

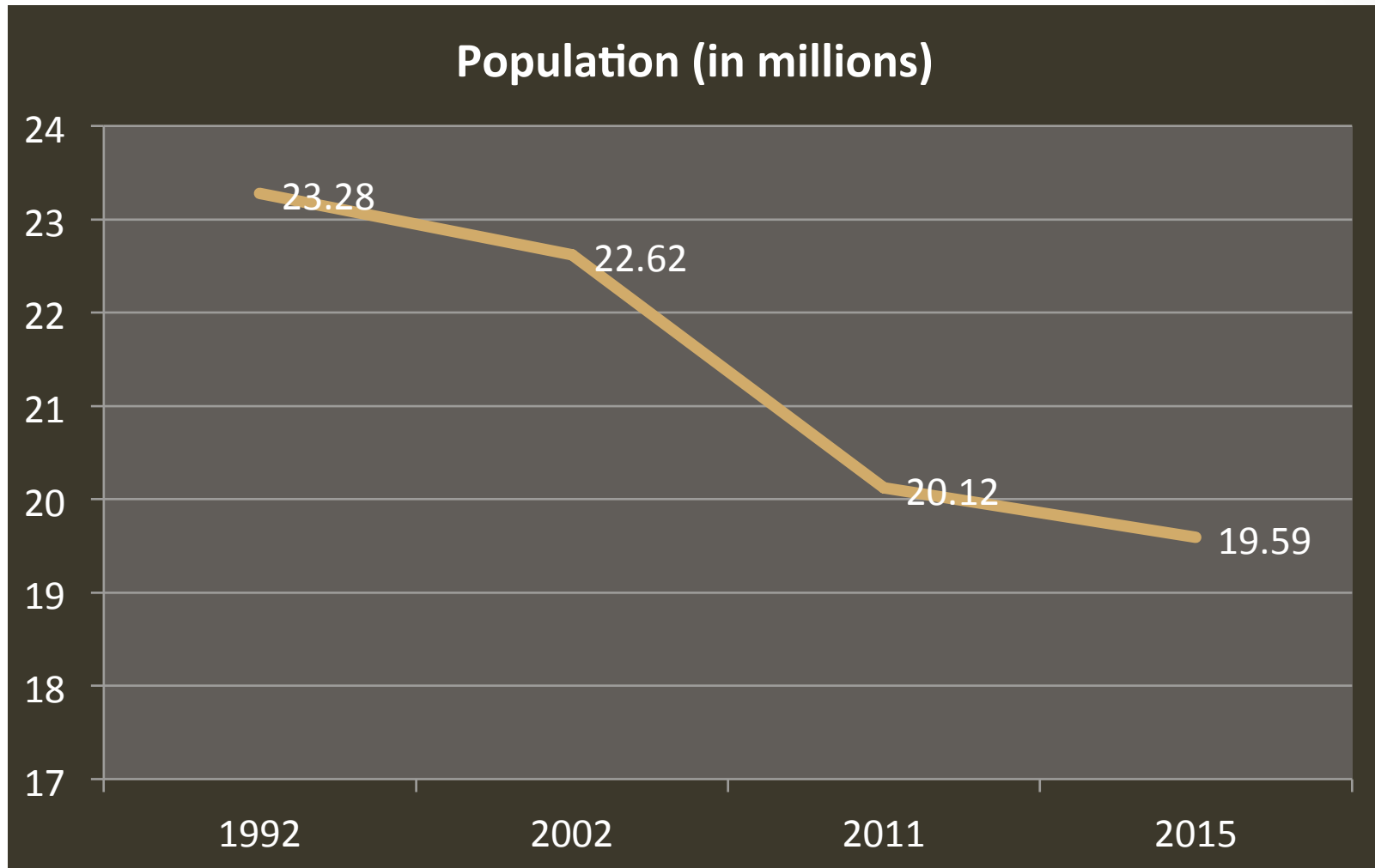
# PRISON OVERCROWDING AND ALTERNATIVES TO DETENTION

## COMPARING NATIONAL EXPERIENCES The Romanian Experience

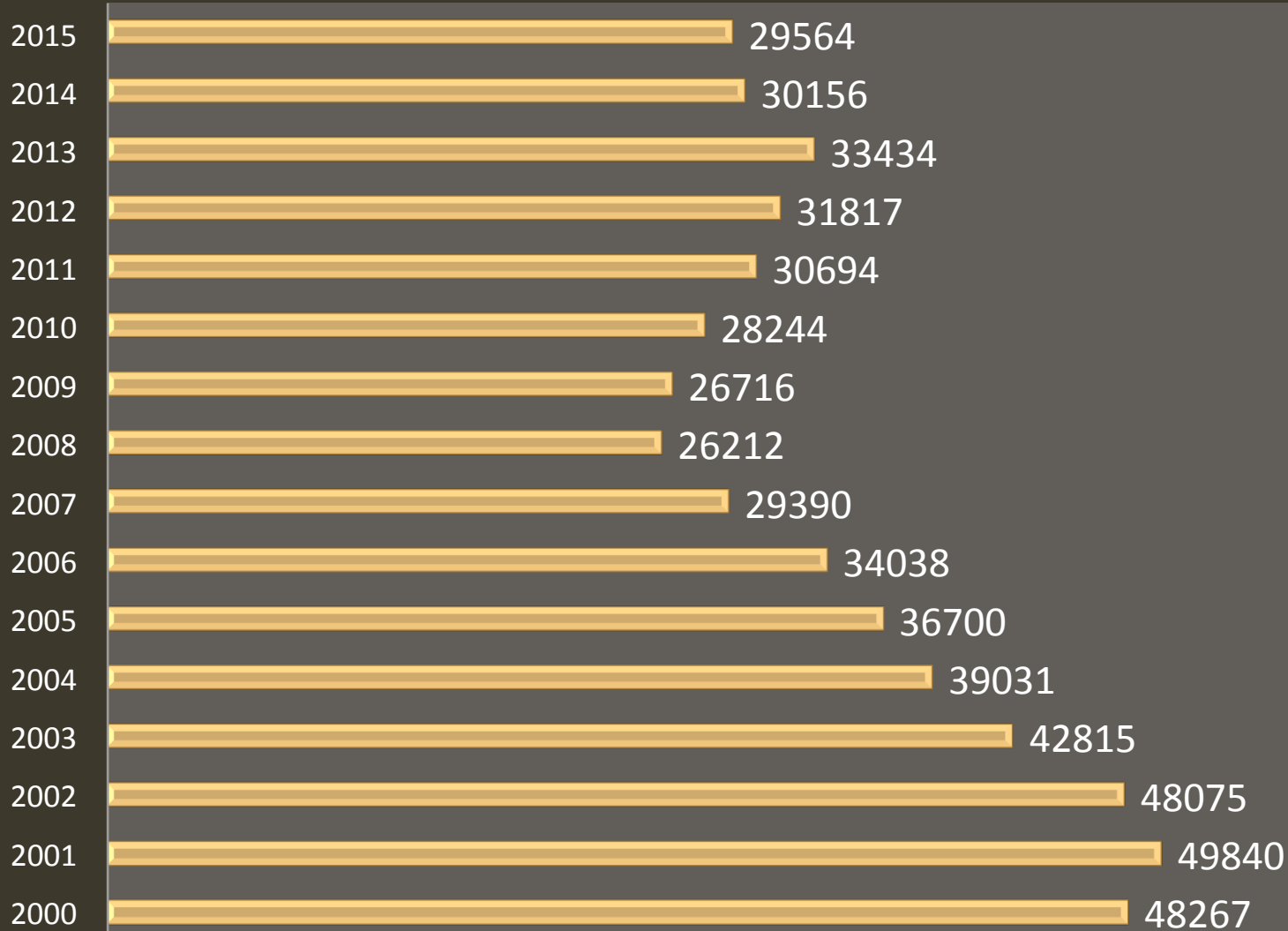
PhD Student Ioana-Paula CURT

# 1. Prison Overcrowding

# Romania's population



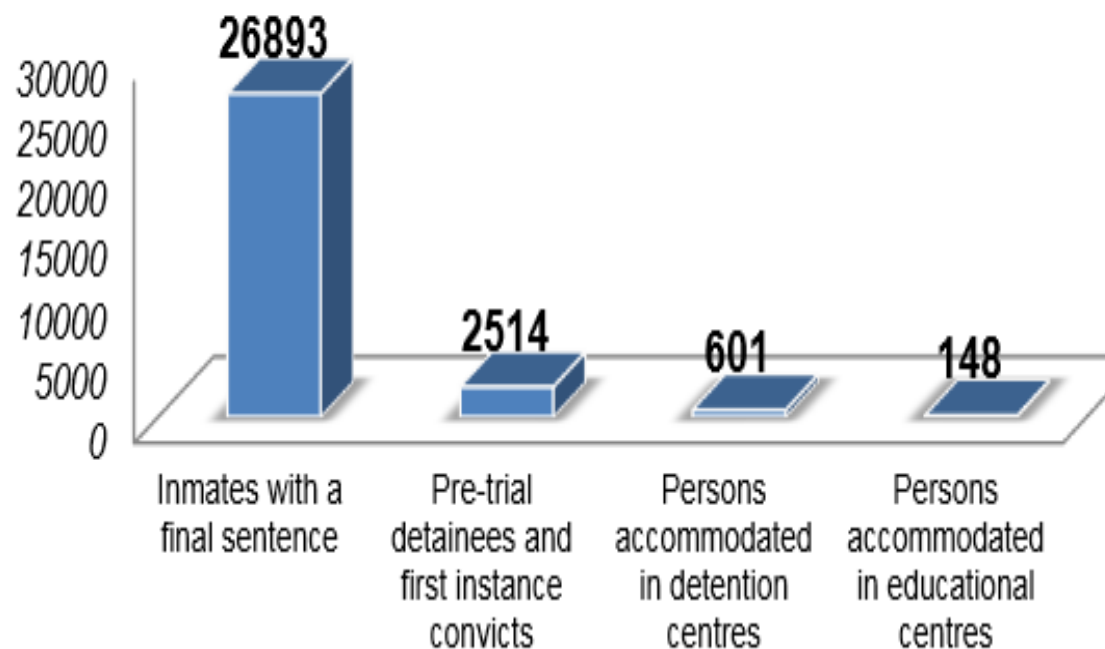
# Prison population evolution (2000-2015)



**Distributing total population according to the juridical situation  
2008-2014**

<b>Year</b>	<b>Total population 31.12</b>	<b>Pre-trial detainees and first instance convicts</b>	<b>%</b>	<b>Inmates with a final sentence</b>	<b>%</b>	<b>Accommodated in re-education centres</b>	<b>%</b>	<b>Accommodated in detention centres</b>	<b>%</b>	<b>Accommodated in educational centres</b>	<b>%</b>
2008	26,212	3,112	11.87	22,937	87.51	163	0.62				
2009	26,716	4,430	16.5	22,145	82.89	163	0.61				
2010	28,244	4,630	16.39	23,435	82.97	179	0.64				
2011	30,694	3,313	10.79	27,213	88.66	168	0.55				
2012	31,817	3,179	9.99	28,473	89.49	165	0.52				
2013	33,434	3,447	10.31	29,987	89.17	175	0.52				
2014	30,156	2,514	8.34	26,893	89.18			601	1.99	148	0.49

