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PENAL POLICY AND APPLICATION OF ALTERNATIVE SANCTIONS IN MONTENEGRO

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NOTE: The views expressed in this document are those of the authors and do not reflect the views of the Ministry of Justice.

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INTRODUCTION

The reaction to the negative effects of institutional punishment, which were shown in the practice in many countries, led to the development of the idea of alternative forms of punishment and to the introduction of new forms of criminal sanctions and measures aimed at humanizing the criminal justice system and reducing deprivation of liberty to the necessary minimum, in order to avoid the negative effects of the prison sentence to the greatest extent possible.

The Montenegrin legislators recognized the importance of alternative sanctions and measures and kept up with the times. In the previous decade, new non-institutional i.e. alternative measures and sanctions were introduced into the penal system, and several laws have been passed that regulate their implementation and execution. This opened the way to solving some of the problems that have continuously accompanied the system of execution of criminal sanctions in Montenegro, such as the overcrowding of prison institutions, the high budget expenditures that accompany institutional punishment and the numerous negative consequences that deprivation of liberty has, both on convicted persons and their families, but also society as a whole.

The aim of this brochure is to provide a brief overview of penal policy in Montenegro with a focus on the application of alternative sanctions and measures compared to institutional punishment in the last 10 years, i.e. from 2012 to the end of 2021, in order to see the actual extent of the application of new penal solutions and institutes. Although there are several alternative sanctions and measures in a broader sense of the term, the focus and subject of this brochure will be alternative sanctions and measures in a narrower sense, i.e. only those sanctions and measures whose execution requires supervision by the competent authority. These are community service, house arrest and suspended sentence with protective supervision.

In order to see the progress achieved in the application of alternative sanctions and measures as precisely as possible, we must also look at some of the key data related to institutional punishment. Given that the brochure is intended primarily for practicing lawyers, we consider it unnecessary to go into details about the strategic, institutional and legislative framework that prescribes criminal sanctions and the manner of their execution in this document. Those aspects are analysed in the document published by CeMI in 2021, entitled "Results and effectiveness of the application of alternative sanctions in Montenegro - recommendations for improvement", which is available on our website <https://cemi.org.me/en/publications>.

INSTITUTIONAL PUNISHMENT IN MONTENEGRO

Prison sentence, which is carried out in the Directorate for the Execution of Criminal Sanctions, undoubtedly has an important purpose and function. As the most severe punishment in our criminal justice system, it should, more than others, achieve a positive effect in terms of general prevention, i.e. it should influence others not to commit criminal acts as well as to strengthen the moral values and the sense of obligation to obey the law. When it comes to special prevention, provided that it is adequately measured, prison sentence should have a rehabilitative effect on the convicted person.

However, it is a generally accepted position in penological theory that deprivation of liberty produces numerous negative consequences, both for the person deprived of liberty, and for his family and society as a whole. Some of the negative aspects of institutional punishment that are most often mentioned are reflected in the overcrowding, high budget expenditures for the execution of prison sentences, separation of convicts from their families, loss of work and difficulty in finding new employment, interruption of education, etc. Detention should also be added here because, although it is not a punishment, it produces similar consequences. Although it is unrealistic to expect the penal system to function without the threat of imprisonment and without its use, it should still be reduced to a necessary minimum. However, this is not the case in Montenegro. According to the Council of Europe data, Montenegro is one of the countries with the worst rating, i.e. with a very high rate of prisoners per 100,000 inhabitants.

Table 1: Total number of prisoners in Montenegro from 2012-2021 (including detention)

Year	No. of inhabitants ¹	No. of prisoners ²	Rate of population in prison and detention per 100,000 inhabitants	Council of Europe average ³
2012	620,893	1,331	214.3	125.6
2013	621,521	1,064	171.1	133.5
2014	622,099	1,062	170.7	124
2015	622,218	1,131	181.7	115.7
2016	622,387	1,123	180.4	117.1
2017	622,359	1,119	179.7	No data
2018	622,182	1,123	180.4	102.5
2019	621,873	1,090	175.2	106.1
2020	620,739	810	130.4	103.2
2021	617,683	920	148.9	101.8

1 Statistical Office of Montenegro, Estimates of the number of inhabitants on January 1, available at: <https://www.monstat.org/cg/page.php?id=273&pageid=48> (for each year, the estimate of the number of inhabitants from January of the following year was taken. For example, for 2012, the data from 1 January 2013 was given, etc.)

