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ALTERNATIVE SANCTIONS IN THE REPUBLIC OF SERBIA, CONTEMPORARY CHALLENGES AND RECOMMENDATIONS FOR IMPROVEMENT

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Summary

The application of alternative sanctions has positive effects both on the re-socialization of perpetrators of criminal acts, and on the reduction of pressure on institutions for the enforcement of prison sanctions. The use of alternative sanctions enables the offender to continue working, educating, keeping family connections, and other activities that may have preventive effect on the crime re-commission and prevent stigmatisation that person might have after the prison sanction.

The subject of this paper is the analysis of the effectiveness of the application of alternative sanctions in the Republic of Serbia and impact of the implementation of National development strategy for the system of enforcement of criminal sanctions for period 2013–2020. In line with the Strategy, the key national legislative acts were amended to align with international and European standards on alternative sanctions, specifically with the CoE European Probation Rules.

Bearing in mind previous experiences, the authors start from the assumption that there are still certain challenges in their application, which can be caused by various factors. In order to give recommendations for reducing the challenges, the authors analyse the compliance of national regulation with international standards, as well as available data on volume and structure of imposed alternative sanctions in period 2015–2020, with the special focus on community work and conditional sanction with oversight.

Introduction

The policy of proliferation of alternatives to imprisonment has been endorsed by the Council of Europe over the last 50 years through adoption of several recommendations and resolutions that provide for a supranational normative framework.¹ International and European rules on alternative sanctions are clear that measures should prioritise the person's rehabilitation, social inclusion and reintegration, comply with human rights and not discriminate or stigmatise in their application.²

The application of alternative sanctions has positive effects on the re-socialization of perpetrators of criminal acts and the decrease of overburden of institutions for the execution of institutional sanctions. The use of alternative sanctions enables the perpetrator to continue working, acquiring education, maintaining family ties and other activities that may have a preventive effect on the re-commission of crimes. In addition, it prevents the stigmatization of convicts after a prison sentence.

Although the terms "alternative prison sentences" and "alternative criminal sanctions" are very often confused, these are two different terms. The first term is broader and, in addition to alternative criminal sanctions, includes other measures and procedures that lead to the non-application of imprisonment. The notion of alternative sanctions is narrower. It covers only substitutes for imprisonment which are provided for in criminal law as criminal sanctions.³

In the Republic of Serbia, the Criminal Code prescribes the following alternative criminal sanctions: suspended sentence with and without protective supervision, house arrest with and without electronic supervision, work in the public interest (community sanction) and conditional release.⁴ Bearing in mind that it includes supervision, which is a characteristic of alternative sanctions, a suspended sentence with protective supervision also represents an alternative criminal sanction.

¹ Junger-Tas J. *Alternatives to Prison Sentences Experiences and Developments*. Amsterdam: Kugler Publications, 1994, p. 10.

² See: Mrvić-Petrović N. and Đorđević, Đ. *Moć i nemoć kazne [The Power and Powerlessness of Punishment]*. Belgrade: Vojnoizdavački zavod, 1998.

³ Tešović O. *Priručnik za primenu alternativnih sankcija [Manual for the application of alternative sanctions]*. Belgrade: Forum of judges of Serbia, 2020. p. 3. Macanović N. *Alternativne krivične sankcije – za i protiv [Alternative criminal sanctions – for and against]*. In: Jovanović G. and Petrović J. (eds.). "Probacija i alternativne krivične sankcije – mogućnosti i perspektive [Probation and alternative criminal sanctions – possibilities and perspectives]". Banja Luka: Center of Modern Knowledge, 2016, p. 24.

⁴ Kolarić D. *Uslovna osuda sa zaštitnim nadzorom i druge alternativne krivične sankcije u Krivičnom zakoniku Srbije [Probation with protective supervision and other alternative criminal sanctions in the Criminal Code of Serbia]*. In: Bejatović S. and Jovanović I. (eds.). *Alternativne krivične sankcije [Alternative criminal sanctions]*. Belgrade: OEBS, 2018, pp. 73–93. *Criminal Code of the Republic of Serbia, The Official Gazette of the Republic of Serbia, No. 85/2005...35/2019*. Available: <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html> [viewed 22.10.2021.].

