2nd Annual Conference of the Max Planck Partner Group for Balkan Criminology

"Imprisonment in the Balkans"

Punishment in Romania

Written By

assist. dr. ***Andra-Roxana Trandafir****, Faculty of Law, Bucharest University*

lecturer dr. ***Daniel Nitu****, Faculty of Law, Babes-Bolyai University in Cluj-Napoca*

Presented by

assoc. assist. lecturer drd. **Ioana Curt**, *Babeș-Bolyai University in Cluj-Napoca*

IMPRISONMENT IN ROMANIA

Imprisonment in Romania

Legal provisions

- The criminal Code – general framework of penalties
- The criminal procedure Code – necessary measures in order to enforce them
- Law no. 254/2013 on enforcement of penalties and precautionary measures involving deprivation of liberty – general conditions of detention and prisoners' rights

The penalty system

- A. <u>The main penalties</u>

- Life imprisonment

  - possibility of conditional release

  - not applicable if the defendant is 65 years old

- Imprisonment

  - general limits: from 15 days to 30 years

- Fine

  - Day Fine system

  - 1 fine day from **10 RON to 500 RON**

  - the number of fine days varies between **30 and 400**

  => approx. (67 Euros – 45.000 Euros)

The penalty system

- B. The complementary penalties

- Ban on the exercise of a number of rights
- Military demotion
- Publication of the final conviction judgment

duration: 1 to 5 years, after the conviction was served

- C. The accessory penalties

- Ban on the exercise of a number of rights

duration: until the main penalty by imprisonment has been served

The penalty system – Alternatives to detention

- Waiver of sentence enforcement

  - the penalty provided by the law <= 5 years
  - the court applies a warning

- Postponement of penalty enforcement

  - the penalty provided by the law < 7 years
  - the imposed penalty is a fine or no more than 2 years of imprisonment
  - probation period, measures and obligations to be met

- Suspension of service of a sentence under supervision

  - the imposed penalty no more than 3 years of imprisonment
  - probation period, measures and obligations to be met
  - community service

The penalty system – Alternatives to detention

- Conditional release

Conditions

a) the convict has served at least a quantum of the penalty, taking into account the work performed (which is different based on the penalty and the age of the convicted person)

b) the convict is serving their sentence in an open or semi-open regime – only for imprisonment, not life imprisonment

c) the convict fulfilled completely all civil obligations established by the judgment of conviction

d) the Court is convinced that the convicted person has reformed and is able to reintegrate into society

The penalty system – Alternatives to detention

- Conditional release

- if the un-serviced penalty >= 2 years, supervision measures, obligations

- possibility to revoke and rescind the release
  - if the convicted person, in ill faith, fails to comply to measures and obligations
  - if the convicted person committed or commits a new offense

- effect: the sentence is deemed as served

IMPRISONMENT PRACTICE

General Information

- If the Court finds the defendant guilty, it will impose the penalty
- No rules or general guideline
  - general criteria of the customization of sentencing
  - the sentencing guideline of the Supreme Court (2008) in case of corruption offenses – not binding
- The Former Criminal Code
  - penalties provided by the law disproportionate
    - e.g. aggravated theft 10-20 years of imprisonment
  - => the courts imposed penalties close to the minimum or under
  - mitigating circumstances – wide effects
- The Criminal Code (2014)
  - the legal range of penalties significantly decreased

