

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

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

Malta

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

National Report Malta

By

Sandra Scicluna

Outline for the national reports

I. LEGAL FRAMEWORK

1 – General framework of the national system of penal sanctions

The penal sanction system of Malta consists of custodial and non-custodial measures. Custodial measures include one civil prison (the Corradino Correctional Facility) and a forensic wing housed within the mental health hospital – which forms part of the civil prison. Prisoners can also be sent for drug rehabilitation and in a half-way house. In such cases prisoners will still fall under the prison authorities and can be returned to the main prison if needed.

Alternatives to incarceration are divided into two – alternatives to incarceration that are not supervised e.g. fines and the conditional discharge and those that are supervised e.g. the probation order and the suspended sentence supervision order. All supervised sanctions fall under the Department of Probation and Parole.

It is the courts that decide on the length and type of sentences. With regards to “reference sanctions”¹ (*i. e.*, the ones prescribed in the legal provisions of criminal offences) the legal length is found in the Criminal Code (Chapter 9 of the Maltese Laws) that prescribes the minimum and maximum sentence length that can be awarded with regards to crimes. It is normal practice that there is a gradation of punishment according to the offender’s criminal career. Therefore, first time offenders are rarely given a custodial-sentences. The law however does make certain exceptions with regards to certain crimes such as drug trafficking, arson etc. Crimes that carry more than seven years imprisonment cannot be given a non-custodial sentence.

The sanction that has the longest period of replacement for a prison sentence is the Probation Order – A probation order can be given in lieu of imprisonment of up to seven

¹ “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).

years imprisonment. On the other hand, the suspended sentence can be used instead of two years of imprisonment.

Diversion from sentence is not possible in most sentences. Strictly speaking there is no provisions in the laws for diversion, the only exception is for small quantities of drugs or cannabis. Such quantities have to be for personal use. In these cases, offenders would be referred to a committee to help them combat their addiction. The emphasis here is on treatment rather than punishment (Chapter 537: Drug Dependence (Treatment not Imprisonment) Act).

2 – Non-custodial sanctions

There is a plethora of non-custodial sentences available in Malta. This section will present the measures available, both those requiring supervision and those that do not require supervision. I chose to present the non-custodial sentences according to the legislation they are found in.

The Criminal Code (Chapter 9 of the Maltese laws) is the oldest piece of legislation with regards to criminal sanctions. This code provides legislation for the following sanctions:

- Reprimand and admonition (Section 7) – this is one of the softest options where a reprimand and admonition in open court is deemed to be enough punishment by the court. There are no further actions by the court or by the supervising authorities (the Department of Probation and Parole). This sanction is listed in the criminal record sheet of the individual, however if the offender does not commit another offence the sanction has no effect on the individual's future.
- Fines – fines are divided into two (Section 7) – fine (*multa*) or fine (*ammenda*). The fine (*multa*) is applicable for crimes. The amount, unless specifically provided by a particular law, is from a maximum of 1,164.69 euro to a minimum of 23.29 euro. In the case of fine (*ammenda*) (applicable to contraventions) the maximum fine is that of 58.23 euro and the minimum is that of 6.99 euro. The concept of Day Fines does not exist in Maltese laws.
- Interdiction (Section 10) – an interdiction can be general or specific. Interdictions can be temporary or for life. Temporary interdictions have a maximum of 5 years unless specified by a particular law.
- Suspended Sentence (Section 28A to 28I) – the Suspended Sentence is a prison sentence of not more than two years suspended for a period between one and 4 years. If the offender does not commit another offence during the operative period of the suspended sentence, such sentence will not come into effect.
- Suspended Sentence with supervision order (Section 28G) – with the suspended sentence the court, when there is a sentence of more than six months imprisonment and not more than two years imprisonment, may make a suspended sentence supervision order. In such cases the offender will be placed

under the supervision of a supervising offices (which is also a probation officer) for the period of the suspended sentence.

