HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

AD HOC PUBLIC REPORT

CONCEPT ON COMBATING CRIMINAL SUBCULTURE IN THE PENITENTIARY INSTITUTIONS OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA

YEREVAN 2019

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Ministry of Foreign Affairs of the Netherlands

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INTRODUCTION

The prison subculture is an aggregate of values, beliefs, habits and rules of conduct accepted by persons deprived of liberty which inevitably arise among those who appear in an isolation. The persons deprived of liberty, being isolated from the society, appear in a new environment, gradually begin to accept the existing value system and the rules for the integration there.

The present concept discusses the existing criminal subculture in the penitentiary institutions of the Ministry of Justice of the Republic of Armenia which is a unique type of the prison subculture and is typical for the Soviet and post-Soviet countries.

It goes back to the Stalin's "Gulag" period (ГУЛаг[1]) when concentration camps were formed in the Soviet penitentiary system, where the fraternity of the criminals dominated. Its representatives, getting the status of the "thieves in law", acquired rights and privileges, at the same time undertaking duties in the name of the other representatives[2] of the fraternity. They were united by a unique value system and strict rules of conduct that were to be observed in the relationships[3] between each other and other persons.

Despite of the dissolution of the USSR, the already formed and widely spread criminal subculture still exists in a number of post-Soviet countries, including Armenia. The international renowned structures have also touched upon the subculture existing in the penitentiary institutions of the Ministry of Justice of RA. In particular, in the reports on Armenia, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter, referred to as the CPT) has recorded the existence of *an informal prison hierarchy* in the penitentiary institutions of the Ministry of Justice[4].

In 2017 it was also touched upon by the United Nations Committee Against Torture in the Concluding observations on the fourth periodic report of Armenia. It was

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1 Translation from Russian "General Department of Camps and Places of Confinement".

2 See at «Baseline study into Criminal Subculture in Prisons in the Republic of Moldova», 2018, https://rm.coe.int/criminal-subculture-md-en-/1680796111 website, page 10.

3 See «The society of the vory-v-zakone, 1930s-1950s», Federico Vares, 1998.

4 See the 2011 CPT Report on Armenia at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806844cd, points 60, 66, 68, and the 2016 Report, at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bf46f, points 49, 53, 54, 110.

mentioned that *the high indices of violence between the persons deprived of liberty can be the result of the criminal subculture and the informal hierarchy*[5].

A social study has been carried out in 2017, by the order of the "Civil Society Institute" NGO, on the negative manifestations of the criminal subculture connected with the impact of criminal subculture on the circle of persons deprived of liberty, the acceptance of subculture by the latter and the penitentiary staff, the involvement level and the reasons.[6]

Taking into account the nature of the criminal subculture and its impact on the relations between the persons deprived of liberty and on the penitentiary system, in general, the purpose of this concept is to disclose the possible ways to exclude the favorable conditions for the existence of the criminal subculture in the penitentiary institutions of the Ministry of Justice of RA, reduce the impact of subculture and prevent its dissemination, present comprehensive proposals for the solution of the problems.

The concept is first addressed to the Ministry of Justice of RA, the Penitentiary Service, the penitentiary staff, as well as to the legislative, executive and judicial authorities, civil society and the citizens of RA.

The first chapter of the concept discusses the practical problems and their solutions in the context of the criminal subculture. The second chapter touches upon the penitentiary legislation studies, the legislative gaps and problems are disclosed which directly or indirectly promote the criminal subculture or do not envisage sufficient adjustments for its prevention.

It should be emphasized that both the practical and legislative proposals should be implemented with a proper coherence in order to achieve the pursued goal.

It is also important to emphasize that while combating criminal subculture, it is essential to ensure the proper implementation of human rights and the fundamental principles of equality of everybody before the legality and right.

Although this concept refers only to the problem of dissemination and influence of the criminal subculture inside the penitentiary institutions, it is also connected with the criminality outside the penitentiary institution formed in the outside world and other circumstances that are not a subject of discussion of the concept.

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5 See at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/ARM/CO/4&Lang=En website, point 31.

6 See the mentioned study at http://www.csi.am/sites/default/files/library/report_prison_subculture%20Arm.pdf website.

CHAPTER 1. PRACTICAL SOLUTIONS FOR THE PREVENTION OF DISSEMINATION OF INFLUENCE OF THE CRIMINAL SUBCULTURE

The concept on combating in the penitentiary institutions against such phenomenon, as the criminal subculture, its dissemination and influence, should be implemented by a comprehensive approach, that is, taking necessary steps both in practice, as well as at the legislative level at the same time.

One of the most important aspects of this approach is the provision of such a system of practical principles in the context of the current legislative regulations and the envisaged amendments which is aimed at reducing the widespread influence of the criminal subculture, up to its complete exclusion.

The recommendations made in the result of the study of the problems refer to the following issues:

1) deprivation of liberty as an exceptional measure,
2) staff of the penitentiary system;
3) programs with the persons deprived of liberty;
4) education and employment of the persons deprived of liberty;
5) conditions of detention in general.

It should be mentioned that for taking effective steps against the criminal subculture, the recommendations on the issues presented above should be implemented by the principle of combining as they are closely interrelated with each other.

1.1 Deprivation of Liberty as an Exceptional Measure

Upon entering a penitentiary institution, persons come across the interpersonal relations, value system and rules of conduct existing there, which are accepted by the other persons deprived of liberty. Thus, the subculture, rooted in the penitentiary system, spreads its influence on the persons entering the penitentiary institution. In this sense, even those who have never had concern with subculture, appear in its target and are directly or indirectly involved in its spreading process.

In terms of prevention of the criminal subculture and its dissemination, it is important to limit the entrance of persons to the penitentiary institutions as much as possible. In order to discuss this issue, it is necessary to refer to the application of punishment in Armenia connected with the deprivation of liberty and the application of pre-trial detention.

Thus, according to statistics, in **2017, 2220** (**93.9%**) out of the **2363** motions on the application of pre-trial detention have been satisfied.[7] From the point of view of the ratio, the situation has not changed substantially in the statistics of the first half of **2018**, according to which **1031** (**94.15%**) out of **1095** motions on the application of pre-trial detention have been satisfied. During the same period **599** (**95.5%**) out of **627** motions on extending the period of pre-trial detention have been satisfied and 383 (**85.4%**) out of **448** motions on the application of bail as an alternative restraint measure were rejected.[8]

The study of statistics lets to conclude that the unified practice of the application of pre-trial detention has a continuous actuality, which, in its turn, is the source of a number of problems.

During 2017, the complaints addressed to the Human Rights Defender also raised problems connected with the application of pre-trial detention. Such complaints have been received mostly from the detainees, their defenders and relatives. In particular, the overwhelming majority of these complaints concerned the non-lawfulness of satisfying the motions on the application of pre-trial detention by courts, the availability of a reasonable suspicion that a person has committed a crime, as well as not making a subject of a proper discussion the circumstances significant when deciding the issue of the pre-trial detention application. Besides, in a number of cases, the detainees have mentioned in their complaints that the courts have not taken into account their state of health when applying pre-trial detention, including disability, adulthood, marital status, as well as the circumstances of having minor children and old parents under their care[9].

Relative to the issue, it should be emphasized that the European Court of Human Rights considers essential the application of pre-trial detention as the exceptional measure of last resort as the limitation on the right to liberty[10] and the application of

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7 See "The Comparative Statistical Analysis of Activities of the Courts of RA in 2016-2017" at http://court.am/arm/left/statistics/%D5%80%D5%A1%D5%B4%D5%A5%D5%B4%D5%A1%D5%BF%D5%A1%D5%AF%D5%A1%D5%B6_%D5%BE%D5%A5%D6%80%D5%AC%D5%B8%D6%82%D5%AE%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B62016-2017.pdf website.

8 See at http://www.court.am/index.php?link=arm/left/statistics/2018_1/crim/by_court.htm website.

9 See the Annual Report of the Human Rights Defender of RA on "The Activities of the Human Rights Defender of the Republic of Armenia, Human Rights and Freedoms Protection Condition in 2017" at http://pashtpan.am/resources/ombudsman/uploads/files/publications/b5220dd0b83b420a5ab8bb037a1e02ca.pdf website, page 228.

