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ALTERNATIVE SANCTIONS

REINTEGRATION THROUGH RESOCIALIZATION



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INTRODUCTION

Overcrowding of prisons is a problem that is facing practically every country in the world. Not only is this expensive, but it can endanger the rehabilitation process of the inmates, which can negatively affect society as a whole. Aside from the negative sociological and psychological effects that the prison sentence has on prisoners, this type of penalty sometimes fails to accomplish its main purpose: prevention of further criminal behaviour by the offenders. Namely, persons who are sentenced to serve time in prison can gain contacts and skills which could lead to further criminal behaviour. In combination with the hard conditions and experiences in these institutions, as well as the social condemnation following these sentences, this type of penalty sometimes fails to help convicted persons move towards reintegration in society. Instead, it further alienates them.

Recognizing these problems led to the development of the idea of noninstitutional punishment and individualization of sanctions, with the goal of accomplishing a more effective resocialization of convicted persons, which eliminates some of the greatest problems of institutionalization. The main characteristic of this type of punishment is that the sanctions are carried out outside of prison institutions. There are different types of noninstitutional punishments. The common name for them is **alternative sanctions**.

Similar to a prison sentence, alternative sanctions have the general purpose of expressing contempt for the committed crime, prevention of further criminal behaviour and rehabilitation of the perpetrators. The difference is that alternative sanctions use different forms of punishment, ones which are adjusted to the needs of each individual convict.

Providing assistance, protection and supervision to offenders through alternative sanctions makes it possible to adjust each sanction to each individual offender in a way that best fulfils the general purpose of punishment. This makes alternative sanctions more affordable, but also more effective and humane than institutional punishment.

SYSTEM OF CRIMINAL SANCTIONS IN MONTENEGRO

The main provision which regulates and determines criminal sanctions is the Criminal Code of Montenegro.

The Criminal Code of Montenegro prescribes four types of criminal sanctions:

1. Penalties
2. Warning measures
3. Security measures
4. Correctional measures

Penalties are:

1. Long-term prison sentence
2. Prison sentence
3. Financial penalty
4. Community service

Prison sentence holds the central place in the penal system of Montenegro.

Although imprisonment is irreplaceable and must exist in the penal system, it can negatively affect both the offender and his/her family, as well as the society as a whole.

Negative aspects of imprisonment are recognized now across the world. Most commonly cited are:

- Separation of the convicted person from his/her family, termination of education and employment
- Difficulties in finding a new job
- Negative influence of other prisoners on the convicted person
- Negative attitude of the society towards the persons who were serving the prison sentence
- Big budget expenditures related to serving a prison sentence
- Overcrowding of prisons
- Greater likelihood that a convicted person will continue to commit crimes after serving a prison sentence.

For these reasons, imprisonment cannot always achieve the goals for which it exists, which has resulted in finding new, less repressive sanctions, which achieve positive goals of punishment and at the same time eliminate negative aspects of imprisonment. These are the so-called **alternative sanctions**.

WHAT ARE ALTERNATIVE SANCTIONS?

When we say alternative sanctions, we mean sanctions that are imposed instead of a prison sentence.

These sanctions individualize and humanize the punishment of convicted persons. Alternative sanctions keep the convicted person in the community, by setting certain conditions and obligations that the convicted person must fulfill. If he/she does not meet these conditions, the alternative sanction will be replaced with a prison sentence.

Therefore, alternative sanctions replace prison sentences with sanctions that will more effectively prevent future crimes, while expressing societal condemnation for the crimes committed, educating convicted persons and reducing the costs related to serving a prison sentence.

In addition to avoiding the negative effects of imprisonment, alternative sanctions have a number of advantages for the community:

- Decrease in prison population
- Reduction of budget expenditures for serving prison sentences and redirecting them to other socially useful purposes
- Participation of the convicted person in his own rehabilitation, in the form of fulfilment of imposed obligations
- Adjusting the sanction to the convicted person
- Direct involvement of the community in the process of rehabilitation and reintegration of the convicted person
- Immediate benefit of the community in the form of community service

Alternatives to prison sentence that may be imposed on the convicted person are:

- Suspended sentence
- Judicial admonition
- Financial penalty
- Community service

There are also modifications of the manner of implementation of the already imposed prison sentence, such as:

- House arrest
- Conditional release

COMMUNITY SERVICE

Community service is one of the most significant alternative sanctions.

It is a socially useful work which does not offend human dignity and is not performed for making profit.

Community service consists of activities whose fulfilment develops socially responsible behaviour of convicted persons, as well as their awareness of responsibility and the consequences of their behaviour. The community is directly involved in the process of rehabilitation of a convicted person sentenced to community service.