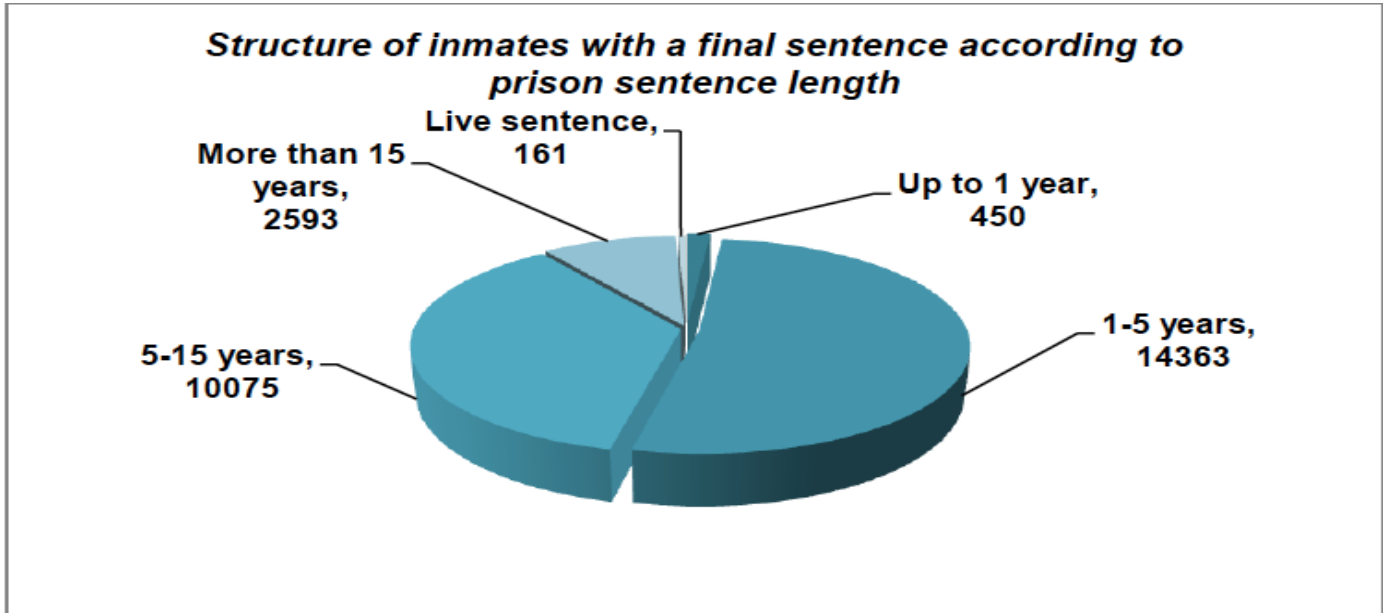
Distribution of sentences

- Data available for 2011-2013
- Imprisonment was the most frequent sentence imposed

Year	Total no. of sentences	Imprisonment sentences – effective execution	Imprisonment and fine sentences – suspended	Imprisonment sentences - supervision under service
2011	47,696	13,514	25,090	3069
2012	49,020	13,786	25,551	4229
2013	47,133	12,891	24,592	4127

Length of imprisonment

- Data available for 2011-2014
- Average length (unofficial) = 3 years and 9 months
- In 2014, the structure of inmates with final custodial sentences was:



Penal Institutions

In 2015 the data provided by the NAP shows there are 45 units in use:

- 34 penitentiaries
- 1 special penitentiary for minors
- 2 detention centres
- 6 prison hospitals
- 2 education centres

Capacity of accommodation - Legal standards

- Internal legal provisions – Order of the Ministry of Justice nr. 433/C/2010

– 4 square meters per detainee (closed and maximum security regime, also minors, youth and arrested)

– 6 cubic meters per detainee (open and semi-open regime)

(6 cubic meters translates to approx. 2,4 square meters)

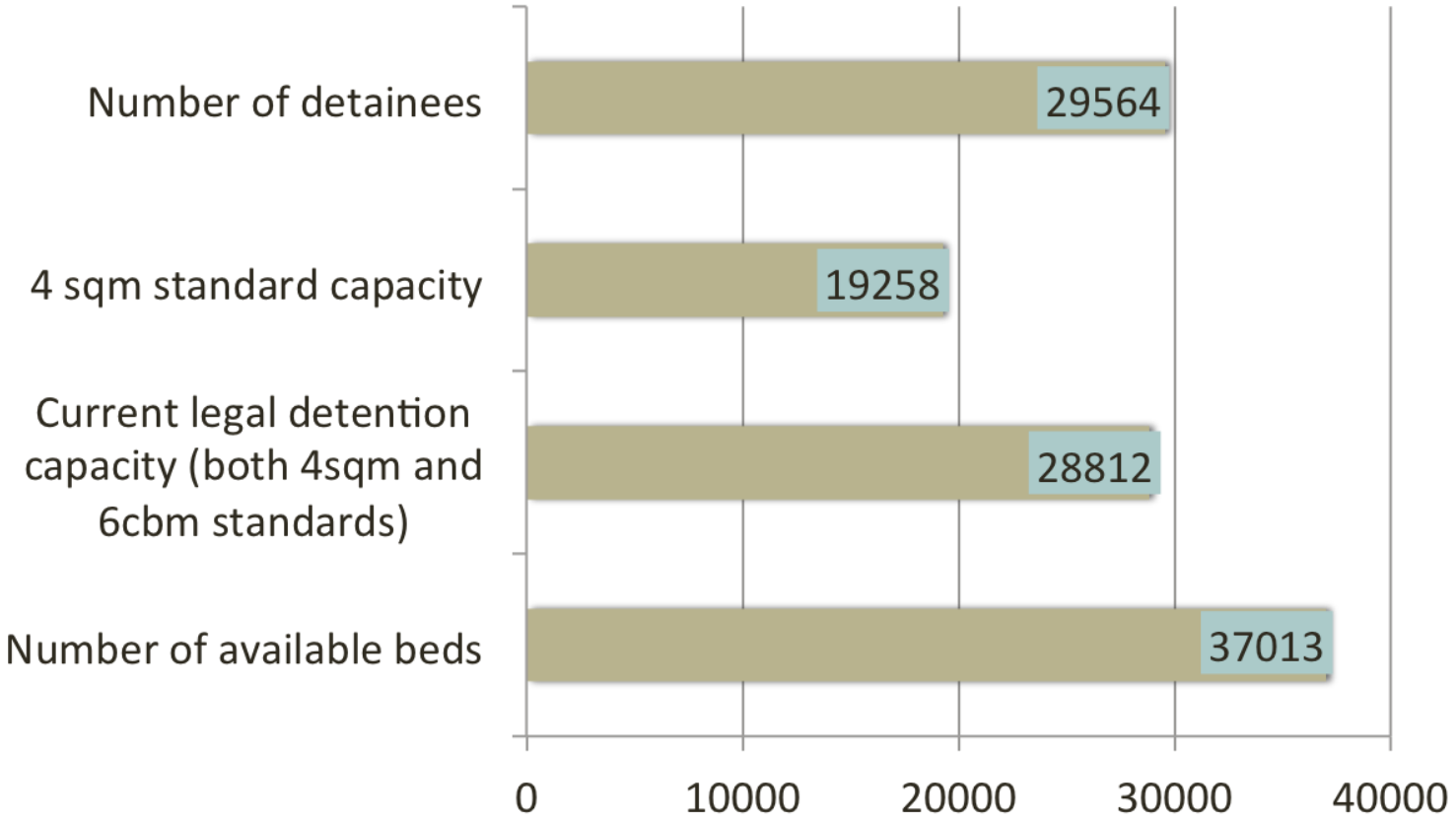
– 7 square meters per detainee (prison hospitals)