10 See the court judgment of March 20, 2018 on the case of Mehmet Hasan Altan v Turkey, complaint No. 13237/17, paragraph 211.

pre-trial detention only in case when less stringent measures cannot ensure the pursued lawful aim.[11]

As to the application of punishments connected with the deprivation of liberty, the statistical data show that in **2017**, the punishment in the form of deprivation of liberty was imposed to **1410** (**58.5%**) out of **2410** persons whose verdicts had come into legal force, to **181** (**7.5%**) persons - in the form of pre-trial detention, to **1** person (**0.1%**) - in the form of detention in a disciplinary battalion. That is to say, the punishments connected with the deprivation of liberty made **66%** of the imposed penalties (in **2016** they made **66.2%** of the imposed penalties).[12]

It is also worth mentioning that in 2017 as well as in 2016, in spite of some decrease in a number of convicted persons, a significant number made the persons convicted for theft, the illicit trafficking in narcotic drugs or psychotropic substances (psychoactive) without sales purpose, as well as, from the crimes against the military order, the violation of the Code of Conduct for Military Relationships in case of the absence of subordination (submission).[13]

The deprivation of liberty brings with itself substantial restrictions of other rights, which, in the social sense, causes negative consequences for both the person deprived of liberty as well as for his family members and relatives. The loss of a consistent contact with the family, workplace, and, in general, with the society, even for a short period of time, can have a long-term and negative impact on the person.

On the other hand, the studies show that the deprivation of liberty can have a criminogenic effect. It can create a favorable environment[14] for committing new offences (including more grave), as well as for the creation of the criminal subculture. And the person who enters a penitentiary institution will inevitably come across with the already existing and rooted criminal subculture, the impact of which will accompany him during the whole period of his deprivation of liberty and even afterwards. The problem is more serious in case of the detained juveniles who are more inclined to yield to the negative impact of their environment. From this point of view, it is important that the draft Criminal Code of RA envisages the deprivation of liberty of a juvenile as an exceptional measure of punishment which can be imposed only when no other means can ensure the implementation of the purpose of the punishment.

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11 See the court judgment of October 13, 2014 on the case Djundiks v Latvia, complaint No. 14920/05, paragraph 89.

12 See footnote 7.

13 See ibidem.

14 See at «Penal Policy with Imprisonment as a Last Resort», IPRT, 2009, http://www.iprt.ie/files/IPRT_Position_Paper_5_-_Penal_Policy_with_Imprisonment_as_a_Last_Resort.pdf website, page 6.

Taking into account a number of negative circumstances connected with the deprivation of liberty and the judicial practice related to it, it is necessary to carry out the review of the legislation and introduce new, more flexible legal mechanisms, particularly, on the application of alternative punishments and pre-trial restraint measures.

1.2 Penitentiary System Staff

The staff of the penitentiary institution is one of the most important components of the penitentiary system, which is to implement a number of issues facing the correctional legislation. The penitentiary officers are facing numerous difficulties and challenges while carrying out this important work, and the steps taken in relation to them are the indicator of the staff professionalism.

Taking into account the fact that the staff of the penitentiary institution is one of the important elements of the system, it is necessary to take significant level of action and invest resources in the direction of assembling it, ensuring social guarantees and proper working conditions for the staff and arranging regular trainings.

The administration of the penitentiary institution is intended to ensure discipline in the institution, along with the other functions. Moreover, this should be carried out only by the administration of the institution. Nevertheless, in its reports on Armenia the CPT has recorded *a general tendency of the penitentiary staff to partially delegate their powers to the persons deprived of liberty who are in the highest status of the prison hierarchy (so-called "watchers"), who exercise control and maintain order among the persons deprived of liberty*. In this regard, the CPT has urged the Armenian authorities *to put an end to relying on the non-formal prison hierarchy in terms of maintaining order in the penitentiary institutions* and stressed *that no person deprived of liberty should spread the functions of authorities against other persons deprived of liberty*.[15]

It is necessary to pay attention to the following issues in order to exclude the implementation of the disciplinary ensuring functions by the criminal subculture representatives and the cooperation of the latter with the administration of the penitentiary institution:

1) recruitment of the administration of the penitentiary institution and a sufficient number of staff;

2) social guarantees and working conditions of the officers;

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15 See at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bf46f website, points 53, 54.

3) professional trainings.

The abovementioned issues reflect the needs of the penitentiary staff for the proper implementation of their responsibilities.

1) Staff Recruitment and Deployment

One of the most significant guarantees for ensuring the security and discipline in the penitentiary institutions is the availability of sufficient number of personnel with an appropriate qualification. The influence of the criminal subculture is connected with the improper implementation of their responsibilities by the institutions staff, which creates a favorable environment for the subculture and a non-secure one for the institution.

The recruitment in the penitentiary institutions was a serious problem for many years, which continues to stay actual. The study of the vacant positions of the penitentiary service states the necessity of employees, especially, in Safety, Security and Medical Service Departments of the institutions. Thus, as of August 16, 2018, 88 vacancies are in the Safety Department, 24 vacancies are in the Security Department and 31 vacancies are in the Medical Service Department out of 197 vacant positions in the penitentiary service.[16]

The work in the penitentiary institution is hard both physically and mentally, often the officers are forced to work under hard working and living conditions, in a closed isolated area, carrying out also the duties of the absent employees because of the vacant positions, which cannot but affect the mood, work motivation and the efficiency of the employees over many years.

The penitentiary institutions need to be recruited with a sufficient number of responsible specialists and officers endowed with high personal qualities. Therefore, an imperative necessity arises to elaborate a staff recruitment policy which should be aimed at attracting young specialists, which will bring new strength and approaches to the institution. There should be a correlation between the experienced and the new employees so that they complement each other.

It is of significance to ensure a belief on the attractiveness of the work in the institution, the formation, among the officers, of the conviction of the importance and significance of their work by increasing the motivation of the employees in the context of ensuring the staff recruitment in the penitentiary institutions. The proper assessment of their work, encouragement and formation of a respectful attitude towards the work of the penitentiary officer in the society may be the solution of this problem.

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16 See the vacant posts at https://ced.am/ website of the Penitentiary Service of the Ministry of Justice of RA.

An important component is the deployment of posts and the definition of job responsibilities. The observations show that the penitentiary officer-person deprived of liberty correlation is not proportionate in the penitentiary institutions.[17] In connection with the issue it should be mentioned that, for example, in the Scandinavian countries, where the lowest index of persons deprived of liberty is recorded, one employee accounts for 1-1.5 persons deprived of liberty (Iceland, Finland, Denmark), and in Sweden and Norway the number of officers even exceeds the number of persons deprived of liberty.[18] In its reports, the Human Rights Commissioner of the Council of Europe also referred to a person deprived of liberty-the institution inspection officer correlation in the penitentiary institutions of the European countries, which generally results in the following: **1 penitentiary officer accounts for 4 persons deprived of liberty**.[19]

The Human Rights Defender has also recorded that *the number of persons deprived of liberty is very different (the least is in "Yerevan-Kentron" penitentiary institution - 60, and the maximum is in "Kosh" penitentiary institution - 640) in those penitentiary institutions where by one psychologist is involved in the process of arrangement of the social, psychological and legal work. Therefore, it is necessary to maintain the numerical ratio of the persons deprived of liberty and the psychologists in the penitentiary institutions, which causes the lack of working efficiency of the psychologists*.[20]

According to the experts, one psychologist can work maximum with 50 persons deprived of liberty.[21]

It is necessary to carry out a comprehensive assessment in relation to penitentiary officer-person deprived of liberty correlation as to what and how many specialists are necessary for the penitentiary institution, taking into account the staff of the institution

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17 See the 2018 AD HOC Report of the Human Rights Defender of RA "On the Provision of Rights of Women and Juveniles Deprived of Liberty in the Penitentiary System" at http://pashtpan.am/resources/ombudsman/uploads/files/publications/b1290ae68d58b1d1d0c065ac84c7827b.pdf website, p.p. 59-61.

18 See at Ragnar Kristoffersen, "Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2011 – 2015", http://www.rikosseuraamus.fi/material/attachments/rise/julkaisut-muut/Jt3QTT5R1/Nordic_Statistics_2011_2015.pdf website, page 51.

19 See the 2002-2005 Report of the Human Rights Commissioner of the Council of Europe on Romania at https://rm.coe.int/16806db7b0 website, point 14.

20 See at http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf website, p.p. 46-47

21 See Article "The Mental Picture of Detainees Changes" at https://www.aravot.am/2009/11/25/351942/ website

and the classification of the detainees. In the result of these assessments, changes should be made in the staff lists of the penitentiary institutions in order to ensure the ordinary activities of the penitentiary institution and the proper implementation of the authorities of the administration.

2) Professional Training and Qualification Development

It is significant to guarantee the staff training, periodic retraining, development of skills to work with the persons deprived of liberty, including the control of the persons deprived of liberty, conflict resolution, violence prevention, proportionate use of force if necessary, etc. after recruitment and deployment of the staff of the penitentiary institutions.

The higher the professional education of the penitentiary officer, the higher the probability of detecting the problems and properly reacting to them in time.

According to Article 20 of the Law "On the Penitentiary Service" of RA, *the penitentiary officers holding the positions of the senior, principal, middle and junior groups of the penitentiary service are subject to mandatory retraining at least once in three years and a special training - at least once a year.*

In order to properly perform the duties, it is necessary to periodically ensure the professional development of the penitentiary officers. The needs of the officers should be taken into account to increase the effectiveness of the training.

