

THE COMMUNITY SENTENCE
IN THE CONTEXT OF EUROPEAN STANDARDS
AND SERBIAN CRIMINAL LEGISLATION

Summary

The goal of the research is to determine how the community service sentence has been shaped nomotechnically; what has been the scope of its application, as well as what is the relationship between its normative and implementation levels. Comparative, normative and legal-dogmatic method will be used in order to draw conclusions about the main possibilities and limitation of criminal law repression in the contemporary discourse. This is followed by statistical data, which serve as a basis for an analysis and comparison between the expected and achieved effects of the analysed norms.

In the concluding considerations, the authors state that the punishment of community service has been and remains a pillar of attitudes regarding the need to promote more active participation of the broader social community in the criminal justice system. Although its ratio legis is embodied in avoiding harmful aspects of the sanction of deprivation of liberty by increasing the potential for processes of reintegrating the convicted person into the society, and reducing both stigmatization on the one hand, and the costs of the penal system on the other, the authors conclude that there is a profound gap between the expected positive implications of the punishment and its actual effects in practice.

Keywords: community sentence, national criminal legislation, penal policy, harmonization, possibilities, limitations.

* PhD, Full Professor, University of Criminal Investigation and Police Studies, Belgrade, Serbia.
E-mail: djordje.djordjevic@kpu.edu.rs
ORCID: <https://orcid.org/0000-0001-5204-7597>

** PhD, Associate Professor, University of Criminal Investigation and Police Studies, Belgrade, Serbia. E-mail: ivana.bodrozic@kpu.edu.rs
ORCID: <https://orcid.org/0000-0001-5010-7832>

KAZNA RADA U JAVNOM INTERESU U KONTEKSTU EVROPSKIH STANDARDA I KRIVIČNOG ZAKONODAVSTVA SRBIJE

Sažetak

Cilj istraživanja je da se utvrdi kako je kazna rada u javnom interesu nomotehnički uobličena, koji je opseg njene primene, kao i kakav je odnos njenog normativnog i aplikabilnog nivoa. Uporednopravni, normativni i pravnodogmatski metodi su korišćeni radi izvođenja zaključaka o načelnim mogućnostima i ograničenjima krivičnopravne represije u savremenom diskursu, čemu slede statistički podaci, kao osnova analize između očekivanog i ostvarenog dejstva analiziranih normi.

U zaključku autori konstatuju da je kazna rada u javnom interesu bila i ostala stub stavova o potrebi promocije aktivnijeg učešća šire društvene zajednice u krivičnopravnom sistemu. Iako je njen ratio legis oličen u izbegavanju štetnih aspekata kazne lišenja slobode, povećanju potencijala reintegracionih procesa osuđenog lica u društvo i smanjivanja sa jedne strane stigmatizacije, a sa druge strane troškova penalnog sistema, autori konstatuju da postoji duboki jaz između očekivanih pozitivnih implikacija kazne rada u javnom interesu i njenog ostvarenog dejstva u praksi.

Ključne reči: kazna rada u javnom interesu, nacionalno krivično zakonodavstvo, politika kažnjavanja, harmonizacija, mogućnosti, ograničenja.

1. Instead of Introduction - General Remarks on European Standards Regarding Community Sanctions and Measures

Theoretical consideration on finding effective mechanisms within the framework of the criminal law response to crime through the selection and application of criminal sanctions include considerations of potential alternatives to the basic repressive measure of imprisonment. The position that the prison sentence has “reached the limits of its possibilities and is accompanied by a not so small a number of negative phenomena both for the convicted person and the society that applies it” (Bejatović, 2018, p. 13) has led to the consideration and subsequent acceptance of modern international and European trends in the field of penal policy and harmonization of regulations pertaining to criminal law matters in the Republic of Serbia.

Although the need for a uniform view of penal policy at the European level is not a condition *sine qua non* for the accession of the Republic of Serbia to the European Union (EU), it is most indicative of the degree of alignment of regulations with European standards in this emphatically repressive area of the state response to crime.

The 1990 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and the 1992 Recommendation No. R (92)16 on the European Rules on community sanctions and measures deserve to be mentioned as forerunners of the documents directly related to the introduction of community service at the supranational and European level.

These documents later received their elaboration and concretization through the activities of the Council of Europe, which developed special standards in the field of penal law, set out in texts of binding contents such as conventions and protocols, but also in the jurisprudence of the European Court of Human Rights on deprivation of liberty and imprisonment. In addition to this, elaborate standards have been established in the so-called non-binding texts, such as recommendations of the Committee of Ministers and the annual general reports of the Council of Europe Committee for the Prevention of Torture.

The Council of Europe documents, such as Recommendation Rec (2000) 22 of the Committee of Ministers to member states on improving the implementation of European rules on sanctions and measures in the community and Recommendation R (2017) 3 of the Committee of Ministers on European rules on sanctions and measures in the community, promote the importance of introducing the sentence of community service listing, by way of argumentation, the reasons for adopting this alternative criminal sanction such as: the absence of deviations in the social life and contacts of the convicted person, lower execution costs, potential positive influence of citizens on the convicted person, its educational potential, a more active participation of the broader social community in the criminal justice system, and avoiding the harmful aspects of a custodial sentence.

