



## MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA

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### CONCEPT ON INTRODUCING A PROGRESSIVE SYSTEM OF ENFORCEMENT OF IMPRISONMENT SENTENCES

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#### I. THE RATIONALE OF INTRODUCING A PROGRESSIVE PENAL ENFORCEMENT SYSTEM

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The aim of the penitentiary system is to guarantee public safety through rehabilitation and social reintegration of prisoners. According to the UN Standard Minimum Rules for the Treatment of Prisoners (hereinafter “Nelson Mandela Rules”), the purpose and justification of deprivation of liberty is, primarily, to protect society against crime and to reduce recidivism. Those aims can only be achieved if the imprisonment time is effectively used to ensure, as far as possible, that offenders are able to lead a law-abiding and self-supporting life upon their return to society.<sup>1</sup>

To achieve this goal, the domestic correctional system must implement practices that have proven their effectiveness, and which are in line with the commitments set out in conventions and treaties to which Republic of Moldova is a party. International standards and European prison rules stipulate the following basic principles:

- The *individualisation* principle means that punishment enforcement shall take into account the diversity of personal characteristics of prisoners, their specific risks and needs and reflect those into individual sentence plans.<sup>2</sup>
- The *normalisation* principle<sup>3</sup> requires that prison life should resemble as closely as possible life in the community.
- The *responsibility* principle suggests that inmates should be given the opportunity to exercise personal responsibility in daily prison life. This means that sentence plans should be developed, as far as possible, with the active participation of the prisoner.<sup>4</sup>
- The principle of *security and safety* prescribes making a clear distinction between diverse types of risks a convict may pose to others, to him/herself and to community in the event of escape. This principle recommends ensuring a proper balance between the physical, procedural and dynamic security.<sup>5</sup>

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<sup>1</sup> The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 4.1.

<sup>2</sup> Recommendation Rec(2003) 23 of the Committee of Ministers to Member States on the management by prison administrations of life-sentence and long-term prisoners, rule 3. The Nelson Mandela Rules, Rule 89(1).

<sup>3</sup> Rec (2003)23, rule 4. European Prison Rules, Rec (2006)2, rule 5, rule 6. The Nelson Mandela Rules, rule 5, rule 96

<sup>4</sup> Rec (2003)23, rule 5, rule 9

<sup>5</sup> Rec (2003)23, rule 6. European Prison Rules, Rec (2006)2, rules 51 -53. The Nelson Mandela Rules, rule 89(2) UNODC Handbook on the Management of High-Risk Prisoners, chapter 5.

- The principle of *progression*<sup>6</sup> means that sentence plans shall aim at securing a progressive movement of the prisoner through security levels and a gradual adaptation to freedom.

The Moldovan legislation provides in art. 72 of the Moldovan Criminal Code, and art. 385 of the Moldovan Criminal Procedure Code that imprisonment is served in open, semi-closed and closed penitentiaries. Women and minors are held in separate penitentiaries and persons requiring medical treatment are held in a prison hospital (hereinafter the words ‘prison’ and ‘penitentiary’ are used interchangeably). According to art. 219, para (2) of the Enforcement Code, within each prison type there are three regimes of detention: initial, common and resocialisation regime. Thus, in the Republic of Moldova, there are nine regimes of enforcement of custodial sentences - three different regimes for three different types of penitentiaries. Taking into account the existence of specialized penitentiaries, the total number of regimes amounts to fifteen.

Currently, the initial regime is just an induction period which can last three, six or nine months depending on the respective type of prison, and is served in cell-type facilities. The rest of the prison population, regardless of the fact that they are in common or resocialization regimes, or whether they are in closed and semi-closed prisons, live in shared communal spaces – large dormitories called “barracks” and move freely within designated prison walls/zones.

Regrettably, in terms of infrastructure, the distinction between types and regimes is not tangible. The criminal enforcement legislation in force provides distinct rights for prisoners based on their detention regime (e.g. longer duration of family visits). Resocialization and reintegration measures are mostly applied in the last six months of the sentence when the convict should be transferred into the resocialization regime. The only condition for being transferred into the next regime is the expiration of a specific duration of the prison sentence.

Whereas current regimes mark the start, middle and the end of a custodial sentence, the classification of penitentiaries into three types, simply separates prisoners according to the length of their sentence. The type of prison is set in the law and cannot be changed during sentence enforcement, for example:

- Persons convicted of crimes committed by imprudence shall serve their imprisonment sentence in open penitentiaries.
- Persons convicted of minor, less serious and serious crimes committed with intent shall serve imprisonment in semi-closed penitentiaries<sup>7</sup>.
- Persons convicted of especially serious and exceptionally serious crimes as well as persons who reoffended shall serve the imprisonment in closed penitentiaries.<sup>8</sup>
- Persons aged under 18 shall serve the punishment of imprisonment in prisons for juveniles.
- Convicted women shall serve the imprisonment sentence in penitentiaries for women.

