



# Investigating Alternatives to Imprisonment

Within Council of Europe Member States

The Quaker Council for European Affairs

**Produced by the Quaker Council for European Affairs (QCEA)**

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The Quaker Council for European Affairs (QCEA) was founded in 1979 to promote the values of the Religious Society of Friends (Quakers) in the European context. Our purpose is to express a Quaker vision in matters of peace, human rights, and economic justice. QCEA is based in Brussels and is an international, not-for-profit organisation under Belgian Law.

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## List of Acronyms

These are the main acronyms used in this report:

ATP	Alternatives to imprisonment	EM	Electronic Monitoring
CM	Core Member	CoE	Council of Europe
CO	Community service order	FGM	Family group meeting
FGC	Family group conferencing	RJ	Restorative justice
QPSW	Quaker Peace and Social Witness	SO	Ex-sex offender
QUNO	Quaker United Nations Office	SS	Suspended sentence
QCEA	Quaker Council for European Affairs	UN	United Nations
COSA	Circles of Support and Accountability	VOM	Victim offender mediation
UNODC	United Nations Office on Drugs and Crime		

These are the acronyms used for member states in this report:

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MAL	Malta
AUS	Austria	MOL	Moldova
AZE	Azerbaijan	MCO	Monaco
BEL	Belgium	MON	Monte Negro
B&H	Bosnia & Herzegovina	NET	Netherlands
BUL	Bulgaria	NOR	Norway
CRO	Croatia	POL	Poland
CYP	Cyprus	POR	Portugal
CZE	Czech Republic	ROM	Romania
DEN	Denmark	RUS	Russian Federation
EST	Estonia	SAN	San Marino
FIN	Finland	SER	Serbia
FRA	France	SVK	Slovak Republic
GEO	Georgia	SLO	Slovenia
GER	Germany	SPA	Spain
GRE	Greece	SWE	Sweden
HUN	Hungary	SWI	Switzerland
ICE	Iceland	MAC	Former Yugoslav Republic of Macedonia
ITA	Italy		
IRE	Ireland	TUR	Turkey
LAT	Latvia	UKR	Ukraine
LEI	Lichtenstein	UK	England and Wales

## Executive Summary

### 1 Introductory paragraphs

The Religious Society of Friends (Quakers) has a long history of campaigning for prison and criminal justice reform. Working in the context of this 350 year old Quaker tradition, the Quaker Council for European Affairs is actively involved in promoting respect for human rights. In partnership with the Quaker United Nations Office (QUNO) - Geneva and Quaker Peace and Social Witness (QPSW) in the UK, QCEA has been studying the conditions of women in prison for more than 6 years. Following extensive research into the conditions of women in prison in the member states of the Council of Europe member, QCEA found that in many cases prison sentences do little to reduce the risks of re-offending. At the same time, the social cost to both prisoners and their families is disproportionately high.

#### 1.1 Why we did this study

Most people leaving prison re-enter society with a drug addiction, few qualifications, and no money and return to the lives within which their crime(s) took place in the first instance. Others will have lost local connections to their family, their job, and their home. In situations such as these the likelihood of repeat offending is high. Acknowledging this, and the fact that the practice of sending individuals to prison frequently leaves the needs of the victims, the offenders themselves, and their respective communities unmet, QCEA has undertaken research into the uses of alternatives to imprisonment sentences in Council of Europe member states. This report is the result of this research.

#### 1.2 Our approach

In 2007, the QCEA designed and sent out questionnaires to the Ministries of Justice in the forty-seven member states of the Council of Europe and to the United Nations Interim Administration in Kosovo and the Government of Catalonia.<sup>1</sup> To improve the likelihood of a response, questionnaires were also sent to Ministry staff, prison governors, judges and other experts. Later in the same year, to encourage further responses from member states governments, a shortened version of the initial questionnaire was circulated to those countries that had not replied. In addition to the Department of Justice of Catalonia (a region of Spain), thirty Ministries responded, seventeen to the longer version of the questionnaire, ten to the shorter and three provided other information but did not respond directly to the questionnaire.<sup>2</sup> Additional information has been collected from a variety of non-governmental sources, including organisations and individuals working either in prisons or in organisations related to one or more of the alternatives to imprisonment we examine. We make

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<sup>1</sup> The Council of Europe member states (as of October 2007) were: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.

<sup>2</sup> QCEA received a response from the following Council of Europe member states: Austria, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Georgia, Germany, Hungary, Iceland, Italy, Latvia, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Switzerland, Turkey, Ukraine and the UK (England and Wales).

recommendations for improvements to the use and management of alternatives to imprisonment sentences.

### 1.3 The importance of alternatives to imprisonment

Historically prisons were not used as punishment per se, but to act as warehouses to confine criminals until corporal or capital punishment could be administered. The modern penal system has evolved considerably from this and now has a differentiated approach. From a criminological perspective prisons are primarily understood as an approach to offending which has the following purposes: deter, incapacitate (i.e. remove the offender from society), deliver retribution and rehabilitate<sup>3</sup>. Political and academic debate on whether these aims can be achieved has surrounded the penal system for years; however one thing that is certain is that the majority of offenders within a prison will be released back into society.

In cases where offending has taken place and alternatives to imprisonment are used, offenders are filtered away from the prison system which is an increasing financial burden. In providing alternatives to imprisonment member states have the potential to dramatically reduce the rate of offending in their country, which in turn reduces the prison population and the cost of detecting and punishing crime.

There needs to be greater consideration given to a combination of appropriate punishments and rehabilitative programmes so that the offender can be successfully reintegrated into society. It is important that offenders are not sent to prisons and forgotten about until the day of their release. In doing this the likelihood of reoffending is high and problems with offending behaviour are not being addressed. This is not beneficial to the offender or society. In considering alternatives to imprisonment, in as many cases as possible, some of the root causes of offending behaviour, such as poverty or a traumatic upbringing, are being addressed rather than swept under the carpet to fester and potentially fuel further offending.

## 2 Concerns about Prisons

### 2.1 Effectiveness

Overcrowding has overwhelmingly negative consequences for everyone involved in prison systems: prison staff, prison managers, and the prisoners themselves. When prisons operate beyond their capacity, the increase in noise and tension; along with the decrease in prison visits, food, and personal space are unacceptable. Furthermore, all of these consequences dramatically reduce the impact which prison can make to reduce re-offending and as a direct result of them prisoners are less likely to emerge as useful citizens, and therefore compromise the safety of member states' general populations.

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<sup>3</sup> Chris Hale, *et al.*, *Criminology* (Oxford: Oxford University Press, 2005), p. 547

## 2.2 Cost

Money spent on prison services varies between member states. Of the information received, the England and Wales prison service spends by far the most per year (2,778,097,651 euros),<sup>4</sup> with Monaco spending the least (2,065,500 euros).<sup>5</sup> The cost of imprisoning an individual is often surprisingly high. An increase in the number of prisoners requires an increase in the number of guards whose salaries need to be paid for. Data from all states show that the cost of an individual prisoner varies depending on the level of security, age and gender:

- The higher the security of the prison, the higher the cost
- Only four states gave details of the separate individual costs for men, women and young offenders. However, in all four states - Bulgaria, Estonia, Moldova, and Serbia - the cost of imprisoning a juvenile was higher than that of imprisoning either a man or a woman. In all four states, the cost of imprisoning a woman was higher than that of imprisoning a man.

Overall, the cost of imprisoning one person for one year varies from 1,125 euros in Moldova<sup>6</sup> to 70,000 euros in Norway.<sup>7</sup> In response to this question, **eleven out of nineteen states stated that they spend an average of more than 20,000 euros per prisoner per year with six of these spending in excess of 40,000 euros.**

## 2.3 Characteristics of the Prison Population

It is important to identify the demographics of prisoners, including who the prisoners are, what they are in prison for and how much time they spend there. There is general consensus that the 'average prisoner' has certain common demographic and other characteristics. Low education level and a history of truanting or exclusion from school is one such characteristic, resulting in approximately two thirds of the prison population not having basic literacy skills. Mental health as well as alcohol and drug problems or dependency are present in both male and female prisoners. For women prisoners Fowler estimates that 75 per cent of women entering European prisons are problematic drug and alcohol users (2002)<sup>8</sup>. In England and Wales it is estimated that 20 per cent of men and 40 per cent of women have attempted suicide prior to reception into prison<sup>9</sup> and in 2008 of 166 recorded deaths in prison 61 were self-inflicted and 20 of these were whilst being held on remand<sup>10</sup>.

The average length of prison sentence varies markedly between members states of the Council of Europe. Spain has the highest average sentence - ninety-one months (seven years and seven months). The average sentence in Ukraine, Malta, Czech Republic, Croatia, Romania, Sarajevo (Canton of Bosnia & Herzegovina), and Estonia also exceeds four years. Norway, Switzerland and Bosnia & Herzegovina (Mostar) have average sentences of less than one year.

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<sup>4</sup> McGraw, Eric, '17 years on: Prison policy still fails the nation' Inside Time, (October 2007), sec. Newsround, p. 10

<sup>5</sup> QCEA questionnaire, returned by the Directeur des Services Judiciaires in Monaco, q. 6

<sup>6</sup> QCEA questionnaire, returned by the Moldovan Ministry of Justice, q. 8

<sup>7</sup> QCEA questionnaire, returned by the Royal Ministry of Justice and the Police in Norway, q. 8

<sup>8</sup> Cited in 'Health Care Needs of Women in Prison: The Gap Between Policy and Implementation', MacDonald M, presentation at 'What Works with Women Offenders: The Gap Between Policy and Implementation: Lessons from Other Countries on Dealing with Drug Related Offenders', June 2005 [online], accessed on 7 July 2009, available at <http://www0.bcu.ac.uk/crq/presentations/prato2005.ppt>

<sup>9</sup> Hale et al., Criminology, p. 552

<sup>10</sup> Inquest, *Death in Prisons [online]*, accessed 22 May 2009, available at: [http://inquest.gn.apc.org/data\\_deaths\\_in\\_prison.html](http://inquest.gn.apc.org/data_deaths_in_prison.html)

Of the fifteen member states eight find that the majority of their prison population are imprisoned for dishonest crimes, four for violent crimes, two have a majority for drug-related crimes and one, Cyprus, for 'other crime'.

## 2.4 Prisoners on remand

In many European countries remand prisoners make up a large proportion of the overall prison population. The Russian Federation and Turkey, the two member states with the highest number of prisoners awaiting trial hold 146,784 remand prisoners (16.5 per cent of the overall prison population) and 59,340 remand prisoners; 53.3 per cent of the total prison population respectively. Given that the prison population in Turkey exceeds the official capacity this is a statistic of particular note and concern. Despite around half of states' remand populations being between fifteen and thirty per cent of the overall prison population there remains a high level of variance - even between countries with high prison populations. As noted above, 53.3 per cent of Turkey's 82,742 prisoners have not yet been convicted or sentenced<sup>11</sup> while 17.4 per cent of Germany's 75,719 prisoners are awaiting trial.<sup>12</sup>

**There are currently 360,458 prisoners who have not been found guilty of a crime in Council of Europe member states.** QCEA supports the Council of Europe Recommendation Rec(2006)13 where it states that 'remand in custody shall only be used when strictly necessary and as a measure of last resort'.<sup>13</sup>

## 2.5 Disadvantaged groups

### 2.5.1 Foreign National Prisoners

Foreign national prisoners are a disadvantaged group in many European countries. They often face various extra challenges which other prisoners do not. This situation is particularly acute for foreign national prisoners who are not normally resident in the state in which they are imprisoned. If a prisoner's first language differs from that of the state in which they are imprisoned, their communication with a lawyer and understanding of their legal situation may be impaired.<sup>14</sup> It is also possible that legal procedures will be slower where there is a need for translation/interpretation, particularly if the first language of the prisoner in question is not widely spoken.

Foreign national prisoners comprise more than half the overall prison population in eight states: San Marino, Montenegro, Andorra, Monaco, Luxembourg, Liechtenstein, Switzerland and Cyprus. In these states the need of provisions for foreign national prisoners is of particular concern although the overall *number* of prisoners in these countries is relatively low.

### 2.5.2 Juveniles and Young Offenders

Juvenile prisoners and imprisoned young offenders (identified by QCEA as prisoners younger than eighteen and twenty-one years of age respectively) are a minority in all states' prison systems and in many establishments across Europe.

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<sup>11</sup> International Centre for Prison Studies, *Prison Brief for Turkey* [on-line], accessed 31 August 2009, available at [http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=119](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=119)

<sup>12</sup> QCEA questionnaire, returned by the German Ministry of Justice, q. 3

<sup>13</sup> Council of Europe, *Rec(2006)13*, p. 2

<sup>14</sup> Quaker Council for European Affairs, *Women in Prison: A Review of the Conditions in Member States of the Council of Europe* (Brussels, February 2007), p. 23



QCEA received responses from nineteen member states to the question asking for the exact number of juveniles and young offenders currently held in custody. It can be noted that there does not appear to be any direct relationship between the number of juveniles in prison and the number of young offenders in prison in the responding member states.

Imprisoning young offenders is often problematic and there are repercussions. Once a youth is drawn into the penal system it is hard to stop that individual from being tarred. In England and Wales a disproportionate number of young offenders imprisoned are reconvicted within two years of their release.

### **3 Alternatives to Imprisonment**

The use of different alternatives to imprisonment varies across Europe, but some alternatives are used more widely than others.

#### **3.1 Probation**

Probation is widely used in Council of Europe member states. When an offender is 'on probation', he or she is still active in society but is supervised and supported by a probation officer. Offenders must attend regular supervision sessions with their probation officer. Other requirements may include completing a community sentence successfully, completing treatment for alcohol or drug abuse, staying in a prescribed hostel, or staying away from an area where their crime was committed. If the rules or requirements are broken, an individual will face disciplinary action and may be sent to (or returned to) prison.

Some probation systems have only been operating for a relatively short period of time, as is the case in some south eastern countries. Where the probation services is new, for example Bulgaria, it is particularly difficult for staff members to be trained and able to deal with difficulties including problems surrounding drug dependents, offenders with HIV and the particular problems of female or juvenile clients.

The public perception of recidivism<sup>15</sup> for offenders on probation is not necessarily accurate. Cases in which offenders have carried out crimes, including murder, while under supervision give the impression that there is a major problem within the probation service. Media representation of these high profile cases can often be damaging to the reputation of this service.

One criticism of the probation service in England and Wales is that they are too quick to return offenders to prison if they breach one of the conditions of their probation. Providing more support to enable offenders to avoid this and perhaps being more subjective when an offender breaches one of the terms may help prevent this.

Many probation services across Europe are not given adequate resources. All seven responding member states allocate less than twenty-five per cent to their probation services of that allocated to their prison services. Probation services need to be able to provide a flexible service and work towards being able to respond to each individual's needs and provide personal treatment. Because rehabilitative programmes are often the most effective, it is important to make these as widely available as possible.

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<sup>15</sup> Relapse into criminal behaviour

## 3.2 Fines and Compensation Orders

Fines are a monetary sanction imposed upon a convicted offender which can vary according to where the crime was committed, the gravity of the crime and the economic status of the convicted individual (when structured fines are used). Compensation orders (CO) are where money is paid by an offender to a victim directly.

Fines are most frequently imposed for minor offences, and were used by all nine of the Ministries who answered this section of the questionnaire. Generally, violent crimes (including sexual violence) are not tackled by imposing a fine as a principal sentence; although in most respondents' countries a fine can make up part of the sentence if the court considers this appropriate.

When a fine or Compensation Order is given, the gravity of the associated crime is taken into consideration. Automatic fines, such as those for motoring offences and parking tickets, are criticised as they do not take into consideration the economic status of the offender.

There is no official data or formal measurement of how effective fines are in any of the responding Ministries. Greater understanding of this will improve the use of fines as an alternative to prison.

## 3.3 Conditional (or Early) Release

A conditional release can be granted to imprisoned offenders who have not completed the full term of their prison sentence. The conditional release imposes regulations on the offender's activities and who he/she is in contact with. If an offender fails to meet these conditions, he/she may be returned to prison. The Council of Europe's 2003 recommendation<sup>16</sup> states as a general principle, that 'conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community'.<sup>17</sup>

Deciding whether or not to grant a conditional release to an individual must be done on a case-by-case basis and - if administered correctly - can be very effective. However, it is necessary for member states to monitor how effective the decisions are.

For conditional release to be as effective as possible there is a need for the community to be involved. It is important that vocational and educational training as well as employment should be made available to offenders (and ex-offenders) on conditional release.

Of the eight states that responded only half measured the rate of recidivism amongst offenders who had been granted a conditional release.

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<sup>16</sup> Communication from the Council of Europe: *Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole)*, a [on-line] 6 December 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=70103&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

<sup>17</sup> *ibid.*, paragraph 3

### 3.4 Electronic Monitoring

When an offender is monitored electronically, a tracking device (or 'tag') is fitted to their ankle and a monitoring unit is positioned in the person's house or other place of curfew.<sup>18</sup> Currently, the equipment is based on radio frequency technology where the tag acts as a transmitter. The tag sends signals to the monitoring unit which in turn send signals to a control centre.

The use of electronic monitoring or 'tagging', is becoming increasingly widespread and is now used to monitor over 10,000 offenders in Europe per day. As is the case with probation systems, high-profile mistakes are emphasised and have the ability to tar the public's perception of the system. Effective electronic monitoring relies on several factors, including: the appropriate selection of offenders, robust and appropriate technology, fitting electronic tags promptly, responding to breaches promptly and communication between contractors and the criminal justice system.

Of the responding member states on Luxembourg currently monitor the rate of recidivism and find it to be only 8 per cent. The 2006 report published by the National Audit Office in England and Wales states that 'electronically monitored curfews may be having a positive impact on reducing re-offending but further research is required to establish this'.<sup>19</sup>

### 3.5 Suspended Sentences

This is where an individual is not sent to prison but is required to meet certain other conditions. Suspended sentences can be considered an appealing alternative to prison for certain states - particularly those whose prison systems are overcrowded. When such a sentence is given, the threat of imprisonment is made clearly and heard by the public. It is intended to act as a deterrent. A suspended sentence is essentially a *punitive* measure; although in Sweden, where alternatives to imprisonment are largely considered to be preferable to imprisonment, a rehabilitative element to the sanction is also present. It is common to find that a suspended sentence cannot be used where a sentence of two or more years has been passed, or the crime is defined as a 'hard crime'. The Italian Ministry stated that a suspended sentence would not be imposed for crimes 'such as sexual abuse, terrorism, criminal organisation, illegal immigration, traffic of human beings'.<sup>20</sup>

The effectiveness of a suspended sentence can depend on a variety of factors. These could include age, nationality, gender, previous criminal history, occupation, and the crime committed. Only three Ministries were aware of the rate of re-offending amongst individuals who have a suspended sentence imposed on them. In Luxembourg the rate was zero per cent. In both Catalonia and Switzerland the rate was higher - both seventeen per cent.

### 3.6 Community Sanctions and Measures

Offenders can be required to perform community sanctions either entirely or partially *in lieu* of spending time in prison (or other judicial penalties). This will usually involve unpaid work and often goes together with a rehabilitation scheme (see later). The Council of Europe has produced a recommendation to guide the use of community measures which it defines as:

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<sup>18</sup> On occasion, electronic monitoring is also used to maintain contact with asylum seekers while their applications are being considered.

<sup>19</sup> *ibid.*, p. 3

<sup>20</sup> *QCEA questionnaire*, returned by the Italian Ministry of Justice, q. 49

*sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.*<sup>21</sup>

As is the case with conditional release, suspended sentences, and electronic monitoring, community sanctions are available for 'less serious offences'. Community sanctions can involve a range of different activities and these vary between member states. However, all member states' community sentences can include mandatory, unpaid work. None of the responding Ministries have community measures specifically intended for female offenders.

No member states gave examples of community sanctions tailored specifically for highly-educated offenders. However it is important to maintain the 'sanction' element of such a scheme. Community sanctions for highly-educated offenders should both make use of the skills that people have but ensure an element of 'sanction' is maintained; by doing so member states would provide useful alternatives to imprisonment but also retain the disciplinary element of the sanction.

Various factors make community service successful or otherwise. In the 2001 CEP workshop in Malta, national guidelines were seen to be of particular importance. The workshop report states that 'these should be clearly stated and enforced'.<sup>22</sup> This would ensure offenders would know clearly how they were expected to behave, while the judiciary and prosecution would be aware that community sanctions are serious and meaningful punishments.

### 3.7 Drug and Alcohol Rehabilitation

There are two widely-accepted ways to reduce the number of prisoners convicted for drug-related offences: decriminalisation (although not an alternative to imprisonment as such) and diversion of offenders to institutions other than prison services. Diversion of drug-related offenders to facilities outside prisons would be a major step for most European countries to take.

In many cases, individuals who are addicted to drugs (including alcohol) often turn to other forms of criminal activity to pay for their addiction. If drug treatment programmes are effective in curbing addictions and more widespread implementation, future crime rates could drop significantly. The majority of individuals imprisoned for drug-related offences are addicted to at least one substance themselves and are not major players in international drug-trading circles. Finding suitable alternatives to imprisonment for low-level drug offenders could dramatically reduce the number of prisoners in European prison systems; but more importantly, could better respond to the needs of these groups of people thereby increasing the likelihood of successful rehabilitation and reintegration.

Of the seventeen member states that responded, only ten can sentence an offender to a drug or alcohol treatment programme as an alternative to imprisonment. In most states, drug-treatment programmes run in prison. Drug and alcohol rehabilitation schemes are most effective when based in dedicated institutions. In addition to this, individual tailoring which adapts to the offender's

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<sup>21</sup> Communication from the Council of Europe: Recommendation R(92)16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures, Appendix - Glossary [on-line], accessed 13 December 2007, available at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/legal\\_instruments/Rec.R\(92\)16.asp#TopOfPage](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/legal_instruments/Rec.R(92)16.asp#TopOfPage)

<sup>22</sup> CEP, *Community Service in Europe* [on-line], accessed 7 July 2008, available at [http://www.cepprobation.org/default.asp?page\\_id=53](http://www.cepprobation.org/default.asp?page_id=53)

needs is essential. It is important that the offender can have no contact with drugs coming in from the outside to prevent relapse. It should also be remembered that despite regulations in all European countries, illegal substances including hard drugs are available in almost all prisons. This reality must be acknowledged when sentencing vulnerable offenders to a prison term.

### 3.8 Sex Offender Rehabilitation

Psychiatric treatment whilst in prison or being placed in a special detention facility are, for most member states, the only available ways to deal with sex offenders. Although not as it stands an alternative, England and Wales are currently running a programme for ex-sex offenders called Circles of Support and Accountability. At present COSA are only offered after imprisonment and as a voluntary scheme (i.e. they are not conditions of probation etc). The voluntary nature of COSA is crucial to the success of the programme and QCEA would not recommend altering this as the only result of this could be negative. However, the time at which COSA are offered, could be re-evaluated. COSA are not currently an alternative to imprisonment but more of a tool to enable those who are willing to avoid future recidivist behaviour.

A circle of support and accountability (COSA) consists of 4 - 6 volunteers who meet weekly with their 'core member' (as the ex-sex offender is referred to). The content of the meeting is dependent upon the needs of the core member. As well as providing support and help the volunteers are there to, if the core member expresses something of concern, hold him accountable and if necessary liaise with the necessary agency in the criminal justice system.

The Thames Valley pilot scheme of COSA over the period of 2002 - 2006 **had no reconvictions of any of its core members of a sexual crime**. However at present COSA only have limited scope, many offenders do not know anything of COSA and consequently cannot benefit from them. Similarly, the scheme is not yet widespread enough to be available to everyone. Currently there are no examples of COSA for offenders other than ex-sex offenders; however it is likely that other ex-offenders could benefit from the support provided.

### 3.9 Restorative Justice

Restorative justice (RJ) is the name given to a theory of justice in which 'the victim and the offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator'<sup>23</sup>. RJ is designed to provide an alternative to the more penal justice awarded in traditional criminal justice systems. There are two overlapping qualities involved with RJ, communication around the crime and reparation as a different concept, as the rebalance of harmony. A restorative process provides a platform for understanding. Victim and offender are taken as individuals who have the opportunity to consider the crime from the others perspective, this concept is often empowering to the victim. By allowing both parties to be pivotal to the solution to the harm a healing process is created which could not otherwise be produced. There are many different types of RJ, used at many different intervals within the CJS and outside it. Within the CJS it is crucial to provide thoroughly trained individuals who can act as independent mediators or facilitators to enable both parties involved in the crime to address the harm and search for ways of resolving it. RJ practices continue to become more and more popular across Europe and

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<sup>23</sup> United Nations Office on Drugs and Crime, *Handbook on Restorative Justice programmes*, Criminal Justice Handbook Series (New York: United Nations Publication, 2006), p. 7

elsewhere. In 1999, the Committee of Ministers<sup>24</sup> adopted Recommendation No. R(99)19<sup>25</sup> which concerns mediation in penal matters. This, in part, encourages member states to provide mediation as a service at all stages of the criminal justice process.<sup>26</sup> The Council of Europe has been active on the subject, for example, by commissioning the 'European Forum for Restorative Justice' to write a guide to support the policy development and implementation of RJ.

Of the seventeen states that responded to the relevant section of QCEA's questionnaire, eight can sentence restorative justice measures as an alternative to imprisonment. RJ is not an alternative to imprisonment in nine of the responding member states and currently RJ is mostly commonly used for juveniles or young offenders in Europe.

Evidence indicating support for RJ programmes can be found in Norway, where research reveals 'high levels of victim satisfaction [and] little evidence of recidivism', and in Austria, where 're-offending does seem to have reduced [and] victims express high levels of satisfaction'.<sup>27</sup> A 2004 study on victim satisfaction with restorative justice conferences concluded 'that victims are more satisfied when they have opted to go through restorative justice means rather than traditional means'.<sup>28</sup> There is also anecdotal evidence that victim satisfaction when RJ processes are used is vastly greater than when traditional criminal justice measures are taken.

### 3.10 Pre-Court Proceedings

Pre-court proceedings describe a range of alternatives where offenders may be dealt with by police forces instead of attending a trial. These are often used in the form of formal cautions given to juveniles and young offenders, for example, or where a voluntary agreement with the victim takes place. More precisely, this report defines pre-court proceedings as a proceeding where a case is not formally adjudicated by a court and is instead processed by mechanisms which exclude the courts. In practice, all European countries divert offenders on a regular basis, whether or not specific strategies have been incorporated. Criminal justice systems in Europe will only process a small proportion of the criminal law offences which take place within them. Structured discretion should be applied by clearly instructing members of police services regarding when they can issue warnings and when no further action is necessary. In addition, clear instruction should be given on 'when they may be able to divert qualifying offenders to alternative programmes without referring the case to the prosecuting authorities, and when they must refer alleged offences to prosecuting authorities'.<sup>29</sup> It is also necessary that prosecutors are given clear guidelines.

Pre-court proceedings are not yet established as an alternative to prison in Croatia or Malta. Ministries in Luxembourg, Norway and Switzerland stated that less serious or minor offences are most often considered. In Norway, there must be a presumption of guilt which is usually the result of an admission on the part of the offender. Most cases involve minor crimes committed by juvenile

<sup>24</sup> The decision-making body of the Council of Europe

<sup>25</sup> Communication from the Council of Europe: *Recommendation No. R(99)19. September 1999* [online], accessed 11 December 2007, available at <http://www.victimologia.org/Normativa/Recomendacion%20concerniente%20a%20mediacion.pdf>

<sup>26</sup> UNODC, Handbook on Restorative Justice programmes, p. 492

<sup>27</sup> Rethinking Crime and Punishment (strategic initiative), *Restorative justice: An idea whose time has come?* Briefing Paper (March 2004), p. 3

<sup>28</sup> Behtz, Sarah Anne, *Justice For All?: Victim Satisfaction With Restorative Justice Conferences* [on-line], accessed 19 December 2007, available at <http://etd-submit.etsu.edu/etd/theses/available/etd-1115104-143503/unrestricted/BehtzS121304f.pdf>

<sup>29</sup> UNODC, Alternatives to Imprisonment, p. 20

offenders, but not all. The Ministry in Luxembourg specified theft and burglary as offences where pre-court proceedings might be used. In Italy, Moldova and Monaco, juveniles and young offenders are targeted for these proceedings.

### 3.11 Alternatives for specific categories of offenders

The majority of prisoners in Europe are adult men that have been convicted of a crime. However, other categories of prisoner also make up a significant proportion of the prison population. As QCEA found when examining the situation of women in prison across Europe; these groups can and do have particular requirements and concerns. QCEA received fifteen responses to this section of the questionnaire. Of the fifteen, thirteen Ministries stated that there were groups of prisoners for which alternatives were usually more effective at reducing the motivation to re-offend. It is clear that the majority believe that alternatives to imprisonment are usually more effective than prison for reducing re-offending amongst juveniles and young offenders. However, the majority did not consider that women offenders were such a group. Of the responding members states two, Moldova and the Ukraine, have sanctions aimed specifically at women offenders. Both countries have the facility to release pregnant women or women with young children from prison. If the pregnant woman or mother re-offends when released she may be returned to prison to serve the original or an amended sentence:<sup>30</sup>

The use of imprisonment for young offenders can vary considerably across Europe. For example, the age at which a child becomes criminally responsible ranges from eight years old in Scotland to eighteen years old in Belgium. By increasing the minimum age at which children are held responsible for their actions, the number that enters European criminal justice systems could be reduced. QCEA asked Ministries whether or not alternative sanctions aimed specifically at young people were available in their countries. Nine out of fourteen states do have alternative sanctions targeted at young people specifically. Restorative practices are often piloted for young offenders and although changes take time the results are usually positive.

## 4 Summary of Recommendations

### 4.1 Measurement, monitoring and statistics

Member states should ensure rehabilitation is the first purpose of the criminal justice system.

Ministries of Justice should keep statistics on the number of offenders on probation that return to prison. These should be made publicly available.

Probation services should be measured against given criteria and there should be clear structures and commitment from staff.

QCEA urges Council of Europe member states to measure the rate of re-offending among conditionally released offenders.

All member states should keep up-to-date statistics which indicate the number of offenders being monitored electronically in their country. These statistics should be publicly available.

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<sup>30</sup> Legislation Online, *The Criminal Code of the Republic of Ukraine (English Version)* [on-line], accessed 3 January 2008, available at <http://www.legislationline.org/legislations.php?jid=53&ltid=15>

The rate of recidivism is an important indicator as to the success of suspended sentences as an alternative sanction. Member states are encouraged to measure this (through commissioning research or in other ways) to discern where suspended sentences are most appropriate.

The different institutions and agencies of member states criminal justice systems need to work with the public, through education, providing information, consultation and discussion, to show the benefits of appropriately rehabilitative response.

## 4.2 Effectiveness

Member states' criminal justice systems need to make it clear to the public that their main priority is rehabilitation.

Member states should ensure there is sufficient information available to support and enable public debate about the rehabilitative purpose of its criminal justice system.

Member states should ensure probation services receive sufficient funding to be managed thoroughly and effectively.

All agencies within the criminal justice system and beyond who have involvement with offenders on probation need to work effectively together, and with the public, to ensure that the risk of re-offending is minimised.

All agencies within the criminal justice system and beyond who have involvement with offenders on probation need to work effectively together, the wider public and the media to ensure that public perception of crime and re-offending is accurate.

Member states should seek to involve members of the community local to where the offender will conduct his or her community sanction. This can increase the relevance of the sentence and facilitate re-integration.

Accurate information regarding drug and alcohol treatments should be more readily available to ensure wide spread public awareness of success and better public opinion.

The different institutions and agencies of member states criminal justice systems need to work together to ensure they meet the complex needs of sex offenders.

The different institutions and agencies of member states criminal justice systems need to work with the media to ensure reporting is more balanced and rational.

## 4.3 Further research

There should be an official measurement of how effective the use of fines is in member states. If necessary, research should be commissioned to discover where fines are an effective alternative to imprisonment and where they are not.

Member states should be more aware of whether offenders given fines or Compensation Orders re-offend. This could be achieved through commissioning research in this area.



Data on the use of conditional release and its effectiveness should be collected and analysed in all member states. In the absence of such data at present, research should be commissioned to assess the effectiveness of conditional release as an alternative to continued imprisonment. Such research should also develop data gathering methodologies for the future.

OCEA recommends that member states measure the rate of recidivism for electronically monitored offenders. Where the rate is found to be significantly lower, such as in England and Wales, further research should be commissioned to identify why there is a difference.

Member states are encouraged to measure the rate of recidivism among individuals ordered to complete a community sanction. Research should be commissioned to discern for which offenders this alternative sanction is most appropriate.

Member states are encouraged to measure the rate of recidivism among individuals ordered to complete a drug rehabilitation programme. In addition to this member states should analyse the success of such programmes and use these statistics to identify where more resources are needed.

The relationship between victim satisfaction and restorative versus punitive justice in Europe is an area for further research.

Member states should measure the effectiveness of the pre-court proceedings in their countries. Researching the rate of recidivism for these alternative sanctions is one way this could be done. The research could be undertaken by one or more Ministry staff members, or be commissioned to external bodies.

Member states should commission research into the likely effects of increasing the minimum age of criminal responsibility in their country.

#### 4.4 Specific recommendations relating to specific alternatives

Where possible, probation services should have the option to require offenders to participate in alcohol/drug rehabilitation programmes, sex-offender rehabilitation programmes, restorative justice programmes, community services and other activities as considered relevant on a case by case basis.

Member states should better tailor their probation service to an offenders needs.

The economic status of the offender should be taken into consideration for *all* fines and Compensation Orders, but should ensure that fines for wealthier offenders are not out of proportion with the crime.

Member states must make sure that their use of electronic monitoring is not based on limited evidence nor dictated by short-term political interest.

All member states should make legal provisions to enable courts to sentence certain offenders, including those addicted to drugs, to complete relevant and intensive treatment programmes as an alternative to imprisonment.

Member states' governments should channel more resources into rehabilitation centres with proven success in terms of the rehabilitation of the individuals treated (possibly measured by recidivism rates).

All member states should include informal and formal cautions as pre-trial proceedings.

Member states should ensure that alternatives to imprisonment are sought for crimes such as petty theft and motoring offences when the prisoner constitutes no danger to the general public

#### 4.5 Specific recommendations for different groups of offenders

All member states should ensure child care provision is provided where necessary for offenders sentenced to complete community measures or sanctions. Otherwise an unfair burden is placed on offenders with dependent children.

Community sanctions for highly-educated offenders should be considered pro-actively by member states but ensure a 'sanction' element of the alternative is maintained. Some offenders can make a uniquely positive contribution to the societies their crime may have damaged.

Member states consider adopting Criminal Law which enables, where appropriate, pregnant women or women with young children to be discharged from prison; as is the case in Moldova and the Ukraine.

All member states should consider introducing alternative measures which target juveniles and young offenders in particular. Measures including youth restorative justice programmes could be employed, as is the case in Catalonia.

#### 4.6 Specific recommendations relating to Circles of Support and Accountability

All member states should begin the process of setting up Circles of Support and Accountability (COSA) to help rehabilitate sex-offenders.

It should be mandatory for member state prisons to provide offenders with information about COSA prior to release where these are available.

Member states should investigate the possibility of providing COSA for ex-offenders whose original offence is one other than a sex offence.

Member states should ensure adequate funding is made available to member states for setting up, recruitment, training, advertising and maintaining of Circles of Support and Accountability.

Upon the setting up of COSA, member states should record data to provide sufficient information regarding recidivist behaviour.

More research should be conducted into the practicalities of providing COSA at different stages in the criminal justice system, more particularly as an alternative to prison.

Member states should explore the possibility of providing contact with COSA whilst the offender is still in prison.

## 4.7 Specific recommendations relating to restorative justice

Member states should adopt legislation which allows for restorative justice programmes to be used in criminal justice systems where appropriate.

All member states should make legal provision for restorative justice approaches to be used as alternatives to imprisonment.

Where restorative justice practices have been incorporated into the criminal justice system, their use regarding the types of crime and profiles of offender should be reviewed. RJ should not only be available for low-level crime and younger offenders.

Restorative justice measures should be more widely used as alternatives to imprisonment in all Council of Europe member states.

Member states should measure how effective restorative justice practices are as an alternative to imprisonment in their country. This could be done by measuring the recidivism rate, as is the case in Catalonia (a region of Spain).

## Introduction

The Religious Society of Friends (Quakers) has a long history of campaigning for prison and criminal justice reform. Working in the context of this 350 year old Quaker tradition, the Quaker Council for European Affairs is actively involved in promoting respect for human rights. In partnership with the Quaker United Nations Office (QUNO) - Geneva and Quaker Peace and Social Witness (QPSW) in the UK, QCEA has been studying the conditions of women in prison for more than six years. Following extensive research into the conditions of women in prison in the member states of the Council of Europe, QCEA found that in many cases prison sentences do little to reduce the risks of re-offending. At the same time, the social cost to both prisoners and their families is disproportionately high. The 2007 report on Women in Prison is available on our website<sup>31</sup>, or in print upon request.

### Quaker Council for European Affairs - Women in Prison

#### Recommendation 15:

In all cases, prison should be used as a last resort only if no other options are available and alternative forms of sentencing, including community service orders or similar and restorative justice approaches should be considered first.

