



Project "Reducing prison population: advanced tools of justice in Europe"

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1. General legal framework

1.1. Pre-trial detention and alternative measures

The constitution of the Republic of Latvia foresees that every person has the right to liberty and security of person; no one may be deprived of or have their liberty restricted, otherwise than in accordance with law¹. The State protects the honour and dignity of every human and torture or other cruel or degrading treatment of human beings is prohibited. No one can be subjected to inhuman or degrading punishment². In accordance with the Criminal Procedure Law of the Republic of Latvia (hereinafter referred to as CPL) pre-trial detention, arrest³, is one of the procedural compulsory measures or a security measure that can be applied only to a suspect or accused⁴. In Latvia, all compulsory measures listed in CPL can be generally divided in two groups: compulsory measures not related to deprivation of liberty and compulsory measures related to deprivation of liberty⁵. It must be noted that arrest, house arrest, detention and placement in a medical institution for the performance of an expert-examination are the only compulsory measures related to deprivation of liberty – in all other cases of applying compulsory measures, the person is not isolated from society.

Grounds for application of a procedural compulsory measure are a person's resistance to reaching the aim of criminal proceedings or to the performance of a separate procedural action, or non-execution or improper execution of his or her procedural duties. A security measure can be applied as a procedural security measure to a suspect or an accused if there are grounds to believe that the relevant person will continue criminal activities, or hinder pre-trial criminal proceedings or court or avoid such proceedings and court. In making a judgment, a court may apply a security measure to an accused if there are grounds to believe that he or she may avoid the execution of the judgment. In cases when a court has imposed a punishment of deprivation of liberty for serious or especially serious crimes, a judgment of conviction may be the grounds for selection of security measure – arrest⁶. A procedural compulsory measure (namely, arrest, placement in a medical institution for the performance of an expert-examination and conveyance by force) is applied by a person directing the proceedings (police or prosecutor) or an investigating judge with a motivated written decision but security

¹ The Constitution of the Republic of Latvia, Article 94, <http://likumi.lv/doc.php?id=57980> (accessed on 15.07.2014).

² Ibid, Article 95, <http://likumi.lv/doc.php?id=57980> (accessed on 15.07.2014).

³ Translator's note: official translation of Criminal Procedure Law refers to pre-trial detention as arrest, therefore this term will be used within this research.

⁴ Criminal Procedure Law, Article 242, <http://likumi.lv/doc.php?id=107820> (accessed on 15.07.2014).

⁵ Please see Attachment 1 of this report.

⁶ Ibid, Article 241 (accessed 15.07.2014).

measures are applied by investigating judge⁷. The person directing the proceedings should choose a procedural compulsory measure that infringes upon the basic rights of a person as little as possible, and is proportionate. In selecting a security measure, a person directing the proceedings takes into account the nature and harmfulness of a criminal offence, the character of the suspect or accused, his or her family situation, health, and other conditions⁸. Arrest is a security measure, which imposes the most limitations to person's rights and freedom. Therefore it is used only in exceptional cases if the investigatory judge is confident that other security measures cannot be applied to the suspect or accused – the investigatory judge has to justify the decision to apply arrest.

If, during the term of the application of a procedural security measure, the grounds for the application of such measure disappear or change, the provisions for the application of such measure, or the behaviour of the person, change, or if other circumstances are ascertained that determine the selection of the compulsory measure, a person directing the proceedings can take a decision on modification or revocation of such procedural security measure⁹. The following security measures are foreseen in CPL¹⁰: notification of the change of the place of residence; reporting to the police authority at a specific time; prohibition from approaching a specific person or location; prohibition from specific employment; prohibition from departing from the State; residence in a specific place; personal guarantee; bail; placement under police supervision; house arrest and arrest. Taking into account the abovementioned, it is possible to conclude that CPL provides judges and persons directing the proceedings with a wide range of different security measures in order to apply the most appropriate one to a specific suspect or accused, considering all the circumstance of the case.

In accordance with the statistics of Judicial Information System¹¹, in 2013 there were 871 decisions to apply arrest as a security measure (in 2012 there were 1114 such decisions, but in 2011 – 2275 decisions to apply arrest). At the same time, other procedural compulsory measures were applied in 2401 cases (in 2012 there were 2609 such decisions, in 2011 – 1414 decisions to apply other procedural compulsory measures).

These statistics give grounds to conclude that during the last three years there is a decreasing tendency in the application of arrest but it must be noted, however, that application of compulsory measures that are not related with isolation from society might be used more often. The number of persons in Latvian prisons who are arrested at pre-trial stage has also been decreasing¹², namely – if there were 2662 pre-trial arrested in 2004, there were only 1526

⁷ Ibid, Article 245 (accessed 15.07.2014).

⁸ Ibid, Article 244 (accessed 15.07.2014).

⁹ Ibid, Article 249 (accessed 15.07.2014).

¹⁰ Ibid, Article 243 (accessed 15.07.2014).

¹¹ Publicly available data from Judicial Information System, <http://court.jm.gov.lv/> (accessed 15.07.2014).

¹² Annual report of 2013, Latvian Prison Administration, <http://ej.uz/mh8v> (accessed 15.07.2014).

in 2013. The total number of prisoners (including both the arrested and convicted persons) is also declining – if the number of prisoners in 2004 was 7646, in 2013 this number has decreased to 5139 prisoners.

