



# Probation Service for Palestine

- A review of non-custodial penalty and law proposal for a system of Conditional Release

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## Preface

The objective of this review is to provide an overall description of conditional release and supervision of conditionally released prisoners and furthermore to provide a proposal for a legal basis for conditional release and supervision of released prisoners.

Another objective is to provide a comprehensive description of alternative sanctions to prison and a review of systems of legislation for alternative sanctions.

The proposal from EUPOL COPPS to the Ministry of Justice is to consider to incorporate an enhanced legislation for conditional release and supervision of conditionally released prisoners through the Ministry's reviews of the Penal Code and the Corrections and Rehabilitations Centres Law No. 6 of 1998.

This review is written within the framework of EUPOL COPPS mandate to assist the civil police, rule of law institutions and ministries in regards of law enforcement with legal advising and advising on correctional service.

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## Terminology

Conditional Release: A person who is released before the termination of a Prison Sentence. The convicted is released with the “condition” not to commit new offences. The remained penalty can fully or partly be added on the penalty for the new offense. The person shall be well-behaved and pay damages that have been issued for the crime.

Parole: Time serving for a person who is conditionally released before the termination of the prison sentence, and which time also can be forfeited.

Supervision: The conditional release can be supplemented by “supervision”. The supervised have to follow instructions from a responsible authority. There can be issued “provisions” that regulate the content of the supervision. These “provisions” and “instructions” are added to the conditions for a conditional release.

Alternative Sanctions: The term is used for non-custodial sanctions, to replace a prison sentence.

Conditional Sentence: An alternative to imprisonment that does not contain a supervision, but the alternative penal value for a prison sentence can be added to the new penalty if the convicted commits a new offence.

Probation: A wide definition of law enforcement with punishment that not contain imprisonment. A “Probation Order” is for example a supervision on a convict as an alternative sanction.

## Summary

This review contains a proposal for a system of conditional release. It also contain a description of alternative sanctions. The recommendation is that Palestine starts with a system of conditional release and supervision of released persons. This presupposes the building of an organisation that at a later stage can handle alternative sanctions. In the review the following themes are handled.

### **The purpose of the penal system**

One reason for punishment may be for deterrence to people in general and for reprimanding unacceptable behavior. Another to protect victims of crime and for protection of the society in general.

A penal system also provides the opportunity to prevent recidivism, which is of great importance for reducing crime and for increasing security in society. The enforcement of punishment should therefore be designed fo prevent recidivism without compromising the requirements for security and civil protection. At the same time, the enforcement of sentences should be based on humane and meaningful correctional service.

### **Individual design**

A conditional release with the remainder of time to serve and requirements of good behaviour provides a possible time for reintegration into society and continued oversight by authorities.

The parole period provides tools for giving incentives to the individual and also tools for dealing with misdemeanors and for the revocation of granted freedom.

In order to be effective, the supervision period must be individually designed based on the individual's needs, risks and behaviour. This should be designed without compromising the requirements of society protection, security, predictability and legal certainty.

### **Proportionality, equal treatment and predictability**

A penal system must be designed with sanctions in in reasonable proportion to the illegal act committed. Legislation should also facilitate a guarantee of equal treatment and predictability. Sanctions should not be sentenced subjectively, law enforcement should not be subjective and sentencing should be predictable.

All levels; legislation, the design of enforcement, the implementation and management of misdemeanors must be characterised by equal treatment and predictability. This should be taken into account when designing supervision of conditional released and alternative sanctions, as well as the fact that the handling should not erode the penal value.

### **Organisation**

To build a system of conditional release begins with the construction of a system for corrections services in society and reducing use of prisons. This enables options for reducing overcrowding in the prisons and more cost effective correctional service.

A system for conditional release requires from the very beginning an answer to the question of who will bear responsibility for supervision following the conditional release, -or alternative non-custodial sanctions. How could an organisational structure be designed? Who should hold decision making powers?

### **The forms for monitoring and risk- and need assessment**

The credibility of the supervision of convicts on parole or convicts on probation is of crucial importance for the ambition to reduce the use of prison sentences and to increase the granting of early releases. Finding appropriate forms for an optimal design of supervision after conditional release and enforcement of alternative non-custodial sanctions requires considerations of, among other things:

- rules in the penal legislation on what time a prisoner can be released, when supervision of a conditional released can be used and for which crimes alternative sanctions can be imposed;
- regulations of how to handle any negligence of probation requirements (what possible measures can be used and the design of a possible staircase of measures);
- regulations to revoke an alternative sanction and to convert it to a prison sentence;
- a design of structure for supervising conditional released and probationers (as well as the content and where the responsibility for the more detailed design should be regulated;
- the use of risk- and need assessments;
- regulations of what forms of control can be used;

- a standard setting - what should be regulated by law and what can be regulated at a lower level.

### **International commitments**

The United Nations has standards that regulate requirements in the field of correction and which are useful in designing a correction system in the society. Descriptions are found in the appendix.

### **International outlook. A comparison of five states**

In order to take advantage of foreign / international experiences, there are in the appendices examples of how other countries; Estonia, Turkey, Sweden, Croatia and Georgia have designed conditional release monitoring and alternative sanctions.

## **1.0 Proposal of a system for conditional release**

The proposal in this review entails that Palestine at this stage, through its law reviews of the penal code and the prison law, updates the laws to implement a system of conditionally release and supervision of conditionally released prisoners. This is a suggestion of the first step in building a correction service in society. Further down follows a suggestion of a clear law regulation of conditional release and supervision after conditional release

The society holds a strong interest in effectively preventing recidivism. A purpose of conditional freedom is that in an appropriate manner control the transition from a life in an institution to a life in freedom. The possibility of a gradual transition from the institution to freedom is in many cases a good way of rehabilitation to society and crucial for an adaptation to life in freedom.

A system of conditional release can also be important as an incentive for good behaviour during the institutional period, as negligence during the institutional period can lead to a postponement of release, according to the proposal submitted here.

As viewed from a criminological perspective - to reduce the risk of recidivism, incarceration is often counterproductive in many aspects. The inmate is deprived of the opportunity for personal development, career and education. This is especially a problem for younger persons. An inmate meets a clientele that is not socially preventive and can in the worst case be drawn into further crime or drug abuse. A successive release has also a rehabilitative effect when the inmate is tried in society, gets supports and still under continued control.

There is today a possibility to grant a convict a so called Early Release from prison, after two thirds serving according to the current Palestinian prison law. That requires a Ministry decision. It is rare for these releases to happen and requires both a strengthened legal framework and an authority tasked to conduct supervision.

In this proposal *the Ministry is recommended to implement* a system of conditional release after two thirds of serving as a main rule, if the prison sentence is one month or more. *The Ministry is proposed that* the conditional release can be postponed if there is exceptional reasons for it, through a court decision. *The Ministry is also proposed to* regulate possibility for supervision by law.

That a conditional release should apply as a main rule means a simple regulation that to the greatest extent possible applies equally to everyone. This would ensure predictability and that the number of inmates released after two thirds of serving will increase. It also reduces the risk of arbitrary treatment.

The Mission suggests that the conditional release is for persons sentenced for more than one month because the time of less than one month is so short that the incarceration does not have any negative effects. The penalty must also have a defined time of serving. As long as a life sentence have no defined time of serving, there can not been granted a time for conditional releae and parole.

The fact that conditional release as a general rule can take place after the convicted person has served two thirds of the sentence further means that the time of serving is predictable to the convicted person. The time of conditional release can only be postponed due to negligence.

### **The protection of society**

It is possible to implement that presumption of conditional release should not apply to a particular group of offenders. It could be decided that a type of offences whould not be able to grant conditional release for instance. It does not change the require of predictability. This is however not proposed in the review. The proposal suggests the Ministry to decide it to be equal to all.

*The Ministry is proposed to regulate that;* if there are exceptional reasons against conditional release, it should be possible to postpone it for a maximum of six months at a time. In assessing whether there are exceptional reasons against conditional release, consideration shall be given to whether the convicted person has seriously violated the regulations in the prison. In assessing whether there are exceptional reasons against conditional release, an overall assessment of everything that has occurred during serving must be made. Occasional breaches should not normally be sufficient for the conditional release to be postponed.