A person who performs community service is not entitled to compensation for this work. Rather, by working in the public interest, he/she is redeeming him/herself to the community for his/her illicit behaviour.

► Conditions for sentencing

This penalty may be imposed only for less serious criminal offenses punishable by a fine or imprisonment for up to five years.

A necessary condition for imposing community service is the consent of the **convicted person**. Without this consent, community service would be forced labour, which is contrary to the Constitution of Montenegro, as well as international conventions and human rights standards prohibiting forced labour.

► How it is executed

Community service is executed by working in one of the legal entities, institutions and organizations that have signed an agreement with the Ministry of Justice, on the execution of community service (eg. municipal companies, healthcare institutions, Red Cross, educational institutions etc.).

Before serving the sentence of community service, the convicted person conducts an interview with an official of the Directorate for Probation. The Directorate makes the selection of the legal entity, i.e. the organization where community service is conducted, as well as the type of work, according to the abilities, professional knowledge and health condition of the convicted person. The community service penalty is executed at the employer located in the domicile or temporary residence of the convicted person.

After the conversation with the officer of the Directorate, the convicted person signs a contract on the execution of community service sentence.

Community service is limited in time. **It cannot be performed for less than 60 or longer than 360 hours.** The period in which this sentence must be executed ranges from 30 days to six months, and a maximum of 60 hours of community service can be performed in one month.

A person sentenced to community service has the right to appropriate working conditions, working hours, rest during working hours, daily and weekly rest and protection at work, in accordance with general labour regulations.

The Ministry of Justice insures a convicted person against injury in the workplace.

A person sentenced to community service must not be referred to difficult, risky or jobs that require special professional qualifications that the convicted person does not have.

► **Enforcement control**

The authorized official of the legal entity / institution / organization in which community service is performed, keeps records of the hours worked, while the control of the execution of the sentence is monitored by the officials of the Directorate for Probation. If the person sentenced to community service does not serve the sentence in the manner prescribed in the contract, or if he/she refuses to sign the contract, community service will be replaced by a prison sentence, so that every 60 hours of community service are replaced by one month in prison.

► **Temporary suspension of community service**

In certain cases, it is possible to request a temporary suspension of community service.

The convicted person or a member of his/her immediate family may submit to the Ministry of Justice a request, with appropriate evidence, for temporary suspension of the execution of community service, in the case of:

- illness or bodily injury that prevents the execution of the sentence;
- sudden severe illness of a close family member;
- death of a close family member;
- pregnancy, maternity or parental leave;
- the need to perform works in order to prevent or eliminate significant material damage to the convicted person or his/her family, due to a natural disaster.

Termination of the execution of community service may be granted for a maximum of 30 days, while during pregnancy, maternity or parental leave, the termination may last until the first year of the life of the child on whose birth the application was submitted.

HOUSE ARREST

House arrest is a modification of the manner of execution of a prison sentence, due to the fact that this sentence is served in the home of the convict.

House arrest achieves the same goals that are achieved by imprisonment, but without the negative consequences of an institutional type of prison sentence, i.e. house arrest contributes to relieving prison capacities. Further, the convicted person is not being separated from his/her family, he/she can continue with the education as well as some work obligations. Also, the level of social condemnation towards persons convicted to house arrest is lower than the condemnation of persons convicted to a prison sentence.

House arrest is often equated with house detention, but these are two different types of arrests. House arrest is a **penalty** that the court imposes on a convicted person with a **judgement** at the end of a criminal trial. House detention is a measure of ensuring the presence of the accused during the criminal proceedings, which the court imposes with a **decision**.

► Conditions for sentencing

If the court imposes a prison sentence on a criminal offender for a term of **up to six months**, the court may also rule that the penalty be served in the offender's home.

When deciding whether the penalty of house arrest is justified in a particular case, the court will take into account the personality of the criminal offender, his/her earlier life, his/her behaviour after the crime, the degree of guilt and other circumstances under which he/she had committed the crime.

The penalty of house arrest cannot be imposed for the criminal acts against marriage and family, if the convicted person lives in the same household or family community with the injured party.

► How it is executed

The penalty of house arrest is imposed along with electronic surveillance, i.e. the convicted person is forced to wear the **ankle monitor** tracking device, and cannot leave the premises in which he resides, except in special cases prescribed by law.

If a person sentenced to house arrest arbitrarily leaves the premises where he lives (once for more than six hours or twice for up to six hours), the remaining part of the sentence will be replaced by imprisonment served in the Administration for the Execution of Criminal Sanctions.

Arbitrary obstruction, damage and removal of the ankle monitor is also considered as leaving the premises without permission.