2 Data on the number of prisoners obtained from UIKS based on the Request for Free Access to Information

3 Council of Europe Annual Penal Statistics - SPACE I, available at: <https://wp.unil.ch/space/space-i/annual-reports/>

An additional problem is the fact that the Montenegrin public for the most part has a positive attitude towards the effectiveness of prison sentences. CeMI's public poll from March 2021 showed that more than two thirds of citizens believe that prison is the most effective form of punishment.⁴

Table 2: The number of imposed prison sentences in the period from 2012-2021⁸

COURT	GODINA									
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
BC Bar	90	113	112	169	116	133	68	68	36	53
BC Berane	102	96	80	86	75	63	53	49	39	40
BC Bijelo Polje	149	80	73	96	74	79	89	51	42	38
BC Cetinje	29	61	51	57	51	43	33	28	23	22
BC Danilovgrad	46	42	3	25	2	29	22	22	18	14
BC Herceg Novi	62	53	38	56	24	23	15	26	30	22
BC Kolasin	19	16	23	42	37	14	25	29	18	15
BC Kotor	98	150	80	139	160	128	81	83	84	31
BC Niksic	217	229	163	116	121	114	99	106	126	76
BC Plav	16	24	7	19	25	4	7	1	3	6
BC Pljevlja	50	38	38	31	24	43	29	25	23	29
BC Podgorica	277	281	241	306	312	280	225	272	352	201
BC Rozaje	49	93	50	49	80	63	46	52	38	25
BC Ulcinj	38	23	27	39	24	9	15	15	19	8
BC Zabljak	9	14	10	15	4	8	16	3	2	0
HC Bijelo Polje	65	75	133 ⁷	72	81	90	48	22	8	28
HC Podgorica	315	283	50	166	150	120	96	109	186	97
TOTAL	1,631	1,671	1,179	1,483	1,360	1,243	967	961	1,047	705

When it comes to the length of prison sentences, one of the CPT recommendations is that the Montenegrin authorities pursue their efforts to combat prison overcrowding taking into account the relevant recommendations of the Committee of Ministers of the CoE.⁵ This problem is also recognized in the Strategy for the Execution of Criminal Sanctions for 2017-2021, which states that the most serious weakness in the penal system of Montenegro is too much reliance on prison sentences, and that they are imposed in circumstances where other countries use alternatives.⁶

4 CeMI public polling research, available at: <https://cemi.org.me/storage/uploads/1d6diiLbnqjZyKWrfWbz964CdC6KjqjBY0eTjKla.pdf>

5 Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 16 October 2017, p 26, available at: <https://rm.coe.int/1680925987>

6 Ministry of Justice, Strategy for the Execution of Criminal Sanctions 2017-2021, p. 16

7 In the report on the work of the Judicial Council for 2014, there was most likely a permutation of the data for the High Court in Bijelo Polje and the High Court in Podgorica. However, the data is presented as written in the report.

8 Judicial Council Annual Reports, available at: <https://sudovi.me/sds/sadrzaj/2zaV>

One of the main mechanisms for reducing the number prisoners is the greater use of alternative sanctions and measures. As alternative sanctions in the narrower sense are sometimes defined as new sanctions, devoid of penal features, which can be used to replace a short-term prison sentence (as a rule up to six months, exceptionally up to one year),⁹ it is important to look at the percentage of prison sentences imposed for the specified duration.

Note: The values shown in black or white represent percentage values in Montenegro, while the values shown in red or yellow represent the average in the Council of Europe countries for the same year.

Table 3: Length of prison sentences in Montenegro from 2012-2021 (in percentages)