Research¹³ in the field emphasizes that procedural compulsory measures foreseen in CPL, including security measures that are not related to person's isolation from society, can all be viewed as alternatives to detention (alternatives to arrest) in a wider sense. However, only house arrest, bail and placement of a minor in a social correctional educational institution can be named as alternatives to detention (alternatives to arrest) in a narrower sense. House arrest and placement of a minor in a social correctional educational institution are related to deprivation of liberty (or more likely – limitation of liberty) to certain amount, yet less so if compared to arrest. Bail can be used in cases where there are legal grounds to impose arrest but the judge considers that "it is possible to reach the goals of criminal proceedings with less limiting approaches"¹⁴.

1.2. Post – trial detention and alternative measures

Within the Latvian criminal justice system, deprivation of liberty is the most serious sanction from all those foreseen in Criminal Law¹⁵ (hereinafter referred to as CL). CL defines deprivation of liberty as compulsory imprisonment of a person which can be determined for a term of not less than 15 days and not exceeding fifteen years, but for especially serious crimes – for a term not exceeding twenty years. In cases specifically provided for in CL, deprivation of liberty may be determined for life (life sentence)¹⁶. Similar to the division of procedural compulsory measures in CPL, the sentences foreseen in CL can be divided in sentences related to deprivation of liberty and sentences not related to deprivation of liberty. In the Latvian system of criminal sanctions deprivation of liberty is not considered to be the "main sanction" for which one can search for alternatives. Deprivation of liberty is applied as the most serious criminal sanction for serious and especially serious crimes.

This is why there is no such concept as "alternative sanctions" in the Latvian criminal justice system, but there are sanctions without person's isolation from the society as well as several

¹³ Pre-trial detention in Latvian criminal proceedings (research paper in latvian), A.Judins, I.Kronberga, 2011, <http://www.providus.lv/public/27503.html> (accessed 17.07.2014).

¹⁴ Pre-trial detention in Latvian criminal proceedings (research paper in Latvian), A.Judins, I.Kronberga, 2011, page 74, <http://www.providus.lv/public/27503.html> (accessed 17.07.2014).

¹⁵ The Criminal Law, Article 38, <http://likumi.lv/doc.php?id=88966> (accessed 17.07.2014).

¹⁶ Ibid.

ways to apply for release prior to the completion of a punishment of deprivation of liberty in prison. By using this approach, imprisonment is replaced by probationary supervision and participation in probation programmes. All punishments are divided in two groups where the first one is basic punishment – fine, community service and deprivation of liberty, while the second group includes all of the additional punishments, namely, confiscation of property, deportation from the Republic of Latvia, community service, fine, limitation of rights, police supervision and probationary supervision. Additional sentences can be applied together with one of the basic punishments. Of the types of punishments listed above, only deprivation of liberty can be viewed as related to person's isolation from society. When assessing these types of punishments in a wider sense, all of the sanctions without deprivation of liberty foreseen in CL can be considered as alternatives to imprisonment. However, from the point of view of the criminal justice system, those are other, less severe punishments and their application is in no way related to cases when the court applies deprivation of liberty.

Abovementioned observations lead to setting limitations for this research and therefore further analysis will be addressing cases when deprivation of liberty is replaced with supervision within society, namely: when a person is sentenced with a suspended sentence or when a person is conditionally released from prison prior to completion of sentence by replacing deprivation of liberty with probationary supervision within society.

Suspended sentence¹⁷ is one of the ways in which deprivation of liberty can be executed without isolating a person from society. If the court decides to sentence a person to deprivation of liberty for a term exceeding three months but not exceeding five years, and later the court (taking into account the nature of the committed offence and the harm caused, the personality of the offender and other circumstances of the matter) becomes convinced that the offender, will not commit violations in the future despite not serving the sentence, it may suspend the sentence of the offender. In such a case, the court sentences the person with deprivation of liberty and decides that the execution of sentence is suspended if, within the term of probation adjudicated, the convicted person does not commit a new criminal offence, does not violate public order, and fulfills the obligations imposed by the court and foreseen within the law regulating execution of punishment. In imposing suspended sentence, the court shall prescribe a term of probation of not less than six months and not exceeding five years. The term of probation starts when the judgment of the court enters into effect. In imposing suspended sentence, circumstances which the court has found substantial enough to suspend the sentence, as well as reasons why relevant obligations have been imposed for the convicted person, shall be set out in the judgment. The following obligations may be imposed on the person: to allay the harm caused to the victim, within a term specified by the court, not to change his or her place of residence without the consent of the State Probation Service, to participate in probation programmes in accordance with the instructions from State Probation

¹⁷ The Criminal Law, Article 55, <http://likumi.lv/doc.php?id=88966> (accessed 17.07.2014).

Service, not to visit specific locations, to be present at place of residence at the time specified et al. If the convicted person, upon whom a suspended sentence has been imposed, does not fulfill the obligations imposed by the court or commits a new criminal offence during the term of probation, the court can stop supervision of the person within society and send the person to prison for execution of initially imposed deprivation of liberty. Thus, suspended sentence allows for the execution of deprivation of liberty within society and without imprisonment.