<sup>6</sup> Rec(2003) 23, rule 8. This rule is particularly relevant for long-term sentences and high-risk prisoners.

<sup>7</sup> A crime is considered minor if the applicable sentence is under 2 years of imprisonment.

A crime is considered less serious if the applicable punishment is between 2 and 5 years of imprisonment.

A crime is considered serious if the applicable punishment is between 5 and 12 years of imprisonment.

A crime is considered extremely serious if the applicable punishment falls within 12 and 20 years in prison.

A crime is considered exceptionally serious if the applicable punishment is over 20 years or life imprisonment.

English version of the Criminal Code (translation dated November 2009)

[https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova.html/Republic\\_of\\_Moldova\\_Criminal\\_Code.pdf](https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova.html/Republic_of_Moldova_Criminal_Code.pdf)

<sup>8</sup> Criminal Code, Art. 16, para. (5) Particularly serious offences shall be deemed to be offences committed with intent to for which the criminal law provides for a maximum term of imprisonment exceeding 12 years. And para. (6) Exceptionally serious offences shall be deemed to be offences committed with intent for which the criminal law provides for life imprisonment

Although the Moldovan Criminal Code provides in art. 72 para (7) that ‘*Changing the prison category is decided by Court according to legislation in force*’, in practice, there are no other legal provision clarifying the situations when such change is deemed necessary, except for cases of penal policy humanization by decreasing sentencing levels or otherwise easing the situation of offenders. According to art. 385 para (1) point 9) of the Criminal Procedure Code, the type of prison is stipulated in the sentence. The basic criteria for determining the type of prison remains the length of the custodial sentence, convict’s age (minors/adults) and gender. Criteria like attitudes, behaviour, psycho-social background, risk profile, or the nature of committed crime (with/without violence) are not taken into consideration.

**Hence, Moldova’s current legislation limits the individualisation of prisoners treatment, as it fails to allow a classification of inmates based on risk level, or to allow reviewing the security level based on progress in changing behaviour.**

Three fundamental problems emerge from this system and practice:

- Breaching or only partly observing the above-mentioned principles and rules for the treatment of prisoners set out in international and European human rights instruments;
- Failure to value the role of prison staff in the enforcement process, even though they know best the risks and needs of offenders from their daily interactions and can evaluate the outcome of certain interventions, or use regimes to motivate a behaviour change;
- The free movement within prison walls of large numbers of prisoners is fertile ground for prisoner subculture and informal self-governance, because without a risk-based classification and separation, prison gangs nurture their power to act collectively, stage mass riots etc.

International practice and recommendations, however, suggest that the security level should be determined by the prison administration/system based on an assessment of the degree of risk the prisoner poses to society.<sup>9</sup> In its report to the Government of the Republic of Moldova, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) specified that the judicial authority must determine the appropriate length of sentence for a particular offence, while staff of the penitentiary system must be responsible for determining the regime on the basis of officially approved criteria and individual assessments of prisoners.<sup>10</sup>

The Council of Europe (CoE) notes that in countries with inherited Soviet criminal justice philosophy, there is still a tendency to impose imprisonment more frequently and for longer terms than in Western European countries.<sup>11</sup> According to the definition given in the Recommendation of the Committee of Ministers to member states Rec (2003)23 on the management of prisoners sentenced to life imprisonment and long terms, sentences amounting to or exceeding five years can be considered long.<sup>12</sup> Thus, in the Republic of Moldova, out of 5 417 sentenced persons in custody, 3 922, or **72.4%, are serving a long sentence exceeding five years**, as of April 1, 2022.<sup>13</sup> The longer the sentence, the greater the rehabilitation efforts of the prison administration given the impact of institutionalisation.

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<sup>9</sup> Recommendation Rec(2006)2 Rule 51

<sup>10</sup> Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of September 14-25, 2015

<sup>11</sup> Criminal Justice Responses to Prison Overcrowding in Eastern Partnership Countries, Compilation of the Reports on Study carried in Armenia, Georgia, Moldova and Ukraine, 2016, p. 253

<sup>12</sup> Recommendation Rec(2003) 23, p. 1

<sup>13</sup> <http://penitenciari.gov.md/ro/statistica>

Compared to other CoE countries, the average length of imprisonment in Moldova is one of the longest in Europe (only Azerbaijan and Portugal exceed Moldova insignificantly)<sup>14</sup>. Consequently, Moldova's incarceration rate is twice higher than the average among 47 CoE countries, i.e. Republic of Moldova had 208 prisoners per 100 000 inhabitants in 2022<sup>15</sup> while the average rate in Council of Europe countries was 110 per 100 000 population according to the Annual Statistical Report 2021 (SPACE I). Given the long sentences and the low engagement in meaningful activities (the share of prisoners employed in work did not exceeded 15% in the last decade), it can be assumed that the purpose of criminal punishment is largely not being achieved. In other words, Moldova has a harsh, retributive penal policy and a rigid non-individualized enforcement system.

