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The impact of the COVID-19 pandemic on non-custodial sanctions and measures

Summary report of a comparative study in Member States of the European Union

The impact of the COVID-19 pandemic on non-custodial sanctions and measures

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Introduction

In order to reduce prison populations to manage the spread of COVID-19, many states have turned to the use of non-custodial sanctions and measures and the adoption of early or emergency release schemes. While the impact of the pandemic on prisons has been well documented,[1] it is less clear how COVID-19 and the different measures governments have adopted in response to the pandemic have impacted the use, implementation, management and experience of non-custodial sanctions and measures and release preparation and support.

This summary comparative report on the impact of the COVID-19 pandemic on the imposition and implementation of non-custodial sentences and the preparation of individuals for release from prison is part of the international project Addressing gaps in the implementation and management of alternatives to imprisonment and post-release support during the COVID-19 global pandemic, funded by the International Penal and Penitentiary Foundation and implemented between March 2021 and January 2022. The aims of the project are:

- to understand the impacts of the COVID-19 pandemic on the use, implementation and experience of non-custodial sentences;
- to raise awareness and engage government stakeholders with practical recommendations to take urgent and systemic steps to protect the rights of people on probation, ensuring that during times of crisis and national emergency they receive adequate supervision, complete their sentences and do not face discrimination;
- to develop a 10-point plan with evidence-based recommendations that are applicable internationally for the improved implementation of alternatives to imprisonment during times of national or international crisis or emergency and that expand the use of non-custodial measures in a non-discriminatory manner (i.e. to whom these measures are applied and how they are managed).

In four countries – Georgia, Hungary, Kyrgyzstan and Portugal – research teams conducted in-depth studies, producing four independent reports on how COVID-19 impacted the use, implementation and experience of non-custodial sanctions and those released from prison during the pandemic.[2] Prior research by Penal Reform International (PRI) into the impacts of the COVID-19 pandemic on criminal justice systems globally, alongside practical experience and expertise on good practices and implementing international standards, such as the UN Standard Minimum Rules on Non-custodial Measures (the Tokyo Rules),[3] will inform the development of internationally applicable recommendations for adaptable, resilient, fair and effective probation, in times of crises as well as normal operations. This report also contributes to these efforts.

As part of a wider comparative study conducted by the University of Coimbra as part of the project *Promoting non-discriminatory alternatives to imprisonment across Europe*,[4] this comparative study is based on national reports provided by experts from 19 Member States of the European Union (EU).[5] In two further countries, where the research team could not obtain national reports, semi-structured interviews were conducted with representatives of the prison and probation services.[6]

1. For more in-depth analysis and information on the impact of the COVID-19 pandemic on prisons see, for example, the following publications by Penal Reform International: *Global Prison Trends 2021*, May 2021, available at cdn.penalreform.org/wp-content/uploads/2021/05/Global-prison-trends-2021.pdf; *Coronavirus: Preventing harm and human rights violations in criminal justice systems*, July 2020; *Coronavirus: Healthcare and human rights of people in prison*, March 2020, available at: www.penalreform.org/covid-19/resources-related-to-covid-19/
2. Available at: www.penalreform.org/resource/country-reports-covid-19-impact-non-custodial-measures/.
3. UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)*, A/RES/45/110 (14 Dec. 1990).
4. The project is funded by the European Union's Justice Programme (2014-2020) and coordinated by Penal Reform International, in partnership with the Institute for Legal Research of the Faculty of Law of the University of Coimbra and the Hungarian Helsinki Committee.
5. The list of contributing experts can be found in the Acknowledgments section. Although the research team invited experts in all 27 Member States to participate in the study, it was not possible to receive contributions from all of them within the time limit for delivering this report.
6. This was the case with Latvia and Denmark (interviews held online).

The national reports and data-collection interviews followed an outline questionnaire prepared by the research team, meant to ensure standardisation of replies. The questionnaire was divided into three parts, and each part encompassed several questions that addressed the following issues: (i) non-custodial sentences or measures aimed at reducing the prison population as a means of preventing the spread of the virus within prison facilities; (ii) the impact of the pandemic on non-custodial sanctions and measures; (iii) the impact of the pandemic on the future of non-custodial sanctions. Occasionally, the reports and interview data were complemented by information from other published sources.[7]

This report follows the outline of the questionnaire, although the research team found it appropriate to discuss the issues of preparing individuals for release, the impact of the pandemic on the work and well-being of probation staff and the specific impacts on persons in vulnerable situations in separate chapters.

It is important to note that, although the EU Member States share common principles and values, each Member State has its own criminal law, penal system and rules of criminal procedure. The situation of prison systems (especially occupancy rates) at the outset of the pandemic also differed significantly. The differences in statistical recording of prison and probation data affect their comparability too. These difficulties impact comparative studies in criminal law in general, and with the unprecedented nature of the phenomenon under study – the COVID-19 pandemic – such challenges are even more present, since there has been no time to stabilise solutions or harmonise data collection procedures. Moreover, not all national reports addressed all questionnaire items and not all reports provided the same level of detail, which sometimes made the comparative process difficult, limiting the comparability of the information. Furthermore, while in some countries there was published data on the subject – allowing to check or complement the information – in others little information on the impact of the pandemic was available at the time of writing this study. As a result, throughout the report, comparative data are punctuated by the provision of individual examples from specific countries. We believe that these individual examples, while not constituting a comparison in a strict sense, enrich the study by showing how various systems found solutions to deal with the challenges posed by the pandemic.

In the Member States covered by the study, we sought to identify common problems and difficulties faced in the context of the COVID-19 pandemic and non-custodial sanctions and measures, compare the measures taken to deal with them and highlight examples of good practice.

We draw general conclusions from the experiences of the 21 countries, anticipate what lessons will be drawn from the measures and policies introduced during the pandemic and identify recommendations for building on the lessons learned and making penal systems more resilient to future crises.

7. In those cases, sources were duly referenced.

1. Non-custodial sentences or measures aimed at reducing prison populations

Given the poor state of detention and detainee health conditions in many countries, governments – faced with the increased vulnerability of people in prison to COVID-19 infection – were forced to deal with the problem of overcrowding to prevent COVID-19 outbreaks in prisons. Thus, Member States of the EU have taken different steps to protect the health of imprisoned individuals and prison staff according to the particular needs in each national context. While most Member States have adopted measures to avoid physical contact with the outside world by suspending visits, transfers, leaves, work and other activities, some Member States also decided to reduce the prison population by suspending the implementation of sentences of imprisonment or by releasing individuals through non-custodial alternatives, early release or pardon.[8]

➔ In Italy, it was reported that the judges responsible for the execution of sentences (magistratura di sorveglianza) played a supplementary role in the control of COVID-19 within the prison system by making wider use of existing release mechanisms and alternatives to detention, applying them from an emergency perspective, thus facilitating the release of individuals at a greater health risk. This judicial policy, combined with the legislative measures, contributed to a reduction of incarceration rates from March 2020 to October 2021.

In countries where the existing release mechanisms or alternative measures were deemed insufficient to reduce levels of imprisonment, governments introduced new exceptional measures at the legislative level to allow for the release of individuals from prison (as seen in Belgium, France, Italy and Portugal).

➔ In Belgium, limited detention (a form of prison leave) could no longer be applied due to the impossibility of preparing the probation plan required for granting partial home detention, making it impossible to apply this measure. This contributed to the establishment of temporary measures that allowed individuals to leave prison.

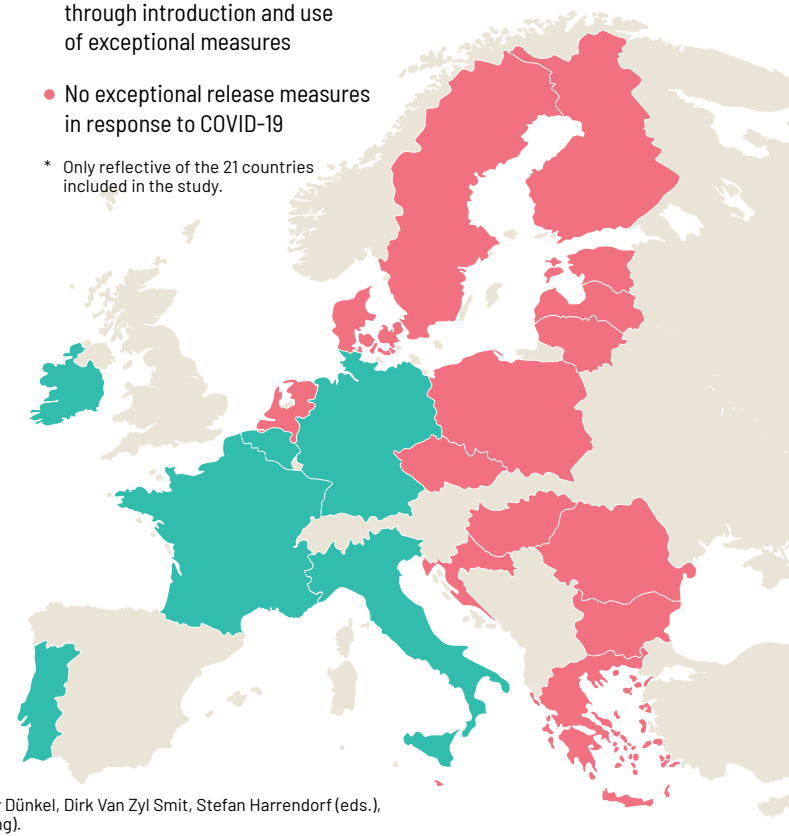
In those States where prison overcrowding was not a problem, such as in the Czech Republic, Denmark, Estonia, Lithuania, Malta and Sweden, release measures were not adopted. In others, despite the overcrowding, release measures were not considered by the government (Hungary) or proposals from human rights organisations and criminal justice professionals for adopting prison population reduction policies were abandoned as prisons did not face a serious outbreak of COVID-19 infections after the restrictive measures were adopted (Greece).

