



CARE OR CONTROL:

Assessment of the efficacy of Georgia's
probation system vis-à-vis drug offenses

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Introduction and research findings

Probation plays a cardinal role in the criminal justice system. Historically, probation practices emerged in the mid-nineteenth century. Based on a comparative historical analysis of Britain and the United States, one author (Jake Phillips) singles out two main approaches, on which probation practices are grounded: in the first case, Christian missionary action was a leading one in the justice system. It was based on the idea of a spiritual transformation of a person, the way of “*turning an individual into a new person*”. In this sense, in Britain, “*religious sensitivities defined the first important ideology of probation*.”¹ In the US, conversely, early probation practices were based on the belief in rational choice (including in the context of factors such as poverty).² It must be said, however, that these practices of probation began to take shape as solid institutions only later, in the twentieth century.³ Despite these ideological differences, it is believed that in both cases, the aim was to reduce the negative effects of imprisonment on individuals⁴ and to offer a more humane alternative to imprisonment.⁵

It can be stipulated that these founding principles have, to some extent, determined the dominance of different components in probation systems. While probation agencies in the United States focused on strengthening the monitoring capacity, in Britain, in addition to this function, they were required by the 1907 Act to provide “*advice, assistance, and rapport*”.⁶ This discord is, of course, more useful for the purposes of explaining more general trends and context, and does not reflect all the layers and flows within the different systems. In addition, such theoretical reasoning is also fruitful in illustrating the two natures of probation. In modern systems, probation typically performs control and monitoring roles as well as care, support, and social inclusion functions. Consequently, it constitutes a part of both criminal justice and social policy.

Despite the noted differences, we can examine the common trends as well. Modern neo-liberal systems are characterized by the growth of prison populations and the production of a ‘culture of control’.⁷ Although probation functions have been expanding since the

1 Jake Phillips, The social construction of probation in England and Wales, and the United States: implications for the transferability of probation practice, *British Journal of Community Justice*, 8 (1), 2010, p. 4, available at: <https://bit.ly/3N9L4Mw>, accessed on: 19.04.2022.

2 Ibid, pp. 4-5.

3 Ibid, p. 6.

4 Ibid, p. 3.

5 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 41.

6 Influenced by this differentiation, they also distinguish ‘client management’ versus ‘client-centeredness’ approaches. Jake Phillips, The social construction of probation in England and Wales, and the United States: implications for the transferability of probation practice, *British Journal of Community Justice*, 8 (1), 2010, pp. 8-10.

7 Ibid, p. 1.

second half of the twentieth century, it has not had a significant impact on reducing the overall prison population (as in the case of England).⁸ In general, criticisms of existing probation systems point to the fact that they are often more focused on risk management and oversight than on social empowerment.

The role of the probation system is crucial in the context of drug crime. Drug policy in Georgia is still fraught with many challenges. Drug users (other than marijuana users) continue to face stringent sanctions under existing legislation, which is exacerbated by the lack of access to care measures, stigma, and alienating practices. The main reason for this is that the state views drug-related behaviors (possession, purchase, storage, cultivation, etc.), and, to a large extent, consumption, through repressive lenses.

International and local studies confirm that a large proportion of those convicted of drug offenses experience a severe social context, as well as a need to be provided with support and treatment services. For most individuals convicted of drug offenses, imprisonment is not only inhumane but also unfit for the purposes of the sentence. Consequently, the importance of probation is particularly grand in this case: it can ideally combine the function of caring for and supporting convicted persons under conditions of less intensive control. By considering the existing approaches, legislation, and policies, the present study aims to determine to what extent the Georgian probation system performs this exercise properly.

It should be noted that fundamental research on the functioning of the Probation Agency in Georgia, its challenges, and relation to drug-related offenses is very limited. This is especially problematic given that Georgia has one of the highest probationer rates in Europe. In particular, according to 2020 data, the highest number of probationers per 100,000 inhabitants in Europe, after Poland, Turkey and Lithuania, is in Georgia (562 persons).⁹ Georgia is also one of the three European countries classified as *“a jurisdiction with a high probation population rate and a relatively high prison population rate.”*¹⁰ It is considered that *“community sanctions are used in Georgia not as alternatives to imprisonment, but rather as supplementary sanctions.”*¹¹

The objective of this research is to examine the probation system and its role in a broader context, as well as to determine the key challenges it faces. The following findings were discovered through the research exercise:

8 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 41.

9 Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, *Probation and Prisons in Europe, 2020: Key Findings of the SPACE reports*, Council of Europe, 2021, p. 4, available at: <https://bit.ly/3JPEiZk>, accessed on: 19.04.2022.

10 Ibid, p. 7.

11 Ibid, p. 8.

- The objective of the probation system in Georgia is understood primarily in the technical sense of control and the enforcement of sentencing, while the obligation to care is not considered a central component of the policy;
- In addition to the imposition of probation for drug offenses, other types of supplementary punishments (such as fines and deprivation of the right to work) are actively utilized, which increase the social and financial burden on a person;
- The vast majority of individuals convicted of drug offenses are unemployed at the time of the commission of the crime;
- The wide discretion of the probation officer is problematic, as they have the capacity to request a person on probation for a drug crime or a person released on parole, at any time, to undergo a drug test and submit an appropriate report;
- If a probationer is found to have used a drug, the obligation to notify the Ministry of the Interior is a logical continuation of the existing drug policy, which still sees drug users as objects of criminal prosecution. Thus, we need to view this predicament more broadly, in the context of the critique of drug policy, where the most important problem is the criminalization of drug use;
- The National Probation Agency does not process the information on how many times it has addressed the Ministry of Internal Affairs on drug use-related matters. As a result, control strategies are unpublished, and their scale remains unclear;
- An individual cannot independently apply to the Standing Commission of the National Probation Agency with a request to revoke a probation sentence and remove a conviction. In this process, the Head of the Probation Bureau exercises unjustified discretion and the decision-making is not transparent;
- The Standing Commission decides on the termination of probation, as well as the early restoration of the rights in relation to drug-related offenses, and the reduction of the term of deprivation of the rights, without a hearing, which is contrary to the principle of transparency;
- Access to social workers and psychologists in the probation system is largely limited, including in geographical terms;
- The National Probation Agency probation officers, social workers, and psychologists sustain a high caseload;
- There is a clear disproportion in the probation system between the representation of social workers and psychologists on the one hand and that of probation officers, on the other, in favor of the latter. This points to the evident shortage of care and support approaches in the probation system;
- The existing allocation of resources in the National Probation Agency is not based on specific methodological documents, which is essential for evaluating the effectiveness of its work;

- For the purposes of the resocialization and rehabilitation of probationers, the involvement of social workers and psychologists in the risk and needs assessment process is limited, and the probation officer exercises the leading capacity;
- The involvement of the beneficiaries in the process of developing an individually tailored plan is minimized. They also do not have the opportunity to request an in-depth study and evaluation of their social status and personal characteristics (dynamic factors);
- With regard to probationers, unlike ex-prisoners, the responsibilities of the National Probation Agency are less concrete in terms of providing social support and empowerment services;
- The number of ex-prisoners who applied to the National Probation Agency for appropriate assistance is small, indicating the need for more awareness-raising and other efforts on the part of the Agency;
- There are no specialization modules for the staff of the National Probation Agency, which would provide them with more knowledge of the context and properties of a drug crime;
- The National Probation Agency does not carry out active research activities to analyze the social characteristics of probationers and to develop pertinent policies based on them;
- In general, on many critical issues (such as recidivism by probationers, imposition of duties other than reporting once a week, etc.), research, statistics- and analytics-based activities at the National Probation Agency are extremely limited or practically non-existent.

Methodology

The present study has two main objectives, which has defined and shaped its methodology.

The first part of the study serves to provide a theoretical analysis of drug crime, its underlying causes, as well as the role, purpose, and relation of probation to drug crime. These issues are addressed in Chapters I-V of the study. They review existing research and empirical data on the causes of a drug crime; Describe theoretical approaches to explaining the causes of crime; Drug crime prevention mechanisms; Existing scientific reflections and observations on the role, purpose, and modern understanding of probation. Finally, the presented reasoning serves to illustrate how transformative vision can be applied when examining drug crime prevention in the context of the probation system. The main proposition of the research, in this part, is that the probation system, and its prosocial understanding, can play an important role in the personal and social empowerment of probationers.

The second part of the study, Chapters VI-X, is devoted to the analysis of the Georgian probation system and the evaluation of its effectiveness in relation to drug crimes. In the framework of the research, the main focus was on the norms of criminal law where the intent to sell does not appear, namely: parts I, II, and III of Article 260 of the Criminal Code; Parts I, II, and III of Article 261; Parts I and II of Article 265; Article 273; Parts I, II, III, IV, V, VI, and VII of Article 273¹. In this part of the research, we processed various types of information, which made it possible to assess the approaches of the Georgian probation system, the general picture of probationers pertaining to drug crimes, the main challenges of the National Probation Agency, the problems related to access to social workers and psychologists, etc. The reasoning presented in these chapters leads to the conclusion that the probation system in Georgia operates according to the logic of criminal justice, where control methods play a leading role. Activities focused on social empowerment are not sufficiently fostered at either legislative or practical levels.

Overall, the information presented in the study relies on different sources, vis-à-vis the objectives of the relevant parts of the study. Theoretical reasoning is based on local and international studies, articles, and reports that fully meet the criteria of reliability, validity, and objectivity. For the determination of international standards pertaining to the systematic arrangement of probation, the study focuses on the Recommendations of the Committee of Ministers of the Council of Europe on Probation Rules. For the purposes of the assessment of the Georgian model of probation and the related challenges, the present study also analyzes various types of legal acts and public information requested from relevant government agencies.

It should be noted that the main limitation of the document is the lack of a sociological research component. We acknowledge that some parts of the research in this regard need further study and observation. This mainly concerns the practical components of the work of the National Probation Agency. However, at the same time, this leaves room for further, more multifaceted scientific and research contributions.

I. What causes drug crimes?

The search for the causes of crime is central to the analysis and evaluation of criminal policy. A comparison of the triggering factors of criminal behavior, local contexts, and trajectories of state policy should reveal the correctness of the logic of the operation of different structures or its erroneousness. With this fundamental assumption, this chapter reviews the key approaches and observations that are employed to explain drug crime and are relevant in the Georgian context.

The underlying causes of a drug crime, as well as any deviant behavior, are manifold. The scientific literature on the causal aspects of crime contains a variety of theoretical frameworks and numerous empirical evidence, demonstrating the complexity of crime as a social phenomenon.¹² Theoretical and practical research contributions in this field span about 200 years and are based on the views of representatives of various fields, in particular the philosophers of law, sociologists, biologists, psychologists, and political scientists.¹³

Analysis of the causes of drug use or related drug offenses rarely focuses on the individual motivation of the perpetrator. Conversely, the explanation of action from historical, spatial, sociocultural, and economic perspectives is more widespread and accepted.¹⁴ Such explanations place major emphasis on the perpetrator's personal biography, the existence of a socialization deficit, and their social and economic conditions.¹⁵ Consequently, the main focus is on growing up in difficult family conditions, living in disadvantaged social areas, and experiencing poverty and unemployment.¹⁶ Seeing the issue from this perspective takes its basis from the various theoretical frameworks that have developed since the twentieth century and are largely based on functionalist and critical sociological traditions.¹⁷

First of all, the factors contributing to drug crime in Georgia should be discussed. A recent study on the social aspects of crime and punishment, which involved ex-convicted

12 John Lea, *Left Realism: A Radical Criminology for the Current Crisis*, International Journal for Crime, Justice and Social Democracy, 2016, p. 60.

13 Roger Hopkins Burke, *An Introduction to Criminological Theory*, Third Edition, Willan Publishing, 2009, p. 1.

14 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, *Crime and Punishment Policy in Georgia (Analysis of Property Crimes (Theft / Robbery) and Separate Drug Offenses)*, Social Justice Center, 2021, p. 57, available at: <https://bit.ly/3CTPMcL>, accessed on: 19.04.2022.

15 Ibid.

16 Ibid.

17 William Little, *Introduction to Sociology – 1st Canadian Edition*, Rice University, 2013, pp. 208-212.

persons and family members of those convicted at the time of writing the study,¹⁸ found that drug use was related to the following key factors: drug use for recreation and relaxation; Interest in drugs; Difficult family and personal financial situation; Having persons with drug addiction in a close circle (family, relatives, neighborhood, friendship circle, etc.); Lack of information about drug offenses or adverse effects of drugs; And the loss of interest in life, stress.¹⁹ Some of the respondents, when talking about the general reasons and context pertaining to drug use, also mentioned that it is, to some extent, related to easy access to drugs.²⁰

It should be noted that in the parts of the study where the respondents separately appraised the risk factors for drug use, purchase-storage, production-manufacture, and sales, naturally, differences were identified in terms of the importance and intensity of these factors. However, the opinions expressed about the reasons for consumption, purchase-storage, and production are more aligned than those pertaining to sales.²¹ Some studies in other countries, pertaining to the sale of drugs, also indicate the acquisition of social status through income from drug sales.²² Overall, in terms of both the use and sale of various drugs, studies confirm a direct link between these actions and socioeconomic conditions, such as belonging to a lower social class, status, or living environment.²³

It should be noted that similar conclusions are derived from a study conducted by the Prosecutor's Office of Georgia in 2016. According to the study of the factors contributing to drug use, *"the first factor was having a lot of free time, i.e. unemployment (28.9%), the second factor was the social environment, family and friends (19.4%). Also, important determinants were easy access to drugs (14.3%), financial and social problems (12.6%), etc."*²⁴

18 For the quantitative study, the respondents were selected using a non-random sampling model, namely using the "snow ball" principle – property crime (theft / robbery) and drug related offenders shared contact information of other members of the target group, expanding the circle. Face-to-face interviews were conducted. A total of 708 individuals participated in the survey, according to the type of crimes as follows: property crime (theft / robbery) – 348 respondents; Drug crime – 360 respondents. In addition, 17 focus groups were conducted within the qualitative part of the study. Iago Kachkachishvili, Nino Esebua and others, Study of Social Aspects of Crime and Punishment, 2021, pp. 10-12, available at: <https://bit.ly/3N0EYhk>, accessed on: 19.04.2022.

19 Ibid, p. 159.

20 Ibid, p. 172.

21 Ibid, pp. 173-175.

22 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 58.

23 Ibid.

24 Prosecution study: Unemployment, Social Environment – Contributing Factors to Drug Addiction, available at: <https://bit.ly/3IIvDSA>, accessed at: 19.04.2022.

