

REDUCING PRISON OVERCROWDING IN GREECE

Report of the Directorate General of Human Rights and Rule of Law, Action against
Crime Department, Criminal Law Co-operation Unit

*Prepared on the basis of the discussion at the meeting in Athens, on
12 December 2018, and expert opinions provided*

BY

| | |
|--------------------------|---|
| Mauro Palma | <i>President, Italian Independent Authority for the rights of persons deprived of the liberty, National Preventive Mechanism under UN OPCAT</i> |
| Sonja Snacken | <i>Professor of Criminology, Vrije Universiteit Brussel, Brussels, Belgium</i> |
| Vincent Theis | <i>former Governor of Luxembourg Prison, Luxembourg</i> |
| Iuliana Carbunaru | <i>Probation Inspector, National Probation Directorate, Ministry of Justice, Romania</i> |

March 2019

*The opinions expressed in this report are the responsibility of the authors and do not necessarily
reflect the official policy of the Council of Europe*

Table of Contents

| | | |
|-----|--|----|
| 1 | Executive Summary | 3 |
| 2 | Introduction | 6 |
| 3 | Prison Overcrowding..... | 7 |
| 4 | The Council of Europe and the overcrowding in prison | 9 |
| 5 | Analysis of root causes of prison overcrowding in Greece | 13 |
| 5.1 | Prison population | 13 |
| 5.2 | Criminality? | 15 |
| 5.3 | Greek penal policy | 17 |
| 6 | Overcrowding and prison capacity in Greece | 20 |
| 7 | Strategic Plan for the Penitentiary System (2018 – 2020) | 22 |
| 7.1 | Strategic objective 1: Improvement of detention conditions – Modernisation of infrastructure..... | 22 |
| 7.2 | Strategic objective 2: Human Resources Development - Personnel Training – Administration..... | 23 |
| 7.3 | Strategic objective 4: Preparation of reintegration - post-penitentiary care..... | 23 |
| 7.4 | Strategic objective 3: Reducing prison overcrowding | 23 |
| 8 | Recommended elements for the Strategic Plan | 29 |
| 9 | Addressing the prison overcrowding in Greece by developing sustainable alternatives to detention | 31 |
| | ANNEX I: Agenda | 38 |
| | ANNEX II: List of Participants..... | 40 |

Tables of Figures

| | |
|---|----|
| Table 1: Prison population and prison rate (2005 - 2015) | 13 |
| Table 2: Length of sentences imposed, prison population 1 September 2015, Greece and European median – Percentages | 14 |
| Table 3: Offences per 100 000 population – Greece and European median (2007 – 2011) | 16 |
| Figure 1: Prison rate trend 2005 - 2015..... | 13 |
| Figure 2: Mechanisms of changing prison populations | 15 |

1 Executive Summary

In recent years, many decisions and measures have been taken to reduce prison overcrowding in Greek prisons. In 2014 the number of prisoners was over twelve thousand. In 2016 the total number decreased to 9 611, however now there are some hundreds more. It appears that most of the adopted measures are more contingent than strategic, i.e. not able to provide for a solid and structural change in the system.

Overcrowding may be assessed by referring to the number of prisoners to be accommodated in existing infrastructures. In this context, the standard of 4 m² per person in multi-occupancy cells put forward by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is to be understood as an absolute minimum, the desirable standard being higher, not to forget the more reasonable norms provided for by the Greek legislation. The official capacity of each detention facility should be critically re-evaluated accordingly. The rationale of a '*reduction of overcrowding by all means*' should give way to a reasonable evaluation of the present and future needs of accommodation.

The statistical figures provided by the Greek authorities indicate that the total available space for accommodation of prisoners in the 34 detention facilities complies globally with CPT standards of 4 m² per person. However, these figures do not give a clear picture of the real situation because the distribution of persons in prison is not homogeneous throughout the country and the 34 prisons, with some of them having an occupancy rate of up to 200%.

A specific agenda for the implementation of concrete measures to relieve the detention facilities of the burden of overcrowding, should be put in place.

The Greek authorities should opt for a pro-active communication strategy. Limiting the use of deprivation of liberty and improving detention conditions is not only a necessity under human rights obligations, it also renders the penal justice system more effective and hence makes society safer. Involving academics will help to introduce a rational and evidence-based narrative into the public debate about crime, justice, rehabilitation and public safety.

The Greek authorities should be commended for elaborating the Strategic Plan for the Penitentiary System 2018 – 2020, aiming at establishing a long-term coherent and effective crime and prison policy, in accordance with Council of Europe standards.

The widespread consultation with different stakeholders which the Greek authorities undertook as part of the process of setting up the Strategic Plan, should also be commended.

The global paradigm of the Strategic Plan is in line with the Council of Europe standards insofar as its corner stones are said to be "*humanism – safety – reintegration – transparency*", the deprivation of liberty is seen as an "*ultimate means and only for the necessary period of time*" and the priority is given to "*reintegration, which commences from the first day of imprisonment and continues after release*".

The analysis of the root causes of Greek prison overcrowding clearly points to the very severe penal legislation and sentencing practices, which cannot be explained by the relatively low crime rates. Therefore the prison overcrowding would require *inter alia* reforms

of the penal legislation (Penal Code and Code of Criminal Procedure) and practices. Due to only scant information received about the latter reforms currently being undertaken in Greece, suggestions in this report mainly refer to the routes of reform based on international experiences. Attention is also paid to how more moderate penal and prison policies can be legitimized in the face of public concern over crime and security issues.

International evidence shows that only a coherent reductionist penal policy can lead to a long-term decrease of the average prison population. The Council of Europe *Recommendation concerning prison overcrowding and prison population inflation* and the *White Paper on Prison Overcrowding CM (2016) 121* fit into the reductionist policy framework. However, Greek penal policy between 2000 and 2007 must be described as an expansionist policy, while from 2007 onwards, an amalgam of measures has been taken which has all the characteristics of a bifurcation policy, not a reductionist policy. Such a bifurcated policy cannot consistently combat the prison overcrowding. The only lasting remedy to tackle the penal inflation, resulting from a disproportionately punitive penal legislation and practice, is the development of more moderate penal policies and practices, reducing both, the use and the length of imprisonment.

Greece has the highest percentage of long and very long prison sentences in Europe, while its crime rates are lower or equal to the European median. A more moderate penal policy is possible without affecting the protection of society against crime. Where public concern about crime and insecurity is high, moderation cannot be pursued through hidden policies but must deal with the emotions and fears of the public through explicit dialogue, therefore it is important for Greek policy-makers to know which values would legitimize more moderate penal policies in Greece.

Strategic Objective 3 of the Strategic Plan deals explicitly with reducing prison overcrowding. However, Strategic Objectives 1, 2 and 4 may also impact the imprisonment rate as they aim for a better preparation for reintegration and may hence foster a successful back-door reductionist policy. A clear choice for a reintegration model focusing on desistance would help all professionals involved.

Imprisonment must be made impossible for certain crimes through decriminalisation and depenalisation, not by merely increasing the number of available community sanctions and leaving the choice to the courts, which is known to often result in “net-widening” (White Paper on Prison Overcrowding CM (2016) 121), §65, §161).

Community sanctions and measures must be part of a coherent and effective “front door” (alternatives to remand custody, prison sentences) and “back door” (electronic monitoring, parole) reductionist policy. A thorough revision of the Penal Code and other criminal legislation is essential for imprisonment to be really used as a last resort, which means less and shorter terms of imprisonment. Apart from suspended sentences, front door community sanctions should consist of autonomous sanctions. They should not be too many, have a clear hierarchy in the penal scale, and not be limited to petty offences or first offenders without a criminal record. Back door measures are at risk to lead to compensatory sentencing by judges if they are not seen as legitimate. Community sanctions and measures, including supervision, require a credible implementation by sufficient and adequately trained staff. In case of violation and recall, legislation should provide for deduction of the success period which will reduce the length of sentence still to be served.

Training of judges and public prosecutors is essential to enhance their knowledge of the effectiveness of and familiarity with non-custodial responses to crime. Specialized courts such as “Drug courts” may help to increase the expertise in such complex matters.

The Greek authorities have decided to address prison overcrowding by *extending the use and reinforcement of credible serving of alternative measures*, as described in the Strategic Plan. This objective is in line with the Council of Europe standards that deprivation of liberty should be used as a measure of last resort and the efforts made so far need to be encouraged and further addressed. However, the role of the probation service inside of the criminal justice chain seems not to be quite known or very clear to all the actors involved. In this respect a comprehensive Action Plan or other policy paper for the development of the Greek Probation Service needs to be developed.

2 Introduction

The CPT issued on 15 March 2011, a Public Statement under art.10, par. 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. With reference to its visits carried out since 1993, the CPT had “*observed a steady deterioration in the living conditions and treatment of prisoners over the past decade*” and “*identified a number of fundamental structural issues which serve to undermine attempts to remedy this state of affairs. They include the **lack of a strategic plan** to manage prisons, which are complex institutions, the absence of an effective system of reporting and supervision, and inadequate management of staff. The CPT has highlighted in its reports the unsuitable material conditions, the absence of an appropriate regime and the poor provision of health care. It has found that due to the totally inadequate staffing levels, effective control within the accommodation areas of some of the prisons visited has progressively been ceded to groups of strong prisoners. All these issues are compounded by the **severe overcrowding** within most Greek prisons*”.¹ According to the CPT, “safe and secure custody for inmates” was no longer ensured.

In recent years, the authorities have taken important measures to tackle the prison overcrowding. In April 2015, after its visit, the CPT, while acknowledging the steps taken by the Greek authorities in reducing the prison population and the consequent unacceptable overcrowding, invited the authorities to elaborate a Strategic Plan with focus on reviewing the functioning of the prison system and introducing a managerial approach to the problems affecting the implementation of the sanctions aimed at the social reinsertion of the prisoners.

In December 2016 the Council of Europe organised in Athens a meeting with the Greek authorities to discuss possible ways of efficiently addressing the encountered persistent difficulties in the Greek prison establishments due to severe overcrowding. At the meeting the authorities were recommended to develop a Strategic Plan with reference to the shared experiences from other countries and in line with the European Convention on Human Rights (ECHR) and other relevant Council of Europe standards.

Further to the preparation and adoption by the Ministry of Justice, Transparency and Human Rights of Greece of a Strategic Plan for the Penitentiary System 2018-2020, the Council of Europe organised on 12 December 2018, a meeting with experts and representatives of the key institutions within the Greek judicial system, to analyse the root causes of the prison overcrowding in Greece and to discuss the necessary measures included in the Strategic Plan to overcome the difficult situation in prisons.

