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FORENSIC CRIMINOLOGY, RISK ASSESSMENTS AND THE PREVENTION OF RECIDIVISM
An introduction to a genuine idiographic method (MIVEA)

The present paper gives insight to an innovative approach in Forensic Criminology, that applies criminological knowledge for risk and needs assessments aiming at preventing recidivism. Although risk assessments are mainly conducted by psychologists and psychiatrists that predominantly work with actuarial risk assessments, hence with standardized, statistical methods, this approach is idiographic and refrains from relying on the comparison with the "average" but focuses on the individual: the Method of Ideal-Typical-Comparative-Case-By-Case Analysis (in short: MIVEA). Thus, the issue under scrutiny is the application of specific criminological knowledge for risk assessments. As a result, the paper will provide knowledge about the role of Forensic Criminology in the field of risk assessments and will illustrate the importance of the application of genuine idiographic risk assessments methods. It largely draws on research conducted by the founders of the method in question and their successors (especially Bock (2019) Angewandte Kriminologie. 5th edn. München: Vahlen)

Keywords: Forensic Criminology, Recidivism, Prevention, Risk and Needs Assessments

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1. Introduction

Why do we punish criminal offenders and *whom* do we want to punish *how*? These questions have been discussed since ancient times. In contemporary academia we can basically find two main approaches that often pursue contradictory purposes. On the one hand there is the “absolute theory”, that conceives punishment as an equalizer, which is detached from social roles and responsibilities. According to this approach retaliation and punishment must be paramount. Immanuel Kant, for example, postulated that a murderer must be executed so that “he [the offender] experiences what his own deeds are worth” (Kant, 1797, according to Byrd, 1989: 151). On the other hand, the “relative” approach strives for the social responsibility of criminal justice. This theory’s focus lies on the prevention of recidivism (specific prevention) and the stabilization of norms in the eyes of the public (general prevention). The first theory targets the recidivism risk of the individual offender, which is why punishment must be made primarily to hinder the offender from offending again and to “educate” the offender to a future lawful conduct. The latter focuses on the educational effect of punishment on the public. To this end, the main goal of punishment is to threaten and to counteract the commission of criminal acts by others (not the individual offender) (Kienapfel et al., 2020). Nowadays scholars mostly agree on the rejection of the “absolute theory” with retaliation as the main purpose of punishment (Kienapfel et al., 2020; Roxin, 2006: AT I § 3 85-96). In this sense, in academia a so-called “preventive unification theory” is prevailing (Kienapfel et al., 2020: 8; Roxin, 2006: AT I § 3 85). Against this backdrop the idea of a preventative justice seems to supplant approaches that focus on retaliation and punishment. However, especially the theory of “specific prevention” and its application in criminal proceedings with respect to the validity, reliability, and objectivity of risk assessment instruments as well as approaches to accurate and proportionate (also alternative) interventions is under ongoing academic and political discussion.

2. Risk assessments and the prevention of recidivism in the Austrian Criminal (Procedure) Code – an overview

Taking Slobogin’s (Slobogin, 2011) four main sentencing approaches into account, the Austrian Criminal Justice System embodies no “determinate sentencing regime”, that solely punishes people proportionate to the nature of the crime and offender’s culpability. It follows a more indeterminate or (depending on the severeness of the crime) hybrid “limiting retributivism” approach, that imposes

sentencing but allows (actually even demands) risk assessments to define accurate interventions.

