STEERING GROUP FOR PRISON REFORM IN MOLDOVA

ANALYSIS OF THE CURRENT SITUATION AS REGARDS THE CRIMINAL JUSTICE SYSTEM AND PENAL POLICY OF THE REPUBLIC OF MOLDOVA

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INTRODUCTION

The Republic of Moldova gained both independence and sovereignty in 1991, since when reform of the judicial system in general, and of the criminal justice system in particular, has been begun, leading to changes in the legislation regarding the status of judges, the organisation of the justice system, the status of accused persons, etc.

Now, 12 years later, the criminal justice system still faces serious problems, from the unacceptably long duration of the procedure and violations of detainees' rights to prison overcrowding and a lack of rehabilitation schemes.

In order to detect the weak points of the criminal justice system, the Institute for Penal Reform carried out a detailed analysis, encompassing the Moldovan criminal justice system and the phases of criminal procedure (investigation, trial and enforcement of penalties), in the light of both the legislative framework in force prior to June 12 2003 and the one which came into force on that date.

One of the aims of this report is to present a complete and objective picture of the functioning of the criminal justice system, its strong points, as well as the existing weaknesses and shortcomings. In the process of drafting this report, the Institute not only used official data - existing laws and draft legislation, statistical data presented by state bodies (Supreme Court of Justice of the Republic of Moldova, Department of Penitentiary Institutions, Chišinău city prosecutor's office, etc) - but also made use of the findings of independent sociological research and surveys, as well as other reports based on field work.

A brief description of the Institute for Penal Reform (IRP), the reporting body

The Institute for Penal Reform (IRP) is a non-governmental, apolitical, independent and non-profit-making organisation which functions at national level.

It was established in March 2001 by the SOROS Foundation Moldova, under the name CARPEM - Centre for Assistance to Penitentiary Reform in Moldova. In November 2002, the name was changed to IRP, because of a broadening of its aims and activities.

The main ***purpose*** of the Institute for Penal Reform is to offer assistance with penal and prison reform in the Republic of Moldova.

The objectives of the IRP are:
- to offer assistance to governmental structures in the formulation of a humane criminal justice policy;
- to draw up proposals with a view to adjusting the national legislative framework to international standards, on the basis of scientific research and analysis;
- to help to change the aim of criminal penalties, as well as the attitude of society towards the prison system, from pure punishment of the offender to re-education and rehabilitation;

- to establish a strategic partnership between national decision-making agencies, non-governmental organisations and civil society, based on international co-operation and experience.

The IRP is acting in collaboration with, and with the support of, the Parliament of the Republic of Moldova (Legal Committee, Committee for Appointments and Immunities), the Moldovan Ministry of Justice, the Judicial Service Commission, the Supreme Court of Justice, the Department of Penitentiary Institutions at the Ministry of Justice, etc.

The Institute is the local implementing agency for the Netherlands Helsinki Committee, and is beginning, projects with DFID, UNICEF Moldova and Penal Reform International/KNCV.

The IRP carries out a wide **range of activities** in the field of penal reform in Moldova, namely:

- activities encouraging the implementation of alternative penalties and measures (community service, mediation and probation);
- activities to adjust the national legislative framework to international standards; provision of legal and policy advice regarding deprivation of liberty;
- activities relating to the youth justice system;
- activities to increase detainees' access to information;
- training for prison staff;
- twinning between Moldovan and Dutch prisons;
- the establishment and maintenance of an intranet system to collect information about detainees: "Crimin".

KEY TERMS USED IN THIS REPORT

The Criminal Code of the Republic of Moldova (also called "the new Criminal Code"): The Criminal Code adopted on April 18 2002 (Law Number 985-XV), which has been in force since June 12 2003.

The old Criminal Code: The Criminal Code adopted on March 24 1961 (published in the Supreme Soviet News of the SSR of Moldova, 1961, No 10, Art 141) and repealed on June 12 2003.

The Code of Criminal Procedure (also called "the new Code of Criminal Procedure"): The Code adopted on March 14 2003, which has been in force since June 12 2003.

The old Code of Criminal Procedure: The Code of Criminal Procedure adopted on March 24 1961 and repealed on June 12 2003.

The Official Gazette of the Republic of Moldova (Monitorul Oficial al Republicii Moldova): This is the official publication in which laws and other standard-setting instruments are published.

Preventive detention isolators (SIZOs)*, also known as "pre-trial isolators": These isolation units, for which the Department of Penitentiary Institutions is responsible, are used to detain people during the pre-trial period. There are five SIZOs, one each in Chișinău, Bălți, Cahul, Rezina and Bender.

Temporary detention isolators (IVSs): These isolation units, for which the Ministry of Internal Affairs (police), the Information and Security Service and the Centre for Fighting Economic Crimes and Corruption are responsible, are used to detain people on a temporary basis.

* **The Russian abbreviations are retained because they are widely used (especially by practitioners)**. SIZO = Sledstvennîi IZOliator; IVS = Izoliator Vremennogo Soderjania.

I. GENERAL INFORMATION ABOUT THE REPUBLIC OF MOLDOVA

Location: Eastern Europe, between Romania and Ukraine
Capital: Chişinău
Area: *Total area:* 33,700 sq km
Land boundaries: These total 1,389 km, 450 km with Romania and 939 km with Ukraine
Climate: Moderate winters, warm summers
Natural resources: Lignite, phosphorites, gypsum
Population: 4,473,033 (July 1994 est.)
Population growth rate: 0.38% (1994 est.)
Birth rate: 16.02 births per 1,000 population (1994 est.)
Death rate: 10.02 deaths per 1,000 population (1994 est.)
Infant mortality rate: 30.3 deaths per 1,000 live births (1994 est.)
Life expectancy at birth:
Whole population: 68.07 years
Men: 64.65 years
Women: 71.67 years (1994 est.)
Overall fertility rate: 2.18 children born per woman (1994 est.)

Ethnic percentages: Moldavian/Romanian 64.5%, Ukrainian 13.8%, Russian 13%, Gagauz 3.5%, Jewish 1.5%, Bulgarian 2%, other 1.7% (1989 figures)
Religions: Eastern Orthodox 98.5%, Jewish 1.5%,
Languages: Moldovan (the official language, which is virtually the same as the Romanian language), Russian, Gagauz (a Turkish dialect)

Currency: Moldovan lei (MDL). Exchange rate in September 2003: 14.8 lei to 1 EURO.

The budget of the Republic of Moldova for the year 2003:
Income – 3999.6 million lei
Expenses – 4200.6 million lei
Budget deficit: 201 million lei

Costs of the justice system (judicial authorities): - 61 million lei
Costs of the Department of Penitentiary Institutions: - 71 million lei (of the requisite 161 million, ie 44 %)

I. THE LEGAL FRAMEWORK OF THE CRIMINAL JUSTICE SYSTEM

THE CRIMINAL LAW AND THE LAW GOVERNING CRIMINAL PROCEDURE (a comparative analysis)

The collapse of the Soviet system, which had been based on administrative control, created favourable conditions for the introduction of democratic values and human rights. Declaring its sovereignty, and later independence, the Republic of Moldova started along the path to economic and political liberalisation by introducing the machinery of the rule of law.

The anti-totalitarian movement, together with a general tendency to improve the human rights protection machinery, have led the new state to proclaim its allegiance to generally recognised human values.

Thus the Republic of Moldova has acceded to a number of international treaties relating to the protection of fundamental human rights and freedoms. By virtue of a decision of the Parliament of the Republic of Moldova of 28.07.90, Decision No 217-XII, Moldova acceded to the Universal Declaration of Human Rights, undertaking to respect the general principles of human rights protection. Other international instruments to which Moldova has acceded are the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (both of 1966), the Helsinki Final Act of the CSCE, the Concluding Documents of the Follow-up Meetings in Madrid and Vienna of the Conference on Security and Co-operation in Europe, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, the Charter of Paris for a New Europe, etc.

Article 4 of the Constitution of the Republic of Moldova proclaims the precedence of international human rights legislation over national legislation: "Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova… Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations".[1]

The principal that international instruments take priority has also been confirmed by the Supreme Court of Justice, which, after studying the way in which those constitutional provisions were applied, adopted on January 30 1996 the Decision "On the practical application by the courts of some provisions of the Constitution of the Republic of Moldova"[2]. Paragraph 3 lays down that "in cases when national legislation contravenes an international instrument, the provisions of the international instrument to which the Republic of Moldova is a party shall be applied".

The Convention for the Protection of Human Rights and Fundamental Freedoms was signed by the Republic of Moldova on 13 July 1995. During preparations for

[1] Article 4 of the Constitution of the Republic of Moldova, adopted on 29 July 1994, Official Gazette of the Republic of Moldova No 1, of 12 August 1994.
[2] Decision of the Supreme Court of Justice, Decision No 2, of 30 January 1996.

ratification, an inter-ministerial commission was set up to examine the compatibility of national legislation with international provisions, and on 12 September 1997, the European Convention on Human Rights was ratified. Afterwards, a working group was set up to examine the compatibility of the legislation of the Republic of Moldova with the provisions of the European Convention on Human Rights. With a view to fulfilling the statutory obligations intended to ensure observance of human rights and fundamental freedoms, the President of Moldova issued a decree[3] empowering the Ministry of Justice to represent the Government in the European Commission and European Court. The Parliament of the Republic, in Decision No 1447-XIII, of 28 January 1998, approved a programme to bring national legislation into line with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms[4].

The old Criminal Code of the Republic of Moldova was adopted by virtue of a law of the Soviet Socialist Republic of Moldova on 24 March 1961 (published in the Supreme Soviet News of the SSR of Moldova,19 61, No 10, Article 141). It has subsequently undergone some substantial amendments, but was still unable to regulate all the new social values and relationships. So the new Criminal Code was adopted on 18 April 2002 (by Law No 985-XV). It was initially supposed to come into force on 1 October 2002, according to Law No 1160-XV, of 21 June 2002, on the coming into force of the Criminal Code of the Republic of Moldova, but since it provided for a series of new legal figures and concepts, it required new mechanisms to be created or existing ones to be modified. As it was impossible to make the relevant amendments in the planned time frame, the entry into force of the new Criminal Code was postponed, initially to 1 January 2003[5]. On 27 December 2002, Parliament decided that the new Criminal Code had to come into force at the same time as the Code of Criminal Procedure[6]. When, on 12 June 2003, the Law on the Amendment of the Constitution of the Republic of Moldova came into force, a law that provides for reorganisation of the judicial system, the new Criminal Code and Code of Criminal Procedure[7], as well as the Civil Code and Code of Civil Procedure, were brought into force on the same day.

The new Criminal Code (with its 393 articles) is longer than the old Criminal Code (which had 270 articles).

There is also a difference in terms of social priorities (values). Thus the first chapter of a special part is dedicated to crimes against peace and human security, as well as war crimes, followed by crimes against the person, rights and freedoms and protection of property, with the state's interests coming afterwards.

A considerable novelty, enriching criminal legislation, is the division of crimes into five categories: minor offences, lesser crimes, serious crimes, very serious crimes and extremely serious crimes (Article 16 of the Criminal Code). Two criteria underlie this division: the degree of seriousness of the act, expressed by the penalty applicable, and

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[3] Decree of the President of the Republic of Moldova No 126, of 13 May 1996, on representing the Government of the Republic of Moldova in the European Commission of Human Rights and in the European Court of Human Rights (Official Gazette No 32-33/340, of 30 May 1996).
[4] Official Gazette No 16-17/112, of 5 March 1998.
[5] Law No 1323-XV of 26 September 2002.
[6] Law No 1563-XV of 19 December 2002.
[7] Law of the Republic of Moldova on the Amendment of the Constitution of the Republic of Moldova, No 1471-XV, of 21 November 2002, *Official Gazette of the Republic of Moldova No 169/1294, of 12 December 2002.*

the extent of culpability. This innovation is of great practical importance, because it offers a basis for differentiation, where criminal responsibility and individual punishment are concerned.

Another innovation lies in a criminal penalty introduced in the Criminal Code, namely unpaid voluntary work[8]. This form of penalty will be available for minor offences or lesser crimes, for a total period of between 60 and 240 hours, at a rate between two and four working hours per day.

Another new concept is the criminal liability of legal entities, which gives them the status of perpetrators of crime[9]. This concept was introduced because a whole range of crimes, mainly ecological and economic, cause considerable damage to citizens and society. It was in this context that the Committee of Ministers of the Council of Europe adopted Recommendation(88) R 18 concerning the liability of enterprises having legal personality for offences committed in the exercise of their activities[10].

According to the new Criminal Code, the criminal liability of legal entities arises in the following cases:
a. When a legal entity fails to comply, or complies inappropriately, with direct provisions of the law which require or prohibit certain activities;
b. When a legal entity begins an activity which is not in accordance with its articles of association or its declared objectives;
c. When an act which causes, or has the potential to cause, considerable damage to a person, to society or to the state was committed in the interests of a legal entity, or was allowed, sanctioned, approved or used by a body or person authorised to represent the management of a legal entity.

The Criminal Code introduces a new system of penalties. Provision is no longer made for the "social reprimand", dismissal from office, deprivation of parental rights or confiscation of personal property, for these are regarded as inefficient in the new economic conditions.
New forms of punishment have been introduced: detention for a period of up to six months and unpaid community work.

The withdrawal of the aforementioned penalties is not likely to affect the number of detainees. Under Article 21 of the old Criminal Code, a social reprimand or dismissal from office were applicable either as a principal or as a supplementary penalty. In practice, they were not used in place of imprisonment, but as supplementary measures additional to a fine or a custodial sentence.

Deprivation of parental rights was a penalty applicable only as a supplementary measure.

Unpaid community work is a new penalty which is likely to influence the number of detainees, which should be reduced if the penalty is applied properly. The new Criminal Code provides for this penalty to be applied for a wide range of offences, most of which are common ones.

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[8] Articles 62 and 67 of the new Criminal Code.
[9] Article 21 of the new Criminal Code.
[10] Adopted by the Committee of Ministers on 20 October 1988, at the 420th meeting of the Ministers' Deputies .

Economic crime is the subject of one of the longest chapters. The majority of the rules laid down are new ones, not included in the previous Criminal Code. The aim in this context is to combat criminal activity in every sphere of the economy: banking, industry, taxation, customs, advertising, etc. Among the concepts which therefore appear are "illegal entrepreneurial activity", "illegal bank activity", "pseudo-entrepreneurial activity" and "money laundering".

A new, independent chapter on "Ecological crime" was included because of the dangerous effects of ecological disaster. The emergence of computer crime led to the inclusion of a chapter on "Computer-based crime". Provision is also made for the protection of members of the law enforcement agencies (investigators, prosecutors and judges) and of participants in criminal proceedings (witnesses, experts and translators).

The new Criminal Code introduced some different provisions relating to certain activities regarded as "socially dangerous". Under the old Criminal Code, tax evasion by private individuals was a criminal offence, with tax evasion being taken to mean failure to submit a compulsory declaration of income or the provision of inaccurate information relating to income and expenses. If the sum of unpaid tax was higher than 100 conventional units (2000 lei), the offence of tax evasion was regarded as having been committed.

The Law enforcing the Criminal Code of the Republic of Moldova, of 21 June 2002, provides that:
- the investigation of criminal cases begun on the grounds of facts decriminalised by the new Criminal Code shall cease;
- sentences passed prior to the Law's entry into force shall be reviewed, and reduced if possible;
- the execution of final sentences passed on the basis of facts decriminalised by the new Criminal Code shall cease.

Article 42 of the Criminal Code was repealed by Law No 229-XV[11], in 2001 (this article made it possible for a penalty below the minimum for which the law provided to be applied).

This amendment of the law gave rise to much discussion among lawyers. Most considered it to be an attempt to limit the judge's discretion in respect of individual punishments. The new Criminal Code rectified this mistake, through some articles which refer to individualisation of punishment, and it also lays down that the punishment imposed on any person found guilty should be fair. Account is to be taken of the seriousness of the crime committed, the perpetrator's motives, his or her personality, the circumstances of the case, and the influence on rehabilitation of the punishment imposed, as well as of the offender's family situation.

It is also important to mention the fact that a more severe penalty from among the alternatives applicable to a certain crime is to be imposed only if the less severe option is regarded as inadequate to achieve the aim of the punishment.

[11] Law of the Republic of Moldova amending the Criminal Code, No 229-XV, of 1 June 2001, Official Gazette of the Republic of Moldova No 78-80/576, of 12 July 2001.

It should be noted that Article 79 of the new Criminal Code allows a court to impose a penalty below the minimum for which the criminal law provides for a specific crime, to apply a more lenient category of penalty or not to apply a compulsory supplementary penalty. The law lays down in respect of such cases the circumstances in which the offence was committed, the motives, the guilty person's role in the crime, his or her behaviour during and after the crime, any other circumstances which may considerably reduce the seriousness of the act and its consequences and the active contribution of the participant to the revelation of a crime committed by a group.

The criminal law also regulates the punishment imposed when guilt is freely admitted[12], in which case the punishment may be reduced by one-third of the maximum applicable to this type of crime.

We believe that the effect of the new Criminal Code on the prison population may be an increase, with more severe penalties being imposed for some categories of crimes and a larger number of crimes provided for by the new Code (257). The inclusion in the new Code of alternative penalties, such as unpaid community work, nevertheless leads us to conclude that the number of detainees, particularly those held for crimes against property (who constitute the majority of prisoners) and for other minor and lesser crimes, could fall.

Criminal procedure is regulated by the new Code of Criminal Procedure, which came into force on 12 June 2003, superseding the old Code, adopted in 1961.

The new Code of Criminal Procedure provides for a number of new institutions which pursue the aim of improving the workings of criminal justice. It states that the standards of international law take precedence over national legislation. Some generally respected principles appeared alongside those for which the old Code had provided (legality, equality between persons, presumption of innocence, respect of rights, freedoms and human dignity, inviolability of the person and of his or her home and property, secrecy of correspondence, right to a fair trial, and so on), but these were still not provided for by law. They include, for example, conduct of the proceedings within a reasonable time limit, the right to remain silent, the right not to be prosecuted twice for the same offence, the rights of the victim, the principle of adversarial proceedings and the free admission of evidence.

One of the most vital reforms of criminal procedure relates to prosecution. Inquiries underlie the process, and state agencies have to engage in investigations of crimes. The innovation lies in the lead role taken by the prosecutor, to whom criminal investigation officers now report. Under the old Code, the prosecutor merely ensured that the police complied with the law and confirmed any charge.