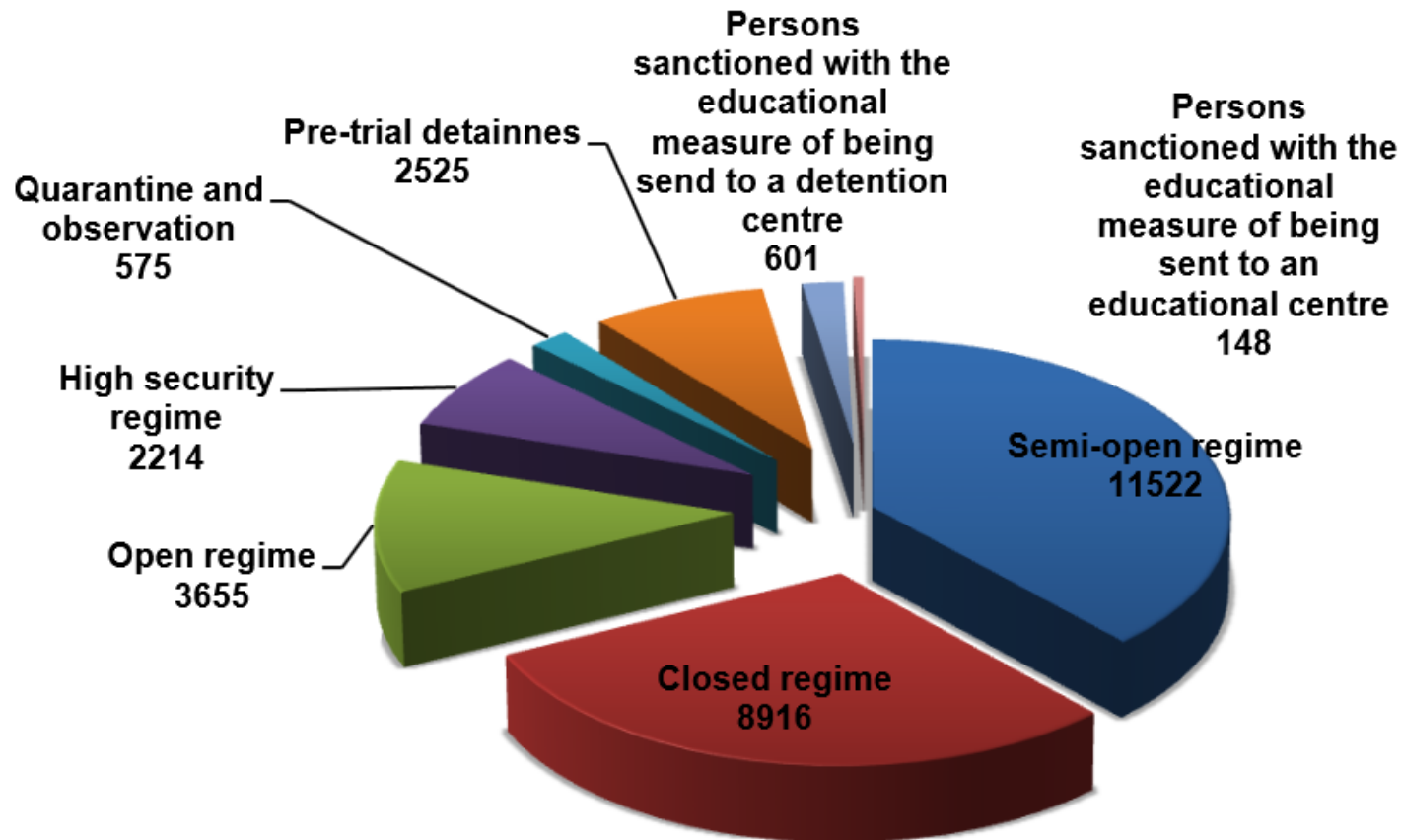
### *Prison population on 31.12.2014*



### **Prison population on 31.12.2014 – 30,156, out of whom**

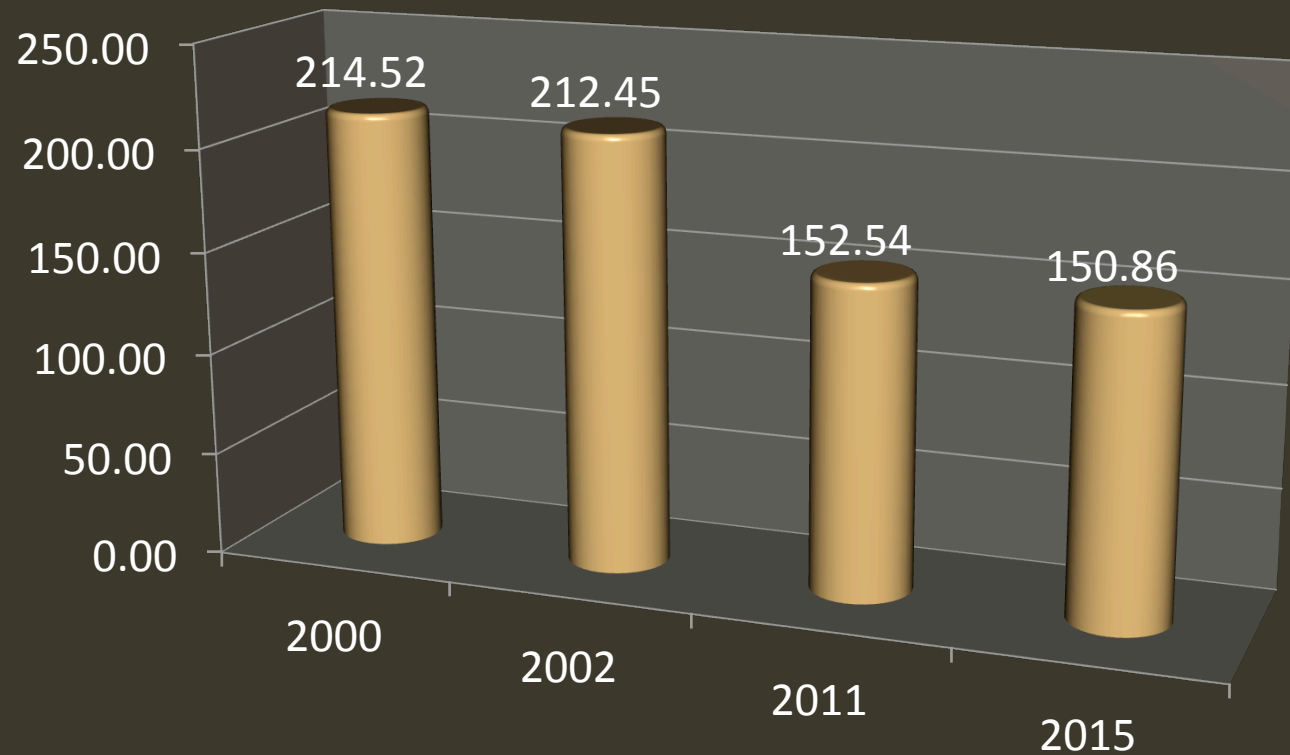
- 26,893 inmates with a final sentence (89.18%);
- 2,514 pre-trial detainees and first instance convicts (8.34%);
- 601 persons accommodated in detention centres (1.99%);
- 148 persons accommodated in educational centres (0.49%).