¹ CPT – Public statement concerning Greece – CPT/Inf (2011)10

3 Prison Overcrowding

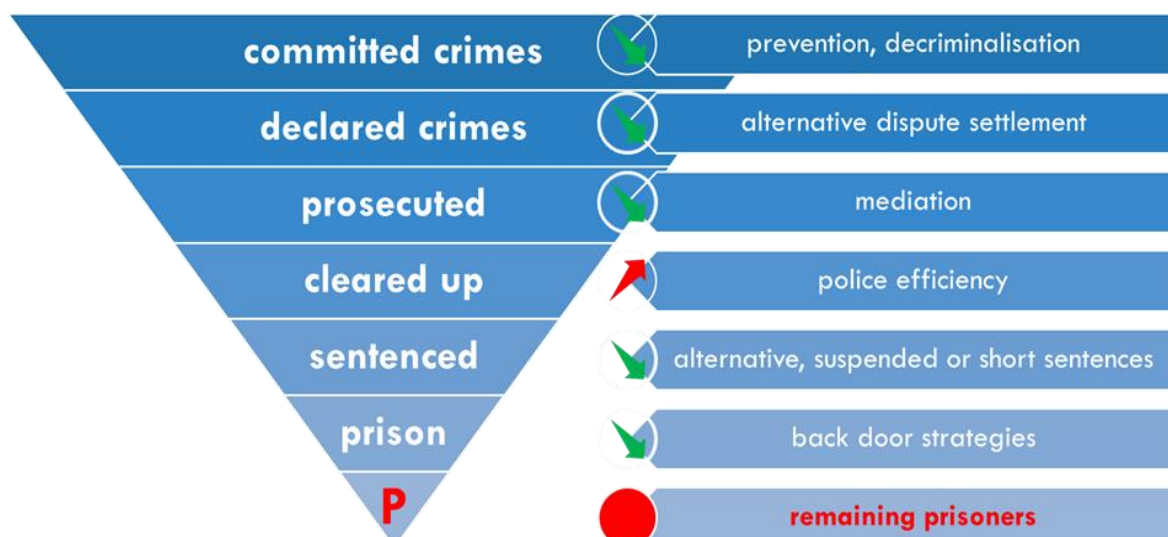
While widely accepted that imprisonment should be used as a last resort, in many European countries it is often intended to develop severe penal policies. Prolonged pre-trial detention and long-term sentences are still too often presented in public debates as the best way to ensure public safety, while in reality they hamper the possibilities to build a law-abiding life.

From the perspective of a prison observer, the theoretical standpoints are thus undergoing a kind of assessment that is not sketching optimistic scenarios about its real pragmatism.

When prison overcrowding violates human dignity and fundamental rights, reducing the prison population is an unavoidable obligation. The public however may feel concerned about public safety and perceived “leniency”. The real question is. “How can a safe society be achieved?” and “What can be the contribution of the penal policy?”

Overcrowding is a matter of concern because it jeopardizes the smooth operation of detention facilities, undermines rehabilitation efforts and relapse prevention and is hence socially damaging, in addition to constituting a human rights concern. Overcrowding results from overuse of imprisonment. There’s a general understanding nowadays that a punitive penal policy, harsh sentencing and the number of citizens who are deprived of their liberty in a given society are neither indicators of a reduction of the number of committed crimes or of their gravity, nor of a subjective feeling of safety among the general population.

In the same way, the imprisonment rate, as expressed by the number of prisoners per 100,000 inhabitants, does not reflect the crime rate in a country. The imprisonment rate in the Council of Europe Member States ranges from 43.9 in Iceland to nearby 439,2 in the Russian Federation.² Such a disparity in imprisonment rates cannot be a matter of crime rates only; it rather results from political choices. Many complex societal mechanisms interact here:



² SPACE I – Annual Penal Statistics 2016, page 34, 50 (the value for the Russian Federation is a mere estimation as precise figures were lacking, and San Marino with 6.1 is not representative).

Not every offense will be reported to the police and appear in crime statistics. Only a part of the filed complaints will be prosecuted, cleared up and taken to court. Actual convictions will still be fewer and among these, only some will lead to imprisonment.

A consistent and coherent penal policy must touch upon each of these aspects and tune them in a pro-active and object-oriented strategy to reach the goal of a safe society in full respect of human rights and at an affordable cost.

Deprivation of liberty can be a measure of last resort only if the potentialities of all other levels of preventing criminal behaviour, such as: dispute settlement, alternatives to prosecution, alternative sentencing, front door and back door strategies are operational and effective. Reducing overcrowding is a *conditio sine qua non* to make rehabilitation effective and thus to contribute to a safer society.

4 The Council of Europe and the overcrowding in prison

In 2014, further to a proposal made at the 19th Conference of Directors of Prison and Probation Services, the Council of Europe set up a *Drafting Working Group*, comprising judges, prosecutors, representatives of the ministries of justice and chairs of the Committees involved in justice matters, with the task to draft a *White Paper on Prison Overcrowding CM (2016) 121* to assist member States in addressing the problem of prison overcrowding. The reason was that many years after the adoption of the Committee of Ministers Recommendation R (99) 22 concerning prison overcrowding and prison population inflation, the problem was far from being resolved and, on the contrary, it was even more alarming than in the past. The aim was to assist national authorities to start a dialogue among judges, prosecutors, legislators, decision-makers and prison and probation services to agree on long-term national strategies and on specific actions to address prison overcrowding. This is because overcrowding is not a problem of the Prison Administration – or not only of the Prison Administration – but a problem involving many judicial actors.

Over the past twenty-five years a number of European countries have faced a constantly increasing number of prisoners and a gradual conversion of prisons into warehouses of persons deprived of their liberty with no programmes and treatment, but only cramped housing of persons for a period of their life.

Many European prison systems are facing difficulties in providing acceptable conditions of detention to the increased number of inmates accommodated in their prisons. Therefore, it comes as no surprise that the European Court of Human Rights (ECtHR) is increasingly finding violations of Article 3 of the European Convention on Human Rights (ECHR) on the grounds of overcrowding. The case law of the ECtHR on alleged violations of Article 3 is more and more focusing on the material conditions of detention and the lack of a system of domestic remedies, able to stop a situation of “inhuman or degrading treatment” in prison, due to overcrowding.

The ECtHR has pointed out that overcrowding may in itself in certain situations be considered to be so severe as to justify a finding of a violation of Article 3. In some cases the ECtHR condemned the relevant states and requested them to draw up a Plan aimed at stopping this process and converting the current approach into a more flexible system where detention is really seen as a measure of last resort, while a panoply of alternative sanctions and measures are implemented by the judicial authorities.

It should be clear – axiomatic – that the enforcement of a penal sanction, which is depriving an individual of his/her liberty can never result in the reduction of the fundamental rights of the individual on whom the sanction is imposed, despite the limits on the exercise of said rights consequent to the deprivation of liberty. And the first two rights are the ***right to personal integrity*** and the ***right to dignity***.

It is important to refer to Article 3 of the ECHR that «No one shall be subjected to torture or to inhuman or degrading treatment or punishment». The ban expressed by this article cannot be derogated: no exceptional circumstances of any kind may be invoked to diminish its absoluteness and allow practices disrespectful of the dignity of a person deprived of his/her liberty by a public authority.

In combating torture and inhuman or degrading treatment, three different actions to be undertaken by States Parties are implied: **prevention, repression and compensation.**

States shall not only refrain from such practices but they shall also do everything appropriate to prevent them. Moreover, they must repress such practices whenever occurred and compensate victims for the damage inflicted, granting them the means necessary for their possible complete rehabilitation. The preventive perspective is the basic approach of the Council of Europe and the activity of many Council of Europe bodies (the CPT in particular) is based on this approach.

However, violations of Article 3 of the ECHR often occur and it is up to the ECtHR to identify the lack of policy of States Parties aimed at removing all the factors, the cumulative effect of which can easily lead to a situation that falls within the definition of “inhuman or degrading treatment”. “Pilot” judgments are also issued whenever a systemic deficiency of a law-enforcement system is identified.

On 8 January 2013 the ECtHR issued a “pilot” judgment concerning the severe overcrowding in the Italian prisons and the inherent detention conditions. The ECtHR ruled that the conditions of detention suffered by the seven persons of the examined case violated Article 3 of the ECHR (Case **Torreggiani and other six applicants v. Italy** – application no. 43517/09). This judgment followed another judgment in 2009 concerning bad detention conditions due to prison overcrowding in Italy, when the ECtHR received a complaint from an individual prisoner and found a violation of Article 3 (Case **Sulejmanović v. Italy** – application no. 22635/03).³

In fact at the time of the 2013 judgement, more than 3,000 Italian cases were pending before the ECtHR, presenting exactly the same situation. The high number of recurring cases was indicative of a structural deficiency of the existing system in Italy. Therefore, the ECtHR, on the basis of article 46 § 1 of the ECHR, resorted to the special “pilot” judgement procedure under article 61 § 3 of the Rules of Court and:

- held there had been a violation of Article 3 of the Convention;
- gave instruction to Italy about pathways for the measures to be taken in order to tackle the problem and redesign the prison system pursuant to obligations under Article 3 of the ECHR;
- requested the adoption of an **Action Plan** based on its indications, including the provision of a system of domestic remedies, preventive as well as compensatory;
- suspended the scrutiny of the remaining cases and decided to resume their analysis one year after the issued “pilot” judgment.

Three other “pilot” judgments in this area are indicative of the ECtHR’s approach. In particular:

- **Ananyev and others v. Russia**, no. 42525/07, 10 January 2012. A structural deficiency was found in this case, concerning persons in remand detention. The judgment contains a long and detailed analysis of the cause of the problem and gives a direction for the Action Plan (presented on 19 April 2017). The ECtHR asked for a significant reduction of

³ A substantial difference should be considered between the cases. In 2009 the Court examined an *individual* case and stated that in that specific case a violation had occurred. But, from 2009 to 2013 a high number of detainees had applied to the Court presenting the same situation with bad conditions due to the persistent overcrowding. So, in 2013 the Court did not consider the situation from the individual perspective, but as a *structural* problem of the Italian prison system.

resorting to pre-trial detention (a reduction in numbers and in duration) and suggested other possible control measure for a number of crimes. Two important references are: the Committee of Ministers Recommendation R (99) 22 concerning prison overcrowding and prison population inflation and the 9 basic principles of the CM Recommendation Rec (2006)2 on the European Prison Rules.

- **Iacov Stanciu v. Romania**, no. 35972/05, 24 July 2012, again concerning the detention conditions due to prison overcrowding, and again the necessity of a domestic remedy.
- **Sikorski v. Poland** and **Orchowski v. Poland** (2009). Two cases very similar (in the structure of the judgment to the Italian *Torreggiani* case). These two cases are relevant because of the link between judgements of the ECtHR and those of the national Constitutional Court (in this case the Polish one). In 2008 the Polish Constitutional Court ruled that overcrowding can easily lead to inhuman or degrading treatment, violating article 40 of the Polish Constitution.⁴

In all these cases the ECtHR considered the two effects: the dimension of the cell – about 2,37 m² per person – and the activities out of the cell.

