# PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO IMPRISONMENT ACROSS EUROPE

## NON-CUSTODIAL SANCTIONS AND MEASURES IN THE MEMBER STATES OF THE EUROPEAN UNION

## Lithuania

Gintautas Sakalauskas

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Gintautas Sakalauskas
Lecturer at the University of Vilnius, Faculty of Law, Department of Criminal Justice

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# Non-custodial sanctions and measures in Lithuania: a large bouquet with a questionable purpose and unclear effectiveness

Gintautas SAKALAUSKAS*

## 1. Legal framework

### 1.1. The system of penalties

The first national Criminal Code of the Republic of Lithuania (CC) came into force on the 1st May 2003 along with the Code of Criminal Procedure and the Code of Execution of Penalties (CEP). One of the aims of the new legislation was to create a new wide, flexible and to a different types of crimes proportional penalties system (see also Sakalauskas 2005; Čepas, Sakalauskas 2010; Sakalauskas 2014; Sakalauskas 2019a; 2019b). In the last 18 years the Criminal Code has been amended almost 100 times, including also the changes in criminal sanctions system. It shows ant instability of criminal policy, mostly caused by initiatives of "better deterrent reaction" to a crime and reducing of criminal behaviour.

According to the Criminal Code[1], a penalty shall be a measure of compulsion applied by the State, which is imposed by a court's judgement upon a person who has committed a crime or misdemeanour (Para 1, Article 41). The actual redaction (September 2021) of the Criminal Code provides the following penalties for natural persons:[2]

1) community service for a period from one month up to one year for 10–40 hours per month with a maximum of 480 hours for a crime and 240 hours for a misdemeanor in total (Articles 42, 46 CC); the penalty of community service may be imposed only with the consent of the accused person; the service to be performed by the convict shall be selected by the probation service assisted by executive institutions of municipalities; where a convict person evades performance of community service, a court may, on the recommendations of the probation service, replace community service penalty with a fine or restriction of liberty (Para 7, Article 46 CC);
2) a fine in the amount from 15 to 6 000 minimum standards of living (MSLs)(Articles 42, 47 CC) for crimes of varying severity; since the 1st of January 2018 the one minimum standard of living is 50 euros, so the maximum of a fine for a grave crime is 300 000 euros; even the maximum of a fine for a minor crime is 100 000 euros – 10 times more than the average of annual personal income (netto) in Lithuania; where a person does not possess sufficient funds to pay a fine imposed by a court, the court may replace this penalty with community service (Para 7, Article 47 CC); where a person evades voluntary payment of a fine and it is not possible to recover it, a court may replace the fine with restriction of liberty (Para 8, Article 47 CC); it is one of very positive amendments of the Criminal Code, which came into force on the 5th of July 2019, that there is no replacement of evaded fine with an arrest penalty provided;
3) restriction of liberty for a period from three months up to two years (Articles 42, 48 CC); the persons sentenced to restriction of liberty shall be usually under control of the electronic monitoring and under the different obligations and prohibitive injunctions; where a person evades the serving of the penalty of restriction of liberty, this penalty shall be replaced with arrest (Para 8, Article 48 CC);

* Gintautas Sakalauskas is associate Professor at Vilnius University, Faculty of Law, Department of Criminal Justice.

[1] The last consolidated version of the Criminal Code of the Republic of Lithuania valid until 30th of September can be found here: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/28b18041843311e89188e16a6495e98c. There was 17 new amendments to the CC till September 2021.

[2] The Criminal Code of Lithuania provides also criminal liability of a legal entity (Article 20 CC). Upon a legal entity for the commission of a criminal act may be imposed a fine, restriction of operation of the legal entity or liquidation of the legal entity (Article 43 CC). There is in Lithuania just a few dozen of such cases per year.

4) arrest for a period of 15 to 90 days for a crime and of 10 to 45 days for a misdemeanor (Articles 42, 49 CC); the court may suspend an arrest penalty imposed for a first time committed criminal offence for a period of tree moths up to one year and impose an electronic monitoring for this period together with a different penal sanctions or obligations (Para 1, Article 75 CC);
5) fixed-term custodial sentence for a period of three months to 20 years (Articles 42, 50 CC); the court may suspend a custodial sentence of up to four years for one or several minor crimes or less serious[3] premeditated crimes and up to six years for one or several crimes committed through negligence; the court may suspend the execution of the imposed sentence for a period ranging from one year up to three years; the execution of the sentence may be suspended where the court rules that there is a reasonable ground for believing that the purpose of the penalty will be achieved without the sentence actually being served; since the 5th of July 2019 there is also a possibility to suspend a part of a custodial sentence, but just for crimes committed through negligence of more than six years, also a custodial sentence of more than four years for one or several minor crimes or less serious premeditated crimes, even a possibility to suspend a part of custodial sentence up to fife years for some serious crimes (Para 3, Article 75 CC);
6) life custodial sentence; until April 2019 the Lithuanian law did not provide for (early) release in life custodial cases, it was possible just like an exception by a way of an amnesty (Article 78 CC) or clemency (Article 79 CC); according to the judgment of 23 May 2017 of the European Court for Human Rights this regulation had been held as a violation of the Article 3 of the Convention of Human Rights;[4] there is now a possibility after 20 years served sentence to replace it with fixed-term sentence for a period of 5 to 10 years with a passible early release after a half of served sentence.

All these penalties shall be imposed by court in the case provided for in the Special Part of the Criminal Code. Only one penalty may be imposed on a person for the commission of one crime or misdemeanour[5] (Para 3, Article 42 CC).

The purpose of a penalty shall be: 1) to prevent persons from committing criminal acts; 2) to punish a person who has committed a criminal act; 3) to deprive the convicted person of the possibility to commit new criminal acts or to restrict such a possibility; 4) to exert an influence on the persons who have served their sentence to ensure that they comply with laws and do not relapse into crime; 5) to ensure implementation of the principle of justice (Para 2, Article 41 CC). This eclecticism of different purposes makes it possible to impose very different penalties, because the main purpose is not clear, all the more so as one of the purposes is simply to punish a person who has committed a criminal act. Nevertheless, the Code of Execution of Penalties (CEP) in Para 2, Article 1 establishes just one general purpose of resocialization (re-integration) of all convicts – the promotion of a person's ability to live a law-abiding life (see more Sakalauskas 2019b).

