



## **ASSESSMENT OF ALTERNATIVE SENTENCING IN ARMENIA**

PRESENTED TO

**OSCE YEREVAN OFFICE**

---

**Advanced Social Technologies**  
31 Nalbandyan str., apt. 2, 375009 Yerevan, Armenia  
Tel: (374 1) 581001, Fax: (374 1) 565619  
E-mail: [ast@ast.am](mailto:ast@ast.am)  
URL: [www.ast.am](http://www.ast.am)

# CONTENTS

<b>FOREWORD.....</b>	<b>4</b>
<b>INTRODUCTION.....</b>	<b>6</b>
<b>I. SURVEY METHODOLOGY.....</b>	<b>6</b>
<i>OVERVIEW OF METHODS OF DATA COLLECTION .....</i>	<i>6</i>
<i>OVERVIEW OF METHODS OF DATA ANALYSIS.....</i>	<i>9</i>
<b>II. CORE ANALYTICAL FRAMEWORK .....</b>	<b>9</b>
<i>THEORY OF CHANGE .....</i>	<i>9</i>
<i>KEY ANALYTICAL CATEGORIES.....</i>	<i>10</i>
<b>CHAPTER 1 .....</b>	<b>12</b>
<b>1.1. INSTITUTIONAL REFORM.....</b>	<b>12</b>
<i>WHAT WAS ACHIEVED SO FAR? .....</i>	<i>12</i>
<i>WHERE ARE WE NOW? .....</i>	<i>14</i>
<b>2.2. LEGAL FRAMEWORK FOR ALTERNATIVE SENTENCING .....</b>	<b>15</b>
<i>SENTENCING.....</i>	<i>15</i>
<i>EXECUTION OF THE PUNISHMENT .....</i>	<i>17</i>
<b>CHAPTER 2 .....</b>	<b>20</b>
<b>2.1. ATTITUDES TOWARDS ALTERNATIVES TO IMPRISONMENT .....</b>	<b>20</b>
<i>POSITIVE ASPECTS.....</i>	<i>21</i>
<i>NEGATIVE ASPECTS.....</i>	<i>24</i>
<b>2.2. EFFECTIVENESS .....</b>	<b>26</b>
<i>SEVERE VS MILD SANCTIONS.....</i>	<i>26</i>
<i>ALTERNATIVE SANCTIONS VS OBJECTIVES OF CRIMINAL PUNISHMENT .....</i>	<i>27</i>
<i>NON-CUSTODIAL VS CUSTODIAL MEASURES OF PUNISHMENT .....</i>	<i>32</i>
<b>2.3. THE OFFENDER .....</b>	<b>34</b>
<i>PREFERENCES.....</i>	<i>34</i>
<i>EXPECTATIONS AND WISHES .....</i>	<i>37</i>
<b>2.4. THE SOCIETY .....</b>	<b>38</b>
<i>SOCIAL RESPONSE .....</i>	<i>38</i>
<i>SOCIAL READINESS TO ACCEPT THE CHANGE .....</i>	<i>39</i>
<b>CHAPTER 3 .....</b>	<b>41</b>
<b>3.1. LAWS AND IDEAS IN PRACTICE.....</b>	<b>41</b>
<i>POTENTIAL FIELD FOR COMMUNITY SERVICE .....</i>	<i>41</i>
<i>ACTORS OF THE PROCESS.....</i>	<i>43</i>
<b>3.2. SCENARIOS .....</b>	<b>46</b>
<i>PESSIMISTIC SCENARIO.....</i>	<i>46</i>
<i>OPTIMISTIC SCENARIO .....</i>	<i>49</i>
<b>CONCLUSION.....</b>	<b>52</b>
<b>I. SUMMARY OF FINDINGS .....</b>	<b>52</b>
<b>II. RECOMMENDATIONS .....</b>	<b>53</b>
<i>STRATEGY 1: GUARANTEEING ADEQUACY OF THE PUNISHMENT.....</i>	<i>54</i>
<i>STRATEGY 2: GUARANTEEING PROPER FUNCTIONING OF IMPLEMENTATION MECHANISMS .....</i>	<i>55</i>
<i>STRATEGY 3: GUARANTEEING SOCIAL RESPONSIBILITY .....</i>	<i>56</i>

## **FOREWORD** *by Stefan Buchmayer, OSCE Office in Yerevan*

---

When the criminal justice system in the Republic of Armenia was transferred from the then Ministry of Interior to the Ministry of Justice in 2001, Armenia made a major step towards demilitarization of its penal executive system. The Ministry of Justice used the opportunity provided by the new situation to start an ambitious Criminal Justice Reform Program, which was strongly supported by the OSCE.

To recount just some of the activities that were realized in a spirit of openness and cooperation we want to list here the so called *training for trainers* in international standards for prison authorities and an exploration of possibilities of social rehabilitation in the penitentiary system.

During the different phases of the *training for trainers* project senior and middle management staff of the prison administration attended courses, which facilitated their knowledge about international standards of a human rights based detention approach and enabled them to pass this new experiences on to lower rank prison staff.

Equally important the OSCE considers legal options for non-custodial punishment of crimes, wherever circumstances allow for such options. Although the Armenian rate of prisoners/population lies between 100 and 150/100 000 dependent on total population estimates and is thus lower than in other countries of the former Soviet Union, alternative sentences could have still, where applicable, a very positive impact on individuals, the society and the economy.

Hence, we believe that with this first assessment about alternative sentencing possibilities in Armenia, a door was opened for further enhanced interest in this subject.

**Stefan Buchmayer**

Human Rights Officer  
OSCE Office in Yerevan

# **FOREWORD** *by Anna Minasyan, Advanced Social Technologies*

---

Reforms of criminal justice have started in Armenia in late 90's with a purpose to align Armenian legislation with the requirements of modern democratic society. An important aspect of the concepts behind the changes in the law is enlargement of the scope of use of non-custodial measures of punishment.

Development and implementation of alternative sentencing options is a serious step forward to building a humanitarian system of penal sanctions. However, up to date no substantial research data was available either on the level of understanding of alternative sentencing among court officials and criminal justice practitioners, the community and offenders, or on the existing and needed infrastructure for effective implementation of alternative sanctions.

In an attempt to fill this information gap, we focused on the following areas:

- a) Awareness, understanding and attitudes of different parties towards alternative sentencing,
- b) Perceived impact and effectiveness of non-custodial measures of punishment,
- c) Perspectives, needs and limitations with respect to implementation of alternative sanctions.

Based on the results of the sociological survey, which addressed the mentioned questions, we aimed at identifying possibilities and actions needed to develop and implement an effective system of alternative sanctions.

Advanced Social Technologies owes a large debt of gratitude to organizations and individuals who assisted us in conduction of the study.

We would like to express our sincere thankfulness to **Ms. Blanka Hancilova**, **Ms. Tatevik Melikyan** and **Mr. Stefan Buchmayer**, *OSCE Yerevan Office*, and **Mr. David**

**Amiryan**, *OSI Assistance Foundation*, for their efforts and contribution to the success of the program.

The study would not have been possible without the incredible support, guidance and encouragement provided to us by **Mr. Varouzhan Melkonyan**, *Deputy Head of Criminal-Executive Department of the Ministry of Justice of the RA*.

Special thanks are owed to **General-Mayor Eduard Ghazaryan**, *Head of Headquarters of Police of the RA*, **Mr. Samvel Hovhannisyan**, *Head of the Criminal Executive Department of Ministry of Justice of the RA*, **Mr. Arsen Mheryan**, *Court of Cassation of the RA* and **Mr. Lyova Sahakyan**, *General Prosecutor's Office of the RA*, for their assistance in conduction of interviews with target groups of respondents.

Furthermore, we would like to acknowledge the valuable advice and clarifications of our legal experts **Ms. Narine Rshtuni**, **Mr. Hayk Khemchyan** and **Mr. Michael Grigoryan** regarding the legal underlying of the subject.

Finally, we would like to acknowledge the contribution of the staff of the project (interviewers **Ms. Mary Yerosyan** and **Ms. Sona Tamrazyan** (*Yerevan phase*), **Ms. Anahit Khanoyan** (*Gyumri phase*) and **Ms. Alina Poghosyan** (*our field supervisor and Gyumri phase interviewer*)) for its immense efforts and dedication to the objectives of the study.

**Anna Minasyan**

President

Advanced Social Technologies

# **INTRODUCTION**

## ***METHODOLOGY AND ANALYTICAL FRAMEWORK***

---

*This section presents an overview of our approaches to data collection and data analysis. It also serves a general guideline for interpretation of the information obtained through the survey.*

### **I. SURVEY METHODOLOGY**

The current study is the first attempt to get an insight into the perspectives of implementation of non-custodial punishments in Armenia. In view of the limitations in the scope of the project we have adopted a qualitative methodology for both data collection and data analysis.

This choice does not minimize the advantages and necessity of a quantitative research to address a wide range of questions that we came across during our study.

#### ***OVERVIEW OF METHODS OF DATA COLLECTION***

As per project description, sociological research was conducted in Yerevan and in Gyumri. Two major methods of qualitative data collection were used: in-depth interviews and focus groups.

##### **In-depth interviews**

In-depth interviews were conducted with three main groups of respondents:

- Key informants - experts of Armenian and international criminal law
- Opinion leaders – judges, prosecutors, attorneys, local government representatives, local police, attorneys and social workers and
- offenders.

Questions posed during all interviews included issues of relevance of alternative sanctions, their effectiveness and possibilities, limitations and perspectives of their

implementation. Specific questions were developed and addressed with each of the groups and subgroups of respondents. Techniques of both direct and projective questioning were employed to enrich the collected data.<sup>1</sup>

## Focus groups

Four focus groups were organized (three in Yerevan and one in Gyumri) with participation of NGO leaders, private sector managers and attorneys.

In addition to discussing main questions addressed during in-depth interviews, participants of the focus groups constructed the ideal picture of implementation of alternative sentencing options in Armenia and brainstormed strategies to achieve the desired situation.

## Sample

In total, 112 respondents took part in the survey in Yerevan and in Gyumri. Table below presents the distribution of respondents by target groups and locations.

**Table 1. Sample design**

Group <sup>2</sup>	Number of respondents		
	Yerevan	Gyumri	Total
Attorneys	16	8	24
Judges	12	7	19
Local government	10	4	14
Local police	11	3	14
NGO leaders	5	6	11
Offenders	-	-	10 <sup>3</sup>
Prosecutors	5	2	7
Social workers	5	0	5
Private sector managers	2	2	4
Legal experts	4	-	4
<b>Total</b>	<b>70</b>	<b>32</b>	<b>112</b>

<sup>1</sup> Note: Direct questioning aims at revealing the respondent's personal opinion on a certain issue (i.e. what is your attitude towards alternative sentencing?). Projective questioning refers to getting the respondents estimates with respect to the opinions of the others (i.e. what do you think will be the attitude of the society?).

<sup>2</sup> Groups are listed in descending order according to the total number of respondents within each group.

<sup>3</sup> Offenders were interviewed in Vanadzor Pre-trial Detention Center

**Legal experts**, specialists of Armenian and international criminal law with sound knowledge of current legal reforms, were recommended by the Advisory Board of the project, comprised of Criminal Executive Department of the Ministry of Justice of the Republic of Armenia, OSCE ODIHR, ABA CEELI and UNICEF.

**Attorneys** were selected based on the references provided by the legal experts and according to the experience of attorneys in the sphere of criminal justice. Some of them represent professional unions of attorneys, while part of them functions independently.

**Judges** represent all first-instance courts of Yerevan and Gyumri, as well as the Court of Appeal of the RA and the Court of Cassation of the RA.

**Local government** is represented by the Municipality of Gyumri and all District Municipalities of Yerevan. Head of the Municipality, Head of Staff and/or Head of Legal Department was asked to participate in the survey.

**Local police** is represented by two groups of respondents: a) current employees of the Police Department, referred to by the Headquarters of the Police and the legal experts and b) former representatives of Ministry of Interior selected with the employment of the ‘snowball technique’<sup>4</sup>

**NGO leaders** were selected based on the expertise and achievements of the NGOs in the sphere of criminal justice and human rights.

**Offenders** were selected according to type and the nature of the crime. Interviews were conducted with those offenders who may possibly be sentenced to a non-custodial measure of punishment as per the provisions of current Armenian legislation.

**Prosecutors** were recommended by the Office of General Prosecutor of the RA and represent the Gyumri department and 5 out of 7 Yerevan district departments of the Prosecutor’s Office.

**Social workers** specialized in prison service and criminal executive sphere in general were selected according to their experience and interest in the subject.

**Private sector managers** were selected according to the sphere of business activity, hypothetically suitable for implementation of non-custodial measures of punishment. Industry and production were chosen to be the most relevant spheres.

---

<sup>4</sup> ‘Snowball technique’ is a widely practiced method of selection of opinion leaders, the essence of which is asking each respondent to recommend the next person to be interviewed.



## ***OVERVIEW OF METHODS OF DATA ANALYSIS***

Methodology of the study necessitated a primarily qualitative analytical approach. Diversity of opinions, beliefs and attitudes required us to categorize and classify the data acquired, to examine cause-effect relationships and to perform a comparative analysis of estimates of different groups of respondents.

