

CRIMINAL POLICY HUMANIZATION AND FURTHER LEGISLATIVE DEVELOPMENT IN THE KYRGYZ REPUBLIC

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ABBREVIATIONS

CC	Criminal Code
CPC	Criminal Procedure Code
EU	European Union
KR	The Kyrgyz Republic
MoJ	Ministry of Justice
NPM	National Preventive Mechanism
PC	Penal Code
SPS	State Penal Service
UN	The United Nations
UNODC	United Nations Office on Drugs and Crime

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INTRODUCTION

INTRODUCTION

Since December 2009, the UNODC Programme Office in Kyrgyzstan has been implementing a Prison Reform Project in Kyrgyzstan which aims at providing assistance in strengthening the rule of law through further humanization of the criminal justice system.

This project consists of several components, including the following:

- (a) legislative improvements aimed at criminal policy humanization;
- (b) formulating further development strategy in relation to the penal system;
- (c) strengthening managerial skills of those working in penitentiary facilities through conducting a series of training workshops, developing new curricula and supporting the Training Centre of the SPS;
- (d) developing pilot projects on generating additional sources of income and promoting social reintegration of prisoners;
- (e) improving sanitary and hygienic conditions in some facilities by renovating water and heating supply systems, sewage systems, etc in order to ensure a safer environment for protecting the lives and work of prisoners and staff members, and to prevent the spread of diseases.

As part of the first component, the UNODC Programme Office arranged an expert mission engaged in legislation assessment, also aimed at determining necessary steps toward further humanization of the criminal policy in the country. From 29 July through 5 August 2010, the experts held a number of meetings with representatives of the Interim Government, President's Administration, independent national experts, political actors and civil society activists. The experts also took part in a seminar¹ on discussing draft legislation meant to further develop an independent judiciary. They analyzed the applicable legislation and draft legislation directed at further improvements in this area.

The results of the mission are reflected in this analytical review whose main purpose is to develop conceptual proposals on further legislative improvements in the area of criminal justice in compliance with international human rights standards.

This project is implemented by the UNODC Programme Office in Kyrgyzstan and funded by the EU.

¹ Bringing Legislation in Line with the New Constitution (Development, Amendments, Expert Examination), organized by the MoJ of the KR and UNDP Project on Parliamentary and Constitutional Reform, and funded by the EU (Issyk-Kul, 1-8 August 2010).

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BACKGROUND

BACKGROUND

After the April 2010 events a new Constitution of the Kyrgyz Republic (hereinafter the Constitution) was adopted and endorsed by the public at the referendum which was held on 27 June 2010. This resulted in the need to revise the legislation drastically in order to further improve the work of public offices, to ensure human rights and liberties, and to develop democratic institutions.

Given the present conditions, the existing regulatory and legal frameworks become instable as the political situation in the country remains tense, while the constitutional provisions and laws need to be harmonized.

In this regard, on 12 July 2010 the Deputy Chairperson of the Interim Government signed an Executive Order (hereinafter the Executive Order) on establishing a working group to prepare for practical implementation of the new Constitution and bringing the applicable legislation in line with its provisions (Appendix 1).

Afterwards, a list of primary draft laws was compiled which should be either revised or developed within the framework of implementing the new Constitution (Appendix 2). Furthermore, a number of meetings were held with senior officials of the MoJ of the KR, representatives of international organizations accredited in the Kyrgyz Republic and civil society institutions on providing technical, expert and other assistance to the above working group.

As part of executing the Executive Order, on 30 June 2010 the Deputy Chairperson of the Interim Government and acting Minister of Justice held a joint meeting with representatives of international organizations on coordinating the issue of legislation reform. During the meeting, willingness was expressed to continue cooperation, and agreements were reached as to the procedure and types of such cooperation. Notably, in the course of these events the highest-level officials in the country reaffirmed the need to conduct a comprehensive legal reform, referring to it as a mandatory requirement for the sustainable and positive development of the country. All further project activities were conducted in light of the above-mentioned circumstances.

3**STRUCTURE OF
ANALYTICAL
REVIEW**

3. STRUCTURE OF ANALYTICAL REVIEW

Reducing repressive trends in criminal justice, abandoning entirely inquisitional practices of settling criminal conflicts that have already exhausted themselves, and developing institutions promoting human rights and a just social order are possible only in case of a comprehensive scientific approach to this issue. In the course of the mission whose purpose was to assess the measures required for legislative improvement in the Kyrgyz Republic, it transpired that the actual and appropriate change of the criminal policy in favour of greater respect for human rights and freedoms is unlikely to be achieved only through reforming the legislation directly regulating substantive, procedural and penal issues of applying criminal sanctions. Recognizing certain issues remaining outside the legal regulation, such as a lack of proper infrastructure, insufficient funding, difficulties in personnel training, staff turnover, political instability, etc, the experts believe, within their mission, that legislative development should take place not only in the area of criminal relations in the narrow sense, but in a much broader context.

In the present analysis, the main forms of criminal policy humanization in the Kyrgyz Republic are considered in the following order:

1. General conditions for regulatory and legal improvement of the legislation which imply a fundamental revision of the legal base required for democratization and liberalization of the law application regime in the country.
2. Special institutions requiring legal improvement remain within the realm of criminal legislation and may lead to the reduction of cases when individuals are deprived of their freedom (or it is restricted), because they serve as alternatives to the latter.
3. Special measures of regulatory and legal improvement designed to humanize the execution of deprivation (restriction) of freedom when the latter is impossible to avoid².

The experts are cognizant of the fact that all aspects of the judicial reform relating to criminal policy humanization in the Kyrgyz Republic are impossible to assess in one report as a result of the mission, as the

² It is also worth mentioning that the CC, CPC and PC of the KR regulate all proceedings against those who have come of age and those who are treated as minors. There is no separate legislation concerning this area of legal relations, nor is there any special branch of the judicial and law enforcement system for minors (juvenile justice). Therefore, the tenuous peculiarities concerning minors that exist in the legislation of the Kyrgyz Republic will be considered in this paper within the relevant sections. However, in general terms, such insignificant and insufficient differentiation regarding the legislation on minors as compared to the rest of the legislation should be highlighted as a grave issue of criminal justice in the Kyrgyz Republic. This approach, no doubt, makes any criminal policy humanization concerning such a vulnerable group as minors difficult.

number of issues that need to be settled is so broad that a more in-depth and fundamental research study would be required. All ideas set forth in this analysis present a list of recommendations formulated in the course of studying the applicable law and its revision trends that came into being as a result of dramatic changes in the Kyrgyz society. The experts also realize that some of these recommendations may be disputable. They invite all those interested to participate in discussing these recommendations and stand ready to consider all opinions in this regard.