The jurisprudence of the ECtHR about the dimensions of cells reached a point of conclusion with the Grande Chamber judgement in the case **Mursic v. Croatia** (20 October 2016)⁵ when the ECtHR recalled the approach of the judgment in the *Ananyev and others v. Russia*. It is *based* on the “strong presumption”. On the basis of a thorough analysis of its previous case-law on the matter, in this case, the ECtHR set out the following test for overcrowding: (1) each detainee must have an individual sleeping place in the cell; (2) each must dispose of at least 3 m² of floor space; and (3) the overall surface area of the cell must be such as to allow detainees to move freely between items of furniture. It stressed that the absence of any of the above elements created in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3.⁶

Article 3 of the ECHR is intransigent and so are the European Prison Rules when *stressing that “the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society”⁷*, that “*prison conditions that infringe prisoners’ human rights are not justified by lack of resources*”⁸ and that “*all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.*”⁹

The CPT¹⁰ standards regarding living space per prisoner in prison establishments, emphasise that it must be well understood that 4 m² per person in a multiple-occupancy cell and 6 m² for a single-occupancy cell are meant to be a “*rule of thumb standard for the minimum amount of living space [...] in a cell*”.¹¹ The sanitary annex (which should be fully

⁴ The case was about the article 248 of the Code for the execution of sentences, which allowed the prison governor to accommodate persons in cell measuring less than 3 square meters.

⁵ Application no. 7334/13.

⁶ See *Ananyev and Others v. Russia*, cited above, § 148.

⁷ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

⁸ *ibidem* – rule 4

⁹ *ibidem* – rule 6

¹⁰ CPT – Living space per prisoner in prison establishments : CPT standards – CPT/Inf (2015)44

¹¹ *ibidem*

partitioned in multi-occupancy cells) shall not be counted and must be added to this minimum. Additionally, the distance between walls must exceed 2 m and the height can't be less than 2.5 m. These minima apply as well to disciplinary, security and segregation cells. The CPT reiterates its fundamental objections to the concept as such of large-scale dormitories, due to the lack of privacy for the prisoners concerned and the increased risk of inter-prisoner violence and intimidation.

Referring to Rule 18.5 of the European Prison Rule¹² which is in favour of "*individual cells except where it is preferable for [prisoners] to share sleeping accommodation*" and to its nearly 30-year-long experience, the CPT promotes a **desirable standard** for multi-occupancy cells of 4 m² per prisoner plus an additional 2 sq.m. for each cell, resulting in 10 m² for 2 persons, 14 m² for 3, 18 m² for 4, these areas not comprising the sanitary annex. A thorough assessment of each and every room reserved for accommodation should be carried out by the Greek authorities on the basis of these criteria; non-compliant rooms should be barred from usage. The capacity would then need to be revised accordingly.

In this context the *White Paper on Prison Overcrowding CM (2016) 121*), drafted by the Council for Penological Co-operation (PC-CP) in 2011 and approved by the Committee of Ministers¹³ – underlined the need for a general definition of minimum space to be ensured to each prisoner, at national level (Rule 18.1): "It should be noted that there are significant differences in the methods for calculating prison places used by different Council of Europe member states and therefore the data related to prison capacity should be evaluated against the real space/square meters available to each prisoner as well as against time spent daily in the cells. It should also be taken into account that space and square meters are not the only relevant factors when assessing overcrowding issues. Overcrowding problems are also part of and closely linked to the general issue of providing for appropriate overall prison conditions, including staffing and offering meaningful activities that meet international standards and are aimed at re-socialising prisoners".

¹² Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

¹³ White Paper on Prison Overcrowding CM(2016)121-add3

5 Analysis of root causes of prison overcrowding in Greece

Prison populations are the result of the combination of the flow of entries into prison, the length of remand custodies and prison sentences, and the granting and recall of early release. Trends over time and international comparisons are easiest understood through the prison rates, i.e. the number of prisoners per 100 000 inhabitants.

5.1 Prison population

Greece has known an increasing trend in prison rates over the last 10 years, with a slight decrease since 2015 (table 1; figure 1).

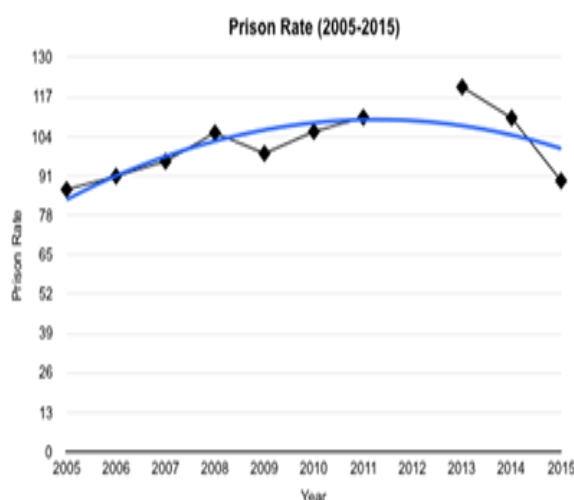
Table 1: Prison population and prison rate (2005 - 2015)

Prison population + prison rate (2005 - 2015)

| Year | Prison Population | Prison Rate |
|------|-------------------|-------------|
| 2005 | 9589 | 86.5 |
| 2006 | 10113 | 90.9 |
| 2007 | 10700 | 95.8 |
| 2008 | 11798 | 105.2 |
| 2009 | 11080 | 98.4 |
| 2010 | 11934 | 105.6 |
| 2011 | 12479 | 110.3 |
| 2012 | - | - |
| 2013 | 13238 | 120.3 |
| 2014 | 12006 | 110.1 |
| 2015 | 9646 | 89.4 |

Source: SPACE I (2016), Table 1.5

Figure 1: Prison rate trend 2005 - 2015



Source: SPACE I (2016), Table 1.5

This prison rate seems at first sight to represent an “average” European rate. However, a closer look shows that Greece is burdened by an **exceptionally high number of (very) long prison sentences - and this despite relatively low and decreasing crime rates**. Comparing prison statistics for Greece to the European median, it is clear that Greece has a lower flow of entries into prison (SPACE I (2016) Table 8: rate 110,4 versus median 166,7 in 2014), **much less short term** (1 September 2015: 1,7% versus 13,5% sentences of less than 1 year) **and medium term** prison sentences (6,6% versus 55% sentences between 1 and 5 years), and the **highest percentage of long-term prison sentences of all Council of Europe member states**: 77.3 % versus 33.4 % of sentences above 5 years, 47,8% versus 11,8% of sentences between 10 and 20 years, and 13.1 % versus 1.7 % life sentence prisoners (table 2).

Table 2: Length of sentences imposed, prison population 1 September 2015, Greece and European median – Percentages

| Length of sentences imposed, prison population 1 September 2015 - Percentages - Greece and European median | | |
|--|-------------|-----------------|
| | Greece | European median |
| 1m - 1y | 1.7 | 13.5 |
| 1m - 6m | 0.6 | 5.1 |
| 6m - 1y | 1.1 | 8.4 |
| 1y - 5y | 6.6 | 55 |
| 1y - 2y | 1.8 | 24.7 |
| 2y - 5y | 4.8 | 17.7* |
| 5y - 10y | 29.6 | 21.8 |
| 10y-15y | 19.1 | 10.7** |
| > 15y | 28.7 | 1.1*** |
| Life S | 13.1 | 1.7 |
| Other | 1.2 | 0.0 |
| > 5y | 77.3 | 33.4 |

* 3y-5y
** 10y - 20y
*** > 20y

Source: SPACE I (2016), Table 7

Greece also shows a much lower flow of releases (SPACE I (2016) Table 9: rate 86.3 versus 155,0 in 2014), which is linked to the higher percentage of long-term prison sentences but seems to also indicate a **restrictive use of early release mechanisms** for this category.

Finally, Greece faces a high percentage of **foreign national** prisoners (SPACE I (2016) Table 4: 54,5% versus 10,8% on 1 September 2015), which raises challenges for the application of non-custodial sanctions and measures at the level of remand custody, sentencing and conditional release.

Foreign nationality may never justify discriminative treatment. However, a differentiation into resident and non-resident foreign nationals would be helpful, as non-resident persons might be less eligible for non-custodial measures and sentences and thus contribute to a higher imprisonment rate (Luxembourg may be cited as an example with 50% of the prison population being non-resident foreigners, 25 % resident foreigners and 25 % nationals).

5.2 Criminality?

All international comparative studies ascertain there is **no automatic link** between crime rates and prison rates, as both develop fairly independent from each other (Zimring & Hawkins, 1991; Snacken, Beyens, Tubex, 1995; Tonry, 2007; Lappi-Seppälä, 2012; Snacken, 2015). This evidence also forms the basis for the Council of Europe *Recommendation R (99) 22 concerning prison overcrowding and prison population inflation* and the *White Paper on Prison Overcrowding* CM (2016) 121).

Figure 2 illustrates how criminality cannot influence prison populations without passing through the “filter” of the criminal justice system. Its impact is hence dependent on how penal policies and practices are developed at all levels of that system (legislation, police, prosecution, remand custody, sentencing, release) and the place of imprisonment in these policies and practices. However, criminality remains one of the factors in these complex mechanisms, and particular crime events or features may and often do influence public opinion, media reporting and political discourse on crime and punishment issues (Snacken, Beyens & Tubex, 1995; Snacken 2015). These aspects must be taken into account when developing legitimate and credible penal policies (infra).

Figure 2: Mechanisms of changing prison populations

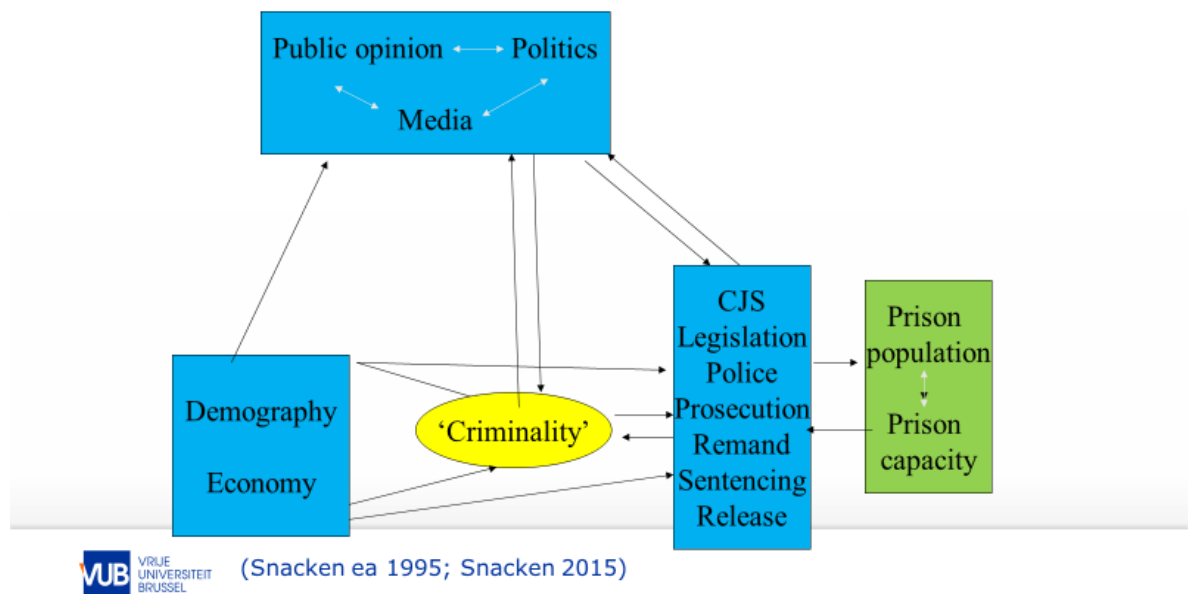


Table 3 compares crime rates in Greece with the European median for the period 2007-2011.