Measures aimed at reducing prison populations took different forms, including the suspension of enforcement of new prison sentences, pardons, temporary prison leave, early release schemes and the use of alternatives to imprisonment (non-custodial sanctions or measures).

Exceptional prison release measures in response to COVID-19 in the EU*

- Release of people from prison in response to COVID-19 through introduction and use of exceptional measures
- No exceptional release measures in response to COVID-19

* Only reflective of the 21 countries included in the study.



8. For more information about the impact of the pandemic on prison systems, Frieder Dünkel, Dirk Van Zyl Smit, Stefan Harrendorf (eds.), *The Impact of the Coronavirus on Prisoners and Penal Policy*, (Routledge, forthcoming).

Suspension of execution of prison sentences

The suspension of executing a prison sentence – sometimes referred to as a 'suspended sentence' – has taken two different forms during the pandemic: the suspension of the execution of new sentences of imprisonment and the suspension of prison sentences already being executed, which resulted in the release of individuals from prison. In Bulgaria, Denmark and Latvia, for example, the enforcement of new prison sentences was postponed, and many people who were convicted remained at liberty, awaiting the beginning of the execution of their sentence.

- ➔ In Finland, the admission to prison of persons sentenced to unconditional imprisonment of up to six months or a prison sentence handed down for unpaid fines was limited.
- ➔ In Austria, persons infected with COVID-19 or in quarantine due to contact with an infected person were considered unfit for detention. If the convicted person was free and the sentence to be executed did not exceed three years, the prison sentence could not be enforced unless the individual had been convicted of a sexual offence or was deemed to pose a threat to public safety, e.g. because of a violent crime.[9]
- ➔ In Portugal, while there was no official stay of the execution of prison sentences, the Advisory Council of the Prosecutor General's Office issued an opinion sustaining the suspension of the issuance and execution of arrest warrants.

In some countries (as seen in Denmark and Finland), the postponement of prison sentences caused a backlog of sentences to be executed, overburdening the prison and probation services at a later time.

While many federal states in Germany also postponed the execution of new sentences, especially subsidiary penalties for failure to pay fines as well as short-term prison sentences, other German federal states temporarily released people serving subsidiary penalties (fine-default detention) and short-term sentences, interrupting the ongoing execution of the sentence. Some federal states went further and interrupted the execution of regular prison sentences up to a certain length by releasing people temporarily, which was the case for sentences of up to six months (Baden-Württemberg, Bavaria), 12 months (Lower Saxony, North Rhine-Westphalia) or even up to three years (Berlin, Hamburg, Saxony); Hamburg did not summon those sentenced to imprisonment to start serving their sentences of up to three years and interrupted the execution of sentences of up to 18 months.

Belgium allowed people to request temporary leave from prison as a temporary interruption to the execution of prison sentences, referred to as 'Corona-leave'. The measure was only available to individuals who met certain requirements (i.e. having a permanent place of residence, not having committed certain offences, such as terrorist-related or sex offences and not having been convicted to one or multiple prison sentences that together exceeded ten years). Individuals at risk of developing serious symptoms following COVID-19 infection were exempted from complying with these requirements in order to qualify for Corona-leave.

> "Belgium introduced 'Corona-leave', a new temporary interruption to the execution of prison sentences. As of 30 November 2021, 826 people were released under this measure."

In both Belgium and Germany, temporary releases were considered to be an interruption of the execution of the prison sentence; therefore, the time spent out of prison did not affect the length of the prison sentence. In Belgium, however, a first version of the leave whereby individuals had to comply with certain conditions during the leave was ruled unconstitutional by the Cour de cassation, and a second version of the 'Corona-leave' was introduced by law on 20 December 2020, free from any conditions to be complied with during the period of leave. While an extension of this temporary measure was provided in Belgium, by a Ministerial Decree (of 25 June 2021) until 15 September 2021, in Germany some states resumed executing short-term sentences and fine-default detention in mid-2020, and others renewed the measures in October 2020 – during the second wave of the pandemic.

Pardons

Portugal and Germany were the only Member States included in this study that reported the granting of exceptional pardons of sentences to enable the release of individuals from prison as part of their COVID-19 response. In Italy, it was noted that tackling the high levels of overcrowding through pardons was a political impossibility, even though the national experts considered that it may have been justified under the emergency context.

9. European Prison Observatory, COVID-19: *What is happening in European prisons?*, Update #3, 17 April 2020, p. 3, www.prisonobservatory.org.

In Germany, a few federal states granted an amnesty for people who had received a prison sentence for unpaid fines (e.g. Berlin, to a lesser extent also Hamburg). The 16 Ministries of Justice reported that only a few applications for a pardon due to a risk of infection (e.g. from specific vulnerable people in prison) were submitted. The outcome of these individual cases is unknown.

> “Two different types of exceptional pardons were introduced in Portugal in response to COVID-19: a collective pardon for individuals with sentences up to two years' of imprisonment or with up to two years of a longer prison sentence remaining and an exceptional individual presidential pardon available for imprisoned individuals aged 65 or older and suffering from a physical or mental illness or a diminshed degree of autonomy that is seen as incompatible with remaining in prison during the pandemic.”

Law No. 9/2020 of 10 April, which established an exceptional system for the enforcement of sentences in Portugal due to the pandemic, created two distinct pardons. The law provided for a collective pardon granted to individuals sentenced to up to two years' imprisonment or, in the case of longer prison sentences, to individuals whose remaining period of imprisonment was up to two years, provided that at least half of the sentence had been served. This pardon included imprisonment resulting from the conversion of unpaid fines and non-compliance with a non-custodial sentence as well as prison sentences being served concurrently for several offences. It was only applicable to individuals whose sentences were final before the law came into force and expressly excluded certain crimes.[10]

Applied by the courts following a case-by-case analysis, the pardon was conditional on its beneficiary not reoffending for a period of one year, with reoffending requiring the original sentence to be served in full, in addition to the sentence passed for the new offence. The law also provided for an exceptional individual pardon, granted by the President to imprisoned individuals aged 65 or over, those with a physical or mental illness or a diminished degree of autonomy that was incompatible with being in prison during the pandemic. The individual's consent was required for the pardon, and persons convicted of the crimes listed above were equally unable to benefit from this measure. Fourteen individual pardons were granted by the President in April 2020 in response to the pandemic.

Prison leave

In order to avoid physical contact between individuals in prison and the outside world, regular prison leaves (permitting individuals to leave prison for short periods during their sentence, also referred to as temporary release) were suspended and restricted in several countries (e.g. Croatia, Denmark, Finland, Germany, Portugal). In Germany, the statistical data clearly shows the impact of the pandemic on prison leaves. The percentage of temporarily absent individuals dropped from 5.6 per cent at the end of March 2020 to 3.7 per cent and stood at 4.0 per cent at the end of June 2020. Conversely, in other Member States, new possibilities of prison leave were created as a way to decrease the prison population during the pandemic.

In the Netherlands, where no special sanctions, penalties or measures were adopted to release individuals from prisons, the final period of imprisonment usually served in low security institutions was temporarily suspended. In practice, this was facilitated by the granting of longer leave, implemented with the use of electronic monitoring.

In Portugal, for people ineligible for a pardon (see above), Law No. 9/2020 established a system of prison release on licence of 45 days, renewable for successive periods of 45 days. Granting of the licence was the responsibility of the Director-General of the Prison and Probation Service and conditional on the consent of the person involved. The renewal was dependent on their conduct during the time on licence as well as the evolution of the pandemic. This extraordinary licence could only be granted to persons who had previously benefited from judicial prison leave and who fulfilled the general requirements for the measure. In contrast to the normal release on licence, this extraordinary leave required the individual to remain at home – as was in force for the community in general during the state of emergency – and to accept the supervision of the probation services and police authorities, comply with their directions and respond to them when contacted, namely by telephone.

10. The excluded crimes included murder, domestic violence, aggravated assault, sexual offences, torture, arson, membership in a criminal organisation, corruption, money laundering, drug trafficking and crimes committed by members of the police and security forces, the armed forces, or by prison officials or officers in the performance of their duties and those committed by holders of political or high public office in the performance of their duties.

Individuals who were in an open prison regime working outside of the prison might be authorised to keep their job while on leave. If a person failed, without justifiable excuse, to comply with the conditions imposed while on licence, probation services would immediately report it to the Prison Service, and a solemn warning could be issued by the prison governor or the licence could be revoked by the Director-General.

Extraordinary measures of release

To address overcrowding in prisons, some Member States (Belgium, Italy, Portugal) also introduced new forms of non-custodial sentences or early release systems, while others (e.g. France and Poland) introduced a new basis for granting existing measures, instead of creating new ones.

> “While temporary releases in Belgium and Germany were considered to be an interruption of the execution of the prison sentence, time spent on prison leave under the Portuguese emergency law counted as time served, except in case of revocation for non-compliance.”

In Belgium, Royal Decree No. 3 of 9 April 2020 introduced a measure of early release on a provisional basis, granting the power to release individuals to the prison administrators instead of the sentence implementation courts. Six months before the end of the executable part of the prison sentence, detainees could apply to the prison administration for early provisional release, provided they had a permanent place of residence and sufficient financial means. Early conditional release could not be granted if the duration of the imposed prison sentence exceeded ten years or if the applicant was convicted of a terrorist-related or sexual offence.

