



## The Efficiency of Alternative Punishments through the Prism of the Punitive System

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**Abstract:** This study explores the role and impact of alternative penalties within the criminal justice system. It starts by defining alternative sanctions, including community service, and other forms, while examining the significance of these measures in supporting the social reintegration of offenders, often in combination with supplementary punishments. The research in question highlights the advantages of alternative punishments compared to custodial punishment, highlighting statistics on recidivism and the costs associated with different types of sanctions, through the lens of whether or not law enforcement agencies apply a harsher or milder punishment on a case-by-case basis case, in accordance with the purpose of the criminal penalty. It also looks at the challenges and limitations encountered in implementing these measures, including insufficient financial resources and public perception. Through international case studies, the research illustrates successful models of alternative sentencing and suggests possible improvements for the national system. The conclusion emphasizes the need for a balanced approach between punitive sanctions and reintegration measures, as well as the importance of education and professional training in the field of criminal justice. Overall, the present study argues for a reconsideration of the role of alternative punishments in the punitive system, arguing that they can significantly contribute to reducing recidivism and facilitating the social reintegration of criminals.

**Keywords:** unpaid work; recidivism; punitive sanction; reintegration measures

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## 1. Introduction

The concept of “alternative punishment” refers to sanctioning measures that offer an alternative to a harsher punishment, or in particular to a custodial sentence, with the main aim of rehabilitation and social reintegration of criminals. Although, from the perspective of the Criminal Code of the Republic of Moldova, sometimes the alternative punishment, in the sense of the local legislator, can be a harsher one, other than the primary one, such as imprisonment from 15 to 20 years or life imprisonment, in the case of intentional homicide with aggravating circumstances, penalty integrated in art. 145 paragraph 2 of the Criminal Code. We can see other examples in this sense. However, the present study, focused on the principle of humanism, is dedicated to another way of correcting, re-educating and re-socializing convicts, as further observed through the prism of Government Recommendations expressed in the United Nations Report on Alternatives to Deprivation of Liberty (UNODOC).

These measures are designed to meet the individual needs of convicts and to reduce the negative impact of incarceration, both on offenders and on society. Alternative punishment aims to provide more humane and effective solutions than imprisonment, promoting the offender’s accountability and reducing the risk of recidivism, while supporting his integration into society.

It is known that for people who are serving their prison sentence, and especially in the prisons of the Republic of Moldova, the effect can be the opposite, in relation to the purpose proposed by the legislator in the norm cited above.

The recommendations made to governments by the United Nations Report on Alternatives to Deprivation of Liberty (UNODOC) identify several key reasons why alternative measures are more effective than deprivation of liberty: “Deprivation of liberty inevitably violates at least some Human Rights and is very expensive. The truth is that most of its goals can be achieved more effectively by other means. Alternatives to deprivation of liberty violate human rights to a lesser extent and are cheaper. Evaluated based on human rights standards and the associated costs, the arguments against incarceration are very strong”.<sup>1</sup>

The assessment of the dynamics of alternatives to interaction with the formal criminal justice system and to deprivation of liberty must be carried out taking into

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<sup>1</sup> UNODOC, Handbook of basic principles and promising practices On Alternatives to Imprisonment, UNODOC, Criminal Justice Handbook Series, United Nations, 2007.

account the socio-cultural context and the ideological and political developments at the governmental level.

The effects of the application of the custodial sentence are subject to many criticisms (Foucault, p. 386), arising from the following aspects:

- there is a risk of relapse;
- does not reduce the crime rate;
- encourages the creation of an environment of delinquents, in solidarity with each other, hierarchical, ready for all kinds of future complicity.

The effectiveness of alternative punishments compared to custodial punishment involves the evaluation of several aspects, such as the impact on recidivism, the costs to the justice system, as well as the effects on the social reintegration of convicts.

Alternative sentences have a positive impact on recidivism rates as they promote rehabilitation and reintegration by keeping offenders in contact with the community and providing opportunities for personal development, counseling and professional support. Studies show that, on average, offenders who benefit from alternative measures are less likely to return to criminal behavior than those who have served a custodial sentence.