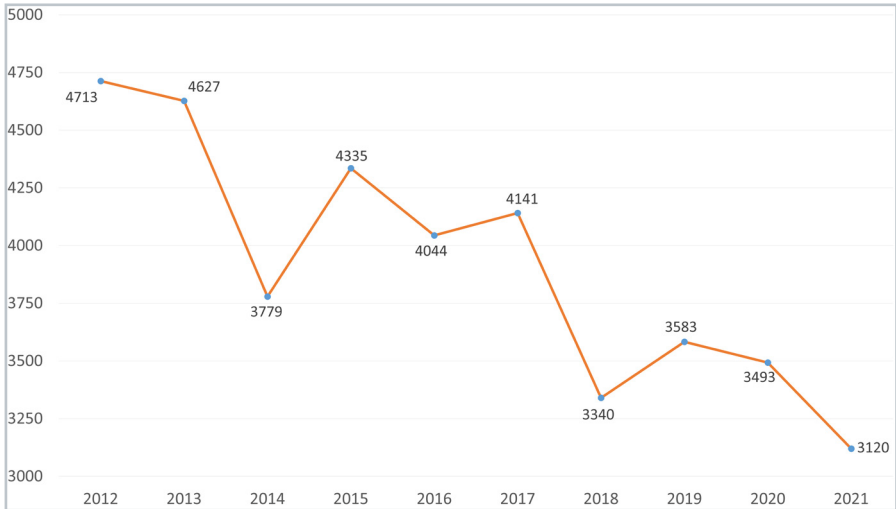
YEAR	Up to 1 month	1-3 months	3-6 months	Up to 6 months total	6 months to 1 year	1-3 years	3-5 years	5-10 years	10-20 years	20+ years
2012	3.1	3.2	8.8	15.1	9.2	48.7	14	5.9	5.2	2
	0.3	1.3	4	5.6	9.2	25	17.6	9.1	9.5	0.7
2013	1.7	1	8.2	10.9	4.9	22.7	26.6	27.6	4	3.3
	0.3	0.9	3.8	5	7.5	23.1	18.5	20.6	10	0.8
2014	3.1	4.7	8.4	16.2	5.5	48	20.9	4.3	2	3
	0.5	0.8	4.1	5.4	7	23.8	18	22.1	0.7	1.7
2015	4.2	4.2	3.7	12.1	26.7	36	13.4	8	2.3	1.1
	0.3	1.1	3.7	5.1	8.4	24.7	17.7	21.8	10.7	1.1
2016	2.3	6.8	7.8	16.9	27.1	32.8	12.5	7.2	1.9	1
	0.3	1.3	3.4	5	8.3	26.4	17.8	20.5	11.8	1.3
2017	/	/	/	/	/	/	/	/	/	/
2018	5.3	3.5	9.5	18.3	8.9	26.6	14.1	15.9	13.9	2.2
	0.2	1.3	5	6.5	8.1	24	16.2	17	11.5	1.5
2019	5.4	3.3	8.8	17.5	9.5	27.4	14.4	15.4	14	2.2
	0.3	1.3	4	5.6	8.2	27.4	16.7	20.2	11.4	2
2020	1.1	6.6	9.2	16.9	8.4	29.4	10.9	12.7	14.9	6.9
	0.3	1	3.6	4.9	8.2	21.9	18.8	19.9	11.7	1.3
2021	3.1	1.9	2.3	7.3	4.4	29.6	14.3	18.8	20.9	11.8
	0.2	0.8	3.5	4.5	6.7	23.5	17.2	20.8	12.3	2

Source: Council of Europe Annual Penal Statistics – SPACE I reports from 2012 to 2021.

According to CoE data, in the last 10 years, the number of prison sentences lasting up to six months was at a particularly high level in Montenegro, compared to the CoE average, with the exception of 2021, when a significantly lower number of sentences was recorded compared to previous years.

⁹ N. Mrvic Petrovic, *Alternative criminal sanctions and procedures*, Medijska centar Odbrana, Beograd, 2010, p. 16.

Graph 1: Total number of sanctions imposed in basic and higher courts in the period from 2012 to the end of 2021



Source: Judicial Council Annual Reports from 2012 to 2021.

Taking into account the COVID-19 pandemic, which in that period affected every aspect of life, including the work of the judiciary, we cannot draw a definitive conclusion yet whether the lower number of prison sentences, and sanctions in general is an anomaly partially caused by the consequences of the pandemic or a positive trend that will continue in the future.

COMMUNITY SERVICE

Montenegro has made moderate progress in the application of the penalty of community service in the last 10 years, but there are still large discrepancies in the application of this alternative sanction in certain courts.

In order to obtain the most accurate data possible, we reviewed the judgments published on the website sudovi.me, in which community service sentences were imposed. A small, but significant discrepancy was noticed in relation to the data published in the annual reports of the Judicial Council. The most significant difference is reflected in the fact that according to the reports of the Judicial Council, there were no community service sentences in the Basic Court in Kolasin. However, a small number of such judgements can be found on the website sudovi.me. A smaller difference was also observed in several other basic courts. Apart from this difference, the reports of individual courts are different in content. Some reports clearly show the number and percentage of all sanctions imposed in one year, while the reports of other courts are significantly poorer in content.

Table 4: the number of imposed community service sentences from 2012-2021¹⁰

BASIC COURT	YEAR										TOTAL
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	
Bar	0	0	1	10	20 ⁺¹	21	7	13	21 ⁺²	17 ⁺¹	110
Berane	0	0	0	9	21	41	16	30	26	10	153
Bijelo polje	0	0	17	18	29	21	7 ⁺¹	17 ⁺¹	12	10 ⁺²	131
Cetinje	2 ⁺¹	19	24	22	29	19	5	3 ⁺¹	4	2	129
Danilovgrad	4	5 ⁺⁵	0	1	1 ⁺¹	3	8 ⁺¹	11 ⁺¹	3	5 ⁺¹	41
Herceg Novi	0	1	9	15	10	9	2 ⁺¹	8	7	15	76
Kolasin	0	0	0	1 ⁺¹	0	0	1 ⁺¹	2 ⁺²	4 ⁺⁴	2 ⁺²	10
Kotor	2 ⁺¹	2 ⁺²	10 ⁺¹	22	21	25	23	34	30 ⁺⁶	24	193
Niksic	0	0	11	35	38	47	37	36	9 ⁺¹	6	219
Plav	0	0	0	0	2	23	35	8	18	8	94
Pljevlja	0	0	0	1 ⁺¹	0	1	0	4	0	0	6
Podgorica	0	3	20	33	48	68	73	80	52 ⁺²	67	444
Rozaje	0	0	0	0	1	3	1	1	6	0	12
Ulcinj	0	2 ⁺¹	4	5 ⁺¹	5	5	1	5	15	2	44
Zabljak	0	0	0	0	0	1	10	10	11	5 ⁺²	37
TOTAL	8	32	96	172	225	287	226	262	218	173	1,699