The publication “Study of the Social Aspects of Crime and Punishment” illustrates the demographic and social characteristics of the respondents at the time of the commission of a drug crime. This type of information is important to narrate a kind of social portrait and chronicle the situation that preceded the commission of a particular criminal behavior. Some of the demographic characteristics detailed in the study are:

Age – The vast majority of ex-convicted persons were young or middle-aged at the time of the crime.²⁵ A similar distribution was observed in a survey of family members of convicted prisoners.²⁶

Level of education – The majority of ex-convicted persons (56.2%) had completed only secondary education before imprisonment/probation (grades 10-12).²⁷ With regard to the individuals convicted at the time of writing the study, the proportion of respondents with only a secondary education was comparatively small, albeit still high – 48%.²⁸

Income – According to the study, about one-fifth of individuals with a drug crime related convictions had income in the range of 700-1000 GEL or more than 1000 GEL.²⁹ 16.2% of respondents had no personal income at the time of the commission of the crime, 15.1% had no stable income, and the rest had extremely low income.³⁰ The difficult social background was even more evident with regard to the those convicted at the time of conducting the study. In particular, based on a survey of family members, it was found that not more than 8% of the prisoners had an income of more than 700 GEL at the time of the commission of the crime.³¹

Family Economic Situation – More than half (53.5%) of ex-convicted persons surveyed stated that their family's economic situation was particularly dire at the time of the commission of the crime.³² According to them, they had enough money for food, but to meet all other needs, including buying clothes and shoes, they had to save or borrow.³³ A sur-

25 In particular, 18.4% of ex-convicted persons were under 25, 40.5% were between 25 and 34, and 30.3% were between 35 and 44. Iago Kachkachishvili, Nino Esebua and others, p. 221.

26 Ibid.

27 Of the remaining respondents, 21.1% had full higher education, 11.4% had completed vocational education, and 9.7% had incomplete higher education. Ibid, p. 222.

28 Ibid.

29 Ibid, p. 225.

30 Ibid.

31 Ibid.

32 Ibid, p. 226.

33 Ibid.

vey of family members of prisoners convicted at the time of the conducting of the study revealed that a third of respondents were in such a situation.³⁴

Employment Status – 44.3% of ex-prisoners / probationers surveyed were unemployed and 38.9% were unofficially employed.³⁵ This data was found to be even more acute with regard to the individuals convicted at the time of the study. In particular, according to their family members, 56% of those in prison setting were unemployed at the time of the commission of the crime and 29.6% were unofficially employed.³⁶

The impact of this type of demographic characteristic on crime, in general, is also confirmed by the data of convicted persons in Georgia for the last 10 years. In particular, during this period, annually, 80-85% of the total number of convicted persons had secondary or incomplete secondary education.³⁷ During the same period, about 84% of convicted persons reported unemployment at the time of the crime.³⁸

To summarize this chapter, it must be said that social factors are crucial in the search for factors contributing to the crime commission. However, this does not mean that social vulnerability (e.g., unemployment or incomplete education) should be equated with criminality. It is such an approach that leads to socially marginalized people becoming objects of control and subordination. The information presented illustrates that the fight against drug crime is not a narrowly criminal justice issue, but rather a social concern in itself, where deep roots of oppression and marginalization can be identified. Thus, the goal of research into the social variables that contribute to crime should be to shift the crime-fighting paradigm, concentrating on opportunities for compassion and empowerment rather than repressive methods.

34 Ibid.

35 Ibid, p. 227.

36 Ibid.

37 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 60.

38 Ibid.

II. Theoretical frameworks and designations that explain the causes of crime

2.1. Deterministic theories

Simultaneously with the search for the causes of the crime, theoretical views were formed, which revealed certain correlations between socio-economic or cultural determinants and the behavior of the individual/group. These theories focus mainly on social factors and see the causes of crime not in a biological or specific psychological state but rather in relation to social structures.³⁹

One such approach is Robert Merton's Anomie / Strain Theory, which delves into the foundations of crime in the socio-economic and cultural order rather than in human internal differences.⁴⁰ According to Merton, crime occurs when there is a kind of "gap" between the cultural goals in the society (e.g. material well-being, social status) and the structural means needed to attain them (e.g. education, employment).⁴¹ The strain between means and ends finds expression in frustration and anger.⁴² This in turn encourages some people to achieve their goals in illegitimate and illegal ways.⁴³ The Strain Theory, in the context of a drug crime, in light of the mentioned Georgian studies, creates valuable contextualization and theorizing opportunities. The sale of drugs may be related to the goal of improving material conditions under economic strains.⁴⁴ In addition, people wanting to avoid this type of tension, deny the importance of goals in society, including by escaping from the unwanted realities of life, in particular through the use of drugs.⁴⁵

Jock Young, a representative of Left Realism and the Critical School, relied on the framework of Strain Theory to point out that the breakdown of welfare systems and the ever-increasing inequality between the rich and the poor contributed to the exclusion of oppressed groups.⁴⁶ This process took place in parallel with cultural inclusion.⁴⁷ Modern

39 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 15.

40 Ibid, p. 16.

41 The Scottish Centre for Crime and Justice Research (SCCJR), Theories and causes of crime, Glasgow, 2016, p. 4, available at: <https://bit.ly/3KXkkwX>, accessed on: 19.04.2022.

42 Ibid.

43 Ibid.

44 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p.62.

45 Ibid.

46 SCCJR, Theories and causes of crime, Glasgow, 2016, p. 4.

47 Ibid.

consumer capitalism places a special emphasis on material success, which exacerbates the feelings and state of deprivation experienced by the less successful.⁴⁸

Young also made a significant contribution to the study of drug use. In his publication, "The Drugtakers: The Social Meaning of Drug Use", Young points out that the use of the "social pathology" approach to explaining drug use is, in itself, a social response to drug use and that this response plays an important role in creating modalities of experiences of drug use, drug subcultures, and existing experiences pertaining to the effects of drugs.⁴⁹ The "pathology" approach is characterized by "absolute monolithicity" and *"denies the authenticity of the explanations that drug users attribute to their behavior."*⁵⁰ Young, by expending the views⁵¹ and theoretical frameworks of various sociologists,⁵² discussed how moral crusaders such as law enforcement and the media feed and strengthen moral indignation.⁵³ The logic of such actions of these actors in a capitalist society, according to Young, has ideological and commercial foundations, where these actors try to become the *"defenders of moral consensus."*⁵⁴ Moral panic influences the imagination of criminal behaviors; *"they reinforce both deviation and punitive responses to them, and they promote the arbitrary translation of stereotypes into facts and fantasies into reality."*⁵⁵

Another important theoretical framework that responds to the so-called social factors of drug crime is the Social Disorganization Theory. This approach places particular emphasis on the environment, which is characterized by weakened social ties, lack of well-being, and improper functioning of social structures.⁵⁶ This condition is otherwise called an "unhealthy social ecosystem."⁵⁷ From the perspective of the "social disorganization theory", characteristics such as frustration, stress, desire to escape from everyday life, lack of social solidarity, etc. – a combination of these factors in specific residential areas, create the conditions for the origin of deviant behavior.⁵⁸

48 Ibid.

49 The Drugtakers: The Social Meaning of Drug Use by Jock Young, Review by: Mary McIntosh, The British Journal of Sociology, Vol. 23, No. 2, 1972, p. 249.

50 Ibid.

51 Most notably Howard Becker and Albert K. Cohen.

52 Most notably, Labelling Theory and Strain Theory.

53 Eugene McLaughlin, See also Young 1971: Marshall McLuhan, moral panics and moral indignation, 2014, p. 3.

54 Ibid.

55 Ibid, p. 5.

56 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 34.

57 Ibid.

58 Ibid, p. 61.

An unhealthy social ecosystem is highlighted also in the Critical Theory, but unlike Social Disorganization Theory, which sees crime prevention as more about sharing moral values and strengthening social ties, Critical Theory takes into account economic inequality and other types of oppression and power dynamics issues.⁵⁹ It can be said that *“low-income and otherwise marginalized domains are characterized by their own situational vulnerability, which is caused by social and demographic deprivation”*.⁶⁰ The complexity of the issue was also pointed out by the focus group participants in the “Study of the Social Aspects of the Crime and Punishment.” They pointed out that *“this issue needs a complex assessment, as committing this or that type of drug crime can be conditioned by several factors – economic status, psychological status, social circle, level of education, employment status, family relationships, etc.”*⁶¹

The issue of culture and its complex characteristics are also noteworthy in relation to drug crimes and their causal factors. This refers to culture not only as a phenomenon involved in the reflection and reproduction of capitalist logic but also as specific influences within and outside the family that more directly shape behaviors and tendencies.⁶² This includes schools, the media, and religious institutions. The immediate environment has a particularly strong influence on behavior, forming not only the beliefs and values of group members but also the arts and crafts of crime.⁶³ For example, knowledge of how to obtain and consume drugs is usually taught in different types of social circles.⁶⁴

The importance of culture is great in analyzing the prevalence of drug crimes among young people. This issue is all the more pertinent given that, according to the study “Social Aspects of Crime and Punishment”, young people are one of the most vulnerable groups to drug crime.⁶⁵ The scientific literature speaks of drug use as a form of “youth culture.”⁶⁶ The Theory of the Drug Epidemic is used to explain the widespread use of drugs among young people. This approach focuses on several factors that contribute to the spread of drugs among young people: knowledge about the drug and its effects; Availability and ease of access to drugs; Motivation to use drugs; Convincing individuals about the safety of the drug and denying its damaging effects; And a willingness to tolerate deviant behavior.⁶⁷

59 Ibid, p. 34.

60 Ibid.

61 Iago Kachkachishvili, Nino Esebua and others, p. 242.

62 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 16.

63 Ibid.

64 Ibid.

65 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 63.

66 Ibid.

67 For more details, see *ibid*, p. 64.

On the whole, the prevailing theories focused on the search for the causes of crime can be characterized as deterministic (more specifically, we must place them within the framework of so-called soft determinism).⁶⁸ These approaches focus more on social factors than on biological or psychological ones, which are more evidently criticized in the scientific literature. However, it should also be noted that cognitive-behavioral psychology has played a major role in shaping modern probation systems, their goals, and ways of functioning.⁶⁹ Psychological approaches focus mainly on childhood experiences, thoughts, or feelings that affect a person's psychology (why some people do not think about the consequences of their behavior; why they lack empathy or moral sensitivity; what role feelings of shame or guilt play, etc.).⁷⁰ It should be noted that the impact of the cognitive-behavioral approach on probation systems is still central, and the strategies for its operation are largely determined by this theoretical framework (we will discuss this approach and its critique in more detail in the following (sub)chapters).

2.2. Differently asked questions

What all deterministic approaches have in common is that they are focused on the causes of crime. For example, according to one of the authors, *"Although people sometimes choose to engage in criminal behavior, they do not do it of their own free will. 'Choice' imposes responsibility on them, but the grounds for crime explain that choice. These fundamentals, which are social and economic, undermine, limit, or narrow down the choices available to them. Many of us, in similar situations, would follow the same path. If we understand the deep linkages between socio-economic circumstances and criminal behavior, we may be able to reduce crime in more effective and humane ways."*⁷¹

Some theories look at the issue from a different prism. For example, Rational Choice Theory seeks not "causes" of crime, but its "purposes".⁷² This theory is also referred to as the economic model of behavior. The Theory of Rational Choice postulates that the individual, when choosing this or that behavior, will perform a cost-benefit analysis.⁷³ One American, when asked as to why he robbed banks, maintained the following: *"Because that is where money is*

68 Gordon A. Crews, Determinism, The Encyclopedia of Theoretical Criminology, First Edition, edited by J. Mitchell Miller, 2014, p. 1, available at: <https://bit.ly/3JuyS6W>, accessed on: 19.04.2022.

69 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 14.

70 Ibid.

71 Ibid, p. 18.

72 Ibid, p. 22.

73 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 22.

kept”.⁷⁴ This phrase is used to illustrate that sometimes there is nothing mystical about the objectives of the crime, its motives are rather simple and clear.⁷⁵

The Theory of Rational Choice has been met with widespread criticism in the scientific literature. It is believed that it is not actually convincing in relation to various types of deviant behavior, such as violent crime.⁷⁶ The economic model of behavior does not take into account the factor of emotion, which, according to numerous studies, has a significant impact on decision-making.⁷⁷ In addition, according to this approach, if a high “price” is set in response to deviant behavior, it should have a deterrent effect. For example, according to Rational Choice Theory, “*expectation of punishment and related stigma, as well as reduced chances of participating in future public life, are seen as factors influencing a person's decision whether or not to use an illicit drug.*”⁷⁸ There is an assumption, however, that the degree of the expected punishment has a low impact on the prevention of most offenses.⁷⁹ It is believed that, in terms of conformity to the norm, the expected deterioration of a person's social status or other sorts of informal sanctions are more important.⁸⁰ It also means that the deterrent effect of criminal sanctions ceases to apply, “*if deviant behavior is positively assessed in a social environment relevant to the individual.*”⁸¹

Another assumption of the Labeling Theory is that deviations are created by social groups introducing certain rules, addressing those rules to specific people, and labeling them as ‘outsiders’.⁸² It is the violation of these rules that constitutes a crime.⁸³ Howard Becker pointed out that the definition of deviation is not the severity of the actions committed, but the effect of others applying rules and punishments to ‘offenders’.⁸⁴ The culprit is, said Becker, who has been successfully ‘labeled’ with this label.⁸⁵ Behavior is deviant if it is so marked by the people.⁸⁶ According to the most common view, this is mainly the

74 Williem Sutton, Jr. (1901–80). Ibid, p. 21.

75 Ibid, p. 22.

76 Ibid.

77 Ibid.

78 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 55.

79 Ibid.

80 Ibid.

81 Ibid.

82 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 20.

83 Ibid.

84 Ibid.

85 Ibid.

86 Ibid.

case with the criminalization of the poor, oppressed and vulnerable groups.⁸⁷ Numerous studies, for example, confirm the systemic and persistent nature of the disproportionate criminalization of African Americans and Latinx in the United States in the name of the “war on drugs.”⁸⁸ Influenced by the Labeling Theory, some scientists have developed the idea of the so-called “Radical Non-intervention”, according to which criminal interventions do not have a positive impact on crime prevention.⁸⁹

Being called a ‘culprit’ or a ‘criminal’ has long-term consequences that affect people in many areas of life. Removing this label is often difficult and affects not only how others perceive the ‘labeled’, but also how the latter develop a perception of themselves.⁹⁰ For example, the Sociological Study of the Social Aspects of Crime and Punishment found that individuals convicted of drug offenses find it particularly difficult to go through the process of reintegration and resocialization, establish contacts with members of the public, and adapt to the environment.⁹¹ According to the focus group participants, *“a person who has been imprisoned is often characterized by low self-esteem and a sense of alienation.”*⁹² Employer attitudes are also a significant problem. *“Communication with the employer in the job search process often ends after the applicant’s conviction records are found,”* said one respondent.⁹³

Because of the particular complexity of the question, “Why do people commit crimes?”, some scholars have attempted to rephrase it as “Why does not everyone commit a crime?”⁹⁴ This influential approach is known in the scientific literature as the Control Theory, which in turn derives from the Social Disorganization Theory.⁹⁵ According to “Control Theory”, there are four possible reasons for not committing deviant behavior: 1) Attachment – thinking about what others, especially those in close circles (for example, family), think about us, and how our behavior will affect them; 2) Commitment – our investment in personal goals, plans or activities does not allow us to imperil or jeopardize them; 3) Involvement – a large portion of people (perhaps most of them) are so involved in a lawful lifestyle that they do not think about deviant behaviors; 4) Belief

87 Jeffrey Reiman and Paul Leighton, *The Rich Get Richer and the Poor Get Prison: Ideology, Class and Criminal Justice*, eleventh edition, Routledge, 2017, p. 135.