Chronologically speaking, most of these documents precede the adoption of community service as a separate punishment in the system of criminal sanctions in the Republic of Serbia and are primarily aimed at establishing certain standards striving towards building a more humane and efficient penal system based on the fundamental premise that imprisonment should be used as an *ultima ratio* measure, that every measure must be based on the law, the consent of the person upon whom they are imposed and executed, developing awareness of the status of 'real sanctions' which correspond to certain categories of criminal offences, restricting the right of a convicted person only to the extent that is necessary, participation of the local community, ensuring public support and cooperation.

2. The Community Service – Comparative and Serbian Law Perspective

Although some experts in the field of criminal law put forward proposals aimed at introducing the community service as a criminal sanction in the national criminal legislations back in the 1990s, it was not accepted at the time on the grounds that there were no adequate conditions for its execution. As part of the reform of the criminal legislation of the SFRY, in 1990, a draft article was prepared and proposed, which referred to the introduction of the penalty of community service, but the article was not accepted and was not included in the draft text of the General Part of the Criminal Code. The idea and proposal to introduce this alternative criminal sanction was realized 16 years later. This is an excellent example of the fact that the influence of the criminal law dogmatics is not given the importance that it deserves and that the lawgiver accepts some solutions late in relation to the general development of ideas, institutes, and alternatives to existing criminal law institutes. If the indiscriminate application of the solutions accepted in the relevant documents also infrequently constitutes the staple and the basis of changes in the national legislation, then the proven legal dogmatic solutions accepted in the comparative criminal law theory and legislation should and must have a significantly stronger influence on the legislator. This is an outstanding example of how dogmatists can launch certain initiatives in a timely manner and in harmony with internationally accepted solutions, yet, for political reasons, the legislator fails to recognize them timely and therefore noticeably delays the standardization and applicability of the norms accepted so late. It is not surprising then that there is a gap between the standards in the observed field and the national judicial practice. However, a decade and a half later, it found its place in the system of criminal law provisions as a punishment within the criminal law system.

Upon the introduction of community service, European legislations and their positive experiences served as a useful landmark and a model in the context of a classic comparative law model, since community service proved to be the most successful of all alternative criminal sanctions.

Community service has been introduced in a large number of European criminal legislations, including those of Germany, England, Wales, France, Ireland, Italy, Switzerland, Spain and Portugal (Stojanović, 2019, pp. 235-236).

It was first prescribed in England and Wales in 1972 within the *Criminal Justice Act*, then in Northern Ireland, Scotland and the Republic of Ireland, and in the 1990s in other European legislations as well. It was accepted in the legislations of the so-called Old Commonwealth -Australia, New Zealand, South Africa and Canada (Mrvić Petrović, 2018, p. 152).

The name of this penalty differs in various criminal legislations. In the CC of Denmark (Langsted, Garde & Greve, 1998, p. 99) and CC of the Netherlands (Rayer & Wadsworth, 1997, p. 52) e.g. it is called “social community service”, Spanish CC (Valle Muniz, Morales Garcia & Fernandes Palma, 1997, p. 124) and the CC of Portugal (Codigo penal, 1997) refer to it as “service for the societal benefit” (*trabajos en beneficio de la comunidad*, i.e. *trabalho a favor da comunidade*). CC of the Russian Federation (Скуратов & Лебедев, 1996, p. 102) refers to it as “obligatory work/labor” (*обязательные работы*), French CC (Nouveau Code pénal, 1993, p. 23) as “work in the general interest” (*travail d’intérêt general*) and the CC of Croatia¹ – “work for the public benefit”. Criminal Code of Montenegro² calls this penalty “work for the general interest”. CC of the Russian Federation also stipulated the penalty of the “correctional work” (*исправительные работы*) (Скуратов & Лебедев, p. 102), though it is in its essence significantly different compared to the community service penalty, hence not suitable for comparative legal approach.

The solution offered by the national legislator in the Criminal Code (CC) of 2006 differed conceptually from almost all other European legislations as they did not envisage the community service as a punishment. Thus, Serbia was among the pioneers in terms of giving the community service the character of punishment and a principal one at that. In numerous other European legislations, community service is either just a possibility in the process of executing the sanction of deprivation of liberty or its legal nature is not explicitly defined. The fact is that the legislation of Switzerland, which followed the Serbian national legislation in providing for community service as the main punishment, showed that this did not contribute to its more frequent use in practice. On the contrary, the experience of Switzerland indicated that the alternative criminal sanction was used more often during the period when it was envisaged only as a possibility (Stojanović, 2015, p. 18, fn. 41).

In the process of its transformation, since the adoption and entry into force of the 2006 CC (Criminal Code-CC) the criminal legislation of Serbia has complemented its system of criminal sanctions by introducing new types of punishment or, more precisely, alternative sanctions: the community service and the revocation of a driver’s licence. The starting point upon their introduction was the idea to reduce the punishment of deprivation of liberty to the optimal minimum and fundamentally promote its alternatives, the positive effects of which are directly proportional to the negative effects of imprisonment, that is, deprivation of liberty.