Most people leaving prison re-enter society with a drug addiction, few qualifications, and no money and return to the lives within which their crime(s) took place in the first instance. Others will have lost local connections to their family, their job, and their home. In situations such as these the likelihood of repeat offending is high.

Acknowledging this, and the fact that the practice of sending individuals to prison frequently leaves the needs of the victims, the offenders themselves, and their respective communities unmet, QCEA has undertaken research into the uses of alternatives to imprisonment sentences in Council of Europe member states. This report is the result of this research.

Information has been compiled on how frequently different alternatives are used, what their costs are, and how they impact on the offender. We have also analysed the available information regarding recidivism for imprisonment and the alternatives. This information has been gathered systematically from the criminal justice systems of the member states.

We make recommendations for improvements to the use and management of alternatives to imprisonment sentences.

## 1 To imprison or not - some background

Imprisoning people who commit crimes is an age-old approach to justice. There are many types of prisons across the world demonstrating a wide range of different standards.

### 1.1 Assumptions of Incarceration

Historically prisons were not used as punishment *per se*, but to act as warehouses to confine criminals until corporal or capital punishment could be administered. The modern penal system has

<sup>31</sup> <http://www.quaker.org/qcea/prison/Final%20Report%20Part1.pdf>

evolved considerably from this and now has a differentiated approach. From a criminological perspective prisons are primarily understood as an approach to offending which has the following purposes: to deter, to incapacitate (i.e. remove the offender from society), to deliver retribution and to rehabilitate<sup>32</sup>. Political and academic debate on whether these aims can be achieved has surrounded the penal system for years; however one thing that is certain is that the majority of offenders within a prison will be released back into society. The question as to whether prisons adequately rehabilitate offenders, enabling them to lead a constructive life when they are released is therefore important. When debating the arguments between imprisoning an offender and alternatives to imprisonment, it is important to take into account the theoretical purposes of social responses to criminal behaviour. We need to consider whether the more penal approaches of imprisonment and the delivery of retribution are important, or whether greater consideration needs to be given to a combination of appropriate punishment and rehabilitation so the offender can be successfully reintegrated into society. It is therefore important that offenders are not sent to prisons and forgotten about until the day of their release.

Public perceptions of alternatives to imprisonment play a key role in administering effective alternatives. Punishment in the community is often regarded as a poor substitute for 'real punishment'. More needs to be done to command the public confidence and sway them away from considering this the 'soft option'. More debate may also be needed with the public to discuss what the role of prisons actually is, and whether incarceration is always the best response to crime.

**OCEA Recommendation:** Member states should ensure rehabilitation is the first purpose of the criminal justice system.

**OCEA Recommendation:** Member states' criminal justice systems need to make it clear to the public that their main priority is rehabilitation.

**OCEA Recommendation:** Each member state should ensure that there is sufficient information available to support and enable public debate about the rehabilitative purpose of its criminal justice system.

## 1.2 Existing International Standards

As governments around the world seek to tackle prison overcrowding, there has been an increasing interest from international bodies in the solution to this. Numerous international instruments which recommend changes in existing sentencing policies now exist, including the wider use of alternatives to imprisonment, seeking to reduce the number of people being isolated from their societies for long periods of time.<sup>33</sup>

### 1.2.1 United Nations

In 1990, the United Nations (UN) adopted Standard Minimum Rules for Non-Custodial Measures; also referred to as The Tokyo Rules. These rules provide a set of basic principles to promote the use of non-custodial sentences and measures, as well as minimum safeguards for persons subject to non-

<sup>32</sup> Chris Hale, *et al.*, *Criminology* (Oxford: Oxford University Press, 2005), p. 547

<sup>33</sup> Communication from the United Nations: United Nations Office on Drugs and Crime, *Custodial and Non-Custodial Measures: Alternatives to Incarceration*, Criminal Justice Assessment Toolkit No. 3 (New York, 2006), p. 7, accessed 1 December 2009, available at [http://www.unodc.org/pdf/criminal\\_justice/ALTERNATIVES\\_INCARCERATION.pdf](http://www.unodc.org/pdf/criminal_justice/ALTERNATIVES_INCARCERATION.pdf)

custodial alternatives to imprisonment.<sup>34</sup> Here, it is clearly stated that alternatives should be developed and used more widely in member states.

#### **Article 1. Fundamental aims**

1.5 *Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.*

#### **Article 2. The scope of non-custodial measures**

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, *the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.*

2.4 *The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.*<sup>35</sup>

The United Nations Office on Drugs and Crime (UNODC) has also provided states with manuals on alternatives to prison and a handbook on restorative justice programmes. These have been used to produce the Alternatives to Incarceration Toolkit which seeks to aid states' assessments of systems of alternatives to imprisonment.<sup>36</sup>

### **1.2.2 Council of Europe**

The Council of Europe (CoE) has a history of examining criminal justice matters and in seeking to coordinate its member states' responses to issues surrounding sentencing policy as well as prison conditions. Various legal instruments in the penological field are now available to the CoE, some of which refer directly to the use of alternatives to custodial sentences.

The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders was the first such instrument, signed in 1964. Article 1 states that 'Contracting Parties undertake to grant each other... the mutual assistance necessary for the social rehabilitation of the offenders'.<sup>37</sup> Since this Convention a number of relevant resolutions and recommendations have been made. These include:

#### **Resolutions**

- Resolution (65) 1 on suspended sentence, probation and other alternatives to imprisonment
- Resolution (66) 25 on the short-term treatment of young offenders of less than 21 years
- Resolution (70) 1 on the practical organisation of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders

<sup>34</sup> Communication from the United Nations: The Office of the United Nations High Commissioner for Human Rights, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, General Assembly resolution 45/110 (December 1990), accessed 1 December 2009, available at <http://www2.ohchr.org/english/law/tokyorules.htm>

<sup>35</sup> Emphasis added

<sup>36</sup> UNODC, Criminal Justice Assessment Toolkit No. 3

<sup>37</sup> Communication from the Council of Europe: Council of Europe, *European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders*, ETS No. 51 (Strasbourg, November 1964), p. 2 [online], accessed 1 December 2009, available at <http://conventions.coe.int/Treaty/en/Treaties/Word/051.doc>

- Resolution (76) 10 on certain alternative penal measures to imprisonment.

### Recommendations

- Rec. R (82) 17 on the custody and treatment of dangerous prisoners
- Rec. R (92) 16 on the European rules on community sanctions and measures
- Rec. R (99) 22 concerning prison overcrowding and prison population inflation
- Rec. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures
- Rec. R (2003) 22 concerning conditional release
- Rec. R (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

These instruments seek to establish common principles regarding the enforcement of custodial sentences among the member states with the goal of strengthening international cooperation within the field. When taken together, it is evident that the CoE firmly believes that prison sentencing is an expensive process. Development of alternatives - both those that have existed for a long a time and new measures - is considered necessary and encouraged.

### Recommendation Concerning Prison Overcrowding and Prison Population Inflation<sup>38</sup>

#### Appendix to Recommendation No. R (99) 22

##### I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.
2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.
3. Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

When all the above legal instruments are taken together, it is clear that there is strong international support for the development and use of appropriate alternatives to imprisonment.

As prison overcrowding continues to increase and more effective as well as cost-effective criminal justice policies are sought by member states of the Council of Europe, research into alternative measures becomes ever more necessary.

<sup>38</sup> Communication from the Council of Europe: Council of Europe, *Recommendation concerning prison overcrowding and prison population inflation*, Rec. (99) 22 (Strasbourg, September 1999) [online], accessed 1 December 2009 available at [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(99\)22&Language=lanEnglish&Ver=original&Site=COE&BackColorIntranet=DBCFC2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(99)22&Language=lanEnglish&Ver=original&Site=COE&BackColorIntranet=DBCFC2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

## 2 Methodology

### 2.1 QCEA's approach to the research

In 2007, the QCEA designed and sent out questionnaires to the Ministries of Justice in the forty-seven member states of the Council of Europe and to the United Nations Interim Administration in Kosovo and the Government of Catalonia (a region of Spain).<sup>39</sup> To improve the likelihood of a response, questionnaires were also sent to Ministry staff, prison governors, judges and other experts. Later in the same year, to encourage further responses from member state governments, a shortened version of the initial questionnaire was circulated to those countries that had not replied. This prompted nine further responses.

In addition to the Department of Justice of Catalonia, thirty Ministries responded, seventeen to the longer version of the questionnaire, ten to the shorter and three provided other information but did not respond directly to the questionnaire.<sup>40</sup> The responses varied in detail with some Ministries answering both the questionnaire and providing additional information, while others offered information on a subset of questions only.

Additional information has been collected from a variety of non-governmental sources, including organisations and individuals working either in prisons or in organisations related to one or more of the alternatives to imprisonment we examine in this report. Information from non-government sources has been used for the statistical calculations and comparisons with governmental information where this is specifically stated. Where entries in the tables are blank, this means that no answer was provided to that question, or part of the question. If the question response explicitly stated that the data was not available, we have indicated this in the tables.

### 2.2 Notes on Individual Countries

QCEA received eight separate questionnaires from official sources in Bosnia & Herzegovina. The central Ministry was able to answer some questions; however, much of the information comes from the relevant administrations in the following seven regions: Bihac, Mostar, Tuzla, Bosanska, Sarajevo, Srpska, and Zenica.

The Ministries of Justice in Austria and Turkey responded but were unable to answer our questionnaire. The Austrian Ministry did not have the resources, while Article 53 of the Statistics Act

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<sup>39</sup> The Council of Europe member states (as of October 2007) were: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine, and the United Kingdom.

<sup>40</sup> QCEA received a response from the following Council of Europe member states: Austria, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Georgia, Germany, Hungary, Iceland, Italy, Latvia, Luxembourg, Malta, Moldova, Monaco, the Netherlands, Norway, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Switzerland, Turkey, Ukraine and the United Kingdom (England and Wales).



of Turkey prevented the Turkish Ministry from answering. Both Ministries did send other information.

The Prison Service in the UK is divided between services in England & Wales, Scotland, Northern Ireland, Guernsey, and Jersey. When the report does not specify which of the ministries it is referring to, it is referring to the Ministry with responsibility for England and Wales.

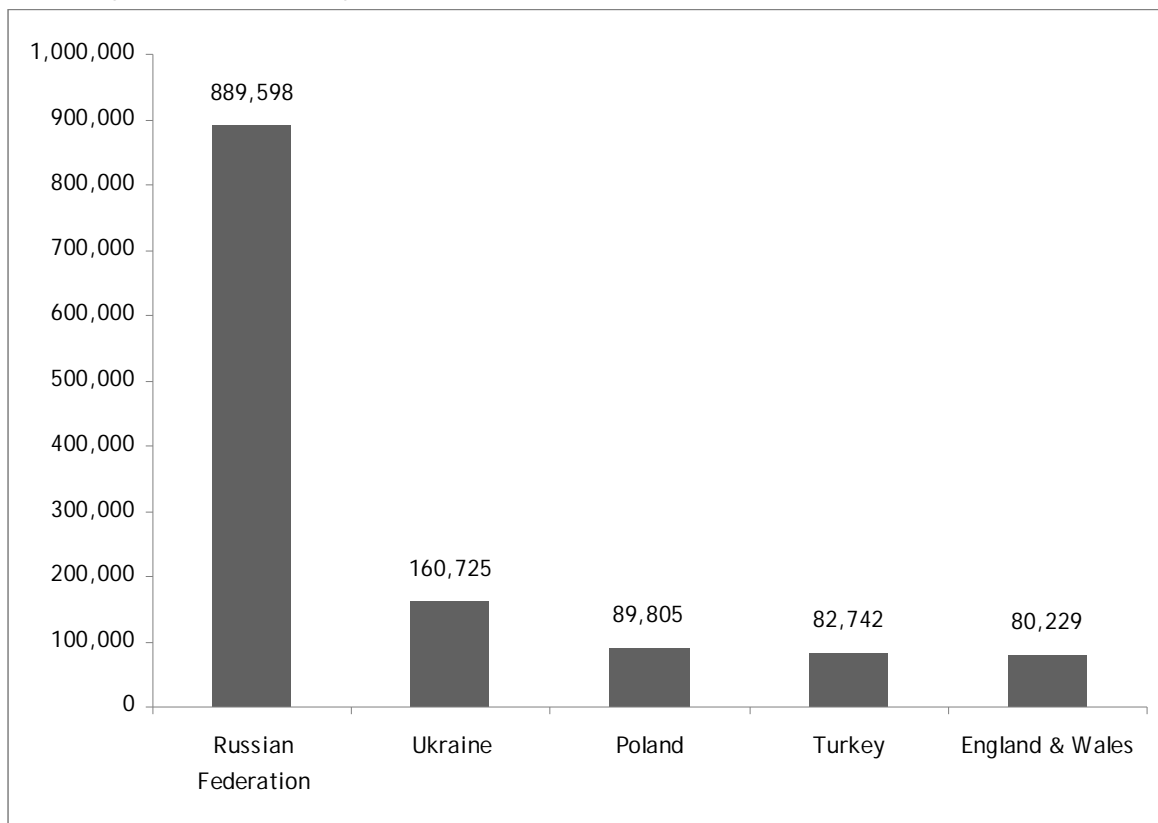
### 3 Prison Populations

#### 3.1 Numbers and Trends

Graphs of prison populations in appendix 1 show that populations in member states of the Council of Europe vary dramatically. The Russian Federation holds the most prisoners at any one time - currently 889 598; while San Marino holds the fewest - currently one.<sup>41</sup>

**Graph 1: Total Prison Population for selected member states**

Graph 1 below, shows the five member states with the highest number of prisoners. The Russian Federation can be seen to imprison more than five times as many individuals as any other state. The second highest number belongs to the Ukraine with 160,725 prisoners.<sup>42</sup>

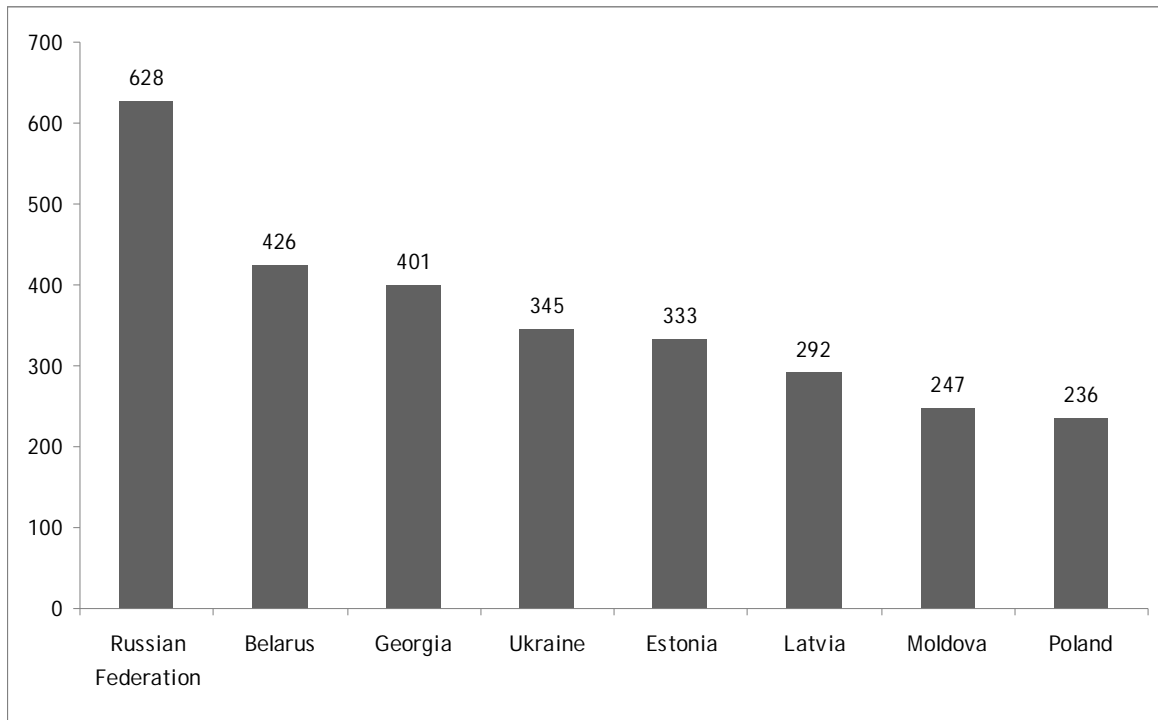


<sup>41</sup> International Centre for Prison Studies, *Europe - Prison Population Totals* [on-line], accessed 31 October 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps/work.html>

<sup>42</sup> QCEA questionnaire, returned by the State Department of Ukraine on Enforcement of Sentences (Execution of Punishment), q. 3.

The Russian Federation also incarcerates more individuals per 100,000 of its population than any other member state. Belarus (included in this report although not a member state of the Council of Europe) and Georgia have the next highest figures, imprisoning 426 and 401 people per 100,000 respectively.<sup>43</sup> Prison population rates per 100,000 of the general population can be seen in Graph 2 below.

**Graph 2: Prison Population per 100,000 of Population**



The questionnaires returned from the Ministries of Justice indicate a variety of different trends in member states' prison populations. However, of those countries in Europe where data is available, **it can be observed that the majority imprison more people now than they did five years ago and the number of prisoners continues to increase.**

The responding member states provided data for a ten-year period from 1998 until 2007. This data reveals a trend of increasing numbers of prisoners across the ten-year period. This trend can be seen in Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, France, Greece, Hungary, Iceland, Ireland, Luxembourg, Malta, the Netherlands, Norway, Poland, Serbia, Spain (including Catalonia), Sweden, the Former Yugoslav Republic of Macedonia, Turkey, and the United Kingdom.<sup>44</sup> There has been a particularly marked increase in the Austrian prison population, although only over the last six years. A handbook sent by the Austrian Ministry of Justice states that 'since 2002 there has been an exceptional increase from approx. 7,500 (2002) to 8,487 (1<sup>st</sup> Dec. 2003)'. The last five

<sup>43</sup> International Centre for Prison Studies, *Europe - Prison Population Rates per 100,000 of the national population* [online], accessed 31 October 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps/work.html>

<sup>44</sup> Where a country listed did not answer question 3 of the QCEA questionnaire, figures have been taken from other, non-governmental sources. Government officials did provide details for the following states (of the twenty-two listed): Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Iceland, Luxembourg, Malta, the Netherlands, Norway, Serbia, and Catalonia (a province in Spain)

years have also seen increasing incarceration rates in the Czech Republic, although this was not the case prior to 2002.<sup>45</sup>

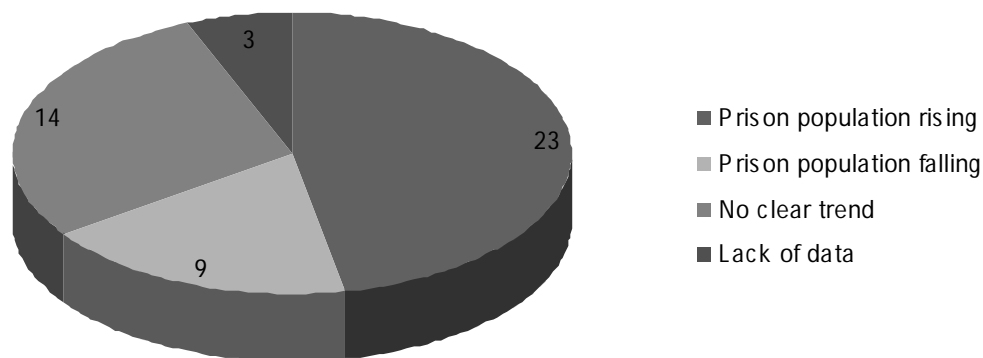
In nine countries this trend is reversed and prison numbers are falling. This is the case in Armenia, Georgia, Lithuania, Moldova, Romania, the Russian Federation, Slovenia, and the Ukraine. This has also been the trend in Germany since 2003.<sup>46</sup> It is worth noting that in both the Russian Federation and the Ukraine - the two states with the highest prison population - the number of prisoners is falling.

Twelve states appear to have no clear trend in their prison population: Albania, Azerbaijan, Denmark, Estonia, Finland, Italy, Latvia, Monaco, Portugal, Romania, Slovakia and Switzerland.

There is not enough data to come to any conclusions regarding the remaining four member states: Andorra, Liechtenstein, Montenegro, and San Marino.

Below, Graph 3 shows the proportion of countries with different prison population trends. A rising prison population can be observed in twenty-three of the forty-seven member states, while only nine have a falling prison population.

**Graph 3: Prison Population Trends by Number of Countries**



### 3.2 Overcrowding

The issue of prison overcrowding has received much attention in different countries around Europe. In some countries it represents the respective prison administrations' most serious challenge.

Overcrowding has overwhelmingly negative consequences for everyone involved in prison systems: prison staff, prison managers, and the prisoners themselves. The following examples of how overcrowding causes harm in prison systems were noted by Her Majesty's Chief Inspector of Prisons for Scotland in 2006. He describes them as the 'nine evils of overcrowding':<sup>47</sup>

<sup>45</sup> QCEA questionnaire, returned by the Prison Service of the Czech Republic (under the Ministry of Justice), q. 3

<sup>46</sup> QCEA questionnaire, returned by the German Ministry of Justice, q. 3

<sup>47</sup> Scottish Executive Publications, *HM Chief Inspector of Prisons in Scotland: Annual Report 2005 - 2006* [on-line], accessed 2 November 2007, available at <http://www.scotland.gov.uk/Publications/2006/10/26121221/3>

**The nine evils of overcrowding**

- It increases the number of prisoners managed by prison staff who, as a result, have less time to devote to screening prisoners for self-harm or suicide, prisoners with mental health problems and prisoners who are potentially violent. Risk assessments will inevitably suffer.
- It increases the availability of drugs since there are more people who want drugs and prison staff have less time to search.
- It increases the likelihood of cell-sharing: two people, often complete strangers, are required to live in very close proximity. This will involve another person who may have a history of violence and of whose medical and mental health history the prisoner will know nothing about; and it will involve sharing a toilet within the cell.
- It increases noise and tension.
- It makes it likely that prisoners will have less access to staff; and that they will find that those staff to whom they do have access will have less time to deal with them.
- The resources in prison will be more stretched, so prisoners will have less access to programmes, education, training, work etc.
- Facilities will also be more stretched, so that laundry will be done less often and food quality will deteriorate.
- Prisoners will spend more time in cell.
- Family contact and visits will be restricted.

These consequences are wrong in themselves. When prisons operate beyond their capacity, the increase in noise and tension, along with the decrease in prison visits, food, and personal space are unacceptable.

Furthermore, all of these consequences dramatically reduce the impact which prison can make to reduce re-offending. As a direct result of them, prisoners are less likely to emerge as useful citizens, and therefore compromise the safety of member states' general populations. The President of the Supreme Court of the United Kingdom, Lord Phillips, has previously warned that overcrowding in prisons is 'absolutely fatal' for the treatment of prisoners.<sup>48</sup>

### 3.3 The capacities of European prison administrations

The capacity of prison administrations varies across Europe. The Russian Federation has the highest capacity with 955,096 places available,<sup>49</sup> while San Marino has the lowest, with twelve.<sup>50</sup>

At the time of writing, **twenty-five member states of the Council of Europe have more prisoners than they have official prison places**: Albania, Andorra, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Finland, France, Georgia, Greece, Hungary, Italy, Luxembourg, Monaco, Montenegro, Poland, Portugal, Serbia, Slovenia, Spain, Sweden, Turkey, and the UK (England and Wales and Scotland).

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<sup>48</sup> *ibid.*

<sup>49</sup> International Centre for Prison Studies, *Prison Brief for Russian Federation* [on-line], accessed 2 November 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps/work.html>

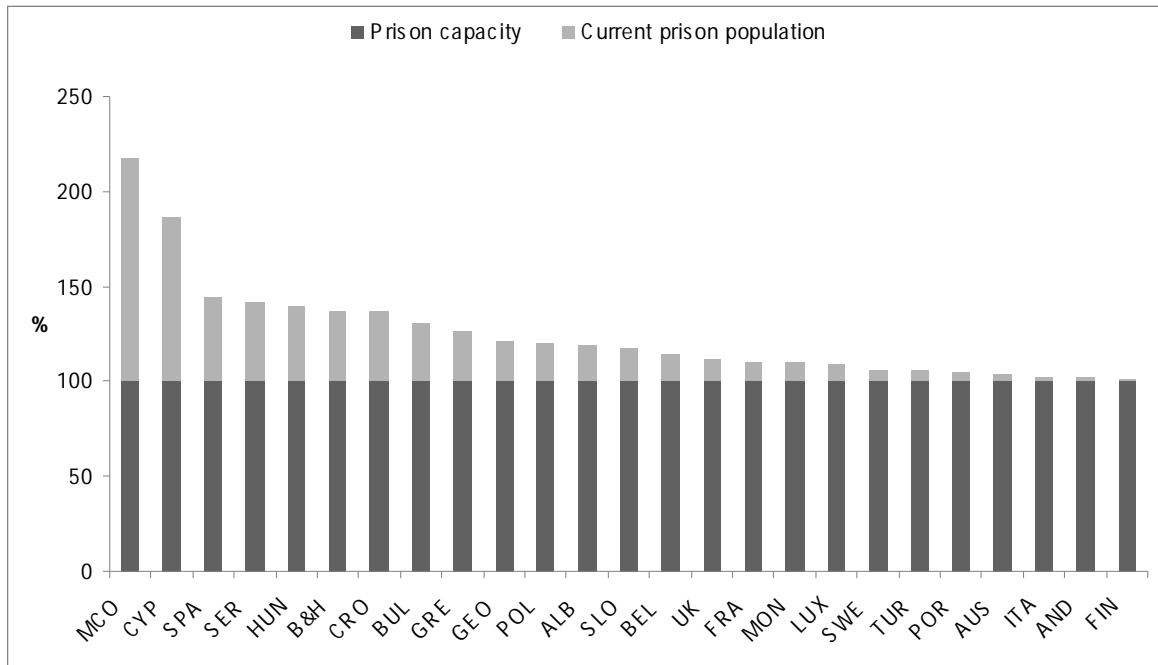
<sup>50</sup> International Centre for Prison Studies, *Prison Brief for San Marino* [on-line], accessed 2 November 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps/work.html>

**Graph 4: Percentage of Prison Capacity Used - Exceeded Capacity**

Graph 4, below, shows that the current number of prisoners in Monaco exceeds prison capacity by 118 per cent.<sup>51</sup> Cyprus exceeds prison capacity by 86 per cent. Spain, Serbia, Hungary, Bosnia & Herzegovina, Croatia, Bulgaria, and Greece all imprison between 26 per cent and 44 per cent over their capacity.

In addition to the twenty-five member states, a further three have between 95 and 100 per cent of their prison places in use: the Czech Republic, the Netherlands and Norway. In both the Netherlands and Norway the number of people imprisoned has been increasing over the last ten years, making the current situation of particular concern.

The following member states currently have occupancy rates below capacity: Armenia, Azerbaijan, Denmark, Estonia, Germany, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Romania, the Russian Federation, San Marino, Slovakia, Switzerland, the Former Yugoslav Republic of Macedonia, and Ukraine.

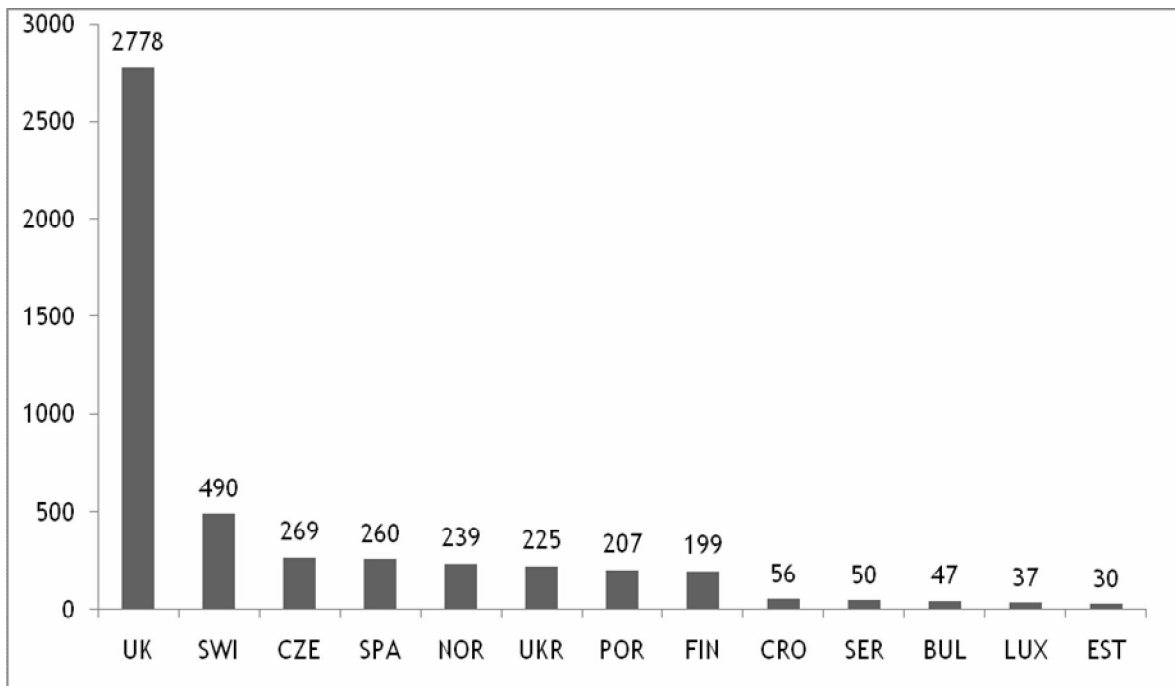


<sup>51</sup> QCEA questionnaire, returned by the Directeur des Services Judiciaires in Monaco, questions 3 and 4

### 3.4 The cost of Prison

Money spent on prison services varies between member states. Of the information received, the England and Wales prison service spends by far the most per year (2,778,097,651 euros),<sup>52</sup> with Monaco spending the least (2,065,500 euros).<sup>53</sup>

**Graph 5: Money (to nearest million euros) allocated to prison services by selected countries**



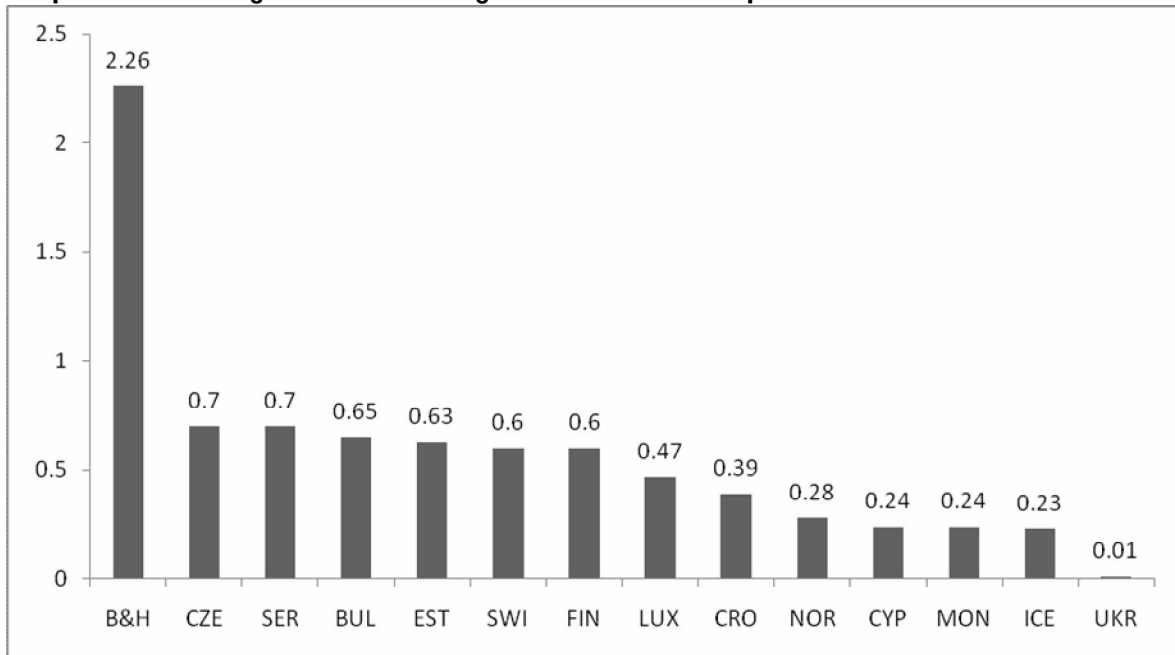
Graph 5, above, shows the member states that spend the most money on their prison services. The Prison Service in England and Wales is the only service in Europe to receive more than 500 million euros per year.

OCEA also asked each Ministry for information on the percentage of the overall state budget spent on the prison service. We received information from fourteen states. Below, Graph 6 shows the responses. One point of note is that Ukraine, despite imprisoning more people than all states except the Russian Federation, allocates only 0.01 per cent of their overall budget to the prison service.

<sup>52</sup> McGraw, Eric, '17 years on: Prison policy still fails the nation' Inside Time, (October 2007), sec. Newsround, p. 10

<sup>53</sup> OCEA questionnaire, returned by the Directeur des Services Judiciaires in Monaco, q. 6

**Graph 6: Percentage of overall budget allocated to the prison services**



The cost of imprisoning an individual is often surprisingly high. An increase in the number of prisoners requires an increase in the number of guards whose salaries need to be paid for. On 31 July 2007, the Prison Service in England and Wales employed 27,222 prison officers, equating to one officer for every three prisoners. This ratio has decreased since 1990 when the number of officers was double the number of prisoners.<sup>54</sup> It is important that when prison populations increase, more teachers, doctors and cleaning staff also need to be hired, as well as increasing the budget for food, maintenance and other activities.

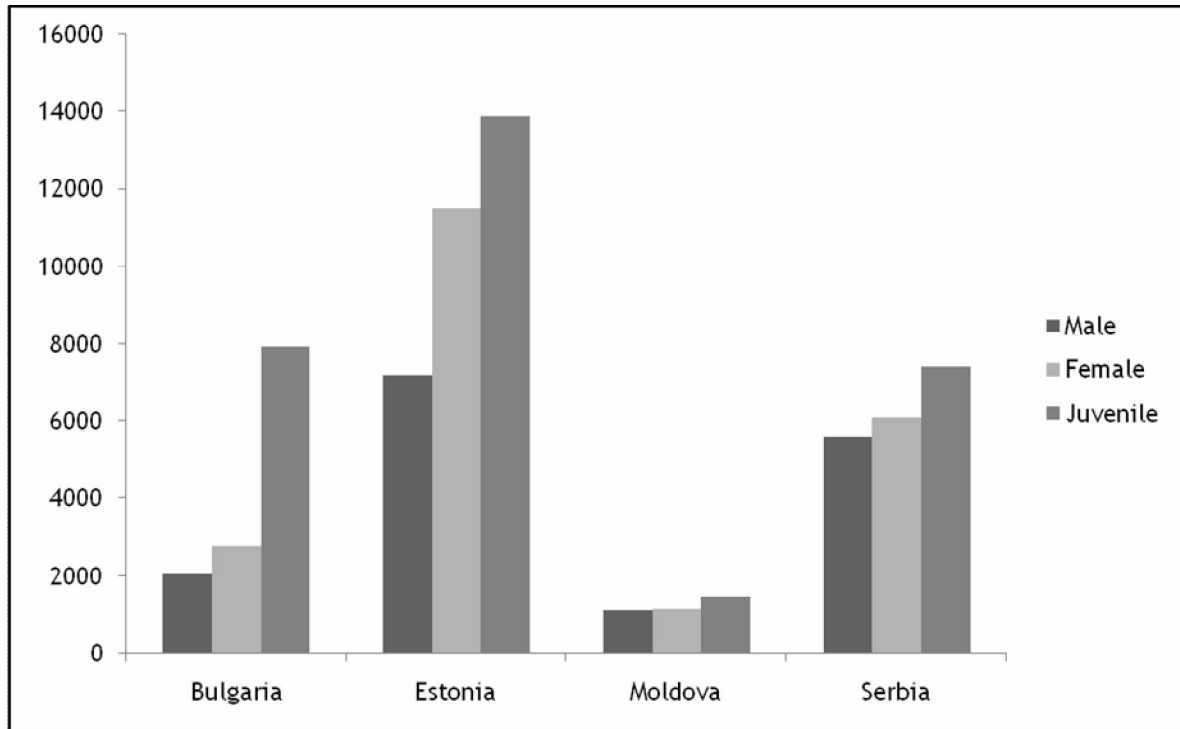
Data from all member states show that the cost of an individual prisoner varies depending on the level of security, age and gender:

- The higher the security of the prison, the higher the cost
- Only four states gave details of the separate individual costs for men, women and young offenders. However, in all four states - Bulgaria, Estonia, Moldova, and Serbia - the cost of imprisoning a juvenile was higher than that of imprisoning either a man or a woman. In all four states, the cost of imprisoning a woman was higher than that of imprisoning a man.

Graph 7 (below) shows the financial cost of imprisoning one individual for one year in the four responding member states (Bulgaria, Estonia, Moldova, Serbia). In the cases of male, female and juvenile prisoners, Estonia is the most expensive and Moldova is the least expensive. However, it is interesting to note that a Bulgarian juvenile is more expensive to imprison than a Serbian juvenile, despite the general cost of a prisoner in Serbia exceeding that of Bulgaria.