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**GENERAL CONDITIONS
FOR CRIMINAL POLICY
HUMANIZATION**

4. GENERAL CONDITIONS FOR CRIMINAL POLICY HUMANIZATION

4.1. Importance of measures to ensure judicial independence

As criminal justice administration is the exceptional prerogative of the judiciary, while making decisions on applying pretrial restrictions (also referred to as “measures of restraint” – Translator’s note) not related to custody, alternative criminal punishment not resulting in deprivation of freedom, etc fall within the competences of courts, legislation on the judicial system and status of judges becomes of paramount importance as a general institutional factor affecting the humanization of the criminal policy.

According to many national experts, Kyrgyz judges are not ready yet to employ even those alternative mechanisms that emerged in the CC and CPC of the KR in the course of post-Soviet reforms, most notably after 2000. Such unpreparedness can be partially explained by the fact that for years the judiciary in the Kyrgyz Republic has not been enjoying the necessary degree of independence, and at the present time it is in the process of its institutional development.

In the course of the meetings as part of the mission, the experts developed an impression that many representatives of the Kyrgyz political elite understand perfectly that there is no other way but to create a full-fledged independent judiciary. The dramatic events of April 2010, as it seems now, made them believe even more strongly that appropriate measures should be taken as speedily as possible, and in particular, at the legislative level.

At the same time, it should be noted that after the new Constitution was adopted at the national referendum on 27 June 2010 reflecting an aspiration for an independent judiciary, efforts started to be made to bring the legislation in line with the Constitution. This work is directly related to the legislation on the judicial system. For instance, efforts are being made presently to develop a draft Law of the Kyrgyz Republic “On the Status of Judges in the Kyrgyz Republic,” Law “On the Supreme Court of the Kyrgyz Republic and local courts,” “On the Judicial Selection Council,” “On Judicial Self-Governance Bodies” and “On Constitutional Judicial Proceedings.”

Within their mission, the experts took part in the meetings of the working groups developing the above-mentioned draft laws and expressed some ideas as to reforming the judicial system taking into account international standards.

When the judicial legislation is amended, we believe it is important to focus exceptionally on the independence of the judiciary, and to provide for effective checks and balances protecting judges against any pressure coming from the executive authorities or any

other political entity. At the same time, it is important to strengthen an open and fair procedure for selecting and hiring judges in the legislation, allowing the worthiest citizens of the country to mete out justice. In addition, the idea of developing separate institutions with public involvement in justice administration is much welcome, and particularly jury trials. Supposedly, jury trials should enjoy a broad enough jurisdiction in order to guarantee every single person who is accused of committing a grave offense the right to be tried by a “court of peers.” We deem it beneficial to develop and to strengthen judicial control over the restriction of civil rights and liberties.

All these measures will help interconnect the judicial system and civil society, which is in fact one of the incentives for humanizing law application practices. Free and independent courts drawing their powers from public support will never go above and beyond reasonable frameworks of criminal repression and will always remember about the precedence of human rights over other values.

Recommendation:

To continue with the regular efforts on establishing an independent judiciary in the Kyrgyz Republic based on justice, openness and public representation.

4.2. Improvement of the criminal procedure system

Criminal policy humanization will be hardly achievable unless an effective criminal procedure system is established in the course of the reform that would be compliant with contemporary standards. Otherwise, many mechanisms meant to liberalize criminal law application (alternatives to criminal prosecution, alternative pretrial restrictions, alternative sanctions) will be impossible to fit properly in the criminal justice structure, as they will be some sort of a “foreign matter” there. The criminal procedure system should be efficient, stable and well balance as to incorporate successfully all those measures that are designed specifically to humanize the criminal policy.

In this context, creating an effective criminal justice mechanism and criminal policy humanization should not be viewed as “parallel” tasks, but rather as absolutely intertwined ones. In other words, an effective and fair criminal procedure is an integral part of such humanization.

What seems of primary importance is the Kyrgyz criminal procedure system gaining functional logic which was largely lost during the Soviet and post-Soviet eras. An essential task is to separate three fundamental functions, namely the police, prosecutorial and judicial functions. This is particularly important for the pretrial stages of criminal proceedings. As can be drawn from analyzing the applicable CPC of the KR, at the present time these functions remain fairly mixed up. This does not allow, for instance, incorporating appropriately various forms of police alternatives to criminal prosecution in the criminal procedure mechanism. It is as difficult to solve properly the issue of an entity deciding upon the application of alternative pretrial restrictions, to organize at the administrative level the subordination of services controlling the execution of alternative pretrial restrictions and alternatives to criminal prosecution, etc.³ Humanization is not possible without the effective restriction of police powers by judicial procedures. We deem it worthwhile to envision one single set of procedural guarantees protecting human rights during all activities by inquiry or investigation agencies (open, secret, investigative or related to special investigation means) resulting in the infringement of fundamental rights and freedoms. For this purpose, judicial control over legal restrictions during criminal proceedings should be further developed. According to the new Constitution, an interference with privacy is allowed only based on a judicial act, and therefore, the forms of such an interference should be clearly laid down in the law and set within the framework of a reasonable and understandable criminal procedure.

It is important to develop the Habeas Corpus principle⁴ which is set forth in Article 24 of the Constitution. According to General Comment 8 of the UN Human Rights Committee (Article 9 – right to freedom and security of person), such an important guarantee as judicial determination of whether or not a person was detained based on legal grounds applies to all individuals deprived of their freedom as a result of an arrest or being taken into custody.⁵ The Habeas

³ For more details see L. Golovko, Prospects for Reforming the Bodies Ensuring Security and Fighting against Crime in the Republic of Kazakhstan, Legal Policy Research Center (LPRC), 2009, http://www.lprc.kz/ru/index.php?option=com_content&task=view&id=127

⁴ Habeas Corpus (Latin, “that you have the body [the subject person under detention]”) is a form of judicial control over the respect for human rights when a person is detained, guaranteeing everyone who is deprived of their freedom the right to appear before a court of law for the latter to verify the legality of, and justification for, depriving someone of their personal freedom and to decide upon pretrial restrictions only after this procedure.

