include in their order the deadline by which those obligations shall be met, which can not be longer than 6 months in general or 9 months for obligations undertaken by mediation agreement signed with the civil party*

*and which starts as of the date the order is communicated.*

- What are the legal criteria that the court must consider in the choice of the penalty to be imposed and in the determination of its length? If specified, what is the role of the purposes of punishment (resocialisation/rehabilitation, general prevention, deterrence, incapacitation, retribution...) and of the degree of culpability in the determination of the sentence?

According to art.74, Criminal code, the general criteria for customization of a sentence are:

*(1) Establishing the length or amount of a penalty shall be made on the basis of the seriousness of the offense and the threat posed by the convict, all of which shall be assessed based on the following criteria:*

*a) the circumstances and manner of commission of the offense, as well as the means that were used;*

*b) the threat to the protected social value;*

*c) the nature and seriousness of the outcome produced by the offense or other consequences of the offense;*

*d) the reason for committing the offense and intended goal;*

*e) the nature and frequency of offenses in the convict's criminal history;*

*f) the convict's conduct after committing the offense and during the trial;*

*g) the convict's level of education, age, health, family and social situation.*

*(2) When the law stipulates alternative penalties for the offense, the criteria stipulated in par. (1) shall be a factor in selecting one of those alternatives.*

- What concrete circumstances of the case/of the offender should be considered by the court when applying those criteria? Are those circumstances listed exhaustively in the law? Can they be relevant in either a mitigating or aggravating sense? *(For instance, do sentencers have guidelines or laws indicating mitigating circumstances such as poverty, childcare or care responsibilities, coercion, background of violence or trauma, mental health condition, etc. which influence the choice or length of sanction?)*

According to art.75, Criminal code,

*(1) The following situations represent legal mitigating circumstances:*

*a) offense committed under the influence of a strong disturbance or emotion, caused by the victim, caused either by violence, by infringement of a person's dignity or by other serious illicit actions;*

*b) exceeding the limits of legitimate defense;*

*c) exceeding the limits of a state of necessity;*

*d) covering all the material damage caused by an offense, during criminal investigation or trial, until the first hearing, if the offender has not benefited from this circumstance within 5 years prior to committing the crime. Mitigating circumstances do not apply if the following offenses are committed: offense against the person, aggravated theft, robbery, piracy, fraud committed through computer systems and electronic means of payment, assault, judicial assault, abusive behavior, offenses against public safety, offenses against public health, offenses against freedom of religion and respect due to the deceased, against national security, against the fighting capacity of the armed forces, crime of genocide, crimes against humanity and war crimes, offenses against Romanian state border, offenses against the law on preventing and combating terrorism, corruption offenses, offenses assimilated to corruption offenses, or against the financial interests of the European Union, violation of regulations concerning explosive, nuclear and radioactive materials, drug offenses, drug precursors offenses, money laundering offenses, offenses against civil aviation activities and which might endanger flight safety*

*and aviation security, offenses against witness protection, offenses against bans on organizations and symbols with fascist, racist and xenophobic character and against the promotion of worship of persons guilty of crimes against peace and humanity, offenses relating to trafficking in human organs, tissues or cells, offenses relating to preventing and combating pornography and relating to adoption rules.*

*(2) The following situations may represent judicial mitigating circumstances:*

- a) efforts made by an offender to eliminate or reduce the consequences of their offense;*
- b) circumstances relating to the committed offense, which reduce the seriousness of the offense or the threat posed by the offender.*

According to art.77, Criminal code,

*The following constitute aggravating circumstances:*

- a) the offense was committed by three or more persons together;*
- b) the offense was committed with cruelty or subjecting the victim to degrading treatment;*
- c) the offense was committed by methods or means of a nature likely to endanger other persons or assets;*
- d) the offense was committed by an offender who is of age, if they were joined by an underage person;*
- e) the offense was committed by taking advantage of a clear state of vulnerability of the victim, caused by age, health, impairment or other reasons;*
- f) the offense was committed in a state of voluntary intoxication with alcohol or other psychoactive substances, when such state was induced with a view to committing the offense;*
- g) the offense was committed by a person who took advantage of the situation caused by a disaster, of a state of siege or a state of emergency;*
- h) the offense was committed for reasons related to race, nationality ethnicity, language, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection, or for other reasons of the same type, considered by the offender to cause the inferiority of an individual from other individuals.*

We have practical reasons to appreciate that information included in the requested pre-sentence reports are taken into consideration by the judge in sentencing.

- Are non-custodial sentences imposed by the trial judge or afterwards by a judge responsible for the execution of sentences – or are both possible?

The trial judge is in charge with the direct imposition of a (non-custodial) sentence.

- Does the judge have a duty to impose non-custodial sentences if the conditions are met? Are there cases of mandatory imposition of a non-custodial sentence? Does the judge have a duty to give reasons for the choice and the length of the sentence?

Only in the case of juveniles the Criminal code gives a clear priority to non-custodial sanctions (educational measures).

It is mandatory for the judges to submit the grounds for their sentences.

- Are there “sentencing guidelines” in your jurisdiction? If so, which authority is responsible for issuing them, and what is their role in the imposition of non-custodial

sentences? Are there any sentencing guidelines on specific groups of people or certain categories of offences?

There are guidelines offered by the Superior Council of Magistracy (<https://www.csm1909.ro/Default.aspx>), National Institute of Magistracy (<http://inm->



[lex.ro/](http://lex.ro/)) or High Court of Cassation and Justice, but there are not a proper sentencing guidelines, as we know.

- Can there be an appeal specifically concerning the type and length of the sentence imposed? Who can appeal?