<sup>54</sup> Eric McGraw, *Inside Time*, p. 10

**Graph 7: The cost of imprisonment for one year in four member states (in euros)**



Overall, the cost of imprisoning one person for one year varies from 1,125 euros in Moldova<sup>55</sup> to nearly 75,000 euros in Iceland.<sup>56</sup> In response to this question, **eleven out of nineteen states stated that they spend an average of more than 20,000 euros per prisoner per year with six of these spending in excess of 40,000 euros.**

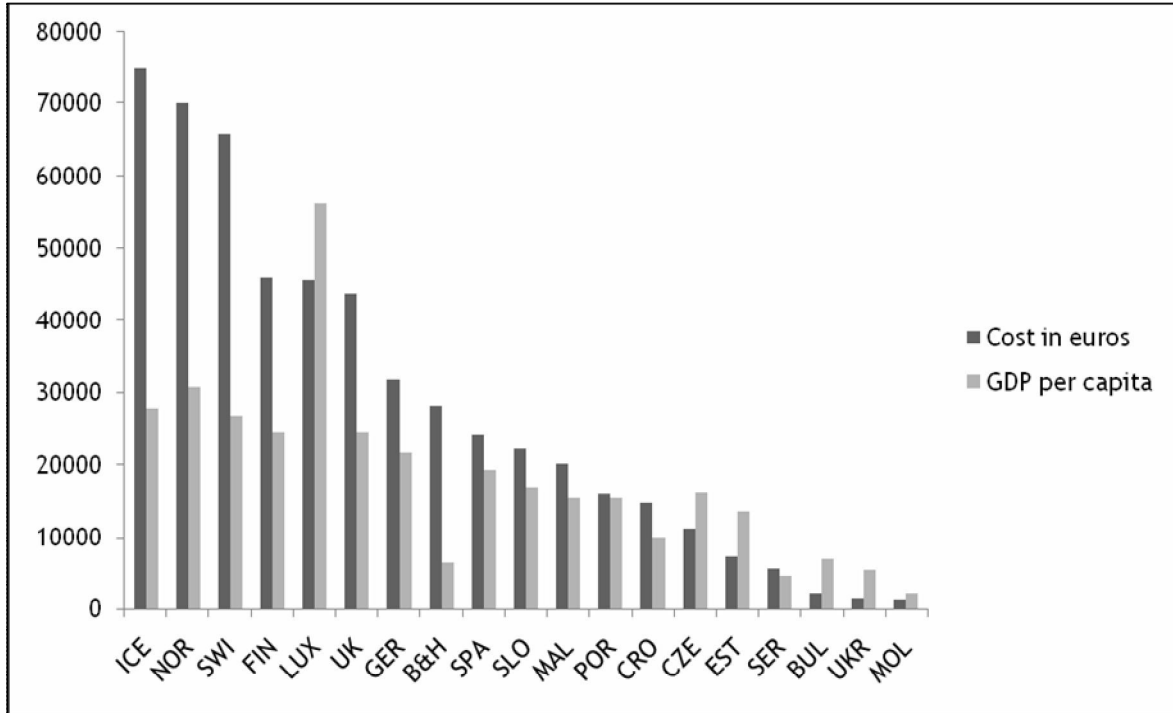
<sup>55</sup> QCEA questionnaire, returned by the Moldovan Ministry of Justice, q. 8

<sup>56</sup> QCEA questionnaire, returned by the Prison and Probation Administration (under the Ministry of Justice) in Iceland, q. 8



**Graph 8: Average cost of imprisoning one person for one year measured against GDP per capita (in euros)<sup>57</sup>**

Graph 8 below, shows the average cost of imprisoning one prisoner for one year measured against the GDP per capita of nineteen countries. Thirteen countries spend more per prisoner per year than their respective GDP per capita. Four countries - Iceland, Norway, Switzerland, and Bosnia & Herzegovina - spend, on average, more than twice their GDP per capita per prisoner per year.



Notes: Bulgaria, Estonia and Serbia did not provide an overall cost. In each case the figure used represents the average cost for a male prisoner (the most common in all countries). Therefore the *actual* overall cost is higher than the figure provided in Graph 8.

In the case of Bosnia & Herzegovina, the figures from the different cantons received ranged from 2,178.61 euros to 27,956.20 euros. The figure in Graph 8 is the highest figure and so is not representative. The overall figure will be lower, but still in excess of the GDP per capita.

This data highlights the financial burden imprisonment places on member states. Historically the debate for and against prisons focuses on the moral, political and social arguments for sentencing; however as public money is so precious the economic dimension becomes harder to ignore.

### 3.5 Demographics of Prisoners

#### 3.5.1 Shared Characteristics

It is important to identify the demographics of prisoners, including who the prisoners are, what they are in prison for and how much time they spend there. There is general consensus that the ‘average prisoner’ has certain common demographic and other characteristics. Low education level and a

<sup>57</sup> GDP per capita figures are taken from the International Monetary Fund. See *International Monetary Fund* [on-line], accessed on 1 December 2009, available at <http://www.imf.org/external/>

history of truancy or exclusion from school is one such characteristic, resulting in approximately two thirds of the prison population not having basic literacy skills. Mental health as well as alcohol and drug problems or dependency are present in both male and female prisoners. For women prisoners Fowler estimates that 75 per cent of women entering European prisons are problematic drug and alcohol users (2002)<sup>58</sup>. In England and Wales it is estimated that 20 per cent of men and 40 per cent of women have attempted suicide prior to reception into prison<sup>59</sup> and in 2008 of 166 recorded deaths in prison, 61 were self-inflicted and 20 of these were whilst being held on remand<sup>60</sup>.

### 3.5.2 Average length of a prison sentence

When a sentence for an individual offender is longer, the financial resources required from the state are greater.

The average length of prison sentence varies markedly amongst member states of the Council of Europe. Eighteen Ministries responded to this section of the questionnaire. Responses from different regions in Bosnia & Herzegovina varied, the highest and lowest figures were from the Sarajevo (highest) and Mostar (lowest) regions respectively.

Spain has the highest average sentence - ninety-one months (seven years and seven months). The average sentence in the Czech Republic, Croatia, Estonia, Malta, Romania, Sarajevo (Canton of Bosnia & Herzegovina), and Ukraine also exceeds four years. Bosnia & Herzegovina (Mostar), Norway and Switzerland have average sentences of less than one year.

QCEA found no correlation between the length of an average prison sentence and either (a) the likelihood of overcrowding (as measured by exceeded capacity) or (b), the number of prisoners.

### 3.5.3 Types of crime resulting in imprisonment

For the purpose of the questionnaire violent crimes include homicide, serious assault or attempted murder and robbery. Indecent crimes include rape or attempted rape, indecent assault and prostitution. Dishonest crimes include housebreaking, theft (including shoplifting and stealing motor vehicles), fraud, forgery and debt. Drug-related crimes include drug dealing and possession of drugs. Motoring offences include dangerous and careless driving and drunk driving. Other crimes include fire-raising (arson), vandalism and handling offensive weapons.

The table below shows what types of crime prisoners are imprisoned for. The responding member states provided the information as a percentage. The table identifies that of the fifteen member states, eight find that the majority of their prison population are imprisoned for dishonest crimes, four for violent crimes, two have a majority for drug-related crimes and one, Cyprus, for 'other crime'. At 72 per cent the majority of Bulgaria's prison population are imprisoned for dishonest crime. Luxembourg, who spends 45,000 euros per prisoner per year, detains 50 per cent of their prison population for drug offences.

<sup>58</sup> Cited in 'Health Care Needs of Women in Prison: The Gap Between Policy and Implementation', MacDonald M, presentation at 'What Works with Women Offenders: The Gap Between Policy and Implementation: Lessons from Other Countries on Dealing with Drug Related Offenders', June 2005 [online], accessed on 7 July 2009, available at <http://www.uce.ac.uk/crq/moragpubs.htm>

<sup>59</sup>Hale et al., *Criminology*, p. 552

<sup>60</sup>Inquest, *Death in Prisons [online]*, accessed 22 May 2009, available at: [http://inquest.gn.apc.org/data\\_deaths\\_in\\_prison.html](http://inquest.gn.apc.org/data_deaths_in_prison.html)

**Table 1: The crimes offenders are imprisoned for in selected member states**

Member State	Type of Offence (%)					
	Violent Crime	Indecent Crime	Dishonest Crime	Drug-related crime	Other Crime	Motoring Crime
Bosnia & Herzegovina	25	6	30	10	21	8
Bulgaria	13	7	72	6		3
Cyprus	8.09	1.94	38.69	7.86	42.22	1.2
Estonia	33	0	46	9.6	6	5.4
Finland	45.9	3.2	14.9 <sup>61</sup>	15.2	8.7	12.1 <sup>62</sup>
Germany	31.39	7.63	34.73	14.85	0.97	5.31
Iceland	14.8	8.5	23.6	33.8	3.6	15.7
Latvia	18	4.6	59	13	0	5
Luxembourg	15.25	5.5	7.36	50	2.1	0.9
Norway	26	8.7	21.3	29.2	1.2	6.1
Romania	45.66	6.42	33.37	5.24		2.32
Serbia	26	3	37	13	6	5
Spain	5.9	6.1	43.1	27.5	16.9	0.5
Ukraine	38.2	2.3 <sup>63</sup>	32.7 <sup>64</sup>	15.9		
England and Wales	13.3	1.5	19.4	12.7	17.1	2.2

### 3.5.4 Prisoners awaiting trial

A large proportion of Europe's prison population is made up of prisoners awaiting trial.<sup>65</sup> These are persons held in prison who have not been found guilty of any crime.

In its Recommendation Rec(2006)13, the Committee of Ministers<sup>66</sup> of the Council of Europe addressed the issue of the use of remand in custody.<sup>67</sup> This Recommendation notes the damage done by remanding persons in custody, particularly those subsequently found not guilty. The psychological effect, the impact on family life, the disruption of work and social life and the costs of imprisonment are all discussed.

Imprisoning people before they have been tried must be a last resort and deemed strictly necessary. The General Principles in Recommendation Rec(2006)13 include the following:

<sup>61</sup> For housebreaking

<sup>62</sup> For drunk driving

<sup>63</sup> For rape

<sup>64</sup> For burglary

<sup>65</sup> For a definition of prisoners awaiting trial; see the QCEA *Glossary for Criminal Justice Papers* [on-line], available at <http://www.quaker.org/qcea/prison/Glossary%20for%20Criminal%20Justice%20Papers%20.pdf>

<sup>66</sup> Council of Europe's decision making body

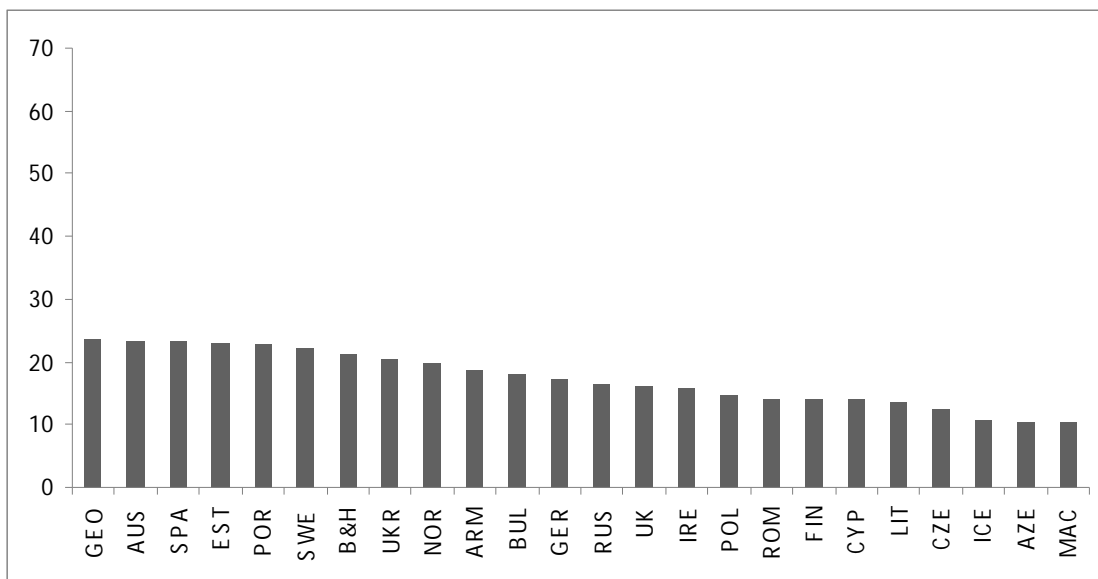
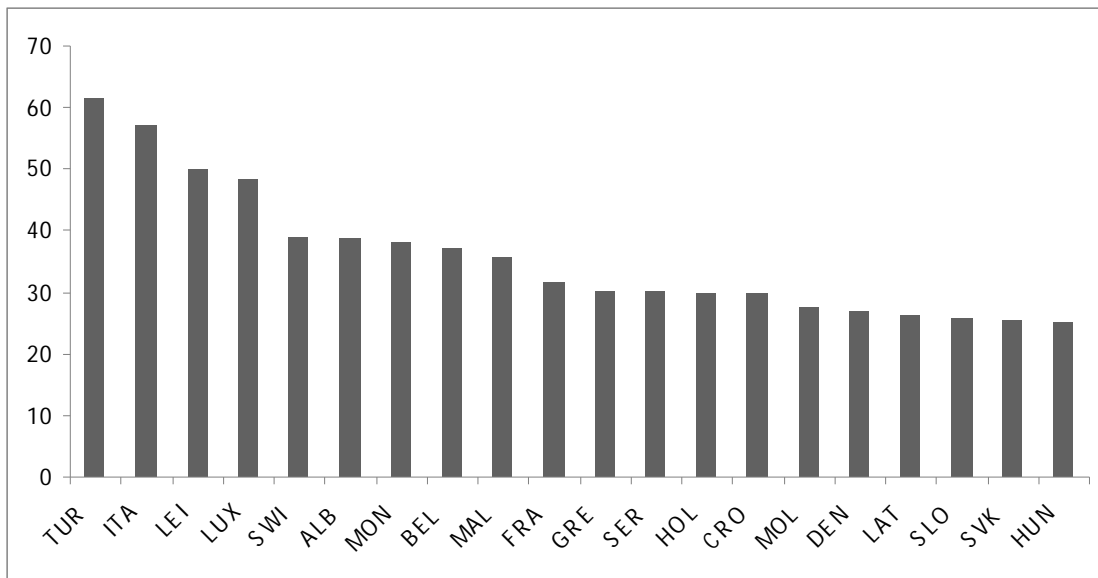
<sup>67</sup> Council of Europe, Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse [on-line], accessed 20 November 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=1041281&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

**General principles**

3. [1] In view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.  
 [2] There shall not be a mandatory requirement that persons suspected of an offence (or particular classes of such persons) be remanded in custody.  
 [3] In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons.

4. In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available.

**Graph 9a and 9b: The number of remand prisoners as a percentage of the overall prison population in the forty-seven Council of Europe member states**



In many European countries remand prisoners make up a large proportion of the overall prison population. Graphs 9a and 9b (above) show the percentage of remand prisoners in the overall prison population of the forty-seven Council of Europe member states. Graph 9a shows the 23 member states with the highest percentage and graph 9b shows the 24 member states with the lowest percentage. The Russian Federation and Turkey, the two member states with the highest number of prisoners awaiting trial hold 146,784 remand prisoners (16.5 per cent of the overall prison population) and 50,886 remand prisoners (61.5 per cent of the total prison population respectively). Given that the prison population in Turkey exceeds the official capacity, this is a statistic of particular note and concern.

Graphs 9a and 9b also show that figures for prisoners awaiting trial as a percentage of the overall prison population vary dramatically in Europe; particularly in countries with small populations. The percentage of remand prisoners in Macedonia (10.4 per cent), Cyprus (14 per cent), and Finland (14 per cent) are amongst the lowest within member states of the Council of Europe. San Marino (100 per cent), Andorra (77 per cent), and Monaco (61.8 per cent) are amongst the highest.<sup>68</sup>

Despite around half of member states' remand populations being between fifteen and thirty per cent of the overall prison population there remains a high level of variance - even between countries with high prison populations. As noted above, 61.5 per cent of Turkey's 82,742 prisoners have not yet been convicted,<sup>69</sup> while 17.4 per cent of Germany's 75,719 prisoners are awaiting trial.<sup>70</sup>

**There are currently 360,458 prisoners who have not been found guilty of a crime in Council of Europe member states.** QCEA supports the Council of Europe Recommendation Rec(2006)13 where it states that 'remand in custody shall only be used when strictly necessary and as a measure of last resort'.<sup>71</sup> The conditions and individual experiences whilst in remand are often worse than those for sentenced prisoners. In Estonia, for example, prisoners on remand may be kept locked in their cell for 23 hours a day<sup>72</sup>. Other rights and services afforded to convicted prisoners may be less, or not at all, available to those held on remand. Education is often unavailable and visiting rights may be more limited than usual.

The QCEA Women in Prison report found that on average the percentage of women prisoners awaiting trial is 30 per cent, varying from 7 per cent (Switzerland) to 60 per cent (Georgia). Awaiting trial is a time of great insecurity for prisoners, and may have a more profound effect upon women prisoners. Due to their small numbers, female prisoners awaiting trial may have less access to facilities and opportunities which are available to male prisoners awaiting trial. It is more likely that a woman is the sole carer for a child and women with young children may not be able to get a place on a mother and baby unit or a special cell if they are awaiting trial. They may also be placed a long way from home, making access to family and children difficult. Consequently being held on remand has ramification for a woman's life by introducing instability into the lives of the remand prisoner's children and making it difficult to organise alternative care arrangements for children.

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<sup>68</sup> Where QCEA did not receive a response from the relevant Ministry, the figures have been obtained from the International Centre for Prison Studies, *Prison Brief - Europe* [on-line], accessed 20 November 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps>

<sup>69</sup> International Centre for Prison Studies, *Prison Brief for Turkey* [on-line], accessed 21 November 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps>

<sup>70</sup> QCEA questionnaire, returned by the German Ministry of Justice, q. 3

<sup>71</sup> Council of Europe, *Rec(2006)13*, p. 2

<sup>72</sup> *Visit to Tallinn Prison - a report by the Quaker Council for European Affairs*, accessed on 22 May 2009, available at: <http://www.quaker.org/qcea/prison/Tallinn.pdf>

## 3.6 Disadvantaged Groups in the Prison System

### 3.6.1 Foreign national prisoners

Foreign national prisoners are a disadvantaged group in many European countries. They often face various extra challenges which other prisoners do not. This situation is particularly acute for foreign national prisoners who are not normally resident in the state in which they are imprisoned. Please see appendix 1 for graphs relating to foreign national prisoners in the prison system

If a prisoner's first language differs from that of the state in which they are imprisoned, their communication with a lawyer and understanding of their legal situation may be impaired.<sup>73</sup> It is also possible that legal procedures will be slower where there is a need for translation/interpretation, particularly if the first language of the prisoner in question is not widely spoken. The QCEA Women in Prison report states that:

*'comprehension of prison rules and the behaviour expected of them may differ from that of their peers... they may have trouble negotiating the benefits and sanctions of the prison system, as well as the legal system. Isolation, incomprehension and lack of knowledge may create barriers for accessing work, training and education... Food, manners, dress, sleeping and hygiene habits... may all differ from what they are used to.'*<sup>74</sup>

The means to maintain contact with families and communication with the outside world are of concern (particularly regarding contact in other countries) and are particularly important for this group of prisoners.

Foreign national prisoners comprise more than half the overall prison population in eight states: Andorra, Cyprus, Liechtenstein Luxembourg, Monaco, Montenegro, San Marino and Switzerland. In these states the need of provisions for foreign national prisoners is of particular concern although the overall *number* of prisoners in these countries is relatively low. Germany (27.2 per cent);<sup>75</sup> France (21.4 per cent);<sup>76</sup> and the United Kingdom (13.9 per cent)<sup>77</sup> have a much greater number of foreign national prisoners, even at the lower percentages, illustrating that appropriate provision is of crucial importance across Europe.

In seventeen member states, the foreign national prisoner population is below five per cent of the overall population: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Poland, Romania, the Russian Federation, Serbia, Slovakia, Turkey and Ukraine.

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<sup>73</sup> Quaker Council for European Affairs, *Women in Prison: A Review of the Conditions in Member States of the Council of Europe* (Brussels, February 2007), p. 23

<sup>74</sup> *ibid.*, p. 24

<sup>75</sup> *QCEA questionnaire*, returned by the German Ministry of Justice, q. 13

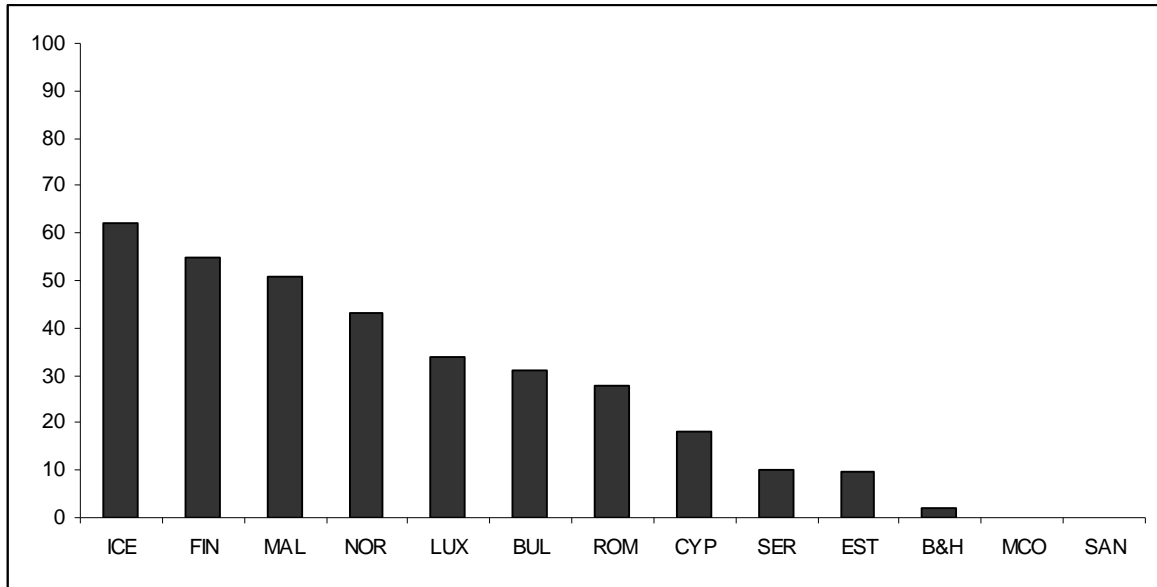
<sup>76</sup> International Centre for Prison Studies, *Prison Brief for France* [on-line], accessed 22 November 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps>

<sup>77</sup> International Centre for Prison Studies, *Prison Brief for the United Kingdom: England and Wales* [on-line], accessed 22 November 2007, available at <http://www.kcl.ac.uk/schools/law/research/icps>

**Graph 10: Percentage of foreign national prisoners convicted of drug-related offences**

Graph 10 (below) shows the percentage of foreign nationals imprisoned for drug-related offences (possession, trafficking, or other). QCEA received responses to this question from thirteen Council of Europe member states.<sup>78</sup> The graph shows a wide range of responses amongst states.

In Iceland 61.5 per cent of the foreign national prison population is imprisoned for drug-related offences. In Bulgaria, Finland, Luxembourg, Malta and Norway, the percentage of foreign nationals imprisoned for drug-related offences is over 30 per cent. Croatia, Switzerland and the Czech Republic stated that no data was available for this question.<sup>79</sup>



In the responding member states the percentage of those imprisoned for drug-related offences range from 6 per cent (Bulgaria) to 50 per cent (Luxembourg), with an average of 18.47 per cent of the total prison population. The average of foreign national prisoners imprisoned for drug-related offences (in the responding member states) is 31.1 per cent, i.e. higher. The exception is Luxembourg where 50 per cent of the overall prison population is imprisoned for drug-related offences, but only 34.46 per cent of foreign nationals are imprisoned for the same offence.

**3.6.2 Juveniles and young offenders**

Juvenile prisoners and imprisoned young offenders (identified by QCEA as prisoners younger than eighteen and twenty-one years of age respectively) are a minority in all member states’ prison systems and in many establishments across Europe. The United Nations Standard Minimum Rules for the Treatment of Prisoners state that:<sup>80</sup>

<sup>78</sup> QCEA questionnaire, q. 14

<sup>79</sup> *ibid.*

<sup>80</sup> *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, accessed 1 December 2009, available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, ...  
 (d) Young prisoners shall be kept separate from adults.

QCEA received responses from nineteen member states to the question asking for the exact number of juveniles and young offenders (defined above) currently held in custody. The replies from the Ministries of Justice are shown in Table 2 below:

**Table 2: The number of juveniles and young offenders in twenty-one member states (includes Catalonia)**

Member State	Juveniles	Young Offenders
England and Wales	2780	<sup>81</sup>
Ukraine	1419	7328
Germany	740	3516
Moldova	665	144
Catalonia (region of Spain)	367	263
Portugal	143	364
Croatia	133	66
Czech Republic	123	0
Bulgaria	97	0
Estonia	81	308
Malta	30	0
Switzerland	30	60
Serbia	18	227
Slovenia	14	136
Luxembourg	9	35
Cyprus	5	23
Bosnia & Herzegovina	5	35
Norway	4	143
Finland	2	81
Montenegro	0	2
Iceland	0	9

The Czech Republic responded that the number of young offenders was not counted so as to be in accordance with law,<sup>82</sup> while Bulgaria responded that statistics for this age group (eighteen to twenty-one years) were not available.

QCEA did not receive a reply for Spain, although the responsible Ministry in the Catalonia region did respond as can be seen in Table 2.

Table 2 is presented in descending order of the number of imprisoned juveniles. It can be noted that there does not appear to be any direct relationship between the number of juveniles in prison and the number of young offenders in prison in the responding member states.

<sup>81</sup> England and Wales did not provide a figure in their questionnaire

<sup>82</sup> QCEA questionnaire, returned by the Czech Republic Ministry of Justice, q. 15



Imprisoning young offenders is often problematic and there are repercussions. Once a youth is drawn into the penal system it is hard to stop that individual from being tarred. In England and Wales a disproportionate number of young offenders imprisoned are reconvicted within two years of their release.

**Recommendation:** All member states should provide alternatives to imprisonment wherever possible for young offenders.

## 4 Alternatives to imprisonment in Council of Europe member states

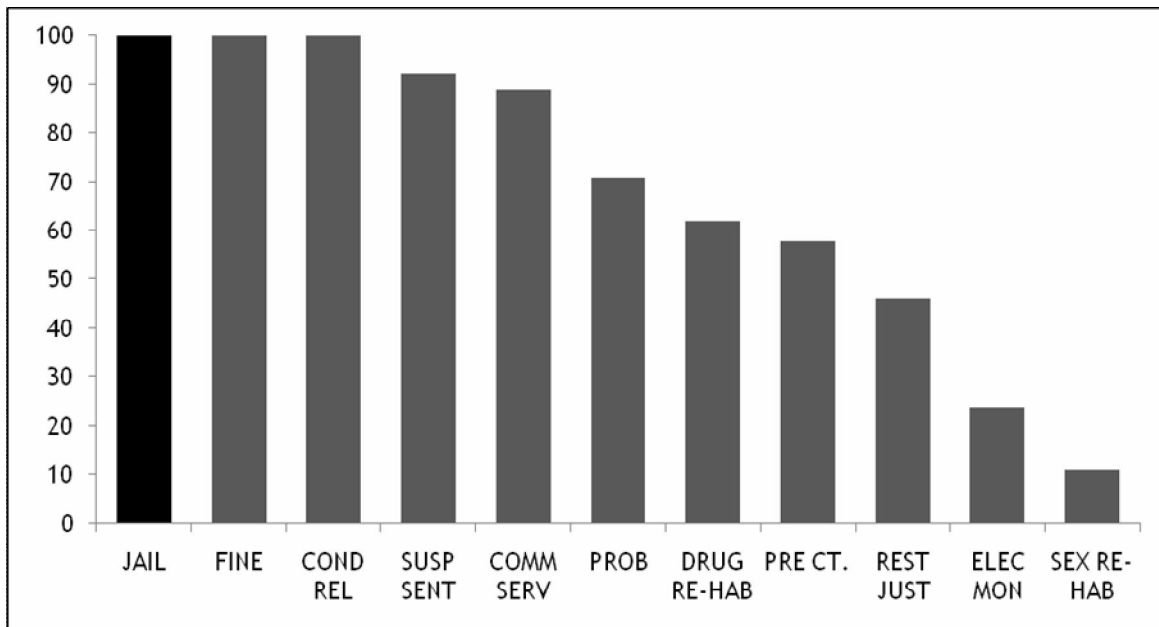
The use of different alternatives to imprisonment varies across Europe, but some alternatives are used more widely than others.

QCEA asked member states which of the following measures are used as an alternative to imprisonment in their country:

- Probation (PROB)
- Fines (FINE)
- Conditional release (COND REL)
- Electronic monitoring (ELEC MON)
- Suspended sentencing (SUSP SENT)
- Community service (COMM SERV)
- Drug and alcohol rehabilitation (DRUG RE-HAB)
- Sex offender rehabilitation (SEX RE-HAB)
- Restorative justice measures (REST JUST)
- Pre-court proceedings (PRE CT.)

The use of each of these alternatives to imprisonment in European states will be looked at in detail in the following sections of this report. Graph 11 below shows the percentage of responding member states that use various alternative sanctions. The dark column indicates prison use.

**Graph 11: The percentage of member states that use alternatives to imprisonment**



The responding states were: Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Iceland, Italy, Luxembourg, Malta, Moldova, Monaco, Norway, Slovenia, Spain, Switzerland and Ukraine.

All respondents indicated that fines and conditional release are used in their country - although the Norwegian Ministry said that conditional release was 'not regarded as an alternative to prison'.<sup>83</sup> The vast majority of respondents employ a probation service, suspended sentencing and community service as alternative sanctions. Most Ministries use drug and/or alcohol rehabilitation programmes, as well as pre-court proceedings. Below 50 per cent of governments use restorative justice measures as alternatives to imprisonment; and the least widely used measures were electronic monitoring and sex offender rehabilitation.

In addition to the above mentioned alternatives, Finland has an alternative set of sanctions specific to offenders younger than eighteen years of age. The Finnish Ministry stated that juvenile punishment 'consists of supervision, different activities and programmes promoting coping in society, and an orientation to working life and work... the content of each juvenile punishment is defined in the enforcement plan approved by the court. Juvenile punishment is served according to a planned schedule eight hours a week at most. The young offender is compensated for moderate travelling expenses caused by serving the juvenile punishment.'<sup>84</sup>

The Ukrainian Ministry added the following as other alternative sanctions: 'prohibition to occupy some types of posts, liberty restriction, release of pregnant women and those who have children under 3 years old'.<sup>85</sup>

Different crimes were mentioned as being most appropriate for the use of alternatives to imprisonment by the ten responding Ministries.

Seven of the ten stated that alternatives to imprisonment were more effective for less serious crimes. The Bulgarian Ministry specified these crimes as those carrying a prison sentence of less than three years. Other specified crimes were offences related to drug abuse, motor offences, minor violent offences and some offences against property in Croatia; thefts, burglaries, motor offences, and default of fine payments in Cyprus; theft and the destruction of personal goods in Luxembourg; and offences with a corresponding prison sentence of less than one year for minor offenders in Serbia.

The Icelandic Ministry considered alternatives to be more effective when considering economic crimes.

No research was available from Finland.

## 4.1 Probation

### 4.1.1 What is probation?

Probation is widely used in Council of Europe member states. When an offender is 'on probation', he or she is still active in society but is supervised and supported by a probation officer. Offenders must attend regular supervision sessions with their probation officer. Other requirements may include completing a community sentence successfully, completing treatment for alcohol or drug abuse, staying in a prescribed hostel, or staying away from an area where their crime was

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<sup>83</sup> *QCEA questionnaire*, returned by the Norwegian Ministry of Justice, q. 16

<sup>84</sup> *QCEA questionnaire*, returned by the Finnish Ministry of Justice, q. 16

<sup>85</sup> *QCEA questionnaire*, returned by the State Department of Ukraine on Enforcement of Sentences (Execution of Punishment), q. 16

committed. If the rules or requirements are broken, an individual will face disciplinary action and may be sent (or returned) to prison.

The United Nations Office on Drugs and Crime (UNODC) has produced a toolkit for states which comments on the need for adequate facilities for all probation services. It states that adequate office space and technical equipment are essential for the efficient work of probation officers, who are often overloaded with cases and require computers to write reports, internet access for gathering information, photocopiers, telephones and faxes to communicate and coordinate with a wide range of actors involved in the administration of community sanctions and measures, and resource and reference books to assist them with their daily work.<sup>86</sup>

#### 4.1.2 When is probation not used?

Of the responses we had to this section of the questionnaire, probation is not used as an alternative to imprisonment in Finland, Norway, Slovenia, Ukraine and Catalonia (a region of Spain).

**Table 3: Comments from member states where probation is not used as an alternative to imprisonment**

Country	Comment
Finland	Probation may be used alongside conditional release or suspended sentencing
Norway	The former Prison Service and Probation Service have been amalgamated into a single service - The Correctional Service of Norway. The Ministry of Justice in Norway stated that 'the Norwegian Correctional Service executes sentences within prison and in the community. That part of the Service responsible for community sanctions is normally translated as The Probation Service' <sup>87</sup>

In most countries where probation is used as an alternative to imprisonment, probation is used only in certain situations but it is not used for the most serious offences.

**Table 4a and 4b: Comments from member states where probation is used as an alternative to imprisonment**

Country	Comment
Croatia	Do not apply alternative sanctions for any offence with a maximum three-year prison sentence or more
Czech Republic	Criminal law stipulates that probation cannot be used as an alternative where the prison sentence is five years or more
Moldova	Probation cannot be an alternative for crimes with intent which carry a five-year prison sentence or an 'omission crime with seven years' imprisonment <sup>88</sup>
Monaco	Probation not used as an alternative for any offence for which the offender has been sentenced to prison for less than three years (and more than five years), or if the offender is a repeat offender.*
Romania	Probation is called suspension under surveillance and cannot be used as an alternative for any offence where the sentences of imprisonment is more than four years
Switzerland	Probation used whenever 'there is a realistic chance that the offender concerned won't commit any crime again' <sup>89</sup>

<sup>86</sup> UNODC, *Custodial and Non-Custodial Measures: Alternatives to Incarceration*, p. 21

<sup>87</sup> *QCEA questionnaire*, returned by the Norwegian Ministry of Justice, q. 17

<sup>88</sup> *QCEA questionnaire*, q. 17

<sup>89</sup> *QCEA questionnaire*, returned by the Swiss Ministry of Justice, q. 17

\* This unique response may relate to the relatively small size of this state. However the precise reasoning is unclear.

Other responses indicated that probation could not be used as an alternative for certain crimes:

Country	Crimes for which alternatives are not available
Bosnia & Herzegovina	War crimes Homicide Drug crimes Serious robbery (involving violence) Rape Paedophilia
Italy	Mafia-related crimes Organised crime Terrorism Trafficking of human beings Illegal immigration
Luxembourg	Violent crimes
Malta	Homicide Rape Aggravated theft

#### 4.1.3 The number of offenders on probation

The number of offenders who are on probation depends on various factors and varies across Europe. Some probation systems have only been operating for a relatively short period of time, as is the case in some south eastern European countries. For example, the Bulgarian probation service, which currently has 1060 clients, has only been in existence since 2005.<sup>90</sup> Where probation services are new, it is particularly difficult for staff members to be trained to be able to deal with difficulties including problems surrounding drug dependents, offenders with HIV and the particular problems of female or juvenile clients.

**Table 5: The number of offenders on probation**

Country	Number	Country	Number
England and Wales	190000	Switzerland	2000
Poland	171662	Denmark	1820
Germany	84552	Bulgaria	1060
Norway	12440	Andorra	472
UK - Scotland	8171	Luxembourg	340
Moldova	7823	Croatia	323
Romania	7139	Iceland	212
Sweden	6429	Cyprus	179
Belgium	4177	Monaco	13
Czech Republic	3975		

Table 5 (above) shows the number of offenders on probation on a given day (the date to which these figures relate varies between member states) in eighteen European states. Where member

<sup>90</sup> Valentina Karaganova, Head of Bulgarian Probation Service, personal correspondence, 24 September 2007

states did not respond, statistics have been taken from the Council of Europe Annual Penal Statistics (SPACE II)<sup>91</sup> or, in the case of England and Wales, through web-based research.<sup>92</sup>

#### 4.1.4 Returning to prison

Only Croatia, Iceland, Luxembourg, Monaco, and Switzerland responded with data regarding the percentage of offenders on probation who were returned to prison. In Monaco, no clients of the probation service have ever returned to prison; in Croatia, the figure is between one and two per cent; in Switzerland between 10 and 15 per cent; in Iceland, between 14 and 26 per cent; and in Luxembourg, a much higher 49 per cent were returned to prison.

The Czech Republic, Moldova, and Norway stated that no official data was available.

One criticism of the probation service in England and Wales is that they are too quick to return offenders to prison if they breach one of the conditions of their probation. Providing more support to enable offenders to avoid this and perhaps being more subjective when an offender breaches one of the terms, may help prevent such a high proportion of offenders being returned to prison, which is highly disruptive, expensive and often unnecessary.