***Structure of prison population according to prison regimes on  
31.12.2014***



# Incarceration rate evolution

**Rate of incarceration (number of detainees per 100.000 inhabitants)**

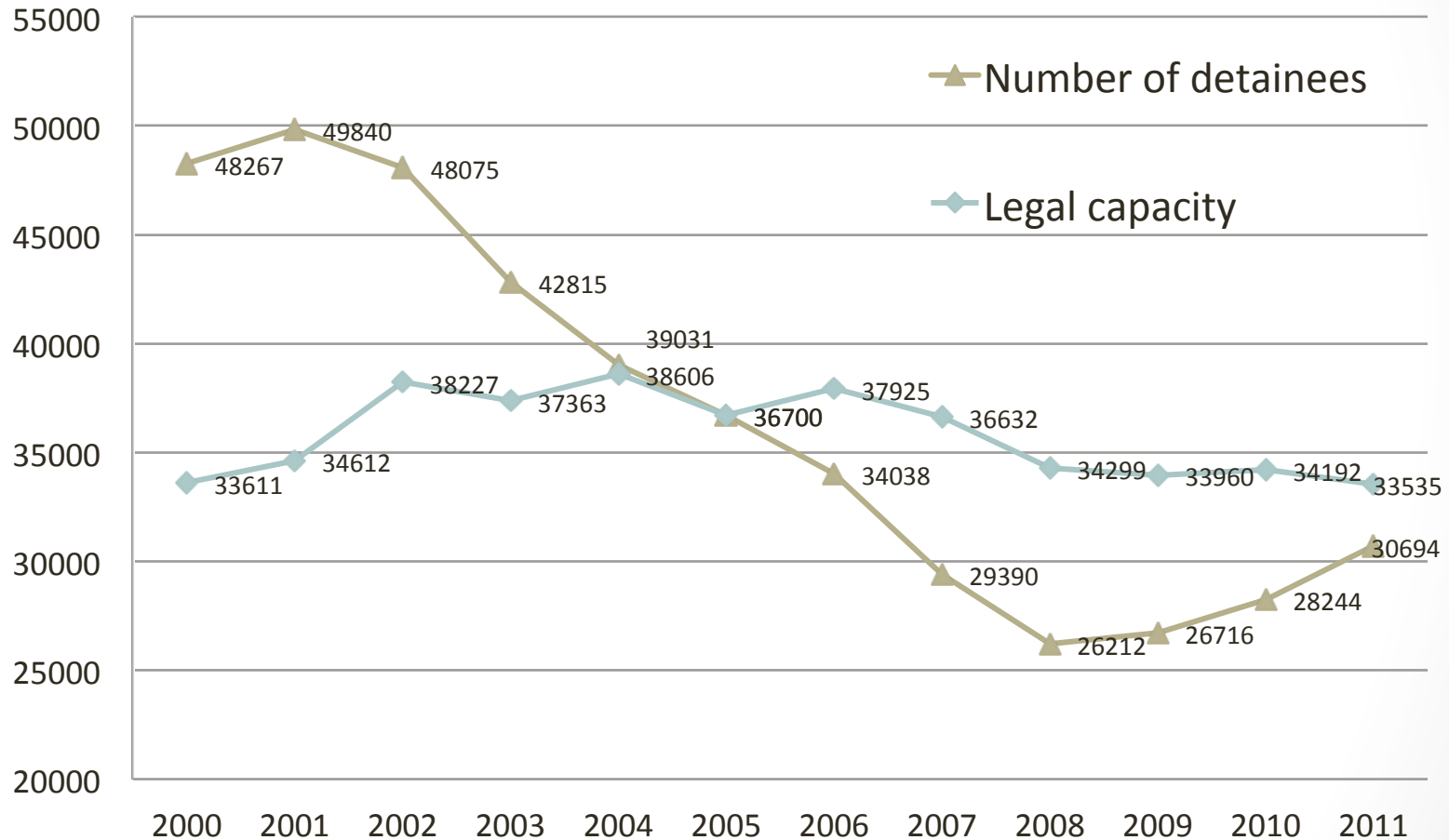




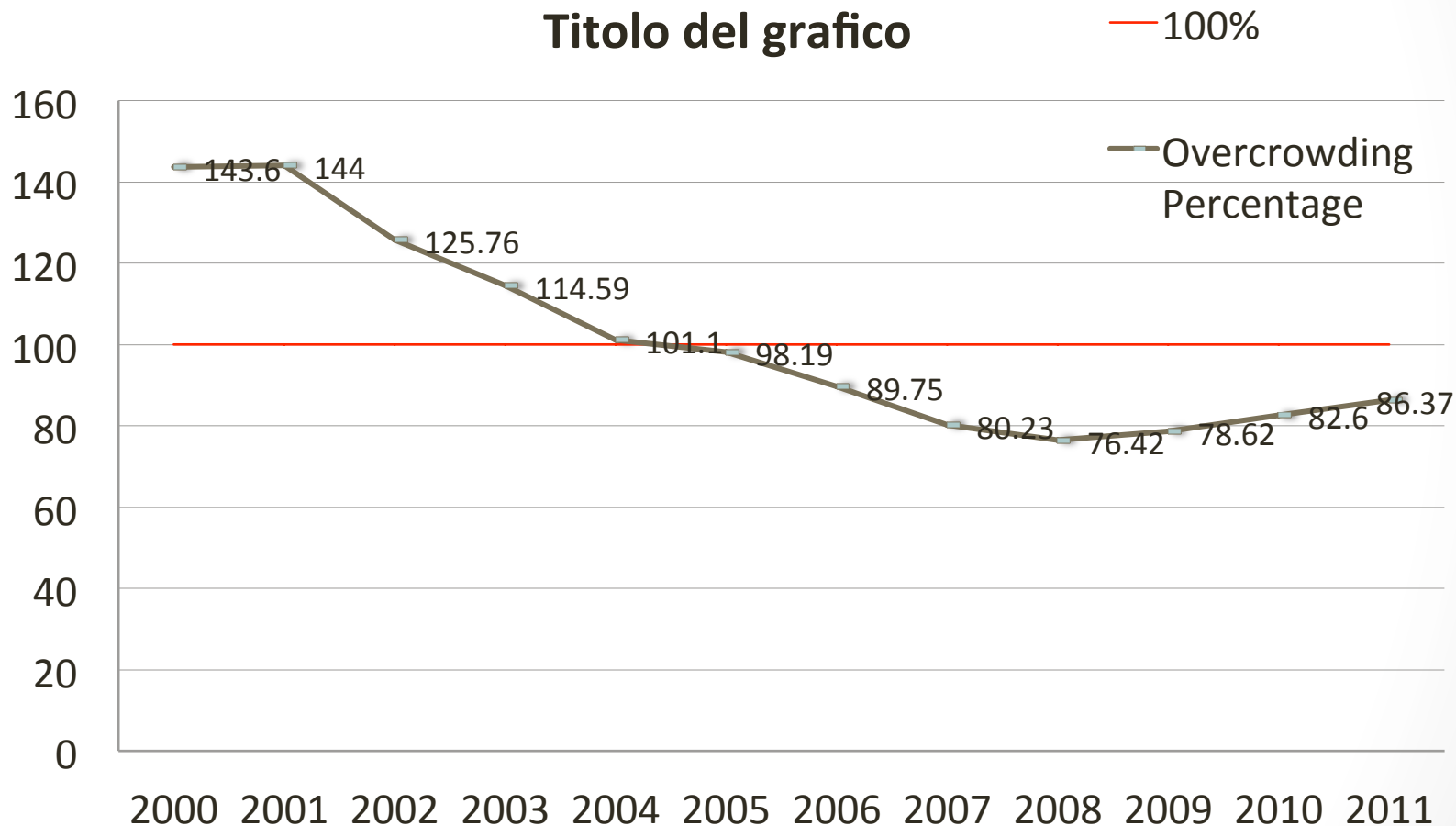
# Legal standards regarding the minimum number of square meters per detainee

- Internal legal provisions – Order of the Ministry of Justice nr. 433/C/2010
  - 4 square meters per prisoner (closed and maximum security regime, also minors, youth and arrested)
