

# **Chapter 21**

## **Moldova**

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# **1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM**

## **1.1 The start of probation in Moldova**

The history of the probation system in Moldova goes back to 1936. Between 1918 and 1940 Moldova was a part of Romania; therefore the story of development of Romanian probation in this period can be related to Moldova as well. The first elements of probation, such as suspension of punishment execution, conditional release or post-criminal assistance were introduced for the first time in the Criminal Code of Romania in 1936. According to art.50 of this Code, each court must coordinate the activity of a supervision body (NGO) responsible for the social reintegration of former prisoners, especially minors. Article 65 of this Code provided for the first time the institution of suspension of the execution of the imprisonment punishment.

According to the Criminal Code of 1961 of the Social Soviet Moldovan Republic, there were certain punishments not involving deprivation of liberty, but they were limited to control of behaviour of the convicts and were mainly for constraint purposes. This activity was performed by the penitentiary system, which until 1995 was a division of the Ministry of Internal Affairs. After 1995 the penitentiary system was subordinated to the Ministry of Justice. In 2002 the service responsible for this activity was demilitarised and transferred to the Department for Execution of Judicial Decisions within the Ministry of Justice, a newly created structure (the Government Decision no. 34 of 15.01.02), responsible for ensuring the execution of judicial decisions related to civil, administrative or criminal cases. Within the central office of the Department for Execution of Judicial Decisions the Directorate for Execution of Non-custodial Sentences was created, execution agencies were open in the regions of the republic, carrying out activities of registration and supervision of people convicted to non-custodial punishments. In 2007 the Directorate for Execution of Non-custodial Sentences is reorganized into Directorate for Probation and 125 staff members are allotted additionally. We can consider that this was the moment when the Probation Service was created in the Republic of Moldova.

## **1.2 Important developments**

At the beginning of 2000 the Law Program of the SOROS Foundation in Moldova acknowledging the need for creation of an institution specialized in supporting the penitentiary reform that would establish a strategic partnership between local decision makers and advanced foreign experience in the area of penitentiary reform, such as Helsinki Committee Holland, International Criminal Reform etc.

The Mission of estimation of needs for the penitentiary reform, conducted in October 2000 by Soros Foundation, with the participation of notorious experts in the field, revealed the need to introduce modifications in the legislation and to promote alternatives to detention in the Republic of Moldova, to modernize and to reform the system of penitentiary institutions; it recommended the initiation of a project in this sense, to be implemented by non-governmental organizations specialized in this area. Thus, the meeting of the senate of the Moldova Soros

Foundation of March 1, 2001 decided to establish the Centre for Assistance to Criminal Reform in Moldova (CARPEM – since 2003 Institute for Penal Reforms), on 10 May 2001 CAPREM was registered with the Ministry of Justice of the Republic of Moldova. CAPREM started its activity in the field of alternatives to detention based on the results of the mission of estimation of the situation related to the execution of criminal sentences, of imprisonment in general and situation in the penitentiary institutions in particular, mission conducted in October 2000 by the Centre for International Legal Cooperation CILC.

Before the project started CAPREM also organized in October 2001 in collaboration with the Ministry of Justice of the Republic of Moldova, the workshop on the subject “Alternatives to detention: temporary release and alternative criminal punishments”, during which the participants (representatives of the law community) were presented a series of alternative measures implemented in the world, the existing gaps and the possibilities of incorporation of new alternatives to preventive arrest and criminal punishments in the national legislation were analysed. At the end of the workshop a number of recommendations for the reforming of the criminal justice system or the development and implementation of alternatives, were drafted.

The activities suggested by CARPEM and by the Helsinki Committee Holland within the project „Assistance of the Penitentiary Reform in Moldova" were made public during the launching event, which took place on 26 February 2002 at the premises of the Soros Foundation Moldova. Within the project "Assistance to Penitentiary Reform in Moldova" CARPEM initiated in April 2002 the creation of a workgroup in the field of alternatives as a specialized structure for the development of alternative measures to detention, both to preventive arrest and to custodial sentences and to draft concrete proposals for the modification of legislation. As result of the activity of the Work Group the following alternative measures, considered as being possible to be implemented in Moldova taking into consideration the national features were developed:

- to arrest: bail, temporary release under judiciary control, home arrest;
- to detention as a criminal punishment: unpaid community work and Probation;
- extra-procedural measures: mediation.

The development of alternatives to detention of children and young people in conflict with the law is a part of the project „Reform of the Juvenile Justice System in Moldova”, implemented by the Government of the Republic of Moldova with support of UNICEF-Moldova since 2003. The Institute for Penal Reforms in partnership and with the financial support of UNICEF Moldova, started in autumn 2003 the project "Alternatives to detention for children in the criminal justice system", aiming at promoting alternatives for children, especially community work, mediation in criminal cases and pre-sentence and sentence probation for children in the system of criminal justice. Due to these activities of the IPR, probation has been implemented gradually in Moldova, its role has been identified and its advantages have been acknowledged.

Following all these activities, the criminal, criminal procedures and criminal execution legislation were supplemented with provisions that give us possibility to conduct probation activities and the Probation Service was created (DG No. 44

of 12.01.07). Probation system of RM is a public one. In our Service work professional personnel and they are state functioners. The concept of Probation Service is to monitor the persons whom weren't applied penal sentence and to assist them. The system of probation is a centralized one and is governed by the Ministry of Justice. The growing rate of offences and a great number of prisoners created the need of changing the direction of criminal policies. With the establishment of the probation system, the treatment of prisoners by the society will significantly change. The old supervision system of the internal affairs bodies was transformed into the rehabilitation of offenders. A new structure has been created, that will combine supervision and assistance of the offender and will become a support for the entire society. If we would like to make a description of recent progress in the field, the following events should be mentioned:

- adoption of the Law 297 of 24.02.99 on social reintegration of people released from prison;
- entry into force on 12.06.03 of the Criminal Code and Criminal Procedures Code;
- the Execution Code enters into force in July 2005;
- by the Government Decision No.1643 of 31.12.03 the regulation on the execution of criminal punishment in the form of unpaid community work is approved;
- initial piloting of unpaid community work in Ungheni, Nisporeni and Chisinau (January-March 2004);
- training of the staff of execution agencies, of local public administration authorities regarding the methods of execution of unpaid community work punishment;
- the IPR pilot-project, financed by UNICEF Moldova, on pre-sentence probation for minors;
- establishment of the Directorate for the Execution of Non-custodial Criminal Sentences, Government Decision No. 312 of 15.03.2002;
- the Government Decision No. 1059 of 27.09.04 provides that the supervision of execution of judicial decisions applying a non-custodial sentence for all categories of convicts, adults and minors, becomes the task of the Execution Department, through the Directorate for Execution of Non-custodial Criminal Sentences;
- an IPR project financed by Soros-Foundation Moldova (SFM) and the Swedish Agency for International Development and Cooperation (SIDA) creates Centres for Community Justice (post-penitentiary probation);
- in 2005 the Execution Code enters into force, providing probation activities;
- the Government Decision No. 44 of 12.01.07 reorganizes the Directorate for execution of non-custodial criminal sentences into Directorate for Probation and 125 staff members are allotted for the probation activity- creation of the State Probation Service;
- UNICEF-Moldova employs an international expert for the development of the plan for recruiting and monitoring of the staff that will perform activities of probation with the minors;
- the draft law on probation is developed.

### **1.3 Probation activities in a nutshell**

As it was mentioned, while the supervision activity of individuals released from criminal sentence existed for a longer time, the practical activity of pre-sentence probation started in 2004 through a pilot-project. Starting from 1 January 2004, the IPR began drafting pre-sentence reports about minors. This activity was carried out according to the program "Alternative to detention and legal assistance for children in the criminal justice system" financed by UNICEF-Moldova. The reports are developed by the experts in psychology and social assistance of IPR who are working in the execution agencies. Thus, the current directions of probation activity can be divided into:

- development of pre-sentence reports for psychosocial assessment of minors;
- supervision of people released from criminal punishment- conviction with conditional suspension of punishment execution, art.90 Criminal Code of RM; conditional release from punishment before term, art.91 of the Criminal Code of RM; postponement of sentence execution for pregnant women or women with children under the age of 8, art. 96 of the Criminal Code;
- execution of criminal punishment in form of unpaid community work- art. 67 of the Criminal Code of RM;
- release from punishment of minors, art.93 CC;
- activity in the penitentiary, art. 237 EC RM;
- post-penitentiary activity (Law on social reintegration of people released from prisons, No.297-XIV of 24.02.99).

## **2 LEGISLATIVE BASIS AND MISSION**

### **2.1 Legislative basis**

In the Republic of Moldova the role of probation is certainly identified and acknowledged as having many advantages. The legal framework favourable to the implementation of community sentences has already been developed. The provisions of the Criminal Code (art. 54, 67, 90, 91, 93, 96, 104) and of the Criminal Procedures Code (art. 385, 475, 485 CPP RM), regulate the alternatives to detention already at the stage of criminal prosecution, as well as create a mainly educating punishment system for minors. New institutions, such as unpaid community work are only an example of that. The Criminal Procedures Code provides that when issuing a sentence, the court decides what punishment shall be applied to the culprit taking into consideration the recommendations of the re-socialization service, if such an enquiry has been made (art. 385). Within the criminal prosecution and trial of cases involving minors, a social enquiry shall be requested, and presentation of necessary documents and other criminal prosecution and judiciary actions shall be performed (art.485 CPP RM), this activity is done by the Probation Service (conform GD 44 from 1.01.07). When issuing a sentence in a case involving minors, besides the questions mentioned in art. 385, the court shall also examine the possibility of release from criminal punishment of the minor according to art.93 of the Criminal Code or conditional suspension of the punishment according to art.90 of the Criminal Code. In case

of release of the minor from criminal punishment with his admission into a special education and re-education or into a treatment and re-education institution, as well as with application of constraint measures of educational nature, provided in art.104 of the Criminal Code, the court informs about it the specialized state body (Probation Service) which will be in charge of controlling the behaviour of the convicted minor. The Criminal Code of the Republic of Moldova provides the applicable requirements and obligations in the period of execution of the non-custodial punishment (art. 64, 65, 66, 67, 73, 74) and release from criminal punishment (art. 90, 91, 92, 96). Particularly, constraint measures of educational nature are provided for minors: warning, supervision by parents, tutors or specialized state bodies; compelling the minor to repair the caused damages, compelling the minor to undergo a medical psychological treatment, enlisting of the minor into a special education or re-education institution or a treatment and re-education institution (art. 54, 93, 104).