It may be also reasonable to cooperate with the relevant faculties of the higher educational institutions. Thus, the Penitentiary Service has been cooperating with the Yerevan State Medical University[22] after Mkhitar Heratsi since 2015 to fill the vacancies of the medical divisions. Such an approach is welcomed and it is necessary to deepen such cooperation in order to increase the efficiency of the work.

It is also significant to arrange regular meetings on exchange of experiences.

3) Social Guarantees and Working Conditions

The recruitment of qualified specialists only is not sufficient for effective work with the persons deprived of liberty. Devotion to work and motivation are the main guarantees of the normal work of the penitentiary institution. The proper remuneration for work is a priority in the formation of the necessary attitude towards work. Apart from the fact that low remuneration impedes the involvement of specialists and causes personnel loss, it is also fraught with serious corruption risks, which regularly detected crimes, committed by the officers, testify of.

22 See at https://ced.am website of the Penitentiary Service of the Ministry of Justice of RA.

The penitentiary officers should also be ensured with other social guarantees: the employees' work schedule defined by the Labor Code, demands for payment for overtime work should be maintained, as well as the penitentiary officers who are far from their place of residence should be provided with a transportation service at the actual time of completion of their work.

At the same time, it is necessary to ensure proper working conditions of the penitentiary officers, particularly, the improvement of the offices of the latter and conditions of the premises where the service is being carried out.

In case of a skilled staff, trust of the persons deprived of liberty will grow towards the administration, an atmosphere of mutual trust between the persons deprived of liberty and the personnel will be formed in the institutions, which will limit the possibilities of the criminal subculture manifestation.

Summarizing the abovementioned, it is necessary:

- ✓ **To assess what type and how many specialists the penitentiary institution needs, increase the relevant personnel of the penitentiary institutions based on the assessment, taking into account the internationally adopted criteria;**
- ✓ **To elaborate a clear procedure for the staff involvement, promote the work of highly qualified specialists in the penitentiary institutions;**
- ✓ **To take measures directed to ensuring recruitment of the penitentiary institutions (including social workers, psychologists);**
- ✓ **To arrange regular training courses, in accordance with the occupational needs of the penitentiary officers and the other employees involved in the penitentiary system, on the practical methods of limiting the criminal subculture and its impact;**
- ✓ **To foresee regular meetings and discussions of the specialists (particularly psychologists and social workers) for the purpose of exchanging experience and discussing working situations;**
- ✓ **To ensure a proper remuneration and other social guarantees for the penitentiary officers and other employees involved in the penitentiary system;**
- ✓ **To improve the working conditions of the latter, ensure the arrangement of duty and remuneration in accordance with the requirements of the Labor Code of RA**.

1.3 Programs with the Persons Deprived of Liberty

The foundation stone of the penitentiary institution activities should be the respectful attitude towards every person deprived of liberty based on the human rights, observation of ethical canons, which may be a precondition for the formation of an

atmosphere of mutual trust and change of the behavior of the person deprived of liberty and, as a consequence, the guaranty of effective management of the institution and, as a result, the limitation of the role of the criminal subculture.

The resocialization of the person committed to sentence is one of the most significant objectives of the punishment, in which the work done with the persons deprived of liberty in the penitentiary institutions is very important.

Periodic and effective programs with the persons deprived of liberty will have a major impact on the prevention of dissemination of the criminal subculture, as it is directed to the formation of a respectful attitude towards people, society, rules of coexistence and traditions and promotion of the law-abiding behavior. The convicted should have possibly improved social, mental and moral behavior at the moment of release.

Those entering the penitentiary institution for the first time, may be depressed, scared, as well as quite the contrary, be aggressive, or drugged. It is significant to assess accurately the criminogenic characteristics of the persons, their disposition to the criminal subculture and, according to that assessment, make a decision on the distribution, elaborate an individual resocialization plan, in case of the satisfactory completion of which, under the conditions of regular revaluation, the convicted will have the opportunity to change his regime of serving sentence or, in general, get a provisional release.

The individual plans should include psychological, social and legal continuous work in relation to obtaining education, skills, occupation during the entire period of the imprisonment, preparing the persons to withstand the possible difficulties after being released, conditioned by the necessity of care of the vital needs, as well as the possible discrimination and insulting.

Efforts should be made to involve all the persons deprived of liberty in the measures envisaged by the individual rehabilitation plans. During that period, it is especially significant to carry out continuous social, psychological and legal work with those persons who are not concerned with the criminal subculture or "reject" it. The encouragement of these persons for displaying a law-abiding behavior and for the participation in the programs with them, can have a major impact on the manifestation of both the legitimate behavior of the latter as well as evoke aspiration among the other persons deprived of liberty to take part in the remedial measures. This is aimed at reducing the impact of the criminal subculture and refraining the persons deprived of liberty from the concern with it.

It is also necessary to carry out programs to change the stereotyped and prejudiced attitude in the society towards the convicted. Many people are convinced that the criminal must suffer, depriving him/her of the rights is correct, non-employment of the

former convicted is fair. In this context, the reconciliation also should be an important component of the individual resocialization plan, which can simultaneously target a number of problems: the perpetrator gets a chance to repent and immediately compensate the complainant for his crime, and the complainant gets a chance to forgive the perpetrator and receive compensation for the damages. This, apart from everything else, can change the complainant's attitude towards the convicted, in particular, and towards the persons deprived of liberty, in general.

The Law "On Probation" of RA envisages the implementation of reconciliation, but the provisions refer only to the beneficiaries of the Probation Service.[23] It would also be reasonable to envisage an institute of reconciliation for the persons deprived of liberty by establishing clear criteria in which cases it is possible to initiate a reconciliation process, and in which cases not, as well as to envisage a procedure which will foresee reduction of the term of sentence, mitigation of regime or a provisional release in case of success of the reconciliation procedure.

The international experience shows the justification of the institute of reconciliation from the point of view of restorative justice. For example, according to the **Canadian** Correctional Service, 89 per cent of criminals, involved in face-to-face meetings with the victim, did not commit a new crime.[24] The studies also confirm the effectiveness of the institute of reconciliation. [25]

The role of reconciliation is granted to the Probation Service in some European countries (**e.g. Austria, Germany, the Czech Republic**), and it is a separate institution in other countries (**e.g. Finland, Norway**).

Summarizing the abovementioned, it is necessary to:

✓ **Implement social, psychological and legal continuous programs with the persons deprived of liberty from the moment of entering the penitentiary institution;**

✓ **Assess their attitude towards the criminal subculture;**

✓ **Make an individual correctional and resocialization plan of the person based on relevant assessments;**

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23 See Articles 29-34 of Law "On Probation" of RA.

24 See "Restorative Opportunities - Victim-Offender Mediation Services 2016-2017, Correctional Results for Face-to-Face Meetings" at the Canadian Correctional Services website https://www.csc-scc.gc.ca/restorative-justice/003005-1002-en.shtml

25 See, for example, the joint work of UNICEF, the Ministry of Justice of Albania, the Reconciliation Service of Norway, the Ministry of Foreign Affairs of Norway and "The Conflicts Resolution and Dispute Settlement" Fund. "Implementing alternative measures to detention in penal cases – Introducing and sharing experiences on restorative justice and victim offender mediation application for juveniles and beyond".

✓ **Encourage social, mental and moral healthy behavior based on the universal human values;**

✓ **Encourage persons being involved in the programs to be implemented and not related to the criminal subculture;**

✓ **Ensure continuous psychological work preparing the person for the release and the possible difficulties and overcoming them;**

✓ **Elaborate and introduce the startup procedure of reconciliation institute for the persons deprived of liberty;**

✓ **Develop and expand the role of the Conciliator of the Probation State Service**.

1.4 Employment and Education

Education, training of the highly-demanded professional skills, ensuring employment in the penitentiary institution and the creation of employment prospects, broadening the horizons, education of the correct value system and the promotion and motivation of a person to be involved in resocialization programs, gives the persons deprived of liberty an opportunity for alternatives, and reduces the possibility of manifestation of the criminal subculture and refrains from the concern with it when applied with the other measures.

1) Work

It is important to ensure fertile and meaningful everyday life in the context of reducing the role of the criminal subculture. Work is one of the most important components of the solution of that problem, as the dead time is diminished during the day. The importance of work is also conditioned with the fact that many people resort to crime because of not having a possibility to get legal income. Work is also of great significance in terms of the resocialization of the person deprived of liberty. For many people, the stay period in the penitentiary institution may be the first opportunity of the person to acquire professional skills and/or have a regular work. In a person the work educates a respectful attitude towards the work, he is accustomed to the working-day schedule, creates confidence that he will be able to ensure his employment after being released. All this requires that the proposed works in the penitentiary institution enable to acquire highly-demanded skills and knowledge.