- International legal provisions – The CPT and ECHR Standards

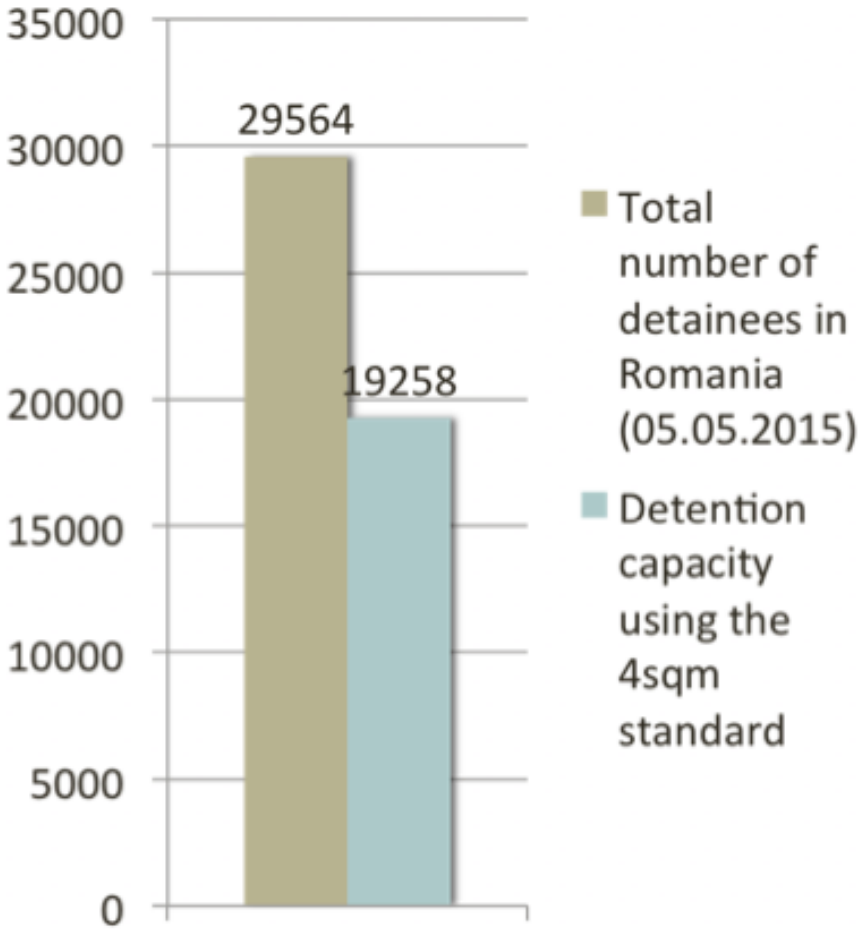
– 4 square meters per detainee, when detained in common

– 9 square meters per detainee, when detained in solitary

The current situation regarding prison overcrowding (05.05.2015)



The density of the detainees



Whilst taking into consideration the CPT 4sqm standard, the current overflow is 10306.