**Recommendation:** Ministries of Justice should keep statistics on the number of offenders on probation that return to prison. These should be made publicly available.

#### 4.1.5 Financing probation services

Many probation services across Europe are not given adequate resources to cope with the role expected of them appropriately.

All seven responding member states allocate less than twenty-five per cent of their total prison service budget to their probation services.

England and Wales allocates the largest amount of money (632,849,087 euros) and the highest percentage (22.78 per cent). Croatia, Moldova, Malta and Switzerland all allocate less than five per cent of the money available to the prison service to the probation service.

**Recommendation:** Member states should ensure probation services receive sufficient funding to be managed thoroughly and effectively.

#### 4.1.6 Requirements when on probation

What is required of an offender on probation does vary between member states. However, some conditions, such as regular meetings with a probation officer, are employed in most (if not all) member states.

QCEA received responses from the following eleven member states to the question regarding probation conditions: Croatia, Czech Republic, Iceland, Italy, Luxembourg, Malta, Moldova, Monaco, Norway, Romania and Switzerland.

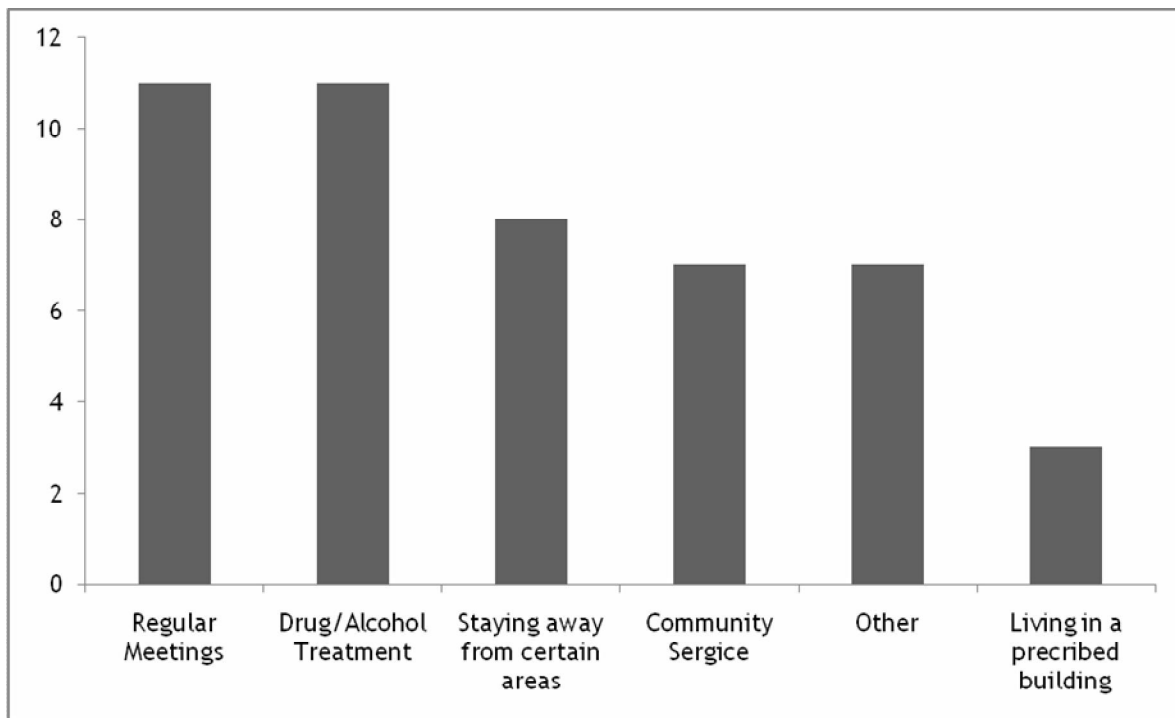
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<sup>91</sup> Communication from the Council of Europe: Council of Europe, *SPACE II (Council of Europe Annual Penal Statistics) Community Sanctions and Measures (CSM) Ordered in 2001*, PC-CP (2003)6 (Strasbourg, August 2003), p. 32 [online], accessed 1 December 2009, available at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/)

<sup>92</sup> For information on the UK (England & Wales) Probation Service, see *National Probation Service*, Welcome [on-line], accessed 3 December 2007, available at <http://www.probation.homeoffice.gov.uk>

Graph 12 (below) shows that in all eleven member states, regular meetings with an official are required. Furthermore, each member state has the facility to oblige an offender to attend a drug and/or alcohol rehabilitation course. The majority can require offenders to participate in community service<sup>93</sup> as well as staying away from certain areas.<sup>94</sup> These might be areas where the offence has taken place. Only three states - Malta, Monaco and Norway - can require the offender to live in a prescribed building.

**Graph 12: Conditions of probation in eleven member states**



The following stipulations were added as other conditions which could be demanded:

- Take adequate employment, qualifying for a particular vocation [Croatia]
- Not using alcohol or drugs (this can be tested under Article 64 of the Sentences Act) [Iceland]
- Social or financial support to victims; staying away from certain people [Italy]
- Paying a fine [Luxembourg]
- To repay/make up for damage to the victim [Moldova]
- Participating in various programmes including: cognitive skills, Stop Crime, anger management, drink/driving, sexual impulse control, WIN (for women); not contacting specified persons; and participation in a Conciliation Council [Norway]
- Repay debts; Attend socio-educational courses [Switzerland]

**Recommendation:** Where possible, probation services should have the option of requiring offenders to participate in alcohol/drug rehabilitation programmes, sex-offender rehabilitation programmes, restorative justice programmes, community services and other activities as considered relevant on a case by case basis.

<sup>93</sup> The seven respondents who can require offenders to participate in community service are: Croatia, Czech Republic, Luxembourg, Malta, Moldova, Norway, and Switzerland.

<sup>94</sup> The seven respondents who can require offenders to stay away from certain areas are: Croatia, Czech Republic, Italy, Luxembourg, Monaco, Norway, and Switzerland.

#### 4.1.7 The effectiveness of probation services

The effectiveness of a probation service is dependent on various factors. The aims of a service typically include those stated by the England and Wales Probation Service: protecting the public, reducing re-offending, finding a suitable punishment for an offender, raising an offender's awareness of his/her crime and its effects, and rehabilitation of the offender.<sup>95</sup>

Evaluation of probation services is carried out through a range of means in Europe. QCEA received ten responses, which ranged from no formal measuring of the service - in Iceland, Moldova<sup>96</sup> and Norway - to statistical and recidivism studies in Croatia, the Czech Republic, Luxembourg and Switzerland. Other forms of measurement include consultation with probation officers - in Croatia and Monaco - and the production of annual reports.

In England and Wales, regional probation services take part in an annual award ceremony in London alongside services from various other sectors in the UK economy. Awards aim to recognise and reward the efforts of organisations that strive for innovation, make continuous operational improvements and identify best practice approaches that produce success. In 2007, two probation areas were announced as winners of the award - Kent Probation Area and Sussex Probation Area. Passion and commitment of staff members, clear direction, structured processes and demonstrable achievements were stated reasons for the award.<sup>97</sup>

**Recommendation:** Probation services should be measured against given criteria and there should be clear structures and commitment from staff.

Asked how effective they considered their national probation service to be, seven Ministries described the service as 'effective'. These were: Croatia, Italy, Luxembourg, Malta, Moldova, Monaco, and Switzerland. Bosnia & Herzegovina stated that their service was 'not efficient'; the Czech Republic stated that there was no data available.<sup>98</sup>

#### 4.1.8 Recidivism

Three Ministries stated that they measured recidivism rates amongst individuals who have been on probation. These were Bosnia & Herzegovina, Croatia and Luxembourg. The Prison and Probation Administration (PPA) in Iceland stated that they were in the process of introducing such measurement.

Of these, the highest rate of recidivism, by a large margin, was in Bosnia & Herzegovina where thirty-five per cent of offenders on probation go on to commit at least one further crime. The rate in Luxembourg is 6.3 per cent; and the lowest rate is in Croatia, with only 1.3 per cent committing further crimes.

The public perception of recidivism for offenders on probation is not necessarily accurate. Cases in which offenders have carried out crimes, including murder, while on probation, give the impression that there is a major problem with the probation service.

<sup>95</sup> National Probation Service, *Our Aims* [on-line], accessed 4 December 2007, available at <http://www.probation.homeoffice.gov.uk/output/page18.asp>

<sup>96</sup> The Moldovan Probation Service has only been in operation since January 2007, hence no measurement

<sup>97</sup> National Probation Service, *Probation Leads the Way for Justice and Law at the London Excellence Awards 2007* [on-line], accessed 4 December 2007, available at <http://www.probation.homeoffice.gov.uk/output/page367.asp>

<sup>98</sup> QCEA questionnaire, response to q. 24



Mary-Ann and her 18-year old friend were abducted in central Reading, UK before being taken to a guest house where they were raped and tortured. They were then driven to the Berkshire town's Prospect Park to be killed. Mary-Ann died from repeated stab wounds while her friend, who cannot be named, was shot in the head but survived. Drug dealer Adrian Thomas, 20, and fellow gang members Michael Johnson, 19, Jamaile Morally, 22, and 18-year old Indrit Krasniqi were all under supervision in the community at the time of the killing.

These kinds of cases remove any faith the public might have in the probation service, regardless of statistical success. To prevent this from happening, there needs to be 'better partnerships between the criminal justice system and the wider community in order to combat crime'<sup>99</sup> including the perception of crime, by forming better relationships between criminal justice institutions and the media.

**Recommendation:** All agencies within the criminal justice system and beyond who have involvement with offenders on probation need to work effectively together, and with the public, to ensure that the risk of re-offending is minimised.

**Recommendation:** All agencies within the criminal justice system and beyond who have involvement with offenders on probation need to work effectively together, and with the wider public and the media, to ensure that public perception of crime and re-offending is accurate.

#### 4.1.9 How probation can be improved

Probation services need to be able to provide a flexible service and work towards being able to respond to each individual's needs and provide personal treatment. Because rehabilitative programmes are often the most effective, it is important to make these as widely available as possible.

QCEA asked Ministries how their probation services could be improved.

Seven of the eleven responses QCEA received indicated that more funding was required: Bosnia & Herzegovina, Croatia, Iceland, Malta, Moldova, Romania, and Switzerland. This is also true of the Probation Service in England and Wales, where judges and probation staff say 'the supervision system is overloaded'.<sup>100</sup> From the responses received by QCEA, probation services in Italy, Luxembourg and Monaco stated that their probation services do not need more funding.

A higher level of cooperation with, and involvement from, local communities would improve the probation services in seven of the responding countries: Bosnia & Herzegovina, Croatia, Iceland, Italy, Luxembourg, Moldova, and Romania. Communities have been involved in various ways across Europe. This will be looked at in more detail in section 4.6 of this report.

Both Bosnia & Herzegovina and Iceland stated that stricter probation conditions would improve their respective probation services.

<sup>99</sup> British Broadcasting Community News (BBC News), *Clark pursues improved probation* [online], accessed on 7 July 2009, available at [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4831158.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4831158.stm)

<sup>100</sup> British Broadcasting Community News (BBC News), *Tougher curbs on freed criminals* [on-line], accessed 5 December 2007, available at [http://news.bbc.co.uk/2/hi/uk\\_news/4924686.stm](http://news.bbc.co.uk/2/hi/uk_news/4924686.stm)

Monaco stated that due to the small number of cases, and the fact that there has never been a case where an individual has re-offended, their probation service is 'quite satisfactory as it is'.<sup>101</sup>

The need for probation services to more thoroughly assess the requirements of individual clients was accepted and acted upon by the Icelandic Parliament who passed Sentences Act no. 49/2005 in May 2005. Regarding the Sentences Act, the Icelandic Ministry said:

*'The implementation of the new law has influenced the probation service as well as other fields of the Prison and Probation Administration's (PPA) work. Regarding the probation service the major change is a more thorough diagnosis of the clients needs (the diagnosis is supposed to take place at the beginning of imprisonment) as well as increasing the resources used in supporting and supervising them during the probation time. One important aim of the probation service is to become more focused in the supervision of its clients, helping and supporting those who really need it.'*<sup>102</sup>

In addition to ensuring adequate funding, probation services could also be improved by better assessment of clients' needs, by tailoring the services to the needs of individuals and by embedding the service more in the community through combination with other alternatives to imprisonment such as community service orders, sentencing circles, restorative justice approaches, etc., all of which are discussed in more detail later in this report.

**Recommendation:** Member states should better tailor their probation service to an offender's needs.

## 4.2 Fines and Compensation Orders

### 4.2.1 What are fines and compensation orders?

Fines are a monetary sanction imposed upon a convicted offender which can vary according to where the crime was committed, the gravity of the crime and the economic status of the convicted individual (when structured fines are used).

Compensation orders (CO), where money is paid by an offender to a victim directly, are frequently used as a principal sentence in the Netherlands and Germany, although a CO cannot be a principal sentence in Austria.<sup>103</sup>

### 4.2.2 When are fines used?

Fines are most frequently imposed for minor offences, and were used by all nine of the Ministries who answered this section of the questionnaire. Croatia, Finland, Iceland, and Switzerland mentioned motoring or traffic offences as particularly common. Other offences listed as minor were certain drug offences (such as possession), and less serious offences against property.<sup>104</sup>

<sup>101</sup> QCEA questionnaire, returned by the Monaco Ministry of Justice, q. 26

<sup>102</sup> QCEA questionnaire, returned by the Icelandic Ministry of Justice, q. 26

<sup>103</sup> Communication from the Council of Europe: *SPACE II: Council of Europe Annual Penal Statistics, Community Sanctions and Measures Ordered in 2001* [on-line], accessed 30 March 2007, available at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/statistics\\_space\\_ii/PC-CP\(2003\)6E-%20Space-II.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_ii/PC-CP(2003)6E-%20Space-II.pdf)

<sup>104</sup> QCEA questionnaire, returned by the Croatian Ministry of Justice, q. 29

Other crimes mentioned were fraud and defamation (Croatia); theft, assault and burglary (Luxembourg); and money laundering, tax evasion and forgery of official documents (Bosnia & Herzegovina). The Sarajevo region of Bosnia & Herzegovina mentioned that fines were most often imposed on individuals who steal wood.

In Moldova, a Compensation Order is imposed in 'every case where a victim has suffered damage'.<sup>105</sup>

When serious or so-called 'hard crimes' have been committed, fines are not used in most member states.

Generally, violent crimes (including sexual violence) are not tackled by imposing a fine as a principal sentence; although in most of the member states who responded, a fine can make up part of the sentence if the court considers this appropriate.

Fines are not considered appropriate for murder, rape, serious drug offences, aggravated robberies, and major re-offences by any member state. Any offence carrying a maximum prison sentence of at least three years in Croatia, any 'intentional violent crime' in Moldova, and any war crime conviction in Bosnia & Herzegovina cannot be dealt with by a fine.

#### 4.2.3 The size of the fine

When a fine or Compensation Order is given, the gravity of the associated crime is taken into consideration in all member states. Of the nine Ministries that responded to this section of the questionnaire, only Italy did not take the economic status of the offender into consideration. The location where a crime takes place can also have a bearing on the size of the fine in the Bosanska region of Bosnia & Herzegovina.

Automatic fines, such as those for motoring offences and parking tickets, are criticised as they do not take into consideration the economic status of the offender. However some member states, such as England and Wales, may, when approached, offer acceptable payment programmes which consider the status of the offender (e.g. student, unemployed etc.).

A scheme in England and Wales taking into consideration the economic circumstances of an offender was scrapped due to an outcry from the public. The scheme meant that offenders could be paying thousands of pounds more than the original total for the fine<sup>106</sup>. It is important to make sure that where an offender may have difficulty paying a fine, their economic circumstances are taken into consideration. However where an offender is a higher earner, the fine must not become totally out of proportion with the offence.

**Recommendation:** The economic status of the offender should be taken into consideration for *all* fines and Compensation Orders, but member states should ensure that fines for wealthier offenders are not out of proportion with the crime.

<sup>105</sup> QCEA questionnaire, returned by the Moldovan Ministry of Justice, q. 29

<sup>106</sup> The Telegraph, *Middle class to pay higher fines for the same offence*, accessed on 7 August 2009, available at <http://www.telegraph.co.uk/news/uknews/1481143/Middle-class-to-pay-higher-fines-for-the-same-offence.html>

#### 4.2.4 The effectiveness of fines

There is no official data or formal measurement of the effectiveness of fines in any of the responding Ministries. Ministries in Finland and Norway stated that they knew of no research in this area.

Moldova and Slovenia both considered their use of fines to be efficient. Regions in Bosnia & Herzegovina differed in their opinions, with the Mostar region believing their use of fines to be efficient while the Sarajevo region indicated that they thought fines were 'not efficient'.<sup>107</sup>

It is unsatisfactory that member states do not measure and are therefore not aware of how effective the use of fines is as an alternative to imprisonment. It is highly likely that compensation orders are effective in compensating victims and act as a deterrent for *some* members of society but not for all. Greater understanding of this will improve the use of fines as an alternative to prison.

A MORI survey of electronically monitored individuals and their family members, commissioned by the National Audit Office in England and Wales, found that there was 'widespread agreement' that electronic monitoring was a more effective measure than fines. It concludes that 'if people could afford the fine, it was not seen as an effective punishment, and where people could not pay the fine, it was likely that their family would suffer the financial consequences'.<sup>108</sup>

**Recommendation:** There should be an official measurement of how effective the use of fines is in member states. If necessary, research should be commissioned to discover where fines are an effective alternative to imprisonment and where they are not.

#### 4.2.5 Recidivism

The only respondents that measured the rate of recidivism when fines are used were Switzerland and the Mostar region of Bosnia & Herzegovina. The rates of re-offending are 8.5 per cent and four per cent respectively.

Luxembourg, Malta, Moldova, and Slovenia all stated that figures were not available.

**Recommendation:** Member states should be more aware of whether offenders given fines or Compensation Orders re-offend. This could be achieved through commissioning research in this area.

### 4.3 Conditional (or Early) Release

#### 4.3.1 What is Conditional (or Early) Release?

A conditional release can be granted to imprisoned offenders who have not completed the full term of their prison sentence. The conditional release imposes regulations on the offender's activities and who he/she is in contact with. If an offender fails to meet these conditions, he/she may be returned to prison.

<sup>107</sup> QCEA questionnaire, q. 32

<sup>108</sup> National Audit Office, *The Electronic Monitoring of Adult Offenders: Report by the Comptroller and Auditor General, 1 February 2006 - Appendix 4* [on-line], accessed 11 December 2007, available at [http://www.nao.org.uk/publications/nao\\_reports/05-06/0506800.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/0506800.pdf)

In its 2003 Recommendation, the Council of Europe defines conditional release as 'the early release of sentenced prisoners under individualised post-release conditions'.<sup>109</sup>

The Council of Europe Recommendation states as a general principle, that 'conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community'.<sup>110</sup> Also of note is the recommendation that, in order to reduce recidivism, individually tailored conditions should be included as a standard requirement (alongside the requirement not to re-offend):

8. In order to reduce the risk of recidivism of conditionally released prisoners, it should be possible to impose on them individualised conditions such as:
- The payment of compensation or the making of reparation to victims;
  - Entering into treatment for drug or alcohol misuse or any other treatable condition manifestly associated with the commission of crime;
  - Working or following some other approved occupational activity, for instance, education or vocational training;
  - Participation in personal development programmes;
  - A prohibition on residing in, or visiting, certain places.<sup>111</sup>

For conditional release to be as effective as possible there is a need for the community to be involved. The UNODC found that one key concern was finding suitable employment - both during the conditional release period and afterwards, when the full sentence has been effectively served. It is important that vocational and educational training as well as employment should be made available to offenders on conditional release (and ex-offenders).

In their *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, the UNODC included a section on who should act to improve the practice of conditional release:

**Legislators** must create a procedural framework that allows early release and the decision making and review processes that allow its use.

**Prison authorities** are key players in the process of early release, unless release is triggered automatically. They refer early release candidates to the bodies that decide whether to release them and prepare prisoners for early release if granted.

**Administrators** must provide an institutional infrastructure that allows for the imposition of suitable conditions of release.

**Probation officers** need to cooperate with prison authorities to coordinate the release process and to ensure that prisoners are suitably prepared for life in the community.

**The police** should be encouraged to play a supportive role in the contact with offenders who have been released conditionally.

**Non-governmental organisations** and **members of the wider public** can help by offering work to prisoners who are conditionally released and assisting with their integration into the community.

**Heads of State** make major strategic decisions when deciding to use their powers of pardon and amnesty.

<sup>109</sup> Communication from the Council of Europe: *Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole)* [on-line], accessed 6 December 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=70103&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

<sup>110</sup> *ibid.*, paragraph 3

<sup>111</sup> *ibid.*, paragraph 8

### 4.3.2 When conditional release is used

In almost all European countries, conditional release can be considered for any offender who has spent an extended period in prison regardless of the offence he or she may have committed.

In many countries, conditional release is used as a stage between prison and a return to the outside world. An offender will return to the community but will be required to adhere to one or more conditions.

The only condition applicable to all countries is the condition which demands that no further crime be committed. In some cases, conditions similar to those of probation (see above) may be considered - including the completion of a rehabilitation course, regular meetings with authorities, staying away from certain areas or people, living in a prescribed building, and refraining from drug or alcohol use. However, this is not the case in all European countries.

When a conditional release is considered, various factors should be taken into consideration, including:

- Whether the prisoner is a first-time offender or a repeat offender
- How old the offender was when he/she committed the offence for which they are imprisoned
- What the risk to the general public is.

Croatia and Italy, in response to the QCEA questionnaire, provided information about additional considerations which apply in their countries. In Croatia the following are material considerations:

- Whether the act was committed in a particularly cruel way
- Whether there were aggravating circumstances related to the offence
- The degree of remorse and acceptance of guilt for the offence.

In Italy an offender must have paid off any legal and economic debt and show remorse for the offence committed.<sup>112</sup>

Conditional release is usually considered after an offender has completed either half or two thirds of their sentence. This varies between member states and can depend on the factors mentioned above.

Finland, Iceland, Norway and Slovenia specified that either half or two thirds of the sentence must have been completed by an offender. In Finland, according to chapter 2c of the Penal Code; 'a prisoner shall be released having served two-thirds of the sentence. First-timers shall be released having served half the sentence'.<sup>113</sup> In Iceland, prisoners not serving sentences for serious offences may be granted probation when half the sentence is complete, and after two-thirds of a sentence in more serious cases. A prisoner regarded as a habitual offender, or who has repeatedly violated the terms of probation, will not be granted probation again, except under exceptional circumstances. In Norway, all persons are considered for conditional release when they have completed two-thirds of their sentence provided that the initial prison sentence was more than seventy-three days.

The Italian Ministry stated that conditional release in the Italian system is seen as one of the alternative measures less easy to obtain and generally 'applies to offenders convicted to a life sentence'.<sup>114</sup> In Slovenia there is no supervision of conditionally released offenders.<sup>115</sup>

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<sup>112</sup> QCEA questionnaire, q. 34

<sup>113</sup> QCEA questionnaire, returned by the Finnish Ministry of Justice, q. 34

<sup>114</sup> QCEA questionnaire, returned by the Italian Ministry of Justice, q. 34

<sup>115</sup> Council of Europe, *SPACE II*, p. 11

### 4.3.3 The effectiveness of conditional release

There is no official data or formal measurement of how effective conditional release is in any of the responding Ministries. The Catalanian Ministry stated that effectiveness was measured on a case-by-case basis. This was satisfactory as the number of cases in the region is very low.

Iceland is the only member state which knew of any research in this area. This research was undertaken by Eric P. Baumer, Helgi Gunnlaugsson, Kristrún Kristinsdóttir, and Richard Wright and studied recidivism and the return to criminal behaviour of previously convicted offenders (published in 2001).<sup>116</sup>

Finland and Switzerland said that no relevant research was available.

There were seven responses to the question asking whether or not they considered their use of conditional release to be effective. Croatia, Moldova, Slovenia and Catalonia (a region of Spain) stated that it was. Sarajevo (canton of Bosnia & Herzegovina) stated that its use was not efficient. Italy and Switzerland did not know.

Deciding whether or not to grant conditional release to an individual on a case-by-case basis - if administered correctly - allows for the most effective decision-making. However, it is necessary for member states to have a record of how effective the decisions made are.

**Recommendation:** Data on the use of conditional release and its effectiveness should be collected and analysed in all member states. In the absence of such data at present, research should be commissioned to assess the effectiveness of conditional release as an alternative to continued imprisonment. Such research should also develop data gathering methodologies for the future.

### 4.3.4 Recidivism

Of the eight responses, only Bosnia & Herzegovina, Croatia, Luxembourg and Spain measured the rate of recidivism amongst offenders who had been granted a conditional release.

In the case of Bosnia & Herzegovina, QCEA received responses from Republika Srpska (one of the two political entities of Bosnia & Herzegovina) and Sarajevo (one of 10 cantons of Bosnia & Herzegovina). In both cases the rate of recidivism is very low; zero per cent in the Republika Srpska and three per cent in Sarajevo. It is unclear why the Sarajevo region described their use of conditional release sentences as 'not efficient'.<sup>117</sup> The Croatian Ministry stated that the rate in their country was very low.

Six per cent of conditionally released offenders are returned to prison in Luxembourg. According to the Ministry in Catalonia (Spain) research shows that recidivism rates are generally lower among offenders who have been granted conditional release and completed their sentence on this basis compared to those who have 'received liberty directly'.<sup>118</sup>

Moldova, Monaco, Slovenia and Switzerland do not measure recidivism rates.

<sup>116</sup> Baumer Eric P., et al., *Recidivism in Iceland: A research of the return of criminals to criminal behaviour after being punished* (Reykjavik, 2001)

<sup>117</sup> *QCEA questionnaire*, returned by the Justice Administration in Sarajevo under the Ministry of Justice in Bosnia & Herzegovina, q. 37

<sup>118</sup> *QCEA questionnaire*, returned by the Catalan Ministry of Justice, q. 38

**Recommendation:** QCEA urges Council of Europe member states to measure the rate of re-offending amongst conditionally released offenders.

## 4.4 Electronic Monitoring

### 4.4.1 What is electronic monitoring?

The use of electronic monitoring was first applied in a criminal justice case in England and Wales in 1989, when a man was granted bail on condition that he 'voluntarily agreed' to have a device attached to him (Lilly and Himan, 1993:1)<sup>119</sup> The use of electronic monitoring (EM), or 'tagging', is becoming increasingly widespread and is now used to monitor over 10,000 offenders in Europe on any given day. Where it has been established, electronic monitoring of a curfew has become an ever-more important part of criminal justice systems and is used at various stages of criminal cases: as a condition of granting bail before trial; as a sentence in its own right; and as a condition of early release from prison.

When an offender is monitored electronically, a tracking device (or 'tag') is fitted to their ankle and a monitoring unit is positioned in the person's house or other place of curfew.<sup>120</sup> Currently, the equipment is based on radio frequency technology where the tag acts as a transmitter. The tag sends signals to the monitoring unit which in turn send signals to a control centre. The largest number of electronically monitored individuals is in England and Wales where the control centre is operated by a private company - Group 4 Securicor.<sup>121</sup>

### 4.4.2 When is electronic monitoring used?

In the keynote address to the 5<sup>th</sup> European Conference on 'Electronic Monitoring: Ethics, Politics and Practice', given in May 2007, Dick Whitfield stated that one common thread that can be observed within Europe is that the growth of EM has been 'very largely politically driven - much more than most criminal justice developments. It means it is also politically more vulnerable, too'.<sup>122</sup> This is an additional challenge facing states with EM systems - as well as member states who intend to introduce EM in the future. As is the case with probation systems, high-profile mistakes receive a lot of attention.

**Recommendation:** Member states must make sure that their use of EM is not based on limited evidence nor dictated by short-term political interest.

EM schemes are currently in operation in Belgium, Denmark, England and Wales, France, Germany, Italy, Luxembourg, the Netherlands, Portugal, Scotland, Spain and Sweden. The Ministry of Justice in Switzerland stated that EM was present there, but 'has only been tested in certain cantons'.<sup>123</sup> According to the presentation made by the CEP, the European Organisation for Probation, at

<sup>119</sup> Hale et al, *Criminology*, p. 481

<sup>120</sup> On occasions, electronic monitoring is also used to maintain contact with asylum seekers while their applications are being considered.

<sup>121</sup> See G4S UK Justice - Technical Info, *Tagging Explained* [on-line], accessed 10 December 2007, available at [http://www.g4s.com/uk/uk-what\\_we\\_do/uk-justiceservices/uk-electronic\\_monitoring/uk-tagging\\_explained.htm](http://www.g4s.com/uk/uk-what_we_do/uk-justiceservices/uk-electronic_monitoring/uk-tagging_explained.htm)

<sup>122</sup> Whitfield Dick, *Electronic Monitoring: Ethics, Politics and Practice*, keynote presentation 10 May 2007 in the Netherlands [on-line], accessed 10 December 2007, available at [http://www.cep-probation.org/uploaded\\_files/pres%20EM%2007%20whitfield.pdf](http://www.cep-probation.org/uploaded_files/pres%20EM%2007%20whitfield.pdf)

<sup>123</sup> QCEA questionnaire, response from the Swiss Ministry of Justice, q. 40



Egmond aan Zee in May 2007, EM is being seriously considered by the authorities in Poland and could be introduced there in the near future.<sup>124</sup>

The electronic monitoring of offenders will have conditions attached to it which, if not adhered to, could result in the advantages of EM being revoked and the offender in question being returned to court for re-sentencing, which may result in imprisonment. Conditions for offenders being electronically monitored may include typically:

- No further offences must be committed
- A specific plan of activities must be followed
- Supervision and control from the relevant authorities (which may be unannounced) must be accepted
- Participation in crime prevention/rehabilitative programmes may be mandatory
- Frequent testing to ensure no consumption of alcohol or drugs must be accepted.

Other conditions may be attached if the circumstances of the crime necessitate it.

Norway and Malta stated that EM was not used in their countries.

In Switzerland, EM has not been used for any offenders convicted of 'hard crimes'. Italy and Luxembourg do not electronically monitor offenders who have been convicted of sexual offences, including rape and sexual assault. In England and Wales, the use of EM depends on an assessment of the individual concerned rather than the crime he or she has committed.

#### 4.4.3 The financial cost of electronic monitoring

Electronic monitoring is much cheaper than imprisonment. As technology advances and competition in this area increases, the costs are likely to reduce over the next five years or so. In their report on the Electronic Monitoring of Adult Offenders, the National Audit Office in England and Wales states that 'under contracts put in place in 2005, the [UK] Home Office expect the average contractual cost of monitoring each person to fall from 1,943 pounds sterling [2,143 euros] to 992 pounds sterling [1094 euros]. This reduction is equivalent to a saving of 49.5 million pounds sterling per annum [more than 54.6 million euros], based on the 53,230 people who were monitored in 2004-05.'<sup>125</sup>

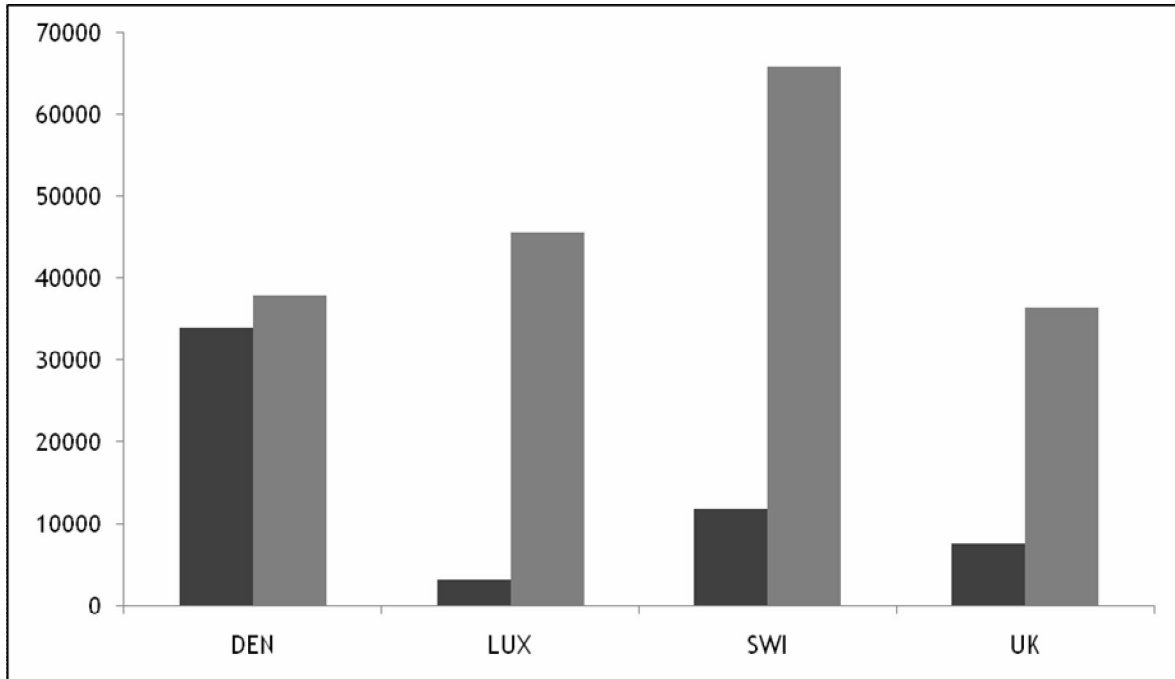
Graph 13 (below) shows the cost of electronically monitoring one individual for one year in Denmark, Luxembourg, Switzerland and England and Wales. When compared to the cost of holding an offender in prison for the same period, it is clear that EM is much cheaper except in Denmark where it saves the comparatively small amount of 4,000 euros - although the figure here is compared with a place in an open prison. It should be noted that in the majority of cases, an electronically monitored curfew is shorter than a year. When this is the case the difference in costs may be less dramatic, yet still indisputable.

<sup>124</sup> Poland - *On the Way to Electronic Monitoring of Offenders*, presentation 11 May 2007 at Egmond aan Zee in the Netherlands [on-line], accessed 10 December 2007, available at

[http://www.ceprobation.org/uploaded\\_files/pres%20EM%2007%20sielicki.pdf](http://www.ceprobation.org/uploaded_files/pres%20EM%2007%20sielicki.pdf)

<sup>125</sup> National Audit Office, *The Electronic Monitoring of Adult Offenders: Report by the Comptroller and Auditor General, 1 February 2006* [on-line], accessed 10 December 2007, available at [http://www.nao.org.uk/publications/nao\\_reports/05-06/0506800.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/0506800.pdf)

**Graph 13: The cost of EM compared to prison (one prisoner for one year) (in euros)**



Only Luxembourg, Catalonia (a region of Spain), and Switzerland were able to give figures on the number of offenders being monitored electronically in their country or region. Of these, Switzerland has 328 electronically monitored offenders, Catalonia has 128, and Luxembourg has thirteen.

**Recommendation:** All member states should keep up-to-date statistics which indicate the number of offenders being monitored electronically in their country. These statistics should be publicly available.

#### 4.4.4 Monitoring non-violent offenders

OCEA asked Ministries whether or not they believed electronic monitoring should be considered more seriously for nonviolent offenders. According to some surveys, there is strong public opinion that nonviolent offenders should be monitored electronically rather than be sent to (or kept in) prison.<sup>126</sup>

Italy, Luxembourg, Malta and Catalonia (a region of Spain) responded in support of this idea - with the Italian Ministry adding that EM could be a lower cost option by using the ability of policemen to enforce curfews for home detention in addition to giving an offender a second chance.<sup>127</sup>

Bosnia & Herzegovina disagreed saying that nonviolent offenders should not be electronically monitored. Switzerland responded pragmatically, stating that ‘this subject is disputed; the future of electronic monitoring is open.’<sup>128</sup>

<sup>126</sup> For example, see *ICM poll* [on-line], accessed 25 March 2007, available at <http://news.bbc.co.uk/1/hi/uk/1143335.stm>

<sup>127</sup> *OCEA questionnaire*, returned by the Italian Ministry, q. 44

<sup>128</sup> *OCEA questionnaire*, returned by the Swiss Ministry of Justice, q. 44

In response to the question of whether or not EM should be more widely used in general, the answers were the same except in the case of Bosnia & Herzegovina, where the Ministry supported the more widespread use of EM despite answering that this should not be the case for nonviolent offenders. The Ministry in Catalonia added that 'the possibilities for reintegration are bigger and the cost for society is lower'.<sup>129</sup> Romania responded that 'we think that introducing electronic monitoring is a useful measure that might bring an important contribution to watching more efficiently how sentenced persons at liberty observe the obligations imposed by the court of justice'.

#### 4.4.5 The effectiveness of electronic monitoring

Effective EM relies on several factors including: the appropriate selection of offenders, robust and appropriate technology, fitting electronic tags promptly, responding to breaches promptly, and communication between contractors and the criminal justice system. It should also serve to halt what may be developing criminal careers. A MORI survey, commissioned by the National Audit Office in England and Wales, explored the experiences with EM of monitored offenders and members of their household. One interviewed offender stated that:

*'You learn more about other crimes [in prison] and I think it gives you a taste to do other crimes because you're sat listening to other people'.<sup>130</sup>*

Effective EM would stop offenders acquiring this taste.