⁵ In its decision upon the case Antti Vuolanne vs. Finland, the UN Committee noted that when a decision to deprive someone of their freedom is made by an administrative body or authority, there is no doubt that para. 4, Article 9 of the International Covenant on Civil and Political Rights obliges its parties to provide a person who in detention with the right to apply to court. See Com-

Corpus guarantee should be applied equally in all cases when a person is deprived of their freedom without any exceptions, and not only within criminal or administrative proceedings, but also when a person is deprived of their freedom within military, educational or medical procedures. In this case, judges should have the right to assess not only the legality of such detention, but also the grounds for suspecting this person of committing an offense, and to have a possibility to use a wider range of measures to coerce the accused to demonstrate proper conduct.

Due protection of human rights, reduction of the prison population and alternatives to criminal prosecution and punishment are not possible without effective and professional representatives of the legal profession. Apart from improving the legal status of defense lawyers in the Kyrgyz Republic and organizational forms of the corporate defense lawyers' community, it would be required to expand and to clarify the competences of a defense counsel in criminal proceedings by making more specific the procedure of collecting and presenting evidence by a lawyer, guarantees of his/her activities and the major standards of professional ethics.

Criminal proceedings based on the international fair trial principle and set within the framework of an effective and efficient procedure act as a reliable safeguard of humane treatment concerning those who found themselves in the area of criminal relations. The justice system taking into account the specific legal status of every single participant and preserving a reasonable balance between individual and public interests often demonstrates greater leniency toward those who erred and better protects those who suffered as a result of a misdeed.

Recommendation:

To start working on a fundamentally new CPC of the KR that would obliterate the above-mentioned distinctive flaws of a transition criminal procedure characteristic of the post-Soviet epoch, being fully compliant with international standards in the area of fair trial and taking into account the contemporary achievements of the legal science.

4.3. Overcoming corruption through legislative improvements

A war on corruption is a separate issue going, *prima facie*, far beyond the criminal policy humanization strategy. However, if we

take a closer look at these two issues they will seem inextricably intertwined. Rampant corruption that has now permeated the Kyrgyz society creates an environment of total mistrust toward judicial and law enforcement institutions. Corruption largely disallows the use of alternative mechanisms, lenient criminal sanctions, etc. As is well known, the use of the latter is contingent on the discretionary view of a judge and other public officials involved in criminal proceedings. However, it is corruption that breeds absolute public distrust toward such a discretionary view perceived as one of the possibilities for abuse of power. We cannot state for sure in this review to what extent this lack of trust is fair or not fair. What seems important is that many judges prefer to impose the strictest punishment possible, avoiding diligently any other alternative mechanisms or means to extenuate sanctions envisioned in criminal and criminal procedure legislation for fear of corruption accusations. As a result, the “corruption factor” plays a key role in the issue of criminal policy humanization, which was repeatedly stressed by the national experts questioned by the authors.

Apart from tarnishing the reputation of public officials, corruption deprives citizens with low incomes of their right to fair trial. When police powers are not properly restrained, there is more likelihood that a person having no money to buy themselves off those prosecuting them can fall victim to arbitrariness and lawlessness.

Evidently, just a technical expansion of special institutional means aimed at criminal policy humanization will not be effective enough in an environment of widespread corruption and/or widespread suspicions of corruption. As a result, any legislative measures (organizational, social, economic, etc) meant to combat corruption and to increase the prestige of judges and law enforcement agencies have a direct impact on the prospects of criminal policy humanization. Non-corrupt public officials are more strongly committed to less strictness in law application. As they work in an environment of mutual trust, they should not prove their uncompromising stand by demonstrating excessive cruelty toward offenders.

Recommendation:

To continue the development of anti-corruption legislation as a mandatory condition for criminal policy humanization.

5

**SPECIAL INSTITUTIONS
TO CREATE ALTERNATIVES
TO DEPRIVATION
(RESTRICTION)
OF FREEDOM**

5. SPECIAL INSTITUTIONS TO CREATE ALTERNATIVES TO DEPRIVATION (RESTRICTION) OF FREEDOM

5.1. Alternatives to criminal prosecution

Bodies dealing with criminal proceedings demonstrate humanism in their work when they have legal mechanisms enabling them to apply, based on an individual approach, more lenient forms of responsibility toward those who deserve it or to solve a particular criminal conflict in some other way without any undue cruelty to offenders. Alternatives to criminal prosecution are one such mechanism. One of the main directions regarding criminal policy humanization is developing further such alternatives to criminal prosecution.

5.1.1. Procedural aspect

The applicable CPC of the KR provides for a number of institutions which can be classified as alternatives to criminal prosecution (Article 29). We refer to the possibility of terminating a criminal case due to the changing situation and due to a conciliation agreement between the accused and the victim. In the latter case, the law also mentions a possibility of using a “conciliation procedure through a mediator,” that is, criminal mediation. These provisions of the CPC of the KR are, in turn, a mirror reflection of the corresponding norms in the CC of the KR (Articles 65, 66), among which a relief from criminal liability resulting from release on bail has been restored recently (Article 66-1 of the CC of the KR). We should mention separately a special alternative to criminal prosecution in reference to minors (Article 401 of the CPC of the KR) which is a relief from criminal liability as a result of applying one of the educational measures envisioned in Article 83 the CC of the KR.

If we are guided by international standards, then Kyrgyzstan’s regulatory list of alternatives to criminal prosecution seems fairly scarce, even we disregard the extent to which they are actually applied. Needless to say, it needs to be further developed. New alternatives to criminal prosecution should egress that would be well known in legal comparative terms. These could be voluntary works in the interests of the public or voluntary treatment of drug or alcohol addiction (if criminal actions are related to these conditions). There can also be a warning about the inadmissibility of violating the law which can be taken into account when a repeated offense is committed, voluntary employment, etc. The purpose of this analysis is not to formulate specific legislative norms aimed at incorporating concrete alternatives to criminal prosecution in the national legislation. What seems important is that such measures should be developed taking into account, of course, specific conditions in the country. They

should also be developed in a way that would ensure maximum individualization of decision-making regarding criminal prosecution (or refusal thereof).