CONDITIONAL RELEASE

Conditional release is another modification of the prison sentence. Conditional release implies an earlier release from prison of a convicted person who has served one part of the prison sentence, provided that he/she does not commit a new criminal offence until the expiration of the time for which the prison sentence was imposed.

A person sentenced to long-term imprisonment may also be conditionally released.

► The purpose of conditional release

The purpose of conditional release is rehabilitation and reintegration of convicted persons, when it can be justifiably expected that such an effect can be achieved without imprisonment.

The institute of conditional release directly affects the reduction of the prison population and the costs that accompany institutional punishment.

► Requirements for conditional release

Convicted person who has served **two thirds** and in exceptional cases **half** of the prison sentence, may submit a request to the court for conditional release from serving the remaining prison sentence.

If the court accepts the application for conditional release, it may impose one or more obligations on the convict. For example, it may oblige a convicted person to refrain from the use of drugs, alcohol, and other psychoactive substances, or to refrain from contact with certain persons, to seek and accept employment appropriate to his/her ability to work, etc.

The goal of adapting sanctions to individual convicts in this way is to contribute to preventing further crimes.

► Revocation of conditional release

The court may revoke conditional release if the convicted person, while on conditional release, commits one or more **criminal offences** punishable by imprisonment for **more than one year** or if the convicted person **fails to perform any imposed obligation**.

In assessing whether to revoke the conditional release, the court will take into account in particular the similarity of the crimes committed, the motives from which the crimes were committed and other circumstances that indicate the justification for revoking conditional release.

WARNING MEASURES

Warning measures play an important role in the process of humanization and individualization of criminal sanctions.

Warning measures are aimed, not at imposing a penalty on person convicted for a minor criminal offence if that is not necessary, and if the court determines that the warning, i.e. admonition or warning with the threat of punishment, i.e. suspended sentence will have sufficient influence on the convicted person to deter repeat offending.

The warning measures prescribed in the Criminal Code of Montenegro are judicial admonition and suspended sentence.

► JUDICIAL ADMONITION

Judicial admonition is by its nature the least repressive sanction. It does not contain a threat of punishment or other elements of retaliation, nor is it its role in the penal system. Judicial admonition does not impose a prison sentence (or a fine) at all. Instead, it threatens the perpetrator of a lesser crime the use of a more severe punishment if he commits a new crime.

Judicial admonition may be issued for criminal offenses punishable by imprisonment for up to one year or by a fine. Under certain conditions, it is also prescribed for criminal offenses punishable by imprisonment of up to three years, provided that the criminal offense was committed under particularly mitigating circumstances.

In deciding whether to issue a judicial admonition, the court will take into account the identity of the perpetrator, his earlier life, his behaviour after the crime, and especially his attitude towards the victim, degree of guilt and other circumstances under which the crime was committed.

► SUSPENDED SENTENCE

The main reason why probation is accepted in most legal systems in the world is its efficiency. Due to its efficiency, a suspended sentence is one of the most frequently imposed sanctions in Montenegro.

Suspended sentence consists of two elements: **punishment** and **probation**. The essence of suspended sentence is that the penalty of imprisonment for up to two years will not be executed if the convicted person does not commit a new crime during the probation term. In addition to the established sentence, one or more other obligations may be imposed on the convicted person. The deadline for fulfilling these obligations is prescribed within the probation term.

► Conditions for sentencing

A suspended sentence cannot be imposed for criminal offenses punishable by imprisonment of at least 10 years or more. Nor can it be imposed for intentional criminal offenses if more than five years have passed since the conviction for that offense became final. A suspended sentence cannot be imposed on a person who has already been given two suspended sentences.

Unlike a judicial admonition that does not contain a sentence, a suspended sentence is imposed with the threat of an already established prison sentence of up to two years. If the convicted person does not comply with the prescribed conditions during the probation term, the suspended sentence shall be replaced by the sentence of prison imposed by the court during the sentencing.

The probation term may not be less than one year nor more than five years.

Prison sentence shall not be executed if the convicted person does not commit a new criminal offense during the probation and if he fulfils other obligations determined by the court.

► **Revocation of suspended sentence**

The Criminal Code of Montenegro envisages three situations in which the court will revoke the suspended sentence:

1. **Due to a new criminal offence:** if a new offence is punishable by imprisonment for a term of two years or more, the court will revoke the suspended sentence. A suspended sentence may also be revoked if the convicted person commits a criminal offence punishable by less than two years, if the court, after assessing all the circumstances related to the criminal offence and the convicted person, determines that the suspended sentence should be revoked.
2. **Due to a previously committed criminal offence:** if, after imposing a suspended sentence, the court determines that the convicted person has committed a criminal offence before the suspended sentence, and assesses that there would be no basis

for imposing a suspended sentence if the offence was known to the court.