Sentences may be challenged by an appeal, unless the law stipulates otherwise.

According to the Criminal procedure code, art.409,

*(1) The following may file an appeal:*

- a) the prosecutor, with respect to the criminal and the civil components;*
- b) the defendant, with respect to the criminal and the civil components;*
- c) the civil party, with respect to the criminal and the civil components and the party with civil liability, with respect to the civil component, whereas with respect to the criminal component, to the extent that the solution this component influenced the solution the civil component;*
- d) the victim, with respect to the criminal component;*
- e) the witness, the expert, the interpreter and the counsel, with respect to the judicial expenses, their fees and the judicial fines applied;*
- f) any natural or legal entity whose legitimate rights were directly violated through a measure or an action of the court, with respect to the orders that caused such a violation.*

*(2) In the case of persons provided under par. (1) letters b) - f), the appeal may also be filed by the legal representative or by the counsel, whereas in the case of the defendant, by the spouse.*

#### **4 – Implementation of non-custodial sanctions and consequences of non-compliance**

- Is there judicial supervision of the implementation? Is there a specialized court/judge responsible for supervising the implementation?

According to the Criminal procedure code, art.554 (*Judge delegate in charge of enforcement*),

*(1) The enforcement court shall appoint one or more of its judges to enforce sentences.*

*(2) If upon enforcement of a sentence or during its service any ambiguity or obstacle to enforcement occurs, the judge delegate in charge of enforcement may notify the enforcement court, which shall act as per the provisions of Arts. 597 and 598.*

- What happens if the sentenced person breaches the conditions attached to the sentence? Is recall to prison automatic or are there other options? Which authority is competent to decide?

If the sentenced person breaches de condition attached to the sentence, the probation counselor – case manager notify the enforcement court through an evaluation report.

##### **Adults**

According to the Criminal code (art. 88 par.1 and art.96 par.1),

*If during the supervision term, a supervised person, in ill-faith, does not comply with the supervision measures or fails to perform the obligations imposed or established by law, the court shall revoke suspension and shall order service of the penalty.*

The enforcement court has to decide upon the ill-faith and, as a consequence, to admit or not the notification sent by the probation counselor – case manager.

##### **Juveniles**

According to the Criminal code (art.123 par. 1 and 2),

*(1) If a juvenile does not comply, in ill-faith, with the educational measure's conditions or with the obligations imposed, the court rules to:*

*a) increase the educational measure, without exceeding the maximum term provided by law for it;*

*b) replace the previous measure by another, more severe, non-custodial educational measures;*

*c) replace the enforced measure by confinement in an educational centre, in case the most severe non-custodial educational measure was taken initially.*

*(2) In the cases referred to in par. (1) lett. a) and b), if the conditions for the service of the educational measure or obligations imposed are still not complied with, the court shall*

*replace the non-custodial educational measure with the measure of confinement in an educational centre.*

The enforcement court has to decide upon the ill-faith and, as a consequence, to admit or not the notification sent by the probation counselor – case manager.

- Can the length of the sentence be modified in the course of implementation? If so, under what circumstances?

Adults – No

Juveniles – Yes (see the above mentioned details, according to art.123 par.1 and 2, Criminal Code)

### **5 – Early release**

- Are there forms of early release from prison (including parole or other forms of modifying or replacing imprisonment during its implementation)?

Juveniles

According to the Criminal Code, art.124 par.4 and art.125 par.4,

*If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of*

*social reintegration, following service of at least half of the internment period, the court may order as follows:*

*a) replacement of the internment by the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the person admitted to a medical facility has not turned 18;*

*b) release from the educational/detention center, if the person admitted to a medical facility has turned 18.*

Conditional release is possible for imprisoned adults.

- What are the time frames (*quantum* of sentence served) for its application? What are the formal and substantial requirements for granting early release? Are there cases of mandatory conditional release?

According to the Criminal Code, art.99 par.1,

*Conditional release in case of life imprisonment may be ordered if:*

*a) a convict effectively served 20 years in prison;*

*b) a convict had a good conduct during the entire sentence service;*

*c) a convict entirely met all civil obligations established by the judgment of conviction, unless they prove to have been unable to do so;*

*d) the court is convinced that the convicted person has reformed and is able to reintegrate into society.*

According to the Criminal Code, art.100 par.1-4,

*(1) Conditional release may be ordered if:*

*a) a convict has served at least two-thirds of the penalty, in case of a term of imprisonment no longer 10 years, or at least three quarters of the penalty, but no more than 20 years in prison, in case of a term of imprisonment exceeding 10 years;*

*b) a convict is serving their sentence in an open or semi-open regime;*

*c) a convict fulfilled completely all civil obligations established by the judgment of conviction, unless they prove to have been unable to do so;*

*d) the court is convinced that the convicted person has reformed and is able to reintegrate into society.*

*(2) If a convicted person turned 60, conditional release may be ordered after the effective serving of half of the penalty, in case of a term of imprisonment not exceeding 10 years, or at least two-thirds of the penalty, in case a term of imprisonment exceeding 10 years, provided that the conditions set forth in par. (1) lett. b) - d) are fulfilled.*

*(3) In calculating increments of penalty provided in par. (1), the part of the sentence term that may be deemed, according to law, as served due to the work performed is to be considered. In this case, conditional release may be ordered prior to the effective service of at least half of the prison sentence, when it does not exceed 10 years, and at least two-thirds, when the penalty is more than 10 years.*

*(4) In calculating increments of penalty provided in par. (2), consideration shall be given to the part of the sentence term that may be regarded as served, according to law, due to the work performed. In this case, conditional release may be ordered prior to the*

*effective service of at least one-third of the imprisonment sentence, when it does not exceed 10 years, and at least half of it, when the sentence is more than 10 years.*

There are no cases of mandatory conditional release.

