

ALTERNATIVES TO PRISON SENTENCES

Emil Turkovic¹, Slavica Dinic²

¹ Educons University, Faculty of Security Studies, Vojvode Putnika 87, Sremska Kamenica, Republic of Serbia, emilturkovic101@gmail.com

² Educons University, Faculty of Security Studies, Vojvode Putnika 87, Sremska Kamenica, Republic of Serbia, slavicaadinic@yahoo.com

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Abstract: *The increase in criminal activities in society inevitably leads to an increase in the number of convicted persons, and thus to an increase in the prison population, and prison sentences, as the only criminal sanction that has withstood the test of time, the condemnation of history, all changes and criticism. The retributive character of imprisonment is unquestionable. However, looking at the statistical segment of convictions under criminal sanctions in Serbia in the last two decades, we see that the prison sentence was used too much for crimes of a lighter type, or those minor ones, i.e. trivial criminality, essentially for acts of little importance. What we want to investigate in this paper is a penological approach to reducing the prison population rate, through the application of the principle of opportunity and the imposition of alternative measures, primarily for crimes of minor importance, because the imposition of short-term prison sentences for minor crimes, which was the case in our country until recently, first of all, it harms the perpetrator of the criminal act, then it "costs" the state coffers, and the application of treatment to the convicted person in a short period of time is almost impossible.*

Key words: *offense of minor significance, prison sentence, alternative measures*

1. INTRODUCTION

Alternative sanctions can take various forms. They can be applied in pre-trial proceedings, in the trial and sentencing phases, or after sentencing. Alternative sanctions include public interest sentences, which hold offenders accountable for their actions, and may include fines, probation, and a wide range of pre-trial, pre-appeal and post-appeal alternatives to incarceration. Currently, in Serbia, emphasis is placed on the introduction of new types of alternative sanctions - unpaid work in the public interest and probationary period - and on mediation, reconciliation and settlement with the injured party, and on parole.

The absence of a clearly focused implementation plan can to some extent be related to the Law on the Execution of Criminal Sanctions, which does not regulate in detail the processes involved in the implementation of alternative sanctions or prescribe specific measures aimed at reducing the prison population (for example, early release from prison supported by electronic surveillance and home curfew). However, if the goals of the introduction of

alternative sanctions are to be achieved, it is necessary that they be clearly defined and understandable to all involved in their implementation.

Where prison sentences are imposed for minor offenses and trivial crimes and where the number of prisoners is growing, the prison authorities are unable to provide additional resources - neither material nor human - necessary to successfully fight the increase in the number of prisoners, which results in prison overcrowding. In this case, states realize that they are unable to fulfill their duty to care for those they incarcerate, and the ability of prison authorities to guarantee basic human rights to prisoners, to work to rehabilitate prisoners by preparing them for reintegration into society, is impaired. Where the perpetrators of less serious crimes (insignificant or so-called petty crime) are given alternative sanctions, the resources of prison authorities can be freed up and they can work more effectively with those for whom prison is the only option. This is in line with the Council of Europe Recommendation on Prison Overcrowding and Prison Population Growth Rec (1999), which recommends that deprivation of liberty should be seen as a sanction to be resorted to only as a last resort, when the seriousness of the offense would justify any other sanction or made the measure inadequate.

Certain Serbian legal and sub-legal texts, above all the Strategy for the Reform of the Criminal System of Serbia, the Code of Criminal Procedure, represent the context within the standards of the Council of Europe, especially the revised European Prison Rules: Recommendation Rec (2006), (hereinafter referred to as "EPR"), Recommendation Rec (1992) on sanctions and measures related to the public interest (hereinafter R (1992)), Recommendation Rec (1997) on personnel responsible for the implementation of sanctions and measures (hereinafter R (1997)) and Recommendation Rec (2000) on improving enforcement European rules on sanctions and measures related to the public interest (hereinafter R (2000)). In addition, the implementation and improvement of the system for the execution of criminal sanctions, and the application of alternative measures and criminal sanctions to alternative prison sentences are based on the principles set forth in international instruments (to the European Convention on Human Rights, Council of Europe Recommendation Rec (1999) on prison overcrowding and prison population growth (hereinafter R (1999)), the United Nations Standard Minimum Rules on Non-custodial Measures (Tokyo Rules) and practices in other European countries. Overall, in Serbia and its system of execution of criminal sanctions, there is an understanding of what is needed to develop an effective system of execution of criminal sanctions and therefore to apply a system of alternative sanctions for criminal acts of petty crime, where the application of a prison sentence would not be expedient and adequate to the committed criminal act. Also, there is good cooperation between the ministries of Serbia and some of the key agencies that will be involved in the processes of application and implementation of changes in the system of execution of criminal sanctions and the implementation of the system of alternative sanctions, primarily the Administration for the Execution of Institutional Sanctions of the Ministry of Justice, the Office of the State Prosecutor, the Ministry of Labor, employment and social policy, Judicial Training Center, Open Society Fund and UNICEF.