Detention reduces contact with the outside environment and often contributes to the development of criminal relationships between prisoners, which can increase the risk of recidivism and the difficulty of social reintegration after release. Detention, however, has a short-term deterrent effect, being perceived by criminals as a more severe sanction.

Detention entails considerable expenses for the state, given the costs of maintaining prisons and those associated with their administration. In addition, detention can increase the risk of overcrowding, which reduces the quality of detention conditions and can lead to human rights issues.

Alternative punishments are perceived variably by the public. Although their effectiveness is supported by evidence, public perception of the “mildness” of these measures can sometimes create resistance. However, when applied correctly, alternative punishments help reduce the stigmatization of offenders and facilitate their acceptance into the community.

In assessing the effectiveness of alternative punishments, it is important to establish the extent to which lower-risk offenders are more suitable for alternative punishments, while custodial sentences may be applied more frequently to those with a high degree of dangerousness. This differentiation contributes to the efficient and equitable use of judicial resources.

In other words, alternative punishments have been shown to be effective, particularly in preventing recidivism and reducing costs, and can offer significant long-term benefits. At the same time, custodial punishment remains an important measure for serious and violent crimes, but it should be used judiciously, complementing a balanced system of sanctions.

## **2. The Theoretical and Legislative Context**

The Criminal Code of the Republic of Moldova includes adequate provisions to establish criminal liability and, ultimately, impose a fair and proportional punishment based on the severity of the offense. Articles 53–60 of the Criminal Code outline various conditions under which an individual may be exempt from criminal liability if the prosecutor or judge determines that the person can be rehabilitated without the need for criminal punishment.

According to national legislation, an alternative sentence may involve unpaid community service. This entails training the offender to work, outside of their regular work or study hours, under the direction of local public administration authorities. The law stipulates that unpaid community service should be carried out over a period of 60 to 240 hours, with a daily work requirement of 2 to 4 hours. However, if the offender is not engaged in basic work or education activities, they may be required to work up to 8 hours a day, either at their request or with their consent.<sup>1</sup>

A fine is a commonly used alternative punishment, where the offender is penalized by paying a specified sum of money. The Criminal Code of the Republic of Moldova outlines the conditions and limits under which a fine can be imposed, based on the nature of the offense and the circumstances of the offender. If the convicted individual is unable to pay the fine, the court, in accordance with Article

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<sup>1</sup> Article 67 of the Criminal Code of the Republic of Moldova.

67 of the Criminal Code, may substitute the unpaid fine with community service, with 60 hours of unpaid work being equivalent to 100 conventional fine units.<sup>1</sup>

In this regard, it is also important to mention the conditional suspension of the sentence. This form of punishment involves the temporary suspension of imprisonment for an individual convicted of a crime, allowing them to be exempt from serving part or all of the sentence, as long as they meet the conditions outlined in Article 90 of the Criminal Code of the Republic of Moldova. This alternative plays a crucial role in preventing reoffending and encourages the offender to actively engage in society, ensuring compliance with specific conditions set by probation authorities.

For legal entities, an alternative form of punishment can involve the suspension of certain rights to carry out specific activities. This may include a ban on entering into particular transactions, issuing shares or securities, receiving state subsidies, benefits, or engaging in other activities. As previously mentioned, the Criminal Code of the Republic of Moldova also stipulates the possibility of liquidating a legal entity as a punishment, which is imposed if the court determines that the severity of the crime committed justifies the dissolution of the entity and the cessation of its operations. This penalty is applied as the primary sanction.<sup>2</sup>

For legal entities, although alternative punishments may seem more severe at times, they could serve a strategic purpose. In some cases, the offender may prefer the liquidation of the legal entity as a criminal penalty rather than paying a criminal fine.

For instance, Article 165 of the Criminal Code of the Republic of Moldova, which addresses “Trafficking in Human Beings”. The criminal rather wants the liquidation of the instrument of committing the crime – the legal person, than the payment of a criminal fine. Tomorrow, he creates a new criminal instrument, another legal entity, which will take over the activity of the previous one (art. 241 Criminal Code - Illegal practice of entrepreneurial activity, art. 243 - Money laundering, art. 249 - Avoidance of payment of import duties, etc.).