  - 6 cubic meters per prisoner (open and semi-open regime)  
(6 cubic meters translates to approximately 2,4 square meters)
- International legal provisions – The CPT Standard
  - 4 square meters per prisoner, when detained in common
  - 9 square meters per prisoner, when detained in solitary

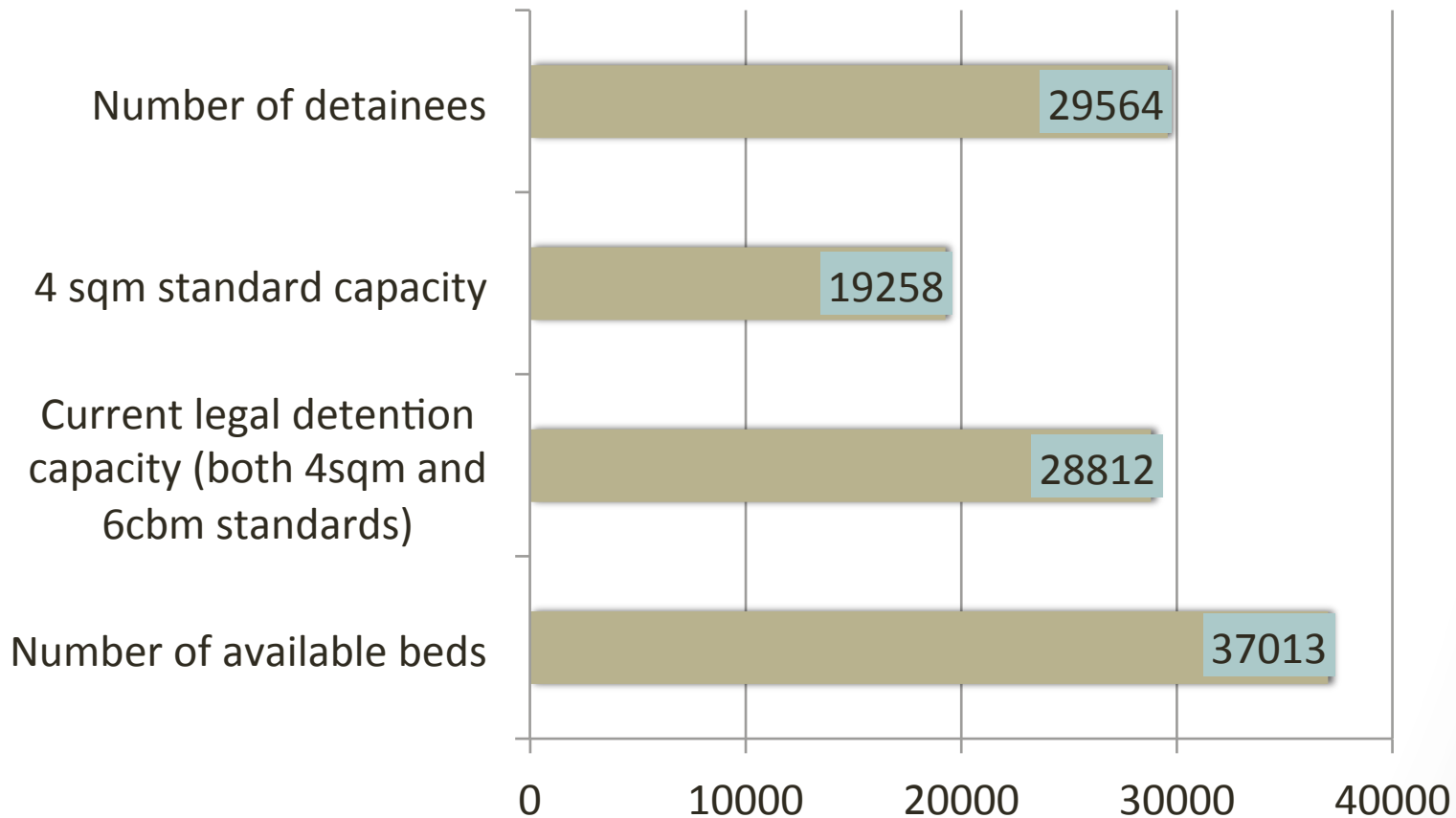
# Prison capacity and prison overcrowding – using the 6 cubic meters standard (2000-2011)



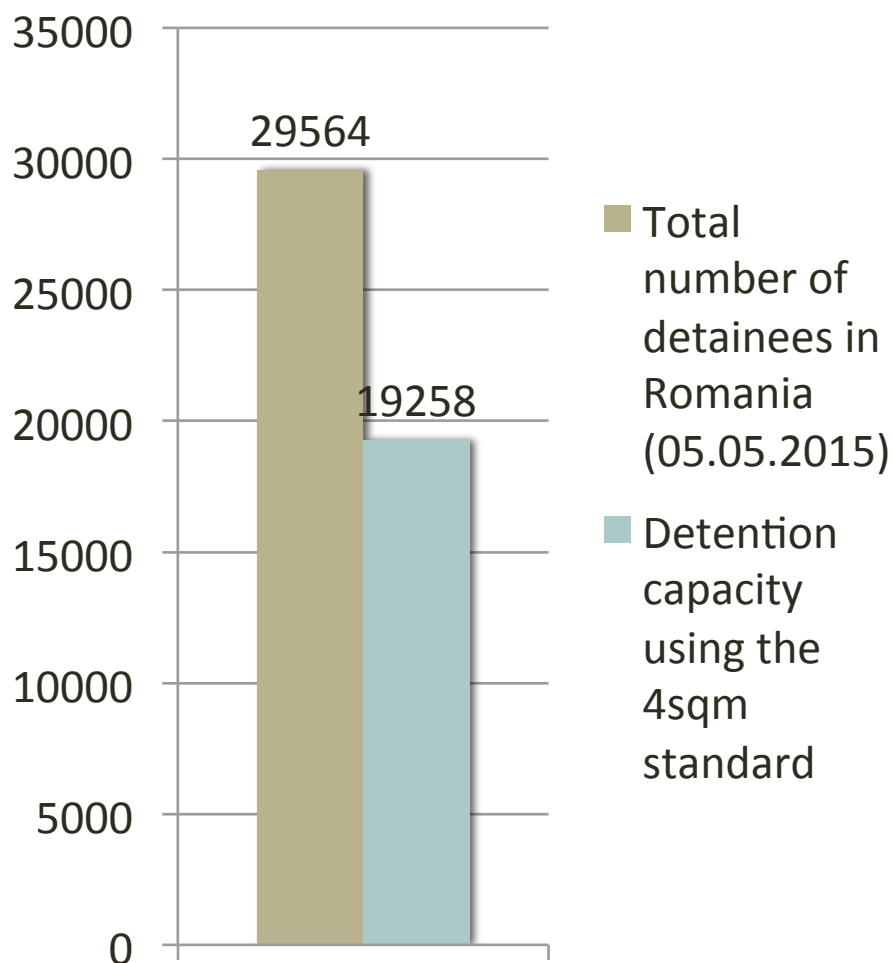
# Prison overcrowding rate – using the 6 cubic meters standard (2000-2011)