In accordance with the new Code, the prosecutor draws up the charge, orders the carrying out of certain investigative activities and bears responsibility for the quality of the criminal investigation. The prosecutor brings the charge in court and has the right to appeal against court decisions.

[12] An agreement on the acknowledgement of guilt is provided for by the new Code of Criminal Procedure.

This reform was implemented because of the lack of professionalism in the agencies responsible for investigation, as well as, in some cases, a prevalent feeling among representatives of investigative agencies that they themselves were not responsible for quality, as other persons and agencies were also involved.

It has emerged from discussions with representatives of the prosecutor's office that this reform was inadequately implemented. Many prosecutors do not even agree with the various arguments put forward, taking the view that the reform will not speed up the procedure.

Now that the Code of Criminal Procedure has come into force, some shortcomings are emerging relating to the prosecutor's role in trials, one of these stemming from the fact that it is difficult for the prosecutor who participated in the trial at first instance also to take part in the court of appeal. Under a statutory obligation to attend the appeal hearing, despite a heavy workload, he or she has to travel to wherever the court of appeal sits (there are six such courts), and often cases are postponed when parties fail to attend.

The new Code of Criminal Procedure reiterates prosecutors' right to initiate or drop criminal proceedings. The power to initiate investigative activities (searches, seizures of objects or documents, telephone tapping, etc) is transferred to examining judges. There is no change, in principle, to the prosecutor's powers relating to preventive measures, and arrests have to be authorised by examining judges.

The role of the "examining judge" is a completely new concept in the new Code of Criminal Procedure. His or her powers include the initiation of certain preventive measures restricting personal freedom (one example being arrest) and the authorisation of certain investigative activities already mentioned. Examining judges may supervise or take part in some investigative activities in order to check that these are lawful, for example hearing a witness benefiting from the witness protection programme.

Examining judges will begin to operate on 1 January 2004, in accordance with Article 7 of the Law for the Enforcement of the Code of Criminal Procedure, Law No 205-XV.

The new Code of Criminal Procedure provides that a number of matters shall be resolved by the examining judge in respect of the execution of punishment. Under Article 471 of the Code, these matters include:

1. Early release on parole (Article 89 of the Criminal Code);
2. Imposition of a less severe penalty in place of the unexecuted part of a punishment (Article 90 of the Criminal Code);
3. Termination of punishment for seriously ill persons (Article 93 of the Criminal Code);
4. Postponement of the execution of punishment for pregnant women and women who have children under the age of eight, cancellation or postponement of their punishment, replacement of one penalty by another or postponement of the execution of the unexecuted punishment (Article 94 of the Criminal Code);
5. Judicial rehabilitation (Article 109 of the Criminal Code);
6. Change of type of detention establishment (Article 73 of the Criminal Code);

7. Replacement of a fine by arrest or imprisonment (Article 75 of the Criminal Code);
8. Replacement of unpaid community work by arrest (Article 68 of the Criminal Code);
9. Execution of the unexecuted punishment as a result of cancellation of a conditional suspension of execution or cancellation of conditional early release (Articles 88 and 89 of the Criminal Code);
10. Search for a convicted person who is eluding the law enforcement agencies;
11. Execution of punishment where another decision has not been executed, unless this was resolved by the previous decision;
12. Computation of preventive arrest or house arrest, unless this was resolved by the previous decision;
13. Prolongation, alteration or cessation of medical constraint measures (Articles 99 and 101 of the Criminal Code);
14. Release from punishment or reduction of punishment as a result of the adoption of a law with retroactive effect;
15. Release from punishment as a result of an amnesty;
16. Release from punishment as a result of the expiry of the time limit for sentence execution (Article 95 of the Criminal Code);
17. Explanation in the event of any suspicions or doubts arising during execution of punishment;
18. Any other issues stipulated by the law which arise during execution of punishment.

Another innovation in the new Code of Criminal Procedure, and one which is quite significant in our opinion, is the presence of an element of restorative justice. Article 276 of the Code provides that the procedure may be started in respect of some crimes only through application by the victim. Thus the Code makes it possible to resolve a conflict between victim and offender through mediation, with the criminal procedure consequently being dropped.

What impact might mediation have on detention? The number of crimes for which mediation is available is relatively high. Reconciliation between the parties through mediation is possible in respect of minor and lesser offences against the person, such as deliberate less serious bodily harm or harm to health, slight bodily harm or harm to health, a threat to murder or to inflict gross bodily harm or harm to health, violation of privacy, etc. Reconciliation between the parties through mediation is possible until such time as the sentence imposed comes into force.

The proper use of mediation between victim and offender will help to reduce the number of people detained.

A Working Group on Alternatives, set up in May 2002 by the Ministry of Justice, together with the IRP, has now drafted a law on mediation in criminal matters which has been transmitted to Parliament. It will be necessary to train mediators and prepare them for their work, to create an organisational structure for mediators, to make arrangements for qualification as a mediator and to control mediation in the sector concerned. This is something which, because of the limited finances of the national budget, it would be reasonable to delegate to NGOs.

III. THE INSTITUTIONS THAT HELP TO IMPLEMENT CRIME POLICY

There is a very wide range of state institutions with legal responsibility for ensuring that the law is complied with: the courts, the prosecutor's office (*Prokuratura*), the bar and the police at the prosecution and trial stage, the Execution Department of the Ministry of Justice and the Department of Penitentiary Institutions during the sentence execution phase, and finally those institutions which deal with detainee rehabilitation.

In 1991, civil society began to become involved in those areas where the state, as a result of lack of funding or experience, was unable to act at the necessary level. A number of non-governmental organisations were set up, and these, through various projects which receive support from international donors, carry out activities which encompass the provision of information, education, monitoring, drawing on international experience, etc. There is still a relatively small number of such organisations working in the criminal justice field.

In 1994, the Parliament of the Republic of Moldova adopted a judicial and law reform blueprint known as "the Concept"[13], and set up a Coordinating Council to monitor reform. The Concept mentions the fact that the current legal, organisational, social and material situation is not conducive to the independent functioning of the judiciary, and fails to ensure both the protection of human rights and freedoms and the rule of law.

Along the lines of the Concept, the Constitution of the Republic of Moldova was then adopted, and some bodies were set up to promote national policy on criminal matters (judicial system, Judicial Service Commission, prosecutor's office and bar); the responsibilities of the Ministries of Justice and Internal Affairs and of the Security and Information Service were defined; the ground rules were drawn up for judge training, and so on.

The Constitutional Court

The **Constitutional Court** was instituted on 13 December 1994[14], as the only organ of constitutional jurisdiction which guarantees the supremacy of the Constitution, ensures that the principle of the division into legislative, executive and judicial powers is respected and guarantees the state's accountability to citizens and citizens' accountability to the state.

The Constitutional Court, on request, exercises control over the constitutionality of laws, regulations, parliamentary decisions, decrees of the President of the Republic of Moldova, decisions and orders of the Government and the international treaties to which the Republic of Moldova as a party.

The Constitutional Court is not part of the judicial system, so it does not examine the merits of cases, by which is meant administrative, civil and criminal matters, nor does it establish the guilt or innocence of the persons concerned, for it is neither a court of appeal nor a body which determines such cases.

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[13] Decision of the Parliament of the Republic of Moldova No 152-XIII, of 21 June 1994, on the adoption of the Concept of judicial and law reform for the Republic of Moldova (Gazette No 6/49,1994).

[14] Law of the Republic of Moldova No 317 and-XIII, of 13 December 1994, on the Constitutional Court (Official Gazette No 8/86, of 7 February 1995).

Judicial Service Commission

The Judicial Service Commission is an independent body for self-administration by the judiciary, set up to ensure that the judicial system functions properly, and it offers a guarantee of the independence of the judiciary[15].

Operating alongside the Judicial Service Commission are the **Qualification Board** and the **Disciplinary Board**. Both Boards, like the Judicial Service Commission, operate on the basis of laws which regulate their status. According to these[16], the Qualification Board is responsible for forming a body of judges qualified to deliver justice and capable of doing so honestly and objectively, thanks to their professionalism, and for laying down the professional level to be attained by candidates for the position of judge and for existing judges. The Disciplinary Board examines cases of alleged disciplinary failings by judges. The Judicial Service Commission has machinery which ensures that the Commission itself and both Boards are able to operate.

The law courts

A specific chapter in the Constitution (IX - Judicial Authority) deals with the legal and judicial reform intended to increase the role of the judiciary and to create better machinery for the justice system. This chapter, together with laws, have laid down a number of principles relating to the activity of the courts: the public nature of debates, the oral and adversarial nature of proceedings, the legal and formal nature of judicial procedure, the establishment of the truth, the active role of judicial bodies, the guarantee of the right of defence, the possibility of appeal and of appeal to the court of cassation, with a view to fair justice. Courts' final decisions are binding on all (the parties to the case and third persons).

An important aspect of free access to justice is the independence of the judge, which has to be ensured through a number of professional, material and organisational guarantees.

In the Republic of Moldova, judges are appointed by the President of the Republic after nomination by the Judicial Service Commission (with the exception of the judges of the Supreme Court of Justice, who are appointed by Parliament, in accordance with Article 116 of the Constitution). There is a restricted range of disciplinary penalties, suspension and dismissal from office, for which the law explicitly provides (Article 24-25 of the Law on the status of judges). Following their appointment, judges may not be removed from office, they benefit from immunity and their property is inviolable. In accordance with law, judges enjoy independence, immunity and inviolability and are subordinate only to the law.

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[15] Law of the Republic of Moldova No 947-XIII, of 19 July 1996, on the Judicial Service Commission (Official Gazette No 64/641, of 3 October 1996).

[16] Law of the Republic of Moldova No 949-XIII, of 19 July 1996 on the Qualification Board and certification of judges; Law of the Republic of Moldova No 950-XIII, of 19 July 1996, on the Disciplinary Board and judges' disciplinary responsibility (Official Gazette No 61-62/607, of 20 September 1996)

Justice is dispensed by the Supreme Court of Justice, the Courts of Appeal and the courts of first instance[17].

Law No 1471-XV, of 21 November 2002 (published in Official Gazette No 169/1294, of 12 December 2002), which has been in force since 12 December 2002, amended Article 115 of the Constitution of the Republic of Moldova, which provided for three levels of courts. Under the legislation of the Republic of Moldova, there are two ordinary ways of challenging judgments: appeals and appeals to the court of cassation. The Supreme Court of Justice functions as the court of cassation.

Some people take the view that the judicial system faces organisational and functional problems, relating to access to justice in administrative cases (dismissal of cases by judges, for example), insufficient legal information, bureaucracy, sophistication of the procedure, and hence compromise of the trial. Criticism is also voiced about the procedure used to appoint and promote judges, with the President's decision being final and the decision of the Judicial Service Commission being a pure formality[18]. It also has to be mentioned that the staff of the legal service, as well as prosecutors, need additional training, which is why it has been considered necessary to set up a National Institute of Magistrates to train current and future members of the judiciary.

The prosecutor's office

The **prosecutor's office (Prokuratura)** is also, according to the Constitution, an integral part of the judicial authorities. The prosecutor represents the general interests of society, defends both the legal order and individuals' rights and freedoms, carries out criminal investigations and prosecutions and is responsible for bringing charges against natural or legal persons. The prosecutor's office is made up of the General Prokuratura, sectoral, municipal and county Prokuraturas, and also specialised Prokuraturas. Its activity is regulated by the Law on the Prokuratura of 29 January 1992[19].

It should be pointed out that the role of the prosecutor's office within the system of law enforcement bodies is controversial. One opinion held (especially by prosecutors themselves) is that, because the office is part of the judicial system, prosecutors should hold special status within the criminal process, their specific attributions differentiating them from the status of the defence. This theory stems from Soviet legislation, under which the prosecutor had the status of supervisor of the law, this supervision extending to criminal cases. Prosecutors now have some powers of discretion to begin or drop criminal proceedings, to decide which charges to lay, and so on.

The other opinion expressed (usually by judges and barristers) is that prosecutors have the status of party to the proceedings, with the same rights as the defence. Criticism of many aspects of criminal procedure has been voiced as a result of this difference of opinion. "Causational appeals", for instance, could be made to the Supreme Court of Justice exclusively by the Principal State Prosecutor or his deputies, leading to the

[17] This system was brought into operation on 12 June 2003.
[18] Report by Transparency International Moldova: "Corruption and the access to justice in the vision of experts and society", Chişinău, 2002, P. 52.
[19] Law of the Republic of Moldova No 902-XII, of 29 January 1992, on the Prokuratura (Official Gazette No 1/23, 1992), republished in Official Gazette No 81-83, of 20 July 2001.

paradoxical situation in which the prosecutor had a unilateral right to appeal against a court decision, while the accused person had no such right. Many lawyers felt that other provisions of the legislation also violated Article 6 of the European Convention on Human Rights. The new Code of Criminal Procedure was intended to remedy this situation as far as was possible.

The activities of the prosecutor's office are subjected to internal control, carried out by the Principal State Prosecutor or the prosecutors subordinate to him, as well as to judicial and parliamentary monitoring. According to the Law on the Prokuratura, it is the prosecutor's office itself which informs Parliament about any successful reduction in crime in the country, but we hold this to be a form of indirect control, for the prosecutor's office tries to submit good figures.

We believe that a separate training institution needs to be set up, possibly within an "Institute of Judges", to train future prosecutors and provide in-service training for current members of the office.

The Bar

According to the Law on Advocacy adopted on 19 July 2002[20], the Bar is an independent agency which exists to offer legal assistance to legal and natural persons, helping to ensure access to justice. The Law lays down the conditions for the provision of legal assistance, including *ex officio* free legal aid provided at the request of investigating or judicial bodies. No detailed description is given of the arrangements for free legal aid. Because of this, the Ministry of Justice and Centre for New Legislation have drawn up draft legislation on free legal aid, and this is currently being examined by various agencies.

It is not yet clear, even from this draft legislation, what categories of persons will benefit from *ex officio* legal aid, ie whether accused persons only might benefit or victims as well, which bodies would coordinate and which finance this activity, and whether non-governmental organisations would be allowed to offer free legal aid.

Under the Law on Advocacy, advocates are licensed by the Ministry of Justice and have the right to set up professional associations. Their supreme body is their Congress. As at the time of writing, a group of MPs has asked the Constitutional Court to check whether the Law on Advocacy conforms to the Constitution. Their argument is based on several grounds, including the compliance of Article 30, regulating the free association of barristers, with other articles setting up the self-administration bodies.

The police

The police are involved in criminal investigations and are responsible for remand centres. They also have to provide protection on behalf of the state to victims, witnesses and other persons assisting in criminal proceedings, as well as having an operational investigation role.

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[20] Law of the Republic of Moldova No 1260-XV, of 19 July 2002, on Advocacy (Official Gazette No 126-127/1001, of 12 September 2002)

Police action is regulated by the Law on the Police, of 18 December 1990[21], which has subsequently been amended on a number of occasions. This Law establishes the right to detain persons under certain circumstances: when a crime has been committed, when a person is a vagrant or beggar and when a person is serving a conditional sentence or has been conditionally released from detention. The police may arrest persons and place them in provisional detention in an institution. Article 13 (P. 19) of the aforementioned Law allows the police at any time to enter houses or other premises where citizens are present in order to prevent a crime or offence or when investigating suspects. The police may make improper use of this provision, because it does not contain a strict and exhaustive list of the cases in which they are entitled to enter a place. On the pretext of pursuing a criminal, the police in some cases actually carry out a search for which the examining judge's consent is in fact required.

There are two categories of police: state and municipal. The organisational structure and strength of the state police force are approved by the government, while those of the municipal police force are a matter for the local authorities and Minister of Internal Affairs.

National training centre for Ministry of Justice and prosecutor's office staff

In pursuance of Government Decision No 96, of 22 February 1996, a National Training Centre for Ministry of Justice and Prosecutor's Office Staff was set up to provide professional, theoretical and practical training at postgraduate level for members of the Moldovan judicial community: judges, office secretaries, enforcement officers, staff of the prosecutor's office and other future employees of the judicial service.

The main objectives

- Increased professionalism among judges, lawyers, prosecutors and other court staff;
- Lawyers' involvement in scientific activities through the "Judicial Courier", the Centre's newsletter;
- The development of the Centre according to international standards.

The centre for the temporary placement of juveniles

The Ministry of Internal Affairs is responsible not only for remand centres, which we shall be looking at below, but also for a number of specialised institutions, one of which is the centre for the temporary placement of juveniles, a specialised independent service within the Ministry of the Interior, which offers care to homeless children. It was set up under an order issued by the Minister of Internal Affairs on 31 May 2002 and takes children between the ages of three and 18. Specialised medical centres also exist to deal with cases of alcoholism and drug addiction.

[21] Law of the Republic of Moldova No 416-XII, of 18 December 1990, on the Police (Veştile No 12/321, 1990), republished in Official Gazette No 17-19, of 31 January 2002

Commissions for juveniles

The **Commissions for juveniles** operate in conjunction with local authorities. The regulations relating to these Commissions were adopted during the Soviet era (in 1967) and are therefore out of date. The Commissions examine the cases of juveniles who have behaved antisocially whilst below the age of criminal responsibility, as well as those of minors who commit crimes between the ages of 14 and 18 but are not prosecuted at the discretion of the prosecutor or the police. They are currently operating only in Chişinău and a few other towns, largely as a result of local/regional administrative reform, although the new Law on Local Public Administration allows such commissions to be set up. According to a UNICEF report on the system of juvenile justice in the Republic of Moldova[22], those commissions operating in the various sectors of Chişinău examined 980 cases relating to minors during 1999.

The Ombudsman

It is the Ombudsman's role to ensure that the human rights and freedoms which exist under the Constitution are respected by central and local authorities, institutions, organisations, enterprises (irrespective of ownership), associations and public corporations.

There are three Ombudsmen, appointed by Parliament for a five-year term, and their activities are based on the Law on Parliamentary Advocates[23].

The Ombudsmen are based at the Centre for Human Rights in Moldova (CHRM), a state agency set up in 1998. Three representatives of the CHRM were appointed in 2000 to serve in other parts of the republic, namely Bălți, Cahul and Comrat.

Under the Law on Parliamentary Advocates, the Ombudsmen examine applications by citizens of the Republic of Moldova, foreigners and stateless persons whose legal rights or interests have been violated on the territory of Moldova. Applications are submitted to the CHRM, and during their examination in accordance with the aforementioned Law, facts and information may be obtained from, and the violated rights restored by, the bodies or the senior officials asked to participate.