When imposing a penalty, a court shall take into consideration very different circumstances: 1) the degree of dangerousness[6] of a committed criminal act; 2) the form and

[3] According to the Criminal Code, premeditated crimes shall be divided into minor, less serious, serious and grave crimes. A minor crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years, a less serious crime – by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years in prison, a serious crime – by a custodial sentence of the duration in excess of three years, but not exceeding ten years in prison, a grave crime – by a custodial sentence of the maximum duration in excess of ten years (Article 11 CC).

[4] *Case of Matiošaitis and others v. Lithuania* (Applications nos. 22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 and 72824/13)

[5] A misdemeanour shall be a dangerous act (act or omission) forbidden under the Criminal Code which is punishable by a non-custodial sentence, with the exception of arrest (Article 12 CC).

[6] Unfortunately, the new Criminal Code of the Republic of Lithuania also contemporary Lithuanian criminal law theory remains this soviet tradition of dangerousness of a criminal act. About this tradition and their sources in

type of guilt; 3) the motives and objectives of the committed criminal act; 4) the stage of the criminal act; 5) the personality of the offender; 6) the form and type of participation of the person as an accomplice in the commission of the criminal act; 7) mitigating and aggravating circumstances; 8) the damage caused by the criminal act. Where imposition of the penalty provided for in the sanction of an article is evidently in contravention to the principle of justice, a court may, taking into consideration the purpose of the penalty, impose a commuted penalty subject to a reasoned decision (Article 54 CC).

According to the Article 55 CC, the court shall generally impose a non-custodial sentence upon a person prosecuted for the first time for a negligent or minor or less serious premeditated crime. In the event of imposition of a custodial sentence, the court must justify its decision.

In the Article 61 CC is the rule of measure of the penalty with reference to its average provided. When imposing a penalty, a court shall take into consideration whether only mitigating circumstances or only aggravating circumstances, or both mitigating and aggravating circumstances have been established and shall assess the relevance of each circumstance. Having assessed mitigating and/or aggravating circumstances, the amount, nature and interrelation thereof, also other circumstances, a court shall make a reasoned choice of a more lenient or more severe type of a penalty as well as the measure of the penalty with reference to the average penalty. The average penalty provided for by a law shall be determined as the aggregate of the minimum and maximum measure of a penalty provided for in the sanction of an article, which is subsequently divided by half. Where the sanction of the article prescribes no minimum measure of a penalty for a committed criminal act, the average penalty shall be determined on the basis of the minimum measure of a penalty fixed for that type of penalties. Where the offender voluntarily confesses to commission of a crime, sincerely regrets it and actively assists in the detection of the crime as well as there are no aggravating circumstances, a court shall impose upon him a custodial sentence not exceeding the average penalty provided for in the sanction of an article for the committed crime or a non-custodial sentence.

The rule of measure of the penalty with reference to its average was constructed with a purpose to unify the praxis of imposed penalties. But this rule is very ambiguous. It seems contrary to the principle of *ultima ratio* and tightens the penalties imposed, because a usual criminal offence, in other words a criminal offence of "normal" severity is equate to an average penalty, not to a minimal penalty (*ultima ratio*).

### 1.2. Release from criminal liability

On the definition of the "criminal liability" is based the theory of Lithuanian criminal law and the main structure of the reaction to a criminal behaviour, significant influence of soviet criminal law theory remained. The release from criminal liability is similar to the process of diversion, but constructed in material criminal law. The Criminal Code of the Republic of Lithuania provides eight[7] possibilities for release from a criminal liability:

a) when a person or criminal act loses its dangerousness[8] (Article 36 CC);
b) due to minor relevance of a crime (Article 37 CC);
c) upon reconciliation between the offender and the victim (Article 38 CC);
d) on the basis of mitigating circumstances (Article 39 CC);
e) when a person actively assisted in detecting the criminal acts committed by members of an organised group or a criminal association (Article 39 (1) CC);
f) on status of whistle-blower (Article 39 (2) CC);
g) on bail (Article 40 CC);

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the soviet criminal law see more Mishina, E. (2017). The Re-birth of Soviet Criminal Law in Post-Soviet Russia. Russian Law Journal, 5 (1), 57–78.

[7] There are also 11 possibilities for release from criminal liability, provide in the Special Part of the CC for concrete crimes (for example, possession of illegal drugs, corruption, illegal crossing of the state border etc.).

[8] See above the *Reference 6*.

h) for minors (Article 93 CC).

Release from criminal liability can be applied in the pre-court and in the court level – during the pre-trial investigation (upon the decision of pre-trial judge, who confirms the decision of the prosecutor[9]), the preliminary hearing and also during the trial. Release from criminal liability means, that the person is not convicted and penalties are not applied. But a person released from criminal liability may be subject to the penal sanctions (see *Chapter 1.3.*). Furthermore, there are the conditional and unconditional types of release from criminal liability. In case of conditional release from criminal liability (upon reconciliation and upon bail), if a person released from criminal liability commits a new premeditated crime within the period of one year after reconciliation or during the term of bail, the previous decision releasing him from criminal liability shall become invalid and the court shall decide to prosecute the person for all the criminal acts committed.

There are a lot of different conditions for the releases from criminal liability. The most commonly applied types are even the mentioned release from criminal responsibility upon reconciliation between the offender and the victim (Article 38 CC) and on bail (Article 40 CC). In the last years from approximately 25 000 persons suspected of (charged with) criminal offences per year, up to 5 000 were released from criminal liability upon reconciliation and up to 1 000 – released on bail[10].

Both releases from criminal liability are possible by a reasoned decision of the court, when a person commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime. In the last years the Article 38 CC were mostly applied in cases of causing physical pain or a negligible health impairment and the Article 40 CC – in cases of violation of regulations governing road traffic safety or operation of vehicles (Article 281 CC)[11].