# The current situation regarding prison overcrowding (05.05.2015)



# The current satisfaction of the 4 square meters CPT standard



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

Also, the current occupation rate is **153,52%**

# Work example: Gherla Penitentiary

- Total number of detainees – 845
- Detention capacity (4sqm standard) – 503
- Occupation rate – 167,99%
- Detention capacity (Internal legal provisions) – 549
- Occupation rate – 153.92%
- Total number of installed beds – 1216

## 2. Alternatives to detention

# A chronological approach

	Criminal Code/ Procedure Code 1969	Criminal Code/ Procedure Code 2014
Before Judgment	<u>Preventive measures</u> <ul style="list-style-type: none"> <li>- Taking into custody</li> <li>- <b>The interdiction to exceed the boundaries of a locality / the country</b></li> <li>- Pre-trial arrest</li> </ul> <u>Concluding criminal investigation measures (definitive)</u> <ul style="list-style-type: none"> <li>- <b>Art. 18<sup>1</sup> provisions, regarding lack of the social danger of a crime</b></li> </ul>	<u>Preventive measures</u> <ul style="list-style-type: none"> <li>- Taking into custody</li> <li>- <b>Judicial control</b></li> <li>- <b>Judicial control on bail</b></li> <li>- <b>House arrest</b></li> <li>- Pre-trial arrest</li> </ul> <u>Concluding criminal investigation measures (definitive)</u> <ul style="list-style-type: none"> <li>- <b>Dropping charges, due to lack of public interest in prosecuting</b></li> </ul>



	Criminal Code/ Procedure Code 1969	Criminal Code/ Procedure Code 2014
During Judgment	The above mentioned preventive measures	The above mentioned preventive measures
During Judgement (Definitive measures)	<ul style="list-style-type: none"> <li>- <b>Art. 18<sup>1</sup> provisions, regarding lack of the social danger of a crime</b></li> <li>- <b>Suspending serving of a sentence under condition</b></li> <li>- <b>Suspending serving of a sentence under supervision</b></li> <li>- <b>Penal Fine</b></li> <li>- Imprisonment</li> <li>- Life imprisonment</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Waiver of sentence enforcement</b></li> <li>- <b>Postponement of penalty enforcement</b></li> <li>- <b>Suspending serving of a sentence under supervision</b></li> <li>- <b>Penal Fine</b></li> <li>- Imprisonment</li> <li>- Life imprisonment</li> </ul>
After the Sentence	- <b>Conditional release</b>	- <b>Conditional release</b>

# Preventive measures

## 1. Judicial control

During the criminal investigation, a prosecutor may order the taking of a judicial control measure against a defendant, if such preventive measure is necessary in order to ensure a proper conducting of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense.

The Preliminary Chamber Judge, in preliminary chamber procedure, or the Court, during the trial, may order a judicial control measure against a defendant.

Judicial control can be instated regardless of the legal penalty set for the crime.

# Obligations

- a) to appear before the criminal investigation body, the Preliminary Chamber Judge or the court any time they are called;
- b) to inform forthwith the judicial bodies having ordered the measure or with which their case is pending on any change of domicile;
- c) to appear before the law enforcement body appointed to supervise them by the judicial bodies having ordered the measure, according to the supervision schedule prepared by the law enforcement body or whenever they are called.

# Measures

- a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval;
- b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these;
- c) to permanently wear an electronic surveillance system;
- d) not to return to their family's dwelling, not to get close to the victim or the members of their family, to other participants in the committed offense, witnesses or experts or to other persons specified by the judicial bodies and not to communicate with these in any way, be it directly or indirectly;
- e) not to practice a profession, craft or activity during the practice or performance of which they committed the act;
- f) to periodically provide information their living means;
- g) to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification;
- h) not to take part in sports or cultural events or to other public gatherings;
- i) not to drive specific vehicles established by the judicial bodies;
- j) not to hold, use or carry weapons;
- k) not to issue cheques.

## **2. Judicial control on bail**

- the defendant is obliged to deposit a bail, the value of which is established by the judicial bodies (at least 1000 RON = 250 EUR).

### **Consequences of breaching judicial control**

- in case of breaching in ill-faith the obligations resting upon them, a judicial control measure can be replaced by a house arrest measure or a pre-trial arrest measure.

### 3. House arrest

= an obligation imposed on a defendant, for a determined time period, not to leave the building where they live, without permission from the judicial bodies and to observe certain restrictions imposed by those.

House arrest is ordered by the Judge for Rights and Liberties, by the Preliminary Chamber Judge or by the Court.

#### **Obligations**

- a) To appear when summoned
- b) Not to communicate with the victim or the participants
- c) To wear an electronic surveillance system (optional)

Judicial bodies may allow the defendant to leave the building for educational or professional purposes, for a limited time period.

**Breaching the obligations** with ill faith may result in replacing house arrest with pre-trial arrest.

# Definitive measures

## 1. Dropping Charges

In the situation of offenses for which the law requires the penalty of a fine or a penalty of imprisonment of no more than 7 years, the prosecutor can drop charges when, they find that a **public interest is not served in prosecuting.**

When the offender is identified, weighing the public interest aspect also involves the person of the suspect or defendant, their conduct previous to the offense and the efforts they made in removing or minimizing the consequences of the offense.

After consulting with the suspect or defendant, the prosecutor can order that they comply with one or several obligations.

## 2. Criminal Fine

A fine consists of the amount of money a convicted individual is compelled to pay to the State.

### The fine-day system

- 1 fine day from **10 RON to 500 RON**
- the number of fine days varies between **30 and 400**.

A court shall establish the number of fine-days according to the general criteria for customization of sentencing.

The special thresholds for fine-days range between:

- a) 60 to 180 fine-days, when the law stipulates only a penalty by fine for that offense;
- b) 120 to 240 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of no more than 2 years;
- c) 180 to 300 fine-days, when the law stipulates a penalty by fine alternatively for a term of imprisonment of more than 2 years.

Crimes punishable with a fine range from theft or battery, to trespassing and receiving stolen goods.



- **Replacement of a penalty by fine by a term of imprisonment**
- If the convicted defendant fails to pay their fine, in ill-faith, in whole or in part, the number of fine-days shall be replaced by the same number of days of imprisonment.

**1 fine day = 1 day in prison**

- **Serving the penalty by fine by performing community service**

In case the whole or part of the penalty by fine cannot be served for reasons not attributable to the convicted defendant, with the latter's consent, the Court can replace the obligation to pay a fine by the obligation to perform community service.

**1 fine-day = 1 work day (2 hours)**

The Court shall replace fine-days that were not served as community service by a corresponding number of days of imprisonment if:

a) the convicted defendant fails to perform community service as ordered by the Court;

b) the convicted defendant commits a new offense which is discovered before full performance of community service.

If a convicted defendant **does not consent** to perform community service, the amount of fine not paid shall be replaced by a penalty by imprisonment.

### 3. Waiver of sentence enforcement

#### Conditions

a) the committed offense has a low degree of seriousness, given the nature and extent of its consequences, means used, manner and circumstances of commission, reason and goal intended;

b) considering the person of the defendant, their conduct before committing the offense, their efforts to remove or minimize the consequences of their offense, and their likelihood of rehabilitation, the Court feels that enforcing a penalty would be untimely because of its consequences on the defendant.