¹ *Narodne novine* [Official Gazette of the Republic of Croatia], Nos. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022 and 114/2023 Available at: www.zakon.hr (29. 9. 2022)

² Available at: www.gov.me/dokumenta/c4dcee51-ee88-430f-a8db-de91f38eadc4 (2. 2. 2024)

Although the process of changes and development of the criminal legislation began with the adoption of the 2006 CC, predominantly characterized by an emphasized dynamic³, as well as punitive populism and the tightening of repression (Bodrožić, 2022, pp. 392-393), the sanction of community service is considered in this paper as a counterweight to these negatively characterized criminal policy tendencies and is designated as the pillar of views on the need to promote more active participation of a broader social community in the criminal justice system, to avoid harmful aspects of the sanction of deprivation of liberty, and increase the potential of processes of reintegration of the convicted persons into society, as well as to reduce stigmatization, on the one hand, and the costs of the penal system, on the other.

Its limitations are observed in the broader context of the lack of an appropriate level of cooperation between the subjects within the judicial system, as well as the resistance of judges towards extra-institutional sanctions, as a direct consequence of the system's rigidity, reluctance to adapt, and conforming to the populist and punitive rhetoric of the wider public discourse.

3. Advantages and Disadvantages of the Community Service

A lot has already been written about the numerous positive effects of applying the community service in the myriad of theoretical papers dealing with this alternative criminal sanction. In this context, the moral and educational aspects of this sanction are especially emphasized. Such service does not have a retributive character and it is not meant to be some evil by which the society 'revenge' against one who violated its norms of conduct. On the contrary, its nature should be that of honourable compensation by the offender to the society for the violation of the protected object. The work itself should thus have a corrective effect on perpetrators and, in a manner, lead to their rehabilitation. In order to achieve this, the Code stipulates that the work must be done in the public interest, i.e., it has to be beneficial for the society as a whole, and not only for a company, an enterprise or an individual; that it must not be humiliating for the perpetrator, and that it is not performed for profit.

On the other hand, bearing in mind that this sanction is mainly used as a substitute for short-term prison sentences, its application means avoiding all the adverse consequences that the prison sentences entail, such as separation from home and family, disruption of family relations, absence from work, frequently a

³ The statute was amended seven times from the time it was adopted to the moment of writing this paper.

loss of job, negative reaction of the environment, bad influence of the prison environment, and the frequently noted impossibility of resocialization (Atanacković, 1988, p. 94; Lazarević, 1974, p. 44). This avoidance of imprisonment, as the main goal of the application of this punishment, is possible in situations where the severity of crime requires that the perpetrator has to be punished, but the characteristics of the perpetrator's personality are such that it can be justifiably believed that the purpose of punishment will be achieved even without his imprisonment.

There are almost no disagreements in the works of theoreticians who have focused on this punishment regarding the mentioned positive aspects and advantages that this punishment entails in relation to the prison sentence. However, the manner in which this penalty is defined in our CC leaves some dilemmas and some open questions, the resolution of which could eliminate some shortcomings in the application of this penalty and ensure its wider and more consistent application.

First of all, the question arises as to whether imposing community service as a punishment is the best solution. It has actually been devised as a substitute for punishment, so it seems that its treatment as a separate criminal law measure would be theoretically more justified. Yet it is not a purely theoretical issue, as it has certain practical implications that are manifested in the application of some general institutes of criminal law, such as determining a sanction for joinder of offences (Đorđević, 2019, p. 213) or determining a sanction to a convicted person (Đorđević, 2008, p. 166) statute of limitations, etc. The assumption remains that, by giving it the rank of a principal punishment, the legislator wants to strengthen its position in the system of criminal sanctions (Stojanović, 2020, p. 319).

It is especially illogical that the CC stipulates (Article 44 CC) that the punishment of community service can be imposed both as the main and the secondary punishment. If something is theoretically conceived and introduced into the criminal legislation with the idea of replacing the punishment in certain cases, there is no justification for imposing such a punishment as secondary to the punishment it is supposed to substitute (Stojanović, 2019, p. 260). This possibility did not exist at the time of adoption of the CC from 2005, but was introduced by its amendments from September 2009. Fortunately, to the best of our knowledge, it has almost never been used in practice. Therefore, the idea of removing this provision from the CC seems completely justified (Pavićević, 2022, p. 70).

The penalty of community service is not prescribed in the CC for any specific criminal offence. This is logical if we treat this sanction only as a substitute for punishment, but if we consider it as a separate punishment, then the solution could be different. There is no reason why this punishment could not be stipulated for certain less serious crimes, alternatively with a prison sentence, and even a fine (e.g. for an insult). We have such an example in our misdemeanour law,

where there is also a punishment of community service, which is prescribed as an alternative to a prison sentence or a fine for certain offences under the Law on Public Order and Peace (Đorđević, 2021, p. 109).

