

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

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

Czech Republic

Andrea Matoušková



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Andrea Matoušková
DG of the Probation and Mediation Service of the Czech Republic
Professor at Universita Karlova

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Instituto Jurídico
Faculdade de Direito da Universidade de Coimbra
Colégio da Trindade | 3000-018 Coimbra | PORTUGAL

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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.

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?

Criminal sanctions include penalties and protective measures. Educational, protective and penal measures may be imposed on a juvenile¹.

Institute of Criminology and Social Prevention in research Criminal Justice System in the Czech Republic mentions the basic principles of the criminal justice system:

Imposition of criminal sanctions is governed by the principle of humanity, which prohibits imposition of cruel or disproportionate sanctions and ensures their execution must not diminish human dignity. According to Art. 39 of the Charter, punishments are imposed only on the basis of law (nulla poena sine lege – principle of legality), which also applies to protective measures. Another important principle is the principle of proportionality of the sanction to the nature and seriousness of the committed crime and circumstances of the offender. At the same time, where imposition of a more moderate sanction suffices, a more severe sanction may not be imposed (principle of subsidiarity of stricter sanction). When imposing sanctions, it is also necessary to take into account the interests of persons injured by the criminal offence.

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

The legal provisions concerning all crimes specified in a part two (special part) of the Penal Code (starting from the Section 140) utilise imprisonment as the primary “reference sanction.”

All possible types of sanctions are stated in the Section 52 of the Penal Code, referred as “Types of Punishments.”

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

Section 55 of the Penal Code mentions the maximum limit of imprisonment:

A punishment of an unconditional prison sentence shall be imposed for a maximum of twenty years unless it involves an extraordinary increase of a prison sentence, imposition of a prison sentence upon an offender of a criminal offence committed in

¹ A juvenile person is a person who has reached fifteen years of age but has not exceeded eighteen years of age at the moment of committing a criminal act.

² “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).

favour of an organised criminal group or an exceptional punishment is concerned.

Section 54 of the Penal Code explains the term exceptional punishment:

The term exceptional punishment denotes both a prison sentence for over twenty to thirty years and a life prison sentence. An exceptional punishment may only be imposed for a particularly serious crime.

For criminal offences where the upper punishment limit of a prison sentence does not exceed five years, an unconditional punishment of a prison sentence may be imposed solely subject to the condition that, with regard to the character of the offender, imposing a different punishment would evidently not assist the offender to lead an orderly life.

Section 31 of the Act no. 218/2003 Coll., on Criminal Liability of Juveniles for Wrongful Acts and on Juvenile Justice and on the Amendment of Certain Acts (Juvenile Justice Act) regulates the custodial sentence imposed on juveniles:

An unconditional custodial sentence may be imposed on a juvenile only if, having regard to the circumstances of the case, the person of the juvenile or the measures applied previously, the imposition of another criminal measure would clearly not be sufficient to achieve the purpose of this law.

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

Sections 46 - 48 of the Penal Code are dedicated to waiver of punishment:

The punishment for an offender who has committed an offence³ and who regrets having committing the act and demonstrates genuine efforts at reformation may be waived if it can be reasonably expected, with regard to the nature and seriousness of the offence committed and the current way of life of the offender, that merely discussing the matter at hand will suffice to ensure their reformation and the protection of society.

The court shall also abandon punishment under specified circumstances (for more information see Section 46 of the Penal Code). The court shall also abandon punishment of the offender while simultaneously imposing protective treatment or protective detention (for more information see Section 47 of the Penal Code.).

Section 48 of the Penal Code provides information on conditional waiver of punishment with supervision:

The court may waive a punishment and stipulate the supervision of the offender if it deems it necessary to monitor the offender's behaviour over a specified period of time. In the event of a conditionally waived punishment, the court shall determine probational period of up to one year and at the same time shall impose supervision upon the offender.

The court may impose upon an offender, whose punishment has been conditionally waived, appropriate restrictions and obligations aimed at ensuring the offender leads an orderly life; as a general rule, the court shall further impose upon them the obligation to compensate the damage or redress the non-material damage caused by

³ Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

their criminal offence or to surrender any unjust enrichment obtained through a criminal offence, depending on their ability to do so.

See Section 48 of the Penal Code for more information.

Diversions from the hearing of case in the main trial are listed in Sections 307–314 of the Code of Criminal Procedure. Probation and Mediation Service can arrange the conditions for the diversion of a prosecution (conditional suspension of the criminal prosecution and settlements) in the pre-trial stage of the criminal proceedings.

Conditions for conditional suspension of the criminal prosecution are listed in Section 307 of the Code of Criminal Procedure:

The court, with the consent of the accused and, in the preliminary hearing, the public prosecutor, may conditionally suspend the criminal prosecution in the proceedings on an offence⁴, if

a) the accused confesses to the act,

b) they compensated any damage if it was caused by the act or if they entered into an agreement with the victim on the damages, or if they have taken other necessary measures for compensation,

c) they surrendered unjust enrichment obtained through an offence or concluded an agreement on its surrender with the victim, or took other appropriate measures for its surrender,

and given the character of the accused, with regards to their previous life and the circumstances of the case, such a decision can be reasonably deemed as sufficient.

See Section 307 of the Code of Criminal Procedure for more information.

For information about conditional deferral of the submission of the petition for punishment in the summary preliminary hearing see Section 179g of the Code of Criminal Procedure.

Conditions for settlement are listed in Section 309 of the Code of Criminal Procedure:

During the proceedings on an offence⁵, the court, with the consent of the accused and the victim and, in the preliminary hearing, the public prosecutor, may decide on the approval of the settlement and terminate the criminal prosecution, if the accused

a) confesses that they committed the act for which they are being prosecuted and there is no reasonable doubt that their statement was made freely, seriously, and definitely,

b) they pay the victim for the damages caused by the offence or they make the necessary measures for its compensation, or otherwise compensate for the damages caused by the criminal offence,

c) they surrender any unjust enrichment gained by a petty offence or take other appropriate measures for its surrender, and

d) they deposit into the court's account, or in a preliminary hearing into the public prosecution's account, a monetary sum intended for the State for financial assistance to victims of criminal activity under a special legal regulation, and providing this sum does not seem disproportionate to the seriousness of the offence,

and if they deem such method of dealing with the matter as sufficient, given the nature

⁴ Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

⁵ Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

and seriousness of the act committed, to the degree to which the offence affected public interest and to the accused and their personal wealth.

See Section 309 of the Code of Criminal Procedure for more information.

The public prosecutor shall defer the matter in the summary preliminary hearing if they decided on the approval of the settlement, while applying accordingly the provisions of Section 309 of the Code of Criminal Procedure. For more information see Section 179c of the Code of Criminal Procedure.

Section 33 of the Penal Code informs about expiry for criminal liability through effective remorse. Criminal liability for certain criminal offences shall expire if the offender voluntarily prevented or rectified the detrimental consequence of a criminal offence or reported a criminal offence at the time when the detrimental effects of the criminal offence could still be prevented. A report must be made to the public prosecutor or the police authority. A soldier may report it to their commander.

For more information about effective remorse see Section 33 of the Penal Code.

Section 70 of the Act no. 218/2003 Coll., on Criminal Liability of Juveniles for Wrongful Acts and on Juvenile Justice and on the Amendment of Certain Acts (Juvenile Justice Act) informs about the conditions for withdrawal from the criminal prosecution of a juvenile:

In guilt proceedings, for which the Penal Code provides for a custodial sentence of no more than three years, the Youth Court and, in the pre-trial proceedings, the Public Prosecutor may, on the grounds of a lack of public interest, further prosecution of the juvenile and taking into account the nature and seriousness of the offence and the person of the juvenile, withdraw from the prosecution of the juvenile if prosecution is not expedient and the punishment is not necessary to deter juvenile from committing further offences.