The Probation Act (Chapter 446) gives dispositions for a number of non-custodial sentences. Under this act we find the following alternatives to incarceration:

- Probation orders (Section 7) – The probation order can have a minimum of one year and a maximum of 3 years where an offender is subject to supervision by a probation officer. Such order can also include a treatment order. Such order cannot exceed the length of the probation order. Probation orders can be given in lieu of a prison sentence not exceeding seven years.
- Treatment orders (section 7, subsection 5) – a court may order the offender to undergo treatment. The length of such treatment cannot exceed 3 years.
- Community Service Order (Section 11) – This order can only be given to offenders who are over 16 years of age. The hours of unpaid work or unpaid work and training shall not be less than 40 hours and not more than 480 hours. The work has to be done in a period between one month and two years, although such time-frame could be increased if the court is of the opinion that such an increase is in the service of justice. In these cases, the time frame cannot be extended beyond a further two years. This order can also be given for offences that carry up to seven years of incarceration.
- Combination Order (Section 18) – This order is a combination of the probation order and the community service order. The term of the probation order remains the same i.e. between 1 and 3 years, however the work hours are modified between 40 and 100 hours.
- Absolute Discharge (Section 22) – in this order the court deems that the impact of the trial was enough for the offender, therefore the offender is discharged absolutely. This works in a similar way as the Reprimand and Admonition above.
- Conditional Discharge (Section 22) – in this order the court deems that the offender does not need supervision. Therefore, it is possible to discharge the offender for a maximum of 3 years (there is no minimum) with the only condition being that such offender does not commit a further crime during the operative period of the sentence.
- Parole – this is regulated by the Restorative Justice Act (Chapter 516). Prisoners have to apply for parole 6 month prior to the eligibility date of release. Earlier dates of release are regulated by the law. Offenders sentenced to less than one year imprisonment cannot apply for parole. Those sentenced between one to two years can apply after they have served one third of their prison sentence, those sentenced between 2 years and 7 years can apply after have served 50 percent of their sentence and those sentenced to more than 7 years can apply after 58 percent of their sentence. The length of parole supervision is the length of the remaining portion of the prison sentence.

All non-Custodial sentences are imposed directly by the court, with the exception of Parole that is an administrative sanction given by the parole board while the offender is

still undergoing a prison sentence. In all cases where there is a supervision element, consent is required. It is therefore required in the Suspended Sentence Supervision Order, in the Probation Order, in the Community Service Order, in the Combination Order, in the Treatment Order and in Parole. Every sanction is explained to the offender in a language that he/she can understand i.e. avoiding the use of legal jargon, and after he/she accepts, the offender is asked to sign a document of this acceptance.

There are certain laws that preclude the use of non-custodial sentences, such as drug trafficking, arson and sentences that carry more than 7 years imprisonment. Certain characteristics can also preclude a person from applying for parole. These are: if a person is sentenced to a prison term less than one year; is detained under the Immigration Act; is subject to extradition proceedings, is a third country national who will be deported at the end of the prison sentence, is detained because they have attempted to subvert the Government of Malta or have conspired against the state, is sentenced to acts of terrorism, funding of terrorism and any other ancillary offences. Not having a fixed address might preclude an offender from benefiting from non-custodial sanctions as such punishments require an offender to have a fixed abode. Very few people in Malta do not have a place to stay, although this number is increasing.

Community sanctions in Malta tend to be given in a non-cumulative manner, because the laws tend to exclude this. Sentencing judges sometime circumvent these dispositions and issue a number of cumulative sentences, that can either be applied concurrently (for example this will happen if there are two probation orders that overlap) or cumulative, although these are rare. The most common cumulative sentences are prison sentences. In the case of non-custodial sentences community service orders can be cumulative – in this case one sentence is applied after the other. Probation orders and Treatment Orders can be extended by the court when there is a new offence and the operative period of the orders restarts. Sometimes a probation order is given when there is an on-going prison sentence. This is aimed at helping the reintegration of the offender once the offender is released from prison.