Table 3: Offences per 100 000 population – Greece and European median (2007 – 2011)

| | 2007 | 2008 | 2009 | 2010 | 2011 | Change |
|--------------------|---------|---------|---------|---------|---------|---------|
| Total Greece | 3790 | 3746 | 3436 | 2954 | 1716 | -55 |
| Median | 3776 | 3802 | 3768 | 3797 | 3612 | |
| Homicide/completed | 2.1/1.0 | 2.2/1.1 | 2.2/1.1 | 2.2/1.0 | 1.9/0.9 | -8/ -10 |
| | 3.1/1.6 | 3.0/1.5 | 3.1/1.4 | 2.8/1.3 | 2.8/1.4 | |
| Assault | 184 | 181 | 178 | 176 | 139 | -24 |
| | 126 | 116 | 128 | 117 | 135 | |
| Sexual assault | 7 | 8 | 10 | 7 | 5 | -28 |
| | 19 | 20 | 20 | 20 | 19 | |
| Rape | 2.0 | 2.2 | 2.2 | 2.1 | 1.6 | -18 |
| | 5.3 | 4.9 | 4.6 | 5.1 | 5.5 | |
| Robbery | 25 | 28 | 37 | 39 | 40 | +58 |
| | 57 | 50 | 50 | 48 | 42 | |
| Theft | 690 | 756 | 811 | 853 | 871 | +26 |
| | 1745 | 1715 | 1783 | 1872 | 1754 | |
| Burglary | 339 | 394 | 419 | 460 | 492 | +45 |
| | 471 | 475 | 472 | 482 | 515 | |
| Drug offences | 71 | 88 | 92 | 77 | 66 | -7 |
| | 155 | 151 | 146 | 141 | 151 | |

Source: *European Sourcebook on Crime and Criminal Justice (2014/2017)*, Table 1.a

We can conclude that:

- Total crime rates have **decreased** significantly and are **lower** than the European median.
- Crimes against persons such as homicide, assault and sexual assault have decreased significantly and are lower than the European median. While figures for assault and especially sexual assault are very much dependent on reporting and registration practices, this is much less the case for homicide, which is generally seen as the best indicator for international crime comparisons.
- Property crimes have increased but are still much lower (theft) or equal (robbery, burglary) to the European median.
- Drug offences are slightly decreasing and are much lower than the European median.

Police statistics provided by the authorities for the Athens meeting indicate this trend continues for the period 2010 – 2017.

The combination of relatively low crime rates and very long prison sentences clearly indicates that Greek prison overcrowding is in the first place the result of a very **severe penal policy and legislation**.

5.3 Greek penal policy

Rutherford (1984) has described three types of penal policies with regard to the use of imprisonment.

First, a **reductionist policy**, based on a consistent scepticism towards the possible advantages of incarceration at all levels of the criminal justice system, the refusal to accept prison overcrowding, no expansion of prison capacity, and development of both a “front-door” policy to reduce the input of prisoners into the system and a “back door” policy to limit their length of stay in prison. His examples of England (1908-1938), Japan (1950-1975) and the Netherlands (1950-1975), confirmed by the more recent illustration of Finland (since 1970), show that a coherent reductionist penal policy indeed does lead to a long term decrease of the average prison population (see also *infra*).

Secondly, an **expansionist policy**, characterized by a constant increase of the prison population, a belief with legislators and penal professionals that “prison works”, serious prison overcrowding and the expansion of prison capacity and staff. Illustrations can be found in the Netherlands between 1980 and 2006 (a quadrupling of the prison population), England and Wales after the Second World War and since the 1980’s, and the USA (quadrupling) for the past four decades.

Thirdly, a **stand still policy**, characterized by a mixed bag of strategies. Sentencing judges are invited to limit the application of imprisonment by a greater use of non-custodial sanctions, new prisons are built with the intention to replace outdated capacity, there is no clear limit on the extent of the prison population, attempts are made to increase the discretionary application of early releases, and the use of imprisonment is not fundamentally questioned.

In practice however, this latter penal policy often results in a **“bifurcation” policy**. The application of non-custodial sanctions and measures is limited to “petty” offenders with a limited or no criminal record, while “serious” offenders, especially those involved in drugs, violent or sexual delinquency, terrorism and recidivists are dealt with by increasingly severe terms of incarceration. Such bifurcation policies have been found in legislation, prosecution, sentencing and early release policies in e.g. Belgium, France, the Netherlands, Germany, England and Wales (Snacken, 2006). As the increase in punitiveness at the upper level of the penal scale cannot be compensated by the more modest decrease at the lower end, this policy usually results in **increasing prison rates**.

The Council of Europe’s *Recommendation R (99) 22 concerning prison overcrowding and prison population inflation* and the *White Paper on Prison Overcrowding* CM (2016) 121 fit into the reductionist policy framework. They emphasise that “Legislation and sentencing practices are in any case among the root causes for increased rates of imprisonment” (White Paper, § 53) and recommend member states to enhance non-custodial legislation and practices at pre-trial, trial and post-trial phase.

Greek penal policy between 2000 and 2007 can be described as an expansionist policy, focused on prison building. From 2007 onwards, an amalgam of measures was taken (see Koulouris e.a. 2015) which has all the characteristics of a **bifurcation policy**, not a reductionist policy. Prison building continued. Measures were taken to reduce the prison population and widen the implementation of alternative sanctions and measures. The Greek Probation Service for Adults was established in 2007. Community service order and

suspended sentence with probation were introduced in 2010, but not as autonomous sanctions. The resulting increased case-load for probation officers was not followed by matching staffing levels, with the Probation Service in at least 12 judicial resorts not being staffed at all (Statistics Probation Total Adults, 2017). At the lower level of the penal scale, monetary conversion and suspension of short term sentences were vastly applied at the implementation level (2000-2002: 70000 cases each) but led to compensatory longer sentences being imposed by judges. At the upper level, more punitive legislation was introduced concerning organized crime, terrorism, money laundering and various forms of trafficking of illicit substances and human beings. As a result, both the imposed sentence length and the sentence length to be served before conditional release becomes possible increased. Treatment of substance abuse for drug offenders was introduced as a sentencing option in 2013, but is apparently not popular with judges, and was accompanied in the same legislation by very severe sentences of 10 to 20 years and life imprisonment for aggravated cases of drug trafficking. Home detention with electronic monitoring (EM) was introduced as a release measure in 2013, but without any support being provided to the offenders under EM, which may hinder their reintegration and desistance process. In case of revocation, the “success” period is not deducted from the remaining sentence to be served. Conditional release is provided for in the Penal Code. It is not clear whether it also leads to compensatory sentencing by judges and how it is applied to the vast number of foreign nationals. Here too, the “success” period under conditional release is not deducted in case of revocation. Emergency release measures were taken to limit the severe prison overcrowding and the resulting inhuman and degrading circumstances, but with only temporary and soon reversed results, as prisoners left prison without adequate preparation or support.

Such a bifurcated policy cannot consistently tackle the prison overcrowding.

Due to reported low crime rates over the last decade and the rather low number of non-custodial or community sanctions and measures granted, a general consensus was reached also among the participants at the Athens meeting that the overall penal policy in Greece is disproportionally harsh in comparison to other European countries and that a **revision of the penal code is a *conditio sine qua non*** for reducing the number of prisoners. This is also in line with the Council of Europe Recommendation (92)17 concerning consistency in sentencing, which states that:

“The rationales for sentencing should be reviewed from time to time. The tendency to establish uniform rationales and priorities at European level should be encouraged and promoted. Sentencing practice should be subjected to critical reappraisal so as to avoid undue severity.

Sentencing rationales should be consistent with modern and humane crime policies, in particular in respect of reducing the use of imprisonment, expanding the use of community sanctions and measures, pursuing policies of decriminalisation, using measures of diversion such as mediation, and of ensuring the compensation of victims.”¹⁴

Such a revision however will yield results in the sense of a reduction of the prison population only on a medium - to long-term perspective and should hence be supported by the introduction of a highly **flexible system of execution of sentences allowing the competent authorities to shift dynamically among different sanctions and measures** (including semi-detention, conditional release, home curfew, e-monitoring, community work,

¹⁴ Recommendation Rec(92)17 concerning consistency in sentencing – par. A. 5 and 6

probation) as a substitution to imprisonment, whenever such a change is deemed helpful for the reintegration of the offender and justifiable with regard to risk assessment. Such an opportunistic approach would constitute a helpful back-door strategy with immediate results.

6 Overcrowding and prison capacity in Greece

The statistical figures provided by the Greek authorities indicate that the total available space for accommodation of prisoners in the 34 detention facilities amounts to 43,520.45 m², concluding that – though the population of 10,793 prisoners¹⁵ exceeds the official capacity of 9,935 by a **108.33 %** rate – the system still complies globally with CPT standards of 4 m² per person. However, these figures do not give a clear picture of the real situation because the distribution of persons in prison is not homogeneous throughout the country and the 34 prisons:¹⁶ for instance in Korotini Prison the overcrowding rate is about 189% and in Kos Prison is 207%. Even Korydallos I has a rate of about 150%.

This calls for a number of observations:

- The 514 beds in the Korydallos prison hospital and the psychiatric hospital should not count in the prison capacity, as they are a temporary accommodation for patients only, who will be transferred back to the normal regime after recovery. This will be more evident, if the health care authorities will be entrusted with the management of the given establishments in the future. Considering that prisons in Greece count 2,463 cells¹⁷ and subtracting the hospital beds, the national capacity would be around 8,700 beds if the CPT's desirable standard were applied, displaying an average of 125 % occupation at present. That said, the Greek Penitentiary Code dated 1999 is far more generous. Article 21 rules that a single cell shall have 35 cubic meters (corresponding to comfortable 10–15 m² ground area!), double-occupancy cells may not be of less than 40 cubic meters and multi-occupancy rooms limited to 6 inmates shall guarantee at least 6 m² per person. This legal standard should lead the authorities in the future.
- As 15 detention facilities are under-occupied with 900 vacant beds, the overcrowding focuses unequally on the remaining prisons, several of which are affected by an occupancy level of **200 %**. A more rational allocation strategy should be developed allowing a more economic use of existing capacities. Such a strategy should however take into account the need for proximity to the prisoner's family or residence and hence might target as a priority non-resident foreigners, who could be moved more easily to available free places.
- A difference should be made between overcrowded cells and overcrowded prisons, the latter notion taking into account the infrastructure, the regime and the availability and quality of services provided, including logistics, health and social care, meaningful activities and safety and security.
- On a medium-term perspective, should the positive improvements of the general prison regime (i.e. individual sentence planning, education, work, meaningful activities) geared towards reintegration and crime desistance be implemented as foreseen in the Strategic Plan, every detention facility must have sufficient space for activities. In order to

¹⁵ as collected on November 16th, 2018

¹⁶ Four prisons (in Athens, Volos, Kassavetia and Korynthos) are reserved for juveniles. The capacity of Volos juvenile prison is 54, but in December 2018 it accommodated 103 juveniles (almost the double of its capacity). The juvenile prison of Athens was overcrowded too, (about 120% of its capacity). On the contrary, the number of prisoners in the two juvenile prisons in Kassavetia and Korynthos were about half of their capacity.