During 2017, in the penitentiary institutions 201 convicted were engaged at techno-economic service works on a paid basis and 238 convicted, with their consent, were engaged in an unpaid work, whereas 3549 persons deprived of liberty have been

detained in the penitentiary institutions. It turns out that 12% of persons deprived of liberty are engaged at work, which cannot be considered a sufficient index.[26]

The involvement of the state as a customer in this matter may be significant. For example, in the **Southern Africa**, property necessary for the state needs is made by the persons deprived of liberty[27], and the same practice functions also in **Canada.**[28] The persons deprived of liberty may be also involved in public works, such as, for example, social institutions, making of certain goods for the needs of the army, the involvement in the agricultural works, and so on.

It is necessary to carry out effective steps in the direction of increasing the involvement of the persons deprived of liberty in techno-economic and other possible works in the penitentiary institutions, taking into account the significance of work and its favorable results.

2) Education

Ensuring the implementation of the right of education for the persons deprived of liberty is a vitally important component in deterring the persons deprived of liberty from the concern with the criminal subculture.

According to the report of the "Center for Legal Education and Implementation of Rehabilitation Programs" SNCO, during the period from September 2016 to September 2017, in "Armavir" Penitentiary institution, jointly with the Department on Social, Psycological and Legal works, carried out courses on "Pottery and Pottery Annealing, Painting Technology", "Modern Applied Arts", "Woodworking and Artistic Wood Carving", "Computer Skills Training" and "Basic Knowledge of Russian Language", in which 48 convicted participated.[29] SNCO carried out courses with the aesthetic education training programs, in which 16 detainees and/or convicted juveniles and 35 convicted women participated. 90 convicted participated in courses held in "Armavir" Penitentiary institution.

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26 See at http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf website, page 86.

27 See "Prisoners set to earn money" at https://www.sowetanlive.co.za/news/2012-11-20-prisoners-set-to-earn-money/ website.

28 See article "Job training program for inmates stuck in the past, says prison watchdog" at https://www.cbc.ca/news/canada/nova-scotia/prison-training-workforce-rehabilitation-inmates-1.3953592 website.

29 See the Annual Report of the Activities of the Ministry of Justice of RA (September 2016 - September 2017) at http://moj.am/article/1843 website.

The mentioned figures show that the provision of the persons deprived of liberty with the educational programs is not on a sufficient level, so it is necessary to take continuous steps to ensure the education of the persons deprived of liberty, arrange more educational programs and involve the persons deprived of liberty in them.

It should be also mentioned that a special attention should be paid to the provision of implementation of the right of education (including secondary) of the juveniles deprived of liberty. Nevertheless, the Human Rights Defender has recorded that the secondary education[30] of the juveniles deprived of liberty is not ensured in "Abovyan" Penitentiary institution.

Based on the significance of ensuring education of the persons deprived of liberty, it is necessary to:

- ✓ **Motivate and encourage the participation in the educational programs considering it a basis for incentive measure application;**
- ✓ **Ensure the involvement in secondary education of those persons deprived of liberty who need it, involve all the juveniles in secondary education;**
- ✓ **Arrange regular training courses relevant to the needs of the persons deprived of liberty, including vocational training (hairdressing, tailoring, cooking, computer programming, construction, car mechanic, driving skills, etc.);**
- ✓ **Arrange special retraining for the teaching staff working with the persons deprived of liberty**.

3) Cultural Events and Leisure

The arrangement of leisure time is important in the matter of correction, resocialization, and formation and development of a proper value system of the persons deprived of liberty, as the cultural education and formation of preferences are significant in the context of formation of the value system of a person and accordingly rejecting the criminal subculture.

The study of cultural events held in the penitentiary institutions during 2016-2017 shows that they are organized not in all the institutions,[31] they are one-type, which, in due course, leads to the decrease of the emotional impact of these events and their degree of interest in them. The participation in sports events is also available to a limited number of persons as they have a certain direction, such as running, long jump, hand-to-hand fighting, and do not give an opportunity to be engaged in trainings

30 See the 2018 AD HOC Report of the Human Rights Defender of RA "On the Provision of Rights of Women and Juveniles Deprived of Liberty in the Penitentiary System" at http://pashtpan.am/resources/ombudsman/uploads/files/publications/b1290ae68d58b1d1d0c065ac84c7827b.pdf website, p.p. 52-58.

31 See the website of the Penitentiary Service of the Ministry of Justice of RA at https://ced.am

maintaining and promoting the healthy lifestyle, such as, for example, can be the sports hall fitted with certain equipment.

The study of the international experience shows that theater performances, dances, film shows, operas and other cultural events are widely applied in the context of resocialization.

In Belgium, for example, the convicted have an access to the Internet with a limited accessibility with the possibility to make certain online purchases and download movies.[32]

From the point of view of the employment of the persons deprived of liberty the provision of the latter with possibilities for the creative work, involvement in craft or art and their promotion is also very important.

Based on the abovementioned, it is necessary to:

- ✓ **Consider the needs of the persons deprived of liberty when developing cultural programs;**
- ✓ **Arrange the events regularly and in all penitentiary institutions;**
- ✓ **Ensure opportunities for practicing gymnastics (sports hall, sports equipment)**.

1.5 General Conditions of Detention

One of the fundamental principles of the effective management of the penitentiary institutions is the respect of the dignity of every person deprived of liberty in any case. The protection of the rights of the persons deprived of liberty is the responsibility of the public authorities. This means that the competent bodies of the penitentiary system should ensure that the conditions of the place of confinement meet at least the basic requirements of the persons deprived of liberty, which is fixed both by domestic as well as international criteria. Persons in the penitentiary institutions should be ensured with an adequate living space, natural and artificial lighting, bedding and clothing, food and water accessibility, possibilities to care for the personal hygiene and sanitary needs, rest, outdoor walk and involvement in gymnastics.

The provision of proper keeping conditions has a major impact on the behavior of each person deprived of liberty and the penitentiary system, as well as on the treatment towards other persons. This is of great importance for maintaining general discipline in the penitentiary institution, including the reduction of the influence of the criminal subculture.

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32 See at E-bo enterprises https://www.ebo-enterprises.com/prisoncloud website.

The satisfaction of the basic needs of the persons namely by the representatives of the public authorities creates a respectful attitude and an atmosphere of confidence, which plays a significant role in the process of refraining the persons from the public dangerous acts and the criminal non-formal relations. The principle should be the following: the State should meet the basic requirements of the persons deprived of liberty.

Nevertheless, there are a number of problems in the penitentiary institutions of the Republic of Armenia related to detention conditions in general, which are periodically recorded both by the Human Rights Defender as well as the international organizations.

Thus, the Human Rights Defender as the National Preventive Mechanism in the annual report on the 2017 activities has raised the problems recorded in the penitentiary institutions which are related to the following issues:

1) ensuring the right of health protection of the persons deprived of liberty;

2) overcrowding, unequal allocation in the prison wards;

3) ensuring bathing and toilets;

4) sanitary-hygienic and general conditions;

5) ensuring the persons deprived of liberty with the necessary implements;

6) ensuring proper food;

7) ensuring the right of rest, including the right of outdoor walks or involvement in gymnastics, and so on.

The abovementioned issues were in details touched upon in the Human Rights Defender's report, practical and legal analyses and relevant recommendations on their basis were presented, the implementation of which would have a serious impact on ensuring the welfare of the persons kept in the penitentiary institutions. The implementation of the recommendations and the reforms in the sphere is vitally important as the recorded problems create favorable conditions for the existence of the criminal subculture and its impact.

Thus, for example, due to overcrowding, the administration of the penitentiary institution cannot carry out its duties properly, including the supervision and provision of security of the institution and the persons. On the other hand, among the persons deprived of liberty there appears tension, the problem of sleeping by shift, risks of use of force and pressure, self-injury, suicide, health problems, including mental health. Such conditions promote the possibilities of strengthening the positions of the criminal subculture and making adjustments among the persons deprived of liberty.

While speaking about the proper detention conditions of the persons deprived of liberty as well as ensuring the possibilities of implementation of their rights, it should be clearly stated that this should be carried out in full compliance with the general principle of equality under the law.

The CPT in the 2016 report on Armenia has stated that *the criminal subculture representatives ("watchers") were obviously granted with certain privileges, such as possibilities of a relative free movement inside the institution and access to any prison ward*. It was also mentioned *that the latter were provided with better prison wards (with high quality furniture)*.[33]

It should be clearly emphasized that it is necessary to exclude providing the persons deprived of liberty with any illegal privilege. It undermines the principles of the legal state and the supremacy of law and is the basis for the criminal subculture representatives to perform their functions effectively, to strengthen their influence and position.

This requirement proceeds directly from Article 28 of the Constitution of RA (equality of everybody under the law) and Article 8 of the Penitentiary Code of RA (the principle of equality of the convicted under the law).

Depriving the criminal subculture representatives of the privileges will have a profound effect on the reputation and influence of the latter because the possibilities to perform their functions will be limited.

[33] See at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bf46f website, point 53 and reference 73.