The needs assessment report for the HRCCJ Program revealed that various alternatives to imprisonment have not been fully utilized. As a result, in 2017, the Criminal Code was amended to include a new method of serving a prison sentence

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<sup>1</sup> Art. 64.

<sup>2</sup> Art 74.

– the partial suspension of the sentence.<sup>1</sup> As a result, when the court imposes a punishment, it applies the provisions for partial suspension of the sentence to the convicted individual, specifying the duration of the prison sentence and the probation period in the decision. The Criminal Code governs not only the use of these provisions but also their duration and the methods of implementation. Therefore, it can be concluded that the Criminal Code of the Republic of Moldova aligns with Recommendation CM/Rec (2017) 3, which stipulates that alternatives to imprisonment must comply with the principle of legality and be clearly regulated by law.

When applying a sentence with the conditional suspension of the prison sentence, the court specifies the length of the probation period (ranging from 1 to 5 years) and the types of obligations that the convicted individual must fulfill.<sup>2</sup>

When imposing a sentence with the partial suspension of the prison sentence, the court specifies the portion of the sentence to be served in prison and the remaining part to be served during the probation period.<sup>3</sup>

The general criteria for individualizing the punishment are stipulated in art. 75 of the Criminal Code of the Republic of Moldova.

In line with Recommendation no. R(92)17, Law no. 163/2017 explicitly established custodial sentences as a measure of last resort. According to Article 75, paragraph (2) of the Criminal Code of the Republic of Moldova, imprisonment is considered an exceptional measure, applied only when the severity of the crime and the offender's characteristics make a prison sentence necessary, and when alternative punishments would be insufficient to achieve the intended goals. A more severe punishment is imposed only when a less severe option would fail to meet the objectives of the penalty. Furthermore, Article 75(1) of the Criminal Code emphasizes the individualization of punishment, stating that a fair sentence should be determined based on the nature of the crime, its motive, the offender's personality, any circumstances that may mitigate or aggravate responsibility, the

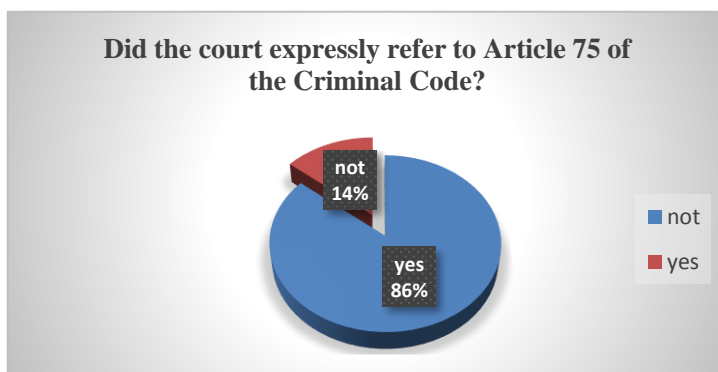
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<sup>1</sup> Article 90<sup>1</sup>.

<sup>2</sup> Article 90.

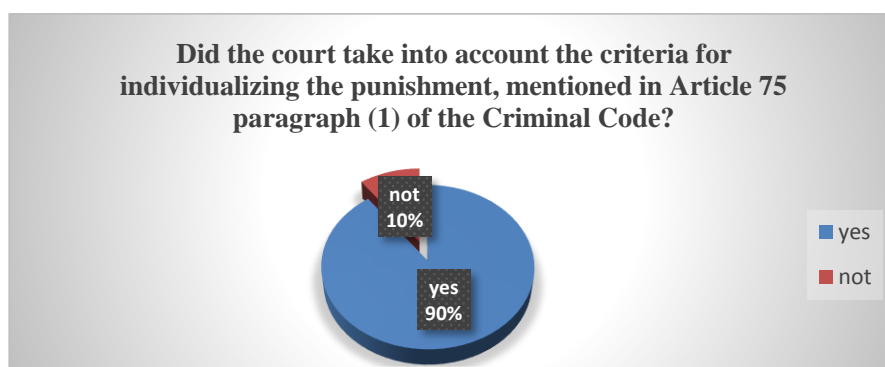
<sup>3</sup> Article 90<sup>1</sup>.

impact of the sentence on the offender's rehabilitation, and the living conditions of their family.