Wherever possible and applicable, we support our analysis with quantitative presentation of major opinion blocks.

However there are certain limitations linked to the interpretation of such quantitative data: *a)* the sample size is small, hence there is a certain risk connected with correct extrapolation of the acquired data, *b)* there is a certain degree of the author's subjectivity, caused by the necessity to sort and classify the diverse qualitative information and *c)* some scales that are used to present the data are not sufficiently sensitive (*i.e.* positive and rather positive estimates in certain cases are grouped under one category).

Nevertheless, these are the major, commonly accepted shortcomings of qualitative data analysis in general, which we tried to control for (at least in part) by explanation of the basis and rationale of the categorization that is used.

## **II. CORE ANALYTICAL FRAMEWORK**

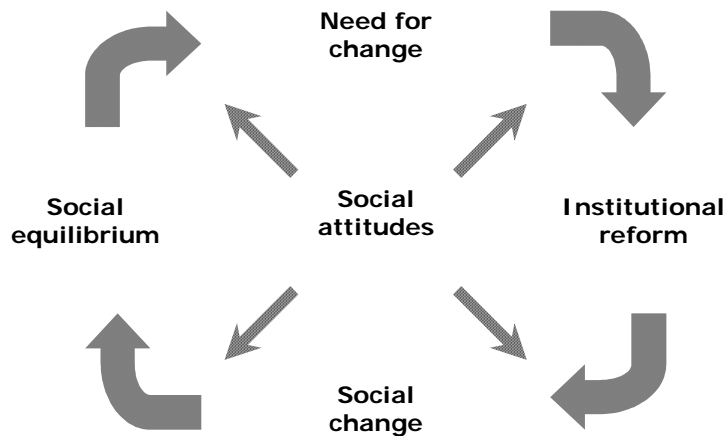
Basic postulation of this study is that comprehensive analysis of any phenomenon assumes examination of those social processes in which the phenomenon is involved. In this sense, increased use of alternative sanctions should be regarded as one part of the reform of Armenian criminal justice system in general. Such approach requires us to analyze alternative sentencing in frames of the theory of change.

### ***THEORY OF CHANGE***

Social scientists provide us with a wide variety of grand theories explaining the origins, the flow and the outcomes of changes that happen throughout the history of any society. On one hand, *it has been, and still is, problematic to try and construct theories which attempt to*

*explain everything - the relationship between social change and all aspects of society;*<sup>5</sup> on the other hand, we believe, that general provisions of these theories can be successfully applied to the subject of our study.<sup>6</sup>

Most of the change theories base on various modifications of a common change model, which is graphically presented below.



Analyzing the results of sociological survey based on this model, we present the legal framework of alternative sentencing in the light of the latest **institutional reform** (*Chapter 1. Change Process: Facts and Figures*), assess the **social need** for broader practice of non-custodial measures of punishment (*Chapter 2. Alternatives to imprisonment: Armenian Pros and Contras*), project the perspectives of bringing the laws into practice (*Chapter 3. Implementation: Prospect and Possible Scenarios*) and develop strategies to facilitate **social change** (*Conclusion: Strategies and Priorities for Action*).

## **KEY ANALYTICAL CATEGORIES**

**Social change** refers to acts of advocacy for the cause of changing society in a positive way. The term can encompass concepts as broad as revolution and paradigm shift, to narrow phenomena such as transformation of a particular area of social relations.

**Social attitudes** refer to relatively enduring views on people, behaviour, or events. Attitudes reflect a tendency to classify objects and events and to react to them with some consistency. Attitudes are not directly observable but rather are inferred from the objective, evaluative responses a person makes.

<sup>5</sup> Perston, C., *Social Continuity and Change, and Social Theory*, p. 7, NY, 2000

<sup>6</sup> Since current study is rather practical than theoretical in nature, we tried not to step in discussion of advantages and limitations of vast theoretical material that is available. To get acquainted with major perspectives on social change you can refer to works of M. Weber, L. Coser and A. Giddens.

***Social function*** refers to constructive role of an element in an assembly (such as a person within a group) *or* to contribution of a social phenomenon to fulfillment of social needs and to social integrity.

***Social dysfunction*** refers to the breakdown or abnormal behaviour of a function *or* to destructive consequences of a social phenomenon for the social system.

***Social control*** refers to social mechanisms that regulate individual and group behaviour, in terms of sanctions and rewards. Formal social control is conducted by government and organizations using law enforcement mechanisms. Informal social control is expressed through custom, norms, and mores using informal sanctions such as criticism, disapproval, guilt and shaming.

***Social work*** refers to organized effort to help individuals to adjust themselves to the community, as well as to adapt the community to the needs of such persons.

*This chapter gives an insight into the milestones of the reform of criminal justice system in Armenia and examines the building blocks of contemporary Armenian legislation with respect to non-custodial measures of punishment.*

### **1.1. INSTITUTIONAL REFORM**

Criminal justice reform process was initiated in Armenia in 1998 with the establishment of the Department of Structural Reforms within the Ministry of Internal Affairs.<sup>7</sup>

Reform aimed at humanization of criminal executive system, an objective, which, on one hand, was dictated by the Council of Europe and, on the other hand, was determined by the needs of contemporary Armenian society.

The reform included two major components – structural and legal.

#### ***WHAT WAS ACHIEVED SO FAR?***

First phase of the reform included structural reorganization of criminal-executive system and development of key legislative acts regulating the area.

##### **Structural reform**

The actual reform process started in 2001 with the transfer of Criminal Executive Department (formerly Department of Execution of Criminal Punishments) from the Ministry of Interior to the Ministry of Justice.

Main reason behind the structural reform was the demilitarization of criminal executive system, and particularly the prison administration. One of the interviewed legal experts states, *“If not de jure but de facto the doors of criminal executive system were closed for the society. It was justified, since military structures cannot be open. However, those locks gave rise to negative stereotypes towards the prison service and the justice system in general.”*<sup>8</sup> Sharing

---

<sup>7</sup> The department was later transferred to the Ministry of Justice and renamed to Department of Legal Reforms

<sup>8</sup> Hereinafter: italic font is used to quote the respondents

this opinion, majority of our legal experts believe the reorganization was necessary. *“The substantial advantage of structural reform is that we are now civil and not military servants.”*

Thanks to the reform, public access to the system has improved. A public observer group, comprised of representatives of 11 NGOs, has been established (when?) with the aim to ensure social monitoring of the prison service. They are allowed to enter penitentiary institutions and have a tête-à-tête conversation with the offenders. The structural reform allowed Armenia to join international standards of prison service and to widen the scope of the prisoners’ rights.<sup>9</sup>

### **Legal reform**

Another major reason behind the reform was to align Armenian criminal legislation with best practices and standards of international criminal law.

An important step to achievement of this objective was the enactment of new Criminal Code in August, 2003, which came to replace the Criminal Code of the Armenian SSR enacted in 1961. Among other legal acts, adopted in the first phase of the reform were the Criminal Procedure Code (1999), the Law on Treatment of Arrestees and Detainees (2002) and The Law on Penitentiary Service (2003).

Legal experts interviewed believe the new Criminal Code mended some of the weaknesses of the former legislation, mainly in terms of *“rejecting declarative nature and avoiding ideological stamps essentially attached to the Criminal Law of the past”*. One of our experts claims *“the new Criminal Code is exclusively legal rather than political or populist document.”*

Apart from the paradigm shift, the experts mentioned several specific advantages of the new legislation, namely:

- a) The Criminal Code has been humanized to a great extent. 6000 convicts were held in custody before the reform; after the first phase of the reform this number was cut in half. This happened mainly since the new Code widened the scope of use of alternative sanctions, shortened the terms of custodial sanctions for many types of crimes and excluded criminal liability for committal of certain actions.<sup>10</sup> A crucial step towards humanization of the criminal law was the substitution of the death penalty with life sentence.

---

<sup>9</sup> Respondents refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (1977)

<sup>10</sup> e.g. homosexual relations of mutual consent

- b) The Criminal Code encourages the use of milder sanctions, providing that maximum punishment shall only be imposed when less strict form of punishment would not be effective.<sup>11</sup> One of our legal experts even states that very lenient sanctions are prescribed for certain types of crimes. *“As an attorney, I approve imposition of milder sanctions, but I think in some cases, such as human trafficking, we should be much stricter.”*<sup>12</sup>
- c) The current Code provides specific criminal liability and criminal punishment for juvenile offenders. One of the legal experts stated, *“Considering the obligation of the state to take special care of children, a special Chapter in the Code to regulate the criminal practice with respect to juveniles was designed.”*
- d) One of the underlying principles of the criminal law is individuality of justice and liability. *“Perhaps, the biggest achievement in the history of criminal law is the denial of unalterable imperative punishments. Any offense and every offender are characterized by a number of individual features and circumstances that mitigate or aggravate the criminal liability. It is therefore essential and commendable to allow the court to show individual approach to every single case”*, a legal expert stresses.
- e) On the other hand, the extent of judicial discretion has been minimized.<sup>13</sup> The former Criminal Code provided for sanctions with minimum of 3 and maximum of 12 years of imprisonment for the same type of crime. Such intervals are shortened and a wide range of alternative sentencing options is introduced.
- f) Finally, the Criminal Code has been modernized. It incorporates norms and measures, which are necessary for struggle against modern-day crimes, such as terrorism and crimes against computer technologies.

## **WHERE ARE WE NOW?**

---

<sup>11</sup> Criminal Code of the Republic of Armenia, Article 61, Para 3

<sup>12</sup> Article 132, Para 1 of the Criminal Code provides maximum 4 years of imprisonment for human trafficking, which is categorized as a medium-gravity crime (with certain aggravating circumstances the offender can be sentenced for up to 8 years of imprisonment).

<sup>13</sup> This statement however does not correspond to the opinion of majority of our respondents. We therefore thoroughly analyze the issue of judicial discretion and subjectivity in Chapter 3.

The second phase of the reform process aims at modernization of the criminal legislation in a large sense. It considers comprehensive design and redesign of legal acts regulating the whole sphere of criminal justice.

The milestone of the reform at this stage is the adoption of Criminal Executive Code that was elaborated with participation of European experts and ratified by the National Assembly on September 27, 2004. The Code, which came to replace the 1971 Code of Correctional Labor of the Armenian SSR, sets a legal basis for the implementation of penal sanctions, including the alternatives to imprisonment.

One of the components of the reform that is currently in progress is the development and enactment of normative acts regulating practical implementation of penal sanctions as well as functioning of social-psychological and medical services for the convicts and prisoners.

Another objective set forth is professional training of criminal executive officers, which includes education on practical implication of modern psychology and modern approaches to the prison system. *“Such training is essential. We cannot expect a person who was engaged for 20 years in operational activities of the Police to practice social-psychological skills and show respect towards the rights of the convicts”*, a representative of Criminal-Executive Department states.

## **1.2. LEGAL FRAMEWORK FOR ALTERNATIVE SENTENCING**

### ***SENTENCING***

The Armenian law provides that the purposes of punishment are the restoration of social justice, the correction of the offender, and the prevention of the crime.

Although the law requires that the sanction imposed be within the limits stipulated by the Criminal Code, there is nevertheless a certain degree of judicial discretion when imposing a sentence<sup>14</sup>. However, little guidance is available under the existing legislation concerning the sentencing apart from the general provision of the Criminal Code that the type and degree of punishment shall be determined by the extend of social danger of the crime and its nature,

---

<sup>14</sup> *Alternative Sentencing: An Overview of Armenia's legal framework*, prepared by ABA/CEELI, May, 2004

by the characteristic features of the offender, including circumstances mitigating or aggravating the liability or the punishment.<sup>15</sup>

The Criminal Code expressly prohibits imposing a more severe sanction than the maximum sanction provided by the law. As far as the minimum sanctions are concerned, the court may in exceptional cases sentence the offender to a punishment measure under the lower limit. The factors, which effectively allow the court to choose milder punishment than envisaged by the law, include the offender's efforts to minimize the danger of the crime committed, and collaboration with justice.<sup>16</sup>

The Criminal Code provides for an exhaustive list of aggravating circumstances.<sup>17</sup> As far as mitigating circumstances are concerned, the court may take into account other circumstances in addition to those provided by the law.<sup>18</sup> First time committal of an offence or committal of the offence as a result of coercion or dependence, the offender's minor age, pregnancy or having custody of a child under 14 are among the factors to be considered by the judge when deciding whether a more lenient sentence can be imposed.

Criminal Code of the Republic of Armenia provides for the following types of non-custodial punishments: fine; deprivation of the right to hold certain posts or practice certain activities; public works/community service; deprivation of special titles or military ranks, categories, degrees or qualification classes; confiscation of property; correctional labor; and service in disciplinary battalion (imposed on military servicepersons).

Deprivation of special titles or military ranks and confiscation of property can only be administered as supplementary penalties, while fine and deprivation of the right to hold certain posts or practice certain activities can be administered both as principal and supplementary penalties, i.e. be imposed in addition to the principal penalty, including deprivation of liberty.