CHAPTER 2. LEGISLATIVE REGULATION PROBLEMS

At present, the domestic penitentiary legislation does not clearly regulate a number of key problems. Non-clear regulations may cause a broad discretion of the state bodies, corruption risks, as well as be used by the criminal subculture representatives to intensify their influence and strengthen their position. Therefore, there is a necessity to regulate distinctly the legislative gaps to eliminate such events.

Legislative amendments should be aimed at preventing, both directly and indirectly, the spread of the criminal subculture. Guarantees should be ensured which will refrain the persons deprived of liberty from any concern with the criminal subculture.

Finally, it is extremely important to pay a special attention to the procedure of correction of all the persons deprived of liberty and their reintegration into society. The social and psychological work with each person, discipline incentives and punishment measures, and employment provision should contribute to the formation of a law-abiding behavior which has a crucial role from the point of view of preventing the spread of the criminal subculture and minimizing its impact.

Taking into account the abovementioned, problems of the penitentiary legislation regulations have been raised, in connection with which it is necessary to make appropriate amendments, which will contribute to the reduction of the influence of the criminal subculture as well as to the gradual preparation of the persons deprived of liberty to the release.

It should be also noted that for the effective implementation of the combat against the influence of the criminal subculture and its dissemination, along with the introduction of the appropriate amendments in connection with the problems of legislative regulation presented below, it is necessary to ensure the solution of the presented practical problems in an equivalent correlation.

2.1 Allocation

In the combat against the criminal subculture, a special attention should be paid to the allocation of the persons deprived of liberty in the penitentiary system, including both when choosing the penitentiary institution as well as the institution wards. This is important from several points of view, and in case of the effective application, it can have a significant impact on the diminution of the influence of the criminal subculture, inhibit its dissemination and the involvement of new representatives.

First of all, it should be noted that the determination of the type of the correctional institution and the change of the type of the institution for carrying punishment in the

Republic of Armenia is in the jurisdiction of the Allocation Committee (hereinafter, Allocation Committee) functioning at the Central Body of the Penitentiary Service of the Ministry of Justice.

The legal basis and the standard operating procedures of the Allocation Committee are fixed by Order No 34-N of March 14, 2012 of the Minister of Justice of RA.[34]

This confirms the composition of the Committee and its standard operating procedures, nevertheless, **it does not fix what the Committee should be guided by, how will motivate the decisions, what criteria and actual facts should take into consideration when choosing a penitentiary institution for the persons to carry punishment**.

The Human Rights Defender of RA as the National Preventive Mechanism has touched upon the raised issue in the Annual Report on 2017 activities, where it was also recorded that *at the legislative level there are lacking such criteria by which the Allocation Committee should be governed to determine, in which concrete penitential institution the convicted person will serve the sentence according to the defined type of the correctional institution*. [35]

Various circumstances should be taken into account when introducing criteria for the allocation in a penitentiary institution under the legislation. The involvement of the person in the criminal world, his attitude towards the criminal subculture, the reputation, the role among the criminal subculture representatives etc. are significant.

For example, in the studies on criminal subculture of the penitentiary institutions of the Republic of Moldova, from the point of view of the criminal subculture, it was suggested to allocate the leaders in a special penitentiary institution or to reside them in a separate building of the penitentiary institution. It aims to prevent the dissemination of the criminal subculture, its impact, strengthening of the position of the authorities exercising leading functions through other persons, the exploitation of other persons, and so on. Nevertheless, it was emphasized that, in case of such a separation, the allocation of the other persons deprived of liberty on the basis of non-formal class differentiation is impermissible.[36] The Georgian authorities carried out such a policy:

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34 Order No 34-N of March 14, 2012 of the Minister of Justice of RA "On Approving the Composition and Standard Operating Procedures of the Allocation Committee of the Central Body of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia and Revocation of Order KH-26-N of April 21, 2005 of the Minister of Justice of the Republic of Armenia".

35 See at http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf website, p.p. 139-149.

36 See at «Baseline study into Criminal Subculture in Prisons in the Republic of Moldova», 2018, https://rm.coe.int/criminal-subculture-md-en-/1680796111 website, page 39.

the authorities in the criminal world, particularly, the "thieves in law", were separated from the other persons deprived of liberty and were transferred to a separate penitentiary institution foreseen for them.

When discussing the abovementioned, it should be clearly recorded that separating the criminal authorities from the other persons deprived of liberty cannot solely solve the problem of the influence of the latter and the dissemination of the criminal subculture. It can contribute to the reduction of the impact of concrete persons, but it should be taken into consideration that new authorities may regularly appear among the persons deprived of liberty, who by availing of the chance will strengthen their positions.

It should be noted that maintenance of contact with the family members plays a major role in the reintegration of the person deprived of liberty into society and refraining him from siding with the criminal subculture, which is strengthened by regular meetings. From the point of view of the person, the meeting with the family members, including children, close contact with them and the wish to see them again is of great psychological importance in terms of correction of the person deprived of liberty and forms a constant aim of returning to the family as soon as possible, for which the person should refrain from wrongdoing, conduct good behavior, receive incentives and assure the court that holding him in the penitentiary institution is no longer implied by the purpose of punishment.

Therefore, it is of great significance to promote the provision of regular meetings with close relatives. In this regard, the role of the Allocation Committee arises **when allocating the person in a penitentiary institution near to the place of residence of the close relatives** which will create a real opportunity for the close relatives to visit the penitentiary institution regularly, since, in practice, the relatives have difficulties when visiting a penitentiary institution located far away from their place of residence, which impedes the frequency of the visits. [37]

According to the abovementioned, it is necessary to fix elaborated criteria at the legislative level in terms of choosing more expedient one from the penitentiary institutions for carrying the punishment, which will allow the competent body to make an effective decision, as far as possible, satisfying the requirements of the person and ensuring the individualization of carrying the punishment.

Collecting information on the persons and their effective use can contribute to the solution of a number of issues. At that, the mentioned actions should be of regular

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37 Rule 17.1 of the European Prison Rules touches upon the requirement of allocation near to the place of residence of the close relatives, according to which the persons deprived of liberty, as far as possible, should be allocated in a place of detention (...) near to the place of their residence.

nature for the purpose of supervising all the developments in the person. Based on the assessment of the information received, the Allocation Committee can also effectively and fairly discuss the issue of changing the type (regime) of the correctional institution of the person for carrying the punishment in case of the availability of basis defined by the Penitentiary Code.

Thus, according to Article 101 of the Penitentiary Code of RA, the Allocation Committee changes the type of the correctional institution for carrying punishment, taking into consideration the displayed **behavior** of the person convicted for a certain period or life imprisonment, **the expediency of the degree of isolation and the rules of keeping the convicted separated defined by the Code**.

Here, too, the necessity of relevant criteria arises for the Allocation Committee to ensure the legal certainty. **Particularly, it should be clear what circumstances are taken into account when changing the type of the correctional institution (concern with the criminal subculture, discipline, maintaining contact with family members, participation in the educational programs, etc.) and by what criteria the expediency of the degree of isolation is determined**.

As to the issue of allocation already in the prison wards of the penitentiary institution, it should be noted that here the administration of the penitentiary institution is the competent body. According to Point 10 of the Appendix of Decree[38] No 1543-N of August 3, 2006 of the Government of RA, *after the detainee is admitted to the place of detention, and the convicted is admitted to the correctional institution for the purpose of undergoing medical examination and getting acquainted with the conditions of the place of detention or the correctional institution, they are placed in the wards of the quarantine department foreseen for that purpose for a period of up to seven days*. According to Point 15 of the same Appendix, *during the stay of the detainees or the convicted in the quarantine department, they are allocated by cells or lodgings where the detainees or the convicted are transferred after the completion in the quarantine department of the works in accordance with the established procedure. The detainees are allocated by cells and kept separately in the places of detention in accordance with the Law of the Republic of Armenia "On Keeping Arrested and Detained Persons", and the convicted are allocated by cells or lodgings in accordance with the Penitentiary Code of the Republic of Armenia, taking into account also* ***the compatibility, state of health and security of the persons***.

38 Decree No 1543-N of August 3, 2006 of the Government of RA "On Approval of the Internal Regulations of the Places of Detention of the Arrested and the Correctional Institutions of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia".

It is assumed from the mentioned provisions that relevant assessment works should be carried out during the placement in the quarantine department of the persons deprived of liberty, that will be directed to ensuring their compatibility with other persons and the security. W**hen allocating in the cells of the penitentiary institution it is important to take into account the attitude of the person towards the criminal subculture, his aptitude to follow it, his participation, position, role in the criminal world and so on. The assessments on these circumstances will allow, together with other risks, to rise locally the solutions directed against the dissemination of the criminal subculture, which, in its turn, will contribute to the reduction of the general impact of the subculture**.

Summarizing the abovementioned, it is necessary to fix clear criteria at the legislative level, which will allow the competent body to make an effective decision on choosing the penitentiary institution of the person deprived of liberty for carrying punishment, changing the type of the correctional institution, and allocating in the cells.