Alternative sanctions in the legislation of the Republic of Serbia are not directly prescribed for certain criminal offenses but are related to the duration of the envisaged sanction for the specific crime. However, for some offenses application of alternative sanctions is excluded (e.g., house arrest as alternative sanction cannot be imposed in connection with the criminal offense of domestic violence). For some crimes, short-term prison sentences are prescribed for the basic form of the crime, so alternative sanctions can only be imposed for that form.⁵ Despite reforms and efforts available statistical data highlighted that there is room for increase of application of alternative sanctions. The reasons for the still modest number of alternative sanctions are twofold. One of the assumptions from which we start in this paper is shortcomings in the legislative framework and lack of incentives for judges to impose alternative sanctions. The second reason relates to the capacities of probation services, which are reflected in the insufficient number of employees until 2021, as well as technical shortcomings for supervision. Examples of comparative good practices could be used for strengthening of legislative framework, organization of work and judicial practice.

In the first part of the paper, we analysed the international standards in the field of alternative sanctions, followed by the assessment of compliance of Serbian national legislation with them. After that, we provided an overview of the good practices from comparative legislation, which could have a positive impact on the legislation and practice in Serbia, in order to increase the number of court judgements in which perpetrators were sentenced to alternative sanctions instead of short prison sentences. After that, we analysed the reports of various institutions on the number of imposed alternatives in the period of 2015–2020. Based on the application of legal-dogmatic, comparative legal method and content analysis, we try to provide recommendations for improvement of national legislation and practice in relation to the imposition and application of alternative sanctions.

1. International and EU standards

According to the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners (Rule No. 58) and revised rules from 2015 known as the Nelson Mandela Rules (Rule No. 41), custodial sentences should be applied only when their application is justified to protect society from crime.⁶ In the area

⁵ For example, criminal offenses: unauthorized possession of narcotics, endangering the safety of public transport and theft, which, according to relevant reports, are the most common criminal offenses committed in the territory of the Republic of Serbia.

⁶ Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Available: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf [viewed 22.10.2021.].

of alternative sanctions, the most relevant international soft-law instrument is the United Nations Standard Minimum Rules for Non-Custodial Measures from 1990 (Tokyo Rules) that are not legally binding, but is of a great importance for the imposition of extrajudicial measures.⁷ The aim of their adoption was to promote the imposition of alternative sanctions in order to strengthen special prevention in criminal law and limit the application of imprisonment by applying alternative sanctions. According to paragraph 2.3. of Tokyo rules, the criminal justice system should provide a wide range of measures that are alternatives to institutional sanctions. Paragraph 3.4. of Tokyo rules emphasize that measures imposing an obligation on an offender can be applied only after the consent of the offender. The same requirement of consent is envisaged by Recommendation R(92)16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures (Rule 35).⁸

However, such an obligation is not prescribed by the Criminal Code of the Republic of Serbia. According to Art. 65, para. 2 of the Criminal Code, in addition to the imposition of a suspended sentence, the perpetrator of a criminal offense may also be obliged to return the proceeds of crime, the obligation to compensate the damage caused by the criminal offense, and other obligations. However, the obligation to give consent by a convicted person in accordance with European standards is not prescribed.⁹ The same inconsistency is present when it comes to accepting obligations that are imposed with a suspended sentence with protective supervision.¹⁰

National legislation is harmonized with European standards in terms of considering the purpose of the sanction imposed, the perpetrator's personality, his previous life, behaviour after the crime, the degree of guilt and other responsibilities under which the crime was committed. Thus, Art. 72, para. 1 of the Criminal Code of the Republic of Serbia prescribes the obligation for a court when deciding on a suspended sentence with protective supervision to take into account the perpetrator's personality, previous life, posture, and especially his/her relationship with the victim of the crime and circumstances of the commission

⁷ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990. Available: <https://www.ohchr.org/documents/professionalinterest/tokyorules.pdf> [viewed 22.10.2021.].

⁸ Recommendation No. R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community sanctions and measures, adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies. Available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d5ec6> [viewed 22.10.2021.].

⁹ See: Snacken S. and McNeill F. Scientific recommendations. In: Flore D., Bosly S., Honhon A. and Maggio J. (eds.). Probation Measures and Alternative Sanctions in the European Union. Cambridge: Intersentia, 2021, pp. 561–571.

¹⁰ However, the Criminal Procedure Code requires consent of the suspect for the application of measures envisaged within the deferred prosecution (Art. 283 of the Criminal Procedure Code).

of the offense.¹¹ However, there is no provision that requires the explicit consent of the perpetrator before or during the imposition of measures. To ensure full harmonisation with European standards, the Serbian legislation should include requirement of the explicit consent of the convicted person to the fulfilment of the obligations that can be imposed under protective supervision.