At the same time, provisions of Sentence Execution Code of Latvia¹⁸ foresee the procedure which allows for persons sentenced with deprivation of liberty in prison to be released from serving the sentence after a specific period of time and placed under the probationary supervision for the remaining term of the sentence. Decision to release a person conditionally before the end of the term is made by a court. If conditional release before the end of term can be applied to a convicted person, the institution executing the sentence shall, according to the relevant decision of the administrative committee, submit an application regarding the conditional release of the convicted person before the end of term to the city (district) court in the territory in which the institution is located. The submission and the documents appended thereto shall contain information characterizing the behaviour of the convicted person, involvement in resocialisation measures and the results of resocialisation, attitude towards work and studies during the entire term of serving the sentence, as well as a written assessment of the convicted person prepared by the State Probation Service. The court can decide to release the person conditionally before the end of a basic punishment's term if there are grounds to believe that after the release person will be able to integrate into the society without committing new offence. If the court orders the person to be conditionally released and to be placed under probationary supervision, a person has a duty to, within ten working days, attend and register at the territorial office of the State Probation Service specified by the court.

State Probation Service draws up a probation supervision plan for the conditionally released person and involves the person in probation programmes as needed. If the person who is conditionally released before the end of the term without a valid reason does not fulfill the obligations imposed by the court or within laws and regulations governing the execution of sentences or if this person commits a new criminal offence, the court can impose return to the prison to serve the remaining part of the sentence there¹⁹.

When developing the provisions regulating the system of imposing and execution of sentences, the Republic of Latvia takes into consideration requirements and principles provided for in

¹⁸ The Sentence Execution Code, Article 111, <http://likumi.lv/doc.php?id=90218> (accessed 17.07.2014).

¹⁹ The Criminal Law, Article 61, <http://likumi.lv/doc.php?id=88966> (accessed 17.07.2014).

International and European Union laws, including the guidelines from European Commission²⁰ and the Framework decisions of the European Council²¹.

2. Political and social context of alternatives to imprisonment

2.1. Socio-demographic profile of imprisoned persons (pre- and post trial detention).

The Latvian prison system is made up of 12 prisons²² that are subordinated to the Latvian Prison Administration. The Latvian Prison Administration in turn is subordinated to the Ministry of Justice of the Republic of Latvia. Prisons in Latvia are divided in the following types: investigation prisons, open prisons, partly-closed prisons, closed prisons and there is also one juvenile correctional institution. As of January 1, 2014, the total number of inmates was 5139, of which 3613 persons were convicted, but 1526 persons were in pre-trial arrest. The total number of minor inmates was 46 – 22 minors were in pre-trial arrest but 24 were convicted. The maximum limit of persons that can be placed in Latvian prisons is 7970. From the total number of inmates as of December 31, 2013 there were 347 women (102 in pre-trial arrest and 245 – convicted) and 65 persons imposed with a life sentence (12 in pre-trial arrest and 53 - convicted). When compared to 2012, in 2013 the number of inmates decreased by 978 persons²³.

Out of all inmates²⁴:

- 29,7% were in pre-trial arrest but for 70,3% of inmates sentence execution was carried out²⁵;
- 1,3% inmates were from abroad but the rest were permanent residents or citizens of Latvia. 93,2% were men and 6,8% - women;
- 47,5% of all inmates were imprisoned for the first time, 20,6% - for the second time, 12% - for the third time but 19,9% of all inmates were imprisoned for the fourth or more times.

²⁰ For example: Green paper on the application on EU Criminal Justice legislation in the field of detention, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0327:FIN:en:PDF> (accessed 18.07.2014).

²¹ For cooperation within the field of criminal justice with other European countries, Latvia uses the documents listed here: <http://m.likumi.lv/doc.php?id=172708> (accessed 17.07.2014).

²²Information from the webpage of Latvian Prison Administration and its Annual reports, <http://ej.uz/mh8v> (accessed 18.07.2014).

²³ Annual report of 2013, Latvian Prison Administration, <http://ej.uz/mh8v> (accessed 18.07.2014).

²⁴ Annual report of 2013, Latvian Prison Administration, <http://ej.uz/mh8v> (accessed 18.07.2014).

²⁵ Please see Chart 2 in attachment.

- 38,1% were sentenced with a term from 5-10 years, 20,1% - for 3-5 years, 18,9% were sentenced for 1-3 years, 16,4% of inmates – for 10-20 years, for 0,1% the term exceeded 20 years, 1,5% were sentenced to life imprisonment but 4,9% - from 1 month to 1 year.
- 33,4% of all inmates were 30-40 years of age, 22,4% - 25-30 years of age, 18,7% of inmates – 40-50 years of age, 11,7% - 21-25 years of age, 8,2% - 50-60 years of age, 3% - 18-21 years of age, 2% were older than 60 years of age but 0,5% were below 18 years of age.
- 4,4% of all inmates were people with disabilities (invalidity, incapacity, mobility impairments et.al.)

In 2013, 77,4% of all prisoners were sentenced for serious or exceptionally serious crimes and they were serving their sentence in closed prisons. 1292 prisoners were considered to be exceptionally dangerous and were placed under special surveillance, including persons under suspicion of a possible escape – 174, persons with a tendency to attack prison administration – 137, persons with a tendency for suicide – 261, as well as 720 drug addicts. There were 23 licensed and accredited general education programs, 23 professional education programs, 36 programs of interest education implemented in prisons during 2013. In addition to that, inmates were also able to study for higher education through distance learning via post services. 1629 inmates were engaged in educational programs, which adds up to 29% of the total number of inmates in 2013. However, as of December 31, 2013, there were 1653 inmates engaged in educational programs – 32% of the total number of inmates²⁶.