For more information about withdrawal from the criminal prosecution of a juvenile see Section 70 of the Act no. 218/2003 Coll.

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.)

Types of non-custodial sanctions defined by the Penal Code of the Czech Republic:

- **Conditional conviction to the punishment by prison sentence.** The court will determine a probation period of one to five years.

- **Conditional conviction to the punishment by prison sentence with supervision.** The court will determine a probation period of one to five years.

- **House arrest.** The court may impose a punishment of house arrest for up to two years.

- **Community service.** The court may impose community service in the extent between 50 and 300 hours.

- **Forfeiture of property.** Forfeiture of property shall apply to the entire property of the convict or such part of it as determined by the court. The forfeiture, however, shall not apply to those items of possession that are essential in terms of satisfying the convict's

fundamental needs or the needs of persons for whose alimentation and upbringing the convict is obliged to provide under the law.

- **Monetary penalty.** A monetary penalty shall be imposed in terms of daily rates. The total number of which shall be at least 20 and at most 730 full daily rates. A daily rate shall amount to at least CZK 100 and at most CZK 50,000.

- **Forfeiture of a possessed item.**

- **Forfeiture of a replacement value.**

- **Punishment by disqualification.** The court may impose a punishment consisting of a punishment by disqualification of one to ten years.

- **Prohibition on possessing and breeding animals.** The court may impose this sentence of up to 10 years.

- **Prohibition of residence.** The court may impose a one to ten years prohibition of residence.

- **Prohibition of entry to sporting, cultural and other social events.** The court may impose a punishment prohibiting entry to sporting, cultural and other social events for up to ten years.

- **Deportation.** The court may impose a punishment of deportation with a varying severity of one to ten years, or indefinitely.

The Penal Code also defines **the punishment of denouncing honorary degrees or accolades** and **the punishment of loss of military rank**. These two sanctions can be imposed only with unconditional punishment by prison sentence for at least two years. For more information about these punishments see Sections 78 and 79 of the Penal Code.

In addition to these sanctions, protective measures also appear in the criminal system. Protective measures are protective treatment, security detention, confiscation of an item, confiscation of a portion of assets and protective education. Protective education may only be imposed on a juvenile.

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

In cases of conditional conviction to the punishment by prison sentence with or without probation, the prison sentence is imposed first. The court then conditionally defer the serving of a prison sentence.

Other non-custodial sentences 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?

Legal requirements for the imposition of sanctions:

Conditional conviction to the punishment by prison sentence. The court may conditionally defer the serving of a prison sentence which does not exceed three years where, considering the character of the offender and their personal circumstances, and especially considering their life so far and the environment in which they live and work, and taking into account the circumstances of the case, it justifiably believes that no term need be served by the offender in order for them to begin leading an orderly life.

Conditional conviction to the punishment by prison sentence with supervision.

Where the offender's conduct needs greater monitoring and supervision and where the offender must be provided with due care and assistance during their probational period, the court may conditionally defer the execution of punishment by a prison sentence of up to three years while simultaneously pronouncing supervision over the offender.

For more information about conditional conviction to the punishment by prison sentence see Sections 81-87 of the Penal Code.

House arrest. The court may impose a punishment of house arrest when convicting an offender of an offence⁶ where in consideration of the nature and seriousness of the offence committed and the character and personal circumstances of the offender, it may be reasonably believed that imposition of such a punishment, perhaps concurrently with another punishment, will suffice, and where the offender will sign a written pledge to the effect that during the period of time stipulated they will remain resident at a determined dwelling or its part and will provide all the necessary co-operation during any checks.

For more information about house arrest see Sections 60-61 of the Penal Code.

Community service. The court may impose community service where it convicts the offender of an offence⁷. Community service may be imposed as a separate punishment where, with regard to the nature and seriousness of the offence committed and the character of the offender and their personal circumstances, no other punishment needs to be imposed. When imposing community service, the court shall take into account the offender's own standpoint, their health, as well as whether such a punishment can be practicably imposed. The court shall not impose community service if the offender's medical health will not allow for the systematic performance of such work.

For more information about community service see Sections 62-65 of the Penal Code.

Forfeiture of property. The court may, in consideration of the circumstances of the criminal offence committed and the offender's personal circumstances, impose the forfeiture of property if it punished an offender to an exceptional punishment or if it punished them for a particularly serious crime in which the offender sought to gain or gained for themselves or for another person material benefits.

For more information about forfeiture of property see Section 66 of the Penal Code.

Monetary penalty. The court may impose a monetary penalty where the offender sought to secure or secured for themselves or for another person any material benefit by committing an intentional criminal offence.

For more information about monetary penalty see Sections 67-69 of the Penal Code.

Forfeiture of a possessed item. The court shall impose forfeiture of items that are direct proceeds of crime. The court may impose forfeiture of an item which are instruments of crime, or which are arranged proceeds of crime where the value of the items constituting the direct proceeds of crime is not negligible in relation to the value of the items constituting the arranged proceeds of crime.

For more information about forfeiture of a possessed item see Section 70 of the Penal

⁶ Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

⁷ Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

Code.

Forfeiture of a replacement value. If, prior to the imposition of the forfeiture of a possessed item which the court may declare confiscated under Sections 70-72, the offender destroys, damages or otherwise depreciates, misappropriates, renders unusable, removes or exploits, in particular by consumption of such possessed item or if they otherwise defeat its forfeiture, the court may impose the forfeiture of a replacement value up to the amount corresponding to the value of such possessed item or other asset. The value of the item that the court could declare confiscated may be set out based on an expert statement or report.

For more information about forfeiture of a replacement value see Section 71 of the Penal Code.

Punishment by disqualification. The court may impose a punishment consisting of a punishment by disqualification if the offender has committed a criminal offence in association with such activity.

For more information about punishment by disqualification see Sections 73-74 of the Penal Code.

Prohibition on possessing and breeding animals. The court may impose a sentence for violation of the prohibition on possessing and breeding animals if the offender has committed an offence in connection with the possession, breeding or raising of animals.

For more information about prohibition on possessing and breeding animals see Sections 74a-74b of the Penal Code.

Prohibition of residence. The court may impose a one to ten years prohibition of residence for an intentional criminal offence if, after taking into account the offender's current way of life and the place of committing an act, it deems it necessary for protecting the public order, family, health, good morals or property. Punishment of prohibition of residence shall not apply to the place or district in which the offender has their residence.

For more information about prohibition of residence see Section 75 of the Penal Code.

Prohibition of entry to sporting, cultural and other social events. The court may impose a punishment prohibiting entry to sporting, cultural and other social events if the offender has committed an intentional criminal offence in association with their entry to such an event.

For more information about prohibition of entry to sporting, cultural and other social events see Sections 76-77 of the Penal Code.

Deportation. The court may impose a punishment of deportation from the territory of the Czech Republic upon an offender who is not a Czech national, either as a separate punishment or concurrently with another punishment, where it is required to protect the safety of the persons, or property, or other general interests. Deportation may be imposed as a separate punishment if, considering the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstances, no other punishment need to be imposed.

For more information about deportation see Section 80 of the Penal Code.

The Penal Code also defines the **punishment of denouncing honorary degrees or**

accolades and the punishment of loss of military rank. These two sanctions can be imposed only with unconditional punishment by prison sentence for at least two years. For more information about these punishments see Sections 78 and 79 of the Penal Code.

- 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?

Sections 62-64 of the Penal Code provides information about circumstances when community service cannot be imposed:

The court shall generally not impose community service where the offender's community service punishment has been transformed, during the three years preceding the imposition of this type of punishment, into a prison sentence. The court shall not impose community service if the offender's medical health will not allow for the systematic performance of such work.

Section 68 of the Penal Code provides information about imposing a monetary penalty:

The court shall not impose a monetary penalty if it is evident that such punishment would be uncollectible.