The release can only be postponed until the end of the prison sentence. It must be considered who is to be given competence for the decision; the head of the prison, the minister, the court etc. It should be seen as a technical issue rather than political. There are benefits to share the decision making process by more then one part, while *the suggestion to the Ministry is that* a court judge will make the decision after proposal from the prison authority. Such decision must then afterwards be possible for appeal.

### **Parole period**

After the conditional release, there should be a parole period corresponding to the sentence remaining at the time of release, however, at least one year. There is a requirement for good behaviour and for making effort to reintegrate. As a general rule, a prison sentence shall be deemed to have been fully executed at the end of the parole period, provided that conditionally granted freedom can then no longer be declared forfeited due to misdemeanours. The parole period is the time during which the convicted person can be under supervision. The possibilities to forfeit conditionally granted freedom are affected by the length of the parole period.

## **Supervision**

*The Ministry is proposed to decide to incorporate possibility to issue supervision of the released convict, through the introduction of a conditionally release system.*

Through the supervision, a desirable control of the conditionally released takes place and conditions are created for intervention in the event of negligence. At the same time, the supervision constitutes a support for the released and allows opportunities to receive support and help, for example to avoid relapse with substance abuse.

Supervision involves both control and support and is associated with the expectation of good behaviour. The demand for good behaviour includes both that the convicted person must see a supervisor at certain interval for counselling meetings as well as following instructions, for example to arrange employment, to take help to refrain from crime or from drug abuse.

*The Ministry is within the review proposed to decide that a supervision should be imposed individually related to a risk assessment. It would be even more equal, and simple, to impose all conditional released a supervision. But it is hard to justify supervision for persons who obviously not is in a need of it and it would be more costly. It could for example be quite clear that for some inmates the risk of relapse is low and in combination with a short prison sentence it could be seen as unnecessary to issue a supervision. A supervision after conditional release shall last for one year.*

## **Warning**

A conditionally released under supervision should be reminded about obligations and warned before further steps are taken. A written warning should contain information about the next step, which would be that a part of the conditionally released term can be forfeited. In the proposal the suggestion is from 14 days to maximum ninety days at a time.

## **Forfeiture**

If the conditionally released person (with or without supervision) commits new crimes during the parole period, it should be possible to declare the whole remaining sentence time forfeited. This means that the person, in addition to the punishment that the new crime leads to, must also serve the remaining sentence for the crime from which he or she has been conditionally released.

**Lastly**, The proposal section contains an obligation for the authority to report breaches of conditions to the court. The proposal provides a link to the fact that negligence can cause the conditional freedom to be forfeited. These are necessary safeguards for a system of conditionally release. The safeguards makes the conditional release policy possible without erosion of the penal value, to keep the citizens confidence over the penal system, and without compromising the requirements of society protection. The proposed section of the law also clarifies what the released person have to obey in order to give a predictability.

## 2.0 Proposal of law regulation for a system of conditional release within the Palestinian Penal Code

Within regulations on imprisonment, these articles are proposed as a chapter on Conditional Release.

### Articles

*1a When two-thirds, but at least thirty days, of a fixed term of imprisonment has been served, the sentenced person shall be conditionally released.*

*1b If there are exceptional reasons against conditional release the release can be postponed. When assessing whether there are exceptional reasons against conditional release, particular consideration is given to whether, during enforcement in a correctional institution, the sentenced person has neglected assigned measures that are intended to prevent relapse into crime or promote their reintegration to society; or has otherwise in a serious way breached the provisions and conditions that apply to enforcement.*

*1c If conditional release is postponed, the decision states by how many days. When determining how many days' conditional release will be postponed by, particular consideration is given to the nature and scope of the breaches that occasion the postponement of conditional release. Conditional release may be postponed for at most one hundred and eighty days at a time.*

*1d The released person must be well behave and, according to his ability, integrate into society and pay damages awarded for the crime.*

*2a A Parole period equivalent to the remaining term of imprisonment upon release applies following conditional release, however at least one year.*

*2b The Parole period is a possible period when the convicted person can be under supervision.*

*3a The court may issue an order of supervision of the released person. The decision of supervision should be issued if it is not a low risk that the offender will commit further crimes, and in order to reduce that risk.*

*The Corrections and Rehabilitations Centres Department shall well in time before a possible release provide the court with an individual risk assessment therefore.*

*3b The time for supervision shall cease after one year.*

*4 The supervision of released convict shall be managed by the probation service.*

*5 The person under supervision is obliged to meet the probation officer when summoned, maintain contact with the probation service in accordance with their instructions, and to follow the sentence plan.*

*The probation service is responsible to create a sentence plan together with the convict which should be individually tailored. The plan shall contain activities that the convicted shall do or avoid in order to prevent relapse in criminal behaviour. The plan shall be based on a risk and need assessment.*

*6 The court may, if necessary in order to reduce the risk of a person to commit new offences, or to facilitate the convict's rehabilitation to a law abiding life, issue provisions that the supervised person must follow. The court may, when it is reason therefore, change or repeal these provision. Such provision may concern:*

*a. participation in relapse prevention or substance abuse related programmes;*

*b. participation in psychiatric care;*

*c. obligation to submit drug tests or tests of alcohol consumption.*

*d. Instructions concerning places or areas the convicted must remain in or is not permitted to visit;*

*e. Instructions concerning to not visit a certain person.*

*7 If a convict fails, during a period of parole, to comply with supervisory requirements, perform the obligations imposed on the convict the probation service may issue a written caution.*

*8 If the convicted person has in a serious manner violated what applies to him or her and it can be assumed that he or she will not rectify himself or herself through any such measure that the probation service can take, the authority shall request that prosecutors propose the court that probation must be revoked.*

*9 If the released person does not comply with a written caution and the nature of breaches are severe, the court may declare the conditionally release forfeited for a period of 14 days and a maximum of ninety days a time. When determining the term of forfeiture, special consideration shall be given to the nature and extent of the breaches which give rise to the forfeiture.*

*10 As a general rule, a prison sentence shall be deemed to have been fully executed at the end of the parole period, provided that conditionally granted freedom can then no longer be declared forfeited because of ongoing case there on.*

*11 If an offender commits a new criminal offence during a period of conditional release and is sentenced to imprisonment, the court may forfeit the full, or part of, the unserved part. The aggregate punishment shall be imposed.*

### **3.0 Conditional Release and supervision of conditional released**

There are obvious disadvantages to having inmates serving the entire sentence in an institution. Those who have served the entire prison sentence in an institution will not be subject by the option of monitoring and control which the system of conditional release and

supervision after release is based on. This supervision is a key factor in the reintegration into society. The convict will benefit from the freedom and from a possible assistance and at the same time there is an opportunity to terminate the granted liberty.

The content of the supervision after conditional release is usually that the supervised person visits a probation officer regularly for motivational conversations. The officer works with crime prevention through counselling. These efforts can be combined with a more structural treatment for example targeting criminality or substance addiction conducted by the probation officer or external care.

The probation officer also supports with practical assistance such as facilitating contact with social authorities, job agencies, care centres etc. It is usual that the released is imposed to submit tests for drug use or sobriety test. The released can be prohibited to visit certain areas or persons.

The legislator is recommended to take into account;

- what time a convict earliest can be released
- if conditional release should be a presumption or optional, (see 4.3 individual treatment)
- How long a supervision term shall be
- whether time for supervision should be able to shorten or to prolong
- how to regulate breaches of conditions by law. Staircase before revocation?
- The design of supervision. Opportunity to issue certain provisions?
- Regulation of revocation of the granted release
- Considerations must be taken about whom giving authority for decision making, (see 4.5 The organisational structure)
- Considerations must also be taken about what level of procedures for the supervisions that will be regulated by law. What can stay at SOP level instead.

It is according to current prison law regulated that an inmate shall be released if he has spent two-thirds (2/3) of the sentence, has shown a good conduct and that his release will not constitute a danger to public security, **see appendix 1**.

During 2020, 203 inmates were release from Correction and Rehabilitations Centres in Palestine. Out of these 92 were granted early release, of which 86 had amnesty from the President. Six of the inmates were granted release after have served two thirds of the sentence. Worth noting is that the authority has reported that they had a significant proportion of early released due to Covid-19 situation.