Given that it has not been prescribed for any specific crime, the penalty of community service is always determined and pronounced within the limits of its general minimum and maximum. This is neither logical nor justified if one takes into account that this sentence can be imposed for different criminal offences of very different severity, which only have in common that they are punishable by imprisonment of up to three years or a fine. This practically means that the community service is determined and pronounced in the same range both when it comes to a criminal offence punishable by imprisonment of up to six months and the one punishable by imprisonment of up to three years. If there had been no desire to determine special minimums and maximums of this punishment for individual criminal offences, this inconsistency could have been avoided by linking the penal frameworks of this punishment for individual criminal offences to the framework of the prescribed prison sentence, something similar to regulating the sanction of fine. In this way, the only thing left for the court to do when determining the community service sentence, bearing in mind the purpose of punishment, is to “have regard to the type of committed criminal offence, personality of the perpetrator, and his readiness to perform community service”, acting within the framework of the general minimum and maximum of this sentence, regardless of the criminal offence in question. It is especially striking that the Code mentions only the type of crime committed as a criterion for sentencing, and not its severity, which is utterly unacceptable, because it is not in accordance with the basic principle that the punishment should be proportionate to the severity of the crime. Considering that it is difficult to find any justification for this kind of wording, we can only believe that it is merely an editorial error.

It seems that some of these objections could have been forestalled if the legislator had opted for a system according to which a determined sanction and not a prescribed sentence appears as a condition for the imposition of such a sentence, as in the case of a suspended sentence or house arrest. The advantages of such a system would be multiple. First of all, the possibility for imposing community service would be linked to a specific committed offence and the punishment envisaged for it, and not the abstractly prescribed punishment for that act. This would allow for the punishment to be imposed for serious crime as well if in a specific case it constitutes a less serious crime, and it would not be possible if it was a less serious crime which appeared in a more serious form. The current provisions do not allow the imposition of community service for a criminal offence punishable by a penalty of imprisonment in excess of three years, regardless of

whether the offence in the specific case was a less serious manifestation, or even where there are grounds for mitigating the sentence (e.g. voluntary abandonment, attempt, commission of crime under the influence of compulsive force or threat or in the extreme necessity, etc.).

Still, even in the case of such a decision, an upper limit should be set according to the envisaged punishment, and the offences listed for which this sentence cannot be pronounced, regardless of the sentence determined in the given case, as is the case with suspended sentence.

The advantage of tying the possibility of imposing community service to the determinate rather than stipulated sentence lies, among other things, in the fact the determinate sentence in a specific case already contains an assessment of the perpetrator's personality to which it must be adapted, which is not the case with the prescribed sentence. The assessment of the perpetrator's personality should be one of the key factors in imposing this sanction, which has been designed as highly suitable for certain categories of perpetrators (first-time offenders, negligent perpetrators, accidental culprits, traffic offenders, etc.) (Mrvić Petrović, 2018, p. 155).

Additionally, such a solution would mean that the perpetrator of a criminal offence, who is to be sentenced to community service and who is to declare beforehand whether he consents to such a punishment or not, actually has something concrete to declare, that is, he knows what this penalty substitutes, which is not the case with the current provision, because the perpetrator must plead without knowing what is being replaced (what he will be sentenced to if he does not accept the replacement) or what exactly is to be the substitute (what kind of service and for how long). It practically reduces his blank consent – given without awareness of what kind of alternative is offered to him and how favourable it may be for him – to a mere technicality, as the perpetrator gives his consent under the assumption that any kind of work is a more favourable option for him than any prison sentence. Nevertheless, the CC defines such consent as a necessary condition in order to reject the objection that this punishment represents a form of forced labour, which is inadmissible from the point of view of respect for human rights and also contrary to the national Constitution (Article 26, paragraph 3 of the Constitution of the Republic of Serbia), as well as international conventions (European Convention on the Protection of Fundamental Human Rights and Freedoms of November 4, 1950 and International Convention of the Prohibition of Forced Labour No. 105, of June 25, 1957).

In relation to the necessary consent of the perpetrator to be sentenced to community service there is no provision in the regulations or a single view in practice regarding the point of time at which the perpetrator is to give his consent to this penalty, which implies that it can be done throughout the trial but it is obviously

the most logical to occur following the completion of evidentiary proceedings and before the conclusion of the trial (Tešović, 2020, p. 23) at the latest during delivering the closing argument (Vuković, 2021, p. 462). The consent to this sanction does not in itself imply admission of having committed a criminal offence, which is supported by judicial practice⁴ and this was also the position taken by the Court of Appeal in response of the judges of the Criminal Division of this court to the question of the lower-instance courts at its session held on October 30, 2014.⁵ Yet in practice, this penalty, as a rule, occurs in cases where the perpetrator confesses the commission of a criminal offence (Tešović, 2022, p. 255).