Section 80 of the Penal Code provides information about situations when a punishment of deportation cannot be imposed (e.g. the offender has permanent residence in the territory of the Czech Republic).

House arrest cannot be imposed without written pledge of the offender that during the period of time stipulated he will remain resident at a determined dwelling or its part and will provide all the necessary co-operation during any checks.

There are also specified circumstances for imposing sanctions by the criminal warrant:

A punishment of community service may be imposed by the criminal warrant only after the prior request of a probation officer's report containing the findings about the possibilities of the execution of this punishment and on the medical capacity of the accused, including the opinion of the accused on this type of punishment. The punishment of community service is imposed with regard to this report.

A punishment of house arrest may be imposed by the criminal warrant only after the prior request of a probation officer's report containing findings on the possibilities for executing this punishment, including the position of the accused on the imposition of this type of punishment. The punishment of house arrest is imposed after taking into account this report.

For more information about conditions for the imposing sanctions by criminal warrant, see Section 314e of the Code of Criminal Procedure.

A Probation and mediation worker can conduct a so-called preliminary investigation institute before the imposition of house arrest. There are several circumstances, which exclude the house arrest sentence recommendation. For instance, when the offender doesn't have a stable place of residence or when the offense included violence against relatives with whom the offender continues to live in the same household.

- Are there also ancillary penalties (penalties imposed cumulatively with the main

sentence)? How are they applied?

Section 53 of the Penal Code explains imposing multiple penalties separately and concurrently:

Where the criminal law stipulates multiple penalties for certain criminal offences, such penalties may be imposed consecutively or concurrently. In addition to the punishment specified by criminal law for any criminal offence, other penalties may be imposed as stipulated under Section 52. However, the punishment of house arrest can not be imposed concurrently with a prison sentence and community service, community service next to a prison sentence, nor a monetary penalty with the forfeiture of property or prohibition of residence alongside deportation.

House arrest, community service, fine, prohibition on possessing and breeding animals, prohibition on entering sports, cultural and other social events, deportation and prohibition on residence can be imposed separately, even if the criminal law does not provide for such a penalty for a certain offense.

The court may impose the punishment of denouncing honorary degrees or accolades and punishment of loss of military rank only with unconditional punishment by prison sentence for at least two years. For more information about these punishments see Sections 78 and 79 of the Penal Code.

Except the penalties, the judge may impose a reasonable restrictions or reasonable obligations to the offender. Some of these obligations are similar to the non-custodial sanctions (for example the obligation of conditional released to remain at the determined period of time in their residence or its part or obligation of a juvenile to perform a socially beneficial activity).

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?

No, there is no sentencing phase autonomous from the guilt phase. The court decides about the guilt and imposes a penalty together in one proceeding.

Section 122 of the Code of Criminal Procedure:

The convicting judgment must include a statement on the punishment stating the statutory provisions under which the punishment was meted out or under which the punishment was waived and, in the case of a conditional suspension of punishment with supervision, also the statement on the probation period and its duration.

- 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?

Section 38 of the Penal Code provides information about proportionality of criminal sanctions:

Criminal sanctions must be imposed while taking account of the nature and

seriousness of the criminal offence committed and the offender's personal circumstances. Where a more lenient criminal sanction may be imposed upon an offender, a more severe criminal sanction may not be imposed upon them. In imposing criminal sanctions, the interests protected by the law of such persons aggrieved by the criminal offence shall be taken into account.

Section 39 of the Penal Code provides information about determination of the type and severity of punishment:

In determining the type and severity of the punishment, the court shall take due account of the nature and seriousness of the criminal offence committed, of the personal, family, property and other relations of the offender and their existing way of life and the possibility of their personal reform. Moreover, the offender's behaviour after the act shall also be taken into account, in particular their efforts at making good any damage or remedying any other detrimental effects of the act. The court shall also take account of the offender's attitude to the criminal offence in the criminal proceedings, whether the offender made an agreement on guilt and punishment, whether the offender pleaded guilty or whether they designated the operative events as indisputable, and where the offender has been designated as a co-operating accused, account shall further be taken of the extent to which they have contributed to the clarification of a crime committed by members of an organised group, in connection with an organised group or in favour of an organised criminal group. They shall also take account of the effects and consequences that may be expected from the punishment in terms of the offender's future life.

Institute of Criminology and Social Prevention in research Criminal Justice System in the Czech Republic mentions purposes of punishment:

The purpose of punishment is not defined directly in the CC. From the view of criminal law doctrine and practice it consists of (Šámal & et al., 2012, p. 489n.):

- **the retributive element of punishment** – the offender must suffer appropriate retribution for the offence;
- **the special preventive purpose of punishment** – the punishment should result in the social reintegration of the offender, i.e. the punishment should aim at the correction of the offender and their reintegration into society, which they should live in as full-valued member in future;
- **the neutralizing function of punishment** – the punishment should make it impossible or, at least, difficult for the offender to commit further crimes;
- **the corrective effect of punishment** – the offender is given broader corrective and socializing management in order for the punishment to have a more reliable effect;
- **the generally preventive effect of punishment** – potential offenders should be deterred from committing crimes;
- **the restorative and satisfaction function of punishment** – when imposing a punishment, the court must also take into account the interests of persons injured by the offence; i.e. the punishment should encourage the offender to endeavour to compensate the damage (and, if applicable, to provide other forms of reasonable satisfaction) to persons injured by the offence.

- 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?)

Mitigating and aggravating circumstances are listed in Sections 41 and 42 of the Penal Code:

The court shall consider as mitigating circumstances especially those in which the offender

- a) has committed a criminal offence for the first time and under such circumstances that were beyond their control,
- b) has committed a criminal offence in a state of extreme distress, out of compassion or due to a general lack of experience,
- c) has committed a criminal offence under the pressure of addiction or subordination,
- d) has committed a criminal offence under threat or duress,
- e) has committed a criminal offence under onerous personal and family relations, the nature of which they cannot be held responsible for,
- f) has committed a criminal offence at an age close to that of a legal minor,
- g) has committed a criminal offence while trying to avert an assault or other risk without having entirely met the conditions of self defence or extreme exigency, or has exceeded the limits of admissible risk or the limits of another circumstance which would have excluded illegality,
- h) has committed a criminal offence in legal error, which could have been avoided,
- i) has caused minor damage or other minor detrimental effects by committing the criminal offence,
- j) has contributed to the removal of the detrimental consequences of a criminal offence or voluntarily covered the damages,
- k) has reported their own criminal offence to the authorities,
- l) has confessed to having committed the criminal offence,
- m) has contributed to the clarification of their own criminal activity or significantly contributed to the clarification of a criminal offence committed by another offender,
- n) has contributed, in particular as a co-operating accused, in clarifying the criminal activity committed by members of an organised group, in association with an organised group, or in favour of an organised criminal group,
- o) has sincerely regretted committing their criminal offence, or
- p) had been leading an orderly life before they committed the criminal offence.