When it comes to alternative sanctions according to the provisions of national legislation, the obligatory consent of the perpetrator is required only in connection with the imposition of a sentence of community work, because forced labour is prohibited (Art. 52, para. 4 of the Criminal Code).

According to the Recommendation Rec (2000)22 on improving the implementation of the European rules on community sanctions and measures, an alternative sanction or measure must be of limited duration.¹² However, there is an exception, e.g. if the seriousness of the previous or committed criminal offense in combination with the personal characteristics of the perpetrator requires an unlimited duration, as well as due to the constant and immediate danger to human life and health and the safety of the community. According to the recommendations, sanctions and measures implemented at the national level should be prescribed, imposed and enforced only on the basis of the law, and the legal provisions should be clear, as well as prescribe the consequences of non-compliance with the established restrictions.

In addition to the listed recommendations, relevant soft-law instruments for application of alternative sanctions at the national level are Recommendation R(2010) 1 on probation rules adopted by the Committee of Ministers, as well as Recommendation R(2014) 4 on electronic surveillance.¹³

¹¹ These measures may consist of reporting to the body responsible for protective supervision within the deadlines set by that body, training the perpetrator for a certain profession, accepting employment appropriate to the perpetrator's abilities, fulfilling the obligations of family support (alimony), care of children and other family obligations, refraining from visiting certain places, bars or events if it may be an opportunity or incentive to commit crimes again, timely notification of change of residence, address or workplace, restraint of use of drugs or alcoholic beverages, treatment in an appropriate health institution, visiting certain professional and other counselling centers or institutions and acting in accordance with their instructions and eliminating or mitigating the damage caused by the crime, and especially reconciling with the victim of the crime.

¹² Recommendation Rec(2000)22 of the Committee of Ministers to Member States on improving the implementation of the European rules on community sanctions and measures (adopted by the Committee of Ministers on 29 November 2000 at the 731st meeting of the Minister's Deputies. Published in Gazette Committee of Ministres, November 2000, No. X/2000. Appendix 1 to the Recommendation Rec (2000)22. Available: <https://www.legislationline.org/documents/id/8023> [viewed 21.10.2021.].

¹³ The Recommendation CM/Rec(2010)1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, adopted by the Committee of Ministers on 20 January 2010. at the 1075th meeting of the Ministers' Deputies. Available: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cfbc7 [viewed 22.10.2021.]. Recommendation CM/Rec(2014)4 of the Committee of Ministers to Member States on electronic monitoring, adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies. Available: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c64a7 [viewed 22.10.2021.].

According to Recommendation R(92) 17 of the Committee of Ministers to Member States considering consistency in sentencing, imprisonment sanctions should be considered as a sanction of last resort and should be imposed only in a situation where the imposition of another sentence would be inadequate to the gravity of the offense, justified, and it should not be longer than what is considered necessary for that crime.¹⁴ In addition, criteria for excluding imprisonment should be developed, especially in cases of minor pecuniary damage, consideration should be given to introducing legal restrictions on imprisonment, especially for short-term imprisonment, and national laws should prescribe non-custodial sanctions or measures instead of imprisonment for certain crimes. However, the challenge for implementation of that recommendation in the Republic of Serbia is the fact that a significant number of criminal offenses are prescribed by different laws,¹⁵ which provide for penalties that are disproportionate to the gravity of the criminal offense, i.e., the degree of their social danger and consequences. Therefore, it is necessary to reassess the need of regulation of so many crimes in the national legislation, which in practice causes challenges for application.

2. Good practice on alternative sanctions in comparative legislation

To improve the national legislation of the Republic of Serbia on alternative sanctions, we analysed the provisions of the Penal or Criminal Codes of the Republic of Croatia, Slovenia and Germany to identify solutions that could be applicable to Serbian legal framework. The first two countries were members of the Socialist Federal Republic of Yugoslavia, so they share the same legal tradition with the Republic of Serbia, while its criminal legislation developed under the influence of the German legal tradition. In addition, these countries are members of the European Union, so their solutions could be applied in the process of harmonising the criminal legislation of the Republic of Serbia with the EU acquis.