1179 inmates were employed in 2013: 570 convicted persons were involved in the facility management of a prison and 609 inmates were employed at work places created by merchants in prisons, including 600 convicted persons and 9 persons in pre-trial arrest. The level of inmates' employment was 23% of all inmates as of December 31, 2013 – 11% in the facility management of a prison and 12% - at work places created by merchants in prisons.

As for the spiritual care of the inmates: in accordance with national laws and regulations, chaplains in prisons ensured individuals' rights to exercise freedom of religion as stated in the Constitution of the Republic of Latvia²⁷, the Law on Religious Organizations²⁸ and international human rights treaties relating to religion. To ensure each inmate's right to exercise freedom of religion, chaplains in prisons organized spiritual care measures in the following directions: worship services, concerts of sacred music, classes for research of religious literature, demonstration and discussions of films with religious content, spiritual care programs, analytical discussions on various religion-related topics as well as individual discussions.

²⁶ Annual report of 2013, Prison Administration of Latvia, <http://ej.uz/mh8v> (accessed 18.07.2014).

²⁷ The Constitution of the Republic of Latvia, <http://likumi.lv/doc.php?id=57980> (accessed 18.07.2014).

²⁸ Law on Religious Organizations, <http://likumi.lv/doc.php?id=36874> (accessed 18.07.2014).

As of January 1, 2014²⁹, inmates of the following nationalities were placed in Latvian prisons: 2093 Latvians, 1878 Russians, 187 Roma, 121 Belarusians, 93 Ukrainians, 83 Lithuanians, 76 Poles, 14 Azerbaijanis, 8 Moldovans, 7 Jews, 7 Estonians, 5 Tatars, 5 Germans, 3 Georgians, 3 Uzbeks, 3 Greeks, 2 Romanians, 2 Lezgians, 2 Komi people, and one inmate from each of the following nationalities – Udmurt, Chechen, Liv, Bulgarian, Swedish, Kirghiz, Montenegrin, Finn, Chuvash.

2.2. What are the main arguments (political, social, philosophical, and economic) used to design and implement alternatives to imprisonment?

In Latvia, similar to other countries in Europe and beyond, the development of alternative solutions for imprisonment in most cases derives from four reasons:

- a) Firstly, a state's historical development and the consequences of this development;
- b) Secondly, society's current understanding of security and society's need for security including the change of values as a result of society's development;
- c) Thirdly, research papers prepared by specialists, covering various topics in the field of public security and addressing the ways to achieve society's need for security;
- d) Fourthly, European Union laws as well as international laws and regulations that include the best practices and recommendations from other countries with the goal of improving security.

If compared to many other European countries, democracy in Latvia is relatively new³⁰ and Latvia's criminal justice policy, including penal policy, was formed after regaining independence in the mid-1990s. Therefore, when analyzing the development of criminal justice policy in Latvia, one has to consider the "heritage" that remained after seceding from the Soviet Union. This includes legal provisions that were created for the needs of the totalitarian regime, a highly repressive penal system and a colony-type³¹ prison system. For a considerable period of time, implementation of the Criminal Law and Sentence Execution Code provisions foresaw the wide application of deprivation of liberty³² and debates on alternatives for imprisonment were

²⁹ Information provided by Latvian Prison Administration as of 01.01.2014.

³⁰ The way to Restorative Justice, Part 1, The Historical background, Page 3,

http://www.providus.lv/upload_file/The%20Way%20to%20Restorative%20Justice.pdf (accessed 21.07.2014).

³¹ Author's note: colonies were prisons where the main sentence execution approach was to correct inmates with hard work and political education. In colonies inmates were held in big dormitory-type rooms with up to 150 persons in one such room.

³² Author's note: for instance, in 2003, the total number of inmates was 8231 out of which 4962 were convicted but 3269 – in pre-trial arrest , <http://ej.uz/fvj6> (accessed 21.07.2014).

largely non-existent³³. This led to an overload in Latvian prisons: closed prisons were overcrowded by 102,5%, but juvenile correctional institutions were overcrowded by 117,9%³⁴. Implementation of resocialisation measures was practically impossible and this in turn led to penitentiary recidivism remaining at high level: 53,2% of all inmates returned to prison after serving their sentence. Taking into account the abovementioned considerations as well as a need for legislation that would correspond to the society's values and needs for security, including an effective penal system, new legislation was created. Laws and regulations included alternatives to imprisonment (sanctions without isolation from society) that could be applied at the pre-trial as well as after-trial stages³⁵:

- Criminal Law³⁶ was adopted on 17.06.1998. and it entered into effect on 01.04.1999. A new sentence was included in the Criminal Law, which did not require a person's isolation from society – community service. At the same time, the legal framework for suspended sentence and conditional release prior to the completion of punishment was improved;
- State Probation Service law³⁷ was adopted on 18.12.2003. and it entered into effect on 01.01.2004. Establishment of the State Probation Service contributed to substantial improvements to the sentence execution system as well as created a platform for broader execution of those sentences that are not related to isolation from society. Establishment of this institution led to more effective supervision of persons convicted with suspended sentences, the process of development and licensing of probation programs, effectively executed community service, and the introduction and implementation of Restorative Justice approaches via offender-victim mediation;
- Criminal Procedure Law³⁸ was adopted on 21.04.2005. and it entered into effect on 01.10.2005. The new wording of CPL included procedural compulsory measures (including security measures) that were new to the Latvian criminal justice system and that were not related to isolating a person from society at the pre-trial stage of criminal proceedings;
- Sentence Execution Code of the Republic of Latvia (adopted on 23.1.1970.) has been significantly amended during the last few years. As a result of these amendments,

³³ Author's note: more information on current issues regarding deprivation of liberty is available here: Thesis for Workshop "The principle of normality - a way to safer society -integration and treatment of inmates, what works and what not?" <http://www.providus.lv/public/27842.html> (accessed 21.07.2014).