The court shall consider as aggravating circumstances especially those in which the offender

- a) has committed a criminal offence deliberately or with prior consideration,
- b) has committed a criminal offence due to avarice, revenge, due to national, racial, ethnic, religious, class or other equivalent hatred, or out of another especially heinous motive,
- c) has committed a criminal offence in a cruel or tortuous way, insidiously, with especially malicious or in any other similar way,
- d) has committed a criminal offence by exploiting somebody's need, distress, vulnerability, addiction or subordination,
- e) has violated a special obligation due to a criminal offence,
- f) has exploited their employment, position or function to commit a criminal offence,
- g) has committed a criminal offence against a person participating in a rescue of human life and to protect health or property,
- h) has committed a criminal offence against a child, close person, pregnant woman, ill person, disabled person, elderly person or infirm person, thereby endangering their

lives or health, causing them damage, bodily or any other harm or obtained unjust enrichment to their detriment,

i) has led another person, especially a child under the age of fifteen, a minor or a person of an age close to the legal age of minor, to commit an act otherwise punishable, into misconduct or to commit a criminal offence,

j) has committed a criminal offence during an emergency situation, natural disaster or other event seriously jeopardising lives, public order or property, or in a territory which is being or has been evacuated,

k) has caused more serious damage or other more serious detrimental effects by committing the criminal offence,

l) has gained greater benefit by committing the criminal offence,

m) has committed a criminal offence of a greater extent, or which applies to more items or persons, or was committing or continued to commit a criminal offence for a longer period of time,

n) has committed more criminal offences,

o) has committed a criminal offence with another person,

p) has committed a criminal offence as the organiser, as a member of an organised group or member of a criminal association, or

q) has already been convicted for a criminal offence; depending on the nature of the previous conviction, the court shall be entitled not to regard the circumstance as aggravating, especially in terms of the significance of the protected interest affected by the act, the method of carrying out the act and its consequences, the circumstances under which the act was committed, the offender, the extent of their fault, their motives and the period of time that has lapsed since the last conviction; and in cases where criminal offences were committed by an offender in a condition caused by a mental disorder, or where an offender who indulges in the abuse of addictive substances commits a criminal offence under their influence, or in connection to their abuse, and also where the offender has already begun their treatment or taken other action necessary to start treatment.

There are also circumstances, for which a judge can impose a higher penalty. These circumstances are written directly in the legal provisions of specific offences (in second or next subsections).

Some of the circumstances for which a judge can impose a higher penalty:

- the act was committed by a member of an organised group,
- the act was committed on a child, on pregnant woman or on two or more persons,
- the act was committed repeatedly,
- the act was committed on another person for their actual or perceived race, ethnicity, nationality, political belief, religion, or because they are actually or allegedly non-religious,
- the act was committed in a particularly brutal and painful manner...

For criminal offences against property, there can be higher penalties according to the caused damage. Penalties can be higher if it was caused damage that is not negligible, damage that is not small, larger damage, substantial damage or large-scale damage. For more information about boundaries of the amount of damages see Section 138 of the Penal Code.

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

Non-custodial sentences are imposed by the trial judge. The trial judge is also

responsible for the execution of sentences.

- 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?

Section 55 Subsection 2 of the Penal Code provides information about unconditional punishment:

For criminal offences where the upper punishment limit of a prison sentence does not exceed five years, an unconditional punishment of a prison sentence may be imposed solely subject to the condition that, with regard to the character of the offender, imposing a different punishment would evidently not assist the offender to lead an orderly life.

Section 125 of the Code of Criminal Procedure provides information about judge duty to give reasons for the choice and the length of the sentence:

When justifying the imposed punishment, it shall state the considerations it followed in deciding the punishment; how it assessed the nature and seriousness of the criminal offence in terms of the importance of a particular protected interest that was affected by the act; the manner in which the act was performed and its consequences; the circumstances under which the act was committed, the offender, the extent of culpability and the motives, intentions or objectives of the offender, as well as the mitigating and aggravating circumstances; the time elapsed since the committing of the criminal offence; any changes in the circumstances and length of criminal proceedings; if it took an excessively long time to consider the complexity of the case; the conduct of the law enforcement authorities; the importance of the proceedings for the offender and their behaviour which contributed to delays in the proceedings; it shall also indicate how they took into account the personal, family, property and other circumstances of the offender, their previous way of life, conduct of the offender after the committing of the act, particularly their attempts to compensate for damages or other adverse consequences of their actions; and also, if they have been identified as a co-operating accused, on how they substantially contributed to the clarification of a crime committed by members of an organised group, in connection with an organised group or for the benefit of an organised criminal group.

- 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?

Case law is not a recognised source of law in the Czech Republic. Despite that, the decisions of the courts, especially the decisions of Supreme Courts and the Constitutional Court, shape the legal system considerably. The most significant judgments of these courts are published in the official Collection of Laws.

The purpose of case law is to clarify the issues to which it is not easy to find a clear answer. The purpose of the case law or individual case law is therefore to ensure the interpretation of the points of law at issue.

However, case law is merely of a recommendation nature and is not binding. The courts are therefore not obliged to follow these recommendations in case law. Although the case law is not binding, courts should respect and follow the case law. In its

decision of 3 December 2009, the Supreme Court of the Czech Republic issued a statement stating that it is desirable that lower courts take into account established case law in their decision-making practice, and if they do not do so, it is desirable that they justify their actions.

Case law of the Supreme Court of the Czech Republic is binding only for decisions on a specific case. Within extraordinary appeal, the legal opinion of the court of appeal is binding for the court whose decision it concerns.

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

Sections 245-265 of the Code of Criminal Procedure provide information about appeal and appeal proceedings.

Entitled persons who can lodge an appeal are listed in Section 246 of the Code of Criminal Procedure.

A judgment may be contested by an appeal

a) by the public prosecutor for the inaccuracy of any statement,

b) by the defendant for the inaccuracy of any statement which directly affects them, unless in case of a verdict of guilty to the extent to which the court accepted their guilty plea,

c) by the party to an action for the inaccuracy of statements on confiscation of items or confiscation of a part of property,

d) by the victim who applied their claim for damages or non-material damages or the surrender of unjust enrichment, due to the inaccuracy of the statement on the damages or non-material damages or the surrender of unjust enrichment.

Section 258 of the Code of Criminal Procedure mentions that the court of appeal shall also revoke the contested judgment due to the inappropriateness of the imposed punishment within the examined part of the judgment.

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?

Yes, the implementation is under judicial supervision. There is no specialized court or judge responsible for the supervising - the judge who imposed the sanction is also responsible for supervising the implementation.

- 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?

Section 51 of the Penal Code mentions the rights and duties of probation officer performing supervision:

If the offender, who is under a supervision, breaches either significantly or repeatedly the conditions of probation, probation program or adequate restrictions and adequate duties, the probation officer shall without undue delay notify the judge, who imposed

the supervision. In case of less severe infringements of the set conditions, probation plan or adequate restrictions and adequate duties shall the probation officer bring such deficiencies to the attention of the offender and shall warn him that in case of repetition or more significant infringements of the conditions, probation program or adequate restrictions and adequate duties, he/she will inform the presiding judge thereof.

Amendment to the Penal Code grants new rights to the probation officer from 1.1.2022. Probation officer will be able to make suggestion to the court for:

- conversion of punishment or the rest of it,
- execution of a surrogate custodial sentence,
- ordering the sentence or the rest of it,

if the sentenced person breaches the conditions.

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

Section 86 of the Penal code informs about decision on conditional sentence with supervision:

Exceptionally, the court may, depending on the circumstances of the case and the convicted, leave the conditional conviction with supervision as valid, even if the convicted provided the cause for the enforcement of the sentence and reasonably extend the probational period but not by more than two years while it may not exceed the upper limit of the probational period stipulated in Section 85 Subsection 1.

Probation period may also be extended in cases of conditional conviction to the punishment by prison sentence (see Section 83 of the Penal Code) and conditional release or conditional waiver of the execution of the remaining part of punishment by disqualification, residency ban, or prohibition on entering sporting, cultural and other social events (see Section 91 of the Penal Code).

From 1.1.2022, the amendment to the Penal Code grants new rights to the probation officer.

If the probation officer finds that conditions exist for:

- decision, that sentenced person has proven themselves competent,
- the removal of the imposed reasonable restriction, reasonable obligation, educational measure or supervision,
- the conversion of punishment or the rest of it,
- execution of a surrogate custodial sentence,
- ordering the sentence or the rest of it,
- or whether a sentence is imposed on a convict whose sentence has been suspended,

probation officer will make suggestion to the court for such a decision.