A person may be released by a court from criminal liability upon bail subject to a request by a person worthy of a court's trust to transfer the offender into his responsibility on bail where: 1) he commits the criminal act for the first time, and 2) he fully confesses his guilt and regrets having committed the criminal act, and 3) at least partly compensates for or eliminates the damage incurred or undertakes to compensate for such where it has been incurred, and 4) there is a basis for believing that he will fully compensate for or eliminate the damage incurred, will comply with laws and will not commit new criminal acts. A bailsman may be parents of the offender, close relatives or other persons worthy of a court's trust. When taking a decision, the court shall take account of the bailsman's personal traits or nature of activities and a possibility of exerting a positive influence on the offender. The term of bail shall be set from one year up to three years. Bail may be set with or without a surety (Article 40 CC).

A person may be released by a court from criminal liability upon reconciliation where: 1) he has confessed to commission of the criminal act, and 2) voluntarily compensated for or eliminated the damage incurred to a natural or legal person or agreed on the compensation for or elimination of this damage, and 3) reconciles with the victim or a representative of a legal person or a state institution, and 4) there is a basis for believing that he will not commit new criminal acts (Article 38 CC). Initiative to reconcile may come from offender, victim, case investigator, prosecutor or a judge.

The major shortcoming of this legal instrument in Article 38 CC is that no mediation is provided in the process of victim-offender reconciliation (an independent and well-trained third party (mediator) is not involved in the process). Purposeful communication and reflection of the conflict do not take place (or at least no provision is made to facilitate it). There are no research data in Lithuania on who usually take the first step to reconcile. However, it is very likely that offenders and case investigators have the biggest interest in closing the case in this way, either to finish the process quickly, or to avoid the risk of being formally sentenced (Bikelis, Sakalauskas 2015: 490). Besides the fact that the procedure involved in reconciliation

[9] Article 212 and Para 2, Article 214 of the Code of Criminal Proceedings of the Republic of Lithuania.
[10] The Lithuanian Departmental Register of Criminal Offences: Forma_2-IT.
[11] The Lithuanian Departmental Register of Criminal Offences: Forma_3-IT.

in Lithuania is very formal, there are two major weaknesses compared to mediation: 1) release from liability is conditional, dependent on the offender resisting from reoffending. If he/she reoffends with intent within one year, the decision not to prosecute is voided, and a decision should be adopted on the liability of the person for all the criminal acts committed; 2) there are some other conditions, which preclude process of reconciliation, and which are more relevant to the considerations on re-offending risk rather than the idea of mediation (real reconciliation and compensation of damages). For example, there is the restriction that, for person who have already been released from criminal liability on the basis of reconciliation within the last four years (between previous reconciliation and the new criminal offence), Article 38 CC shall not have an effect.

One of the necessary preconditions for development of restorative justice in Lithuania is establishment of mediating institution (mediator) in the process of victim-offender reconciliation. There were some efforts to include such provision into the draft of new Criminal Code but they received very little support and were ineffective. Formal release form criminal liability without a mediator and mutual reflections on the conflict and consequent agreements does not guaranty restorative justice. Even more – it gives a chance for misuse of position – for an offender, for a victim and for investigators of a case (Bikelis, Sakalauskas 2015: 490).

Other six types of release from criminal liability were applied very rare. There are few hundred cases per year of release from criminal liability for minors (Article 93), also about hundred cases of release from criminal liability due to minor relevance of a crime (Article 37) and just few or no cases of release from criminal liability due other grounds.

### 1.3. Penal sanctions

An adult person released from criminal liability or released from a penalty (probation) or early released from a correctional institution may be subject to the following penal sanctions (Para 2, Article 67 CC):

1) prohibition to exercise a special right for a period from one year up to five years (the right to drive land vehicles, air- or water-borne vehicles, the right to hold and carry a weapon, the right to hunt, the right to fish, etc. in the cases when a person committed a criminal act while exercising these rights) (Article 68 CC);

2) deprivation of public rights in the cases when a criminal act is committed in abuse of public rights (to be elected or appointed to an elected or appointed position at state or municipal institutions and agencies, undertakings or non-state organisations), from one year up to five years, for the less serious and serious crimes against civil service and public interest from three up to seven years (Article 68(1) CC);

3) deprivation of the right to be employed in a certain position or to engage in a certain type of activities (in the cases when a person commits a criminal act in the field of his occupational or professional activities or where, having regard to the nature of the criminal act committed, the court comes to the conclusion that the person may not preserve the right to be employed in a certain position or to engage in a certain type of activities), from one year up to five years, for the less serious and serious crimes against civil service and public interest from three up to seven years (Article 68(2) CC);

4) compensation for or elimination of property damage (Article 69 CC);

5) unpaid work (with the consent of the accused person of 20 up to 100 hours at health care, social care and guardianship or other state or non-state bodies and organisations not longer than for one year) (Article 70 CC);

6) payment of a contribution to the fund of crime victims (in the amount from 10 MSLs up to 250 MSLs; the contribution must be paid within a time limit laid down by the court, this term may not be longer than three years) (Article 71 CC);

7) confiscation of property (an instrument or a means used to commit an act prohibited by CC or the result of such an act shall be considered as property subject to confiscation) (Article 72 CC);

8) the obligation to reside separately from the victim and/or prohibition to approach the victim closer that a prescribed distance (Article 72(1) CC);

9) participation in the programmes correcting violent behaviour (Article 72(2) CC);

10) extended confiscation of property (shall be the taking into ownership of the State of the property of the offender or part thereof disproportionate to the legitimate income of the offender, where there are grounds for believing that the property has been obtained by criminal means) (Article 72(3) CC);

11) the obligation to notify a change of residence or departure from one year up to five years (in cases of sexual abuse of children).

According to the Para 1, Article 67 CC penal sanctions must assist in implementing the purpose of a penalty. This statement is controversial, because the main idea of penal sanctions was to create a system of measures instead of penalties. The original version of the Criminal Code, which came into force on the 1th of May 2003, provided only fife of actual 11 penal sanctions and only the confiscation of property might be imposed together with a penalty. Actually, from all penal sanctions only provided under No 4 and 5 may not be imposed with a penalty.