The Execution Code provides that the execution of the punishment by application of a fine, of the punishment consisting in deprivation of the right to hold certain positions or to carry out a certain activity, deprivation of the military degree, a special title, qualification (classification) and of state distinctions, punishment in form of unpaid community work, conditional suspension of punishment execution, conditional release from punishment before term, replacement of the non-enforced part of the punishment with a milder one, release from punishment of minors, postponement of the execution of the punishment for pregnant women and women with children under the age of 8, as well as of execution of punishment applied to legal entities are ensured by the execution agencies (art. 170 EC RM). The execution agency supervises and performs probation measures for people for which the punishment execution has been suspended, who have been conditionally released from punishment before term, including those related to obeying of restrictions established by court for the provided period (art.art.279, 281, 288). All decisions related to the execution of educational constraint measures are sent by the court to the Probation Service in the area of residence of the minor (art.311 EC RM).

According to art.237 EC RM the administration of the prison encourages the contacts of the prisoners with the penitentiary Probation Service and the representatives of civil society who are able to provide legal and social assistance to prisoners, as well as with people able to help in their social reintegration and adaptation. Art. 233 EC RM directly provides the establishment of the penitentiary Probation Service in the penitentiary system. The prisoner can be granted amnesty with the reduction of the term of punishment or released with the establishment of a probation period. In this case, the person is supervised by the Probation Service during the probation period (art. 292 EC RM). Article 293 of the Execution Code provides that the convict can be pardoned through a decree of the President of the Republic of Moldova. The pardoned person shall be given a probation period. During the probation period the Probation Service supervises the behaviour of the pardoned person. The President of the Republic of Moldova is annually informed about the behaviour of the culprit. Upon the expiry of the provided probation period, the competent institution or body informs within 5 days the President of the Republic of Moldova and the court that has examined the facts and law during trial of the case about the cessation of

the supervision measures. Administrative Acts: Government Decision no. 312 of 15.03.2002 creating the Directorate for Execution of Non-custodial Criminal Punishments:

- Government Decision no.1643 of 31.12.03 approving the regulations on the execution of criminal punishment in form of unpaid community work (DG no.1643 of 31.12.03);
- Government Decision no.1059 of 27.09.04 providing that the supervision of execution of judicial decisions applying a non-custodial punishment for all categories of convicts, adults and minors shall be performed by the Directorate for Execution of Non-custodial Criminal Punishments;
- Government Decision no.44 of 12.01.07 reorganizes the Directorate for Execution of Non-custodial Criminal Punishments into Directorate for Probation and 125 staff members are allotted for the probation activity, i.e. the State Probation Service is created.

## **2.2 Mission and mission statement**

The mission and the objectives of the Probation Service are to protect the community and to prevent repeated offences, to assist and to provide counselling for the successful reintegration of the offenders into the community. The tasks of probation are to correct and to re-educate people who have committed offences, to support their re-socialization and reintegration into society through an established intervention plan, in order to increase the efficiency of the criminal justice system and the importance of the concept of individualization of criminal liability, to succeed in promotion of the adequate behaviour of people in conflict with criminal law, observance of interdictions and legal requirements by supervised people, prevention of new offences and their rehabilitation. In their work, the Probation Counsellor seeks to optimally use the resources provided by public authorities and civil society to facilitate the fulfilment of objectives of probation activities. For this purpose, the Probation Counsellor cooperates with the staff of the Ministry of Internal Affairs, with the prosecutor's office, representatives of local public administration, social protection structures, education institutions, healthcare institutions, penitentiaries, religious communities, territorial employment agencies, civil associations, foundations, etc. If necessary, the Probation Service signs the corresponding cooperation agreements.

Probation Services cooperate with the employees specialized in assistance and counselling from the Social, Education and Probation Service of penitentiary institutions of the Republic of Moldova, for the purpose of guiding and supporting social reintegration of persons sentenced to deprivation of liberty. If it is necessary to talk to the imprisoned person, the employees of the Probation Service have the right to visit the beneficiaries who are in pre-trial detention or who are serving their imprisonment sentence. If necessary, the Probation Service, in cooperation with social security structures, education institutions, healthcare institutions, registered churches and religious organizations, civil associations, foundations and other humanitarian associations coordinates this cooperation in order to use probation and mediation in a criminal trial. During the period of activity, the Probation Service cooperates with the structures

appointed by a special law to ensure social and legal protection of children and provide assistance to inadapted citizens.

In relation to the probation activity, the employees of the Probation Service have the right to request necessary data and information from state bodies, individuals and legal entities that are obliged, if there is no law or regulation that stipulates otherwise, to provide the requested data immediately. If a state body, an individual or a legal entity groundlessly refuses to satisfy the submitted request, the employee of the Probation Service notifies the prosecutor for the necessary measures to be taken. The Probation Counsellor can be helped in their work by unofficial assistants (social assistants), who with or without being paid, at their own initiative and upon the request of the Probation Counsellor, can facilitate probation activities. The Probation Counsellor shall periodically provide information to the public opinion regarding the developments in the probation activity. In relation to probation responsibilities, the Probation Service has the right to obtain information and data about the beneficiary's personality, which are relevant for the court decision.

### **2.3 Crime prevention**

In the process of reformation of the criminal justice system in Moldova, special attention is paid to alternative punishments to detention enforced for the people convicted to minor and less serious offences of conditional and community criminal punishments, aiming at significantly reducing the number of prisoners and organizing their correction outside the prison, placed under supervision of staff specially trained in this field; educational preventive measures and measures of social rehabilitation based on a complex of measures being provided. The implementation of the institute of probation and of alternatives to detention in Moldova is also based on the recommendations of the Committee of Ministers of the Council of Europe. Therefore the development of probation in Moldova is very important for the society. The probation activity is based on the principles:

- respect for human rights and human dignity and non-admitting of any kind of discrimination;
- permanent support and encouragement of supervised, assisted and counselled people for their reintegration into the society and for the undertaking of responsibility for one's own actions through the formation of a correct attitude towards the law and the rules of social behaviour;
- opportunities, as the probation activity is carried out at any stage of the criminal process in order to ensure an efficient social response to the committed deed, depending on the psychosocial situation and the circumstances of the offence and to achieve a successful intervention for the settlement of the problems of the person in conflict with the law;
- participation of the community in the process of assistance, professional counselling and control;
- differentiation and individualization – probation activities are selected depending on the psychosocial situation and the committed offence.

The development of probation is a priority of the criminal policy of the state. These concerns are provided in the Action Plan of the Ministry of Justice on the enforcement of the Republic of Moldova-European Union Action Plan. The

improvement of the legal framework and of the mechanism of enforcement of probation, development of the law on probation, development and approval of the Concept of Development of the Probation Service, creation of Probation Services, continuous training of the staff of Probation Services are only a part of objectives provided in this document.

Cooperation with law enforcement agencies, local public administration and other non-governmental institutions aims at planning and exercising joint measures, ensuring exchange of information related to the supervision of the convicts and release from punishment. The probation counsellors of the IPR work together with the enforcement agencies.

## **2.4 Victim protection**

One of the most important evolutions in the contemporary thinking and response to the offence phenomenon is the growing interest for restorative justice. This concept emphasizes the importance of the increase of the role of the victims of offences and members of the community, responsibility of the offender towards the people to which he/she caused damage, restoring of emotional and material damage caused to victims and providing, as much as possible, a wide range of opportunities for dialogue, negotiation and settlement of problems in order to obtain a stronger feeling of community safety, settlement of the conflict and compensation for the harm caused to all those involved or affected by the offence. The activity of assistance of the victim in Moldova is not developed. However in June 2007 the Parliament of the Republic of Moldova adopted the Law on Mediation. According to this law, the activity of mediation shall be carried out by individuals on the basis of a license. The objectives of mediation can be described as restorative settlement of the conflict involving actively the victim and the offender in the effort to repair the emotional and material damage caused by the offence; creation of opportunities for the victim and the offender to discuss about the committed offence, to get answers to the questions, to express emotions, to focus on rehabilitation and treatment, development of an acceptable bilateral plan regarding the prejudice caused by the crime. In February 2005, the Mediation Centre was opened in Chisinau (IPR project), specialized in providing mediation services in criminal cases involving minors, victims or offenders. In the process of organization and development of mediation certain conclusions related to the philosophy of restorative justice have been made, first of all related to the position of the victim in the criminal process. While initially mediation was understood as a possibility of cessation of criminal prosecution of an offender, after some experience and analysis of the situation of the victim we came to the idea that the goal of restorative justice is to establish the situation previous to the conflict, through compensation of material damage to the victim and reestablishment of social relations between the parties.