- Who is competent for granting release and for monitoring its implementation?

A commission of the penitentiary may formulate proposals for conditional release, and the court in the penitentiary district decides whether or not to accept the proposal.

If it is decided conditional release in case of life imprisonment, the convict is subject to a supervision period of 10 years – the probation service is in charge with the coordination of supervision.

If it is decided conditional release in case of imprisonment, the convict is subjected to supervision during the remaining part of an un-serviced penalty only if this period is of

minimum 2 years - the probation service is in charge with the coordination of supervision, in this case.

- What type of conditions can be imposed? What are the consequences of non-compliance with the conditions? Is recall to prison automatic or is there discretion? In the event of revocation, does the time spent on conditional release count as prison time?

According to the Criminal code, art.101 par.1 and 2,

*(1) If the remaining part of an un-serviced penalty is, upon conditional release, of 2 years or more, a convict shall comply with the following supervision measures:*

- a) report to the Probation Service on the dates set by the latter;*
- b) receive visits by the probation officer appointed to supervise them;*
- c) give notice of changing domicile and of any travel longer than 5 days, as well as of their return date;*
- d) give notice of changing jobs;*
- e) provide information and documents of a nature that will make it possible to check into their livelihood.*

*(2) In the case referred to in par. (1), the court may require a convict to perform one or more of the following obligations:*

- a) take classes in school or a vocational training;*
- b) attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities;*
- c) not leave Romanian territory*
- d) not be in certain locations or attend certain sports events, cultural events or public gatherings established by the Court;*
- e) not communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or to not go near such persons;*
- f) not drive certain vehicles established by the Court;*
- g) not own, use and carry any category of weapons.*

According to the Criminal Code, art.104 par.1,

*If during the supervision term a convicted person, in ill-faith, does not comply with the supervision measures or fails to perform the obligations imposed, the court shall revoke release, and shall order service of the rest of the penalty.*

Concurrently with the replacement or release, in case of a juvenile, the court shall order the observance of one or several obligations until reaching the duration of internment, as follows:

- a) take classes in school or a vocational training;*
- b) not to cross the territorial limit set by the Court, without the Probation Service's approval;*
- c) not to be in certain places or at certain sporting cultural events or other public meetings indicated by the Court;*
- d) to stay away from and not communicate with the victim or members of their family, the participants in the offense or other persons indicated by the Court;*
- e) to report to the Probation Service on the dates set by the latter;*
- f) to comply with medical control, treatment or care measures.*

If the parolee breaches de condition attached to the sentence, the probation counselor – case manager notify the enforcement court through an evaluation report. The enforcement court has to decide upon the ill-faith and, as a consequence, to admit or not the notification sent by the probation counselor – case manager.

In the event of revocation, the time spent on conditional release does not count as prison time.

## **6 – Sanctions or measures applicable to vulnerable persons and minority groups**

- Are there non-custodial sanctions – or specific programmes as part of a non-custodial sanction – specifically designed for particularly vulnerable persons (young adults, older persons, women, foreign nationals, persons with disabilities, people with mental health conditions, ethnic minorities, Roma, Indigenous peoples, LGBTIQ+ or other)? Or different requirements for giving a non-custodial alternative to those categories? Is there a preference for non-custodial sanctions regarding vulnerable groups and/or minorities?

Probation offices have specific programmes: `Developing Social Abilities` – for juveniles; `Drink&Drive`; `Mentoring Roma` – in some probation offices, in the recent past.

- Can you identify any legal barriers to vulnerable persons or minority groups accessing non-custodial sanctions?

Generally speaking, probationers leaving in the rural areas (aprox,45%) are spending more personal resources in order to reach the probation office, situated in the main town of each of the counties (some of the probation offices are `duplicated`, with a secondary office in another town of the county).

- Are there specific forms of early release for those vulnerable groups and/or minorities?  
Old persons can be released earlier from prisons.

## **II. NON-CUSTODIAL SANCTIONS/MEASURES IN PRACTICE**

### **1 – How non-custodial sanctions and measures work in practice**

- How significant is the use of alternative sanctions in practice? What are the most and least used sentences?

During the entire year, 2020, probation counsellors managed aprox. 100,000 cases registered in the supervision of the probation offices.

In 2020, the stock number in probation was aprox. 67,000 (the stock number in penitentiary units was aprox. 22,000).

The the most used sentence is suspension of service of a sentence under supervision (a non-custodial sanction for adults), and the least used is curfew on weekend (a non-custodial sanction for juveniles).

- If possible, please provide statistical data on the use of these sentences. If available, provide information also on their application to vulnerable and/or minority groups (young adults, older persons, women, foreign nationals, persons with disabilities, people with mental health conditions, minorities, Roma, indigenous peoples, LGBTIQ+ or other).

In 2020, the stock number in probation is represented by:

Aprox. 47,000 suspension of service of a sentence under supervision

Aprox. 20,000 postponement of penalty enforcement,  
Aprox. 400 serving the penalty by fine by performing community service,  
Aprox. 300 parole (adults);

Aprox. 1,200 non-custodial educational measures,  
Aprox. 200 parole (juveniles).

Older persons (60+) registered in probation represent aprox. 7.5% out of the stock.  
Women registered in probation represent aprox. 9% out of the stock.

- If there is no disaggregated data on application of non-custodial sanctions for specific groups, are there other non-official sources or information available? (Please provide these)

No data.