From 1.1.2022, the supervision, reasonable restriction, reasonable obligation or educational measure may be abolished. Abolishment is possible after execution of one third of the sentence, at the earliest after six months. The accused/convicted person may apply for abolishment only with a favourable opinion from the probation officer.

5 – Early release

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

We distinguish conditional release with or without supervision. In the case of conditional release, the court sets a probational period of up to three years for persons convicted of an offence⁸ and from one year to seven years for persons convicted of a crime.⁹

- 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?

Section 88 of the Penal Code provides information about conditional release:

The court may conditionally release the convicted from custody if, following the full force and effect of the judgment, particularly when serving the sentence, the convicted demonstrated their reformation by their behaviour and by the performance of their duties, and may be expected to lead an orderly life in the future, or if the court accepts a guarantee for completion of the reformation of the convicted, and

a) the convicted has served at least half of the imposed prison sentence or, upon the decision of the President of the Czech Republic, reduced prison sentence, or

b) the convicted who was not convicted of a particularly serious crime ... and who has not been yet imprisoned, who has served at least one third of an imposed prison sentence or one third of a prison sentence reduced by a decision of the President of the Czech Republic.

If the person convicted of an offence¹⁰ has demonstrated, by their exemplary behaviour and performance of their duties, that further execution of punishment is not necessary, the court may conditionally release them from custody even before they have served the part of the prison sentence which is required for conditional release.

A person convicted for specified offences as well as a person convicted to an exceptional prison sentence (20-30 years), may be conditionally released only after serving two-thirds of the imposed prison sentence, if there is no risk, considering the circumstances of act, for which they were convicted and the nature of their character, of the recurring of the committed act or any other similar exceptionally serious crime.

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

The convicted person may be released from custody only by the decision of the court. Supervision over the offender shall be entrusted to the probation officer. The Probation officer may also control appropriate restrictions and obligations stipulated to the offender by the court.

⁸ Section 14 of the Penal Code:

(1) Criminal offences are divided into offences and crimes.

(2) Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

(3) Crimes are all criminal offences that are not classified as offences under criminal law; particularly serious crimes are those intentional criminal offences for which criminal law sets out a prison sentence with an upper penalty limit of at least ten years.

⁹ See Section 14 of the Penal Code

¹⁰ Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

- 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?

Section 89 of the Penal Code provides information about probational period and reasonable restrictions and reasonable obligations of conditional release:

The court may also pronounce supervision over an offender and simultaneously order that in the determined part of the probational period subsequently following the beginning of the probational period the offender remain at the determined period of time in their residence or its part.

The court may impose upon the conditionally released the reasonable restrictions and obligations referred to in Section 48 Subsection 4 in order for them to lead a decent life. The court may order the parolee released under Section 88 Subsection 2 to remain in the determined residence or its part during the set time during the probational period subsequently following the beginning of the probational period, or to perform work for community service providers, or to deposit a specified sum of money to the account of the court in order to help the victims of crime.

The total duration of the determined stay of the parolee in the determined residence or its part may not exceed one year, even in the event of a longer probational period.

If the conditionally released led a decent life during the probational period and complied with the conditions imposed, the court shall pronounce them proven competent. Otherwise, they shall decide, even during the probational period, that the remaining term of punishment shall be enforced.

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?

Legislation and conditions for juveniles and children under 15 years old are regulated by Act no. 218/2003 Coll., on Criminal Liability of Juveniles for Wrongful Acts and on Juvenile Justice and on the Amendment of Certain Acts.

Educational, protective and penal measures may be imposed on a juvenile. A juvenile person is a person who has reached fifteen years of age but has not exceeded eighteen years of age at the moment of committing a criminal act.

Educational (reformatory) measures are:

- supervision of a probation officer,
- probation programme,
- educational obligations,
- educational restrictions,

- admonition with a warning.

Protective measures are:

- protective treatment,
- security detention,
- confiscation of an item,
- confiscation of a portion of assets,
- protective education.

Penal measures which a juvenile court may impose on a juvenile are:

- community service,
- fine,
- fine with a conditional suspension,
- forfeiture of items,
- disqualification (prohibition to undertake certain activities),
- banishment,
- house arrest,
- prohibition to attend sports, cultural and other social events,
- conditional imprisonment suspended for a probation period (suspended sentence),
- conditional imprisonment suspended for a probation period with supervision,
- unsuspended imprisonment.

A child who has not reached fifteen years of age at the time of committing a crime is not criminally liable. For such a child who committed an otherwise criminal act, measures necessary for reform and protection can be used (e.g. probation supervision, a child's obligation to participate in a therapeutic, psychological or another suitable educational program, protective education etc.).

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

Section 3 of the Act no. 218/2003 Coll., on Criminal Liability of Juveniles for Wrongful Acts and on Juvenile Justice and on the Amendment of Certain Acts mentions, that criminal measures may be applied only when specific management methods and measures, in particular restoring disturbed social relations and contributing to the prevention of unlawful acts, appear unlikely to achieve the purpose of this law.

- Are there specific forms of early release for those vulnerable groups and/or minorities?

Section 78 of the Act no. 218/2003 Coll., on Criminal Liability of Juveniles for Wrongful Acts and on Juvenile Justice and on the Amendment of Certain Acts (Juvenile Justice Act) mentions:

A juvenile¹¹ may, on a proposal from the Public Prosecutor or the judge, be suspended from custody under the conditions laid down in the Penal Code even before he has completed a third, a half or two thirds of the sentence.

On conditional release, the court shall set a probationary period of up to three years for

¹¹ A juvenile person is a person who has reached fifteen years of age but has not exceeded eighteen years of age at the moment of committing a criminal act.

those convicted of an offence¹² and up to five years for those convicted of a crime¹³.

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?

The most common alternative sanctions imposed as the main sanction were in 2020 conditional conviction to the punishment by prison sentence (imposed on 22 412 persons), monetary penalty (imposed on 7 821 persons) and community service (imposed on 5 403 persons). Another common sanction was in 2020 conditional conviction to the punishment by prison sentence with supervision, which was imposed on 3 076 persons.

We have recorded 449 persons with imposed punishment by disqualification and 491 persons with imposed deportation as the main sanction.

The least often imposed main sanctions were: house arrest (imposed on 95 persons), forfeiture of a possessed item and forfeiture of a replacement value (imposed on 69 persons) prohibition of residence (imposed on 45 persons) and prohibition of entry to sporting, cultural and other social events (imposed on 1 person).

The main sanctions that weren't imposed even on one person were: punishment of denouncing honorary degrees or accolades, punishment of loss of military rank and forfeiture of property.

Along with the main sanction, punishment by disqualification was imposed on 14 231 persons. Other most common sanctions imposed with the main sanction were monetary penalty (imposed on 2 108 persons) and deportation (imposed on 712 persons). Less often with the main sanction were imposed the prohibition of entry to sporting, cultural and other social events (imposed on 40 persons) and the punishment of denouncing honorary degrees or accolades (imposed on 1 person).

Data source: The CSLAV application of Ministry of Justice 2020

*the specified numbers are the numbers of persons with imposed sanctions

*with juveniles

*without cumulative sentences

- 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).

¹² Offences are all negligent criminal offences and such intentional criminal offences for which the criminal law sets out a prison sentence with an upper penalty limit of up to five years.

¹³ Crimes are all criminal offences that are not classified as offences under criminal law.

Sanctions imposed on juveniles in 2020:

The most common alternative sanctions imposed on a juveniles as the main sanction were in 2020 conditional conviction to the punishment by prison sentence (imposed on 591 juveniles), community service (imposed on 182 juveniles) and conditional conviction to the punishment by prison sentence with supervision (imposed on 119 juveniles). Monetary penalty was imposed on 4 juveniles, deportation was imposed on 3 juveniles, forfeiture of a possessed item and forfeiture of a replacement value was imposed on 1 juvenile and punishment by disqualification was imposed on 1 juvenile.