Having released a minor from criminal liability on the grounds provided for in Para, Article 93, the court shall impose against him the reformative sanctions provided for in Article 82 CC. A minor released from criminal liability or released from a penalty (probation) may be also subject to payment of a contribution to the fund of crime victims (in the amount from 3 MSLs up to 25 MSLs to the fund of crime victims, confiscation of property and extended confiscation of property (Para 4, Article 67 CC).

**1.4. "Front door" probation (suspended custodial sentences)**

In *Chapter 1.1.* mentioned in the Criminal Code provided possibility to suspend fully or partly a fixed-term custodial sanction or fully suspend an arrest penalty. In suspending the execution of these penalties, the court shall impose upon the convict one or more mutually compatible penal sanctions (see *Chapter 1.3.*) and/or following obligations:

1) to offer an apology to the victim;

2) to provide assistance to the victim during the latter's medical treatment;

3) to undergo treatment of addiction diseases, where the convict agrees;

4) to educate and take care of his minor children, to take care of their health, to maintain them;

5) to take up employment or studies, continue employment or studies;

6) to participate in a behaviour correction programme;

7) not to leave home at a certain time, unless this is related to work or studies;

8) not to leave the city/district of the place of residence without the authorisation of the institution supervising the convict;

9) not to visit certain places or to refrain from communicating with certain persons or groups of persons;

10) not to use psychoactive substances;

11) not to possess, use or acquire certain items or not engage in certain activities (Para 1, 5, Article 75).

The court may impose upon a person, at the request of the person or other participants of criminal proceedings, also at its own discretion, other obligations not provided for by the criminal law which, in the court's opinion, would have a positive impact on the conduct of the convict.

The procedure for and conditions of suspension of the execution of a sentence shall be stipulated by the Law on Probation of the Republic of Lithuania, which came into force on the 1st of July 2012 and has been regulated the probation system newly. The last fundamentally amended version of the Law on Probation came into force on the 1st of July 2020. The Probation Service system is subordinate to the Prison Department under the Ministry of Justice, and as it

is organized according to hierarchical subordination, probation workers have uniforms and degrees as well as the officers, who work in prisons. Thus, according to their competence and functions they are oriented more to monitoring and control, and not to social work as it is the case in the most Western European countries.

According to the Law on Probation, probation in Lithuania means fully or partly suspended custodial sentences and early (conditional) release (parole) (see *Chapter 1.5.*) (thus "front door" and "back door" strategies apply).

According to the Article 18 of the Law on Probation, probation officers create an individual plan for the monitoring of probationers. The probationer must participate in the establishment this probation plan, in the case of juvenile probationers, the legal representatives must also participate. Other relevant agencies for the resettlement of offenders may be included as well. The individual plan of probationer monitoring is created by considering designated probation conditions, the risk level of the probationer, and other criminogenic factors. The individual monitoring plan for juvenile probationers is created according to their social maturity and personal developmental needs. The individual plan of probationer monitoring must indicate:

1) long-term goals of probationer resocialization, individual measures and their implementation terms;

2) measures helping to probationer to implement probation conditions and their implementation terms;

3) measures to control the behaviour of probationers and to intensity their implementation;

4) state and municipal authorities and institutions, associations, religious communities, other legal entities, as well as volunteers who implement resocialization measures;

5) forms of participation of representatives of juvenile probationers;

6) periodicity of probationer settlement under the conditions established for the execution of the probation term;

7) other measures the implementation of which would help the probationer to socially integrate.

The individual plan of probationer monitoring must be created no later than after ten working days from the beginning of the execution of probation. An individual probation plan must not be established, when the probation term is no longer than two months, and in the case of juvenile probationers – not longer than one month. If no plan is not created, the probationer is acquainted with the order and conditions of probation implementing, his rights and obligations and short-term measures of probationer resocialization are being implemented. The individual plan of probationer monitoring may be adjusted taking into account changed circumstances.

According to Article 20 of the Law on Probation, probation officers help probationers to solve their personal and social problems, they:

1) consult and mediate on issues of organizing personal or other documents, searching for housing;

2) refer to the social services agencies, as well to institutions which provide services to individuals with addictive disorders, to inform about social benefits to persons released from prisons;

3) help to find a job to probationers, initiate meetings with possible employers, informs about services of the labour offices;

4) motivate and encourage the probationers to receive education;

5) motivate and encourage the probationers to participate in behavioural-treatment programmes;

6) provide information and consult on other probationers' social integration issues and provide other necessary personal or social assistance.

The probation service, however, implement also other penalties (community service and restriction of liberty) and the most of the penal sanctions, which are not formally considered as probation (see *Chapter 2.3.*), but regulation provided in the Law on probation is applicable just during the period of probation (execution of suspended custodial sentences and early release).

### 1.5. Early release ("back door" probation)

The new wording of Article 157 of the Code of Execution of Penalties of the Republic of Lithuania (CEP), came into force on 5th of July 2020, once again substantially changed the conditions of parole (the said conditions were amended in 2003, 2011 and 2015)[12].

According to the Article 157, Paragraph 1 CEP, may be granted release on parole prisoners with a low risk of criminal behaviour or who have made clear progress in reducing the risk of their criminal behaviour and who have actually served the following minimum parts of their sentences, may be granted release on parole:

1. prisoners sentenced for negligent offences if the sentence imposed does not exceed six years, other inmates if the sentence imposed does not exceed four years as well as juveniles after serving one-third of the sentence imposed;
2. prisoners sentenced for a sentence of more than four years and less than ten years after serving half of the sentence imposed;
3. prisoners sentenced to more than ten years but less twenty-five years of imprisonment after serving two-thirds of the sentence imposed (Para 2, Article 157 CEP).

If the inmate consents to electronic monitoring, he or she may be granted release on parole up to six months earlier than the date set in the Para 2, Article 157 CEP. Prisoners, not released after the date set in the Para 2, Article 157 CEP, with exception of high-risk offenders and sentenced for the grave crimes or some serious crimes were automatically released under control of electronic monitoring after serving three-quarters of the sentence imposed (Para 3, Article 157 CEP). All prisoners, who have not served a disciplinary penalty for a breach of discipline committed in the course of serving a sentence, may be released only after three months after the disciplinary penalty has been served (Para 5, Article 157 CEP).

