# PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO IMPRISONMENT ACROSS EUROPE

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

## Greece

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

## National Report: GREECE
## The bipolar politics and policies of community sanctions: Amending the reforms, restricting and suspending implementation

**By**

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**In memory of Maria Anagnostaki, gone but not forgotten,**

**"the answer is blowing in the wind"**

**Komotini, December 2021**

## INTRODUCTION

The almost 70-year-old Greek Criminal Code of 1950 came to its end in July 2019, after successive preparatory committees' drafts aiming at its replacement. One of the main reasons given to justify the 2019 reform of criminal law was the need to introduce a consistent and coherent system of sanctions, restoring proportionality at the stage of sentencing and the actual execution of sentences and abandoning prior policies to address prison overcrowding by ad hoc, emergency early release measures.

Some of the most important innovations introduced by the 2019 Criminal Code (Law 4619/2019) include:

-abolition of obsolete crimes and decriminalisation of infractions, so as the latter to be dealt with by administrative sanctions,

- classification of offenses into two (not three, as in the past) categories, felonies and misdemeanours,

- modernisation of penal sanctions, with the introduction of community service as a sentence in its own right, alongside custodial and pecuniary sanctions and the expansion of pecuniary penalties based on the model of day-fines,

- abolition of recidivism due to its disproportionate sentencing results,

- abolition of indeterminate custody and detention in a mental institution as inconsistent with a criminal justice system based on the offender's culpability,

- abolition of the conversion of custodial sentences to pecuniary ones to end economic inequalities and to avoid inconsistencies in the sanctions-system of the previous Criminal Code,

- expansion of juvenile detention for offenders over the age of 15 in any violent offence or offence against life or bodily integrity prescribed as a felony (if committed by an adult), when the sentencing court considers that the mere imposition of other, reformative measures is insufficient, and, mainly,

-moderation or substantial decrease of penal sanctions, aiming to restore the balance between their severity and the gravity of the offence.

This scheme of sanctions was discredited immediately after its introduction, together with other choices made in the 2019 Criminal Code, for the alleged crime policy gaps and weaknesses it caused in a period of politically and mass media amplified claims for "increased" criminality, which has not been documented by its proponents. Consequently, a few months after its entry into force, the 2019 Criminal Code was amended so as to strenghen its supposedly deterrent potential, with some partial interventions increasing "real time" of some custodial sentences. In November 2021 it has been re-amended by Law 4855/2021 to a more punitive direction, with a rhetoric of security and protection of the rights of the victims, the provision of more and longer, actually served custodial sentences and restrictions to the implementation of community sentences, introducing mandatory life imprisonment for high treason, murder, gang rape, fatal rape, deadly robbery, providing for harsher penalties for crimes against personal freedom, sexual freedom and economic exploitation of sexual life as well as crimes against children, toughening the formal preconditions for conditional release eligibility etc.

# I. LEGAL FRAMEWORK

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

The 2019 Criminal Code introduces "a five-tier" sanctions-system:

(i) minor misdemeanours are punishable with community service or a pecuniary penalty;
(ii) serious misdemeanours, formerly punishable with imprisonment of up to five years, are now threatened with a pecuniary penalty or imprisonment up to three years;
(iii) felonies formerly punishable with incarceration of five to ten years are depenalised as misdemeanours currently punishable with incarceration of three to five years;
(iv) felonies punishable in the 1950 Criminal Code with incarceration of five to twenty years are dealt with incarceration of five to ten years, unless special reasons justify the imposition of a more severe sentence; and
(v) felonies formerly punishable with incarceration of ten to twenty years, are awarded against with incarceration of five to fifteen years.

Life sentences are reserved for the most serious felonies against life or liberty, only in disjunction with temporary incarceration of at least ten years (see, though, above, the introduction for 2021 amendments, altering this basic feature of the 2019 reform).

The main, "reference sanctions"[1] are i) custodial sentences (including life and temporary incarceration), ii) pecuniary sentences in the form of day fines and iii) community service.

The maximum limit of imprisonment that allows its replacement by a non-custodial measure varies, depending on each sanctioning option. The basic custody threshold is normally three years when suspension or conversion of the sentence are considered, but in many cases it exceeds this limit and it reaches, or even surpasses 15 years in cases of vulnerable offenders (the elderly, the sick, and mothers of children younger than eight years old) eligible for home detention. The recent reform (Law 4855/2021) excludes from implementation of home detention for vulnerable offenders only those having to serve a life custodial sentence.

The new Code of Criminal Procedure (Law 4620/2019), approved simultaneously with the Criminal Code provides for the non-imposition of a sentence introducing i) refraining from prosecution in cases of (a) misdemeanours punishable with imprisonment up to three years and (b) specific crimes, on condition that the person to whom the crime is attributed shall provide full redress for the damage caused and ii) plea bargaining.

Moreover, the 2019 Criminal Code introduces the power of the court to discharge the sentence in misdemeanours i) discretionary, where the imposition of the sentence is deemed unnecessary (namely when a defendant has suffered severe repercussions from his/her act, when the harm caused is insignificant, or when an unusually long period of time has elapsed since the commission of the offense) and ii) mandatorily, when a restorative justice process involving the offender and the victim is completed.

## 2 –Non-custodial sanctions

Directly imposed (autonomous) non-custodial sanctions are fines and community service.

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[1] "Reference sanction"/"sanction de référence" in the sense of Council of Europe Recommendations No. (92) 17 concerning consistency in sentencing (rule B 5*c)*)and No. (2000)22 on improving the implementation of the European Rules on community sanctions and measures (Rule 2).

A pecuniary sanction in the 2019 Criminal Code is calculated with day units (i) maximum 90, when a fine is the only imposable sanction, (ii) maximum 180, when a fine is interchangeably imposable with a custodial sanction and (iii) maximum 360, when the monetary and the custodial sanctions are imposable cumulatively. The amount of the fine ranges normally from 1 to 100 euros per day unit. The number of day units is defined by the seriousness of the offence and the culpability of the offender. The amount of money for each day unit is calculated according to the personal and financial condition of the offender (net income, property, family and other obligations). Payment in instalments within 3 years is possible for offenders who cannot afford to pay the imposed fine immediately.

Community service as autonomous sanction cannot normally be less than 100 hours nor exceed 720 hours, and unpaid work for the benefit of the community must be fully performed within 24 months. The age, the offender's health conditions and his/her professional and family obligations are taken into account by the sentnecing court. In case of non compliance of the offender to offer work to public agencies, local government bodies, non-profit private law organisations or the victim, as ordered, a pecuniary penalty has to be paid (serving a prison term instead of community service, an option available to courts in the 2019 Criminal code, was abolished in November 2021). In such cases 4 hours of community service correspond to 1 day unit of a pecuniary penalty. Moreover, if the offended fails to perform community work properly, the public prosecutor competent for the enforcement of the sentence, may: (a) issue a warning to the sentenced person; (b) extend the time limit to carry out the work up to 1 additional year; (c) allow for the enforcement of the defined monetary penalty after deducting the appropriate amount corresponding to the already enforced part of the community service, setting for every 4 hours of work 1 day unit. Other oprions provided for in the 2019 Criminal Code (the enforcement of the custodial sentence imposed for 10 days up to 1 month or fully, deducting the time of community service offered and matching 4 hours of work by 1 day in prison) have been abolished with Law 4855/2021.

Moreover, a range of non-custodial modes of enforcement of custodial sanctions (alternative measures) exists, replacing fully or partly the execution of imposed custodial sentences. These measures are:

- Suspension of a custodial sentence up to three years, for one month up to three years as a norm (when suspension is not granted the court is obliged to justify specifically why custody is absolutely necessary to prevent the commission of other crimes by the offender). Suspension may be also partial, with a period of ten days up to three months being served in prison.