The community service is intended as an alternative to a prison sentence. However, the wording of Article 53 of the CC which stipulates this punishment allows for its implementation as a substitute for a fine. This is possible in two cases: if it replaces the fine for the committed criminal offence of insult (the only offence in the CC which is punishable by a fine) or if the convicted person fails to pay the fine to which he was sentenced following conviction for a criminal offence within the set period. It then indirectly appears as a substitute for imprisonment for unpaid fines that would otherwise be an alternative if there was no punishment of community service (Kiurski, 2010, p. 85). This, of course, by no means implies that the unpaid fine must be replaced by community service, but it is only a possibility, in addition to imprisonment, which is decided by the court. The judicial practice also speaks to this effect.⁶ Even in such a case, it is logical that the consent of the convicted person is necessary for the imposition of the sentence of community service, although this is not explicitly stated in the Criminal Code.

In connection with the replacement of an unpaid fine with the community service sentence, the question arises in practice as to whether an unpaid fine imposed for a criminal offence that does not meet the condition required for the imposition of community service (punishable by a stricter punishment than the one of three years imprisonment) can be replaced by this penalty. The point of view that is unanimously accepted both in theory (Tešović, 2022, p. 255) and in practice⁷ is that it is not possible because the opposite interpretation would

⁴ The decision of the Higher Court in Niš, Kž br. 651/16 of 17/01/2017 and the decision of the Basic Court in Niš K 49/16 of 06/09/2016) – *Bilten Višeg suda u Nišu* [Bulletin of the Higher Court in Niš], No. 34/2017, Intermex, Belgrade, Available at: www.propisionline.com (29. 9. 2022).

⁵ *Bilten Apelacionog suda u Beogradu* [Bulletin of the Appellate Court in Belgrade], No. 8/2016, Intermex, Belgrade, Available at: www.propisionline.com (29. 9. 2022).

⁶ The decision of the Basic Court in G. Milanovac Kv 38/18 of 30/03/2018 and the decision of the Higher Court in Čačak Kž 30/18 of 19/04/2018), Intermex, Belgrade, Available at: www.propisionline.com (29. 9. 2022).

⁷ The decision of the Basic Court in G. Milanovac, Kv. 60/16 of 15/4/2016 and the decision of

actually expand the field of application of the community service to offences for which this punishment it is not stipulated by law.

The CC also provides that this punishment can be replaced by a prison sentence in the event that the convicted offender fails to perform part or all hours of community service to which he/she was sentenced. The substitution is then carried out by replacing every eight hours of work with one day of imprisonment. This proportion is indirectly present in the replacement of an unpaid fine that can be replaced by a prison sentence (1,000 dinars = one day of imprisonment) or a sentence of community service (1,000 dinars = eight hours of work). It is easy to calculate that the longest sentence of community service (360 hours) in case of non-fulfilment of the obligation can be replaced with a maximum of 45 days of imprisonment. On the basis of this it can be concluded that the application of community service sentence as an alternative to a prison sentence makes sense only when it comes to a very light form of criminal offence for which a prison sentence of up to one and a half month would otherwise be imposed, and the court considers that there is no place for imposing a conditional sentence.

On the other hand, if the person sentenced to community service does good work and fulfils all of his obligations, the court may, at the proposal of the Commissioner, reduce his punishment by a quarter. Without questioning the justification of such a provision which is aimed at motivating the convict to perform good quality work, one may raise the question as to why the legislator did not opt for a reduction by a third by analogy with the institute of parole. The reduction cannot be applied if the community service represents an alternative for an unpaid fine, even if the convicted person fulfils all his obligations arising from the conviction, because the community service here is only a substitute resulting from the convict's failure to fulfill the obligations from the original sentence (Ćorović, 2015, p. 126).

All of the drawbacks that appear when it comes to community service as provided for in the national CC have been noticed by theoreticians and those who deal with the implementation of this sanction in practice almost immediately after its introduction into our criminal legislation in 2005. A lot has been written and discussed about it, many articles and books have been written, countless discussions and consultations have been organized. That is why it is somewhat surprising that in the past sixteen years, during which the CC was amended seven times, the legislators failed to heed the repeated objections and proposals *de lege ferenda* as regards this sanction and did not find it necessary to effect certain changes that would have make this sanction better and more applicable in practice.

the Higher Court in Čačak, Kž. 64/16 of 19/7/2016, Intermex, Belgrade, Available at: www.propisyonline.com (29. 9. 2022).

4. Community Service Sentence in Judicial Practice

4.1. Table 1: The total number of convicted persons sentenced to community service in the 2007–2020 period⁸

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Service	48	35	51	71	357	365	348	371	353	329	348	275	209	123

Table 1 shows the tendency in the number of persons legally sentenced to community service since its introduction (in 2006 there were still no such sentences which is logical considering that the Code implementation started on January 1, 2006, and this pertains to legally convicted persons) until 2020 (the Statistical Office has not yet published the data for 2021). After the first years of very rare, almost sporadic application of this penalty, since 2011 we have noticed a sudden increase in its application. This can be related with the adoption of the statute on amending the Law on the Execution of Criminal Sanctions from 2009⁹ which made significant changes in the provisions on the execution of this criminal sanction, which allowed for its simpler and more massive application. The number remained at approximately the same level for a while, only to register a significant decline in the number of convictions in 2018, amounting to only 123 convictions in 2020, which is only one third of the number of convictions in the 2007–2011 period.