¹⁷ SPACE I – Annual Penal Statistics 2016, page 34, 50

safeguard allocation of prisoners according to individual risk and needs assessment, a 90 % occupation of the given capacity of each establishment should not be exceeded.¹⁸

A strategic plan should be based upon realistic figures. The present capacity as well as the desired future capacity should be critically re-evaluated taking into account the above.

¹⁸ See the White Paper on Prison Overcrowding CM(2016)121-add3

7 Strategic Plan for the Penitentiary System (2018 – 2020)

The global paradigm of the Strategic Plan is in line with Council of Europe standards insofar as its corner stones are said to be “*humanism – safety – reintegration – transparency*”, as deprivation of liberty is seen as an “*ultimate means and only for the necessary period of time*” and as priority is given to “*reintegration, which commences from the first day of imprisonment and continues after release*”.

Furthermore, the widespread consultation of different stakeholders which the Greek authorities undertook as part of the process of setting up the Strategic Plan is to be commended.

Strategic Objective 3 deals explicitly with reducing prison overcrowding. However, the possible impact of Strategic Objectives 1, 2 and 4 as a back-door strategy needs also to be mentioned.

7.1 Strategic objective 1: Improvement of detention conditions – modernisation of infrastructure

There is a clear link with (preparation for) **reintegration** and hence potentially with a **successful back-door reductionist policy**: a better preparation should enhance (1) the application of conditional release, which shortens the prison sentences served; (2) its success rate, which should limit recall to prison.

Some questions/remarks remain though:

1.4. Vocational training through soap factory, ceramics workshop, sewing: Do these activities lead to real employment opportunities after release?

1.5. Allocation of prisoners: Will allocation take into account that a successful social reintegration requires the prisoners to maintain family contacts and hence be imprisoned close to their family and social networks?

1.6. Reorganization of rural detention facilities: Are prisoners as in most other countries coming mainly from large cities? If so, they should not be sent too far away from their social networks (see 1.5).

1.8. Operation of day release departments: Are they seen as a preparation for conditional release?

1-10. Plan for treatment of vulnerable groups: Important!

1-11. Telematics Technologies Possibilities: Why is this mentioned for students only? This is important for a proper reintegration for all prisoners.

1-13. Operation of new detention facilities: Are these facilities part of an expansionist policy or only meant to replace buildings which do not comply with Art. 3 of the ECHR?

7.2 Strategic objective 2: Human Resources Development - Personnel Training – Administration

Personnel training and policy also have a link with preparation of prisoners for their **reintegration** and hence a **successful back door reductionist policy**.

Questions/remarks:

2-2. Elaboration of Personnel Training Plan: Interculturalism, mental health, preparation of reintegration... This is only mentioned for probation officers and scientific staff, but should also include prison officers.

2-12. Life-long training: Role of personnel in the treatment and reintegration of prisoner, needs of vulnerable groups; intercultural education -> Important!

2-14. Cooperation with HOU for Tertiary Education: Is this also meant for prison officers?

7.3 Strategic objective 4: Preparation of reintegration - post-penitentiary care

Here is again an obvious link with a potentially **successful back door reductionist policy**.

Questions/remarks:

4-2, 4-4. Education, vocational training, individual detention plan: Important to increase the number of parole decisions.

4.5. Reinforcement of EPANODOS; regional network: Reinforcement is important to increase the success rate of parole, but so is the expertise of the professionals involved. The Plan mentions a “mobility program of the public sector”; will this guarantee adequate training and expertise?

Which reintegration model is applied? Risk-Need-Responsivity Model (RNR), Good Lives Model (GLM), Desistance? See the emphasis on “desistance” in the recent Council of Europe Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures, where it is defined as *“the process by which, with or without the intervention of criminal justice agencies, offenders terminate their offending activities and maintain crime-free lives through the development of their human capital (such as individual skills and knowledge) and their social capital (such as employment, family, social connections and ties and engagement in civil society)”*. This implies that desistance depends not only on social reintegration but also on civil reintegration (obvious and hidden effects of a criminal record on employment, housing, parental care and other possibilities to regain full citizenship and a crime-free identity)(see 4-14, 4-15, 4-17).

7.4 Strategic objective 3: Reducing prison overcrowding

Eight targets fixed by Objective 3 (4, 6, 9, 10, 11, 12, 13 and 14) aim at juvenile offenders and ways to divert them from the penitentiary system. While the high value of these measures is without question, their impact on overcrowding will be negligible, as juveniles hardly count for 1.5 % of the total prison population. In addition, specific agenda for the

implementation of concrete measures relieving detention facilities of the burden of overcrowding does not exist.

3-1. Identify the causes of overcrowding

Council of Europe experts and Greek practitioners at the Athens meeting agreed that Greek prison overcrowding results from a **disproportionately punitive penal legislation and practice**, resulting in **penal inflation**. The only lasting remedy to tackle this penal inflation is the development of **more moderate penal policies and practices** reducing both, the use and the length of imprisonment. Experiences from other countries show that this is possible. One such example is the reform of the criminal legislation in Romania (in 2014) where general measures and the reduction of the length of imprisonment from 4 up to 10 years, compared with the previous legislation, had a significant impact on prison overcrowding.

3-2. Reassessment of the use of Community alternative measures

The Strategic Plan refers to the pilot project on electronic surveillance and to development of a plan on the community service measure.

It is of the utmost importance for this reassessment that community sanctions and measures are part of a coherent and effective “front door” (alternatives to remand custody, prison sentences) and “back door” (electronic monitoring, parole) reductionist policy. A thorough **revision of the Penal Code and other criminal legislation** is essential for imprisonment to be really used as a last resort, which means **less and shorter terms of imprisonment**. Imprisonment must be made impossible for certain crimes through decriminalisation and depenalisation (Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation, Basic Principle 4), not by merely increasing the number of available community sanctions and leaving the choice to the courts, which is known to often result in “net-widening” (White Paper on Prison Overcrowding CM (2016) 121), §65, §161).

Apart from suspended sentences, front door community sanctions should consist of **autonomous sanctions**. They should not be too many, have a clear hierarchy in the penal scale, and not be limited to petty offences or first offenders without a criminal record. Back door measures are at risk to lead to compensatory sentencing by judges if they are not seen as legitimate.

The revision of the Penal Code would provide for:

- the decriminalisation, depenalisation or downgrading of a number of offenses;
- a general reduction of penal tariffs and length of sentences;
- abolishment of the principle of compulsory minimum sentences, leaving it to the discretion of the courts to fix the shortest sentence or the most lenient one, deemed proportional, just and necessary;
- introduction of non-custodial measures and sanctions as main sentences, limiting the use of imprisonment to a measure of last resort for the most serious offenses (or offenders) for which any other sanction would appear inadequate;

The revision of the Penal Procedure Code could:

- reinforce the practice of discretionary prosecution and diversion of prosecution;¹⁹ diversion or termination of prosecution can be subjected to a so-called ‘transaction’ in which the offender agrees to fulfill one or more (financial) conditions, or to a penal order (fine, community service or victim compensation) imposed by the prosecutor;
- introduce restorative justice through victim-offender mediation and/or victim compensation;²⁰
- introduce legal provisions limiting the use and duration of remand detention;²¹
- provide for alternatives to pre-trial detention and promote their application instead of custody.²²

3-3 Increase the number of probation officers.

Community sanctions and measures including supervision require a credible implementation by sufficient and adequately trained staff.

3-5 Dialogue with judges/public prosecutors.

Training of judges and public prosecutors is essential to enhance their knowledge of the effectiveness of and familiarity with non-custodial responses to crime. Specialized courts such as “Drug courts” may help to increase the expertise in such complex matters.

3-7 Conditional release. See comments to Strategic Objectives 1, 2 and 4.

The beneficial counting of time served due to high age and a difficult health situation is positive.

In case of violation and recall, legislation should provide for deduction of the success period (CM/Rec (2017) 3 on the European Rules on community sanctions and measures, §70), independent of whether recall originates in a breach of conditions or a new offence. This will reduce the length of sentence still to be served.

3-15 EU Framework Decision on transfer of prisoners: see Rec (2012) 12 on foreign prisoners.

Conclusion: Legitimacy of moderate penal policies

The root causes for Greek prison overcrowding are to be found in the penal inflation resulting from disproportionately punitive penal legislation and practices. Greece has the **highest percentage of long and very long** prison sentences in Europe, while its crime rates are lower or equal to the European median. A more moderate penal policy is possible without affecting the protection of society against crime. Where public concern about crime and insecurity is high, moderation cannot be pursued through hidden policies (“moderation-by-stealth”) but must tackle the emotions and fears of the public through explicit dialogue: **“moderation-as-politics”** (Loader, 2010). This dialogic approach to legitimacy between power-holders and audience is based on the legal/ constitutional validity of penal policies

¹⁹ White Paper on Prison Overcrowding CM(2016)121 –add3 par. 47 and Recommendation (99)22 concerning prison overcrowding and prison population inflation – par. 10

²⁰ Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters

²¹ Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse – par. 1 - 24

²² ibidem

and on shared values. In our pluralist societies, this will often require “skilful negotiation” (Bottoms & Tankebe, 2012). **Punishment** is linked to **many different and conflicting emotions and values**. Policy-makers hence can appeal to different political, moral, ethical and criminological arguments.

Finland, for example, managed to decrease its prison population by 60% in 25 years’ time, from a prison rate of 118 in 1976 to 50 in 1999. Despite some fluctuations, the prison rate remains low at 54,8 in 2015. This impressive decrease was the result of an explicit and coherent long-term reductionist policy. It started with the finding by experts that although Finland had very similar crime rates as the other Scandinavian countries, its prison population was four times higher. Within its historical framework of Russian influence, Finland wanted to become more “Scandinavian”. This Scandinavian identity, coupled to the evidence in the other Scandinavian countries that lower prison rates did not impact the crime rate, legitimized legislation limiting the use and length of prison sentences through decriminalisation and depenalisation at the front door. While alcohol (ab)use was of a similar concern in Finnish society as drug (ab)use in other countries, offences related to alcohol were decriminalised: it was emphasised that social and health problems should be solved by social and health policies, not penal policies. Non-violent property offences were depenalised, with imprisonment being no longer an option for judges to impose. Supported by a Minister of Justice who was herself a criminology professor, seminars were organized with prosecutors, judges and journalists to explain the reasons for these policies.

In Europe, the abolition of the death penalty and the strive for more humane prison conditions are linked to the protection of human dignity and human rights, which is seen as an essential part of the European identity (van Zyl Smit & Snacken, 2009).

In the United States, harsh penal policies were legitimized since the 1970s by referring to public fear of crime, emotional retribution for victims and demonization of offenders. Since 2000, more attention is paid to the need to take care of the re-entry of prisoners into society upon release, backed by Evangelical Protestant values about the redeemability of prisoners (cf. Second Chance Act, 2007). Religion being very important in US society, this is seen as a possible important turn away from the former highly punitive penal rhetoric and policy (Green, 2013).