This measure was disconnected from recidivism based restrictions of the pre-2019 period, but the law has been re-amended and previous convictions to prison sentences exceeding three years prevent mandatorily the suspension of the imposed sentence. According to November 2021 amendments, the court may exceptionally suspend the sentence when previous convictions to imprisonment do not exceed five years, unless the actual execution of the sentence is absolutely necessary.

The court, suspending a custodial sentence, may order alternatively or cumulatively (a) restoration of the damage caused to the victim; (b) removal of a driving license up to 1 year; (c) payment of an amount of up to 10,000 euros for public-benefit purposes; (d) fulfillment of the sentenced person's care obligations; (e) participation of the sentenced person, should they consent, in drug rehabilitation or other therapeutic programme; (f) probation supervision; (g) appearance at a police department; (h) prohibition of leaving

the country. Probation supervision, thus, is just one of eight terms available to the discertionary powers of the sentencing court.

- Conversion of prison sentences not exceeding three years to community service up to 1,500 hours, which must be offered within three years, when the sentence is not suspended and the court accepts that imprisonment is unnecessary to prevent the commission of further crimes.

- Serving custodial sentences at home. Eligible offenders are over 70 years of age (excluding lifers) or offenders who suffer from certain serious diseases or are mothers of children up to eight years old, unless the court decides that serving time in prison is absolutely necessary to prevent further offenses of similar gravity to the ones for which the offender has been convicted.

Fully or partly diversionary alternatives to prison (suspended sentences, home detention, conditional release) cannot be imposed when the competent court or judicial council is justifying that custody is necessary to prevent the commission of other crimes. The law does not specify any criteria a judicial authority should use to refuse a non-custodial sanction or measure but the conduct of the offender. When conditional release is considered, the offender's conduct during the execution of the sentence is assessed.

The imposition of non-custodial sanctions is not dependent on particular circumstances related either to the offender or to the offence. In law, being a foreign national, unemployed, homeless etc, does not affect an offender's eligibility for a non-custodial sentence. Homelessness, though, is not compatible with the execution of a custodial sentence at home or with electronically monitored conditional release with home detention. Moreover, after the amendments of the 2019 Criminal Code introduced with Law 4855/2021, conditional release with electronic monitoring is not allowed for specific crimes such as aggravated forms of drug-trafficking, criminal organization, terrorist acts, robbery, extortion, trafficking in human beings. For the same serious crimes (felonies), a longer stay of the offender in prison (compared with other felonies) is required before traditional conditional release can be granted. For instance, a prisoner serving a 15-years custodial sentence for the above mentioned serious crimes, previously eligible for conditional release after 6 years "real prison time", under the new provisions can be conditionally released after 9 years at least and in the case of life imprisonment after 18 years, two years later than previously.

With the 2021 amendments, one or more prior convictions to imprisonment exceeding three years preclude the conditional suspension of prison sentences, despite the abolition of the provisions for recidivism with the 2019 Criminal Code. In these cases, though, the court has the power to convert imprisonment to community service. Community service as a sentence in its own right is applicable in a limited number of minor offences (totally eighteen misdemeanours).

The consent of the offender is explicitly required when a) suspension of a custodial sentence is granted on condition that the offender will attend a drug detoxification or other therapeutic programme and b) conversion of a non-suspended custodial sentence to community service is ordered. Moreover, a) execution of a custodial sentence at home for vulnerable prisoners and b) conditional release to home detention with electronic monitoring are granted only if the eligible prisoner applies for it. Community service as an autonomous sanction is ordered without an offender's consent requirement, despite the absolute constitutional prohibition of any form of obligatory work. The court defines the equivalent amount of the monetary penalty the offender should pay in case of non-compliance with the imposed community service obligations.

Ancillary penalties, imposed cumulatively with a main custodial sentence are: a) the potential deprivation to hold an office or position, when the offender is convicted of a felony, b) the potential prohibition to practice a profession, when for this profession the permission of an authority is needed, in case the offender is sentenced to a custodial

sanction of at least two years, c) the revocation of a driving license or a license to operate professionally a means of transport, when the offender is sentenced to a custodial sanction of at least six months, d) the publication of a conviction in particular cases of public interest and upon the victim's application and e) confiscation of property or objects being products of a felony or intentionally committed misdemeanour.

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

The decision of the court on the innocence or guilt of the defendant precedes the sentencing phase of the defendant found guilty. The discussion on the sentence takes place immediately after the defendant is declared guilty.

The 2019 Criminal Code provides that sentencing determines the just and fair punishment of a crime, based on i) the gravity of the offence (the harm done, the danger caused, the act itself and its object and all relevant circumstances at the preparatory stage and during commission) and ii) the culpability of the offender (the intensity of the purpose or the degree of negligence, the pushing causes, the reasons and the aims pursued, the character and the degree of the offender's development that influenced the act, the offender's individual and social circumstances and past life in so far as they are relevant to the act, the offender's ability and possibility to behave differently, his/her conduct during and after the act, especially the repentance showed and the willingness to redress the consequences of the act. As it is noted, in addition to the principle that the imposed sentence should correspond to the sentence served, the offenders' personal traits and conduct after the commission of the crime are taken into account in the context of a system directed to special prevention and social rehabilitation.[2]

The sentencing court is instructed by the law not to limit itself on the offence committed but also consider the impact of the sentence on the defendant and his/her family. The Criminal Code includes explicit rules, guiding the courts as to the factors that should be considered for or against the defendant when guilt is declared. These factors are indicatively cited, as follows:

-Factors to be taken into account *for* the offender are: his/her secondary role in an act committed by many perpetrators, his/her justifiable emotional condition, his/her availability to authorities without significant delay, although he/she could have escaped, the substantial contribution he/she offered to the investigation of the crime.

-Factors assessed *against* the offender are: the professional commission of the act, the particular harshness of the act, the exploitation of the victim's trust, the fact that the victim could not protect him/herself, the primary role of the offender in an act committed by many perpetrators.

Moreover, the Criminal Code includes provisions for mitigating circumstances, referred to indicatively and resulting in the reduction of the sanction at the sentencing stage. Such circumstances are the offender's law abiding life before the commission of the crime, not excluded by a previous conviction for a minor misdemeanour, the offender's non-humble motives or his/her poverty or the influence of a serious threat or a person to whom he/she owes obedience or he/she is dependent on, the inappropriate

[2]See Symeonidou-Kastanidou, E., Naziris, Y. "The new system of penal sanctions in Greece", and Tzannetaki T. "Potentially perverse effects of front- and back- door penal policies – The Greek example", in: Papacharalampous Ch. (ed) (2020). *The Aims of Punishment. Theoretical, International and Law Comparative Approaches*, Athens-Thessaloniki: Sakkoulas Publications, 277-303 and 249-275 respectively.

behaviour of the victim, the offender's sincere repentance and efforts to remove or reduce the consequences of his act, the offender's good conduct for a relatively long time after the act, even in custody, as well as the unreasonable duration of the criminal proceedings that is not due to the defendant.
As regards the decision of the court to impose a pecuniary sanction, the 2019 Criminal Code adopts a model inspired by Scandinavian jurisdictions and applied in the Swiss criminal law; the court determines initially "daily units", based on the seriousness of the offence and the defendant's culpability and then proceeds to assign a monetary value to each unit, according to the personal and financial condition of the offender (net income, overall assets, family obligations).Respectively, as regards community service, the 2019 code provides that the sentencing court considers the offender's age, health condition and professional/family obligations and determines a pecuniary sentence to be executed if the offenders does not comply to the assigned obligations of unpaid work to the benefit of the community.
Crimes committed with racist motives due to the victim's race, colour, nationality, gender and gender identity, religion, sexual orientation are punishable with tougher sanctions, as the racist characteristics of an offence are considered aggravating circumstances.
Non-custodial sentences are imposed mandatorily in some minor misdemeanours, where the law provides that community service or fines are the only available sentencing options. Moreover, alternatives replacing custodial sentences fully or partly (conditional suspension with or without probation, conditional release with or without electronic monitoring, execution of a custodial sentence at home) are the norm when other preconditions are met and then custody is imposed exceptionally, when the court justifies that deprivation of liberty is necessary to prevent the commission of other crimes.