Also, the current occupation rate is 153,52%

Penal Institutions – other data (2014)

Average expense for a prisoner per day

- *A total of 545 lei / month / average cost of inmate's maintenance*
- *A 94 lei / month Health Insurance House contribution*
- Therefore, we can estimate a roughly 21.3 lei / day / inmate, which is about 4.75 Euro / day

Number of inmates per one custodian

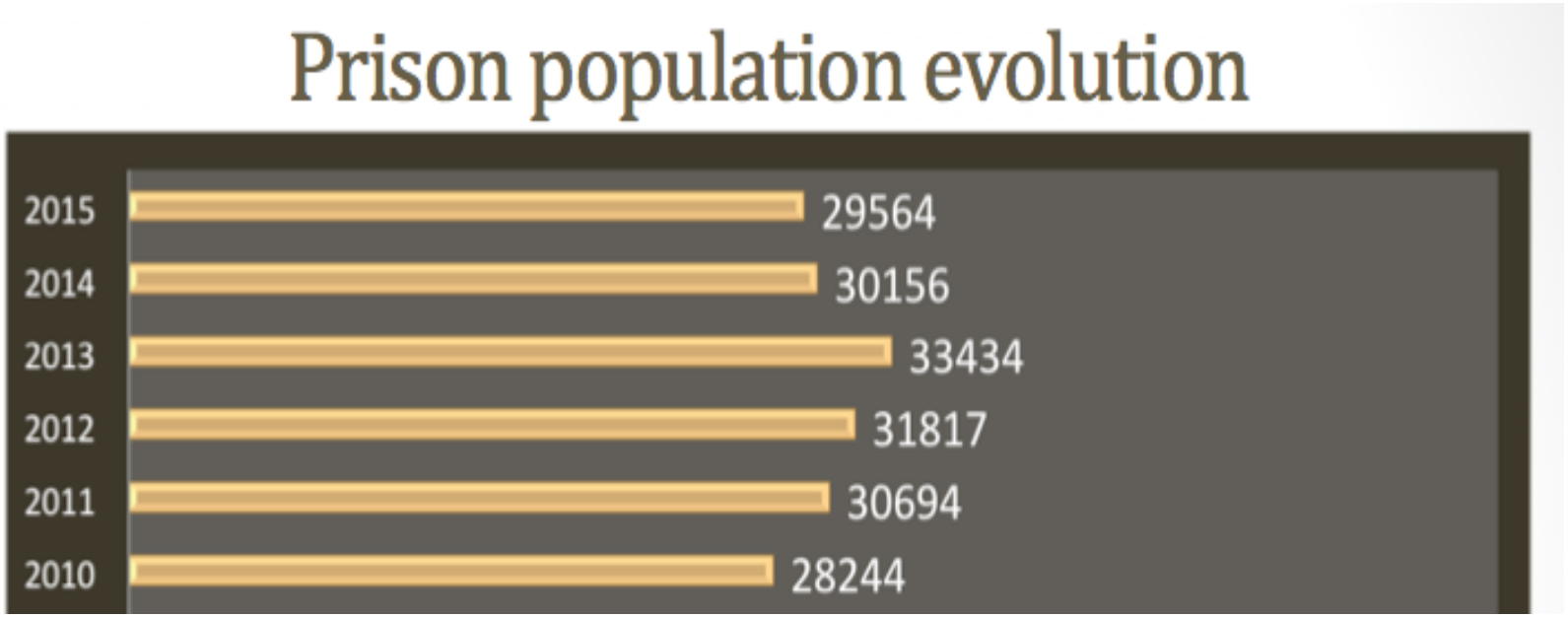
- *In 2014 - a total number of 30.156 detainees*
- *7.916 guards*
- Therefore, we can estimate a ratio of 3.8 inmates / custodian

Conditions in Penal Institutions

- ***Prison regime:***
  - high security regime
    - life imprisonment and prison > 13 years
  - close regime
    - imprisonment 3 – 13 years
  - semi-open regime
    - imprisonment 1 – 3 years
  - open regime
    - Imprisonment up to 1 year