Between two conflicting options - imprisonment and probation - today there is a whole range of sanctions and measures that can be maximally adapted to each individual. These measures are united under the name of alternative sanctions and represent the concept of sanctions and measures under the auspices of the social community, based on the assumption that the goals of punishment can be largely achieved in conditions that are less restrictive than imprisonment. The reasons for striving for a preventive rather than a retributive component of punishment lie, among other things, in the negative effects of prison sentences on the convict, his family and the social community. The negative effects of a prison sentence on a convicted person are, first of all: permanent marking as a criminal; separation from family; interruption of education,

loss of job, as well as difficulty in finding a new job; within the penitentiary institutions comes under the very bad influence of problematic inmates. All of the above increases the chances that the convicted person will commit a criminal offense again - recidivism.

The introduction of alternative sanctions in our criminal system is therefore fully in line with modern European trends in the field of penal policy and the need to establish common principles on penal policy among member states of the Council of Europe. A prerequisite for the practical application of alternative sanctions was the adoption of adequate legal regulations, which was done in Serbia in 2006 with the adoption of the Criminal Code and the Law on the Execution of Criminal Sanctions. In order for alternative sanctions to be adequately applied in court practice, appropriate organizational prerequisites are necessary. That is why the Ministry of Justice, in cooperation with the OSCE Mission in Serbia and the Office of the Council of Europe in Belgrade, first worked on the development, and now on the implementation of the Strategy for the reform of the system of execution of institutional sanctions and the implementation of alternative sanctions, the main points of which are: the establishment of the Trustee Service, training of trustees and creation of conditions for their work, professional training of judges and prosecutors, formation of a coordination body and creation of material conditions for full implementation of alternative sanctions and sensitization of public opinion.

As positive effects of effective implementation of alternative sanctions, the following can be counted: negative effects of imprisonment are avoided (separation from family, interruption of education, loss of job, negative influence of other prisoners); the social community is given a more active role in the criminal justice system; the social community receives an immediate benefit in the form of free labor of convicted persons; the reintegration of convicted persons into free society is carried out efficiently and publicly; conditions are created for removing or mitigating the damage caused to the victim of a criminal offense or for her reconciliation with the convict; the social stigmatization of convicts decreases; the prison population decreases, which results in lower costs and allocations from the community.

After the amendment of the Law on the Execution of Criminal Sanctions, key acts were adopted that more closely define the implementation of alternative sanctions: the Rulebook on the Execution of a Conditional Sentence with Protective Supervision and the Rulebook on the Execution of a Sentence of Community Service. In addition, the principles defined by the Rules of work in the public interest and conditional sentences with protective supervision are also very important, namely:

- guaranteeing respect for human dignity, rights, freedoms and privacy of the convicted person and his family and
- prohibition of discrimination due to race, skin color, gender, language, religion, political or other belief, national and social origin, property status, birth, education, social position or other personal characteristic.

2. WORK IN THE PUBLIC INTEREST

The sentence of work in the public interest implies free socially useful work, which does not serve to gain profit, with the aim of the convict developing a more responsible attitude towards society and the consequences of his actions. Work in the public interest was included in our Criminal Code due to numerous positive experiences of other countries, as well as due to the position of our theory that it is justified to introduce this sanction in our legislation. Work in the public interest in Serbia can only be imposed as the main punishment, but this does not change its basic meaning - to be an alternative to imprisonment. The court can impose a sentence of public interest work when it is a criminal offense for which a prison term of up to

3 years or a fine is prescribed, which in our criminal legislation essentially represents lighter crimes, although in our Criminal Code there is no division into lighter and heavier criminal acts, but it is determined that more serious criminal acts are those illegal acts for which a prison sentence of five years or longer is prescribed. Reciprocally, they would come to the conclusion that all crimes for which a shorter prison sentence of 5 years or some lighter criminal sanction, such as a fine, community service or revocation of a driver's license, are prescribed, are lesser crimes. It is also necessary for the perpetrator to accept this sanction, because according to the relevant international acts, forced labor is prohibited as a criminal sanction.

Work in the public interest must meet 3 conditions:

- that it is useful for society,
- that it does not offend human dignity and
- that it is not done with the aim of gaining profit.