According to the new Criminal Code, deprivation of liberty can occur in the form of arrest<sup>19</sup> (maximum term of 3 months in strict custody), imprisonment for a certain term<sup>20</sup> (15

---

<sup>15</sup> Criminal Code of the Republic of Armenia, Article 61, Para 2

<sup>16</sup> Criminal Code of the Republic of Armenia, Article 64

<sup>17</sup> Ibid, Article 63.

<sup>18</sup> Ibid, Article 62.

<sup>19</sup> Ibid, Article 57

<sup>20</sup> Ibid, Article 59



years maximum, 20 years maximum by the aggregate of sentences) or life sentence<sup>21</sup> (with the benefit of parole; parole no earlier than after serving 20 years in prison).

The Armenian legislation also provides for the option of replacing the unserved part of the sentence with a more lenient one after the convict has served at least one third of the sentence.<sup>22</sup> Only offenders convicted of less serious crimes qualify for this option.

The issue of effective and proportionate penalties for those offenders who breach the terms of non-custodial sentence is of central importance in developing viable alternatives to imprisonment. Armenia's criminal legislation is compliant with the international standards<sup>23</sup> in providing that in the case of a breach of a non-custodial sentence, the court should decide on the issue of the replacement of the sentence by a custodial one.

## ***EXECUTION OF THE PUNISHMENT***

As far as execution of alternative sanctions is concerned, the Criminal Executive Code provides for the establishment of Criminal Executive Inspectorates under the jurisdiction of the Criminal Executive Department of the Ministry of Justice. The inspectorates are considered to be in charge of implementation of alternative sanctions, except for keeping in disciplinary battalion (implemented by the battalion).

Following is the brief description of principal non-custodial punishments provided by the Armenian law.

### **Fine**

Current Criminal Code provides for a wide use of fine as minimum punishment for majority of crimes. Amount of the fine, ranging from 30 to 1000 minimal salaries at the moment of fining, is determined taking into account the nature and gravity of the crime, as well as, the property status of the convicted person.<sup>24</sup>

In case if the convicted person is incapable of immediately paying the fine in full the court establishes a payment deadline, up to 1 year, or allows to pay the fine on installment within the same period. In case if the offender defaults of the payment the court can substitute

---

<sup>21</sup> Criminal Code of the Republic of Armenia, Article 60

<sup>22</sup> Ibid, Article 77

<sup>23</sup> Recommendations No R (92) 16 of the Committee of Ministers of the Council of Europe (On the European Rules on Community Sanctions and Measures), Rule 10

<sup>24</sup> Criminal Code of the Republic of Armenia, Article 51, Para 2

the fine or unpaid part of it with community service, counting 10 hours of public works as minimal salary.<sup>25</sup>

### **Community Service**

New Criminal Code does not include some types of alternative sanctions that used to be part of the former Code, such as exile, expel, public condemnation, and responsibility to compensate the damage. Instead, a new non-custodial sanction – community service was introduced.

Community service, an unpaid socially useful activity at the expense of the convict's leisure time, is assigned with duration of 360-1500 hours as an alternative punishment to imprisonment, that is, it can in certain conditions substitute imprisonment.

One of the legal experts said *“Inclusion of community service in the new Criminal Code gave rise to serious debates, since it is an innovation for our country and a challenge to our legal traditions. One of the hot questions was whether the Armenian citizens would accept community service in case it carries an imperative, compulsory nature.”* Solution that was chosen is reflected in Article 54, Para 3 of the Criminal Code. It reads: community service is assigned as an alternative punishment to imprisonment, in case of written consent of the person to be convicted, which is submitted before the court decision is made.<sup>26</sup> This condition is in accordance with UN Standard Minimum Rules for Non-Custodial Measures, which provide that non-custodial punishments imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.<sup>27</sup>

According to the Criminal Executive Code, the implementation of the community service is secured by the Criminal Executive Inspectorates in places determined by the latter or by Local Self-Government Bodies. Criminal Executive Inspectorates are to be responsible for offenders' recording, communication of the terms and conditions of serving the punishment and control over fulfillment by the offender of those terms and conditions.<sup>28</sup>

Criminal Executive Code provides that in case if the offender evades from performing community service or otherwise violates the terms and conditions of serving the punishment, the court can substitute the unperformed part of it with arrest or imprisonment for a certain

---

<sup>25</sup> Criminal Code of the Republic of Armenia, Article 51, Para 4

<sup>26</sup> We further discuss the advantages and disadvantages of this provision in *Chapter 2, Section 2.4. The Offender*

<sup>27</sup> UN Standard Minimum Rules for Non-Custodial Punishments, Article 3, Para 4

<sup>28</sup> Paraphrase: Criminal Executive Code of the Republic of Armenia, Article 32, Para 3

term, counting 1 day of imprisonment for 4 hours of community service, as per Article 68 of the Criminal Code of the Republic of Armenia.

Community service cannot be imposed on disabled persons of first or second degree, juveniles under 16, pensioners, pregnant women and drafted servicemen.<sup>29</sup>

### **Correctional labor**

As opposed to community service, correctional labor was widely practiced during Soviet times. *“This sanction was imposed on people who committed minor crimes and in most of the cases it proved to be effective”*, an attorney admitted.

The offender is to serve this punishment for the term of 2 months to 2 years either at his workplace or in other places within his residence region as appointed by authorized bodies<sup>30</sup>. Five to twenty percents of the earnings of the convict are deducted in favor of the state, as per decision of the court.<sup>31</sup>

As in case of community service, the implementation of correctional labor is ensured by Criminal Executive Inspectorates. In case if the offender is unemployed, he/she must either find a job or register in the State Employment Agency. At that, unemployed offender does not have a right to refuse the workplace offered by the State Employment Agency.<sup>32</sup>

Criminal Executive Inspectorate is expected to cooperate with the administration of offender’s workplace to ensure proper implementation of the sanction.

---

<sup>29</sup> Criminal Code of the Republic of Armenia, Article 54, Para 4

<sup>30</sup> Ibid, Article 56, Para 1

<sup>31</sup> Ibid. Article 56, Para 2

<sup>32</sup> Criminal Executive Code of the Republic of Armenia, Article 42, Para 3

## CHAPTER 2

## ALTERNATIVES TO IMPRISONMENT: ARMENIAN PROS AND CONTRAS

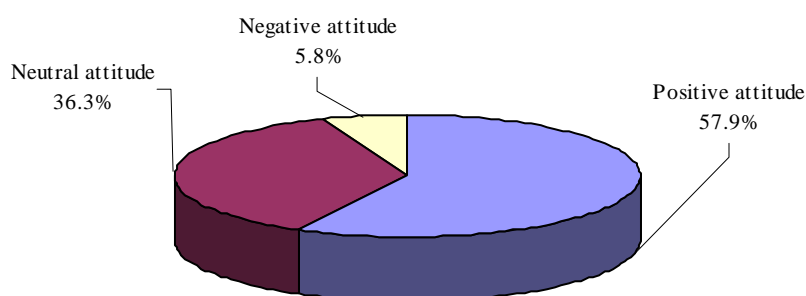
*Based on the core analytical framework, this chapter addresses the issue of whether or not contemporary Armenian society needs alternative sanctions. Some of the major questions we examine are attitudes of different parties towards non-custodial measures of punishment, the effectiveness of these sanctions and their influence on the offender and the society.*

### 2.1. ATTITUDES TOWARDS ALTERNATIVES TO IMPRISONMENT

Attitudes of respondents can be grouped in three major categories – positive, neutral and negative. Answers of respondents, who are confident about positive impact of alternative sentencing, are grouped under category ‘positive attitude’; opinions of those, who think non-custodial measures of punishment have both advantages and disadvantages are labeled ‘neutral attitude’; ‘negative attitude’ concerns the assumptions that alternative sanctions bring to undesirable social consequences.

The chart below demonstrates the results of such classification.

**Chart 1. General attitude towards alternative sentencing**

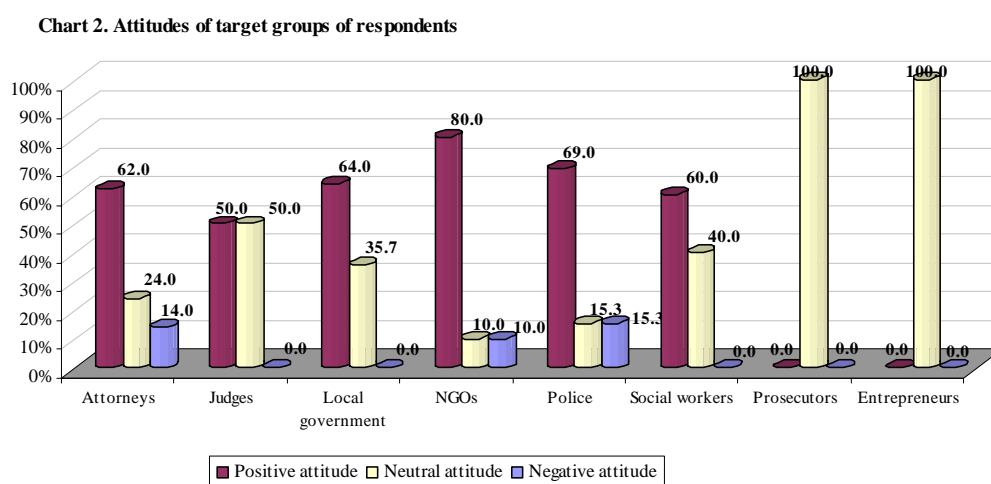


Comparing the opinions of different groups of respondents, we came across some remarkable specifics, one of which is that all prosecutors and entrepreneurs both in Yerevan and in Gyumri have neutral attitude towards alternatives to imprisonment. We think such attitude in case of prosecutors is determined by their inclination not to explicitly support any

of the approaches but rather to limit themselves to conditional statements. As far as the attitude of entrepreneurs is concerned, the [neutral] outcome was expected, since they have never been involved in such discussions before and had no definite idea about the process.

It is interesting to note that overwhelming majority of local government representatives in Yerevan have positive attitude towards non-custodial measures of punishment, while the attitude of all Gyumri representatives of the mentioned group is neutral. Possible explanation to such outcome is that, Gyumri respondents in general, and Local Government representatives in particular, showed less awareness of the reforms and their practical implementation than the opinion leaders from Yerevan.

The chart below presents the attitudes of target groups of respondents.



Main assumptions on which the respondents ground their attitude are presented in the next two sections of this chapter.

## ***POSITIVE ASPECTS***

Analysis of survey results allows assuming that positive aspects of non-custodial measures of punishment are manifested on two levels: macro or institutional level and micro or functional level.

### **Macro-level: Relevance**

Major assumption of the key parties supporting alternatives to imprisonment is that such measures are relevant, since they respond to modern social demand and are aligned with current trends in international criminal law.

Adopting **restorative approach** to criminal justice, contemporary democratic society demands that imprisonment is used only as a measure of last resort. *“Imprisonment is not a goal in itself. It is, perhaps, the easiest but far not the best way to restore social justice,”* a legal expert stresses.

Sharing such approach, most of the respondents believe that introduction of new non-custodial sanctions will allow finding **tailored solutions** to each situation to better meet the declared objectives of criminal punishment. Majority of the interviewed judges claim that *“wide variety of sanctions allows us taking individualized approach to offenders; consider their motives, behavior and attitudes in order to impose a just and effective sanction.”*

Many respondents ground their positive attitude towards alternative sentencing on **humanistic ideology** and respect for human rights. They are convinced that mild sanctions, such as fine, are, in certain cases, more effective for correction of the offenders. Given that *“severe sanctions, anyway, do not reduce the number of crimes,”* majority of attorneys and NGO representatives feel the judges should be inclined to impose the minimum sanction prescribed for the given offense profile.<sup>33</sup>

Some respondents support their positive attitude towards alternative sanctions with **best international practices**, claiming that Western democratic societies have been very successful in implementation of effective alternatives to imprisonment.

### **Micro-level: Value-added functions**

Basic assumption shared by overwhelming majority of respondents is that neither the offender, nor the State nor the family benefit from imprisonment, imposed in case of minor crimes. The assumption is further developed into a statement that non-custodial sanctions bring added-value to the society by fulfilling certain social, social-psychological and economic functions.

Major **social functions** of alternative sanctions are social integration, proper socialization, social control and public trust building.

Alternative sanctions contribute to **social integration**, since they allow correcting the offenders not isolating them from the society. One of the judges from Gyumri noted in this

---

<sup>33</sup> One of the respondents suggested that Criminal Code of RA incorporates Article 66 of the Spanish Criminal Code, which reads: *“In case if there are more than two mitigating and no aggravating circumstances, the judge has to sentence the offender to a minimum punishment measure provided for by the law”*.

respect, *“I came to witness cases, when people once sentenced to imprisonment intentionally re-offended to return to prison, being unable to live “outside the cell” and adapt to external environment.”* Non-custodial measures of punishment allow offenders to work, communicate with people and live with their families, thus giving chance to avoid negative consequences of isolation, such as broken social links, damaged social statuses, stigmatization and lack of smooth reintegration.