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

Once an accused is found guilty of a crime, the court can stay the procedures to ask the Department of Probation and Parole to prepare a pre-sentencing report. This report will assist the court in dealing with the offender in the best way possible, taking into consideration the needs of the offender. The court can also order a social inquiry report when the court is thinking of issuing bail. The report will present the social history of the offender to help the court decide on the risk that the accused has for re-offending. In certain cases, the court can issue a so called 'provisional order of supervision' where a probation officer will follow the accused until the court decides on the guilt of the offender and the sentence.

The legal criteria that the court must consider in the choice of penalty are mainly determined by Chapter 9 of the laws of Malta (the Criminal Code). Section 33 of the Criminal Code exempts from criminal responsibility all those who, at the time that they committed the offence were either in a state of insanity or they were forced to commit the act by someone or something that they could not resist. If a person is intoxicated there need to be specific criteria that have to be applied to determine guilt. The first being that the person was so intoxicated that he/she could not understand what he/she was doing or that the person was temporally insane. Section 35 of the same code renders children under the age of 14 as not being criminal responsible. For minors between 14 and 16 the state has to prove that the person acted with mischievous discretion. If such is proven, the sentence will be decreased. Together with the above

the courts have a guideline as to the minimum and maximum sentence applicable according to the crime committed. There are no formal sentencing guidelines available for the judiciary, which can result in non-equity in sentencing. The criminal code does not specify the purpose of punishment. However, with the emphasis being on punishment one may conclude that this code looks at deterrence and retribution as its main role in issuing punishment. However, when one considers The Probation Act, The Restorative Justice Act and the Prison Regulations of 1995 there is a strong element of rehabilitation and reintegration in them. The creation of the Probation Act itself mentions as one of the roles of the probation officer as that of 'advising and assisting' the probationer. The Restorative Justice Act also uses the same phrase to describe the role of the Parole Officer. While the idea of Restorative Justice is by definition a reintegrative measure. The prison regulations speak about 'respectful resettlement in society upon release'

The court when deciding a sentence will decide according to the parameters of the law. There are mitigating circumstances (listed above). However, such circumstances are mainly due to age and mental capabilities. The *actus rea* and the *mens rea* principles apply. A repeat offender is more likely to receive a harsh sentence, than a first-time offender (this is also specified in the law – where recidivists have their sentence increased). With regards to social problems, although these are not listed as mitigating circumstances the judiciary take these into consideration and are more likely to sentence to non-custodial sentence (where possible) those that require and want help.

Non-custodial sentences are always imposed by the trial judge. Malta in alternative sanctions follows the common law model of imposing non-custodial sentences. Judges do not have a duty to impose non-custodial sentences. In no stage is the judge forced to give a non-custodial sentence. In the sentence the judge needs to give the reason for the sentence however as there is no real constraints on the judge to impose a non-custodial sentence, this remains at the discretion of the judiciary concerned. This could lead to substantially different sentences for similar offences. The use of sentencing guidelines would surely help to mitigate certain discrepancies. However, there are no sentencing guidelines in Malta, but there is precedent – whereby the rulings of the superior courts, especially in its appellate form are taken as a guideline for the other courts to operate by. Any sentence can be appealed. Appeals are possible for the sentence itself, the length and type of sentence. Both offender and the state can appeal a sentence. When the state appeals a sentence, this is done by the Attorney General.

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

Alternatives to incarceration are issued by the courts but supervision of non-custodial measures are under the jurisdiction of the Department of Probation and Parole. Each offender is assigned a probation officer that is responsible for the case. Probation officers are monitored by Senior Probation Officers who are responsible for the overall monitoring of cases. In reality probation officers have a lot of discretion. Although there are standard operational procedures that guide the probation officer, decisions remain in the discretion of the officer. Therefore, it is the officer that reports the case in the case of breach, to the courts and these are to a certain extent, subjective. The standard operational procedures try to limit discretion as much as possible. While the courts decides whom to put under probation supervision and courts do receive periodic reports from the probation officer on how the offender is adjusting, they cannot recall a sentence

if there has not been another offence (and here the committing of the offence needs to be proven first) or the probation officer draws a report to report the breach to the court.