It seems that normally the majority of the prisoners are not granted conditional release. An opportunity for supervision after conditional release, regulated by law, would probably enable more inmates on parole. A designated organisation to commit supervision would also improve the opportunity. Today's law lacks a possibility for supervision of released prisoners.

### **Which law should regulate conditional release?**

Regulations of conditional release can mainly be regulated in a prison law (as in Canada) or in a penal code (as in Sweden and Estonia). A reason to place the regulation in a prison law is to place the entire regulation of this sanction gathered in one place. Conditional release and the supervision of the person can be seen as a package of content of a release planning along with short term leaves for instance.

What opposes this is that the content of all sanctions is described together in the penal code and it becomes easy for a reader to find the most important part of the prison sentence at the same place. Other things that regulates non-custodial serving, (the alternative sanctions), will be in the penal code. Certain rules of the content of a both supervision types can be linked in the law.

## 4.0 The design of sanctions

### 4.1 The purpose of the penal system

There are many reasons for not sentencing a person to imprisonment. But for severe crimes no country has found an alternative tough or strong enough. We aim effects to deter people for committing crimes. We definitely want to give reprimands for unacceptable behaviour. We want to protect the victims and the society. An imprisonment is effective in order to prevent recidivism, at least in the short run. However imprisonment as the only measure has shown not to be effective. Incarceration creates passivity, it creates hatred and abandonment.

A penal system can be created to provide opportunity to prevent recidivism. The security at the prisons, the treatment of prisoner, the activities and programmes is crucial to develop to meet this. There is a lot of international experiences in using alternative sanctions to imprisonment, successive release via different release measure and supervision of released prisoners, short term leave from prison, among others.

Important aspects are release planning and assistance by the release from a prison. The weakest point of a prison sentence, when coming to recidivism, is the release. Beside of a possible treatment programme, there are few things that are more important than planning the release. To secure a place to live, to secure a livelihood, to prepare for whom not to meet and, for what avoiding to do after release. The longer a prison sentence is, the more passive many prisoners become, until the very end when many get stressed and anxious and the risk of relapse in criminality and drug abuse rises.

The isolation itself often has clear negative psychological effects that make the person less equipped to cope with a life in freedom. That's why most prison systems grants prisoners with short term leaves from prison and also long term leaves, (work release, halfway house etc.), as measures for release. After the release it is favourable to continue with a control mechanism beside of counseling and support and it is here this proposal comes in.

### 4.2 Equality, predictability and proportionality

The negative effects of isolation and the sensitive time around release from prison are aspects to consider when designing the legal ground for the penal system. An egalitarian society should of course treat everyone equally, regardless of political affiliation, national affiliation and any other characteristics. As well offenders deserves to be treated totally equal, with the only focus on different treatment regarding to the risk of recidivism and the crime.

That gives a reason to consider aspects of proportionality and predictability. As well as equal sentencing, the possibilities for non custodial measures and provisions and instructions shall be issued objectively. Objectivity in decision making is promoted for decision makers and the clients when the laws and regulations have a predictability.

The predictability makes it more easy for convict to understand what is expected. It makes it easier for the convicts to prepare for release if it is clear when the release can come. The predictability makes it easy for non convicts and victims to understand the punishment. It helps officers and judges to act objectiviliy.

The proportionality also comes as a need in order to treat convicts equal. There should be a proportionality between a security measure and the risk that the measure shall meet. To not give a more harsh punishment or not decide on a more harsh measure than necessary should be linked to the universal principle of not using more force than necessary in other contexts.

### **4.3 Individual treatment**

To sanction the convicted person with the appropriate and proportional measures, there is a high need for individually tailored decisions. There should be an individual risk and need assessment presented for important decisions such as granting release, postponing release, granting leaves, denying leaves, issuing provisons and so on.

The proposal for law regulation of conditional release, presented in the beginning, suggested conditional release after two thirds serving as a normative presumption. But as well facultative because it can be postponed if it is exceptional reasons against it. The current prison law now enable an option to be released. Around the world both these systems, the presumtional and the optional, can be seen. If the the system of conditional release instead would be optional and require a court decision, it could be seen as more safe. No prisoner with a huge amount of breaches of rules and bad behaviour would be releaed "by accident". The sentence as a punish would maybe feel more hard if the term initially looks longer and the punishment would be more reprimanding.

But if the conditional release is optional, there is a high risk for cases of unequal treatment and there would definitely be a less predictable system and. If the date of release instead is predictable there is a better possibility for the convicts to plan for future release. Only if the convict failure to obey the rules of the corretion institution and instructions given, the convict is at risk to have a postponed release instead.

The choise of regulation for release by law is a political, not only a technical issue, for the Palestinian Authority to make. But it is an exampl to concider when coming to equal treatment and predictability.

#### *Alternative sanctions*

When coming to a possible sentencing to alternative sanctions there should be a risk and need assesement. Here it is of course also a penal value of the crime and punishment that most be definied.

A reason for many penalty systems around the world, to sentence an offender to probation order is because the sanction normally gives the offender assistance with the persons problems, which was one of the reasons that lead to the crime. Such problem can be a drug addiction. Not every offender have personal problems that can be linked to the crime. It is therefore not only the penal value that makes an offender suitable for a probation order or a community service. A risk and need assessment must be committed and taken into concideration. The individualized decision making makes the offenders to be treated different

but not non-equal. With less personal difficulties the client would be expected to take another level of responsibility.

#### **4.4 Caution with the use of risk assessment**

As mentioned, risk- and need assessments can be, and should be, used in many areas. However the predictability and the equality within the treatment of people by the law, should never be put at risk.

When the most important decisions are to be made, they should be linked to the actual actions of the convicts and not too much to the estimated risk. A decision to postpone a conditional release, (or to grant a conditional release), should be based mainly of assessment of misbehaviour of the convict at the prison.

Many countries' correctional systems base their measures on an estimated assessment of a model of "risk, needs and responsivity". The risk- and needs assessments that are carried out are at different levels and are of varying scope. Some are focused on criminality in general, some regarding violent crimes, sexual crimes or the regarding risk of relapse into addiction. Some of the assessments are made with an inclusion of assessment of psychiatric diagnoses that predict the risk of relapse. Other manuals do not include diagnoses.

Canada's penitentiary system and its criminological research have been at the forefront in many cases of this development of manuals that are now used in many countries. Despite increasingly sophisticated systems, it is very difficult to predict recidivism. The instruments are primarily aimed at assessing the needs of a particular person. The reason is to assess which decisions should be made in general, or for an individual therapist to focus a conversation on.

Unfortunately, assessments done by the most skilled psychiatrists to assess recidivism tend do end up quite far from a 100% correct outcome. It is therefore not possible to a sufficient enough level to tell who will have a relapse in criminality. Rules which mean that the risk of recidivism shall constitute grounds for decisions of a conditional release for instance, would make people serving a longer term due to the assessed risk of reoffending, even though reoffending never had happened if the person had been released.

#### **4.5 The organisational structure**

The Correction and Rehabilitation Centres Department, CRCDC is a department of the Palestinian Civil Police. The Services are governed by the Ministry of Interior. In most countries (for instance all five countries described in this review) the Prison Service are governed by Ministries of Justice. Prison and Probation organisations tend not to be a part of the police service, (and so in none of the countries in the review). The authority who deliver the sanctions are then not a part either of the judicial power or of the authority that investigates the offenders. **See further appendix 5.**

#### *Furthur development of alternative sanctions*

When discussing whether a Corrections and Probation service can be a part of the prison system it shall be noted difficulties with confidence and trust between a probation officer and a convicted. When coming to the possibility to have trustful and sincere conversations this is crucial. The convict is expected to talk openly for example about challenges to avoid violent

behaviour or to avoid abuse of drugs. This makes an organisation under a police authority much more difficult to handle.

The probation service is in most countries the authority who provides social inquiries as pre-trial reports to the courts. The reporting is preceded by an interview of the suspected person, before the trial. It is not suitable that the suspected would visit a probation officer at the same authority that is doing the interrogation and investigation. As well in this meeting the suspected person is expected to talk openly of personal difficulties that can lead to crime.