Conditional suspension of a custodial sentence and community service as an autonomous sanction are always ordered by the court. When the reasons justifying other alternative measures emerge after the imposition of a custodial sentence by the sentencing court, a judicial council is competent to order the execution of the sentence at home or the conditional release of the prisoner, with or without electronic monitoring. The public prosecutor competent for the enforcement of sentences can bring back to the court or to the judicial council cases of an offender's non-compliance to the terms and conditions ordered by judges.No particular sentencing guidelines exist to deal with specific groups of people or certain categories of offences.

An appeal can be brought before the second instance court, either by the defendant / convicted offender or by the public prosecutor. An appeal results in the reexamination of the court's judgement in all its parts, unless the appellant specifies a particular issue and restricts the appeal to it. The type and length of the sentence imposed are not defined as reasons to appeal, but both can change when an appeal is discussed.

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

The founding law of the probation service provided that each service would be supervised by a judge for the implementation of sentences (following the French system of the Juge des libertés et de la detention / Juge d'application de la pêne). Judges for the implementation of sentences were never appointed and public prosecutors were called to perform the relevant duties and to supervise the implementation of community measures instead. Each probation service operates under the supervision of the head public prosecutor of the local court. There is also administrative control by the Ministry of Justice, and in some provation services senior probation officers are employed.

The implementation of non-custodial sanctions and measures is monitored by the public prosecutor competent for the enforcement of these sanctions and measures. In

cases of default / breach of the conditions attached to a non-custodial sentence, the public prosecutor brings the case back to the sentencing court or the judicial council which granted the alternative to custody, to review the case. Then, various options are available, depending on the sanction or measure. When a monetary sanction is imposed, the court has the power to grant a payment deadline, reduce the amount of the fine or replace the fine by community service. When community service work obligations are breached, the competent public prosecutor takes into account the frequency and seriousness of the offender's conduct and may, after the issue of a written notice, extend the period of the order up to one year or allow the execution of the fine determined by the sentencing court, deducting the amount corresponding to the already offered work. In such a case four hours of unpaid work are equivalent to a unit fine.If the conditions of a suspended sentence are violated, the public prosecutor, again taking into account the frequency and seriousness of the violations, may issue a written warning or bring the case back to the court. The court, then, may either modify the conditions or impose additional ones or convert the suspended sentence to community service or order the execution of the suspended sentence in full or in part. When an offender is serving a custodial sentence at home, the judicial council -not the sentencing court- is competent to revoke the measure, if residence related restrictions and other preconditions for its imposition are not met.

Recall to prison is automatic only if the sentenced offender or the released prisoner commits a new crime within the probationary period of a suspended sentence or conditional release. The length of the imposed sentence is not modified in the course of implementation, but when the alternative sentence or mode of execution is revoked due to the commission of a new crime, the imposed sentences are cumulatively served, the remaining part of the first sentence being fully served.

## 5 –Early release

The replacement or modification of the execution or actually served custodial sentences is possible with i) home detention, or ii) -when the sentence does not exceed five years- a combination of custody (1/10 of the imposed custodial sentence), community service (3/10 of the sentence) and conditional release or iii) conditional release with or without electronic monitoring. Home detention is applicable either with a decision of the sentencing court, made immediately after the imposition of the sentence or any time after the custodial sentence is being served, with a decision of a judicial council, replacing deprivation of liberty of various categories of vulnerable prisoners.

The timeframes for the application of conditional release vary depending on the kind of the custodial sentence being served, namely if it has been imposed for the commission of a misdemeanour (imprisonment) or a felony (incarceration) and the crime committed. The rule is that offenders serving imprisonment are eligible for traditional conditional release (without electronic monitoring) after having served 2/5 of their sentence, actually or with beneficial calculation of sentence time for participating in various activities (work, education, treatment). Offenders serving temporary incarceration may be conditionally released after 3/5 of their sentence (at least 2/5 actually), but if the crime they have committed is a serious felony such as drug-trafficking and trafficking in human beings, criminal organization, terrorist acts, robbery, extortion, this time is increased to 4/5 (at least 3/5 actually). For lifers, the threshold for conditional release is 20 years (at least 16 of them as real prison time, increased to 18 years for the above mentioned serious crimes). Prisoners serving more than one life sentences are eligible for conditional release after 25 years in prison. Vulnerable prisoners (suffering from serious diseases, disabled, mothers of children caring for them in prison, undergoing detoxification treatment etc.) as well as prisoners held in police detention centres benefit from notional calculation of prison time.

Electronically monitored conditional release with home detention precedes traditional conditional release. Prisoners are eligible for release with electronic monitoring after

having served actually or with beneficial calculation 1/5 of a term of imprisonment. The respective time increases to 2/5 (at least 1/5 actually) when the sentence is temporary incarceration (offenders convicted for the above mentioned serious felonies are not eligible for this form of conditional release) and is 14 years (12 years actually) when the imposed sentence is life incarceration. When more than one life sentences have been imposed and are served, the minimum time a prisoner has to stay in prison is 20 years.

The requirements for granting conditional release, after the abolition of its almost "mandatory" forms for certain categories of prisoners with the 2019 Criminal Code and the 2021 amendments aiming to restore features of "parole', allow the competent judicial council to deny conditional release (electronically monitored or not) with the assessment that more time in prison is necessary to prevent future offenses. This assessment is based on the prisoner's conduct during his/her custody. The law clarifies that the unjustified recourse to a disciplinary offence is not sufficient to result in the refusal of conditional release. In a nutshell, there is a judicial discretion area, allowing space for dangerousness based considerations to impede conditional release, increased with the 2019 Criminal Code and its recent amendments.

The judicial council of the location of the custodial institution where the sentence is served is competent to grant conditional release. Implementation is monitored by the public prosecutor for the enforcement of sentences and the offenders refer usually to the police and rarely to the probation service. These agencies report to the public prosecutor when the released offenders do not comply with the imposed conditions / obligations.

Electronically monitored conditional release is combined with home detention. The judicial council which is granting conditional release (initially) or the public prosecutor (at a later stage) defines the offender's programme of absence from his/her residence for professional, educational, therapeutic or other similar reasons.

Conditions / obligations are not mandatorily imposed on conditionally released offenders without electronic monitoring. The most common conditions imposed on them are to reside at a specific address, not to leave the country and present themselves to the police. Other, more interventionist obligations are the supervision of the probation service and the attendance of a therapeutic programme. Non-compliance may result in conditional release revocation (it is up to the discretionary powers of the judicial council). When non-compliance procedures are initiated for offenders conditionally released with electronic monitoring, the gravity of the breach, the manner and the general conditions are assessed to inform the view that the offender is not expected to fulfill his/her obligations in the future. If conditional release is revoked, the time that has passed from release to the new arrest is not counted as part of the sentence.

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

As mentioned above, home detention replacing the execution of custodial sentences is designed for the elderly, the sick, the disabled and women who are child-carers. In these cases particular conditions are applicable, including probation supervision and electronic monitoring or therapeutic programmes. Specific programmes as part of a non-custodial sanction or requirements tailored to particular categories of offenders to facilitate the imposition of non-custodial alternatives exist especially for drug-addicted offenders.

Barriers set by criminal law to exclude vulnerable persons or minority groups from non-custodial sanctions assessment due to their vulnerability or status do not exist. Offenders are eligible for sentence suspension, conversion and replacement, including conditional release, regardless of their vulnerabilities, which, from another point of view may be read as "with their vulnerabilities not being considered". Nevertheless, offenders' difficulties to work due to health problems, substance addictions, lack of

documents, lack of residence, limited communication skills, affect in practice their ability to perform community service work or serve their sentence at home and in general, to be subject to measures presupposing particular status and conditions of life.