Croatian Code contains a provision aimed at encouraging more frequent application of alternative sanctions. Namely, Art. 45 of the Penal Code stipulates that a court may impose a prison sentence of six months only if it can be expected that a fine or a community sanction cannot be carried out or if a fine, community sanction or probation could not achieve the purpose of punishment.¹⁶ This

¹⁴ The Recommendation R(92) 17 of the Committee of Ministers to Member States considering consistency in sentencing, adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies. Available: <https://rm.coe.int/16804d6ac8> [viewed 21.10.2021.].

¹⁵ For example, the Law on Tax Procedure and Tax Administration of the Republic of Serbia, which prescribes a larger number of criminal offenses in addition to tax payment and non-payment of withholding tax, which are prescribed by the basic criminal legislation. Many of these crimes could be prescribed as a misdemeanour or fall under the legal description of already existing crimes.

¹⁶ Penal Code of the Republic of Croatia, Narodne novine Republike Hrvatske [The Official Gazette of the Republic of Croatia], No. 125/2011...84/2021. Available: <https://www.zakon.hr/z/98/Kazneni-zakon> [viewed 22.10.2021.].

means that even in these cases, the judge would be obliged to provide reasoning for imposition of short-term prison sanction, instead of alternative sanction. The solution from Croatian legislation is revealing the burden from judges in case they apply for alternative sanctions, while legislation in Serbia is having opposite approach and judges have to provide reasoning for imposing alternative sanction instead of a prison sanction.

Furthermore, the Penal Code of Croatia prescribes that in addition to the community sanction, the perpetrator may be imposed one or more obligations envisaged for the application of the institute of conditional release or protective supervision. Such an approach of the legislator is largely in line with the Recommendations of the Committee of Ministers.

In the Republic of Slovenia, community sanction is an alternative to the imprisonment prescribed by Art. 86, paras 7 to 10 of the Penal Code as a substitute for imprisonment for up to two years.¹⁷ According to that provision, a convicted person may, instead of imprisonment for up to two years (this possibility is excluded if the perpetrator of a criminal offense against sexual freedom is in question, because there would be a possibility to repeat the commission of a criminal offense) perform community sanction for two years. To impose a community, the consent of the convicted person is necessary. The body responsible for the sanction enforcement, when determining the type of community work, shall take into account the expertise and ability of the convict to work. The court may order measures of protective supervision, and towards the person who has been imposed sanction of community work.

German law recognizes two sanctions that are an alternative to imprisonment. These are a suspended sentence and a suspended sentence with protective supervision. They are prescribed by Arts 56 to 56d of the Criminal Code of the Federal Republic of Germany.¹⁸

In addition, the court may issue certain orders to the convicted person with the aim to prevent reoffending. However, since the success of the measure depends on the readiness of the perpetrator to perform the imposed obligation, his consent is required for its imposition, which is in line with European standards on the imposition of alternative sanctions. Work in the public interest may be imposed in German law as part of a suspended sentence with protective supervision as one of the obligations provided for by it or as a substitute for an unpaid fine. It cannot be imposed as an independent sanction.

The Criminal Code of the Federal Republic of Germany includes same provision as the Croatian legislation, and which incentivise the application of alternative sanctions. Art. 47 stipulates that short-term imprisonment is an

¹⁷ Criminal Code of the Republic of Slovenia, Uradni list Republike Slovenije [The Official Gazette of the Republic of Slovenia], No. 50/2012...95/2021. Available: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKOS050> [viewed 22.10.2021.].

¹⁸ Strafgesetzbuch (StGB). Adopted on 15 May 1871, with last amendments from 19 June 2019. Available: https://www.legislationline.org/download/id/8253/file/Germany_CC%20am2019_de.pdf [viewed 21.10.2021.].

exception. Therefore, the courts must explain in the verdict in which they impose a short-term prison sentence why they decided to impose such a sentence, and not an alternative sanction.

3. Challenges in the application of alternative sanctions in the Republic of Serbia

The draft Strategy for the Development of Alternative Sanctions in the Republic of Serbia for the period 2021–2027¹⁹ was recently published for public consultations. The new policy document is a continuation of the strategic planning of reforms of the system of execution of criminal sanctions in the Republic of Serbia. It began with the adoption of the 2005 Strategy for the Reform System of the Criminal Sanctions Enforcement.²⁰ In the same year, the Criminal Code²¹ was amended to introduce alternative sanctions as prescribed by Arts 43–52. Based on it, the Law on Execution of Criminal Sanctions was passed, after which a Strategy for Reducing the Overcrowding of Accommodation Capacities in Institutions for Execution of Criminal Sanctions in the Republic of Serbia in the period from 2010 to 2015 was drafted.²² With the aim to improve legislative framework and ensure alignment with the EU *acquis*, in 2014 the new Law on Execution of Criminal Sanctions was adopted,²³ while alternative sanctions were regulated by a separate law.²⁴