Function of **proper socialization** is closely linked with the function of social integration. It is based on the belief that places of imprisonment have gravely negative influence on the process of the offenders’ socialization. Expressing the opinion of majority of respondents, one of the attorneys stated, *“Imprisonment is meant to correct the offenders; however prisons seem to be perfect schools of crime. Offenders have nothing else to do but to learn and adopt the values and norms of criminal environment.”* In the opinion of respondents, problem of de-socialization is particularly facing juveniles and first-time committers. In this respect, few respondents (mainly social workers) support a radical approach, stating that *“even in cases when alternative sanctions are not effective in terms of correction of the offenders, they are still justified, since at least, they do not further spoil the offenders.”*

**Social control** over the offenders, which becomes possible thanks to non-custodial sanctions, is another important contribution to a healthy society. It forces people to put efforts in correction of the offenders, thus increasing social responsibility and civic engagement in solution of social problems.

Another interesting assumption is that alternative sanctions may contribute to **building trust** towards the system of social justice. *“One mechanism to build social trust,”* an attorney proposes, *“is to sentence some of the well-known public figures to community service. Such measures, if widely publicized, can drastically change the public opinion on the justice system.”* Some respondents claim that such examples can, in addition, be very effective in terms of prevention of undesirable patterns of behavior.

Main **social-psychological functions** of non-custodial sanctions are smooth rehabilitation and avoidance of stigmatization.

It is well known that imprisonment has many negative psychological effects on the offenders, and the difficulty of **rehabilitation** is, perhaps, the weakest link in the whole process. From this point of view, many respondents believe, alternatives to imprisonment are

much more effective, since they might help offenders to realize their guilt and, which is even more important, to work and to fulfill their potential. *“Work is considered to be the best way to educate a person and to cultivate moral lifestyle,”* a social worker says, adding that correctional labor, in particular, allows people to use their professional skills, thus increasing their feeling of importance and self-confidence. Besides, non-custodial measures of punishment allow avoiding the **stigma** of “imprisoned”, a label, which the public considers to be identical to ‘criminal’ and ‘immoral’.

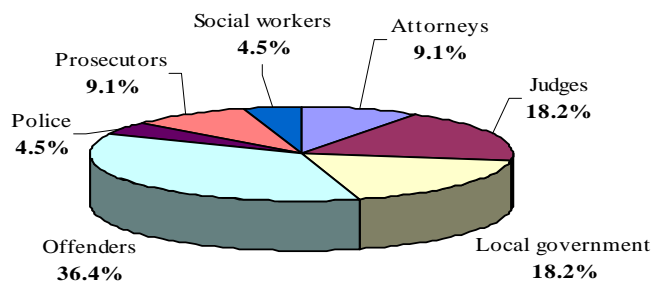
Although majority of respondents refer to above-mentioned social and social-psychological advantages of non-custodial measures of punishment, a number of representatives of Local Government draw attention to their **economic rationale**.

Firstly, alternative sanctions are cost-effective for the State, since they do not require financial contribution, as in case of imprisonment. *“The State spends roughly 1400 AMD a day on each offender in detention,”* a judge says and adds *“Alternative sanctions allow saving financial recourses. Furthermore, majority of these sanctions add value to the State budget.”* On the other hand, non-custodial measures of punishment, unlike imprisonment, do not undermine financial sustainability of the offenders’ families.

## ***NEGATIVE ASPECTS***

24 out of 112 respondents (or 21.4%) believe that alternative sanctions cannot have any negative consequences or dysfunctions. Distribution of these respondents by target groups is presented in the chart below.

**Chart 3. "No negative aspects" by groups of respondents**



Quite expectedly, offenders tend to be the least critical in terms of alternatives to imprisonment, even though most of them do not have a clear idea about the content and



mechanisms of these sanctions. Opinions of respondents who do think alternative sentencing has certain limitations and dysfunctions are presented below.

One of the major negative aspects of alternative sanctions in particular and reform of the criminal justice system in general, is that **the reforms neglect Armenian current reality** and that practices of foreign countries are not properly localized. Many respondents representing all target groups feel that *“the reforms are performed under European pressure”* and stress that mechanically outsourced laws of other countries cannot effectively function in Armenia. *“So called alternative sanctions are artificial in nature; they do not reflect our social and legal traditions and Armenian way of thinking,”* a policeman claims.<sup>34</sup>

Another dysfunction of alternative sentencing, according to some attorneys and social workers, is the **new opportunity for corruption**. *“It is nonsense. The judges will find a new source of income getting a chance to “sell” a favorable sanction to either of the parties.”* Consequently, this will contribute to social inequity, since the poor will not be able to benefit from the process.

Among most frequently mentioned negative consequences of alternative sanctions are the **atmosphere of impunity** and **increased number of offenses**. *“Being rather mild, these sanctions might weaken the effect and the whole idea of criminal punishment”,* a policeman assumes, adding that *“if we fine a hooligan, he might realize that he is allowed to pay money and beat somebody; this is very dangerous.”* Some judges think that *“sanctions such as community service and correctional labor might be a good way to avoid ‘real’ punishment”,* due to which offenders will not understand their mistakes and will become uncontrollable.

On the other hand, this is not necessarily the dysfunction of non-custodial type of punishment, since the arguments brought by the respondents can be easily applied to types of minor custodial punishments as well. This leads us to a wider debate on strengths and weaknesses of severe and mild sanctions in general, which is not the key objective of current study. Considering the above-mentioned, we think the most relevant and typical shortcoming of alternative sentencing was mentioned by one of the NGO representatives in Gyumri, who hypothesized that *“given the unemployment rate, in case if correctional labor is implemented, people will tend to commit minor crimes to get a job.”*

---

<sup>34</sup> The respondents mainly refer to community service and correctional labor in this respect.

## 2.2. EFFECTIVENESS

We tried to assess the effectiveness of alternative sentencing from three different perspectives: *a)* advantages and disadvantages of severe and mild sanctions in general, *b)* effectiveness of alternative sanctions in terms of their correspondence to the objectives of criminal punishment and *c)* comparative analysis of efficiency of custodial and non-custodial measures of punishment.

### *SEVERE VS MILD SANCTIONS*

Respondents share a belief that *“successful struggle against crime is conditioned by inevitability and adequacy of criminal punishment.”* They think there is no single formula to determine whether a severe or mild sanction should be imposed, since the effect of each of the sanctions depends on the offender’s personality and the circumstances under which the offense was committed.

Both severe and mild sanctions have shortcomings. *“An unreasonably mild punishment might give rise to feeling of impunity, while unjustified severe punishment might cultivate a feeling of hatred towards the state and the society,”* a prosecutor explains.

As stated above, the respondents tended not to show a distinctly supportive approach to either of the poles and were rather inclined to limit to broad universal statements. However, an interesting picture was revealed when we went further and asked the judges and prosecutors to estimate the proportion of minimum and maximum punishments they imposed or proposed in their judicial practice.

Most of the respondents claimed they sentenced the majority of offenders to the minimum sanction provided for by the law. Many judges stated they sometimes sentenced offenders to sanctions under lower limit and never imposed the maximum punishment permitted. *“I want to assure you that the court, in general, does not have negative predispositions towards the offenders”*, one of the judges says, while a prosecutor asserts *“the maximum punishment shall only be imposed in cases when minor sanctions cannot serve the objectives of criminal justice.”*

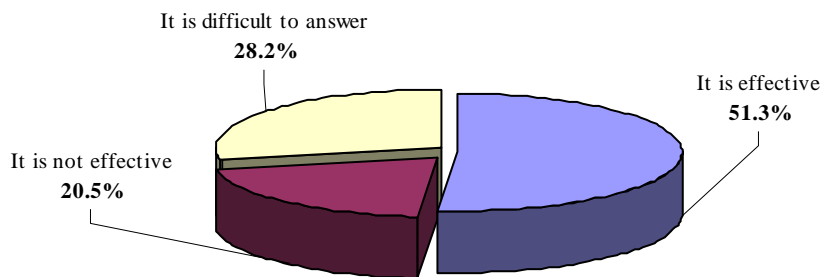
## ***ALTERNATIVE SANCTIONS VS OBJECTIVES OF CRIMINAL PUNISHMENT***

Armenian criminal law provides that purposes of criminal punishment are the restoration of social justice, the correction of the offender and the prevention of crimes. We have asked the respondents: how well do alternative sanctions serve each of these objectives? Major opinion blocks regarding this question are presented below.

### **Restoration of social justice**

There is a disagreement regarding the issue of whether or not alternative sentencing is effective in terms of restoration of social justice. As the chart below demonstrates, half of the respondents claim it to be effective, while another half either believes it is not effective or have difficulty to give a definite answer.

**Chart 4. Is alternative sentencing effective in terms of restoration of social justice?**



Starting point for the respondents who had difficulty estimating the effectiveness of alternatives to imprisonment in terms of serving the restoration of social justice (as well as the other two objectives of criminal punishment) is that fulfillment of these objectives is determined not by the type or severity of the punishment, but by the offenders' personality and the specifics of each case.

Main arguments voiced by those respondents who think alternative sentencing will not help restoring social justice are:

- a) Main beneficiaries of alternative sanction are the offenders. *"The victims will not be satisfied with such measures and will try to revenge. None of them would like to see the offenders in freedom,"* a policeman assumes.
- b) Given the lack of workplaces, correctional labor and community service cannot be properly implemented; *"the victims will see that the offenders, in fact, do not*

*serve the punishment, hence social justice cannot be restored,”* an attorney argues.

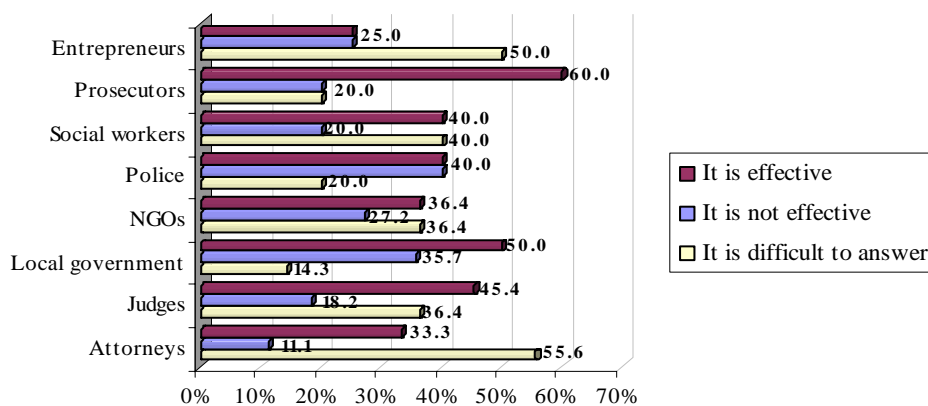
- c) Today, only the rich will benefit from alternative sanctions. *“They will “buy” community service sentence, then “buy” somebody to serve instead of them. I cannot envision how social justice can be restored”*, a policeman doubts.

Major assumptions supporting the effectiveness of alternative sanctions are:

- a) Social justice is restored when adequate punishment is imposed. In cases when alternative sanctions are adequate, both the victim and the offender are satisfied: *“the victim will not think the punishment is too mild and the offender will not mind to be fined,”* a judge asserts.
- b) Alternative sanctions allow the offender to compensate the damage caused to the victim, which is the shortest way to restore social justice<sup>35</sup>.

Differences of the respondents’ opinions across target groups are presented in the following chart.

**Chart 5. Is alternative sentencing effective in terms of restoration of social justice?**



<sup>35</sup> One of the respondents, a former representative of Ministry of Interior, presented an interesting point of view in this respect. According to his opinion, reimbursement is a fake idea. *“There was a wise saying in a Russian song about Don Quixote – “there are so many not revenged and there are no revenged at all.” There is no such thing as good reimbursement; if somebody committed an offense against my relative or me and is kept somewhere in a cell what reimbursement do I get? There were times when murder was punished with murder, but these times have passed. I think times will come when people will totally give up using institutional punishments.”*

The chart shows two remarkable positions:

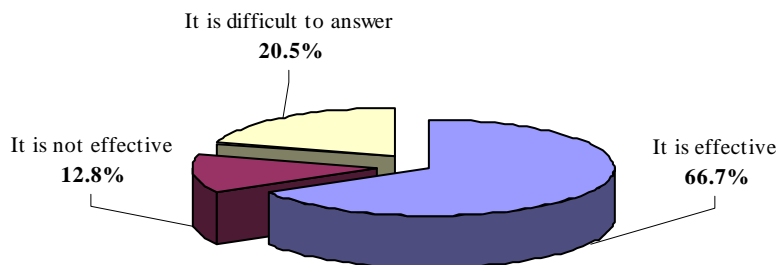
- Majority of prosecutors think alternative sanctions are effective in terms of restoration of social justice and the same distribution occurs in their estimates regarding the other two objectives of criminal punishment (*see below*)
- Local police gives the most pessimistic projections of the efficiency of non-custodial sanctions.