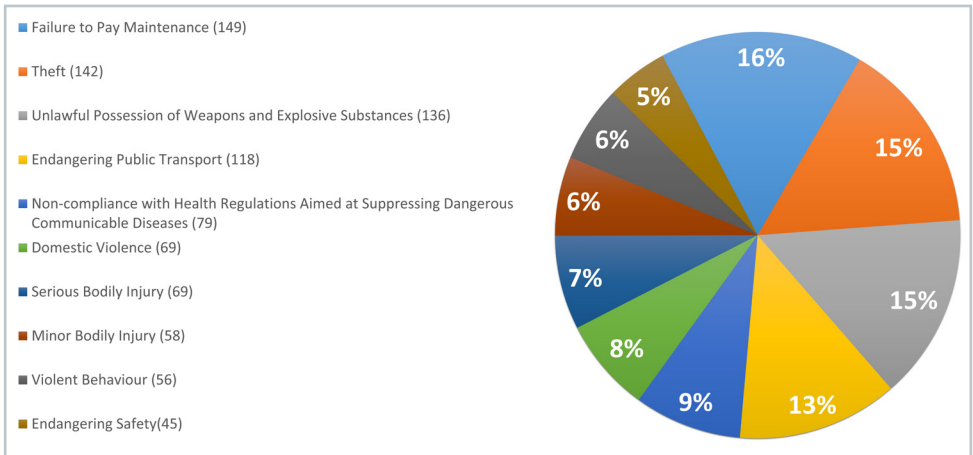
Sources: Judicial Council annual reports and court decisions on the website sudovi.me

¹⁰ The numbers colored in blue represent an increase compared to the official data of the Judicial Council, based on an insight into court decisions on the website sudovi.me.

Table 5: percentage of community service sentences compared to other sanctions and 10-year average (basic courts)

YEAR	SANCTION				
	Community Service	Fine	Suspended Sentence	Prison Sentence	Other
2012	0 %	8.76 %	62.33 %	28.91 %	0 %
2013	0.61 %	7.42 %	58.83 %	33.14 %	4.16 %
2014	2.64 %	6.12 %	56.6 %	27.73 %	6.9 %
2015	4.13 %	5.62 %	50.72 %	30.42 %	9.11 %
2016	5.89 %	4.51 %	47.22 %	29.8 %	12.59 %
2017	7.61 %	5.2 %	44.81 %	27.41 %	14.96 %
2018	7.15 %	4.89 %	44.11 %	26.5 %	17.35 %
2019	7.75 %	3.98 %	45.45 %	25.03 %	17.79 %
2020	6.65 %	9.01 %	42.52 %	27.94 %	13.89 %
2021	5.8 %	6.23 %	53.57 %	20.4 %	14 %
AVERAGE	4.8 %	6.2 %	50.6 %	27.7 %	11 %

Source: Judicial Council annual reports

Graph 2: criminal offenses for which the basic courts most often imposed a sentence of public service from 2012-2021

Source: website sudovi.me

Although progress has been made in imposing this type of punishment, it is important to point out some shortcomings, especially when it comes to the criminal offense of domestic violence.

Namely, there were cases of community service being imposed for the aforementioned criminal offense in cases where the person was previously convicted for the same criminal offense, which in itself is controversial from the aspect of the preventive effect of the sanction.

When imposing a sentence of community service, the court often takes as a mitigating circumstance the fact that the injured party did not join the criminal prosecution. It is not rare that the injured party asks the court for a lighter sentence as well as situations when the victim reports domestic violence for the first time and the defendant is a person with no previous convictions, even though the circumstances of the case show that he has committed this form of violence before. All this points to a lack of awareness among citizens about the seriousness of domestic violence, and/or a lack of trust in the work of relevant institutions to provide victims with adequate protection. It is a particularly worrying phenomenon in cases involving violence between spouses, ex-spouses and extramarital partners. This is where one of the long-term problems of violence against women in our society comes to the fore, given that in almost all cases the woman is the injured party and the man is the perpetrator. It should be pointed out that the Istanbul Convention justifies that violence against a former or current spouse or partner be prescribed as an aggravating circumstance. Although this is not the case in our Criminal Code, it speaks in favor of the seriousness of the criminal offense and additionally confirms that courts should be careful when imposing a sentence of community service for cases of domestic violence, especially when it comes to persons who have already been convicted for the same criminal offense. One of the alternative sanctions that could be considered in some cases when it comes to this criminal offense is a suspended sentence with protective supervision. Although the application of this type of sanction is extremely rare in the practice of our courts, in those cases in which the court applied it, it was imposed precisely in cases of domestic violence.