## **3 THE ORGANIZATION OF PROBATION SERVICES**

### **3.1 Main characteristics**

Currently a structure performing probation duties and conducting activities connected to this institution functions in the Republic of Moldova and namely Directorate for Probation of the Execution Department. The Department for Execution of Judicial Decisions, under the Ministry of Justice was established in the Republic of Moldova by Government Decision No.34 in 2002. The Department included the judicial executors service (previously the executors were part of the court staff) and the correction affairs service – a structure of the penitentiary system supervising people convicted to non-custodial punishments.

The Directorate for Probation is a specialized body, which, through the territorial subdivisions of the Department, enforces the community criminal punishments, performs supervision and probation of persons released from criminal punishment, in terms established by the court of law: conditional suspension of the punishment execution (art.90 Criminal Code of the Republic of Moldova), postponement of punishment execution for pregnant women and for women who have children under the age of 8 years ( art.96 CC RM), release on probation before term ( art.91 CC RM), release of minors from criminal liability (art.54 CC RM), release of minors from criminal punishment, (art.93 CC RM); application of constraint measures of educational nature (art.104 CC RM). These persons are in charge of deprivation of a military rank, of a special title, of qualification (classification) and of state distinctions (art.66 CC RM), application of fines as criminal punishment (art.64 CC RM), unpaid community work (art.67 CC RM), deprivation of the right to hold certain positions or to carry out a certain activity (art.65 CC RM).

The Institute of Penal Reforms is involved in probation activity through projects financed by Soros-Moldova, SIDA (Sweden), ICCO (Holland), UNICEF-Moldova conducting pre- sentence activity with minors, assisting and counselling persons released from penitentiaries. As mentioned above, the Probation Service of the Ministry of Justice keeps records of and supervises the persons released from criminal sentence and coordinates the execution of non-custodial criminal sentences as well as enforces educational measures for minors. The assistance and conciliation, preparation of pre-sentence reports regarding minors as well as the post penitentiary assistance is provided by the NGO–The Institute of Penal Reforms, Community Justice Centres in collaboration with execution agencies.

### **3.2 Internal organization**

The probation activities are conducted by judicial executors (after the adoption of the Law on Probation – probation counsellors) and probation counsellors of the IPR. The judicial executor is a public servant and shall meet the following requirements: be a citizen of the RM, not have criminal record, have university degree and pass an intelligence test. While exercising the duties, the staff shall observe professional standards and legislation, other regulatory acts, court decisions, etc. They shall act with responsibility, respect people's fundamental rights and liberties and human dignity. They also must observe the principle of confidentiality of information, except for information that can be regarded as an offence. If the executor does not fulfil his/her duties appropriately, sanctions can be applied in accordance with Labour legislation.

### **3.2.1 Probation workers**

The Directorate for Execution of Non-custodial Criminal Punishments was established within the central office of the Department for Execution of Judicial Decisions. In 2007, according to Government decision No.44 of 12 January, the Directorate for Execution of Non-custodial Criminal Punishments was reorganized into Directorate for Probation and additional 125 staff members were employed for probation activity. The process of hiring of the personnel has been finished in 2007 and starting from 2008 all candidates started their activity. The subdivisions of the Execution Department are the 42 execution agencies (according to territorial administrative division of Moldova). The execution agencies include the section for enforcement of civil and administrative documents and the probation section. The probation section employees are public servants (employed by the state). The probation sections employ 169 persons and the Directorate for Probation – 9 persons (GD No.44 of 12.01.07). Currently, not all the positions are taken, because staff is being recruited. In order to insure probation measures, probation counsellors have the following main duties:

- keeping record of supervised persons according to registers, personal files, including by electronic methods;
- supervising the fulfilment by supervised persons of obligations established by Legislation and Court;
- organizing control of supervised persons` behaviour;
- solving issues and problems occurring during probation process;
- cooperating with local public bodies, non- governmental organizations, police, and other law bodies;
- checking the level of educational work with minors within education institutions, at the employment place, etc.;
- providing assistance and counselling to clients who signed the agreement.
- visiting and checking the supervised persons at their place of residence – at home, place of study, work, etc.;
- exercising control over execution by the administration of competent bodies of conditions of non -custodial sentence.

### **3.2.2 Education, training requirements and opportunities**

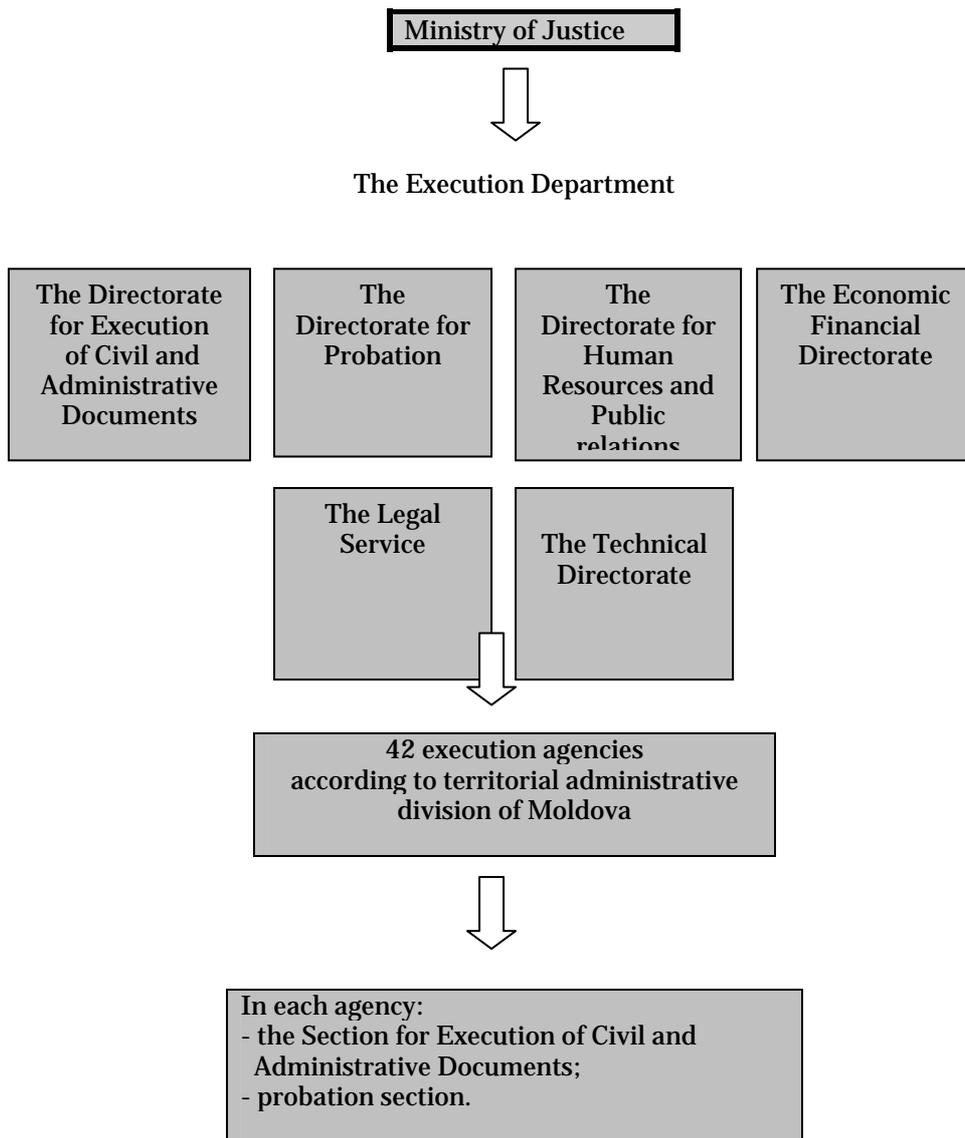
The probation staff will be trained through the National Institute of Justice, established early in 2007. The IPR and other organizations (UNICEF Moldova) also organize trainings, seminars. The Training Program of the National Institute of Justice includes initial 3-month training and continues, depending on the employee's field of activity. Staff training is also stipulated in the Action Plan of the Ministry of Justice on the implementation of the Republic of Moldova – European Union Action Plan:

- to develop an objective and transparent staff recruiting mechanism;
- to develop a complex program to train probation counsellors;
- to organize formation trainings for counsellors;
- to develop individual professional performance assessment norms;
- to issue the probation counsellor's methodological handbook;

- to develop efficient programs for probation counsellor's assistance, counselling and supervision.

### 3.2.3 Other organizations involved in probation work

Figure 1



## 4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

### 4.1 General

Probation and counselling are conducted through direct contacts with the supervised person, other persons and by conducting joint measures with competent bodies for the purpose of organizing different pedagogical and psychological activities aimed at correcting the behaviour of supervised persons and their social rehabilitation.