The survey states that, among those questioned, there was 'widespread agreement that electronic monitoring was a more effective punitive measure than fines... Electronic monitoring was generally viewed as more effective than community service.'<sup>131</sup>

Only Luxembourg and Catalonia commented on how they measured the effectiveness of their use of EM. In Luxembourg, the Department of Justice makes an evaluation of how effectively the system is working. In Catalonia, effectiveness is measured in practice by individual supervision of offenders. However no overall measurement was given. Both Luxembourg and Catalonia stated that their use of EM was effective.

#### 4.4.6 Recidivism

The Ministry in Luxembourg said that they measured the rate of recidivism amongst monitored offenders. The rate was 8 per cent. The Ministry in Catalonia said that recidivism in EM cases would be measured in the near future. Currently, the EM system is too recent a development.

The 2006 report published by the National Audit Office in England and Wales states that 'electronically monitored curfews may be having a positive impact on reducing re-offending but further research is required to establish this'.<sup>132</sup>

UK Home Office re-offending statistics, published in December 2004, indicate that 58.2 per cent of offenders discharged from prison were reconvicted of an offence within two years. The National Audit Office sampled 103 electronically monitored offenders and identified that 12 per cent of those

<sup>129</sup> *OCEA questionnaire*, returned by the Catalan Department of Justice, q. 45

<sup>130</sup> National Audit Office, *The Electronic Monitoring of Adult Offenders: Report by the Comptroller and Auditor General, 1 February 2006 - Appendix 4* [on-line], accessed 11 December 2007, available at [http://www.nao.org.uk/publications/nao\\_reports/05-06/0506800.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/0506800.pdf)

<sup>131</sup> *ibid.*

<sup>132</sup> *ibid.*, p. 3

given Home Detention Curfew were reconvicted within two years. Of those given Adult Curfew Orders, 42 per cent had committed a further offence. As the sample is small this statistic should be treated with caution and further research is needed. However, the UK Home Office statistics indicate that the overall reconviction rate is lower.<sup>133</sup>

A possible explanation as to why the rate of recidivism among electronically monitored offenders is much lower than for those released from prison in England and Wales (and lower than those sentenced to complete community sanctions) is the strict criteria which must be met for offenders to be sentenced to EM. Individuals who are considered likely to re-offend are not sentenced to EM. However, this may not be the only explanation.

**Recommendation:** QCEA recommends that member states measure the rate of recidivism for electronically monitored offenders. Where the rate is found to be significantly lower, such as in England and Wales, further research should be commissioned to identify why there is a difference.

## 4.5 Suspended sentencing

### 4.5.1 What are suspended sentences?

When a defendant is convicted of a crime, he or she may be given a suspended prison sentence. This means that an individual is not sent to prison but is required to meet certain other conditions. Suspended sentencing is seen by some as giving an offender a 'last chance' before prison. Once the sentence has been given, the offender knows that if they commit a further crime they are likely to be sent to prison.<sup>134</sup> A suspended sentence is essentially a *punitive* measure; although in Sweden (and possibly some other countries), where alternatives to imprisonment are largely considered to be preferable to imprisonment, a rehabilitative element to the sanction is also present.

Suspended sentencing is widely used in Austria and Switzerland and is also prevalent in some Scandinavian countries, including Finland and Norway.

According to a report by the Centre for Crime and Justice Studies (CCJS) there has been an increase in the number and proportion of suspended sentences in England and Wales since April 2005. When comparing their use to that of community service orders between April 2005 and July 2006, the CCJS stated that 'the proportion of suspended sentences had increased to twenty-two per cent. Such use of the suspended sentence was unexpected. Home Office estimates had been at around half of that figure'.<sup>135</sup> Suspended sentences have been used in England and Wales for more than thirty-five years.<sup>136</sup>

Suspended sentences can be considered an appealing alternative to prison for certain states - particularly those whose prison systems are overcrowded. When such a sentence is given, the threat of imprisonment is made clearly and heard by the public. It is intended to act as a deterrent. However, it is hoped that imprisonment will not need to take place because the offender will

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<sup>133</sup> *ibid.*

<sup>134</sup> BBC News, *Suspended sentences may be introduced* [on-line], accessed 12 December 2007, available at <http://news.bbc.co.uk/2/hi/europe/3043985.stm>

<sup>135</sup> Centre for Crime and Justice Studies, *The Use and Impact of the Community Order and the Suspended Sentence Order*, February 2007 [on-line], accessed 12 December 2007, available at <http://www.crimeandjustice.org.uk/opus216/impact-community-order-2007.pdf>

<sup>136</sup> BBC News, *Suspended sentences may be introduced* [on-line], accessed 12 December 2007, available at <http://news.bbc.co.uk/2/hi/europe/3043985.stm>

comply with the associated conditions. These invariably include a requirement that the offender does not commit any further offence.

In their *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, the UNODC states that there are still significant associated costs related to this particular sanction and a 'degree of sophistication is required in the procedures when a sentence is imposed for a subsequent offence, if that is also the basis for the revocation of the deferral or suspension of the previous sentence.' In more complicated cases the UNODC writes that this may require 'an entire bureaucracy'.<sup>137</sup>

#### 4.5.2 When is suspended sentencing used?

In Finland, Slovenia and Switzerland<sup>138</sup> a sentence cannot be suspended if it is for two or more years. A suspended sentence can be used where a prison term of less than five years has been imposed in Moldova (or up to seven years for an 'omission crime'<sup>139</sup>). However, the Ministries in Finland and Switzerland specified that a 'hard crime' would not lead to this type of sanction.

The Italian Ministry stated that a suspended sentence would not be given for crimes 'such as sexual abuse, terrorism, organised crime, illegal immigration, or trafficking of human beings'.<sup>140</sup>

Romania responded that a decision to grant a suspended sentence is subjective and that the severity of the offence, the conditions under which it was committed and the circumstances of the offender must all be taken into consideration.

When a sentence is suspended, certain conditions can be imposed on the offender. For example, in England and Wales 51 per cent of suspended sentences currently involve supervision, whilst 41 per cent involve unpaid work. Four per cent involve a curfew order, one per cent involves drug treatment and a further one per cent involves an accredited programme.

For community service orders and suspended sentences the most common combinations are shown in the table below:

**Table 6: Most common combination of two requirements for community service orders and suspended sentence orders**

Combination	Percentage
Supervision and accredited programmes	45% of community service orders 50% of suspended sentences
Supervision and unpaid work	21% of community service orders 22% of suspended sentences
Supervision and drug treatment	15% of community service orders 10% of suspended sentences

<sup>137</sup> UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, p. 34

<sup>138</sup> Switzerland subsequently commented that, 'the 95% of all offenders with a suspended prison term were not put under supervision or had to undergo treatment until 2006. Since 2007, the majority of sentences are handed down with suspended monetary penalties (variable to your income), in combination with unsuspended fines'.

<sup>139</sup> A failure to act which results in a crime, such as failing to file a required tax return, failing to register locally as a convicted felon, failure of a parent to obtain medical help for a child, failure to stop after a vehicle collision, failure to rescue someone fallen overboard from your ship.

<sup>140</sup> *OCEA questionnaire*, returned by the Italian Ministry of Justice, q. 49

**Table 7: Most common combination of three requirements for community service orders and suspended sentence orders**

Combination	Percentage
Supervision and accredited programmes and unpaid work	43% of Community service orders 41% of Suspended sentences
Supervision and accredited programmes and drug treatment	19% of Community service orders 14% of Suspended sentences
Supervision and accredited programmes and curfew	7% of Community service orders 11% of Suspended sentences

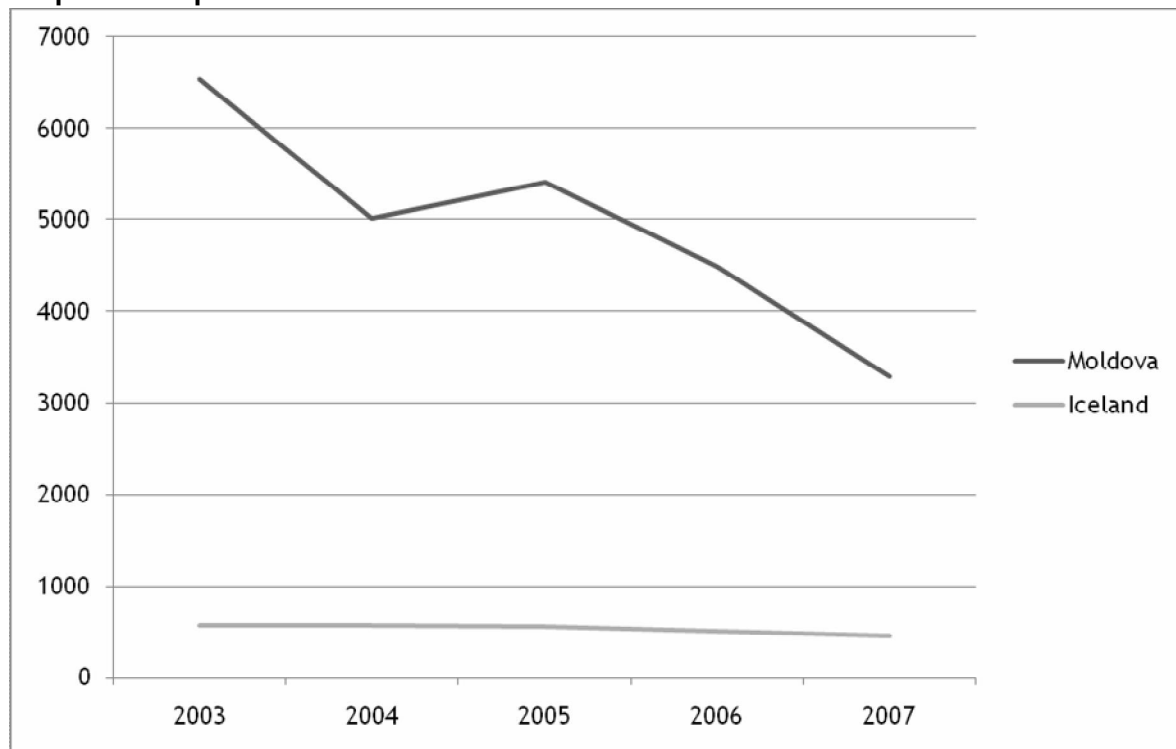
The UK Home Office commented that the court ‘should not impose a very onerous set of requirements which make the offender likely to breach the order’ (Home Office 2005b: 59).

**4.5.3 The number of suspended sentences**

QCEA asked member states how many suspended sentences had been given since 2003. Responses were received from the following Ministries: Finland, Iceland, Luxembourg, Malta, Moldova, Norway, Slovenia, Catalonia (a region of Spain), and Switzerland.

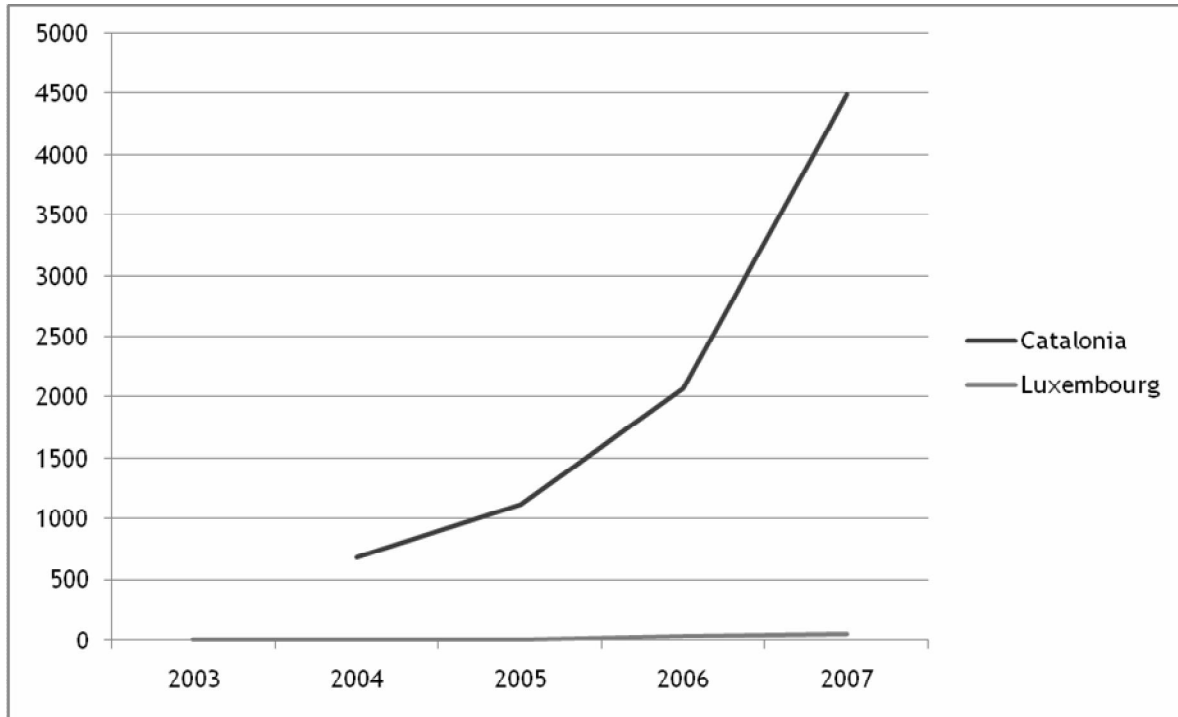
In Iceland and Moldova, there appears to be a trend toward fewer suspended sentences in recent years. Graph 14 (below) shows the number of suspended sentences ordered in Iceland and Moldova since 2003. The figure for 2007 is projected based on the number up to 1 September 2007 in Iceland and 31 August 2007 in Moldova. There is no such identifiable trend in the number of orders in the responses provided by the Ministries in Finland, Malta, Norway, Slovenia, and Switzerland. Switzerland has the highest number - 42,257 in 2005 (latest figure).

**Graph 14: Suspended sentences ordered in Iceland and Moldova**



In Luxembourg and Catalonia this trend is reversed. The number of suspended sentences has increased in recent years. Graph 15 (below) shows the number of suspended sentences ordered in Luxembourg and Catalonia since 2003. The figure for 2007 is projected based on the number of sanctions ordered up to June 2007 for both.

**Graph 15: Suspended sentences ordered in Luxembourg and Catalonia**



#### 4.5.4 The effectiveness of suspended sentences

The effectiveness of a suspended sentence can depend on a variety of factors. These could include age, nationality, gender, previous criminal history, occupation, and the crime committed.

Though not a member state of the Council of Europe, an interesting study relating to Israel evaluated the effectiveness of suspended sentences and came up with the four following conclusions:

- This sanction is more effective with the first offender than with the recidivist
- The effectiveness depends more strongly on the offender’s previous criminal history than on any other variable
- The effectiveness decreases for the ‘professional’ offender
- But effectiveness increases for offenders whose motive is lucrative.<sup>141</sup>

According to this research project, ‘age and previous offence were the variables most significant in determining success rates.’ The best candidates for the sanction were ‘those in the highest age group who had no previous convictions’ while the worst candidates were those ‘in the lowest age group with more than four previous offences’. Finally, the authors conclude the success or otherwise

<sup>141</sup> Shoham Schlomo and Sandberg Moshe, *Suspended Sentences in Israel* (Sage Publications, 1964) Abstract [online], accessed 13 December 2007, available at <http://cad.sagepub.com/cgi/content/abstract/10/1/74>

of suspended sentences is related 'more to the variables of age, personality, and previous criminal history than to the type and severity of sentence he receives.'<sup>142</sup>

Of the responses received by the QCEA, only four Ministries were aware of how effective this sanction was. Recidivism studies are conducted in Luxembourg and Switzerland, while the Ministry in Catalonia stated that they analyse 'each case, assessing systematically if the objectives established have been reached at the end of the period of execution of the measure'.<sup>143</sup> The Icelandic Ministry referred to the previously mentioned recidivism study, carried out in 2001.<sup>144</sup> The Finnish Ministry stated that no recent research is available and the Maltese Ministry were not aware of any relevant measurement.

However, for each of the five Ministries this alternative sentence was considered to be 'effective'. These Ministries were Luxembourg, Moldova, Slovenia, Catalonia, and Switzerland.

#### 4.5.5 Recidivism

Three Ministries were aware of the rate of re-offending amongst individuals who have a suspended sentence imposed on them. In Luxembourg the rate was zero per cent. In Catalonia and Switzerland the rate was higher - 17 per cent and 11.2 per cent respectively. The Swiss Ministry highlighted that the given rate is likely to be higher than the rate of revocation - where an offender goes to prison - as not all re-offences lead to imprisonment. In Switzerland the revocation rate is around ten per cent.

Moldova, Monaco and Slovenia do not measure the rate of recidivism.

**Recommendation:** The rate of recidivism is an important indicator as to the success of suspended sentences as an alternative sanction. Member states are encouraged to measure this (through commissioning research or in other ways) to discern where suspended sentences are most appropriate.

## 4.6 Community Sanctions and Measures

### 4.6.1 What are community sanctions and measures?

Offenders can be required to perform community sanctions either entirely or partly *in lieu* of spending time in prison (or other judicial penalties). This will usually involve unpaid work and often goes together with a rehabilitation scheme (see later). The Council of Europe has produced a recommendation to guide the use of community measures which it defines as:

*sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.*<sup>145</sup>

<sup>142</sup> *Ibid.*

<sup>143</sup> QCEA questionnaire, returned by the Catalan Ministry of Justice, q. 52

<sup>144</sup> See footnote 116

<sup>145</sup> Communication from the Council of Europe: Recommendation R(92)16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures, Appendix - Glossary, accessed [on-line] 13 December 2007, available at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/legal\\_instruments/Rec.R\(92\)16.asp#TopOfPage](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/legal_instruments/Rec.R(92)16.asp#TopOfPage)



Community sanctions and measures of different types can be observed in all Council of Europe member states where figures are available, with the exceptions of Andorra, Azerbaijan and Cyprus.<sup>146</sup> These have been available to varying degrees and have been established for much longer in some countries than in others, e.g. since 1972 in England and Wales, and since 2001 in the Ukraine. Measures are intended to be physically, mentally, or emotionally demanding and may be specifically targeted towards the crime committed.

Someone convicted of persistently dropping litter may be sentenced to pick up litter, for example; or a convicted drunk driver may be required to appear before school groups to explain why drink driving is a crime and an ethical breach.

An intention when implementing community measures is to foster a connection between an offender and the community. The Council of Europe recommendation states the following:<sup>147</sup>

It cannot be too strongly emphasised that community sanctions and measures... are of value for the offender as well as the community since the offender is in a position to continue to exercise choice and assume his social responsibilities. And the implementation of penal sanctions within the community itself rather than through a process of isolation from it may well offer... better protection for society including, of course, the safeguarding of the interests of the victim or victims.

In many cases, community sanctions are considered by offenders to be a more *punitive* measure than prison. In prison, offenders are housed in a cell, told what to do, who to relate to and how, and given three meals per day. They return to the community after six months, for example, saying '*I've paid my debt to society*'. It can be much more difficult to wear a fluorescent vest in the local community where you may be seen by members of the public. Being forced to look after themselves in a structured way - still needing to maintain family relationships and take care of oneself - can be both of greater benefit and a greater challenge.

In Croatia and Slovenia community sanctions are not considered a 'soft' punishment by the general public. Finland, Luxembourg, Malta, Moldova, Switzerland and Ukraine all indicated that their general publics considered community measures to be 'soft'. Community measures do not need to be soft - as noted above, they should be physically, mentally or emotionally demanding. Measures could be taken by states to make clear how demanding the sanctions are. These could include increasing the number of hours imposed as a community sentence.

#### 4.6.2 When are community sanctions used?

OCEA received responses to questions referring to community measures from the following twelve member states and from Catalonia (a region of Spain): Croatia, Finland, Iceland, Italy, Luxembourg, Malta, Moldova, Norway, Romania, Slovenia, Switzerland, and Ukraine.

Community service has been implemented successfully in member states such as Finland and France, where community sanctions are a substitute for time in prison. Of Finnish offenders, 35 per cent are given community service orders for example, and around 25 per cent in France.

<sup>146</sup> Communication from the Council of Europe: *SPACE II: Council of Europe Annual Penal Statistics, Community Sanctions and Measures Ordered in 2001* [on-line], accessed 30 March 2007, available at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/prisons\\_and\\_alternatives/statistics\\_space\\_ii/PC-CP\(2003\)6E-%20Space-II.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_ii/PC-CP(2003)6E-%20Space-II.pdf)

<sup>147</sup> Council of Europe, Recommendation R(92)16, Preamble

As is the case with conditional release, suspended sentences, and electronic monitoring (see above) community sanctions are available for 'softer crimes'. Of the responses received, Slovenia - where crimes with an associated prison term of more than three months disqualify offenders from community sanctions - appears the least inclined toward community sanctions. The Slovenian Ministry provided the following additional information:

*Article 107(4) of Penal Code: A prison sentence not exceeding three months may be served in such a way that the offender, instead of serving the sentence, is put under obligation to perform work for humanitarian organisations or a local community for a period of not more than six months, whereby the total period of work may range from a minimum of eighty to a maximum of two hundred and forty hours. The schedule of such work may not interfere with the offender's regular work obligations. This form of sentence may be ordered by the court which delivered the sentence in the first instance. It can consider the objective and subjective circumstances relating to the offender as well as his consent to such a form of sentence. If the offender does not perform the tasks relating to work for humanitarian organisations or local communities, the court may order a prison sentence to be imposed.*

Community measures are not imposed in Luxembourg or Iceland where the associated prison term exceeds six months. However, in the case of Iceland, community measures can substitute up to one year in prison if the sentence is for non-payment of a fine. Furthermore, 'in most cases sex-offenders are denied'.<sup>148</sup> Romania does not use community measures where the offender poses a high level of social hazard and shows an average to high risk of re-offending.

The community sanctions' 'threshold' in Finland is eight months. The Finnish Ministry provided the following additional comments:

*According to section 11 of chapter 6 of Penal Code an offender who is sentenced to a fixed term of unconditional imprisonment of at most eight months shall be sentenced instead to community service, unless unconditional sentences of imprisonment, earlier community service orders or other weighty reasons are to be considered bars to the imposition of the community service order. A condition for the imposition of a community service order is that the offender has given his/her consent to the community service order and that he/she may be assumed to complete the community service order.*

In Norway, a community sanction can be imposed for crimes with an associated prison term of up to one year, while in Croatia the 'threshold' is three years.

Malta, Moldova, Switzerland and Ukraine specified that community measures were not considered for particularly grave crimes. These included drug trafficking and homicide in Malta, intentional violent crimes in Moldova, 'very hard' or violent crimes in Switzerland, or 'especially grave crimes' in Ukraine.

**Table 8: When community measures were introduced in the responding fourteen states**

Country	Year
England and Wales	1974
France	1983
Norway	1985

<sup>148</sup> OCEA questionnaire, returned by the Icelandic Ministry of Justice, q. 55

Country	Year
Switzerland	1990
Ukraine	1990
Finland	1991
Luxembourg	1994
Slovenia	1994
Spain	1995
Iceland	1995
Romania	1996
Croatia	2001
Belgium	2002
Moldova	2003

Table 8 above shows the year in which community sanctions were introduced as an alternative to imprisonment in thirteen member states. Data for Belgium was taken from the Council of Europe SPACE II statistics.<sup>149</sup>

In 2001, Sweden did not impose community measures as a principal sanction.<sup>150</sup>

#### 4.6.3 The number of community measures and sanctions

Community sanctions are used widely across Europe. The creation of these sanctions is aimed at providing credible and robust alternatives to short-term custodial sentences.

Nine member states responded to the relevant section of the questionnaire; Croatia, Finland, Iceland, Luxembourg, Moldova, Norway, Slovenia, Spain and Ukraine.

The following table shows that in Croatia, Norway, Spain and Ukraine there is a steady increase in the use of community sanctions. Moldova had a dramatic increase between 2004 and 2005.

**Table 9: Number of community sanctions used**

Member State	Year			
	2003	2004	2005	2006
Croatia	41	75	100	284
Finland	3297	3621	3370	N/A
Iceland	83	59	73	93
Luxembourg	87	78	82	98
Moldova	N/A	69	1151	3562
Norway	1441	2151	2573	2733
Slovenia	3	3	10	8
Spain	254	443	1443	3134
Ukraine	3080	3775	4245	4586

<sup>149</sup> Council of Europe, *SPACE II*, p. 10

<sup>150</sup> *ibid.*

#### 4.6.4 What do community measures involve?

Community sanctions can involve a range of different activities and vary depending on the member state in question. However, all member states' community sentences can include mandatory, unpaid work.

Finland, Italy, Luxembourg and Norway specified that an offender can also be ordered to attend a treatment or rehabilitation scheme, including schemes for a drug or alcohol addiction (see later for more details) or for 'sex-drive control' in the case of Norway.

OCEA received many examples of the type of work community measures can involve in the different countries. These include the following:

**Table 10: Examples of community measures from the responding member states**

Work with People	Work on buildings, infrastructure and other manual work	Other
Assisting elderly people: in <i>Iceland, Switzerland, Ukraine</i>	Maintenance of public buildings: in <i>Iceland, Moldova, Spain, Switzerland, Ukraine</i>	Computer registration for NGOs: in <i>Iceland</i>
Assisting in day-care for disabled people: in <i>Iceland, Malta, Ukraine</i>	Gardening: in <i>Switzerland, Ukraine</i>	Shelter for animals: in <i>Iceland, Spain, Switzerland</i>
Food distribution for poor people: in <i>Iceland</i>	Agricultural work: in <i>Switzerland, Ukraine</i>	Market stalls for used household goods: in <i>Iceland, Switzerland</i>
Assisting in working centre for young people: in <i>Iceland, Italy</i>	Cleaning cemeteries: in <i>Moldova</i>	Administration work: in <i>Switzerland</i>
Teaching: in <i>Switzerland</i>		Transport services: in <i>Switzerland</i>
		Work in libraries: in <i>Moldova, Switzerland</i>

Some of these activities, although necessary, are not very attractive to most members of the general public. Assisting in a shelter for homeless cats, cleaning cemeteries, or laboratory work might be examples of this.

The number of hours an offender can be sentenced to can vary significantly between countries. A minimum of around forty hours is usual - such as is the case in England and Wales, France, Ireland, Malta, and the Netherlands. However, the minimum community sentence is twenty hours in Finland and thirty-six hours in Portugal.<sup>151</sup>

There is more substantial variation regarding the maximum number of hours an offender can be ordered to work by a community sentence. The following table details this.<sup>152</sup>

<sup>151</sup> See Conférence Permanente Européenne de la Probation (CEP), *Community Service in Europe: Workshop 16-17 November 2001* [on-line], accessed 14 December 2007, available at [http://www.cep-probation.org/default.asp?page\\_id=53](http://www.cep-probation.org/default.asp?page_id=53)

<sup>152</sup> *ibid.*

**Table 11: Maximum hours for community sentences in responding member states**

Member State	Maximum hours
Finland	200
England and Wales	240
France	240
Ireland	240
Malta	240
Netherlands	240
Portugal	380
Switzerland	720

Of the thirteen responding Ministries, eight stated that they involved the local community in deciding the nature of community sanctions. These were: Finland, Iceland, Italy, Luxembourg, Moldova, Spain, Switzerland, and Ukraine. Croatia, Malta, Norway, Romania and Slovenia do not involve the local community at the moment.

Luxembourg, Moldova, Spain and Ukraine have systems where local government or community members discuss with probation officials or the courts which sanctions should be imposed. In Switzerland, while the judge orders that a community sentence should be imposed, the local communities decide what work should be done.<sup>153</sup> The Icelandic Ministry stated that local communities are involved when a specialist is needed. This may include cases where the offender is disabled.

**Recommendation:** Member states should seek to involve members of the community local to where the offender will conduct his or her community sanction. This can increase the relevance of the sentence and facilitate re-integration.

#### 4.6.5 Community sanctions for women

None of the responding twelve Ministries have community measures specifically intended for female offenders. The Ministry in Iceland stated that the service 'depends on the character and what he or she can do'. The Ministry in Norway stated that, despite there being only one 'community service order' (called the Community Sanction); this sanction has 'an almost unlimited number of combinations of conditions and programmes... the sex of the offender may influence the choice of content. The Community Sanction is intended to be a flexible reaction that can be matched to the offender. Such elements as sex, age, social, psychological, and educational needs may be taken into consideration when deciding the content.'<sup>154</sup> The Swiss criminal code does not stipulate special conditions for women but the cantons are able to do so if they choose to.

Child care is provided for offenders completing community sentences in Italy and Malta; although in Italy this is only available 'for women with children below three years old'.<sup>155</sup> In Moldova, community service is postponed for pregnant women or women with children of up to eight years of age.

In Norway, the child care situation should be taken into account when imposing a community service. In Switzerland this is a possibility but is not stipulated in the criminal code.

<sup>153</sup> *OCEA questionnaire*, returned by the Swiss Ministry of Justice, q. 59

<sup>154</sup> *OCEA questionnaire*, returned by the Icelandic and Norwegian Ministries of Justice, q. 60

<sup>155</sup> *OCEA questionnaire*, returned by the Italian Ministry of Justice, q. 61

**Recommendation:** All member states should ensure child care provision is provided where necessary for offenders sentenced to complete community measures or sanctions. Otherwise an unfair burden is placed on offenders with dependent children.

#### 4.6.6 Community sanctions for highly-educated offenders

When highly-educated offenders are sent to prison, for example business people convicted for fraud or money laundering, there is little doubt that society is not making the best use of their skills. However, the desire to punish the offender often prevails over the desire to repair harm or serve the community.

No member states gave examples of community sanctions tailored specifically for highly-educated offenders.

Iceland, Norway, Spain and Switzerland all allow for the possibility of suitable schemes. The Icelandic Ministry stated that in some cases, educated offenders are requested from organisations participating in the implementation of community measures.

Offenders who are capable of teaching at a high level or supporting government workers could be sentenced to do so. There is no reason why this type of sanction cannot be considered and made acceptable and applicable. This would be far more cost effective than imprisonment.

However it is important to maintain the ‘sanction’ element of such a scheme. Community sanctions for highly-educated offenders should both make use of the skills that people have, but also ensure that an element of ‘sanction’ is maintained. By doing so, member states would provide useful alternatives to imprisonment but also retain the disciplinary element of the sanction.

**Recommendation:** Community sanctions for highly-educated offenders should be considered proactively by member states but also ensure that a ‘sanction’ element of the alternative is maintained. Some offenders can make a uniquely positive contribution to the societies their crime may have damaged.

#### 4.6.7 The effectiveness of community sanctions and measures

Various factors make community service successful. In the 2001 Community Service in Europe (CEP) workshop in Malta, national guidelines were seen to be of particular importance. The workshop report states that ‘these should be clearly stated and enforced.’<sup>156</sup> These are important both for offenders and the judiciary (and the prosecution). Offenders should know clearly how they are expected to behave, while the judiciary and prosecution should be aware that community sanctions are serious and meaningful punishments.

The workshop also noted that breaches of conditions should be dealt with firmly and consistently. Too many warnings become counter productive. A lack of action influences the perception that members of the public, the judiciary, and the prosecution have regarding the seriousness of the sanction. This can jeopardise the whole community service project.

It is important to start with projects that an agency is able to manage with a high degree of success. In these cases, projects should give visible results and be encouraging for the offender to do, such as the clearing and upkeep of a public garden. Success stories should be given publicity, e.g. the renovation of community premises done by a group of offenders on community service.

<sup>156</sup> CEP, *Community Service in Europe* [on-line], accessed 7 July 2008, available at [http://www.cep-probation.org/default.asp?page\\_id=53](http://www.cep-probation.org/default.asp?page_id=53)

A further conclusion from the 2001 CEP workshop indicates that the agencies where the work is carried out (community agencies) should be included at all stages of community service, from the planning to the completion. They should be informed of all important information regarding the offender, the amount of time to serve, security measures and so on.

When choosing where a community sanction should be undertaken, it is important to match the offender with the task as far as possible. More appropriate tasks offering development opportunities and building on skills are more likely to have a positive effect on the offender as well as increasing the chance of the task itself being completed to a more satisfactory standard.

It can also be important to consider whether or not an offender should be placed individually or as part of a larger group. Individual placements can be easier to manage in the smaller European countries, such as Andorra, Malta and Montenegro. These placements also reduce the likelihood of 'having community service groups transformed in a hub of criminal association'.<sup>157</sup> The advantages of group projects include the ability to perform a large and highly visible amount of work in a relatively short time period. These placements are often cheaper for authorities as the ratio of offenders to supervisors is smaller.

Other factors, including the training of supervisors and the willingness of the offenders themselves to participate can be important factors in the effectiveness of community sanctions.

Member states measure the effectiveness in different ways. Of the seven responses to the relevant question in QCEA's questionnaire, five kept statistics on either the completion rate or the rate of recidivism (see below). The other two, Moldova and Catalonia (a region of Spain), analysed each individual case. All seven - Croatia, Finland, Iceland, Luxembourg, Moldova, Catalonia, and Switzerland - considered their use of community sanctions to be effective. In addition, the Ministries in Malta and Slovenia considered community sanctions to be an effective alternative to imprisonment.

QCEA received responses from eleven Ministries indicating how the use of community sanctions could be improved. Finland and Ukraine suggested increasing the use of drug treatment programmes alongside the community service order. Other improvements suggested included more funding, more information to the public about the successes of this type of sanction etc. Spain specified the need for more commitment from the community and public bodies and the possibility of improving the image of community sanctions by means of the media. Romania suggested developing a new network of NGOs to provide different possibilities for carrying out unpaid activities depending upon social categories, age and gender. They believed this could help in building magistrates' belief in the effectiveness of such sanctions.

#### 4.6.8 Recidivism

Croatia, Luxembourg and Catalonia (a region of Spain) stated that they measure the rate of re-offending among individuals sentenced to community sanctions. The Icelandic Ministry stated that this will be measured in Iceland.

The rates of recidivism were noticeably low: 8 per cent in Croatia, 10 per cent in Luxembourg and 15.8 per cent in Catalonia.

<b>Recommendation:</b> Member states are encouraged to measure the rate of recidivism among
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<sup>157</sup> *ibid.*

individuals ordered to complete a community sanction. Research should be commissioned to discern for which offenders this alternative sanction is most appropriate.

## 4.7 Drug and Alcohol Rehabilitation

Prisoners convicted of drug-related offences make up a significant proportion of the overall prison population in all European countries.<sup>158</sup> This, in part, stems from European states' efforts to deal with trafficking in illegal drugs. The majority of individuals imprisoned for drug-related offences are addicted to at least one substance themselves and are not major players in international drug-trading circles. Finding suitable alternatives to imprisonment for low-level drug offenders could dramatically reduce the number of prisoners in European prison systems; but more importantly, could better respond to the needs of these groups of people thereby increasing the likelihood of successful rehabilitation and reintegration.

In many cases, individuals who are addicted to drugs (including alcohol) often turn to other forms of criminal activity to pay for their addiction. If drug treatment programmes are effective in curbing addictions and more widespread implementation, future crime rates could drop significantly.

There are two widely-accepted ways to reduce the number of prisoners convicted for drug-related offences: decriminalisation (although not an alternative to imprisonment as such) and diversion of offenders to institutions other than prison services.

Decriminalisation is a controversial measure for governments to take. There are different levels of decriminalisation which a government could potentially explore: decriminalising some or all drugs entirely; decriminalising possession of certain drugs, but continuing to consider their 'dealing' as illegal; revising (especially lowering) the category or class a particular drug is in etc. The issue of decriminalisation does divide many societies.

Supporters of steps including those mentioned above, argue that current laws cost money, time and resources as well as criminalising many people who are otherwise law-abiding citizens. Decriminalising drugs would help reduce the black market and allow the government to accrue revenue similar to that for alcohol and tobacco. Critics of these measures argue that the legal system should reflect the values of society - and that these values should clearly acknowledge that drugs are harmful and undesirable. Furthermore, they state that it cannot be claimed that the black market would decrease in influence particularly as the cost of a legalised drug is likely to increase.<sup>159</sup>

Diversion of drug-related offenders to facilities outside prisons would be a major step for most European countries to take. The majority of offenders who violate drug laws commit their crimes because they are addicted to drugs themselves. According to the UNODC Handbook on Alternatives to Imprisonment, 'authorities find that treating offenders for their addictions is more effective than processing and eventually punishing them through the criminal justice system.'<sup>160</sup>

Some European countries have sought to divert offenders convicted of drug-related crime to 'drug treatment courts'. These so-called 'drug courts' have been introduced in Denmark, England and Wales, and Ireland. They aim to 'stop drug abuse and related criminal activity of offenders through

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<sup>158</sup> Excluding San Marino at the time of writing

<sup>159</sup> See Royal Society of Arts Commission on Illegal Drugs, *Drugs - Facing Facts*, March 2007 [on-line], accessed 17 December 2007, available at <http://www.rsadrugscommission.org/>

<sup>160</sup> UNODC, *Alternatives to Imprisonment*, p. 63



court-directed treatment and rehabilitation programmes<sup>161</sup> and take the place of an ordinary court in sentencing an offender. In most cases, the offender must plead guilty to attend a 'drug court'. Successful completion of a course may lead to deferral of the trial or dismissal of a criminal case while recidivism or non-compliance may lead to a reversion to the traditional criminal justice system.