HOUSE ARREST

House arrest accomplishes the same goals as a short-term prison sentence, but at the same time, it eliminates some of the negative aspects of the prison sentence that can be harmful to the offender and his family. A person who has served a prison sentence can be permanently marked as socially dangerous and irredimable, untrustworthy, etc. Serving a sentence of house arrest is mostly free from such a perception, thus preventing the negative consequences of permanent labeling of criminals by society. More importantly, house arrest prevents the occurrence of negative behavioral consequences on the convicted person, which arise as a result of poor living conditions in prison. We have to pose a question, whether bad prison conditions in combination with negative public perception can truly contribute to the proper resocialization and rehabilitation of convicted persons, especially persons sentenced to short prison terms. House arrest also has a direct impact on the lower burden on prison capacities.

Table 6: number of imposed house arrest sentences from 2013-2021

COURT	YEAR									TOTAL
	2013	2014	2015	2016	2017	2018	2019	2020	2021	
OS Bar	0	0	0	0	13	10	15	17	20	75
OS Berane	0	0	2	10	18	8	14	4	9	65
OS Bijelo polje	0	0	0	2	12	16	19	20	22	91
OS Cetinje	0	0	1	0	3	12	10	4	7	37
OS Danilovgrad	0	0	0	0	0	0	1	11	5	17
OS Herceg Novi	0	0	0	0	0	0	3	5	0	8
OS Kolasin	0	0	0	0	0	1	1	1	2	5
OS Kotor	1	3	0	8	34	27	9	39	16	137
OS Niksic	0	0	0	1	2	5	32	60	31	131
OS Plav	1	0	0	1	0	0	1	1	0	4
OS Pljevlja	0	0	0	1	1	1	3	1	9	16
OS Podgorica	0	0	0	0	6	11	23	55	43	138
OS Rozaje	0	0	4	24	16	13	19	25	9	110
OS Ulcinj	0	0	2	4	0	2	6	14	5	33
OS Zabljak	0	0	0	0	0	0	0	0	0	0
VS Bijelo Polje	0	0	0	0	2	0	0	0	7	9
VS Podgorica	0	0	0	0	1	2	22	37	15	77
TOTAL	2	3	9	51	108	108	178	294	200	953

Source: court decisions on website sudovi.me

The aforementioned table, however, does not show the full picture of the imposition of this penalty. According to the data of the Parole Office, 1,090 judgments were delivered to the Parole Office for execution of house arrest at the Basic court level alone. Together with high courts, that number is 1,506. The biggest difference is observed from 2018 onwards.

In the upcoming table, we can see the number of verdicts in which the sentence of house arrest was pronounced, which were then submitted to the Ministry of Justice, i.e. to the Parole Office.¹¹

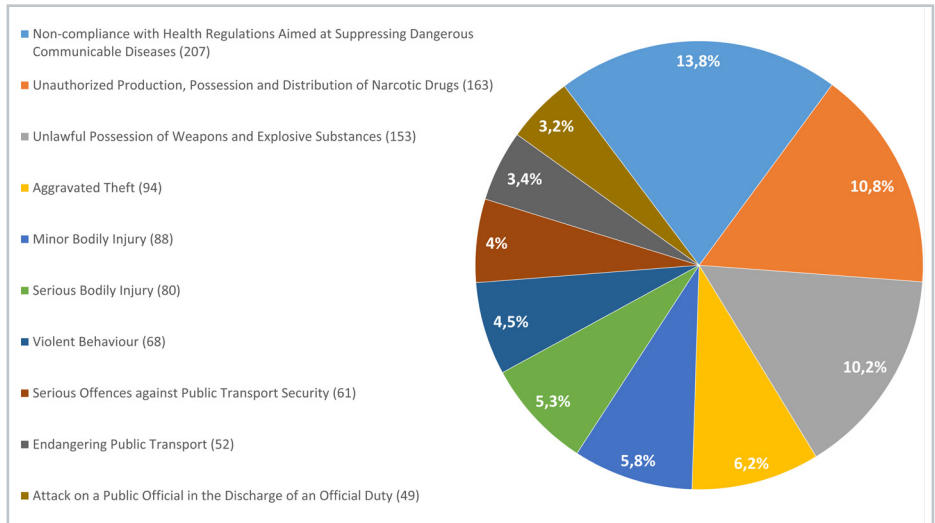
Table 7: percentage of house arrest sentences relative to prison sentences

SANCTION	YEAR								
	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total number of sanctions	4,627	3,779	4,335	4,044	4,141	3,340	3,583	3,493	3,120
Prison sentence	1,671	1,179	1,483	1,360	1,243	967	961	1,047	705
House arrest	0	0	4	48	92	139	259	405	318
% of house arrest sentences compared to prison sentences	0	0	0.26	3.52	7.4	14.37	26.95	38.68	45.1
% house arrest sentences compared to all sanctions	0	0	0.09	1.18	2.22	4.16	7.22	11.59	10.19