In Italy, the legislature sought to reduce the number of individuals in prison by utilising non-custodial measures. In particular, Decree-Law No. 18 of 17 March 2020 (the ‘Cure Italy Decree’) introduced a special form of home detention for sentences of up to 18 months. While home detention offered a simplified procedure, it required those with more than six months of their sentence to be subject to electronic surveillance, which limited its availability due to a lack of electronic monitoring devices. The number of people who benefitted from this new form of home detention was further limited because several groups of detainees were excluded from the measure.[11]

In Portugal, individuals who had previously benefited from the extraordinary prison leave described above could, as long as the measure was accomplished successfully, benefit from early release, bringing forward their parole by a period of up to six months, by court decision. The difference from the ordinary parole system was that the period had to be spent at home, under the supervision of the probation services and the police, which required additional resources from probation services. Individuals convicted of offences against the police and security forces, the armed forces, or prison wardens and officials in the exercise in their duties were excluded from this exceptional measure of early release.

In France, prisons were facing high risks of COVID-19 outbreaks due to critical levels of overcrowding at the onset of the pandemic: on 1 March 2020 there were 72,400 individuals imprisoned in facilities with 61,500 places. Due to the pandemic, important steps were taken rapidly to curb the risk of COVID-19 outbreaks posed by the overcrowding, such as additional sentence reductions of two months for most individuals serving a custodial sentence during the national lockdown in the first few months of the pandemic and the establishment of order No. 2020-303 of 25 March 2020, which adapted rules of criminal procedure and has allowed added flexibility in some processes. In that context, specific arrangements for early release with house arrest and for conversion of sentences (including deferred community service and home detention under electronic surveillance) have been created for individuals sentenced to less than five years of imprisonment and whose remaining sentence was less than or equal to two months (for early release) or six months (for conversion of sentence), provided that they had accommodation.

11. The following persons were excluded: ‘detainees sanctioned for disciplinary offences related to riots or disturbances in prison [...] or in respect of whom a disciplinary report has been drawn up in connection with disturbances and riots since 7 March 2020 [...] and those convicted of mistreatment of family members and cohabitants or of persecution.’

> At the onset of the pandemic, several steps were quickly taken in France to curb the extreme risk of contagion among those inside the country's overcrowded prisons, including reductions in custodial sentences and specific opportunities for early release as well as increased flexibility in certain processes as a result of adapted criminal procedural rules.

According to an administrative order, it was preferable to convert the prison sentence to community service rather than electronic surveillance, as prison staff (who are appointed to install electronic monitoring devices) were overburdened, making it impossible to ensure effective enforcement of electronic surveillance. These measures explicitly excluded persons convicted for terrorism-related offences, domestic violence, sexual offences against children and those who took part in a violent collective action in prison or put others at risk by not respecting COVID-19- related public health rules.

In Poland, a legislative act of 31 March 2020 introduced a new basis for suspending the execution of imprisonment. The scheme introduced by the legislature does not apply to persons convicted for offences punishable by imprisonment for a term exceeding three years, to people who have reoffended or to people who earn regular income from committing criminal offences. Secondly, the legislature extended the possibility of serving a sentence of imprisonment outside prison by changing the formulation of the formal premise of the said institution: pursuant to the Act, the penitentiary court may permit a sentence of imprisonment to be served under the electronic supervision system when, for example, the individual has been sentenced to a term of imprisonment not exceeding 18 months. Prior to the amendment, this option was available only to those sentenced to up to a year of imprisonment.

Promoting existing non-custodial sanctions and measures

In their efforts to reduce prison populations, apart from the introduction of extraordinary measures, Member States also sought to promote the use of existing non-custodial sanctions. This resulted in increased use of alternatives to imprisonment such as suspended sentences (Germany), electronic monitoring (Belgium) and conditional release (Czech Republic).

In France, the procedures to grant reductions to mandatory minimum sentences or modifications of prison sentences to more flexible measures – such as an external placement (placement extérieur, a prison sentence served outside the prison), day parole or parole – were simplified as a result of Order No. 2020-303. The procedure was also adapted for sentence reductions and sentence suspensions (both simple and medical suspensions). These measures were pre-existing but under-utilised, and the health crisis forced judges (juges de l'application des peines), the prison service and the public prosecution service (which enforces the execution of criminal sentences) to find ways to avoid mass COVID-19 outbreaks in overcrowded prisons. To that end the Ministry of Justice, in a circular issued on 20 May 2020, asked prosecutors to facilitate releases and limit new admissions to prisons.[12] Nevertheless, it should be noted that those instructions and measures were applied inconsistently, depending on the location within France.

In Ireland, the Probation Service was involved in facilitating the early release and supervision of selected people in prison, through programmes such as 'Community Return'. The majority of people released were deemed 'low risk' individuals as they were serving a sentence of less than 12 months or had less than six months left to serve.

In Italy, as a result of the limited possibilities to apply the special form of home detention established during the pandemic (as detailed above), the court responsible for the implementation of prison sentences (Magistratura di sorveglianza) has played an important role in using alternative sanctions and measures as a means of mitigating the impact of the virus on Italian prisons. To avoid the limitations of the special form of home detention, the courts continued to apply the previous version or 'ordinary' form of home detention, which did not require mandatory electronic monitoring. On the other hand, the Magistratura di sorveglianza have adopted an emergency perspective while applying the ordinary measures provided in law, trying to extend the scope of the existing non-custodial measures as much as possible, while at the same time facilitating the release of individuals with health problems from prison, as they faced the most serious health risk from COVID-19.

In Portugal, in addition to the exceptional pardon and the extraordinary release on licence, Law No. 9/2020 also provided for the re-examination of the grounds for holding someone on remand (pre-trial detention), especially in the case of individuals aged 65 or over

12. European Prison Observatory, *COVID-19: What is happening in European prisons?*, Update #9, 5 June 2020, p. 3, www.prisonobservatory.org.

and with health problems incompatible with being housed with the general prison population during the COVID-19 pandemic. The same provision reiterated the rule that pre-trial detention is a measure of last resort and should only be applied when all other measures are manifestly inadequate or insufficient.

Contrary to the approaches taken by the majority of other EU Member States, countries such as Hungary and Romania reported a significant decrease in the number of persons released from prison during 2020. In Hungary, the decrease of persons released on parole and those placed in reintegration custody – a form of early release from prison where the sentenced individual is placed at home with electronic monitoring – was explained by the suspension of courts' activities, although judges were authorised under relevant laws to decide on both release on parole and reintegration custody using remote hearings. In Latvia, although there was no decrease in the number of persons released on parole, there were cases of delays in parole decisions due to the impossibility of preparing required reports by probation services, as in-person contact was not viable and there was no process enabling online meetings.

Impact of extraordinary measures to reduce prison populations

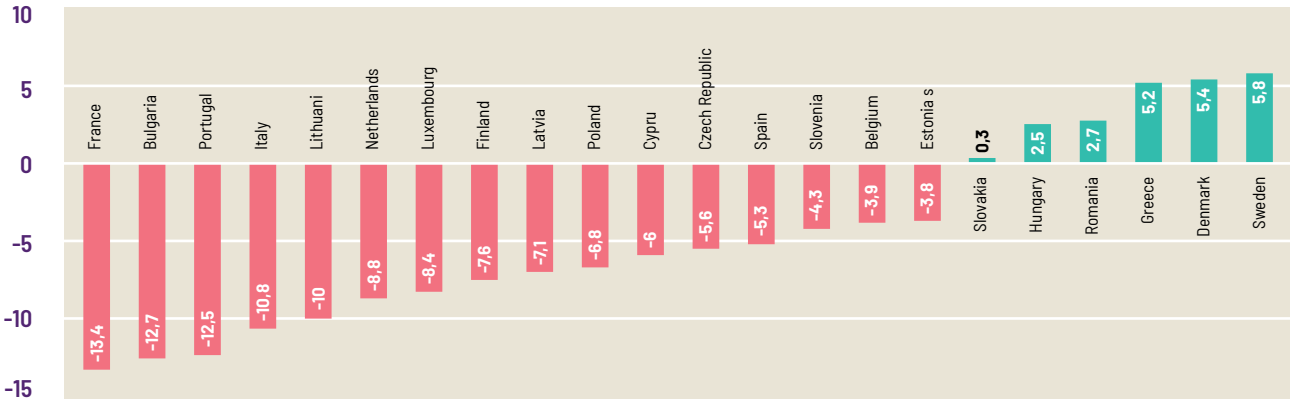
The extraordinary measures adopted during the COVID-19 pandemic undoubtedly contributed to the reduction of prison populations and to the aim of creating more room inside prisons across Members States. These measures proved crucial to allowing greater physical distancing within facilities, the separation of detained persons more susceptible to COVID-19 and the isolation of infected or quarantined individuals.

- ➔ In Portugal approximately 2,000 individuals were released between April and June 2020, bringing the nation's prison population down.
- ➔ In Germany, where overcrowding has not been a problem in most federal states, the decrease in the prison population due to releases and non-execution of short-term prison sentences reduced imprisonment rates from 77 to 67 (per 100,000) and increased the proportion of individuals accommodated in single cells.

It must be highlighted that as of December 2021 no deaths from COVID-19 have been registered in Portuguese or German prisons.

- ➔ In France, the exceptional measures allowed a reduction of the prison population by about 13,000 individuals, 6,000 of them receiving early release.
- ➔ In Italy, the extraordinary legislative and judicial policy has contributed to a reduction of the incarceration rate: Beyond the virus, a report on detention conditions, published in March 2021 by the Italian NGO Antigone, shows that in twelve months (from 28 February 2020) there were 7,533 fewer individuals in Italian penal institutions, corresponding to 12.3 per cent of the total detained population.[13]
- ➔ In Belgium, a total of 356 persons benefited from early provisional release and 826 enjoyed a temporary interruption of their prison sentence.
- ➔ In Ireland, the number of persons in custody decreased from 4,235 in March 2020 to 3,807 by April 2020.