At the beginning of each year, the CHRM submits to Parliament a report on the number of cases dealt with in the course of the previous year.

Within the framework of the criminal justice system, Ombudsmen have the right to hold meetings with a detained or arrested person, with the agreement and in the presence of the person carrying out the criminal investigation, to apply to the court for the status of a third party in order to defend the interests of a complainant alleging a violation of rights or to request criminal or disciplinary proceedings against a person who has violated the right or freedom concerned while acting in his or her official capacity. The Ombudsmen also have the right to pass information to the Constitutional Court to assist it in its task of monitoring the constitutionality of laws and other legal instruments.

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[22] Report drawn up in 2001-2002 by the United Nations Fund for Children (UNICEF), Moldova.

[23] Law of the Republic of Moldova No 1349-XIII, of 17 October 1997, on Parliamentary Advocates (Official Gazette No 82-83/671, of 11 December 1997)

The Centre for Fighting Economic Crimes and Corruption (CFECC)

The Centre for Fighting Economic Crimes and Corruption was set up on the basis of Law No 1104-XV, of 6 June 2002[24]. This is a national body which specialises in combating economic and financial crime, tax evasion and corruption.

Under this Law, the Centre has the right to initiate legal proceedings, to involve natural and legal persons in confidential collaboration, to use relevant documents and make use of a temporary isolation unit where the law so provides, to hold (arrested) persons presumed to be guilty of crimes within its jurisdiction and to request explanations from them, search them, monitor them, hold objects and documents, etc.

Department of Penitentiary Institutions

On 1 January 1996, the Department of Penitentiary Institutions was transferred from the Ministry of Internal Affairs to the Ministry of Justice, in response to requirements imposed by the Council of Europe when the Republic of Moldova gained the status of member of that organisation in 1995. The legal instruments which regulated this transfer were Decree No 347 of the President of the Republic of Moldova, of 30 October 1995, and Decision No 865 of the Government of the Republic of Moldova, of 20 December 1995.

In the year 2002 and the first quarter of 2003, the Moldovan prison system functioned in extremely difficult social and economic conditions and with a precarious budget. Notwithstanding all the difficulties it has had to face, the prison system has made significant efforts to improve the situation which had arisen, with a view to achieving stable functioning.

The structure of the prison system underwent changes in 2001 and 2002 which affected both the quality and quantity of its work. Early in 2001, the prison system comprised the Department of Penitentiary Institutions and 20 subordinate structures, but by the end of 2002, the number of DPI institutions had increased to 21, namely:
- 8 "correctional colonies",
- 3 "settlement colonies",
- 6 prisons,
- 1 educational colony for juveniles,
- 1 social rehabilitation institution,
- 1 general hospital,
- 1 prison staff training centre, at Goieni.

A new institution has also been set up in Leova, namely a "strict regime" colony. Within prison No 17, in Rezina, a special unit has also been set up to house prisoners serving life sentences, and a special section to house former employees of government and law enforcement authorities has been set up at the detention centre for juveniles in Lipcani.

[24] Law of the Republic of Moldova No 1104-XV, of 6 June 2002, on the Centre for Fighting Economic Crimes and Corruption (Official Gazette No 91-94/668, of 27 June 2002)

Clearly, the number of detainees is growing in spite of several amnesties in recent years.

Reform of the prison system of the Republic of Moldova involves economic and social difficulties. The main problem derives from the concept of the system's structure and purpose. With its Soviet model, where convicted persons are housed in surviving Gulag-style units, Moldova is striving to achieve European standards, which require prisoners to be individually held in cells. At the same time, there are plans to increase the number of staff performing psychological and social rehabilitation duties.

It is the court which decides on the type of prison and detention regime. Regimes do not differ within a single institution, nor does individualised treatment exist during sentence execution. Sentence enforcement is planned in a generalised way, specifically determined by detention regime.

It is the educational section which prepares detainees for their release, but its activities are of a superficial nature, directed more towards providing information than towards re-establishing links with family and relations, finding employment or solving housing problems. According to information provided by the Department of Penitentiary Institutions, a special service is now being set up to deal with these matters.

Prison overcrowding could be resolved if alternative penalties were imposed, a solution which would also enable repeat offending to be reduced and more work to be done on social rehabilitation and reintegration. The Needs Assessment Mission of 16-19 June 2003 which studied probation at the request of the Institute for Penal Reform produced a recommendation that a probation service be brought into operation, and a strategic plan has been drawn up with this in mind.

The Department for Enforcement of Court Decisions of the Ministry of Justice

The Department for Enforcement of Court Decisions (DECD) was set up in accordance with Government Decision No 34, of 15 January 2002 (published in Official Gazette No 13-15/104, of 24 January 2002). This has territorial sub-divisions in the district courts so as effectively to supervise the enforcement of court decisions within reasonable time limits and to increase responsibility for the way in which court decisions are executed, also extending to the execution of criminal court decisions not involving deprivation of liberty, as well as other decisions stipulated by law.

The functions of the Correctional Service and its geographical sub-divisions (District Correctional Inspectorates), which had prior to that date been part of the Department of Penitentiary Institutions, were transferred to the DECD. Those bodies had been responsible for ensuring that decisions involving probation were enforced, as stipulated in Articles 90 and 91 of the Criminal Code, and elsewhere. They were part of the military structure, and their staff were entitled to carry and to use guns and special equipment. At the same time as the Department for Enforcement of Court Decisions was set up, under the aforementioned Decision, a Directorate for Enforcement of Non-Custodial Measures was set up, a unique and demilitarised structure responsible for the execution of court decisions on non-custodial penalties

and measures. This Department is to be responsible for the enforcement of community service penalties, as well as those involving probation.

IV. PREVENTIVE MEASURES

The preventive measures applied by both prosecution and courts are similar to those used in other countries of the former Soviet Union. The categories of preventive measures are similar in the new Code of Criminal Procedure to those in the old, with a few exceptions. The new Code stipulates some new preventive measures as an alternative to arrest, in addition to those for which the old Code provided.

1. ARREST/DETENTION

In accordance with the Code of Criminal Procedure and the Law on Preliminary Arrest, Law No 1226-XIII, of 27 June 1997, preliminary arrest may be applied to a person suspected of, or charged with, an offence punishable, under the Criminal Code, by deprivation of liberty. Those subject to preventive arrest are held in units known as preventive detention isolators, for which the Department of Penitentiary Institutions is responsible. Under Decree No 347, of 30 October 1995, issued by the President of the Republic of Moldova, and Decision No 865, of 28 December 1995, issued by the Government of the Republic of Moldova, the Department of Penitentiary Institutions, which used to report to the Ministry of the Interior, was transferred to the Ministry of Justice as of 1 January 1996[25].

There are different types of arrest/detention, according to length of time.

A. POLICE ARREST[26]

Initially, a person may be detained for a period of 72 hours. Such detention may be carried out by law enforcement bodies, such as the police, prosecutor's office, Information and Security Service, Centre for Fighting Economic Crimes and Corruption, or other bodies. For that period of 72 hours, a judge's consent is not needed, although the prosecutor must be informed. The fact that no consent is required often gives rise to unreasonable and improper detention.

Detention takes place in temporary isolation units at police stations, units run by the Ministry of the Interior or other entitled institutions. Not only are detainees held in inhuman and degrading conditions in these units, but they also have virtually no right of access to a lawyer. Following several inspections, the experts concluded that the conditions in which people are held may be characterised as torture, due to the completely unacceptable material and sanitary conditions prevailing. In addition, many detainees become infected with tuberculosis, making them a risk to other inmates.

These institutions are the subject of constant attention by the Committee for the Prevention of Torture. Detainees have no access to a doctor, so it is difficult to find

[25] This was one of the requirements which had to be met in order for the Republic of Moldova to become a member of the Council of Europe

[26] Also see the Council of Europe assessment report on police custody in Moldova, written by Mr Michel Colliquet (of the French Gendarmerie) and Mr Emile Berthod (a Swiss police officer) (Doc PCRED/DGI/EXP(2003)14, March 2003)

evidence of torture or inhuman or degrading treatment. Rooms are inadequately ventilated and lit, access to fresh water is limited and hygiene conditions are precarious. When the SIZOs are overcrowded, detainees may remain in Ministry of the Interior preliminary detention isolators for a long period, in contravention of current legislation and in violation of their human rights.

According to data supplied by the prosecutor's office of the Municipality of Chişinău the number of detainees held in the Temporary Detention Isolator and the Administrative Arrest Centre of the Police Inspectorate of the Municipality of Chişinău fluctuates daily between 170 and 220. These figures are 140 and 176% of capacity respectively, the official capacity being 125 detainees. A total of 3 796 people were detained in 2002 in Temporary Detention Isolators and Administrative Arrest Centres in the Municipality of Chişinău, with the figure for the first quarter of the current year being 957.

The problem is that, in some cases, it is convenient for the police to detain people in such conditions in order to force an acknowledgement of guilt. There are some cases of detainees falsely incriminating themselves in the hope of being released or transferred to a pre-trial detention isolator.

B. PRE-TRIAL DETENTION

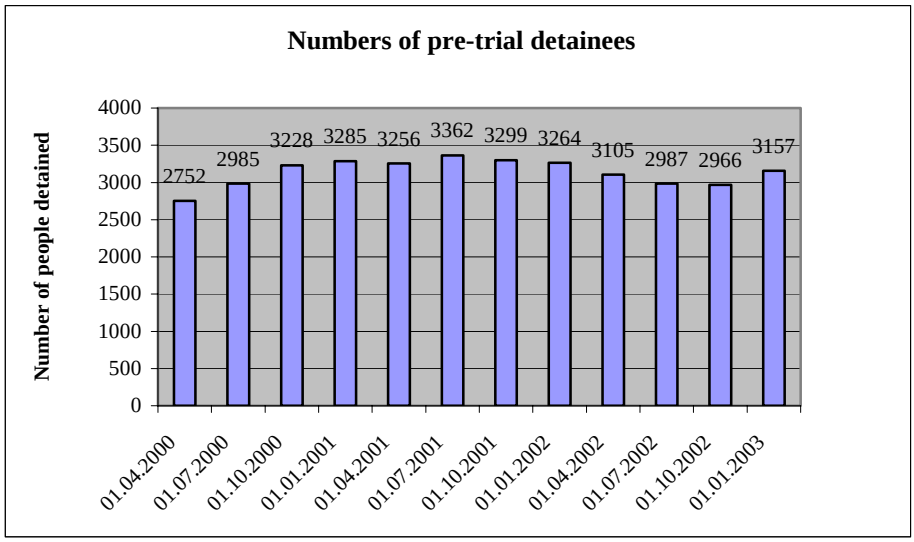
Arrest as a preventive measure is used in accordance with Article 185 of the new Code of Criminal Procedure in respect of offences punishable by deprivation of liberty for more than two years. In exceptional cases, when the judicial body has evidence that a person suspected, accused or charged might evade justice, interfere with investigations or tamper with relevant evidence, or if there is a danger of him or her committing further criminal offences, and in order to ensure that any sentence is executed, preventive arrest may be used in cases of offences for which the statutory punishment is deprivation of liberty for less than two years.

Pre-trial detention is based on an arrest warrant issued by the examining judge or on a decision by a court.

The right to decide to use arrest as a preventive measure is to be enjoyed by judges from sector and municipal courts, under the responsibility of the criminal investigation unit (as of 1 January 2004).

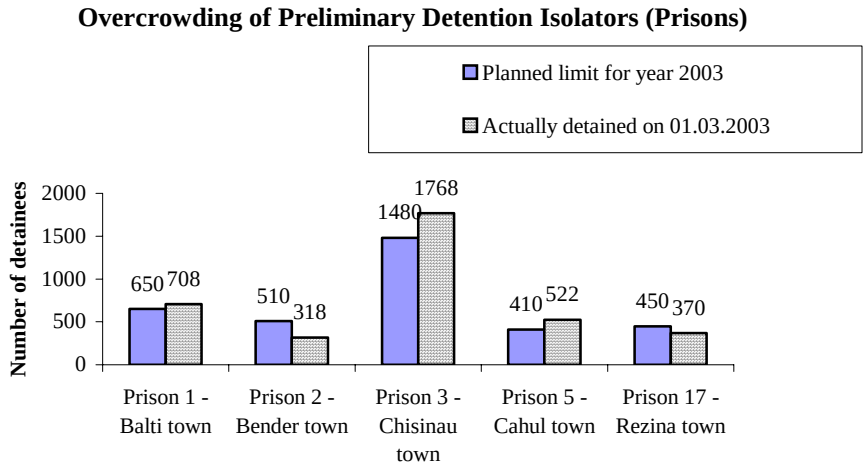
Pre-trial detainees are held in pre-trial isolators for which the Department of Penitentiary Institutions of the Ministry of Justice is responsible.

The number of pre-trial detainees is relatively stable (see the table below).



The **overcrowding problem** is a major one in pre-trial detention isolators as well. The rate of overcrowding is calculated on the basis of the living space of 2 square metres per prisoner required by Moldovan legislation (a living area which does not meet the relevant international standards).

According to statistics provided by the Department of Penitentiary Institutions, there were 3 686 detainees in pre-trial investigation isolators on 1 January 2003, the admissible limit being 3 500 (a figure equivalent to 105.3% of capacity).



The problem of overcrowding in penal institutions stems from a number of problems

1. Unsatisfactory use of arrest. In some cases, arrest as a preliminary measure could be avoided, were account taken of the offender's personality, personal background and occupation, the monthly earnings of a member of his or her family,

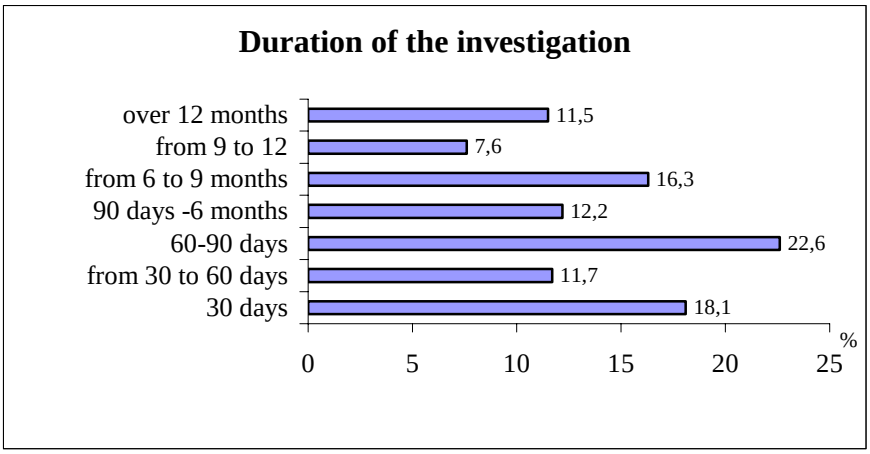
his or her employment, marital and family status, and whether he or she has a permanent address.

2. Delayed preliminary investigation and court proceedings. The preliminary investigation does not always meet the set time limit.

In accordance with Article 20 of the Code of Criminal Procedure, the criminal investigation and trial must be carried out within a reasonable period. Priority must be given to an urgent investigation and trial if the person suspected, accused or charged is a juvenile held in preventive custody. It is the prosecutor's duty to ensure that the investigation is completed within a reasonable time, and once a case has been brought before the court, it is for the judge to ensure that the trial is conducted within a reasonable period. Compliance with the reasonable period requirement is monitored by a higher body.

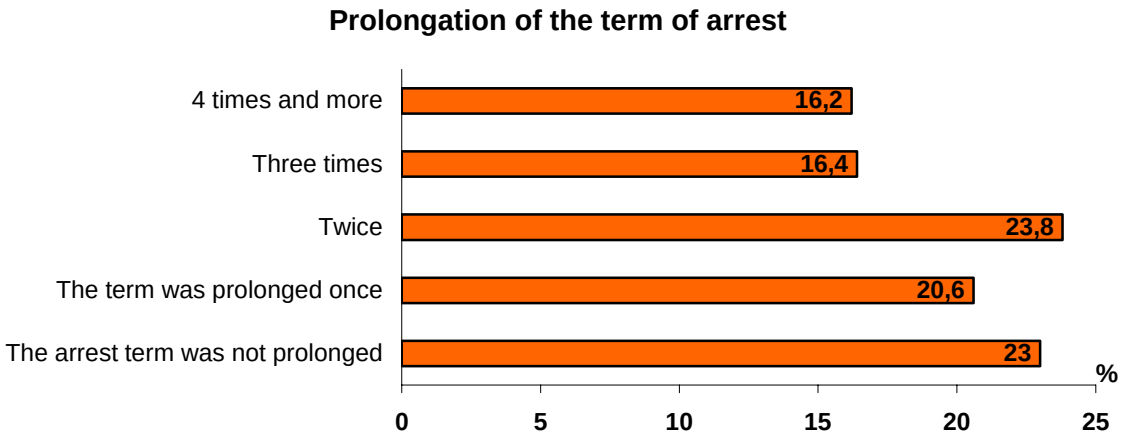
The major problem is that there are no procedures for remedying any violation of the reasonable period requirement. Thus, even if the higher body finds that the requirement was violated, the consequences are disciplinary ones for the investigating body of court.

The findings of a survey carried out in Investigation Pre-Trial Unit No 3, in Chişinău[27], show that, within the first two months, only 34.4% of files were investigated. Another 16.3% were examined within six to nine months, and 7.6% in nine to twelve months, while 11.5% took more than 12 months.



Arrest may be prolonged by order of a prosecutor, by the judge who issued the arrest warrant or by a judge of the court responsible for the preliminary investigation. This may be repeated several times. The term of pre-trial detention was not extended in the cases of 23% of those held in Investigation Pre-Trial Unit No 3. There was one such extension for 20.6% of cases, while there were two for 23.8%. In 16.4% there were three extensions, and four or more in 16.2% of cases.

[27] The Institute for Penal Reform carried out a survey on the basis of a questionnaire, covering Investigation Pre-Trial Unit No 3, in Chişinău, and Investigation Pre-Trial Unit No 1, in Bălţi. A representative sample of 450 people was questioned in Unit No 3, ie 25% of the total number held under preliminary arrest in that institution each year.