It is indisputable that there has been an increase in the number of house arrests, but when it comes to the years 2020 and 2021, in which the largest increase in the imposition of this sentence was recorded, we should keep in mind that in the previous two years, a large number of cases related to the criminal offense of failure to act in accordance with health regulations for the suppression of a dangerous infectious disease, for which the courts often imposed the sentence of house arrest. This is a criminal offense whose sudden increase occurred solely due to the COVID-19 pandemic and which is not expected to be a frequent case in the courts in the coming period.

As the sentence of house arrest is imposed with electronic monitoring, the biggest problem in the implementation of this sentence and the reason why the implementation of this sanction was delayed, was the lack of devices for electronic monitoring, i.e. the electronic bracelet. Without a sufficient number of these devices, persons sentenced to house arrest had to wait for the execution of the sentence, which calls into question the purpose of the punishment, and thus it undoubtedly affects the lower number of sentences imposed.

¹¹ The limitation of this research is reflected in the fact that the number of judgments in which the sentence of house arrest was executed by the Parole Office, does not necessarily coincide with the year in which the sentence of house arrest was pronounced by the court. The records of the Parole Office show the date when the decision was delivered to their office, not the date of the court decision. For example, if in January, the courts send to the Parole Office some of the judgements from December of the previous year, this would be reflected in the statistics for both years. Courts still do not keep separate records of house arrest sentences from prison sentences, and on the website sudovi.me, using advanced search of court decisions, it is not possible to find all verdicts in which house arrest was imposed. Table 6, therefore, can only serve as an indicator of the extent to which individual courts impose this sentence, while Table 7 is an indicator of the overall situation when it comes to the sentence of house arrest compared to prison and other sentences.

Graph 3: criminal offences for which the courts most frequently imposed house arrest from 2013-2022¹²

When we talk about the crimes for which the courts most often imposed the sentence of house arrest, we should emphasise that this sentence can be imposed only on those persons who have been sentenced to a prison sentence of up to six months, making it an ideal alternative to a short-term prison sentence. But there is another important limitation: house arrest cannot be imposed for a crime against marriage and family, if that person lives in the same family household or family union with the injured party.

In practice, however, there was a wrong application of the law, so in rare cases house arrest sentences were imposed precisely for the criminal offense of violence in the family or in the family community to persons who live in the same household with the victim, as well as to persons who, although they do not live they live in the same household in close proximity to the victim who takes care of the convicted person on a daily basis. Although in that case the prohibition from Article 36a para. 3 of the CCCG, it cannot be said that such a decision is in the spirit of the law. Also, we consider the imposition of this sentence for the criminal offense of illicit sexual activity in connection with intercourse with a minor to be controversial, bearing in mind the seriousness of this offense.¹³

¹² Source: Ministry of Justice, Parole Office, data on the day 26.10.2022

¹³ More on this in the publication "Results and efficiency of application of alternative sanctions in Montenegro - recommendations for improvement", available at: <https://cemi.org.me/en/post/results-and-efficiency-of-application-of-alternative-sanctions-in-montenegro-648>

SUSPENDED SENTENCE WITH PROTECTIVE SUPERVISION

Suspended sentence with protective supervision is, as can be deduced from the name itself, a form of probation. The essence of a suspended sentence with protective supervision is reflected in the determination of certain measures of assistance, care, supervision and protection, which are determined for the convicted person as obligations that must be adhered to for a certain period of time during the probationary period. The Criminal Code stipulates the conditions for determining protective supervision and its content, by enumerating several possible obligations that the court can impose on a convicted person, the circumstances that the court should take into account when choosing measures of protective supervision, the duration of protective supervision and the consequences of not fulfilling the obligation of protective supervision.

The goal of protective supervision is to contribute to the reduction of the risk of repeating the criminal offense during probation term. This can have a special significance for our society, given the fact that the rate of recidivism in Montenegro is around 50%, and considering the fact that suspended sentence is the often imposed sanction, it logically follows that a significant number of recidivists can be found precisely among persons who were previously sentenced to a suspended sentence.

As stated earlier, in the current practice of Montenegrin courts, this warning measure is rarely imposed. Namely, there have been only ten judgments that have been submitted to the Parole Office for execution.

Of the 11 verdicts in which the basic courts imposed a suspended sentence with protective supervision in the last six years, and which were submitted to the Parole Office, one is from 2020, three are from 2021, and seven are from 2022. The criminal offence for which this measure was imposed was in all cases the same - domestic violence.¹⁴

Bearing in mind that suspended sentence is the most common sanction imposed by our courts, and on the other hand, the number of cases in which judges decided to impose protective supervision is negligibly low, there is a clear need to demystify the reasons for such a low application of a warning measure that has existed in our penal system since the adoption of the Criminal Code in 2003.