The decision on release on parole falls within the remit of so-called Commissions of release on parole, which are established in each institution (there are even multiple commissions within some institutions). However, this decision has to be confirmed by a district court in cases of release under conditions in No 2 and 3, Para 2, Article 157 provided. Under the new amendment to the CEP of the 1st of July 2020, prisoners that have been imposed an imprisonment sentence of up to four years for intentional offences may be released on parole after serving one third of their sentence in prison. The (final) decision on this matter will be made by the Commissions of release on parole and will not require any approval from the court. On the one hand, such an extended competence of the commission raises doubts on compliance with the provision of Article 109 of the Constitution of the Republic of Lithuania, according to which justice is administered only by courts, but on the other hand, and more importantly, the new system continues to apply the differentiation of conditions for parole based on the duration of the sentence, which is not in line with the purpose of the execution of sentences – re-socialization. The length of a sentence depends primarily on the severity of the offence, which the legislator already takes into account when establishing appropriate lengths of imprisonment sentences in the sanction of the article of the Criminal Code. However, the needs and opportunities for re-socialization depend on the individual person and not on the length of the sentence imposed.

The Commissions of release on parole consist of representatives of municipal councils, communities, associations and educational institutions as well as volunteers. The commission does not have to consider the application from the prison earlier than 20 days before the

[12] About the system of release on parole in Lithuania in general, previous regulations and main problems see more Sakalauskas, 2014; Sakalauskas, 2019a; 2019b.

possible date of early release. If the commission refuses the early release, it has to be considered again within the next six months (Para 6, Article 164, CEP). The commission shall provide the prison and/or the prisoner with motivated recommendations on the social rehabilitation of the prisoner and/or reduction of the risk of criminal behaviour, set a deadline for implementation of these recommendations and the date for reconsideration of possible early release.

According to the Paragraph 158 CEP, the following groups of prisoners are excluded from release on parole:

a) persons who have been sentenced for crimes against the independence, the territorial integrity and the Constitution of the Republic of Lithuania,
b) persons sentenced for sexual offences against minors,
c) persons who serve life imprisonment,
d) persons, who are sentenced for intentional crimes committed within prisons or other custodial institutions,
e) persons, who have to spend the partly suspended fix-term custodial sentence.

As mentioned in *Chapter 1.4.*, the procedure of enforcement of early release (parole), changing its conditions and cancelling of decision for early release is provided in the Law on Probation of the Republic of Lithuania. Probation officers actually start to work with convicts who are on probation when they leave the prison, in which they provide general information on probation to groups of prisoners at least three months before a possible release and create and individual plan of probationer monitoring.

## 2. Non-custodial sanctions and measures in practice

### 2.1. Application of penalties

*Figure 1* shows, that in 2020 the custodial sanctions (arrest and fixed-term custodial sanction) accounted for about 33 % of all applied penalties. Furthermore, for about 5–10 % of suspended fixed-term custodial sanctions were replaced to the real imprisonment because of violation of the conditions of the probation. Also, approximately 5 % of the restrictions of liberty because of avoidance were replaced with the arrest penalty. So, at the end the part of custodial sanctions is even a few percent higher than 33 %.

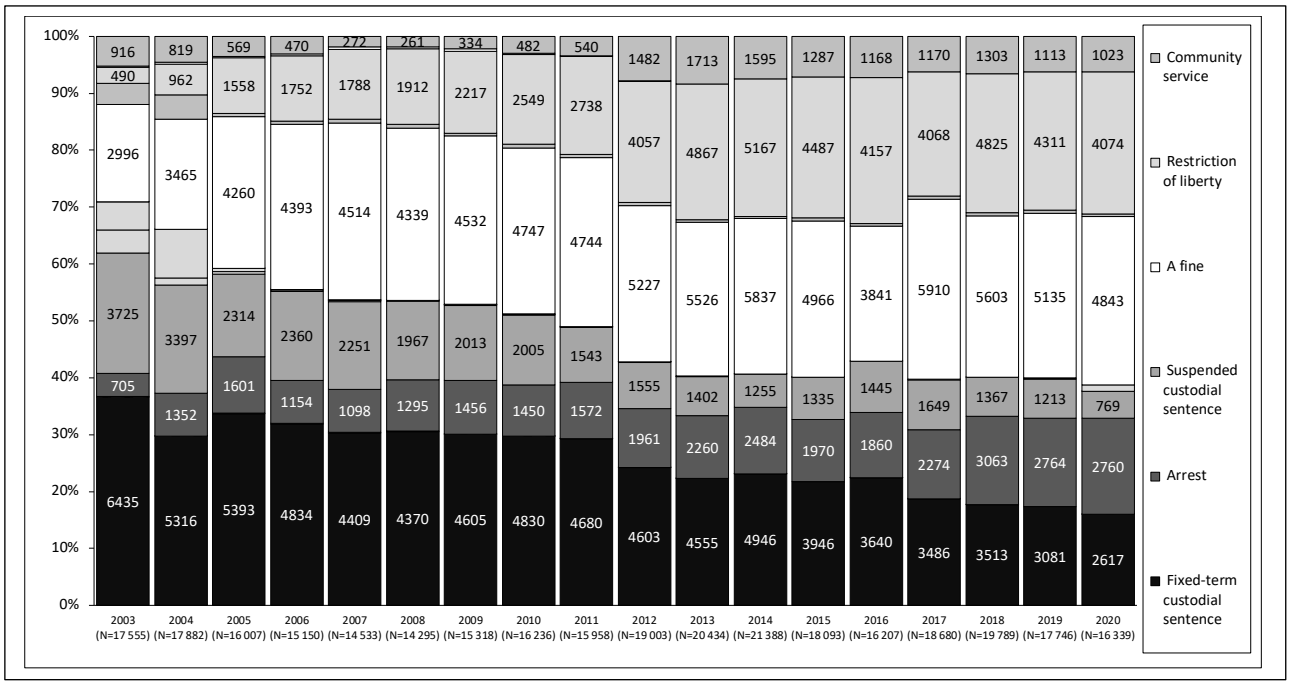


**Figure 1. Penalties imposed for sentenced persons in the first courts level in Lithuania 2003–2020** (absolute numbers and percent scale); Statistics of the Lithuanian National Courts Administration)[13]

For the period 2003–2011 after the new Criminal Code was in place, the penalty of restriction of liberty has become not an alternative to custodial sentence but a replacement for suspended custodial sentence, which in 2011 comprised only about 10 % (1 543 of 15 958 penalties) compared with 21 % in 2003. Fines increased in this time from 17 % to 30 % of all penalties imposed. Unfortunately, there is now statistics in Lithuania about the amount of the fines imposed and about fines replaced, where a person evades voluntary payment of a fine and it is not possible to recover it.