According to the data included in the Report on the application of criminal sanctions in the Republic of Moldova<sup>1</sup>, in general, the courts make an express reference to refer to the criteria of Article 75 of the Criminal Code of the Republic of Moldova.

The criteria for individualizing the punishment, as provided for in Article 75(1) of the Criminal Code of the Republic of Moldova, are also taken into account by the court at fairly satisfactory levels. As indicated in the Diagram below, in only 10% of the court decisions analyzed, the courts did not take into account the criteria for individualizing the punishment, as provided for in Article 75 paragraph (1) of the Criminal Code of the Republic of Moldova.



<sup>1</sup> Report on the application of criminal sanctions in the Republic of Moldova, Council of Europe Publishing F-67075 Strasbourg Cedex <http://book.coe.int> © Council of Europe, December 2021, available at <https://rm.coe.int/report-criminal-sanctions-rom/1680a1c6f1>.

The Criminal Code of the Republic of Moldova only partially aligns with Recommendation no. R(92)17, as the punishment is not aggravated solely in cases of simple recidivism. In instances of dangerous or particularly dangerous recidivism, the sentence is automatically set at a minimum level, unless there are mitigating circumstances. Furthermore, Moldovan legislation does not require the court to consider the defendant's prior crime-free period or their age before committing the current offense. As a result, legislative amendments are needed to fully comply with Council of Europe standards.

Following the idea that the prison sentence should be regarded as a punishment of last resort, the Criminal Code of the Republic of Moldova, in accordance with ECtHR jurisprudence and Recommendation no. R(92)17, requires the court to argue and justify the exceptional character when applying the prison sentence.

When considering alternative punishments for the offense committed, a prison sentence is regarded as an exceptional measure, applied only when the severity of the crime and the offender's characteristics make imprisonment necessary, and when other punishments would be inadequate to achieve the intended objectives. A more severe penalty is imposed only if a less severe alternative would fail to fulfill the purpose of the punishment. The court must justify the exceptional nature of the prison sentence in its decision.

Although the legal framework in the Republic of Moldova offers a broad range of alternatives to imprisonment, these are generally not applicable in cases involving particularly severe crimes or dangerous and highly dangerous recidivism. In most instances, an individual may be exempt from criminal liability only if they are committing a minor or less serious offense for the first time. Conditional suspension of the sentence is rarely applied in cases of serious crimes and is completely excluded for particularly serious or exceptionally severe crimes, as well as for dangerous or highly dangerous recidivism. The court may replace the remaining portion of a prison sentence with a lighter penalty only for those convicted of lesser offenses. Therefore, for particularly serious crimes and dangerous or extremely dangerous recidivism, the Criminal Code predominantly mandates imprisonment, with minimal prospects for early release before the full sentence is served.<sup>1</sup>

The traditional punitive system is structured on the idea that crimes should be punished according to their gravity, and the purpose of punishment is to correct the

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<sup>1</sup> Art. 92.

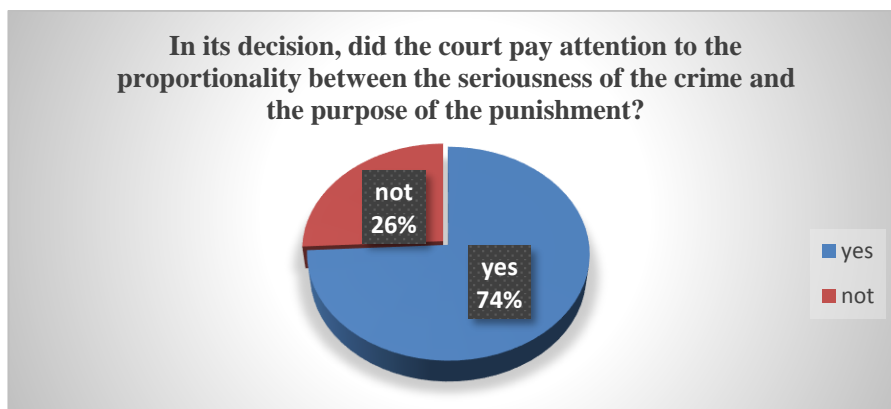


behavior of the criminal and to discourage similar behaviors in society. The system is based on several fundamental principles:

**1. The principle of moral responsibility** - it assumes that the individual is responsible for his actions and must be punished if he chooses to commit a crime. This idea emphasizes the need for the punishment to be proportionate to the seriousness of the act committed.

**2. The principle of proportionality**, according to which the severity of the punishment must be proportional to the severity of the crime. Thus, minor crimes are punished more lightly, while serious crimes are punished more severely. This principle ensures fairness and prevents abuses, considering that the sanctions are determined according to the gravity of the facts. Proportionality, as a principle enshrined by the Constitutional Court of the Republic of Moldova, governs all criminal law institutions, especially criminal liability and punishments or measures.

The data included in the Report on the application of criminal sanctions in the Republic of Moldova show that, in general, the courts of the Republic of Moldova pay attention to the issue of proportionality.



**3. The principle of retribution.** Punishment is a central element of the traditional punishment system, based on the idea that punishment must be some form of “compensation” for the deed. Punishment is not only intended to punish the offender but also to provide a sense of justice to the victim and society by appropriately sanctioning anti-social behaviour.

**4. The principle of rehabilitation.** Although the traditional punitive system does not focus as much on rehabilitation as modern models, there is still a concern for

the reintegration of some offenders after serving their sentence. Incarceration offers some rehabilitative programs, but they are often limited and not the central goal of punishment.

Overall, the traditional punitive system emphasizes punishment as a form of response to anti-social behaviour, aiming to restore order and reinforce legal norms. However, this model faces challenges in the modern context, where greater importance is placed on rehabilitation and social reintegration, as well as reducing the rate of recidivism.

The evolution of alternative punishments within national and international criminal legislation reflects a paradigm shift in the approach to criminal justice, increasingly oriented towards rehabilitation, social reintegration and the reduction of recidivism. This development has been influenced by the high costs of incarceration, prison overcrowding and human rights concerns. Over time, many countries and international bodies have begun to implement alternative measures to replace or complement custodial sentences.

The United Nations played an important role in promoting alternative punishments by adopting the “Tokyo Rules” in 1990. These rules recommend alternatives to incarceration, such as supervised release, community service, and rehabilitative treatment, especially for non-violent offenders. The aim is to improve rehabilitation and reduce the risk of relapse.

In Europe, the Council of Europe has supported the adoption of alternative punishments through various conventions and recommendations, such as Recommendation no. R(92)16 on the European rules on sanctions and measures applicable in the community. They promote alternative sanctions that respect human rights and contribute to effective reintegration into society. Through this document, the Committee of Ministers of the Council of Europe “recommends the governments of the Member States to draw inspiration in their internal legislation and practice from the principles contained in the text of the European Rules on sanctions and measures applied in the community, as shown in the Annex to the Recommendation, with the aim of implement them progressively and to give this text the widest possible dissemination”.<sup>1</sup> The purpose being, to establish a set of rules that allow the national legislator and reference practitioners authorized with

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<sup>1</sup> Recommendation No. R (92) 16 of the Committee of Ministers to the member states regarding the European rules on sanctions applied in the community, adopted by the Committee of Ministers on October 19, 1992.

the decision that the bodies in charge of execution ensure a fair and effective application of the sanctions and measures applied in the community. This application must be aimed at maintaining a necessary and desirable balance, on the one hand, between the demands of the defense of society in its dual aspect of protecting public order and enforcing the rules aimed at repairing the damage caused to the victims, and, on the other hand, the indispensable consideration of the needs of the delinquent in terms of social insertion.