The reasons for this trend can be varied, and probably multiple, but the following table may indicate one of them.

4.2. Table 2: The total number of persons legally sentenced to community service and house arrest in the 2015–2020 period¹⁰

Year	2015	2016	2017	2018	2019	2020
Community service	353	329	348	275	209	123
House arrest	1134	1858	2012	2205	2092	2113

Table 2 offers a parallel representation of the number of persons legally sentenced to community service and the sentence which is executed in the premises where the convicted person resides (the so-called house arrest) in the 2015–2020 period. The data unequivocally show that with the increase in the application of this variant of the prison sentence, the application of community service decreased.

⁸ *Bulletin of the Statistical Office of the RS*, Available at: www.stat.gov.rs (12. 6. 2022).

⁹ *Official Gazette of the RS*, No. 72/2009.

¹⁰ *Bulletin of the Statistical Office of the RS*, Available at: www.stat.gov.rs (12. 6. 2022).

Due to the short time interval in which this phenomenon is observed, it is difficult to draw conclusions with certainty, but certainly there are indications that the courts more often decided on house arrest than of community service (naturally, in cases where it is possible to impose both sanctions). If this is true, then this trend cannot be positively evaluated because these are completely different sanctions, intended for different perpetrators and subject to the fulfilment of different conditions. After all, as already stated, the community service sentence was conceived and introduced as a possible alternative for a prison sentence (and house arrest is still only a variant of a prison sentence), so it is not logical that house arrest should now somehow ‘replace’ the sentence of community service.

4.3. Table 3: The total number of persons legally sentenced to the community service for certain criminal offences in the 2016–2020 period¹¹

Criminal offence / Year	2016	2017	2018	2019	2020	Total
Light bodily injury	19	28	15	8	6	76
Endangering safety	11	10	8	7	5	41
Domestic violence	15	12	19	12	12	70
Failure to provide support/ alimony	12	14		8		34
Theft	128	130	93	76	37	464
Tax avoidance	7	5				12
Petty theft, embezzlement, etc.		6	6			12
Unauthorized use of vehicle			5	8		13
Concealing			10			10
Illegal drug manufacture	5	7				12
Possession of illegal drugs	35	44	44	34	26	183
Forest theft	7	10	20	12		49
Endangering public traffic	12	14	5	8	5	44
Vigilantism	18	20	9			47

Table 3 shows which criminal offences were most frequently punished by community service in the 2016–2022 period. By far the largest number of convictions was related to the criminal offence of theft which is to be expected considering the incidence of this criminal offence. In terms of the number of convictions, theft is followed by the criminal offences of unauthorized possession of narcotic drugs, followed by minor bodily injury and domestic violence. However, in order to get a more precise impression of the crimes for which this penalty was imposed in relation to the crimes for which it could have been imposed, or more precisely, to what extent this possibility was used for certain crimes, we would need information on the number of persons convicted of certain criminal offences which are punishable

¹¹ *Bulletin of the Statistical Office of the RS*, Available at: www.stat.gov.rs (12. 6. 2022).

by up to three years of imprisonment, which cannot be seen from the statistical data of the Statistical Office of the Republic of Serbia. Namely, these statistical data are based on the number of persons convicted of certain criminal acts, but not specific forms of those criminal acts, and there are many acts in which this punishment is envisaged only for some forms of the offence. In addition to this, even on the basis of the available data it can be concluded that the number of community service sentences is relatively small, so that with such small numbers even the differences that appear in certain criminal offences would not be sufficiently illustrative. The fact that the community service sentence is not most often pronounced for the lightest and most common criminal offences can be explained by the fact that a suspended sentence was most frequently imposed for these crimes as a criminal sanction that is more lenient than community service.

Regardless of the significant fluctuations in the application of community service, the previous tables indicate that the application of this penalty, even in the years when it was most often pronounced, is very low and barely reaches about 1% of the total number of legally convicted adults during one year. It certainly cannot be assessed as satisfactory considering the high expectations that existed when the penalty was introduced. What contributed to this, in addition to numerous technical and organizational issues, were certain imprecise and inadequate legal solutions, at least some of which pointed out in this paper.

5. Conclusion

As the percentage of imprisonment sentences in European countries ranges between 10% and 20%, according to the latest research, the Republic of Serbia has been classified in the group of states with an exceptionally high rate of incarceration because in 2019 the prison population amounted to 10,540 persons, which – observed from the aspect of incarceration rate was 159.9% – whereas the European average was 103.2% (Stojanović, 2019, p. 234; Kolaković-Bojović, Batričević & Matić-Bošković, 2022, p. 16). In the context of the topic of this paper, the above can be seen as a limitation of the community service sanction, since these are the data on incarceration of persons as many as 13 years since this sanction has been introduced.