Despite the improvement of the normative framework, in the period from 2001 to 2010, an increase in the prison population was recorded, which meant an overload of accommodation capacities in prisons. During 2010, the number of persons deprived of liberty was 11 000, but in the following period that number remained stable, primarily due to normative interventions.²⁵ Strategy for Reducing the Overcrowding of Accommodation capacities in Institutions for Execution of Criminal Sanctions recognized alternative sanctions and measures, parole and the probation service as institutes that should contribute to reducing prison overcrowding. The strategy yielded results, so overcrowding was reduced to an

¹⁹ Available: <https://www.mpravde.gov.rs/sr/tekst/33173/strategija-razvoja-sistema-izvršenja-krivicnih-sankcija-u-republici-srbiji-za-period-2021-2027-godina.php> [viewed 21.10.2021.].

²⁰ Text is available at: https://arhiva.mpravde.gov.rs/images/Strategija%20reform%20sistema%20izvršenja%20zavodskih%20sankcija_03312.pdf [viewed 21.10.2021.].

²¹ The Criminal Code of the Republic of Serbia was adopted in September 2005 and entered into force on 1 January 2006, The Official Gazette of the Republic of Serbia, No. 85/2005.

²² The Law on Execution of Criminal Sanctions, The Official Gazette of the Republic of Serbia, No. 85/05, 72/09 i 31/11. Strategy for Reducing the Overcrowding of Accommodation Capacities in Institutions for Execution of Criminal Sanctions in the Republic of Serbia in the period from 2010 to 2015. Official Gazette of the Republic of Serbia, No. 53/2010. Available: https://www.cins.rs/uploads/useruploads/Documents/Strategija-za-smanjenje-preopterećenosti-smestajnih-kapaciteta-u-zavodima-za-izvršenje-krivic_03312.pdf [viewed 22.10.2021.].

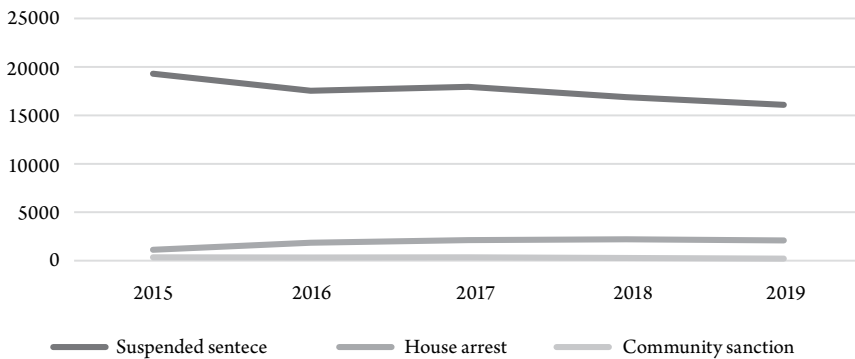
²³ The Law on Execution of Criminal Sanctions. Official Gazette, No. 55/2014, 35/2019.

²⁴ Criminal Code of the Republic of Serbia.

²⁵ Official Statistics of the Directorate for the Execution of Criminal Sanctions, Annual Work Reports.

acceptable level. Thus, the population density in prisons decreased from 172.3 in 2010 to 110.1 in 2015.²⁶ To continue with the trend of reducing overcrowding the new Strategy for Reducing the Overcrowding of Accommodation Capacities in Institutions for Execution of Criminal Sanctions in the Republic of Serbia until 2020 was adopted. Part of the strategic approach was to improve infrastructure and accommodation capacities increased to accommodate 11 451 persons.²⁷

Strategy for Development of System of Execution of Criminal Sanctions until 2020 and new legislative framework had an impact on reduction of short-term prison sanctions from 8 000 in 2015 to 6 000 in 2019, and increase of some alternative sanctions, specifically a house arrest.²⁸ However, judges are still reluctant to impose community sanctions to the higher extent and suspended sentence with protected supervision. According to the SPACE I, in 2020 Serbia still remained among countries with very high prison population rate per 100 000 inhabitants.²⁹