Breaches in all community-based sanctions need to be reported to the courts. It is the court that decides if the breach has occurred and what punishment, if any will be given. The laws give the punishments that the courts can apply. If the breach is found to have occurred the following sanctions apply:

- In the case of interdiction, a fine (*multa*) shall be applied. In the case of fine default, the conversion rate is of one day for every 11.65 euro, for a maximum of one month. In case of a fines over the maximum of 1164 euro, this is transformed to a prison sentence at the rate of one day imprisonment for every 35 euro. However, default for high amount fines is fixed by law at 6 months if the fine is not higher than 7,000 euro; one year for fines not higher than 30,000 euro; 18 months for fines up to 80,000 euro and not more than two years for fines higher than 80,000 euro.
- In cases of breach of the suspended sentence or the suspended sentence with a supervision order the court will put into effect the suspended sentence and deal with the offender for the new case separately. However, if the court is of the opinion that the offence was of an involuntary nature, the court may not call the prison sentence into effect and leave the operational period as is or may vary the order, extending it for a maximum of four years from the variation.
- In cases of breaches in probation orders, treatment orders, community service orders and combination orders, the court will summon the offender. When the court is satisfied that the breach has occurred the court may impose a fine (*ammenda*) of a maximum of 232.94 euro or may deal with the offender as if he/she has just been convicted of that offence. This does not exclude that the court may decide to restart the operational period of supervision or the work hours once again.
- When there is a breach of the conditional discharge the court will deal with the offender as if the conditional discharge had never been made. Here the court must also consider that breach.
- In cases of breaches in parole the offender is recalled to prison and he/she need to serve the rest of the sentence in prison.

In some cases, the length of a community sanction can be either increased or decreased in the course of its implementation. The length of the sentence can be modified either because there has been a breach, and therefore the court decides to re-start the operational period again or if there is a request by the probation officer, however such length cannot be greater than the maximum period allowed by the law. Inversely both probation officer and offender can ask the court to shorten the period of supervision which is rarely done, or discharge the order and ask the court to deal with the offender as if the order had never been granted in the first place.

5 – Early release

Early release from imprisonment is possible either through Parole, remission or amnesty. Parole, is regulated by the Restorative Justice Act (Chapter 516). Prisoners have to

apply for parole 6 month prior to the eligibility date of release. Earliest dates of release are regulated by the law.

Remission is also regulated by the Restorative Justice Act. Prisoners are allowed early release after two thirds of their sentence for good behaviour. In these cases, there is no supervision involved and the prison sentence is deemed to be finished.

Amnesty is a presidential pardon. Sometimes a general amnesty is issued for some national event. These are rare instances. The individual amnesty, although also rare is more used. This happens when there has been a miscarriage of justice or for humanitarian reasons.

There are no cases of mandatory conditional release. The time frames of release is either Remission, which is usually as early as two thirds of the sentence. Although this is not mandatory in effect most, if not all prisoners are granted remission release. It is rare for a prisoner to actually do the whole sentence as prescribed by the court.

Parole has different release dates according to the length of sentence imposed by the courts. Prisoners have to apply for parole 6 month prior to the eligibility date of release. Earlier dates of release are regulated by the law. Offenders sentenced to less than one year imprisonment cannot apply for parole. Those sentenced between one to two years can apply after they have served one third of their prison sentence, those sentenced between 2 years and 7 years can apply after have served 50 percent of their sentence and those sentenced to more than 7 years can apply after 58 percent of their sentence.

In the case of remission, it is the 'Remission Board that grants or takes away remission days in case of good or bad behaviour accordingly. Release on remission is at the end of the sentence and there is no monitoring when released is on remission. In the case of parole, release is granted by the Parole Board and supervision is performed by Parole Officers within the Department of Probation and Parole. Recall from Parole also happens by the Parole Board, either because there has been a new crime or because some undesirable behaviour has occurred – this could include not respecting the conditions of the parole license.