In the annual report mentioned at the beginning of the paper, the Council of Europe Committee for the Prevention of Torture (CPT) dated April 22, 2022, a press release in connection with the Annual Report for 2021, points out the overcrowding of prisons and calls for limitation of the number of prisoners and wider application of extra-institutional sanctions.

Allan Mitchel, the chairman of the CPT, reminds that “governments should ensure that convicts have enough space for a dignified life in prison, as well as that extra-institutional sanctions are adequately applied in order to ensure adequate/proper protection of society by the criminal justice system.”

It reiterates that prison overcrowding is a consequence of the tightening of repression on the legislative level, the lack of recognition of the importance and a small proportion of extra-institutional sanctions.

We believe that this kind of reports represents a very important and useful landmark in assessing the extent of the application of the sanction of work in the public interest at the European and the national level.

Within the framework of repressive tendencies that characterize the process of dynamic changes in the national criminal law, public service has been a pillar of view on the need for promoting more active participation of the wider social community in the criminal justice system, avoiding the harmful aspects of the punishment of deprivation of liberty, increasing the potential of reintegration process of convicted persons into society, as well as reducing stigmatization on the one hand, and the costs of the penal system on the other.

However, the statistical data on the imposition of the penalty of work in the public interest over a whole decade of its application amounting to 1% of the total number of imposed criminal sanctions show that it was not used as a mechanism to reduce the prison population and that its application in judicial practice can be assessed as minor, negligible and certainly far from adequate to the basic idea.

It is indisputable that the opportunities identified in the paper as advantages of this type of punishment remained without adequate application at the level of applicability of the norm, and that in the end it can be stated that a deep gap exists between the expected positive implications of it and its effects of practice, improving the normative solutions in the direction of the given proposals *de lege ferenda*, but also strengthening the need for more intensive application of this type of punishment within the judicial chain.

References

- Atanacković, D. 1988. *Penologija*. Beograd: Naučna knjiga.
- Bejatović, S. 2018. *Alternativne krivične sankcije – regionalna krivična zakonodavstva, iskustva u primeni i unapređenja*. Beograd: Misija OEBS-a u Srbiji.
- Bodrožić, I. 2022. Kontinuirani krivičnopravni intervencionizam – na raskršću politike i prava. *Srpska politička misao*, 2, pp. 381-396. <https://doi.org/10.22182/spm.6822020.17>
- Ćorović, E. 2015. *Sistem krivičnih sankcija Republike Srbije*. Novi Pazar: Državni univerzitet u Novom Pazaru.
- Đorđević, Đ. 2008. Odmeravanje kazne osuđenom licu. U: Ignjatović, Đ. (ur.), *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, II deo*. Beograd: Pravni fakultet u Beogradu, pp. 162-170.
- Đorđević, Đ. 2019. Neki problemi odmeravanja kazne za krivična dela u sticaju. U: Ignjatović, Đ. (ur.), *Kaznena reakcija u Srbiji, IX deo*. Beograd: Pravni fakultet u Beogradu, pp. 207-217.
- Đorđević, Đ. 2021. *Prekršajno pravo*. Beograd: Kriminalističko-policijski univerzitet.
- Kiurski, J. 2010. Alternativne krivične sankcije u KZ Srbije i standardi Evropske unije. U: Bejatović, S. (ur.), *Krivično zakonodavstvo Srbije i standardi Evropske unije*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu, pp. 80-91.
- Kolaković Bojović, M., Batrićević, A. & Matić Bošković, M. 2022. *Analiza uticaja primene alternativnih sankcija i mera u Republici Srbiji u periodu od 2015. do 2020. godine*. Beograd: Misija OEBS-a u Srbiji i Institut za kriminološka i sociološka istraživanja.
- Lazarević, D. 1974. *Kratkotrajne kazne lišenja slobode*. Beograd: Institut za kriminološka i sociološka istraživanja.
- Langsted, L. B., Garde, P. & Greve, V. 1998. *Criminal Law Denmark*, Copenhagen.
- Mrvić Petrović, N. 2018. Rad u javnom interesu (pojam, uslovi, mogućnosti izricanja, trajanje i posledice neizvršenja obaveze. U: Bejatović, S. (ur.), *Alternativne krivične sankcije – regionalna krivična zakonodavstva, iskustva u primeni i unapređenja*. Beograd: Misija OEBS-a u Srbiji.
- Nouveau Code pénal, Mode d'emploi*, 1993, Edition Documents, Paris: J. C. Zylberstein.
- Pavićević, L. 2022. Predstojeće izmene Krivičnog zakonika. U: Bejatović, S. (ur.), *Vaninstitucionalne mere, pojednostavljene forme postupanja i drugi krivičnopravni instrumenti reakcije na kriminalitet i pozitivno kazneno zakonodavstvo (ispunjena očekivanja ili ne?)*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu, pp. 67-72.
- Rayer, L. & Wadsworth, S. 1997. *The Dutch Penal Code*, Littelton: Ed. Rothman, Colorado.
- Скүратов Ю. И. & Лебедев, В. М. 1996. *Комментарий к Уголовному кодексу Российской Федерации*. Москва.
- Stojanović, Z. 2015. Sistem kazni u krivičnom pravu Srbije i potreba njegovog daljeg usavršavanja. U: Ignjatović, Đ. (ur.), *Kaznena reakcija u Srbiji, V deo*. Beograd: Pravni fakultet Univerziteta u Beogradu, pp. 1-24.
- Stojanović, Z. 2019. *Komentar Krivičnog zakonika*. Beograd: Službeni glasnik.