Alternative sanctions 2015–2020

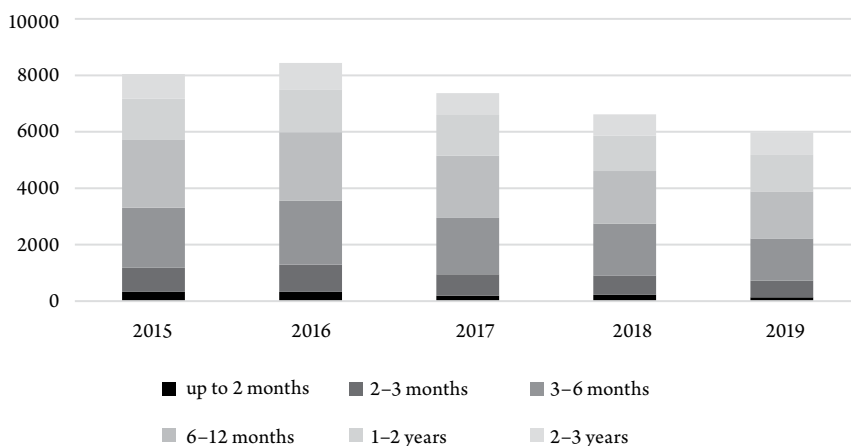
Source: Bulletin of the Republic Statistical Office

²⁶ Strategy for Reducing the Overload of Accommodation Capacities in Institutions for Execution of Criminal Sanctions in the Republic of Serbia until 2020. Official Gazette of the Republic of Serbia, No. 43/2017. Available: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2017/43/1/reg> [viewed 22.10.2021.].

²⁷ *Ex-post* impact assessment of implementation of Strategy for Development of System of Execution of Criminal Sanction until 2020. Ministry of Justice, p. 8. Available: <https://www.mpravde.gov.rs/sr/tekst/33173/strategija-razvoja-sistema-izvršenja-krivicnih-sankcija-u-republici-srbiji-za-period-2021-2027-godina.php> [viewed 22.10.2021.].

²⁸ More about house arrest see in: Matić Bošković M. and Kostić J. Kućni zatvor i iskustva u primeni [House arrest and experience in application]. In: Bejatović S. (ed.). *Izmene u krivičnom zakonodavstvu i statusu nosilaca pravosudnih funkcija i adekvatnosti državne reakcije na kriminalitet (međunarodni pravni standardi i stanje u Srbiji), krivičnopravni aspekti* [Changes in criminal legislation and the status of holders of judicial functions and the adequacy of the state response to crime (international legal standards and the situation in Serbia), aspects of criminal law]. Belgrade: Udruženje za krivičnopravnu teoriju i praksu [Association for Criminal Theory and Practice], Intermex, 2019, pp. 216–229.

²⁹ Prison Population – SPACE I, Council of Europe, 2020. Available: https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf [viewed 22.10.2021.].



Short-term imprisonment 2015–2019

Source: Bulletin of the Republic Statistical Office

The administrative capacity of the Commissioner's Office in the previous period was modest. Only 27 full-time commissioners and 36 educators were employed in 25 probation offices, who work half of their working time in penal constitutions, and half in the Probation service.³⁰ In addition, Serbia was among the countries with the lowest number of probation officers per 100 000 inhabitants. According to the data of the Annual Criminal Statistics of the Council of Europe SPACE II from 2016, the average number of probation officers per 100 000 inhabitants in European countries was 5.8, and in the Republic of Serbia 1.5. However, in late 2020 the new organisational structure of the probation service was adopted, and the number of probation officers were significantly increased, according to the 2020 SPACE II report there were 53 staff members in direct contact with the probationers. The strengthening of human resources was necessary for many reasons, especially having in mind the number of cases in progress and the number of cases pending from previous years.³¹ It is too early to assess the impact of the increased human resource capacities, and results will be available in the future.

According to the existing data, the execution of alternative sanctions and measures does not include treatment or programs prepared to improve the social functioning of the convicted persons and prevent the convicted from reoffending.³²

³⁰ Persons under the supervision of probation agencies – SPACE II, Council of Europe, 2020. Available: https://wp.unil.ch/space/files/2021/09/SPACE-II_Final_report_210919.pdf [viewed 22.10.2021.].

³¹ In 2018, the Commissioner's Office had 5,001 cases in progress, of which 2,260 were completed.