88 Ibid.

89 Rob Canton, *Why Do People Commit Crimes?*, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 21.

90 Ibid, p. 20.

91 Iago Kachkachishvili, Nino Esebua and others, p. 255.

92 Ibid.

93 Ibid.

94 Rob Canton, *Why Do People Commit Crimes?*, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 24.

95 Iago Kachkachishvili, Nino Esebua and others, named work, p. 61.

– this includes measures of moral coercion. According to some scientists, culprits are trying to neutralize these expositions.⁹⁶

Overall, it is believed that the weakening or disappearance of the named factors makes the crime commission more likely.⁹⁷ In addition, some scholars believe that the probation service, and more specifically, the probation officer's professional attitude and relationship with the probationer, may play an important role in reinforcing the factors, such as *attachment*, proposed by the Control Theory.⁹⁸

2.3. Opinions developed in the framework of Desistance Studies

Another differently worded question that is more closely and directly related to probation is: “Under what circumstances shall people stop committing a crime?” Attempts to answer this question in the scientific literature are made within the framework of Desistance Studies.⁹⁹ Closely intertwined with Desistance Studies is the concept of the Good Lives Model (GLM), which sees a reduction in the risk of re-offending in better living conditions, where there will be less and less room for deviation.¹⁰⁰ It is noteworthy that the theoretical framework of desistance studies focuses not only on what living conditions contribute to reducing the risk of re-offending but also on the meanings and attitudes that individuals attach to these changing circumstances.¹⁰¹

Social predictors are central to Desistance Studies. Over the years, the most numerous and multifaceted observations have been made in this area.¹⁰² Most often noted, in this regard, is employment.¹⁰³ In addition, a number of studies have been conducted to determine whether there is a link between desisting from re-deviant behavior and life events such as marriage, integration into a close environment (with peers), imprisonment, alcohol, and drug use.¹⁰⁴

96 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 24.

97 Ibid.

98 Ibid, p. 28.

99 Ibid, p. 25.

100 Ibid.

101 Ibid, p. 26.

102 Lila Kazemian, What Are the Most Important Studies of Desistance and What Are the Future Research Needs?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 37.

103 Ibid.

104 Ibid, pp. 37-46.

There is a general consensus in the scientific literature that job stability leads to deterrence from crime.¹⁰⁵ Studies of marginalized populations (including drug users) have, at various times, found a correlation between desistance from deviant conduct and not only a secure and high-paying job, but even minimum wage and employment options.¹⁰⁶ Despite the existence of this general consensus, it must be said that there are a few scholars who view employment, not as a cause but as a consequence of abstaining from deviant behavior.¹⁰⁷

In addition to the emergence of financial opportunities that are critical to the cessation of certain types of behavior (e.g., property crimes due to severe socioeconomic conditions), one group of scientists believes that employment prevents the re-commission of deviant behavior because of other 4 processes: 1) Mutual exchange of social capital between the employer and the employee; 2) Curtailed subjection to criminal opportunities and a reduced likelihood that “*criminal tendencies translate into behavior*”; 3) Direct, informal social control; And 4) “*Developing a sense of identity and the idea of living one’s own life*”.¹⁰⁸ It seems that employment as a ‘turning point’, is linked to other social transitions and institutions.¹⁰⁹

Most studies also confirm a significant link between marriage and desistance to re-offending. However, there are empirical observations that desistance precedes marriage.¹¹⁰ According to the prevailing view, marriage, in many cases, reduces integration into the environment prone to deviant behavior; It is associated with the emergence of new friends and the expansion of the family, as well as changes in routine activities in general; Spouses are an additional source of social control and effective ‘mechanisms’ for monitoring each other’s routine behaviors; Often, marriage is also associated with a change of residence and having children, leading to additional changes in daily life; Some scholars also point out that marriage “*might change a person’s self-perception*”.¹¹¹ In addition, some studies link the cessation of deviant behavior specifically to the fact of becoming a parent rather than just marriage.¹¹²

105 Ibid, p. 37.

106 Ibid, pp. 37-38.

107 Ibid, p. 38.

108 Ibid, p. 39.

109 Ibid.

110 Torkild Hovde Lyngstad and Torbjørn Skardhamar, Changes in Criminal Offending around the Time of Marriage, *Journal of Research in Crime and Delinquency*, 2013, p. 611.

111 Lila Kazemian, What Are the Most Important Studies of Desistance and What Are the Future Research Needs?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 41.

112 Ibid, p. 43.

Numerous empirical observations point to the importance of acquaintances/familiar networks in the context of cessation of criminal behavior. As already mentioned, some scholars believe that this issue, among others, comes into consideration when discussing marriage and related changes.¹¹³ In addition, some studies focus on the 'quality' of relationships that arise in the context of working relations, rather than the quality of work.¹¹⁴ According to one observation, the decrease in criminal tendencies with age should be explained by the change in relationships with peers.¹¹⁵ However, according to some approaches, in the latter case, along with social factors (social ties, responsibilities, family, employment, etc.), biological factors also come into play.¹¹⁶

Particularly interesting and thought-provoking is the connection between incarceration and recidivism. In particular, most empirical studies and meta-analyzes confirm that imprisonment, including the term of imprisonment, has either no, or adverse effects on recidivism (according to some researchers, it increases the risk of recidivism).¹¹⁷ Imprisonment may further encourage criminal behavior "*by impairing the prisoners' psychological and emotional health*",¹¹⁸ which is linked to the traumatic experience of imprisonment as a whole.¹¹⁹ One of the authors also talks about the term "*prisonization*". This involves the process of incarceration, when convicted individuals master the rules, values, and norms of being in prison, which may be incompatible with 'outside' life, and hinder efforts to refrain from re-offending.¹²⁰

Additionally, studies have highlighted the link between alcohol or drug use and recidivism of deviant behavior. Alcohol and drugs are believed to create a significant barrier to successful desistance and reintegration.¹²¹ For this reason, one of the authors points out that "*the study of desistance almost necessarily involves the study of the prevention of both types of behavior (drug and alcohol use)*".¹²²

113 Ibid, p. 43.

114 Ibid, p. 44.

115 Ibid, p. 43.

116 Rob Canton and Jane Dominey, Probation, Second Edition, Routledge, 2018, p. 134.

117 Paula Smith, Claire Goggin and Paul Gendreau, The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences – 2002-01, Centre for Criminal Justice Studies, University of New Brunswick, 2002, p. 20, available at: <https://bit.ly/36g2xCr>, accessed on: 19.04.2022.

118 Lila Kazemian, What Are the Most Important Studies of Desistance and What Are the Future Research Needs?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 45.

119 Ibid.

120 Ibid.

121 Ibid.

122 Ibid.

In addition, it should be noted that Desistance Studies also paid significant attention to the study of cognitive predictors. Anderson and McNeill distinguish three types of cognitive transformation: (1) *Changes in narrative identity* – noting that “*in order to prevent the commission of the crime, ex-offenders must develop a coherent, prosocial identity.*” ‘Good behavior’ requires a process of rediscovery, ‘self-reconstruction.’¹²³ It also involves understanding why an individual has committed past crimes and looking for reasons why they should decide to stop it.¹²⁴ The construction, deconstruction, and reconstruction of self-stories and narratives have traditionally played a central role in the process of criminal intervention (despite its criticisms).¹²⁵ 2) *Changes in the content of cognitions* – this includes oscillations in pro-criminal tendencies, emotions related to criminal behavior, motivation, and hope And 3) *the transformation of cognitive skills* (such as, for example, changes in self-control or cognitive strategies).¹²⁶ Overall, the study of cognitive predictors implies a fundamental assumption that offenders have a free will and that they remain the determinants of their own way of life. Therefore, this means recognizing human agency.¹²⁷

Finally, it should be noted that Desistance Studies see the cessation of deviant behavior as a complex process and relate it to different stages of personal and social transformation. In the context of Desistance Studies, focusing on the structural content of social predictors, it is fundamentally wrong to label people in conflict with the law as ‘moral strangers.’¹²⁸ Reflection on the elements of the ‘good life’ reminds us that personal change depends not just on individual effort, but also on social capital, equal opportunities, and a fair environment.¹²⁹ Consequently, the developed arguments include taking into account broader socio-economic factors and multifaceted critiques of structural oppression. This, in the context of the operation of probation systems, implies the recognition of its somewhat limited nature.¹³⁰

123 Lila Kazemian, What Are the Most Important Studies of Desistance and What Are the Future Research Needs?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 48.

124 Ibid.

125 Ibid, p. 49.

126 Ibid, p. 46.

127 Ibid.

128 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 135.

129 Ibid, p. 146.

130 Ibid.

III. What is the role of the probation system in preventing recidivism?

Since the 1990s, the cognitive-behavioral approach (which is a synthesis of behaviorism and cognitive psychology) has played a defining role in the functioning of probation systems (although the principal assumptions of this approach have been in use since the 1970s).¹³¹ This approach rejects the study of 'mysterious mental constructs' and focuses on examining explicit and observable behaviors.¹³²

Learning is a central component of the cognitive-behavioral approach. The assumption is that if behavior and thinking are learnable, then change can be achieved through a variety of learning processes, including negative learning (so-called 'unlearning'), i.e., by rejecting unwanted behavioral and thought patterns.¹³³ Unlike some models of treatment, probation intervention can be interpreted as an educational effort aimed at teaching individuals new ways of thinking and behaving and developing decision-making skills.¹³⁴

The cognitive-behavioral approach focuses on the meanings and interpretations that people attribute to the outcome of their own or others' behavior and the events that take place around them.¹³⁵ It somewhat involves the study of personal frameworks.¹³⁶ Thinking patterns and habits influence behavior. For example, the abuser often considers interaction with another person in the context of the type of thinking that makes violence more likely.¹³⁷ In this sense, the cognitive-behavioral approach explores where and under what circumstances different types of thought patterns and frameworks are detrimental; Recognizes the interdependence of thoughts, emotions (feelings), and behavior; Professes that people behave differently in different social contexts and that the ways in which they respond to all of this are subject to change.¹³⁸

The cognitive-behavioral approach has led to the development of the Risk, Need, and Responsivity (RNR) model in probation systems. This model is dominant worldwide to-

131 Ibid, p. 115.

132 Ibid.

133 Ibid, p. 116.

134 Ibid.

135 Ibid.

136 Ibid.

137 Ibid.

138 Ibid, p. 117.

day and the “Recommendations of the Committee of Ministers of the Council of Europe on Probation Rules” are largely based on it. However, the RNR model is hybrid in the sense that it includes both elements of enforcement/control (monitoring of court-imposed conditions) and social work.¹³⁹

According to the risk component, the higher the risk of recidivism, the more intensive and expanded the control mechanisms should be.¹⁴⁰ Risk assessment and management are carried out in different ways. It may include the assessment of individuals within the concept of ‘danger’, which has traditionally been based on the gravity of the offense.¹⁴¹ This approach is particularly criticized for its manipulateness and subordination to power structures.¹⁴² Conversely, in another approach, risk assessment is completely individualized (so-called Person-by-Person Assessment).¹⁴³ It fully relies on the skills, experience, and personal ‘diagnosis’ of the probation officer, which in turn creates the basis for irregularity, bias, error, and discriminatory treatment.¹⁴⁴ Another model, the so-called Actuarial Assessment, aims to identify variables pertaining to crime using various assessment tools, forms, and guidelines, thus assessing and insuring the risks of re-offending.¹⁴⁵ The actuarial assessment approach is largely based on the OGRS (Offender Group Reconviction Scale) method, which collects information on the following variables: age, gender, type of crime, number of prison sentences under the age of 21, number of previous convictions, and age of first conviction.¹⁴⁶ Given the well-founded critique of the effectiveness of the OGRS method,¹⁴⁷ a more complex and multifaceted approach the Offender Assessment System (OASys), has been developed which is discussed in detail in Chapter Five (Modern Understanding of Probation and its Holistic Approaches).

While the objective of the first component is to identify risk groups, the ‘need’ element examines the factors associated with the commission of the crime. These are known as criminogenic needs (meaning the underlying causes of crime).¹⁴⁸ The study of the

139 Faye S. Taxman and Stephanie Maass, What Are the Costs and Benefits of Probation?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 180.

140 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 118.

141 Ibid, p. 151.

142 Ibid.

143 Ibid, p. 154.

144 Ibid.

145 Ibid.

146 Ibid, p. 179.

147 Ibid, p. 180.

148 Ibid, p. 119.

following most common factors within the RNR framework: criminal tendencies (*“thoughts, values, and sentiments that encourage criminal behavior”*); Antisocial characteristics; Criminal environment; Social achievements (education, employment); Marital status (including family instability and parenting skills); Alcohol/drug use; And recreation (lack of prosocial activities).¹⁴⁹

These factors are not easy to identify and largely depend on the efforts of the probation service staff, their diligence, and, long-term work and skills. Because criminogenic needs are associated with recidivism, are concurrent, and, in principle, can be ‘overcome’, they are also regarded as dynamic risk factors.¹⁵⁰ While this approach may be helpful for effective risk management, it is essential that we do not overlook the political and ethical dimensions (and their implications) of translating needs into risks. Poverty, unemployment, problems related to access to education and decent housing, as well as financial difficulties, highlight the links between social exclusion and crime. Discussing them at the individual level and subjecting them to the logic of criminal justice will only exacerbate social exclusion. When a ‘need’ is translated into a ‘risk,’ the person who suffers the most is labeled as the riskiest, the target of harsh punishment, and their social marginalization is exacerbated.¹⁵¹

Thus, the ethical aspect of the work of the Probation Service should also be broadly seen in the criminal justice system. As a crime control agency, the Probation Service may focus on dynamic risk factors, but as an agency that seeks justice, should view the needs as such.¹⁵² For example, access to adequate health care should be fostered, regardless of its impact on the recurrence of crime.¹⁵³ One of the key aspects of legitimizing the probation system is that it must combat social exclusion because of the injustice of the latter, and not just because of its possible effects on the re-offending.¹⁵⁴

The third component of the RNR model, ‘Responsibility’, stipulates that *“any intervention, program, and activity related to offenders should be participatory, encouraging full-fledged involvement and taking into account issues of identity and diversity.”*¹⁵⁵ This com-

149 Ibid.

150 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 15.