Given these circumstances, the Ministry of Justice intends to humanise criminal policy by promoting alternatives to custody, on the one hand, and improve the performance of the penal enforcement for better social rehabilitation of offenders, on the other hand.

Instituting progressive custodial regimes is an effective tool to ensure the individualisation of the enforcement of sentences, gradual reintegration of prisoners into society, as well as to diminish the problem of overcrowding in penitentiaries. In 2023, just **1% of convicts (about 60 persons)** served their punishment in **open type of penitentiary**. By comparison, in Romania, the share of prisoners in the four regimes is evenly distributed. In Sweden, 24% of prisoners serve their sentence in open facilities. Once the progressive regimes are implemented, it is expected that the share of prisoners placed in open regime will increase, because the progressive system would allow long-term prisoners to gradually transition to the life in the community. At the same time, progressive security levels will ensure a better alignment to the fundamental principles of treatment of prisoners, according to which the penitentiary system must not aggravate the suffering inherent in the deprivation of liberty, which is a sentence in itself,<sup>16</sup> and the restrictions imposed on persons deprived of their liberty must be the minimum necessary and proportionate to the legitimate aim for which they are imposed<sup>17</sup>.

In retrospect, to ensure the continuity of the justice sector reform process, the Action Plan for the implementation of the Justice Sector Reform Strategy for 2011-2016 established the action 6.5.8, p. 2 - *Creation of the mechanism for individual planning of sentence enforcement*. Additionally, by Government Decision No. 1462 of 30.12.2016, the Strategy for the development of the penitentiary system for 2016-2020 and the Action Plan for its implementation were approved. One of the objectives of the Strategy was the establishment of the progressive system of sentence enforcement. by. Thus, on 01.12.2016, the working group on the revision of legislation, regulations and procedures started the development this concept and on the amendments to the executive-criminal legislation. On 27.02.2017, the concept of establishing the progressive system of sentence enforcement was presented to the management of the Ministry of Justice, and the working group continued to work on a draft amendment of the Enforcement Code and other legal acts. The draft law on the amendment of some legislative acts with a view to introducing the progressive system of enforcement was analysed by experts contracted by the CoE in 2019 and subsequently in 2021 within the framework of the CoE Programme "Promoting a criminal justice system based on respect for human rights in the Republic of Moldova" funded by the Kingdom of Norway.

Currently, the **Strategy for Ensuring the Independence and Integrity of the Justice Sector** for 2022-2025, approved by Law 211/2021, foresees in specific objective 2.1.5. "*Improving*

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<sup>14</sup> Source: The Annual Penal Statistics Report of the Council of Europe (SPACE I), 2021. The average length of imprisonment is 12.4 months in average in Europe, and 34.6 in Azerbaijan, while in Moldova – 30.5 months. <http://wp.unil.ch/space/space-i/prison-stock-on-1st-january/prison-stock-2014-2015/>

<sup>15</sup> According to the World Prison Brief the prison population rate is 181 inmates per 100,000 inhabitants, based on an estimated national population of 3.53 million (according to Eurostat)

<sup>16</sup> Nelson Mandela Rules, Rule 3

<sup>17</sup> Recommendation Rec(2006)2, Rule 3

*mechanisms of criminal sentences enforcement*”. In the Action Plan for the implementation of the Strategy, one of the actions related to the achievement of this specific objective involves the “*Establishment and implementation of the progressive system of enforcement of criminal sentences*”. To achieve this objective, the Ministry of Justice continues to enjoy the support of development partners and civil society.<sup>18</sup>

In the context of the above ideas, despite the fact that some progress has been made in the period 2016-2020, however, there are still shortcomings in the development of strategic and operational capacities of the penitentiary administration system. Moreover, according to the findings of national and international monitoring bodies, the institutional mechanism for assessing and planning the enforcement of custodial sentence remains underdeveloped. This is why introducing and implementing a progressive system of enforcement of custodial sentence, by shifting the emphasis from a punitive to a rehabilitative correctional policy and strengthening prison safety is a reform priority and requires a substantial transformation of the way the penitentiary system operates.

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## II. CONCEPTUAL APPROACH OF THE NEW ENFORCEMENT MODEL

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The custodial regime represents the totality of applicable rules, rights, obligations, activities and measures to guarantee order and safety in prisons and to prevent re-offending. Currently, the concept of regime has a narrow understanding among Moldovan professionals – it mostly refers to the observance of the daily routine and maintaining safety and order in the penitentiary. The modern concept of regime encompasses prison work, vocational training, education, library provision, offending behaviour programmes, counselling, group therapy, exercise, sport, social and cultural activities, and preparation for release<sup>19</sup>.