At the end of 2011 the new Law on protection against domestic violence came into force and it caused "a tectonic refraction" in the structure of applied penalties. According to the new law all cases of domestic law became a social significance and must be prosecuted without a complaint of a victim. This new regulation caused approximately 10 000 new suspected persons, approximately 40 % of which were sentenced, mostly to a non-custodial sentence or arrest. Another important new amendment of the Criminal Code was the criminalisation of driving a road vehicle under the influence of alcohol, where the blood alcohol level exceeds 1.5 promille (Para 7, Articles 281 CC and later – Article 281(1) CC). Such person shall be punished by a fine or by arrest or by a custodial sentence for a term of up to one year. But the big part of these suspected approximately 6 000 persons per year were also released from criminal liability and penal sanctions were imposed. These tendencies are good visible in the statistics of probation service.

[13] Not shown in the *Figure 1* are numbers of some very rare applied or no more provided penalties: deprivation of public rights and deprivation of the right to be employed in a certain position or to engage in a certain type of activities (both penalties provided till 5th of July 2011, actually – penal sanctions), suspended fine (provided in 2003–2004), suspended arrest (provided in the CC in 2003–2004 and again since the middle of 2019), life custodial sentence, release from penalty because of illness etc.

## 2.2. Statistics of the probation service

As mentioned above, the probation service implements community service, restriction of liberty, suspended custodial sentence and the most of the penal sanctions and reformative measures for minors. The dynamic of number of all persons under the supervision of probation service is shown in the *Figure 2*.

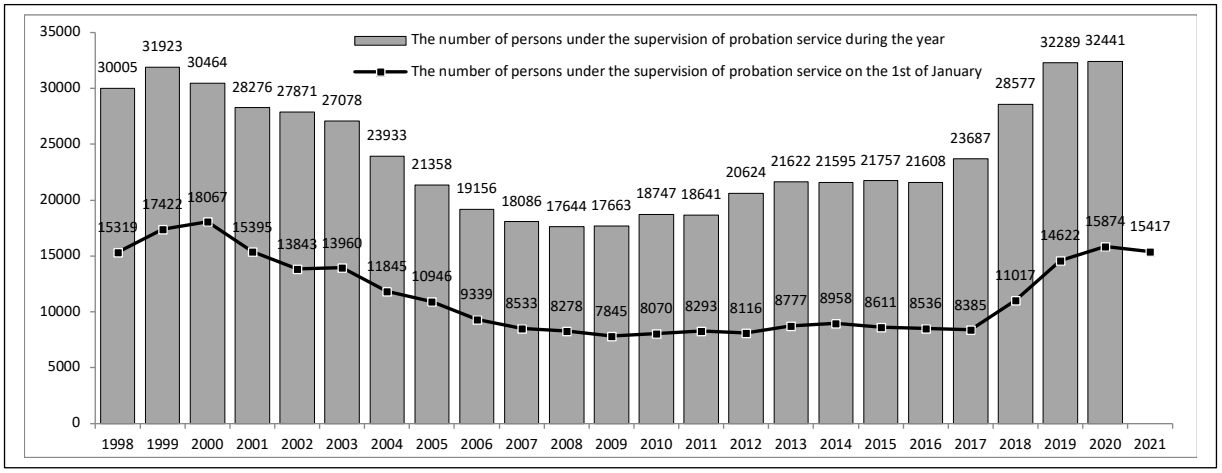


**Figure 2. Persons under the supervision of the Probation service of Lithuania 1998–2021** (absolute numbers of persons during the year and snapshot on the 1st of January every year); Statistics of the Probation service of Lithuania)

*Figure 2* shows an increase of number of persons under supervision in 2012 and 2018, after mentioned extension of formal social control. In *Figure 3* is shown the structure of penal sanctions, reformative measures, penalties and suspended custodial sentences served by the persons under the supervision of the probation service. In the period of 1999–2012 the majority accounted the suspended custodial sentence, in 2013–2017 – the restriction of liberty and till 2018 – the penal sanctions (the reformative measures are just a small part in these numbers). In 2018–2020 from the approximately 30 000 penal sanctions imposed by courts approximately 35 % make a prohibition to exercise a special right (Article 68 CC). As motioned above, a court shall prohibit to exercise special rights for a period from one year up to five years, if imposed together with a penalty of a custodial sentence or arrest, shall apply over the entire term of a custodial sentence or arrest and a period following the custodial sentence or arrest as specified by the court. It means, that the execution of this penal sanction can continue a few years, but in general the is nothing to do for probation service. On the contrary with the second most imposed penal sanction, executed by probation service – participation in the programmes addressing violent behaviour (Article 72(2) CC), imposed in up to 2 000 cases per year. These programmes must be organised or managed by the probation service and it is not so simple, in particular outside of the biggest cities. In general, it should be noted, that NGOs and volunteers are not involved in the implementation of non-custodial sanctions with some very rare exceptions.

Third most imposed penal sanction is the unpaid work (Article 70 CC), with 600–700 cases per year. Another penal sanctions, executed by the probation service, were imposed much less frequently. As well as approximately 35 % of all imposed penal sanctions by courts in the last year makes the confiscation of property (Article 72 CC), but is executed by bailiffs.