The main sanctions that weren't imposed even on one juvenile were: house arrest, prohibition of residence, prohibition of entry to sporting, cultural and other social events, punishment of denouncing honorary degrees or accolades, punishment of loss of military rank and forfeiture of property.

Along with the main sanction, punishment by disqualification was imposed on 29 juveniles. Other sanction imposed with the main sanction was deportation (imposed on 2 juveniles). There were no other sanctions imposed on a juvenile with a main sanction.

Protective measures were imposed on 36 juveniles and education measures were imposed on 144 juveniles.

Data source: The CSLAV application of Ministry of Justice 2020

*the specified numbers are the numbers of juveniles with imposed measures

*without cumulative sentences

Sanctions imposed on older persons (persons older than 65 years) in 2020:

The most common alternative sanctions imposed on older persons as the main sanction were in 2020 conditional conviction to the punishment by prison sentence (imposed on 590 older persons), monetary penalty (imposed on 212 older persons) and community service (imposed on 21 older persons).

We have recorded 19 older persons with imposed punishment by disqualification, 18 older persons with imposed conditional conviction to the punishment by prison sentence with supervision, 4 older persons with imposed forfeiture of a possessed item and forfeiture of a replacement value, 3 older persons with imposed deportation and 1 older person with imposed house arrest as the main sanction.

The main sanctions that weren't imposed even on one older person were: prohibition of residence, prohibition of entry to sporting, cultural and other social events, punishment of denouncing honorary degrees or accolades, punishment of loss of military rank and forfeiture of property.

Along with the main sanction, punishment by disqualification was imposed on 457 older persons. Other most common sanctions imposed with the main sanction were monetary penalty (imposed on 46 older persons) and deportation (imposed on 4 older persons). There were no other sanctions imposed on an older person with a main sanction.

Data source: The CSLAV application of Ministry of Justice 2020

*the specified numbers are the numbers of older persons with imposed sanctions

*without cumulative sentences

Sanctions imposed on women in 2020:

The most common alternative sanctions imposed on women as the main sanction were in 2020 conditional conviction to the punishment by prison sentence (imposed on 4 736 women), community service (imposed on 802 women) and monetary penalty (imposed on 776 women). Another common sanction was in 2020 conditional conviction to the punishment by prison sentence with supervision, which was imposed on 588 women.

We have recorded 49 women with imposed punishment by disqualification and 38 women with imposed deportation as the main sanction.

The least often imposed main sanctions were: house arrest (imposed on 14 women), forfeiture of a possessed item and forfeiture of a replacement value (imposed on 11 women) prohibition of residence (imposed on 11 women).

The main sanctions that weren't imposed even on one woman were: prohibition of entry to sporting, cultural and other social events, punishment of denouncing honorary degrees or accolades, punishment of loss of military rank and forfeiture of property.

Along with the main sanction, punishment by disqualification was imposed on 1 630 women. Other sanctions imposed with the main sanction were monetary penalty (imposed on 171 women) and deportation (imposed on 57 women). There were no other sanctions imposed on a woman with a main sanction.

Data source: The CSLAV application of Ministry of Justice 2020

*the specified numbers are the numbers of women with imposed sanctions

*with juveniles

*without cumulative sentences

Sanctions imposed on foreign nationals in 2020:

The most common alternative sanctions imposed as the main sanction on foreign nationals were in 2020 conditional conviction to the punishment by prison sentence (imposed on 2 475 foreigners), monetary penalty (imposed on 654 foreigners) and deportation (imposed on 491 foreigners).

Community service was imposed on 195 foreigners, punishment by disqualification was imposed on 89 foreigners and conditional conviction to the punishment by prison sentence with supervision was imposed on 42 foreigners.

The least often imposed main sanctions were: forfeiture of a possessed item and forfeiture of a replacement value (imposed on 25 foreigners), prohibition of residence (imposed on 4 foreigners) and house arrest (imposed on 2 foreigners).

The main sanctions that weren't imposed even on one foreigner were: prohibition of entry to sporting, cultural and other social events, punishment of denouncing honorary degrees or accolades, punishment of loss of military rank and forfeiture of property.

Along with the main sanction, punishment by disqualification was imposed on 1 469 foreigners. Other most common sanctions imposed with the main sanction were deportation (imposed on 712 foreigners) and monetary penalty (imposed on 252 foreigners).

Less often with the main sanction was imposed the prohibition of entry to sporting, cultural and other social events (imposed on 1 foreigner). There were no other sanctions imposed on foreign nationals with a main sanction.

Data source: The CSLAV application of Ministry of Justice 2020

*the specified numbers are the numbers of foreign nationals with imposed sanctions

*with juveniles

*without cumulative sentences

We don't collect information about other categories mentioned above (persons with disabilities, people with mental health conditions, minorities, Roma, indigenous people, LGBTIQ+ or other).

- 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).

- 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.

We have recorded 3 255 persons with the conditional release with appropriate obligations or restrictions or probation during the year 2020 (Statistical Yearbook of Prison Service of the Czech Republic 2020). For more information see statistical yearbooks of Prison Service of the Czech Republic: <https://www.vscr.cz/sekce/statisticke-rocenky-vezenske-sluzby>.

- 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?

- 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 and mediation service provides pre-sentencing reports for a home arrest, community service, replacement of pre-trial detention with probation, replacement of protective treatment with probation and reports with respect to conditional release.

Probation and mediation service also provides resolving conflict activities. Except pre-sentencing reports Service also arranges the conditions for the diversion of a prosecution and collects report on personal, family and social conditions and the current life situation of the juvenile.

A pre-sentence report serves to the court / public prosecutor in their effort to consider whether a particular punishment is appropriate as a sentencing option.

Risk and needs assessment of the accused is a part of the pre-sentence report. If needed, the probation officer suggests to the court the imposition of appropriate measures and sanctions (e.g. a probation supervision, an obligation to undergo substance addiction treatment, anger management etc.), which the offender should be subject to during the punishment in the pre-sentence report.

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.

The Probation and Mediation Service promotes and implements community sanctions, provides help and support to the victims of crime, and offers restorative programs (mediation, restorative conferences).

Probation and Mediation Service – Czech Republic is organizational unit of Ministry of Justice of the Czech Republic. Supervision of its activities is carried out by the Ministry

of Justice. The Probation and Mediation Service was established in 2001. The legislation of Probation and Mediation Service is contained in Act No. 257/2000 Coll. Probation and Mediation Service.

In 2020, the Probation and Mediation Service started preparing documents for law enforcement agencies in 7,734 cases. In 2020, the Probation and Mediation Service began monitoring the imposition of sanctions or measures in 14,405 cases.

- 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.

The Probation and Mediation Service is managed by the director. The directorate is located in Prague. There are eight judicial regions in the Czech Republic. In each of them, there is a regional office of the Probation and Mediation Service (second management level). Judicial regions are further divided into 74 judicial districts. There is a service centre in each of them. A head of a centre manages the centre and the employees.

We distinguish two main categories of probation workers: probation officers and probation assistants. These two categories differ in terms of qualification requirements, financial compensation and the job contents.

At the 31st January 2021, 536 employees worked in the Probation and mediation service (3 top level executives at the national probation administrations¹⁴, 8 top level executives at the regional probation administrations, 74 chiefs of units, 352 probation officers and assistants and 99 other staff (staff of the headquarter of Probation and Mediation Service, specialists for electronic monitoring and project workers)).

- 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?

One of the main principles that underline the probation activities in Czech Republic is individual approach. The extent and form of the intervention are selected individually so that they correspond to the specific needs and interests of both the offender and victim. The community's interests and the circumstances of the committed crime are taken into account.

Probation and Mediation service is involved in restorative justice processes (most common are victim-offender mediation and family restorative conferences).