According to the UNODC, 'initial results suggest that drug court programmes are more effective in preventing re-offending than imprisonment and that while they are resource-intensive, cost less than imprisonment in many jurisdictions'.<sup>162</sup> The 12 Step Treatment Guide is less cautious in endorsing the drug courts, saying that 'evaluations consistently show that Drug Treatment Courts effectively reduce recidivism and underlying addiction problems of drug abusing offenders. They provide closer, more comprehensive supervision and more frequent drug testing and monitoring during the programme than other forms of community supervision.'<sup>163</sup>

Other alternative sentences are available to member states which relate specifically to offenders convicted of drug-related crimes. In England and Wales, for example, alcohol rehabilitation courses are available to 'drink drivers', depending on the level of intoxication when caught and the severity of any damage caused. Sending certain addicted offenders to methadone clinics is a further option for some courts in Europe, although not all. For example, the methadone clinic in Varna, Bulgaria, has a proven record of aiding the recovery and successful integration of opioid-addicted offenders. However, current legislation in Bulgaria does not allow addicted offenders to be sent there as an alternative sanction to imprisonment.

Of the seventeen member states that responded, only ten can sentence an offender to a drug or alcohol treatment programme as an alternative to imprisonment. These are: Bosnia & Herzegovina, Croatia, the Czech Republic, Iceland, Italy, Malta, Moldova, Monaco, Spain and Switzerland. Programmes targeted at rehabilitating persistent drug offenders have also been introduced as an alternative to prison sentences in Hungary, Romania and Slovakia.

Bulgaria, Estonia, Finland, Luxembourg, Norway, Slovenia and the Ukraine cannot impose this type of sentence as an alternative to imprisonment.

In most states, drug-treatment programmes are run in prison. However, drug treatment available in prison is on the whole of much poorer quality than treatment available outside prison. It should also be remembered that despite regulations in all European countries, illegal substances including hard drugs are available in almost all prisons. This reality must be acknowledged when sentencing vulnerable offenders to a prison term.

**Recommendation:** All member states should make legal provisions to enable courts to sentence certain offenders, including those addicted to drugs, to complete relevant and intensive treatment programmes as an alternative to imprisonment.

#### 4.7.1 The cost of drug and alcohol treatment

Drug treatments programmes cost significantly less than prison sentences. Of the responding member states four responded to the relevant section here.

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<sup>161</sup> 12 Step Treatment Centres, *Drug Treatment Courts Work* [on-line], accessed 17 December 2007, available at <http://www.12steptreatmentcentres.com/index.asp>

<sup>162</sup> UNODC, *Alternatives to Imprisonment*, p. 64

<sup>163</sup> 12 Step Treatment Centres, *Drug Treatment Courts Work* [on-line], accessed 17 December 2007, available at <http://www.12steptreatmentcentres.com/index.asp>

The Czech Republic spent 160,000 Czech Crowns in 2007 at Heřmanice prison (approximately 5,956 euros) on alcohol and drug rehabilitation programmes.

The prison and probation service in Iceland spend 35,000 Icelandic krona (approximately 190 euros) per person but this only covers part of their six-week stay at the SÁÁ (the largest drug rehabilitation centre in Iceland which runs detoxification programmes); in addition there are non-profit organisations who take in prisoners for rehabilitation without any charge. Malta spends, on average, 300 Malta Liri (approximately 698 euros) per month on such programmes.

Norway estimated that they spend 19,000 euros annually.

In Canada it costs approximately 8,000 Canadian dollars (approximately 5,500 euros) per annum to provide substance abuse treatment to a Toronto Drug Treatment Court participant and 45,000 Canadian dollars (approximately 30,500 euros) to incarcerate the same participant for one year<sup>164</sup>.

**Recommendation:** Member states' governments should channel more resources into rehabilitation centres with proven success in terms of the rehabilitation of the individuals treated (possibly measured by recidivism rates).

#### 4.7.2 The effectiveness of drug and alcohol rehabilitation

Unfortunately drugs are fairly easily obtained inside prisons; this is one of the many reasons why it is important to ensure that offenders are not imprisoned unnecessarily. Drug treatments offered in dedicated institutions are widely considered to be more effective than those offered in prisons. 'In marginal cases, this could become a key factor in deciding whether to impose a conditional sentence of imprisonment or a community penalty in which submitting to drug treatment is a condition of sentence. Conditional release of sentenced prisoners should also make provisions for treatment and monitoring of drug addicts after their release.'<sup>165</sup>

Drug and alcohol rehabilitation schemes are most effective when based in dedicated institutions. In addition to this, individual tailoring which is adapted to each offender's needs is essential. To prevent relapse it is important that the offender has no access to drugs coming in from the outside.

The Czech Republic measures the effectiveness of its programmes through voluntary feedback forms, from which they have concluded that their programmes are effective. Iceland said the effectiveness of drug rehabilitation is first and foremost measured by checking whether they complete their six-week programme. If there are any problems, resistance or violation of rules whilst at the rehabilitation centre the prisoners are sent back to prison. There have also been some studies that have followed up on the recidivism rate of those prisoners who finish their sentence in a rehabilitation centre compared to those prisoners who finish their sentence in prison and/or half-way house. Spain explained that because of numerous variables within the structure of the treatments (such as length) it was hard to ascertain whether the programmes were effective or not. Switzerland and Moldova do not measure the effectiveness.

Only two member states responded with proposals as to how drug and alcohol rehabilitation programmes could become more effective. The Czech Republic believes improvements need to be

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<sup>164</sup> 12 Step Treatment Centres, *Drug Treatment Courts Work* [on-line], accessed 17 December 2007, available at <http://www.12steptreatmentcentres.com/index.asp>

<sup>165</sup> UNODC, *Alternatives to Imprisonment* [on-line]

made in social rehabilitation of offenders. Moldova believes these programmes could become more effective by applying European standards.

### 4.7.3 Recidivism

Four of the responding five member states do not measure recidivism rates (Czech Republic, Luxembourg, Moldova and Switzerland). Iceland is, as previously mentioned, aware of some studies which have followed up on recidivism rates of prisoners who finish their sentences in a rehabilitation centre as opposed to prison. Iceland did not provide any data from these studies.

To fully convey to the relevant authorities and the public the potential success of further enhanced drug and alcohol rehabilitation programmes, research must be done into the effectiveness of them. Without such research it is hard to analyse what strategies are effective and how to further improve them.

Research is more widely available in the US, Canada and Australia. With reference to the 12 Step Treatment Centres:

'Recidivism is significantly reduced for those who successfully complete the drug court programme ... the reductions in offending pre-and post-programme are greater for the drug court graduates than the comparison groups.' (Australia)

'Only 11.6% of those who complete the drug court programme run into trouble again with the law.' (Canada)

'From a sample of 17,000 drug court graduates nationwide, within one year of programme graduation, only 16.4% had been rearrested and charged with a felony offense.' (USA)

**Recommendation:** Member states are encouraged to measure the rate of recidivism among individuals ordered to complete a drug rehabilitation programme. In addition to this, member states should analyse the success of such programmes and use these statistics to identify where more resources are needed.

**Recommendation:** Accurate information regarding drug and alcohol treatments should be more readily available to ensure widespread public awareness of success and better public opinion.

## 4.8 Sex Offender Rehabilitation<sup>166</sup>

### 4.8.1 The issues and the responses

A sex offender is anybody who had been convicted of a sex-related crime, ranging from rape to sexual harassment to paedophilia.

The nature of the crime from this group of offenders means that there needs to be special considerations in place. The result of the offender's actions often leaves the victim in a particularly vulnerable state and as a result of the offence hostility is generated within the community towards the offender. It is crucial to the successful rehabilitation of the offender that this is prevented as

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<sup>166</sup> NB: 98 per cent of people found guilty of, or cautioned for sex offences are male. There are obviously concerns regarding legal gender bias and the argument that men are less likely to report an offence against them because of social standards, however for the purposes of this report I will refer to the sex offender as 'he'.

far as possible. By isolating sex offenders they are dislocated from society; this segregation from the community may not only force the offender into a downward spiral but is also often responsible for preventing the offender from feeling any accountability.

As a group of people, sex offenders are feared and condemned by the majority of the population, used as juicy stories by the media and as a lever for politicians to generate support. Only 11 per cent of the responding member states provide rehabilitation for sex offenders as an alternative to prison. A proportion of member states do provide rehabilitation for sex offenders whilst in prison, which, though not an alternative to imprisonment, has the potential to prevent re-offending and consequently prevent re-incarceration.

The public generally believes that the rate of re-offending among this group of individuals to be quite high.<sup>167</sup>

In the case of Sarah Payne, the convicted offender, Rob Whiting, who abducted and murdered her, had been imprisoned for a previous offence of sexual assault. This was the basis for the campaign coined 'Sarah's Law' by the News of the World newspaper. The intention was to call for measures to curb and control paedophiles by providing a legal right of every parent to know the identity of serious child sex offenders living in their community<sup>168</sup>. This was reminiscent of 'Megan's Law' in the US which can provide photographs, names and addresses of persons on the sex offenders register. Whilst the proposals in 'Sarah's Law' are not quite as radical, they still possess some of the flaws. The call for these kinds of laws are often seen as the result of a 'moral panic' and as the product of exaggerated concern stimulated by extensive media coverage of a few isolated incidents of sexually related homicides against children.<sup>169</sup>

A common theme in the debate that ensues after a high-profile case involving a sex offender, particularly where the offence is committed against a child, is how to respond to these kinds of offences. In June 2007, the UK police's child protection chief said that some offenders who viewed child pornography on the internet should not be sent to prison but rather encouraged to seek treatment. In the ensuing debate, a spokeswoman for the Prison Reform Trust asked 'why not invest in prevention; why wait until a child is harmed?'<sup>170</sup> The opposite, punitive view was taken by Michele Elliot of Kidscape, who stated that 'I think these people deserve prison'.<sup>171</sup> High profile cases, such as the case of Thierry and Myriam Delay in France in 2004, often increase the demand for 'tough sentences' and divert attention away from rehabilitation schemes towards a more retributive approach.

**Recommendation:** The different institutions and agencies of member states' criminal justice systems need to work together to ensure they meet the complex needs of sex offenders.

**Recommendation:** The different institutions and agencies of member states' criminal justice systems need to work with the public, through education, providing information, consultation and discussion, to show the benefits of appropriately rehabilitative responses.

<sup>167</sup> The John Howard Society, *Sex Offender Recidivism* [on-line], accessed 20 April 2009, available at <http://www.johnhoward.ab.ca/PUB/PDF/C24.pdf>

<sup>168</sup> For Sarah, *Sarah's Law* [on-line], accessed 20 April 2009, available at <http://www.forsarah.com/html/sarahslaw.html>

<sup>169</sup> Criminal Justice Policy Review

<sup>170</sup> BBC News, *Treatment of child porn voyeurs* [on-line], accessed 20 April 2009, available at [http://news.bbc.co.uk/2/hi/uk\\_news/6711363.stm](http://news.bbc.co.uk/2/hi/uk_news/6711363.stm)

<sup>171</sup> BBC News, *'Action not jail' for paedophiles* [on-line], accessed 20 April 2009, available at [http://news.bbc.co.uk/2/hi/uk\\_news/6710531.stm](http://news.bbc.co.uk/2/hi/uk_news/6710531.stm)

**Recommendation:** The different institutions and agencies of member states' criminal justice systems need to work with the media to ensure reporting is more balanced and rational.

### 4.8.2 The Good Lives Model

The Good Lives Model of clinical and community rehabilitation<sup>172</sup> provides a strong theoretical rationale on which to base sex offender rehabilitation. The Model argues that all human beings seek happiness by attempting to satisfy nine basic human needs; importantly within these are 'healthy living - physical and sexual health' and 'relatedness - intimate, romantic life, community, family'. These 'needs' are not sufficiently met when a person achieves them inappropriately or when they are too limited and unevenly distributed. Conflict between achieving the goals can often cause problems if the person lacks the capacity to form and adjust to changing circumstances. People may attempt to use inappropriately oriented activities such as offending in order to achieve these needs. This model basically provides a theory to back the belief that if you remove one element of how a person satisfies their basic human needs then a replacement must be provided. For example in the case of a sex offender, if you tell him that he can no longer satisfy his needs of relatedness, i.e. intimacy by committing a sexual offence, then you need to be able to provide a healthy and suitable alternative by setting appropriate goals to achieve a good life. The advantages to this model are that it is *strengths*-based as opposed to *risks*-based which provides a flexible person-centred approach which is easily understood because of its applicability to life. This approach can, and has been used to support certain types of rehabilitation for sex offenders. It has been found that targeting self-esteem through inner peace has been associated with reductions in deviant sexual arousal.<sup>173</sup> This concept is of significant importance in creating a programme to successfully rehabilitate sex offenders.

### 4.8.3 Circles of Support and Accountability (COSA)

The ostracism of a sex offender upon release can lead to the person and his problem being forced underground; this makes it hard to monitor the offender and to prevent any future crime. Vigilante groups make the problem worse or displace it to another area. In Canada in 1994 the Mennonite community in Hamilton, Ontario responded to the release of a sex offender into their community in a revolutionary and unusual way. They recognised the problems faced by a sex offender and in response set up a group of people who were prepared to provide an open environment for the released offender. The idea was that by providing a space for the 'core member' (i.e. the ex-sex offender) to come to terms with his actions and the implications these have had upon his life and others related to his crime, his ability to function in the community would increase.

Several years ago, in collaboration with the Thames Valley Police Service, Quaker Peace and Social Witness, a department of Britain Yearly Meeting of the Religious Society of Friends (Quakers) in England and Wales, recreated this programme as a pilot project with great success. There is now, as a result of this initiative, a thriving community of Circles across England and Wales. There are currently no other Circles of Support and Accountability in any other Council of Europe member state. The Netherlands is exploring the possibility of setting up a similar programme with the help of Hampshire and Thames Valley Circles from England and Wales.

**Recommendation:** All member states should begin the process of setting up Circles of Support and

<sup>172</sup> Ward Tony, et al., *A Good Lives Model of Clinical and Community Rehabilitation* (Sage Publications 2002), p. 25

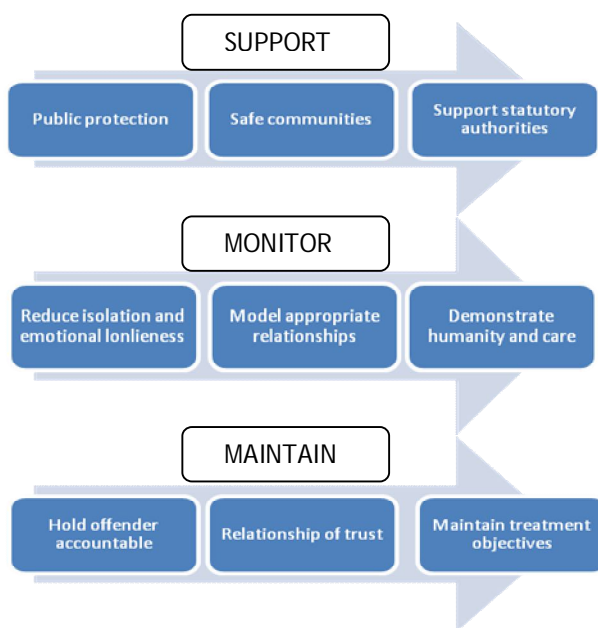
<sup>173</sup> NHS, *Good Lives and Offender Rehabilitation* [on-line], accessed 7 July 2009, available at [http://www.merseycare.nhs.uk/Library/Learning\\_Zone/Learning\\_Development/Practice\\_Development/4.%20Good%20Lives%20&%20Offender%20Rehabilitation%20-%20Neil%20Gredecki.pdf](http://www.merseycare.nhs.uk/Library/Learning_Zone/Learning_Development/Practice_Development/4.%20Good%20Lives%20&%20Offender%20Rehabilitation%20-%20Neil%20Gredecki.pdf)

Accountability to help rehabilitate sex offenders.

#### 4.8.4 Composition of a Circle

A circle of support and accountability (COSA) in England and Wales consists of 4 - 6 volunteers who meet weekly with their 'core member'. The content of the meeting is dependent upon the needs of the core member, he may have concerns specific to re-offending which the volunteers can help with or there may be problems with day to day life such as employment, education or simple things like maintaining contact with the group etc. A quintessential element to the meeting is that not only are the volunteers there to support the offender but their presence also acts as a form of supervision. If the core member expresses something of concern then they are there to hold him accountable and if necessary liaise with the necessary agency in the criminal justice system.

#### 4.8.5 Three key principles



R  
E  
D  
U  
C  
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R  
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F  
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G

As the diagram to the left indicates, COSA strive to provide support for the sex offender by providing friendship and support, therefore preventing the offender from feeling isolated and cut off from the community, a state of mind in which he or she is more likely to offend. Any concerns regarding the core member's activities would result in the relevant authorities being made aware as a direct result of the monitoring role played by the volunteers. The maintenance of these attributes, objectives and friendships results in the likelihood of an offending free lifestyle.

#### 4.8.6 Attributes of success

COSA have their roots in restorative justice (see next chapter). COSA strive to meet the needs of the ex-offender in order to help him or her to participate effectively and actively in his or her own rehabilitation and reintegration into the community. In addition to the three key principles there are two core elements pivotal to the success of COSA.

- **Voluntarism** - It is important to stress how important it is that the members of COSA are volunteers. More often than not by branding a person an ex-sex offender, they are allowed to be defined by society purely by the worst thing they have done, resulting in the ex-offender identifying with that definition himself. By providing the offender with a group of people who want to help him, support him and have his welfare at heart you are restoring his trust which cannot necessarily be provided by supporting authorities. Stereotypically sex offenders often have low self esteem. The police and probation service have a monitoring rather than supportive role; COSA and the volunteers provide a space not informed by judgement.

- Normalisation – The spectrum of volunteers for COSA provide an ideal representation of the community, the ‘normal qualities’ they possess are quintessential to this. The definition placed upon a sex offender can overshadow everything else; the normality of COSA reverses this process.

### **An Offender’s Perspective**

‘I am 19 years old and I live in a probation hostel at the moment. I got a five year sentence for rape so I’ve been locked up since I was 15. I’ve been in my Circle for two months. I’ve got three volunteers and I like the fact that they aren’t paid to work with me, it makes me feel differently about them. I’ve got quite a short licence and the Circle is going to continue even after I’ve left the hostel and my licence is over. We always make decisions together about where we go and what we do. One of the volunteers is going to bring in some maths exam papers for us and we’re going to go over them together. I did a GCSE in English while I was in prison and they think I should do more studying. They have helped me with lots of other things too, like budgeting and motivating me with my housing needs. I’m glad the volunteers are there because although I see my aunt sometimes I don’t see anyone else in my family. I think it’s good that they will be there when I move out of the hostel, as I’m not sure yet where I’m going to be living. But I have started applying for jobs, as I need the money. I don’t like thinking about the future much. But I know the Circle is there for me and will help me to not end up back in prison again.’

‘Martin’ a core member<sup>174</sup>

### **4.8.7 Limitations of COSA**

At present COSA have limited scope and only a small proportion of sex offenders are considered suitable for COSA. The rehabilitation of sex offenders within COSA only has the potential to be successful for a specific proportion of them.

### **A Volunteer’s Perspective**

A volunteer for COSA when interviewed during the course of this project related the opinion of a core member in respect of the classification of the mentality of the sex offender when it comes to reoffending. In his opinion there are three distinct categories of offender. Roughly a quarter of convicted sex offenders do not wish to reoffend and will actively embark on a course of action to prevent this from happening - this group of offenders is ideal for treatment with COSA. A further quarter of convicted sex offenders do not want to reoffend but either do not have the will or the capacity to take steps to prevent this from happening. There is scope for this group of offenders to be helped by COSA. A further estimated half of all convicted sex offenders have no wish to inhibit reoffending and in fact have every intention of practising deviant sexual behaviour again. This provides us with a rough guide as to whom COSA can assist, but also emphasises the limitations. COSA could not work if a sex offender is forced to participate; it is essential that the offender wants to prevent future recidivist behaviour. Compulsory participation in COSA would negate the positive effects they have, COSA are essentially a safety net for offenders who want to change.

It has become evident during this research project that knowledge of COSA within the criminal justice system is limited. Many offenders do not know anything about COSA and consequently cannot benefit from them. Similarly the scheme is not yet widespread enough to be available to everyone.

**Recommendation:** It should be mandatory for member state prisons to provide offenders with information about COSA prior to release when and if these become available.

<sup>174</sup> CirclesUK, *The Circular*, newsletter

Currently there are no examples of COSA for offenders other than ex-sex offenders; however it is likely that other ex-offenders could benefit from the type of support they provide.

**Recommendation:** Member states should investigate the possibility of providing COSA for ex-offenders whose original offence is one other than a sex offence.

Currently COSA are only running in England and Wales, and even here provision is only available in certain areas. Further funding is necessary to recruit volunteers, and to advertise and maintain active COSA. In addition to this, funding is necessary to set up COSA in member states where this form of sex offender rehabilitation is currently not available.

**Recommendation:** Member states should ensure adequate funding is made available to member states for setting up, recruiting and training volunteers, advertising and maintaining Circles of Support and Accountability.

#### 4.8.8 Recidivism

Due to the limited use of COSA, recidivism is hard to measure. The Hampshire Thames Valley (HTV) area has been operating for the longest period. 2008 saw HTV publish their six-year report 'HTV Circles: Six Years of Safer Communities'. In spring 2007, the British Journal of Community Justice (Bates et al, 2007) published the first ever evaluation of Circles of Support and Accountability in England and Wales. The evaluation focussed on sixteen core members from the Thames Valley (TV) COSA from 2002 until the end of 2006. Measured by the Risk Matrix 2000 (Hanson and Thornton, 2000) the core members represented a significant level of recidivism risk. Two core members were considered low risk, five medium risk, six high risk and three very high risk. The expected reconviction rates for this category of offenders are:

LOW risk	-	3% over five years
MEDIUM risk	-	13% over five years
HIGH risk	-	26% over five years
VERY HIGH risk	-	50% over five years

There were NO sexual reconvictions of any core member involved with TV COSA over this period. Further evaluation of recidivist behaviour of the sixteen core members shows that six core members experienced no problems, in five cases there was some kind of problematic 'recidivist' behaviour, in four cases there was a return to prison for breach of parole license conditions and in one case the result was a court conviction for breach of a Sexual Offence Prevention Order (SOPO).

**Recommendation:** Upon setting up COSA, member states should record data to provide sufficient information regarding recidivist behaviour.

#### 4.8.9 The future of Circles of Support and Accountability

As recommended, COSA should be implemented as soon as possible by member states. In addition to this, a review of the point at which COSA engages with the criminal justice system should be conducted. At present COSA are only offered after imprisonment and as a voluntary scheme (i.e. they are not conditions of probation etc). The voluntary nature of COSA is crucial to the success of the programme and QCEA would not recommend altering this, as the result of this could well be negative. However, the time at which COSA are offered could be re-evaluated. COSA are not currently an alternative to imprisonment but more of a tool to enable those who are willing to participate to avoid future recidivist behaviour. There is no research available to suggest how helpful COSA could be at different points in the criminal justice process. One option would be to offer COSA as an alternative to imprisonment for certain offences, such as first offences, non-



violent offences and in instances where the offender shows real remorse and a willingness to change. These suggestions would be extremely dependent upon sufficient funding and support from the different institutions within the criminal justice system.

**Recommendation - further research:** More research should be conducted into the practicalities of providing COSA at different stages in the criminal justice system, more particularly as an alternative to prison.

When an offender becomes aware of COSA and is assigned a Circle, he or she does not come into contact with it until he or she has left the confines of prison. The period immediately after release is a challenging one for the ex-offender. To help make the initial process less intimidating, a meeting between the offender and his or her Circle prior to leaving prison could be of help.

**Recommendation:** Member states should explore the possibility of providing contact with Circles of Support and Accountability whilst the offender is still in prison.

## 4.9 Restorative Justice

### 4.9.1 What is Restorative Justice?

Restorative justice (RJ) is the name given to a theory of justice in which ‘the victim and the offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’<sup>175</sup>. RJ is designed to provide an alternative to the more punitive justice handed down in traditional criminal justice systems. RJ, as the title implies, aims to restore the balance between victim, offender and community and redress the harm caused by the crime. The contrast between this and the more traditional criminal justice system is stark. As the chapter on assumptions of imprisonment states, the treatment of an offender is often the consequence of the theoretical intentions of punishment, i.e. it intends to deter, incapacitate and inflict retribution. RJ does not build on these assumptions. Instead, the relationship between victim and offender is essential to the restorative process. In a more typical scenario a court appearance may have the effect of creating an adversarial relationship. RJ works by enabling the parties to interact in a safe and neutral setting which in turn provides the victim with the opportunity to convey to the offender the real impact of their crime, to get answers to their questions and to receive a response. The offender has the chance to understand the real impact of his or her actions and to understand how they can go about repairing the harm. RJ holds offenders to account for what they have done and enables victims to move on from the crime.<sup>176</sup>

### 4.9.2 The use of restorative processes

There are many different types of RJ, used at many different points within the criminal justice system and outside it. RJ can be found in schools<sup>177</sup>, and within the workplace. Within the criminal justice system it is crucial to provide thoroughly trained individuals who can act as independent mediators or facilitators to enable both parties involved in the crime to address the harm caused by it and to search for ways of resolving it.

### 4.9.3 Main Programmes

There are different models and variations of RJ; however the main frameworks come from four different models.

#### Victim-offender mediation

‘Victim-Offender Mediation (VOM), also called Victim-Offender Dialogue, is a face-to-face meeting, in the presence of a trained mediator, between the victim of a crime and the person who committed that crime. The practice is also called victim-offender dialogue, victim-offender conferencing, victim-offender reconciliation, or restorative justice dialogue. In some practices, the victim and the offender are joined by family and community members or others. In the meeting, the offender and the victim can talk to each other about what happened, the effects of the crime on their lives, and their feelings about it. They may choose to create a mutually agreeable plan to repair any damages that occurred as a result of the crime.’<sup>178</sup>

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<sup>175</sup> UNODC, Handbook on Restorative Justice programmes, p. 7

<sup>176</sup> Restorative Justice Consortium, accessed 6 May 2009, available at [http://www.restorativejustice.org.uk/?Restorative\\_Justice](http://www.restorativejustice.org.uk/?Restorative_Justice)

<sup>177</sup> [http://www.restorativejustice.org.uk/?Restorative\\_Justice:Restorative\\_Approaches\\_in\\_Schools](http://www.restorativejustice.org.uk/?Restorative_Justice:Restorative_Approaches_in_Schools)

<sup>178</sup> VOMA, *Learn about Victim Offender Mediation* [online], accessed 7 July 2009, available at <http://www.voma.org/abtvom.shtml>

### Family conferencing

Family Group Conferences (FGC) are group meetings where extended families are invited to come together with the aim of resolving conflict or problem behaviour. They are primarily, but not exclusively, used for cases involving young people. FGCs can involve social workers, education welfare officers etc. A particular feature of FGCs is private planning time, usually by the youth and his/her family.<sup>179</sup> This helps to address the problem young people may have in conveying their emotions.

### Restorative conferencing

This is a more general concept and consequently harder to define. Generally it consists of a structured intervention by a facilitator involving all those affected by an incident seeking to repair the harm. The conference focuses on the facts and consequences of an incident for all involved. The result is often a mode by which the offender can provide reparation.

### Indirect/Direct mediation

Indirect mediation facilitates a situation where the victim and offender do not want to meet. A mediator will be responsible for 'shuttling' dialogue between the two parties.

Direct mediation involves face to face contact between the parties involved and an impartial mediator to help resolve the conflict.

Indirect/direct mediation differs from victim-offender mediation in that 'in a mediated dispute or conflict, parties are assumed to be on a level moral playing field, often with responsibilities that may need to be shared on all sides. While this sense of shared blame may be true in some criminal cases, in many it is not.'<sup>180</sup>

#### 4.9.4 Restorative justice in Europe

RJ practices continue to become more and more popular across Europe and elsewhere. In 1999, the Committee of Ministers<sup>181</sup> adopted Recommendation No. R(99)19<sup>182</sup> which concerns mediation in penal matters. This, in part, encourages member states to provide mediation as a service at all stages of the criminal justice process.<sup>183</sup> The Council of Europe has been active on the subject, for example, by commissioning the 'European Forum for Restorative Justice' to write a guide to support the policy development and implementation of RJ.<sup>184</sup>

Similarly, the European Union, in its 'Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings', states in Article 10 of that Framework Decision:

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<sup>179</sup> Restorative Justice, *What is restorative justice?* [online], accessed 7 July 2009, available at [http://www.restorativejustice.org.uk/?What\\_is\\_Restorative\\_Justice%3F:Family\\_Conferencing](http://www.restorativejustice.org.uk/?What_is_Restorative_Justice%3F:Family_Conferencing)

<sup>180</sup> Zehr, H, *Little book of Restorative Justice*, p. 9

<sup>181</sup> The decision-making body of the Council of Europe

<sup>182</sup> Communication from the Council of Europe: Recommendation No. R(99)19. September 1999, accessed 11 December 2007, available at

<http://www.victimologia.org/Normativa/Recomendacion%20concerniente%20a%20mediacion.pdf>

<sup>183</sup> UNODC, *Handbook of Restorative Justice*, p. 492

<sup>184</sup> See *ibid.* and Aertsen *et al.* (2004)

**Article 10**

Penal mediation in the course of criminal proceedings

1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.
2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.<sup>185</sup>

The UNODC has produced a handbook which looks at RJ programmes specifically. The handbook provides detailed and accessible analysis of the key considerations behind RJ practices; as well as the key issues involved in designing and implementing different RJ programmes. Following the comprehensive consideration and analysis devoted to these practices, the Office concludes that:

*The experience of stakeholder groups across the globe is that restorative justice programmes hold considerable potential to more effectively address, and repair, the harm done by criminal offending. At the same time, restorative justice programmes can provide crime victims with a more powerful voice, criminal offenders with the opportunity to acknowledge responsibility for their behaviour and receive the assistance they require to address their particular needs, and communities with a more effective strategy to not only respond to crime but to develop and strengthen their conflict prevention and resolution capacity.*

*Restorative justice is not a 'one size fits all' approach to crime. As such, it continues to evolve and assume new forms as governments and communities implement restorative justice principles in a manner that most effectively meets the needs of crime victims, offenders and community residents. A measure of the success of the restorative approach is that it has spawned many different types of programmes and processes.<sup>186</sup>*

There are many specific examples from around the world of RJ proving highly successful; both in terms of victim satisfaction and in a reduction of recidivism.

One victim-offender mediation session in the US brought together one victim of a house break-in, along with the offender and a mediator. After hours of 'heated and emotional dialogue', all parties agreed to a payment plan to cover the cost of damages and of stolen items. The offender made several apologies and completed community service hours in a food bank supported by the victim's church.<sup>187</sup>

A 2003 study in Finland found that in the majority of cases, both victims and offenders agreed upon viable and satisfactory agreements. Elonheimo states that 'rather than the state's retributive interests, the victims' rights are promoted'.<sup>188</sup> However, he finds that there are problems with the practice in Finland; namely that 'too few and too low level crime cases are referred to mediation',

<sup>185</sup> European Union, 'Council Framework Decision on the standing of victims in criminal proceedings', 15 March 2001 [on-line], accessed 3 April 2007 available at [http://eur-lex.europa.eu/smartapi/cgi/sqa\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lq=EN&numdoc=32001F0220&mode\\_l=guichett](http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexapi!prod!CELEXnumdoc&lq=EN&numdoc=32001F0220&mode_l=guichett)

<sup>186</sup> UNODC, *Restorative Justice*, p. 90

<sup>187</sup> UNODC, *Restorative Justice*, p. 20. Many other examples can be found, for example, see Bazemore and Griffiths (1997); Edgar and Newell (2006); and Pelikan (2000: 2003).

<sup>188</sup> Elonheimo Henrik, 'Restorative Justice Theory and the Finnish Mediation Practices', in *Crime and Control in an Integrating Europe; NSfK Research Seminar 2003* [on-line], accessed 19 December 2007, available at <http://www.restorativejustice.org/10fulltext/elonheimo/view>

and there are additional problems regarding its use with young offenders in Finland - that young offenders find it particularly difficult to convey their emotions, leading to too great a focus on an agreement and not the reparation and understanding that RJ practices strive for.

A workshop held in Prague, also in 2003, brought together parties from different European countries to consolidate thinking around the implementation of RJ programmes and find ways of moving the practice forward. George Barrow, of the National Probation Service of England and Wales, highlighted the Czech Republic as an excellent example of moving forward with restorative justice programmes as an alternative to prison sentences. He stated that in the Republic, 'mediation is both embedded in a legal framework and actually evident in day-to-day operations. It is growing in scale and working alongside a prison service with a decreasing population'.<sup>189</sup> The workshop emphasised a need for more active advocacy for RJ, especially to influential internal audiences such as the police, prisons, and prosecutors. A need for more flexible legislation to encourage and allow for RJ was also agreed upon. The same claims could be repeated today, four years after the conference. This is not to say that substantial and meaningful advances have not been made in Europe; they have.

**Recommendation:** Member states should adopt legislation which allows for restorative justice programmes to be used in criminal justice systems where appropriate.

For more in depth analysis of restorative justice programmes and guidelines and information on how to use them there are a number of good sources available. Member states should review the UNODC *Handbook on Restorative Justice Programmes* and other information, and find ways for RJ programmes to be used more widely in their criminal justice systems.

#### 4.9.5 When is restorative justice used?

Of the seventeen states that responded to the relevant section of QCEA's questionnaire, eleven may impose restorative justice measures as an alternative to imprisonment. These are: Austria, the Czech Republic, England and Wales, Finland, Germany, Iceland, Moldova, Norway, Slovenia, Spain and Switzerland.

RJ is not an alternative to imprisonment in Bosnia & Herzegovina, Bulgaria, Croatia, Estonia, Italy, Luxembourg, Malta, Monaco or Ukraine.

RJ is most commonly used for juveniles or young offenders in Europe. Of the Ministries that specified when it is not considered, those in Slovenia and Switzerland stated that sentences of greater than three years, or when a hard crime had been committed were excluded. The Luxembourgian Ministry stated that mediation was excluded for theft and physical assault. The Finnish Ministry stated that 'conciliation does not prevent traditional prosecution but a successful conciliation may have an impact on the consideration of charges'.<sup>190</sup>

Evidence suggests that RJ is most successful in areas of crime and for profiles of offenders which are currently excluded from its practice - that is, more serious crimes and adult offenders. Further studies which examine where RJ processes are most effective should be commissioned.

**Recommendation:** All member states should make legal provision for restorative justice approaches

<sup>189</sup> Barrow George, 'Justice and Balance: Victim, Offender and Community Perspectives', in *Probation in Europe, June 2003* [online], accessed 19 December 2007, available at [http://www.unicri.it/www/documentation/probation/docs/Bulletin\\_27\\_E.pdf](http://www.unicri.it/www/documentation/probation/docs/Bulletin_27_E.pdf)

<sup>190</sup> QCEA questionnaire, responses from the Norwegian and Finnish Ministries of Justice, q. 88

to be used as alternatives to imprisonment.
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<b>Recommendation:</b> Where restorative justice practices have been incorporated into the criminal justice system, their use regarding the types of crime and profiles of offender should be reviewed. RJ should not only be available for low-level crime and younger offenders.
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The Ministries of Justice in Catalonia and Slovenia stated that RJ processes are used ‘very often’. In Catalonia, around 2,000 young offenders per year are referred to such processes, which involve victims, offenders, mediators and the community. The number of referrals in Finland has expanded dramatically since 2006, where there were 3,848 cases. Their 2007 target is 12,000 cases.

#### 4.9.6 Creating the right environment for restorative justice

The majority of member states implementing RJ use it predominantly or exclusively for young offenders. The use of RJ has been criticised for being based on the assumption that an offender under the age of 21 is not yet a ‘lost cause’ and so deserves the opportunity to address these issues within a restorative justice process.

In short we can say that the achievements of RJ are limited for two main reasons. Firstly it is not being used on a wide enough scale across the criminal justice system, which in turn leads to the second potential downfall. Without the funding to create professionals trained in mediation, family conferencing etc. to a high standard, the process and the potential positive effects are limited, particularly if RJ becomes more frequently used for higher end offences.

RJ has often been criticised within the media as being a ‘soft option’ on crime. It is important to stress that the path that an offender must go down through this process is not an easy option. In order for RJ to be successful, an offender must address his/her own issues as well as face up to the victim of their crime. In order for RJ to become more widespread, there needs to be better understanding of it and what it entails.

#### 4.9.7 Restorative justice measures should be more widely used

There is little doubt that RJ measures can be more effective, cost-effective ways of addressing criminal behaviour than traditional justice systems. The evidence for this is now indisputable.

Two member states, Finland and Switzerland, and Catalonia (a region of Spain) responded to this question. All three Ministries reported that in their view RJ measures should be used more widely. The Finnish Ministry’s ‘Plan of Action for 2007-2011’ emphasises that alternatives, including RJ, should be developed to solve conflicts in their jurisdiction. The Catalan Ministry stated that RJ should be used more widely for adult offenders - it is already widely used for young offenders and juveniles; and the Swiss Ministry stated it should be used to a greater extent in cases of juvenile criminality.