The progressive regimes represent a system of organising the process of prison sentences enforcement, which is based on the individualization of security and rehabilitation measures, adjusting them according to the progress or regress in the convict’s change of criminal behaviour, the gradual adaptation to the life in freedom through increased responsibility and autonomy as the person advances towards the completion of a sentence.

### **An individualized and progressive enforcement process includes the following stages:**

- I. Assessment of the convicted person immediately after imprisonment
  - Determination of risk level and identification of criminogenic needs<sup>20</sup>
  - Recommendation of a security level (regime) and specific interventions
- II. Drafting the Individual Sentence Plan
  - Specifying the enforcement regime
  - Setting mandatory/optional programmes/measures
  - Ensuring a balance between security requirements and reintegration needs
- III. Annual Progress Assessment
  - Adjustment of certain activities in the Individual Sentence Plan
  - Recommendation for a regime change, as needed

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<sup>18</sup> For example, the Council of Europe Programme *Strengthening reforms in the penitentiary system, probation and healthcare system in closed institutions in the Republic of Moldova*, 1.03.2021 – 29.02.2024 <https://rm.coe.int/leaflet-spprh-moldova-bil/1680a25ab2>

<sup>19</sup> Criminal Justice Assessment Toolkit, UNODC, pg. 18. <https://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html>

<sup>20</sup> In the penitentiary context, the notion of needs has a double meaning. On the one hand we are talking about basic, general needs, which should be provided on the basis of the fundamental principles of human rights, on the other hand we are talking about criminogenic needs, or the motivations that led the person to commit crimes. Criminogenic needs are also known as dynamic risk factors (which can be intervened upon)

- IV. Progressive/regressive change of the enforcement regime
  - Progressive - transfer to a less restrictive enforcement regime
  - Regressive - transfer to a stricter enforcement regime
  - Adjustment of the individual sentence plan to the new regime requirements
- V. Preparation for release, progressive re-entry into community
  - Assessment of the degree of implementation of the Individual Sentence Plan and the compliance with the conditions of leaving prison/living in the community.
  - Gradual adaptation of convicts to life in the community by granting short leaves outside penitentiary and transfer to open regime
  - Upon release, the convict should ideally have a place to live, a job and a social reintegration plan.

In line with this Concept, the draft law amending several acts proposes merging the concept of '*closed, semi-closed and open type of prison*', with the concept of '*type of regime*'. Thus, the categories of penitentiaries will be:

- Arrest facility<sup>21</sup>;
- Penitentiary;
- Penitentiary for women;
- Centre for minors/juveniles and youngsters;
- Reintegration centre (halfway house<sup>22</sup>).

The enforcement regimes will be differentiated by the restrictions imposed, the applicable security measures, the activities carried out, the degree of autonomy and responsibility of the convict, the freedom of movement inside and outside the penitentiary institution, contact with the outside world and other restrictions of the enforcement regime. It will take into account the principle according to which deprivation of liberty is a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering more than that inherent to imprisonment.<sup>23</sup>

The proposed enforcement regimes are:

- a) closed regime;
- b) semi-closed regime;
- c) open regime.

**The closed regime** consists of imprisonment under strict security conditions. Any out of the cell activities must be authorised, supervised and monitored by prison staff. Movement inside the prison is limited to the guarded perimeter and is always accompanied by an employee. Movement outside the prison can be authorised under special/extraordinary conditions and is conducted with supervision and escort. Participation in group activities and socialising with other inmates is allowed based on an individual risk and needs assessment. This regime will apply to dangerous convicts<sup>24</sup>, who pose risks of committing acts of violence, insubordination, danger to staff, to other inmates and visitors. Underworld criminal leaders and convicts who enforce or promote criminal subculture will be transferred to this regime. The receipt of parcels may be prohibited or limited

<sup>21</sup> Currently, these institutions are called *pre-trial isolators*, however according to the final provisions of Law 300/2017, Art. 96 para. (3), the legislation should be changed adjusting the terminology to *arrest facility*.

<sup>22</sup> A halfway House is a residential centre similar to houses in the community where the convict gradually pays for rent and utilities, where convicts prepare their own food, etc. The halfway house could be managed by National Prison Administration, National Probation Inspectorate and non-governmental organisations.

<sup>23</sup> European Prison Rules, Rule 102.2.