³⁴ Data is based on Annual report of 2003, Latvian Prison Administration, authority of Ministry of Justice of the Republic of Latvia, <http://ej.uz/fvj6> (accessed 21.07.2014).

³⁵ Author's note: these sanctions are also currently valid and a more detailed description is provided within the first section if this research report.

³⁶ Criminal Law (1998), <http://likumi.lv/doc.php?id=88966> (accessed 21.07.2014).

³⁷ State Probation Service Law (2003), <http://likumi.lv/doc.php?id=82551> (accessed 21.07.2014).

³⁸ The Criminal Procedure Law (2005), <http://likumi.lv/doc.php?id=107820> (accessed 21.07.2014).

resocialisation measures are implemented in prisons, including social behaviour correction activities, educational measures and employment³⁹;

- Law on Arrest Execution Procedure was adopted on 22.06.2006. and it entered into effect on 18.07.2006. As a result this law⁴⁰, a legal framework for the application of a procedural compulsory measure (security measure) – arrest, during the pre-trial process was created. This law establishes that the main measures for social rehabilitation of arrested persons are socially useful activities – acquiring general, professional and interest education, educational activities and employment.

In addition to abovementioned, there are various resocialisation programs⁴¹ created and implemented in prisons – these programs cover the areas of education, employment, health care and social behaviour correction, as well as the spiritual care of inmates. In order for resocialisation measures to correspond with the needs of inmates, there were 2767 psychological diagnostics carried out in 2013 – within these diagnostics, social, emotional and intellectual aspects of inmates were addressed as well as risks and needs assessment. Most of the psychological diagnostics were concentrated specifically on assessment of risks and needs of the inmates⁴². Successful resocialisation of inmates plays a crucial role in the process of sentence execution as it accelerates a person's integration in society and it also provides inmates with the possibility of release prior to the completion of a punishment term, instead serving the remaining part of the sentence within society under supervision of the State Probation Service.

If a person is serving a sentence related to deprivation of liberty, this person is entitled to voluntary participate in victim-offender mediation (hereinafter referred to as VOM)⁴³ at any stage of criminal proceedings⁴⁴. For a person serving a sentence in prison, VOM is a voluntary process facilitated by the State Probation Service. In 2013, there have been 12 such cases carried out. One must take into account that reaching the settlement with the victim will not

³⁹ Author's note: In Article 61.¹ of Sentence Execution Code a new definition of resocialization was included as of 2011 and within the context of this definition, a new Section was added to the Code "Resocialisation of Persons Sentenced with Deprivation of Liberty", <http://likumi.lv/doc.php?id=90218> (accessed 21.07.2014).

⁴⁰ Law on Arrest Execution Procedure (2006) Article 23, <http://likumi.lv/doc.php?id=138990> (accessed 21.07.2014).

⁴¹ 09.04.2014. Regulations of Cabinet of Ministers No. 191 on „Procedure of Implementation of convicted persons' resocialisation" entered into force on 12.04.2013. These regulations are directed at equal exercising of convicted persons' rights in prisons and they determine the model of resocialisation for persons sentenced with deprivation of liberty as well as highlight the need for regular re-evaluation of the model while the process of resocialisation is carried out, <http://likumi.lv/doc.php?id=256000> (accessed 21.07.2014).

⁴² Author's note: in accordance with the Annual report of 2013 of Latvian Prison Administration, there are dozens of programs related to education, employment, social behavior correction, spiritual care and health care. As this information is of large-scale, it is impossible to include it in this report due to limitations of report's length.

⁴³ 04.12.2007. Regulations of Cabinet of Ministers No. 825 on "Procedure for organizing and facilitating Victim-offender mediation by State Probation Service", <http://likumi.lv/doc.php?id=167543> (accessed 21.07.2014).

⁴⁴ Author's note: in accordance with information provided by State Probation Service, in 2013 there were 1090 VOMs carried out, where in 688 cases the initiators were the offenders. In 32 cases adults participated in VOM during the execution of sentence, in 12 cases these adults were sentence with deprivation of liberty.

automatically have an impact on the term of imprisonment that is imposed by the court. However, such a settlement will be considered when deciding on release prior to the completion of a punishment and allocating the person under supervision of the State Probation Service⁴⁵.

2.3. What is the place of the victim in policies to design and implement alternatives to imprisonment?

2.4. What is the relationship between the entity of damages suffered by victims and the implementation of alternatives to imprisonment?

In accordance with current legal provisions of the Criminal Law⁴⁶, a person, who has been recognized as a victim within criminal proceedings does not have a direct impact (and neither can a victim require something specific) on the offender's sentence or security measures that the court should impose. At the same time, at all stages of criminal proceedings⁴⁷ victims have the rights to express their views regarding every matter to be discussed, to be informed about the process of the specific case, to submit recusals and applications, to speak at all court sessions, and to express their opinion. An investigating judge shall decide on the application of arrest in pre-trial proceedings and until the commencement of the trial in a court of first instance by examining a proposal of a person directing the proceedings (in most cases - police), but until the commencement of a trial – a proposal of a public prosecutor, hearing the views of the relevant person, as well as examining case materials and assessing the reasons and grounds for placing a person under arrest⁴⁸.