**Table1: Activities of Probation during the Different Stages of Criminal Procedure**

	Pre-Trial Phase See: 4.2	Trial and Enforcement Phase See: 4.3	Post Release Phase See: 4.4
Preparing a Social Enquiry report	x		
Mediation/victim support	x		
Supervising / organizing etc. community service		x	
Supervising etc. drug/alcohol treatment programs		x (SP prison)	
Supervising etc. other community sanctions, namely:		x	x
<i>a. fine</i>		x	x
<i>b. deprivation of the right to hold certain positions or to carry out a certain activity;</i>		x	x
<i>c. release from punishment of minors</i>		x	x
<i>d. application of constraint measures of an educational nature</i>		x	
<i>e. unpaid community work;</i>		x	
Pre - sentence report	x		
Supervising etc. sanction of probation		x	x
Supervising etc. suspended sentence		x	x
Supervising etc. semi-detention		x (SP prison)	
Supervising etc. conditional sentence		x	x
Assistance / support to prisoners in prison		x (SP prison)	x
Supervising etc. conditional release/parole		x	x
Advisory report with respect to amnesty / pardon		x	x
Assistance / support to persons who are granted amnesty / pardon.		x	x



## **4.2 Pre-trial phase**

### **4.2.1 General**

The criminal procedure in Moldova is based on modern principles and includes procedural rights and guarantees such as: presumption of innocence, the right to defence, the guarantee of freedom etc. The purpose of criminal prosecution is to collect the necessary evidence regarding the existence of offence, identification of the offender, to determine whether the case should be sent to court according to the law in order to determine the punishment.

The criminal prosecution body must undertake all measures stipulated by law to completely and objectively research all aspects and circumstances of the case in order to find out the truth. The criminal prosecution is performed in a reasonable term. The criminal prosecution time limit for a specific trial is established by the prosecutor by means of a resolution, depending on trial complexity and behaviour of participants to the trial. Generally speaking, the criminal trial is the activity of criminal prosecution bodies and court bodies with participation of parties to the trial and other persons, carried out in accordance with the provisions of the Criminal Procedures Code. According to the Procedures Code of RM it is carried out by the prosecutor and criminal prosecution officer. As for minors, criminal prosecution is carried out by prosecutor only. In criminal trials justice is enforced by the Supreme Court of Justice, the courts of appeal and prosecutors, according to territorial competence. Besides the ordinary court system, there is the Constitutional Court, which can be directly informed about certain trials and the District Economic Prosecutor's Office and the Economic Court of Appeal. A range of alternatives to pre-trial detention are stipulated at the criminal prosecution stage. The alternatives are stipulated in art.175 CPC RM (table nr.2). Another alternative measure is conditional suspension of criminal prosecution for 1 year. According to art.510 of CPC RM "Conditional suspension of criminal prosecution and further release of criminal liability may be applied for a person convicted for a minor or less serious crime, who pleads guilty and who does not represent a danger for the society and may be re-educated without application of criminal punishment." The prosecutor issues an ordinance of conditional suspension of criminal prosecution. Applying conditional suspension, the prosecutor establishes one or more of the following obligations:

- to leave the place of residence, only under the conditions established by the prosecutor;
- to communicate to the criminal prosecution body when changing the place of residence;
- not to commit crimes or contraventions;
- to continue work or studies;

The ordinance adopted shall be approved by the superior prosecutor. The conditional suspension cannot be applied to the following persons:

- who have criminal record;
- who are alcoholics and drug abusers;
- persons in responsible positions who abused their function;
- who had committed crimes against the security of the state;

- who did not repair the damages caused by their crime.

**Table 2: Alternatives during criminal prosecution stage**

Alternatives to pre-trial detention	interdiction to leave the locality; interdiction to leave the country; the guarantee of a person; the guarantee of an organization; the temporary suspension of the driver's license; placing a military under supervision; placing a minor under supervision; temporary release under; judicial control; temporary release on bail; home arrest.
Conditions for conditional release from punishment	termination of criminal prosecution; mediation; established restrictions and obligations;

#### **4.2.2 Pre-trial report**

At this stage the pre- sentence report for psychosocial evaluation of the suspect, accused, or culprit is developed (it is compulsory for minors and upon request- for adults) and psychosocial counselling and assistance activities on current problems faced by the suspect, accused, and culprit are conducted. Within pre- sentence probation, the probation counsellor carries out the following activities:

- draws up a compulsory pre-sentence psychosocial personality evaluation report on the minor suspect, accused, culprit;
- at the request of the criminal prosecution body, prosecutor, and court draws up a pre-sentence psychosocial personality evaluation report on the adult suspect, accused, culprit;
- provides assistance and psychological counselling in current problems faced by the suspect, accused or culprit;
- the probation counsellor who has drawn up the pre-sentence psychosocial evaluation report at the request of the criminal prosecution body, prosecutor or court must appear before them.

#### **4.2.3 Mediation**

Mediation is an alternative manner of solving the conflict between parties in an amiable way, with the help of a third party. Mediation is not a process to determine guilt or innocence. Mediation is based on parties` trust in the mediator, as a person able to facilitate the negotiation between them and to assist them in solving the conflict by finding a mutually convenient, efficient and sustainable solution. The mediator is the person who helps reaching an agreement; he helps the parties in conflict to reach an agreement and also supervises the mediation process. The mediator is an impartial third party involved in conflict resolution, having specific knowledge and experience in

conflict resolution, assisting the parties in reaching an acceptable solution. The mediator is impartial, treating both parties involved in conflict equally, showing equidistance towards involved interests. Contrary to traditional conflict resolution methods (when a judge or arbitrator, during a previously established procedure, hears the case through legal representatives of parties and then issues a compulsory decision) the mediator plays the role of a catalyst, helping the parties find a range of possible solutions and chose a mutually convenient solution. The mediator facilitates the negotiations and provides active assistance to parties in choosing the convenient solution. The parties are given the possibility and the power to define their expectations and interests and to develop together solutions to achieve these interests. The information coming from mediation shall not be disclosed or used by parties in another trial or before other bodies, and it shall not be used inadequately for personal interests.

### **4.3 Trial and enforcement phase**

#### **4.3.1 General**

The trial phase starts when the file reaches court. During the trial, the Court must research directly and under all aspects the evidence presented by parties or administrated at their request, including hear the culprits, damaged parties, witnesses, research the material evidence, read the expertise reports, records of the case and other documents, as well as examine other evidence stipulated by the present code. When judging the case, the court creates for accusation and defence necessary conditions for multilateral and complete research of circumstances of the case.

The sanctions that can be applied at this stage are divided into punishments, measures and conditions (table No.3). There are main and complementary punishments. The main punishments can be custodial and non-custodial, most of them are alternatives to detention (conviction with conditional suspension of the punishment execution, postponement of the punishment execution for pregnant women and woman who have children under the age of 8 years, release from punishment before term, release from punishment of minors, application of constraint measures of educational nature, deprivation of a military rank, special title, qualification (classification) and state distinctions, fine, punishment in form of unpaid community work, deprivation of the right to hold certain positions and carry out a certain activity). The measures are divided into custodial and non-custodial. The conditions that can be established by court are compulsory. The criminal punishment (art. 61 CC RM) is a state constraint measure and a means of correction and re-education of the convict applied by the courts, in the name of the law, to individuals who have committed crimes, thus imposing certain restrictions and depriving them of certain rights. Criminal punishment has as a purpose restoration of social equity, correction of the convict, as well as preventing the convicts and other individuals from committing new crimes. According to art.62 of CC the following punishments can be applied to individuals who have committed a crime:

- fine;
- deprivation of the right to hold certain positions or to carry out a certain

- activity;
- deprivation of a military rank, of a special title, of a qualification (classification) and of state distinctions;
- unpaid community work;
- arrest;
- sending to a disciplinary military unit (for serving soldiers);
- prison;
- life detention.

#### **4.3.1.1 Fine**

The fine is a pecuniary sanction. The fine shall be established in conventional units. The conventional unit of the fine equals to 20 lei. The amount of the fine for individuals will be established depending on the character and the seriousness of the committed crime, taking into account the financial situation of the offender, between 150 and 1.000 conventional units, and for crimes committed for profit purposes, up to 5.000 conventional units, taking as a basis the conventional unit at the moment when the crime was committed. Fine is applied as both main punishment and complementary punishment.

#### **4.3.1.2 Deprivation of a military rank, a special title, a qualification (classification) and of state distinctions**

In case of conviction for a serious crime, very serious crime or an extremely serious crime, the court, taking into account the circumstances in which the crime was committed, can deprive of a military rank, a special title, a qualification (classification) and state distinctions. The deprivation of a military rank, a special title, a qualification (classification) and of state distinctions is applied only as a complementary punishment.

#### **4.3.1.3 Deprivation of the right to hold certain positions or to carry out a certain activity**

Depriving of the right to hold certain positions or to carry out certain activities consists of the interdiction to hold certain position or to carry out certain activity having the same character as the one used by the convict to commit the crime. Depriving of the right to hold certain positions or to carry out a certain activity can be established by court for a term of 1 - 5 years. Depriving of the right to hold certain positions or to carry out certain activities can be applied as a complementary punishment and in cases when it is not provided as a punishment for crimes from the special part of the Criminal Code, if, due to the character of the crime committed by the convict while carrying out his function or while performing a certain activity, the court considers that it is impossible for the convict to uphold his right to hold certain positions or to carry out a certain activity.

#### **4.3.1.4 Unpaid community work**

Unpaid community work means getting the convict involved in a non -paid, socially useful activity, outside his basic work or school schedule, determined by the local public administration bodies. Unpaid community work will be established between 60 hours and 240 hours and no more than 4 hours per day. In case of failure of the convict to perform unpaid community work, this punishment will be replaced by arrest, 2 hours of unpaid community work being equivalent to one day of arrest. Unpaid community work cannot be established for individuals recognized as first and second degree disabled persons, militaries, pregnant women, women who have children under the age of 8 years, for minors who are under the age of 16 years and to persons who reached the retirement age. Unpaid community work will be carried out during maximum 18 months, period which will be calculated from the date when the final sentence was pronounced. Unpaid community work can be applied as main punishment or in case of conviction with conditional suspension of the punishment execution – as obligation for the probation term.

