

IMPLEMENTATION OF THE SYSTEM OF ALTERNATIVE CRIMINAL SANCTIONS

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Abstract: *The increase in crime rates in many countries, resulted in a drastic increase in the number of prisoners. However imprisonment produced negative consequences for the perpetrators and for society, which led to the fact that in the second half of the twentieth century there comes reviewing of existing prison sentences and finding of adequate solutions to punish offenders. Alternative criminal sanctions have proven to be a necessity, whereby their range is limited and in view of their versatility and its validity they can be evaluated differently. The system of criminal sanctions of the Republic of Serbia also has been enriched with alternative sanctions which gives greater opportunity for individualization in determining the criminal sanctions to prisoners, especially avoiding imposition of short-term prison sentences that have, in practice, proved inadequate. In addition, the introduction of alternative sanctions is a result of the adoption of a number of international legal acts which aim to mitigate or reduce the retributive character of punishment. In relation to penalties, alternative measures have a number of advantages that can be reduced to human nature, a lower degree of repression, as well as the participation of the community in the execution of these measures in order to achieve social reintegration.*

Keywords: *alternative criminal sanctions, community service, house arrest, electronic monitoring*

INTRODUCTION

When discussing alternative criminal sanctions it usually raises a dilemma why do we search for these kinds of sanctions and what is their contribution, because the conclusion is known that the system of criminal sanctions provided in national criminal law is not effective. However, there are legitimate reasons for the above because there are some simple sentences that cannot be carried out, for example, a prison sentence due to excessive overcrowding in prisons. Although it is often emphasized that alternative sanctions mean the search for a more humane form of execution of criminal sanctions, it should be established that that motive despite everything is not in the foreground.

Alternative criminal sanctions are based on the principle of individualization of criminal force against offenders. The goal of alternative criminal sanctions is to reach as many as

possible of the positive effects of the execution of sanctions and reduce to the lowest level the negative effects. From the earliest times, the society has been trying to protect itself from different shapes and types of crime of individuals and groups by different measures. Historical records show that crimes were for a long time punished with harsh punishment: the death penalty, bodily mutilation, and only later, with the development of commodity-money relations from the composition they were able to distinguish fines intended for country (as well as criminal sanctions) and the compensation intended for the damaged (as civil sanctions). The most radical changes in the way of punishment in the history of human society (especially in Europe) were brought by capitalism. The capitalist mode of economy demanded free labor, so the former corporal punishment and the death penalty were replaced with new sanctions such as overseas deportation, imprisonment, forced labor, prohibition of stay in a particular place. New philosophical tendencies and breakthroughs in the field of criminal law theories influenced (admittedly only in the mid XIX century) the application of newly implemented criminal penalties. These changes, which in themselves pose a more humane attitude towards potential criminals, are also a reflection of the pragmatic need for a new way of punishment in order to achieve comprehensive control of behavior of offenders. With regard to the system of penalties, the greatest achievements of industrial capitalism is the introduction of a prison sentence. However, very early there arose the idea that prisoners can be reshaped through work (Mrvić-Petrović, 2008. p 129).

1. GENERAL CONSIDERATIONS OF ALTERNATIVE CRIMINAL SANCTIONS

There is no generally accepted definition of the concept of alternative criminal sanctions, which also represents a significant problem in the context of the present term. In addition, the very term “alternative” has multiple meanings, and also the term “alternative sentence” may be interpreted differently. According to its content alternative sanctions should be the new measures that can be applied to the offenders in a way that they may be treated more favorable, on the other hand different from the traditional criminal sanctions. It is also a concept that is still in development and that can be understood in different ways depending on whether it is linked exclusively to the system of criminal sanctions or function that the application of alternative measures of criminal punishment is achieved in the judicial system. (Ignjatović, 2006, pp. 338-339) The modern system of criminal sanctions is increasingly striving towards pluralistic administration through sanctions that are distinct in their purpose. However, some of them are designed exclusively for minors and other for adult offenders. If the meaning of alternative criminal sanctions is identified with alternative punishments, then the alternative sentences are also security measures and precautions. Security measures and precautions are a special kind of criminal sanctions, and each one has a specific purpose, but they are basically criminal sanctions. Their common feature is that they all are the means of coercion because the offender’s freedoms and rights are restricted because of the work that has been done or fulfilled the objective elements of the crime (made objective non-right). (Ignjatović, 2008, p. 4)

There are different types of measures and sanctions referred to as alternative criminal sanctions, depending on which way we approach the determination of their term. Alternative sanctions mean different measures (of medical and educational characters) that can be

applied instead of the sentence in the criminal justice system as criminal sanctions or as measures to avoid the criminal proceedings or criminal conviction. Sometimes such measures, such as mediation and settlement, can be applied outside the criminal justice system, with the influence of the criminal proceedings or the outcome.