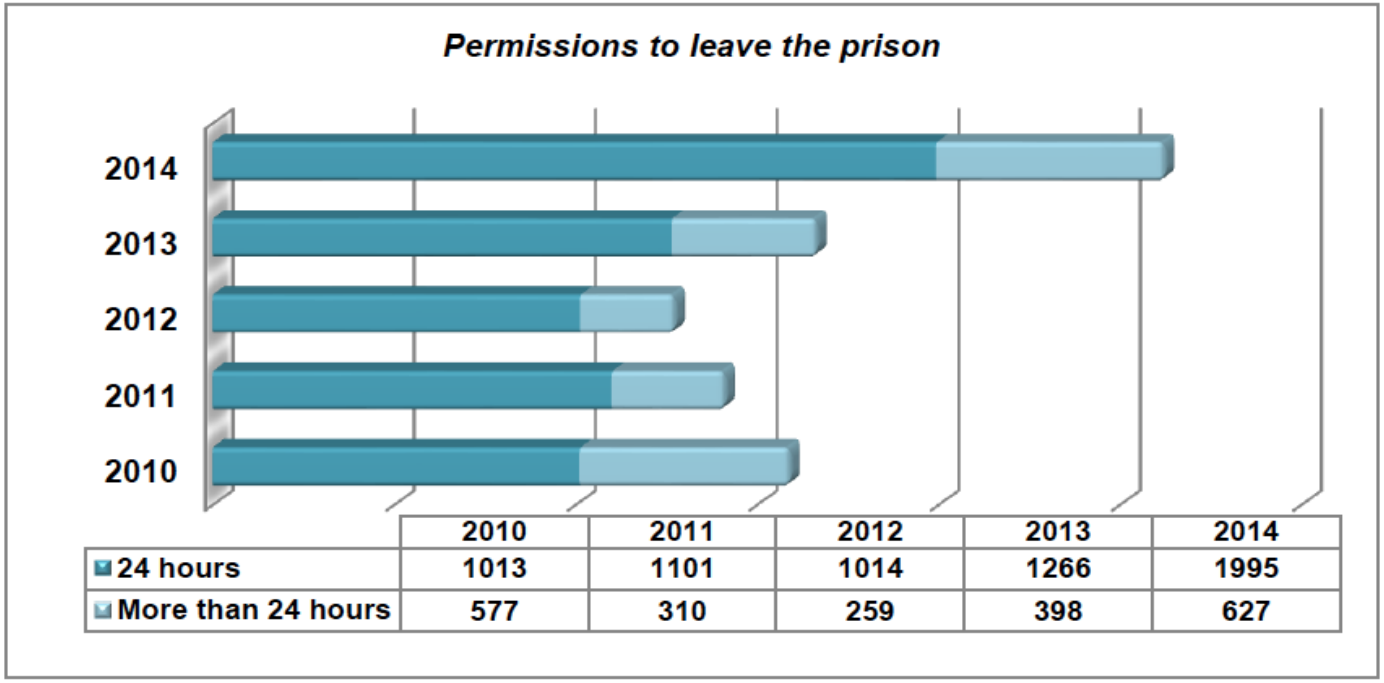
Overcrowding – a major challenge

- deficit of accommodation places > 10.000
- the NAP focuses on developing the prison system infrastructure
- no official data on new entries



Prisoners' contact with the outside world

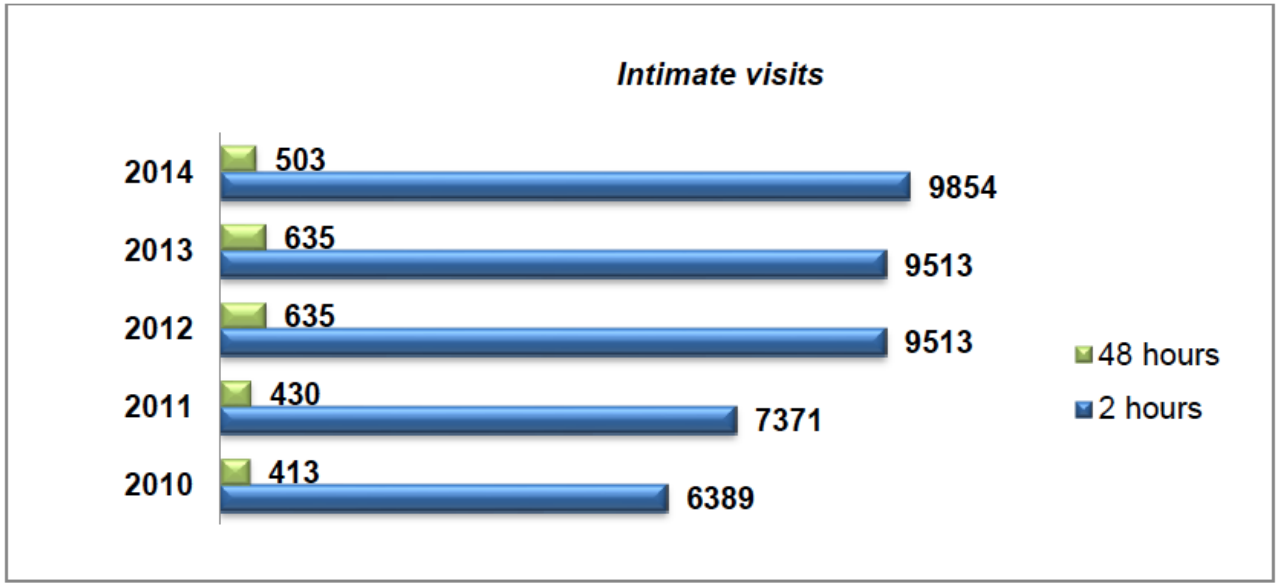
- 4 visits / month, each of which is max. 2 hours
- phone call time – 30 min / day
- permission to leave the prison for 24 hours or more, under certain conditions



	2010	2011	2012	2013	2014
24 hours	1013	1101	1014	1266	1995
More than 24 hours	577	310	259	398	627