3. **Due to non-fulfilment of certain obligations:** if the convicted person did not fulfil the obligations determined by the court along with the suspended sentence, without justification. Alternatively, the court may terminate that obligation or replace it with a new one.

► **SUSPENDED SENTENCE WITH PROTECTIVE SUPERVISION**

The court may order that the offender who has been given a suspended sentence be placed under protective supervision for a certain period of time during the probation period.

Protective supervision includes statutory measures of assistance, care, supervision and protection. For example, protective supervision may consist of the obligation to report to the authority responsible for the execution of the sentence, to assist in training the convicted person for a certain profession, to inform the authorities about the change of place of residence, address or place of work, etc. In our case law, the most common protective supervision measures are: abstinence from drugs or alcohol, treatment in an appropriate health institution, visiting certain professional and other counselling centres or institutions and following their instructions.

FINANCIAL PENALTIES

A financial penalty (fine) consists of the payment of a certain amount of money in favour of the state. A fine is generally considered as a penalty with its own place in the penal system. A fine is not a typical alternative sanction. However, The Criminal Code of Montenegro provides for the possibility of imposing either a fine or a penalty of imprisonment for certain criminal offences.

► Conditions for sentencing

As an alternative for imprisonment, a fine is most often imposed for less serious crimes, punishable by up to one year in prison. However, a fine is also prescribed for some criminal offences for which it is possible to impose a prison sentence of up to two and up to three years (in one case up to four years).

A fine may be replaced by community service, if it does not exceed the amount of 2,000 EUR. Every 25 EUR of a fine is "worth" eight hours of community service, with the provision that community service cannot be longer than 360 hours.

► Determining the fine

There are two ways to determine a fine: a fixed amount system and day fines.

Fixed amount system: a fine is imposed in a specific amount or range for a specific crime. It cannot be less than 200 EUR or more than 20,000 EUR, except in the case when the

crime was committed out of self-interest. In that case, a fine of up to 100,000 EUR can be imposed.

Day fines: the penalty is measured in time duration, after which the monetary value of one day is determined. The monetary value of the day is determined according to the financial status of the convicted person.

The day fines system is utilized when it is possible to determine the convicted person's revenue and expenditures.

► Payment of a fine

The deadline for payment of the fine may not be shorter than 15 days or longer than three months, but in justified cases the court may allow the convicted person to pay the fine in instalments. However, in that case the payment period may not be longer than one year.

Payment of a fine cannot be forced. If the convicted person does not pay the fine within the specified period, it will be transformed into the penalty of prison sentence, in a way that one day of prison is "worth" 25 EUR of a fine. This is known as supplementary prison.

DIRECTORATE FOR PROBATION

Execution of alternative sanctions and supervision over conditionally released convicted persons is performed by the **Directorate for Suspended Sentence**, which was established within the Ministry of Justice.

The Directorate performs the following tasks:

- Implementation and control of the execution of alternative sanctions;
- Drafting agreements and individual contracts governing the execution of community service;
- Informing the court about the course of execution of alternative sanctions;
- Decisions on postponing and terminating the execution of a community service sentence;
- Informing the competent authorities about leaving the premises where the convict lives under house arrest.

The Directorate is responsible for:

- Execution of a suspended sentence;
- Execution of a suspended sentence with protective supervision;
- Execution of community service;
- Execution of obligations of a conditionally released convicted person;
- Execution of house arrest;
- Execution of security measures prohibiting approaching and leaving the apartment or other living space.

► Individual treatment programme

Within the scope of the Directorate's work is also the development of the individual program for convicted persons in the execution of a

suspended sentence, suspended sentence with protective supervision, community service, conditional release, house arrest and security measures restraining order and removal from the apartment or other living premises.

In order to execute a sentence or measure and develop an individual program, the Directorate invites the person to whom the sentence or measure was imposed to conduct an interview. When executing a suspended sentence, suspended sentence with protective supervision and conditional release, before drafting an individual program, the Directorate makes a risk assessment of the convicted person based on data obtained from the convicted person and from documentation about that person (court decisions, findings and opinions of doctors, etc.).

In addition to the phase of execution of criminal sanctions, the Directorate also plays an important role in court proceedings. At the request of the court, the Directorate will prepare a report on the assessment of the risk of criminogenic factors for the person against whom criminal proceedings are being conducted before the court. This report is submitted to the court and is presented as evidence at the main trial.

This report is submitted to the court and is presented as evidence at the main trial. The risk assessment conducted by the Directorate is useful to the court when making a decision, because based on this assessment, it contributes to the individualization of the sanction.