The characteristics of a probation service is the twofold base of being both a service with control mechanism and a service for assistance and support. The probation work is divided in three parts. The pre-trial stage, the enforcement stage and the parole/Aftercare. The pre-trial stage is mostly focusing on provision of pre-trial reports to the courts. The probation officer conducts an interview with a suspected person, either at a remand prison or at the office if the suspected is permitted to be free under the investigation. The officer also collects facts from other authorities concerning living, family, economy etc. The aim is to assess the needs and risks and in particular investigate if there is a link of the findings and the suspected crime. The aim is to give suggestions of a suitable alternative sanction to the court.

In the enforcement stage the probation officer is handling supervision of the convicted client within different kinds of sanctions. In the parole/aftercare stage the probation officer is supervising released prisoners. In some cases, the same staff works with all these stages, in other cases only one of them. Division of cases can also be done of different types of persons, (juveniles, sexual offenders etc.), or types of sanctions, (Community Service, Electronic Monitoring etc.). In some countries probation officers do work with treatment programmes or risk- and need assessments at prisons. The most common is that probation officers have a university degree in social studies or law studies. In most countries they don't wear uniform.

#### *Development of authority in Palestine*

Regardless of the Prison service is a part of the Police service or not, the Probation Service can be organized under the same authority as the prisons (for instance as in Sweden), or outside the prison authority, as in Croatia. However in these questions it shall be remembered that the prison service in Palestine is part of the civil police. To develop a system of conditional release with supervision should be seen as a first step towards a development of alternative sanctions.

As mentioned in the beginning, this proposal suggests Palestine to start with development of conditional release with supervision because it is easier in the legislative work and as a good step in the forming of a strong competent organisation. There will be a lot of work in developing the organisation structure and for both the authority and the courts to develop praxis in the decisions making process.

The Palestinian Authority and Ministry of Justice would preferably start the process with commissioning an authority to build this organisation. An organisation must be prepared to take care of a large number of cases of released inmates to supervise. It shall be noted that the Ministry of Social Development are now having staff that are involved in planning release of inmates and are meeting inmates at the prisons. These work force would be a possible entity to start to develop an organisation from.

There will also be considered which governmental body to regulate the decision competence for. Who will decide to postpone a conditional release? Who will decide on issuing supervision for a coming release. Which governmental body should be eligible to issue certain provisions for the released to follow? Some countries give a big amount of competence to their authorities. Some countries have probation boards which are judicial bodies but outside the jurisdiction of the court. In this proposal of law regulation, the court have been given decision-making power as Palestine at this early stage does not have authorities accustomed to decision-making and probation boards do not exist.

## 5.0 Alternative sanctions

A completely non-custodial sanction can often have a better impact on the individual without the negative effects that a prison sentence entails. The less serious the crime, and the lower the penal value, it is of course also easier to use these sanctions.

This review provides a description of what such sanctions may entail and an international outlook on five other countries. It is challenging to divide “sanctions” from “provisions” when comparing different states from each other. Some countries have clear divisions between different sanctions like “community service”, “prison” and “fine”. Other countries give the court possibility to issue a probation sanction as - the sanction - and also give possibility to issue a huge amount of provisions that are mentioned by the law. In some countries the provision can be given by the Probation Service or by a Probation Board. **See appendix 6 for examples.**

Below is a list of the most common types of alternative sanctions:

### Probation Order

A probation order means that the convicted is issued a supervision which for example could entail regular meetings with a probation officer. The aim is to motivate the convicted to take new steps in direction to manage a living without criminal behaviour. The sanction can be combined with other content such like therapeutic treatment, drug tests and electronic monitoring.

### Community Service

The sanction means to work voluntarily for the society. It can be work like garbage collection, gardening, work at a shelter for homeless, or work for an NGO. The sanction should be decided for a certain time or certain total hours of work and is unpaid. The work is done at another organization than the Probation Service but the probation officer is responsible to establish a work plan and monitor that the plan is followed.

### Parole / Aftercare / Conditional release

After release from prison a supervision can be issued for a period. The purpose is to do a follow up in order to lower the risk of reoffending. The probation service has both a controlling and a supporting function. It can contain activities like in the Probation Order. Local NGOs and other authorities' contribution are crucial to reintegrate convicts in the society within the supervision.

### House arrest

An alternative sanction can entail a limitation of freedom of movement. It can be a prohibition to visit a certain area. It can also be issued as a house arrest. A house arrest can be complemented with electronic monitoring. In some countries House arrest with electronic monitoring is an alternative sanction. In others an extra provision as control mechanism. In some countries it is used in the pre-trial stage, in order to avoid placement in a remand prison.

### Successive release

A parole period before the release from prison can be set as a special measure. That could for example mean that an inmate is placed at a Half-way house or at a center for therapeutic treatment, or under house arrest with electronic monitoring. These could be handled by a probation service.

### **Expected Outcomes:**

Cost-effective compared to Prison

Although staff and equipment is required for probation service, this is likely to be much cheaper than keeping convicts in prisons in most countries.

### Reduce rate of reoffending

The sole use of imprisonment is not a good way of reducing recidivism. In fact, it is likely to be worse if not combined with control and support after release and to use alternative sanction for minor offending's.

### Gender perspective

A prison can often be an even worse environment for women, especially where there are no certain institutions or wards for women. The social stigma is often worse for women in prison than for men. Women who have custody of children can put both herself and her family in a harsh situation.

### Juvenile perspective

Juveniles are particularly vulnerable to end up in criminal environment which often get even worse in a prison. The young age when a person is still growing up and is supposed to go to school, is a crucial period and a key not to be in institution if possible.

### Reduce overcrowding in prisons

Avoiding to put offenders which have committed minor crimes reduces overcrowding. Even if their time of serving is short, in most countries these convicted is in large majority and takes up much of the places in prisons. To let inmates be conditionally released also reduces the overcrowding.

## **5.1 Legal ground for sentence to alternative sanctions**

There are some important elements that must be taken in consideration and regulated by law.

It is recommended to regulate:

- A discription of penal value for sentencing to the sanctions
- The types of sanctions and the content of these
- A stated period for how long the sentence should be
- Procedures for revocation of the sanction and conversion to prison sentence
- Regulation of whom to request for pre-trial report.

The content of the sanctions, ability for provisions and control is recommended to be designed without compromising the requirements of society protection, security, predictability and legal certainty.

Beside of this above discribed there should be other more detailed instructions for the probation service. Some countries have certain laws on probation. There is also a possibility to regulate in a bylaw. But the ministry would also concider in what extent the standard setting should be at the law level at all. It is an advantage if Laws are easy readable and stable. The authority can be given the competence to regulate much of the administration in regulations. That makes it more flexible to adjust.

See examples of sections in the Swedish Penal Code that enabe the court to sentene to alternative santions, in Appendix 2

## **5.2 Revocation of sanctions and recalculation of the penalty**

As mentioned above it is important to make clear that an alternative sanction can be revoked and the procedure for that. When the sanction will be revoked and converted to prison, it should be calculated a value of the part that anyhow has been followed out by the convicted.

A revocation of the sanction would be done as well if the convicted had compleeted the instructions of the sanction but committed a new crime during the probation term. The first penal value of the first issued punishment should be added to the new sentence but the part that the convicted has carried out should be calculated and reduced.

**Appendix 3** shows an extract of the Estonian Penal Code where there is described a staircase of measures when the convict has failed to complete instructions. The law also shows a clear estimate of community service, with numbers of working hours compared with number of days of prison serving.

However, be aware that a simple recalculation of hours cannot always be made. It is not that easy to estimate a penal value of a probation order. Imagine a convicted who for several months was instructed to take part in a treatment programme but just refused to do that. Imagine another convicted that took part in a programme, who learned a lot and fought to keep sober but in the end anyhow had a relapse in drug abuse. How shall these sentence servings be calculated? A court may need space to evaluate a sentence serving with respect to principles of proportionality and equity.

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#### Laws

The Swedish Criminal Code. Brottsbalk (1962:700)

The Croatian Criminal Code. (2011)

The Estonian Penal Code. (2002)

The Penal Code of Turkey. (831/2015)

The Criminal Code of Georgia. (1999)

#### International regulations and standards

United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (the Beijing Rules)

United Nations Standard Minimum Rules for Women Offenders, (the Bangkok Rules)

## Appendix 1

### Extract from Corrections and Rehabilitation Centres Law No. 6 of 1998.

#### Chapter XIII. Commuting Periods of a Sentence

##### Article 45

1. An inmate shall be released if he has spent two-thirds (2/3) of the period of the sentence issued against him, he has shown during such a period good conduct and behavior, and his release will not constitute a danger to public security.