#### **4.3.1.5 Sending to a disciplinary military unit**

Serving militaries who committed crimes, can be sent to a disciplinary military unit for a term up to 2 years, as well as in cases when the court, taking into consideration the circumstances of the case and the convict's personality, considers appropriate to send the offender for the same term to a disciplinary military unit instead of up to 2-year term in prison. Sending to a disciplinary military unit instead of prison cannot be applied for persons who previously served a prison punishment

#### **4.3.1.6 Detention**

Detention means depriving of liberty through isolation from his normal environment and through placement, on the basis of the court sentence, for a certain term into a penitentiary institution an individual found guilty of committing a crime. Imprisonment can be established for a term between 6 months and 25 years. In establishing the punishment for a person who, at the moment when he committed the crime was under 18 years of age, the detention term cannot be over 15 years. In establishing the final punishment in case of one crime, the detention punishment cannot be higher than 30 years, and in case of more than one crime, it cannot be higher than 35 years. In case when life detention punishment is changed, as pardon, with a milder punishment, the detention for 35 years shall be applied.

#### **4.3.1.7 Release from criminal punishment**

In establishing a prison punishment the court can decide to conditionally suspend the punishment execution for a probation period (art. 90 CC RM) or postpone the punishment execution (art.96 CC RM). The conditional suspension of punishment execution is applied in case the prison punishment was established for a term no longer than 5 years for intentionally committed crimes and no longer than 7 years for crimes committed by negligence or in case of the

sentence to detention into a disciplinary military unit. The probation term is set for 1 to 5 years. In case of conviction for a crime that caused damages, the court may decide to conditionally suspend the punishment only if when the sentence is pronounced the damage was entirely compensated. The condition to compensate the damage entirely is not compulsory in case of minors or women having children under 8.

For persons who committed serious crimes, very serious crimes and extremely serious crimes, as well as in cases of relapse, conditional suspension will not be applied. Some restrictions and obligations are established. These provisions play an important role in re-socialization of the convict. In case of conviction with conditional suspension of the punishment, complementary punishments can be applied. The Probation Service as a competent body, exercises control of the behaviour of the convict during conditional suspension of the punishment execution, and supervises the observance of obligations and restrictions by the convict. In case of militaries, the corresponding military commandment is in charge with above-mentioned duties.

According to the stipulations of the Criminal Code the postponement of punishment execution is applied only for pregnant women and for women who have children under the age of 8 years except for women convicted to prison for a term longer than 5 years for serious crimes, very serious crimes and extremely serious crimes. The execution of the punishment is postponed until the child reaches the age of 8 years. In this case restrictions and obligations are established as well. If the woman does not take care of child's upbringing or violates other obligations the postponement of the punishment execution can be cancelled and by court decision the woman is sent to prison. The Probation Service is in charge with supervising these categories of convicts. After 8 years the court of law, at the recommendation of the Probation Service, may decide to completely release the woman from punishment or send her to serve her punishment in prison. All depends on the behaviour of the convicted woman.

As for persons who execute their punishment in prison, the criminal legislation also provides for release on probation before term (art.91 CC RM). Release on probation can be applied after the convict served his punishment for a certain period established by court for each particular offence. By applying release on probation before term, the court may oblige the convict to fulfil some obligations for the rest of punishment that was not executed. The control of the behaviour of the individuals released on probation before term and the supervision of observance of obligations (art.288 CE RM) will be exercised by the competent bodies, the Probation Service, as for soldiers, it will be exercised by the corresponding military commandment. Release on probation before term may be accompanied by some obligations and restrictions. In case the released convict does not fulfil all obligations, at the suggestion of the Probation Service he can be sent to prison to execute the term of punishment that was not executed.

#### **4.3.1.8 Life detention**

Life detention is the imprisonment of the convict for the rest of his life. Life detention is applied only for extremely serious crimes. Life detention cannot be applied to women and minors.



**Table 3**

<b>The main punishments</b>	<b>The trial stage</b>	<b>The execution stage</b>
Custodial	Prison	<ul style="list-style-type: none"> <li>-conditional suspension of the punishment execution;</li> <li>-postponement of the punishment execution for pregnant women and women who have children under the age of 8 years;</li> <li>-release from punishment before term;</li> <li>-fine;</li> <li>-deprivation of the right to hold certain positions or to carry out a certain activity.</li> </ul>
Non-custodial	<p>Alternative to prison:</p> <ul style="list-style-type: none"> <li>-conviction with conditional suspension of the punishment execution, postponement of the punishment execution for pregnant women and women who have children under the age of 8 years, release from punishment before term, deprivation of a military rank, of a special title, of a qualification (classification) and of state distinctions;</li> <li>-fine;</li> <li>-deprivation of the right to hold certain positions or to carry out a certain activity;</li> <li>-release from punishment of minors;</li> <li>-application of constraint measures of an educational nature;</li> <li>-unpaid community work;</li> <li>-deprivation of the right to hold certain positions or to carry out a certain activity.</li> </ul>	
Complementary punishments	<ul style="list-style-type: none"> <li>- fine;</li> <li>-deprivation of the right to hold certain positions or to carry out a certain activity;</li> <li>-release from punishment of minors;</li> <li>deprivation of a military rank, of a special title, of a qualification (classification) and of state distinctions.</li> </ul>	
Non-custodial measures	<ul style="list-style-type: none"> <li>-compulsory medical treatment within special healthcare institutions (for alcohol addicts, drug addicts etc);</li> <li>-application of constraint measures of an educational nature (warning; entrusting the minor for strict supervision to parents or persons replacing them or to specialized state bodies; compelling the minor to repair the caused damage, compelling the minor to undergo a psychological rehabilitation treatment).</li> </ul>	

<b>Custodial measures</b>	<b>-placement into a psychiatric institution under strict supervision; -placement of the minor into a special education and re-education institution or treatment and re-education institution after reaching the age of 18 and only until graduating from a secondary school or vocational school.</b>	<b>- compulsory medical treatment (in prison) and after release from prison, if it is necessary to continue the treatment, they will be treated within special medical institutions.</b>
Conditions	Obligations established by court for conditionally released from punishment before term: -not to change the place of residence without the consent of the Probation Service; -not to attend certain places; -to undergo treatment in case of alcohol abusers, drug addicts, and other substances that cause psychological and physical dependencies, infected with a sexually transmitted disease; -to pay material damages to the victim's family; -to repair caused damages in terms established by court; -to work without being paid within a public institution, from 60 to 200 hours, established by court, maximum 4 hours a day, after his work or school.	Obligations and restrictions during the period of release from criminal punishment established by court and by Execution Code (to observe the provisions of criminal legislation on execution, to respect the dignity of other convicts, of the staff of the institution or of the body insuring the execution of punishment (Probation Service), of other persons, to fulfil the legal requests of the administration of the institution or of the body insuring the execution of punishment (Probation Service), to be present when requested by the administration and explain issues connected to punishment execution, to notify beforehand about change of the place of residence and any trip longer than 5 days, to be present at the Probation Service within 5 days after the court decision, to look after the child ( for women with children).

#### **4.3.2 Pre-sentence report**

Evaluation report is a written document of consultative or orientation nature aimed at providing the criminal prosecution body, prosecutor or court with data on the personality of the suspect, accused or culprit, their level of education, behaviour, family environment, circle of friends, factors that influence or can influence their general conduct, prospects of social reintegration, as well as other information expressly indicated by the inquirer in the request. The file of social reintegration contains data regarding the person, the committed deed, the decision of the court, the established obligations, the evaluation report, other necessary documents and the actually conclusion.

#### **4.3.3 Probation procedures and processes**

When establishing the punishment the court shall also take into account the recommendations of the Probation Service, is such an investigation was carried out. When making the decision in a trial involving a minor, the court shall examine the possibility to release the minor from criminal punishment in

accordance with the provisions of art.93 of the Criminal Code or to conditionally suspend the punishment execution by the minor in accordance with the provisions of art.90 of the Criminal Code. In case of minors released from criminal punishment and minors placed into a special education and re-education institution or into a treatment and re-education institution as well as application of constraint measures of educational nature provided in art.104 of the Criminal Code, the court informs about it the corresponding specialized state body, which is responsible of controlling the behaviour of the convict juvenile.

According to the law on mediation, the mediation procedure may be required by any of the parties. The mediation is required with the consent of both parties and at the initiative of the court or, depending on the case, of the criminal prosecution body. In case both parties accept the mediation, they will sign a mediation contract. The mediation procedure starts on the day when both parties in conflict sign the mediation contract. The parties will willingly accept mediation, including after the trial has started, at any of its stages. The authorities, including judicial authorities, shall inform the parties about the possibility and the advantages of using the mediation procedure and will recommend them to apply for it to solve their conflicts.

A court decision shall enter into force on the day it was announced as final. (1) The final court decisions are compulsory for all individuals and legal entities from the country and have executory power on the entire territory of the Republic of Moldova. The collaboration required for the execution of final court decisions is compulsory for all individuals and legal entities. As ground to initiate a probation activity is the court decision on conditional suspension of the punishment execution applied to the defendant, according to art.90 of the CC RM release on probation before term of persons who execute their punishment in prison, according to art.91 of the CC RM, replacement of the non-executed part of the punishment with a milder punishment, according to art. 92 of the CC RM release from criminal punishment of minors, according to art. 93 of the CC RM, postponement of punishment execution for pregnant women and for women who have children under the age of 8 years, amnesty of persons who execute their punishment in prison. The Decree of the President of the Republic of Moldova on granting individual pardon to convicts also serves as ground for probation activity.