- If possible, please provide data on the application of early release (*e.g.*, *quantum* of sentence served until release; percentage of releases from prison in the form of parole; percentage of recalls to prison). If available, provide specific information on the application of early release vulnerable groups and/or minorities disaggregated by category.

The median length of supervision period in the case of parolees (adults) registered in probation offices at the end of 2020, was 24 month.

- Can you identify or is there any discussion on potential or actual bias on the part of sentencing authorities in adjudicating cases for vulnerable persons or minority groups which affects their access to non-custodial sanctions?

We do not have minimum necessary evidence to express an opinion regarding potential or actual bias on the part of sentencing authorities in adjudicating cases for vulnerable persons or minority groups which affects their access to non-custodial sanctions.

- Do probation officers or relevant agencies provide pre-sentencing reports (or the equivalent) to the judiciary? Do these reports actively promote non-custodial sanctions for vulnerable groups and/or minorities?

Probation counselors provide pre-sentence reports to the judiciary, promoting non-custodial sanctions in most cases.

## **2 – Supervision of the implementation of non-custodial sanctions/ measures**

- What type of body or bodies are in charge of monitoring the implementation and what is their organisational structure? *E.g. probation agencies*. If possible, please provide information on when the agency was established and the average caseloads.

Our 42 probation offices, in charge of monitoring the implementation of non-custodial sanctions/measures, were established in 2001-2002.

The average caseload during entire year, 2020 (stock + flow of exits), was 185 probationers/probation counselors (max. 624!; min. 115).



- Please provide disaggregated data, or information as available, on the representation among the staff (including leadership) of the probation or relevant agency in terms of gender, ethnicity, nationality, and representation of vulnerable or minority groups.

In 2020, 550 probation counselors worked in the 42 probation offices, 42 of them being responsible also as local managers. 33 contractual personnel (drivers and secretaries) were a real support for probation counselors (since August, 2021, another 160 new probation counselors have been hired).

- Is there an individualised approach, with a rehabilitative purpose, providing activities aimed at addressing needs or root causes of offending and at promoting reintegration, or is it mere control/monitoring?

Every person registered in the evidence of a probation office is evaluated in terms of risk, needs and responsibility. We are in an 8-year partnership with Correctional Service Canada (especially with Mr. Larry Motiuk), an opportunity for us to be contributors in developing, and users of SERN (see <http://probatiune.just.ro/wp-content/uploads/2021/09/The-Development-and-Delivery-of-a-Scale-for-the-Evaluation-of-Risk-Needs-SERN-in-Romania.pdf>)

Two of our probation offices (Braşov and Iaşi) are organized (during an experimental period of approx. 5 years) in departments: reintegration programmes, supervision and pre-sentence reports.

- Is the community (NGOs, volunteers, private companies...) involved in the implementation of non-custodial sanctions? Please provide details.

About 20 private partners (especially for psychological services) are abilitated to offer reintegration programmes, included in our base of community institutions made up of over a thousand community collaborators (most of them for community service).

- Is there application of technology to the implementation or supervision (e.g., electronic monitoring, probation "check-in" kiosks)?

We benefit from Canadian technology in assessing risk and criminogenic needs (see above information about SERN).

### **3 - Effectiveness of non-custodial sanctions in achieving the purposes of punishment and reducing the use of imprisonment**

- Are there any data available to assess the effectiveness of non-custodial sentences/measures (in the reintegration of the offender, in avoiding recidivism)? Is there any type of sanction/measure, or good practice in its implementation, that can be highlighted as particularly successful?

According to our latest statistical report, 2018 (possibly to be prepared, before the transition period to an on-line system, which we are going through):

Successfully Terminated: 86.95%;

Pre-release Failure: Technical: 1.36%;

Pre-release Failure: New Crime: 1.94%;

Systemic: 7.76% (annulments, quashing of the initial sentences, findings of lack of competence, etc., out of the total exits from the national probation system).

- Are there any adaptations or specific measures taken with the implementation of non-custodial sanctions to vulnerable persons or minority groups? Are there any sanctions

or measures that have proven particularly effective in reducing offending among certain categories of more vulnerable persons or minority groups?

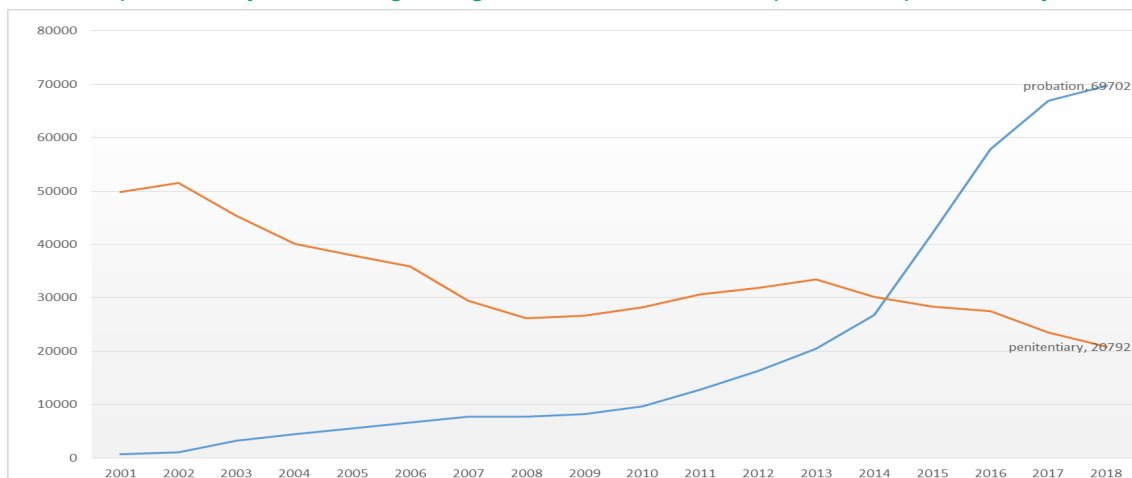
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- Are there any data comparing the reoffending rate (for the same or different categories of offences) in the case of imprisonment vs. the case of non-custodial sentences?