Such dispositions are reasonable. Prosecutors avoid evaluating the law, stating that “*if the criminal legislation allows for imposition of a certain sanction, it means the sanction is effective.*” On the other hand, as it was shown, policemen tend to have rather critical approach towards the offenders and stress the negative impact of alternative sanctions on the victim.

### Correction of the offender

As the chart below demonstrates, alternative sentencing might be quite effective in terms of correction of the offenders.

**Chart 6. Is alternative sentencing effective in terms of correction of the offenders?**

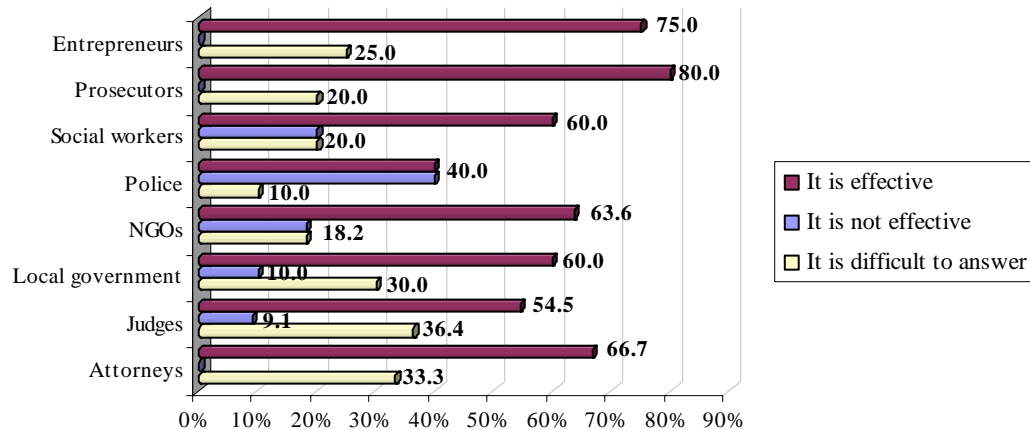


Majority of respondents think that alternative sanctions make it possible to correct the offenders, since firstly, “*we can keep them away from unhealthy environment of prisons*” (attorney) and secondly, “*we give them chance to socialize and provide them with job; these are the most powerful tools of influence*” (local government representative).

Those respondents who think alternative sanctions will not facilitate the correction of the offenders mainly base on the facts that “*some people are criminal in nature; even imprisonment does not correct them*” (policeman) and that “*compulsory work cannot bring to correction*” (attorney).

The chart below presents the opinions of different groups of respondents

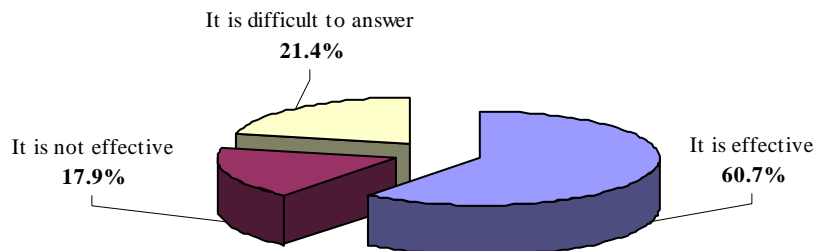
**Chart 7. Is alternative sentencing effective in terms of correction of the offenders?**



## Prevention of crimes

Majority of respondents think alternative sanctions might help to prevent crimes.

**Chart 8. Is alternative sentencing effective in terms of prevention of crimes?**



Those who disagree with the statements, claim that alternative sanctions might make the offenders more confident and allow them go on with their criminal way of life. One of the judges fears that *“it can even have opposite effect: getting a minor punishment they might continue committing crimes.”*

Main arguments in support of effectiveness of alternative sanctions are:

- a) The offenders will work and communicate with people, *“thus having no time and reason to think of new crimes”* (NGO representative)

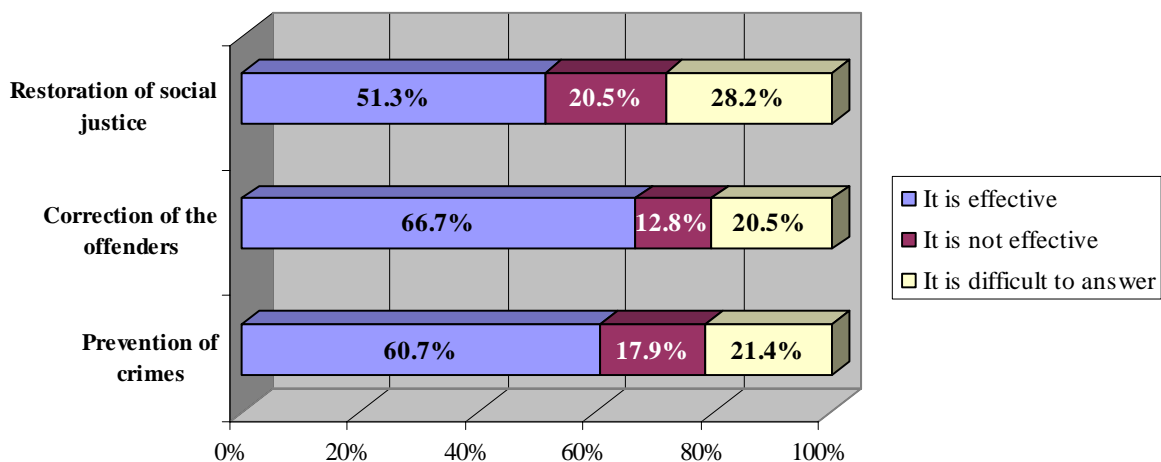
- b) Imposed in case of first-time committal, alternative sanctions can be very effective in reeducating the offenders and making them realize their mistakes
- c) Given Armenian mentality, community service might be more challenging in terms of moral and psychological pressure; hence the lawbreakers will not re-offend
- d) Imprisonment has proved to be inefficient in terms of prevention of crimes. *“Even if 8 out of 10 people sentenced to community service later re-offend, it is nothing compared to the fact that we will have two people saved from imprisonment”*, an attorney claims.

The distribution of opinions across target groups is almost identical to those presented above: majority of prosecutors (60%), attorneys (55.6%) and NGO leaders (54.5%) think alternatives sanctions can effectively prevent crimes, while a significant percent of policemen (40.0%) states non-custodial measures are not effective.

As it was shown, respondents tend to think alternative sanctions are most effective in terms of correction of the offenders and least effective in terms of restoration of social justice.

This difference is clearly illustrated in the chart below.

**Chart 9. Comparative effectiveness of alternative sentencing**



However, based on the above-mentioned arguments, we can assume that alternative sanctions can effectively serve all objectives of criminal punishment, but only in case if *a)* they result from a well-thought objective decision of the court, *b)* they are properly implemented and monitored, and *c)* there is a public awareness of the objectives and the mechanisms of these sanctions.

## ***NON-CUSTODIAL VS CUSTODIAL MEASURES OF PUNISHMENT***

### **Factors determining the efficiency of alternative sanctions**

Criminal Code of the Republic of Armenia provides that the maximum punishment shall only be imposed when less strict form of punishment would not be effective.<sup>36</sup>

Although the Criminal Code clearly defines the types of crimes for which alternative sanctions can be applied, there is still a need to assess the effectiveness of these sanctions as compared to custodial measures of punishment.

According to the opinion of respondents, effectiveness of alternative sanctions depends *a) on the type of the crime, b) on the circumstances under which the crime was committed and c) on the offender's personality.*

Criminal Code provides that alternative sanctions might only be applied in case of minor crimes and majority of respondents believe their effectiveness in these cases is the highest. However a number of respondents argue that non-custodial punishments might be effective for graver crimes as well. *“Non-custodial punishment **can** be effective in certain cases of severe crimes: even in case of a murder, since the key factor here is the motive”, a judge says and adds “Unfortunately, the court does not have a choice in this respect.”*

Some respondents claim that alternative sanctions should not be available for the offenders who committed crimes against *a) life and health and b) the state power.*<sup>37</sup>

Alternative sanctions are effective if the following circumstances are present:

- a) the offense was committed as a result of coercion or dependence (i.e. “if the parents forced the child to commit a crime”)*
- b) the offense was accidental*
- c) it was a first time committal*
- d) the losses caused to the victim were restored.*

---

<sup>36</sup> Criminal Code of the Republic of Armenia, Article 61, Para 3

<sup>37</sup> Note: the Criminal Code provides alternative sanctions for certain types of crimes within both of the categories.



Alternative sanctions prove to be more effective when imposed on juveniles or on those offenders who feel sincere repentance and take actions to minimize the harmful consequences for the victim.

### **Factors influencing the decision of the court**

Experts of criminal law state that there are no provisions in the existing legislation to minimize the use of imprisonment or to encourage the court to widen the scope of the application of non-custodial punishments.<sup>38</sup> Since the legislation allows for a high degree of judicial discretion and subjectivity<sup>39</sup>, it was necessary to examine the factors that influence the court's decision.

Basic consideration of the respondents is that in cases when the Code allows for imposition of a non-custodial punishment, the court has to do so, or else bring solid arguments in favor of isolation of the offender. *“The sanctions in new Criminal Code are listed in an ascending order from lenient to graver; this forces us to have a clear reasoning and explanation of why we think the offender must be sentenced to imprisonment and not to fine or correctional labor,”* a prosecutor explains.

As far as the factors influencing the decision are concerned, the respondents tend to cite those generally provided by the law, such as the nature of the crime, the offender's personality and mitigating and aggravating circumstances.<sup>40</sup> It must be stressed that many respondents limit to listing very few factors, making a universal statement that *“all factors are always considered.”*

According to the respondents, questions that the court officials most frequently address to determine whether a non-custodial punishment can be imposed are:

- a) Was the crime intentional or unintentional?
- b) How harmful were the consequences of the crime for the victim and the society?  
Was the harm physical, moral or economic in nature?
- c) What was the behavior of the offender before the committal?

---

<sup>38</sup> *Alternative Sentencing: An Overview of Armenia's legal framework*, prepared by ABA/CEELI, May, 2004

<sup>39</sup> The range of punishments available for certain offenses is very big and includes both fine, correctional labor and imprisonment.

<sup>40</sup> Article 61, Para 2 of the Criminal Code of Republic of Armenia reads: “the type and degree of punishment shall be determined by the extent of social danger of the crime and its nature, by characteristic features of the offender, including circumstances mitigating or aggravating the liability of punishment”.

The court also considers the age of the offenders and family-specific factors, such as number of children and financial situation.

Respondents claim they pay special attention to the offender's repentance and the probability of the offender's correction. Currently, however, there is no mechanism to assist the court in realistic assessment of the offenders against these two parameters.

Few respondents mention some factors, other than those stated in the Criminal Code. One of these factors is the behavior of the offender in the court. A judge from Gyumri stated direct communication with the offender often influences his decision. Another decisive factor is the social attitude towards the given type of crime and public expectations of adequate punishment.

## **2.3. THE OFFENDER**

This section examines alternative sentencing from the offenders' point of view. It gives insight into the preferences of offenders in terms of custodial and non-custodial punishments, the offenders' expectations from rehabilitation process and their wishes regarding implementation of alternative sanctions.

### ***PREFERENCES***

Criminal Code provides that community service can be imposed as an alternative to imprisonment based on the written agreement of the offender submitted to the court prior to proclamation of the sentence.<sup>41</sup> Given this provision, it is necessary to assess the attitude of respondents towards the provision itself and get to know their projections concerning the type of the sanction the offenders will more likely choose. On the other hand it is interesting to compare those projections with the actual preferences of the offenders that were interviewed.

#### **Attitudes towards the provision**

It is quite remarkable, that half of the respondents approve the provision, while the other half disapproves it. Those who support the idea, think that such provision is necessary, since

---

<sup>41</sup> Criminal Code of the Republic of Armenia, *Article 54, Para 3*

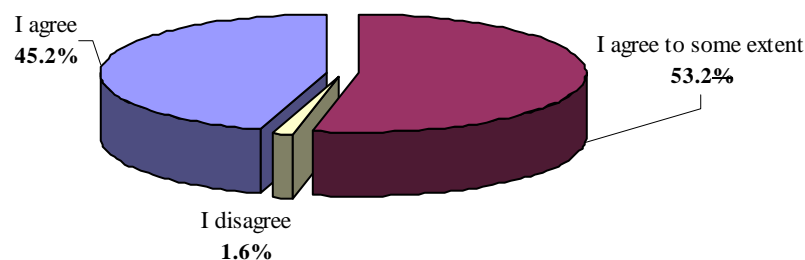
otherwise, European Convention on Human Rights would be violated.<sup>42</sup> Besides, “*you cannot correct a person if you force him to do a job that he does not want to do; it will make him even more aggressive*” (attorney). One of the NGO representatives from Gyumri mentioned an added latent function of this provision: “*it might be a very good test to see whether the offender is ready to cooperate with the society.*”

The opponents of the above-mentioned point of view argue that the offenders must not be given a right to choose a sanction. They believe the court knows best which sanction is most effective in each of the cases; hence “*community service should be compulsory just as all other criminal sanctions are*” (attorney). In contrast, some respondents (mainly NGO representatives and private sector managers) think the offenders will not benefit from this provision, because “*our nation is legally illiterate; people do not know their rights and the offenders will simply be unaware that such choice exists*”

### Projections of offenders’ preferences

The key question that was addressed was whether the respondents think that the offenders will prefer community service to imprisonment. The following chart presents the extent to which they agree with the statement.