151 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 121.

152 Ibid, p. 122.

153 Ibid.

154 Ibid.

155 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 15.

ponent establishes that no single approach can be effective for all people and that the best way to work on people's needs is through individual, face-to-face assessments.¹⁵⁶ In addition, some authors, when discussing identity and diversity concerns, highlight the broader concept of awareness, in particular the importance of issues such as culture, gender, or anything else that may be pertinent to ensuring the availability and efficacy of services.¹⁵⁷

In addition to these three defining principles of the RNR, the scientific literature focuses on other characteristics of effective programs, namely: respect for the individual (practice must be fair, humane, dignified, and professional); Community-based approaches (community / community-based programs are considered more effective than incarceration); Multi-modality; Relying on structured evaluation schemes and tools; Cohesion and soundness of programs.¹⁵⁸

In the scientific literature, the critical analysis of the RNR model has been developed mainly in the context of Desistance Studies, and, therefore, is it pertinent to discuss the following issues (which are relatively overlooked under the RNR approach):

The Importance of Social Capital – Psychological interventions/programs cannot be sufficient without social inclusion and the emergence of equitable opportunities for the resources that are considered prerequisites for a 'good life' by most people.

Paying attention to the personal perceptions of offenders means taking into account what they think of themselves; What, in their view, facilitates or prevents them from re-offending; And what types of experiences they see as valuable in relation to the probation service. Given that 'self-perception' and the creation of a 'narrative' are central components of sustained deterrence against recidivism, offenders' perceptions should become the starting point and main focus of the change-promoting process.

Emphasizing Strengths – RNR focuses on shortcomings, particularly on cognitive challenges, risks, and needs. Desistance Studies paid special attention to strengths and potentials and took people's personal goals and ambitions seriously. Positive goals – the concerns you fight for – are much more motivating than goals aimed at avoiding/desisting something.

156 Ibid.

157 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 122.

158 Ibid, pp. 122-123.

Finally, the critical analysis focuses on *the importance of relationships*. Probationers often talk about the role of practical assistance provided by probation officers in helping them identify and resolve obstacles to deterring crime. However, they are particularly concerned about the scarcity of cooperation and equal participation.¹⁵⁹

Overall, Desistance Studies focus on life as a process, “*where there is no place for crime*.”¹⁶⁰ It involves the emergence of motivation, skills, and opportunities that cannot be achieved through behavioral programs alone.¹⁶¹ This also means that the framework for the functioning of probation systems cannot be reduced to criminal mechanisms alone.¹⁶² Motivation, skills, and ability are three paradigmatic components, the combined discussion of which reflects the assumptions of different theoretical frameworks about the meanings of “structure” and “agency.” The objective of discussing the combination of these three components is to reject the fully deterministic nature of deviant behavior (taking into account agency, human capital, motivation, and skills), while, at the same time, paying particular attention to structural causes (social capital, equal and equitable opportunities, resources).¹⁶³ This framework, based on the critique of the classical, cognitive-behavioral understanding of RNR, is also called the *pro-social model of probation*.¹⁶⁴

To summarize the reflections on this issue, it must be said that personal change depends not only on individual efforts, but also on social capital, access to services required for social inclusion, and genuine, tangible opportunities.¹⁶⁵ The process of successful reintegration involves both the motivated individual and the willingness of the community and their belief that change is possible.¹⁶⁶ In addition, it requires respect for the legitimate interests of former offenders.¹⁶⁷

The origins of crime are closely intertwined with the social order and, naturally, the answer to it can not be based solely on the mechanisms of criminal justice.¹⁶⁸ Moreover,

159 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, pp. 25-26.

160 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 130.

161 Ibid.

162 Ibid, p. 129.

163 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 30.

164 Ibid, p. 17.

165 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 146.

166 Ibid.

167 Ibid.

168 Ibid.

criminal justice policy should, at best, be viewed as one layer of social policy, and not a separate and decontextualized phenomenon in response to individual crimes.¹⁶⁹ The probation system plays an important role in this case. Although the fight against crime largely depends on broader socio-economic factors, the role of probation is essential in terms of active involvement in the process of advocacy as well as in the access to social inclusion mechanisms.¹⁷⁰ In addition, probation officers can explore in more depth the areas and neighborhoods where offenders reside, identify the problems and opportunities that probationers have in common, and simply not focus on individual characteristics.¹⁷¹

Consequently, it must be said that the production of social criticism by the Probation Service is an important and necessary element, although there is no need for a rigid separation of 'agency' (how individuals think, decide or act) and 'structure' and for giving unconditional priority to either.¹⁷² The authors talk about social and subjective explanations for stopping crime. The Strong Subjective Model focuses on individual motivation and desire; Under the Strong Social Model, social factors are the leading ones; And the third, the so-called Subjective-Social Model argues that life events and social order play a large role in stopping deviant behavior, however, ultimately, the magnitude and significance of the impact of these events are reflected in the minds of individuals and depend to some extent on them.¹⁷³ Probation approaches cannot be based on a Strong Subjective Model, as existing empirical and theoretical observations on the causes of crime, as well as knowledge accumulated in the framework of Desistance Studies, clearly and unequivocally point to the defining nature of social factors. However, the probation system cannot share a fully deterministic view of positivist theories either, because, in this case, there will be no room left to see the "free will" in human behavior.¹⁷⁴ This is incompatible with the idea of the probation system in itself because it "*believes in the possibility of changing a person.*"¹⁷⁵

169 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 18.

170 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 146.

171 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 18.

172 Ibid, p. 19.

173 Lila Kazemian, What Are the Most Important Studies of Desistance and What Are the Future Research Needs?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 50.

174 Rob Canton, Why Do People Commit Crimes?, in *Probation – 12 Essential Questions*, edited by Fergus McNeill, Ioan Durnescu and René Butter, Palgrave Macmillan, 2016, p. 19.

175 Ibid, p. 19.

IV. Drug crime prevention mechanisms

Drug crimes are one of the most prevalent in Georgia (along with economic crimes). Since 2010, the proportion of individuals convicted of drug offenses has ranged from 20 to 40 percent on average.¹⁷⁶ According to 2021 data, the number of convicted persons for illegal manufacturing, production, purchase, storage, transportation, transfer, or sale of drugs was the highest, after the theft.¹⁷⁷

Given the social and health problems caused by drug use, special attention is paid to the prevention of consumption. Traditionally, the prevention of use has been viewed from three different prisms: supply reduction, demand reduction, and harm reduction.¹⁷⁸ Moreover, these approaches also apply to other types of drug crimes.

The Supply Reduction Approach entails different forms of criminal regulation of drugs. The objective is to reduce the impulses of consumption by banning the use, possession, distribution, and other activities pertaining to drugs, imposing punishments, and enacting strict legislation.¹⁷⁹

Demand reduction means “*promoting prevention through education, emotional development, moral growth, and individual and community activism.*”¹⁸⁰ Demand reduction is divided into three layers of prevention: primary, secondary, and tertiary prevention. Primary prevention seeks to anticipate drug use, identify at-risk groups, and prevent drug use primarily through educational mechanisms.¹⁸¹ Secondary prevention focuses on the cessation of active consumption (by users without dependency), for which purpose various types of counseling and rehabilitation interventions are used in conjunction with educational and social mechanisms.¹⁸² As for tertiary prevention, it involves working with individuals with drug dependency to stop compulsive use, with relapse prevention strategies (group interventions, family therapy, promoting a healthy lifestyle, pharmacological strategies, etc.).¹⁸³

176 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 54.

177 The number of convicted persons by type of crime in 2021, available on the official website of the National Statistics Office of Georgia at: <https://bit.ly/3D2DAqa>, accessed on: 19.04.2022.

178 Daryl S. Inaba and William E. Cohen, Uppers, Downers and All Arounders (Physical and Mental Effects of Psychoactive Drugs), 8th Ed., Translators: Maka Chkheidze, Kevetan Todadze, et al, 2017, p. 241.

179 Ibid, p. 250.

180 Ibid, p. 241.

181 Ibid, p. 252.

182 Ibid, p. 254.

183 Ibid, pp. 254-255.

A third approach to preventing drug use is harm reduction. This is the kind of strategy that *“approaches the difficulty of involving and retaining people in the recovery process with techniques to minimize social and personal problems associated with drug use, and does not entail the primary goal of desistance.”*¹⁸⁴ Harm reduction mechanisms may include the provision of clean needles, services for replacing illicit substances with legal ones, addiction treatment to reduce the dependency to a manageable level, decriminalization or legalization of drug use, etc.¹⁸⁵ Overall, harm reduction strategies consider experimental or social consumption of drugs to be permissible to some extent, although they aim to combat the harms of drug use and seek to minimize them.

In general, various actions related to drugs, such as consumption, possession, manufacture, purchase, sale, etc., are associated with different sanctions and criminal liability measures. Repressive mechanisms in the fight against drug crime have long been at the forefront and have relied heavily on the 1961 United Nations Convention on Narcotic Drugs.¹⁸⁶ It should be noted that with regard to drug use, the Convention does not explicitly call for its criminalization, although *“it entails repressive tools as the main way to solve problems stemming from drugs.”*¹⁸⁷

This approach was questioned by the statement of the UN Secretary-General, who considered the fight against drugs by means of repressive mechanisms unsuccessful and raised the issue of the need to decriminalize the personal use of drugs.¹⁸⁸ According to him, *“drugs have destroyed many people, but the harsh measures of the authorities have caused even more suffering.”*¹⁸⁹ The Punitive Turn is associated, on the one hand, with a sharp increase in the number of prisoners, and on the other hand, with a radical shift from the goal of rehabilitation and resocialization of the prisoner, when the individual is ‘rendered harmless’ by their deprivation of liberty.¹⁹⁰

From the experience of Georgia, in terms of repressive drug policy, the Zero Tolerance Policy, started in 2006, which has introduced the practice of imposing the most severe punishments, including on drug users is particularly noteworthy.¹⁹¹ Despite a strict and

184 Ibid, p. 255.

185 Ibid.

186 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 52.

187 Ibid.

188 Ibid, p. 53.

189 Ibid.

190 Ibid, p. 65.

191 Harsh Punishment – The Human Toll of Georgia's Abusive Drug Policies, Human Rights Watch, 2018, available at: <https://bit.ly/3JYtGro>, accessed on: 19.04.2022.

punitive policy, it is believed that the total number of drug users in Georgia did not decrease in those years.¹⁹² Furthermore, *“according to some estimates, the prevalence of problematic or high-risk drug use has grown, with the number of such persons rising from 40,000 to 52,500 from 2009 to 2017.”*¹⁹³ In Georgia, the criminal policy has traditionally been based on the rivalry of “strict” and “soft” punitive mechanisms.¹⁹⁴ In the field of drug policy, severe punishment is considered to be the most effective mechanism for crime prevention. This assumption, in turn, is based on the so-called “correctionalism” approach that disregards the social, economic, and cultural characteristics of drug policy and drug users. Strict criminal punishment-oriented approaches are neither focused on care, harm reduction, and treatment nor take into account factors that contribute to or provoke the commission of drug offenses.

Naturally, the above does not mean that criminal liability measures generally do not affect the prevention of different types of drug crimes. In some cases, it can also be an effective mechanism of prevention. However, in this case, consumption and actions related to the purpose of consumption must be separated from, for example, the sale of drugs (in this regard, also, the issue must be posed fundamentally differently in the presence of a commercial profit motive, and its absence). In addition, *“great importance is attached to the issue of general and specific prevention. General prevention is the desistance of a potential offender and the symbolic illustration of a norm by imposing a sanction (general positive prevention). A specific prevention is the restraint of a specific offender (producer, seller, consumer) from committing further crimes.”*¹⁹⁵

Punishment of drug users on the grounds of general prevention has been criticized in numerous decisions of the Constitutional Court. The first and essentially the most important determinations on this issue were made by the court in the case “Beka Tsikarishvili v. Parliament of Georgia”. The Court noted that imposing imprisonment on a person for the purpose of preventing harm to his health, which serves only the purpose of general prevention, is inexplicable and unjustifiable.¹⁹⁶ This makes a person an object of power *“because punishment does not legitimize action, it is not justified by the danger posed by a person’s action. In this way, the person becomes an instrument within the frame-*

192 Ibid.

193 Ibid.

194 Tamar Gvasalia, Tornike Gerliani and Ani Nasrashvili, p. 37.

195 Ibid, p. 54.

196 Decision of the First Panel of the Constitutional Court of Georgia on №1 / 4/592 in the case “Citizen of Georgia Beka Tsikarishvili v. Parliament of Georgia”, 2015, II Motivational part, paragraphs 82 and 83, available at: <https://bit.ly/3JxXATY>, accessed on: 19.04.2022.

*work of state policy, which inevitably leads to the violation of his dignity.*¹⁹⁷ In addition, the court emphasized the importance of providing care and support services to persons with drug dependency, instead of imposing sanctions. The decision states that *“when a person becomes addicted to a particular substance/means, the use of imprisonment as a punishment is incomprehensible and unjustified.”*¹⁹⁸

It was with this decision that, in 2015, the turnaround in the field of drug policy began. The Constitutional Court has made a number of important clarifications on *“the use, possession, acquisition, storage, and cultivation of marijuana and other narcotic substances. Judgments of the Constitutional Court declared the deprivation of liberty for the possession of marijuana for personal use inadmissible; marijuana use in private space has been legalized; imprisonment was declared a clearly disproportionate punishment for possessing any drug that was of an unusable amount, etc.”*¹⁹⁹ The political class however did not find the will for a fundamental change in drug policy. In 2017, the Georgian National Drug Policy Platform drafted a bill that would improve treatment, rehabilitation, care, and prevention systems, as well as decriminalize possession of all types of drugs.²⁰⁰ The draft law differently and fairly regulated the small and initial amounts of drugs for criminal liability, sanctions imposed for drug crimes, etc.²⁰¹ This initiative has been suspended for an indefinite period after the first reading in the Parliamentary Committee on Health.²⁰²

Approaches based on treatment, rehabilitation, care, and support should be considered the fairest and most humane approach to the prevention of drug crimes (namely, consumption and various actions taken for the purpose of consumption). Strategies that focus on punishing drug users, in addition to not prioritizing the health and psychosocial well-being of individuals, are questionable as to their effectiveness in reducing drug abuse.²⁰³ Moreover, as already mentioned, identical logic may not apply to all types of drug crimes.