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

Since its establishment in 2001, the Probation and Mediation Service has placed emphasis on the cooperation with specialised services and program providers for both

¹⁴ Two positions of top level executives at the national probation administrations weren't filled on the 31st January 2021.

offenders and victims. In the Czech Republic, most of the programs are created and implemented by providers, typically non-governmental non-profit organisations.

Probation intervention often involves linking people to a range of NGO services such as drug and alcohol treatment and employment services. Linking to community-based services reflects the philosophy of promoting a view of the offender within the "wider social context". The program's availability varies in different regions. The probation officer decides which program is suitable for the client, however, if the court does not impose a particular program as an appropriate obligation, the probation officer must seek the client's consent.

NGOs and private companies can also become a providers of community service. The Probation and Mediation Service mainly cooperates with municipalities, non-profit organisations and health, social and educational institutions. The list of the providers of community service is available on the website: <https://www.pmscr.cz/>.

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

Electronic monitoring technically started 20.09.2018. An electronic monitoring can be imposed by court within the replacement of pre-trial detention, within a home arrest and within a conditional release with a obligation of a home arrest.

An alcohol tester may be part of the electronic monitoring. With an alcohol tester it is possible to control the obligation to refrain from consuming alcoholic beverages imposed by the court.

Electronic monitoring can control:

- the obligation to remain at the designated residence or its part at the set time,
- remaining within a commanded zone,
- staying out of the prohibited zone,
- staying outside the protected person's perimeter,
- the obligation to refrain from consuming alcoholic beverages.

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?

We can't provide data about effectiveness of non-custodial sentences/measures. Effectiveness of non-custodial sanctions can't be determined for multiple reasons: variously broad concepts of recidivism, absence of uniform data collection or no evaluation system.

Institute of Criminology and Social Prevention in the monograph "The effectiveness of criminal policy from the perspective of recidivism" summarizes:

In contrast to other countries, recidivism is not statistically monitored in relation to the sanctions imposed and their effectiveness. Police and court statistics do present the share of recidivists in the total number of prosecuted or convicted persons, but we

cannot deduce from these which specific sentences or other measures were used against these individuals in the past.

- 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?

- 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?

As mentioned above, we don't have statistical data about effectiveness of non-custodial sentences/measures.

Institute of Criminology and Social Prevention in research Criminal sanctions – their application, impact on recidivism and medial image on television news, examined recidivism in 4 233 persons.

Part of the research dealt with recidivism in terms of the sanctions imposed:

The largest share of people with a new entry in the register was among those sentenced conditionally with supervision (49,4 %) and person who have been sentenced to community service (48,8 %), lower values were reached by imprisonment (45 %) and house arrest (46 %). However, these differences were not statistically significant. On the basis of logistic regression model, which we created for a part of the set, the punishment of imprisonment appeared as most effective in terms of reducing the risk of recidivism which could be seen as a proof of its deterrent effect in the sense of individual prevention.

The result of this research was that the type of sanctions imposed does not have a significant impact on the recidivism of the convict.

For more information see the research of Institute of Criminology and Social Prevention: <http://bit.ly/krcze423>

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

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?

No new non-custodial sanctions were created during the pandemic to prevent the spread of the virus in prisons.

Emergency measures have been taken in prisons in connection to COVID-19. According to the annual report of the General Directorate of the Prison Service, these measures included limiting visits and the use of "Skype - advocacy" project for communication between prisoner and lawyers, and "Skype - visit" project for communication between prisoner and relatives.

For more information, see the Statistical Yearbook of the Prison Service of the Czech Republic for 2020.

- 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?
- 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?)
- 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?

The staff of the Probation and Mediation Service approached each case individually, with an emphasis on the time limit for serving the sentence.

During the pandemic, 3 ways of solving problems with community service were formulated. The first solution was to await the resumption of sentence. This method of solution was used when the time limit for serving the sentence was sufficient and there was a presumption that the provider would allow the client to serve the sentence in the foreseeable future. In these cases, it was agreed with the client that he would carry out the sentence after the termination of the restrictive measures.

The second solution was to change the provider of the place where the community service was performed. It was possible when the Services Centre had another provider with whom the client could serve the sentence. Then a change of provider request was made to the court.

The third solution was to file a motion to suspend the serving of community service. This method of solution was used when the Services Centre did not have another provider with whom the client could serve the sentence and at the same time the client would not be able to serve the sentence within the statutory time limit. In this case, the court was informed with a proposal to suspend the serving of the sentence of community service.

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?

A total of 14,405 new sanctions and measures were imposed on the Probation and Mediation Service in 2020. This was a decrease of 7% of cases compared to 2019. In 2020, the Service started preparing documents for decisions of law enforcement agencies in 7,734 cases. This was a decrease of 19.9% of cases compared to 2019.

The specific feature is the parole agenda, for which we are seeing growth for a longer time. The number of parole cases (with or without supervision) continued to grow even during the pandemic. Despite the restrictive measures, judges decided on conditional release more frequently in 2020 than in previous years. Their decision-making could also be influenced by the pandemic and the associated pressure to reduce the number of people in prisons.

Data source: AIS PMS - administrative and statistical file system 12/2020

The decrease in the number of new cases in 2020 was mainly caused by the epidemic situation. This was reflected, among other things, in a decline in registered crime. Due to the epidemic situation, the activity of law enforcement agencies was also slowed down and the contacts were reduced.

Registered crimes decreased by 16.9% in 2020 compared to 2019. In 2020, the Police of the Czech Republic registered 165 525 offenses. It was 33 696 offenses less than in the previous year. Restrictive measures were among the reasons for the decline in registered crime. Restrictive measures caused less mobility of people as well as restrictions on the entry of citizens of other countries into the Czech Republic. Other factors, such as legislative changes (e. g. change of the limit of the amount of damage in the qualification of a criminal offence from 5,000 to 10,000 CZK, etc.) may have influenced the decline in registered crime.

The number of prosecuted persons also decreased in 2020. The police of the Czech Republic prosecuted 75,405 people in the whole year. This was 12.5% lower than in 2019.

Data source: Police of the Czech Republic, Report on the situation in the field of internal security and public order in the territory of the Czech Republic in 2020

For more information, see Crime Statistics 2019 and 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?

Obstacles to the enforcement of sanctions have arisen particularly in the case of community service. Community service providers dealt with the number of organisational work restrictions, so some clients were unable to continue working. This was especially the case when the providers' activities were restricted or suspended. Some clients could no longer work because they were sick, quarantined or had some health restrictions. In the event of suspension, both individual clients and the courts

have been informed. This was a client-blameless, objective obstacle to serving a sentence of community service, which could be solved in the following ways: by waiting for the possibility of serving a sentence to be restored, by changing the provider or by a proposal to suspend serving of the sentence.

During the pandemic, random checks of the house arrest continued. The presence of the client in the dwelling was mainly verified visually (without the worker entering the dwelling). The anti-epidemic measures were followed during these inspections.

Many sport, cultural and other events have been cancelled due to the pandemic. The control of the entry ban penalty was therefore carried out mainly by remote means.

Because of the health risks, testing for alcohol and narcotic drugs and psychotropic substances through saliva tests and alcohol testers has been suspended or reduced during specified periods of the pandemic. However, alcohol testing continued for persons monitored via Electronic Monitoring System, where testing was conducted remotely - without the presence of a Service employee.

- 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)?

From the perspective of the implementation of alternative sanctions, there was no significant impact on a particular vulnerable group. The measures taken at the Service level did not distinguish between groups.

The defined groups were mainly affected by measures taken at the national level (for children and adolescents the absence of physical presence in schools, for the elderly distancing from other persons, for foreign nationals the inability to travel to their country, etc.).

- 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.

Support programmes (probation and resocialisation programs, social training programs, etc.) are provided by external entities. Their functioning therefore depended on the decision of an external entity.