#### **4.3.3.1 Conditional suspension of punishment execution.**

By applying release on probation before term, the court may oblige the convict to strictly fulfil the obligations provided by Paragraph (6) of Article 90 for the rest of punishment that was not executed. Release on probation before term may be applied to a convict by the court from the territory of punishment execution, on the basis of the recommendation of the body responsible for control of punishment execution (penitentiary institution, Probation Service). Release on probation before term may be applied only after the convict, who has reached the age of 18 at the moment he committed the crime, executed:

- at least half of the punishment term established for committing a minor offence or for a less serious crime;
- at least two-thirds of the punishment term established for committing a serious

- crime;
- at least three-fourths of the punishment established for committing a very serious or extremely serious crime, as well as of the punishment previously applied to the person released on probation before term, if the release on probation before term was cancelled.

A person, who was sentenced to life detention, may be released on probation before term, if the court finds that the person no longer needs to actually execute the punishment and served at least 35 years in prison. Release on probation before term may be applied to minors only after they served:

- at least one-third of the punishment term established for committing a minor offence or for a less serious crime;
- at least half of the punishment term established for committing a serious crime;
- at least two-thirds of the punishment term established for committing a very serious or extremely serious crime.

If during the probation term the convict violates public order, for which an administrative sanction is applied, or he deliberately avoids performing his obligations established by the court on the application of the release on probation before term, the court, at the recommendation of the body executing the punishment may issue an order regarding the cancellation of the release on probation before term and sending the convict to execute the term of his punishment that was not executed; Secondly, if the convict commits a new crime by negligence, the court will decide whether to cancel or maintain release on probation. Finally, if the convict deliberately commits a new crime; the court will establish his punishment according to the rules provided by Article 85. The punishment is applied according to the same rules in case of a new crime committed by negligence, if the court cancels the release on probation before term. By applying conditional suspension, the court can compel the convict not to change his place of residence without the consent of the competent body, not to attend certain places, to undergo certain treatments in cases of alcohol or drug abuse, or other substances that cause psychological and physical dependencies, or venereal disease, to provide financial support to the family of the victim or to compensate caused damages within a term set by the court;

During the probation term, the court, at the suggestion of the body performing control of the behaviour of the convict during conditional suspension of punishment execution, can cancel entirely or partially, the previously established obligations or can add new ones. If after at least half of the probation term has expired, the convict with a conditional suspension of punishment execution had a proper and exemplary behaviour, the court, at the recommendation of the body controlling the behaviour of the convict released on probation, may issue an order regarding the cancellation of the conviction and of the criminal record. In case, during the probation term, the convict is released on probation systematically violates the established obligations or public order, being submitted to administrative liability, the court, at the recommendation of the body performing control of the behaviour of the convicts with conditional suspension of the punishment execution, may issue an order regarding the cancellation of the release on probation of the convict and his sending to prison to execute his punishment, established by the sentence. In case when, during the

probation term, the convict released on probation from executing his punishment commits a new crime, the court applies a punishment for more than one crime. In case, during the probation term, the convict is released on probation from executing his punishment commits a crime by negligence or a deliberate less serious crime, the matter of cancellation or maintaining the release on probation will be solved by the court.

### **4.3.3.2 Visits**

Within 10 working days from the date of issue of court decision, or decision on pardon, the place, date and time of the first visit are set and the visit takes place. In the case of minors, the first visit is carried out in the presence of parents or persons replacing them, teacher and/or psychologist (if the latter is not mentioned in the staff list), of the worker from children's rights protection body. During the first visit:

- information is provided about the purpose, objectives and method of supervision, probation measures, obligations imposed by the court for the period of supervision and obligations stipulated in the Execution Code, as well as about consequences of failure to fulfil the obligations;
- information is provided about the rights and obligations of the supervised person;
- it is explained that the supervised person must observe the rules of social behaviour;
- the contact telephone number is provided;
- information is requested about the financial-material situation, living conditions, place of work or studies, period of employment and education and about dependants or caregivers of the person;
- explanation is provided about the need to inform the probation officer in writing, in case of change of place of living, residence, place of studies or place of work;
- the notified issues are written in a report that is signed by the probation officer and the supervised person.

For the probation period, discussions with the supervised person are carried out regularly (at least every month). The discussions can be also attended by the relatives of the supervised person or other persons that can positively influence the behaviour of the latter. The results of the discussion are recorded in a report signed by the attendees. The report is annexed to the personal file.

### **4.3.3.3 Supervision of execution of the obligation not to leave the place of residence**

Periodical checks are organized at the supervised persons' home to verify if the person did not change the residence. If the court did not establish the obligation not to leave the place of residence, the supervised person can leave the place of residence for a period that exceeds 5 days. In this case, the supervised person writes an application to the probation officer indicating the reason. If the person leaves in order to change the residence permanently, the file is sent to the corresponding subdivision. In case the person leaves the place of residence temporarily, the supervision plan of the convicted is modified indicating the period for execution of probation measures (schedule of visits, other measures).

### **4.3.3.4 Supervision in case of obligation not to attend certain places**

Periodically, information is required from other persons involved in the supervision process if the person respects the interdictions. For this purpose,

permanent contact is maintained with representatives of local public authorities, police, family of the person, and with any other individual or legal entity that could provide information about violation by the person of the interdiction to attend certain places. In case when there are data about the non-fulfilment of this obligation by the supervised person, the data are checked, including by requesting explanation from the supervised person. If the person is found in a place that the person is not allowed to attend, a protocol is drafted on the non-fulfilment of the interdiction.

#### **4.3.3.5 Supervision in case of obligation to provide material support to the victim's family, to repair the caused damage within the term set by the court**

In case of supervision of the execution of the obligation to provide material support to the victim's family and/or to repay the caused damage, the income and the material situation of the supervised person will be taken into account being periodically checked. The obligation to repay the caused damage within the term set by the court – implies checking whether the supervised person has repaid the damage or periodically repays it (periodical payments etc.) and checking whether the damage is fully repaid when the term set by the court expires. In this context, written information is requested periodically (at least quarterly) from the supervised person about the measures undertaken for the fulfilment of the material obligation. This information is also checked by requesting some confirmation documents. Permanent contact with the victim's family, the individual or the legal entity to whom damage was caused is maintained, if it is possible, and written information is requested from them about the repayment of the damage.

#### **4.3.3.6 Supervision in case of obligation to carry out unpaid community work**

In case of obligation to carry out unpaid community work, the probation officer undertakes all the measures established in the Regulations on the execution of criminal punishment in the form of unpaid community work.

#### **4.3.3.7 Postponement of punishment execution**

Convicted pregnant women and women who have children under the age of 8 years, except for women convicted to prison for a term longer than 5 years for serious crimes, very serious crimes and extremely serious crimes against a person, the court may postpone the execution of the punishment until the child reaches the age of 8 years. In case when the woman abandoned the child or does not take care of the child, after the notice sent by the Probation Service, the court at the recommendation of the control body, may cancel the postponement of the punishment execution and send the convict to serve her punishment in the place established in compliance with the court sentence. In the moment when the child reaches the age of 8 years, the court:

- releases the convict from serving the non-executed part of the punishment;

- changes the non-executed part of the punishment with a milder punishment;
- sends the convict to the corresponding institution for execution of the non-executed part of the punishment.

#### **4.3.3.8 Replacement of punishment by unpaid community work**

According to the Criminal Code of the Republic of Moldova (art.67) in case the convict avoids unpaid community work, this punishment can be replaced by arrest, 2 hours of unpaid community work being equivalent to one day of arrest. Art.64 of CC stipulates that the non-paid fine, established as punishment can be replaced by unpaid community work, 60 hours of unpaid community work being equivalent to 50 conventional units. Unpaid community work will be carried out within a maximum period of 18 months, which will be calculated from the date when the final sentence was pronounced.

In the execution of non-custodial sanctions, the probation service has an important role, especially in relation to supervision of persons released from criminal punishment and unpaid community work. The grounds for probation activity are the decisions of the court to release from criminal punishment. The grounds for probation activity are also the Decrees of Moldovan President on individual pardon for persons convicted to prison.

#### **4.3.3.9 Unpaid community work**

The punishment in the form of unpaid community work is executed in social facilities at the convicted person's place of residence. Social facilities with special destination are determined by mayor's office, together with the execution service, in organizations, institutions and state enterprises, which offer social services, irrespective of their organizational-legal form (hereinafter referred to as – organizations). The duration of the unpaid community work cannot exceed four hours – on the days when the convicted person is not at his/her main place of work, at work or in classes, and two hours – on working days, after the end of work or classes, and four hours with the convicted person's consent. The term of unpaid community work in which the convicted person executes the punishment is calculated in hours.

#### **4.3.3.10 Termination of probation activities**

The persons convicted with conditional suspension of punishment execution, with conditional release from criminal punishment before term are excluded from the registry of convicts through a resolution of the probation officer that is kept in the personal file of the supervised person. Supervised women who are pregnant or have children under 8 years old, whose punishment execution has been postponed, can be excluded from the registry only based on court decision, and issued upon request of the probation officer, in compliance with art.96 of the Criminal Code of the Republic of Moldova.