Percentage change in prison population rates
15 September compared to 1 January 2020



Source: Marcelo F. Aebi and Mélanie M. Tiago, Prisons and prisoners in Europe in pandemic times: An evaluation of the medium-term impact of the COVID-19 on prison populations. Strasbourg: Council of Europe, 2020.

13. Michele Miravalle and Alessio Scandurra, *Oltre il virus*, XVII rapporto di Antigone sulle condizioni di detenzione, Antigone, 2021, https://www.rapportoantigone.it/diciassettesimo-rapporto-sulle-condizioni-di-detenzione/.

In addition to the measures specifically aimed at reducing the prison population as a way of preventing the spread of COVID-19 inside the prison system, it is likely that lockdowns or 'stay at home' orders and other restrictions adopted by governments across the region have also contributed to the decline in the prison population in the EU. This has meant that there has been reduced activity in the criminal justice system, with fewer arrests, while fewer opportunities to commit various types of crimes may have simultaneously resulted in a decrease in crimes committed. The latter hypothesis was statistically demonstrated in countries such as the Czech Republic, France, Germany, Portugal and Romania. In only a few countries (e.g. Greece, Hungary, Sweden) the prison population did not decrease in spite of the pandemic.[14]

In contrast, it is worth noting that the outbreak of COVID-19 and the measures that had to be taken subsequently led to significant backlogs in the criminal justice systems of several Member States (Belgium, Denmark, Finland, The Netherlands).

While no significant adverse reactions to the extraordinary release of individuals from prison were reported in Portuguese society, in Belgium, the release measures were a topic of public discussion with critics voicing their opposition and citing the possible impact on reoffending. In France, there has been some criticism about prison releases among the public, as well as among certain members of parliament who expressed their discontentment with the government's choices. In Italy, it was reported that public opinion is increasingly suspicious of reductions of prison sentences and that humanitarian concerns, on which prison-release programmes should mainly be based in times of emergency, were viewed as subordinate to the needs of public security, which the legislature is required to safeguard.

Several country reports (Poland, France) noted that official data on the impact of the exceptional release measures on recidivism rates is still scarce, and it is difficult to state whether individuals who benefited from the measures adopted during the pandemic committed new crimes after leaving prison. However, the general perception is that there was no significant increase in recidivism caused by early release.

- ➔ Very few cases of repeat offences have been reported in the French press, and the government mentioned 30 cases of reoffending resulting in reimprisonment.
- ➔ In Belgium, only 22 of the 826 people who were granted 'Corona-leave' failed to return to prison voluntarily, and of the 356 people who were granted early provisional release ten committed a new (minor) offence.
- ➔ In Ireland, of those released during the pandemic (approximately 400 individuals), 6 per cent were recalled to prison and compliance rates with the early release conditions were above 85 per cent.
- ➔ In Lithuania, where no extraordinary release measures were adopted during the pandemic, it was found that despite less intense contact between the probation service and clients, the non-compliance rates of non-custodial sentences and the amount of new criminal offences committed during the probation period did not increase compared to 2019.
- ➔ In Portugal, of the 906 individuals who benefited from being released on extraordinary licence, 120 had their licenses revoked due to non-compliance with the imposed conditions, and of the 1,945 persons released under the set of extraordinary measures 235 were recalled to prison due to committing new offences. From the perspective of the Portuguese authorities, this statistically low number is all the more relevant considering that the pandemic brought with it economic and social conditions that hindered both employment opportunities and other facets of social reintegration.

It should be noted that, in Portugal, there were cases of individuals who, after being placed on extraordinary prison leave with the condition to remain at home, either withdrew their consent or did not consent to a renewal of the licence and thus returned to prison. According to the probation service, such decisions were essentially taken due to financial difficulties or lack of adequate family support or housing. Although only a small proportion of people were affected, this calls for reflection not only on the financial and social vulnerability of a significant part of the prison population but also on the (in)adequacy of social support available both to those who have been released from prison and to their families.

14. Marcelo F. Aebi and Mélanie M. Tiago, *Prisons and Prisoners in Europe in pandemic times: An evaluation of the medium-term impact of the COVID-19 on prison populations*, Council of Europe/UNIL,15 Dec. 2020, p. 23

2. The impact of the pandemic on preparing individuals for release from prison

Alongside early and exceptional release options, the measures adopted to prevent the spread of COVID-19 within prisons brought restrictions to contact with the outside world, a significant impact on the daily routine in prisons, including suspension of work, rehabilitation programmes and educational, recreational and religious activities. Shortcomings in the provision of support pre- and post-release became apparent in many countries.

Whenever the probation officers could not enter prison due to pandemic restrictions, contact with detainees was set up via videoconferencing (Czech Republic, Latvia). Many projects and programmes for personal development and social integration run by civil society organisations were suspended (e.g. Croatia). For example, the support provided by NGOs to some individuals in Portugal began to take place by correspondence, which was pointed out as a good practice that allowed the provision of support and may be continued after the COVID-19 pandemic. The suspension of work also affected the income of individuals in prison, who were left without the means to support family members or to pay debts. In Germany, a few federal states offered wage compensation for detainees unable to work during the pandemic.

Many prison systems turned to technology. As face-to-face contact was restricted, communication with family members, meetings with probation officers and the continuation of educational activities depended on the availability of the necessary technology. The lack of equipment in some prisons meant that few individuals could benefit from online classes (e.g. in Portugal, only about 15 per cent of prisons had the necessary equipment for live online classes; where equipment was not available, prisons resorted to a model in which teachers provided students with learning materials, delivered to prisons in person or by email) and some parole or social reports could not be prepared by probation services, resulting in delays in parole decisions (Latvia). It is worth mentioning, however, that when the necessary equipment was available, individuals benefited from the use of new communication technologies, especially to promote contact with their families. In Portugal, for example, the number of telephone calls permitted per day was increased from one to three, and the prison service launched two pilot projects in which landline telephones were installed in cells.

Besides the negative impacts of the isolation and inactivity on social rehabilitation, the sudden release of numerous individuals from prison as a result of the extraordinary measures posed challenges to the provision of monitoring and support services in the community for those released. It was found that responses to the needs of individuals during the pre-release transition period were lacking and that post-release follow-up was insufficient, especially for those who had already completed their sentences (thus, they were not under any kind of supervision). However, here the pandemic seems to only reveal weaknesses and exacerbate failures already existing in the systems, such as the situations of individuals leaving prison without valid personal documentation, with neither transport home nor money for public transport, without housing or a place to stay and without money for their subsistence or a proper life plan (Portugal). As such, insufficient rehabilitation work in prisons, lack of human resources and insufficient cooperation with civil society organisations and public services were brought to light as key gaps that made it more difficult for probation services to deal with the individuals released under various emergency laws.

> “Probation officers in Hungary were able to use time that was freed up by the suspension of in-person contacts in response to the COVID-19 pandemic to introduce new services and assist overburdened reintegration officers.”

In Hungary, on the other hand, the suspension of in-person contacts with individuals under non-custodial sanctions and measures allowed probation officers to spend more time with individuals in prison and on their preparation for release. Making use of that time, the probation service introduced new programmes, group activities for the improvement of social skills for a cell community, took individuals to the library for which, according to reports from the persons concerned, there had been no opportunity previously, and launched an online drug prevention programme. Moreover, by reallocating their free capacities, probation officers assisted reintegration officers who experienced heavier workloads.

3. The impact of the pandemic on the use and implementation of non-custodial sentences

Court activity

During the pandemic, court activities were drastically reduced in many Member States. Court hearings and hearings by the prosecution service could not be held (the Netherlands) or the judicial authorities were recommended (e.g. by the Ministry of Justice, in Latvia) or determined (e.g. under a Government Decree, in Hungary) to conduct only urgent proceedings, such as those involving pre-trial detainees (Germany), criminal cases with elements of violence, juvenile cases, domestic violence (Croatia), decisions on parole, reintegration custody or probationary supervision (Hungary). In Croatia, in addition to the COVID-19 pandemic, the earthquakes that hit Zagreb and Banija in 2020 significantly slowed down the courts. In Portugal, the exception was the sentence implementation courts that saw a significant increase in their workload in April and May 2020 due to emergency pardons under Law No. 9/2020. During this period, the staffing of these courts was temporarily increased in order to ensure that they were capable of fully and swiftly complying with the provisions of the emergency law.

There were also changes to the working methods of judicial courts as they had to adapt to the new regulations on sanctions (i.e. extraordinary measures), social distancing and remote working measures. Firstly, remote working has been prioritised, although it has not always been possible or recommended (in Portugal, for example, any hearings before the supervisory judge concerning non-compliance of persons under home detention occurred, as a rule, with the client physically present in court). In most countries, the staff of judicial bodies worked from home whenever possible, hearings and contact between the parties and all participants in the proceedings were carried out by electronic means of communication, including hearings and other procedural acts concerning persons deprived of their liberty.

➔ In Portugal, from the perspective of the probation service, the use of videoconferencing allowed the courts to hear technical assessments from probation officers and resulted in time savings and, thus, greater efficiency for the service.

Proceedings were also adapted in different ways.

➔ In Latvia, courts changed oral hearings to written proceedings.

➔ In the Netherlands, the prosecution service settled more criminal cases on its own accord, and the courts held sessions more often with a single judge and recalled retired judges to the bench.

➔ In Hungary, a practice of courts proposing penalties acceptable to both the defendant and the prosecution was reportedly followed, thus minimizing the number of trial hearings.