2.2 Individual Assessment

The implementation of the regular individual assessments of the persons deprived of liberty is of great significance in terms of maintaining general discipline in the penitentiary institution and revealing the persons of high risk. As it has been already mentioned, performing assessments is a necessary condition for carrying punishment when discussing the issue of the penitentiary institution, the type of the correctional institution (regime) and the allocation in the penitentiary institution cell. The assessments also contribute to the elaboration of the persons' correctional plan, the implementation of the necessary social and psychological work with them, and, finally, their reintegration into society.

The manual drawn up by the United Nations Office on Drugs and Crime (UNODC) on the high risk persons deprived of liberty emphasizes that the individual assessment of each person deprived of liberty should be carried out both when admitted to the penitentiary institution as well as throughout the period of carrying punishment. It should include the risks of escape of the person deprived of liberty, their public danger in case of escape, the risks of trespass on general order and discipline in the penitentiary institution, as well as the risks that he presents to the public during the detention in the penitentiary institution (through "partners" being at liberty). The assessment should also reveal the rehabilitation needs of the person deprived of liberty, so that the plan of carrying punishment includes appropriate actions for the resocialization of the person. Finally, the results of health assessment should be taken

into account equally, particularly, connected with the mental health of the person and self-injury or suicide risks.[39]

Thus, for example, according to the French Penitentiary Code, an orientation proceeding is carried out before choosing a penitentiary institution for the convicted. It includes collecting all the necessary information on the person for the purpose of allocating the person. These are the personal qualities of the convicted, the past of the latter, abilities, the state of physical and mental health, the social reintegration possibilities. In the result, a so-called orientation document is drawn up.[40]

The Recommendation[41] (2014)3 of the Council of Europe Committee of Ministers on dangerous criminals also highlights the carrying out the risk assessments of the person. According to Point 27 of the Recommendation, *the assessments should include a detailed analysis of the person's displayed behaviors in the past and the chronological, personal and situational factors that have led and contributed to the manifestation of those behaviors. They should be based on the best reliable information.*

Point 33 of the Recommendation states that *the person's risks which the latter presents inside and outside the penitentiary institution should be clearly disjointed. They should be assessed separately.*

The mentioned assessments aim to prevent committing publicly dangerous actions by the persons and disobedience to the disciplinary rules of the penitentiary institution, to ensure the personal needs of the persons and the safety of others, to predict behavioral developments in the person and to take appropriate steps in that connection. They are also highly important for making the effective correctional individual plan of the person deprived of liberty.

The assessments along with the observable behavior should include a study of other attributes and circumstances, such as, for example:

- ✓ The attitude of the person towards the criminal subculture;
- ✓ The position and influence of the person among the carriers of subculture;
- ✓ Attitude towards violence;
- ✓ Ability to predict the consequences of his actions;
- ✓ Person's attitude towards the victim;

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39 See at «Handbook on the management of high-risk prisoners», UNODC, 2016, https://www.unodc.org/documents/justice-and-prison-reform/HB_on_High_Risk_Prisoners_Ebook_appr.pdf website.

40 See at http://prison.eu.org/spip.php?article74 website.

41 See at https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2014)+3+concerning+dangerous+offenders.pdf website.

✓ The social environment where the person is preparing to return (criminal environment, organized groups);

✓ Emotional state, etc.

At present, the Penitentiary Code of RA does not define provisions on the assessment of the persons deprived of liberty and the application of their results. Some of them have been touched upon, in a way, by the Orders of the Minister of Justice of RA.

Thus, subparagraph 11 of point 26 of the Appendix of Order[42] No 194-N of November 21, 2011 of the Minister of Justice of RA on the assessment of risks defines ***the responsibility*** of the Head of Security Department of the penitentiary institution, together with other subdivisions, ***to take measures directed to the revealing the high risk detainees and convicted***, in order to keep a file on them and strengthen the control. However, the same Order does not envisage what measures should be taken directed to reveal the high risk persons and how the cooperation with different structural subdivisions of the penitentiary institution is being implemented for this purpose.

On the other hand, Order[43] No 279-N of July 13, 2016 of the Minister of Justice of RA contains provisions on the general assessment of the persons deprived of liberty, which regulates the activities of the subdivision carrying out social, psychological and legal works with the persons deprived of liberty in the penitentiary institution.

The abovementioned Order envisages provisions on *the preliminary assessment* of the compatibility conditioned with the psychological and other peculiarities of the person deprived of liberty *as well as assessment carried out on the needs*. **However, the Order does not envisage by what criteria it is necessary to be guided, when assessing[44] the risk, and in general, the positive or negative behavior, and other features of a person**.

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42 Order No. 194-N of November 21, 2011 of the Minister of Justice of RA "On Approval of the Procedure of Activities of the Structural Subdivisions on Ensuring Security of the Penitentiary Service of the Ministry of Justice of the Republic of Armenia".

43 Order No 279-N of July 13, 2016 of the Minister of Justice of RA "On Approval of the Procedure of Activities of the Structural Subdivisions Carrying out Social, Psychological and Legal Works with the Detainees and Convicted, and Revocation of Order No 44-N of May 30, 2008 of the Minister of Justice of the Republic of Armenia".

44 The annul Order No 44-N of May 30, 2008 of the Minister of Justice of RA envisaged criteria for assessing certain circumstances and features (the degree of risk of the convicted, discipline, the results of the implementation of the correction program process, etc.), for example, the contact of the convicted with the external world was highly assessed, if the latter made use of the right of meeting, often had a telephone conversation, and so on.

Appendix 1 of the same Order envisages the concept of negative dispositions. Thus, Point 45 of the Appendix defines that *those detainees and convicted are considered having negative disposition who have behavioral and personal disposition to violate the internal regulations of the institution, do harm to themselves or other persons' lives, health, as well as those convicted who have criminogenic positions*. Point 47 of the same Appendix defines that *the detainees and convicted are registered as having negative disposition, if they have one of the dispositions:* ***escape (1), self-injury (2), alcohol, drug (3), aggression and conflict (4), as well as criminogenic positions (5)***. The grounds for having dispositions are also envisaged in the Appendix, but, for example, in accordance with Subparagraph 5 of Point 47 of the Appendix *the information provided by the security or operational subdivisions serves as the basis for having criminogenic positions disposition*. It is not clear what content this information should contain, and, in general, what is a criminogenic position.

Therefore, taking into account the limited scope of negative dispositions and the lack of clear grounds for their registration, it can be concluded that the tool of negative dispositions is not a sufficient and effective measure of assessment of the risk and positive or negative behavior in the persons deprived of liberty, moreover, from the point of view of the criminal subculture, as it does not reveal a number of circumstances being of significance.

It is obvious from the abovementioned that the penitentiary legislation needs serious amendments for the purpose of a better management of the penitentiary system and solution of the problems raised before the penitentiary service. In the combat against the criminal subculture and its dissemination, it is of great importance to collect information on its carriers and all those persons who perform active and passive actions in that direction, carry out periodic assessments of their behavior, in the result of which there will appear an opportunity to take adequate measures on time. The assessment and its results, as already mentioned, will also contribute to the revelation of the needs of the persons deprived of liberty, the performance of the necessary programs with them, preparation for their release and reintegration into society.

Consequently, it is necessary to introduce in the penitentiary legislation a firm mechanism for the permanent assessment of the risk of persons deprived of liberty and their displayed behavior based on respective clear criteria.

2.3 Incentives and Penalties

An important tool for maintaining discipline in the penitentiary institution is the mechanism of incentives and penalties, which allows for encouraging the persons

deprived of liberty for displaying a positive behavior, to refrain them from disciplinary violations, and to bring to responsibility those who committed misconduct.

It is of great importance that the system of incentives and penalties allows to respond to the challenges originating from the criminal subculture and its carriers.

The effective application of the incentives is of great importance for the persons deprived of liberty from the point of view of refraining them from the subculture influence.

Thus, the study on the criminal subculture in the penitentiary institutions of the Republic of Moldova states that not all the persons deprived of liberty accept the criminal subculture in the penitentiary institutions, and some actively protest against the non-formal leadership within the subculture. As a the result of the study, it was suggested to support those persons deprived of liberty who "reject" the criminal subculture and collaborate voluntarily with the administration of the penitentiary institution. [45]

In this regard, "the rejection" of the criminal subculture means not only disobedience to the persons leading it and the specific rules of conduct that are recognized within the frames of the subculture, but also refraining from committing any offence, manifestation of a law-abiding behavior, cooperation with the administration of the institution.

We think that encouraging such a behavior is a necessary condition for reducing the impact of the subculture. Moreover, incentives should generate real favorable consequences for the person, which should be enshrined by the legislation. This implies two issues of regulation. First, the person should be aware for which of his manifested actions and inactivity he will receive incentives, that is, certainty should be ensured and the application of the incentive measure should not depend on the broad discretion of the competent body. And secondly, the received incentives should bring a favorable result for him, that is, he will be provided an additional opportunity (telephone call, meetings) and the applied incentive measure should be a circumstance of great importance when changing the type (regime) of the correctional institution to a milder degree of isolation for serving sentence and discussing the issue of provisional release.