Furthermore, the above-mentioned general institutional deformation between police and judicial actions creates additional barriers on the way of applying the already existing alternatives to criminal prosecution. Thus, their procedural nature is not quite clear. On the one hand, according to the CPC of the KR alternatives to criminal prosecution can be applied by an “investigator upon the approval of a prosecutor.” Investigators are the relevant representatives of internal affairs bodies, national security agencies, drug control offices, the penal system, financial police⁶ and customs agencies, i.e. police bodies. In this context, we can talk about police alternatives to criminal prosecution, including police mediation, in Kyrgyzstan’s criminal procedure law.

However, it is obvious that the application of the above alternatives is impeded by a long-outdated, and yet still functioning almost in all post-Soviet countries, evaluation system concerning the quality of work performed by investigation departments. As long as these structures have to report about the number of cases that were submitted to court and resulted in a guilty verdict, it may be worthless to discuss the issue of effective police mediation. The reason is that investigation agencies are not interested in pretrial termination of criminal cases at the agency and organizational level.

On the other hand, a decision on applying alternatives to criminal prosecution can be made only after a criminal case is formally launched, but not in the form of a refusal to carry out criminal prosecution. This level of procedural decisions is not compatible with strictly “police measures.” Finally, there are also representatives of prosecutor’s offices among investigators. This means that Kyrgyzstan’s alternatives to criminal prosecution reach a prosecutorial level of decision-making. Such practices, strictly speaking, are not quite in line with the scheme of applying alternatives “after” launching formal criminal prosecution either which also suggests a formal criminal evaluation of a particular deed, emergence of a suspect as a formal figure, etc. Apparently, the issues of separating police, prosecutorial and judicial functions should be regulated legally and institutionally, including in terms of alternatives to criminal prosecution.

⁶ When the mission was carrying out its activities in Bishkek it became known that there were plans on dissolving the financial police and transferring its functions to the Ministry of the Interior.

5.1.2. Institutional aspect

Alternatives to criminal prosecution that exist in the Kyrgyz legislation are reflected exclusively in the criminal procedure law and are not buttressed by any institutional base. In particular, this refers to criminal mediation. The issue as to who bears the function of mediators remains open. After a norm on mediation was added to the CPC of the KR based on the Law of 25 June 2007, no single legislative act emerged that would regulate the functional aspects of the work carried out by mediation services, individual mediators, etc. The issue of mediation financing has not been solved at the legislative level either.

Obviously, developing a set of alternatives to criminal prosecution will be at least somewhat worthwhile only if it simultaneously supported at the institutional level. The implementation of most modern-day alternatives should be imposed on certain bodies and services. Otherwise, they are not likely to be effective, and simple procedural regulation will not be sufficient.

Recommendations:

To increase the number of alternatives to criminal prosecution and clarify the organization procedure for their application;

To develop mediation procedurally;

To create an institutional basis (bodies and services) for applying alternatives to criminal prosecution and mediation.

5.2. Alternatives to custody as a pretrial restriction

In most post-Soviet countries the prison population is on the rise due to an unjustifiably wide use of detention as a pretrial restriction. In actuality, apart from political and economic reasons this is also affected by imperfection of the applicable criminal procedure legislation, primitive legal regulation of this type of relations and underdevelopment of the relevant state services. The situation can be remarkably improved if this issue is approached from an effective and scientific point of view.

What we have observed demonstrates that when criminal prosecution bodies initiate a petition on selecting detention as a pretrial restriction, they often make this decision guided by their own interests and convenience. They do not view custody as an extreme pretrial restriction measure and do not bother to choose less strict

pretrial restrictions even when this is possible. Obviously, detention is good for investigation agencies. On the one hand, it makes the organizational aspect of pretrial proceedings easier, ensuring permanent control over those brought to criminal liability, and on the other hand, it is one of the levers to influence these people. As is well known, suppressing a person's will and obtaining evidence proving that the accused (suspect) is guilty is much easier when they are demoralized by detention and limited in their possibility to access appropriate protection. Under these conditions, an investigator who should choose a pretrial restriction does not have any incentives to apply more labour-consuming and less strict pretrial restrictions, such as release on bail or personal surety (guaranty of defendant's appearance with criminal liability for nonappearance – Translator's note). Criminal prosecution bodies find it much easier to work by exercising total control over the person under investigation. Appropriate legal regulation and proper judicial control should override this repressive tradition and create better conditions for applying alternative pretrial restrictions other than detention.

5.2.1. Procedural aspect

The set of pretrial restrictions envisioned by the CPC of the KR is clearly outdated. In fact, it reflects a purely Soviet system of pretrial restrictions. Thus, the following pretrial restrictions, except for detention, can be applied to someone accused of committing an offense who has come of age and who does not serve in the military: 1) recognizance (written pledge) not to leave the place; 2) personal surety; 3) release on bail; 4) house arrest (Article 101 of the CPC of the KR). Additionally, minors can face a so-called "delivery for supervision" (by parents, guardians, etc), while those serving in the military can be subject to delivery for supervision by the commanding officers of a military unit.

At the same time, we should bear in mind that in this case "bail" means paying a certain amount of money whose size is limited by a fairly significant minimum threshold. As a result, it is not possible to apply this measure of restraint toward low-income people which, given the socio-economic situation in the country, seems alarming. House arrest also seems rather old-fashioned, reminding of the measures known the 19th century, rather than of a modern-day alternative to pretrial confinement undergirded by modern-day control methods. In fact, a decision-maker has only two actual measures at his/her disposal, which is a written pledge not to leave the place and detention. Admittedly, these two measures of restraint are the ones that are used most often during criminal proceedings.

In the criminal procedure system of the Kyrgyz Republic there are no such alternative measures of restraint as returning certain documents (international passport, driver's license, special permits) to the state, prohibition to visit certain places or to sign contracts with certain people, undergoing treatment or rehabilitation measures, prohibition to engage in certain activities, etc. In addition, a few alternative measures of restraint in this case cannot be applied as whole, and the person making a decision has to choose only one, which does not always allow creating flexible possibilities for refusing to apply detention.

Also, discussing Kyrgyzstan's pretrial restrictions, we again stumble across the above-mentioned general institutional issues. Different long-term pretrial restrictions are applied by judges and investigators (who in most cases represent police agencies) and prosecutors. For instance, courts enjoy the exceptional prerogative to make decisions upon detention and house arrest. However, if we talk about other alternative pretrial restrictions, during preliminary stages of criminal proceedings such a decision is the prerogative of an investigator and a prosecutor. In this sense, "other measures of restraint" are not so much the "alternatives" in the hands of a court of law, but rather some sort of a "parallel" repressive competence.