Consequently, no single approach can be considered a universal solution. The reason for this is *“the existence of many variables in the formation of substance abuse and ad-*

197 Ibid, para. 83.

198 Ibid, para. 82.

199 Tornike Gerliani, Practice of the Constitutional Court on Drug Policy – Assessing the Process of Reflecting Decisions in Law, Social Justice Center, 2021, p. 22, available at: <https://bit.ly/36mYSCG>, accessed on: 19.04.2022.

200 Ana Nasrashvili, Narcopolitics in Georgia (Suspended Reform and New Trends), 2019, p. 16, available at: <https://bit.ly/3uahcac>, accessed on: 19.04.2022.

201 Ibid.

202 Tornike Gerliani, p. 22.

203 Daryl S. Inaba and William E. Cohen, p. 251.

diction."²⁰⁴ The desirability of each approach should be determined by the type of drug crime prevention, which of them provides a fairer and more humane approach, and to what extent this or that strategy takes into account the social, economic, or cultural context of the society and so on. It is important to keep in mind that instead of repressive means, care and support measures should be utilized towards a person, in cases of harm to their own health. This stems from the perspective of both social empowerment and support for human beings, as well as respect for the individual's personal autonomy, dignity, and freedom of will.

204 Ibid, p. 258.

V. Modern understanding of probation and holistic approaches

Historically, the role of probation has been viewed differently and evolved over time. However, it is interesting to note that the critical perspectives and practical efforts pertaining to the importance of probation today somewhat go back to the ideological origins that were one of the foundations of the development of probation systems.²⁰⁵ As is known, the role of the first probation officers employed in prisons lay in social and welfare-oriented work.²⁰⁶ After that, for a long time, the probation system was seen narrowly, primarily as a criminal justice, risk-oriented agency. But gradually, against the backdrop of criticism of such approaches, a process of re-understanding the importance of probation began, resulting in the development of pro-social models of probation.²⁰⁷

The most complex and versatile approach in practice today, on which probation systems rely in many countries, is the Offender Assessment System (OASys).²⁰⁸ The perk of this system is that it has introduced social components more actively in the activities of probation services. In particular, in addition to traditional risk assessment and management approaches, in this case, the central place is occupied by the study of social variables such as housing; education and employment; finances and income; social and personal relationships; lifestyle; drug and alcohol consumption; emotional well-being (including mental health); behaviors (including considering the expected consequences of one's own actions; seeing issues from someone else's perspective); and attitudes (towards committable offenses and supervision practices).²⁰⁹

In view of the above, it is possible to discuss the characteristics of the pro-social model of probation, which sees probation not from a narrow criminal law perspective, but from an inter-agency, social and personal empowerment prism. In this sense, the pro-social model views the named variables as objects of evaluation and intervention, and, at the same time, as structural problems:

Housing – Decent housing is central for maintaining a job and income, treatment, family support, and more. In addition, decent and affordable housing is fundamental for successful rehabilitation and ensuring the risk of harm to others. It is believed that access

205 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 26.

206 Ibid, p. 228.

207 Ibid, p. 31.

208 Ibid, p. 181.

209 Ibid.

to decent housing, is a necessary, although insufficient, precondition to prevent a recurrence of crime.²¹⁰

Employment and Education – Most offenders are unemployed at the time of the commission of a crime. The links between access to employment/education and crime are complex, however, there is no doubt that having a job brings different opportunities and legitimate sources of income, changes lifestyles, and strengthens informal control mechanisms, which are important components of crime deterrence.²¹¹

Mental and Psychological Health – The link between crime and mental health is also complex. The social justice paradigm requires that offenders have access to health care programs. The probation system, along with health services, plays a big role in this regard.²¹²

Drugs and Alcohol – Individuals addicted to various substances or drugs must have access to all the options for treatment, harm reduction, and control. To this end, the state must provide them with appropriate services. There are three types of interventions in this regard: 1) Biological interventions – this includes replacement therapy, detoxification, treatment of health problems caused by drug abuse, etc. 2) Psychological interventions – such are different types of therapies and consultations. and 3) social interventions – aimed at reducing the social exclusion of people, improving their access to housing, employment, etc.²¹³ These types of interventions are known in addiction science as the “biopsychosocial model”, which is a holistic approach.²¹⁴ According to the biopsychosocial model, “*drug use is the result of the interaction of genetic/biological, psychological and socio-cultural factors and all these factors should be taken into account in the prevention and treatment of drug use.*”²¹⁵ Moreover, according to this approach, no separate agency/institution possess enough competence and expertise to make this process ultimately successful and tailored to the needs of the individual.²¹⁶ Accordingly, “*Treatment, psychosocial assistance and rehabilitation of individuals with drug addiction is possible only through an integrated model of assistance, in which services are provided in concert and*

210 Ibid, p. 191.

211 Ibid.

212 Ibid, pp. 192-193.

213 Ibid, p. 193.

214 Ioseb Abesadze, Nana Agapishvili and others, Biopsychosocial approach in the field of health care, Georgian Care Platform, 2020, p. 7, available at: <https://bit.ly/3ujU0WW>, accessed on: 19.04.2022.

215 Ibid, p. 122.

216 Ibid, p. 123.

*jointly by state, community and public organizations.*²¹⁷ Integrated care aims to support drug users, including by means of combating health-related and social challenges.²¹⁸ The approaches introduced by the integrated care paradigm are directly related to the biopsychosocial model.²¹⁹

Finances and Debt – Poverty is one of the most prominent features of the part of society that most often deals with probation services. Nevertheless, when analyzing the recidivism and role of the probation system, little attention is paid to poverty as a structural problem and its practical manifestations.²²⁰

Families and children of offenders – It should be noted that the role of probation is very important with regard to working with the families of offenders. This includes family support, offering a variety of services to improve family relationships, and so on. It is believed that the probation, health, and education services, as well as the public organizations cooperating with them, can make a valuable contribution to the social empowerment of the individual and the prevention of recidivism.²²¹

It should be noted that these issues raised by pro-social models of probation are of fundamental importance, although a large part of them are structural in nature and, consequently, the probation service will not be responsible for resolving them. However, the main essence of this approach is that it sees the probation system as one of the pillars of social inclusion and well-being. As part of its activities, the probation system may in some cases play a leading role itself (work done by social workers and psychologists, research and analytical work, reflection on community problems, etc.), or act as a liaison, connecting the various relevant structures and the individual in order to socially empower the latter, put their needs on the agenda and address them.²²²

When the case concerns drug users and drug-related crimes the probation system and non-custodial sentences acquire particular relevance. As noted in the opening chapters, social, economic, and cultural factors have a particular impact on drug crime. Probation, unlike deprivation of liberty, is distinguished by the fact that the consideration of these

217 Ibid.

218 Ioseb Abesadze, Ucha Vakhania and others, *Integrated Care, Georgian Care Platform*, 2021, pp. 102-103, available at: <https://bit.ly/3L0edI8>, accessed on: 19.04.2022.

219 Ibid, p. 7.

220 Rob Canton and Jane Dominey, *Probation, Second Edition*, Routledge, 2018, p. 193.

221 Ibid, p. 194. In addition, the types of interventions that aim to change behaviors, inclinations, and attitudes are important. This issue is discussed more in detail in Chapter III (“What is the role of the probation system in preventing recidivism?”)

222 Rob Canton and Jane Dominey, *Probation, Second Edition*, Routledge, 2018, p. 146.

social variables is central to it. Probation in itself implies fostering the integration of the individual into society and relies on complex and multifaceted approaches to this end. In this sense, probation is a highly flexible mechanism.

Strict criminal repression of drug offenses has historically often been used to create moral panic.²²³ This is a cyclical process characterized by the production of public opinion by various actors (media, institutions), labeling people belonging to a particular group as deviants, discovering new acts of deviation, generating fear, and using stronger punitive measures.²²⁴ These practices, in turn, expose the power and ideological goals of the state by which it is involved in the process of disciplining and morally educating the public. For example, David Garland notes that *“the war on drugs in the United States, from the 1970s to the 1980s, often treated the act of possession and sale of criminalized substances as a heinous crime that deserved very serious and severe punishment. [...] The American people, at some point, realized that such an approach was not based on proper policy or morality, and opposed it. “[They thought] that in reality such a repressive reaction to drug use and the sale was too harsh and did not correspond to the values that many people shared.”*²²⁵

223 William Little, Introduction to Sociology – 1st Canadian Edition, Rice University, 2013, p. 202.

224 Ibid.

225 Sociology of Punishment: Interview with David Garland, Part I, available at: <https://bit.ly/3D2NTdD>, accessed on: 19.04.2022.

VI. Probation System in Georgia – Introduction

The National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation is a legal entity of public law operating in the field of governance of the Ministry of Corrections and Probation of Georgia.²²⁶ The agency exercises supervisory as well as resocialization, reintegration, and prevention capacity.²²⁷ By performing these functions, the probation agency serves the purpose of ensuring public safety.²²⁸

The mandate of the Probation Agency extends to the enforcement of various acts and non-custodial sentences. In particular, the Agency oversees the execution of the following types of non-custodial sentences: deprivation of the right to hold office or engage in activities; Deprivation of the right to operate for a legal entity; Assignment of community service and corrective work; Assignment of house arrest; And restriction of firearms-related rights.²²⁹ In addition, the following legal acts are subject to enforcement: the assignment of a suspended sentence; granting of parole, and deferral of the sentence (for a pregnant woman – up to 1 year after delivery).²³⁰

The Probation Agency exercises its powers through structural units (9 in total)²³¹ and territorial bodies – probation bureaus (10 in total).²³² The bureaus, in turn, consist of

226 The Law of Georgia on Crime Prevention, Rules of Execution of Non-custodial Sentences and Probation, Article 3, Paragraph 1, available at: <https://bit.ly/383KbFc>, accessed on: 19.04.2022.

227 Order №485 of the Minister of Justice of Georgia “on the Approval of the Statute of the Legal Entity under Public Law – Crime Prevention, Execution of Non-custodial Sentences and the National Probation Agency,” paragraph 2 of Article 2, available at: <https://bit.ly/3rB7JIm>, accessed on: 19.04.2022.

228 Order №485 of the Minister of Justice of Georgia “On Approval of the Statute of the Legal Entity of Public Law – Crime Prevention, Execution of Non-custodial Sentences and the National Probation Agency,” Article 1, Paragraph 1.

229 Article 2, Paragraph 1 of the Law of Georgia on Crime Prevention, Rules of Execution of Non-custodial Sentences and Probation.

230 Ibid, Article 2, paragraph 2.

231 The structural units of the Agency are: Administrative Department; Organizational Support Department; Department of Economics; Department of Resocialization-Rehabilitation of Convicted Persons and Former Prisoners; Public Relations Department; Research and Services Department; Internal Audit Department; Department of Diversion and Mediation; And the Juvenile Referral Center. Order of the Minister of Justice of Georgia №485 “On Approval of the Statute of the Legal Entity under Public Law – Crime Prevention, Execution of Non-custodial Sentences and the National Agency for Probation,” Paragraph 2 of Article 7.

232 territorial bodies of the Agency are: Tbilisi Probation Bureau; Samegrelo and Zemo Svaneti Probation Bureau; Adjara and Guria Probation Bureau; Imereti Probation Bureau; Racha-Lechkhumi and Kvemo Svaneti Probation Bureau; Samtskhe-Javakheti Probation Bureau; Shida Kartli Probation Bureau; Mtskheta-Mtianeti Probation Bureau; Kvemo Kartli Probation Bureau; And Kakheti Probation Bureau. Order №485 of the Minister of Justice of Georgia on the Approval of the Statute of the Legal Entity under Public Law – Crime Prevention, Execution of Non-custodial Sentences and the National Agency for Probation, paragraph 3 of Article 7.

different district offices.²³³ The Probation Agency is led by the Head of the Agency, who is appointed and dismissed by the Minister of Justice.²³⁴

According to the 2020 Order of the Minister of Justice of Georgia, penitentiary institutions and the National Probation Agency serve three large groups of beneficiaries for the purpose of resocialization-rehabilitation: 1) adult convicted persons placed in penitentiary institutions; 2) probationers, and 3) formerly convicted persons.²³⁵

The recent systematization of the relevant legal framework for resocialization-rehabilitation, structural adjustment, and refinement of individual evaluation forms should be considered a step forward.²³⁶ In addition, since the end of 2019, ex-convicted persons have been added to the beneficiary circle of the National Probation Agency.²³⁷ According to the existing regulations, the case management of convicted persons in the penitentiary system is introduced in the first stage to the following target groups: Convicted individuals from №5 Women's Special Institution; Convicted persons from №16 Low-risk and Release Preparation Facility; All convicted persons with a life sentence.²³⁸ According to the Order, case management in other penitentiary institutions should be introduced progressively, in stages, by the end of 2023.²³⁹ According to the information requested from the Special Penitentiary Service, the case management of convicted persons has been additionally introduced in №3, №6, №10, №15, and №17 penitentiary institutions.²⁴⁰

233 Public Information № 2/108557 provided by LEPL National Agency for Crime Prevention, Non-custodial Sentences and Probation.

234 Article 3, Paragraph 2 of the Law of Georgia on Crime Prevention, Rules for Execution of Non-custodial Sentences and Probation.

235 Order of the Minister of Justice of Georgia №502 "On the assessment of risks and needs for the resocialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)". Article 3, sub-para. "a", available at: <https://bit.ly/3OpN2ZZ>, accessed on: 15.03.2022.

236 Compare the annulled orders: Order №39 of the Minister of Corrections and Probation of Georgia of June 5, 2015 "On the risk assessment of the convicted persons and the approval of the principles, rules and forms for the development of the individual plan;" Order of the Minister of Corrections and Probation of Georgia of April 29, 2015 №33 "On the approval of rules for individual planning on sentencing." Available at: <https://bit.ly/3MmcH3X> and <https://bit.ly/3xAdGt3>; accessed on: 15.03.2022.

237 See: November 29, 2019 Law on Amendments to the Law of Georgia on Execution of Non-custodial Sentences and Probation, Article 7, Paragraph 1, available at: <https://bit.ly/3uWtd4E>; accessed on: 15.03.2022.

238 Order of the Minister of Justice of Georgia №502 "On the assessment of risks and needs for the resocialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)".

239 Ibid.

240 Public information №98016 / 01 provided by the Special Penitentiary Service.

It is important to have a clear vision of how sufficient resources are available for effective case management in all penitentiary institutions, whether this decision is based on specific resource management and enhancement strategy, and whether there is a risk insurance plan in this regard. So far, these issues are vague, indicating the need for more openness and the development of research-based strategies by the Ministry. These challenges are, as of now, unresolved, connoting that the Ministry should be more transparent and adopt research-based initiatives.