Finally, specific forms of early conditional release of the pre-2019 Criminal Code period for some vulnerable groups (the elderly, the sick and disabled, women child-carers etc.) have been replaced by provisions granting extra sentence time, beneficially calculated, to the same categories of prisoners.

## II. NON-CUSTODIAL SANCTIONS/MEASURES IN PRACTICE[3]

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

Non-supervisory alternative sanctions and measures (simple conditional suspension and conversion of custodial sentences to fines) were widely used for decades in the pre-2019 Criminal Law reform period. Probationary community sanctions and measures (supervised conditional suspension and further conversion of custodial sentences initially converted to a fine and then to community service) were introduced in 1991 but the national probation service, competent to provide social support to offenders and control them in the community was established in 2006. After the 2019 reform, the implementation of community service, either as a new, autonomous sentence or as a mode for the execution of a custodial sentence, has been suspended, while supervision in suspended sentences, formerly being a mode of execution of custodial sentences of three up to five years, is just one of eight terms available to the sentencing courts in all suspended custodial sentences. Community based sanctions and measures, then, on the one hand do not have a long-standing tradition in the criminal justice system and, on the other hand, do not have a stable, concrete legal nature, a clear identity and an implementation "space" in sentencing.They mean different things to different people. The contacted probation officers' views are revealing; the significance of community alternatives is very high for them, either as a form of social justice and offenders' reintegration, allowing them to stay socially and professionally active and manage their personal, family and other issues or as diversion from prison, contributing to the alleviation of prison overcrowding and the avoidance of the negative effects of prison on offenders' personal lives and social relations. These advantages, though, have not been disseminated to the public. No particular efforts to raise awareness and inform the wider society of them have been undertaken by the competent administrative authority, namely the Ministry of Justice. Moreover, due to lack of sentencing guidance and training, the judiciary many times identify penal sanctions with imprisonment and their attitudes as regards the penal validity, credibility and appropriateness of alternatives vary from one probation area to another, the result being some probation officers having no offenders to supervise or dealing with a more or less manageable number of cases (ranging from 20 to 50, as probation officers mentioned) and other probation officers having "unbearable" workloads approximating or surpassing one hundred "active" cases to work with.

In general, the most popular and promising (as "corresponding" with rehabilitative, retributive and restorative penal aims and goals) community sanction or measure seems to be community service, followed by supervised suspended sentence.

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[3] This part of the report is a synthesis of contributions of front line staff (probation officers), who accepted researchers' invitation to participate in structured discussions, based on the project questionnaire. Nine probation officers from seven different probation areas, two big urban centres and five regional services, attended three different online meetings, organised by researchers in late September and the first half of October 2021. Three more probation officers from one central and two regional probation services, did not manage to attend the meetings, despite their expressed eagerness to participate.

Conditional release of prisoners is widely used, but it is only exceptionally supervised by the probation service (contacted probation officers mentioned that the number of “parolees” they supervise ranges from zero to two!).

Statistical data are not collected regularly and systematically, although probation services keep detailed records and they are able to contribute in sharing relevant information. The most updated statistical information available is found in the 2020 Council of Europe Annual Penal Statistics SPACE II,[4] where one can see that the so called “probation population” rate at the end of January 2020 was 163 per 100,000 inhabitants (the respective rate for the prison population being 102.4), but 44% of offenders subject to various forms of penal control in the community (including, though, pretrial measures and measures for juvenile offenders) were conditionally released prisoners, who -as mentioned above- are rarely being supervised by probation officers, usually referring themselves to the police. A small percentage of the total offender population being controlled in the community on 31 January 2020 were women (6%; the respective percentage in the prison population was 5.3%) and foreign offenders dealt with in the community were 7.2% of the total “probation” population (their percentage in the prison population was eight times higher: 57.8%). Data from the same source show that on 31 January 2020, from a total of 8,319 persons subjected to various forms of penal supervision in the community, 2,177 offenders were on probation, 2,253 were working for the benefit of the community, 80 were electronically monitored, 2,428 were conditionally released, 73 were undergoing treatment etc.

No data exist as regards specific vulnerable and /or minority groups with the exception of basic information for women and foreign nationals, mentioned above. Contacted probation professionals referred that supervised offenders are often Roma and drug users, in need of tailored interventions, taking into account cultural particularities and rehabilitation needs.

Other (unpublished) data of the Ministry of Justice, Transparency and Human Rights presented to Council of Europe meetings of experts with Greek prison and probation authorities for the years 2016 and 2017 show that in the fifty one (51) established probation services (departments or offices), fifteen [in 2016] and twelve [in 2017] were totally unstaffed and that all other services were dealing with:

[in 2016] 2,502 community service orders, 324 suspended sentences with probation supervision and 18 conditional releases and

[in 2017] 2,867 community service orders, 816 suspended sentences with probation supervision and 20 conditional releases.

Other recent non-official sources of information on alternatives to prison are not available. A couple of 2015 research reports include some additional information and references as regards the pre-2015 period.[5] An older research on the function and work of probation services, conducted by M. Anagnostaki in 2014 and published in 2016[6] showed that in a five-year period (2009-2013) in 11 of the 12 probation services (of the totally 14 probation services operating in Greece during the period covered by the research) which responded to the questionnaire, only 110 cases of supervised

[4]Aebi, M. F., & Hashimoto, Y.Z. (2020). SPACE II – 2020 – Council of Europe Annual Penal Statistics: Persons under the supervision of probation agencies. Strasbourg: Council of Europe. See also the respective reports for the years 2015-2019.

[5] Mavris, M., Koulouris, N., Anagnostaki, M. (2015).*“Probation in Greece”*, contribution to A.M. van Kalmthout and I. Durnescu [eds], Probation in Europe, CEP and Aloskofis, W., Vidali, S., Koros, D., Koulouris, N., Spyrea, S. (2015). “*Alternatives to Prison in Europe. Greece*”, European Observatory on Alternatives to Imprisonment [JUSTICE programme, funded by the European Commission], Rome, Antigone Edizioni.

[6] Anagnostaki, M. (2016). Function and Work of Social Assistance Officers’ Services. Research findings, contribution to M. Gasparinatou [ed], *“Crime and Penal Repression in Times of Crisis. Essays in Honour of Professor N.K. Courakis”*, Athens: A.N. Sakkoulas Publishers, 2303-2348 (in Greek).

suspended sentences and 152 cases of conditional release were assigned to probation officers, while the number of community service orders was climbing to 2,346.

Conditional release is a highly controversial crime and prison policy issue, “suffering” successive reforms either to amplify punitiveness (increasing the actual time to be served in prison before conditional release eligibility is considered) or to restrict severity in sentencing and reduce the prison population (decreasing the length of the sentences imposed by courts). In a recent study for public-private sector partnerships and the involvement of the private sector in the management and operation of prisons, Professor E. Lambropoulou[7] observed that according to data from the Greek Statistics Authority, a continuously decreasing percentage of convicted prisoners are released having fully served their sentence (8.8 % in 2000, 8.3% in 2011 and 2.2% in 2013). In 2015 (last year with published data when Lambropoulou completed her study), from 14,781 sentenced prisoners, 7,675 were released (51.92%); 5,123 of them were conditionally released and only 97 were released having served their sentence in full. An additional number of 752 convicted prisoners were released due to beneficial calculation of sentence time due to work, education and other activities. No data exist as regards the quantum of sentence served until release or the number of released prisoners belonging to vulnerable groups. The Criminal Code provides that the prison administration should initiate the procedure for conditional release two months before the minimum time of the sentence being served is completed.