Finally, there is one more important issue largely affecting the excessive prevalence of pretrial confinement which is low effectiveness of judicial control (judicial monopoly in making appropriate decisions). This control has proved to be rather nominal, rather than actual. The Habeas Corpus procedure is not duly applied in Kyrgyzstan's⁷ legislation. In these circumstances, courts do not play their role of an "institutional stopper" and do not serve as a proper filter on the way of undue confinement which is not supported by any actual need. This is where come across the general institutional factors again that were discussed above (lack of an independent judiciary and the role of corruption).

⁷ For instance, according to S. Pashin, a famous Russian scholar, a serious gap in regulating judicial authorization of arrest at the legislative level is a lack of the direct requirement to verify the sufficiency of grounds for suspecting a person of committing a crime or accusation in criminal procedure law. As stated by him, the "lack of such a legal prescription, no doubt, creates preconditions for violating the ban on arbitrary arrest on a mass scale." See S. Pashin, *Analysis of Legislation in Central Asia (Kazakhstan, Uzbekistan, Kyrgyzstan) on Introducing Judicial Authorization of Arrest*, Legal Policy Research Center (LPRC), Almaty, 2008, p. 15. It is also worth mentioning that in Kyrgyzstan, as well as in other Central Asian countries, a limited Habeas corpus model is used (only applied to criminal proceedings). Moreover, the judicial procedure for authorizing arrest is described in the CPC of the KR in general terms and without specific details. See *ibid.*, pp. 9-10, 12-16. This situation is not fully in line with basic international human rights standards in this area. http://www.lprc.kz/ru/index.php?option=com_content&task=view&id=74

5.2.2. Institutional aspect

It should be acknowledged that none of the “alternative” measures of restraint are supported by institutional means of controlling the behaviour of a person who stayed free. Such control is needed both a priori (for individualizing the measure of restraint) and a posteriori (for observing the behaviour of a person after an “alternative measure of restraint” was applied to him/her). It should be noted that in case of treatment or social and psychological rehabilitation of the accused additional institutional measures are required not so much for “control,” but rather for fulfilling the relevant decision. However, such means of control are missing in the Kyrgyz Republic not only in practice, but also at the regulatory level. This becomes particularly remarkable in case of house arrest requiring, given the modern, dynamic and communicative society, special mechanisms for ensuring proper conduct of the accused.

Obviously, expanding the set of pretrial restrictions will not be beneficial unless all necessary financial and organizational conditions are provided. Almost each of these pretrial restrictions require a special answer to the question as to who will control the accused who stayed free. It is also clear that institutional separateness of bodies and individuals making decisions as to measures of restraint is not conducive to solving this problem. Ideally, the control mechanism over alternative measures of restraint should be based on the same principles as the control mechanism over alternative sanctions by probation services. Furthermore, both of these mechanisms may well be unified technically (if pretrial detention facilities are controlled by the SPS, there are no obstacles for imposing control over alternative measures of restraint upon probation services). However, any reform of this kind requires that the procedural function on making a decision about all measures of restraint be concentrated, in parallel, in single (judicial) hands. Otherwise, such procedural separateness as for making decisions on measures of restraint will be inevitably followed by institutional separateness regarding the control mechanism over their implementation (in reference to “alternative measures”). We cannot say that this will be much better than the present institutional vacuum.

Recommendations:

To expand the set of pretrial restrictions other than deprivation of freedom and to create procedural conditions for their implementation;

To move away from the minimum threshold on bail which makes it difficult to use by low-income persons;

To ensure procedural possibilities for applying, in case there is a need to do so, a few pretrial restrictions at the same time other than deprivation of freedom;

To create institutional conditions for controlling the implementation of pretrial restrictions other than deprivation of freedom and re-socialization of persons staying free.

5.3. Alternatives to deprivation of freedom

Genuine criminal policy humanization will not be possible if deprivation of freedom will, as before, be regarded as almost an equivalent to criminal punishment. Actual deprivation of freedom should, in fact, be not the major punishment, but rather an exceptional one, applied in cases when there is no way to avoid due to certain objective reasons. This approach is only possible when there is a wide range of penalties other than deprivation of freedom in the legislation (alternatives to deprivation of freedom). However, it will not suffice to lay down such penalties in the criminal legislation. It will be required to create procedural and institutional (organizational) conditions at the regulatory level for applying these penalties for alternatives to deprivation of freedom to be used effectively and sweeping out (replacing) deprivation of freedom as much as possible when there is no urgent need for it.

5.3.1. Procedural aspect

The criminal procedure system in the Kyrgyz Republic still adheres to the well-known principle of a unified sentence when by retiring to a consultation room judges have to pass a decision on whether or not a person is guilty and at the same time decide upon punishment (Article 312 and others of the CPC of the KR). In other words, after recognizing the guilt of a person courts do not have any possibility to postpone for a certain period of time a decision on punishment in order to study in more detail the personality of an offender, to produce the so-called “pre-sentence report,” etc.

We deem it possible to consider regulating in the law a special procedure for passing a sentence with regard to those whose personal change and re-socialization are achievable as a result of applying either alternatives to deprivation of freedom or a complete exemption from punishment. In the United Kingdom, for instance, after declaring a person guilty of committing an offense a judge may defer the consideration of punishment for a certain amount of time (e.g. one month), during which a convict has the right to make good the damage caused by their offense, tender their apologies to the injured party, become employed, embark on a drug addiction therapy, etc. When passing its sentence, a court of law will consider this person's conduct during this time. A similar procedure exists in France where a judge after declaring a person guilty has the right to defer passing a sentence for some time. Moreover, the same judge may defer, if need be, the sentence repeatedly taking into account the applicable provision whereby punishment should be imposed no later than one year after a person is declared guilty. This approach allows for individualizing punishment in an "interactive manner." In other words, this means taking into account the personality of an offender not only at the moment of committing a crime, but also after this (Has this person found a job or keeps leading an "asocial" lifestyle? Has this person compensated the damage caused to the injured party or not? Has this person received treatment for drug addiction or ignored it?). There is a requirement to prepare a detailed file for this person (pre-sentence report) that would include information about his/her behaviour from the moment he/she was found guilty till the passing of a sentence.