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- Is there data available to assess whether the application of alternative sentences results in a real decrease in the use of imprisonment (rather than causing a net-widening phenomenon)?

In a comparative synthesis regarding the stock numbers in probation/penitentiary,



It is observable a decrease in the number of prisoners, starting with 2014 (the year of entry into force of the new criminal code), but the great increase in the number of probationers has, among the causes, the abolition of a sanction from the old criminal code (the conditional suspension of the punishment, in which probation had no responsibilities).

- In your opinion, what are the main barriers to a wider use of alternatives to imprisonment, or the main failures in their implementation?

There is a clear evidence regarding the prevalence of probation, in the recent period.

### **III. IMPACT OF THE COVID-19 PANDEMIC ON THE IMPOSITION AND IMPLEMENTATION OF NON-CUSTODIAL SANCTIONS AND MEASURES**

#### **1. Non-custodial sentences or measures aimed at reducing the prison population as a means of preventing the spread of the virus within prison facilities**

- What sanctions or measures (including pardons, postponement of the execution of the sentence, replacement of imprisonment by a non-custodial alternative, early release, etc.) were designed to allow for the release of people from prison during the pandemic? Have new non-custodial sanctions/measures been created for this purpose?

At the legislative level, no new sanctions or measures have been designed to allow the release of prisoners during the pandemic.

According to the *Annual Activity Report – 2020*, of the National Administration of Penitentiaries, measures were designed and implemented to protect the health of

persons deprived of liberty in custody and measures to protect the health of the staff, which aimed to limit the number of infections (according to the *Report*, in 2020, the number of persons deprived of liberty confirmed with the SARS-CoV-2 virus was 859, and the number of employees confirmed with the SARS-CoV-2 virus was 1254).

According to the *Annual Activity Report – 2020*, of the National Administration of Penitentiaries, the prison population in 2020 was 21,753 (compared to 20,578 in 2019), the number of inmates entered being 11,043 (compared to 12,037 in 2019), and the number of inmates leaving penitentiary units being 9,274 (compared to 11,317 in 2019); of the persons who left the penitentiary units in 2020, 5,211 were conditionally released (compared to 7,347 in 2019), and 1853 were released after serving the entire sentence (compared to 1,618 in 2019).

Part of the explanation for the decrease in the number of persons released in 2020, compared to that of 2019, could be represented by the decrease in the group of detained persons who could benefit from the benefits of *Law no. 169 of 14 July 2017 for the amendment and completion of Law no. 254/2013 on the execution of custodial sentences and measures ordered by the judicial bodies during the criminal proceedings*, which made it possible to release some of the detained persons conditionally by special compensatory measures.

- Were there specific measures applicable to vulnerable groups and/or minorities (e.g. were there certain categories of people specifically targeted as part of these efforts, or categories explicitly excluded)? If so, which groups?

It could be treated as a vulnerable group the one made up of persons detained in inappropriate conditions and who could be released in 2020 by applying *Law no. 169 of 14 July 2017*.

By this law was introduced in *Law nr. 254/2013 on the execution of custodial sentences and measures ordered by the judicial bodies during the criminal proceedings*, Article 55 ind.1, referring to 'compensation in case of accommodation in inappropriate conditions'. According to the first 3 paragraphs of that article,

- (1) *When calculating the sentence actually executed, the execution of the sentence in inappropriate conditions shall be taken into account, regardless of the regime of execution of the sentence, as a compensatory measure, in which case, for each period of 30 days executed in inappropriate conditions, even if they are not consecutive, it shall be considered executed, in addition, 6 days of the punishment applied.*
- (2) *For the purposes of this Article, accommodation of a person in any detention centre in Romania who has been absent under the conditions imposed by European standards shall be deemed to be inappropriate conditions.*
- (3) *For the purposes of this Article, accommodation shall be deemed to be the execution of the sentence in inappropriate conditions in any of the following situations:*
  - a) *accommodation in a space less than or equal to 4 sqm / detainee, which is calculated, excluding the area of the toilets and of the food storage spaces, by dividing the total area of the detention rooms by the number of persons accommodated in the respective rooms, regardless of the endowment of the space in question;*
  - b) *lack of access to outdoor activities;*
  - c) *lack of access to natural light or sufficient air or availability of ventilation;*
  - d) *lack of adequate room temperature;*
  - e) *lack of possibility to use the toilet in private and to comply with basic sanitary norms, as well as hygiene requirements;*
  - f) *existence of infiltrations, dampness and mold into the walls of detention rooms.*

- How effective have the alternatives been in achieving a reduction in recidivism? (Did the released persons commit new crimes? What was the reaction of the community to the measures?)

No studies have been identified on the recidivism of persons released from penitentiaries, with the application of *Law no. 169 of 14 July 2017*.

In the period 2017-2020, through the media, many cases of crimes committed by persons released from penitentiaries with the application of *Law no. 169 of 14 July 2017* have been brought to the attention of the public opinion.