2. If the sentence is a life sentence, the inmate shall be released if he has spent a period of twenty (20) years in the Centre and his conduct during this period was good.

##### Article 46

1. The release pursuant to the preceding Article shall be made by decision of the Minister upon the recommendation of the Director General. The decision shall specify the reasons for the release.

2. If the release is on probation, the released may be returned to the Centre to complete the remaining period of his sentence if any misconduct is substantiated or if the released violates the conditions of the probation, upon a decision of the Attorney-General stating the reasons for the return of the released.

##### Article 47

The Director shall forward to the Director-General a report on every inmate whose sentence exceeds the period of ten (10) years from the lapse of the first six (6) years, including all information pertaining to the inmate and followed by a periodic report for every year of the remaining period.

##### Article 48

The President of the National Authority may release inmates on national or religious occasions. The release shall be made at the time determined in the decision of pardon.

## Appendix 2

### Sentencing to alternative sanctions pursuant the Swedish Penal Code

The following is selections from the relevant sections in the Swedish Penal Code. The law is relatively concise and shows some elements that should be included to enable sentencing. Relevant focuses are underlined.

The first section of chapter 28 shows that a “probation order” is possible for any case of criminality, when imprisonment in in the range for punishment.

Section 2a gives another type of sanction “probation combined with community service”

Section 6 gives opportunity for provision on top of the probation order. The section refers to Chapter 26 where there in section 16 is given eight different provisions that can be issued for a conditional released prisoner. Section 16 is relevant also for probation order. It is the Probation Service that issues this provision by the law.

Section 6b is another sanction. Probation with a certain treatment plan. For sentencing according to 6b the court must give state an alternative punishment to prison. If the convict fails and the probation should be removed, that alternative punishment will be applicable

Section 8 is the safeguard for how to remove the sanction. When the convict fails to follow the regulated sanction, the Probation Service must request the prosecutor to bring the case to the court.

Chapter 30 regulates the choice of sanctions.

#### **Part Three of the Swedish Penal Code On the Penalties**

Chapter 25 – on fines

Chapter 26 – on imprisonment

Chapter 27 – on conditional sentences

Chapter 28 – on probation

Section 1

A court may impose probation for an offence for which a fine is considered an insufficient sanction. Act 1988:942

Section 2

Probation may be combined with day –fines, in a number of at most two hundred, whether or not a fine is provided for the offence. Act 1991:240.

#### Section 2a

Probation may, if the accused consents to it, be combined with a community service provision. Such a provision concerns the obligation to undertake unpaid work for at least forty and at most two hundred and forty hours.

When the court issues a community service provision, the judgement must state how long the term of imprisonment would have been if a sanction of imprisonment had been chosen instead.

The Swedish Prison and Probation Service may change or cancel a community service provision, if there are grounds to do so. Act 2021:249.

#### Section 4

Probation extends over a probationary period of three years from the date on which enforcement of the sanction begins. Act 1983:240.

#### Section 5

Probation is combined with supervision from the date of the judgement. However, the court may decide that supervision will not begin until the judgement has become final with respect to the sentenced person. If the judgement is appealed, a higher court may decide to interrupt enforcement.

Supervision ceases at the end of the probationary period or on an earlier date decided by the Swedish Prison and Probation Service. However, the period of supervision may not be less than one year.

If enforcement was interrupted as a result of decision of a higher court and the accused is subsequently nonetheless sentenced to probation, the time during which probation was not enforced is not included in either the period of supervision or the probationary period.

#### Section 6

The provisions of Chapter 26, Sections 11 and 13–18 apply correspondingly to a person sentenced to probation. However, the court must assign a probation officer in the judgment, unless special grounds indicate otherwise.

In the judgment, the court may issue provisions under Chapter 26, Section 16, second paragraph, points 3–8, and third paragraph, and Chapter 27, Section 5, second paragraph. The Swedish Prison and Probation Service may change or cancel a provision under Chapter 27, Section 5, second paragraph, if there are grounds to do so. Act 2021:249.

#### Section 6b

In cases referred to in Chapter 30, Section 9, second paragraph, point 3, if the planned treatment is decisive in a sentence of probation being imposed, the court must state in the judgement how long term of imprisonment would have been if a sanction of imprisonment had been instead. In such cases, furthermore, a provision on the treatment plan that the sentenced person has undertaken to follow is always issued in the judgement. It may be decided in connection with such a treatment plan that whoever is responsible for the treatment must notify the Swedish Prison and Probation Service and the prosecutor if the sentence person seriously disregards their obligations under the plan. Act 2019:464.

## Section 8

If the sentenced person has, in a serious way, breached the conditions that apply to them and it can be assumed that they will not be corrected through any measures that the Swedish Prison and Probation Service can take, the Service must request that a prosecutor bring an action before a court for probation to be removed. Such an action may also be brought without request by the Swedish Probation Service if, in a case referred to in Section 6b, first paragraph, the sentenced person has, in a serious way, breached the conditions that apply to them under their treatment plan. The action must be initiated before the end of the probationary period. Act 2021:249.

## Chapter 30 – On choice of sanction

### Section 4

When choosing a sanction, the court pays particular heed to circumstances that speak in favour of a less severe sanction than imprisonment. The court thereby takes into consideration circumstances referred to in Chapter 29, section 5.

In addition to the penalty value and nature of the offences, if the accused has previously been guilty of an offence the court may take this into consideration as grounds for imprisonment. Act 1988:942.

### Section 7

As grounds for conditional sentence, if there is no particular reason to fear that the accused will commit further offences, the court takes this into consideration when choosing a sanction.

As special grounds for a conditional sentence instead of imprisonment, if the accused consent to the sentence being combined with a provision on community service, and if such a provision is appropriate in view of the character of the accused and other circumstances, the court may take this into consideration. Act 1998:604.

### Section 8

A conditional sentence is combined with day-fines unless, in view of an obligation to complete community service or other consequences of the offence, a penalty of a fine would affect the accused too harshly, or other special grounds against, imposing a fine. Act 2017:442.

### Section 9

As ground for probation, if there is reason to assume that his sanction may contribute to the accused refraining from further offences, the court takes this into consideration when choosing a sanction.

As special grounds for probation instead of imprisonment, the court may take into consideration:

1. Whether a substantial improvement has occurred in the personal or social situation of the accused to have had a connection with their offences;
2. Whether the accused is undergoing treatment for substance abuse or for some other circumstances that can be assumed to have a connection with their offences.

3. Whether abuse of addictive substances or some other special circumstances requiring care or other treatment significantly contributed to the offence being committed and the accused declares themselves willing to undergo appropriate treatment in accordance with a personal plan that can be arranged in connection with enforcement;  
or

Whether the accused consents to probation being combined with a provision on community service, and such a provision is appropriate in view of the character of the accused and other circumstances. Act 1994:604.

## Appendix 3

### Breaches of conditions, revocation of an alternative sanction. An Estonian example

In the Estonian Penal code, Chapter 4, Division 2, §69 there is a clear description of a penal value of Community Service (up to 2 years), how to value working hours (one day of detention or imprisonment corresponds to two hours of community service), and also gives a legal ground for the court to remove the sanction:

(6) “If an offender evades community service, fails to comply with supervisory requirements or perform the obligations imposed on him or her, the official enforcing the punishment may issue a written notice cautioning him or her or the court may impose additional obligations on the offender in accordance with the provisions of subsection 75 (2) of this Code, extend the term for the performance of community service, taking into consideration the general term provided for in subsection (3) of this section for performance of community service, or enforce the detention or imprisonment imposed on the offender. In the case of enforcement of detention or imprisonment, the sentence shall be deemed to be served to the extent of the community service performed by the offender, whereas one hour of community service corresponds to one day of detention or imprisonment. In the case of enforcement of detention of less than ten days, the sentence shall be deemed to be served to the extent of the hours of community service performed by the offender in proportion to the detention imposed.

(7) If an offender commits another criminal offence during the performance of community service and is sentenced to imprisonment, the unserved part of the community service imposed on the offender shall be substituted for pursuant to the ratio provided for in subsection (6) of this section. The aggregate punishment shall be imposed pursuant to the provisions of subsection 65 (2) of this Code.