Prisoners' contact with the outside world

- right to intimate visits
  - only after the final conviction, discrimination for pre-trial detainees
  - => The Constitutional Court declared the provisions are unconstitutional



Discrimination

- no data available on discrimination towards a certain group of prisoners
- 18 religious cults recognized by the law whose volunteers have access to prisons

- however, there are some provisions of the Law no. 254/2013 that seem to be discriminating towards pre-trial detainees, that were not yet sanctioned by the Constitutional Court
  - e.g. the permission to leave the prison, only available after the final conviction

Critical issues regarding imprisonment

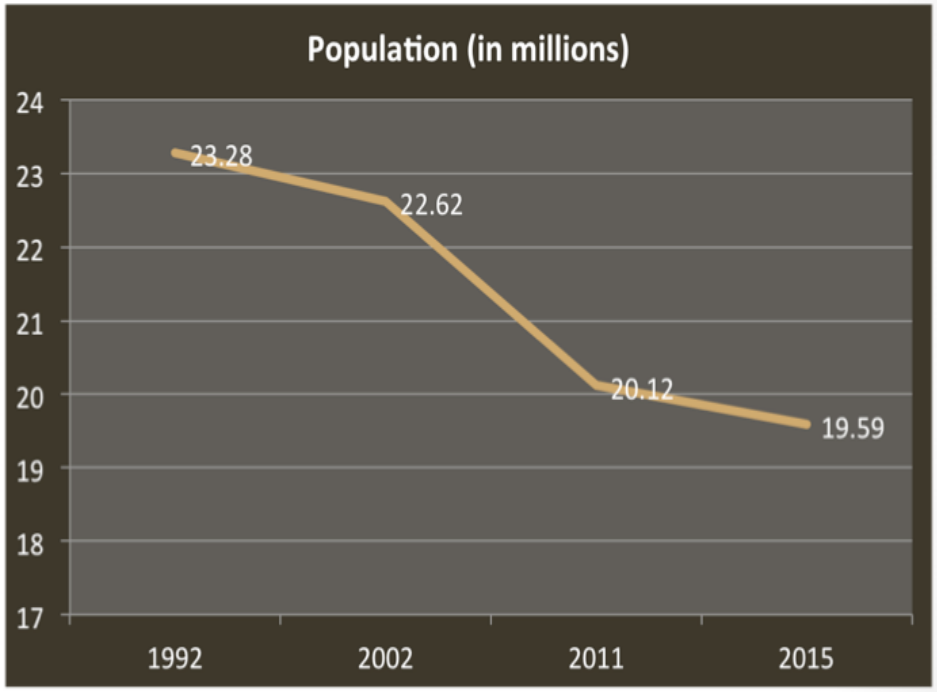
- overcrowding
- deficiencies in ensuring material detention conditions – over 90 ECHR convictions on this matter
- increased use of forbidden substances and mobile phones
- aggressive behavior of inmates
- the incidence of tuberculosis in the prison system (descending in the last years)