<b>Recommendation:</b> Restorative justice measures should be more widely used as alternatives to imprisonment in all Council of Europe member states.
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#### 4.9.8 Recidivism

Evidence indicating support for RJ programmes can be found in Norway, where research reveals ‘high levels of victim satisfaction [and] little evidence of recidivism’, and in Austria, where ‘re-

offending does seem to have reduced [and] victims express high levels of satisfaction'.<sup>191</sup> A 2004 study on victim satisfaction with restorative justice conferences found 'that victims are more satisfied when they have opted to go through restorative justice means rather than traditional means'.<sup>192</sup>

**Recommendation - further research:**

The relationship between victim satisfaction and restorative versus punitive justice in Europe is an area for further research.

Member states measured the effectiveness of their respective RJ programmes in the following ways: whether the crime report is dismissed; assessments made by mediators using a range of indicators (the results of which are forwarded to the Ministry (in Catalonia)); and scientific surveillance.

All three responding Ministries (Slovenia, Catalonia and Switzerland) reported that restorative justice was an effective alternative in their country or region.

The Catalan Ministry was the only Ministry able to provide recidivism rates for offenders involved in RJ processes. The rate is eleven per cent.

**Recommendation:** Member states should measure how effective restorative justice practices are as an alternative to imprisonment in their country. This could be done by measuring the recidivism rate, as is the case in Catalonia.

## 4.10 Pre-Court Proceedings

### 4.10.1 What are pre-court proceedings?

Pre-court proceedings describe a range of alternatives where offenders may be dealt with by police forces instead of attending a trial. These are often used in the form of formal cautions given to juveniles and young offenders, for example, or where a voluntary agreement is made with the victim.

More precisely this report defines pre-court proceedings as proceedings where a case is not formally adjudicated by a court and is instead processed by mechanisms which exclude the courts. This definition presupposes that these proceedings:

- Can only occur when a person has committed a legally prosecutable action; they do not include strategies designed to prevent offending in the first instance
- Must take place before a case has come to court; they do not include post-adjudication programmes which aim to keep offenders out of detention facilities
- Must involve offenders who would have been summoned to court had no such proceedings existed; they do not include cases where a formal court appearance would not have been required.<sup>193</sup>

<sup>191</sup> Rethinking Crime and Punishment (strategic initiative), *Restorative Justice: An idea whose time has come?* Briefing Paper (March 2004), p. 3

<sup>192</sup> Behtz Sarah Anne, *Justice For All?: Victim Satisfaction With Restorative Justice Conferences* [on-line], accessed 19 December 2007, available at <http://etd-submit.etsu.edu/etd/theses/available/etd-1115104-143503/unrestricted/BehtzS121304f.pdf>

<sup>193</sup> See Joy Wundersitz, *Pre-Court Diversion: The Australian Experience*, p.2 [on-line], accessed 20 December 2007, available at <http://www.aic.gov.au/conferences/outlook97/wunder.pdf>

As an alternative to imprisonment, pre-court proceedings tend to focus on juveniles and young offenders and indeed are particularly applicable to these categories of offenders. The Beijing Rules, adopted by the United Nations in 1985 as the standard minimum rules for the administration of juvenile justice, state that:<sup>194</sup>

**Rule 11.1:** Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority

**Rule 11.2:** The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings

**Rule 11.3:** Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

In 2003, the Committee of Ministers (the decision-making body of the Council of Europe) adopted a recommendation regarding the way juvenile delinquency should be dealt with in the European context. Recommendation Rec(2003)20 states in its section 7 that:<sup>195</sup>

Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted.

Cautioning is utilised throughout European criminal justice systems and is essentially used to deal with less serious crimes simply and quickly and divert offenders away from court proceedings. There are often different degrees of cautioning. In England and Wales ‘simple cautioning’ intends to make the offender understand the unacceptability of their behaviour and the likely consequences of any further criminality. ‘Conditional cautions’ differ from simple cautions in that the offender must comply with certain conditions to avoid prosecution for the offence. Conditions may include reparation or rehabilitation. The cautioning system intends to provide police with a more central role by providing them with the power to impose their own penalties at the ‘front end’ of the system and allow them to divert cases away from the courts.

In Norway all less serious offences may be considered for cautioning however they are mostly, but not exclusively, used in cases concerning minor offences by young persons. First, there must be an acceptance of guilt, normally with an admission. Conditions are applied to the caution for a certain time period, failure to comply with these conditions, for example that no further offences be committed, may lead to court proceedings. In very few cases reporting to the Probation Service may also be applied. In the event of a new offence, the original offence may be taken into consideration.

<sup>194</sup> *Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*, adopted by General Assembly Resolution 40/33 of 29 November 1985, paragraph 11 [online], accessed 1 December 2009, available at <http://www.lawphil.net/international/treaties/unsmraj.html>

<sup>195</sup> Communication from the Council of Europe: Council of Europe, Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (Strasbourg, 24 September 2003) [online], accessed 1 December 2009, available at <https://wcd.coe.int/ViewDoc.jsp?id=70063&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB>



In practice, all European countries divert offenders on a regular basis, whether or not specific strategies have been incorporated into their legal system. Criminal justice systems in Europe will only process a small proportion of the criminal offences committed.

The United Nations Handbook on Alternatives to Prison states that the important question with regard to diversion of offences is how to structure the discretion exercised by European police forces and prosecutors. This requires clear instructions to members of police services about when they can issue warnings and when no further action is necessary. In addition, clear instruction should be given on 'when they may be able to divert qualifying offenders to alternative programmes without referring the case to the prosecuting authorities, and when they must refer alleged offences to prosecuting authorities'.<sup>196</sup> It is also necessary that prosecutors be given clear guidelines. In addition, 'both police and prosecutors need to consider the views of victims of the alleged offences, although victims have no veto over state action in the criminal justice sphere'.<sup>197</sup>

A diversion strategy which aims to keep women outside the criminal justice system is currently in operation in Scotland. The arrest referral and diversion plans target women whose offences are connected to a drug addiction in most cases. Women offenders represent forty-eight per cent<sup>198</sup> of those diverted from the criminal justice system in this strategy.<sup>199</sup> QCEA's 2007 report, entitled '*Women in Prison: A Review of the Conditions in Member States of the Council of Europe*', found that in many cases, women are being incarcerated unnecessarily in Europe. This often has particularly acute consequences, especially when the women have dependents. The report recommends the following:<sup>200</sup>

**Recommendation 29:**

Member states ensure that women with dependent children are not given a prison sentence wherever possible...

#### 4.10.2 When are pre-court proceedings used?

Nine Ministries responded to questions regarding their use of pre-court proceedings as an alternative sanction to imprisonment. These were Croatia, Finland, Italy, Luxembourg, Malta, Moldova, Monaco, Norway and Switzerland.

Pre-court proceedings are not yet established as an alternative to prison in Croatia or Malta.

Ministries in Luxembourg, Norway and Switzerland stated that less serious or minor offences are most often considered. In Norway, there must be an acceptance of guilt which is usually the result of an admission on the part of the offender. Most cases involve minor crimes committed by juvenile offenders, but not all. The Ministry in Luxembourg specified theft and burglary as offences where pre-court proceedings might be used.

<sup>196</sup> UNODC, Alternatives to Imprisonment, p.20

<sup>197</sup> *ibid.*

<sup>198</sup> UNODC, Alternatives to Imprisonment, p. 69

<sup>199</sup> For more information, see The Scottish Government Publications, *Arrest Referral: A Guide to Principles and Practices: Summary* [on-line], accessed 20 December 2007, available at <http://www.scotland.gov.uk/Publications/2002/05/14527/2753>

<sup>200</sup> Quaker Council for European Affairs, *Women in Prison: A Review of Conditions in Member States of the Council of Europe*, February 2007 [on-line], accessed 20 December 2007, available at <http://www.quaker.org/qcea/prison/Final%20Report%20Part1.pdf>

In Italy, Moldova and Monaco, juveniles and young offenders are targeted for these proceedings.

The Finnish Ministry specified three forms of pre-court proceedings available to the justice system in their country:<sup>201</sup>

*Summary penal proceedings: The prerequisites are that the offence is subject to public prosecution and the most severe penalty provided is a fine or imprisonment for a maximum of six months. Consent must be given by the victim.*

*Summary penal fee: This may be ordered for some light offences (mainly traffic offences) by the police.*

*Waiving of charges as a sanction: The public prosecutor may not prosecute in two cases: (1) where a penalty more severe than a fine is not anticipated for the offence and the offence is deemed of little significance in view of its detrimental effects and the degree of culpability of the offender manifest in it; and (2) where a person under 18 years of age has committed the offence and a penalty more severe than a fine or imprisonment for at most six months is not anticipated for it and the offence is deemed to be the result of lack of judgment or incaution rather than heedlessness of the prohibitions and commands of the law.*

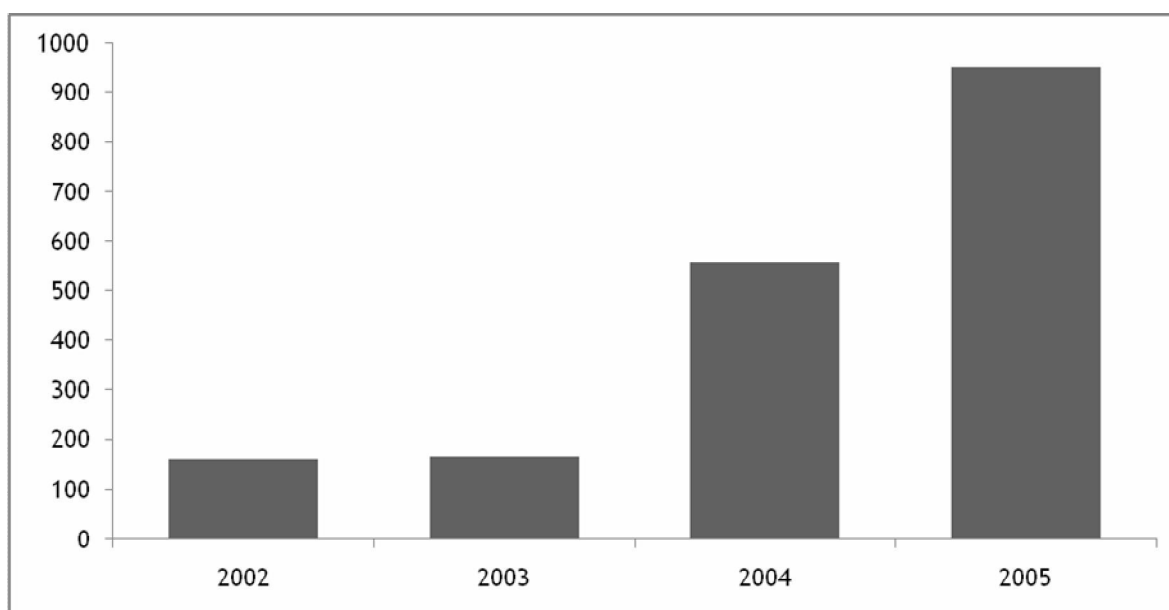
Another proceeding, available in Norway, is the use of the Child Welfare Authority; where minors (under the age of criminal responsibility - fifteen years) may be referred. However, when seen as appropriate, those up to the age of eighteen years may also be referred as an alternative to prosecution. Formal cautions and voluntary agreements with the victim of crime are also used. These measures were specified by the Ministries in Monaco and Switzerland. Formal cautions are not used in Moldova.

**Recommendation:** All member states include informal and formal cautions as pre-trial proceedings.

There were no observable patterns in the number of offenders taking part in pre-court proceedings in the figures given for Finland. Luxembourg demonstrates an increase over a two-year period as does Norway but over a four-year period.

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<sup>201</sup> QCEA questionnaire, returned by the Finnish Ministry of Justice, q. 96

**Graph 16: Increased use of pre-court proceedings in Norway**

#### 4.10.3 The effectiveness of pre-court proceedings

All five Ministries that responded to this section of QCEA's questionnaire stated that the effectiveness of pre-court proceedings as an alternative sanction was not measured or known about; or considered applicable in one case. This is unsatisfactory and an area for further research for each member state.

The rate of recidivism for offenders who are subject to pre-court proceedings is not known in any member state of the Council of Europe.

**Recommendation:** Member states should measure the effectiveness of the pre-court proceedings in their countries. Researching the rate of recidivism for these alternative sanctions is one way this could be done. The research could be undertaken by one or more Ministry staff members, or be commissioned to external bodies.

The Ministries in Finland and Luxembourg stated that they would like to see pre-court proceedings more widely used in their countries. The Finnish Ministry added that 'according to the plan of action of the Ministry of Justice concerning development of criminal policy in years 2007-2011 waiving of the proceedings should be used more widely.'<sup>202</sup>

No responding Ministry believed that pre-court proceedings were used too widely.

#### 4.11 Alternatives for Special Categories of Prisoner

The majority of prisoners in Europe are adult men that have been convicted of a crime. However, other categories of prisoner also make up a significant proportion of the prison population. As QCEA

<sup>202</sup> QCEA questionnaire, returned by the Finnish Ministry of Justice, q. 102

found when examining the situation of women in prison across Europe, these groups can and do have particular requirements and concerns.

In their *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, the UNODC mentions children, offenders who are addicted to drugs, mentally-ill offenders, women, and foreign national prisoners. The report states that, while these people may be in prison as a result of formal proceedings 'where this is not the case, their imprisonment poses grave human rights concerns. Whatever their legal status, prisons are particularly poorly placed to provide the care these prisoners need'.<sup>203</sup>

QCEA received fifteen responses to this section of the questionnaire.

Of the fifteen, thirteen Ministries stated that there were groups of prisoners for which alternatives were usually more effective at reducing the motivation to re-offend. These Ministries are: Bulgaria, Catalonia (a region of Spain), Croatia, Cyprus, the Czech Republic, Estonia, Iceland, Luxembourg, Moldova, Serbia, Slovenia, Switzerland, and Ukraine.

The Finnish Ministry stated that no data is available.

Graph 17 (below) shows which groups, if any, were specified by the fifteen Ministries that responded to the relevant QCEA question. It is clear that the majority believe that alternatives to imprisonment are usually more effective than prison for reducing re-offending amongst juveniles and young offenders.

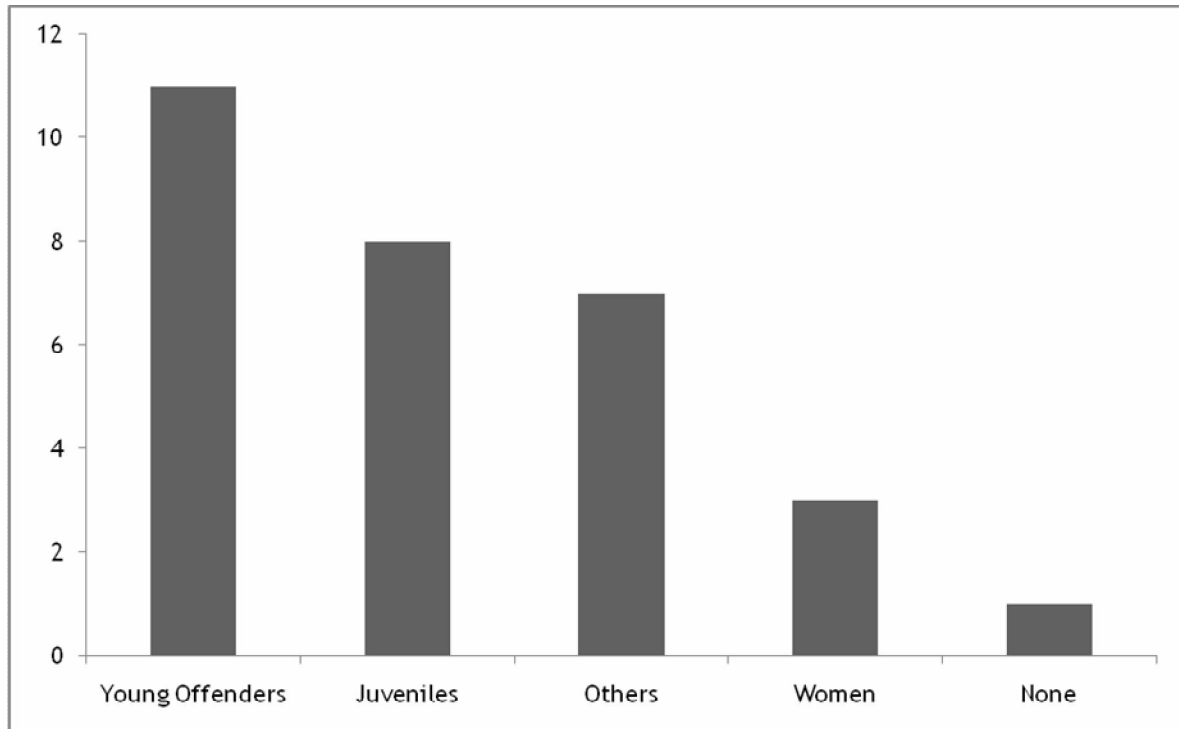
However, the majority did not consider that women offenders were such a group.

Seven Ministries listed other groups: offenders convicted of non-deliberate (i.e. no direct intent) crimes and crimes carrying a sentence of less than three years were mentioned by the Ministry in Bulgaria, while the Ukrainian Ministry referred to offenders convicted of low-level crimes. The Ministry in Catalonia stated that for all non-violent prisoners, 'all the alternatives are much more appropriate than prison sentences'.<sup>204</sup> The Swiss Ministry mentioned sex offenders, persons with drug addictions and/or who were mentally ill; the Ministries in Croatia and Cyprus also referred to offenders with drug addictions. The Ministry in Slovenia did not specify further.

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<sup>203</sup> UNODC, *Alternatives to Imprisonment*, pp. 57 - 72

<sup>204</sup> *QCEA questionnaire*, returned by the Catalan Ministry of Justice, q. 104

**Graph 17: Where alternatives to imprisonment are more likely to reduce the motivation to re-offend**

#### 4.11.1 Alternatives for women

OCEA asked whether or not alternative sanctions aimed specifically at women were available in the Council of Europe member states.

Fourteen Ministries replied to these OCEA questions: Bulgaria, Croatia, Cyprus, Estonia, Finland, Iceland, Luxembourg, Malta, Moldova, Norway, Serbia, Slovenia, Switzerland, and Ukraine.

Of these, two - Moldova and Ukraine - had sanctions aimed specifically at women offenders.

Both countries have the facility to release pregnant women or women with young children from prison. If the pregnant woman or mother re-offends when released she may be returned to prison to serve the original or an amended sentence. Excerpts from the two relevant articles in the Ukrainian Criminal Code are given below:<sup>205</sup>

<sup>205</sup> Legislation Online, *The Criminal Code of the Republic of Ukraine (English Version)* [on-line], accessed 3 January 2008, available at <http://www.legislationline.org/legislations.php?jid=53&ltid=15>

**Article 79. Discharge on probation for pregnant women and women having children under seven years of age**

1. Where a restraint of liberty or imprisonment is imposed upon pregnant women or women having children under seven years of age, except for the persons sentenced to imprisonment for a term over five years for grave or special grave offenses, a court may discharge such persons from both primary and additional punishments on probation for a period of leave granted by law to women in view of pregnancy, childbirth and until the child attains seven years of age.

4. Upon the expiry of a probation period, depending on the conduct of the convicted woman, a court shall discharge her from punishment or send her to serve the imposed sentence.

5. Where a convict discharged on probation relinquishes her child, resigns the child to a children's home, neglects her duty to take care of the child, fails to comply with the obligations imposed upon her by a court or regularly commits offenses that entail administrative penalties and demonstrate her unwillingness to reform, a court, on a motion of the monitoring authority, shall refer such a convicted woman to serve her sentence imposed by a court.

**Article 83. Discharge from punishment for pregnant women and women with children under three years of age**

1. Women sentenced to the restraint of liberty or imprisonment, who become pregnant or give birth to a child while serving their sentences, except women sentenced to imprisonment for a term over five years for intended grave or special grave offenses, may be discharged, by a court, from serving their sentences for a period of time within which a woman may enjoy her maternity leave, in accordance with the law, in connection with her pregnancy, child birth and until the child attains three years of age.

2. Discharge from serving a sentence shall apply to any sentenced female who has a family or relatives, who agree to live with her, or any sentenced female who is able to independently provide proper conditions for the raising of her child.

4. When the child attains three years of age or if the child dies, a court may discharge the sentenced female from serving her sentence, or commute her sentence, or order that she should continue to serve her original sentence, depending on her conduct. In case of ordering the continued service of sentence, the court may fully or partially include the period, during which the sentenced female was released from serving her sentence, in the term of her sentence.

**Recommendation:** Member states consider adopting criminal law which enables, where appropriate, pregnant women or women with young children to be discharged from prison; as is the case in Moldova and Ukraine.

In most countries, women are in prison for non-violent or drug offences.<sup>206</sup> Results from QCEA's research documented in its Women in Prison Report agree with this conclusion.

**Recommendation:** Member states ensure that alternatives to imprisonment are sought for crimes such as petty theft and motoring offences when the prisoner constitutes no danger to the general public.

#### 4.11.2 Alternatives for young people

The use of imprisonment for young offenders varies considerably across Europe. For example, the age at which a child becomes criminally responsible ranges from eight years old in Scotland to eighteen years old in Belgium. By increasing the minimum age at which children are held responsible for their actions, the number who enter European criminal justice systems could be reduced.

QCEA asked Ministries whether or not alternative sanctions aimed specifically at young people were available in their countries.

Nine out of the thirteen member states and Catalonia (a region of Spain) do have alternative sanctions targeted at young people specifically: Bulgaria, Catalonia, Croatia, Estonia, Finland, Iceland, Luxembourg, Slovenia, and Switzerland.

Cyprus, Malta, Moldova, Serbia and Ukraine do not have alternative sanctions targeted at young people.

Restorative justice programmes including victim-offender mediation are available in Catalonia. A restorative justice for juvenile offenders programme was piloted in Iceland in 2006. In addition, the Icelandic Government Agency of Child Protection can accommodate offenders less than eighteen years of age in a treatment facility. In Switzerland, offenders up to the age of twenty-five years can be sent to special institutions.<sup>207</sup>

Changing criminal justice systems to increase and improve the use of alternative sanctions for juveniles and young offenders can take some time. Writing in the UK newspaper *The Observer*, Mary Riddell writes that:

*'It seems beyond obvious that community projects, designed to inspire or deter, must be expanded to reach children before anything terrible happens. Yet a pilot launched by Nacro, the crime reduction charity, for 'youth peer panels' was greeted last week as if it were the greatest affront to natural justice since the Spanish Inquisition... behind the hysteria lies a restorative justice programme in which minor miscreants learn, by talking with a 'jury' of other children, how their actions hurt others and how to make amends; it is not a replacement for the criminal process. The [UK] Treasury grant of 500,000 pounds sterling looks modest beside the 280 million pounds sterling... spent every year on locking up young*

<sup>206</sup> Lemgruber Julia, Women in the Criminal Justice System Keynote Speech to the workshop which took place during the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders in Vienna, April 2000

<sup>207</sup> QCEA questionnaire, returned by the Swiss Ministry of Justice, q. 108

*people. Many will have their lives ruined in the process; some will go on to wreck the lives of others.*<sup>208</sup>

**Recommendation:** All member states should consider introducing alternative measures which target juveniles and young offenders in particular. Measures including youth restorative justice programmes could be employed, as is the case in Catalonia.

**Recommendation:** Member states should commission research into the likely effects of increasing the minimum age of criminal responsibility in their country.

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<sup>208</sup> Riddell Mary, 'An Unlikely Path to Hope Behind Bars', *The Observer*, 28 October 2007 [newspaper on-line], accessed 4 January 2008, available at <http://www.guardian.co.uk/commentisfree/story/0,,2200797,00.html>



## 5 The importance of alternatives to imprisonment

### 5.1 Finding Alternatives

OCEA asked the Ministries how important it is to find alternatives to imprisonment sentences, given the rise in the prison population of many European countries.

**The Ministries in all fifteen responding countries stated that it was either very important or important to find more alternative sentences to prison sanctions in their country.**

Ministries in Catalonia (a region of Spain), Croatia, Cyprus, Iceland, Italy, Luxembourg, Moldova, and Serbia, all considered it 'very important' to find more alternatives to imprisonment. Those in Bulgaria, Estonia, Finland, Malta, Slovenia, Switzerland and Ukraine all stated that this was 'important'.

No Ministry considered the importance of finding more alternatives to imprisonment to be 'neutral', 'unimportant', or 'other (e.g. destructive)'.

### 5.2 Improving the use of alternatives to imprisonment

Fourteen member states responded to the question as to how to improve the use of alternatives to imprisonment.

**Table 12: Responding member states' comments on improving alternatives to imprisonment**

COUNTRY	COMMENT
Bulgaria	Legislative changes for enlarged application of the probation and the conditional sentencing.
Croatia	Establishing specialised Probation Service with full-time employed probation officers. Spreading possibilities of probation/alternative measures both during court proceedings and after sentence (prison or alternative) has been declared.
Estonia	This can be achieved through improvement in work processes and standards and cooperation at local and state level.
Finland	According to the plan of action of Ministry of Justice concerning development of criminal policy in years 2007-2011 alternative methods to solve conflicts should be developed and criminal justice system should be diversified and alternatives to prison sentence should be developed. For example drug and alcohol rehabilitation should be more widely used as a part of community service and the use of electronic monitoring should be considered.

COUNTRY	COMMENT
Iceland	Well established monitored system and various treatments (different needs for different offenders). Recently, PPA has implemented treatment/program for some offenders as part of the community service (up to 1/3 of total hours). It could be effective to implement specific programs for traffic violators and more intensive treatment and support for young offenders.
Italy	Just on 10th July 2007 we had a conference on this in order to propose a different approach to sentences profiting of the fact that there are two commissions deputed to propose how to change Italian criminal and procedural criminal codes.
Luxembourg	Use them more; scientific evaluation; prison overcrowding.
Moldova	To improve material base of the Probation Service; To use some European programmes and to implement them in Probation Service activity; To improve the professional level of the personnel; To share the experience with other states; To improve the level of collaboration with international partners.
Serbia	Establishment of legal framework; organisation and development of probation service; education of probation officers; raising public awareness; education and motivation of other parties involved in the implementation of alternative sanctions (judiciary, ministry of internal affairs, employers, local community, etc.).
Slovenia	To establish probation service.
Spain	Make available more space and resources for the involvement of social institutions (i.e. the family, church, education system etc.).
Catalonia	Increase the resources to create a real system of probation and restorative justice services.
Switzerland	In a first step, the databases to measure the success of alternatives to prison sentencing should be improved.

COUNTRY	COMMENT
Ukraine	<ol style="list-style-type: none"> <li>1. To introduce changes and amendments to the Criminal, Criminal Execution and Criminal Proceeding Codes of Ukraine.</li> <li>2. Courts should use more the alternative punishments.</li> <li>3. Volunteers, NGOs and corresponding state bodies should be involved in implementing the alternative punishments.</li> <li>4. Creation of the proper material and technical basis, as well as the single information network for the future probation service of Ukraine.</li> </ol>
United Kingdom	We are constantly reviewing Community Sentences, seeking to provide the courts with an appropriate range of sanctions - community and custodial.

## 6 Conclusion

QCEA argues that imprisoning offenders is not the most effective way of dealing with offending behaviour in many instances. The alternatives to imprisonment we have highlighted, when implemented and assessed effectively, are often more successful at providing society with a suitable and effective response to crime and more often than not significantly less expensive.

We have made 49 recommendations throughout this report. A summary of these recommendations can be found in the Executive Summary on pages 15 to 17.

The most important ways in which improvements to the use of alternatives to imprisonment (ATP) can contribute to better criminal justice are:

- Effective measuring of use and effect of ATP
- Effective and detailed research including case studies demonstrating the benefits and the pitfalls of ATP
- Sharing experience amongst member states of the Council of Europe and beyond
- Looking at the offender as a whole person with the potential to change
- Ensuring that the needs of the victim are considered at every stage of the process without giving victims a veto over criminal justice decisions
- Ensuring better understanding of ATP in the population by working with the media and through educational institutions to provide better information.

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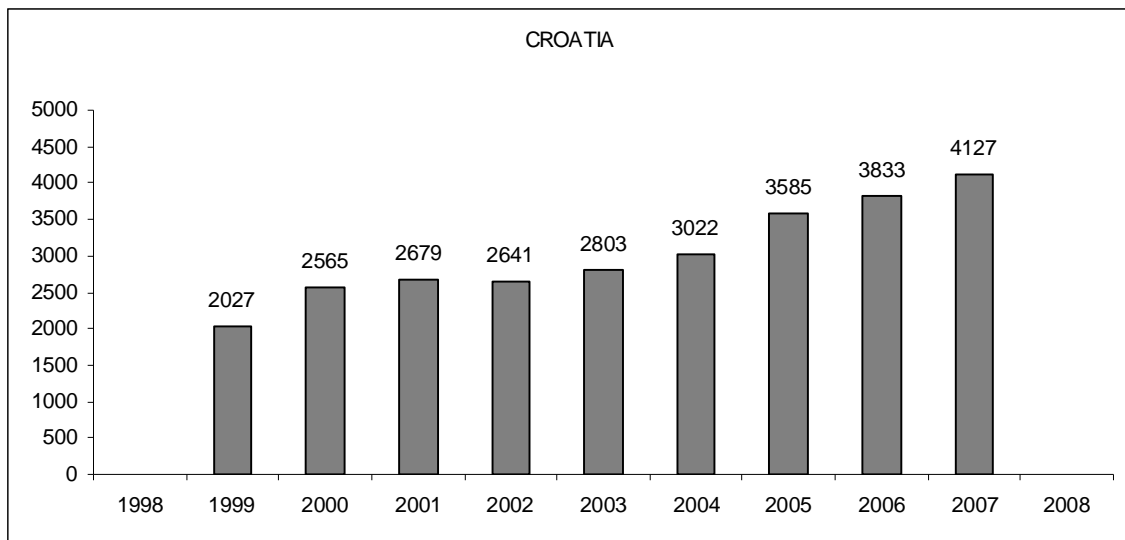
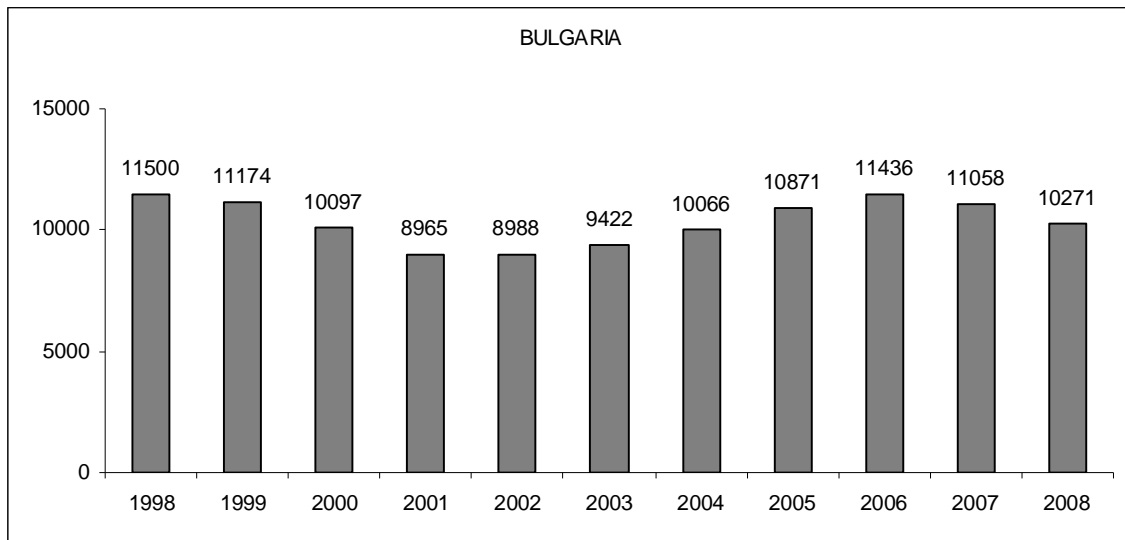
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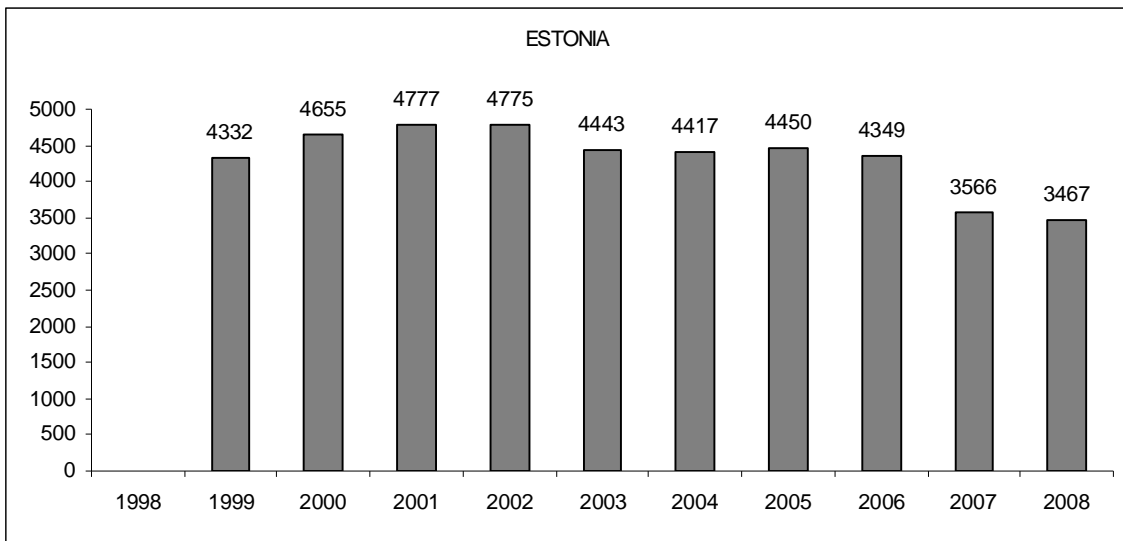
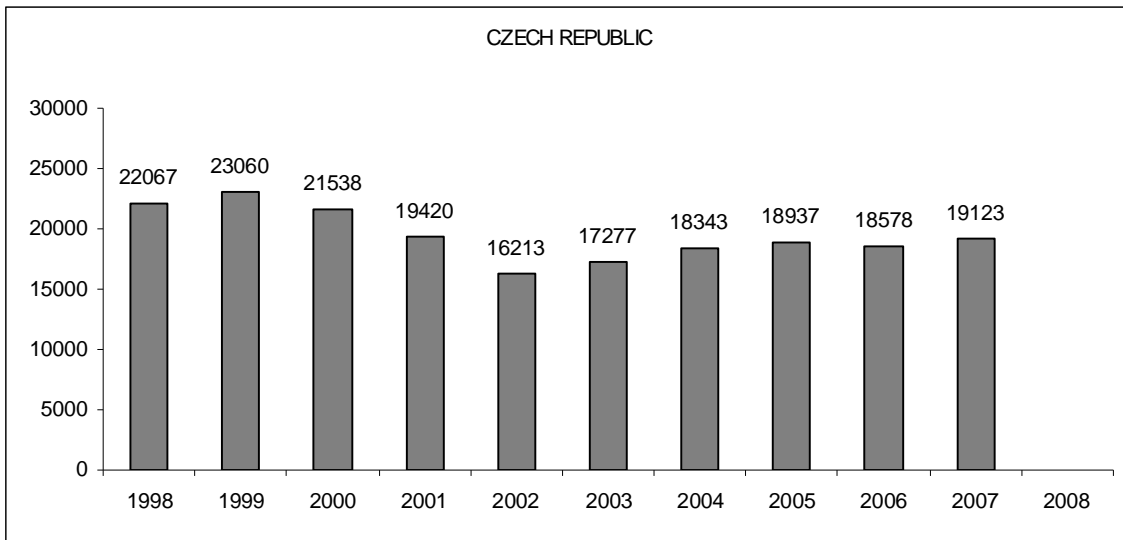
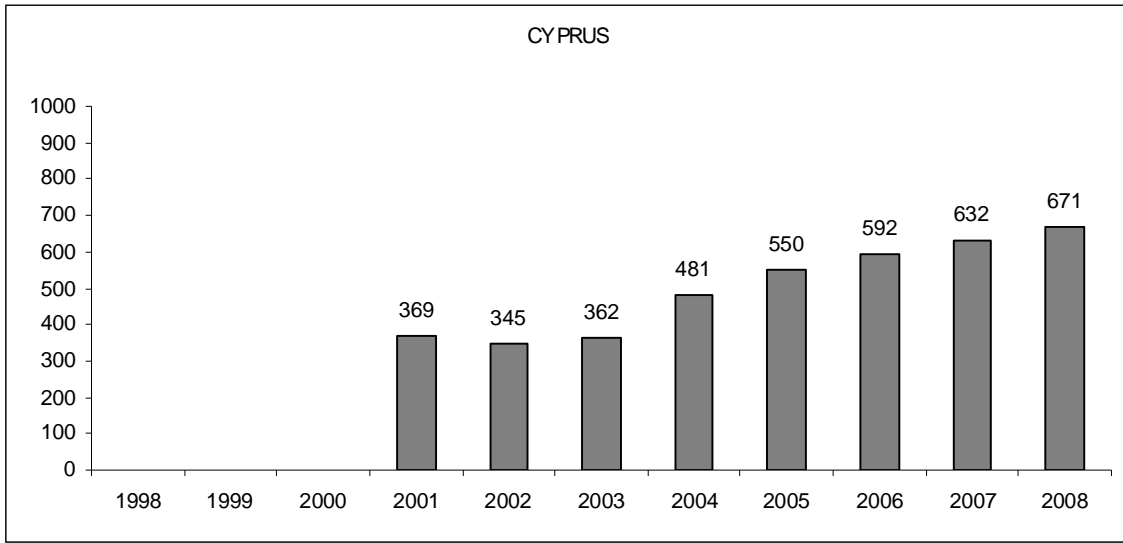