Statistical data on non-custodial sentences and workloads

Despite the promotion of non-custodial sanctions and measures in most Member States in 2020 in order to alleviate the problem of overcrowding in prisons, there was a general decrease in non-custodial sentences handed down and probation workloads compared to 2019. The number of new cases supervised by probation services decreased by 19.6 per cent in Portugal, 12 per cent in Romania and 7 per cent in the Czech Republic, while the number of cases supervised by probation decreased by 6 per cent in the Netherlands and the number of pending cases supervised by probation officers was 13.5 per cent lower in Hungary.

The number of requests for pre-sentence reports or documents of technical advice prepared by the probation service for decisions of law enforcement agencies decreased by almost 50 per cent in Latvia, 19.9 per cent in the Czech Republic, 14.8 per cent in Portugal and 7 per cent in the Netherlands. Parole increased in the Czech Republic, where judges decided on conditional release more frequently in 2020 than in previous years, and in Portugal, due to the emergency legislation, but parole decreased in Latvia, which registered fewer requests for parole, and Hungary, due to the suspension of court activities.

New legislation adapting implementation of non-custodial sanctions

In some Member States, special legislation was passed directing changes to the modes of operation for probation services and the implementation of non-custodial sentences during the pandemic.

➔ In Denmark, there was emergency legislation governing the work of the Prison and Probation Service, allowing for the postponement of the implementation of non-custodial sentences until September 2021.

➔ In Finland, a law on temporary measures for the enforcement of sanctions and pre-trial detention due to COVID-19 and a decree establishing temporary restrictions on the implementation of community sentences came into force in June 2021, restricting the enforcement of new community sanctions.

➔ In Latvia, an amendment was made to the regulation governing the supervision procedures of the State Probation Service, allowing for State Probation Service officials to substitute face-to-face meetings with remote means of communication, provided that some conditions are met.

➔ In Romania, an emergency law included provisions governing situations where the conditions attached to community sentences could not be fulfilled due to the pandemic, allowing for a modification of those conditions.

➔ In Hungary, adaptations to the implementation of sanctions were adopted through special decrees issued by the Government under an Authorization Act passed by the Parliament.

However, even if most Member States have not adopted legal measures to adapt the work of probation services, the pandemic impacted probation in all countries particularly in working methods, contact with clients and the implementation of community sentences.

Adaptation of working methods for probation services

In all countries included in the comparative study, probation services adapted their working methods. Adaptations included reducing face-to-face meetings, resorting to remote means of communication and restricting or suspending group rehabilitation programmes for persons serving sentences in the community. Many probation services organised shifts, with some staff working remotely or in the office on a rotating schedule to maintain social distance and reduce personal contact. When carrying out in-person duties probation staff had to integrate compliance with guidelines from public health authorities into their working practices, namely regarding social distancing rules and the use of personal protective equipment (PPE).

Remote means of communication with clients and colleagues included phone, videoconferencing and e-mail. In general, probation staff were able to adapt to the new methods, even if it required a more significant effort from those less familiar with technology. The possibilities offered by online tools were seen as particularly positive when it comes to communication and knowledge sharing across regions, which is felt as an important aspect of harmonising service provision and standards.

In countries where probation officers were not equipped with computers and other devices, staff had to use their own personal equipment (e.g. in France), with States later making efforts to equip staff with the necessary tools.

➔ In Latvia, the State Probation Service developed a manual for the use of digital communication tools when contacting clients.

➔ In Ireland, remote access to the Probation Service IT system was not available to all staff at the early stages of the pandemic, which created frustration among staff that could not maintain case records and adjust case management plans.

The degree to which face-to-face contacts were restricted varied according to the pandemic risk at each point in time. The initial phase of the pandemic tended to be characterized by greater restrictions, with services then adapting their working methods to best keep pursuing their work.

In some countries, the suspension of face-to-face meetings was contingent on a risk assessment, with in-person meetings being kept only for higher-risk individuals.

➔ In the Netherlands, where the shift to online meetings took place on a large scale, in-person meetings were not suspended for high-risk individuals.

➔ In the Czech Republic, Probation and Mediation Service officers had to individually assess the need for face-to-face contact with the client. When that was the case, meetings were scheduled in advance and complied with social distancing and sanitation rules.

➔ In Latvia, in-person meetings for the preparation of pre-sentence reports were similarly subject to a risk assessment and were limited to the person to be sentenced and the victim (where normally also members of the family and social network would be interviewed), and the evaluation of housing conditions was suspended. As to meetings with individuals on probation, there were changes in format and frequency, based on risk-level, with higher-risk individuals keeping in-person meetings.

➔ In Sweden, high-risk clients have had in-person meetings combined with videoconferences, while low-risk clients and individuals in risk groups for infection have served most of their non-custodial sentence without any physical meetings.

While home visits were restricted, they were still carried out with the adoption of safety procedures. These included wearing PPE and not entering the client's house. One notable example in the Netherlands was the practice of occasionally alternating online meetings with walks outdoors with the client. However, in some countries, home visits were completely suspended, at least during periods with more strict restrictions or when COVID-19 case numbers were high (Belgium, Malta).

> "Faced with restrictions on office work and the need to follow safety measures, some probation staff in the Netherlands took walks with clients in lieu of online meetings."

While technology was in general considered very helpful for the management of probation during the pandemic, some shortcomings were also noted. Firstly, technology is not a complete substitute for in-person work, nor is this seen as a goal to be aimed towards. This is especially the case regarding rehabilitation programmes, which could not be satisfactorily adapted to an online format. Secondly, some individuals on probation were not as easily reachable, especially those in socially or economically vulnerable situations (e.g. those in more precarious housing, with a lack of internet access or devices or lacking necessary IT skills).

➔ In Sweden, persons less familiar with digital technologies have been able to continue visiting the probation office or to combine videoconferences with face-to-face meetings to minimize the negative impacts of the implementation of risk-reducing measures.

Thirdly, the lack of personal contact increased the risk of individuals on probation losing their motivation to adhere to the terms of their non-custodial sentence. Such challenges were noted, for example, in Belgium and Portugal.

Use and implementation of non-custodial sanctions

Community service

Some national experts reported that out of all non-custodial sentences, community service was the most impacted by the pandemic (Belgium, Ireland, Malta, Netherlands). In the Netherlands, for example, the enforcement of community service decreased by 47 per cent, and 58 per cent of work-projects were closed. In Belgium, only 3 per cent of the community service orders in Flanders were carried out during the pandemic. In Ireland, the number of persons under a Community Service Order dropped from 2,376 in March 2020 to 1,747 in July 2020 as a result of a suspension of community service.

The pandemic had repercussions for the imposition and implementation of community service, primarily due to the fact that some institutions that provided workplaces were not able or willing to accept community service workers. However, in most countries, situations where it was not possible to continue performing community work coexisted with situations where it was possible to continue the work.

Where it was possible to continue the provision of community service, protective measures were adopted, similar to measures brought into workplaces in general (e.g. wearing face masks and other PPE, hand sanitizing, social distancing, capacity reduction, reduction of contact between co-workers, regular disinfection of facilities). In some countries (e.g. Latvia), community work related to the prevention or mitigation of the pandemic (e.g. cleaning and sanitation) continued, while in others it was limited to outdoor activities, such as cleaning of public spaces, work in parks and gardens or waste collection (Greece, Ireland).

Common reasons for the suspension of community service were: (i) closures of institutions where the work was provided; (ii) the impossibility of providing work that complied with social distancing and hygiene guidelines; (iii) the need to prevent contagion by the virus, as in the case of work provided in nursing homes; (iv) situations where the person sanctioned became sick, had to quarantine or was particularly vulnerable to COVID-19 due to health conditions; (v) difficulties with finding placements for new community work sentences; (vi) the imposition of vaccination or the presentation of a negative COVID-19 test as a precondition for accepting individuals to perform community service or to allow them to enter public buildings.

Several different solutions were adopted to deal with situations where community service could not continue. Solutions included the following:

- Interrupting the execution of work until it was possible to resume (Bulgaria, Czech Republic, France, Hungary, Latvia, Portugal, Romania) or on the condition that it was not possible to find another workplace (Poland)
- Postponing the implementation of new community work sentences (Finland, Hungary, Latvia)
- Changing the workplace to another institution (Czech Republic, Estonia, Hungary, Poland)
- Adapting the work, for example by replacing original tasks with tasks that could be performed remotely or outdoors (Finland, Estonia, Romania);
- Reducing the number of hours to be served (Greece) or replacing the obligation to perform work with other obligations (Finland, Portugal)
- Extending the time limit for serving the sentence, either on a case-by-case decision (Belgium/Flanders, Denmark, France, Greece, Malta) or by law (Hungary, Netherlands)
- Terminating the sentence earlier, considering the sentence served, when the part already served was deemed satisfactory by the court (France, Greece, Portugal);
- Deploying additional staff to ensure the implementation of community service (Belgium/Flanders).

➔ In Romania, guidelines for probation services included trying to replace community work in hospitals, nursing homes or other institutions where COVID-19 infections have been confirmed with other duties aimed at supporting people in need of assistance, such as going shopping for older persons, distributing hygienic and sanitary materials in the community, sanitizing public spaces, etc.

➔ In Ireland, due to the challenges posed by face-to-face group-based community service, the probation service developed and piloted online opportunities for clients to engage in meaningful online work as part of a Community Service Order, in partnership with associations and NGOs.

➔ In the Czech Republic, depending on the time limit for serving each community service sentence, a combination of three solutions was adopted. When the time limit for serving the sentence was sufficient and it was foreseeable that the work with the same provider could continue when pandemic restrictions were eased, community work was interrupted until restrictive measures were eased and it was possible to resume work; a second solution was to change the provider of the workplace, which was subject to court approval; a third possibility, for cases where it was not possible to change provider and it was not foreseeable that the hours of community work could be performed within the statutory time limit for serving the sentence, was to file a motion to suspend the serving of the sentence.