According to data provided by the Supreme Court of Justice[28], 2 321 applications for extensions were made to the courts in 2001. Of these, 2 070 (89.2%) were granted, resulting in an extension of pre-trial detention, while 221 (9.5%) were rejected and 30 cases were dismissed. In the year 2002, 2 359 requests for prolongation were made, of which 1 941 (82.3%) were granted and 246 (10.4%) rejected, with 172 cases being dismissed.

6 391 applications for preliminary arrest warrants were received and examined by the Moldovan courts in 2002, 5 367 of which (84%) were accepted, resulting in an arrest warrant being issued, while 1 015 (15.9%) were rejected and nine cases were dismissed. 559 court decisions to issue arrest warrants were challenged in 2002, with 105 such decisions (18.8%) being overturned, resulting in the persons concerned being released from arrest.

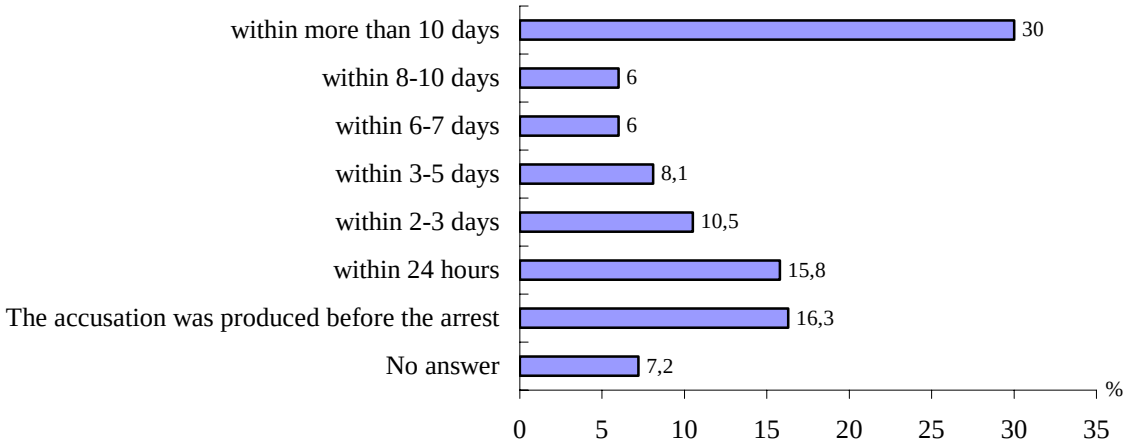
3. Delays in the hearing of cases by the courts are another problem which may cause pre-trial detention to be prolonged. According to figures published in Bulletin No 4 (2001) of the Supreme Court of Justice, there remained on 1 January 2001 4 730 unexamined criminal files (23.8% of all the files awaiting judges' attention), while the figure on 1 January 2000 had been 3 706 (21.2%). On 1 January 2002, 5 115 cases remained to be examined, while the number had risen by 1 January 2003 to 5 253 (Bulletin No 1 (2003) of the Supreme Court of Justice).

A number of the fundamental rights of persons detained in pre-trial units are frequently infringed:

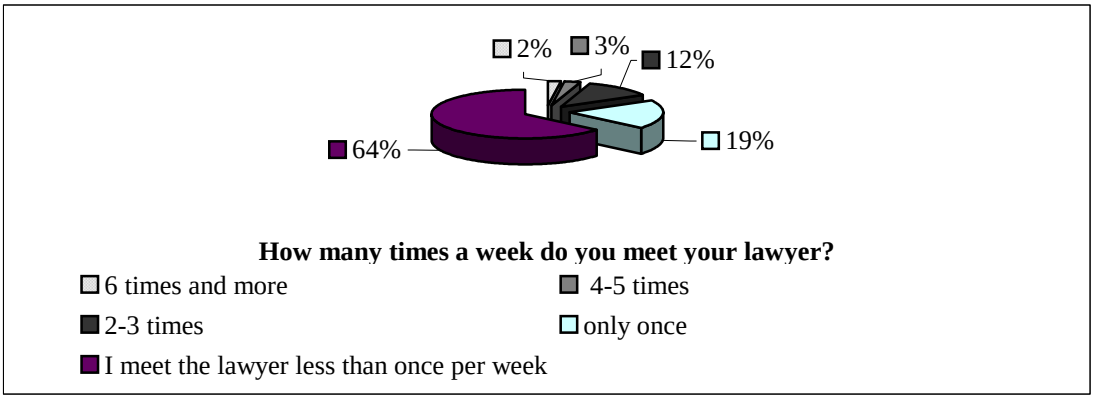
1. A charge sheet must be produced within two days at most of the issuing of the "accusation order", and no later than on the day on which the accused attends voluntarily or is compelled to attend. 16.3% of those surveyed said that they were shown the charge sheet before they were arrested, 15.8% saw it within 24 hours, and one out of ten respondents within two to three days. It also emerged that 30% of all respondents first saw the charge sheet more than ten days after their arrest.

[28] Informative Bulletin of the Supreme Court of Justice No 1-4, 2001, No 1-4, 2002 and No 1-2, 2003

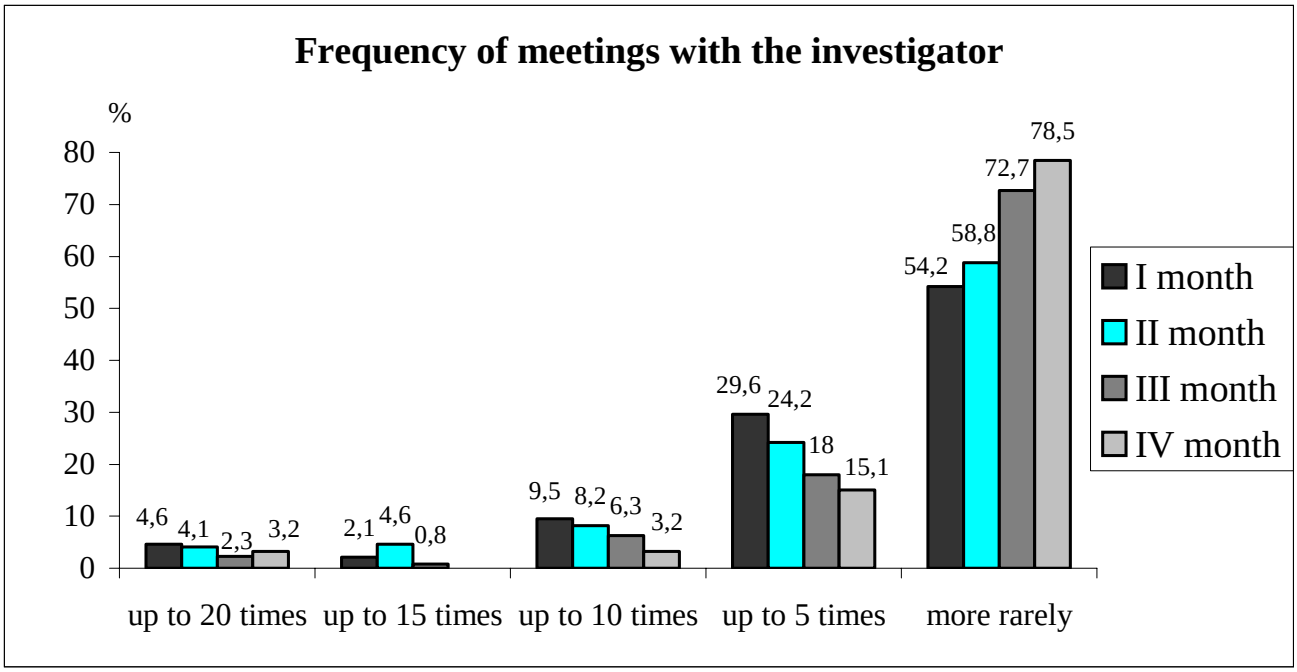
Production of charge sheets



2. The right to defence: This is in theory guaranteed under national legislation. In practice, however, the lawyers assigned by the state to provide free legal aid could not provide efficient legal assistance, the majority having no interest in providing assistance free of charge, because the fee paid to them by the state is very modest and paid belatedly. In order to collect information about the circumstances of offences, lawyers may make appointments of unlimited number and duration
with suspects or accused persons, but in practice, 63.7% of persons under arrest are able to meet their lawyers less than once a week, 19.3% once a week and 11.8% twice or three times a week. **Only one of every 20 arrested persons communicates with his or her lawyer more than four times a week.**



3. Meetings with the investigator: In Investigation Pre-Trial Unit No 3 (Chişinău), some 6 to 8% of people under preliminary arrest meet the investigator 15 to 20 times per month during their first two months of detention. The number of persons visited by the investigator up to ten times per month does not exceed 10%, while no more than 30% are visited up to five times. **The majority of people under arrest said that they met the investigator fewer than five times per month.**



4. Detention conditions: A limited budget[29] has repercussions for the material conditions of detention. Living conditions are often unbearable (overcrowding, serious problems relating to nutrition, bedding, laundry, soap supply, and so on)[30].

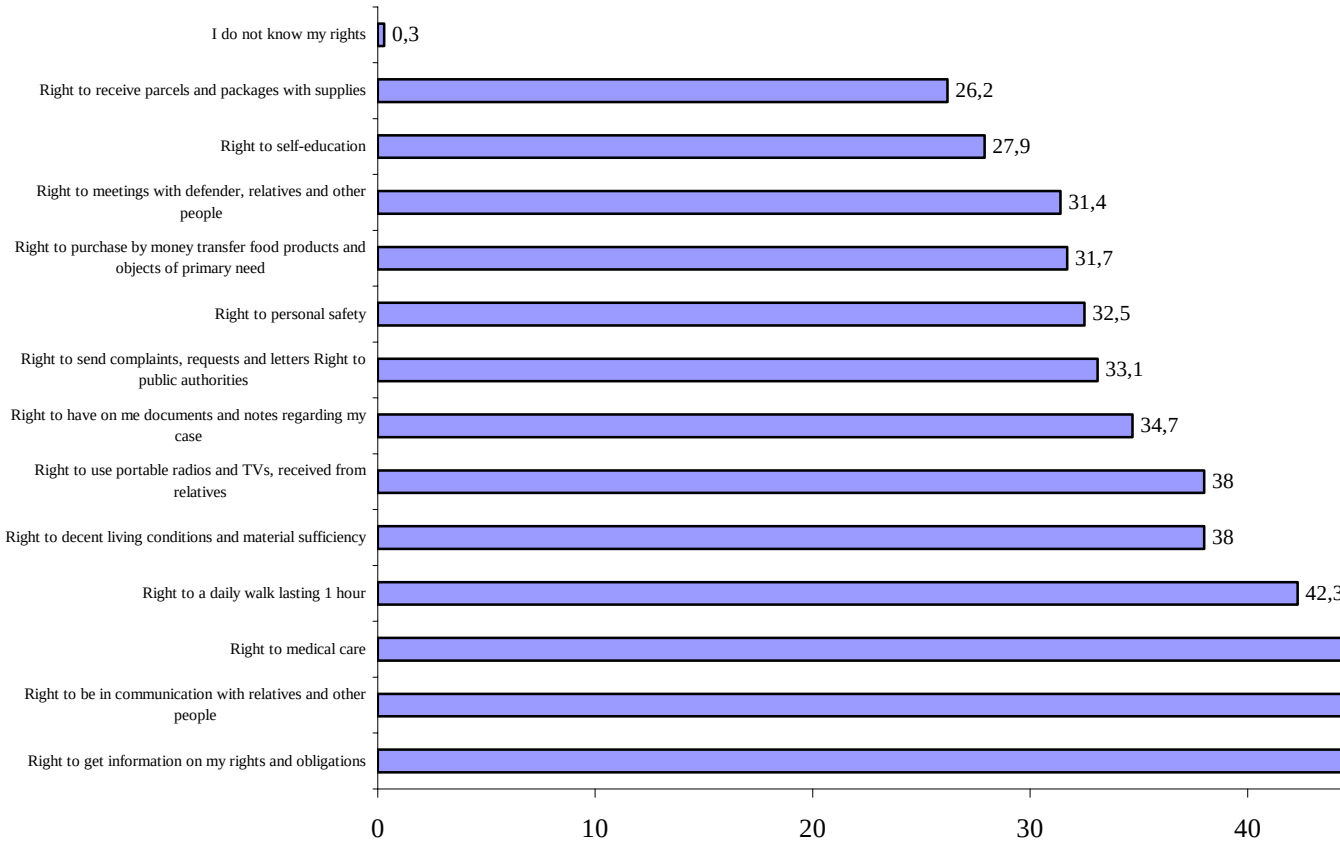
According to a report drawn up by the Institute for Penal Reform, **a number of the rights of people under preliminary arrest are not respected**:
- Half of all prisoners stated that their right to be informed of their rights and obligations, of their detention regime and of the internal rules have been violated;
- 46.2% said that they were not allowed to write to relatives or to anyone else;
- 45.9% complained of a lack of medical care;
- 42.3% said that they were denied their right to a daily one-hour walk and their right to read newspapers from the isolator's library or which they had bought themselves.

The respondents also revealed other flagrant violations of their rights within the isolator premises. Proper enforcement of prisoners' rights and obligations would help to improve pre-trial detention conditions and would enhance the efficiency of the criminal investigation process.

Which of your rights were violated during your detention in the Investigation Pre-Trial Unit?

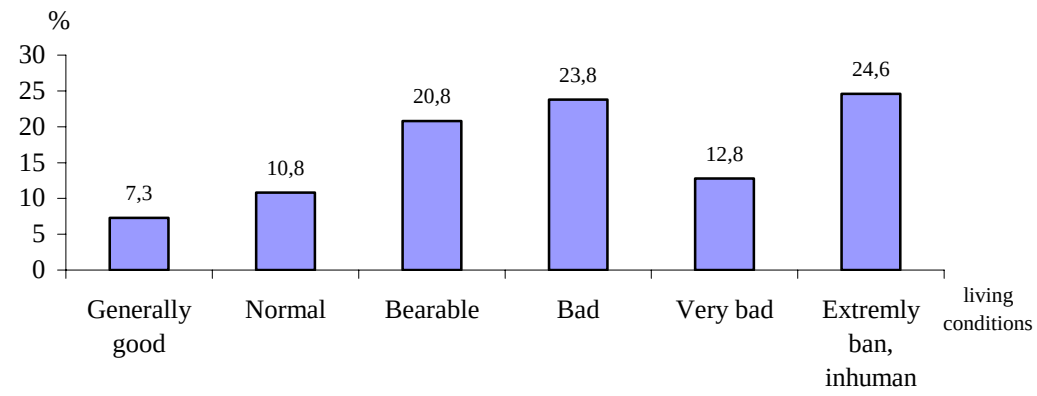
[29] 44.8% of the amount needed to meet the 2003 expenditure of the Penitentiary Institutions Department comes from the state budget, this rate usually ranging from 35 to 45% of the estimated needs each year. Prisons may make use of prisoner labour, with prisoners' earnings covering some of the expenditure on food and on improving detention conditions. The available extra-budgetary resources are, however, not enough to make detention conditions acceptable.

[30] This situation is revealed by most of the reports based on assessment missions and study visits. These reports include the report on the prison system drawn up by the Centre for International Legal Co-operation (CILC) and the Soros Foundation Moldova (after their assessment visit from 1-6 October 2000), a report by Mr Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights (16-20 October 2000), a report on the prison system written by Yves Tigoulet and Jules Ziemons (study visit from 15 to 22 July 2001), a report issued by the Government of the Republic of Moldova following a visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (10-22 June 2001), annual reports drawn up by the Human Rights Centre of the Republic of Moldova and monitoring reports drawn up by public organisations in Moldova.



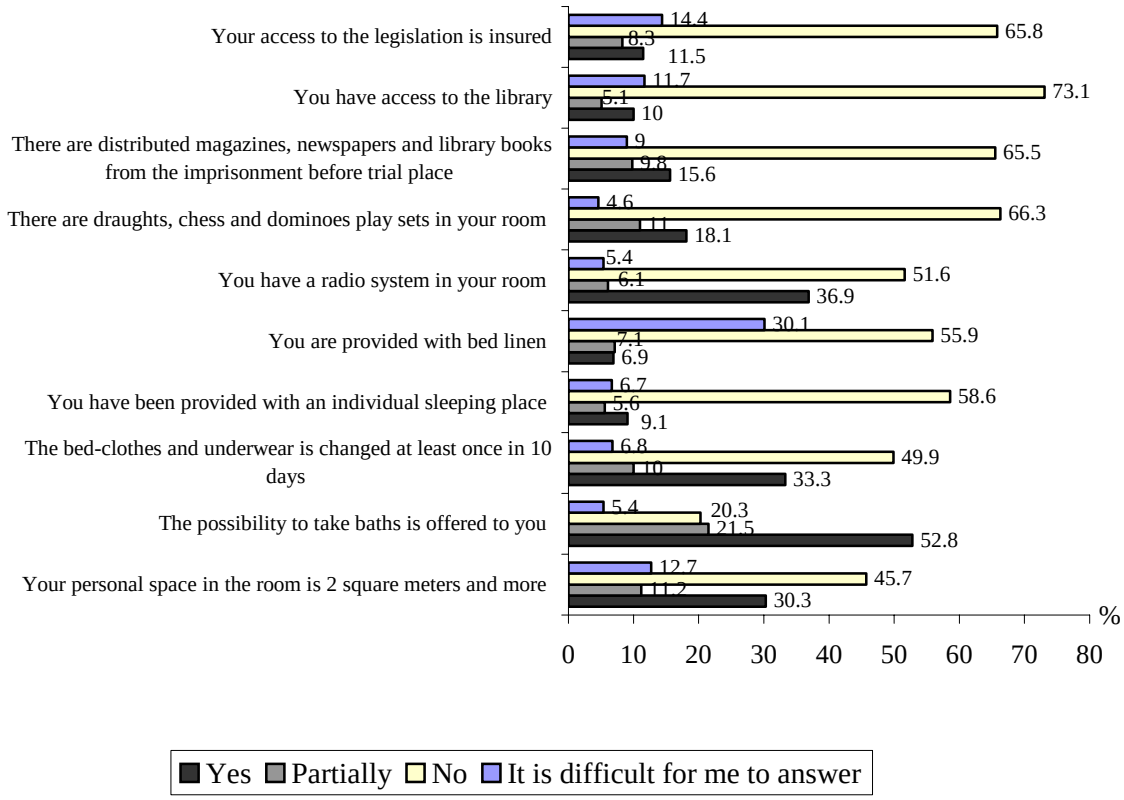
As can be seen below, living conditions in the place of preliminary arrest are regarded by prisoners as very poor. Approximately 18% of detainees consider their conditions "good" or "normal". One fifth of respondents regard living conditions in Investigation Pre-Trial Unit No 3 as "bearable", ie they can put up with them, while 36.6% of those surveyed regarded their life in prison as difficult and very complicated, and a quarter of respondents (24.6%) consider their living conditions extreme and inhuman.