## Appendix 4

### International commitments

Clear regulations regarding the introduction of probation can primarily be read in the UN standard rules. The Beijing Rules for juvenile offenders, the Bangkok Rules for women offenders and the Tokyo Rules that regulates “Non-Custodial Measures” are all having recommendations in the area. The focus, however, is most on alternative sanctions than on conditional release.

The most explicit description is found in these articles of the

#### **Tokyo Rules:**

*1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation need of the offender.*

*2.1 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonments, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.*

The Tokyo rules recommends post-sentencing dispositions, like parole but also Halfway house or work- or education release, which can be arranged before the full release from prison. Any form of release from an institution shall be considered at an early stage.

The Tokyo rules also contains recommendations of pre-trial reports, different sanctions, conditions, breach of conditions, revocation of sanction, staffing, use of volunteers and more.

**The Bangkok rules;** expresses the importance to try alternative sanctions for women offenders.

Rule 61. “ courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and typical backgrounds.” When decisions of conditional release there should also be taken into account women prisoners’ caretaking responsibilities as well as their specific social reintegration needs.

**The Beijing rules;** stresses that detention pending trial for juveniles should be replaced by alternative measures such as supervision, intensive care or placement in a family when possible.

The background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated in a social inquiry report, before sentencing.

Deprivation of personal liberty as punishment shall be avoided for juveniles unless the offence is not certainly serious as violence.

## Appendix 5

### Other countries probation structures. An outlook on Turkey, Sweden, Estonia, Georgia and Croatia.

#### **Probation Service structure Turkey**

There were possibilities for Probation in Turkey already 1925 when it was included in the Penal code. But as late as in 2005 the Probation Service were further developed and institutionalized. Turkish Probation Service is providing all the three main probation areas, pre-trial stage, enforcement stage and parole/Aftercare.

- Assisting judicial authorities with social investigation reports.
- Supervision and monitoring of suspects, accused and convicts within the society with rehabilitation activities.
- Aftercare service

The measures are grounded in Risk- and need assessment and the staff is working with individual sentence planning. Rehabilitation measures when it is deemed necessary for the probationer (or if the court imposes it).

Rehabilitation work in Turkey are carried out in cooperation with other governmental institutions and/or NGOs.

Volunteers can be used under the guidance of employed educated staff, (By-law on Probation Service Article 54). Preparing social investigation reports can be given to volunteers if they are educated as psychologists, social workers, sociologist and pedagogues for example.

#### Electronic monitoring

Electronic monitoring methods are used in some probation decisions as a sanction alternative to short term imprisonment. They can also be used for conditionally released prisoners.

#### Legislation:

Penal Code

Code of criminal procedure

Law on execution of penalties and security measures

The law on probation services

#### Central organization

The regional Probation services are part of the Probation Department within the Prison and Detention Houses, affiliated to the Ministry of Justice.

On provincial level (in cities and counties) the probation services are the responsibility of probation directorates and protection boards, affiliated to the chief public prosecutor offices.

#### **Probation Service structure Sweden**

The Swedish Probation Service is a section within the Prison and Probation Service, affiliated to the Ministry of Justice. Sweden as well as Turkey also have had possibilities for probation for a very long time which started with Conditional Sentence and Conditional Release year 1906. However, the country has a much longer tradition of probation work, which started

from Non-governmental support more than 20 years before the National Probation Service was developed. The Service is providing all the three main probation areas, pre-trial stage, enforcement stage and parole/Aftercare. What characterize the Swedish structure is also possibilities for serving of sentence on pre-parole before the fixed date of conditional release.

- Assisting judicial authorities with social investigation reports.
- Supervision of convicts within the society with rehabilitation activities.
- Aftercare /supervision service of conditional released
- Halfway house, Treatment measures -before conditional release, Electronic monitoring before release, Daily work-leave
- Supervision as a measure for juveniles

The measures are grounded in Risk- and need assessment and the staff is working with individual sentence planning. Treatment programmes are mostly carried out when the court imposes it, which mostly are done on suggest from the Probation Service.

Rehabilitation work are carried out in cooperation with other governmental institutions and/or NGOs. Volunteers can be used under the guidance of employed educated staff.

#### Electronic monitoring

Electronic monitoring is used as a certain alternative sanction to short term imprisonment upon the prison-convicted application. In 2021 it was implemented that Electronic Monitoring also could be used as control mechanism for a probationer or a conditional released prisoner.

#### Legislation:

The Penal Code

The Prison Act

The Law on Social Inquiry for criminal cases

#### Probation board

With a long history there are at the provincial level probation boards, which fulfills the tasks from a court. They consist of a chairman who is a court judge appointed by a First instance court and a number of members who are laymen appointed by the Regional Parliament.

The authorization for the Probation board to make decisions has recently diminished. During the enforcement stage of Probation, the Probation board recently could decide whether to prolong the supervision period of a probation sentence. They could during the serving change or cancel a Community Service which was imposed by the court. They could issue a warning on a person under supervision if breaching the conditions and they were obliged to request a prosecutor to bring action before a court with a recommendation to get the probation to be revoked (and converted to prison sentence). Concerning clients under parole after release from prison, the Probation board before could issue provisions for the supervision as well as for a person who is sentenced to probation service. Now the eligibility for all those decisions are moved to the National Probation Service itself.

Compared with other the states Sweden has a notable decentralized jurisdiction for the Non-custodial care. However, the Probation board is still the eligible authority to forfeit days of the parole time (maximum 90 days in a row). That means that the client is transferred to incarceration after failure of the parole. The Probation board is also the authority which is

eligible to decide to apprehend a person in the first case if he or she doesn't show up at the Probation Service.

The arrangements for successive release meaning that a prisoner can be placed at a treatment center, at halfway house or be granted electronic monitoring in the society, before the day of release is also authorized for the Prison and Probation Service do decide on. However, the Probation board is authorized to cancel these measure if the convicted failure the serving.

### **Probation Service structure Estonia**

After regaining independence after the Soviet Union occupation the country wished to decrease the number of prisoners, which became one of the main arguments in justifying the need for the creation of the probation system. The Probation Supervision Act entered into force on 1 May 1998. The probation service started to work all over the Estonia immediately. In drafting the Act, laws of other countries regulating similar systems were used as a basis. Estonian Probation Service is providing all the three main probation areas, pre-trial stage, enforcement stage and parole/Aftercare.

- Assisting judicial authorities with social investigation reports.
- Supervision of convicts within the society with rehabilitation activities.
- Aftercare /supervision service of conditional released
- Supervision as a measure for juveniles

The measures are grounded in Risk- and need assessment and the staff is working with individual sentence planning. In Estonia, the probation officers are often working in prisons with risk- and need assessment and treatment programmes.

The basis for the activities is the court's decision or ruling, which sets the framework for the probation officers practice. Only courts have authority to change the sanction or provisions attached to them and continuous communication with judges is inevitable. Here you could compare with Sweden where sanctions are sentenced by the court but the Probation Service is eligible to issue provisions as the content of the sanction and also repeal them, without any communication with the judges or with the Probation board.

The Estonian probation officers are civil servants. Despite the possibility to assign parts of probation supervision to a suitable non-profit association within the jurisdiction of a court, there has never been implemented<sup>1</sup>. Here it's also interested to compare with Sweden, who has a much longer history of probation work. The work with providing courts with pre-trial reports started by an NGO in Sweden already in the beginning of the last century.

The Estonian Probation Service anyway uses volunteers as laymen to assist the probation officer<sup>2</sup>. As a voluntary probation assistant can serve any person who has expressed the desire and is suitable for probation work after have being examined as suitable related to personal characteristics and experiences.

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<sup>1</sup> The Estonian Probation Supervision Act, §21.

<sup>2</sup> The Estonian Probation Supervision Act, §17.

Legislation:  
the Penal Code  
the Code of Criminal Procedure  
Probation Supervision Act

#### Central organisation

The Prison department of the Ministry of Justice is central body of the Prison Service. The department is led by a deputy Secretary-General, who is also acting as Director of the Prison Service. The department has four divisions with heads of divisions acting as Deputy heads of the prison service in relevant field. Probation issues are dealt by the Social Rehabilitation Division of the Prison Department.