The European Union, also encouraged member states to adopt alternative measures to alleviate the problem of prison overcrowding and to promote justice centered on rehabilitation. Various directives and resolutions support the development of rehabilitation programs and trial measures.

Western European countries such as Sweden, Norway, Germany and the Netherlands have been pioneers in adopting alternative punishments. These countries have introduced programs of rehabilitation, community service and electronic monitoring to reduce incarceration and encourage social integration.

In the US, alternative sentencing began to be adopted in the context of the prison overcrowding crisis of the 1980s and 1990s. Today, various states implement alternative programs for non-violent offenders, including probation, electronic monitoring, and specialized courts (e.g. drug courts).

In Romania, the current Penal Code (adopted in 2009 and entered into force in 2014) introduced several alternative measures to detention. These include community service<sup>1</sup>, deferred and suspended sentences under supervision.<sup>2</sup> The changes were motivated by the need to align with European standards and to make the justice system more efficient.

Although alternative measures have become widespread, their implementation varies significantly between states, depending on available resources and legislative specifics. In many countries, the application of these measures is limited by a lack of specialized staff and resources.

There is a general trend of increasing interest in alternative measures globally in order to create a more humane and efficient justice system. In the future, alternative measures are likely to be used even more frequently as evidence of their

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<sup>1</sup> Article 64 of the Criminal Code of Romania, an integral part of Law 286/2009, in force since February 1, 2014.

<sup>2</sup> Article 83-90 of the Criminal Code of Romania, an integral part of Law 286/2009, in force since February 1, 2014.

effectiveness accumulates and appropriate monitoring and rehabilitation infrastructures are developed.

The evolution of alternative sentencing demonstrates an international and national commitment to a more equitable criminal justice system focused on rehabilitation and reintegration. As these measures become more common and better regulated, they have the potential to significantly transform the justice system, helping to reduce recidivism and protect human rights.

Alternative punishments in the Republic of Moldova are managed through the Probation Service, which ensures the monitoring and supervision of criminals benefiting from such measures. The implementation of these alternative sanctions has resulted in a reduction in the number of people incarcerated and has contributed to improving the social reintegration of convicts, especially in the case of those who have committed minor crimes.

The adoption and expansion of alternative punishments in the Republic of Moldova reflects a modern trend in criminal legislation, at the same time aligning with international recommendations regarding the humanization of criminal justice and the efficiency of the sanctions system.

### **3. Analyzing the Effectiveness of Alternative Punishments**

In general, international studies show that alternative sentencing helps reduce recidivism, especially for non-violent offenders and those who have committed minor crimes. For example, a study carried out by the Council of Europe demonstrated that recidivism rates are, on average, 10-20% lower among people who benefited from alternative measures compared to those who were incarcerated.

According to data provided by the Romanian Probation Service, the recidivism rate for those who have benefited from alternative punishments such as supervision or community service is approximately 20-25%, compared to a rate of over 40% for those who have executed custodial sentences.

In the Republic of Moldova, data on the recidivism rate for those who benefited from alternative punishments are relatively limited, and collecting and analyzing this data is a challenge. The country's probation system was established in 2007 and aimed to implement community sanctions such as community service, electronic monitoring, fines and conditional sentences with probation. Although these alternative measures have been thought to reduce recidivism and encourage

social reintegration, their effect has not been evaluated in the long term due to the lack of a robust monitoring system and adequate resources.<sup>1</sup>

However, there are some estimates and study initiatives on the effectiveness of these community sanctions. It has been observed that alternative measures can reduce recidivism for less serious crimes, but their application is still formalistic and patchy, and their implementation in practice is often influenced by public perception and local politics.

For a more concrete assessment, the authorities recommended the development of a data collection system and a detailed analysis of the factors that contribute to the success or failure of alternative punishment.

The social reintegration of people who have received alternative sentences tends to be easier and more effective, as they often maintain their links with family, work and community. Data show that offenders who have benefited from social reintegration programs and psychological counseling return to society with a reduced risk of committing new crimes.