How would you describe your living conditions in the preliminary arrest unit?



Prisoners may take baths and change their linen once every ten days. Only one third of them has "personal space" measuring not less than two square metres. They have no occupations or ways of spending their leisure time. Only 36.9% of respondents said that they had a radio which worked, 18.1% referred to the available draughts, chess and domino sets, 15.6% of the rooms housing prisoners benefited from a distribution of magazines, newspapers and books from the prison library, and only one prisoner in ten had access to that library. Very few had access to legislation (11.5%).

Do these statements about living conditions apply to you?



Detainees under preliminary arrest live in communal rooms. In special cases, prisoners may be detained in cells on the basis of an order, justified and confirmed by the prosecutors, issued by, or at the request of, the person investigating the case or by the head of the pre-trial unit. 46.2% of the detainees in Unit No 3 are held in shared rooms, while 53.8% are in cells. The cells usually house people who did not have a permanent job before their arrest (84.8%), people who were engaged in physical work in the services sector (71.4%), etc. The communal rooms house mostly businessmen (75.7%), farm workers (63%), managers, and so on.

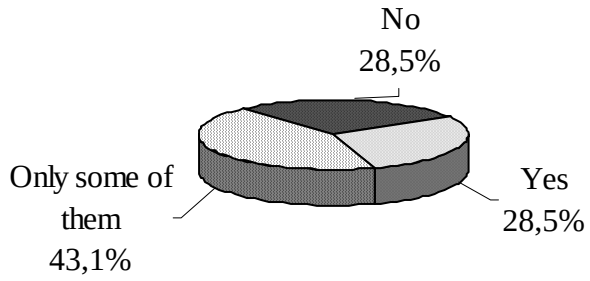
5. Medical care

Easily transmissible diseases, particularly tuberculosis, spread rapidly in investigation pre-trial units. Most victims contract the disease during their detention in the temporary detention isolators.

6. Awareness of rights

Persons under preliminary arrest are not fully aware of their rights. Not only do they have certain rights, they must also fulfil their obligations, but not all prisoners know their rights, 28.5% being unaware of them, 43% having partial awareness and only 28.5% being fully aware of all their rights.

Are you aware of your rights and obligations in the investigation pre-trial unit?



2. ALTERNATIVE PREVENTIVE MEASURES TO ARREST

The new Code of Criminal Procedure provides for a greater number of alternative preventive measures. The alternatives for which it provides are:

1. Prohibition of leaving the person's home area
2. Prohibition of travel abroad
3. Provision of a personal guarantee
4. Provision of a guarantee by an organisation
5. Temporary confiscation of driving licence
6. Supervision order on a serviceman
7. Supervision order on a minor
8. Temporary release under judicial supervision
9. Temporary release on bail
10. House arrest

The old Code also provided for a **prohibition of leaving the home area**, but the new one adds the **prohibition of travel abroad**. The procedure is similar in both cases.

The new Code also allows **a guarantee to be provided by a person or an organisation**. Another innovation is the provision that an individual agreeing to give a guarantee must deposit between 50 and 300 "conventional monetary units"[31] with the prosecutor's office or the court. An organisation offering a guarantee has to deposit between 300 and 500 units.

This sum does not serve as bail, so we consider this preliminary measure to be less effective. In general, a guarantee offered by a person or by an organisation should not be assessed in monetary terms and involve deposits of cash. This deprives this preliminary measure of its essence, which would normally be the involvement of trustworthy people in ensuring that the accused behaves properly.

Another preliminary measure not stipulated by the old Code of Criminal Procedure, and with a narrower field of application, is **temporary confiscation of the driving licence**. This is applied, either as a basic or an additional measure, only in cases of infringements relating to the rules of the road.

[31] The term is used in the new Criminal Code to indicate a monetary equivalent, allowing for inflation, and the "conventional monetary unit" currently equates to 20 lei.

Imposition of a supervision order on a serviceman is a preliminary measure for which the old Code also provided.

Juveniles may be placed under the supervision of their parents, guardians, trustees or other trustworthy persons, as well as of the specialised education establishment which they attend. Another innovation as compared to the old Code is the **responsibility of guarantors** (from 10 to 25 conventional monetary units).

Another preliminary measure not stipulated in the old Code is **house arrest**, under which a person is isolated in his or her own home. Such arrest may not be applied to all accused or suspects, but only to those charged with crimes in the serious and lesser categories. It is also applicable to persons in certain categories who are charged with very serious crimes (people aged over 60, people with first degree disabilities, pregnant women, and women caring for children under the age of eight).

Persons subjected to house arrest may not only be confined to their home, but may also have additional restrictions imposed: prohibition of telephone calls, of incoming and outgoing correspondence, of use of means of communication and of speaking to certain persons.

Like the old one, the new Code provides for two methods of **temporary release: under judicial supervision and on bail**.

Temporary release under judicial supervision may be applied only in cases of crimes of negligence or crimes committed deliberately punishable by less than ten years of imprisonment. Such temporary release may be conditional on the beneficiary not leaving the area, informing the authorities of any change of address, not visiting certain places, etc.

Judges very seldom (if ever) make use of this option, for fear of being accused of corruption and of being held responsible.

Temporary release on bail is a preventive measure which serves as an alternative to arrest, applicable only to someone under preliminary arrest and in the following conditions:
- the damage caused by the crime has been made good
- the bail set by the judge or the court has been deposited
- the crime committed, whether negligently or deliberately, is punishable by more than 25 years' imprisonment
- the suspect has never previously committed crimes in the serious, very serious or extremely serious category, or there are no grounds for believing that he or she will commit another crime or attempt to intimidate witnesses, eliminate evidence or abscond.

During release on bail, the person concerned is obliged to attend when called by the criminal investigation unit or the court and to advise any change in home address. Certain restrictions available in the event of temporary release under court supervision may be applied (Article 191 of the Code of Criminal Procedure): it may be specified that persons so released may not leave their home area other than on conditions laid

down by the examining judge or, in certain cases, by the court; they may not go to certain places; they may not be in contact with certain people; they may not do anything which would impede the process of establishing the truth during the trial; they may not drive a car; they may not hold the kind of job which they had when the crime was committed.

The amount of the bail set by the judge or the court may range from 300 to 100 000 conventional monetary units[32], depending on the person's financial situation or on the seriousness of the crime committed (equivalent to 6 000 lei to 2 million lei).

Two major problems arise in respect of bail. Firstly, the person concerned has to admit causing the damage and express willingness to compensate for it. Anyone not confessing, so not compensating for the damage caused, has to remain under arrest. In our view, this violates the principle of the presumption of innocence, for, if a court imposes bail, it shows that it regards the person concerned as guilty before the sentencing stage. The second problem is the high level of bail set (between 300 and 100 000 units) in a population which is in a difficult financial situation and has a low income.

V. THE MACHINERY OF THE CRIMINAL JUSTICE SYSTEM

A. CRIMINAL INVESTIGATION

Criminal investigation practice has developed over the forty-year period since the adoption of the old Code of Criminal Procedure in 1961.

Criminal investigations are dealt with by officers from the prosecutor's office, the Ministry of the Interior, the Information and Security Service, the Customs Department and the Centre for Fighting Economic Crimes and Corruption. The activities of these bodies are supervised by the prosecutor who signs the charge document.

The various criminal investigation bodies bear responsibility for different kinds of criminal case. The bodies concerned have a certain amount of discretion to refuse to start investigations and may give a reason for suspending or shelving them. The prosecutor supervising the activity of the prosecuting body has the same power. Since 23 June 2000 it has also been possible for the victim of an offence to influence the case. At that time, judicial control over the pre-trial procedure was established, enabling the party which has suffered damage (victim) and other interested parties to appeal to the court if the prosecuting body refuses to start criminal proceedings, or if an investigated case is suspended or shelved.

This institution appeared to work efficiently, but the reality was different. Many investigators were indifferent to the quality of the investigation. Nor did the prosecutor know enough about the circumstances of the case, and this had a negative impact on the quality of the charging process. Thus offenders might have been cleared even where both the crime and their guilt existed. The table below, published

[32] One conventional monetary unit equals 20 lei (Article 64 of the new Criminal Code).

by the Supreme Court of Justice, relates to the numbers of cases closed and people cleared.

Year	Cases investigated	Cases closed	People cleared
1999	13790	1285	412
2000	15153	758	486
2001	15152	897	508
2002	17086	824	481

An attempt was made in the new Code of Criminal Procedure to resolve this issue, which made prosecutors responsible for investigations through the criminal investigation officers who report to them. These officers had previously worked for the criminal investigation bodies which existed under the previous law. These provisions may affect the responsibilities of prosecution bodies, as the prosecutor responsible for the investigation will be the one who lays the charges in court and has to ensure compliance with human rights.

B. THE JUDICIAL STAGE

There are criminal courts at three levels, the Supreme Court of Justice, the Courts of Appeal and the courts of first instance. In pursuance of Law No 1471-XV, of 21 November 2002[33], Parliament has begun the process of amendment of the Constitution. The previous tribunals have disappeared, lawyers having criticised the existence of courts which could examine cases at first instance, but also at the level of appeal and cassation appeal for certain categories of crimes: they asserted that this meant an overlapping of functions with other courts and gave rise to unjustified delays in the investigation process.

The former tribunals were replaced by Courts of Appeal (6 in number, whereas the old system had had five tribunals and one appeal court) which have the right to examine cases at first instance, at appeal and in cassation appeal, depending on the crime committed. In accordance with the Code of Criminal Procedure, these courts investigate criminal cases not within the jurisdiction of other courts. Both the old and the new Codes of Criminal Procedure stipulate that there shall be a military court. According to the law governing military courts, these are specialised courts. In fact, however, they cannot be regarded as specialised, because they do not examine a specific category of criminal cases (military crimes), but any crime committed by a member of the armed forces. This situation led to some controversy in the sphere of legal doctrine, it being argued that this kind of provision of the law opened the way for violations of Article 6 of the European Convention on Human Rights.

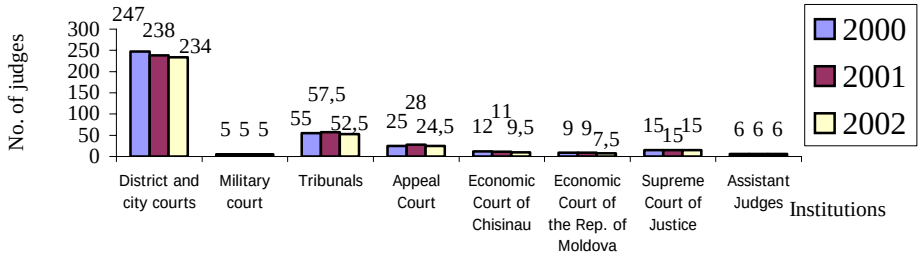
According to the new Code, the Court of Appeal examines serious, very serious and extremely serious crimes at first instance, as well as appeals and cassation appeals.

[33] Law No 1471-XV of the Republic of Moldova amending the Constitution of the Republic of Moldova, of 21 November 2002, Official Gazette No 169, of 12 December 2002.

The Supreme Court serves as a court of appeal for cassation appeals and examines exceptional cassation appeal cases and other issues.

There are currently 354 judges working in the Republic of Moldova.

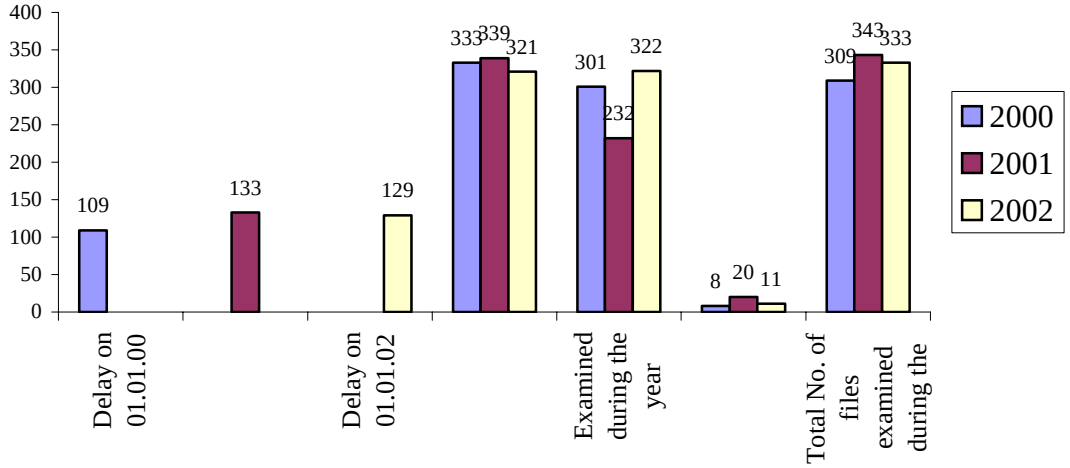
Number of judges



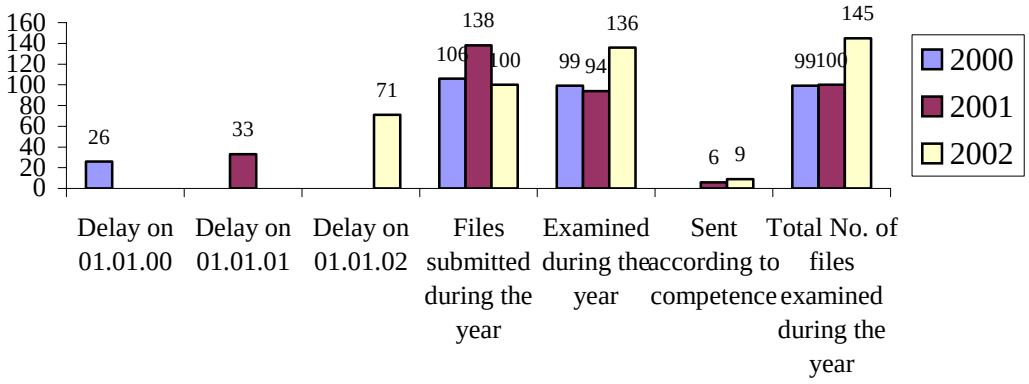
The number of judges is constant. Nevertheless, the judges claim that a huge workload is the reason for the delays in the investigation of criminal cases. In 2000, 2001 and 2002, the total numbers of cases dealt with were:

Year	**Cases**
2000	16177
2001	15152
2002	17086

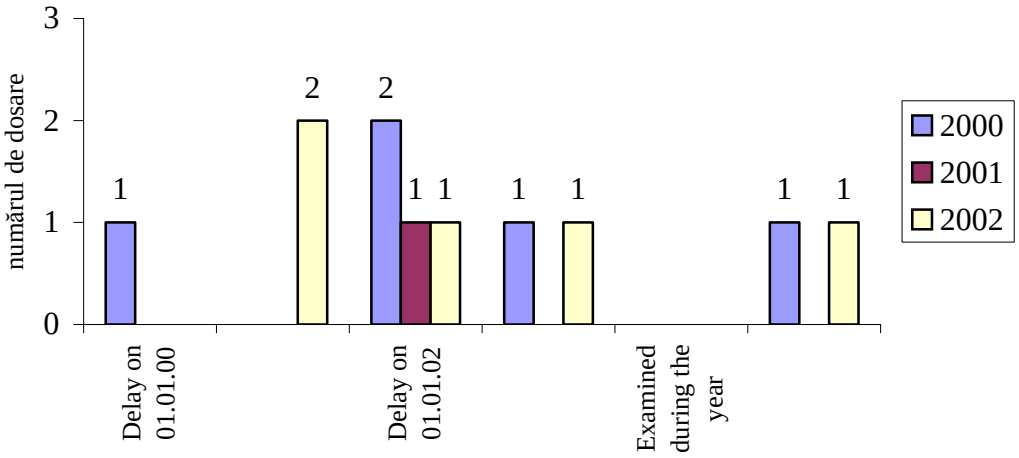
Examination of criminal cases at first instance by the tribunal



Investigation of criminal files at first instance by the Court of Appeal



Number of criminal cases in the Supreme Court of Justice



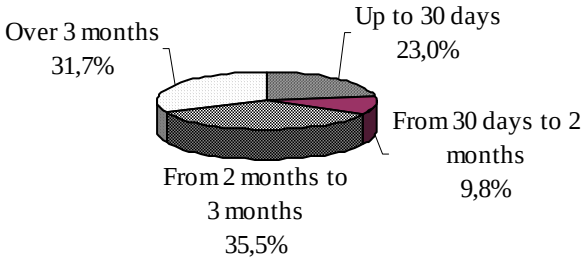
Clearly, a considerable amount of work is done. Delays in the examination of criminal files result from a lack of equipment enabling judges' activities to be organised, as well as, in some cases, from the indifferent and irresponsible attitude of the judge concerned.

C. APPEALS

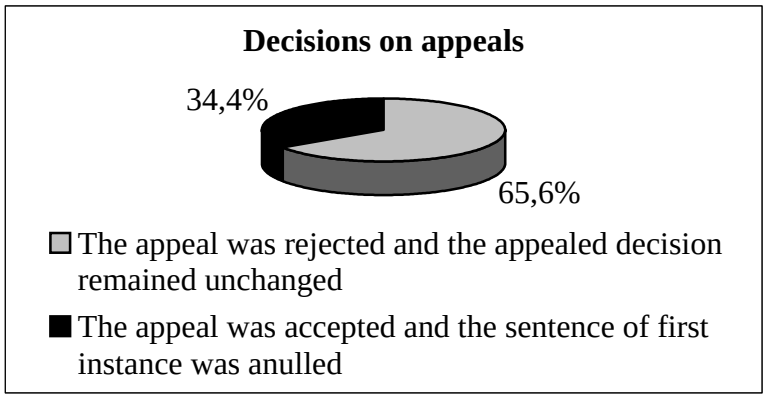
The legislation on criminal procedure provides for two methods of ordinary appeal: appeals and cassation appeals. Innovative steps were taken in 1996, when the Code of Criminal Procedure was substantially amended, particularly where appeal procedures were concerned.