Chart 10. Do you think offenders will prefer community service?



As the chart shows, 45.2 % of the respondents believe that given such opportunity the offenders will undoubtedly prefer community service. “*Liberty is priceless*” (local government representative), “*‘human being’ is a ‘social being’ and isolation contradicts its very nature*” (social worker), “*any kind of duty is better than imprisonment*” (policeman). These are some of the statements that respondents have made in support of their opinion.

---

<sup>42</sup> Note: Article 4, Para 2 of the European Convention on Human Rights reads, “No one shall be required to perform forced or compulsory labor”.

Besides, some of them think community service to be very lenient punishment or even a way to avoid punishment.

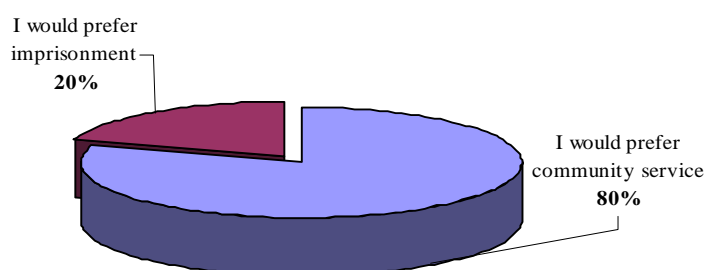
More than half of the respondents (53.2 %) think that some of the offenders or their majority will prefer community service; however there will be some that will prefer imprisonment. *“Those who consider themselves to be “cool guys” will prefer imprisonment, while those who committed an unintentional crime and feel their guilt will choose community service,”* a policeman thinks. Majority of respondents believe that those offenders who already served a term in prison will not prefer community service, since *“they are used to the prison culture and will be afraid of getting stigmatized by their fellow prisoners.”*<sup>43</sup> On the other hand, as one of the social workers points out, *“some people simply do not want to work and prefer living in the prison for free.”*

A minor percent of respondents (a policeman and a prosecutor from Gyumri) claimed almost none of the offenders in Gyumri will choose community service, since *“there are many ‘self-enamored guys’, who will believe community service can harm their social status.”*

### **Actual preferences of the offenders**

In the opinion of all interviewed offenders, majority of offenders in general will use the opportunity to substitute imprisonment with community service, since *“any type of work is better than isolation”*. They believe *“there will be only few offenders who refuse to take this chance, thinking that to clean the streets is worse than to spend years in a cell.”* When asked to express their own preferences, overwhelming majority of offenders claimed they would prefer community service to imprisonment.

**Chart 11. Actual preferences of the offenders**



<sup>43</sup> This statement once again demonstrates some of the respondents' lack of knowledge of current Armenian legislation. The Criminal Code clearly provides that community service cannot be imposed on re-offenders.

One of the offenders claimed he would never choose community service, since he will not be paid for the job, while another one said he would choose imprisonment because he cannot work due to health problems.

Major reason for which the offenders consider community service to be better is that physical and moral conditions in prisons are very severe. *“If I was sentenced to an alternative punishment, I would not be morally depressed, my health would not be harmed and my parents would not suffer. The food here is awful, it is wet and everyone is smoking”*, a 19-year old offender complains. Some other arguments supporting this opinion are:

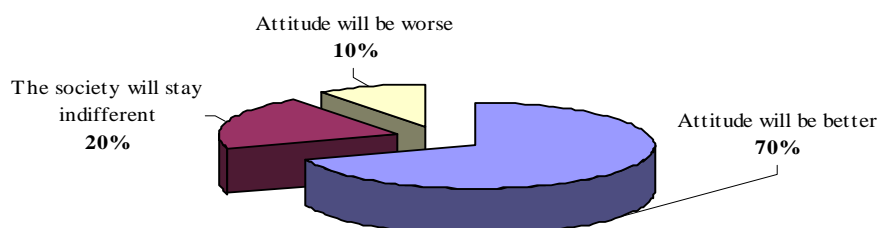
- a) Non-custodial punishments allow the offenders to live with their families, earn money and somehow survive
- b) The offenders have better chance to be corrected, since they can communicate with people
- c) These sanctions do not have side negative effects on the offender’s friends and relatives. *“Because of me no one would want to marry my sister in case I am imprisoned.”*

## ***EXPECTATIONS AND WISHES***

The major problems that the offenders think they will face after serving a term in prison are difficulty to restore relations with friends and relatives, impossibility to get a job and find legal sources of income to support their families. Some respondents believe the only way-out will be migration. Most of the interviewed offenders believe the mentioned problems would not face them if they were sentenced to alternative sanction.

Majority of offenders think the society will be more tolerant to those who serve an alternative sentence than to those who are imprisoned.

**Chart 12. Offenders' expectations of social attitude**



Offenders assume that *“the attitude of the society will be positive, since people will think if I am working then I realize my mistake.”* The respondents believe that this is because *“people do not understand that prisons are also unique “schools of life.” They take into account nothing but the fact that you are a “prisoner” and it spoils your whole life.”* One of the offenders fears that public opinion might be very negative. *“People will laugh at them”*, he shortly explained.

The respondents wish that the State takes measures to motivate offenders to engage in community service. *“Let them implement this sanction so that people do not seek ways to avoid it. Let the location be close to the offender’s residence and the job be not very hard or degrading.”*

*“Our country needs specialists of certain professions. Offenders, who have the necessary skills, can work in remote regions of the country. Let the State take care of their basic needs and they will work for free”*, another respondent proposed.

## **2.4. THE SOCIETY**

As previous sections of this chapter demonstrated, one of the major positive aspects of non-custodial punishments is that the offenders are not isolated from the society. This facilitates the process of their re-socialization and helps them build acceptable patterns of behavior. However, so far we have examined how this might function in favor of the offenders. Current section is an attempt to analyze this issue from the perspective of the society.<sup>44</sup> Key questions that we address here are *a)* what will be the social response to a broader practice of alternatives to imprisonment? and *b)* is the society ready to take responsibility and participate in correction of the offenders?

### ***SOCIAL RESPONSE***

Majority of respondents believe that social response will be rather positive. They think implementation of alternative sanctions may result in a better social attitude towards the offenders. *“In fact, the society stigmatizes the prisoners and not the offenders; this important phenomenon allows us assuming that people will have rather liberal feelings towards those*

---

<sup>44</sup> It is important to stress that our analysis bases on data collected through a projective technique, that is, on how the respondents feel the society will behave. We fully realize that in order to realistically assess the social attitude it is necessary to get “first-hand” information through a public opinion poll.

who are serving a non-custodial punishment, since they might simply not perceive them as criminals,” an attorney explains.

Furthermore, there is a chance for the society to become more tolerant. *“People will see that the offenders are just as human as they are”*, a social worker believes.

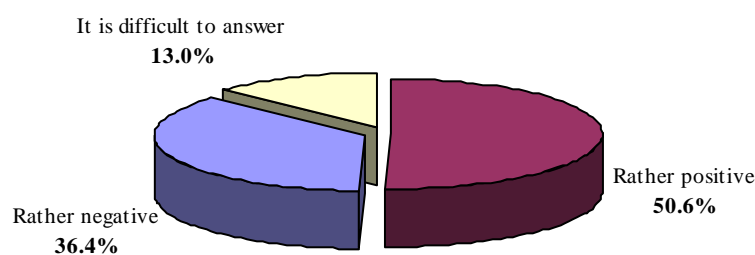
On the other hand, in case if alternative sanctions (particularly correctional labor and community service) are properly implemented, the society will witness how laws are brought into force, which will improve the public opinion on the system of justice in general.

Nevertheless, a significant percent of respondents fears that social response to legal renovations can be rather negative. They claim that *“letting the offenders free is dangerous, since people will think the State is not worried much about social justice”* (local government representative). Most of the respondents supporting this point of view believe that it is very difficult to break the social stereotype that the offender must be imprisoned. *“Deep-rooted legal traditions will not allow the society to adequately respond to the reform,”* a legal expert claims.

Some respondents find it difficult to project the dynamics of social attitude. They think it depends on practical implementation of alternative sanction and time is required for these sanctions to prove effective.

Following chart presents the weights of the above-mentioned opinions.

**Chart 13. Projections of social response**



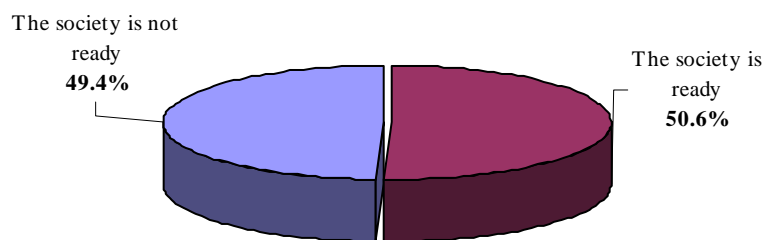
### ***SOCIAL READINESS TO ACCEPT THE CHANGE***

Quite expectedly, those respondents who believe social response will be positive stated that our society is ready accept the changes and take part in the process, while those respondents who are rather pessimistic claim the society is not prepared for that.

Optimistic opinion is based on the previous social experience: *“During Soviet times, the correction of the offenders was often delegated to his or her colleagues. People who lived the Soviet era are used to that.”* Pessimists, however, argue that Armenian mentality will greatly hamper the process. *“Social reform must happen gradually. We might need 200 years to wait”*, an attorney assumes.

The chart below presents the respondents opinion on whether or not the Armenian society is ready to take part in the process.

**Chart 14. Society's readiness to take part in the process**



In the opinion of respondents, the key strategy to prepare society for the change and cultivate social responsibility is public awareness raising.

Some of the methods proposed are:

- a) **Human Rights education** with special accent on rights of the offenders
- b) Facilitation of a **public debates** with participation of lawyers, psychologists, sociologists, NGOs of appropriate profile, and widely publicized through mass media
- c) **Public awareness campaign or social marketing**, including development of targeted TV programs and infomercials, as well as posters, booklets and brochures.

Along with public opinion raising, it is necessary to make the process of implementation of alternative sentences more transparent. *“The society must have access to information about the whole flow of the process starting with law-making and sentencing and ending with cases of effective correction of offenders”*, an NGO representative stresses.



## CHAPTER 3

## ***IMPLEMENTATION: PROSPECT AND POSSIBLE SCENARIOS***

---

*Given that the court has made a decision in favor of a non-custodial punishment, who is going to be in charge of execution of the sanction? Where and how shall the sanction be served? Current chapter attempts to answer these questions and projects opportunities and threats with respect to practical implementation of alternative sanctions in Armenia.*

### **3.1. LAWS AND IDEAS IN PRACTICE**

As it was mentioned in Chapter 1, implementation of alternative sanctions, except for the fines and keeping in disciplinary battalion, will be the responsibility of Criminal Executive Inspectorates established within the Criminal Executive Department of the Ministry of Justice.

However, current legislation still does not provide a legal basis for practical implementation of certain types of non-custodial punishments, such as community service. Types of activities the offenders are expected to perform, as well as the roles and responsibilities of the actors of the process are yet to be clarified.

Bearing this in mind, we tried to find out our respondents' opinion on some aspects of implementation of the mentioned sanction. Given that other alternative sanctions were widely used in the past and that mechanisms of their implementation are more or less defined, we concentrate mainly on projections of respondents regarding implementation of community service.

One of the major questions that we addressed was where and what type of activities the offenders can be required to perform?