A study in Sweden showed that over 70% of people who benefited from rehabilitation and community service programs successfully reintegrated into society within the first two years after completing their sentence, compared to a reintegration rate of under 50 % for those who were incarcerated.

Effective supervision combined with psychological support, counseling and integration into educational or vocational programs has been shown to be essential for successful social reintegration. In the Republic of Moldova and in other European countries, the Probation Service plays an essential role in the reintegration of criminals through supervision measures and individualized support.

Community service programs give offenders the opportunity to actively contribute to society, reducing stigma and giving them a sense of responsibility. Statistics from Romania and Moldova show that people who performed community service had a lower recidivism rate than those who were not involved in such programs.

Probation services in many countries, including the Republic of Moldova, are often under-resourced, both in terms of staff and funding, which can affect the quality of monitoring and support provided to offenders.

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<sup>1</sup> <https://rm.coe.int/report-criminal-sanctions-rom/1680a1c6f1>.

In many cases, the lack of specialized rehabilitation and reintegration programs, such as psychological counseling or vocational training, can reduce the effectiveness of alternative punishments.

Statistical data and comparative studies demonstrate that alternative punishments, when implemented with appropriate support, have a positive impact on social reintegration and can significantly reduce the rate of recidivism. The Republic of Moldova, as well as other states, could benefit from the expansion and diversification of alternative measures, thus contributing to the improvement of public safety and the humanization of the criminal justice system.

#### **4. Conclusions**

Thus, the effectiveness of alternative punishments in the context of the punitive system, highlighting that these measures not only reduce prison overcrowding, allow the concentration of administrative and budgetary resources on other segments of the punitive policy, but also contribute to reducing recidivism. Rehabilitation programs and community measures have been shown to be effective in supporting the reintegration of offenders. The strategy for ensuring the independence and integrity of the justice sector for the years 2021–2024 provides, within Objective 2.1, the promotion of a criminal justice system based on respect for human rights. It is true, as well, that the criminal punishment - prison, in the current conditions of detention in prisons in the Republic of Moldova, most of the time does not achieve its purpose provided for in art. 61 of the Criminal Code, and the state has many arrears in this compartment, with all the efforts made and the enormous expenses incurred at the expense of national taxpayers, or foreign investments.

The humanization of criminal law and the promotion of a justice system that upholds human rights are central priorities in the ongoing reforms within the justice sector of the Republic of Moldova. Efforts to humanize criminal legislation have been evident since the adoption of the current Criminal Code in 2002. One of the main approaches to this humanization is the reduction of severe punishments while ensuring they remain proportional to the crime's severity and the objectives of the punishment. Despite numerous efforts and frequent amendments to the law,

various studies and reports indicate that further work is needed to decriminalize and humanize the criminal justice system.<sup>1</sup>

It is essential to adopt a strategy that combines punitive measures with those of social reintegration. Such an approach can lead to a more humane and effective justice, favoring the reintegration of criminals and reducing their stigmatization.

Continued research and evaluation of alternative punishment systems is vital to tailoring policies based on results. A constant evaluation can identify the best practices and ensure the implementation of evidence-based solutions, thus truly contributing to the improvement of the criminal justice system, in order to achieve the purpose of the criminal punishment through the prism of the provisions of art. 61 of the Criminal Code.

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<sup>1</sup> Several reports have been developed on this topic. See, for example, the Council of Europe Report "Report on the assessment of the needs of the criminal justice system of the Republic of Moldova through the lens of the principles of humanization and restorative justice", dated August 16, 2018, available at: <https://rm.coe.int/2018-08-16-needsassessment-report-component-1-final-eng/16808e2c00>; Vidaicu, M. and Ohrband, G. regarding "Action 2.5.1 of SRSJ 2011-2016. Liberalization of criminal policies through the use of sanctions and non-custodial preventive measures for certain categories of persons and certain crimes", from February 2016, available at [https://nettsteder.regjeringen.no/norlam/files/2017/07/Evaluation\\_Report\\_of\\_the\\_specific\\_intervention.pdf](https://nettsteder.regjeringen.no/norlam/files/2017/07/Evaluation_Report_of_the_specific_intervention.pdf).

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