In Belgium, the Dutroux case in 1996 involving the abduction, rape and murder of young women and girls scandalized the whole society, resulting in a huge public movement demanding abolition of parole for serious offenders. The then Minister of Justice managed to keep parole for serious offenders by using evidence about the effectiveness of parole to reduce the risk of recidivism, by increasing procedural justice for victims and offenders in the parole legislation (1998), and by fostering restorative justice, care and support for victims. In 2013, the release under parole of Dutroux’s former wife and accomplice led again to public outcry. This Minister of Justice reformed parole legislation purely based on enhanced retribution.

It is hence important for **Greek policy-makers** to know **which values** would legitimize more moderate penal policies in Greece. Could it be as in Finland, the evidence that its prison rate is much higher than the crime rate necessitates? Or would it be religion as in the US, as according to a study published in the Greek newspaper Ekathimerini, on 29 October 2018, this is a key part of identity for 76 % of Greeks? Or maybe the increasingly important concept of “justice reinvestment” in the US and Australia, which compares the cost of trying

to solve crime problems through the highly expensive prison system with the much lower cost of looking for solutions in the local communities where investment is needed most:

“Justice reinvestment suggests that prisons are an investment failure, destabilising communities along with the individuals whom they fail to train, treat, or rehabilitate (and whose mental health and substance abuse are often exacerbated by the experience of imprisonment). Instead, to address the causes of offending, money is better spent—and indeed savings can be made—by reinvesting in places where there are a high concentration of offenders. Justice reinvestment, its proponents contend, can serve both the ends of economic efficiency and social justice: ‘the most efficient way to a just society is to reduce criminality at source through investment in social justice’ (Fox e.a., 2013; Australian Government 2018).

At the meeting in Athens, some participants used the term “more lenient” policies. This term needs to be avoided, as “leniency” refers to “softness”, which is different from “moderation” and has a pejorative connotation in relation to crime policies (Loader, 2010). Being “soft on crime” seems associated with relinquishing the duty to protect society and potential victims from crime. “Moderation”, on the contrary, stands opposite to “excess” which means “more than necessary, permitted or desirable”. Moderate penal policies still do what is necessary, but not more than is necessary, which may also be an important economic argument (cf. Justice reinvestment).

Reducing resorting to imprisonment and reducing prison overcrowding are two parallel necessities to assist and control the person outside the prison in the process of becoming aware of the committed crime and the consequent need of reparation or, if detained, to develop a programme of possible social reinsertion to avoid the risk of recidivism.

The Strategic Plan is theoretically in line with these principles. However, the detention – the imprisonment – is still central to the idea of penal sanction that emerges from the Plan.

Few **critical aspects** also emerge from the Plan and the discussion at the December meeting confirmed some concerns related to them:

- Will the limited budget allow for the implementation of the Strategic Plan? The resources allocated for the implementation of the Strategic Plan are not proportionate to the set objectives and not sufficient particularly concerning the training of staff and the programmes for the social reintegration of prisoners;
- In the Plan the role of women in prison seems to be very neglected: is it possible to implement any programme for women in Thessaloniki Prison with 15 women and 259 men? The same in Neapoli Prison where it is planned to have (on average) three women and 42 men. More attention to the inherent vulnerability of women in prison should be paid. This implies not only specialised staff and appropriate facilities where they can be detained, but also the development of specific rules, special programmes and a different model of daily routine in prison;
- The number of young offenders in prison is very high compared to the general population in Greece: at present²³ there are 314 (as a comparison, in Italy there are 475 with a total population that is six times higher than the Greek population). This element is indicative of the weakness of the announced will to reduce the use of

²³ December 2018.

detention: the system is still not able to reduce imprisonment of those who are most in need of an educational approach rather than strictly punitive. It is true that the authorities really want to reduce juvenile delinquency, but it is legitimate to ask whether the sanctioning severity and imprisonment are the appropriate instruments or if, on the contrary, social investments and resorting to educational measures should be increased;

- Actions to reduce overcrowding are limited and fragile (the rise, albeit slow, in the number of prisoners has recently resumed). It should be noted that the level of occupancy in prison should not exceed 85-90% of the capacity of the system. It is not enough to have as many people as there are places available, but to keep a margin below because it is not possible to allocate prisoners everywhere, given their different classification, sex, family and social networks;
- The role of the judiciary is unclear in the Strategic Plan. All we are aware of is that the prison overcrowding is not a problem of the prison administration or at least not only a problem of the prison administration. Prison overcrowding is the result of a long line of decisions involving several actors, in particular the judiciary. It is a problem that puts in question the actions of prosecutors and judges and the effective utility to resort to imprisonment in the pre-trial phase and in cases of petty crimes and consequently short sentences. Limiting the plan to measures concerning the last phase of the judicial path, that is the execution of a sentence, can achieve small results. All the phases should be redesigned and a different culture should be encouraged and developed: pre-trial detention should be a measure applied in very limited cases and properly motivated; in many cases it is necessary to replace court sentences with other types of sentences, alternatives to detention (compensation, disqualification, positive action paths, ...); the execution of prison sentences should be graded with less restrictive measures to accompany the person back to free life;
- The probation system still seems to be only theoretical. This is also due to the lack of investments in this area. It is certainly positive that a debate has been opened around its necessity and that some experiences have begun, but the system does not yet seem to be fully operational and is far from being an effective resource, not only for the purpose of reducing overcrowding, but also and above all to build a system that accompanies and helps people to reduce recidivism;
- The investments for the staff still seem to be inadequate. The authorities must invest on qualified staff (not only on security staff, but also and above all the staff of social and educational profiles). The staff must be numerically increased to avoid that the order in prison is maintained by groups of criminal power, must be trained to face these groups of power and must be open to a positive view of the detention path and not just to the function of custody. These objectives are still far from being achieved;
- A reform of the penitentiary system must also have a cultural value. It must give a signal to decrease the desire for revenge that often emerges in society in response to a committed crime. It is a long journey. The Strategic Plan has started this and must be supported, but the proposed actions are still embryonic and must be supported with more conviction in order to succeed in reducing the demand for prison that comes from the society.

8 Recommended elements for the Strategic Plan

- Legislative actions, aiming at reducing prison entry flows and enabling prisoners to progressively leave the prison system through implementation of alternative measures in support of their reintegration in the community. The development of the probation service is crucial in this context. Non-custodial measures or sanctions are not only a front-door strategy, but also alternatives to deprivation of liberty, be it on a pre-trial stage or as a main sentence. It should also be made possible by law to shift dynamically among different sanctions and measures (including semi-detention, conditional release, home curfew, e-monitoring, community work, probation) as a substitution to imprisonment, whenever such a change is deemed helpful for the reintegration of the offender and justifiable with regard to risk assessment. Such an opportunistic approach would constitute a helpful back-door strategy showing immediate results.²⁴

A flexible system of execution of sentences presupposes of course state-of-the-art sentence planning, repeated individual risk and needs assessment and a well-established professional probation service to prepare, support and accompany the involved offenders²⁵. In order to be effective in cutting the rate of re-offending, rehabilitation programs must follow evidence-based curricula, be managed by well-trained and committed professionals and be carefully targeted on individual assessment of the risks and needs. Specific treatment needs must be met. Assessments must be made by competent experts using reliable state-of-the-art tools.²⁶

The GLM²⁷ offers a strength-based approach enhancing the positive potential of offenders, thus complementing the programs geared towards risk reduction or avoidance.

- Alternative ways of dispute settlement should be actively promoted. Dedicated professional agencies should specialize in friendly litigation, arbitration and mediation and thus avoid unnecessary involvement of police and the justice system. Successful non-judiciary procedures will encourage prosecutors to abstain from prosecution more frequently and hence contribute to improve the efficiency of the judiciary by alleviating their case-load and to shrink pre-trial detention periods;
- Managing actions based on increasing a more open prison regime, focussed on effectively considering the cell as the place for spending the time to rest and not almost the entire daily time;
- Decent prison conditions and sufficient staffing and budgetary means will give credibility to the good intentions about rehabilitation programmes highlighted in the Strategic Plan.

²⁴ See Luxembourg – Penal Procedure Code – par. 673 : « (1) *Le procureur général d'État peut décider l'exécution d'une peine privative de liberté selon les modalités suivantes : l'exécution fractionnée, la semi-liberté, le congé pénal, la suspension de l'exécution de la peine, la libération anticipée, la libération conditionnelle et le placement sous surveillance électronique.* » - http://legilux.public.lu/eli/etat/leg/code/procedure_penale/20181101

²⁵ See Recommendations CM/Rec(2014)3 concerning dangerous offenders, R(2003)23 on the management by prison administrations of life sentence and other long-term prisoners, R(2003)22 concerning conditional release.

²⁶ See Recommendation CM/Rec(2014)3 concerning dangerous offenders, Part III – par. 26 - 33

²⁷ WARD, Tony and MARUNA, Shadd (2007). *Rehabilitation*. New York. ISBN 10: 0—415-38643-8 – and also <https://www.goodlivesmodel.com/>

- Refurbishing actions in order to renovate the existing prisons or rebuilding parts of them rather than to expand the prison estate. The present capacity of the existing real estate as well as the desired future capacity should hence be critically re-evaluated in an object-oriented approach taking into account the multiple criteria within this complex penitentiary system. The rationale of a '**reduction of overcrowding by all means**' should give way to a reasonable evaluation of the present and future needs of accommodation on the basis of the Strategic Plan and its long-term effects and the contemporary standards pertaining to space, activities, safety, security and efficient management.
- Establishing a system of preventive and compensatory remedies. The preventive remedy requires the provision of three elements: a) a judicial authority in charge of stopping the situation if ascertained; b) the legal and logistic possibility to give effectiveness to that judicial decision; c) the provision of a national independent control of the places of deprivation of liberty (in line with the NPM requirements under the OPCAT).
- The establishment of a multidisciplinary think-tank with the task of developing a strategic crime prevention plan²⁸ is also required.
- Given the high rate of foreign nationals in the prison crowd, it would be helpful to have figures about resident and non-resident foreigners as well as EU and non-EU citizens making it easier to plan and enforce timely transfers to home countries;
- A reduction of the number of inmates will be a long-term perspective due to the overly high number of convicts serving long sentences. A study visualising the number of possible releases (including possible early releases) per year over the next 10 years will help the authorities to evaluate capacity requirements and the needs of probation services to cope with a growing number of long-term probationers;
- Involving academics in a continuous assessment of the development of the penal policy and the prison system and research about obtained results, will help to make the public narrative about crime, justice, rehabilitation and safety more rational and evidence-based. Accurate statistics and qualitative research results will lead the judiciary in their sentencing practice²⁹ and the political authorities in their reform processes,³⁰ and will contribute to insulate courts and policymakers from campaigns falsely accusing them of being soft on crime;
- Populist media coverage geared towards stoking fear and enforcing a punitive penal policy can be best countered by a pro-active and transparent attitude towards the media³¹ and by welcoming civil society inside prison walls³².