No documented discussion has been found 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. M. Anagnostaki’s qualitative research with 30 community service cases[8] showed that offenders were men (80%), Greek citizens (90%), middle-aged (45 years and over - 57%), with high school and post-secondary education (47%), married or divorced (67%) unemployed (43%) and sentenced for public debts and other economic infractions (50%). Some of the probation officers who participated in the meetings organized for the needs of the present report mentioned that, in their opinion, bias indications do not exist and offenders who belong to vulnerable groups do not end up in prison due to community service. Other probation officers, though, said that some vulnerable groups are further marginalized in the criminal justice system and that criminal justice authorities are hesitant to order community service when the offender is a migrant, due to the perceived difficulty to locate them or communicate with them. They also referred to serious problems as regards Roma offenders’ eligibility for community service (mentioning selective and negative discriminatory practices of agencies where community service is offered) or, rather, in matching community service activities with their interests and cultural particularities. Moreover, they added that some vulnerable offenders, as the sick and the elderly, are not given the proper community sanction or measure (i.e. they are ordered to offer community service instead of the imposition of home detention, or they are placed on probation while no need of supervision exists). In a nutshell, the problem is not that some vulnerable offenders are excluded from community sanctions and measures, but that existing and imposed community sanctions and measures are not suitable for them and that courts fail to individualise available options to offender’s personal needs.

Probation officers are competent to provide pre-sentencing reports, but this duty is rarely assigned to them, making it a totally neglected feature of their work. Anagnostaki’s research for the years 2009-2013 in 11 of the 12 probation services (of the totally 14 probation services operating in Greece) recorded just five cases of presentence reports writing. Some of the probation officers participating in the

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[7] Lambropoulou, E. (2020). Partnership Schemes and Contract Forms of Custodial Institutions’ Functions to the Private Sector. Athens: Papazissis, 28-29 (in Greek).

[8] See footnote 6.

meetings organised for the present research mentioned that they have never been assigned with presentence report writing. An important development in the involvement of probation officers in the imposition and implementation of community service is the research they are assigned to conduct as regards the agency of the community where offenders' unpaid work can be offered. It is left to be seen if this recently introduced significant practice will contribute in the improvement of the role of the probation service.

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

The Probation Service is a public service, set up in 2006. In 2007, fifty four (54) probation officers were appointed nationally as public servants under the Ministry of Justice and currently they report directly to the Department for Administration and Operation of Juvenile and Adult Probation Officers Services and Supervision of Societies for the Protection of Juveniles. No supervisory probation precedents existed before 1991, year of the first legislative initiative to introduce probation (for adults; the probation service for juvenile offenders has been operating as a separate public service since the 1950s). Probation officers' duties are to "assist" and "supervise" offenders subject to their responsibility. Details that would provide explicit content to the meaning of assistance, i.e. promoting successful social inclusion or building positive relations and bonds with wider society, are not found in any of the legal documents regulating the function of the probation service. The 2019 Criminal Code does not include the provisions of its 1950 predecesor as regards what probation work is consisted of. An important aspect of the organisation of probation (: formally called "social assistance") services is the merge of the juvenile and the adult sector, decided in 2014 in the context of the economic crisis measures intoduced to decrease costs and to redistribute insufficient probation staff, making more services operational without hiring additional employees. In the post-2014 organizational chart reshaped in 2017, the unified juvenile and adult services are operating either as one direction with two disinct sections, one for juveniles and another for adults or as two independent sections, one for adults and one for juveniles or as two autonomous offices, or finally, as one united autonomous office. Depending on the administrative structure and staffing of their services, some probation officers work exclusively with adults, others work exclusively with juveniles and others work with both categories of offenders, not having the proper educational and professional background. It needs to be stressed that probation officers have been appointed and are employed without any sort of training except of a two week initial theoretical education concerning the operational activities of the courts and some additional seminars in the context of technical assistance programmes offered by the Council of Europe or particular countries of the European Union.

The Probation Administration and the Prison Administration are distinct bodies, formerly operated under the administrative supervision of the Ministry of Justice, Transparency and Human Rights and currently (since 2019) subjected to different Ministries; the probation service is a Ministry of Justice structure, while the prison service operates within the Ministry for Citizen's Protection. This causes communication and coordination problems, not only reflected in services' functions and operation but, also, influencing negatively their work with offenders subject to custodial and non-custodial forms of penal control.

According to Council of Europe SPACE II data,[9] the total staff employed by probation agencies or working for them (including the probation service for juveniles) in 2020 were 154 officers, 37 of them senior probation officers and 80 of them qualified probation staff. An official informatory note of the Ministry of Justice issued in early 2021 for the needs of a Council of Europe project for prison healthcare and prison

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[9] See footnote 4.

overcrowding in Greece, referred that fifty (50) probation officers were employed for the supervision of adult offenders in thirty nine (39) of the totally fifty one probation services and thirty (30) staff positions were vacant.

All probation officers participating in the meetings organised by the authors of the present report mentioned that only one staff selection and appointment procedure has taken place, in 2006-2007. Since then, appointments have been limited to quite low numbers, and almost all changes in probation services staffing are due to public services staff mobility programmes, including mobility from the adult to the juvenile probation sector. As a consequence, the number of probation officers delaing with adult offenders around the country declined from fifty four (54) in 2007 to fourty one (41) in 2015 before their increase to the above mentioned number (50) in early 2021. Probation officers are qualified social workers, psychologists, sociologists and criminologists. The criteria used for their selection and appointment were typical, related to their educational qualifications, with no additional training and special professional development requirements. With the exception of family status (members of large families, with three or four and more children), no other social criteria have been taken in consideration in staff selection procedures. It is observed that the great majority of probation officers are women. Anagnostaki's research found that in December 2014, in twelve (12) then operating probation services, thirty nine (43) probation officers were employed, four of them on leave. From the thirty nine (39) probation officers "on-duty", four (4) were men and thirty five (35) were women (91%). Thirty (30) were social workers (70%), six (6) were psychologists, two (2) were sociologists and one (1) was a lawyer. The participation of seven (7) women out of the nine (9) totally probation officers who responded to our invitation to discuss for the needs of the present project confirms this finding, but it is not due to any quota based professional positions allocation. Ministry of Justice officials in the context of the above mentioned Council of Europe project for prison healthcare and prison overcrowding in Greece, referred that two new invitations to tender are being processed for the recruitment of seven (7) and fifteen (15) probation officers respectively, with unknown time of candidates' appointment.

Data showing how supervised offenders are distributed among probation services and officers are scarce and inconsistent. Probation officers say that such data do exist but there is not a centrally organized procedure to collect them and elaborate on them. Some probation officers refer to the number of cases assigned to their service throughout its operation, others use annual flow data while others mention their stock, "active" workloads. They claim that in some probation areas they are dealing with multiple numbers of offenders than their colleagues in other areas, facing the danger of burnout. A characteristic example is a regional probation service with one employee who had to manage one hundred and forty cases at a time, who was relieved with the pandemic lockdown, which resulted in an impressive reduction of the current workload to forty or fifty. Another example refers to a big city, where more than ten thousand (10,000) cases of supervision (40% probation and 60% community service) have been assigned to the probation service in the fifteen years of its operation, with workloads of one hundred and more offenders per probation officer at a time. These numbers, in combination with administrative duties and report-writing, make supervision a typical processing procedure. Other probation officers referred that in their service the number of staff has doubled due to recent mobility procedures, but still their workload exceeds fifty (50) cases per month, which is more or less manageable. Others said that the number of cases each officer deals with per month is around fifteen (15), allowing them to individualise highly their interventions and work substantially with offenders. Data obtained by the Ministry of Justice through a small scale survey conducted for the purposes of 2015 Mavris, Koulouris and Anagnostaki report for the CEP, showed that the average caseload for each probation officer concerning community work supervision, suspended sentence with probationary supervision and supervising conditionally released offenders was 23 for the year 2011 and 34 for the year 2013 and

the daily average number of offenders dealt with by probation services was seventeen (17) for the year 2011 and eighteen (18) for the year 2013. Anagnostaki found in her 2014 research that the average community service cases, managed by each probation officer for a three-year period was twenty (20).