Since they are different in the nature and function of these measures, the most beneficial alternative criminal sanctions are classified according to their content and concrete goals that they can achieve. Thus, among other sanctions, we first clearly distinguish different variants of prison treatment and shortening the duration of the prison sentence, which should achieve additional impact on the rehabilitation of the offender. Among other alternatives they differ in that they are applied retrospectively, after the court decision imposing a prison sentence. Such a modification in the phase of execution of sentence of imprisonment seeks to improve the performance of penalties and strengthen the additional impact on the offender. It should be noted that those sanctions are in the function of repair or mitigate the harmful consequences of the offense. Respective sanctions such as compensation and work in the public interest represent a real alternative, measures that did not exist in the system of criminal sanctions based on an entirely different approach to punishment. They primary should exercise appropriate influence in relation to the victim of the offense, and secondary and against the perpetrator. Within this group, it is possible to classify also the settlement and reconciliation of the offender and the victim of the offense. But, sincethis is not only a sanction, but also the method of reaching an agreement on compensation for damages which has its effects on the start criminal proceedings, mediation is considered separately, as a measure to be applied before starting or during criminal proceedings.(Karabec, 2005, pp. 132-133)

2. ALTERNATIVE CRIMINAL SANCTIONS IN THE PRACTICE OF THE EUROPEAN UNION

By the end of the last century, the general trend in Europe was the increase in the prison population, which is largely reminiscent of the period of twenty years earlier in the United States and Canada. Faced with the above problems and clear trends, some countries have adapted the use of alternative sanctions and changed the national system for greater efficiency in the process of conditional release and reduced number of persons serving prison sentences. Many countries increased concerned measures, with the introduction of electronic surveillance, such as England and Wales where they have been intensively used since 2000. In France, it is also a means of imposing a curfew or house arrest, while Greece has introduced a limited pilot electronic monitoring with house arrest since 2013. The most commonly used measures in European countries are:

- community service (unpaid labor for the specified number of hours or days),
- supervision or control without therapy and rehabilitation and supervision or control with the treatment or rehabilitation (for example under the control of access to training, education, the treatment of drug or alcohol addiction, the mental health care, etc.). (more in: Heard, 2016)

In addition, it is important to emphasize that the introduction of alternative sanctions allows for greater private sector involvement. Nevertheless, as a result of the application of

new technology it can be seen that tracking becomes cheaper and easier to control, and the very handling is quite simplistic. But, there always appears the risk of endangering civil liberties that may be disproportionate to the objectives to be achieved through the implementation of these measures. On the other hand one of the goals such as a trial within a reasonable time can actually be compromised if there is a long delay in court proceedings. However, this goal can be achieved to some extent if we take into account the fact that a person can easily be controlled through the application of those funds, which is also cheaper than would be the case if he is kept in custody.

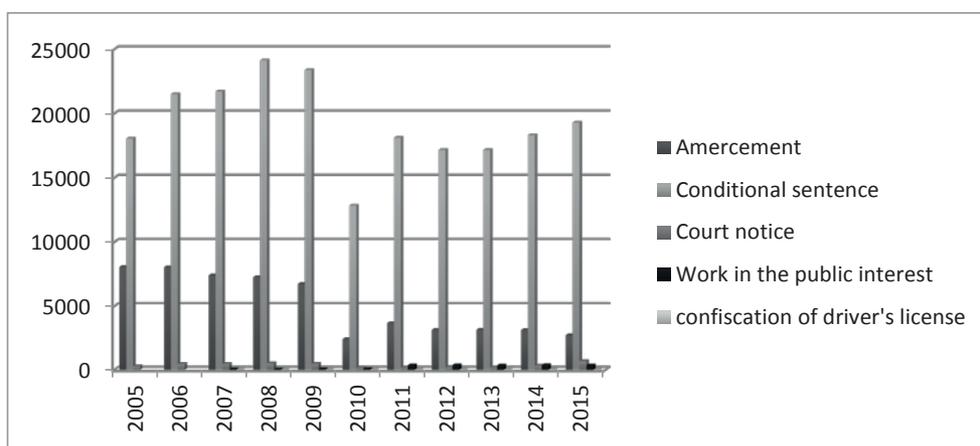
Table 1: Types of sanctions imposed in certain European countries in 2006 (in percentages)
(more in: Heard, 2016)