There are various conditions that can be imposed on the parolee. Obviously, the Parole Board has to be convinced that the likelihood of re-offending is minimal or null. All offenders have to agree to live in a pre-designed place (this can be at home or in a half-way house), meet with the parole officer periodically and not commit another offence while on parole. Furthermore, the Parole Board can add a number of conditions to the parole license. Such conditions may include: monetary compensation to the victim; no contact with the victim or the victim's family; condition recommended by the victim to the parole board; to undergo electronic monitoring (this is not yet in place); to attend treatment programmes; to participate in educational, vocational and/or training programmes; to perform work in the community. Curfew restrictions; an obligation to reside in a particular location and any other conditions can also be applied. Any non-compliance would result in the suspension of the parole license and a return to prison. The parole board will judge if there has been a breach in the license and if the parolee is to be kept in prison for the rest of the sentence or can be released. Although on paper there is no discretion with regards to recall, the Parole Officer always has discretion as to what is allowed or not. If a person is recalled the time spent under conditional release does not count as prison time.

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

There are no differences when it comes to sentencing offenders. The court will take into consideration age – those between 14 and 18 will get their sentence diminished by one degree. Mental capacity – those who are not capable of reason or those who have mental health problems are either given a lighter sentence or not sentenced at all. In other circumstances the law is applied equally to all, however circumstances are taken into account to mitigate the sentence. Therefore poverty, socio-economic circumstances and so on, although not playing a part in establishing guilt or otherwise, usually are considered by the court before sentencing. Community sanctions are used in some of these cases.

There are no real legal barriers as there is no discrimination in the applicability of the law. Certain groups, such as migrants would have difficulties navigating the criminal justice system. People not residing in Malta might have a harder time accessing non-custodial measures due to logistic reasons.

There are specific forms of early release for those vulnerable groups mainly the young and those that have undergone rehabilitation. The Restorative Justice Act predisposed early release for young offenders – this can be written in the court sentence or the person. Earlier eligibility date in parole can also be granted for those offenders that have been reformed and are facing a new sentence for a crime committed years back.

II. NON-CUSTODIAL SANCTIONS/MEASURES IN PRACTICE

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

Data will be presented to show the significance in the use of alternative sanctions in practice. The data being used for this report is that of 2019, as this is the last official government report data issued. Data is taken from the Annual reports published by the government but also for the on-line sentences data base. As can be seen from the table below, the number of fines issued in 2019 where 295 fines from the criminal courts and 3525 from the courts of Magistrates reaching a total of 3820 fines. The amount collected by the Ministry during 2019 was a total of 1,263 fines amounting to 237,225.38 euro (Ministry for Justice Annual report, 2019). During 2019, 3387 fines were converted to a prison sentence. These cases do not belong to cases decided in 2019 only (Annual Malta Government Report, Ministry for Justice, 2019).

New cases in prison for 2019 where 655 while the Department for Probation and Parole had 992 cases divided as follows: Probation Orders – 184 cases; Suspended sentence with supervision orders – 22 cases; Community service orders – 33 cases; Combination orders – 2; Parole licence – 20; and Treatment orders 59 (Annual Malta Government Report, Ministry for Home Affairs, 2019).

Unfortunately, there is no data easily accessible for the absolute discharge, and the reprimand and admonition. A search on the government website on sentencing yielded no results. An e-sentence search for 2019 yielded 121 suspended sentences and 35 conditional discharges. This data needs to be interpreted with caution. Primarily these are the sentences that have been uploaded on the site (they are not necessarily all sentences) and secondary there is a possibility that the search did not yield all the sentences of the kind researched as the key words were not found.

In the case of Parole – during 2019, there were 79 applications for a parole licence. Out of these fifty-eight persons never ended up on parole. This is due to the fact that a number of prisoners withdraw their parole application and others would not have been

granted the parole licence. By the end of 2019 only 21 persons had been put under parole supervision.