Officially declared aims as regards probation work do not exist and the values of the service are not explicitly stated in official documents. Anyway, probation work can be viewed through the prism of the aims and values of both the sentencing system and the correctional law and practice. Lack of a particular mission of the probation service and goals to be pursued by probation officers is observed too. The same can be said as regards theoretical paradigms determining probation officers' work. They use individual counselling and motivational interviewing and they supervise offenders to assist them and to enforce court orders. Moreover, no clear distinction between supervision and assistance is being made. One probation officer said that he shifted from the initial control-oriented supervision he practiced to a more care-based approach. Other officers referred that care and control coexist and are intertwined in their work, explaining that control is sometimes beneficial for the supervised offenders, helping them to comply with their obligations and avoid ending up in prison. The "proportion" of care and control depends on several factors, including the offender's personal and social circumstances, criminal record and reoffending, etc. Probation supervision consists of communication and meetings with the offender and contacts with persons in the organisations and services collaborating with the criminal justice system, offering positions for the placement of offenders working to the benefit of the community.

An offender may be referred to other agencies to cover personal needs or for special treatment, but the probation officer is still responsible to assess, elaborate and co-ordinate supervision and to ensure contact with the offender and his/her compliance to the probationary sanction or measure. Probation officers make an initial interview and assessment of the offender, followd by regular interviews, family visits and support work when considered necessary, counselling, help with preparing official documents and court appearances. Some of our interlocutors mentioned that it is part of their work to create networks with the community and provide individualised solutions. They referred to particular cooperation with bar associations, migrants' collectivities and non-governmental organisations, drug dependence treatment services, social services of local authorities, healthcare services, professional's unions and transport organisations to facilitate supervised offenders' compliance and help them solve serious personal, social and economic problems. Other probation officers mentioned that collaborations with NGOs are exceptional and that reliability and ability of such organizations to collaborate should be assessed. They added that networking is depending on the initiative of each probation officer or service, there is no centrally planned and guided strategy at place. From this point of view, probation officers claim that they are "left to their own devices" and that the involvement of the community (other social services, NGOs, volunteers, employers) in the implementation of non-custodial sanctions is the result of their own inspirations, initiatives and efforts, not an informed and centrally planned strategy of partnerships and cooperation.

Regarding applications of technology to the implementation of probation supervision, electronically monitored offenders (having been conditionally released to serve one part of their custodial sentence at home before traditional conditional release is granted to them) are supervised by a private security company, not by the probation service, and implementation is at a pilot stage, limited in specific areas of the country. Other technological applications are not in place. One participant officer mentioned that the logistics of the service is very poor, and his colleagues mentioned the electronic equipment of their services is insufficient and obsolete, adding that they are not even given mobile phones and sometimes they have to use their personal devices to perform their duties, paying the cost themselves.

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

Data to assess the effectiveness of non-custodial sentences/measures in terms of changes in offenders' social lives and conditions are not available. SPACE II flow data[10] show that in 2019, from 5,881 offenders who exited probationary measures 4,656 (79.2%) had completed their obligations. In 801 cases (13.6%) the probationary measure was revoked, 169 offenders (2.9%) ended up in prison, 58 absconded (1%) and 128 died (2.2%). Anagnostaki reported 227 cases of community service orders (approximately 10% of the 2,346 cases recorded in the five-year period 2009-2013) where breach procedures were initiated. In a sample of thirty (30) of these cases she studied qualitatively, eleven (11) were due to no-show of offenders and seven (7) were due to their failure to perform the work assigned to them. Five (5) more cases of no-show were due to the offenders' arrest and imprisonment for other pending criminal cases. Probation officers who participated in the meetings organised by the authors of the present report, mentioned that in general, many times they are involved in offenders' supervision with delay, years after the offence is committed and offenders' lives have changed. They add that probation is imposed horizontally, even in cases where supervision is unnecessary (this is a problem of the sanction system of the previous Criminal Code, where all suspended custodial sentences between 3 and 5 years included probation supervision by law). Anyway, in some probation officers' opinion, offenders on probationary supervision respond to their obligations and desist from crime better than those working for the benefit of the community, taking into consideration the differences in the content of control exercised in the two categories (in community service control over offenders is focusing on conforming with work related obligations, in probation control is oriented to other aspects of their lives and behaviour). Simultaneously, probation officers admit that community service is a very promising sentencing option, meeting different penal philosophies, but offenders working for the benefit of the community return often to court and to probation services. Other probation officers mentioned the opposite, namely that the majority of offenders on community service do not return to probation services as recidivists. One probation officer said it is not easy to follow supervised offenders' life course and possible new convictions due to their mobility from one probation area to another. One probation officer observed that successful reintegration is a multifaceted and complicated issue, it is not easy to consider that non-compliance or non-desistance from crime is the result of failures attributable exclusively to offenders or to probation services or other contributing factors. Another officer added that she and her colleagues are expected to offer more than they can, but they try hard because they want to get the best possible results.

Probation officers who shared their views with the authors of the present report mentioned that in some cases they succeed to help offenders overcome serious personal, health, family, financial and social problems (find a home or a job, improve their children's living conditions, get a pension or other social benefit, cover medication costs etc.). Some of them referred with enthusiasm to work placements of offenders on community service, resulting either in improving an organization or agency regular staff skills, taking advantage of the offenders' qualifications or in the employment of offenders by the cooperating agency or another employer after the completion of the non-custodial sanction or measure. Similar findings are reported in Anagnostaki's research, conducted in 2014.

As the content and the details of implementation of non-custodial sanctions and measures is left to each probation service and individual probation officers, it is not possible to define any measures that have been taken adjusted to vulnerable persons or minority groups. Similarly, it is not possible to identify particular sanctions or

[10] See footnote 4.

measures effective in reducing offending among certain categories of more vulnerable persons or minority groups.

There is complete lack of data that could allow comparisons between reoffending rates (for the same or different categories of offences) in cases of imprisonment and in cases of non-custodial sentences.

As regards the results of the implementation of alternative sentences in the use of imprisonment and the prison population, the 2015 reports written for the Confederation of European Probation (CEP) and the European Observatory on alternatives to imprisonment[11] mention that the increase of the prison population up to 2015 can be partially attributed to sanctions and measures which have been introduced to widen the use of non custodial options and alleviate prison overcrowding. Community sanctions and measures have had inflationary results in the long run, and they pushed courts to increase the length of the prison sentences imposed by courts, in their effort to assure that perpetrators of some crimes would not be eligible for suspension or conversion of their sentences. Controversial efforts to relieve crowded prisons with emergency release measures were under way (and continued up to 2019, when this policy was abandoned), with soon reversed results. Lack of recent data and the suspension of implementation of all forms of community service under the 2019 Criminal Code combined with the transitional implementation of pre-2019 modalities of community service and the drift of the law with the initial (2019) abolition of any reconviction based criteria when the suspension of a sentence is considered and the reintroduction of recidivism as a legal barrier to suspend otherwise suspendable sentences, do not allow a credible comparison of the prison population and the number of offenders under probation. Data from the pre-2019 reform period (2016-2017) show a slight decrease of the prison population from 9,611 to 9,560 prisoners and a slight increase of offenders under probation from 2,826 to 3,683. Taking into consideration that in the above mentioned period the prison population was affected by early, emergency conditional release measures, such data do not support that non-custodial sanctions and measures either have a net widening effect or play the significant role they should to transfer a significant number of offenders from prison to the probation service as when they are part of robust, sustainable and effective sanctions systems.[12] Some of our interlocutors expressed the view that community service, as it operates, is diverting offenders who comply from prison, while conditionally suspended sentences may be imposed on offenders who would not end up in prison anyway.