➔ In Finland, while implementation of new community sentences was postponed, for sentences that were already being enforced the content of the work was adapted, for example through written assignments, online assignments provided by substance abuse and mental health services or programmes and meetings with the client's supervisor.

➔ In the Netherlands, to overcome the rise in the number of people who failed to complete their community service, probation services created 'absence-coaches' who successfully motivated absentees to resume work projects.

The lack of workplaces also promoted new partnerships aimed at providing new workplaces. This was reported in Belgium/Flanders, Hungary and the Netherlands, where the probation service directed its focus on securing large national partners (see page 30 below for more details).

In some countries, emergency laws or measures governed the adaptations to community work (Finland, Hungary, Netherlands, Poland), whereas existing laws were sufficient to deal with the challenges in others.

➔ In Finland, a Decree by the Ministry of Justice restricted the enforcement of new community service sentences.

➔ In the Netherlands, on the basis of Article 29 of the COVID Emergency Act, the 18-month implementation period for the completion of community service was extended by one year and was subsequently extended every two months.

➔ In Poland, the legislature introduced a statutory suspension of the time limit for the enforcement of community work sentences.

In contrast, in Portugal, the Penal Code already contained provisions that allowed the country to deal with the issue that community service work could not continue as usual, which proved appropriate and sufficient to solve the cases arising during the pandemic. In fact, Article 59 of the Penal Code provided that: community service may be provisionally suspended on serious medical, family, professional, social or other grounds (though the total length of the sentence may not exceed 30 months); if the performance of community service is considered satisfactory, the court may terminate it once two-thirds of the sentence has been served (except for sentences of less than seventy-two hours); and, if the community work was not completed for a reason that is not attributable to the sentenced individual, instead of having to serve the original term of imprisonment, the court shall either replace it with a fine or suspend it for a period between one and three years, subject to the fulfilment of appropriate obligations.

In other cases, like in Greece, where there were no specific laws providing for adaptations to community sentences, it was the criminal justice professionals themselves who found solutions, on a case-by-case basis, ranging from extensions of the time limit for executing the sentence or reduction of working hours to early termination of the sentence or remote supervision.

Home detention and electronic monitoring

Regular supervision visits to people serving home detention continued but were sometimes adapted, for example by not entering the client's home (e.g. Czech Republic) or by visiting less often (Latvia, except for higher-risk individuals). Protective measures were also generally adopted when installing the surveillance devices and conducting checks.

- ➔ In Denmark, home visits were replaced by phone calls, and it was reported that clients felt that they were able to speak with their probation officers longer because they had more time.
- ➔ In Bulgaria, adaptations to the work of probation officers led to wider use of electronic monitoring with persons who needed more intensive supervision. In Belgium, a significant increase in the use of electronic monitoring was also reported.
- ➔ In Hungary, reintegration custody (early release from prison to home detention with electronic monitoring) was also impacted. The assessment of technical conditions for the surveillance devices to be installed had to be carried out remotely based on available documents and through videoconferences. If reintegration custody was ordered, but the electronic monitoring device could not be installed, the sentenced individual could not be placed in reintegration custody.

Other non-custodial sentences

Similar measures as were described above in relation to community work also applied to other non-custodial sentences involving some kind of probation or supervision in the community, including the postponement of the implementation of new probation orders (Finland).

- ➔ In Poland, despite the absence of a formal suspension of the execution of sentences, court-ordered restrictions on the work of probation officers led to a lack of supervision of the conditional suspension of imprisonment during the early stages of the COVID-19 pandemic.
- ➔ In France, community supervision (suivi socio-judiciaire) was suspended during the first wave of the pandemic and the time to complete the sentence was extended.
- ➔ In Romania, if the fulfilment of conditions attached to a community sentence was not possible due to the pandemic, probation officers could modify the content of the conditions; where this was not possible, officers would notify the court.

When the implementation of community sentences was postponed or suspended, this sometimes resulted in waiting lists (Belgium, Denmark, Netherlands) that not only impacted probation caseloads but also widened the time gap between the offence and the execution of the sentence.

In regard to monetary fines, in Poland, special measures during the pandemic allowed for the suspension of the execution of sentences, the payment of fines in instalments and the remission of the fine. The latter could take place in a situation when a convicted person, for reasons beyond his or her control (e.g. due to losing his or her job as a result of the COVID-19 pandemic), did not pay the fine, and its enforcement by other means proved to be impossible or inexpedient. In the Netherlands, a special 2020 governmental decree concerning the 'ability-to-pay' principle has made it easier to arrange a settlement to pay a fine in instalments.

As already explained in chapter one, emergency measures in Germany included a suspension of enforcement of fine-default detention in March 2020

(renewed during times when COVID-19 cases peaked). The prison population serving prison sentences for fine defaults dropped significantly as a consequence (by 72 per cent between February and June 2020). The proportion of fine defaulters as a proportion of the overall adult prison population fell from 10.6 per cent to 5.8 per cent at the end of March 2020 and further to 3.5 per cent in June 2020 (with significant variations among federal states). Some federal states also granted amnesties for fines.

Rehabilitation programmes

The restrictions on in-person contacts had a strong impact on rehabilitation programmes that form part of community sanctions (e.g. as a condition for a suspended sentence or other community sentences). In most countries, both individual and group programmes were suspended, at least in the first months of the pandemic (Bulgaria, Latvia, Poland, Portugal, Romania). Probation Services then made efforts to resume programmes by reducing group sizes, running them individually or resorting to remote means.

Whereas in some countries, like Portugal or Latvia (in the latter especially regarding mediation), probation services remained hesitant to transfer rehabilitation programmes to remote modes, online rehabilitation programmes were tried in other countries.

- ➔ In Malta, therapy sessions were held online and methods such as internet-based eye movement desensitization and reprocessing (iEMDR) were used.
- ➔ In Estonia, in cases where individuals on probation were mandated by the court to undergo a social programme (i.e. a structured rehabilitation or reintegration programme), it was assessed whether it was possible to carry it out on an individual basis. If so, the programme was carried out by telephone, with materials being distributed by e-mail; group programmes requiring face-to-face meetings were postponed.
- ➔ In Romania, guidelines included providing programmes through remote means; when this was not feasible, programmes resumed in-person, but group programmes were adapted to individual versions.
- ➔ In Sweden, individual programmes were mostly conducted by video and there were also some initial attempts to conduct group-treatment programmes remotely –- but most group programmes ended up being conducted as individual sessions instead, while others were suspended.

The monitoring of drug and alcohol use was suspended or restricted in some cases to avoid health risks. However, in countries such as the Czech Republic, for those in home detention with electronic monitoring, remote testing was already available before the pandemic, so it was possible to keep processes in place. In Finland, substance-use controls continued to be carried out, with the adoption of safety measures such as the use of PPE.

4. The impact on the work and well-being of probation officers

Lockdowns, remote working, social distancing and other restrictions also had an impact on probation staff – on their work, their well-being, their work-life balance and in terms of risk to their health. The many, often sudden, shifts in the methods and tools probation officers had at their disposal in order to conduct their duties and maintain contact with individuals under their supervision increased uncertainty and work-related challenges. Meanwhile, staff had to consider their personal health, safety and the concerns they may have regarding responsibilities toward family members at home.

Health and well-being of probation staff

In many Member States, probation workers were given the status of front-line or essential public service workers (Bulgaria, Netherlands, Portugal, Romania). In countries where they were not (Malta), measures were still taken to protect their well-being, such as ensuring availability of PPE, regular testing and some kind of priority in vaccination. In Greece, it was reported that probation staff were not treated as front-line professionals and had to pay for COVID-19 rapid tests themselves.

> “Probation staff was not consistently included as a priority group for COVID-19 vaccinations.”

While in some countries probation staff were included as a priority group for vaccination (Bulgaria, France, Malta, Romania), in other countries this did not happen (Czech Republic, where they were provided vaccines according to their age group alongside the general public). In others, such as Portugal, due to the scarcity of vaccines at the beginning of the vaccination process, only those probation officers working in prisons and, later, those working with people on electronic monitoring were prioritized, the other probation staff being vaccinated by age group as the rest of the population.

Whereas probation staff in countries such as the Netherlands and Portugal were, like healthcare personnel, entitled to child care during school closures, this benefit was not extended to probation staff across all countries (e.g. France).

Challenges related to necessary adjustments to the provision of non-custodial sanctions and measures on the one hand and limited provisions and clarity on the other hand were reported by probation staff in several countries.

- In Greece, probation officers reported that the lack of legislative arrangements for people serving community sanctions and the absence of instructions and guidance as to how issues that emerged during the pandemic should be dealt with have prompted among staff a perceived sense of neglect and indifference by the State. In their words, they felt that ‘the groups they are working with [individuals on probation and other supervised persons] do not exist for the State’.
- In Sweden, many probation officers have described the day-to-day work as less rewarding when not meeting clients in person, and some of them have reported more antisocial behaviour from their clients during videoconferences compared with face-to-face meetings.
- 26 of the 36 probation officers who replied to a survey conducted for the Belgian report indicated that all the changes resulting from the pandemic had a significant impact on their mental well-being, and the judges, lawyers and public prosecutors who responded experienced a similar impact.

Nevertheless, probation staff were generally provided with some type of support, either of a psychological nature or through individualised efforts by management (e.g. through meetings and conversations to discuss needs and solutions), to help them deal with pandemic-related problems and stress related to fear of contracting the virus and to worrying about vulnerable family members (Ireland, Malta, Portugal).