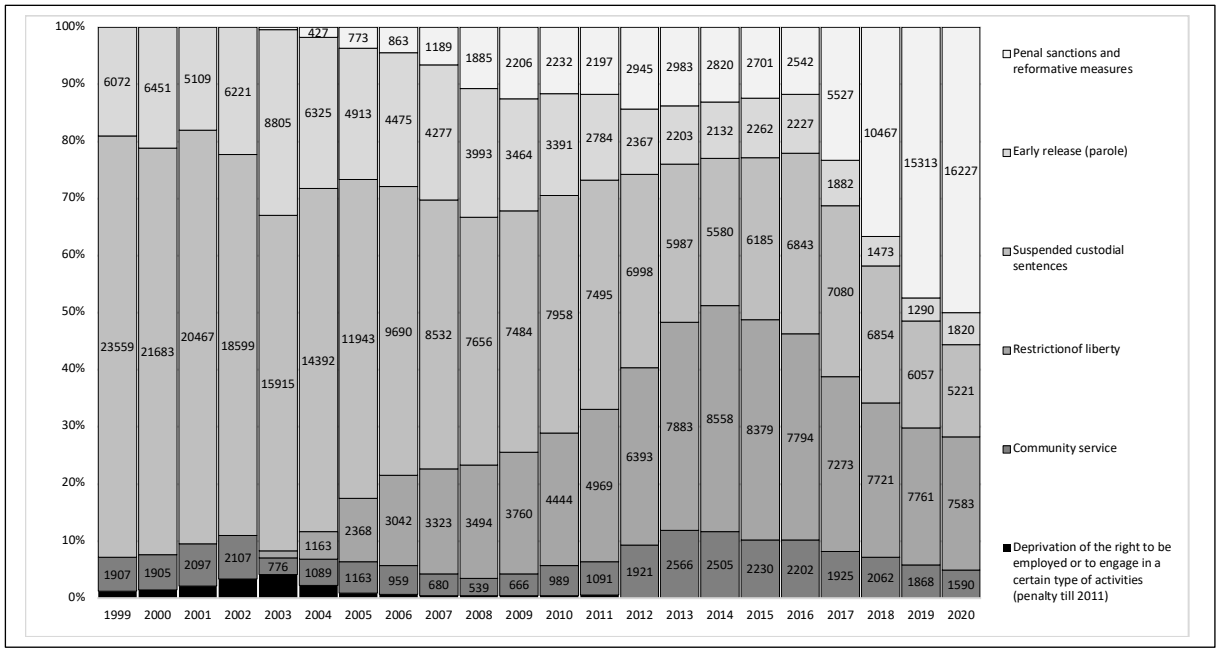


**Figure 3. Penal sanctions, reformative measures, penalties and suspended custodial sentences served by the persons under the supervision of the Probation service of Lithuania 1998–2021** (absolute numbers during the year); Statistics of the Probation service of Lithuania)

Another 50 % of all by the probation service executed sentences, shown in *Picture 3* (the lower dark grey part), are much more conected with a stronger control of convicts and higher workloads for probation service.

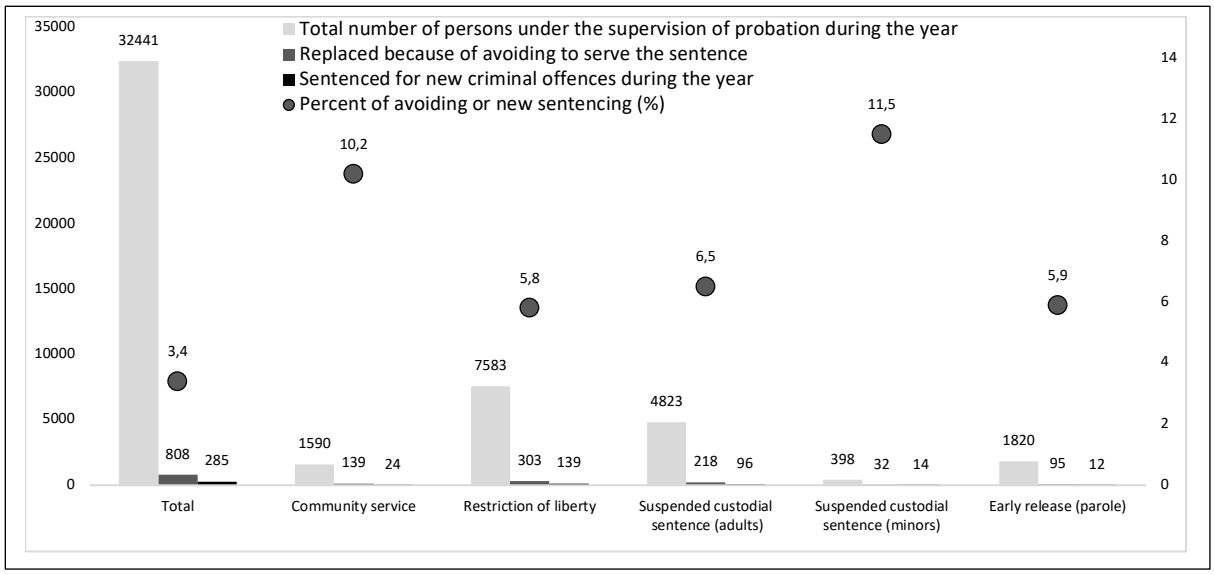


**Figure 4. Convicted persons under the supervision of probation service, from them avoided to serve the sentence or sentenced for a new criminal offence** (absolute numbers and percent during the year 2020) (Statistics of the Probation service of Lithuania)

Unfortunately, but there is still no research on the quality of work with individuals under probation in Lithuania, successful strategies and measures, real content of the work with convicts and its efficiency, also research about repeated criminal behaviour after serving of

different criminal sanctions. It is known from general statistics that during the period of one year only a minority (about 5–12 %) of all individuals under supervision of probation service violate conditions of probation or commit new criminal offences (*Figure* 4).

### 2.3. Early release (parole)

The practice of granting an early release has become even more restrictive after the law reform in 2021, although the opposite was intended. 2012 a share of 36.5 % of all released prisoners was released conditionally, 2013 only – 34.2 %, 2014–2016 only approximately 31 %, and 2017–2019 only 22 % (*Figure 5*). Especially the courts tend to decide negatively. They oftentimes do not accept the positive decisions/proposals of the commissions because in the view of the judges the "aim of the sanction has not been reached" (often because of the severity of the crime, general prevention or punishment considerations). The part of early released persons has been changed in 2020, after 45 % were released on parole, most of them according the new regulation of automatic conditional release under control of electronic monitoring after serving three-quarters of the sentence imposed (Para 3, Article 157 CEP; *see Chapter 1.5.*). The main purpose of this regulation was even to reduce the number of prisoners (about trends see more Aebi, Tiago 2020). It is not yet clear, how consistent this trend will be.