A wide application of alternative penalties seems problematic without such procedural mechanisms that are not found in the criminal procedure legislation of the Kyrgyz Republic. At what point should a court of law pass an order to prepare the information about a person? If this is done before this person is declared guilty this would mean inadmissible prejudgment in relation to the final conclusion on a person's guilt. Doing this after declaring a defendant guilty is not possible as a court of law does not have any procedural possibility to put off a decision on punishment, i.e. there is no possibility to properly individualize punishment. Cogently, this is one of the reasons why alternative sanctions are so hard to apply, since in order to apply them a court of law does not have sufficient data about the personality of the accused and his/her actual readiness to change.

In addition, the CPC of the KR does not deal accurately enough with the issue of imposing the burden of proof. In the legislation, a model is used whereby a prosecutor should present evidence related to all factual circumstances of the case. These include evidence proving a person's guilt of committing an offense and evidence describing their

personal traits (Article 82 of the CPC of the KR). In this situation, the only way to individualize punishment for a judge is to study the case files presented by a prosecutor. As a rule, prosecutors confine themselves to formal certificates on whether or not this person was convicted by a court of law before, formal references, etc, since for them such files are very much secondary in nature (they will not be the ones to impose punishment). As a result, a judge does not have enough data that would allow him/her to make a justified and informed decision as for the application of alternative sanctions.

From the procedural point of view, it is of paramount importance to create conditions for the appropriate individualization of punishment. This problem should, first of all, be solved at the level of evidence law. A prosecutor should only prove that a given person committed an offense. The rest should not fall under his/her purview, i.e. looking for files on the personality of a convicted individual should be the prerogative of a judge, rather than a prosecutor, for which purpose a judge should have sufficient infrastructure, i.e. the people who, at his/her behest, would produce a pre-sentence report (ideally this should be a probation service).⁸ In addition, to develop such a report, as was mentioned above, proper procedural conditions should be created, e.g. the judge's right to defer a decision upon punishment after declaring a person's guilt (as prescribed by the law). This deferment period could also be used for conducting pre-sentence mediation procedures, creating incentives for voluntary compensation of the damage caused, etc.

It should be noted that at the legislative level in the Kyrgyz Republic efforts are being made (including with the help of international organizations) on developing a number of necessary legal and regulatory acts, among which there is a Law "On Probation Services," Instructions on presenting a pretrial report in the activities of the penal inspection, etc.⁹ At the same time, attention should be paid

⁸ See para. 1.2. above where it talks more comprehensively about the need to separate police, prosecutorial and judicial functions. In this case we face the same at the local level. Proper separation of prosecutorial and judicial functions not yet achieved in post-Soviet countries is a mandatory precondition for criminal policy humanization. Collecting information about someone's personality should not be the obligation of a prosecutor in adversarial criminal proceedings, unless such information relates to proving the guilt of a person who committed an offense. Imposition of punishment is a court's function, and courts should have procedural measures on collecting information about a person outside any offense that was committed. In other words, it should be done exceptionally for punishment individualization. These procedural tools are a pre-sentence report and a probation service collecting information about the personality of a convict at the request of a court of law.

⁹ See para. 1.2. above where it talks more comprehensively about the need to separate police, prosecutorial and judicial functions. In this case we face the same at the local level. Proper separation of prosecutorial and judicial functions

to the importance of their proper implementation at the level of the CPC of the KR. Otherwise, there is little likelihood that these efforts will be crowned with success.

5.3.2. Substantive aspect

As regards the set of alternative penalties, it should be acknowledged that they are fairly diverse and is, in general, compliant with international standards, including due to reforms that have been conducted in recent years. For instance, in the CC of the KR we can find such penalties which are well known from the legal comparative perspective, namely public works, restriction of freedom, and rather ingenious types of punishment that may be regarded as a positive national development, such as triple ayip (a fine three times greater than the damage caused – Translator’s note) and public apologies along with reparation of damages (Article 42 of the CC of the KR). Furthermore, the CC of the KR even manages to avoid some typical mistakes of post-Soviet countries, prescribing appropriately, for instance, that public works can be imposed “normally with the consent of the convicted individual” (Article 43 of the CC of the KR). Although the reservation “normally” may sound dubious from the viewpoint of international law, the very mentioning of “consent” is, no doubt, a remarkable step forward. The CC of the KR also provides for such technically essential ways aimed at criminal policy humanization as suspended sentence, release on parole, etc.

Furthermore, the CC of the KR regulates fairly narrowly the procedure for implementing alternative sanctions, not leaving any conspicuous gaps at the level of penal law. Issues related to controlling those facing a suspended sentence and others are regulated rather adequately in the legislation.

Certainly, issues related to punishment and a range of applicable penalties should be improved, in particular, from the viewpoint of looking for new alternative sanctions to deprivation of freedom reflecting the Kyrgyz socio-economic context. In addition, a detailed inventory of the special section of the CC should be carried out, containing types of punishment for specific actions. This will help

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elucidate whether or not sanctions are properly balanced in each specific case. However, this work seems rather technical, rather than conceptual, but we should not diminish its importance.

Generally, there is no sense that legal regulation of issues related to punishment at the CC level and its implementation at the CPC level are the most urgent problems impeding criminal policy humanization in the Kyrgyz Republic.

5.3.3. Institutional aspect

Institutional issues of implementing alternative sanctions seem much more complicated and pressing. The pivotal issue is a transformation of the penal inspections into the effective probation services. We should mention a few laudable steps in this area, in particular the establishment of a Task Force to develop a Law “On Probation in the Kyrgyz Republic” in accordance with the Order of the Chairperson of the SPS of the KR as of 5 April 2010 (Appendix 3). We believe these efforts should continue.

However, some legal and regulatory measures look less clear. In particular, removing the SPS and penal inspections from the jurisdiction of the MoJ is not likely to have a positive impact on developing adequate probation services in the Kyrgyz Republic. Entrusted with implementing alternative sanctions, the penal inspections are militarized. Their employees have special ranks, wear uniforms, and in some cases have to live in the barracks. As a result, there is a risk that the penal inspections will transfigure not so much into probation services equipped with social, medical, psychological and other components, but rather into a military or law enforcement agency. In general, the SPS is turning into one such agency quite speedily.