## Enforcement of a penalty cannot be waived if:

a) the defendant has a **previous conviction**, except for the pardoned offenses, for the ones that are no longer stipulated in criminal law or for which rehabilitation has taken place or the deadline for rehabilitation has arrived;

b) the same defendant **has already had a case of penalty waiver** granted to them in the 2 years previous to the commission of the offense for which they are on trial;

c) the defendant has evaded criminal investigation or prosecution or tried to obstruct discovery of the truth or identification and prosecution of themselves or participants in the offense;

d) the penalty (provided by the law) for that offense is more than **5 years** of imprisonment.

When ruling to waive a penalty a Court will issue the defendant with a warning.

## 4. Postponement of penalty enforcement

### Conditions

a) the sentence, including for a situation of multiple offenses, is a fine or no more than 2 years of imprisonment;

b) the defendant does not have any previous prison sentences, except except for the pardoned offenses, for the ones that are no longer stipulated in criminal law or for which rehabilitation has taken place or the deadline for rehabilitation has arrived;

c) the defendant has consented to perform community service;

d) considering the person of the defendant, their conduct before committing the offense, their efforts to remove or minimize the consequences of their offense, and their likelihood of rehabilitation, the Court feels that enforcing a penalty immediately is not necessary, but it is nevertheless mandatory to have their conduct supervised for a determined period.

Enforcing a sentence **cannot be postponed if the penalty stipulated by law for the committed offense is no less than 7 years of imprisonment** or if the defendant has evaded the criminal investigation or prosecution or tried to obstruct discovery of the truth or identification and prosecution of themselves or participants in the offense.

For the duration of the probation period, a defendant who has been granted postponement of penalty enforcement must comply with the following

### **Measures**

- a) report to the Probation Service on the dates set by the latter;
- b) receive visits by the probation officer appointed to supervise them;
- c) give notice of changing domicile and of any travel longer than 5 days, as well as of their return date;
- d) give notice of changing jobs;
- e) provide information and documents of a nature that will make it possible to check into their livelihood.

## Obligations

- a) take classes in school or a vocational training;
- b) perform community service for a duration between 30 and 60 days, in the conditions ordered by the Court, except for the case where their health precludes them from performing that service. The daily number of hours to be performed shall be established as under the Law on the Service of Penalties;
- c) attend one or more social reintegration programs operated by the Probation Service or given in cooperation with community entities;
- d) comply with medical checkups, treatment or care;
- e) not communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or to not go near such persons;
- f) not be in certain locations or attend certain sports events, cultural events or public gatherings established by the Court;
- g) not drive certain vehicles established by the Court;
- h) not own, use and carry any category of weapons;
- i) not leave Romanian territory without securing agreement from the Court;
- j) not take or exercise the position, profession, occupation or activity they used in the commission of the offense.

## 5. Suspension of service of a sentence under supervision

### Conditions

a) the penalty imposed, including in case of multiple offenses, is a term of no more than 3 years of imprisonment;

b) the offender was not previously convicted to imprisonment for a term exceeding one year, except for the pardoned offenses, for the ones that are no longer stipulated in criminal law, offenses committed with basic intent or for which rehabilitation has taken place or the deadline for rehabilitation has arrived;

c) the offender agreed to perform community service;

d) by considering the offender's person, the offender's conduct prior to the commission of the criminal offense, their efforts to eliminate or mitigate the consequences of such criminal offense and their means of reformation, the court feels that the penalty is sufficient, even without service thereof, that the convict will not commit other offenses, but that it is necessary to monitor their behavior for a limited period of time.



**Suspension** of service of a sentence under supervision **may not be ordered** if:

a) a fine is the only penalty;

b) enforcement of the sentence was initially postponed, and such postponement was subsequently revoked;

c) the defendant has evaded criminal investigation or prosecution or tried to obstruct discovery of the truth or identification and prosecution of themselves or participants in the offense.

For the duration of the probation period, a defendant who has been granted suspension of service of a sentence under supervision must comply with the probation measures stated above. Also, the Court must order the defendant to comply with **at least one of the obligations**.

Also, **community service is mandatory**.

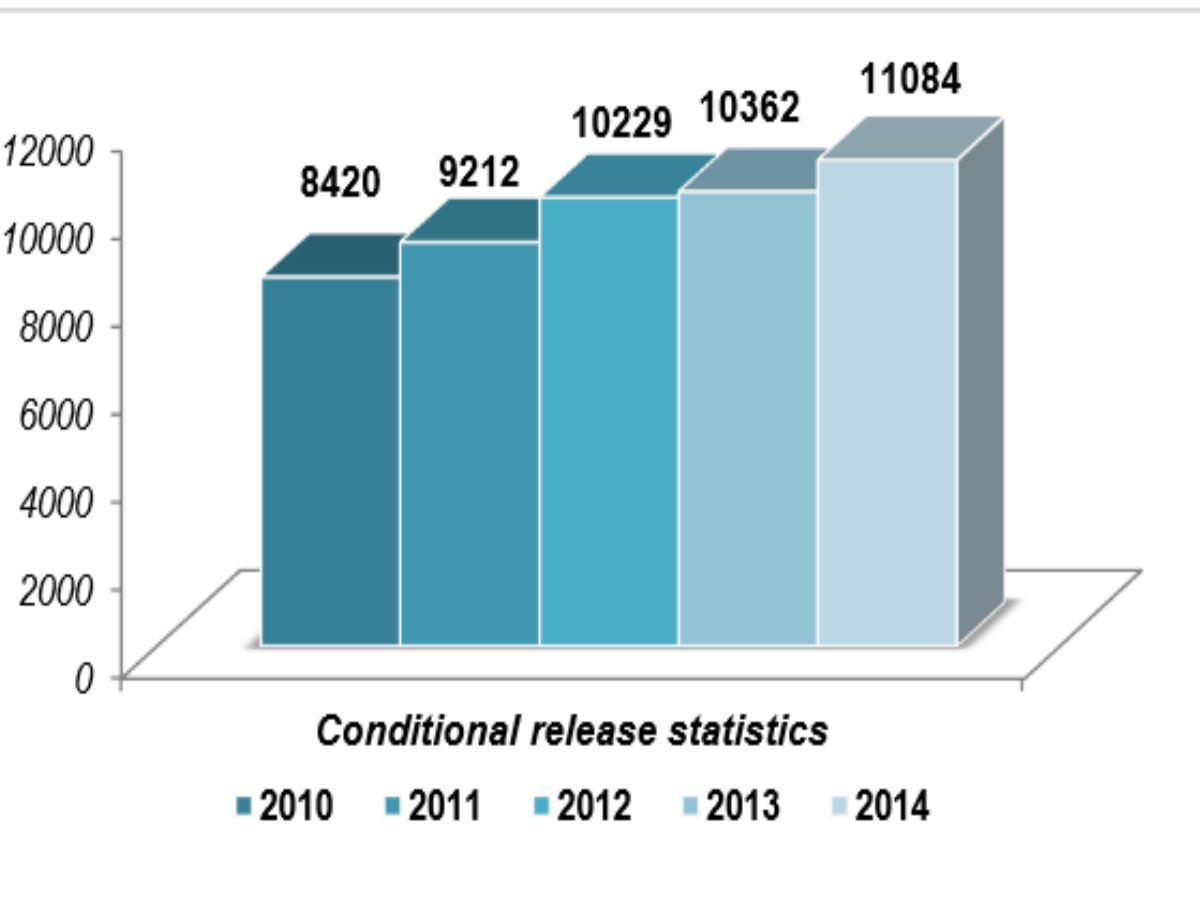
## C. Authority and power of control

- Even though the prosecutor can take the defendant in custody for 24 hours, or can oblige him to judicial control and judicial control on bail, the general power of control of the **preventive measures** is kept by the Judge for Rights and Liberties, according to the principle of separation of judicial functions, stated by art. 3 of the Criminal Procedure Code.
- This judicial function is shared with the Judge of Preliminary Chamber and the Court, depending on the moment at hand.
- The definitive measures can be imposed either by the Court, or by the prosecutor, whilst in the latter case, the Judge of Preliminary Court can ultimately be invested to verify the solution.