The new Code of Criminal Procedure does not substantially change the arrangements for appeals, which have much in common with those stipulated by French legislation. The practical problems which arise relate to the long duration of the examination of criminal appeals or cassation appeals. The IRP survey carried out in SIZO 3 revealed

that appeals took up to 30 days from the date of submission for 23% of persons under preliminary arrest, while they took between one and two months for another 10%, between two and three months for 35.5% and over three months for the remaining 32%.

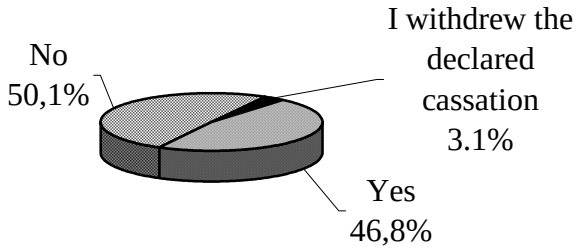


The appeals were decided following examination, with 65.5% being rejected, leaving the sentence appealed against unchanged. A third (34.4%) were upheld, so the sentence passed at first instance was annulled. Generally speaking, appeals lodged by students, businessmen and employees in the services sector were accepted, while those made by unemployed persons and by experts in the industrial and social fields were rejected.



In certain cases, court decisions may be subject to cassation appeals. According to the survey, 46.8% of investigated persons lodged an appeal at cassation level. Such appeals are more frequently made by people who have benefited from higher education (53.3%), married persons (55%), women (55%) and former managers from the world of business (80%). Single prisoners (38.5%), people of no fixed abode (40.6%) and young people aged 16 to 18 (26.7%) rarely appeal at cassation level against court decisions.

Have you appealed against the sentence pronounced?



It also has to be mentioned that the heavy workload also stems from the insufficient number of simplified procedures. In most cases of certain minor crimes, a simplified protocol procedure was followed, but this was in fact very similar to the usual procedure. The result was a delay in case investigation. Other points to mention are the low levels of familiarity with the legal system and of respect towards the justice system, as well as an extremely negative attitude to the law.

Some people were affected by these factors and consequently did not appear in court as witnesses or victims, having lost their faith in justice.

The new Code laid down a set of special procedures intended to achieve differentiation and ensure rapid examination of criminal cases, in an attempt to change this situation. The procedures covered relate to confession, conditional suspension of prosecution and release, and the prosecution and trial of criminals caught in the act. Time is needed in order to ascertain whether these institutions are viable.

D. TYPES OF CRIMINAL PENALTIES

The new Code sets down a range of punishments for criminal offences. Some are the same as those which appeared in the old Code:

a. Fines
b. Deprivation of the right to hold certain posts or engage in certain activities
c. Withdrawal of military rank, special title or qualification
d. Community service
e. Arrest
f. Detention in a disciplinary unit (applicable to members of the armed forces)
g. Imprisonment
h. Life imprisonment

DEPRIVATION OF LIBERTY

The most severe punishment is deprivation of liberty, imprisonment either for a fixed term or for life. Under the old Criminal Code, such punishments were served in the following institutions:

- colony-settlements

- correctional colonies with normal regime (first offenders having committed deliberate crimes not classified as very serious)
- correctional colonies with strict regime (first offenders having committed very serious crimes)
- correctional colonies with severe regime (re-offenders)
- correctional colonies with special regime (offenders classified as extremely dangerous repeat offenders).

The new Criminal Code stipulates that sentences are to be served in the following institutions:

- open prisons (for crimes committed through negligence)
- semi-closed prisons (for deliberate minor offences, lesser and serious crimes)
- closed prisons (for very serious crimes and repeat crimes).

Under the new Criminal Code, the court may decide to change the category of prison at the request of the prison administration.

It also has to be pointed out that the prison governor has authority to apply some temporary corrective and punitive measures for the purposes of correcting and re-educating convicted prisoners. In accordance with the Code for the Enforcement of Criminal Sanctions, a prison governor may decide to change the conditions of detention, within the same prison, by transferring a convicted person from the initial conditions (adaptation) to normal conditions (re-socialisation), and vice versa. In practice, there is often no differentiation in the attitude taken to different categories of convicted persons.

During the transitional period, until such time as the prison system has been organised in accordance with the new Criminal Code, prisoners who should be in open prisons will be placed in colony-settlements, those whose sentences should be served in semi-closed prisons will be housed in normal and strict-regime colonies, and those due to serve in closed prisons will be placed in severe and special-regime colonies and in prisons.

The pre-trial units for which the Penitentiary Institutions Department of the Ministry of Justice is responsible are in a better state than the Ministry of Interior's preliminary detention isolators. Detention conditions in the institutions where custodial sentences are served remain precarious, however. The statutory norm is two square metres of living space per prisoner, which is not enough for sanitary conditions to be achieved. Bedding, personal hygiene items and sufficient foodstuffs cannot be provided because of the lack of financial resources.

The detention regime for an adult male, for instance, costs 15.40 lei, that for minors 30.52 lei, and that for women 19.60 lei. Essentials are mostly paid for by relatives and friends, who bring the prisoners what they need.

The **medical care** of prisoners is provided by the medical centres within each institution. When special care is needed, this is provided at the Pruncul general hospital, which has a capacity of 160 beds, or the Tighina tuberculosis hospital, with a capacity of 200 beds. According to Penitentiary Institutions Department figures, the

actual financial resources spent on medical care amount to 5.7% of what is planned and requested, and this shows the low level of medical care. Any additional expenditure comes from international non-governmental organisations. Because of the unstable situation on the left bank of the river Nistru, the Penitentiary Institutions Department is now being forced to withdraw the tuberculosis hospital from Tighina, and a similar hospital is now being built in Rezina.

The main diseases suffered by prisoners are:

1. Infectious and parasitic diseases (including tuberculosis), 28.8%
2. Respiratory illnesses, 16.2%
3. Mental illnesses, 14.5%
4. Diseases of the digestive system, 10.8%

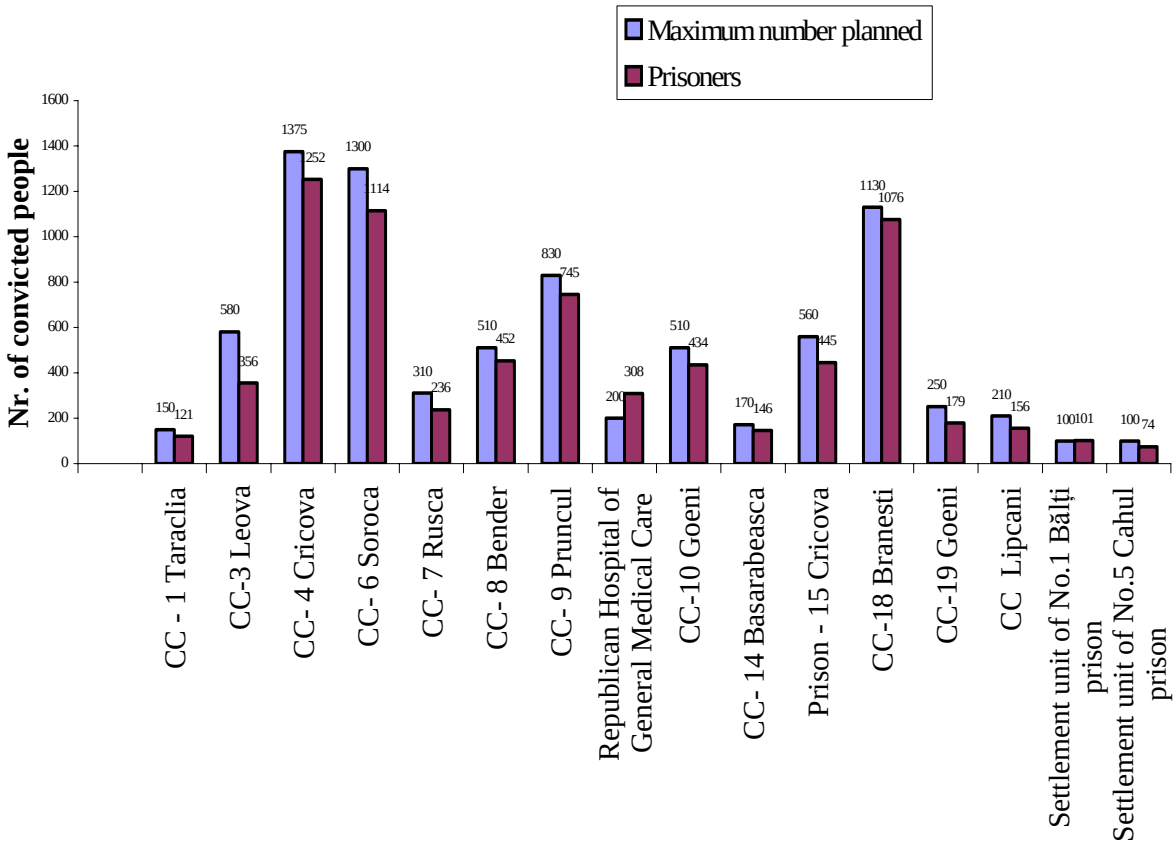
A current total of 765 tuberculosis sufferers and 211 HIV-positive detainees are registered within the prison system. No records are kept of AIDS patients.

The psychological service: This was set up in 1994 within the prison system. The aim is to find new methods of studying personality and groupings and to offer psychological counselling (to both prisoners and staff), but there is still a lack of training of specialists in psychology and of the requisite work space and equipment.

Education is still a major problem in custodial institutions. Where no education and re-education programmes exist, the educational purpose of deprivation of liberty is lost, leaving only a punitive/repressive function. Lack of financial resources is a serious problem in this context, but it is not the only reason for the deficiencies. Existing educational programmes still date from the Soviet era, involving large numbers of prisoners simultaneously, and this prevents the necessary psychological contact from being established and the expected results from being achieved. There is also a lack of preparation for release from detention.

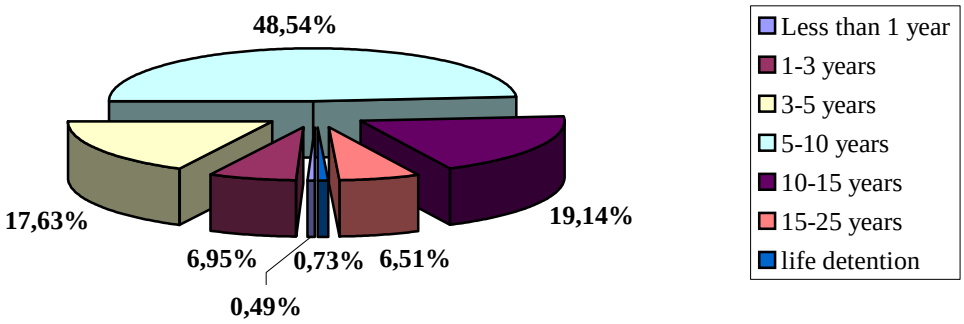
The diagram below shows the situation in the custodial institutions of the Republic of Moldova on 1 January 2003, on the basis of the information provided by the Department of Penitentiary Institutions of the Ministry of Justice.

Population of penitentiary institutions (Colonies)



Almost half of the total of 7 217 detainees has been sentenced to between five and ten years' deprivation of liberty, and over a quarter are serving sentences of between 10 and 25 years:

Classification of detainees according to length of sentence



Detention periods are long. The imprisonment rate is reduced through conditional early releases, the imposition of fines to replace the part of the sentenced not served, favourable calculation of the terms of detention when the convicted person is working, and amnesties. The use of an amnesty presupposes appropriate preparation to avoid repeat offending. The frequency with which amnesties are used and the repeat offending rate prove that preparation for release is poorly done, and that police supervision following release is inefficient (non-existence of probation services).

Specific features of the detention of women and minors

In January 2003, 321 women and 122 minors were serving sentences in the custodial institutions of Moldova.

Age	Women	Minors
Up to 15 years		1
16 years		4
17 years		24
18 years		50
19 – 21 years	7	43
22 - 30 years	129	-
31 – 40 years	83	-
41 - 50 years	74	-
51 - 55 years	18	-
55 - 60 years	6	-
over 60 years	4	-
Total	**321**	**122**

Breakdown of convicted women and minors according to the crimes committed	Women	Minors
Pre-meditated murder Art. 88, 89, 92[34]	77	14
Serious intentional physical abuse (Art. 95)	20	1
Rape (Art. 102,103)	3	8
Stealing of goods (Art.119)	99	64
Robbery (Art. 120)	19	13
Pillage (Art. 121)	18	14
Large-scale stealing of property (Art.123[1])	26	1
Hooliganism (Art. 218)	-	1
Violations related to drugs (Art. 225)	43	2
Other violations	16	4
Total	**321**	**122**

Breakdown of women and minors according to their number of convictions	**Women**	**Minors**
First	151	115
Second	82	6
Third	42	1
Fourth and over	46	-
Total	**321**	**122**

In general, minors are given custodial punishment only in exceptional cases, when they pose a danger to society and their personality is such that they need to be isolated from society and educated in a correctional establishment. Convictions of minors increased from 1 894 in 2001 to 2 160 in 2002 (a 14% rise). The number of convictions for serious crimes also increased (487 minors were convicted for this kind of crimes). Statistics showing the breakdown of punishment measures for 2001 and 2002 are shown below.

	2001	**2002**

[34] Current Criminal Code

Treatment of minors	Total	%	Total	%
	1 894		2 160	
Custodial punishment	227	12	294	13,6
Fine	270	14,2	380	17,6
Probation	1 018	53,8	1 261	58,4
Suspended sentence	52	2,7	5	0,2
Other punishment	327	17,3	220	10,2
Application of Art. 42	228	12,0	24	1,1

Minors are better treated during detention than are adults. In their correctional colony, in the village of Lipcani, basic living standards are respected. Women are held in the women's prison in the village of Rusca or, separately from men, in preliminary investigation pre-trial units.

The training of prison staff

Prison staff training is currently provided by the Training Centre of the Penitentiary Institutions Department (for staff newly taken on). Training programmes are outdated and the instructors lack the necessary training materials. Strict observance of military ranking makes it impossible for interactive methods to be used and prevents an appropriate atmosphere for training from being created.

Some prison staff were trained at the Moldovan Police Academy, while others have enjoyed training provided by non-governmental organisations. The lack of an organised system for improving occupational skills makes it impossible for larger numbers of prison staff to be trained.

Legislative innovations relating to the serving of custodial sentences

A draft Enforcement Code is undergoing its second reading. This lays down the procedures for the execution of custodial sentences. It establishes a maximum capacity of 500 detainees per prison, for the sake of the safety of both prisoners and staff. Special reductions in sentence length will be possible for employed prisoners. Restrictions on the number of letters, parcels and food packets which prisoners may receive will be abolished, and no such restrictions will apply to minors (the aim is to improve prisoner nutrition). Certain measures are also included to encourage conscientious behaviour and with a view to correction and re-education.

Life imprisonment cannot be applied to women or minors. Life prisoners are held at Rezina prison, which currently has 55 inmates. Their separate detention is justified by the high level of danger they pose to society, as determined by the court. Life imprisonment is a penalty applied to extremely serious crimes (committed with intent). When a sentence is decided in pursuance of the new Criminal Code, a number of circumstances are taken into consideration: the gravity of the crimes committed, its causes/reasons, the personality of the offender, any attenuating and aggravating circumstances, the desired aim in terms of improvement of behaviour and re-education, and the family's living conditions. However, courts do not always have this information available, making it necessary to have a pre-sentencing probation service to determine the degree of danger posed to society and, in some cases,

whether life prisoners should be detained with other categories of convicted persons in closed prisons. There is no system for monitoring changes in the level of danger posed to society during the execution of sentences.

ALTERNATIVES TO IMPRISONMENT

The new Criminal Code extends the scope of alternatives to the deprivation of liberty.

Fines

Under the old Code, a fine could be between 25 and 1 000 times the minimum wage[34]. The old Code provided that fines could be paid in instalments, a method applied when someone was unable to pay a fine because of his or her poor financial situation. This stipulation does not appear in the new Code. Thus anyone who fails to pay a fine might well end up in prison, for the new Code stipulates that in the event of non-payment of a fine, that penalty may be replaced by arrest or imprisonment, with one month of arrest equating to 50 monetary units[35]. The new Code also provides for the possibility of a fine being replaced by unpaid work for the benefit of the community[36], should a convicted person be unable to pay the fine imposed. In such cases, 60 hours of unpaid community work equate to 50 monetary units.

Fines are frequently imposed by the courts:

Year	People fined	% of the total number of convicted persons
1999	3 237	20.6
2000	4 987	28.8
2001	4 528	26.4
2002	5 799	30.8

Unpaid community work (community service) is an alternative to detention for which the old Criminal Code made no provision. Community service penalties range from 60 to 240 hours, at a rate of between two and four hours per day. A deliberate failure to comply with a community service order may lead to that order being replaced by arrest: one day of arrest equates to two hours of unpaid community work. Community service may not be imposed on grade I and II disabled persons, members of the armed forces, pregnant women, women who have children aged under 8, minors under the age of 16 or retired persons.

A scientific conference held by the Institute for Penal Reform in collaboration with the Ministry of Justice in November 2002 on "Implementation of Community Service in Moldova: Realities and Prospects" looked at the actual possibility of applying this punishment. It was the opinion of the judges of the Supreme Court of Justice that it could be difficult to substitute arrest for a community service order, because of the difference between the punishments.

[34] The minimum wage can be equated to monetary units.
[35] Under the old Criminal Code, the correlation between detention and fine was one month of deprivation of liberty for three times the minimum wage.
[36] A new category of punishment not provided for by the old Code.

It should not be overlooked that, until 1995, the Criminal Code provided for "correctional work" as a punishment. This penalty, lasting for a period of less than two years, was the main punishment imposed for minor and lesser crimes, convicted persons serving the sentence at their workplace and losing 20% of their wage, which was placed in a special account.

This punishment was not included in the new Code because it was regarded as conflicting with the provisions of the European Convention on Human Rights.

Free admission of guilt

A convicted person who has freely admitted guilt may avoid prison or receive a more lenient punishment. The applicable reduction is one-third of the maximum punishment for which the law provides. A similar situation arises in respect of the sentencing of first offenders for conspiring to commit a crime not subsequently carried out: in such cases, the punishment cannot exceed half of the maximum punishment laid down for the type of crime concerned.