Country	Alternative sanctions	Probation	Prison	Other measures
Austria		6,5	93,5	
Belgium	2,5	34,4	63,1	
France		3,5	96,5	
Holland	52,2	6,6	40,1	0,4
Germany		4,1	95,9	
Poland	0,1	9,3	90,4	0,2
Portugal		17,5	81,6	
Romania		1,9	98,1	
Hungary	0,2	4,0	42,5	53,1
Slovakia			69,4	21,0
Croatia	3,4	52,5	11,6	26,0
Sweden	1,2		88,1	11,9
Switzerland		14,8	63,0	22,2

When it comes to the practical application of the subject of sanctions in Europe it is very difficult to reach the objective of general indicators that point to the trend of using these measures. Without special going into the analysis of the above we need only to indicate that alternative sanctions are differently defined in national legislations as well as the fact that individual countries (e.g. The United Kingdom) have a much longer history of application of these sanctions, unlike other countries (e.g. The Western Balkan countries) that have respective sanctions implemented into national legislation at the turn of this century. Despite the aforementioned for the Republic of Serbia experiences of the developed countries of the old continent are of vital importance, particularly in the current process of integration and harmonization of national legislation with the European Union in this area. Based on statistical indicators which are converted by the unique methodology of scientific principles to achieve objectivity in many countries the number of imposed alternative sanctions is at a very low level or number i.e. the number of imposed sanctions is negligible compared to other sanctions.

3. ALTERNATIVE CRIMINAL SANCTIONS IN SERBIA

The Republic of Serbia had long lagged behind the developed part of Europe and was one of the last to introduce alternative criminal sanctions through the reform of criminal legislation in 2005. However, the very prescription of alternative sanctions marked the initial phase in the direction of a significant adjustment to the system of criminal sanctions, the standards defined by the United Nations and the Council of Europe. The beginning of the application of those sanctions has been accompanied by numerous problems of lack of organizational conditions, lack of financial support from the state, the negative attitude of professional public. All this made it impossible to achieve significant success in the implementation of these measures. (Mrvić-Petrović, 2010, p. 56)



Graph 1. Alternative criminal sanctions in Serbia in the period from 2005 to 2014

Based on the analysis of the presented data we can give a general conclusion on the application of alternative criminal sanctions in the Republic of Serbia. The general impression is that suspended sentence is dominant alternative punishment. In the analyzed period, in addition to the above sanctions (Graph 1), only in 2015 there has been recorded 1,134 home prison sentences. At the same time it is a period in which there were recorded 274 604 sanctions, and out of this number 77% are suspended sentences, 20% are monetary fines and 3% other criminal penalties. In addition it should be noted that in the period since 2010 there has been apparent tendency of reduction of suspended sentences in relation to the previous period, and the situation is same with fines. Statistical data for the period 2001-2005 show that in this period there was a certain decrease in the number of reported minors who committed offenses, and that from 2005 and in 2006 we faced the increasing number of these offenses. However, the number of convictions in 2005 was slightly lower (2,234 for the area of central Serbia and Vojvodina), compared to 2001 when there were 2,398.

In terms of fines, over a longer period of time the general impression is its decrease in the total number of sanctions in the Republic of Serbia. The analyzed period can be conditionally divided into two parts. The first period was from 2005 to 2010, when the number of fines imposed was considerably large and ranged from 10 to 20% of the total number of

sanctions imposed on an annual basis, and the second period is from 2010 to 2015, which marks the uniformity without major deviations or with a significantly reduced number of fines imposed in relation to the previous period. However, uniformity is only conditional because we see a slight downward trend in the number of sanctions imposed on the subject. During this period, fines comprised 8.2 to 11.9% of the total number of sanctions imposed. In addition to the trend of reduction of the fine, the general impression is that the respective sanction is very little used as opposed to a conditional sentence.