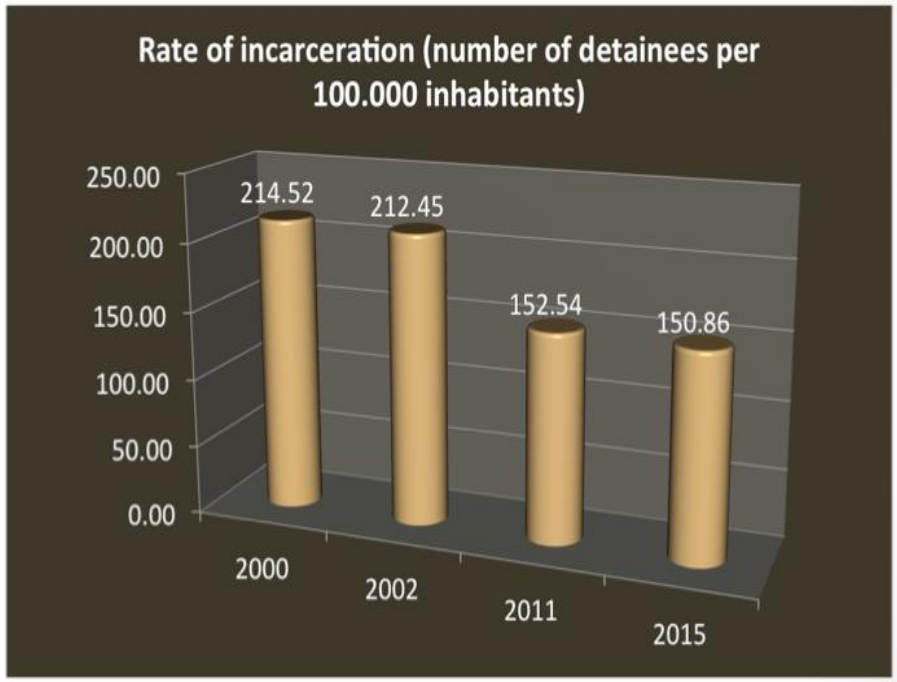
PRISON POPULATION

The prisoner population ratio

- 31.12.2014 – 30.156 inmates
- 05.05.2015 – 29.564 inmates

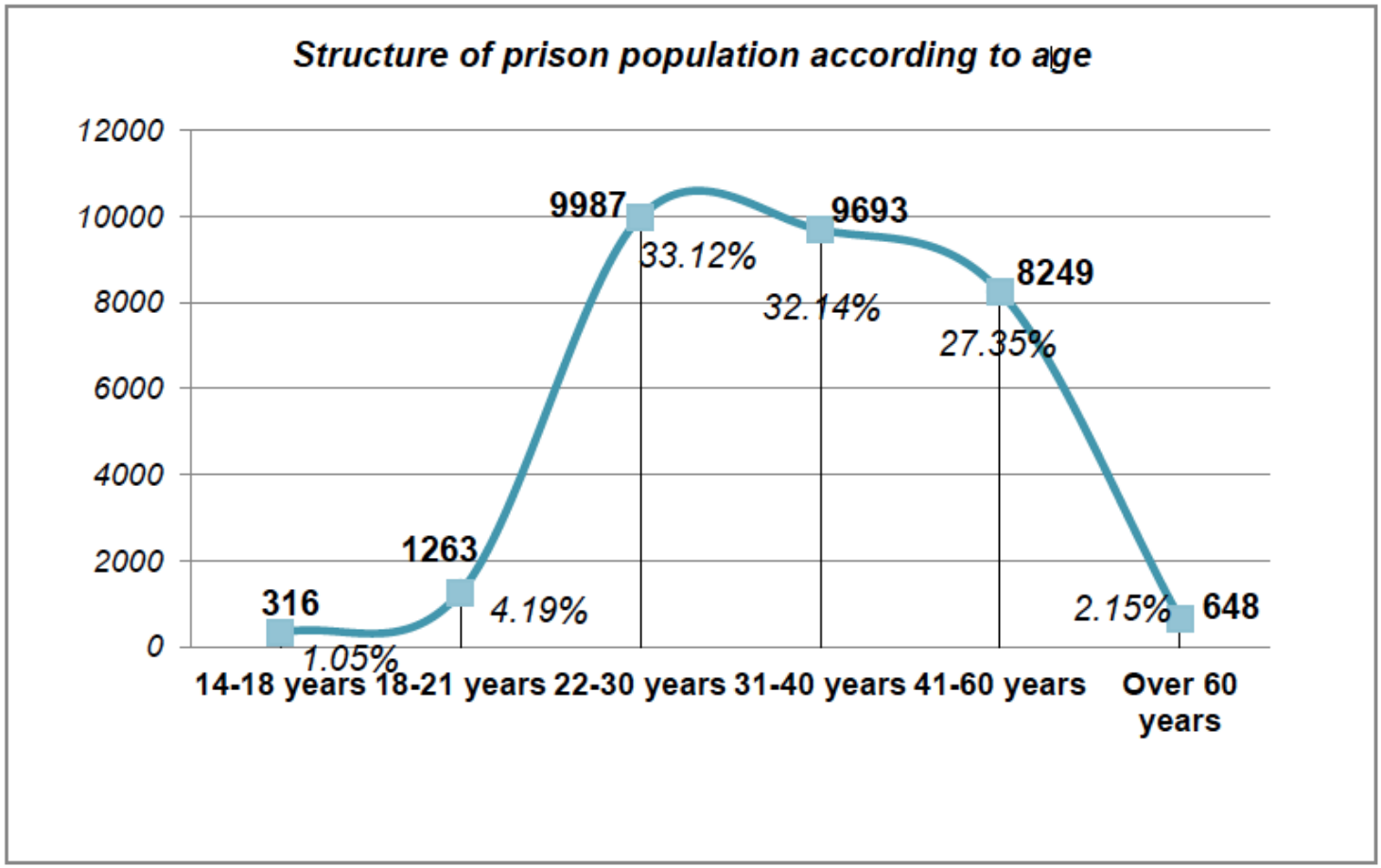
Romania's population





The median age of prisoners (2014)