VII. Conditional convictions for drug crimes in Georgia – a general picture

The role of the probation system is colossal in the process of rehabilitation, resocialization, and social empowerment of drug crime offenders. This is especially true for those types of drug offenses that do not pertain sale of drugs, hence – drug use, possession, purchase, storage, cultivation, and so on. The importance of probation in relation to drug offenses is explained by two major factors: 1) Drug offenses are usually driven by the type of social factors to which a strict criminal policy cannot be the answer. Such a policy fails to attain its objectives by punishing a person, does not lead to a reduction in drug crimes in the long run, and does not respect people's choices (there is no empirical evidence that perpetrators of drug crimes commit any other, more serious crimes).²⁴¹ 2) The probation system, although part of the criminal justice system, in case of its proper and fair execution, combines the components of social empowerment and care for a person. Care and social inclusion are central ideas of probation. In addition, probation agencies, while exercising a supervisory function, at the same time rely on the fundamental belief in human change and freedom of choice.

Decriminalization of drugs in Georgia, despite the efforts of international and local actors, has not been possible.²⁴² Since 2015, drug policy has undergone significant liberalization by the Constitutional Court, although regular users of any drug other than marijuana are still subject to criminal prosecution.²⁴³ This is against the background of the established negative consequences of severe criminal liability against drug users. For example, a report by Human Rights Watch states: *For people who struggle with drug dependence, criminalization often means cycling in and out of jail or prison, with little to no access to voluntary treatment. Criminalization undermines the right to health, as fear of law enforcement can drive people who use drugs underground, deterring them from accessing health services and emergency medicine and leading to illness and sometimes fatal overdose.*²⁴⁴

In such a case, it is important to avoid imprisonment as much as possible for a number of drug offenses, as well as the type of sanctions that have a severe impact on the social and economic situation of the individuals. Regarding the specific norms of criminal law,²⁴⁵ the total number of persons convicted by the district (city) courts of Georgia is as follows: in 2018 –

241 Harsh Punishment The Human Toll of Georgia's Abusive Drug Policies, Human Rights Watch, 2018.

242 Tornike Gerliani, 2021, p. 22.

243 Ibid, p. 23.

244 Harsh Punishment – The Human Toll of Georgia's Abusive Drug Policies, Human Rights Watch, 2018.

245 Parts I, II and III of Article 260 of the Criminal Code; Parts I, II and III of Article 261; Sections I and II of Article 265; Article 273; And Parts I, II, III, IV, IV, V, VI, and VII of Article 2731.

2,317 persons; In 2019 – 3,305; In 2020 – 2,106; In 2021 – 1,493 (9-month data).²⁴⁶ The used sentences, according to each year and the relevant norms, are as follows:

Articles of the Criminal Code	Convicted persons in total	Including			Year
	Persons	Deprivation of liberty	Fine	Community service	
		Persons	Persons	Persons	
260 (I, II, III)	1.437	240	29	0	2018
261 (I, II, III)	23	5	2	0	
265 (I, II)	197	4	77	34	
273	238	7	113	68	
273 ¹ (I, II, III, IV, V, VI, VII)	422	4	161	200	
All Articles	2.317	260	382	302	
260 (I, II, III)	1.736	302	34	1	2019
261 (I, II, III)	74	11	9	0	
265 (I, II)	404	11	185	43	
273	94	9	36	26	
273 ¹ (I, II, III, IV, V, VI, VII)	997	5	381	494	
All Articles	3.305	338	645	563	
260 (I, II, III)	1.006	195	17	2	2020
261 (I, II, III)	36	6	5	0	
265 (I, II)	271	13	99	37	
273	53	2	20	16	
273 ¹ (I, II, III, IV, V, VI, VII)	740	5	294	343	
All Articles	2.106	221	435	398	
260 (I, II, III)	1.046	100	11	0	2021 ²⁴⁷
261 (I, II, III)	12	2	4	0	
265 (I, II)	232	11	84	27	
273	18	1	2	6	
273 ¹ (I, II, III, IV, V, VI, VII)	739	6	282	335	
All Articles	2.047	120	383	368	

²⁴⁶ Public information NP-818-21 provided by the Supreme Court.

²⁴⁷ Public information provided by the Supreme Court NP-129-22.

Based on the available data, we can say that in general, every year, imprisonment, as the form of punishment, does not hold a large share, is characterized by a declining trend after 2019, but is still significant (260 cases of imprisonment in 2018; 338 in 2019; 221 in 2020; 120 in 2021).²⁴⁸ It is most often used in relation to Article 260 paras 1 and 3 of the Criminal Code. Moreover, it is problematic that the number of fines in 2019, 2020, and 2021 was higher than in 2018. In particular, in 2018, in relation to the named norms, fines were imposed on 382 persons, in 2019 – 645, in 2020 – 435, and in 2021 – 383 persons).²⁴⁹

Pertaining to the above norms, in 2018 conditional sentence was imposed 1,357 cases, in 2019 – 1,751, in 2020 – 1,026, and until November 15, 2021 – 1,001.²⁵⁰ A particular problem is a fact that a conditional sentence is often supplemented with fines and deprivation of the right to carry out activities as an additional punishment, which usually poses a severe social and financial burden for convicted persons. Such a policy of punishment clearly indicates that drug policy continues to be seen from the paradigm of repression, not care. It should also be noted that, compared to fines and deprivation of the right to carry out activities, community service usually accounts for a much smaller share (comparatively 2021 data show a more positive trend):

Articles of Criminal Code	Conditional Sentence	Additional sentence			Year
		Fine	Deprivation of the right to carry out activities	Community service	
	Person	Person	Person	Person	
260 (I, II, III)	1.161	838	733	222	2018
261 (I, II, III)	16	9	9	1	
265 (I, II)	75	18	38	23	
273	50	14	13	12	
273 ¹ (I, II, III, IV, V, VI, VII)	55	8	14	12	
All Articles	1.357	887	807	270	
260 (I, II, III)	1.400	1.135	830	197	2019
261 (I, II, III)	54	43	31	7	
265 (I, II)	157	54	77	41	
273	23	12	12	4	
273 ¹ (I, II, III, IV, V, VI, VII)	117	50	41	13	
All Articles	1.751	1.294	991	262	

248 Public information provided by the Supreme Court NP-818-21.

249 Ibid.

250 Public information provided by the Supreme Court NP-125-22.

260 (I, II, III)	773	621	450	101	2020
261 (I, II, III)	25	17	11	3	
265 (I, II)	115	38	39	45	
273	15	6	2	1	
273 ¹ (I, II, III, IV, V, VI, VII)	98	14	32	29	
All Articles	1.026	696	534	179	
260 (I, II, III)	817	636	444	500	2021 (up to November 15) ²⁵²
261 (I, II, III)	5	3	3	0	
265 (I, II)	94	28	30	33	
273	8	4	2	0	
273 ¹ (I, II, III, IV, V, VI, VII)	77	20	22	17	
All Articles	1.001	691	501	550	

Particularly interesting is the social distinction of convicted persons, namely their employment status. Public information provided by the Supreme Court shows that from 2018 to date, the majority of convicted persons (86-91%), subject to the above provisions, were unemployed, and this figure is growing (in 2018-2019 the share of unemployed was 86%, in 2020 – 87 %, and in the first 9 months of 2021 – 91%).²⁵² This once again clearly demonstrates the social aspects of drug use and the need for state care and support approaches.

²⁵¹ Public information provided by the Supreme Court NP-818-21.

²⁵² Public information provided by the Supreme Court NP-818-21.

VIII. Basic approaches to care and control in the probation system

By the most general division, probation has two major functions – care and control.²⁵³ This separation shows the intertwining of criminal and social empowerment mechanisms in the probation system. Although the proliferation of punishment and risk management approaches across Europe has been noticeable over the years (this trend is otherwise called the “welfare-to-correction” shift), the components of care and social work remain central in the probation system.²⁵⁴

The probation system is responsible not only for supervision and monitoring (even when these capacities may be essential components of supervision).²⁵⁵ According to the recommendations of the Committee of Ministers of the Council of Europe, “*social inclusion is a guiding principle in the practice of probation*”,²⁵⁶ which includes working actively with offenders, creating different types of opportunities for them, and assisting and motivating them to acquire new skills.²⁵⁷ Probation is based on the fundamental assumption that this process should become the basis for a change for an individual, foster their social empowerment and, consequently, prevent recidivism.

The goals of re-socialization, reintegration, and social inclusion of the individual include the individual empowerment of the individual, as well as the promotion of their self-establishment in the existing social environment. For example, the official comments on the Recommendations of the Committee of Ministers recognize the importance of employment for crime prevention. In order to find an adequate and decent job, it is necessary not only to have the appropriate skills and motivation but also to have job opportunities.²⁵⁸ As a rule, for individuals in conflict with the law finding a job and gaining the trust of the employer comes with additional difficulties.²⁵⁹ The role of probation agencies is crucial at such times – they have to act as a kind of mediator, who, by actively working with the individual and the various sectors and taking into account the multifaceted

253 Rob Canton and Jane Dominey, *Probation*, Second Edition, Routledge, 2018, p. 36.

254 Ibid, pp. 105-106.

255 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 1.

256 Ibid, paragraph 12.

257 Ibid, paragraph 1.

258 Ibid, paragraph 59.

259 Ibid.

needs of the individual, facilitates their employment.²⁶⁰ The recommendations of the Committee of Ministers indicate that “*Supervision shall not be seen as a purely controlling task, but also as a means of advising, assisting and motivating offenders.*”²⁶¹

Therefore, it is essential to determine, on the one hand, how much the existing legislative framework prioritizes the goals of resocialization, reintegration, and social inclusion (compared to the goals of control), and on the other hand, how much care-oriented resources are available in the system per se. For research purposes, the main focus will be on drug crimes.

According to the existing regulatory provisions, “*the regime established by law for probationers and parolees shall include the obligation to appear, once a week, at a specified time and place determined by a probation officer.*”²⁶² This is a standard procedure that applies to all convicted persons. Under the law, the prescribed regime may include the performance of other duties provided by law,²⁶³ as well as the obligation to undergo a mandatory rehabilitation course based on the probationer's risk and need assessment.²⁶⁴ The Social Justice Center was interested in the type of measures used in recent years (from January 1, 2018, to November 15, 2021) vis-à-vis persons convicted of specific drug-related offenses (except for the sale of drugs).²⁶⁵ In the first case, the public information provided by them establishes that the probation agency does not keep statistics on the imposition of other obligations. We must therefore assume that its share is insignificant (although it is impossible to determine precisely, which primarily points to the need for the agency to produce such statistics). In this case, it is also unclear exactly what type of additional obligations may be imposed on probationers (presumably, it should be derived from Article 65 of the Criminal Code).²⁶⁶

260 Ibid.

261 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 55.

262 Law of Georgia on Crime Prevention, Rules of Execution of Non-custodial Sentences and Probation, Article 12, Paragraph 1.

263 Ibid.

264 Ibid, paragraph 11.

265 Parts I, II and III of Article 260 of the Criminal Code; Parts I, II and III of Article 261; Parts I and II of Article 265; Article 273; and Parts I, II, III, IV, V, VI, and VII of Article 2731.

266 According to this norm, “*In the case of a conditional sentence, if there are relevant grounds, the court may impose on the convicted person certain obligations: not to change permanent place of residence without the permission of the Bureau of Crime Prevention, Execution of Non-custodial Sentences and Probation, not to establish relationships with persons who may engage him/ her in anti-social activities, not to visit a particular place, to provide material support to the family, to undergo a treatment course for alcoholism, drug addiction, toxic addiction or venereal disease, and if the convicted person has committed a domestic crime, to undergo a mandatory training course directed at changing violent behaviour and conduct. The court may also impose on the convicted person other obligations which will help in correcting him/her.*” Article 65 of the Criminal Code of Georgia.

As for the obligation to undergo the rehabilitation course, the agency keeps general statistics, though not segregated data based on whether the programs were delivered on the basis of compulsory or non-compulsory criteria.²⁶⁷ Without this information, it is impossible to determine whether each probationer has the opportunity to engage in treatment-rehabilitation programs based on their wishes. And yet, even against this background, the statistics provided by the Probation Agency do not show any promising signs. Each year, the probation agency serves several thousand individuals convicted of certain drug offenses (5,372 in 2018; 5,750 in 2019; 5,563 in 2020; 2880 as of October 30, 2021), and the number of drug rehabilitation programs provided ranges roughly from 50 to 100.²⁶⁸

Other legal standards enshrined in law are also problematic with regard to probationers. In particular, the Order of the Minister of Justice stipulates that the Agency offers the following assistance to beneficiary ex-prisoners as part of case management: *psychosocial services; Legal services; Increase access to health services; Employment promotion; Participation in sports, recreational and cultural events; Vocational training /study of crafts; Non-formal education; Support for business initiatives of ex-prisoners; Participation in a foreign language course; Involvement in a criminal law mediation program; Work with family members of beneficiaries and more.*²⁶⁹

Conversely, with regard to the Agency's convicted beneficiaries, the legislation distinguishes between three types of rehabilitation programs: "*a) programs focused on criminal behavior – interventions that are directly related to a change in a particular criminal behavior (mandatory for the convicted persons); b) programs related to criminal behavior – interventions that are indirectly related to the change of criminal behavior, but affect it (can be mandatory or voluntary); c) Personal and social skills development programs – interventions that pertain clinical needs and social skills development (can be mandatory and voluntary).*"²⁷⁰ It is clear that in this case, the agency's functions in relation to convicted beneficiaries are more vague and are less specific with regard to care and support obligations.

267 According to the information provided by the Probation Agency, the total number of rehabilitation programs was: in 2018 – 88, in 2019 – 46, in 2020 – 51, October 30, 2021 – 76. LEPL National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation, Public Information № 2/108557.

268 Ibid.

269 Order of the Minister of Justice of Georgia №502 "On the assessment of risks and needs for the re-socialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)". Article 38, paragraphs 1 and 2.

270 Ibid, Article 25, paragraph 1.

Moreover, it should be noted that the total number of ex-prisoners who applied to the agency for appropriate assistance is very small. In particular, in the period from March 2020 (after the order came into force) to February 15, 2022, 75 people applied to the Agency's program.²⁷¹ Of these, a total of 14 were convicted of drug offenses.²⁷²

In general, the obligation to care for the beneficiary implies that the programs/interventions implemented by the agency should be based on a professional assessment of criminogenic factors and planned in close coordination with the convicted person. The legislation provides a broad definition of criminogenic factors, which is "*any factor (risk and necessity) causing person's criminal behavior, the positive change of which reduces the likelihood of a recurrence of the crime.*"²⁷³ However, analysis of the legislation reveals that the evaluation and planning process is not dominated by the involvement of a social worker and a psychologist.