In 2020, 3 long-term Service projects were completed. These projects were completed regardless of the pandemic. In 2020, the Service launched the Back to Life project, which aims to create 4 Programme Centres and a probation house. The Probation and Mediation Service also continued to provide assistance to victims of crime through counselling services for victims.

- 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)?

During the pandemic, several measures were taken within the Service to protect the health of employees.

Measures regulating the regime arrangements at the Service Centres according to the issued threat level has been processed. At the same time, the threat level varied according to the current epidemic situation in the region. The regime measures dealt with the following areas: staff contacts within the Service, staff contacts with other persons, staff contacts with clients in a workplace and in the field, testing for alcohol and narcotics and psychotropic substances, health epidemic measures at the workplace.

Employees were divided into smaller teams during the pandemic and had to take turns in a workplace. At the height of the pandemic, employees could work from home for several days.

There has been a change in the way the work is done. During the pandemic, telephone and e-mail communication became preferable over face-to-face consultations. During the pandemic, Probation and Mediation Service workers had to individually assess the need for face-to-face contact with the client. The meetings were arranged in advance. In case of face-to-face consultation, it was necessary to follow general anti-pandemic measures: wearing masks, disinfecting, keeping spacing.

Under nationwide government measures, employees at a particular time of a pandemic had to be regularly tested in the workplace for the virus by antigenic tests. The tests were provided to the workers. The service was also interested in enforcing the inclusion of workers in the risk group to be vaccinated as a matter of priority. However, there was no inclusion in the risk group. Probation and Mediation Service workers applied for vaccination based on their age.

Parts of the courses and trainings were cancelled under the measures. Trainings for employees and qualification courses for new employees were subsequently carried out online.

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

During the pandemic, cooperation with prisons was set up via video conferencing. Employees of the Service were allowed to use video conference calls for personal consultations with incarcerated persons with whom the Service entered into cooperation. This was particularly the case when processing a report with respect to conditional release, report with respect to conditional release with the obligation of a home arrest, report for the replacement of pre-trial detention with probation, etc.

The use of the videoconferencing equipment was conditioned by a situation when Probation and Mediation Service worker could not enter the prison due to an emergency (pandemic).

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 established institutes mentioned in the previous sub-chapters can be used also after the pandemic ends. Videoconferencing in prisons can be used in other emergencies when a Probation and Mediation Service worker would not be able to enter the prison.

New ways of working are also likely to remain: using electronic forms of communication (especially with law enforcement agencies) or prioritising the transmission of documents in electronic form, etc.

Within the Service, it was decided to use online communication when working with offenders. This decision will allow to continue to use the forms of online communication with the client in defined cases. These will include cases when the client will be sick, the client will be in quarantine or isolation, the client will be abroad or will be on business trips, etc. Online communication can also be used to communicate with victims or other entities. Online communication with a client or other entities is a tool that can be used in emergencies. Personal consultations remain an essential tool for the professional work of the Service's employees and cannot be replaced by an online form of communication.

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

Every organisation, including the Probation and Mediation Service, must be able to adapt to the situation. The Probation and Mediation Service did not suspend its activities even during the pandemic. Probation and Mediation Service workers were available to both perpetrators and victims mainly through forms of long-distance communication. The service was thus able to continue to fulfill its objectives and provide assistance to both offenders and victims of crime.

However, physical contact is necessary for the activities of the Probation and Mediation Service. We need to establish physical contact with offenders for risk analysis. When working with victims, physical presence is essential to establish contact and provide assistance. Restorative approaches such as mediation also cannot be carried out online.

Finally, it is also not possible to represent the development of skills online among the employees of the Service. Interaction is required to train in the areas of communication or working with the client in order to acquire the skills. Physical presence and personal contact are also important for team building and leadership and for team development.

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.

Probation and Mediation Service started Back to Life project. The aim of the project is to develop and increase accessibility of standardized resocialisation programmes in the Czech Republic by launching and operating the Programme Centres and Probation House providing a residential resocialisation programme.

Establishment of four Programme Centres will provide accessibility of various resocialisation programmes to offenders with imposed alternative sentences and conditionally released offenders. The programmes will target essential areas of their lives in order to support an effort in changing their lives. Four Programme Centres are located in four judicial regions: South Bohemia (České Budějovice), West Bohemia (Sokolov/Cheb), North Bohemia (Most), Northern Moravia (Frýdek-Místek). There will be 4-5 lecturers providing the programmes.

The very first Probation House in the Czech Republic will enable an intensive work with conditionally released offenders including securing a supervision of obligations and restrictions imposed by the court. The Probation House will be located in Písek, South Bohemia. From 2020 to 2022 the building will be renovated. The Probation House will operate from spring 2022. There will be 3 probation specialists working with the clients.

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?

The following may be considered as problem areas:

- legislative complexity, lack of clarity, lack of consistency,
- bureaucracy associated with communication with police, courts or prosecutors,
- a long process associated with legislative changes,
- the absence of a comprehensive system for the evaluation of non-custodial sanctions and measures,
- limited staff capacity of the Probation and Mediation Service,
- insufficient frequency of commissioning of probation officers for preliminary enquiries within the house arrest or pre-sentencing of the community service and subsequent problems with the execution of these non-negotiated sanctions,
- lack of continuity of work with perpetrators in social policy (executions of clients,

their debts and difficult exit from the debt spiral).

What is working in the current system:

- The Probation and Mediation Service works with offenders as well as with victims of crime. In its activities, it applies a restorative approach, which aims to repair relationships disrupted by crime. Probation and Mediation Service cooperates with both parties of the criminal proceedings.
- To a limited extent, Probation and Mediation Service also integrated so-called Victim Counselling Centres into standard practice in the regions. These Victim Counselling Centres were partly transferred to the agenda of the staff of the Probation and Mediation Service and partly to the agenda of the new victim counsellors.
- Probation and Mediation Service integrated into practice the experiences of the Parole Commissions project. In this project, the Probation and Mediation Service, the Prison Service of the Czech Republic and the victims or their representatives entered into process of pre-negotiating conditional release. We are currently trying to integrate this institute into Czech legislation.

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

We expect a positive impact of the Penal Code's legal amendment on 1.1.2022 which:

- adds new powers to probation officers:
 - o sub-autonomous decision making about the place of execution of a community service sentence,
 - o authorisation to make suggestions to court,
 - o mandate to work with suspects and children under 15 years old,
 - o mandate for parole activities,
 - o mandate for orientation testing for the presence of alcohol and drugs...
- aims to reduce bureaucracy (by removing administrative burdens),
- specifies the specific duties that probation officers can control (probation officers will no longer be entrusted with the control of responsibilities that they are unable to control).

This amendment will allow probation officers to make suggestion to the court for extradition of:

- decision, that sentenced person has proven themselves competent,
- the removal of the imposed reasonable restriction, reasonable obligation, educational measure or supervision,
- the conversion of punishment or the rest of it,
- execution of a surrogate custodial sentence,
- ordering the sentence or the rest of it,
- or whether a sentence is imposed on a convict whose sentence has been suspended.

We also consider the new information system, which is currently under development, to be a positive change. Among other things, this new system will include a so-called SARPO (comprehensive analysis of the risks and needs of the convicted person).

The Probation and Mediation Service is also undertaking a number of new projects to incorporate modern institutes related to alternative sanctions into practice. These are, in particular, the Project for the Establishment of a Probation House (PRODO) and the

Project for the Establishment of a Network of Regional Centres, providing selected available programmes.

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

In the context of the introduction of the new information system and the progressive digitization, we also expect better interconnection between the various government systems and more effective access to information.

We also expect more frequent use of electronic forms of communication (whether with law enforcement agencies or with offenders).

We are preparing to launch the electronic system Risk and need assessment.

As a Probation and Mediation Service, we would also welcome more frequent use of technical applications, including the complete replacement of random visits with electronic forms of controls.