Sentences given during 2019

Type of Sentence	Number of Cases
Prison	655
Conditional Discharge	35*
Fines	3820
Probation Orders	184
Community Service orders	33
Combination orders	2
Suspended Sentence	121*
Suspended Sentence with a Supervision order	22
Treatment orders	59
Parole Licence	20

Source: Government Annual reports 2019

*Data from search on e-sentences on-line

Data on vulnerable and/or minority groups is not easily available. Age and gender are the data that is readily collected. Some 13% of all the people, under some form of correctional supervision, are between 14 and 18 years old. Prisoners under the age of 18 are not common and amount to less than 1% of the whole prison population. About 7% of the prison (World Prison Brief, 2021) and 16% of probation population is female (Personal Communication with the Department of Probation and Parole) while slightly more than 55% are foreign prisoners. The most common nationality, after Maltese, is Sudanese, Somalians and Libyans (Cilia, 2020). In 2020 there were about 8% of the total prison population over 60 years old (Parliamentary Question 17487).

The most common 'early release' measure is that of Remission. Remission comes in the form of a pardon of a third of the prison sentence. Although such release should not be automatic, in reality it is very much so. Very few prisoners, if any do not actually get released after the two-third point of their sentence. Another method of release is Parole. This mode of release is not much used. Prisoners tend to prefer to wait for their release via remission rather than apply for parole. The fact that only 79 persons of a prison population pushing the 700 mark, in 2019 applied for parole and that a number of these would have dropped their parole application shows this. Granted that there are also other variables such as length of sentence that make some prisoners ineligible for parole, still the number of 79 cases (about 11%) is rather low and lower still are the number of granted parole licence (21 in 2019). Amongst practitioners the feeling is that most prisoners do not want to apply for parole.

There is very few discussions, 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. The thoughts of the professionals concerned center around the possibility of the non-use of non-custodial sentences for people who do not habitually reside in Malta. For such persons the options are almost always the use of prison sentence or an alternative that does not require supervision such as a fine. The use of the fine, will work against those who cannot pay, invariably forcing them to enter prison to 'pay' the fine.

Presentencing reports are provided to the judiciary when requested by the courts. The only sentence when the courts have to ask for a presentencing report is when they want to sentence someone for a community service order. In the creation of a presentencing report, the probation officer gives an outline of the criminal, social and family history. In these instances, any vulnerabilities are mentioned. The report as such, does not promote the use of non-custodial sanctions because the person comes from a minority group or is vulnerable. The report considers the needs of the offender and the protection of society. If the probation officer is convinced that the needs of the offender merits a non-custodial sentence and that the offender will not continue to harm society, then a recommendation for a non-custodial sentence will be written.

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

The Department of Probation and Parole is in charge of monitoring the implementation of non-custodial sentences. The department became autonomous in 2012, however it has been in existence since 1957, first as a unit under the department of social affair and later as part of the correctional services. The Department is headed by a director assisted by a deputy director. On the probation side there is a Principal Probation Officer (at present the post is vacant), four Senior Probation Officers, and 24 Probation Officers. According to the present workers' collective agreement the caseload of each officer should be between 40 and 55 cases. All probation officers and management are Maltese. This is probably the result that the language of the Maltese courts is Maltese, therefore a prerequisite to enter the service, is that the person is fluent in the Maltese language. There majority of probation officers are females (18 out of 24) as is the Director.

The aims of probation is to achieve a balance between care and control, to help the offender and protect society. The Mission statement as listed on the departmental website are two-fold:

“To help ensure social stability by contributing to minimise the frequency of crime for more public protection and by ensuring the re-integration of offenders.

and

To ensure that the services offered address the needs of the Criminal Justice System in line with principles of Restorative Justice.” (Probation and Parole Services, n.d.)

This is a clear indication that each offender is seen as an individual to be helped. Together with the offender, the probation officer draws up a care-plan, which is reviewed periodically, on the points that the offender must work on to reduce offending and promote monitoring. There is a control element also present, offenders who persist in their illegal behaviour are taken back to court.