If the victim has submitted (to police or prosecutor) his or her opinion (application) on imposing a certain type of security measure for the suspect or accused due to feeling threatened, the court can consider this information. However, the basic approach would be for the judge to assess whether there are grounds for imposing pre-trial arrest for the suspect or accused as foreseen in CPL⁴⁹. When making a judgement for conviction, the following aspects will be considered: seriousness or nature of a criminal offence, circumstances of the committing of a criminal offence, the amount of harm caused to the victim, the aggravating and mitigating

⁴⁵ More information on application of Restorative Justice tools in Latvia is available here: Restorative Justice in Latvia: Advancement, Perspectives and Challenges in Future (2013), http://www.providus.lv/upload_file/Publikacijas/Kriminalt/Restorative_Justice_Latvia_Report.pdf (accessed 21.07.2014).

⁴⁶ The Criminal Procedure Law (2005), <http://likumi.lv/doc.php?id=107820> (accessed 21.07.2014).

⁴⁷ Ibid, Part 6, <http://likumi.lv/doc.php?id=107820> (accessed 21.07.2014).

⁴⁸ Ibid, Article 274, <http://likumi.lv/doc.php?id=107820> (accessed 21.07.2014).

⁴⁹ Ibid, Article 272 (accessed 21.07.2014).

circumstances as well as any personal characterising information. If the victim feels threatened, he or she is entitled to special protection which allows not to disclose one's identity and to participate in court sessions via audio or video conferencing.

Within the Latvian Criminal Justice system there is no direct link between the amount and seriousness of harm caused to the victim and application of sanction that is not related to deprivation of liberty. In the case of criminal offence, the seriousness of criminal offence⁵⁰, the form of guilt (through negligence or intentionally) as well as the aggravating and mitigating circumstances are all considered. The court adjudges sentence to the extent set out in the section of the Special Part of Criminal Law as it provides for liability for the criminal offence committed, and incompliance with the provisions of the General Part of Criminal Law. In determining a sentence, the court takes into account the character of and harm caused by the criminal offence committed, the personality of the offender and mitigating or aggravating circumstances. If a criminal violation or a less serious crime is committed, deprivation of liberty will be imposed only in cases where the goal of punishment cannot be reached by imposing any other sanction, not related to isolation from society, as foreseen in the corresponding section of CL⁵¹.

In relation to the role of crime victims in criminal proceedings, several research-based⁵² reforms are planned to be carried out in Latvia, including those regarding the transposition of Directive 2012/29/EU of the European Parliament and of the Council of October 25, 2012, which establish minimum standards on the rights, support and protection of victims of crime and replace the Council Framework Decision 2001/220/JHA.

2.5. What is the role of civil society in debates and policies about alternatives to imprisonment?

In Latvia, civil society's involvement in the decision making process and cooperation with public administration is usually carried out through non-governmental organizations (hereinafter referred to as NGOs). The following forms of cooperation are possible:

- a) NGOs can participate in the work of legislator (parliament of Latvia – Saeima) with their proposals and it is also possible to attend and to express opinions at the meetings of

⁵⁰ Criminal Law (1998), Article 7, <http://likumi.lv/doc.php?id=88966> (accessed 21.07.2014).

⁵¹ Ibid, Article 46, <http://likumi.lv/doc.php?id=88966> (accessed 21.07.2014).

⁵² Author's note: more information on development of victims support system is available here: Development of compensation mechanisms in Latvia, <http://www.providus.lv/public/27851.html>; Provision of the Needs of Crime Victims: Support to Prevention of Victimisation in Latvia, http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Victim%20support/ANG_105_finish_doc.pdf (accessed 21.07.2014).

Saeima's sectoral committees. These forms of participation have been in place since 2006 when the Declaration on Development of Civil Society in Latvia and on Cooperation with Non-governmental Organizations was adopted⁵³. The Declaration foresees a specific procedure detailing the ways in which representatives from NGOs can engage in the work of the Saeima's committees and how these committees must listen to opinions and suggestions of NGOs and society regarding the issues within the scope of their competence.

- b) NGOs can participate in the work of the Cabinet of Ministers of the Republic of Latvia with their proposals. In 2005, a memorandum on cooperation among the Cabinet of Ministers and Non-governmental Organizations⁵⁴ was signed – its goal is to support effective and socially focused work of the public administration. For those organizations, which have signed the memorandum, cooperation with the Cabinet of Ministers has improved. As cooperative partners, these organizations are asked to participate in discussions about the public administration's documents and participate in the work groups from different ministries as they discuss laws and policy development documents⁵⁵.
- c) NGOs can cooperate with specific institutions of the public administration in accordance with their field of activities. For instance, the Prison Administration of Latvia has established close cooperation with researchers from Centre for Public Policy PROVIDUS (within the field of research), the Prison Fellowship Latvia (for the resocialisation of inmates) and other NGOS.

3. Cross-cutting and topical issues

3.1. Is the argument of cost-benefit-analysis used in designing and implementing policies towards alternatives to imprisonment?