The risk and needs assessment include 3 steps: preparation of a significant harm risk screening document; And compiling static and dynamic parts of the risk and needs assessment form. Significant harm risk screening includes examining a person's violent behaviors/tendencies (whether they have committed a violent intentional crime and whether it was reoccurring whether or not they are a member of a violent group or whether they have expressed such behavior in the family, towards the child; Have experience of substance abuse, related to the violent behavior, prior to arrest, etc.). At this stage, the level of risk of significant harm to oneself is assessed, which involves the assessment of two components: 1) whether they have destructive tendencies. For example, attempted suicide, self-harm, or extreme forms of protest; And 2) whether they are addicted to alcohol, psychoactive substances, and/or gambling.²⁷⁴

As for the next two steps: the static parts of the risk and needs assessment involve the detailed processing of general [identifying] information and past convictions. The study of dynamic factors analyzes the social and psycho-emotional state of a person. In particular, this stage involves the assessment of the following elements: housing; relationships with family and loved ones; education; employment; economic situation; gambling

271 Public Information № 2/15386, provided by the LEPL National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation.

272 According to information provided by the agency, they were involved in the following support programs and activities: full medical care, provision of food and travel card, shelter, and literature/fiction books.

273 Order of the Minister of Justice of Georgia №502 "On the assessment of risks and needs for the re-socialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)". Article 3, sub-paragraph "t".

274 Ibid, Annex N5.

addiction; alcohol abuse; abuse of psychoactive substances; attitude towards the crime committed; antisocial relationships; motivation for change; thinking and behavior control; physical and psychological health.²⁷⁵

First of all, it should be noted that the probation officer is the one who completes the significant harm risk screening document and the static part of the risk and needs assessment form.²⁷⁶ The law also stipulates that the probation officer assess these risks in the *“area of operation of the probation bureau where the services of a social worker and psychologist are not provided.”*²⁷⁷ This reservation is a recognition that in a normal case, the assessment of both stages should not be done only by the probation officer, as, at this time, not only legal but also, in part, social and personal characteristics are assessed. Thus, a social worker and/or psychologist should be involved in it, as appropriate. This is all the more important because this stage determines whether the dynamic factors are evaluated. According to the Order, *“in case of low level of the risk of significant harm and a low or medium level of static factors from the risk and needs assessment form, [...] dynamic factors are not filled in and the case remains with the probation officer to coordinate the execution of the sentence.”*²⁷⁸

In the case management process, in order to assess the dynamic factors, the social worker is involved if the following are identified: 1) low level of the risk of significant harm and high level of static factors in the risk and needs assessment form; Or 2) average level of the risk of significant harm risk and low, medium or high level of static factors in the risk and needs assessment form.²⁷⁹ Thus, the legislation strictly prescribes the procedure for assessing the dynamic factors and, consequently, ensuring the involvement of the social worker in this process. In fact, the beneficiary does not have the opportunity to request an in-depth study and assessment of their social status and personal characteristics, which would make it clearer what specific needs the beneficiary faces, what type and scope of programs and support mechanisms are important to them. At this stage of case management, the interests of the beneficiary should be brought to the forefront as much as possible. It is considered that wherever possible, the convicted persons should be involved in the assessment process.²⁸⁰ This, *inter alia*, includes taking into account their visions and personal desires.²⁸¹

275 Ibid.

276 Ibid, Article 21, paragraph 2.

277 Ibid, Article 21, paragraph 3, sub-paragraph “a”.

278 Ibid, Article 21, paragraph 3, sub-paragraph “b”.

279 Ibid, Article 21, paragraph 3, sub-paragraphs “c” and “d”.

280 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 67.

281 Ibid.

The involvement of the convicted person is also minimized at the stage of developing an individual plan. According to the existing normative regulation, the multidisciplinary team (probation officer, social worker, and/or psychologist) prepares an individual plan and informs the beneficiary.²⁸² In case a convicted person refuses to sign the plan, a relevant note shall be made in the document stating the reason for the refusal to sign.²⁸³ Consequently, there is limited space for considering the concerns or wishes of the beneficiary even at the stage of preparing the individual plan.

The fact that individual case management planning and, consequently, the provision of support mechanisms for the convicted person depends on the actual ability to form a team (a team cannot be formed where the services of a social worker and/or psychologist are not available) is rather problematic.²⁸⁴ Given the limited representation of social workers and psychologists in the probation agency, the actual opportunities for creating the team are severely limited (the distribution of resources will be discussed in detail in the next chapter).

Other circumstances pertaining to drug crimes are also interesting. According to the law, *“a probation officer is entitled to request a person convicted of a drug offense and released on parole periodically or in case of reasonable suspicion to undergo a relevant drug test within 5 working days and to submit an appropriate report. If the convicted person has been found to have used drugs, as a result of a drug test provided for in this paragraph, except for the use of the drug by the convicted person for medical purposes, the Probation Bureau shall notify the Ministry of Internal Affairs of Georgia.”*²⁸⁵ It should be noted that in general, when a convicted person is involved in the treatment-rehabilitation process, such a request may indeed be legitimate. However, this regulation has two problems: 1) it is unclear what is the basis for giving such wide discretion to a probation officer. Such authority should exist in the specific cases where the beneficiary is involved in relevant treatment and rehabilitation programs, and therefore the issue of drug use is essential in the interests of the successful completion of their individual plan; 2) The obligation to inform the Ministry of Internal Affairs in case of confirmation of drug use is the manifestation of a policy aimed at controlling and repressing drug users. This norm reflects the repressive drug policy in Georgia, which, until now, instead of caring for drug users, is focused on punishing them. This issue, naturally, should not be considered in isolation

282 Order of the Minister of Justice of Georgia №502 “On the assessment of risks and needs for the re-socialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)”. Article 24, para 4.

283 Ibid, Article 24, paragraph 5.

284 Ibid, Article 23, paragraph 3.

285 Law of Georgia on Crime Prevention, Rules of Execution of Non-custodial Sentences and Probation, Article 12, Paragraph 12.

from the existing drug policy in the country. As already mentioned, except for marijuana, decriminalization of other drugs has not been carried out in Georgia. Consumption of other drugs is still a criminal act. Accordingly, the obligation to inform the Ministry of Internal Affairs established by the named norm is a [logical] continuation of the policy- chain oriented at supervision and punishment. Thus, when criticizing this particular piece of legislation, we do not overlook the fact that the issue must be seen as part of a systemic transformation (which entails the decriminalization of drug use).

It is important to note that Social Justice Center applied to the National Probation Agency to provide information on how many times probation officers requested a probationer to undergo a drug test, and how many times the Probation Bureau informed the Ministry of Internal Affairs of drug abuse (years 2018-2021). It turned out that the agency does not process this information,²⁸⁶ which is an additional problem, because the control-oriented strategies are unpublicized, and its scale remains unclear.

It should also be noted that inter-agency work is essential for the introduction and strengthening of care-oriented mechanisms. This is necessary to meet the complex needs of probationers, to strengthen them, and to ensure public safety.²⁸⁷ These types of close links are developed through the development of inter-agency protocols, which may include the exchange of information, the referral of beneficiaries, the facilitation of cooperation, the planning of common action strategies, and other methods.²⁸⁸ The study was particularly interested in whether there are any inter-agency memoranda, protocols, or other types of documents with the Ministry of IDPs from the Occupied Territories, Labor, Health, and Social Affairs of Georgia. According to the information provided by the Agency, such documents have not been signed by the agencies.²⁸⁹

In addition to the mentioned significant shortcomings, we also encounter positive approaches in the system. The Probation Agency's Standing Commission on Abolition of Probation, based on the application of a person and the submission of a narcological report, reviews and decides on the issue of early restoration of the rights taken away from a convicted drug offender or reduction of the term of deprivation of rights (once

286 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

287 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 12.

288 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 31.

289 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentence and Probation № 2/15386.

one-third of the deprivation term is up).²⁹⁰ A request for public information indicates that the satisfaction rate from the commission after the appeal is very high, especially in 2018-2020 (98-99%).²⁹¹ A slight decrease was observed in 2021 (91%).²⁹²

Standing Commission for the Abolition of Probation (Restoration / Reduction of Deprived Rights before the Date of the Session)	Number of Applicants	Number of approved applications
The year 2018	500	492
The Year 2019	419	415
The Year 2020	276	274
The Year 2021 (up to October 30)	211	193
Total	1406	1374

The Standing Commission also makes decisions on probationers and parolees (as well as in cases of deferral of sentence for a pregnant woman), the abolition of probation and the removal of a conviction.²⁹³ It is noteworthy that in this case, too, the satisfaction rate is quite high (in the range of 96-99% in 2018-2020), however, as of October 30, 2021, there is a clear downward trend (about 72%).²⁹⁴

Standing Commission for the Abolition of Probation (Abolition of probation and removal of conviction)	Number of Applicants	Number of approved applications
Year 2018	4455	4408
Year 2019	4376	4259
Year 2020	3772	3614
Year 2021 (up to October 30)	1557	1116
Total	14160	13397

290 Law of Georgia on Crime Prevention, Rules of Execution of Non-custodial Sentences and Probation, Article 221, Paragraph 2.

291 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

292 Ibid.

293 It should be noted that before 2011 the decision to terminate probation and remove the conviction was made by the court. It is believed that this model is more valid from a legal point of view. However, due to the caseload of the courts, in order to make a decision quickly and efficiently, it was considered expedient to delegate this right to another agency. For this purpose, at the end of 2011 a standing commission was established consisting of 5 members. See: Giorgi Aroshvili, Givi Mikanadze and Moris Shalikashvili, Probation Law, Tbilisi, 2015, pp. 182-183, available at: <https://bit.ly/3ruvv94>, accessed on: 19.04.2022.

294 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

However, in this case there are additional unjustified legal barriers. In particular, the convicted person himself does not have the right to apply to the Standing Commission with a request to revoke the suspended sentence and remove the conviction. For this purpose, the convicted person must first address the head of the bureau (an individual convicted in the drug crime must also submit a relevant report on drug testing), and the latter decides whether to petition the Standing Commission to decide on the issue.²⁹⁵

It is unclear why the head of the probation bureau is given such discretion, and why a convicted person is not able to apply to the Standing Commission independently to have their probation revoked or remanded. Naturally, the head of the bureau should have the right to write a negative conclusion, although this should not become an obstacle to the matter being referred to the standing commission itself. Additionally the fact that neither the law nor the statute of the Agency defines how and by what procedure the head of the bureau makes a decision is further problematic. Consequently, in the context of such vague legislative regulation, there are risks of discrimination, arbitrariness, bias, and unfair decisions.

An additional problem is that the Standing Commission makes a decision on the abolition of probation, as well as the early restoration of the rights in relation to drug offenses or the reduction of the term of deprivation of these rights, without an oral hearing.²⁹⁶ This approach runs counter to the principle of transparency – it remains unclear to the probationer based on what circumstances the commission made its decision. The possibility to appeal the decision in court cannot be considered an effective, flexible, and expedient alternative.

Legislative norms and discussed public information are the first indicators that the objective of probation in Georgia is seen primarily in the technical sense of control and sentencing, while the obligation to care is not considered a central component of the policy. The analyzed issues show a general picture of the dominance of control functions in the Georgian probation system, which points to the fact that the probation system in Georgia is less focused on the social empowerment of the convicted persons. In the following chapters, we will try to highlight the problems in Georgia in this regard and why the probation agency is not able to properly perform its social function.

295 Law of Georgia on Crime Prevention, Rules of Execution of Non-custodial Sentences and Probation, Article 21, Paragraph 4.

296 Ibid, Article 22¹, Paragraph 10.

IX. Access to social workers and psychologists in the probation system and their specialization

The work of social workers and psychologists is a mechanism for implementing care approaches in the probation system. The recommendations of the Committee of Ministers of the Council of Europe indicate that the objective of interventions by probation services is rehabilitation and the prevention of the recurrence of crime.²⁹⁷ In this process, it is often necessary to actively use social support mechanisms, offer employment paths, educational programs, and other opportunities, as well as introduce behavior-oriented programs.²⁹⁸ Therefore, it is essential that social workers and psychologists are properly represented in probation bureaus and offices. Given the two functions of probation (care and supervision), the services of social workers and psychologists are at least as important as those of probation officers.

According to the Order of the Minister of Justice of Georgia, beyond the penitentiary institutions, *“the case management of convicted persons and former prisoners is conducted by the probation agency in the territory where the services of a social worker and a psychologist are available.”*²⁹⁹ Against this background, neither the legislative framework nor any policy document outlines the strategies for the full integration of social workers and psychologists into the probation system throughout Georgia. Moreover, it is not clear that this issue is generally a priority for the state. Moreover, it is not clear that this issue is generally a priority for the state.

The issue is all the more problematic given that it is difficult to implement one of the most important principles in the probation system – multimodal case management. This implies that *“probation agencies should use different methods based on interdisciplinary approaches.”*³⁰⁰ The importance of multidisciplinary work and the ways in which it is used are also set out in Georgian law, although it does not attach absolute importance to this principle. As already mentioned, the creation of a multidisciplinary

297 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 76.

298 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec(2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 76.

299 Order of the Minister of Justice of Georgia №502 “On the assessment of risks and needs for the re-socialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)”.

300 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 77.

nary team depends on the actual availability of the social worker and / or psychologist at the specific territory.³⁰¹

This approach, established by law, consequently affects the availability of social workers and psychologists at probation bureaus throughout Georgia. According to the information requested from the Probation Agency, as of February 15, 2022, the National Probation Agency employs a total of 49 social workers.³⁰² 40 of them are employed at the Division of Resocialization-Rehabilitation of Convicted Persons, 5 at the Division of Resocialization-Rehabilitation of Former Prisoners, and 4 in the Juvenile Referral Center.³⁰³ The number of psychologists is 20 in total (3 of them are employed at the Juvenile Referral Center, 16 at the Division of Resocialization-Rehabilitation of Convicted Persons, and 1 at the Division of Resocialization-Rehabilitation of Former Prisoners).³⁰⁴

From this general data, the scale of the problem is already clear, and it stems from two circumstances: 1) there is an obvious disproportion between the representation of social workers and psychologists on the one hand, and the scale of representation of probation officers on the other. In particular, while the actual number of social workers and psychologists is 49 and 20 respectively, the total number of probation officers is 139.³⁰⁵ 2) These numbers are minuscule against the background of the fact that, as already mentioned, the number of probationers under specific norms of drug-related offenses alone has reached an average of 5,000 in recent years. It should be noted that the National Probation Agency serves a much larger number of probationers, given the total number of probationers per year (on average, 20,000 for all types of criminal offenses over the last 4 years).³⁰⁶

301 Order of the Minister of Justice of Georgia №502 “On the assessment of risks and needs for the resocialization and rehabilitation of adult convicted persons and ex-prisoners, as well as the approval of the rules for the preparation, implementation and monitoring of an individual plan (case management rule)”. Article 23, paragraph 3.