<sup>24</sup> According to Recommendation CM/Rec(2014)3 of the Committee of Ministers to Member States on dangerous criminals, a dangerous criminal is a person who has been convicted for very serious crimes of a sexual or violent nature against persons and has a high probability of committing repeated very serious crimes of a sexual or violent nature against persons.



under the closed regime. This type of regime will not apply to pregnant women or mothers with children up to 2 years old, convicts over the age of 65 and disabled convicts with severe locomotor disabilities. In the closed regime, sectors with differentiated levels of security can be created, according to the procedure set up by the National Administration of Penitentiaries (hereinafter NAP). However, the application of higher-security measures will be ordered and authorised only in exceptional conditions, following an individual assessment.<sup>25</sup> Any restrictions of rights applied within the closed regime must be proportionate to the aim pursued, and the administration must properly determine the threat.<sup>26</sup>

**The semi-closed regime** consists of detention under medium security conditions. Convicts have freedom of movement within the prison territory for the purposes of work, education or participation in programs. Participation in activities, according to the individual sentence plan, is a mandatory condition for being in this regime. The semi-closed regime will give inmates the opportunity to move unaccompanied inside the penitentiary within the limits set by the administration. The leaves from prison will be authorised gradually: starting with a few hours, with escort, and, if necessary, with electronic monitoring; ending with full day and unescorted leaves. This regime will be applied to sentenced persons who do not pose an imminent risk to the safety of staff, other prisoners, and visitors, as well as to convicted persons who are employed in the prison's household and maintenance service or who work in correctional industries.

**The open regime** represents detention under minimum security and supervision conditions. This regime is based on voluntary discipline, an increased sense of responsibility of the convict and encourages prisoners to use the given freedoms in good faith. Participation in activities is mandatory and requires limited monitoring. Convicts serving their sentence under this regime will have the opportunity to work or study in the community, with or without supervision of prison staff. The open regime will apply to sentenced persons who do not pose a risk to public safety, taking into account the principle that the detention regime should not be more severe than necessary, and security measures should be proportionate to the risk the person presents. Convicts in the open regime will have controlled access to the internet and mobile phones.

**The therapeutic community** will be a separate sector that can accept convicts from all regimes. However, the prison administration will consider separating prisoners who have freedom of movement only within the guarded perimeter from those who have freedom of movement outside the prison. Selection and acceptance into the community is decided by the head (chief) of the therapeutic community sector. The therapeutic community programme may be recommended by the psychologist and is an important stage of the individual sentence planning. After successful completion of the therapeutic community programme, the convict will either be proposed for parole (if they have served the minimum fraction) or will be transferred to separate drug-free units where staff are trained on how to work with post-rehabilitation individuals to maintain the progress the convict has made.

**Reintegration Centre (halfway house)** is residential housing for a small or medium-sized group of people. The placement in this centre is temporary, usually up to a 1 year, as follows:

- the offender has 6 months before release and has not been transferred to open regime;
- the offender has been released on parole but has no place to live or work;
- the sentenced person has been released at the end of the term and has signed the aftercare agreement with the probation service (INP).

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<sup>25</sup> European Prison Rules, Rule 53.1.

<sup>26</sup> To fight organised crime, some countries, such as Italy, have set up special high-security regimes, which has led to several cases being referred to the ECHR. In *Enea v. Italy* (MC), 2009, para. 60-

**The initial decision on the applicable enforcement regime** will be conducted in a manner similar to the current criminal law. The proposed novelty is the introduction of a mandatory minimum fraction to be served in the initially-set regime and the establishment of a Risk Assessment and Sentence Planning Unit.

Thus, it is proposed that the initial placement into a regime is valid for the first fifth fraction of the sentence and should take place as follows:

- persons sentenced to less than 2 years of imprisonment or who have committed crimes unintentionally, are initially placed in open regime;
- persons sentenced to a term ranging from 2 to 5 years of imprisonment are initially placed in the semi-closed regime;
- all persons sentenced to more than 5 years of imprisonment are initially placed in the closed regime, except for cases when the Risk Assessment and Sentence Planning Unit recommends placement in semi-closed regime.

Following the sentencing decision by Court, the NAP will allocate sentenced prisoners to open and semi-open regimes according to the principle of proximity to the place of residence. In the case of closed regime applicable for persons sentenced to long punishments, the Risk Assessment and Sentence Planning Unit will recommend allocation to a specific prison after an individual assessment.

In accordance with Rule 51 of the Recommendation of the Committee of Ministers of the Member States of the CoE on the **European Prison Rules Rec(2006)2**, *"As soon as possible after admission, prisoners shall be assessed to determine: a. the risk that they would present to the community if they were to escape; b. the risk that they will try to escape either on their own or with external assistance. Each prisoner will immediately be placed under a security regime appropriate to the risk identified"*. At the same time, Rule 52 of Rec (2006)2, provides that: *"As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison, or whether they are likely to harm themselves"*.