## 6. Conditional release

### Conditions

- a) the convict has served at least two-thirds of the penalty, in case of a term of imprisonment no longer 10 years, or at least three quarters of the penalty, but no more than 20 years in prison, in case of a term of imprisonment exceeding 10 years;
- b) the convict is serving their sentence in an open or semi-open regime;
- c) the convict fulfilled completely all civil obligations established by the judgment of conviction, unless they prove to have been unable to do so;
- d) the Court is convinced that the convicted person has reformed and is able to reintegrate into society.

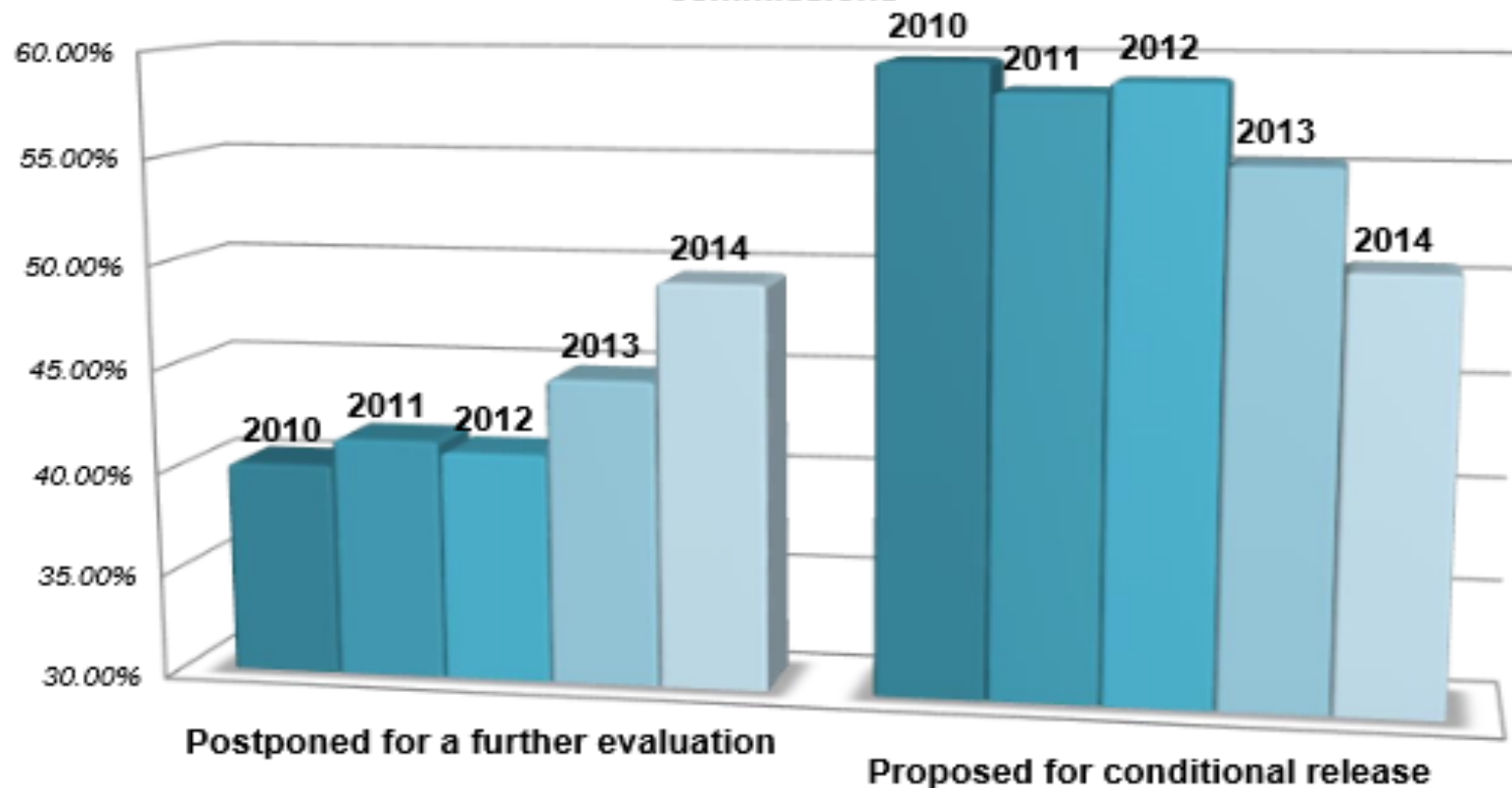


**21,924** inmates were assessed by the conditional release commission;

**11,084** prisoners were released on parole;

**308** persons released before the expiration time of the educational measure (persons in the detention and educational centres).

**Comparative chart on the decisions issued by the conditional release commissions**

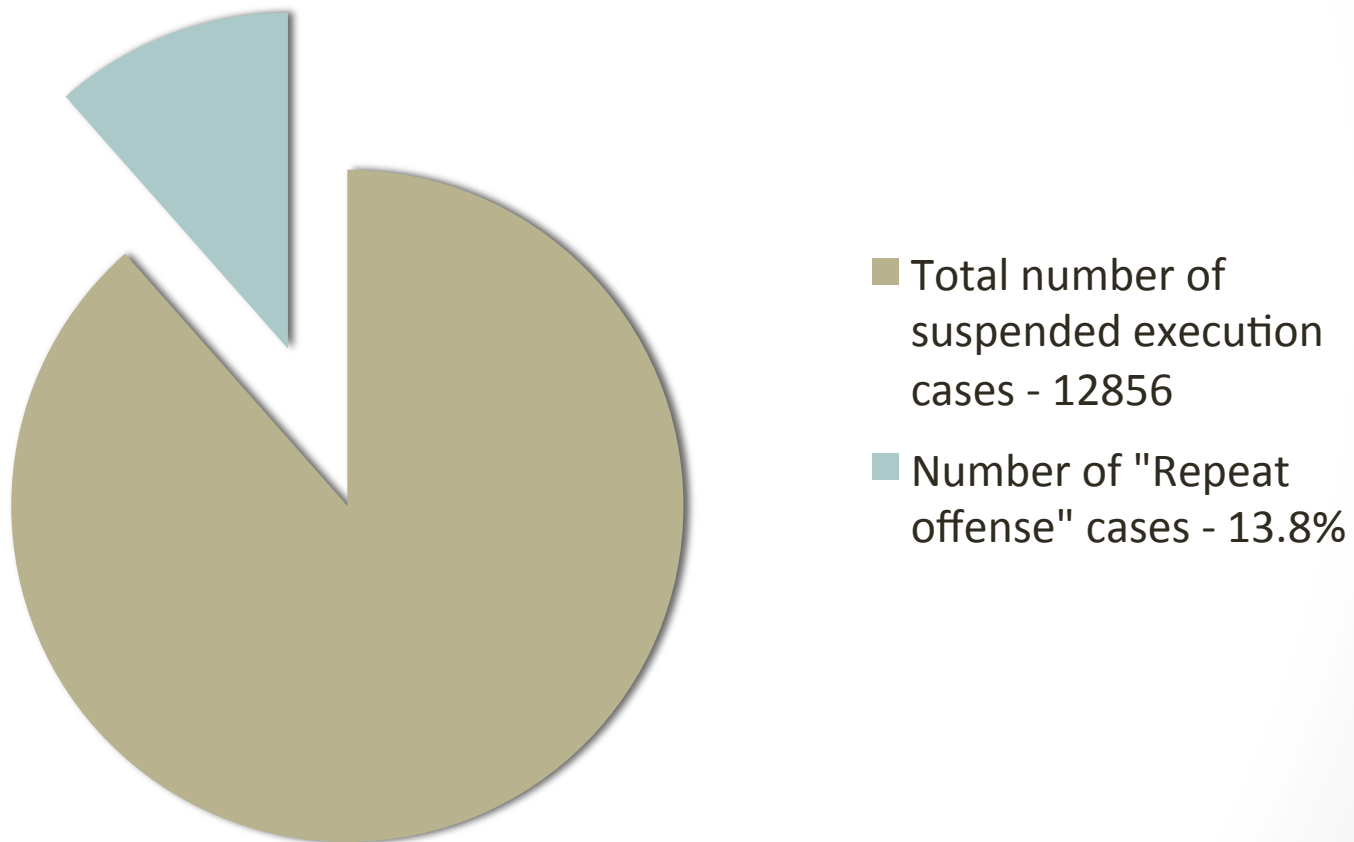


	Postponed for a further evaluation	Proposed for conditional release
■ 2010	40.22%	59.78%
■ 2011	41.56%	58.44%
■ 2012	41.06%	58.94%
■ 2013	44.74%	55.26%
■ 2014	49.45%	50.55%