Four regional probation departments function in the structures of three regional prisons. Prison Governor is responsible for both – enforcement of custodial and non-custodial sanctions and measures in respective region.

#### Electronic monitoring

Since 2011 Electronic Monitoring can be used for remand prisoners as alternative to detention before and during trial. Since the same year it can be used as alternative to prison for a convicted with maximum 6 months of prison. It can also be added as supplementary obligation for a probation.

#### **Probation Service structure Georgia**

The Probation Service started after the Soviet Union occupation. From the beginning the service was governed by the Ministry of Internal Affairs. In 2001 it was moved to the Ministry of Justice of Georgia. There are 11 regional bureaus and offices of probation. The Georgian Probation Service is providing service on the pre-trial stage and on the enforcement stage. As it is described in referred material the service is not providing supervision of conditionally released.

The probation officers have started working on the assessment of risks and individual sentence planning. This method makes it possible to plan targeted measures for crime prevention. The introduction of new methods of risk assessment and individual sentence planning has improved and is described to have been successful, particularly in terms of estimating risks of crime recurrence and in providing efficient measures for crime prevention.

Since 2016 the Probation Agency has a system for preparing individual pre-sentence report for the court, for adult alleged offenders in order to assist the judicial authorities in determining appropriate sanctions or measures. Under the Juvenile Justice Code adopted in 2015, pre-sentence reports regarding juvenile offenders are obligatory. There was also introduced a system with electronic monitoring of juveniles with the code. The Probation Agency then started to plan for initiating introduction of electronic monitoring for adult offenders at the same time.

- Assisting judicial authorities with social investigation reports.
- Supervision convicts within the society with rehabilitation activities.
- Supervision as a measure for juveniles

Legislation:

The Criminal Code

The Law on Procedure of Execution of Non- Custodial Sanctions and Probation

The Juvenile Justice Code

The Prison Code

### **Probation Service structure Croatia**

Probation service in Croatia is in jurisdiction of Ministry of Justice that in 2009 founded special directorate for this purpose – The Directorate for Probation and Victims and Witnesses support. Direct probation work with offenders is conducted in 12 regional probation offices, while Central Office in Zagreb is in charge of improving quality of services, taking measures to improve probation services and probation system as a whole, as well as to provide administrative and legal support for regional offices. The Probation service is providing interventions for adult offenders, while juvenile offenders (from 14 to 18 years of age) are in jurisdiction of the social welfare system. The Croatian Probation Service is providing all the three main probation areas, pre-trial stage, enforcement stage and parole/Aftercare.

The first community sanctions and measures started with implementation at the end of 2001, after the new Croatian Criminal Code came into force in 1998. This new Criminal Code led to the development of special Supervision of Suspended Sentence and Community Service Act in 1999.

Execution of these sanctions was at that time in jurisdiction of Directorate for prison system, Central office. Community sanctions were executed by professionals who had university degree mostly in social pedagogy, social work and psychology, and who worked within Ministry of Justice or Ministry of Social Welfare.

Probation was at least up to 2014 (when reference material was written) mostly involved in execution of two community measures: (1) suspended sentence with supervision and (2) community work. However, the law allows sentencing to treatment order, drug/alcohol treatment, psychiatric treatment and use of Electronic Monitoring. They developed during the time the use of Risk- and need assessments.

### **Organizational structure**

The Directorate for Probation and Victims and Witnesses support is an office at Ministry of Justice. The directorate is divided in two parts: The Sector for probation and the Sector for victim and witness support.

Legislation

The Criminal Code

The Criminal Procedure Act

The Law on the Execution of Prison Sentence

The Misdemeanours Act

The Law on Probation

The Probation Sector is structured in four departments:

a) the department for development and analysis,  
and departments for the three main areas of probation;

- b) Department for supervision,
- c) Department for probation tasks during prison sentence and conditional release, and
- d) Department for tasks during criminal procedure.

#### The Probation Officer

The Law on Probation defines that probation officers must have a bachelor or master degree in social pedagogy, social works, psychology or other social-humanistic sciences, and must have experience and professional competencies to work with offenders.

## Appendix 6

### Other countries mixtures of sanctions. An outlook on Turkey, Sweden, Estonia, Georgia and Croatia.

#### **Alternative Sanctions in Turkey**

Probation involvement in Pre-trial / trial stage:

A Prosecutor or the court requests for pre-trial report in Turkey, which prepares of Probation Service by psychologists, sociologists, social workers, and teachers. This report is a pre-sentence report. In the report, information of the suspect or accused is assessed. The information consists of one's identity, previous criminal information (if any), health, family, environment, education, personal aspects, social and economic situation, cognitive and psychological situation, possible risks posed to the society/victim and attitudes and behaviours.

The report is prepared by discussing with the suspect or the accused and his/her family and social environment. In the concluding part of the report, the elements which may constitute the risk of offending and the risk of giving damage to society or himself/herself are assessed. In case there is the impression that a person gave a false statement during the preparation of the report or the answers given are contradictory, this situation is explained in the concluding part of the report.

Turkish sanctions and probation involvement in the enforcement stage:

#### Alternative Sanctions in the Penal Code

For short term prison sentence the court can decide on alternatives pursuant Article 50

- Attending an educational programme
- Prohibiting from travelling to certain places or from conducting certain activities
- Community Service

As an alternative to prison sentence there is also a possibility for the court to decide on "Suspended Sentence" pursuant Article 51. It is formulated a couple of additional decisions to the suspended sentence;

- That an offender shall (if uneducated) attend an educational program,
- That an offender, who possesses a profession or trade, shall work in a public or private institution under the supervision of another person,
- That an offender, who is under the age of eighteen years of age, shall attend an educational institution, which provides accommodation when necessary, in order to acquire a profession.

#### Suspensions to open a criminal case: Penal Code Article 191

A regulation of Suspended Sentence is also find in the Penal Code Article 191 (Amended 18/06/2014) where the court is given opportunity in case of a person who is suspected to narcotic crime can decide of suspension of opening of the criminal case for five years. In this case a probationary measure shall be applied for at least one year.

If the offender is not complying with the imposed obligations, a criminal action shall be brought against the person, (Article 191 (4)).

### The Law on Execution of Penalties and Security Measures

Under this law it regulates following:

- Conditionally release from Prison
- Community Service instead of judicial fines
- Decision of the execution of house arrest

### The Juvenile protection law

Pursuant Article 36 the court can decide to sentence a child to supervision which is handled by the Probation Directorate.

### **Alternative Sanctions in Sweden**

Probation involvement in Pre-trial / trial stage:

A pre-trial report can be requested both for offenders who are in a remand prison or out in the community. When the suspected offender is not in remand, the indicted person is called to the probation office. The probation service has access to the preliminary police investigation and the indictment. In order to obtain the necessary information, accused persons are interviewed, contact is made with references and information is obtained from the social services, the Social Insurance Bureau and Swedish Enforcement Authority, which provide background knowledge on financial aspects, eventual dependent children, sick leave, etc. Previous documented offenses and/or sentences are reviewed. If the person is currently under supervision due to a previous sentence, the probation officer provides information on the progress of a prior supervision.

The pre-sentence report is delivered to the court in advance of the opening of the trial and copies are given to both the prosecution and defense. The report intends to assist the court in its choice of sanctions and, for that reason, shall clearly state whether there is a need to impose supervision. The probation service may also suggest a specific sanction, such as probation with specific provisions as participation in treatment programmes and control of sobriety, or contract treatment. In some cases, a need for supervision due to risk of recidivism is clear, but it is not possible to suggest probation due to factors such as the client's refusal to cooperate with the conditions of identified necessary interventions, or due to previous severe or repeated misconduct during probation. Furthermore, an assessment regarding the suitability of the client to perform community service is made.

Swedish sanctions and probation involvement in the enforcement stage

- Conditional Sentence, (without Probation Service involvement)
  - Conditional Sentence combined with Community Service or/and with day fine.
  - Probation Order
  - Probation Order combined with Community Service
  - Probation Order with determined Treatment plan.
  - Electronic Monitoring as alternative to prison sentence
- Conditional release

### Conditional Sentence

The convicted has a probationary period one year, but without supervision. The Conditional sentence can be combined with Community Service- but without more involvement from the Probation Service. The court can prescribe that the convicted during the probationary period

shall compensate for damages caused by the crime. There is a probationary period of two years.