The sole responsibility of supervision is in the hands of the department of Probation and Parole however, the department works with other NGOs, private companies and government departments to ensure that best services for the probationer. The agencies

that the service, works mostly with are the job finding agencies, drug and alcohol addiction services and family services. In Community Service Orders, work placement providers are either NGOs or local councils. The placement provider is not expected to report the offenders for bad behaviour, rather they are expected to tell the probation officers of any concerns they might have.

To date there is very minimum technology being used, with the exception of the most used technology such as phones and apps. There is no electronic monitoring – although such seems to be in the pipeline and certainly no check-in kiosks.

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

Unfortunately, there are no pure recidivism studies in this area. The lack of rigorous scientific studies in this area is a draw back.

There are no adaptations or specific measures taken with the implementation of non-custodial sanctions to vulnerable persons or minority groups as there are no sanctions or measures that have proven particularly effective in reducing offending among certain categories of more vulnerable persons or minority groups. This is probably due to the fact that minority groups are not found much in the probation services.

There are also no 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.

There is no 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).

I think that the main barriers to a wider use of alternative to incarceration is the fact that the laws does not permit the changing of a fine to an alternative, another component could be the lack of appreciation by the judiciary in non-custodial measures as incarceration is seen as 'the punishment' while non-custodial sentences are seen as a softer option. Parliament should address this, by issuing legislation that 'forces' the judiciary to consider non-custodial alternatives before issuing a prison sentence.

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

During the pandemic the prison closed its doors to visitors. Prison officers and other prison staff were on a week in, week out work routine. Before the staff was let in prison for the working week they would all undergo a covid-19 test. New prisoners were also isolated when they entered prison. Although this was not desirable, it did protect the prisoners from the pandemic. As there was never a real crisis in prison, no new alternative to imprisonment were created to address the pandemic. During the worst times of the pandemic the law courts were closed, so no new sentences we being issued. Therefore, most sentences were postponed.

Most people under some form of probation supervision would be considered vulnerable as their health is not optimal and they tend to adopt a lifestyle that puts them at risk. Due to this, the fact that the country went into a quasi-lockdown for three-month, probation officers worked from home. Home visits and visits to institutions did not happen and all contact was made through phones or other forms of electronic media.

No persons were released from prison due to covid-19, therefore the effectiveness of otherwise of such measures cannot be known.

From the non-custodial side, Community Service orders were the most impacted. When this happened, the measure was extended. Out-patient orders were also affected. Therapy was usually held on-line. The use of internet-based eye movement desensitization and reprocessing (iEMDR) was used. The other forms of community sanctions where supervision was involved were impacted as no face-to-face sessions were held, rather everything was held remotely.

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

The Department of Probation and Parole had to go in semi-lockdown when the covid-19 cases started escalating without control. During this period, which lasted about 3 months the courts were also closed, therefore probation officers did not need to go to the court house. Once Covid-19 was brought under control the probation services started operating in bubbles. Only half the officers would be physically present at work, while the others worked remotely. When officers needed to go to court, but their bubble was not at work, they could go into the building but they could not have any physical contact with the members of the other bubble. This ensured that in case of a probation officer being found positive, only half of the service would need to be quarantined. In the meantime, the meeting rooms and the shared office space was decked with Perspex, where the 2-meter social distance could not be maintained, to ensure safety. Although precautions were taken – social distance, bubbles, Perspex, masks, and sanitizers; invariably, if a probation officer was found to be covid positive there was transmission in the place of work. Today the service is back to operating in a quasi-normal manner. All officers are in the office, with the occasional scare when someone is found positive. In these instances, all are sent home to work remotely and covid-19 tests are carried out after 3 days.