Mavris, Koulouris and Anagnostaki in their 2015 report on probation in Greece[13] note that the highly legal tradition of the Greek penal system, the domination of custodial sentences and the absence of social work or welfare culture in criminal justice seem to empede attempts to give the probation service a cental role in it and grant supervision of offenders in the community a clearly oriented place in the sentencing system. On the other hand, public and academic discourse and reseach are rather poor on these issues while probation stakeholders and penal pressure groups have not initiated

[11] See footnote 5.

[12] See Palma, M., Snacken, S., Theis, V., Carbunaru, I. (2019). Reducing Prison Overcrowding in Greece. Report of the Directorate General of Human Rights and Rule of Law, Action against Crime Department, Criminal Law Co-operation Unit. Council of Europe in the Art of Crime, 6, May 2019. The same conclusion is repeated in the 2021 update of this document, authored by S. Snacken, I. Carbunaru and N. Koulouris (unpublished).

[13] See footnote 5.

informed relevant public debates. In addition to these observations, the successive changes in legislation and implementation gaps are confusing and do not allow the non-custodial sanctions and measures to find an identity. Consequently, non-custodial sanctions and measures keep a rather secondary position in the sanctions system.

## 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

No sanctions or measures of any kind were designed to allow for the release of people from prison during the COVID-19 pandemic. A public discussion was initiated in the beginning (Spring 2020), where human rights organisations, criminal justice professionals (bar associations, lawyers practising criminal law) submitted proposals for the introduction of legislative emergency measures to achieve a prison population reduction with early release of the most vulnerable prisoners (especially the sick and the elderly) and those having served the most of their prison terms. Simultaneously, the intention of the Government was announced to introduce emergency release measures targeting vulnerable prisoners. Despite this, such legislation has never passed. The prison population slightly increased at this period and then stood more or less stable throughout the pandemic and the lockdowns.

More specifically, the General Secretariat for Crime Policy of the Ministry for Citizens' Protection, competent for prisons, announced then that a prison population reduction policy was being considered but, finally, as prisons did not face a serious outbreak of COVID-19 infections with the restrictive measures adopted, this option was abandoned, and no measures had been taken to relieve prison crowding. This policy has not changed even after October 2020, when prisons reported, as nowadays, big numbers of infections. Competent authorities avoid to announce official data as regards the dissemination of the coronavirus and any release measures are still out of the current policy agenda.

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

Due to the restrictive (social distancing, quarantine and lock-down-type) measures taken to regulate social life and in both, the public and the private sector, agencies usually accepting offenders ordered to offer work for the benefit of the community, mainly municipalities, where reluctant to offer work positions to people sentenced to community service technical, administrative, or other, indoors work. Therefore, community service has been limited in "open air" work, in parks and gardens, in cleaning of public spaces and in waste collection. Moreover, non-vaccinated people serving non-custodial sentences were for months not allowed to enter public services buildings (the majority of offenders being subjected to penal control in the community cannot afford the expenses of repeated rapid tests). In such cases, face to face probation supervision meetings were not held and probationary work was carried mainly with telephone calls. It has been referred by two of the nine probation officers who participated in three online interviews we organized (see above), that when an agency considers vaccination as a precondition to accept offenders to perform community service, while vaccination is not obligatory, imposition or implementation of such a sanction is not possible. In addition, many services and agencies (e.g. sports facilities, public kindergartens etc.) suspended their operation during the lockdown periods of the pandemic, rendering the offer of community work by offenders unfeasible.

The above-mentioned problems were mainly solved with individualised improvisations invented by probation officers in cooperation with public prosecutors competent for the enforcement of courts' decisions imposing penal sanctions. For example, sanction execution periods and offenders' obligations adjustments were being made (extensions of time, reductions of community service hours, cessation of compliance checks, introduction of "distance supervision" (telephone contacts [but not online communication], that supervised offenders perceived as an expression of their probation officers' interest for them). The probation officers we contacted considered these practices as satisfactory. Currently, most of these problems have been overcome and probation supervision routines return to pre-pandemic normality. Nevertheless, a serious problem persists, for offenders who are not vaccinated and do not have a Social Security Registration Number, who cannot provide a valid rapid test certificate and for this reason they are excluded from community service work.

As regards obstacles to the imposition or implementation of sanctions/measures which involve physical presence in certain places or face-to-face contact with probation services, all probation officers who accepted to participate in the online meetings we organised mentioned that municipalities do not allow entrance to the non-vaccinated without a rapid test certificate. Different modes of adjustment to the conditions emerged from the pandemic seem to have been in place in different probation areas. Our interlocutors argued that in the capital city and in one more probation area, competent public prosecutors ordered the extension of the period offenders were permitted to complete community work and comply with their obligations. In other probation areas public prosecutors decided to reduce the number of community service hours, even to file some pending cases, and approve the successful completion of community service orders.

The nine probation officers who joined the meetings we organised, argued that they themselves and their colleagues approach each case individually and try to assist people belonging to vulnerable groups (an example was given regarding a supervised pregnant woman who gave birth during the lockdown). However, they pointed out that offenders belonging to the Roma population face difficulties in meeting the obligations ordered and comply with their community sanctions terms. The reason is that many of them are unvaccinated and cannot afford the cost of rapid tests that would allow them to proceed and complete the order of the court. Moreover, immigrants without documents, unvaccinated and lacking a Social Security Registration Number, cannot provide a valid certificate of rapid test, being also excluded from the implementation of community sanctions and measures.

Referring the impact of COVID-19 to support programmes, the probation officers who responded to our call mentioned one support program, tailored to the needs of drug addicted offenders under probation supervision. The programme operates in Athens, in collaboration with a center for the rehabilitation of drug dependent persons [KETHEA], and it has not been influenced by the pandemic. Another support programme, addressed also to drug addicted offenders in the community but based on harm reduction principles, run by the OrganisationAgainst Drugs [OKANA] was discontinued. No other organised interventionist programmes run either by probation services or other agencies or institutions, either for drug addicted offenders or other offenders in need of support were mentioned.

The impact of lockdowns and other changes on daily work routines of probation staff is not negligible. Interviewed probation officers said that they have been affected by the pandemic in the same way other services of the public sector have been influenced. They mentioned the introduction of teleworking as a major change in their professional

routines. Despite this convenient development, their pre-pandemic workloads remained the same[14] and their supervisory work with probationers has been adversely affected. Moreover, the lack of daily face to face communication among probation officers themselves was a negative outcome, impeding them from professional interaction in performing their duties. Additionally, lack of communication between probation officers and judges, in periods when the operation of courts was suspended and exclusively dealt with issues of immediate priority, especially in rural areas was also a problem. Furthermore, participants argued that they were not treated as frontline professionals since, although at some delayed point (months after the outbreak of the pandemic) they were given face masks and antiseptics as well as office equipment (separation glass), they had to pay for rapid tests. Most importantly, in their words, they felt that "the groups they are working with [probationers and other supervised offenders] do not exist for the state". To be precise, their sense of state neglect and indifference is stemming from the lack of i) any legislative arrangements for offenders subjected to community sanctions and measures and ii) any formal instructions and guidance tailored to their work as to how issues that emerged in the pandemic should be dealt with. The suspension of community service in all the forms introduced in the 2019 Criminal Code (as a sentence in its own right and as a mode of full or partial execution of custodial sentences), decided due to lack of sufficient probation infrastructures and staff (namely regardless of the pandemic), is another factor contributing to probation officers' discomfort or distress. On the other hand they acknowledge that probationers and other supervised offenders in general were not excluded from the measures introduced to restrict the expansion of the pandemic for any reason related to their legal status.