#### Probation Order

Probation order means that the convicted calls for meetings with probation officer, from every week to every third week. The motivational dialogues with the officer can be combined with provisions to take part in treatment programmes suitable for the convicted crime and needs. The probation Order can as another sanction be combined with Community Service.

#### Probation Order with determined Treatment plan.

In this sanction the convicted get a determined treatment plan in the court sentence. Most common is that the convicted must stay at a treatment center with restrictions to leave the building. The length is most commonly decided in the treatment plan. In this sanction the court always put a penal value of the sanction, which means that the court decides on an alternative length of prison. If the alternative prison sanction would have been 12 months, this is the term the convicted have to serve if Probation order is revoked. If the sentence is revoked, the court assesses the value of what the convicted have served within the Probation Order.

#### Electronic Monitoring as alternative to prison sentence

The maximum length of Electronic Monitoring is six months' prison. When a convicted person has got his or her sentence, he or she can apply by the Probation Service to serve the sentence with electronic tag. It is the Probation Service who is eligible to make the decision of approval. The convicted must have an occupation or studies for at least half time work, in order to avoid too harsh isolation in house arrest.

#### Conditional release

Except life sentenced, and convicts with less than one month of imprisonment, the convict get conditional release automatically after he or she have served 2/3 of the sentence. The conditional release can be prolonged if the convicted has been reported for serious misconduct. The release can be prolonged up to six months, which is a decision that the Prison Service make. The Probation Service decides whether the convicted will be issued supervision upon release. The decision is made out from Risk- and need assessment.

Before conditional release The Prison and Probation Service can grant the prisoner possibility to serve the sentence in the society if the risk assessment allows. The measures are to serve at a Halfway house, to serve with Electronic Monitoring at home, to stay at treatment center or to be grant a daily-leave from prison to work or study, if there is a reason to get assistance with career change. This can normally be granted earliest after the person have served half the time.

### **Alternative Sanctions in Estonia**

Probation involvement in Pre-trial / trial stage:

The Prosecutor's Office requests pre-trial reports from the Probation Service in Estonia. In order to suggest a sanction of treatment or a community Service, they shall base it from investigations from the Probation Service. It is compulsory to do so if the accused is a minor and it's mandatory also for the judge in that case to control

A probation officer prepares the reports which contains a summary of the personal characteristics and social circumstances of a suspect, and an opinion on the probationary period and selected obligations (including interdiction to enter different cities/places) to be applied with regard to a suspect, the accused. The courts need the information because it is in the sentencing phase the conditions of probationary period and interdiction to enter places etc. are set. Compare with the Swedish system where the Probation Service decided that.

A pre-trial report contains biographical facts and a psychological-social prognosis of a suspect. The probation officer commit interview with the suspected and persons close to him or her. Information from local government agencies, employer and schools are collected.

Estonian sanctions and probation involvement in the enforcement stage

- Probation Order
- Electronic monitoring as alternative to imprisonment
- Supervision with treatment programme
- Community service
- Supervision of conduct as a sanction applicable for minors
  
- Conditional release
- Electronic monitoring combined with the release on parole

The Probation Service also take care of a certain sanction with probation for juveniles. The court decides on which sanction (after proposal from Probation Service) and it also decides on all obligations and to revoke the sanction.

Conditional release

In certain cases, supervision can be issued after release. In Estonia it must be a court who issue supervision and it is only for convicts with a sentence with two years or more. To issue this supervision, it must be a reason to believe that he or she may commit new criminal offences. This assumption should be related to the personality of the convicted offender, his or her previous personal history and living conditions and conduct during the service of the sentence.

It is the court who decides if the person can be released. It can be done after a minimum of 2/3 serving. If the convict applies for electronic monitoring, the minimum period of served imprisonment is half the sentence.

Compare the release with Swedish law, where there is a main rule for conditional release after 2/3 serving by the law, if there is no reason against it. The Swedish Prison Service can without involvement of court, decide to postpone the release with up to six months when the convict has failure the fulfilment a good behaviour. The Swedish Probation Service can decide on a certain measure out of prison with Electronic Monitoring before the day for release, earliest after half the sentences have been served.

If a convicted offender fails to comply with supervisory requirements or perform the obligations imposed on him or her, the Estonian court may, on the basis of a report prepared by the probation officer, extend the term of supervision of conduct by up to one year at a time or impose additional obligations.

On the basis of a report prepared by the probation officer, a court may mitigate or repeal the obligations imposed on the convicted offender for the period of supervision of conduct.

### **Alternative Sanctions in Georgia**

Probation involvement in Pre-trial / trial stage:

Individual assessment report about the juvenile is mandatory. It should contain: Juvenile's level of development; Conditions of life, growing and development, Education, Health status, Family situation, Special needs, Risk for reoffending. There should be a recommendation of measures.

Georgian sanctions and probation involvement in the enforcement stage

There is many different sanctions formulated in Georgia, which in the other countries probation organisations would have been formulated as obligations or restrictions that could be added to the serving. And on the other side there is no treatment order formulated as a sanction. In the referred literature "Probation in Europe Georgia" the probation service is described most as sanctions for juveniles, even though it is also possible to sentence adults to some Non-custodial sanctions.

- Suspended sentence
- Conditional sentence (without Probation Service involvement)
- House arrest
- Electronic Monitoring
- Community Service
- Correctional work
- Restriction of Freedom
- Treatment Order
- Banning to hold a certain position or pursuing a particular occupation
- Supervision as a measure for juveniles

#### Community Service

Community service means that a convicted person works free of charge, the type of work is determined by the probation office. Community service is appointed for a term of 40 to 800 hours, (maximum 300 for juveniles). It can be more of the term if sentence of fine is changed by community work.

#### Correctional work

Correctional work is appointed for a period ranging from a month to two years and must be served at convict's workplace. While serving correctional work convicts are prohibited to quit job without permission of the probation bureau.

#### Restriction of Freedom

Serving the restriction of freedom means, serving a sentence in institution for the whole time, except for non- working days and holidays.

#### House arrest

House arrest can be appointed to juveniles from 6 months to 1 year. It means that the person must be in his place of residence during day and night. Juveniles are not allowed to leave their living place in hours which are determined by the court. Execution of punishment is implemented by the supervision of a probation bureau with Electronic Monitoring.

No Aftercare for parole

Unlike the other compared countries, the Probation Service in Georgia does not offer after-care services for probation according to the referred literature. However, it says that “individuals who are still in need of support and guidance, out of their own free, will continue their contact with agencies who offer support”, (Probation in Europe, Georgia 5.3). It is not explained whether it is mandatory, meaning that there is a conditional release.

### **Alternative Sanctions in Croatia**

Probation involvement in Pre-trial / trial stage:

Either the Attorney Office or the court requests for a Pre-trial report. The report is conducted by the Probation Service. The report shall include criminogenic risk level and intervention needs, attitude toward the offence, information about previous criminal activities.

Reports for the state attorney also includes assessment of appropriateness of implementing special obligations, while report for the judge includes assessment of anticipated rehabilitative impact of the sanction.

Croatian sanctions and probation involvement in the enforcement stage

- Conditional sentence with supervision
- Community Service
- Treatment order
- Psychiatric treatment
- Drug/alcohol treatment programme
- Electronic Monitoring<sup>3</sup>
  
- Conditional release

The court decides on which sanction (after proposal from Probation Service) and it also decides on all obligations and to revoke the sanction. The Probation Service also conduct supervision during parole after release from prison, with obligations set by the court.

Conditional sentence with supervision

It is the court who imposes provisions as conditions. These could be to engage in medical treatment, addiction treatment, psychosocial treatment or in education for certain vocation. It can also be restrictions from visiting some places and events.

Community Service

The sanction can be used as alternative sentence to a prison sentence up to six months. It can last from 10 to 60 working days. It is conducted in public and other services with whom the Ministry of Justice has signed an agreement, and that are involved in humanitarian, ecological, communal or other socially useful activity (e.g. utilities, retirement homes, centres for working therapy and rehabilitation, hospitals, Red Cross, etc.). It is free and must not be used for gaining any financial profit.

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<sup>3</sup> When the reference literature “Probation in Europe Croatia” was written, the Electronic Monitoring sanction was implemented by the law but not yet in praxis.