## D. The fail ratio for alternative measures

Some data regarding the former Penal Code (conditional suspension of sentence and suspension of sentence under supervision)

**2011**



**2012**



- Total number of suspended execution cases - 16383
- Number of "Repeat offense" cases - 16.38%

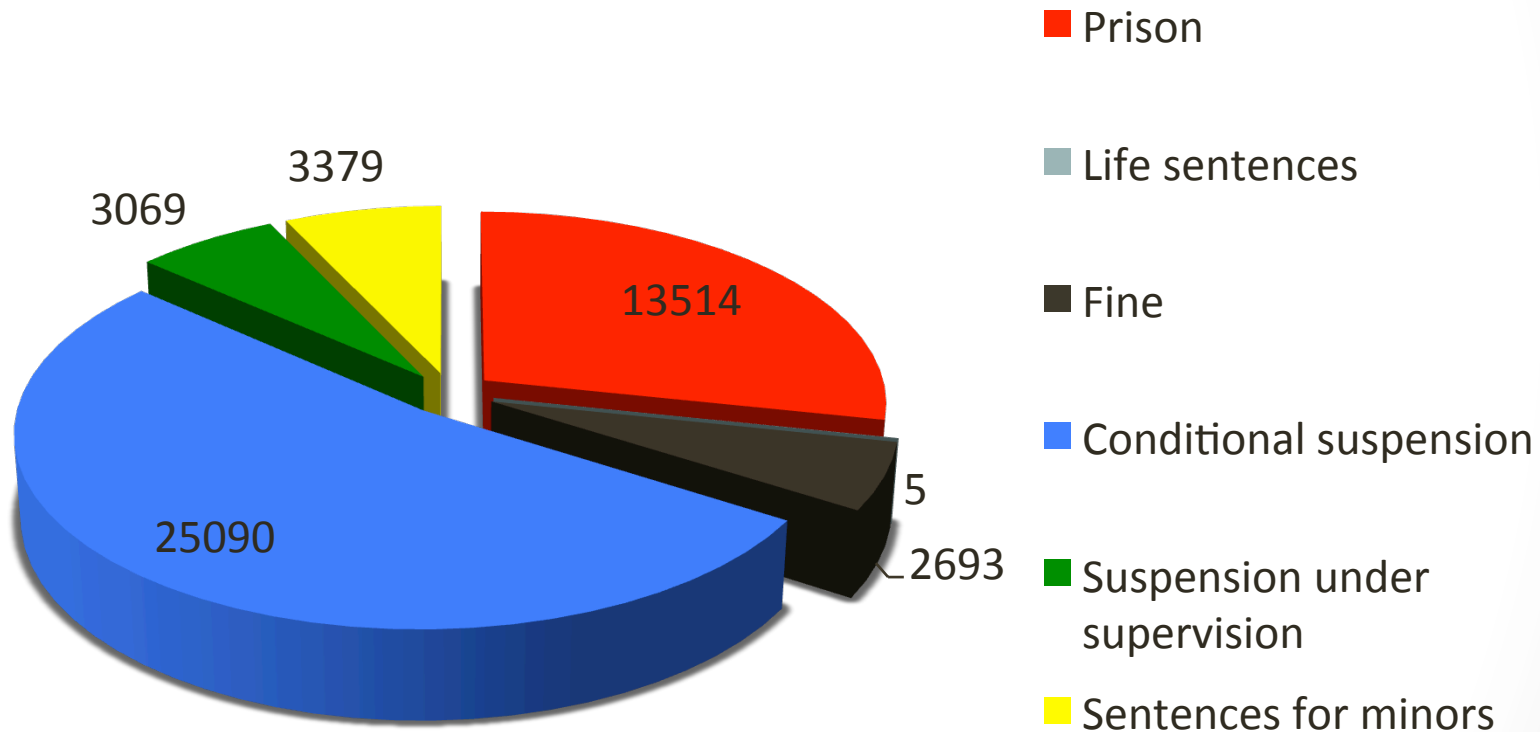
**2013**



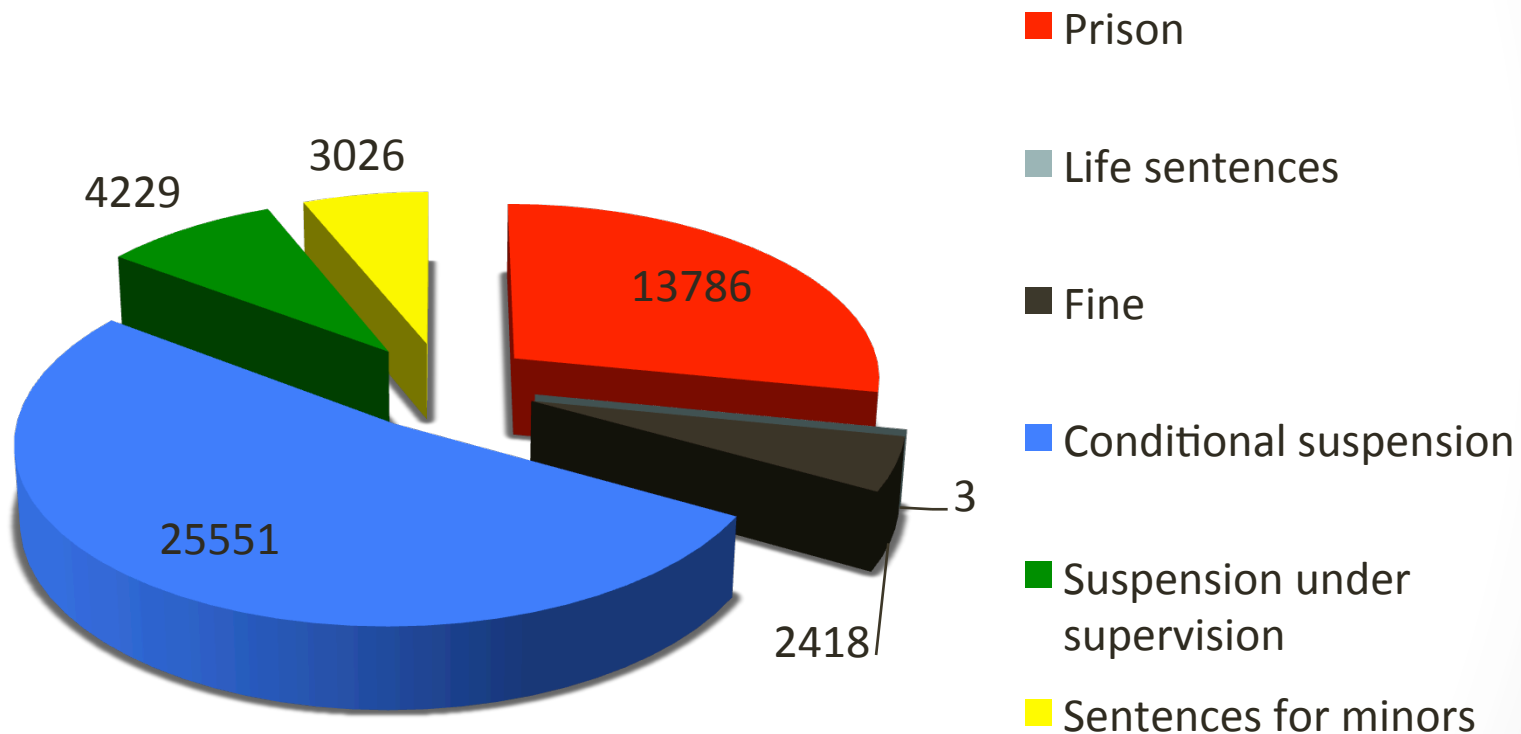
- Total number of suspended execution cases - 20446
- Number of "Repeat offense" cases - 16.13%



# Definitive sentences 2011



# Definitive sentences 2012



# Definitive sentences 2013