- If conditions of a non-custodial sanction (*for instance, community service, or completion of a substance use programme*) were impacted by the COVID-19 pandemic, what happened to the sanction? Was the time extended for the sentence to be completed, or was it shortened?

Persons (adults or minors) released from penitentiary units and subject to probation cannot be obliged to community service (work unpaid for the benefit of the community).

In probation there are three categories of persons released from penitentiary units (the equivalent of parolees):

- adults released on parole from prison, for which the remaining unexecuted sentence at the time of release is 2 years or more;
- minors for whom the judge decided to replace the confinement in an educational/detention centre with the educational measure of daily assistance for a period equal to the duration of the unexecuted confinement, but not more than 6 months, if the confined person has not reached the age of 18 years;
- minors for whom the judge decided to release from the educational / detention center, if the confined person has reached the age of 18 years.

Face-to-face interactions being limited, in general, during the pandemic, the activities of probation counselors were adapted / suspended in working with persons (adults or minors) released from penitentiary units, similar to working with persons sanctioned in the community (without going through the penitentiary), when they were obliged by court decision to:

- report to the Probation Service on the dates set by the latter;
- receive visits by the probation officer appointed to supervise them;
- comply with medical checkups, treatment or care;
- attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities.

During the pandemic, the duration of the sanction executed in the community / supervision term has not been modified (extended/shortened).

By *Law no. 55/2020* it was provided the possibility that if the fulfillment of the measures/obligations cannot be achieved by the end of the surveillance term for reasons related to the evolution of the pandemic, so not attributable to the supervised person, the probation counselor - case manager takes steps to modify the content of the obligation, if this is possible, or notifies the court about the objective impossibility of executing the respective measure/obligation.

## **2. Impact of the pandemic on non-custodial sanctions/measures**

- What was the impact of the restrictive measures aimed at the prevention of the spread of the virus (lockdowns, social distancing rules, teleworking and other restrictions) on the use and implementation of non-custodial sentences/measures?

The ratio between probation admissions and penitentiary units admissions decreased by more than 4%: 2.89 (in 2020), compared to 3.02 (in 2019). We could appreciate that more serious crimes have been committed, according to court decisions.

The number of admissions registered by the all 42 probation offices decreased by more than 12%: 31,878 (in 2020), compared to 36,339 (in 2019). Even taking into account the objective delays in judging cases in the pandemic, the decrease in the flow of entries in probation can be considered as an approximate reflection of the decrease in the number of crimes committed (and sanctioned) during this period.

Depending on the type of crimes committed by persons who entered the probation, the most significant decreases recorded in 2020, compared to 2019, were registered in terms of offences against persons (-51%) and offences against property (-36%). Decreases were also registered in respect of probationers sanctioned for committing drug offences (-7%) and those sanctioned for committing road traffic offences (-8%). These differences contributed to the increase in the proportion of probationers sanctioned for committing road traffic offences to almost 60% of the stock, on 31.12.2020.

- Have there been obstacles to the imposition or implementation of sanctions/measures which involve physical presence in certain places (such as community service) or face-to-face contact with probation services? Were adaptations or suspensions put into place?

During the lockdown declared in Romania between 16 March 2020 and 14 May 2020, amongst the emergency measures with immediate application have been included measures related to execution of community sanctions and measures.

Thus, have been suspended:

- all direct contacts between the supervised persons and the probation counsellors either at the probation premises or home visits,
- the obligations to perform unpaid work for the benefit of the community,
- the obligation to attend a training course or professional qualification,
- the obligation to attend one or more programs of social reintegration.

The suspended measures and obligations are resumed after the cessation of the state of emergency (lockdown).

For situations where the term of supervision, the duration of the supervision or the duration of the non-custodial educational measure for juveniles was fulfilled during the state of emergency, the final supervision report prepared by the probation case manager mentions how the supervision process was carried out and the objective impossibility of execution of the measures and obligations.

In order to implement the Presidential Decree the National Probation General Director issued several decisions in order to guide the probation activity.

In the cases mentioned above, the probation counsellors inform the supervised person by telephone or e-mail and send written notifications to the community institutions in which the obligations are executed regarding the suspension of their execution.

During the alert state, declared in Romania on May 15, 2020 and prolonged at this time, direct contacts with the probationers were resumed, but under certain conditions, in compliance with certain criteria. The criteria for prioritizing the cases in which the encounters with the probationers are made at the probation service headquarters and are established by decision of the General Director. As a rule, the criteria refer to: the dynamics of the infection rate at the level of each county, the caseload, the local resources, the rest of the punishment to be executed, particularities of the cases (risk, needs, obligations imposed by the judge), IT means that the persons have or other local and punctual circumstances.

For this period (of alert), the encounters organized online predominate. The encounters held at the probation service headquarters are preceded by activities of their preparation, carried out through remote communication means with the probationers, in order to facilitate the achievement of the purpose of the encounter in the shortest possible time.

New cases

For all new cases received during the state of emergency the case manager makes all the requests for locating and telephone contact of the supervised person and continue to communicate in writing a copy of the penal sentence and other information relevant for the probationer. He/she is informed regarding the necessity of submitting a declaration and documents regarding the housing, financial situation, school preparation or professional qualification, the current professional situation and other necessary documents related to the measures imposed by the court. It is communicated to the supervised person that the first meeting will be held after 15.05.2020, following the day on which the meeting is to be communicated to the supervised person by any written or telephone means, these issues being recorded in writing by the probation case manager. During this time, the probation case manager are keeping contact through distance communication with different supervised persons depending on their problems and needs.

#### Conditional release meetings

The hearings for conditional release continue, including the attendance of the probation staff to these meetings respecting the recommendation for social distancing and other protective means.