Suspended sentences

Sentences may also be suspended under the new Criminal Code. Suspension may be conditional, an option open if the court imposed a maximum of five years' imprisonment for a crime committed deliberately, or seven years in the case of crimes committed negligently. The court takes into consideration the circumstances of the case and the personality of the person convicted. It may lay down a probation period of from one to five years, and may also impose certain obligations on the person concerned, who may be required to reside at the same home address, to refrain from going to certain places, to undergo treatment for alcoholism, drug addiction or sexually transmitted disease, to provide financial support to the victim's family, to remedy the damage within a time limit set by the court, etc. If the convicted person fulfils his obligations for half of the set period, the court may annul the conviction. If, on the other hand, he or she fails to meet the obligations, imprisonment may be ordered.

Conditional suspension of a punishment was often applied by the courts under the old Criminal Code as well, especially in the case of minors.

Year	Suspended sentences imposed	% of all convicted persons
1999	4 711	30.1
2000	6 653	38.4
2001	6 241	36.4
2002	7 482	39.7

A fundamental problem is the non-existence of a **probation service** in Moldova. Were such a service to exist, reports could be drawn up about offenders' personality at the pre-detention probation stage, in order to avoid unnecessary preliminary arrests and to promote better individualisation of punishment, including deprivation of liberty. During the detention phase, it would enable sentence execution to be chosen

and planned with a view to further social rehabilitation of the individual concerned, and in the post-detention phase it would contribute to social reintegration after release.

In fact, individuals are left to their own devices, with no social reintegration measures being taken. This is because of the present situation in Moldova, which has no state institutions to provide a probation service, and where non-governmental structures have only just started their activity. The law itself (Article 90, paragraph 7 of the Criminal Code) specifies that the court shall **control**[37] the convicted person's behaviour. The emphasis is thus placed on control, and not on social reintegration.

The high unemployment rate, the low level of incomes and a disregard for the state may lead to further crimes being committed during the probation period, or to a failure to fulfil the obligations set by the court. Imprisonment may result. It should be stated, however, that when a person commits a crime of negligence, or a lesser deliberate crime, during the probation period, it is the court which decides whether or not the suspension shall continue.

Postponement of sentence execution

Execution of the sentences imposed on pregnant women and women with children under the age of eight may be postponed, except where they are sentenced to a prison term of more than five years for serious, very serious or extremely serious crimes. In this context, the situation over the past four years is shown in the table below:

Year	Number of persons concerned	% of all convicted persons
1999	724	4.6
2000	766	4.4
2001	164	1.0
2002	68	0.4

Conditional early release

One possibility for which the new Criminal Code provides is conditional early release on the basis of a decision by the court. The court may, in such cases, impose certain obligations on the individual, obligations identical to those imposed on persons subject to suspended sentences. Adults may benefit from conditional early release if they have effectively served at least half of the term set by the court for committing a minor or lesser crime, or at least two-thirds of the term imposed for very or extremely serious crimes. A person granted conditional early release but then committing another crime, irrespective of the punishment for this new crime, or a person failing to fulfil the obligations laid down by the court may only be released again after 35 years of imprisonment.

The law is more lenient to minors: Young persons who committed a crime while under the age of 18 may benefit from conditional early release or have the unexecuted

[37] The emphasis is ours.

part of their punishment replaced by a more lenient penalty once they have effectively served at least one-third of their sentence.

Conditional early release or replacement of the unexecuted part of a punishment by a more lenient penalty may be applied to the following, if they have served at least half of the term to which they were sentenced:
1. Persons serving custodial sentences of at least five years for a deliberate crime committed when they were under the age of 18;
2. Persons who have already served a custodial sentence for a deliberate crime, and who committed another deliberate crime, for which they were sentenced to deprivation of liberty, while under the age of 18 and before the end or the suspension of execution of their sentence;
3. Persons who committed a deliberate crime while under the age of 18 and while serving their sentence in a prison.

Conditional early release or replacement of the unexecuted part of a punishment by a more lenient penalty may be applied to the following, if they have served at least two-thirds of the term to which they were sentenced:
1. Persons previously sentenced to deprivation of liberty for a deliberate crime and who have been granted conditional early release or replacement of the unexecuted term by a more lenient penalty, if they committed a deliberate crime for which they were sentenced to deprivation of liberty while under the age of 18 and before the end of the unexecuted part of the sentence;
2. Persons convicted of serious crimes committed under the age of 18.

Conditional release may be cancelled in certain circumstances, such as commission of another crime during the unexecuted term of a sentence by a person granted conditional early release while under 18.

Substitution of a more lenient penalty for imprisonment

The new Criminal Code also provides for other possible arrangements for release. Imprisonment may be replaced by a more lenient penalty. This is possible only in respect of minor or lesser crimes, in which case the offender may be assigned to a special educational and corrective institution, as well as being made subject to constraint measures with educational goals. These include: a warning, an obligation to remedy the damage caused (account being taken of the minor's financial situation) and an obligation to undergo medical treatment in the form of psychological rehabilitation. There are at present no special education institutions in Moldova.

A person may also be **released** as a result of a **change of situation**, where the offence committed was a minor or lesser crime and is no longer of a damaging nature, and where corrective action is possible without a custodial punishment.

Individuals who committed crimes of negligence or who fell ill before the end of the court proceedings or during execution of their sentence, making them unable to understand their own actions, may be released and be made subject to **constraint measures of a medical nature**. These measures are applied in two kinds of psychiatric institutions: one subject to ordinary supervision, the other to strict supervision. This measure is one which was also available under the old legislation.

The institutions concerned are under the responsibility of the Ministry of Health. Release can be granted on a decision by the prison authorities on the basis of a psychiatric report. Persons subject to such measures may also be released in the event of another serious illness, such release being decided by the court.

The new Criminal Code also specifies certain **safety measures** which may be taken in respect of criminals. One such measure is described as "the implementation of constraint measures of a medical nature for alcoholics and drug addicts". This is a measure applicable to offenders who are addicted to alcohol or to narcotics. In such cases, the court may prescribe enforced treatment as well as punishment, on the basis of a medical opinion or at the request of the work collective. If the person concerned has been sent to prison, the treatment is provided in the prison, and can be continued after release in a "special regime" institution. If he or she was not punished by imprisonment, he or she will also be treated in such an institution.

This provision was taken from the old Criminal Code, and is regarded by many as a legacy of the totalitarian era. Obviously, this measure is not part of the system of punishment categories, being designated a safety measure. Nor does the law give an explanation of the terms "alcoholic" and "drug addict". The persons concerned are forcibly detained in a medical institution. The impression may be given (correctly) that someone is punished twice for one misdeed. Also involved in execution of this punishment is the work collective, which has no status in criminal law. Clearly, the collective decision is usually taken by the leader, and as a consequence, this safety measure may violate a number of rights laid down in the European Convention on Human Rights.

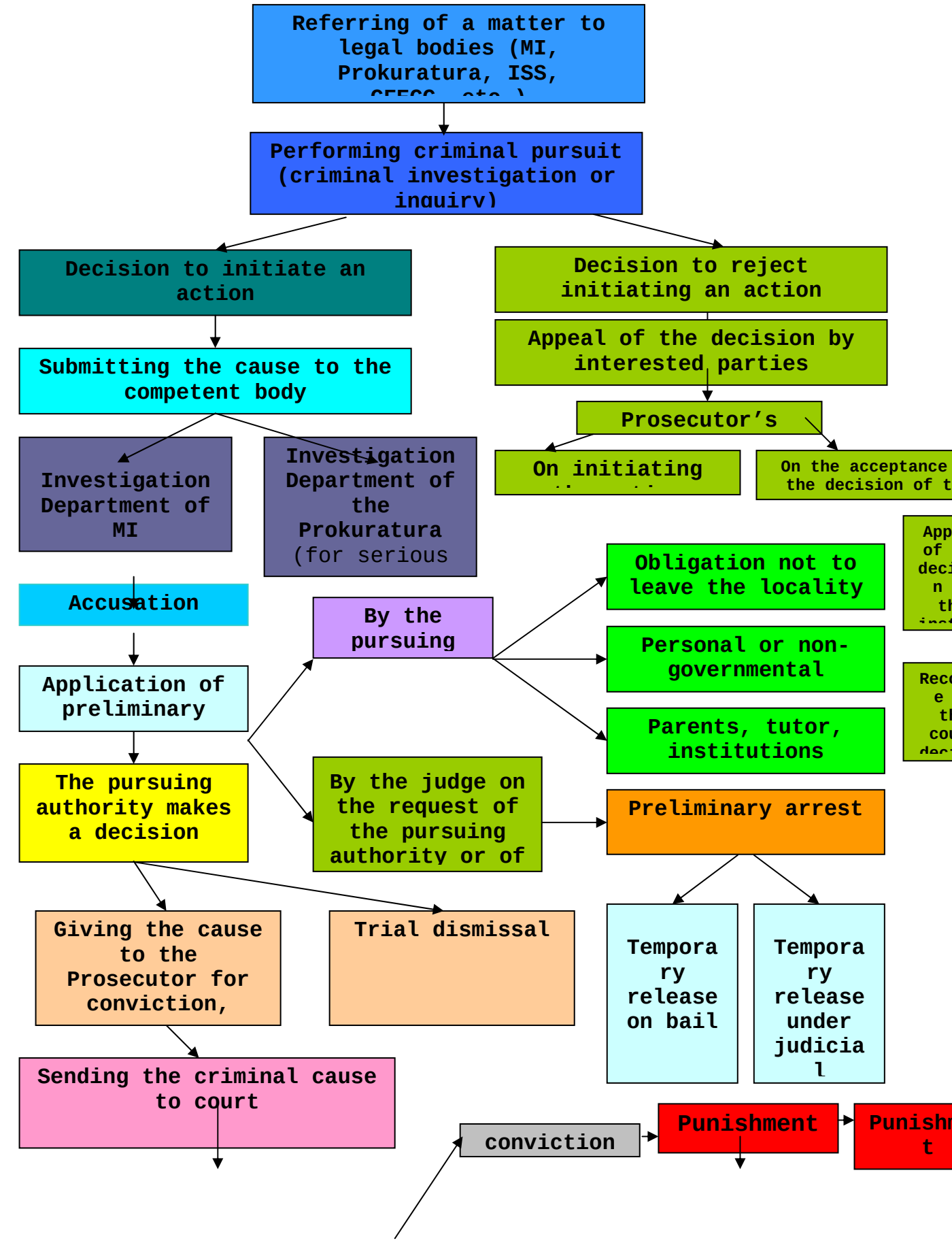
Applications to send 154 people for **alcohol and drug addiction treatment** were examined by the courts in 2002. Appeals were lodged against most of the decisions. Following examination of the appeals, 49.3% of the applications for treatment were rejected, making it obvious that most of the applications concerned were improper.

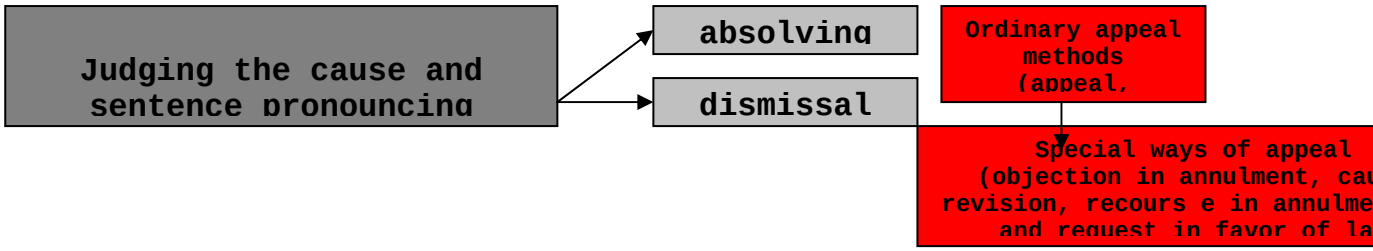
Responsibility for damage caused by the courts

The right to compensation is laid down in both the Constitution of the Republic of Moldova and Law No 1545-XIII, of 25 February 1998, the Law on Compensation for the Prejudice Caused by Illicit Actions by the Criminal Investigation and Preliminary Inquiry Units of the Prosecutor's Office and Judicial Bodies.

In practice, these stipulations are not properly complied with. The amounts of compensation calculated in respect of damage resulting from preliminary arrest (loss of job, risk to health, deprivation of relations with the family, emotional damage, loss of benefit) are very low, between 1 500 and 2 000 lei (approx. 95-130 euros). What is more, these amounts are not paid on time.

VI. Criminal justice machinery (according to the




Judging the cause and sentence pronouncing
absolving
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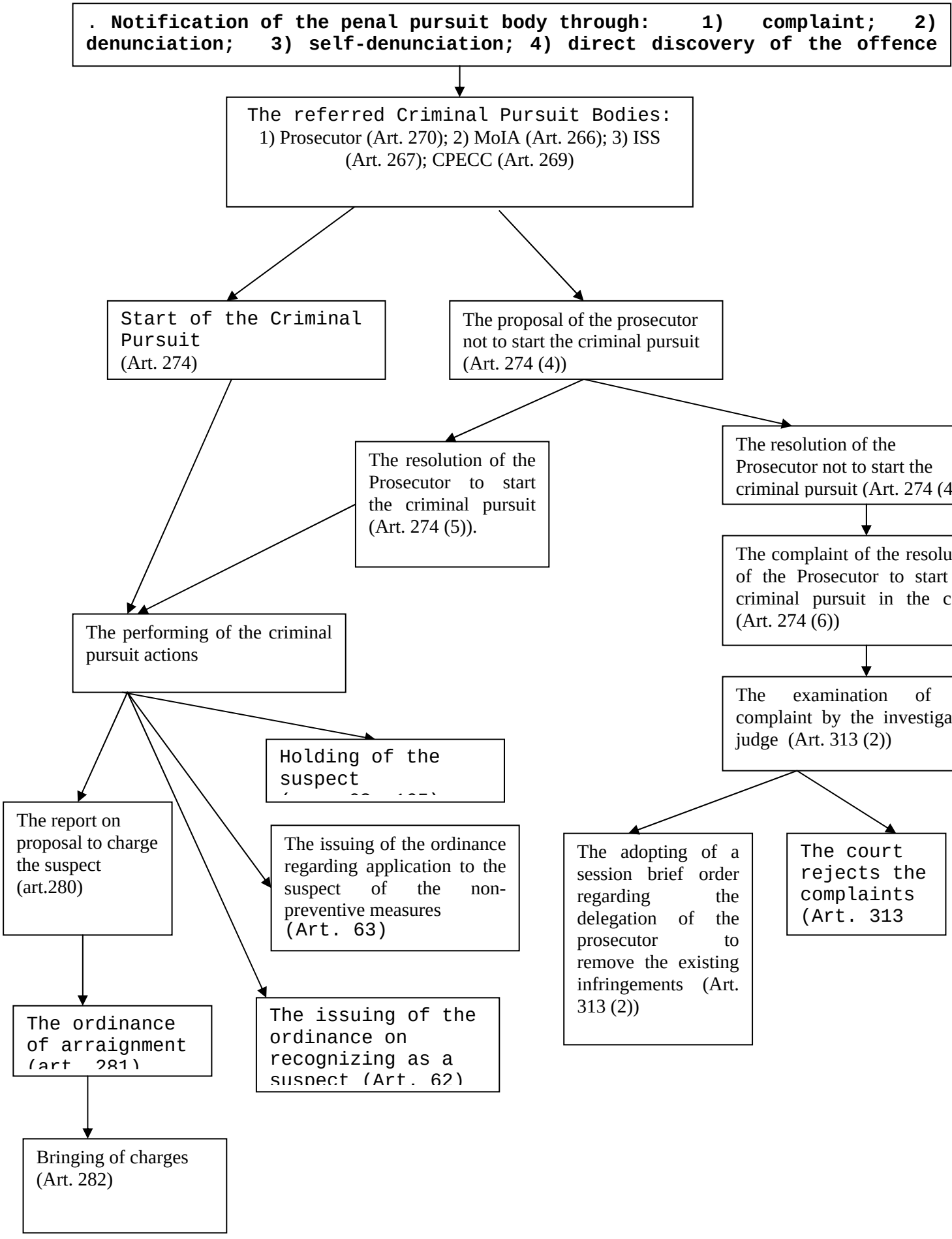
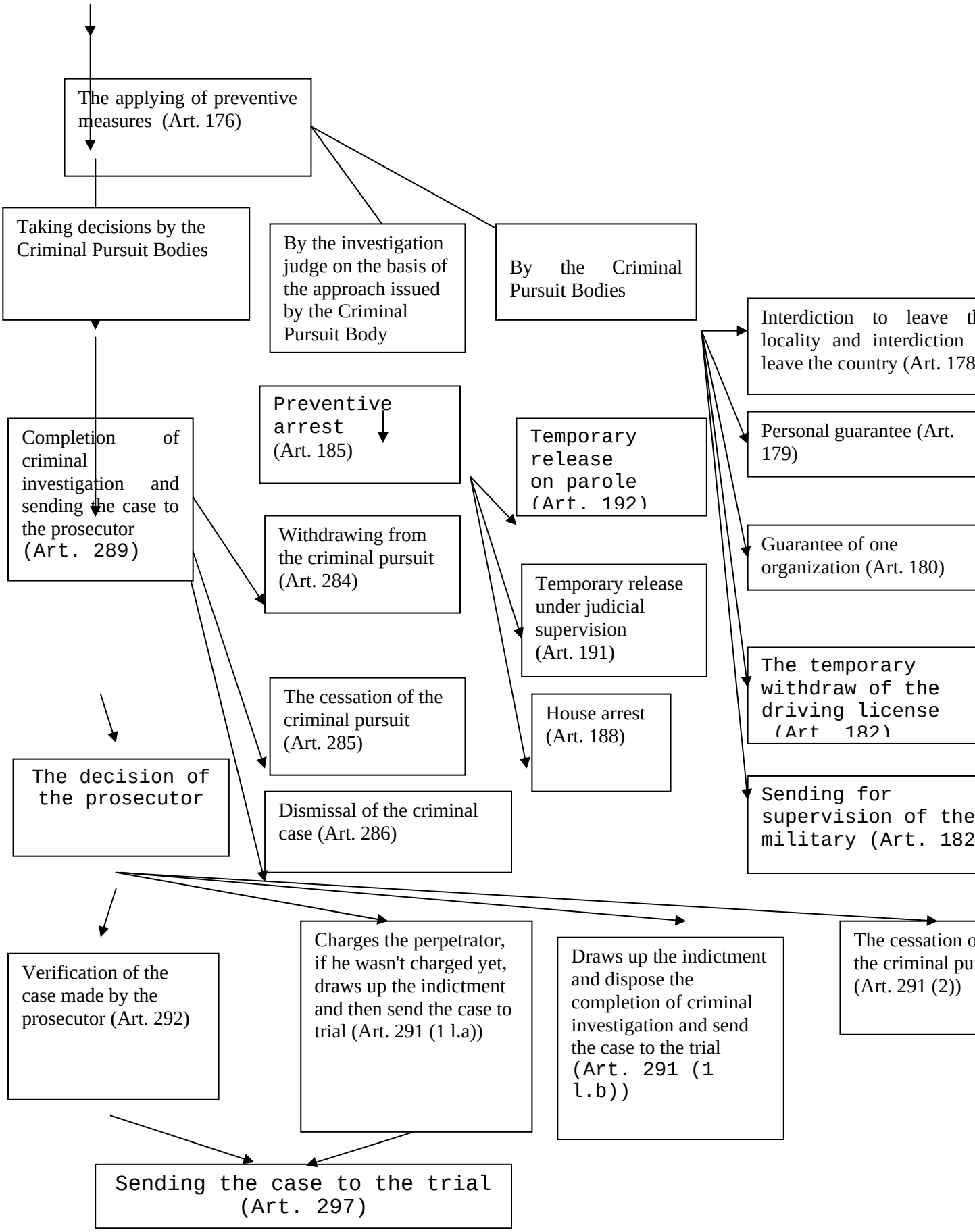
Criminal Justice machinery (according to the new CPC)