Thus, the initial assessment must distinguish between types of risks specific to prison context:<sup>27</sup>

- the risk of escape: the probability that a person will leave his/her assigned prison perimeter without permission;
- risk of violence: the probability of a person committing acts of aggression against other persons;
- risk of self-harm: the probability of a person committing acts of aggression against him/herself;
- other risks: the probability of committing certain types of crime (e.g. sexual offences, terrorism) or harming certain categories of people (e.g. children, family members).

The importance of carrying out a proper risk assessment of all prisoners on matters of safety and security has been underlined in Judgement of the European Court of Human Rights (*see Edwards v. United Kingdom, No. 46477/99, Judgment of 14/03/2002*), in which the Court found that there had been a violation of the right to life in respect of a remand prisoner who had been beaten to death in his cell by his cellmate.

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<sup>27</sup> For details, see the Validation Report: Risk and Needs Assessment Tool in the Romania penitentiary institutions, Ana Maria Szabo and Bogdan Voicu, 2019



It is being proposed here to establish a **Risk Assessment and Sentence Planning Unit** (hereinafter “the Assessment Unit”), that will operate at the level of pre-trial/remand detention facilities (north, centre, south) but will be administratively and hierarchically subordinated to NAP.

The unit will be formed by specialists with different backgrounds and training (predominantly psychologists and psychiatrists). When necessary, the assessment unit will be able to contract specialised services from external or international experts (especially when the assessment unit lacks such specialists). The staff of the unit will be trained, supervised and certified by the NAP in the use of scientifically validated risk assessment tools. The staffing rules, qualifications and certification procedure in the use of certain assessment tools will be determined by the Ministry of Justice.

The assessment unit will have 30 days to carry out the risk assessments. It is expected that 10-15 specialists will be able to process the flow of people requiring assessment. According to the Report on Court Statistics on sentences and other measures applied, out of the total 3592 prison sentences passed by courts during 2021, 735 persons were sentenced to an imprisonment term of less than 2 years, 1759 persons were sentenced to a imprisonment term between 2 and 5 years, 894 - to a term between 5 and 12 years, 204 persons to a term of more than 12 years imprisonment, and 12 persons were sentenced to life imprisonment.

The Assessment Unit will have the **following duties**:

- conducting the initial risk assessment of persons sentenced to long-term imprisonment;
- identifying the criminogenic needs and recommend intervention measures to be included in the Individual Sentence Plan, including the recommendation of the most appropriate penitentiary;
- conducting the initial risk assessment and the assessment upon considering regime change for persons sentenced to life imprisonment;
- verifying and evaluating the quality of risk assessments conducted by penitentiary psychologists and providing professional development training for staff specialised in conducting risk assessments.

A **regime change commission (board)** will be established in each penitentiary. After serving the sentence in the initially-set regime, the regime change commission will examine whether the convict is ready and eligible for transfer to a less restrictive regime. The criteria to be taken into account for the progressive change of the regime are:

- degree of risk posed by the person;
- identified needs;
- behaviour during the enforcement of previous criminal sentences or in remand;
- attitude towards the committed offence;
- age;
- health and treatment needs (e.g. addictions).

**The regressive change of regime** can be conducted any time, based on the decision of the regime change commission. When the conditions of serving in open regime are being breached, the regime change commission and the penitentiary administration can order the regressive transfer to the immediately preceding regime, and namely semi-closed type (depending on the gravity of the disciplinary violation) or order transfer the persons to closed type of regime when the prisoner is suspected of committing a crime or contravention. Convicted persons who have been transferred regressively into a stricter regime are to be evaluated and considered for regime change on a yearly basis. The evaluation of the progress in carrying out the individual sentence plan is the essential tool for taking the decision on change of regime.

The decision to change the regime taken by the committee set up at prison level may be appealed in accordance with art. 473 of the Criminal Procedure Code within 15 days from the moment of notification. The appeal does not suspend the enforcement of the decision. In this context, the list of issues to be dealt with by the Court during the enforcement of custodial sentences provided for in art. 469 para. (1) of the Criminal Procedure Code, must be completed with the resolution of appeals concerning the change of enforcement regime.

**Sentenced women** will be detained, as a general rule, according to the regimes and conditions established for other convicted prisoners. However, special features in the women's penitentiary will be provided for pregnant women, in particular distinct conditions of care before and after childbirth, receiving healthcare services by community hospitals. When the child reaches the age of three, with the mother's written consent or with the consent of the guardianship authority, the child will be placed in the care of persons indicated by the sentenced woman or in the care of a special institution for minors. At the request of the sentenced woman, the penitentiary administration may extend the child's stay with the mother for a maximum of one year. Pregnant women and nursing mothers will be provided with an additional food ration. Pregnant women and women who have children in their care will not be subject to disciplinary sanctions involving isolation. Mothers who will serve the sentence in a semi-closed and open regime will be given leaves in order to be able to take the child to the kindergarten/nursery in the community.