Changes to daily work

In all the studied countries, there was a partial replacement of face-to-face contact with clients by remote means, as described in Chapter 3. In general, probation staff were able to adapt to remote working, even though it required significant effort to learn and adjust practices to these new working methods in a short time.

The pandemic also affected caseload numbers, as described above. In countries that adopted extraordinary release measures, which required some kind of supervision or support from the probation service (e.g. with the early releases in France, the extraordinary temporary leave in Portugal), the increase in workload was felt at an early stage. However, this was mitigated to an extent by a diminished workload in other areas, such as in-person meetings or a decrease in requests for pre-sentence reports and in new sentences to supervise. In contrast, there were jurisdictions where some kind of suspension in the imposition or implementation of new sentences caused a diminished workload in the first instance but caused heavier caseloads as the implementation of new sentences resumed, and probation services have had to deal with significant backlogs and waiting lists (Belgium, Denmark, Netherlands). The absence of officers due to sickness or quarantine also resulted in heavier caseloads for their colleagues (Bulgaria, Portugal).

Training of probation staff was also affected, with training sessions being cancelled in the first stage of the pandemic and later carried out online (e.g. Czech Republic, Portugal).

5. Specific impacts on persons in vulnerable situations

Throughout the COVID-19 pandemic, many governments undertook measures to protect people in vulnerable situations (i.e. older persons, children, young persons, persons with disabilities, LGBTQ people, targets of domestic violence and human trafficking, foreign nationals and refugees, members of the Roma community and homeless people). However, these were measures of a general nature, not specifically designed for cases of convicted persons or those serving sentences in the community.

A specific, differentiated impact of the pandemic on persons subject to non-custodial sanctions or measures and belonging to any of the categories listed above could not be assessed by most country experts. This is, at least in part, due to a lack of disaggregated data on those specific groups or because probation services do not categorise their clients in this way, rather focusing on the individual needs of each client. This was the case, for example in Bulgaria, Czech Republic, France, Poland and Portugal.

However, some information is available and noteworthy regarding specific factors that can increase risk of vulnerability or marginalisation in society such as age, health condition, homelessness, low socio-economic status or poverty and status as a foreign national. These are discussed below, as they shed important light on the unique and disproportionate impact the COVID-19 pandemic has had on some and help deepen our understanding of possible gaps and needs in the availability and implementation of non-custodial sanctions and measures, particularly in times of crises.

Persons deprived of their liberty

Persons deprived of their liberty are, by that mere fact, in a particularly vulnerable situation.[15] They are dependent on the State for almost every aspect of their daily lives and are accommodated in communal living areas that do not necessarily allow for social distancing.

The exceptional measures designed to prevent the spread of the virus inside prisons that were adopted in most countries (such as extraordinary releases and leaves and social distancing rules and other restrictive measures inside prisons), described in Chapter one, were intended precisely to protect this vulnerable population.

As mentioned in chapter one, judges responsible for the execution of sentences played an important role in the control of COVID-19 within the Italian prison system by making wider use of existing release mechanisms and alternatives to detention. The judicial policy of applying these measures from an emergency perspective facilitated the release of individuals deemed at a greater risk to their health should they remain detained and, combined with introduced legislative measures, contributed to the reduced incarceration rates in the country over the last year and a half.

For those who did not benefit from release measures, the pandemic had a strong impact, not only concerning their health and the fear of contracting the virus but also due to the severe restrictions to contacts with the outside world and activities within prisons. Also here socioeconomic vulnerabilities were increasedly felt. For example, where video call systems were provided by prisons to allow for communication with family members and loved ones, those whose families lacked internet access, mobile devices or tech skills were even more isolated.

Unemployment and other socio-economic vulnerabilities

It is known that, in general, a significant proportion of persons in contact with the criminal justice system come from disadvantaged backgrounds. Since the start of the COVID-19 pandemic in early 2020, vulnerabilities stemming from a lower socio-economic status have been heightened in many ways.

Looking back at the early stages of the pandemic, there was an increase in the obstacles faced by unemployed persons due to the overall situation in society, specifically the lack of job opportunities and the precariousness of work. As was the case within the general population, the increase in unemployment and the suspension of many economic activities negatively affected the employability of people serving non-custodial sentences.

➔ In Greece, some disadvantaged groups, such as Roma, faced particular obstacles in serving community sanctions, as they were mostly unvaccinated and could not afford the cost of rapid tests required to attend community work placements.

15. The special situation of vulnerability in which detainees find themselves is highlighted by the European Court of Human Rights, which demands a "strict scrutiny under the Convention" (Iwańczuk v Poland, judgement of 15 November 2001, § 53, https://hudoc.echr.coe.int) and may require an increased protection of the rights of persons deprived of their liberty (Torreggiani and others v Italy, judgement of 8 January 2013, § 65, https://hudoc.echr.coe.int).

> Persons with limited computer skills or access to needed technology faced greater challenges with adapting to digital supervision.

Socio-economic vulnerabilities were also reflected in the greater difficulty of persons with limited computer skills or lacking equipment to adapt to the new reality of digital supervision by the probation service (Belgium, Ireland, Malta, Portugal), whether this was due to a lack of suitable computer equipment or difficulties in using electronic platforms. Persons in such situations were more difficult to reach by probation officers through remote means of communication. Similarly, limited computer literacy or lacking access to needed equipment restricted probation clients' opportunities for remote education or rehabilitation and employment.

- ➔ In Malta, where meetings with people serving community sanctions moved to online platforms, those who did not have internet access at home had to go to a public space equipped with free wi-fi, which increased risks of contagion and limited privacy of the meetings.
- ➔ The Irish report suggests that digital poverty and less privacy when having phonecalls may have disproportionately impacted certain minority ethnic and foreign national groups, as a higher proportion of foreign nationals live in rented accommodation, with a higher likelihood of sharing space with non-family members – this had an impact on meaningful engagement.

> Many of the measures adopted by Member States in response to the pandemic were specifically intended to protect those at a heightened risk in the face of COVID-19 due to older age or pre-existing health conditions.

Older persons and persons with health conditions

Older persons and persons with health conditions were among the few categories of persons recognised as being in a situation of particular vulnerability among those serving criminal sentences and, thus, specifically targeted by measures seeking to protect them. In fact, many of the measures described in the previous sections were aimed at protecting not only public health in general but also specifically persons with health conditions or of older age – characteristics which put them at increased risk of experiencing serious symptoms of COVID-19.

Regarding older persons and persons with health conditions who were subject to criminal sanctions, some countries adopted specific provisions to enhance the use of non-custodial measures in addition to the adoption of general provisions aimed at preventing or mitigating outbreaks of COVID-19 in prisons.

- ➔ In Portugal, the emergency law that provided for the release of people from prison contained a specific measure (exceptional individual pardon) that applied only to individuals aged over 65 who either suffered health problems, physical or mental or for whom housing among the general prison population during the pandemic was seen as unsuitable.
- ➔ In Belgium, physically vulnerable individuals who were at a greater risk of contracting COVID-19 or developing serious symptoms were exempted from the general conditions to benefit from a temporary interruption of the prison sentence – known as 'Corona-leave'.
- ➔ In France, although the extraordinary release measures did not contain provisions specifically targeting people in vulnerable situations, certain categories of people such as pregnant women and persons with health conditions were likely to be treated as a priority.
- ➔ In Italy, judges responsible for the execution of sentences exploited existing release mechanisms and alternatives to detention to facilitate the release of individuals at greater health risk.

Particular difficulties were also reported in the reintegration of older persons released from prison who lacked the ability to live independently, because vacancies in housing units for older persons are scarce (Portugal).

As for older persons and persons with health conditions serving non-custodial sentences, probation services in most Member States avoided in-person contact and replaced it with remote contact whenever possible. While this was intended to offer greater protection for individuals vulnerable to COVID-19, it was noted that older persons, as well as those with limited or no literacy, could not always be covered by probation activities that took place on electronic platforms. Because older persons are recognised as a COVID-19 risk group, they felt the fear of infection more intensely.

Persons with mental health conditions posed a particular challenge to probation services during lockdowns (Malta, Portugal), as the required support services were significantly impacted or suspended and the imposed restrictions and increased isolation could intensify mental health needs.

Young adults

It is more and more broadly recognised that young adults have particular developmental needs and require a unique approach in sentencing and implementation of criminal sanctions and measures. The current research highlighted few particular impacts of the COVID-19 pandemic on young adults serving sentences across the included countries. In Portugal, restrictions on visiting, outside contact and prison activities were felt particularly harshly by young persons in prison . As for young persons serving non-custodial sentences, the Romanian report pointed out that the reduction of in-person interaction with probation officers led to a significant reduction in the effectiveness of interventions.

Persons in a situation of homelessness

Discrimination against persons who do not have accommodation of their own or provided by family members was particularly felt during the pandemic, due to the fact that these individuals were excluded from release measures that required home confinement. This was the case in Belgium, where the conditions to benefit from a temporary interruption of the prison sentence – 'Corona-leave' – included having a place of residence; the same requirement applied for the measure of early release, which could be decided by the prison governor. It was also the case in Portugal, where those without a place to live were excluded from the extraordinary prison leave.

Release measures that did not require the individual to have a place to live were also problematic, as the sudden release of persons without adequate preparation resulted in some of the released individuals sleeping in the streets. In Portugal, this problem was evident in the case of the extraordinary pardon of prison sentences. However, solutions were found through collaborative efforts between public and civil society organisations, providing accommodation for persons in that situation. In Latvia, those released from prison that do not have a place to live have the option to stay at social rehabilitation centres; however, access to such centres was also restricted during the pandemic.