The applying of preventive measures (Art. 176)
Taking decisions by the Criminal Pursuit Bodies
By the investigation judge on the basis of the approach issued by the Criminal Pursuit Body
By the Criminal Pursuit Bodies
Interdiction to leave th locality and interdiction leave the country (Art. 178
Preventive arrest (Art. 185)
Temporary release on parole (Art. 192)
Personal guarantee (Art. 179)
Completion of criminal investigation and sending the case to the prosecutor (Art. 289)
Withdrawing from the criminal pursuit (Art. 284)
Guarantee of one organization (Art. 180)
Temporary release under judicial supervision (Art. 191)
The temporary withdraw of the driving license (Art. 182)
The cessation of the criminal pursuit (Art. 285)
House arrest (Art. 188)
The decision of the prosecutor
Dismissal of the criminal case (Art. 286)
Sending for supervision of the military (Art. 182
Verification of the case made by the prosecutor (Art. 292)
Charges the perpetrator, if he wasn't charged yet, draws up the indictment and then send the case to trial (Art. 291 (1 l.a))
Draws up the indictment and dispose the completion of criminal investigation and send the case to the trial (Art. 291 (1 l.b))
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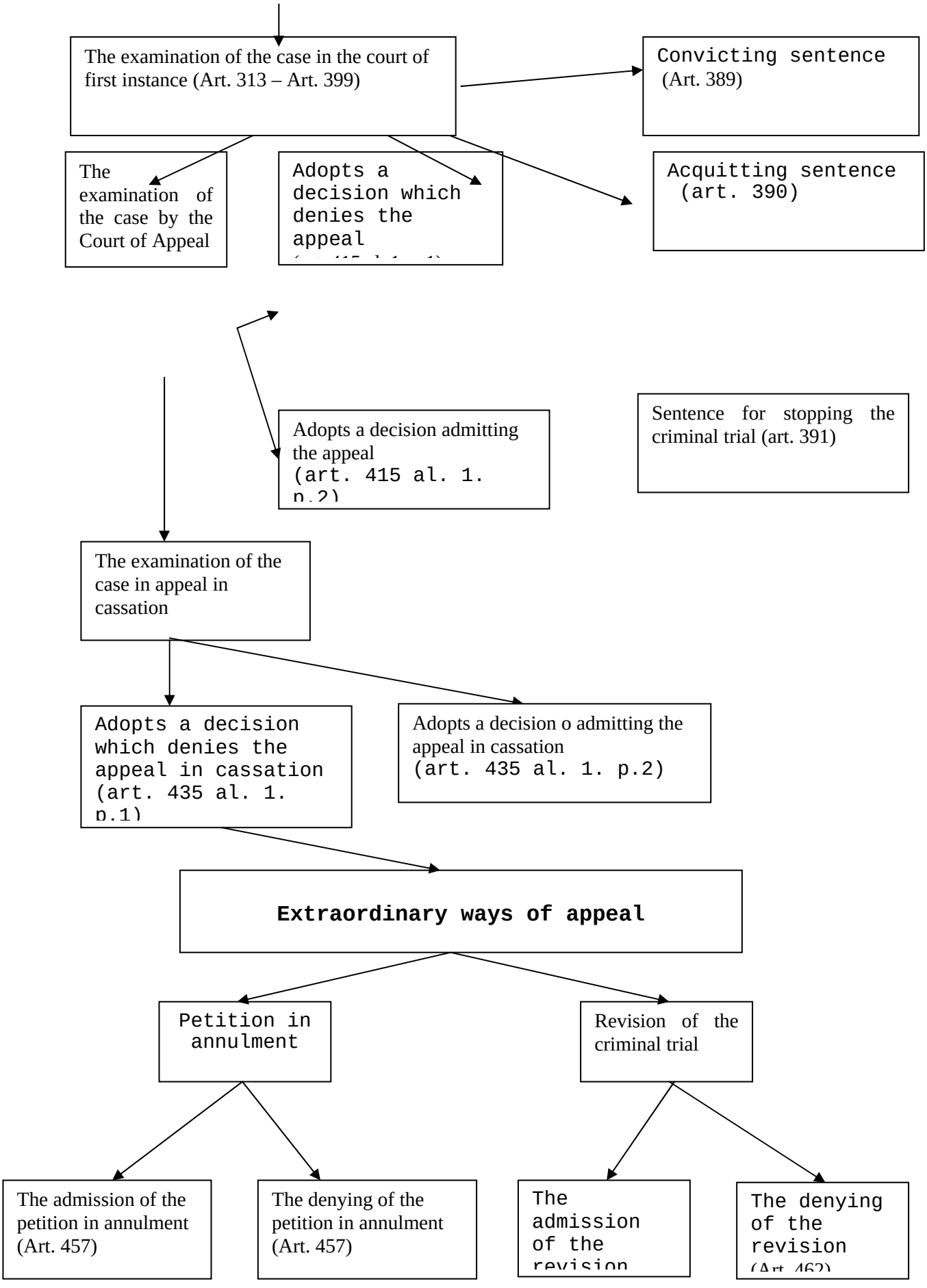
Sending the case to the trial (Art. 297)


The examination of the case in the court of first instance (Art. 313 – Art. 399)
Convicting sentence (Art. 389)
The examination of the case by the Court of Appeal
Adopts a decision which denies the appeal
Acquitting sentence (art. 390)
Adopts a decision admitting the appeal (art. 415 al. 1. p.2)
Sentence for stopping the criminal trial (art. 391)
The examination of the case in appeal in cassation
Adopts a decision which denies the appeal in cassation (art. 435 al. 1. p.1)
Adopts a decision o admitting the appeal in cassation (art. 435 al. 1. p.2)
Extraordinary ways of appeal
Petition in annulment
Revision of the criminal trial
The admission of the petition in annulment (Art. 457)
The denying of the petition in annulment (Art. 457)
The admission of the revision
The denying of the revision (Art. 462)

VII. CONCLUSIONS AND RECOMMENDATIONS

I. The application of alternatives to imprisonment

It is recommended that, in order to reduce prison overcrowding and the population of pre-trial isolation units, arrest be used as an exceptional measure and alternative penalties and measures be applied:

- Action should be taken to facilitate the implementation of community penalties and measures;

- The state should set up a probation infrastructure and the appropriate legal framework, especially for use in the cases of juveniles;

- The state should promote the gradual introduction of new penal or procedural institutions through pilot projects (eg community service, mediation, probation);

- The state should encourage, by every possible method, and where the situation allows, the participation of civil society, mainly NGOs, in the resolving of problems relating to the criminal justice system (legal aid, performance of community service, mediation, probation and other community penalties and measures, for instance);

- Creation of an appropriate legislative framework and infrastructure for mediation in criminal matters, and organisation of a mediation centre, etc.

II. The framework of criminal legislation

The simplified procedures for which the new Code of Criminal Procedure provides should be more widely applied in order to limit the time taken by the investigation and trial.

Legislation should specify prosecutors' duties relating to appeals, as no such provision is made in the new Code of Criminal Procedure.

More time should be allowed to adapt to the provisions of the new Code, particularly where the criminal investigation by the prosecutor is concerned.

A law should be adopted on automatic legal aid.

III. Legal education and training

Support and encouragement should be given to the setting up of a specialised Institute for Magistrates, where those who work in the criminal justice system may be trained.

An Institute for Prosecutors should be founded, either separately or within the Institute for Magistrates, to train future prosecutors and provide in-service training to those already working as prosecutors.

Judges, prosecutors and lawyers should be taught about the application of newly introduced special procedures and penalties, such as the procedure for investigating

and judging cases relating to legal entities, the arrangements for acknowledging guilt, the community service system, etc.

Appropriate training should be given to examining judges and to all other stakeholders.

The wider population should be provided with more legal education, especially young people, and this should cover criminal responsibility and penalties.

IV. Increasing access to justice

Efficient machinery should be devised enabling citizens to address the Supreme Court of Justice.

A special crime victim compensation fund should be set up.

A court specialising in juvenile offences should be established.

V. Temporary detention isolators

Responsibility for **temporary detention isolators** should be transferred to the Ministry of Justice.

Appendix I

APPENDIX TO THE "ANALYSIS OF THE CURRENT SITUATION AS REGARDS THE CRIMINAL JUSTICE SYSTEM AND PENAL POLICY OF THE REPUBLIC OF MOLDOVA"

by Marcelo F Aebi

1. Introduction

The report shows that the Moldovan criminal justice system, like any other such system, has its problems. Two of these, however, give rise to particular concern, and might be solved in the medium-term. They are:

1. Prison overcrowding,
2. The situation of pre-trial detainees.

In this appendix, we shall take a brief look at a few ways of dealing with these problems. We shall not refer to other important issues, such as the duration of trials and the lack of a probation service, because some solutions to these are already suggested in the report. This report is being written in the hope that it will be read by Moldovan policy-makers in the criminal justice sphere. We have therefore decided to put forward pragmatic solutions and avoid in-depth scientific analysis of the problems under discussion.

2. Prison overcrowding

2.1 The main ways of preventing overcrowding

The two main ways would be to reduce the length of the longest prison sentences imposed and to make use of alternative penalties and measures.

The optimum combination of methods for decreasing the prison population is the imposition of shorter prison sentences for serious offences and the replacement of the short sentences imposed for less serious offences by alternative penalties and measures.

2.2 Sentencing-related issues

2.2.1 Introduction

It is clear from the table "Classification of detainees according to length of sentence" that, in the case of Moldova, three-quarters of detainees are serving sentences of more than five years. Thus long sentences largely determine the prison population (the number of detainees at any given time). While it is true that most of the world's prisons hold mainly long-term detainees, the sentences imposed in Moldova seem to

be particularly long. There could be two main contributory factors, and we shall discuss these below.

2.2.2 Long prison sentences

The report says (under "Conditional early release") that the Moldovan Criminal Code stipulates that anyone on conditional early release who commits another offence cannot be released from prison for 35 years. This rule is surely one of the main reasons for the high-level of prison population. Nor should it be forgotten in this context that the re-offending rate in Europe is roughly 50%.

We suggest amendment of this rule to shorten this period of imprisonment. A new rule could stipulate that the term of imprisonment shall be set according to the offences committed, and that, in any case, the maximum term should not exceed 15 or 20 years.

2.2.3 Suspension of the execution of prison sentences

A full explanation of prisoner distribution in Moldovan prisons could only be given by someone familiar with the old Moldovan Criminal Code, under which most of the sentences concerned have been imposed, and such an exercise is beyond the scope of this appendix. According to the penological literature available, the situation will almost certainly not improve under the new Criminal Code. Research has in fact shown (see Kuhn A, *Punitivité, politique criminelle et surpeuplement carcéral - ou comment réduire la population carcérale*, Haupt, Bern, 1993) that judges tend to view sentencing in simple terms of prison or not. The key factor is not the length of sentence, but whether or not a convicted person will go to prison. Thus, if the upper limit for the imposition of a suspended sentence is increased (or, to be more precise, the limit for suspending execution of a prison sentence), the usual result is an increase in the length of sentences imposed. Consequently the percentage of all sentences passed which are suspended is unaffected, *ceteris paribus* (ie if the crime rate is stable).

It might be thought, for instance, that if half of the sentences passed are not suspended, that percentage would also rise if the upper limit for the imposition of such sentences were increased (with cases in which sentences are not currently suspended then resulting in suspension). In practice, this does not happen, for judges tend to impose longer sentences so as to be sure that the persons concerned effectively go to prison. In this context, the five-year upper limit set by the new Criminal Code, according to the report, is quite high, and will probably help to maintain the present structure of sentences passed (three-quarters of detainees are currently serving sentences of more than five years).

We suggest that a debate take place to establish whether such a limit is really appropriate in the present situation in Moldova. This is, of course, a difficult issue because, from the theoretical viewpoint, it might be assumed that the penal system is being made more punitive. But we are guided in this appendix by a pragmatic approach, and believe that a reduction of the upper limit might lead to a general reduction in the length of sentences passed. In any case, the effects of any amendment of the Criminal Code should be carefully monitored through scientific

research (see section 2.3.3). Thus, if our hypothesis proves to be wrong, it will be possible to return to the pre-amendment situation.

2.3 Alternative penalties and measures

2.3.1 Introduction

Few of the available alternative penalties and measures are actually applied, as is clear from the report (chapter on "Alternatives to imprisonment").

Thus the worst combination of factors which may lead to prison overcrowding exists in Moldova: large numbers of long-term sentences and few alternatives to imprisonment. Moreover, the report suggests that judges are reluctant to apply those alternatives.

2.3.2 Setting up of an intermediate body to be responsible for sentence execution

We suggest that, in order to improve this situation, an intermediate body be set up within the Moldovan criminal justice system to be responsible for the execution of sentences. A new probation service could be created, or a judge appointed to be responsible for sentence execution, with similar duties to France's *juge d'application des peines* or Spain's *juez de vigilancia penitenciaria*.

Such judges' functions may vary according to national legislation, but they usually decide the details of sentence execution. Thus they also decide on any conditional early release and they may also be responsible for ensuring that prisoners' rights during their term of imprisonment are respected.

In this context, the court would pass sentence and the judge responsible for sentence execution would supervise the way in which the sentence was served. If the new judges responsible for sentence execution are well-prepared and come from a new generation of judges, wider use might be made of alternative penalties and measures, and early conditional release might be granted more frequently. The system should be improved by including in the Criminal Code the possibility of using alternative penalties as a way of "serving the sentence", not just as punishments in themselves. The Code, for example, could stipulate that anyone sentenced to less than six months of imprisonment could serve their sentence in different ways (prison, community service, etc).

A broader approach would also be conceivable, with the court deciding whether or not a person is guilty, and the decision on the penalty being taken by a specialised sentencing and sentence execution judge. This, however, would require extensive alteration of the criminal justice system, so it would be quite difficult to put into practice.

2.3.3 A role for research

Another way of familiarising those who work in the criminal justice system with the use of alternatives to imprisonment would be to conduct research through a controlled experiment similar to the one carried out in Switzerland (Killias M, Aebi MF &

Ribeaud D, "Does Community Service Rehabilitate Better than Short-term Imprisonment? Results of a Controlled Experiment", *The Howard Journal of Criminal Justice* 39/1 (2000): 40-57; and Killias M, Aebi MF & Ribeaud D, "Learning Through Controlled Experiments: Community Service and Heroin Prescription in Switzerland", *Crime & Delinquency* 46/2 (2000): 233-251). In this context, a comparison could be made, using a group of prisoners sentenced to short-term imprisonment, of the effects on the re-offending rate (and on other issues) of community service and imprisonment. These prisoners could be randomly selected for one of the two types of punishment (community service or imprisonment). Details of this kind of experiment can be found in the two aforementioned articles, and the Moldovan experiment could be of assistance to those who ran the Swiss trials. If the experiment shows a lower re-offending rate among persons sentenced to community service, Moldovan judges might become more receptive to this kind of punishment. Were the rate to increase, the way in which community service is put into practice would need to be reformed.

3. The situation of pre-trial detainees

The situation of pre-trial detainees in Moldova seems critical (see the section on pre-trial detention). Not only is it necessary for new buildings to be constructed to hold such detainees (meeting the minimum sanitary conditions) and for the duration of trials to be reduced, but there is also a need for some kind of external monitoring of whether detainees' rights are respected during detention.

Here, there are at least two possibilities, the first of which would be to give the judge responsible for sentence execution additional responsibility for respect of the rights of pre-trial detainees, as well as responsibility for respect of the rights of convicted prisoners.

The second possibility would be to set up a body to be responsible for respect of the rights of all persons deprived of their liberty (both those in pre-trial detention and those serving sentences), thereby restricting the duties of the judge responsible for sentence execution. Western European countries do not have such a body, probably because they do not usually face a situation similar to the one in Moldova. Such bodies do, however, exist in non-European countries which have serious problems with their prison populations. Argentina, for instance, set up a body a few years ago known as the *Procuración Penitenciaria* (http://www.jus.gov.ar/Ppn/), which can be loosely translated as Penitentiary Attorney. This is a state body responsible for respect of the rights of persons deprived of their liberty, and prisoners or their relatives may submit any complaint to it about such matters as ill-treatment or torture.

Whichever agency were chosen, it would produce annual reports on the situation of prisoners in Moldova, and external help would be useful (through the Council of Europe, for instance).

4. Final remarks

We are, of course, aware that the solutions we suggest imply political decisions which are difficult to take. It has to be understood, however, that, to some extent, the size of

a country's prison population is related not to its crime rate, but to its sentencing policy.

We also encourage policy-makers to read Council of Europe Recommendation R(99)22 on Prison overcrowding and prison population inflation and the relevant report. That document gives a full description of the problem of prison overcrowding and suggests possible solutions.