The issue of application of penalties should be regulated by the same logic. That is, it should be clear for the persons kept in the penitentiary institution that the connection with the criminal subculture, performing forbidden activities (such as gambling or participating in it) within its frames, will have unfavorable consequences for them, which will impede them in the matters of their provisional release from serving

45 See at «Baseline study into Criminal Subculture in Prisons in the Republic of Moldova», 2018, https://rm.coe.int/criminal-subculture-md-en-/1680796111 website, p.p. 44-45.

sentence and transfer to a milder degree of isolation correctional institution. Moreover, the person may be transferred to a disciplinary cell and the type of the correctional institution may be changed to a heavier degree of isolation. Thus, the penalties will play their preventive role and the actions of the criminal subculture representatives who committed a wrongdoing will receive an adequate legal appraisal.

When touching upon the penalties, it is important to mention also the practice of their application. At present, the penitentiary institution administration has a broad discretion envisaged by Part 1 of Article 95 of the Penitentiary Code of RA in choosing the penalty measures (reprimand, severe reprimand, transfer to disciplinary cell), as well as in the determination of the period of transfer to the disciplinary cell (up to fifteen days, and in case of juveniles up to ten days). Taking into account the non-unified practice of application of penalties and the possibility of corruption risks under conditions of such discretion, we think, that it is necessary to define guiding criteria for choosing and applying penalties. It is aimed at ensuring that it should be clear for the criminal subculture representatives and other persons deprived of liberty that their committed wrongdoings within the frames of subculture will receive an appraisal and will entail respective unfavorable consequences which will not depend on the discretion of the administration of the penitentiary institution.

The aim of this mechanism of incentives and penalties is to possibly motivate the person deprived of liberty to display positive behavior and refrain from any relation with the criminal subculture.

Taking into account the abovementioned, it is necessary to fix by legislation clear criteria for the application of incentives and penalties, ensuring a legal distinctness.

2.4 Contact with Outside World

The close ties with the family directly affect the well-being of the persons deprived of liberty, the desire to return to the family, and the manifestation of a law-abiding behavior which, in its turn, refrains them from committing wrongdoings and the influence of the criminal subculture. This is of a great significance in terms of resocializing of the person and preventing him from returning to his criminal activities after serving his sentence.

The most important components of the contact with the outside world are the meetings, telephone calls and correspondence.

When touching upon the legislative problems, it should be noted that in accordance with Part 2 of Article 92 of the Penitentiary Code, the convicted are granted a meeting with close relatives at least one short meeting within a month with the duration of up to

four hours and at least one longtime meeting within 2 months with the duration of up to three days.

However, the Law of RA "On Keeping Arrested and Detained Persons" does not envisage an opportunity of a longtime meeting for detainees. According to Paragraph 12 of Article 15 of the mentioned law, *the detained person is granted a meeting with close relatives, mass media representatives or other persons at least two meetings within a month with a duration of up to three hours*.

The problem has been recorded by the Human Rights Defender, and a legislative draft has been worked out to solve this as well as other issues.[46]

In reference to the minimum number of meetings prescribed by law, it should be noted that, for example, the detainees in **France** are allowed three meetings per week, and the convicted at least one meeting per week.[47] Longtime meetings with family members are granted in a progressive way, the first meeting is for 6 hours, the following meetings - for 24, 48 and 72 hours. The meetings are foreseen in furnished units, reminding 2-3 room apartments, sometimes with a park.

With regard to telephone calls it should be noted that according to Decree No 1543-N of August 3, 2006 of the Government of RA, detainees and convicted are prohibited to have any type of telecommunication means, including mobile phones, which is the basis for applying disciplinary penalties.

In this regard, in 2018, **France** plans to ensure landline telephony in the cells with the possibility to call 4 preselected phone numbers. According to the data, in 2016, the illegal circulation of mobile phones has reduced by 31% in the result of the pilot program, the degree of tension has decreased.[48] The application of such a system is also foreseen in **England and Wales**. The convicted are to pay for the calls, the calls will be made to the phone numbers presented in advance and approved by the Ministry of Justice and they will be recorded.[49] Simultaneously, the government of **Great Britain** is discussing mechanisms to block out the mobile phones signals, including installing

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46 See at http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf website, p.p. 76-77.

47 See L. Kazemian and C. Anderson "The French Prison System: Comparative insights for Policy and Practice in New York and U.S." https://jjrec.files.wordpress.com/2014/04/rec20121.pdf website.

48 See Article at "French prisons to have landline phones installed in cells" at https://www.theguardian.com/world/2018/jan/02/france-plans-to-put-phones-in-prison-cells website.

49 See Article "UK prison inmates to be given phones in their cells" at https://www.independent.co.uk/news/uk/home-news/uk-prison-phones-cells-reforms-england-wales-justice-secretary-david-guake-a8439811.html website.

mufflers and allowing the mobile operators to interrupt the illegal use[50] of mobile phones.

Taking into account both the domestic, as well as the international law and the importance of maintaining contact with the outside world for the persons deprived of liberty and its positive influence, it should be always in the center of attention of the penitentiary service. Apart from the practical steps, it is also necessary to carry out reforms at the legislative level, which will be directed to the strengthening of contact with the outside world.

Thus, we suggest reforming the existing legislation guaranteeing that contact with the outside world is encouraged, the minimal permissible number of meetings is increased, and the restrictions are justified and fair and proceed from the requirements ensuring security. At the same time, we suggest discussing the introduction of mechanism of admission of mobile phones in the penitentiary institutions with respective control and restrictions.

2.5 Early Release on Parole

At the time of deprivation of liberty and during the whole period of serving sentence, the request of the person remains to be released as soon as possible and return to society. This wish of a person and his expectations in this regard may be a very significant factor for the manifestation of positive behavior. From this point of view, the importance of the mechanism of early release on parole should be emphasized, the real possibility of which can be a great impetus in terms of correction of the convicted.

The principle of humanism lies in the basis of this mechanism. It empowers the persons deprived of liberty with a second opportunity to prove that keeping them in bonds no longer proceeds from the purpose of punishment and they are ready to reintegrate into society.

The effectiveness of mechanism of the early release on parole is related to the creation of real expectations among persons to be released, their motivation and reeducation. One of the goals of the effective mechanism is that the convicted should realize the value of his behavior when carrying punishment, show discipline and long for doing all the necessary actions for early release from serving sentence. This also includes in itself the fact that the person should refrain from any connection with the criminal subculture. Therefore, the system of early release on parole is of great

50 See at "Prisons (Interference with Wireless Telegraphy) Bill" https://hansard.parliament.uk/commons/2018-07-06/debates/4C169D4D-2EB6-4E79-B2FA-F55B2C56D759/Prisons(InterferenceWithWirelessTelegraphy)Bill website.

importance in the combat against the dissemination of the criminal subculture influence.

In this regard, the task of the penitentiary legislation is to ensure an effective and operating mechanism of early release on parole from serving sentence, which will be directed to the implementation of its goals.

In recent years, in the Republic of Armenia the system of early release on parole from serving sentence underwent a number of changes. Thus, from the point of view of the competent bodies, a transition from a three-tier system of the penitentiary institution administration-independent commission[51]-court was made to a two-tier system of an independent commission-court. Nevertheless, in practice, this model continued to work with shortcomings which negatively affected the protection[52] of the rights of the persons deprived of liberty.

In 2018, the system of early release on parole from serving sentence was again subjected to major changes, in particular, it is envisaged that the penitentiary and probation services should make positive or negative reports on the convicted, based on which the administration of the penitentiary institution should make a decision on whether to take the person to court or not to take. However, there are a number of shortcomings in the new regulations, too.

1) According to Part 4 of Article 115 of the Penitentiary Code of RA, *the Penitentiary Service and the Probation Service after the receipt of the official notification, within 80 days, should make and submit reports on the circumstances envisaged by Parts 1.1. and 1.2 of Article 76 of the Criminal Code of the Republic of Armenia*. According to Parts 5-8 of the same Article, the reports may be either positive or negative. That is to say, in the reports the Penitentiary Service and Probation Service will fix a final conclusion on the person, which is a mandatory condition for consideration of the question of taking to court the issue of early release on parole from serving sentence.

Part 1.1 of Article 76 of the Criminal Code of RA defines the following circumstances which are taken into account when assessing the proper conduct of the convicted:

1) the availability of the incentive during serving sentence;

2) the availability of a disciplinary penalty during serving sentence;

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51 An independent commission on the issues of early release on parole from serving sentence or changing the unserved part of punishment with a milder type of punishment.