The type and duration of work in the public interest is determined by the court, and the specific type of work and the way it is performed is determined by the commissioner, taking into account the abilities, professional knowledge and health of the convicted person. The minimum sentence of public interest work is 60 hours, and the maximum is 360, and the time to complete the determined number of hours is from one to six months, with a maximum of 60 hours in one month. The punishment of work in the public interest can be applied to both employed and unemployed persons. The employed work during their free time, and the unemployed work at any time.

3. CONDITIONAL SENTENCE WITH PROTECTIVE SUPERVISION

Conditional sentences with protective supervision means monitoring the behavior of the convicted person at liberty during the period of probation (probation) with the provision of the necessary assistance and protection in order to achieve the purpose of this sanction. Probation with protective supervision is a combination of continental and Anglo-Saxon elements of probation. In the basic form of conditional sentence, the relationship towards the convicted is passive and static. Through protective supervision, active actions are undertaken, which provide assistance and protection to the convicted, and at the same time, supervision is carried out over him with the aim of not committing a new crime. A suspended sentence with protective supervision is imposed in cases where there is a certain doubt about the perpetrator and his ability to refrain from committing criminal acts, if he were to be left to his own devices as in the case of an ordinary suspended sentence. Therefore, in the implementation of protective supervision, the active action of the commissioner is also necessary.

The Criminal Code provides for a diverse register of obligations, and that is why protective supervision is a measure that simultaneously includes the protection of the convicted and supervision over him. The employer has the right, in accordance with general regulations, to obtain compensation for damages caused by the work of the convicted person. If the convicted person does not fulfill work obligations or grossly neglects them (late to work, leaves work, is absent without justification, intentionally puts himself in a state of reduced work ability, intentionally damages work equipment, does not respect the organization and way of working, other employees and users of work), the employer's representative must inform the commissioner about it.

Protective supervision is defined in the following 10 points:

- Reporting to the authority responsible for the execution of supervision within the deadlines determined by that authority;
- Training of the offender for a certain profession;

- Acceptance of employment that corresponds to the capabilities of the perpetrator;
- Fulfilling the obligations of supporting the family, keeping and raising children and other family obligations;
- Abstaining from visiting certain places, bars or events, if this can be an opportunity or incentive for committing criminal acts again;
- Timely notification of change of place of residence, address or workplace;
- Abstaining from the use of drugs or alcoholic beverages;
- Treatment in an appropriate health facility;
- Visiting certain professional and other counseling centers or institutions and acting according to their instructions;
- Eliminating or mitigating the damage caused by a criminal act, especially reconciliation with the victim of the committed criminal act.

When choosing the obligations that the convicted person should fulfill within the framework of protective supervision and determining their duration, the court will especially take into account the circumstances related to the perpetrator's personality (his age, state of health, inclinations, habits, motives from which he committed the crime, demeanor after the committed criminal act, previous life, personal and family circumstances, conditions for fulfilling the mandated obligations, etc.). In addition to the length of the protective supervision, the court also determines the time of checking - (probation) of the convicted person, or the time of probation. Depending on the court's decision, these two decisions may have the same duration, and it is possible that the supervision lasts less than the inspection. The court can shorten or terminate the protective supervision if it determines that its purpose has been fulfilled, regardless of the fact that the inspection period is still ongoing. Also, the court can cancel certain obligations of the convicted person and can replace certain obligations with others. In the event that the person sentenced to probation does not fulfill the ordered obligations, the court can warn him, replace the ordered obligation with another, extend the duration of the obligation or revoke the conditional sentence.

4. TRUSTEE SERVICE

Sanctions imposed as an alternative to prison sentences are enforced in Serbia by the Trustee Service. It operates within the Department for Treatment and Alternative Sanctions at the Directorate for the Execution of Institutional Sanctions of the Ministry of Justice. The regulations on protective supervision and work in the public interest regulate in detail the actions of trustees in monitoring the execution of the obligations of the convicted. The trustee service will become an independent service within the Ministry of Justice with stable confidence of the judicial authorities in its work, it will be able to increase the safety of the social community and the degree of successful reintegration of the convicted.

The commissioner is appointed by the director of the Administration for the Execution of Institutional Sanctions on the proposal of the head of the Department for Treatment and Alternative Sanctions, who takes into account the personal characteristics and needs of the convicted person when proposing. The commissioner's powers provide for the establishment and maintenance of contact with the convicted, while respecting the principle whose essence is to limit the rights of the convicted only to the extent necessary to achieve the purpose of the imposed sentence. He cooperates with the competent court, the internal affairs body, the employer and other institutions, organizations and associations, he has the right to request data and inspect official records and other documents of importance for the execution of a conditional sentence with protective supervision, i.e. for the execution of work in the public interest. After the execution of the sentence, the Commissioner is obliged to submit the file of

the execution of the sentence to the Department for Treatment and Alternative Sanctions, and then the Department for Treatment and Alternative Sanctions submits the notification about the execution of the sentence to the court. Records are maintained and kept in the Department of Treatment and Alternative Sanctions, and consist of:

- Registry book (contains basic formal data on the verdict, conviction and sentence itself);
- file that is kept individually for each convicted person (in addition to formal data, it also contains the program of protective supervision/work, the commissioner's report, the monitoring list of the execution of the sentence and prescribed reports).