**Juveniles** sentenced to imprisonment will be detained in juvenile and youth custody centres<sup>28</sup>. The specific features for juveniles will mostly relate to guaranteeing access to education and skill development, and an additional food ration. Regardless of the regime in which they are placed, juveniles will benefit from the right to education. Juvenile prisoners in semi-closed regime will be able to leave the prison for attending the school in the community accompanied by prison staff. While juveniles serving in open regime will go independently to school in the community. Upon reaching the age of 18, the regime change commission will consider whether the juvenile should continue to serve his/her sentence in the juvenile custodial centre until the age of 21. According to international recommendations, minors reaching the age of majority and juveniles judged as minors should be placed in institutions for juvenile offenders or in special institutions for juveniles, unless their social reintegration can be better ensured in adult institutions<sup>29</sup>.

**Life-sentenced prisoners** will enforce their sentence according to the general conditions set for other categories of prisoners. The approach is based on Recommendation Rec (2003)23, rule 7, according to which "*Consideration should be given to not segregating life sentenced and other long-term prisoners on the sole ground of their sentence (non-segregation principle)*".<sup>30</sup> Furthermore, rule 8 of the same recommendation states that "*Individual planning for the management of life or long-term prisoners should aim at securing progressive movement through the penitentiary system (principle of progressivity)*".<sup>31</sup>

The persons sentenced to life imprisonment will initially be placed in a closed regime for a period of 6 years, and the decision to assign them to a specific penitentiary will be made by the NAP based on the risk assessment and the Individual Sentence Plan. The evaluation of the life-sentenced convict upon being considered for a regime change to a more permissive one will be carried out by the assessment unit, and the decision regarding the regime change will be taken by NAP according to clearly established procedures and criteria. Life-sentenced persons placed in semi-closed regime will be able to benefit from movements/leaves outside the prison only with escort

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<sup>28</sup> According to Recommendation Rec(2008)11 on the European Rules for minors subject to sanctions or measures imposed by judicial bodies, minors are considered to be persons who have not reached the age of 18, and juveniles are persons aged 18-21.

<sup>29</sup> Rec(2008)11 on the European Rules for minors subject to sanctions or measures imposed by judicial bodies, p. 59.3

<sup>30</sup> Rec(2003) 23 7

<sup>31</sup> Ibidem, p. 8

or electronic monitoring. Life-sentenced prisoners transferred to the open regime shall wear electronic bracelets.

**For convicts who, given their previous positions, may be threatened** with revenge by other prisoners, separate sectors will be created in each type of regime.

After the entry into force of the new enforcement system, the assessment of convicts currently serving their sentence with a view of changing their regime will be carried out on the basis of the time remaining to be served and the need for preparation for release on parole. In other words, the regime change committee will give priority to prisoners who have 6 months left before submission of release on parole motion to court.

### III. EXPERIENCE OF OTHER COUNTRIES

The analysis of other countries' experience revealed that a system of classification of convicts exists in most European states. When it comes to the authority to set or change the regime, in Europe there are several models:<sup>32</sup>

Models	Brief description of the procedure
<b>Court decision</b>	The regime or security levels are set in the criminal-enforcement legislation or set by the Court (e.g. Slovenia, Slovakia, Lithuania).
<b>The decision of prison administration</b>	<p>The decision about the applicable regime or security level is taken based on the risk and needs assessment of the convicted person, for example:</p> <ul style="list-style-type: none"> <li>✓ The decision is taken by the Correctional Service or the Penitentiary Administration (e.g. Sweden, Norway, Latvia, Scotland, Northern Ireland, Austria, Denmark, Netherlands); <ul style="list-style-type: none"> <li>○ In Denmark, the judge can make non-binding recommendations;</li> </ul> </li> <li>✓ The initial categorization is carried out by an Evaluation Centre or by specialised staff (e.g. Finland, Spain, Germany, UK: England); <ul style="list-style-type: none"> <li>○ In Spain the decision is taken by the Penitentiary, but the supervisory judge monitors the application of regime measures.</li> </ul> </li> </ul>
<b>Mixed model</b>	<p>The allocation to an enforcement regime takes place after a mixed model:</p> <ul style="list-style-type: none"> <li>✓ The court decides the type of penitentiary (maximum security or ordinary), and the prison administration decided the allocation into different security levels within the ordinary regime/prison (Czechia);</li> <li>✓ The court decides the initial regime in which a minimum fraction of the sentence will be enforced according to the legal provisions, and the subsequent transition from one regime to another is decided by the penitentiary board chaired by a delegated Judge. (Romania).</li> </ul>

When it comes to the criteria considered upon categorising prisoners, European practice varies. In Austria for instance, the following factors are taken into account: length of sentence, nature/type of offence, security requirements, need for treatment (educational needs, treatment of violent and addictive behaviour, medical needs, etc.) and if possible, proximity to the place of living or the place where the person is due to be released from detention (post-release living place). In the

<sup>32</sup> Questionnaire distributed by EuroPris among member countries. <https://www.euopris.org/>  
Questionnaire versions in English is available on request.