- Stojanović, Z. 2020. *Krivično pravo – opšti deo*. Beograd: Službeni glasnik.
- Tešović, O. 2020. *Priručnik za primenu alternativnih sankcija*. Beograd: Forum sudija Srbije.
- Tešović, O. 2022. Primena alternativnih krivičnih sankcija (sudska praksa u Republici Srbiji). U: Bejatović, S. (ur.), *Vaninstitucionalne mere, pojednostavljene forme postupanja i drugi krivičnopravni instrumenti reakcije na kriminalitet i pozitivno kazneno zakonodavstvo (ispunjena očekivanja ili ne?)*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu, pp. 245-263.
- Valle Muniz, J. M., Morales Garcia, O. & Fernandes Palma, R. 1997. *Codigo penal y Leyes Penales Especiales*. Madrid: Aranzadi, Editorial.
- Vuković, I. 2021. *Krivično pravo – opšti deo*. Beograd: Pravni fakultet Univerziteta u Beogradu.

Legal Sources

- Codigo penal, 3. edicao, Coimbra, Editora, 1997.
- Krivični zakonik Republike Srbije [Criminal Code of the Republic of Serbia], *Službeni glasnik RS* [Official Gazette of the Republic of Serbia], Nos. 85/2005, 88/2005-cor., 72/2009, 111/2009, 121/2009, 104/2013, 108/2014, 94/2016 and 35/2019.
- Kazneni zakon Republike Hrvatske [Criminal Code of the Republic of Croatia], *Narodne novine* [Official Gazette of the Republic of Croatia], Nos. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022 and 114/2023 www.zakon.hr (29. 9. 2022)
- Krivični zakonik Crne Gore [Criminal Code of Montenegro], *Službeni list RCG/CG* [Official Gazette of Montenegro], Nos. 70/2003, 13/2004, 47/2006, 40/2008, 25/2010, 32/2011, 64/2011 – other laws, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 – other laws, 44/2017, 49/2018, 3/2020, 26/2021 - correction, 144/2021 and 145/2021 and 110/2023 www.gov.me/dokumenta/c4dcee51-ee88-430f-a8db-de91f38eadc4 (2. 2. 2024)
- Recommendation No. R (92)16 on the European Rules on community sanctions and measures. Available at: <http://www.rm.coe.int/16804d5ec6> (1. 9. 2022).
- Recommendation Rec (2000) 22 of the Committee of Ministers to member states on improving the implementation of European rules on sanctions and measures in the community. Available at: <http://www.rm.coe.int/16804e8c38> (1. 9. 2022).
- Recommendation R (2017) 3 of the Committee of Ministers on European rules on sanctions and measures in the community. Available at: <http://www.rm.coe.int/168070c09b> (1. 9. 2022).
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), United Nations Digital Library. Available at: <http://www.digitallibrary.un.org/rs> (12. 9. 2022).
- Zakon o javnom redu i miru [Public Order Act], *Službeni glasnik RS* [Official Gazette of the Republic of Serbia], Nos. 6/2016 and 24/2018.

Case Law

The decision of the Higher Court in Niš, Kž br. 651/16 of 17/01/2017 and the decision of the Basic Court in Niš, K 49/16 of 06/09/2016 – *Bilten Višeg suda u Nišu* [Bulletin of the Higher Court in Niš], No. 34/2017, Intermex, Belgrade. Available at: <http://www.propisionline.com> (29. 9. 2022).

The decision of the Basic Court in G. Milanovac Kv 38/18 of 30/03/2018 and the decision of the Higher Court in Čačak, Kž 30/18 of 19/04/2018, Intermex, Belgrade. Available at: <http://www.propisionline.com> (29. 9. 2022).

The decision of the Basic Court in G. Milanovac, Kv. 60/16 of 15/4/2016 and the decision of the Higher Court in Čačak, Kž. 64/16 of 19/7/2016, Intermex, Belgrade. Available at: <http://www.propisionline.com> (29. 9. 2022).

Internet Sources

Bilten Apelacionog suda u Beogradu [Bulletin of the Appellate Court in Belgrade], No. 8/2016, Intermex, Belgrade. Available at: <http://www.propisionline.com> (29. 9. 2022).

Bilten Višeg suda u Nišu [Bulletin of the Higher Court in Niš], No. 34/2017, Intermex, Belgrade. Available at: <http://www.propisionline.com> (29. 9. 2022).

Statistički bilten Republičkog zavoda za statistiku [Bulletin of the Statistical Office of the Republic of Serbia]. Available at: <http://www.stat.gov.rs> (29. 9. 2022).