The problems that contribute the most to the low application of protective supervision are of both a legislative and an institutional nature. Namely, from the aspect of legal regulations, the content of protective supervision from Article 61 of the Criminal Code is prescribed insufficiently clearly and precisely, while the legal basis for which the court requests a risk assessment report from the Parole Office, which should help the court in determining

¹⁴ Source: Ministry of Justice, Parole Office

the type and length/amount of the sanction, provided for by the Law on Execution of Suspended Sentence and Community Service, i.e. the court can ask for that report at the earliest during the evidentiary procedure, or when it has already established the defendant's guilt and it only has to make a decision on the type and length/amount of the sanction.

In order for the individualization of the sanction to gain its full meaning, the court should have at its disposal all the relevant data about the defendant at the first hearing. This would require the prosecution to request a risk assessment during the investigation, i.e. prior to the indictment, which would have to be prescribed in the Criminal Procedure Code. However, institutional shortcomings should also be taken into account. The Parole Office currently employs 10 officers out of 11 open positions, and there is a real need for a greater number of officers and greater territorial coverage, even at this moment when alternative sanctions represent less than 10% of imposed sanctions. One of the strategic goals of the Strategy for the Execution of Criminal Sanctions 2017-2021, which was not fulfilled, related precisely to the establishment of regional offices of the Parole Office throughout the country in the northern, southern and central regions, in at least 4-6 locations, and an increase in the number of staff by 20-25.

STATISTICAL OVERVIEW OF THE PENAL POLICY OF BASIC AND HIGH COURTS FOR THE PERIOD 2012-2021

On average, from 2012 to the end of 2021, there was a decrease in the imposition of prison sentences and an increase in the imposition of alternative sanctions. Declining trend i.e. growth can be observed on an annual basis.

Table 8: the percentage of growth and decline in the number of sanctions imposed in courts, on an annual basis¹⁵

YEAR	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total no. of sanctions	4,713	4,627	3,779	4,335	4,044	4,141	3,340	3,583	3,493	3,120
Growth / decline	N/A	-1.82%	-18.32%	14.71%	-6.71%	2.39%	-19.34%	7.27%	-2.51%	-10.67%
No. of prison sentences	1,631	1,671	1,179	1,483	1,360	1,243	967	961	1,047	705
Growth / decline	N/A	2.45%	-29.44%	25.78%	-8.29%	-8.6%	-22.2%	-0.62%	8.94%	-32.66%
No. of suspended sentences	2,703	2,343	2,037	2,079	1,792	1,698	1,380	1,508	1,298	1,526
Growth / decline	N/A	-13.31%	-13.06%	2.06%	-13.8%	-5.24%	-18.72%	9.27%	-13.92%	17.56%
No. of community service sentences	8	32	96	172	225	287	226	262	218	173
Growth / decline	N/A	+300	+200	+79.16	+30.81	+27.55	-21.25	+15.92	-16.79	-20.64
No. of house arrests	N/A	0	0	4	48	92	139	259	405	318
Growth / decline	N/A	N/A	N/A	N/A	1.100%	91.66%	51.08%	86.33%	56.37%	-21.48%
No. of fines	379	294	220	230	171	205	164	161	337	209
Growth / decline	N/A	-22.42	-25.17	+4.54	-25.65	19.88%	-20%	-1.82%	109.31%	-37.98%

The following table shows the annual average of the number of imposed sanctions and the growth and decline of various criminal sanctions and measures from 2012 to 2021.

¹⁵ The number of prison sentences is reduced in this table by the number of house arrest sentences submitted by the Parole Office, i.e. prison sentences that are carried out in the Administration for the Execution of Criminal Sanctions. For the house arrest sentence, we used the data from the Parole Office.

Table 9: percentage of increase or decrease in the number of sanctions imposed in basic and high courts, on an annual basis, in the period from 2012 to the end of 2021

Average no. of sanctions annually	3,636
Average growth / decline of the no. of sanctions annually	-3.89%
Average no. of imposed prison sentences annually	1,224
Average growth / decline of imposed prison sentences annually	-7.18%
Average no. of suspended sentences annually	1,836
Average growth / decline of imposed suspended sentences annually	-5.46%
Average no. of community service sentences annually	170
Average growth / decline of imposed community service sentences annually	+66.08%
Average no. of house arrests annually	140
Average growth / decline of imposed house arrests annually	+170.5%
Average no. of fines annually	237
Average growth / decline of imposed fines annually	+0.08%

From the available data, it can be seen that despite the lower number of imposed sanctions in general, the number of imposed alternative sanctions increased from year to year in the previous decade, which is commendable. Admittedly, this is a slow growth, which only at first glance seems drastically high, and for the simple reason that in the first few years after the introduction of certain alternative sanctions, there was a greater difference in the how often they were used. In addition, in some courts there is still an extremely small number of imposed sentences of community service, while the sentence of suspended sentence with protective supervision is almost non-existent. Also, it is evident that there is an imbalance in the practice of the courts in imposing alternative sanctions and measures.