Check Republic, the type of prison is mostly decided based on re-offending and seriousness of the committed crime. In Latvia, the Director of National Prison Administration decides the placement of a prisoner into a security level, based on the needs for healthcare, security and preventing reoffending.

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#### IV. IMPLICATIONS AND PRECONDITIONS FOR IMPLEMENTATION PROCEDURES

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The progressive system of enforcement of imprisonment sentences involves the implementation of a number of innovative practices, such as:

- ✓ establishment of a specialised risk assessment unit;
- ✓ strengthening the importance of the individual sentence plan;
- ✓ decentralisation of decision authority at the level of the penitentiary institution;
- ✓ streamlining processes, digitalization of prisoners' file management, flow of documents;
- ✓ implementing a daily remuneration system for all inmates engaged in meaningful occupations;<sup>33</sup>
- ✓ establishment of Halfway Houses for a safer and progressive re-entry into society.

The following adjustments to **infrastructure** and detention conditions will be needed:

- ✓ considering the need for strict separation according to the regimes, NAP and the penitentiaries will plan the procurement of equipment and devices for locking and separating sectors (e.g. locks for each floor in the closed regime);
- ✓ setting up workshops for providing employment for all convicts, especially/starting with those serving in semi-closed regimes (work places must be created for at least 35% of the total prison population, which is double the current employment level);
- ✓ ensuring phone calls through a digitalized/automated system;
- ✓ re-arrangement of dining spaces in a differentiated manner according to regimes (distribution of food in the cell or floor for closed regimes, communal dining in the semi-closed regime, and arrangement of the kitchens where inmates independently cook their food in the open regime);
- ✓ installing separate showers in the cell or on the floor, in closed regimes.
- ✓ creation/ refurbishment of spaces for the open regime for a capacity of 100 places by end of 2023, and an additional 500 places by 2025.

The **staff** organisation, in particular the ratio of inmates per employee will differ according to regimes and the category of penitentiary:

- ✓ in closed regimes, the ratio staff to inmates must be 1:1.5 (one employee should be assigned to 1.5 prisoners).
- ✓ in semi-closed regimes, the ratio of staff: inmates should be around 1:3
- ✓ in open regimes, the ratio would be 1:10, ten convicts per one employee
- ✓ in juvenile and youth detention centres, a 1:1 ratio is required, and the share of employees with studies in social, psychological, pedagogical sciences shall be 45% of the total.

The above adjustments will be reflected in a timetabled plan for the implementation of progressive regimes.

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<sup>33</sup> It is proposed to establish an identical remuneration for all work activities and a symbolic remuneration for participation in training according to R(89)12, adopted on October 13, 1989 Education in Penitentiary 18 (Chapter III);

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## V. CONCLUSION: THE ADVANTAGES OF PROGRESSIVE REGIMES

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Between the current rigid system and models where the Prison Administration has total discretion and authority in setting and changing regimes, this concept proposes a mixed model of enforcement of custodial sentences. The regime is set initially on the basis of the length the sentence, with the exception of long-term prisoners where the assessment unit may recommend a prison or a different regime. The evaluation of prisoner's progress in the execution of the Individual Sentence Plan is proposed to take place annually, however for progression to the next regime the regime change committee will evaluate the prisoner according to several criteria set out in the legislation.

**The advantages** of the progressive system of enforcement of imprisonment sentences over the current system can be summarised as follows:

- aligning the national legislation to the European standards and recommendations;
- improving individualization of execution of the custodial sentence;
- establishment of a prisoner classification system based on risks and needs;
- achieving the purpose of penal punishment;
- ensuring a strict and clear differentiation between regimes;
- preparing inmates for release by gradually expanding their responsibilities and trust;
- motivating prisoners to change their behaviour and participate in activities;
- viewing imprisonment as means of resocialization and acquiring new skills;
- reasoning of decisions regarding release on parole will improve;
- managing the prison population more flexibly will allow reducing overcrowding.

In conclusion, the progressive regimes constitute an essential component of the sentence enforcement process, focused on the assessment of the convicted person, the individualization of security measures and preparation for release and social reintegration.

**The concept formulates the rationale and the vision of the proposed model for progressive regimes. The document is intended to be used as guidance by the working group in the legal drafting process. Some of the aspects described above may be subject to change or rewording during the process of drafting, consulting and approval of the draft law on amending other laws.**