- around 30 years old



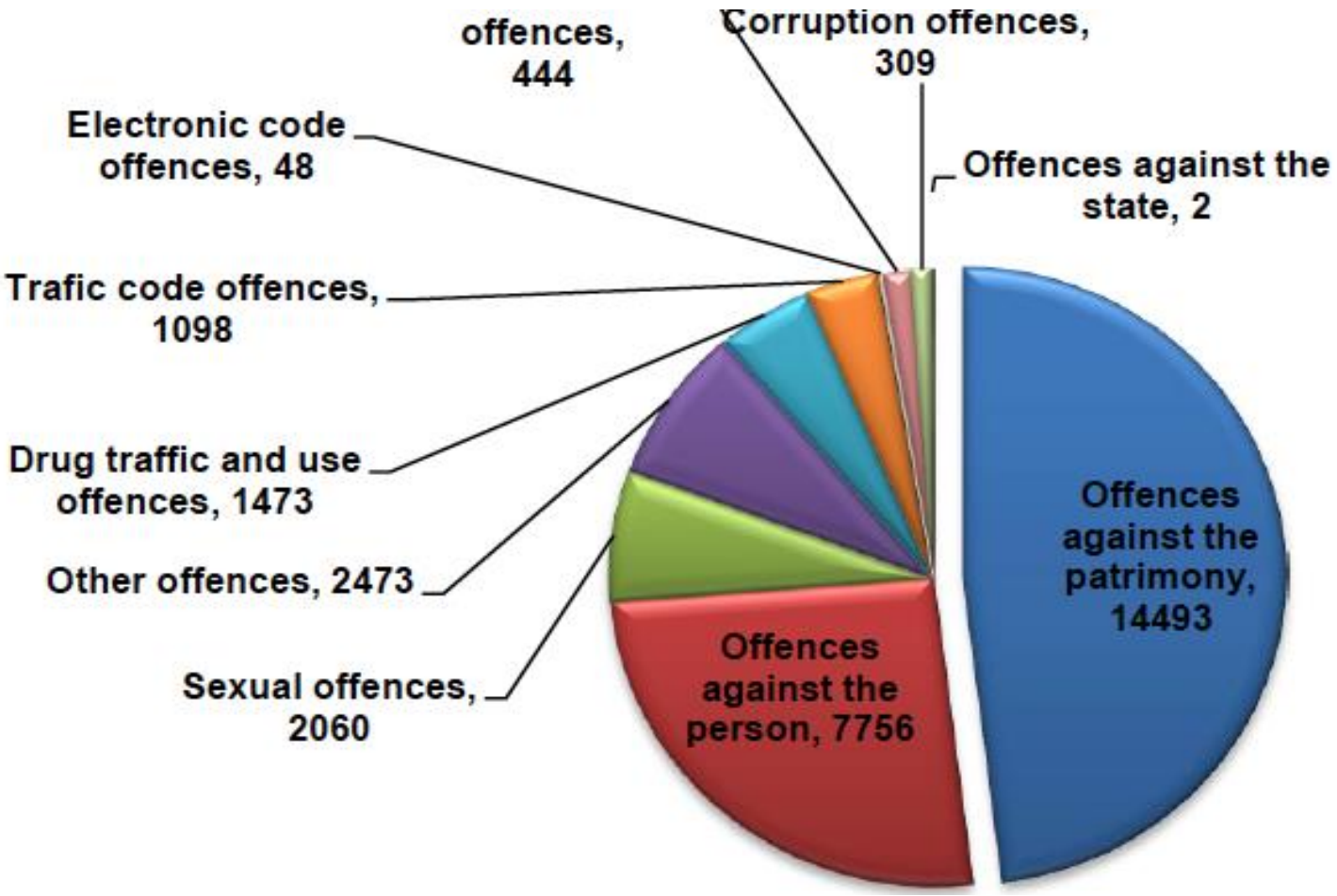
Persons under judicially imposed electronic surveillance

- new provisions, as of 2014
- no numeric data available
- the system seems to be yet inoperable (lack of funds)
- applicability - facultative:
  - preventive measures – house arrest
  - conditional release – un-served penalty >= 2 years

Special Groups of Inmates

- Women – approx. 5% of the total convictions (2011-2013)
  - No data on the number of inmates
- Juvenile offenders – included in the total number of prison population – 317 out of a total of 29.359 (2015)
  - approx. 1% of the inmates (2015)
- Foreigners – 253 out of a total of 30.156 (2014)
  - 75 from EU Member States
  - approx. 0.83% of the inmates

The structure of prison population according to main offenses (2014)



The proportion of reoffenders

- NAP Activity Report (2011, 2014)
  - at the beginning of the '90s, 14% reoffenders
  - in 2014, 43% reoffenders
- unofficial data from the Ministry of Justice
  - the number of reoffenders increased by 20% from 2010 until 2013
  - the total number of inmates in the same period increased by 17%
  - => an increase of approx. 3%

Current discussions

- decrease of the penalties provided by the law for most of the offenses
- the fine provided as an alternative for a greater number of offenses
- on the other hand, in case of multiple crimes or recidivism, the penalties are very severe under the new Criminal Code
- the new provisions regarding the house arrest
- detention conditions - ECHR convictions

Conclusion

- a lot is yet to be done
  - overcrowding
  - poor detention conditions
- major steps have been made
  - the new legislation which entered into force in 2014
  - rehabilitation of many prison facilities