⁵³ Declaration on Development of Civil Society in Latvia and on Cooperation with Non-governmental Organizations, <http://www.saeima.lv/lv/sabiedribas-lidzdaliba/deklaracija/> (accessed 21.07.2014).

⁵⁴ Memorandum on Cooperation among the Cabinet of Ministers and Non-governmental Organizations, http://www.mk.gov.lv/file/files/aktuali/info_presei/2014/mkmem_02121320131216124517.pdf (accessed 21.07.2014).

⁵⁵ Memorandum on Cooperation among the Cabinet of Ministers and Non-governmental Organizations – affirmation for government's and society's cooperation, <http://m.lvportals.lv/likumi-prakse.php?id=261524> (accessed 21.07.2014).

There have been calculations made as to the expenses of sentence execution in Latvia. In 2013⁵⁶, the daily costs of inmate upkeep⁵⁷ were LVL 13,15 per person and these costs exceeded the estimated costs by LVL 1,92 or 14,6% (for both pre-trial arrested and convicted)⁵⁸.

Meanwhile, the costs of one State Probation Service client⁵⁹ in 2013 were LVL 0,89 (for all probation clients together). Even though there has not been a more detailed cost analysis carried out, for instance, as to different types of punishments that are executed by the State Probation Service, this data is sufficient to conclude that any punishments related to isolation from society will be significantly more expensive than punishments not related to isolation from society. Without a doubt, calculations on cost benefits contribute to the development of penal policy, but, at the same time, one must remember that the costs are not the only factor that is considered when planning the penal policy of a country. For instance, if a rapid increase of serious and especially serious crimes would occur, as a result, the number of offenders for whom the court should impose deprivation of liberty would also increase – in this situation the security of society would remain as the priority and imprisonment would be the determined sanction. This would result in additional expenses from the state's budget. In order to reduce the risks that are related to recidivism and the increase of new crimes, appropriate attention to the development of effective secondary and primary prevention is crucial.

3.2. Are there any debates about the position of psychiatric patients in relation to ordinary detainees?

As stated in the Criminal Law, for persons, who have committed the offences set out in CL, but who suffer from mental disorders and have been found to be mentally incapable or have diminished mental capacity, the following compulsory measures of a medical nature may be determined:

- 1) out-patient medical treatment in a medical institution;
- 2) medical treatment of a general type in a psychiatric hospital (ward);
- 3) medical treatment under guard in a specialized psychiatric hospital (ward).

⁵⁶ Author's note: in order with the information provided by Latvian Prison Administration on the first 6 months of 2014, daily costs for one inmate were EUR 20,96 and exceeded the estimated costs for EUR 2,76 or 15,2%

⁵⁷ Author's note: Exchange rate for EUR to LVL on 31.12.2013. was EUR 1=LVL 0,702804

⁵⁸ Information provided by Latvian Prison Administration as of 31.12.2013.

⁵⁹ In accordance with information on costs of 2013 as provided by State Probation Service of Latvia.

If, according to the nature of the committed offence and person's mental state, this person is not dangerous to the public, a court may place the person with his or her relatives or other persons, who shall act as caretakers. If a person has been found to have a diminished mental capacity, medical treatment in places of deprivation of liberty as are appropriate thereto, may also be determined⁶⁰.

The court may determine compulsory measures of a medical nature for persons, who have committed an offence while being in a state of mental incapacity or, after commission of the offence or judgment has been rendered, have become mentally ill, removing their ability to understand or control their actions, if these persons are dangerous to the public according to the nature of the committed offence and their mental state. The compulsory medical treatment and type of medical institution is determined by the court according to the specific mental illness of the person in question and the nature of his or her offence. In the case of a person, who has become mentally ill and is therefore unable to understand or control their actions, a court may adjudge a sentence against this person after he or she recovers their health, if the period of limitation has not expired or there is no other basis for releasing them from criminal liability and sentence. Provision of compulsory measures of a medical nature shall be terminated or altered by a court, on the basis of the opinion of the medical institution, if the person concerned has recovered his or her health or the nature of the illness has changed to such a degree that it is not necessary to provide such measures⁶¹.

If a person is serving a sentence in prison and psychiatrist recognizes a need for medical treatment, this person will be placed in a Prisons' Hospital, where there is a separate department for psychiatric patients. Therefore, inmates with psychiatric illnesses are treated during their sentence and remain separate from other inmates. If the psychiatrist finds that person's condition has improved and there are no grounds for staying in the Prisons' Hospital, the inmate is placed in a prison which corresponds to his or her health conditions so as to continue serving the sentence. The Practice of Latvian prisons shows that in most cases the psychiatric illnesses are linked to autoaggression, predisposition to suicide or self-mutilation (suicidal behavior). In order to foster the professional preparedness of specialists working in the Latvian Prison Administration and prisons when dealing with inmates with the above indicated problems and to find approaches in line with international requirements, on April 1, 2014, the Prison Administration launched a project, "Development of Suicide Prevention Systems in Prisons"⁶². In 2013, there were 4621 cases of psychiatric illnesses and behavioral problems within the Latvian prison system⁶³.

⁶⁰ Criminal Law, Article 68, <http://likumi.lv/doc.php?id=88966> (accessed 21.07.2014).

⁶¹ Ibid, Article 69, <http://likumi.lv/doc.php?id=88966> (accessed 21.07.2014).