We deem it possible to consider the issue of removing the penal inspections from the jurisdiction of the SPS. Ideally, there should be two autonomous systems in the MoJ, one of which will be responsible for executing punishment related to deprivation of freedom and measures of restraint in the form of pretrial confinement (SPS), while the other one will be dealing with alternative mechanisms not related to deprivation (restriction) of freedom (State Probation Service). The State Probation Service that would be under the jurisdiction of the MoJ could consist of three departments. One of them would, at the behest of judges, would be dealing with producing “pre-sentence reports” about the personality of the accused and executing alternative sanctions. The second department would be controlling the behaviour of persons facing alternative measures of restraint other than pretrial confinement, while the third department would

be responsible for implementing alternatives to criminal prosecution and developing criminal mediation. There are no doubts that the State Probation Service should be totally demilitarized and become oriented at solving the issues of criminal policy humanization by civil means only. At the present time, while it is part of the SPS and enjoys all the quasi-military features enjoyed by the SPS, there is little likelihood this will promote such humanization. This issue is particularly relevant in light to the ongoing police reform in the country which affects directly the SPS (this means that the penal inspections are covered too). The reform is being carried out by the Ministry of the Interior. We should bear in mind that the SPS deals with crime investigation, i.e. fulfilling decidedly investigative and police functions which is not likely to be compatible with the activities of probations services. The latter should be subordinate to the judiciary.

Generally, they are procedural and institutional issues that seem to be a major legal and regulatory barrier to applying alternative sanctions which still exist in the CC of the KR as a “formal showcase.”

Recommendations:

To create procedural mechanisms for individualizing punishment by overcoming a number of outdated principles and approaches, including at the level of evidence law, acting as barriers to creating such mechanisms;

To perfect the criminal (general and special sections) and criminal procedure legislation for purposes of developing alternative sanctions;

To continue working on the law on probation services;

To provide institutional conditions for the demilitarization of the penal inspections and transforming them into a convict re-socialization service.

6

**SPECIAL MEASURES TO
HUMANIZE DEPRIVATION
OF FREEDOM**

6. SPECIAL MEASURES TO HUMANIZE DEPRIVATION OF FREEDOM

6.1. Bridging a gap between legal regulation and penitentiary infrastructure

At the current stage, as it seems, humanization of penitentiary institutions related to deprivation of freedom is not aimed at bringing the penal legislation of the Kyrgyz Republic in compliance with international standards. We need to clarify due to a number of legislative reforms the PC of the KR looks quite up-to-date, despite some well-known and obvious shortcomings of the “camp model” regarding the execution of deprivation of freedom envisioned in the Code. However, according to the national experts were questioned the main problem is different. Kyrgyzstan’s still presents a genuine and self-sufficient system for punishment execution only in the formal sense (from the viewpoint of the PC), but not in real life. In actuality it functions within the same infrastructure that Kyrgyzstan inherited from the USSR. During the Soviet era, the Kyrgyz share of penitentiary facilities was only one element of a more comprehensive Soviet system. Therefore, it was not worthwhile building, for instance, high-security colonies in this country due to a low number of people who were convicted for grave offenses, as they could be transferred to other Soviet republics (e.g. to Kazakhstan).

In this situation, without building new penitentiary infrastructure which is, in turn, blocked by economic hardships and insufficient funds (during the post-Soviet era not a single prison has been built in Kyrgyzstan) there is no possibility to implement the already existing provisions from the PC of the KR, to say nothing of improving the Code. Any plans on improving the penitentiary system at the regulatory level are immediately hampered by a lack of all necessary conditions. Therefore, they are doomed to exist on paper only.

Many provisions of the applicable PC of the KR remain a declaration not because the relevant agencies are reluctant to implement them, but only due to a lack of proper infrastructure. For instance, the provision on separate confinement of minors and persons of majority age set forth in Article 52 of the PC of the KR remains unimplemented only due to infrastructural issues. As regards the execution of such punishment as life imprisonment which is meant, in full compliance with international standards, to replace the death penalty, the situation seems even more disastrous. Currently, as many as 213 have been sentenced to this sanction, but there are no facilities to keep them as the state has no prisons and/or high-security colonies. As a result, the authorities have to formally breach the law, let alone

neglecting international standards. Being well aware of the situation, they are forced to keep the aforementioned persons in the most secure facilities where in accordance with the law they should not be kept at all. The very number of persons sentenced to life imprisonment in the Kyrgyz Republic is decidedly excessive. In this context, certain regulatory steps can be made to improve criminal sanctions which will lead to changes in the dynamics of persons sentenced to deprivation of freedom. Such actions should indeed be undertaken. However, in any case this will only change the trend, but will not solve the issue. A disastrous situation can be also observed in lowest-security settlement colonies. There are around 1 400 individuals there at the moment who are formally on the verge of escape. In fact, these people cannot be employed, and as a result, no salaries or nutrition can be provided to them. In light thereof, they have to “leave” and forage for food, which is almost acquiesced in by the administration.

It is also clear that any attempts to jump from the “camp system” of Soviet origin which largely promotes the growth of “criminal carriers” and “criminal subculture” to a more appropriate Western-type prison system can, under any circumstances, be now demonstrated only at the doctrinal level. In actuality, there are impossible to implement due to the above-mentioned infrastructural reasons.

6.2. Improvement of penal legislation

In general, the main problem experienced by the Kyrgyz penitentiary system at this stage is a gargantuan institutional gap between legal regulation at level of the penal legislation and the actual socio-economic situation. This gap poses a significant threat as it turns the rule of law into a mere declaration which is not effective in real life. This totally undermines the idea of a law-governed state. Under these conditions, any steps to improve the Kyrgyz penal legislation should be considered not only through the prism of international standards alone, but also in light of the glaring need for overcoming the institutional gap between the law and reality. The Kyrgyz penal legislation should regulate the actual situation taking into account the existing infrastructure and possibilities of the government to redress it in the near future. Otherwise, at the present time the PC of the KR is partially dedicated to something that doesn't exist in real life, and therefore, many of its provisions are of little regulatory value.

In this context, a new version of the PC should be drafted which should not only reflect international standards as closely as possible, but also take into full consideration the existing penitentiary infrastructure in the Kyrgyz Republic. In particular, the new PC should, using the existing means, solve the issue of keeping individuals sentenced to

deprivation of freedom, overcome the issue of settlement colonies, etc. Speaking in general terms, the new version of the PC should be aimed at mending the institutional gap between the penal legislation and the way deprivation of freedom is actually realized in Kyrgyzstan.