Foreign nationals

Foreign nationals tend to be over-represented in prison systems; however, there is often no specific provision, in law or in practice, for their needs, such as maintaining contact with their families, language and cultural needs, and the need for information on how the prison and wider criminal justice system in the country where they are serving a criminal sentence functions. Their status is often a barrier to being granted non-custodial sanctions and measures.

Some country experts noted that restrictions on the freedom of movement due to lockdowns in response to COVID-19 were felt more strongly by foreign nationals (e.g. Romania). While this may be true for foreign nationals in general, individuals serving non-custodial sentences are in a unique position: they may experience additional pressure due to the need to meet court-mandated obligations and stay informed on shifting restrictions and requirements while many typically available support services were limited or suspended.

In Greece, foreign nationals without regular migration status faced significant obstacles while serving non-custodial sentences, as they were unable to obtain certificates of negative tests, which led to their exclusion from programmes and activities that were part of their community-based sanction.

6. Impact of the pandemic on the future of probation services

The COVID-19 pandemic has shined a light on many longstanding failings and shortcomings in criminal justice systems and underlined the need to address these urgently and sustainably. As the pandemic has forced governments and stakeholders into action, there is momentum toward reforms in sentencing practices and the use and implementation of non-custodial measures. This chapter explores some of the key lessons that have been instilled from the experience of the COVID-19 pandemic to date in the imposition and implementation of non-custodial sanctions and measures.

The pandemic has demonstrated more than ever the importance of in-person contact for the effective delivery of criminal sanctions and measures to reduce reoffending and support rehabilitative goals. With regard to probation services, the study found that – across all the EU Member States covered – face-to-face interaction between probation staff and clients is vital to the successful provision of required assistance, the development of individual competencies and skills, the building of relations of trust and motivating people to engage in rehabilitation activities. As such, **personal contact cannot be replaced** by technology or remote means of communication and services.

There is particular concern about the limitations of analysing risk factors of criminal behaviour and identifying these from a distance. Furthermore, some activities cannot be carried out online effectively, such as programmes with a psycho-educational component or in groups, mediation and other restorative practices. Even when activities can be carried out remotely, some groups remain excluded from them, especially older persons, persons with certain mental health conditions or disabilities and individuals lacking electronic devices or the necessary skills to use new technologies. Finally, it was noted that face-to-face work is also important for the training and development of staff skills, team building and leadership.

Nevertheless, probation services have adapted their work to the constraints of the pandemic, and it is likely that some of the newly established practices will remain in the future, as they were well-accepted by both officers and clients.

The **use of technology** for communications has the potential to play an important supplementary role in the future of non-custodial sanctions and measures and will certainly be more commonplace than before the COVID-19 crisis. Although personal contact cannot be replaced, it can be complemented by virtual communication, as it was useful not only to mitigate the negative impacts of the pandemic (allowing probation services to maintain contact with clients, provide support and mitigate the temporary lack of control or oversight) but also to promote changes in working methods and monitoring in an innovative way.

The use of technology can increase opportunities for rehabilitation, such as offering distance learning opportunities when courses are not available in the client´s area of residence. The positive results of the use of online tools on a daily basis during the pandemic also opened up possibilities for considering their application in the future to develop new projects, activities and rehabilitation programmes.

- ➔ In the Czech Republic, it was decided by the Probation and Mediation Service to keep using online communication when working with clients in defined instances, especially where the person is sick or absent, to communicate with victims or other entities and in emergency cases.
- ➔ In Ireland, it was suggested that clients appeared to be more at ease during telephone supervision, compared to the traditional office environment, and some clients felt reassured to receive the supervision telephone calls, which allowed deeper levels of engagement.
- ➔ In Romania, through the effort of a coordination team and with the personal resources of probation officers, it was possible to creatively adapt some activities for online work (making use of image, text, voice, etc.), including the most widely used social reintegration programme in the country ('Resolution Module').
- ➔ The Swedish Probation Service reported that they have learned that it is possible to hold high quality meetings with clients, to create a good learning environment, to conduct treatment programmes and to work with relationship building and cognitive behavioural techniques remotely.

However, it is essential to ensure that technology remains complementary to human contact and does not serve as a pretext to reduce or replace it, as it is a fundamental component of the socialisation process. In Ireland, it was reported that the success of the shift to remote supervision via telephone and videoconferencing appeared to correlate with the quality of the pre-existing relationship between the probation officer and the client.

> “Whether shifting to remote supervision is successful may correlate with the quality of the pre-existing relationship between the probation officer and the client.”

Moreover, personal data protection is an important issue that has to be thoroughly considered in the use of any digital means.

The use of videoconferencing was also found to be useful for contacting persons in prison, whenever probation staff, family members and representatives of community-based organisations, including NGOs, were unable to enter the prison. The fact that probation officers could be heard by the courts via videoconferencing has also meant significant time savings, but procedural safeguards should be reviewed and adapted for hearings impacting individuals in prison or other participants such as victims and witnesses to ensure due process guarantees, with special attention to individuals in situations of specific vulnerability. Communication between law enforcement agencies prioritising the transmission of documents in electronic format was also reported as a good practice.

The potential of new technologies to play an important role in the criminal justice system imposes the pressing **need for adequate equipment and training of staff**.

Concerning remote work, probation staff indicated a need to increase their knowledge and skills in working with individuals online. In that sense, some Member States have become aware of the need for training staff to use new technologies.

- ➔ In Portugal, the most recent training for probation officers involved in delivering a programme for young persons already includes preparation for delivering it remotely.
- ➔ In Belgium, most of the initial training for newly hired officers and training for the administration of a new social reintegration programme could be provided online, and they will probably be able to continue in this manner.

In addition to new technologies, other means of communication were considered valuable to the provision of support to individuals on probation.

- ➔ In Denmark, for example, phone interviews were found to be a good solution, and individuals on probation felt they had more time to talk with the probation officer when compared to home visits.
- ➔ In Portugal, the support provided by NGOs to some individuals in prison by correspondence proved effective and may be continued after the pandemic.

Remote working was also found to be a practice that would probably become permanent, even though in the form of a mixed regime. The experience of remote working revealed that some tasks can be handled from home, sometimes more efficiently as there are fewer distractions, especially when people share office space or have an open plan office or in areas where transportation is problematic and distances are long and time consuming.

The possibility of meeting online with colleagues from other regions in order to exchange information and harmonise procedures was identified as another positive aspect of remote working.

- ➔ In Malta, the government is discussing the inclusion of remote working as a permanent option in the government civil service, especially for tasks such as report writing and contacting agencies. It is estimated that approximately 40 per cent of work could be carried out from home, and most staff seem to be in favour of this idea.
- ➔ In the Netherlands, a 'blended' form of probation (both online and face-to-face contact) will be further developed, for instance, by developing guidelines on 'Structuring counselling conversations on distance' and **training for probation officers** focused on online (discussion) techniques and technical skills.

Concerning the implementation of non-custodial sanctions and measures, the research made clear that the pandemic brought to light and exacerbated **underlying problems and deficiencies** that need addressing across prison and probation systems.

The insufficient number of probation staff in several countries was felt more intensely during the pandemic. In countries where there are usually waiting lists for implementing non-custodial sentences, the pandemic deepened this problem and made it painfully clear that it is necessary to find alternatives for the long waiting lists.

➔ In the Netherlands, the probation service became aware that the execution of community service orders is overly dependent on many small external parties. That is why the probation service is now focusing on collaboration with large national partners (e.g. cooperation with the Ministry of Defence, the Ministry of Infrastructure and Water Management, the Nature Conservation Agency and housing associations).

One of the main lessons of the pandemic may be found in the fact that emergency laws in many countries allowed a significant reduction of prison occupancy rates without causing spikes in crime rates or a rise in recidivism rates. The extraordinary measures to release individuals had positive impacts and revealed that many persons could be serving their sentence in the community instead of in prison. The possibility of reducing prison populations through the use of electronic monitoring systems, introduced or widened in some Member States in connection with the COVID-19 pandemic, is highlighted as a practice that should also be promoted. However, in considering expanded use of electronic monitoring and other non-custodial measures it is crucial to ensure this does not lead to net-widening through the use of more restrictive or obtrusive measures than necessary.

➔ In France, several associations, lawyers, judges' federations and prison staff unions have expressed the wish to see the development of non-custodial sanctions and measures – as implemented during the lockdown – in order to avoid short prison sentences and increased overcrowding.

Finally, more detailed **data collection by prison and probation services on the use and implementation of non-custodial sentences and parole**, including as regards persons in vulnerable situations or belonging to marginalized groups, is required. This would be instrumental for a more thorough knowledge-base and understanding of specific needs, gaps, opportunities for improvements and good practices and for measuring the impact of changes in law and practice.

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Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. We work to promote criminal justice systems that uphold human rights for all and do no harm. We run practical human rights programmes and support reforms that make criminal justice fair and effective. Our primary objectives are to secure trials that are impartial, sentencing practices that are proportionate and promote social rehabilitation, and humane conditions of detention where alternatives to imprisonment are not possible. We work through country missions, regional hubs, remote coordination, and through partners.

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About the University of Coimbra

The University of Coimbra (UC) is a Portuguese public higher education institution founded in 1290. Its Faculty of Law has a strong tradition of combining teaching and high-level research, through its Institute for Legal Research (Instituto Jurídico), a unit of R&D dedicated to developing interdisciplinary and transdisciplinary research. Faculty members played a crucial role in drafting the Portuguese Penal Code, Criminal Procedure Code and the first laws for the implementation of prison sentences, as well as many of their subsequent reforms. These were regarded as very progressive because of their focus on human dignity, imprisonment as a last resort, and rehabilitation.

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