In some cases the supervision judge from the conditional release commission may decide the hearing of inmates through communication tools for remote teams such as videoconference.

#### Presentence reports

In cases where the deadlines for preparing presentence reports cannot be postponed all the meetings with the persons are organised, as much as possible, by distance communication tools.

#### Health safety

In order to protect the health of the communities, of each of the probationers and their families, and for the probation counsellors, the teams in our probation offices are supported and encouraged to use flexible means for essential activities, including teleworking.

- Was there a more significant impact on particularly vulnerable groups and/or minorities (young adults, older persons, women, foreign nationals, persons with disabilities, people with mental health conditions, ethnic minorities, Roma, Indigenous peoples, LGBTIQ+ or other)?

#### Young adults

Taking into account that the maximum duration of non-custodial educational measures (sanctions applied to minors) is 6 months, we can consider that the reduction of face-to-face interactions with probation counselors has led to a significant reduction in the effectiveness of probation interventions in the case of young people. On the other hand, we could appreciate that family resources could be used to a greater extent (where they existed), especially during the lockdown period.

#### Older persons

Given that about 40% of probationers are older than 40 years, and taking into account the specifics of this pandemic, we can appreciate that the older probationers have felt to a greater extent the danger of infection and even of losing life.

#### Foreign nationals

In the records of the probation offices, there were 278 persons with a different citizenship than Romanian. We can appreciate that the reduction and/or conditioning of their physical mobility has been felt more strongly by these people. At the same time, an important proportion of probationers with Romanian citizenship have worked or are working outside Romania, and we can appreciate that this important group has been more seriously affected, both in terms of physical and occupational mobility.

- Were support programmes suspended, adapted or impacted due to the COVID-19 for people serving non-custodial sanctions (e.g. substance use, behavioural change or other support programmes)? Please comment on the impact.

From May 2020 until now, during the state of alert in Romania, the execution of the obligation, *to attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities*, is carried out according to the following rules established by Law no. 55/2020, and detailed by decision no. 58/18.05.2020 of the General Director:

4.1. *The execution of the obligation of the probationers, to attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities, is carried out during the alert state, through remote audio-video communication methods, under conditions that ensure the confidentiality of the transmitted information.*

4.2. *For the conduct of program sessions through audio-video ways of remote communication, the following technical possibilities can be considered: Skype, WhatsApp video call (with up to 3 people), Zoom meeting via WhatsApp or Google (40-minute meetings accessible free of charge).*

4.3. *In order to carry out the sessions of the programs through audio-video methods, the probation counselor may transmit before the session the content of the worksheets, by means of remote communication (WhatsApp, e-mail, etc.), and may subsequently receive these sheets filled in by the same means of communication.*

4.4. *The social reintegration programs may be carried out at the headquarters of the probation offices or at the headquarters of the competent community institutions, only in the individual working version for the cases in which the execution of this obligation began before the declaration of the state of emergency and was suspended during it, as well as in cases whose term or duration of surveillance expires within 6 months from the date of entry into force of Law no. 55/2020, and the obligation has not been executed and the program cannot be carried out / completed by means of audio-video communication remotely.*

4.5. *For the purpose of carrying out at the probation service premises, the group programmes shall be adapted into the individual working method.*

4.6. *The adaptation of the group programs to the variant of the individual work is carried out only in the situation in which there are not, at the level of the probation office or of the institutions in the community, individual work programs corresponding to the assessed need in the case of the respective person. Where there are individual programmes appropriate to that need, these individual programmes will be implemented and there is no need to adapt the group programmes.*

4.7. *In application of the provisions of points 4.5 and 4.6, the programs available for both group and individual application, such as the `Civic Training Program` and `My Choice Program`, are applied into the individual version.*

4.8. *`Stop! Think and change` does not adapt to the individual working version, having an equivalent in the individual way of working in the `One to One Program`, except for the cases in which this program was started before the declaration of the state of emergency and its development was suspended during the state of emergency, thus being necessary to continue the sessions of the same program.*

4.9. *Adaptation of existing group programs at the level of the probation system, such as `DAS Minors`, `DAS Adults`, `Drink&Drive`, `SEED`, `Stop! Think and change`, etc., it is done through prior consultation of the Methodology and Training Service, as well as of the persons in charge of disseminating the programs within the National Probation Directorate.*

4.10. *The rules on the conduct of individual reintegration programs, as well as group programs, adapted to the individual work variant, apply to all community institutions*

*involved in the development of such programs. In case of non-compliance with these conditions and rules, the case manager may decide to suspend the execution of the obligation within that institution until the conditions for the conduct of the deployment are respected or the institution where the reintegration programme is carried out is changed.*

We can appreciate that, given that more than half of the probationers are obliged by the judge to attend one or more social reintegration programs run by the probation service or organized in collaboration with community institutions, this activity is seriously disrupted. At the same time, given that about 66% of probationers are evaluated at a low, low-medium or medium level, in terms of risk and needs, we understand that their evolution is not seriously affected by the limited attendance to these programs.

- What was the impact on probation staff? (impact of lockdown, teleworking and social distancing rules on their work and their well-being; stress factors, exposure to risk of infection, reconciliation with personal life) Did they have an increased workload due to an increased number of people on probation? Were they considered frontline workers? Did they have access to personal protective equipment, tests, vaccination? Was there also an impact on the availability of volunteers and civil society (e.g. for providing community work)?

In 2020, 63 infections of probation counselors were known (out of the total of 540 counselors employed at the period), along with 1,330 infections of probationers (out of the total of approximately 100,000 probationers with whom probation counselors worked throughout 2020). Probation counselors also particularly felt the infections and deaths of their relatives and probationers for whom they were case managers.