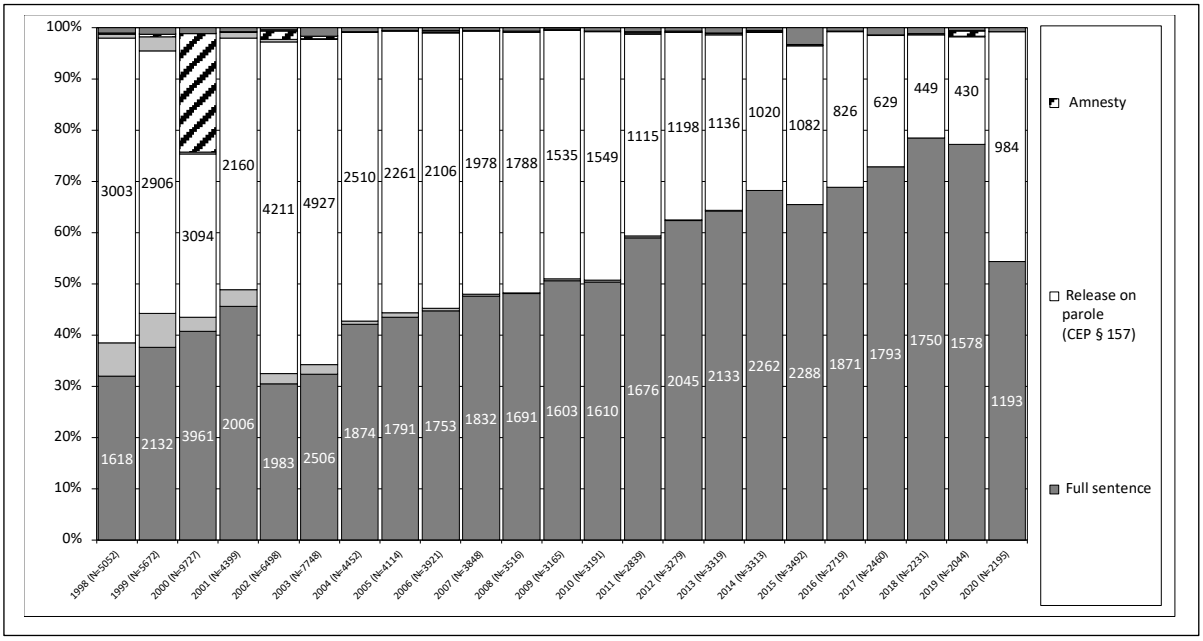


**Figure 5. Grounds for release from prisons in Lithuania, 1998–2020** (absolute numbers and percent scale) (Statistics of the Prison Department of Lithuania)[14]

At the beginning of the year 2021 Lithuania had again (Aebi, Tiago 2020: 6) the highest prison population rate (prisoners per 100,000 residents) in the European Union – 190, despite of a remarkable decrease in the last 10 years (from 330 prisoners per 100,000 residents at the end of 2011). But the image of positive trends could be deceptive. The dynamic from 2012 to 2018 can be described as the way to normalisation. The increase in 2008–2011 was caused by the economical / financial crises and growing punitiveness. The question, what are the main reasons for trends since 2019 and how long it will be continue, is very difficult. Noteworthy, that we had in Lithuania a decrease of registered most serious violent crimes (homicides, severe

[14] Not shown in the *Figure 5* are numbers of some very rare applied grounds for release from prison: terminal illness (Article 76 CC), release from punishment (Article 77 CC, in force till 2012), clemency (Article 79 CC) and replacement of the sentence (due a higher court decision).

bodily injury, rapes, of almost 75 % (from 3 273 in 2011 up to 846 in 2020). As well as, Lithuania has in general the lowest rates of registered criminal offences in the EU. However, in 2018, the number of new entries to prison has once again increased by 27%, compared to 2017 (see Sakalauskas 2021). However, in 2019, this number decreased by 25 %, reaching the lowest point over the entire period of Lithuania's independence. In 2020 this number decreased again by 23 %. It could be an influence of the new legislation, mentioned above, but there is now actual research. Nevertheless, the average of fixed-term custodial sentence, which have to serve the actual prisoners, since 2006 is every year longer and at the end 2020 it was largest number in this period again (87 months in compere to 58 months in 2006) (*see more* Sakalauskas 2014; 2019a; 2021).

The high prisoner rate in Lithuania is caused by frequent application of custodial sentences and further by very long terms of imprisonment (Sakalauskas, Dünkel, 2017) and it is difficult to change some understanding about role and (non)effectiveness of custodial sentences in contemporary penal system. A lack of political interest, caused by expected negative reaction in the society, and general indifference for problems of social integration of prisoners, create an unfavourable atmosphere for changes of penal climate (see also Lappi-Seppälä 2011). Large number of prisoners not only shows a highly repressive culture of punishment compared to other EU countries, but also makes it more difficult to ensure human rights and implement the necessary reforms in the prison system (see also Sakalauskas 2015; 2019a; 2019b; 2021). Unfortunately, at least at the European Union level, the situation in Lithuanian correctional facilities has become one of the worst examples in recent years (see more Sakalauskas 2020a; 2020b; 2020c).

## 4. Impact of the pandemic and prospects for the future of alternatives to imprisonment

There were no big exclusions or facilitations for sentencing and execution of non-custodial sentences during the pandemic in Lithuania, with an exception of remote communication between probation service and convicts. It is very interesting, that the percent of avoiding to serve a sentence and newly committed criminal offences (shown in the *Figure 4*) has been non increased in compere to 2019, despite of probable fewer intensive contacts between probation service and convicts.

To conclude and returning to the topic of this paper, Lithuanian criminal justice system provides a large bouquet of non-custodial sanctions and measures, despite of this there is also the largest prison rate in the EU.

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