³² Spasojević A. and Arsenijević S. Efekti alternativnih sankcija i mera iz ugla Povereničke službe [Effects of alternative sanctions and measures from the point of view of the Commissioner's Service]. Valjevo: Odbor za ljudska prava, 2017, p. 35.

Existence of programs and treatment is of exceptional importance, especially for house arrest, both with and without electronic supervision. The goal of execution of the sanction in the premises where the convicted person lives is to reduce the pressure on the prisons, prevent “criminal contamination” and stigmatization of the convicted.

In accordance to Council of Europe standards, alternative sanctions should be used in combination with interventions aimed at rehabilitating, reintegrating and re-socializing offenders. Given the fact that the reoffending rate in Serbia is around 70 percent,³³ it is necessary to take adequate measures such as treatment programs and post-penal admission that would have a positive effect on reducing returns and re-socialising convicts.³⁴ Therefore, the Republic of Serbia is among the countries with the highest rate of return.³⁵

According to the legislation of the Republic of Serbia, there is no possibility for probation officers (commissioners) to be involved in criminal proceedings before imposition of a criminal sanction. There are comparative experiences in active involvement of probation service through preparation of a report on personal circumstances, which would help the judge in deciding on the sanction.³⁶ Although introduction of this type of report is not in line with the current constitutional and legislative framework, it could be valuable to open public discussion on its relevance for success of resocialisation and prevention of reoffending. There are opinions that this would prejudicated the court decision, but according to some authors, the court as an independent body has the right to decide what data it will collect and what circumstances it will take into account when making a decision.³⁷ Collection of data and information from other state authorities already exists in the legislation and practice in the Republic of Serbia in the family disputes, in which the court often requests the opinion of the Center for Social Work.

³³ Stevanović I., Međedović J., Petrović B. and Vujičić N. *Ekspertska istraživanje i analiza povrata* [Expert research and analysis of returns]. Belgrade: Institute for Criminological and Sociological Research, 2018.

³⁴ About that: Mrvić-Petrović N. *Alternativne krivične sankcije i postupci* [Alternative Criminal Sanctions and Procedures]. Belgrade: Vojnoizdavački zavod, 2010, pp.147–148.

³⁵ Butorovac K., Gracin D. and Stanić N. *The Challenges in reducing criminal recidivism, public security and public order*. 2017 (18), pp. 115–131. See: Nikolić N. and Nikolić N. *Vreme je za drugu šansu: Mogućnost za zapošljavanje bivših osuđenika-analiza i preporuke* [It's time for a second chance: Opportunity for employment of former convicts-analysis and recommendations]. Belgrade: OSCE, Belgrade Center for Human Rights, 2016.

³⁶ According to Tokyo rules 7.1. The report should contain social data on the offender that are relevant to the previous offenses and the offenses that are being prosecuted. Also, the report should contain information relevant to the decision in the judgment, it should be fact-based, objective, impartial, with clearly identified views, if any.

³⁷ Spasojević A. Janković D. and Kovačević N. *Podrška primeni alternativnih sankcija i mera u Srbiji, Izveštaj i preporuke* [Support to the implementation of alternative sanctions and measures in Serbia, Report and recommendations]. Niš: Network of the Committees for Human Rights in Serbia, CHRIS, 2018, p. 109.

Conclusion

Area of execution of criminal sanctions is complex and to conduct reforms and measure their impact requires time. Over the last decade, Serbia is putting efforts to modernize system of execution of criminal sanctions and to develop capacities for alternative sanctions. However, in addition to time, the establishment of the probation service requires resources, both financial and human. Establishment of probation service in Serbia happened in time of budget restrictions and ban on employment, which presented additional challenge for the success.

Analysed data confirms that reforms for introduction of alternative sanctions gave positive results since Serbia decreased number of short-term sentences and increase number of alternative sanctions. However, the structure of alternative sanctions is not adequate. Most of the alternative sanctions are home arrest, where treatment is not available. The community sanctions and suspended sentence with supervision should be used more often as these e sanctions should enable resocialization and prevent reoffending.

To change structure of the alternative sanctions there is a need to increase awareness of judges on their relevance and positive impact. To ensure that trainings, workshops and other awareness raising event should be organized. In addition, the legislative amendments should include incentives for judges to use alternative sanctions instead of short-term imprisonment. Comparative examples from Germany and Croatia might be used as good practice in the future amendments of legislation. Specifically, the duty of the judge to reason decision on short-term imprisonment.

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