⁶² Project „Development of Suicide Prevention Systems in Prisons“ is implemented with support of European Commission, Nr.JUST/2013/JPEN/AG/4554, <http://ej.uz/xy9q> (accessed 22.07.2014).

⁶³ Annual report of 2013, Latvian Prison Administration, <http://ej.uz/mh8v> (accessed 22.07.2014).

3.3. Are there any debates about the position of drug addicts in relation to ordinary detainees?

Psychiatric illnesses and different types of behavioral disorders are closely linked with abuse of addictive substances. According to data from 2013, of the total number of the identified 4621 cases of psychiatric illnesses and behavioral disorders many derived from drug abuse – there were 1621 cases of drug abuse with 918 of them related to intravenous drug users. In 2013, there were 454 cases of HIV linked with drug abuse and 107 cases of AIDS. It must also be noted that among the inmates in Latvia it is quite common that the illness has derived from lasting and excessive alcohol abuse and abuse of other addictive substances. Thus, in 2013, 15 cases of death were registered in prisons – 10 of those because of an illness, 3 – due to suicide and two death cases resulted from bodily injury. The main reasons for deaths of inmates: oncological diseases, cardiovascular diseases, AIDS and AIDS with tuberculosis.

As the level of psychiatric illnesses, HIV, AIDS and tuberculosis among inmates is high, specialists from the prison system implement a number of measures to control and minimize the problems. Therefore, regular health checks are organized for inmates⁶⁴, for instance:

- a) In 2013, 2237 inmates underwent testing for determination of HIV infection, there were also 8719 x-ray examinations for tuberculosis and lung disease identification;
- b) Use of new screening tests for quick detection of drugs and psychotropic substances (with combination of parameters based on the substances that are most often identified in prisons); 114 cases of drug abuse were identified in 2013;
- c) In 2013, in cooperation with the Riga Centre of Psychiatry and Narcology, 11 inmates continued to undergo the long-term pharmacological treatment with a methadone program

In order to address the issue of addictions among inmates on a long term basis, the Latvian Prison Administration has started a project,⁶⁵ “Development of New Department in Olaines Prison, Including Construction and Training of Personnel”. Within the scope of the project, a system for isolating the inmates from addictive substances as well as ensuring preconditions for resocialisation work with groups of addicted inmates is planned. Additionally, specialists from prisons would also be trained to use new methods and approaches when working with inmates with addictions. In order to ensure involvement of addicted inmates in resocialisation measures during their sentence, firstly, it is crucial to solve the problem of addiction and only then turn to

⁶⁴ Ibid, <http://ej.uz/mh8v> (accessed 22.07.2014).

⁶⁵ Project „Development of new department in Olaines prison, including construction and training of personnel”, Nr.LV08/2, <http://ej.uz/4w2f> (accessed 22.07.2014).

resocialisation. For this reason, one of the Latvia's prisons (Olaines prison) will create a place free of drugs and other addictive substances, where addicted inmates will undergo complex treatment and will be involved in resocialisation activities.

4. Concluding remarks: the future of alternatives to imprisonment

Implementation of various alternatives to pre-trial arrest and imprisonment has to be carried out within the context of penal policy development and development of the system for the execution of imprisonment. It must be stressed that advanced criminal justice policy, based on European values, is the main precondition for successful implementation of alternatives to imprisonment. This leads to conclusion that, for in the near future, the following priorities will be on the agenda for criminal justice policy:

1. *Development of a prevention system* in order to reach two goals:
 - 1.1. Implementation of measures to reduce recidivism (secondary prevention) so as to make the resocialisation system more effective – both when executing deprivation of liberty as well as when executing sentences that are not related to deprivation of liberty. This conclusion is supported by the fact that 52,5% of all inmates have been in prison for two and more times.
 - 1.2. Implementation of primary prevention measures so that persons would not commit criminal offences that lead them to imprisonment. This conclusion is supported by the fact that 47,5% are in prison for the first time.
2. *Implementation of electronic monitoring*⁶⁶ would provide possibilities to release convicts prior to the completion of their sentence therefore ensuring that sentence in prison would be executed only for those offenders, whose behavioral risks indicate a need for such an approach, while offenders with low risks would be released prior to the completion of their sentence and placed under supervision of the State Probation Service.
3. *Targeted planning and implementation of resocialisation process* in prisons so as to identify the resocialisation needs of inmates, to evaluate risks of behaving in antisocial ways and committing new criminal offences while serving the sentence. Therefore, it will be possible to take the most suitable measures for social behavior correction and

⁶⁶ With co-financing of Ministry of Justice of Latvia and Norwegian Government Bilateral Financial Instrument a program "Reform of the Latvian Correctional services and police Detention Centres" was started on started 03.06.2013. Within the framework of this program, State Probation Service implements the project "Increasing the Application of Alternatives to Imprisonment (Including Possible Pilot Project on Electronic Surveillance)" Nr.LV08/1, <http://ej.uz/1cmy> (accessed 22.07.2014).

social rehabilitation as well as to take other measures that can be implemented while serving the sentence and can be included in the inmates' resocialisation plan.

4. *Creation of a system of working with convicted persons with addiction to drugs and other addictive substances⁶⁷* in order to improve their physical and psychological health conditions and to foster their integration within the system of resocialisation.

⁶⁷ Project „Development of new department in Olaines prison, including construction and training of personnel”, Nr.LV08/2, <http://ej.uz/4w2f> (accessed 22.07.2014).

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