Offenders on community-based sanctions were for a long time not allowed to go to the department. Programmes such as WhatsApp, zoom and google meet were used instead of face-to-face meeting. Obviously, this put those who did not have access to internet at a disadvantage as they had to find a spot that had free wifi. Although in Malta there are numerous places with free wifi, they are in public spaces, therefore privacy to discuss certain issues could not be achieved. Probation officers needed to be more flexible during this period. Surely supervision was not up to its usual and control was not optimal.

The impact on vulnerable groups is surely felt. We know that there was an increase in domestic violence due to the aggressors remaining at home. Those with mental health problems, faced a more serious situation. Some that did not have mental health problems developed signs of depression.

The support given to offenders on non-custodial sentences had to be changed as face-to-face intervention was not possible and for some time, only remote contact was possible. The officers reacted well to this, however all felt that face-to-face intervention

cannot be substituted. The resulting iEMDR adopted by the psychological team help to a certain extent mitigate some problems.

On the whole the probation staff adopted well to teleworking and social distancing. There was some stress involved especially with regards to working with vulnerable people who were not so careful about exposure. Stress increased for those who had vulnerable people at home. The service was very supportive in these cases. Management tried its best to help probation officers, they were given free face masks and sanitizers, encouraged to work from home and their safety was put in the forefront. They were not considered as front-line workers but they were included for early vaccination together with teachers and social workers. When there was a case of Covid-19 the officers were urged to take the test, which are free in Malta. Sanitations was also carried out when a case was discovered.

Solutions that were found to mitigate the negative impacts of the pandemic on the implementation of non-custodial sanctions were the use of electronic media to help contain the impact of lack of control that the probation officers had on offenders. The use of on-line meetings was also found to be a mitigating circumstance in the work of probation officers.

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

One of the solutions, that started as a mitigating measure during Covid, and that would probably become permanent is the use of remote working. The government is discussing having this as a permanent option in the government service. While full remote work is impossible for probation, a percentage of time could be spent working remotely. Tasks such as report writing, case writing and contacting agencies can be done from home. Probably a 40% work at home could be carried out. Most officers seem to be in favour of this idea.

The pandemic has taught us that we cannot totally work from home as the isolation is not good for team building, however it has also taught us that we could easily do some tasks from home, probably more efficiently as there will not be the distraction that happen at work, especially when people share office space or have an open plan office.

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?

A pilot project on electronic monitoring is being held with prisoners who are allowed to leave prison on prison leave. A white paper was drawn up on electronic monitoring and feedback on this was asked from experts. The proposed law did not make use of the full possibilities of electronic monitoring. Due to this we sent feedback to address lacunae

in certain aspects such as the use of electronic monitoring to probationers and its use in bail.

The Department of Probation and Parole is also working on the creation and implementation of programmes for young offenders (mainly those under 18) and for women offenders.

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?

The prison is overcrowded. There is a lot of use of remand in prison, rather than the use of bail and there is a lot of use of short prison sentences, due to fine defaults or lack of pay in alimony. What is working best, although this still needs improvement, is the employment of more professionals that can assist in the rehabilitation of prisoners.

Overcrowding could be addressed by the use of electronic monitoring with regards to the bail provisions. Fines and lack of alimony payments could be addressed by making the defaulters pay by performing community service. A quantum of earning should be made available so that cases of alimony are paid from a community service fund. Putting a person in prison because of lack of payment in Alimony does not help the children. Furthermore, sentences of less than 6 months in prison should not be given by the courts, as this type of sentence does not address the problems that prisoners have. Short sentences should be avoided, as they are disruptive to the person's life with not real value in rehabilitation. When the court gives a short prison sentence this should be justified. The idea behind sentencing should be that prisons should be used as a last resort.

New technologies are probably in the future of alternatives to imprisonment. This will pose a new challenge to the Malta Probation Services as the department has always worked in the traditional manner of supervision balancing care and control. Electronic monitoring will probably, be the first technology to be introduced and this will hopefully have a direct impact on prison rates. Overall, I think that there is a reluctance to become over reliant on new technologies. However, certain features such as apps and voice recognition checks could have a beneficial effect on control and seeking help. This would always need to be supported by probation officers.

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