²⁸ See Recommendation Rec(2003)21 concerning partnership in crime prevention

²⁹ Recommendation R(92)17 concerning consistency in sentencing : J. Statistics and research

³⁰ Recommendation Rec(2006)2 on the European Prison Rules – rule 91 : *The prison authorities shall support a programme of research and evaluation about the purpose of the prison, its role in a democratic society and the extent to which it is fulfilling its purpose.*

³¹ *ibidem* – rule 90.1

³² *ibidem* – rules 7 and 90.2

9 Addressing prison overcrowding in Greece by developing sustainable alternatives to detention

The Greek authorities have decided to address the prison overcrowding by implementing a set of strategic measures, including *extending the use and reinforcement of credible serving of alternative measures*, as described in the Strategic Plan³³. This objective is in line with the Council of Europe standards³⁴ that deprivation of liberty should be used as a measure of last resort and the efforts made so far in this regard need to be encouraged and further addressed.

The place and the use of alternative measures are very much **connected to the criminal legislation** and according to the information received at the meeting in Athens, the Criminal Code and the Criminal Procedure Code are being reviewed. In this context the role of the community sanctions and measures should be further discussed among all stakeholders and established in line with the new penal policy which will influence the society for the next decades.

The place and the use of the community sanctions and measures are also **related to the administrative measures** taken to implement the vision of the policy makers in this field. Therefore, in order to have a credible system of implementation of *alternative measures*, in addition to improving the penal legislation, the Greek authorities are encouraged to respond to the questions: *what are the strengths and areas of improvements in the system of implementation of community sanctions and measures already in place in the Greek legislation? How many resources the authorities want to allocate to the system in charge of the implementation of alternative measures in order to be effective and represent a genuine alternative to custody? What steps should be taken to promote these measures at the judiciary level and inside of the Greek community?*

With reference to the above, this part of the report will cover the current institutional framework and arrangements of the system of implementation of non-custodial sanctions and measures, and a set of recommendations in order to strengthen the institution - the Greek Probation Service – to effectively implement community sanctions and measures as reliable alternatives to detention. The suggested solutions are based on the information received before and during the meeting in Athens and on the standards of the Council of Europe and best practices from other countries in addressing prison overcrowding. Three pillars for *the reinforcement of credible alternative measures* are emphasised: **Strategic Issues, Operational Methods and Organisational Competence.**

Strategic issues

Development stages: as stated in the chapter dedicated to Greece in the publication “Probation in Europe”,³⁵ the Greek Probation Service for Adults is a relatively new institution within the Greek justice system, becoming operational in 2007, mainly to implement the alternative sanctions introduced in the Criminal Code from 1991– suspended sentence with

³³ Strategic Objective 3

³⁴ Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures

³⁵ Probation in Europe, Greece, 2015, Confederation of European Probation, Editors: Anton van Kalmthout, Ioan Durnescu

probationary supervision and community service order (articles 82 and 100 Greek Criminal Code). The establishment of the Greek Probation Service was planned already in 1991 when changes in the criminal legislation were made but due to administrative reasons (lack of staff) the service was introduced only 16 years later.

Current structure: the Local Probation Services are organised under the authority of the Ministry of Justice, Transparency and Human Rights and report directly to the Department of prevention of delinquency and after care within the Directorate of Crime Policy, part of the General Directorate for Crime and Correctional Policy.

At local level, there are **probation offices in 26 cities** (corresponding to the number of first instance courts), but **12 of them are not operational even today**, 27 years after their establishment. In addition, 3 out the 14 operational probation services did not register any case during 2017. In spite of the fact that the probation services are under the competence of the Ministry of Justice, Transparency and Human Rights, the local probation offices are operating under the authority of the prosecutors, as the latter ones are responsible for execution of the sentences.

The Probation Service for Adults was established separately from the Juvenile Probation (which has a longer tradition in Greece and is more developed than the adult probation) and from the Prison Service and both Probation and Prison Services belong administratively to the General Directorate for Crime and Correctional Policy.

Current operations: the Probation Service for Adults has the competence to prepare pre-trial/pre-sentence reports, in relation to “alternative sanctions”, such as suspended prison sentence or community work and supervising conditionally released persons from prisons. However, community service is the most represented, according to 2017 data:³⁶ 2867 persons serving community service, 816 under suspended sentence and 20 under conditional release, all under the responsibility of 41 probation workers. The Probation Service should have a particular place within the justice system structure as it should participate directly in the justice chain from the pre-trial phase, through the court proceedings and until the end of the prison sentence or the community sanction.

Prison vs. Probation: since no data on persons under probation are available for 2018, it is not possible to make a consistent comparison between persons in prison and under probation for a longer period. Therefore, only the data for 2016 – 2017, provided by the authorities, will be analysed. It is noted that the prison population in Greece had a slight decrease in 2017 compared to 2016: from 9611 to 9560 inmates. In the meantime, the number of persons under probation had a slight increase, from 2826 to 3683. Nevertheless, one of the most important objectives of the Strategic Plan, targeting prison overcrowding, (*reinforcement of credible serving of alternative measures*) has not been achieved. The custodial rate is not decreasing significantly as it should when a robust and sustainable system of community sanctions and measures is in place and used in an efficient manner.³⁷

In order to transfer a consistent number of offenders from prison to the probation service, there is a need for necessary staffing levels, development or restructuring of the working methods and increasing logistical support for the “alternative system” of the execution of the criminal sanctions. Many countries in the region embraced this approach as a direction

³⁶ Statistics probation Total 2017, received from the Greek authorities

³⁷ CM (2016)121 – add3 Council of Europe White Paper on Prison Overcrowding CM (2016) 121), p. 14

towards the reform for reducing prison overcrowding (e.g. Romania, Bulgaria, Serbia) not mentioning other models, such as the Nordic countries or the Netherlands where the number of prisons has been reduced.

Planned reforms: the Greek Probation Service does not have its own development strategy. There are only some actions in the field of probation included in Objective 3 of the Strategic Plan: reassessment of the use of community alternative measures and examination of extending their use (3-2), increasing the number of the probation officers and minors (Action 3-3), institutional upgrading of the role of Minors Guardians and Probation Officers Services and (Action 3-6), review of the legislation related to supervision of conditionally released persons and those on regular leave by the Minors Guardians and Probation Officers Services (Action 3-7), training for the probation staff (Action 3-8), establishment of minor victims protection offices as units of Minors Guardians and Probation Officers Services (Action 3-14). An additional measure is also included under Objective 4: connecting the scientific community with the Minors Guardians and Probation Officers Services (Action 4-8).

Probation Strategy: the Ministry of Justice, Transparency and Human Rights is encouraged to reflect if based on the relevant strategic objectives in the *Strategic Plan*, a comprehensive Action Plan for the development of the Greek Probation Service needs to be developed. Such Action Plan needs to be drafted at ministry level and discussed together with representatives of all the stakeholders involved in this process: police, prosecutors, judges, lawyers, prison service, other ministries, NGOs and donors, in order to create an ownership for defining the place and for strengthening the probation service as a credible institution. This approach is recommended particularly because at the Athens meeting, little was mentioned about a potential contribution of the probation service to reducing prison overcrowding. This shows that the role of probation inside of criminal justice chain is not known or is not very clear to all the actors involved.

In addition to the Action Plan for the development of the Probation Service in Greece, it is recommended to conduct a study to determine the expected impact at the level of legislation, human resources, administrative and financial resources. All these actions should be translated into available funds and the source of funding needs to be identified (state budget and funds from donors). In order to be sustainable, the impact study has to be approved by the state financial authorities and endorsed by the identified donors.

The Athens meeting on reducing prison overcrowding was very well received by all the participants. Therefore, the Ministry of Justice, Transparency and Human Rights is encouraged to consider if it is feasible to establish a strategic group for development of the probation service, as directly related to the decrease of the prison population. During the process of the development of the probation services, many European countries adopted policy documents or established steering groups in order to express the support of the governments and/or the Parliaments for a sustainable implementation of non-custodial sanctions (e.g. Norway, Ireland, Romania, Croatia) and to oversee the progress in this field.

The place of the probation service within the justice chain: as described above, despite the fact that the Greek Probation Service was established by law 27 years ago, it has not contributed significantly to the decrease of the prison population. This is due to several factors but also to the role of "alternative sanctions" within the sentencing process. In some countries (e.g. Romania, Croatia) the *suspended sentence* is very well established in the legislation and used by the judiciary as first option in many situations involving property

crimes, drug related offences, road traffic offenders and also in cases involving crime against persons, white collars crimes and so on. There are also some countries where the role of the suspended sentence is not clear to the society, therefore, it is not very often used by the judiciary. It seems that this is also the case in Greece where only 816 persons have been sanctioned with such a measure in 2017. This fact needs to be analysed together with judges in order to find out if this is because of lack of information or if the legislation is too restrictive to allow the application of more suspended sentences under the supervision of the probation service. In this regard, an analysis of the case studies would be useful regarding cases where an immediate prison sentence was imposed and those with community sanctions (community work or suspended sentence).

As proposed at the meeting in Athens and mentioned above in this report, the changes in the Criminal Code should also consider the possibility to introduce a *probation sanction* within the sentencing tariff, as an intermediate level between the financial penalty and the suspended sentence. In such a case, the judiciary will have 3 non-custodial options before deciding on imprisonment. The international experience can be referred to, in this respect, e.g. Ireland regarding Probation Order or the Romanian experience where after the changes in the Criminal Code, in force in 2014, the prison population decreased from over 30.000 inmates in 2014 to a historical minimum of less than 21.000 inmates today. The Romanian experience is also related to the changes of a range of non-custodial measures where, in addition to fine, the following hierarchy exists:

- ***waiver of penalty:***³⁸ *the court can decide to dismiss the setting up of a sentence for a person found guilty of an offense. The maximum penalty provided by the legislation for the offence should be up to 5 years imprisonment.*
- ***postponement of the penalty:***³⁹ *the measure can be ordered by the court - when the penalty actually set is a fine or imprisonment of up to 2 years but the maximum penalty provided by the legislation for the offence can be up to 7 years.*
- ***suspended sentence***⁴⁰ *- when the penalty actually set is imprisonment of up to 3 years.*

Taking into account the above, the role of the probation service inside the criminal justice system needs to be reviewed in direct relation to the prison overcrowding and this can be done mainly by analysing the impact of the legislation and the role assigned to the Greek Probation Service to properly implement the community sanctions and measures.

Operational methods

In spite of not having the opportunity to receive first-hand information regarding the operational methods used by the Greek Probation Service for Adults, the information received from the authorities and from other on-line sources have been carefully analysed. It is observed that the Greek Probation Service for Adults implements only a limited range of activities from their statutory competences: community service and suspended sentences. Due to this, with reference to the Strategic Plan, the Adult Probation Service has been merged with the Juvenile Probation Service. It is necessary to establish distinct operational

³⁸ Article 80, Romanian Criminal Code

³⁹ Article 83, Romanian Criminal Code

⁴⁰ Article 91, Romanian Criminal Code

methods performed for adults and for juveniles due to the significant differences in these two areas of practice.

It is noted from Objective 3 of the Strategic Plan that the priorities regarding the operations of the probation services until 2020 are related to the supervision of the conditionally released persons and the protection of the victims/minor victims of crimes.