Supervision over the execution of alternative sanctions and the work of the Trustee Service is performed by the Department of Supervision under the Directorate for the Execution of Institutional Sanctions of the Ministry of Justice. Control over the execution of alternative sanctions is performed by the Commission formed by the Committee for Justice and Administration of the Parliament of Serbia and the Protector of Citizens.

The fiduciary service should be developed through:

1. Improvement of personnel, organizational and program foundations;
2. New normative framework, namely:

- amendments to the Code of Criminal Procedure, the Criminal Code and the Law on the Execution of Criminal Sanctions i
- enactment of a special law on the competences and work of the Trustee Service with accompanying by-laws, which was done in 2014 with the enactment of the Law on the Execution of Extra-institutional Sanctions and Measures.

The aforementioned changes will enable the Trustee Service to provide professional assistance to competent state bodies, such as:

- in the pre-investigation procedure - at the request of the prosecutor's office or the court in the procedure of supervision and reporting on the execution of measures or obligations ordered by the prosecutor to the suspect as a condition on the fulfillment of which the suspension of the criminal procedure depends;
- in criminal proceedings - at the request of the court, prepares the so-called a report before imposing a sanction, which should help the court determine an adequate criminal sanction for the defendant. The report contains data on the defendant's family, health, educational, work and property status, as well as the so-called risk assessment of the defendant, that is, assessment of the degree of danger that the defendant represents for the social community and assessment of the degree of danger that the defendant will repeat/continue committing criminal acts;
- in abbreviated proceedings and proceedings for the imposition of criminal sanctions without a main trial - by drawing up a report before the imposition of a sanction in proceedings conducted for minor criminal offenses and for which the imposition of alternative sanctions is possible;
- in the procedure of execution of existing sanctions - cooperation with treatment services in institutions for the execution of prison sanctions in the application of parole, preparation of the convicted for release from punishment and in the post-penal reception of the convicted;
- in the procedure of execution of new alternative sanctions and measures - supervision over the fulfillment of obligations from the court decision ordering the defendant/convict to house arrest, stay in a "halfway house", electronic monitoring.

5. CONCLUSION

In some justice systems, the application and enforcement of alternative sanctions is the responsibility of a separate probation service. In other systems, as was the case in Serbia until 2014 (although the long-term aim was to establish a separate independent service), the prison authorities were responsible for both the prison and the application of alternative sanctions. However, with the adoption of the Law on the Execution of Off-site Sanctions and Measures, the issue of the execution of alternative measures and off-site sanctions was resolved in a good way, and the above-mentioned service, the so-called Trustee Service, for the implementation of the aforementioned law, and the implementation and execution of alternative prison measures in the best possible way. First of all, it is a good way to eliminate the inequities that existed, where we had that in such circumstances, where senior prison officers are tasked with applying prison and alternative sanctions, they can use their knowledge of prison conditions and design the work and development of non-prison sector. Senior officers have a particular role to play in ensuring that the prison is never overused. For example, they can draw public and parliamentary attention to the consequences of prison overcrowding and the lack of resources to care for large numbers of prisoners. It is therefore a key responsibility of prison authorities to make it known to legislators, the judiciary and the public that prison is a place to be used only as a last resort, in cases where no other reasonable solution exists. In all other cases, it should be possible to apply alternatives to prison sentences, above all when it comes to crimes that are classified as minor crimes in the Criminal Code, for crimes caused by negligence, primary perpetrators of crimes, situational perpetrators of illegal crimes, and perpetrators of petty crimes.

In the last few years, approximately 49,000 prison sentences have been handed down in the Republic of Serbia, of which 65.3% are for one year. Bearing in mind how many prison sentences were imposed in the range of 1-3 years, it can be assumed that over 70% of prison sentences could have been replaced by one of the alternative sanctions. This, unfortunately, has apparently not been done. In the end, we hope that this work will, in fact, influence the consideration of such a penal policy, especially for petty crimes, and promote new research and new types of alternative sanctions and measures, as well as perfect the ways and methods of applying them, and improve implementation in our new penal policy.

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