Teleworking and shift work have diminished the benefits of teamwork, increasing the individual effort of each of the probation counselors.

The usual administrative activities, as well as those that were added, to operate the necessary adaptations in the pandemic, were felt to be even more burdensome, given the limited access to probation offices.

There have been situations where absolutely necessary face-to-face interactions have been conducted outdoors, in conditions that are entirely unsuitable for probationers and probation counsellors (access to buildings hosting probation offices being restricted for probationers/the general public).

Probation counselors were given priority access to COVID-19 vaccination administered free of charge by state institutions, as frontline workers.

The National Probation Directorate purchased protective products (protective masks, disinfectant, plexiglass panels). Nebulization services were purchased after each case of infection reported, or carried out regularly in certain offices where the space is restricted / overcrowded.

Most of the institutions in the community where probationers carry out community work are represented by public institutions, and they have experienced the same limitations as probation offices. At the same time, once the community work activity in these institutions resumed, it could be carried out in open spaces, in most cases.

- What solutions were found to mitigate the negative impacts of the pandemic on the implementation of non-custodial sanctions?

From May 2020 until now, during the state of alert in Romania, the execution of community service, ordered either as an obligation or as a result of the replacement of the penal fine, is carried out according to the following rules established by decision no.58 / 18.05.2020:

*5.1. Probation counselors - case managers have the duty to identify the probation files in which the execution of community service initiation has been suspended during the*



*state of emergency, in order to carry out a planning of the execution of this obligation, by consulting the institutions where the work is scheduled to be executed.*

*5.2. Probation counselors - case managers shall proceed according to item 5.1. and with regard to the probation files in which the obligation to perform community service was ordered, and the term or duration of supervision ends within 6 months from the date of entry into force of Law no. 55/2020 or the number of hours of work remaining to be performed does not allow completion in the rest of the term or duration of the supervision.*

*5.3. In order to reduce the risk of infection, it may be considered, as a priority, that the hours of community service may be carried out outdoors, in compliance with the rules of social distancing, the prevention and medical safety measures.*

*5.4. Depending on the evolution of the pandemic at national level, the planning of the execution indoor of the activities of community service can be carried out starting with June 1, 2020, after consulting the institutions in the community and observing the rules of social distancing, as well as the prevention and medical safety measures.*

*5.5. In case of non-compliance with the rules of hygiene and social distancing, the probation counselor - case manager may decide to suspend the execution of the obligation until the conditions of carrying out are ensured or the activities established so that they can be performed outdoors.*

*5.6. The probation counselor - case manager will take the necessary steps to replace the community institution where community service is performed, if it is a hospital unit, a residential center subordinated to the local authorities or an institution where people infected with the SARS-CoV2 virus have been confirmed or other categories of activities to support vulnerable groups may be proposed during this period, such as shopping for the elderly, distributing hygienic and sanitary materials in the community, sanitizing public spaces, etc.*

### **3. Impact of the pandemic on the future of non-custodial sanctions**

- Is it foreseeable that some of the solutions created in the context of the pandemic will become permanent? Please give examples.

Some of the activities could be adapted for online delivery and could be continued: the most widely used social reintegration program, `Resolution Module`, was thus adapted in a creative way for online work (with image, text, voice), through the effort of a coordination team and with personal resources, of probation counselors. Most of the initial training for newly hired and life course training, for the administration of a new social reintegration program, dedicated to probationers who have committed some road traffic offences, have been able to be conducted online, and they will probably be able to continue in this manner.

- What lessons for the future can be learned from the experience of the pandemic?

Along with understanding the need to digitize some probation activities and products, we have experienced what is called the rabbinic solution: for almost 2 years we have been deprived of face-to-face interaction, in many of the situations, that we have come to appreciate even more what seemed normal to us, until 2020 – the in-depth and nuanced interaction, in person.

At the same time, working in difficult situations, such as the one in the pandemic, has occasioned, to a greater extent, the (re)discovery of humanity of the probationer – probation counselor relationship, as they are interested in each other's state of health, before the other details regarding the conditions of surveillance.

## **IV. PROSPECTS FOR THE FUTURE OF ALTERNATIVES TO IMPRISONMENT**

### **1 – Are there innovative initiatives in your country regarding alternatives to deprivation of liberty, ongoing or in preparation?**

- Please indicate existing pilot projects or legislative reforms in progress, particularly those that target or have an impact on vulnerable groups or minorities.

We had to adapt quickly, in pandemic conditions and for most of the new entrants, of road crimes: our in-house developed 'Safe behind the wheel! Stop the accidents!' programme is offered in collaboration with the police.

### **2 – In your opinion, what are the prospects for the development of sanctions or measures in a way that promotes an effective reduction in the use of imprisonment?**

- In your view, what is working best and worst in the current sanctions system?

Is easy to see in the image at the end of chapter II, probation is disturbed by the huge and rapid increase in the caseload in the last 7 years (without a corresponding support in resources). We need time and resources to understand and explain what works and what doesn't.

- What changes could contribute to its improvement? Are alternatives to imprisonment conceivable for the most serious crimes?

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- What could be the role of new technologies in the future of alternatives to imprisonment?

We want the RNR principle to prevail over the imposition of obligations by the judge, regardless of the assessed risk and needs (through SERN technology). Currently, probation counselors work for the administration of many obligations imposed by the judge (following normative prescriptions), otherwise assessed with risk-needs of at most medium level.

Probably, in a 10-year period, we will work in a paperless probation office.