There is also a certain connection between the lower number of imposed criminal sanctions in general and the higher number of imposed alternative sanctions. The question can be raised whether a smaller volume of work allows judges to devote more time to each individual case and whether this allows them to individualize the sanction to a greater extent?

CONCLUSIONS AND RECOMMENDATIONS

Montenegro has undoubtedly achieved progress in the application of alternative criminal sanctions and measures in the previous decade, but significant shortcomings still exist. Our penal system is still dominantly oriented towards institutional punishment, as evidenced by the number of short-term prison sentences, which sometimes exceeds the average in CoE countries several times over. The number of people in detention is also at an extremely high level. Although detention in itself is not a punishment, it often produces the same consequences.

The attitude of the public is directed towards institutional punishment. As many as two-thirds of citizens believe that imprisonment is more effective than alternative sanctions, and a large number of citizens have not even heard of the term alternative sanctions.

The number of prison sentences of up to six months deserves special attention. The effectiveness of short-term prison sentences is highly questionable, i.e. the possibility that in such a short time interval a positive effect on the convicted person can really be achieved from the aspect of special prevention.

In order to fully affirm alternative criminal sanctions, a holistic approach is needed to address the problems that contribute to perceived shortcomings. This includes amendments to existing laws and by-laws, solving institutional deficiencies in terms of the necessary personnel and technical capacities for the effective and timely performance of all activities related to the system of alternative criminal sanctions, but also continuity in raising awareness, both professional and lay public, about the importance and advantages of alternative sanctions.

The penal policy in some courts remains uneven, so the imposition of alternative sanctions such as community service in some courts in the country is continuously low.

The imposition of a sentence of community service in cases of domestic violence is of particular importance, as well as the imposition of a sentence of house arrest contrary to the provisions of Article 36a para. 3 of the CC. Although greater use of alternative sanctions is desirable, they should not be imposed at the expense of effective prevention. Admittedly, these are rare cases, but they should not be ignored.

There is a positive correlation between a lower number of imposed criminal sanctions and a higher number of imposed alternative sanctions, which may indicate that, due to the increased volume of work, judges are not always able to devote enough time to cases in order to fully individualize the sanction for each criminal offender. This is especially important when it comes to suspended sentence with protective supervision, which, both due to lack of practice and legal deficiencies, still lags behind in implementation.

A positive step forward in the application of alternative sanctions is represented by the fact that some courts in the course of criminal proceedings are increasingly asking the Parole Office to prepare a risk assessment report. Those reports also contain a proposal for adequate alternative sanctions that could be imposed on the perpetrator if he were found guilty. One of them is a suspended sentence with protective supervision.

Recommendations:

1. Courts should intensify the practice of sending risk assessment requests to the Parole Office during criminal proceedings.
2. It would be useful to extend this practice to all stages of the procedure, including the pre-investigation stage. Risk assessment at the earliest stage of the procedure can enable a more efficient flow and direction of the procedure and a more efficient selection of effective measures and sanctions to be applied to offenders.
3. It is necessary to amend the Criminal Procedure Code to prescribe the obligation of the prosecution to request from the Parole Directorate a report on risk assessment for persons suspected of committing criminal offenses for which it is possible to prescribe one of the alternative sanctions.
4. In order for the Parole Office to be able to respond to the large volume of work, it is necessary to fulfill the strategic goal provided by the Strategy for the Execution of Criminal Sanctions 2017-2021, i.e. it is necessary to increase the number of employees and establish regional offices in several locations in the country.
5. It is necessary to seriously reconsider the practice of imposing community service for the criminal offense of domestic violence, especially to persons who were previously convicted of the same criminal offense.
6. It is necessary to raise the citizen awareness about the seriousness and cyclical nature of domestic violence, in order to reduce the number of unreported cases that can lead to inadequate sanctioning of offenders.
7. It is necessary to consistently apply the provisions of Article 36a paragraph 3 of the CC.
8. Bearing in mind the relatively small number of issued warning measures of suspended sentence with protective supervision, it is necessary to monitor its application continuously in order to analyze potential shortcomings and opportunities for improvement.
9. It is necessary to additionally inform the public about the importance and positive effects of the application of alternative sanctions, through awareness-raising campaigns and continuous education, especially when it comes to community service
10. It is necessary to fully standardize the form and content of reports on the work of the courts and the Judicial Council and show in more detail the number and percentage of imposed sanctions. It is particularly useful to separate the number and percentage of prison sentences imposed from the number and percentage of house arrest sentences imposed. The same should be done for probation and probation with protective supervision.

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