We have to underline that only *Action 3-7: Review of the legislative framework on the assignment of conditionally released from prison persons' supervision and possibly of those in regular leave by the local Minors Guardians and Probation Officers Services*, is related to prison overcrowding and the prison service, in general, taking into account that the conditional release can influence the existing flow and if implemented properly can have an influence on the long run regarding the number of recalls.

Preparation for release: little information is included in the Strategic Plan about the role of the probation service in the process of preparation for release, in spite of the fact that the probation service has by law the competence to supervise offenders conditionally released. It became obvious at the meeting in Athens that the main body responsible for aftercare is the organisation "Epanodos", which operates under the supervision of the Ministry of Justice, Transparency and Human Rights, providing support for the social reintegration of persons released from prison. Such organisations are welcomed and their support is valuable in every community. However, a co-operation mechanism should be established between "Epanodos" and the probation services to complement their efforts. The Greek authorities are encouraged to explore if a pre-release activity delivered jointly by "Epanodos" and the Probation Service could be introduced in detention facilities in order to ensure a smooth (seamless) transition from prison to supervision by the probation services. This activity can be connected to *Action 4-4 of the Strategic Plan - Creation of a personalized detainee plan for reintegration ...* and can also include a section regarding Release, developed jointly by specialists together with the inmates, **not for them, but with them**, as inmates should be in the centre of their activities and owners of their actions.

Supervision of the conditional released persons: the number of persons conditionally released under probation supervision is extremely low, especially considering the large number of long-term prisoners: 20 persons in 2017 and 18 in 2016. The fact that the authorities are targeting this area in Action 3-7 of the Strategic Plan, is a positive step. A sustainable, effective parole scheme can have an important impact both on prison overcrowding and the prison budget, therefore, the authorities should take into consideration that additional funds and staff are required for the probation service in order to perform these tasks in a professional manner. The budget is always an issue in a reform process but a relatively small increase in the probation staff scheme could enable at least a pilot scheme to be established for a specific target group of inmates (e.g. women prisoners and young adults).

Addressing the risks and needs: the intention of the Greek authorities to reduce the number of expensive prison places can give sufficient grounds for investing in strengthening the probation service. In this context the probation service should allocate the energy on effective operational methods to protect the community by supporting the offenders to embrace a crime free life and to focus on the target groups which present higher risks and needs. This major task cannot be effective if the staff is involved in too many low risk offenders. The number of the probation service staff is very low. In these circumstances it is

advisable to find more efficient ways to supervise offenders who present low levels of risk and needs and to allow the staff to allocate more time and resources to medium and high-risk offenders. For example, those with a low level of risks and needs can be referred by the probation service to the local organisations, such as “Epanodos” or to different mentoring schemes with the probation service having a low contact/treatment involvement. In this context, it is advisable to operate with a standardised, evidence based tool for assessing the level of risks and needs and to incorporate the professional judgment of the staff, as many other prison and probation services have already developed and integrated in their practices. The assessment tool must be subject to regular evaluation as described above. Both prison and probation services should be equipped with treatment programmes in order to address the criminogenic needs in a systematic manner and to work with the strengths of the offenders. To this end, in the Strategic Plan action related to this issue should be included under both, Objective 3 and Objective 4.

Operations related to minor victims: in relation to *Action 3-6 - Enhancing of the duties of minors guardians and probation officers in the field of individual assessment of adult victims to identify their specific protection needs (L4478/2017)* and *Action 3-14 - Establishment of independent minor victims protection offices – “House of the Child” as operational units at the Minors Guardians and Probation Officers Services of Athens, Piraeus, Thessaloniki, Patras and Irakleio (L. 4478/2017)*, it is important to emphasise that the rights and responsibilities of the offenders and the victims should be clearly defined and acknowledged. Interventions should respect the rights and needs of victims and shall aim at increasing offenders’ awareness of the harm done to the victim and their taking responsibility for such harm. Working with victims is a specific area of practice and requires substantial knowledge, experience and training in order to be implemented properly. The probation service should therefore be provided with all necessary resources and means to efficiently implement community sanctions and measures and support the victims of crime, also by co-operating closely with other professionals, such as victim support services and NGO-s. The authorities are recommended to take into account the Council of Europe standards⁴¹ concerning restorative justice in criminal matters and integrate restorative justice approaches in the work of the criminal justice agencies.

Reports for courts and other entities: one of the operational methods assigned to the Greek Probation Service is the competence to draft pre-sentence reports. However, from information received on-line, this activity has not been implemented so far. According to Rule 42 of the Council of Europe Probation Rules, “...probation agencies may prepare pre-sentence reports on individual alleged offenders in order to assist, where applicable, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures...”. In order to make the courts familiar with the possibility to order/receive certain information from a specialized body and to offer sufficient grounds for the decision (e.g. whether a prison sentence should be imposed or an alternative sanction), the Greek authorities are encouraged to analyse the possibility to strengthen this area of practice of the probation service by establishing some pilot service centres where these activities can be performed for the benefits of the courts. According to Rule 45 of the Council of Europe Probation Rules “...probation agencies may produce the reports required for decision to be taken by the competent authorities. **They should include advice on: a. the**

⁴¹ Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters and Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules

feasibility of the offender's release in the community; b. any special conditions that might be included in the decision regarding the offender's release; c. any intervention required to prepare the offender for release." In addition to the approach of drafting a set of objective criteria to support all the actors involved in the chain of conditional release, the Greek authorities are encouraged to reflect on the possibility to involve the probation service to collect information about the inmates, including their resettlement perspectives.

Organisational competence

Management: as mentioned above, the legislative roots of the Greek Probation Service are from early nineties, but even nowadays the service is not fully operational as a reliable alternative to prison. This could be connected, on one hand, to the potential lack of ownership for this "project" and on the other hand, to resource allocation and advocacy. Several actions have already been recommended in order to strengthen the probation service to effectively address prison overcrowding. Nevertheless, all these measures cannot be achieved if a management team will not be assigned for the planning and implementation of this reform. The development of a concept paper regarding the management structure and methods can also be useful. It is not clear if the local probation offices are still under the authority of the prosecutors but in any circumstances the chain of command must be clear in order to avoid overlapping of tasks and unclear reporting structures and accountability for the frontline staff. It must be clearly defined to which body the probation employees are accountable for: local prosecutors, Prison Service or the Ministry of Justice.

Human resources allocation: the fact that 12 local offices have no staff, is a strong message and a significant challenge that the authorities should take into consideration when planning to address prison overcrowding through a sustainable implementation of community sanctions and measures. The probation service should be fully operational for achieving this important objective. The solution identified by the authorities in the Strategic Plan, *Action 3-3 to increase the number of probation officers and minors through transfers/recruitment* is very important but not the best option. **Staff is the most important resource of an organisation and can make a difference between success or failure.** It is therefore recommended that the authorities recruit probation staff through open competition rather than through transfers from other public bodies to ensure "...professional capacity and personal suitability for the complex work they are required to do".⁴² If the authorities will continue further with the transfer option, they are encouraged to assess also the personal suitability of the potential probation employees (e.g. motivation, attitudes and beliefs, abilities, psychological characteristics and so on) besides the professional capacity of the candidates.

Education and Training: this priority is already underlined by the authorities in the Strategic Plan, Action 3-8, taking into account that the employees of the Probation Service will have various degrees of knowledge and experience about the type of work involved. Nevertheless, in addition to the traditional training sessions, peer learning sessions where practitioners in probation offices or prisons exchange their experiences, should also be encouraged. International internships can be also beneficial by offering different models to practitioners to better implement community sanctions and measures and to be inspired from other jurisdictions.

⁴² Rule 22, Recommendation CM/Rec (2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules

ANNEX I: Agenda



REDUCING PRISON OVERCROWDING

Meeting organised by the Council of Europe in co-operation with the Ministry of Justice, Transparency and Human Rights of Greece

Athens, 12 December 2018

AGENDA

Wednesday, 12 December 2018

| | |
|----------------------|---|
| 09:00 – 09:15 | Registration of the participants |
| 09:15 – 10:15 | Opening remarks Michail Kalogirou, Minister of Justice, Transparency and Human Rights Eftichios Fitrakis, Secretary General for Crime Policy, Ministry of Justice, Transparency and Human Rights Mauro Palma, <i>President, Italian Independent Authority for the rights of persons deprived of the liberty, National Preventive Mechanism under UN OPCAT</i> Sonja Snacken, Professor of Criminology, Vrije Universiteit Brussel, Brussels, Belgium Vincent Theis, former Governor of Luxembourg Prison, Luxembourg Iuliana Carbutaru, Probation Inspector, National Probation Directorate, Ministry of Justice, Romania |

Session 1

| | |
|----------------------|---|
| | Coordinator: Eftichios Fitrakis |
| 10:15 – 11:15 | Contributions by participants |
| 11:15 – 11:30 | Coffee break |
| 11:30 – 12:30 | Contributions by participants (continuation) |
| 12:30 – 13:30 | Lunch |

Session 2

| | |
|----------------------|---|
| | Coordinators: Luljeta Kasa , Programme Adviser, Criminal Law Co-operation Unit, Directorate General of Human Rights and Rule of Law, Council of Europe; Maria Anagnostaki , Advisor at the Office of the Secretary General for Crime Policy, Ministry of Justice, Transparency and Human Rights |
| 13:30 – 16:45 | Discussion Interventions by Council of Europe consultants |
| 16:45 – 17:00 | Conclusions/closing remarks Nickolaos Koulouris, President of the Central Scientific Prison Council |

ANNEX II: List of Participants

Michail Kalogirou, Minister of Justice, Transparency and Human Rights

Eftichios Fitrakis, Secretary General for Crime Policy, Ministry of Justice

Panagiota Kozomboli, President of the Special Parliamentary Committee on the Correctional System and other institutions of detention

Prokopios Prokopiou, Head of the General Directorate for Crime and Correctional Policy

Dimitra Kokotini, Vice-President of the Supreme Court for civil and penal matters (Areios Pagos)

Olga Smyrli, Deputy Prosecutor at the Supreme Court

Konstantinos Paraskevaidis, Deputy Prosecutor at the Supreme Court

Panayotis Mprakoumatsos, Deputy Prosecutor at the Supreme Court, member of the Committee for drafting the new Code of Penal Procedure

Christoforos Argyropoulos, President of the Committee for drafting the new Penal Code

Georgios Nikolopoulos, Deputy Ombudsman for Human Rights

Methodios Mataliotakis, representative of the President of the Plenary of all Greek Bar Associations

Christos Manouras, Head of the Directorate for General Policing at Police Headquarters

Kalliopi Dimitrouli, Vice-President of “EPANODOS” – legal body for the reintegration and after care of ex-prisoners

Nickolaos Koulouris, President of the Central Scientific Prison Council

Pavlos Doulamis, Head of the Directorate for Operational Capacity and Crisis Management, Ministry of Justice

Charilaos Zannidis, Director of Patra Prison

Konstantinos Mavrantoukakis, Director of Alikarnassos, Crete Prison

Maria Anagnostaki, Advisor at the Office of the Secretary General for Crime Policy, Ministry of Justice