#### **4.4 Post-release phase**

During the penitentiary probation, the probation officer upon request of the Social-Educational and Probation Service within penitentiary institutions, develops and applies programs on civic, ethical and moral education, professional training, educational work and psycho-social therapy programs,

providing assistance for release from the penitentiary. For this purpose, the probation officer, in cooperation with the Social-Educational and Probation Service within the penitentiary administration contributes to:

- creation of social adaptation sectors in the penitentiaries, which offer the convicted persons the possibility to acquire skills and abilities, to obtain some psychological, moral and practical skills for life in liberty, notions about the basic legislation principles and norms, including provisions regarding the use of workforce and medical insurance;
- establishment of preliminary official contacts with specialized institutions to create possibilities for professional training, professional re-qualification in compliance with the requirements on the labour market;
- establishment of preliminary official contacts with employment agencies with a view to provide truthful information to the convicted persons about vacancies and to select the appropriate place of work, in order to facilitate their registration with the employment agency;
- establishment of contacts with specialized agencies to facilitate, upon request, the rent of a house, for persons who do not have relatives or other social relations;
- establishment of contacts with specialized agencies to facilitate, upon request, the further placement of older people and of Ist and IInd degree disabled in placement institutions for older people;
- development and examination of proposals for the creation of a unique and efficient system for social adaptation of persons released from penitentiaries;
- development and improvement of short-term and long-term programs for social adaptation of persons released from penitentiaries;
- making suggestions regarding the government policy in the field of social adaptation of persons released from penitentiaries;
- coordination of the activity of representatives of other central public authorities, non-governmental organizations, local public authorities, the activity of which aims at or is related to post-penitentiary probation;
- implementation of programs for social correction of the convicted persons;
- according to art.88 p.“e” of the Constitution of the Republic of Moldova, the President of the Republic of Moldova can release a person or change the punishment. In case of release due to pardon the probation term for the rest of punishment can be established (release on probation before term).

#### **4.5 Care and after-care outside the criminal justice system**

The activity in the penitentiary is carried out by the Social, Education and Probation Service of the administration of the penitentiary (art. 223 EC RM). Here programs of civil, ethic and moral education, educational work as well as psychosocial therapy programs are performed, providing assistance for release from the prison. According to art.302 of the EC of RM the administration of the penitentiary informs the local public administration authorities and the regional employment agency about the release of the prisoner, about his studies, work skills and specialization at least 1 month before the arrest term expires or at least 3 months before the imprisonment sentence expires. The administration of the penitentiary ensures the explanation of the provisions of labour legislation on

forms of employment and on the right to single allowance. In cases when the convict wishes to be employed via the National Employment Agency in the area of residence, the administration of the penitentiary sends the application to the Regional Employment Agency within 5 days. The convicts with a 1st or 2nd degree disability, as well as male convicts above the age of 65 and women over 60 years can request placement in homes for disabled or old people. The administration of the penitentiary sends the request of the convicts to the social assistance body within 5 days. The post-penitentiary activity aims at assisting and supporting people released from places of detention in their reintegration in the society after the release. This activity is presently carried out by the IPR within the program "Marginalized Groups. Social Reintegration of Prisoners" with financial support of the Swedish Agency for International Development and Cooperation" (SIDA) and Soros-Foundation Moldova.

#### **4.5.1 Juvenile probation**

##### **4.5.1.1 General provisions**

Probation in case of minors is carried out based on the obligation to respect the best interest of the child and has the following objectives: temporary protection of the child in difficulty, socialization and reintegration of the child into the biological, extended or adoptive family and in community. The probation actions with respect to minors are focused on ensuring psycho-pedagogical rehabilitation of the personality of the child in difficulty, using an individual approach in every case taking in account the age and individual features, establishing and maintaining relations with child protection services in the community where the child is (re) integrated, monitoring pre- and post-integration situation of the minor and his/her family in which the child is (re) integrated, developing the capacity of the family and community to ensure assistance of minors and to prevent the risk of child institutionalisation and getting in difficulty. Finally, any relation with mass media regarding a minor, on whom probation measures are applied, must be dealt with only from the perspective of observing the best interest of the child.

In carrying out probation activities, the probation officer will participate in development and approval of sector and local programs in the field of child and family protection, development and application of the monitoring and evaluation system for child and family protection services, creation of an information system at national and local level to include data about the child and families in difficulty or at risk, institutions of child and family protection, development and promotion of viable models of community-based child and family protection services: services to prevent getting of children in difficulty and in the residential care and education system, social assistance services for children and families at risk and in difficulty and development of the mechanism for involvement of private sector in the settlement of child and family problems and creation of community-based social protection services.

##### **4.5.2 Sentence probation**

Sentence probation activities for juveniles in the Republic of Moldova have been initiated during the period when activities of pre-sentence psychological evaluation reports drafting were piloted. Sentence probation activities for juveniles are implemented by execution agencies (Probation Service) and not internal affairs agencies as of September 2004 by Government Decision No. 1059. The Institute for Penal Reforms participated in this process. Therefore, the goal for this period was to determine current possibilities and necessities that can be realized in the Republic of Moldova in relation to probation activities, which was very useful in piloting the project in three regions by probation counsellors from the Institute for Penal Reforms. In 2005 cooperation was initiated with execution agencies. These activities include applying certain work tools (personal record, psycho-social surveys, intervention plan, evaluation surveys, etc.) that can lead to a positive result. The second area in the activity of probation counsellors represents the intervention in specific cases based on psychosocial problems identified. Juveniles convicted for a minor or less serious offence may be released from criminal liability or punishment by the court (Art. 54, 93,104, Criminal Code of the Republic of Moldova). The court can apply the following constraint measures of educational nature:

- a warning;
- placing the juvenile under the supervision of parents, people who replace them or specialized state bodies;
- obliging the juvenile to repair the damages;
- obliging the juvenile to undergo a psychological rehabilitation treatment;
- placing the juvenile in a special education or re-education institution or in a treatment and re-education institution.

In case the court decides to apply warning as punishment, the probation counsellor invites the juvenile to pick up the written warning against signature within a 5-day period. In case the court decides to place the juvenile under the supervision of parents, people who replace them or specialized state bodies as punishment, the probation counsellor invites the above-mentioned persons and drafts a report within a 5-day period which is signed by the probation counsellor, the juvenile and responsible persons. In case the court sentences the juvenile to undergo a psychological rehabilitation treatment, he contacts the child rights protection institution and the psychological rehabilitation treatment institution located in the area where the juvenile lives within a 5-day period, that jointly plan educational activities. Information on the juvenile's behaviour and attitude regarding measures taken is requested from the above-stated bodies. When the treatment is completed, the results are collected and a report with corresponding conclusions is drafted. In case the court decides to place the juvenile in a special education and re-education institution or in a treatment and re-education institution, the probation counsellor invites the juvenile's parents, people who replace them and sets the departure date to the institution within a 5-day period. In the established day, the probation counsellor goes with the minor to the institution and at arrival presents the court decision to the head of this institution and introduces the minor. The submitting-taking over report is developed. In case the minor hides, the court is notified in order to start searching for him.

When discovering a juvenile whose behaviour questions his psychological condition the probation counsellor recommends his parents or persons who replace them to take the child for a psychiatric evaluation. It is determined whether the juvenile has a psychiatric record. Information about these juveniles is sent to the local psychiatric institution. The date, reason for registration of the patient, short description of the committed offence, and specific data on any psychological disorder are being provided. If the juvenile represents a risk for himself or the society, the doctors are advised to isolate him according to the situation. Conditional release from punishment before term (Art. 91 of the Criminal Code of the Republic of Moldova) can be applied to juveniles if they served:

- at least one-third of their sentence for committing a minor or less serious offence;
- at least half of their sentence for committing a serious offence;
- at least two-thirds of their sentence set for committing a very serious or extremely serious offence;

#### **4.5.3 Preparing the convict for release**

Social assistants and psychologists from penitentiaries where juveniles are imprisoned (there are two of them for young men and women) carry out psychosocial juvenile assessments, intervene in specific cases, participate in trainings organized by the Institute for Penal Reforms, provide informational support. Assessment activities are intended for three categories of beneficiaries: newly arrived juveniles in penitentiary institutions; juveniles who continue to serve their term; juveniles or young people who will soon be released from the penitentiary. Social assistants and psychologists use two main methods to assess the psychosocial situation of juveniles: interview and psychosocial surveys. According to the results of the psychosocial assessments and the term left to be executed, individual working plans are drafted for each juvenile convict. Activities are carried out within the program according to this plan and each juvenile's personality and psychosocial situation. Examination, filing out, record keeping of each file is important in managing activities of social assistants and psychologists. Record keeping of each file involves registering activities the juvenile is involved in, their results or other important information.

#### **4.5.4 Unpaid community work**

The piloting of community service for juveniles included the establishment of local committees and selection of local coordinators and actual outreach work. As part of the first stage of activity, which was carried out in September 2003 – September 2004, a sector for piloting community service was identified, and namely the Centre sector of Chisinau city, and information activities for specialists involved in the project were carried out (round tables for judges, prosecutors, enforcement officers etc.). A Local Committee for coordination of piloting activities and development of proper community service in parallel with piloting of pre-sentence probation was established. Based on obtained results at the end of the first year of activity, especially with regard to low level of

participation of judges, the decision was made to extend piloting of such punishment of juveniles in the city of Chisinau and Ungheni and Cahul regions where Community Justice Centres were created. In order to coordinate the implementation of community service and pre-sentence probation in piloted regions, local committees were established, made of key persons within courts, execution offices, prosecutor's office, internal affairs bodies, and local public administration. Two additional local Committees were created in the Chisinau municipality, one comprised of representatives of the Centre and Botanica sector and the other from representatives of Buiucani, Ciocana and Riscani sector. Aiming at creating a mechanism for applying community service, all municipal sectors authorities within Chisinau municipality were approached to develop a list of works for persons sentenced to community service, as well as to determine the type of works for juveniles and adults. After cooperating with representative of municipal sectors authorities, it became obvious that it is necessary to explain the specifics of punishment with community service, method of implementing this punishment for children. Useful information for decision-makers within organizations where the convicted juvenile serves his community service sentence is provided by the Institute for Penal Reforms.