52 The Human Rights Defender as the National Preventive Mechanism has touched upon the issues of the two-tier system of early release on parole from serving sentence in the annual report on 2017 activities.
See article at
http://www.ombuds.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf website, p.p. 128-139.

3) participation in educational programs, sports or cultural events, or self-employed unions of the convicted, if such a possibility was available, during serving sentence;

4) working for at least three months during serving sentence, if the possibility of work was available, or if not working was conditioned with the health problems of the convicted;

5) other circumstances assessing the proper behavior of the convicted.

And Part 1.2. of Article 76 of the Criminal Code of RA defines circumstances taken into account when assessing the probability of committing a new offence by the convicted. They are:

1) the age of the convicted, the age of the convicted at the time of the crime committed;

2) nature of the crime and public danger;

3) the availability of recurrence;

4) attitude towards his committed offence;

5) assumption of a written obligation on having compensated or otherwise smoothed over the damage caused by the crime or to compensate the damage or otherwise to smooth over;

6) his attitude towards the criminal subculture;

7) certain dispositions, possible dependencies, preferences;

8) participation in resocialization, including personal development activities,

9) the contact with the family or the outside world, or the availability of persons under the care;

10) the social environment;

11) health, including the state of mental health, being on compulsory treatment and the result of the compulsory treatment;

12) other circumstances assessing the probability of committing a new offence by the convicted.

It turns out that the Penitentiary Service and the Probation Service have to submit reports on each of the above 17 circumstances, mentioning the final conclusion.

However, the legislation does not fix how the Penitentiary Service and the Probation Service will draw the conclusion considering the abovementioned circumstances, which circumstances will be given precedence when assessing, how the information will be combined and so on. In the result, the report making bodies are given a wide discretion, which, in its turn, creates an opportunity for the formation of corruption risks and non-unified practice. And, in case of lack of such criteria it is unpredictable for the persons deprived of liberty what conclusions should be expected from the relevant bodies, and, in general, what behavior should be displayed for early release on parole from serving sentence.

In this connection, it should be also mentioned that Point 5 of Recommendation[53] No (2003) 22 of the Council of Europe Committee of Ministers defines that *from the beginning of serving sentence the convicted should be aware of (...) whether what criteria should be applied when discussing the issue of his conditional release*. In accordance with Point 18 of the same Recommendation, *the criteria which the convicted is to satisfy for early release on parole should be clear and explicit*.

The Penitentiary Code does not envisage the mandatory requirement of the Penitentiary Service and Probation Service reports to be **substantiated**, which is also extremely problematic. This problem was also actual in the period of acting[54] of the former mechanism of early release on parole from serving sentence.

Therefore, it is necessary to define clear criteria by legislation, based on which the competent state bodies should make reports on the conditional release of persons from serving sentence, carry out collection of data, assess them and present a substantiated conclusion.

2) Another problem of the current legislation is the regulation defined by Part 8 of Article 115 of the Penitentiary Code of RA, according to which, if the reports of the Penitentiary Service and the Probation Service are negative, ***then the administration of the penitentiary institution executing punishment*** *within three working days after the expiration of the term of punishment prescribed by law with respect to the convicted* ***makes a decision on non-submission to court of the question*** *of early release on parole of* ***the convicted*** *from serving sentence or replacement of the unserved part of punishment by a milder type of punishment. (...)* ***The decision may be appealed*** *to the court of General Jurisdiction of the First Instance within ten days after the receipt of the decision*.

It turns out that by the mentioned formulation, the reports of probation and penitentiary services have a decisive significance for the early release on parole of the person from serving sentence, which is extremely problematic. The abovementioned provision defines the possibility of appealing of the decision of the administration of the institution executing punishment, but it is not clear what the court should make the object of discussion, whereas, the decision of the penitentiary administration on non-submission to the court the issue of early release on parole from serving sentence has

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53 See at https://rm.coe.int/16800ccb5d website.

54 The Human Rights Defender as the National Preventive Mechanism has touched upon the issue in the annual report on 2017 activities.
See Article at
http://www.ombuds.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf p.p. 128-139.

been made in accordance with the Penitentiary Code of RA, in case of two negative reports. That is, the abovementioned provision, in essence, defines an opportunity of appeal of a legal decision.

In this regard, it should be noted that, from the point of view of the rights of the person and the mechanism of early release on parole from serving sentence, the reports for early release on parole from serving sentence should not have a decisive significance, but should be advisory documents for the court when considering the issue of early release on parole of the person from serving sentence. It is also important to emphasize that, in 2017, **213 out of 909 cases** submitted to court on early release on parole from serving sentence have been satisfied[55] in case of **negative** conclusions of independent committees on early release on parole from serving sentence.

Consequently, proceeding from the discussed objectives of the mechanism of the early release on parole from serving sentence, there should be envisaged regulations in the Penitentiary Code of RA related to the submission of the issue of the early release on parole of the convicted from serving sentence to the court, regardless of the availability of the negative reports issued by the competent bodies.

3) The next issue raised related to the mechanism of early release on parole from serving sentence concerns the time limit of the resubmission for early release on parole. Thus, in accordance with Part 12 of Article 115 of the Penitentiary Code of RA, *in case of making a decision not to submit to court the issue of early release of the person on the ground of* ***one positive and one negative report and not giving his consent****, the convicted can again make an application on early release of parole from serving sentence,* ***after three months***. In accordance with Part 13 of the same Article, *in case of the court decision on refusal of early release on parole, the convicted may apply again for early release in* ***six months after the final judicial act enters into force***.

It turns out that in case of the court decision on refusal, in connection with the application of the person to court there will occur unfavorable consequence related to the reapplication, namely, the person will be able to reapply only in six months after the final judicial act enters into force , and in the case of non-appeal of the decision in court, the person has the opportunity to raise again the issue of early release on parole within three months after the decision of the administration of the institution executing the sentence on non-submission of the issue to the court. At that, the six-month period

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55 See at http://pashtpan.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfcd92a8.pdf website, page 130.

begins after the final judicial act enters into legal force and, if the person appeals the decision in the higher authorities, the time limit of reapplication for the early release from serving sentence or the replacement of the unserved part of the sentence with a milder type of sentence may be prolonged for an indefinite period of time for the person. **These regulations create indirect obstacles for the appeal of the decision of the administration executing punishment by the person, as well as the court decision**.

4) Article 77 of the Criminal Code of RA defines the institute of replacement of the unserved part of the sentence with a milder type of punishment, according to which *the court can replace the unserved part of the sentence with a milder type of punishment for the person convicted for non-grave or medium gravity crime (...)*.

It should be noted that the early release on parole from serving sentence and the replacement of the unserved part of the sentence with a milder type of punishment are essentially different institutions, but separate procedures are not envisaged for them by the acting legal regulations, and, in fact, they are discussed together.

The lack of clear and definite regulations can cause problems during the practical application of the discussed institutions. **Therefore, it is necessary to envisage appropriate solutions which will, in practice, ensure the separate discussion not only of the issue of early release on parole but also the issue of the replacement of the unserved part of the sentence with a milder punishment**.

Summarizing the issues of legislative regulation in relation to the early release on parole, it should be noted that, in this connection it is necessary to:

- ✓ **Fix clear criteria by legislation on the basis of which the competent state bodies should make reports on the conditional release of persons from serving sentence, carry out data collection, assess them and present a substantiated conclusion;**
- ✓ **Not to connect the submission to court of the issue of early release on parole of the convicted from serving sentence with the negative reports given by the competent bodies;**
- ✓ **Envisage a proper mechanism for appealing the decisions on early release on parole from serving sentence, excluding occurrence of unfavorable consequences for the person in connection with the appeal;**
- ✓ **Elaborate independent mechanisms for the discussion of the issues of early release on parole from serving sentence and replacement of the unserved part of the sentence with a milder type of punishment**.

SUMMARY

The rooted and the multifarious nature of the criminal subculture requires the state to adopt a special and comprehensive policy towards it. It should be implemented taking into account the roots of the subculture, the ways of its influence dissemination and the perspectives.

The dissemination of influence of the subculture and its ruling role in the penitentiary system give warning of imperfections both of the penitentiary system and the legislative field, so the actions in the combat against the influence of subcultural should be carried out both at the practical as well as the legislative level, in appropriate conjunction, as it has already been mentioned in this concept.

Ensuring the rights of each person deprived of liberty and promoting his reintegration into society are the initial principles in the combat against the criminal subculture, for which the penitentiary system should ensure adequate conditions, have a well-trained and sufficient staff, which, in its turn, requires the provision of appropriate social guarantees and working conditions. At the same time, the penitentiary legislation should be directed to the practical implementation of its objectives and the settlement of the raised requirements, creating a predictable understanding for the person deprived of liberty in the implementation of his rights and obligations.

At the same time, it should be emphasized that the criminal subculture extends beyond the penitentiary institutions, it expands in a wider circles of society, so it should also be reflected in the policy of the state in the combat against crime, ensuring application of effective measures.