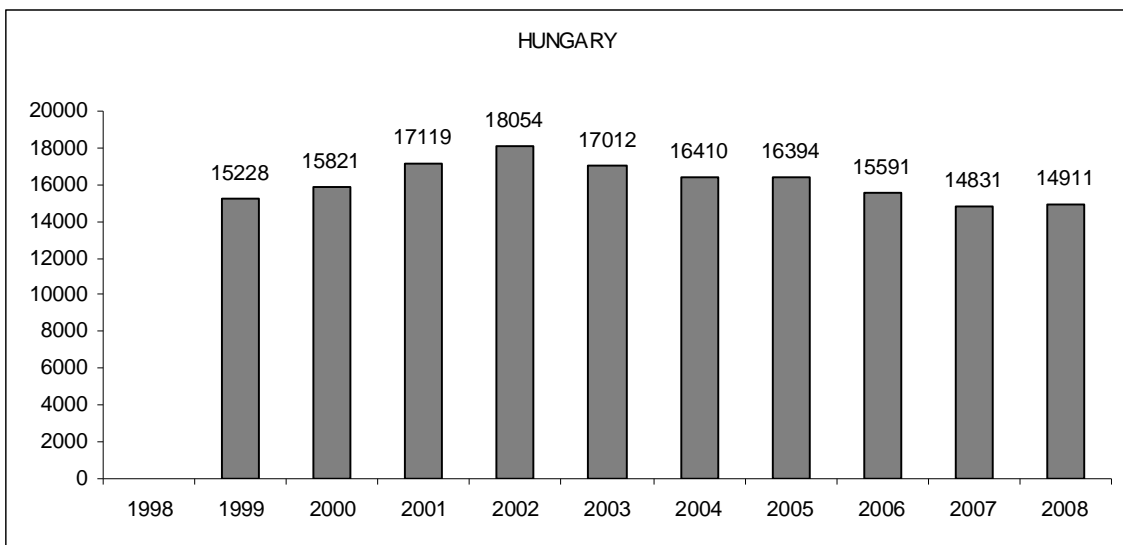
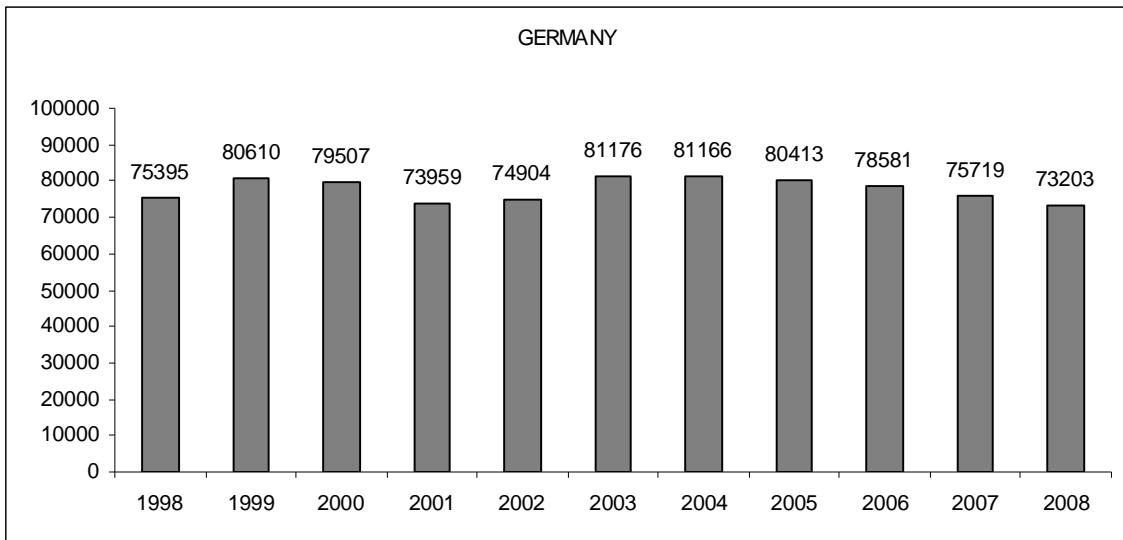
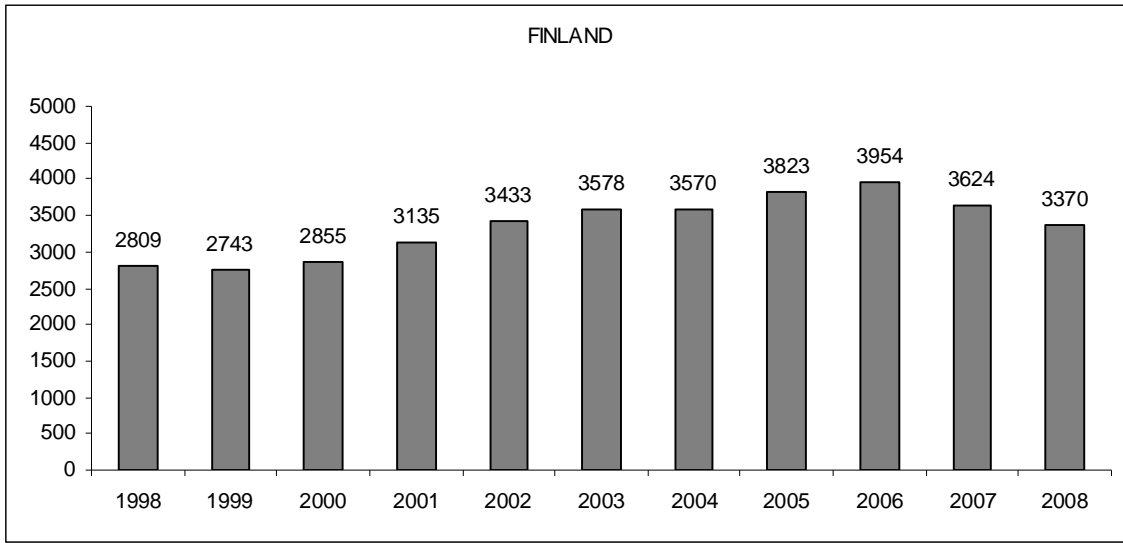
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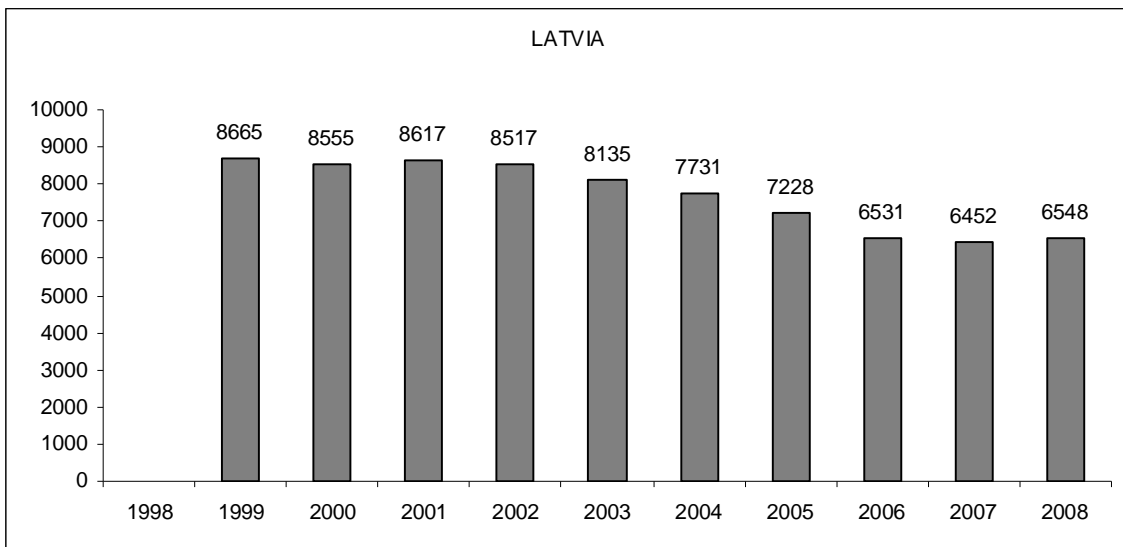
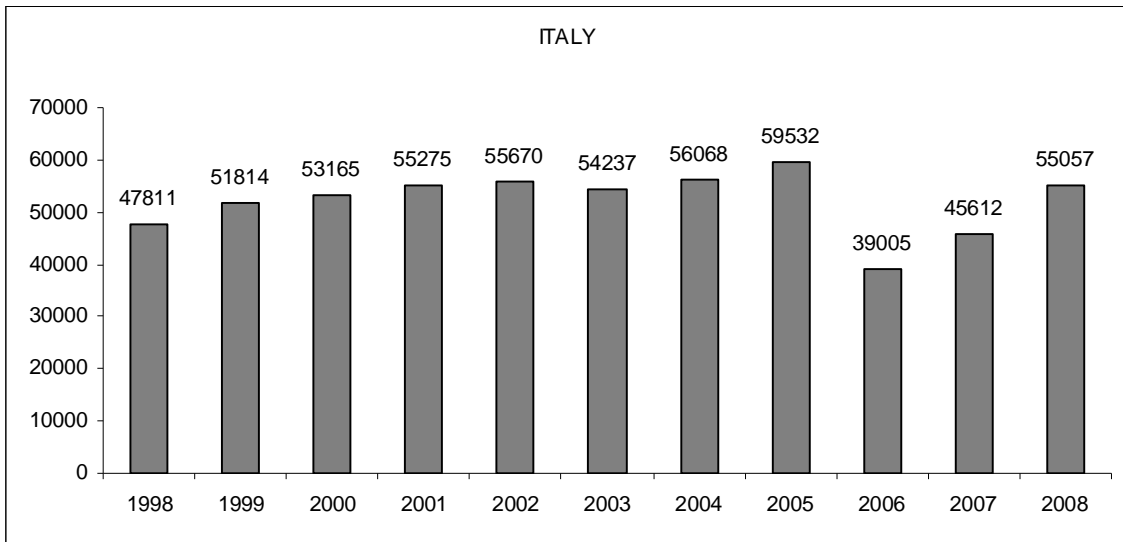
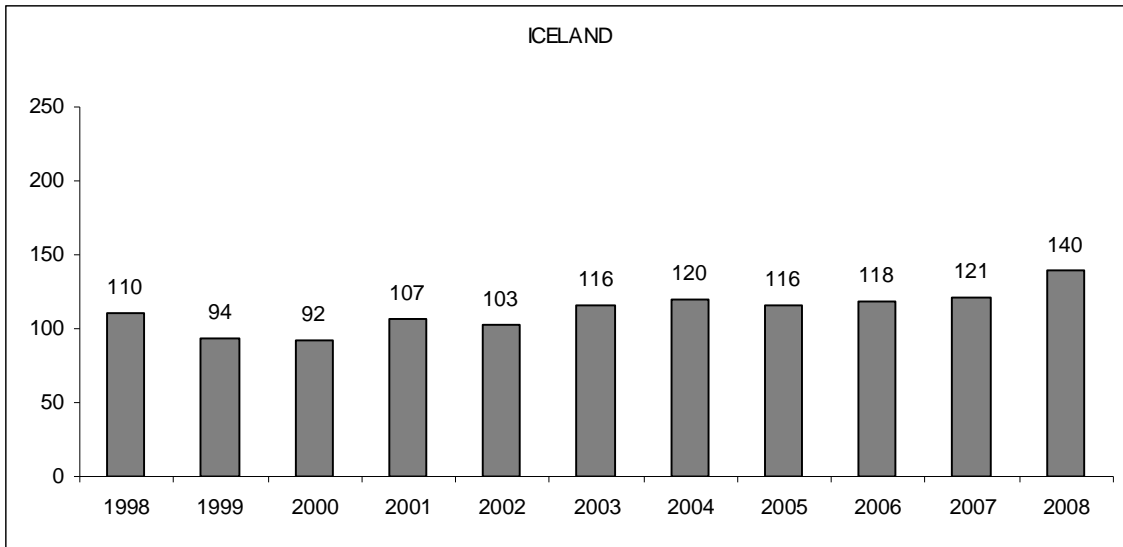
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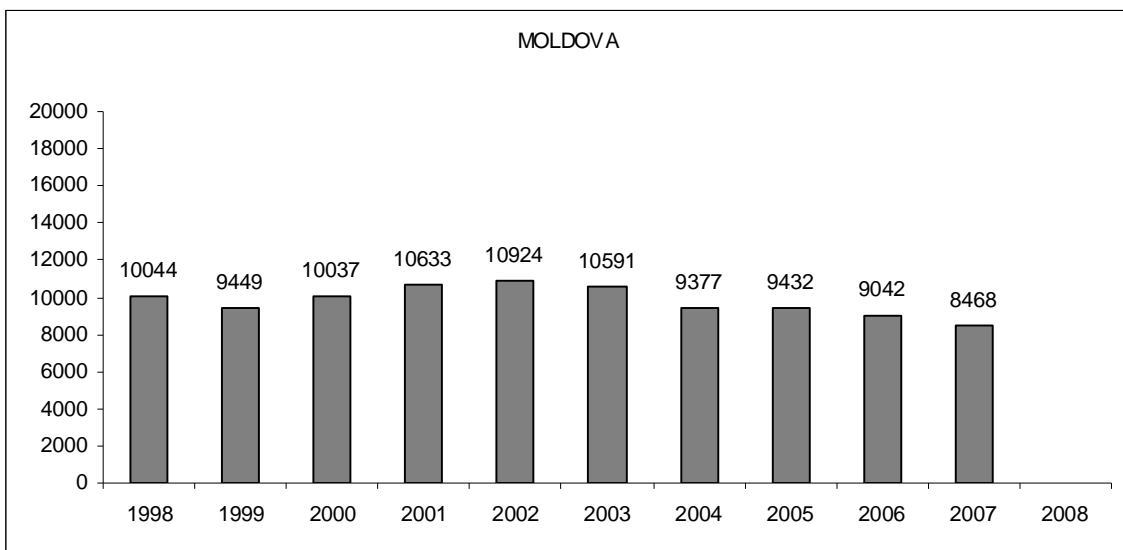
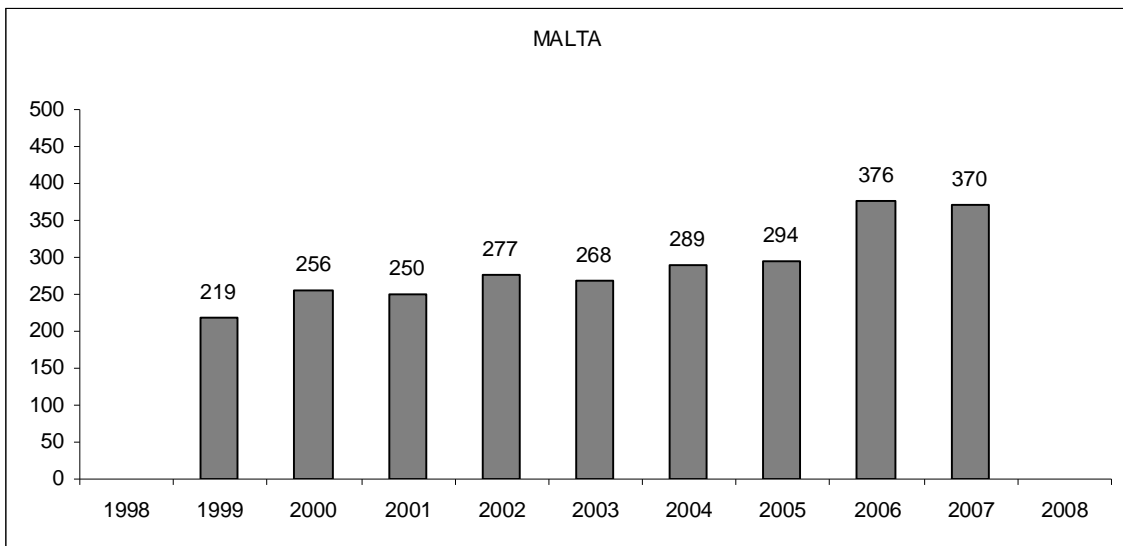
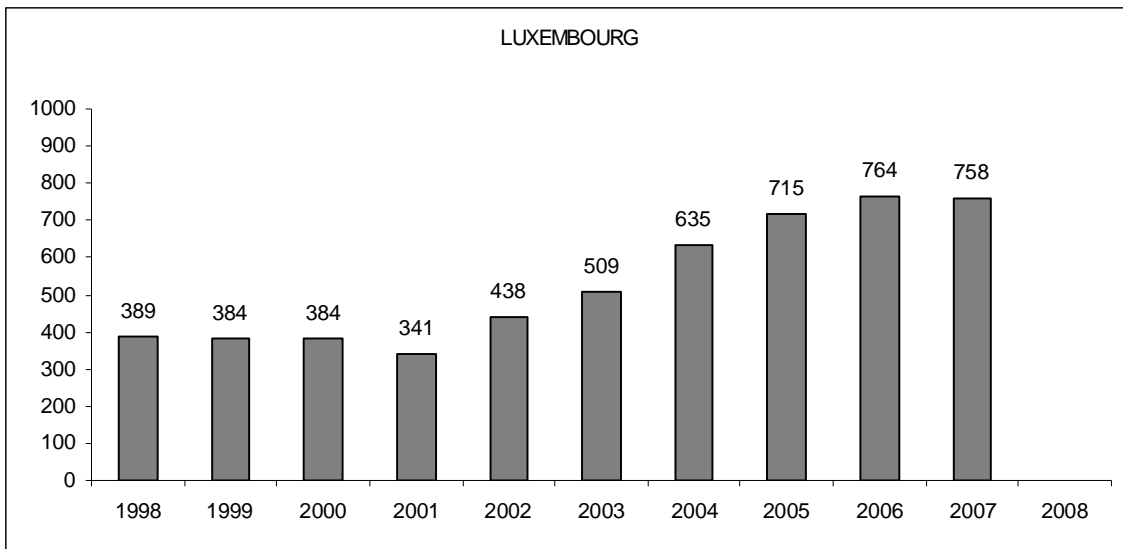
## Appendix 1: Total prison population figures by year

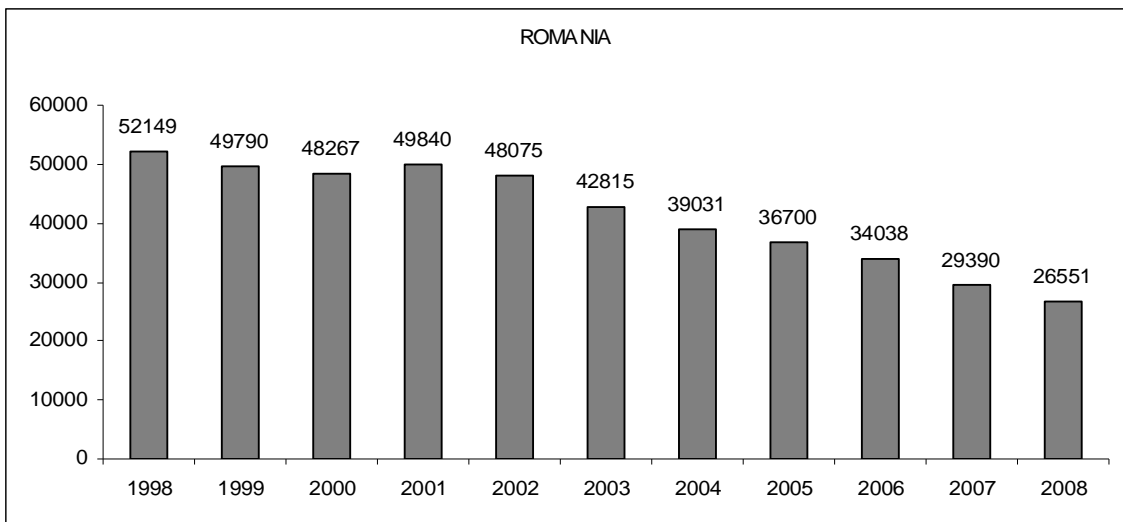
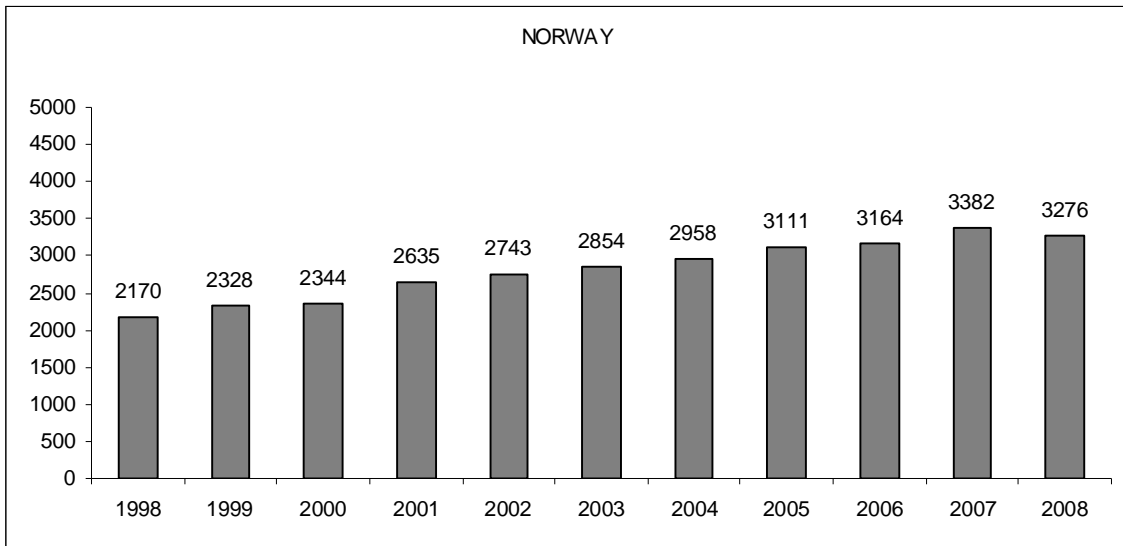
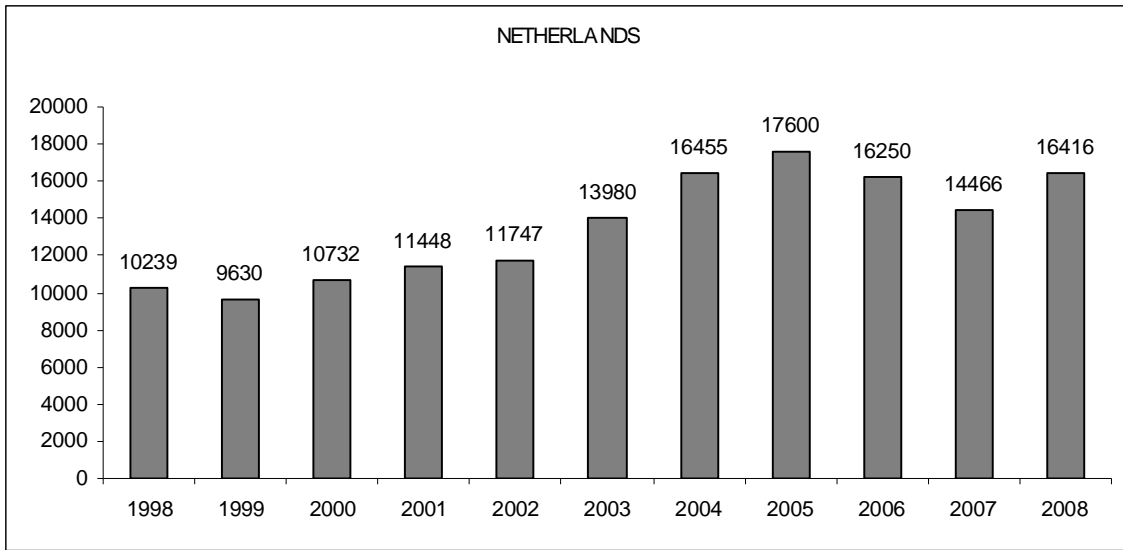


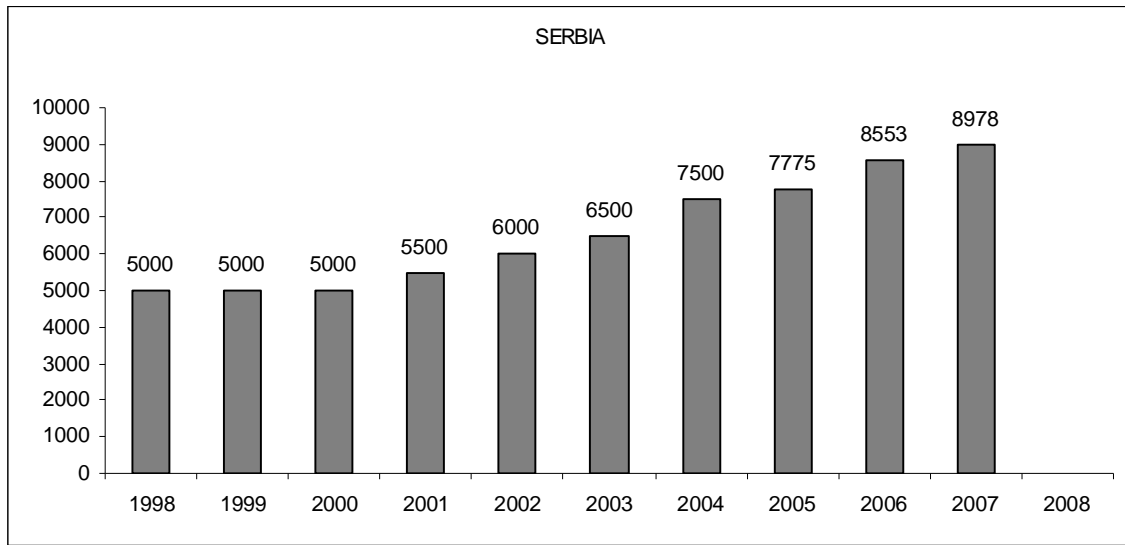




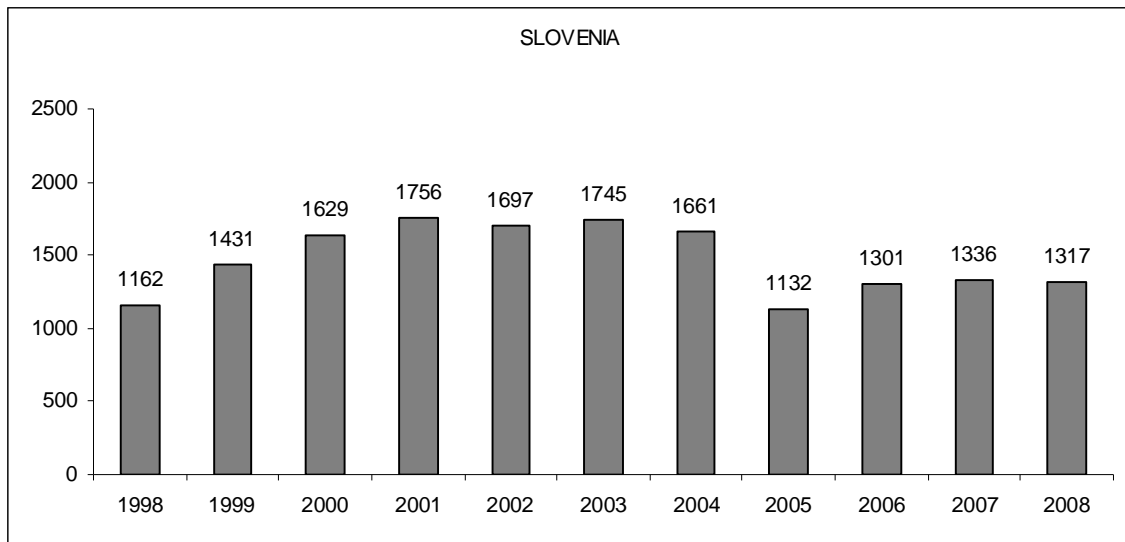






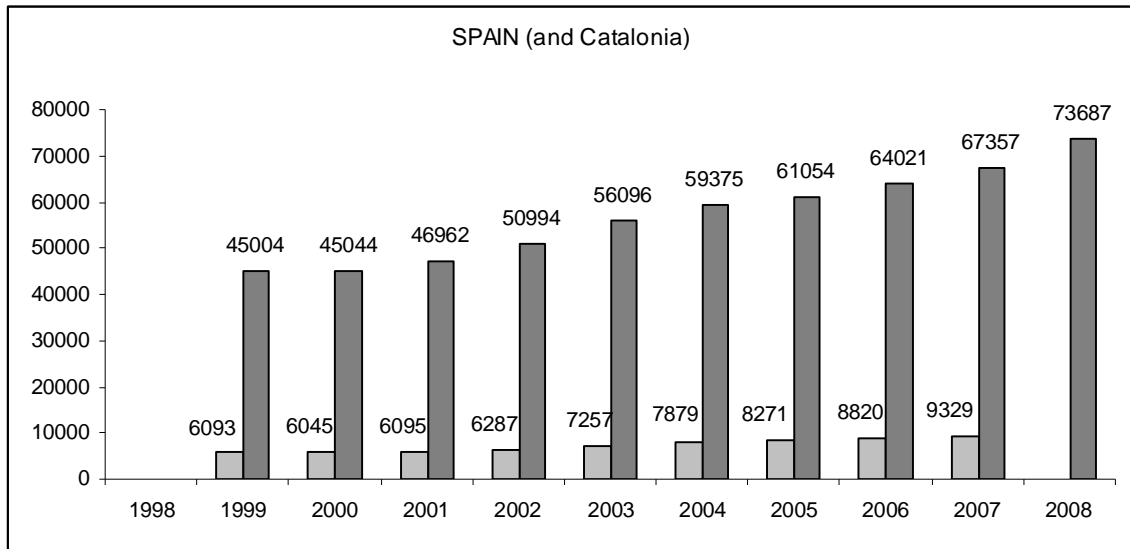


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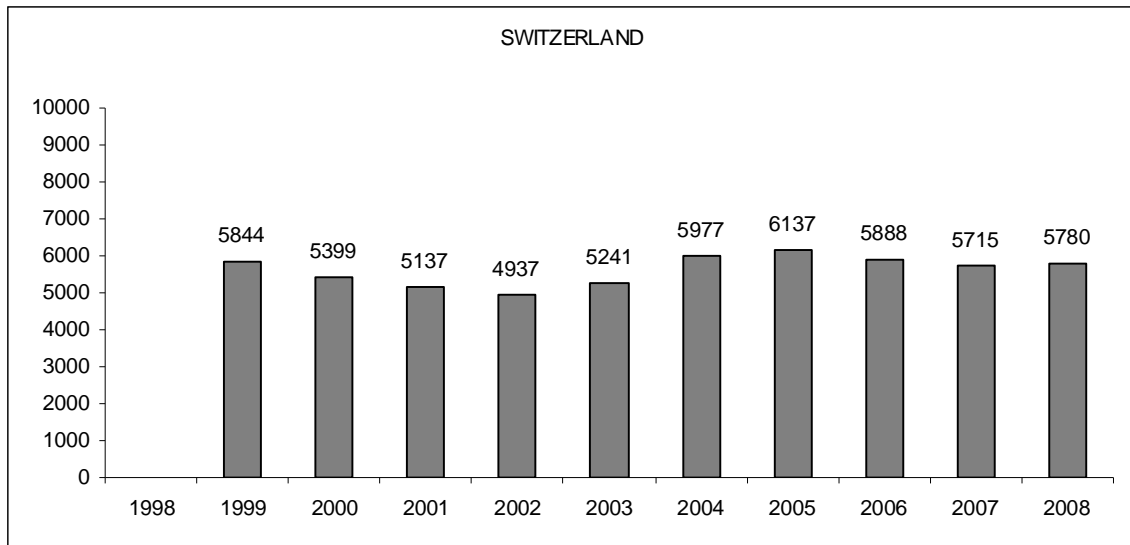


<sup>209</sup> Figures for 1998 to 2004 are estimates provided in the *QCEA questionnaire* returned by the Serbian Ministry of Justice. Figures for 2005 to 2007 are provided by the Council of Europe Penal Statistics, *Space I: Survey 2005 to Survey 2007* which record the total prison population (including pre-trial detainees) on 1<sup>st</sup> September of the relevant year.

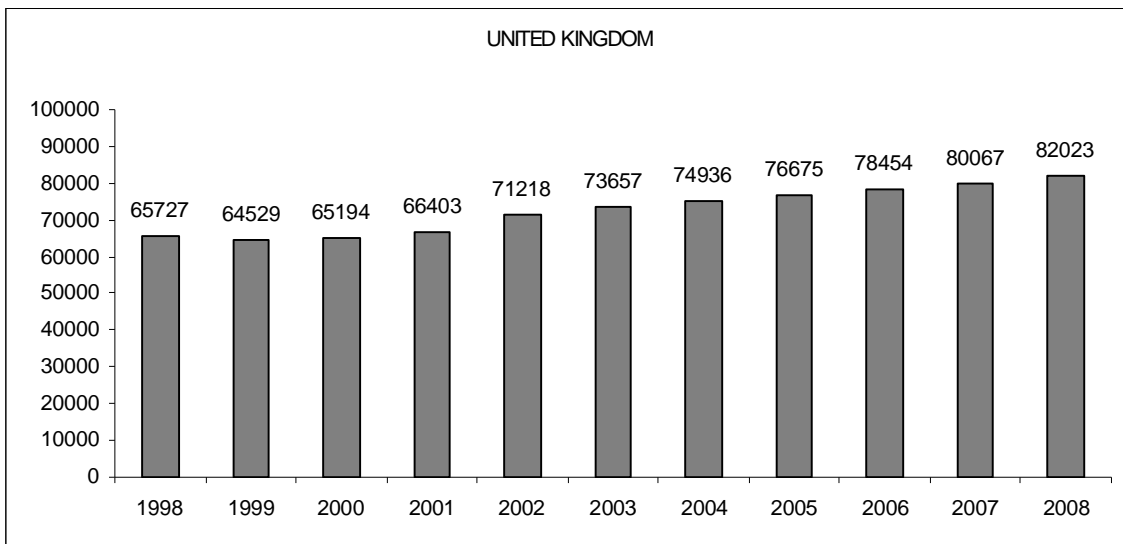
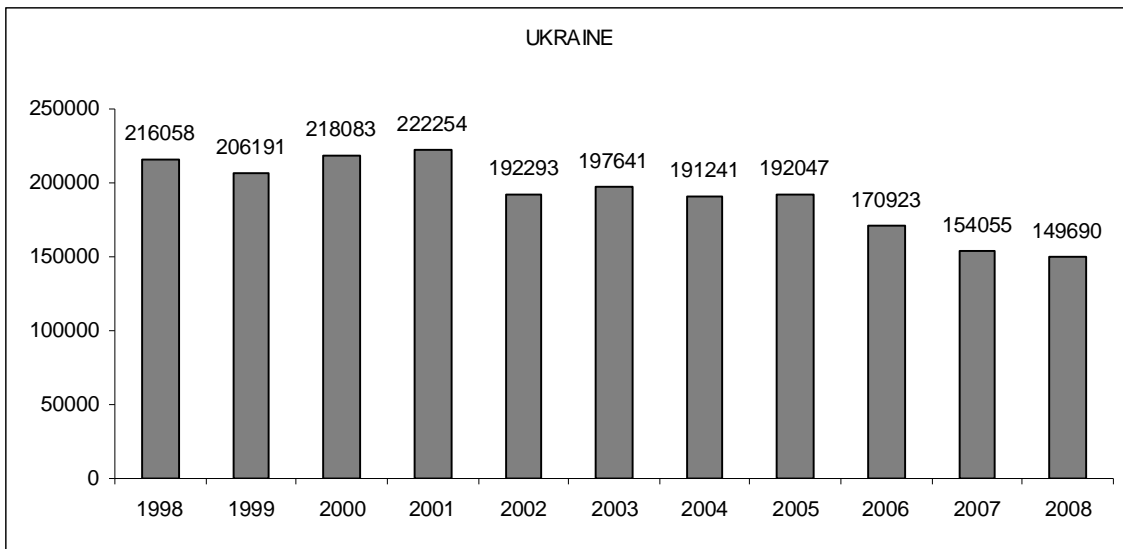




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<sup>210</sup> The figures for Spain include Catalonia within the total and were provided in the *QCEA questionnaire* returned by the Spanish Ministry of the Interior, Madrid. The figures for Catalonia were provided in the *QCEA questionnaire* returned by the Catalan Departament de Justícia, Barcelona. The figure for 2008 is provided by Kings College London: International Centre for Prison Studies, *World Prison Population List (eighth edition)*, January 2009, and does not include a separate figure for Catalonia.



Nothing is easier than to denounce the evildoer; nothing is more difficult than to understand him.

*Fyodor Dostoevsky (1821-1881)*



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