The solutions found to mitigate the negative impacts of the pandemic on the implementation of non-custodial sanctions are related to face to face meetings of probation officers with supervised offenders and "in situ" visits of probation officers to agencies and organisations participating in community service implementation that were stopped. Probation officers focused on modalities of work with no physical presence, in collaboration with municipalities, other cooperating agencies and local public prosecutors offices, despite that no precedents existed to be used as proper experience and “good” practice. In general, one cannot find any centrally or regionally coordinated efforts, tailored to probation agencies' and officers' work.

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

Probation officers participating in the meetings organised by the authors of this report emphasised that inventiveness and initiatives-taking were always part of their professional work, due to the lack of a concrete probation policy and practice framework that could facilitate them in their interventions, regulate and clarify what "probationary supervision" actually means. A new aspect that emerged out of the pandemic landscape could be considered and influence probation work (but finally it was not formally introduced or implemented in practice due to unsolved personal data protection issues) is teleconferencing procedures. Probation officers mentioned that discussions are being held as regards the potential use of teleconferencing on a permanent basis. Some positive COVID-19 related developments (that, however, cannot not be seen as "here to stay" practices) referred to by them are: a) working from one's home seems to be a solution in areas where transportation is problematic and distances are long and getting to their destination is time consuming, b) education and professional training opportunities are improved with e-learning methods, c) a culture of appointment-based meetings, contacts and visits is facilitated and practiced, d)

[14] Although they also referred that a gradual decline was observed as lockdowns and restrictive measures to counter the pandemic were implemented.

plenary sessions of each probation service may take place online, in a more convenient way than sessions with physical presence.

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

### 1 -Innovative initiatives regarding alternatives to deprivation of liberty, ongoing or in preparation

Electronically monitored home detention for conditionally released prisoners is the only measure introduced (in 2013) as a pilot, per se solution to prison crowding (according to its explanatory report). As a form of conditional release following the imposition of a custodial sentence, it can be granted before traditional conditional release is considered, reducing the time an offender has to serve in prison. Its implementation remains at a pilot stage and, in addition to legal restrictions excluding many areas of the country and offenders having committed specific serious felonies, which limit its potential for extensive use, its popularity is extremely limited, mainly because it presupposes a stable residence and it is an intrusive and costly mode of penal control for offenders and their families. Moreover, electronic monitoring pilots were competing with other, less demanding early release measures, introduced as emergencies to curb prison overcrowding between 2014 and 2019. This “competition” resulted in very limited implementation of the measure.

Additionally, community service order, introduced in the 2019 Criminal Code either as a sentence in its own right or as a mode of execution of a custodial sanction disconnected from its pre-2019 conversion to a pecuniary penalty (both innovations for the Greek system of sanctions) has been suspended in search of funding, staffing, partnerships and reorganization of the probation service.

Finally, some restorative and therapeutic measures introduced in recent years, the former as a solution in domestic violence cases and the second as a route away from the penalisation of drug abuse, in combination with plea bargaining possibilities are expected to enrich the options of the penal system and inspire a new culture, away from traditional sanctions schemes. A form of suspended sentence exists for offenders convicted prior to their admission and successful completion of a drug treatment programme, on condition that they remain drug free for periods from three to six years. Moreover, provisions for conditional release are in place for prisoners participating in drug treatment programmes or prisoners who are admitted to continue drug treatment in an formally approved programme in the community. Conversely, prisoners serving life sentences for drug trafficking are not entitled to early release until completion of 25 years. Offenders’ compliance and treatment attendance monitoring is assigned to the personnel and directors of approved drug treatment programmes, not to the probation service.

### 2 –Prospects for the development of sanctions or measures in a way that promotes an effective reduction in the use of imprisonment

It is questionable if the sanctions system, as it is currently structured, can be assessed. Successive changes either widening or restricting the range of sentencing options, additions to and suspensions of particular measures, transitional periods and limited time of implementation, weak, organisationally unsupported, undeveloped and understaffed probation services, lack of interventions tailored to the needs of special groups of supervised offenders, affect seriously efforts to study what works, how and why. Alternatives diverting offenders from prison either at the sentencing stage or at the stage of the execution are available mainly but not exclusively for minor crimes, as

-for instance- some measures are applicable to (vulnerable) offenders serving the longest custodial sentences. Overall the sanctions system lacks a certain philosophy and a clear identity, currently fluctuating between the moderation of the 2019 reform based on consistency and proportionality and the punitiveness of the 2021 amendments, investing to more frequent and longer prison use. Changes of the penal system introduced in 2019 and amended in 2019 seem to lead to a new version of bifurcation policies that have led to the severe prison overcrowding especially between 2010 and 2014.

In this context, an open call for an international competition has been recently issued (no 217/5 August 2021) for the "[U]pgrading [of] the services provided by the structures operating under the supervision of the Ministry of Justice", in particular the administrative and operational reorganisation of services of juvenile and social assistance supervisors, namely services of probation officers for juvenile and adult offenders, so that social reintegration and desistance from crime are achieved. The expected outcome of this project is to contribute to the expansion of the use of community sanctions and the de-escalation of the problem of overloaded prisons. In this call it is mentioned that the Ministry of Justice prioritises principles such as: (i) humanism - respect for rights and international standards, (ii) proportionality / leniency with priority given to the mildest means of repression, (iii) rationalization of the administration, (iv) human resources development and training, (v) openness to society, cooperation with institutions, extroversion, (vi) fight against stigma and social stigmatisation.

As regards the custodial sector of the penal system, after the 2018-2020 strategic plan (based on "*humanism – safety – reintegration – transparency*") expired, a new one is currently being drafted. In June 2021 the competent Deputy Minister for Citizen's Protection, addressing to the Parliament declared that "prison decongestion is an aim we reach day by day through a range of successive initiatives. Central to this aim are decisions made to improve, modernize existing prison facilities and create new ones that follow the latest European standards and good practices." He added that "... a working group has been set up to elaborate the new strategic plan for the years 2021-2023, where the strategic goals and priorities of the penitentiary system for this period will be set. The new strategic objectives will be based on the following pillars: administrative reorganization, security, infrastructure, staffing, education, staff education and professional training, prisoners' education and training, cultural activities, social reintegration of prisoners, expansion of alternatives to custody." In a meeting organized in October 2021 in the context of the project *"Strengthening prison health care in Greece", funded by the Council of Europe Human Rights Trust Fund*[15], high rank officials of the Ministry of Citizen's Protection mentioned that the strategic plan currently being drafted is based on three principles; transparency, justice and security for prisoners and prison staff and that these principles are developed in eight pillars: (i) Infrastructures / improvement of conditions, (ii) security (safety of prison staff and prisoners) and good order, (iii) health - life in custody, (iv) staff training, (v) prisoners' training, (vi) administrative reorganization, (vii) psychosocial wellness and development of prisoners and prison staff and (viii) social reintegration of released prisoners.

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[15] See footnote 12.

One can see that alternatives to custody are missing from the recent presentation of the currently drafted strategic plan of the Ministry for Citizen's Protection, probably because community sanctions and measures are subject to the competence of the Ministry of Justice. In any case, these statements are still vague and the way they will be transformed into specific policies, actions and measures is not known yet.

A different penal culture and policy promoting a stable status, mission and position of non-custodial sanctions and alternatives to prison in the sanctions system as well as reserving a balanced role for well organised, fully developed and sufficiently resourced and networking authorities, services, agencies and organisations (judicial, administrative, community), may allow a more ambitious approach for the future of dealing with offenders in a credible, socially just and promising way. In this context new technologies could be used not only to widen and strengthen controlling aspects and possibilities of non-custodial monitoring of offenders, but also to facilitate supervision, guidance, assistance, communication, coordination and cooperation, reduce costs and avoid time consuming procedures.