In the previous part of this paper it has already been stated that the suspended sentence was the most common criminal sanction in the analyzed period. With regard to these penalties we also observe two periods. The first period is until the year 2010 where the number of suspended sentences was much larger than usual and in some years their number was over 50% of the total number of sanctions (in 2006 52%, 2007 56%, and 2008 57%). However, we should not be misguided by that fact that in 2010 there was recorded the lowest number of suspended sentences, because that year recorded the lowest number of prisoners (21,681 prisoners and 12 833 suspended sentences). In the second part of the analyzed period we have a balanced number of suspended sentences and their number is smaller than in the previous period. Nevertheless, the number of suspended sentences is more than 50% (the least in 2014, with 51.7% and the highest in 2011 with 58.8%). In relation to the suspended sentence judicial admonition in practice was not imposed in large numbers. The largest number of judicial reprimands was recorded in 2008 (524) and in 2015 a total of 694 (2.1%). It is also noticeable that there is unevenness in imposition of court warning, and that there was recorded a higher number in the period from 2005 to 2009 and from 2010 recorded a rise so that in 2015 there was recorded the maximum. Compared with other sanctions analyzed, judicial admonition has its own trend of manifestation, i.e. it does not fit with the other sanctions or follows the trend of the total number of sanctions in the analyzed period. For example, in 2014 when there was recorded the highest number of convicted adults judicial admonition accounted for 1%, and in 2010 when there was recorded the lowest number of sanctions judicial admonition constituted 0.8%. In addition to the respective sanction we can give a general assessment that it is not popular in the practice of the courts in the Republic of Serbia.

When it comes to sentences of community service according to the number of completed verdicts in the analyzed period, it should be noted that the official statistics this penalty has been present since 2007, when it recorded 0.1% (48) compared to other penalties. Without specific analysis we can see a sharp rise after 2010 and the subsequent period a uniform trend, as well as a general increase in the number of sanctions imposed by the courts in the Republic of Serbia. This trend can be justified by the fact that it is a punishment that is new in national legislation, and it includes the necessary support in its implementation in practice. The percentage of these sanctions is represented with 1% (2014) to 1.2% (2011 and 2012). However, the largest number of any sanctions was imposed in 2012 (365) and 2014 (371). The present chart clearly shows the discrepancy between the period before 2010 and the period after 2011. In the first part of the analyzed period shows a very small number of 35 (in 2008) to 71 (2010). But besides that, for the reasons stated, the trend of growth is encouraging, because this sanction gets its place in the system of sanctions of the national criminal legislation.

CONCLUSION

All contemporary legislations in the system of criminal sanctions, in addition and instead of imprisonment (as the most significant criminal penalty prescribed for the majority of offenses or alternatively with other sentences), have of one or more alternative or substitute sanctions. Those are various measures of the social reaction applied by the court for perpetrators of criminal or lighter criminal offences when depending on the characteristics of their character it is not necessary to impose them (or execute imprisonment). Alternative criminal sanctions are: a fine, suspended sentence, judicial admonition, but lately there has been particular emphasis on community work, work in the public interest or work for the public good in freedom. In addition to the above, respective criminal codes have the following alternative measures: compensation, outpatient treatment or referral to training, weekend detention, house arrest, electronic monitoring, etc. Their introduction into the legal system is the result of the adoption of a set of international legal acts which are aimed to mitigate or reduce the retributive character of punishment.

In modern criminal law there is a tendency for the wide application of the different alternative measures or para-penalty criminal sanctions, which are alternatives or substitutes sentence, particularly in the short term. In relation to the sentences, para-penalty measures have a number of advantages which can be summarized as follows: humane character, lower degree of repression, established cooperation with the defendant and an active ratio in execution rates, the achievement of reparations (compensation) to the victim, the participation of the society in the execution of these measures making it easier to achieve the effect of re-socialization. Despite the advantages mentioned above, the application of alternative measures is still facing a series of opponents. Due to everything mentioned so far and primarily for adequate punishment of perpetrators of minor offenses it is useful to impose alternative criminal sanctions. Imposing alternative criminal sanctions in our jurisprudence, we can safely conclude, was significantly represented and this is especially true in the presence of a suspended sentence, a much smaller fines, while the representation of a suspended sentence with supervision of the judicial practice has not seen its confirmation. I personally believe that it would be useful and more adequate to impose greater number of fines, but also in any case where a suspended sentence is imposed and there are legal conditions for the imposition of a suspended sentence with supervision, it is better to impose a suspended sentence with supervision.

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