302 Public Information Provided by the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation № 2/15386.

303 Ibid.

304 Ibid.

305 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

306 Total number of probationers: as of December 31, 2018 – 19,948; As of December 31, 2019 – 20,205; As of December 31, 2020 – 19,422; As of October 30, 2021 – 17,985. Public Information Provided by the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation № 2/108557.

A logical consequence is that the workload of probation officers, social workers, and psychologists in the National Probation Agency is particularly high. According to the information provided by the agency, the average number of cases per probation officer as of January 2022 was 135.³⁰⁷ According to the information provided, the workload of social workers and psychologists varies by region. To illustrate, the highest workload in the case of social workers is in Tbilisi. In particular, the number of ongoing cases per 1 social worker in Tbilisi (average cases distributed per month) in the period from January 1, 2021, to January 1, 2022, was 106.³⁰⁸ In the case of a psychologist, by a similar principle, the highest caseload per 1 psychologist is recorded in Adjara – 142.³⁰⁹

According to the Council of Europe 2020 report, in the vast majority of European countries, the workload of probation officers is much lower than that in Georgia.³¹⁰ Interestingly, the UK HM Inspectorate of Probation published a study in 2021 showing that an average of 50 cases per employee was manageable and the quality of service dramatically worsened with a higher caseload than that.³¹¹

It should also be noted that the given workload information is only useful for presenting a general picture. The most correct way to assess the workload is considered to be a holistic approach when the complexity and needs of each case are taken into account, and not simply the number of offenders subjected to supervision.³¹² Due to research limitations, such an assessment is not possible.

An even larger problem pertaining to the access to social workers and psychologists can be observed if we look at their representation at the regional level. Across the regions, the representation of social workers in terms of re-socialization-rehabilitation of convicted persons is as follows:

307 Public Information Provided by the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation № 2/15386.

308 Ibid.

309 Ibid.

310 Higher rates are observed in only 6 countries: Greece, Monaco, Romania, Slovakia, Spain and Turkey. Marcelo F. Aebi and Yuji Z. Hashimoto, *Persons under the supervision of probation agencies*, Council of Europe, 2020, pp. 116-117, available at: <https://bit.ly/3jKwRrT>, accessed on: 19.04.2022.

311 Caseloads, workloads and staffing levels in probation services, HM Inspectorate of Probation, *Research & Analysis Bulletin* 2021/02, 2021, p. 4, available at: <https://bit.ly/3rw4KRA>, accessed on: 19.04.2022.

312 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 29.

City / Region	Number of social workers
Tbilisi	14
Adjara and Guria	5 (3 serve Adjara whole region, 1 – Guria region, 1 – Ozurgeti municipality)
Shida Kartli	4 (3 of them serve the whole region, 1 – Gori and Khashuri municipalities)
Kvemo Kartli	4 (2 of them serve the whole region, 1 – Rustavi and Marneuli, 1 – Rustavi)
Kakheti	3 (2 of them serve the whole region, 1 – Telavi municipality)
Samtskhe Javakheti	3 (2 of them serve the whole region, 1 – Aspindza, Ninotsminda, and Akhalkalaki municipalities)
Samegrelo and Zemo Svaneti	3 (1 of them serves the whole region, 1 – Senaki and Poti municipalities, and 1 – Zugdidi and Khobi municipalities)
Imereti	2
Mtskheta-Mtianeti	1
Racha – Lechkhumi and Kvemo Svaneti	1

In addition, 5 specialists employed by the Division of Resocialization-Rehabilitation of Former Prisoners serve beneficiaries throughout Georgia. Two of the social workers employed at the Juvenile Referral Center serve Tbilisi and two serve the Imereti region.³¹³

With regard to psychologists, there is one psychologist in almost all regions from the specialists in the field of re-socialization-rehabilitation of convicted individuals, and in Tbilisi, there are 5 of them. 1 psychologist employed at the Division of Resocialization-Rehabilitation Division of Former Prisoners serves beneficiaries throughout Georgia. 2 specialists of the Juvenile Referral Center serve Tbilisi and 1 – Imereti.³¹⁴

Different populations and specific criminogenic factors in Tbilisi and the regions naturally explain the heterogeneous representation of social workers and psychologists (this is also the case with probation officers). However, such a small contingent of social workers and psychologists (in the whole region, or at worst, throughout Georgia, their number may be 1-2), indicates the problem of geographical / territorial access along with the increased workload. These data call into question the prospect of adequate access of probationers and ex-prisoners to social workers and psychologists, especially since their work is not technical – it covers a wide and diverse range of fieldwork, assessment,

313 Public Information Provided by the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation № 2/15386.

314 Ibid.

and individual approaches, for which time and human resources are essential. It should also be noted that in the case of the Juvenile Referral Center, a small representation of a social worker and a psychologist are registered only in Tbilisi and the Imereti region. In the process of increasing resources at the National Probation Agency, it is important to consider these factors.

It should also be noted that probation officers are present in virtually every city / district center (which, naturally, is due to their relatively large number).³¹⁵ Consequently, territorial access in this regard is high. This clearly shows that state policy does not prioritize the importance of strengthening care-oriented services in the probation system, and directs key resources to criminal justice mechanisms.

As for the specialization of the staff of the Probation Agency. The Recommendations of the Committee of Ministers of the Council of Europe indicate that staff of the Probation Agency who have to work with persons convicted of specific offenses should be properly specialized.³¹⁶ Official comments on the same recommendations refer to, *inter alia*, one such group, namely convicted drug offenders, whose behavior changes are related to the variety of difficulties (in this case, the document focuses specifically on drug abuse).³¹⁷

In the context of Georgia, given that probationers are one of the most represented groups in the system, the issue of relevant specializations in the Agency is becoming even more relevant. Requested information from the National Probation Agency reveals that probation officers, social workers, and psychologists undergo a basic course on the work with the agency's target groups, including those involved in drug-related crimes.³¹⁸ Only those specialists who work with minors in conflict with the law are required to take a specialized course.³¹⁹ It is important that the agency has a specialization module in addition to the basic course that equips staff with more knowledge of the context and characteristics of drug crime.

315 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

316 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 27.

317 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 27.

318 Public Information Provided by the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation № 2/15386.

319 Ibid.

X. Research and Transparency

It is recognized that research activities should be a cornerstone of the work of probation agencies.³²⁰ It is believed that this is especially important for determining the scale of recidivism, analyzing specific contexts, and developing best practices.³²¹ Amendments to the existing legislation, policies, and practices “*should be based on sound scientific knowledge and research that is in line with internationally recognized standards.*”³²² In addition, the public and the media should be regularly informed about the work of probation agencies, including the activity goals and results of their work.³²³

The problem of research-based work in the Georgian probation system is particularly noticeable in the following areas:

The efficiency of services of probation officers, social workers, and psychologists – One of the main principles of probation agencies is the evaluation of the effectiveness of their activities with research-based approaches, which should define probation policies and practices.³²⁴ Conducting research is essential to determine the effectiveness of probation in achieving the goals and objectives set by it.³²⁵

In this regard, the probation system in Georgia is facing an obvious challenge, as it is not clear what the existing redistribution of resources is based on, how it is determined, how effective it is, and specifically what the problems are in terms of the provision of adequate services to beneficiaries. According to the information provided by the National Probation Agency, “*At this stage, the Agency does not have a research document/methodology for its functioning. The approval process of the Agency’s Strategic Development Plan for 2022-2026 is currently underway. According to the document, the needs of the Agency staff will be assessed, and the programs, trainings and services will be evaluated, which, together*

320 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 104.

321 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 104.

322 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 2010, paragraph 105.

323 Ibid, paragraph 106.

324 Ibid, paragraph 16.

325 European Committee on Crime Problems (CDPC) – d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 2010, paragraph 16.

*with the relevant monitoring of the annual action plans, will provide an assessment of the functioning of the Agency and its structural units.*³²⁶

Focused research on drug crime – Probationers for drug related offenses make up about a quarter of the total number of probationers each year. This is, in fact, the highest rate after economic crimes.³²⁷ Against this background, it is important for the National Probation Agency to study the causes of the most common offenses, the social context of probationers. This is essential for the introduction of policy planning and social empowerment approaches by the Probation Agency. According to the information requested from the National Probation Agency, the agency does not carry out any active research activities in this regard and does not even collect statistics (except for the division of probationers into adult and juvenile categories). Raw statistical data on the social and demographic characteristics of probationers can be processed through coordination with the Supreme Court, which collects such data on convicted persons.

In addition, as mentioned, the agency does not produce data such as: what other responsibilities persons convicted of relevant drug offenses have, in addition to the obligation to report once a week; Separate statistics on mandatory and non-mandatory rehabilitation courses provided to probationers in the respective drug offenses; Any data / statistics on how many probationers convicted of the relevant drug offenses committed a repeated offense during or after the probation period (the agency produces only general statistics on probationers convicted of all offenses in total); Statistics on how many probationers have committed a repeated offense during or after serving a non-custodial sentence (neither in general nor in relation to persons convicted of drug offenses); In recent years, how many times probation officers have requested that probationers or parolees undergo a drug test and submit an appropriate report.³²⁸

It is clear from the above that research and analysis-based activities at the National Probation Agency are very fragmented and do not actually cover critical issues. It is important that this approach be radically changed and that the agency be transformed into a substantially research-oriented agency.

In addition to research and statistics-oriented work, another problematic issue is the approach of the probation agency not to disclose information about its activities. In the framework of the study, we were interested what guidelines, or programs the Nation-

326 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

327 Ibid.

328 Ibid.

al Probation Agency employs for the purposes of re-socialization and rehabilitation of those individuals convicted in drug crimes. The agency provided information on the number of rehabilitation programs implemented, as well as the fact that *“these rehabilitation programs / modules provide for the management of addiction caused by the use of various psychoactive, psychotropic substances, the principles of working with addiction and prevention of relapse.”*³²⁹ In addition, according to the requested public information, a *“drug rehabilitation program for the penitentiary and probation systems of Georgia”* was developed for persons convicted of drug crimes from December 2019 to August 2021.³³⁰

However, the agency noted that *“in view of international practice, the sensitive nature of documents and the risk of misuse, the agency does not consider it appropriate to publish rehabilitation programs and accompanying guidance documents.”*³³¹ It should be noted that interested parties, especially professional groups, should have access to the policy or guidance documents under which the relevant rehabilitation services are developed and provided to the beneficiaries. Naturally, this does not mean individual programs designed for a specific individual. If the public does not have knowledge of what basic principles, approaches, and strategies the agency relies on when working with beneficiaries, it will be impossible to externally control this work and the idea of accountability will be hampered. Thus, it is essential that the agency provide such information to the public, with all relevant risk insurances and reservations.

329 Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

330 The program is compiled by the psychologists of the Penitentiary Service and the Agency, based on the recommendations of Spanish experts. The rehabilitation program includes 25 group sessions and lasts for 7 months. Public Information Provided by the National Agency for Crime Prevention, Non-custodial Sentences and Probation № 2/108557.

331 Ibid.

Conclusion and recommendations

The presented research first of all showed that the logic of functioning of the probation system in Georgia needs to be re-assessed. As one Council of Europe report points out, Georgia is among the countries where probation can be viewed as a supplement to the penitentiary system. Georgia is among the leaders not only in the number of prisoners, but also in the number of probationers (relative to the total population). Consequently, the transformative role of the probation system in sentencing policy is virtually neglected.

Observations of the probation system in Georgia clearly show that its functioning is essentially based on the principles of criminal justice. Both through the analysis of the legislation and through the multifaceted observation of the distribution of resources in the National Probation Agency, we can say that the control and supervision mechanisms are dominant in the probation system. Care and social empowerment, which is no less important aspect of probation, is viewed as secondary in Georgia.

Against the background of existing legislation and policies, it has emerged that probation fails to bring about any kind of systemic shift in working with people convicted of drug offenses, in their social empowerment and inclusion, in care and assistance. This is particularly unfortunate because, given the specifics of drug crime and its social determinants, the probation system must be able to implement care policy in practice. Insufficient legislative guarantees, scarce human resources, and the dominance of supervisory principles in practice should be considered as the main factors hindering policy transformation in this regard.

As a result of the analysis of the information and legislation processed in the framework of this study, the following recommendations were elaborated pertaining to the relevant government agencies:

- Policies based on control and supervision in the probation system should substantially change and approaches focused on care, support and social inclusion should be bolstered;
- In the case of drug offenses, in addition to probation, supplementary penalties that increase the social and financial burden on a person (fines and deprivation of the right to carry out activities) should be less used;
- The wide discretion of the probation officer, requiring a person convicted of a drug offense and released on parole, to undergo a drug test and to submit an appropriate report, should be limited and narrowed down. Such authority should be retained in specific cases (for example, when the issue of drug use is essential to the beneficiary's interest in the successful completion of treatment-rehabilitation);

- In this context, establishing the fact of drug use by a probationer should not automatically imply an obligation to notify the Ministry of the Interior (it may be significant if it is linked to another crime or failure to perform a specific duty). This change should be part of a systemic transformation that involves the decriminalization of drug use;
- Within the framework of the existing legislative regulation, it is important that the National Probation Agency processes information on how many times it has applied to the Ministry of Internal Affairs about the fact of drug use;
- The person should be able to independently apply to the Standing Commission of the National Probation Agency with a request to have their probation revoked and their conviction lifted;
- The Standing Commission should make a decision on the termination of probation, as well as the early restoration of the rights in relation to the drug offenses or the reduction of the term of deprivation of this right, at the oral hearing;
- It is important to significantly increase the number of social workers and psychologists in the probation system, as well as geographical access to them;
- An increase of human resources and proper management should be the basis for reducing the workload of probation officers, social workers, and psychologists;
- It is necessary to conduct a comprehensive study and evaluation of the effectiveness of available resources in the National Probation Agency;
- The involvement of social workers and psychologists in the process of risk and needs assessment for the re-socialization and rehabilitation of probationers should be increased;
- The beneficiary should be more actively involved in the process of developing an individual plan for them. They should be able to request an in-depth study and evaluation of their social status and personal characteristics (dynamic factors);
- With regard to probationers, the statutory obligations of the National Probation Agency in the provision of social support and reinforcement services should be the same as in the case of former prisoners;
- The National Probation Agency should make more efforts to inform former prisoners and involve them more actively in social assistance programs;
- In addition to the basic course, the National Probation Agency should introduce a specialization module that equips staff with more knowledge of the context and characteristics of a drug crime;
- The National Probation Agency should initiate active research work to analyze the social characteristics of probationers and to develop policies on their basis;
- In general, the National Probation Agency should increase the degree of openness, strengthen the work based on statistics and analytics, and have active communication with the public. Such approaches are, currently, very fragmented in the Agency.

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