The new PC could become a transition version of penal law that would be effective by the time the real socio-economic conditions for creating a modern penitentiary infrastructure in Kyrgyzstan emerge (construction of new prisons, re-equipment of the existing colonies, appearance of special correctional institutions for minors, women, etc). It is only after creating the conditions above that it will be worthwhile raising the issue of altering the very concept of Kyrgyzstan's penitentiary system and sliding from the "camp system" to the Western-type prison system. Adopting the new PC will also require a revision of all sub-legal texts in their entirety regulating deprivation of freedom. At the present time, these acts are worded in a way as to match the applicable PC, and their local improvement seems barely effective.

On top of that, we deem it beneficial to pay attention to the need for bringing the applicable regulatory frameworks in the area of criminal punishment execution in line with international documents promoting human rights in confinement institutions.¹⁰

6.3. Creating an effective public control system in relation to confinement institutions

As is well known, Kyrgyzstan ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This positive move requires further legislative measures to integrate the Optional Protocol in the national legislation and to create an NPM.

At the time this analysis is written, the Working Group on bringing the legislation in compliance with the new 2010 Constitution is engaged, inter alia, in drafting a Law "On National Preventive Mechanism" which should be submitted to Jogorku Kenesh (Parliament of the Kyrgyz Republic – Translator's note) immediately thereafter. As of now, the final draft has not been developed yet, which makes it difficult to analyze. However, it is clear that in any

¹⁰ We believe that it is essential to take into account not only those international human rights agreements that have been already ratified by Kyrgyzstan, but also other UN documents, which include but are not limited to the Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1989), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), etc.

case this document should reflect all principles and approaches set forth in the Optional Protocol which will ensure due public control, including over confinement institutions.

In particular, it is essential to ensure the most transparent way of staffing the national NPM. On the one hand, this mechanism should be developed in view of the fact that an NPM should be comprised of independent experts and civil society activists, and on the other hand, it should contain a procedure for empowering an NPM at the highest institutional level. In addition, it should be envisioned on a mandatory basis that NPM representatives should have the right to access, without hindrance and any warning, any places where persons with restricted freedom may be kept, irrespective of the grounds thereunto (criminal punishment, measures of restraint, detention, administrative measures, etc). There should be no places whatsoever that an NPM would not have the right to visit. A separate issue is the future structure of the national NPM which should take into account the size and administrative division of the country. Should there be only one central NPM, or should there also be its regional representative offices at the oblast level, for instance? Finally, when developing a Law "On NPM" it should be borne in mind that it is the state that is obliged to finance it. This should be reflected in the law itself and in the legislation on the national budget.¹¹

Recommendations:

To start working on developing a new version of the PC of the KR in order to bridge the gap between the text of the Code and actual penitentiary infrastructure;

To conduct an inventory of all sub-legal texts regulating the execution of deprivation of freedom to revise them in parallel with drafting a new PC of the KR;

To revise the legislation and regulatory frameworks taking into account international documents laying down the human rights standards in confinement institutions;

To draft a Law "On National Preventive Mechanism" which would be fully compliant with the provisions of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹¹ Certainly, the list of issues related to developing a Law "On NPM" mentioned above is not comprehensive. We have highlighted only some of them which we encountered in other post-Soviet countries where similar laws were developed.

7. MAJOR CONCLUSIONS AND RECOMMENDATIONS

Presumably, at the present time the Kyrgyz Republic is at the most important development stage in its history. There exists a real chance now to bring the entire legislation of the country in good shape. This will help solve a number of political and economic issues that have accumulated in recent years. Indeed, freedom and justice give rise to the best civil and creative qualities in people, which in the long run will lead to the prosperity of the state.

The outdated residue of the Soviet past and unsuccessful traces of the post-Soviet transformation have not yet been jettisoned from the applicable legislation in the Kyrgyz Republic. These atavistic features clearly hinder criminal policy humanization. Apparently, a sweeping and systemic reform of the entire legal and regulatory frameworks are required to rectify the situation. However, the errors of recent years should not be repeated again. Preferably, it should be carried out on a sound scientific basis taking into account the most recent achievements in the area of legal theory and law application practices, in an environment of an open and fundamental discussion with the representatives of all stakeholders. The recommendations below may be viewed as some useful ideas to start such a discussion:

- To continue with the regular efforts on establishing an independent judiciary in the Kyrgyz Republic based on justice, openness and public representation;
- To start working on a fundamentally new CPC that would obliterate the above-mentioned distinctive flaws of a transition criminal procedure characteristic of the post-Soviet epoch, being fully compliant with international standards in the area of fair trial and taking into account the contemporary achievements of the legal science;
- To continue the development of anti-corruption legislation as a mandatory condition for criminal policy humanization;
- To increase the number of alternatives to criminal prosecution and clarify the organization procedure for their application;
- To develop mediation procedurally;
- To create an institutional basis (bodies and services) for applying alternatives to criminal prosecution and mediation;
- To expand the set of pretrial restrictions other than deprivation of freedom and to create procedural conditions for their implementation;

- To move away from the minimum threshold on bail which makes it difficult to use by low-income persons;
- To ensure procedural possibilities for applying, in case there is a need to do so, a few pretrial restrictions at the same time other than deprivation of freedom;
- To create institutional conditions for controlling the implementation of pretrial restrictions other than deprivation of freedom and re-socialization of persons staying free;
- To create procedural mechanisms for individualizing punishment by overcoming a number of outdated principles and approaches, including at the level of evidence law, acting as barriers to creating such mechanisms;
- To perfect the criminal (general and special sections) and criminal procedure legislation for purposes of developing alternative sanctions;
- To continue working on the law on probation services;
- To provide institutional conditions for the demilitarization of the penal inspections and transforming them into a convict re-socialization service.
- To start working on developing a new version of the PC of the KR in order to bridge the gap between the text of the Code and actual penitentiary infrastructure;
- To conduct an inventory of all sub-legal texts regulating the execution of deprivation of freedom to revise them in parallel with drafting a new PC of the KR;
- To revise the legislation and regulatory frameworks taking into account international documents laying down the human rights standards in confinement institutions;
- To draft a Law "On National Preventive Mechanism" which would be fully compliant with the provisions of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- To start working on separating criminal legislation on minors from the rest of criminal legislation at the substantive, procedural and institutional levels.