#### ***POTENTIAL FIELD FOR COMMUNITY SERVICE***

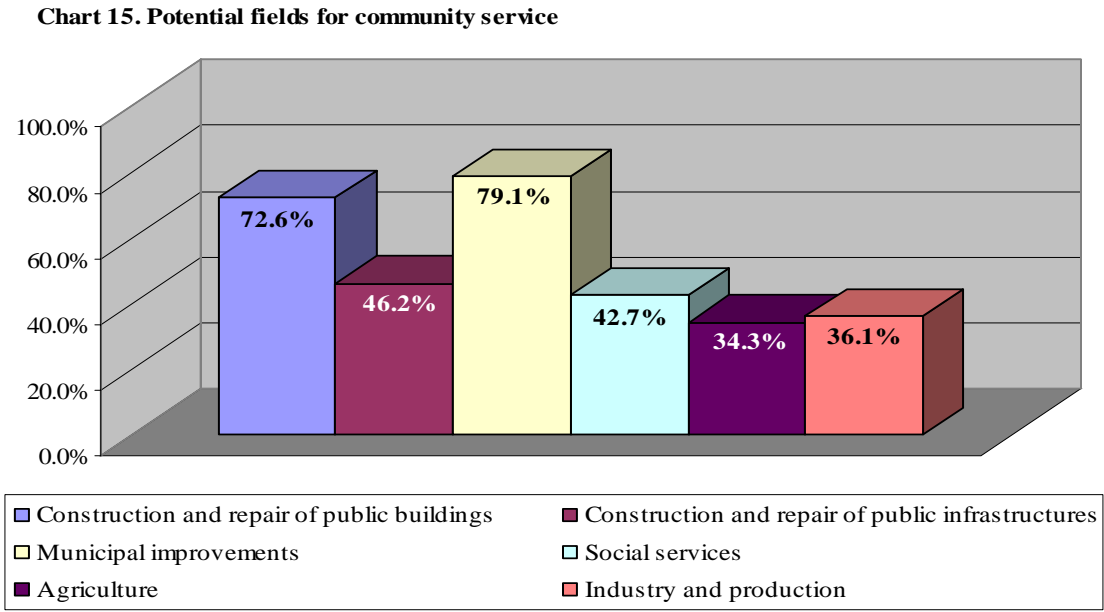
Basic consideration of majority of respondents is that community service assumes hard physical labor. Some respondents think *“the job must not necessarily be pleasant.”* Few

supporters of this opinion (mainly policemen, private sector managers and local government representatives) think the court should not even think about the offender’s dignity when deciding on the nature of the punishment.<sup>45</sup>

Based on these assumptions, a substantial list of socially useful tasks is elaborated. It includes but is not limited to the following main areas:

- Construction and repair of buildings of public use (*schools, hospitals, etc.*)
- Construction and repair of public infrastructures (*roads, water pipes, gas lines, etc.*)
- Municipal improvements (*waste collection, planting of trees, cleaning the roads from snow, etc.*)
- Social services (*working in hospitals, psychiatric clinics, homes for elderly, etc.*)
- Agriculture (*harvesting, shepherding, etc.*)
- Industry and production (*mining, loading, packaging, etc.*).

The chart below demonstrates the preferences of respondents with respect to the mentioned fields of community service.



The respondents think the workplaces can be provided by state, private and public sector employers. Current legislation does not set limitations as to where community sanctions can be served. However, many respondents think community service will be more effective if

<sup>45</sup> However, this statement contradicts to Article 3, Para 9 of the UN Standards Minimum Rules for Non-Custodial Punishments, which stipulates that the dignity of the offender subject to non-custodial measures shall be protected at all times.

organized in private companies, since *“the control over the quality and over the work schedule is much stricter there”* (attorney).

Another issue of concern is the location of serving the punishment. Some respondents claim the offenders should serve it in their own community. However, majority of respondents think the offenders have to serve the punishment far from their residence, since otherwise new conflicts might arise and the offender might get stigmatized by his neighbors.

On the other hand, some respondents believe, *“Sending offenders to work in other community will not help them avoid meeting friends and acquaintances, because Yerevan is a small city”* (social worker). Hence, they propose sending the offenders to work in boarder-zone settlements or far-off mountainous regions of Armenia.

In this respect, one can mention a serious contradiction: on one hand, the respondents think community service can help the offenders to socialize, allowing them live with their relatives and friends. On the other hand, what they suggest is, in fact, a new type of isolation. This contradiction may be conditioned by the following two interrelated circumstances: a) in the opinion of the respondents, the society is not yet ready to adequately position itself in frames of the process; b) hence, the respondents tend to choose the easiest way to prevent possible conflicts. Given such choice, however, the effectiveness of community service in general can be put under question.

## ***ACTORS OF THE PROCESS***

Questions that we further examined were: what parties, apart from Criminal Executive Inspectorates, shall be involved in the process to make it more effective; and what should be the role of each of those parties within the process?

Table below presents the summary of the respondents' ideas on both of the questions.

**Table 2. Actors to be involved in implementation of non-custodial punishments**

<b>Actor</b>	<b>Main role</b>
Local government	Providing workplaces, supervision of the offenders
Municipal police	Supervision of the offenders
Mass Media	Public awareness raising, publicizing the implementation process

Actor	Main role
Spiritual leaders <sup>46</sup>	Guiding, counseling, spiritual education
Private companies	Providing workplaces
NGOs	Training, social control, providing workplaces, protection of the offenders' rights
Diaspora	Investments in production and industry and employment of the offenders
Attorneys	Supervision of the process
Psychologists	Psychological expertise, determining the relevance of alternative sanction
Social workers	Work with offenders and their employers to ensure proper effect of the sanctions

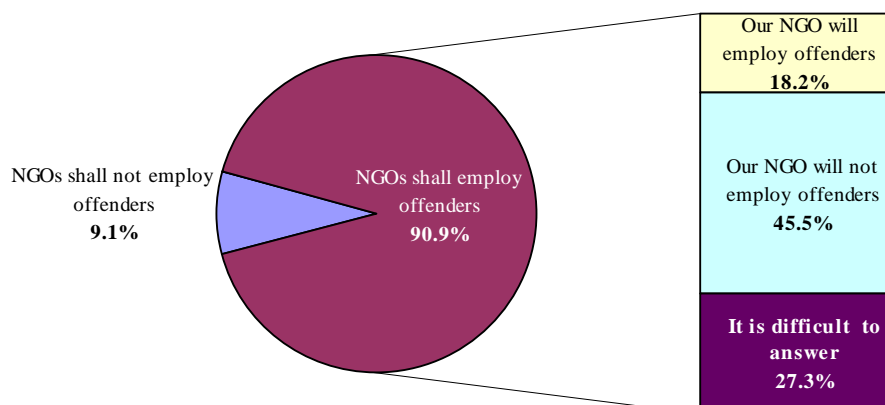
Some respondents think *“every single person and organization has to take responsibility to facilitate the correction of the offenders, since it will benefit the whole society”* (social worker). We had a chance to check whether some NGOs and private companies are actually willing to take such challenge.

### Responsibility of NGOs

Many of our respondents, including majority of NGO representatives, think it might be very effective to give the offenders an opportunity to work for public organizations, since the objectives and working climate in these organizations is quite favorable for building socially acceptable patterns of behavior.

However, only few of NGOs that participated to our focus groups discussions stated they would not mind to employ offenders sentenced to an alternative sanction.

Chart 16. Imperatives vs NGOs' personal responsibility



<sup>46</sup> One of our respondents proposed, *“We have doctors to deal with physical health, why don't we have people to deal with the health of the soul? I am speaking neither of psychologists, nor of the priests. I am speaking of people with sound life experience and wisdom, of those who can find ways to the souls of the offenders”*.

There are three major reasons for such contradiction. First and most important reason is that NGO leaders are not clear about the mechanisms and conditions of fulfillment of correctional labor and community service. *“My rights and responsibilities as an employer must be clearly reflected in appropriate laws. Otherwise I am afraid I can become an offender myself”*, a Gyumri NGO representative worries.

Another issue of concern is the offender. *“In case if the offender was sentenced for robbery or bribery I would seriously think whether it is worth employing him and whether we have mechanisms to control his behavior.”*

Only two NGO leaders stated they are open to work with offenders in case they can be helpful for the organization. *“Most of our programs require special skills and academic background. If the offender possesses those skills we do not mind employing him.”*

Indeed, although NGOs are expected to show much more “non-commercial” approach and rather think about contributing to social integrity, they should of course get fair compensation for their efforts and altruistic approach.

### **Responsibility of private companies**

While most of the respondents believe private companies might be willing to employ offenders as a cheap workforce, none of the managers of private companies included in our survey showed enthusiasm with this respect.<sup>47</sup>

Apart from worries already voiced by NGO representatives, private companies have another major concern, that is, the tax regulation of the process. *“I would employ offenders in case I was not supposed to pay taxes for them. I think the State has to design a special tax policy – employers must be granted tax privileges for such cases.”*

Private managers believe the State has to take full responsibility of the process at least at the initial stage. *“They should first of all provide the offenders with jobs in state companies to test it and to show us how it works.”*

However, our respondents were not radical in their statements. They suggest that after the implementation framework is completely developed, the Criminal Executive Inspectorates create a database of offenders sentenced to correctional labor and community service so that

---

<sup>47</sup> This, however, does not speak for the motivation and attitudes of Armenian private companies in general, since only 4 companies were included in our sample.

they can choose appropriate people to work with. “As soon as the laws start to actually function and we have a heavy workload, I will employ some offenders for one or two months”, a dried fruits producer says.

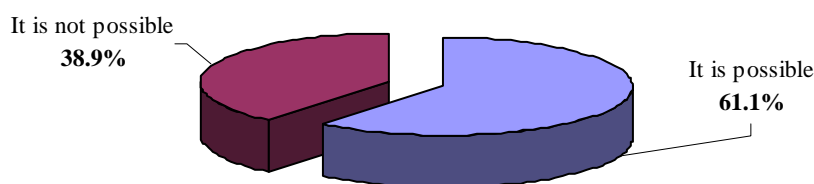
## 3.2. SCENARIOS

Having examined the current situation, we considered it necessary to assess the feasibility of effective implementation of alternative sanctions in Armenia.

While majority of our respondents have encouraging expectations, still a significant number of people have pessimistic prospects.

The chart below presents the distribution of respondents’ estimates of whether or not it is possible to successfully implement alternative sanctions in Armenia.

**Chart 17. Is it possible to effectively implement alternative sanctions in Armenia?**



Based on the estimates and clarifications of respondents one can design two different scenarios of the future of alternative sentencing practices in Armenia.<sup>48</sup>

### ***PESSIMISTIC SCENARIO***

***Those who think alternative sanctions can be properly implemented in Armenia are utopians, who neglect Armenian current reality.***

***If we widen the scope of use of non-custodial punishments, we will facilitate repeated crimes, undermine the very basis of social justice and end up building a more polarized society.***

<sup>48</sup> The scenarios were not elaborated by the respondents. They were distilled by the authors from judgments and opinions of the respondents concerning possible development of the process in Armenia.

Scenario writers believe their projection is feasible, since the process of practical implementation of alternative sanctions in Armenia is facing a number of obstacles. *“There are certain undisputable facts. We will face objective and realistic obstacles once we step into fulfillment of the provisions of the law; those obstacles will hamper the process from the very beginning, that is, the objective and well-thought decision of the court, till the very end, that is, the successful rehabilitation of the offenders,”* an attorney claims.

## **Sentencing**

Providing for a number of sentencing options, some respondents (attorneys, social workers and NGO representatives) think *“Armenian legislation encourages **judicial subjectivity**.”* There exist neither sentencing guidelines nor social-psychological expertise to assist the judges in imposition of an objective and effective sentence. Moreover, judges can impose sanctions based solely on subjective considerations, since there are no accountability mechanisms.

Given the prevalence of **corruption** in all fields of Armenian social reality the key ‘subjective consideration’ of the judges will be financial in nature. Respondents believe that whenever a judge faces a choice between custodial and non-custodial measure of punishment, the decisive factor will be the volume of ‘encouragement’. *“If the bribe you are ready to pay responds to the ‘pricelist’, you can be sure to get the ‘best’ punishment available. In contrast, those people who refuse to pay will have no chance to get an adequate punishment. Replace ‘punishment’ with ‘product’ and read one of the basic principles of commercial relations”*, an attorney figuratively explains.

Some respondents claim that another obstacle that can hinder alternative sentencing is the **financial situation** of Armenian population. They argue that offenders who are not able to pay fines might actually prefer being sentenced to imprisonment. This statement, yet, contradicts the provisions of Armenian criminal law and again speaks for some of the respondents’ lack of basic knowledge of current legislation. According to the Criminal Code of the Republic of Armenia, alternative punishment for fine defaulters is community service and not imprisonment.<sup>49</sup> Nevertheless, social conditions of population can indeed set limitations to implication of fine as a criminal punishment in general.

---

<sup>49</sup> Article 51, Para 4 of the Criminal Code provides that in case of impossibility to pay the fine, the court can substitute the fine or unpaid part thereof with community service, counting 10 hours of community service as minimal salary.

## Implementation

The respondents believe a number of obstacles will consecutively emerge during implementation of alternative sentences.

Primary obstacle that we will face is the **lack of knowledge and skills** of the parties to be involved in implementation process. *“There is a serious problem of human recourses. Current staff of Criminal Executive structures has been educated in the old Soviet system, where the offender’ rights and constructive methods of their treatment were totally neglected,”* a legal expert notes. On the other hand, neither the Local Government, nor most of the private or public organizations have ever been involved in correction of the offenders. Hence, they are not aware of the roles they are expected to play and do not have appropriate skills to fulfill those roles.

Secondly, if even the above-mentioned problem is solved, we will face the **lack of practical mechanisms** to implement the sanctions and control the offenders. *“Current legislation does not yet provide answers as to where non-custodial sanctions must be served, what type of activities they include and what the mechanisms of control look like,”* an attorney stresses.

In turn, whenever the mechanisms of implementation are clarified, a much difficult problem will arise, that is, the **lack of workplaces**. *“Thousands of educated law-abiding citizens fight for every underpaid job vacancy. There will be no chance to find workplaces for the offenders,”* a policeman argues. On the other hand, very few state companies are still functioning and majority of workplaces are now offered by private companies. The respondents believe the managers of these companies will not employ offenders; moreover, *“in case if one of their employees commits an offense and is sentenced to correctional labor, the employers will fire him”* (attorney).