#### **4.5.5 Mediation**

As of February 1, 2005 the mediation in criminal cases involving juveniles is implemented in Chisinau municipality. The creation of the Centre for Mediation within the Institute for Penal Reforms was possible due to financial support of UNICEF Moldova in partnership with the Institute for Penal Reforms, which is financed by ICCO and CORDAID Foundations. Implementation of mediation in criminal cases was preceded by an information and training campaign for mediators and employees from legal institutions. The challenges of the first stage of mediation were the following: nature of offences committed by juveniles, inactivity of legal bodies and lack of knowledge in the society on the mediation process. Informing mediators at criminal prosecution stage is successful because the mediation institution is essentially an alternative to the classical criminal process. Problems that arise in mediation at this stage are related to insufficient time dedicated to mediation activities. Certainly, the mediation procedure can continue during the trial period, although mediators try to fulfil their mission until this stage, so that criminal prosecutors do not lose their trust in the mediation process. After the analysis of offences committed by juveniles, it becomes clear that these are of economic nature and are committed in groups. Offences committed in groups, like theft, are automatically classified as serious offences and are not under the incidence of article 109 of the Criminal Code.

## **5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION**

### **5.1 Finances**

Probation Service, a government organization is financed from the state budget, created for the activity of the Execution Department of the Ministry of Justice. It does not have a separate budget. The Ministry of Justice supervises the execution of the budget of the Execution Department. The final report is approved annually. The budget stipulates all expenditures, types of expenditures for example salaries, fees, service costs, etc. Expenditures must be structured according to the budget.

## **5.2 Accounting**

The budget is administered by the Execution Department management. Expenditures are directly managed by the department management. Probation Service's budget is an integrated budget of the Enforcement Department.

## **5.3 Registration systems and evaluation procedures**

In order to keep record of supervised persons separate registers for each category of punishment are developed. The record is kept in electronic versions (in computer). Within 5 days after the document is registered the personal file is initiated. The number of personal file corresponds to the number in the registration file. The file contains documents on the basis of which the supervised person was registered, information regarding this person's behavior, the way he observe his obligations, administrative offences committed or information about him being suspected, accused, culprit as well as about probation measures. The documents annexed to the file shall be numbered and registered within the file record in the order they are enforced. A single file is initiated for supervised persons who, as complementary punishment, are deprived of the right to hold certain positions and carry out a certain activity. A single file is initiated for supervised persons sentenced to unpaid community work. Personal files on individuals subject to probation are compiled. Personal file is confidential. With a written consent of the individual, the defence lawyer, organizations carrying out activities in the field of protection of human rights or the rights of convicts can have the access to their file.

## **5.4 Societal support and client's views**

Studies on societal views and the clients' views on Probation Services work do not exist.

## **6 PROBATION CLIENTS' RIGHTS**

Generally speaking, supervised persons have the same rights as other citizens except for the restrictions stipulated by the Execution Code and standard acts adopted according to it. Restriction of rights stipulated in Art.20-24 of the Constitution of the Republic of Moldova is not allowed. The convicted foreign citizen or stateless person has rights and obligations stipulated in international agreements the Republic of Moldova adhered to, the legislation of the Republic of

Moldova on the legal status of foreign citizen and stateless persons with exceptions and restrictions provided by the present code and adopted standard acts. Rights are exercised according to the criminal and criminal execution legislation. Exercising by the client of his rights must not violate the rights and interests of other persons and should not violate conditions of punishment execution. When we talk about rights of the convicted person, the following are guaranteed:

- the right to be informed by the institution or body which ensures punishment execution in the language he understands about his rights and obligations, method and conditions of punishment execution and changes that may happen;
- the right to protection, respect from the institution or the body which ensures punishment execution, dignity and freedom including not to undergo torture, cruel, inhuman and degrading punishments or medical and scientific research whether he consents or not that would represent a hazard for his life or health, benefiting from state protection if it is the case;
- the right to petition (request, complaints, proposals, notification) to the administration of the institution or body which ensures punishment execution or to superior bodies, court, prosecutor's office, central and local public authorities, civil associations, other institutions and bodies including international ones;
- right to legal assistance on a contractual basis from lawyers and other persons authorized to provide such assistance;
- right to healthcare;
- right to social insurance and pension.

The main methods to correct a convicted person are: manner and conditions of punishment execution, community service, educational work, professional training, general education, influence of the society. Correctional treatment is applied when taking into consideration the type of the offence and the convict's behaviour according to an individual and continuous program. In addition to the above-stated, supervised persons have the right to:

- request and receive information on court decision execution procedure;
- request and receive information on assistance and counselling;
- request and receive explanation in regard to his rights;
- benefit from behaviour correction services rendered by the Probation Service;
- participate in various programs implemented by the Probation Services.

## **7 NEW DEVELOPMENTS**

An important act in probation development is the Law on probation. The Draft Law stipulates the objective, principles, and activity direction of probation. The outcome of probation activity can be positive if the society is involved. Therefore, it stipulates the cooperation between governmental and non-governmental organizations, including international ones. The Action Plan of the Ministry of Justice on the implementation of the Republic of Moldova-European Union Action Plan addresses a series of activities in probation development: improve the legislative framework and mechanism of applying probation; draft a Bill on

probation; develop and approve the Concept for Probation Service development; develop the Regulations on the status of probation counsellors; develop instructions for the activity of probation counsellors related to assisting, counselling and supervising within the community; introduce necessary amendments to the legislation to improve the direct cooperation between probation counsellors and other authorities; determine the exact type of probation activities needed to be carried out for juveniles; develop a work standard for the probation counsellor; implement the Probation Service; develop efficient programs for probation counsellor in assisting, counselling and supervision of juveniles. This plan stipulates ongoing training of probation staff, develop a complex training program for probation counsellors, carry out training courses for counsellors, develop evaluation norms of individual professional performance, develop a methodological guidebook for the probation counsellor.

In order to implement the National Action Plan on human rights for the years 2004-2008, the Action Plan of the Ministry of Justice includes the development of the mechanism for accreditation of institutions, public and non-governmental organizations which provide social assistance services to children and families; continuous training of specialists who work for and with children (judges, lawyers, bailiffs, public workers, teachers, doctors, social assistants, representatives of non-governmental organizations); promote annual awareness raising programs in raising public awareness on child protection issues: children from institutions, children with disabilities, children living on the street, mistreated/trafficked children; create a unique, efficient system of social integration (by creating social integration centres) for persons released from prison. Although the Republic of Moldova is a relatively small state and unknown to the world, it faces problems common to various countries, crime prevention being the most serious. Therefore, a series of measures were undertaken to create a probation system in the Republic of Moldova, previously described in this report. It is only normal that methodological, theoretical, financial and other issues emerged in the beginning; therefore the experience of some European countries was followed (Czech Republic, Hungary, Poland, Estonia, Sweden, Netherlands, Romania, Latvia, Georgia, Lithuania etc.). Work visits helped initiating the process, even if Moldova needs further support and assistance in developing probation.

## **8 IMPORTANT PUBLICATIONS**

Dr. G. Florian, dr. V. Zaharia, dr. M. Dilion, Vitalie Popa, R. Moraru-Chiliman, V. Cojocaru. *Probațiunea prezentențială în privința minorilor*. Teorie și practică. IRP, 2005.

Dr. X. Ulianoschi, V. Mîrza, I. Golubțov, S. Rîjicova, S. Hanganu. *Ghid privind munca neremunerată în folosul comunității, aplicată față de minori*. IRP, 2005.

Dr. V. Zaharia, A. Adam, A. Cocîrță, V. Cojocaru. *Ghidul rudelor persoanelor condamnate*. IRP, 2006.

Institutul de Reforme Penale. *Raportul misiunii de evaluare a necesităților în domeniul pregătirii pentru liberare a deținuților.*

V. Prițcan, T. Gribincea, R. Moraru-Chiliman, A. Cojocaru, C. Fuschici, Vladimir Popa, V. Dumbrăveanu, V. Lungu, M. Popovici, V. Cojocaru. *Reintegrarea socială a persoanelor liberate din locurile de detenție.* Ghid practic. IRP, 2007.

*Ghid pentru specialiștii din domeniul justiției juvenile.* IRP, UNICEF-Moldova, 2005

*Justiția juvenilă în Moldova.* Raportul de evaluare UNICEF 2002-2003

N. Canter, A. Vulpesc, D. Postu , I. Adam . *Pregătirea pentru liberare a deținuților.* Ghid practic. IRP. 2007

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## ANNEX 1

### 1 Criminal statistics

Unpaid community work has been applied at the national level since 1 January 2005. The total number of convicts until the present moment is estimated to be around 5,000 people. The evolution of punishment application is shown in the table below:

**Table 1.1**

Year	No. of Convicts	Detention	Fine
<b>2004</b>	12751	3019 (23.6%)	2046 (16%)
<b>2005</b>	14103	3193 (22.6%)	2255 (16%)
<b>2006</b>	12424	2932 (23.6%)	2281 (18.4%)

**Table 1.2**

Sanction	<b>2005</b>	<b>2006</b>
Conditional suspension of the punishment execution	6706/849	5432/894
Postponement of the punishment execution for pregnant women and women who have children under the age of 8 years	110	138
Release from punishment before term	883	1051/2
Deprivation of the right to hold certain positions or to carry out a certain activity.	407	550
Unpaid community work	1039/73	2241/189