At the end, effective implementation of alternative sanctions and probation requires certain **technical infrastructure**, which is currently unavailable. The respondents mainly point out that Criminal Executive structures lack modern information and communication technologies as well as such equipment as detectors of location.

## Rehabilitation

First obstacle that will face effective rehabilitation of the offenders is the **lack of functioning social-psychological services**. *“Psychologists do not know what they are called*



*for. They fail to provide real assistance to the offenders in most of the cases,”* a social worker states and adds that the efforts of social workers, on the other hand, are not organized anyhow.

Another major problem is that the **society is unaware** of the purpose and objectives of alternative sanctions and, hence, is not ready for taking direct responsibility to participate in the process of correction of the offenders. *“The community cannot objectively assess the importance of the sanctions and cannot respond adequately; we therefore will fail to achieve the end-result,”* a prosecutor fears.

Taking into account this impressive list of problems, majority of which are indeed undisputable, it might seem really unjustified to expect something else than *repeated crimes, social injustice and polarization of the society*.

However, there is another major opinion block, supporters of which convince us that the situation is not hopeless. Our optimistic scenario writers think that not all of the mentioned obstacles are fundamental and believe that all problems can sooner or later be solved.

### **OPTIMISTIC SCENARIO**

*Short-term thinking and destructive criticism never helped solving social problems.*

*Social change will gradually happen and alternatives to imprisonment will prove to contribute to effective re-socialization of the offenders, triumph of social justice and improvement of social solidarity.*

Basic assumption of optimistic scenario writers is that not any reform can provide immediate results. *“We do not design laws for one year. We must look in the future –set objectives and find ways to accomplish them. This is the only sustainable way to facilitate change,”* a legal expert stresses.

Respondents admit that there are certain limitations and obstacles on the way to effective implementation of non-custodial penal sanctions in Armenia. However, in a long-term perspective those problems will be overcome and there are already some positive prerequisites for their solution.

Firstly and most importantly, the **weaknesses of Armenian legislation are improved** to a great extent and the legal reform is still in progress.

*“New Criminal and Criminal Executive Codes set the essential legal framework for implementation of alternative sanctions. At the same time, we are working on single laws that will regulate and facilitate the whole process.”* This statement comes to address the concerns of the pessimists regarding lack of mechanisms for practical implementation of non-custodial sanctions.

Turning to flexibility of the new Criminal Code, which is considered to encourage **judicial subjectivity and corruption**, the respondents argue that *“we could not neglect ground principles of criminal justice, such as humanity and individuality of punishment just because people feared some judges would abuse the provisions of the law for their own benefit. The laws cannot depend on personal characteristics of the citizens”* (attorney). Besides, certain measures are taken to minimize the risk: *“the Code provides serious criminal liability for those who commit crimes against the system of justice”* (prosecutor).

Reacting to the concerns about **specifics of Armenian labor market**, respondents claim there are many way-outs.

Majority of local government representatives both in Yerevan and in Gyumri stated they can involve offenders in various activities of their communities. *“There is a wrong stereotype that local self-governing bodies do nothing and therefore have nothing to offer to the offenders. We have a very heavy workload and will be happy to have people to help us”*, Head of Nubarashen Community of Yerevan asserts.

As discussed in previous sections of this chapter, public organizations and private companies can also under certain conditions provide workplaces to those sentenced to community service and correctional labor. Besides, the respondents think that many charitable organizations that implement community development programs in far-off regions of Armenia would be willing to recruit cheap workforce.

Another problem that was voiced by pessimistic scenario writers was the **lack of knowledge and skills** of the Criminal Executive officers. However, a special training department is now functioning in the Ministry of Justice, which is called to compensate this knowledge gap. *“We have many young and enthusiastic employees, who are ready to learn and contribute to successful implementation of the provisions of the law,”* a legal expert claims.

With respect to **lack of financial recourses and technical infrastructure**, the respondents believe that *“as soon as we have first examples of successful correction of offenders by means of non-custodial measures of punishment, international donor organizations and the Diaspora will assist us in solving those problems”* (policeman).

At the end, the respondents believe it is always possible to make amendments to the laws. *“I am sure the current legal framework can help us achieve the desired outcomes. However, if single provisions of it prove to be ineffective, there is always a chance to improve them,”* an attorney asserts.

# CONCLUSION *STRATEGIES AND PRIORITIES FOR ACTION*

---

*Concluding part of the report summarizes the results of the study and proposes strategies to facilitate successful and effective implementation of alternative sentencing options in Armenia.*

## **I. SUMMARY OF FINDINGS**

The study allowed drawing certain important conclusions with respect to the current situation and prospects of implementation of non-custodial measures of punishment in Armenia. The following main aspects of the issue were clarified:

- Majority of stakeholders of the process have positive attitude towards alternative sentencing options. Their attitude is based on the belief that enlarged practice of alternative sanctions corresponds to the modern trends in international criminal law and contributes to such important processes as social integration, proper socialization of the offenders and public trust building towards the system of social justice.
- Some opinion leaders note negative consequences of implementation of alternative sanctions in Armenia. They state innovations in criminal law do not correspond to Armenian mentality and will hence contribute to corruption and create atmosphere of impunity.
- Alternative sanctions will prove to be effective in terms of correction of the offenders and prevention of crimes. It is difficult to project their effectiveness in terms of restoration of social justice.
- The offenders think that wider implementation of alternative sanctions is highly commendable, since they fear after imprisonment it would be difficult to restore social relations, to get a job and find legal sources of income to support their families. They think the society will be more tolerant to those who serve an alternative sentence than to those who are imprisoned.

- It is, however, quite difficult to project the actual social reaction. Half of the respondents think the society will show rather positive attitude, while another half fears prejudiced behavior. Accordingly, respondents do not agree on whether or not the Armenian society is ready to accept the innovations.
- There are no provisions in the current legislation regarding the scope of activities the offenders can be required to perform if sentenced to community service. Some of the potential fields the respondents propose are construction and repair activities, municipal improvements, social services, agriculture and industry.
- There are two possible scenarios of the future of alternative sentencing in Armenia – pessimistic and optimistic. Pessimistic scenario is based on the current Armenian reality and objective obstacles on the way of implementation of alternative sanctions, while optimistic scenario looks into future and stresses the existing prerequisites for successful practice of non-custodial punishments.

## **II. RECOMMENDATIONS**

There can be two major approaches to achieve the desired objectives.

One of them would be to concentrate on solutions of macro problems that currently face Armenian society. However, once we accept that implementation of non-custodial measures of punishment depends on social-economic policies to increase social welfare, improve the labor market and fight the corruption, we will not go further than stating that to start practicing alternative sanctions we first have to wait for Armenia to become a Western model country.

Based on the results of the study, we believe that there is an alternative to this macro strategy, that is, to try to address the subject-specific issues voiced by our respondents. Adopting such approach we tried to develop certain micro strategies that we think can effectively serve the establishment of favorable environment for implementation of alternative sentencing options in Armenia.

Three strategies are designed to address key components of the process: sentencing, implementation and social attitudes. Each strategy is presented through a graphical model, supported with necessary argumentations and supplemented with priorities for action.

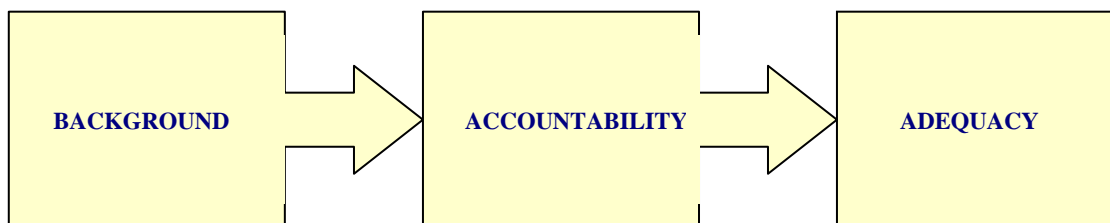
## ***STRATEGY 1: GUARANTEEING ADEQUACY OF THE PUNISHMENT***

### **Rationale**

It was shown that one of the key obstacles on the way to successful implementation of alternative sanctions is judicial subjectivity, which sometimes leads to inadequate and inefficient selection of criminal sanctions to be imposed on offenders.

### **Strategic model**

The desired outcome can be achieved if the courts are provided with appropriate tools and background information for objective and effective sentencing and are kept accountable for their decisions.



### **Priorities for action**

To provide a necessary background for effective sentencing it is recommended:

- Based on best international practices to develop sentencing guidelines to support the implementation of the relevant provisions of the law;
- To increase the sensitivity of alternative sentencing options by introducing new alternative sanctions, such as publicizing the crimes, apology to the victim and house arrest;
- To ensure that the court's decision is supported by professional psychological expertise.

To ensure accountability of the judges it is proposed:

- To pay special attention to awareness raising among offenders with respect to their right to appeal the decision of the court;
- To encourage appropriate NGOs to participate in court trials and voice their concerns regarding the objectivity of the court decision;
- To publicize administrative or criminal penalties imposed on court officials in case they violate the relevant provisions of the law.

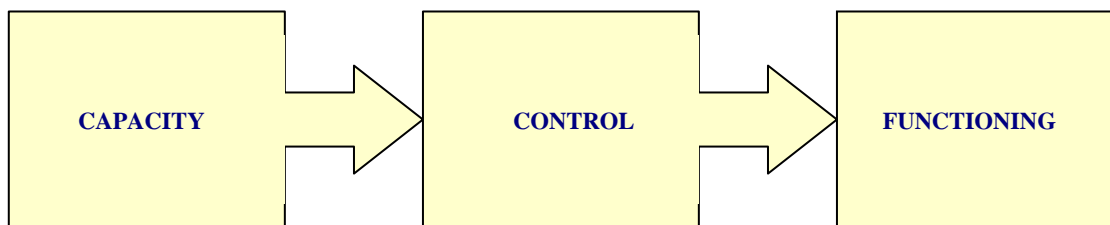
## ***STRATEGY 2: GUARANTEEING PROPER FUNCTIONING OF IMPLEMENTATION MECHANISMS***

### **Rationale**

Main problem that was stated to hamper the implementation process was lack of appropriate implementation mechanisms. However, we demonstrated that some of those mechanisms already exist and the others are being developed. The problem therefore is the lack of capacity to use the existing mechanisms.

### **Strategic model**

The objective can be accomplished if capacity building measures are undertaken and a multi-level control over the process is ensured.



### **Priorities for action**

To improve the existing capacity for implementation of alternative sanctions it is suggested:

- To communicate the principles and explain the mechanisms of implementation of non-custodial punishments to all parties that are supposed to participate in the process, including Criminal Executive Inspectorates, Local Self-Government Bodies, private companies and NGOs;
- Along with theoretical knowledge, provide those parties with practical skills training, such as planning, teamwork and conflict management;
- To ensure functioning of professional social services to facilitate the offenders' integration and to help the employers create a favorable environment for their correction.

A multi-level control over the process shall be ensured through regular monitoring of the process carried out with a combined effort of justice system officials, international organizations, the Clergy, local NGOs and social scientists.

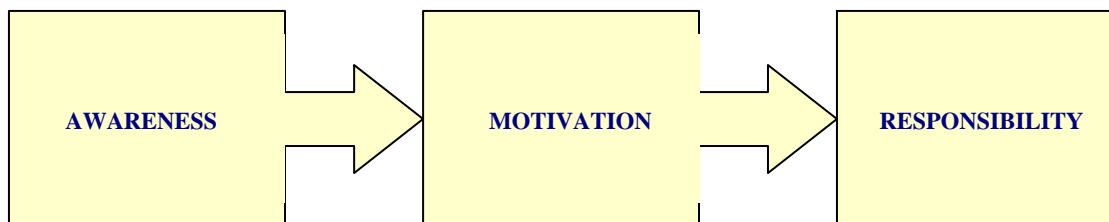
### ***STRATEGY 3: GUARANTEEING SOCIAL RESPONSIBILITY***

#### **Rationale**

Social attitudes and public involvement in the process of implementation of alternative sanctions were acknowledged to be exceptionally important for achievement of the end-result of non-custodial punishments. It was, however, stressed that Armenian society is not yet fully ready to play the role prescribed to it in frames of the process.

#### **Strategic model**

Social responsibility can be ensured if the society understands the objectives and importance of alternatives to imprisonment and is encouraged to contribute to correction of the offenders.



#### **Priorities for action**

To raise public awareness it is recommended:

- To carry out a nationwide attitude and awareness survey to assess the public opinion and reveal the major knowledge gaps;
- To facilitate a public debate, with participation of practicing lawyers, judges, psychologists, sociologists and NGOs of appropriate profile;
- To undertake a social marketing campaign, including development of targeted TV programs and infomercials, as well as posters, booklets and brochures.

To motivate public involvement we propose:

- To ensure transparency of alternative sentencing process by publicizing criminal cases, sentencing patterns and practices of successful implementation of alternative sanctions;
- To design special tax policy to encourage active involvement of public and private sector employers in implementation of community service and correctional labor.