In the Austrian Criminal Justice System punishment is mainly seen as a means of influencing the inner disposition of the offender towards social values and norms (“specific prevention”) and as a means of influencing the disposition of the public (“general prevention”) (Kienapfel et al., 2020). Against this backdrop the Austrian Criminal Code follows a pluralistic approach as it does not give concrete answers about the ideology of punishment, but explicitly prescribes the two principles of prevention within various provisions. Some essential provisions are sections 32, 37, 43, 43a, 46 in the Austrian Criminal Code (StGB) and section 191 para 1 Z 2 as well as section 198 para 1 in the Austrian Criminal Procedure Code (StPO). Within these provisions the court (or in specific cases also the public prosecution, e.g. “Diversion” sections 198 et seqq. StPO) has to determine what kind of “punishment” (monetary penalty, imprisonment, or alternative measures such as probation, “diversion” and alternative directives like community work or anti-violence trainings) is accurate and proportionate to prevent the individual offender from offending again (special prevention) and/or to prevent the general public from committing criminal offences (negative general prevention) and/or to maintain or strengthen their compliance with the law as well as their trust in the persistence and enforcement power of the criminal justice system (positive general prevention) (Schöch, 1990). These provisions are complemented by provisions that focus on the potential dangerousness of very specific groups of offenders and preventive measures, e.g., § 21 StGB Detention in a mental health facility, § 22 StGB detention in a facility for the treatment of addiction or § 23 StGB Detention in a facility for dangerous repeat offenders. The court must apply preventative oriented provisions not only when sentencing the individual in the first place, but also when deciding whether the individual can be released on parole (e.g., §§ 46, 47 StGB). It must be noted that as a consequence of the legality principle a person can only be subject to such “risk assessments” before a criminal court if the person has committed a crime. Thus, the Austrian Criminal Justice system does not allow preventive detention without a previous criminal conduct (see for example Ratz, 2011: n: 4.)

Section 43 Austrian Criminal Code (see below) shows the necessity of both special and general preventive considerations and highlights the legal requirement of case-by-case assessments with a focus on the offender as an individual.

Section 43 StGB (Austrian Criminal Code, translated by Schloenhardt, Höpfel, Strafgesetzbuch, Austrian Criminal Code 2021; with minor modifications)

(1) When a person has been sentenced to a period of imprisonment not exceeding two years, the court has to conditionally suspend the sentence for a minimum period of one year and a maximum of three years, if it can be presumed that the mere prospect of the enforcement of the sentence, by itself or in combination with other measures, will suffice to prevent the person committing other offences, and that the enforcement of the sentence is not needed to thwart the commission of offences by others. In this context particular consideration has to be given to the nature of the offence, the character of the person, the degree of the person's culpability, the person's prior way of life, and the person's behavior after the offence.

…

However, a detailed discussion of section 43 StGB (Austrian Criminal Code) and its implementation would go beyond the scope of this paper. Nevertheless, it can be said that this particular provision would allow a broad discussion, especially since the decision-making practice is primarily intuitive and based on an overall assessment by the court (Jerabek, Ropper, 2020: n: 19). This inevitably leads to inconsistencies. For example, decision-making practices diverge significantly between the east and west of Austria (Grafl, Haider 2018; Grafl, 2018; Schmoller, 2015).

3. Forensic Criminology, risk assessments and the prevention of recidivism

In recent years an enormous amount of research in the field of risk assessments and recidivism rates has been conducted and various methods to assess recidivism risks have been developed. In a nutshell, these methods can be classified into three main categories, that follow different methodological approaches: 1. The intuitive risk assessment, 2. The statistical risk assessment 3. The idiographic risk assessment (see also Rettenberger, 2018 and Stempkowski, 2018 with detailed explanations and further classifications). The research and practice in the field is nowadays mainly conducted by psychologists and psychiatrists that predominantly work with standardized, statistical methods, like PCL-R, VRAG, HCR-20 or ILRV (see for example Rettenberger, 2016: 9; Rettenberger, 2018, Stempkowski, 2018).

Although these instruments show high indices of validity (Rettenberger, 2016: 10; Rettenberger 2018), one must not forget that not only every single false negative might cause great harm, but also every single "false positive offender"

experiences a severe encroachment of his/her liberty. The crucial thing though is that risk assessments can always “just” reflect statements of probabilities and never of certainties. However, we must aim to reduce the number of false positives as well as the number of false negatives to the best of our capabilities. With fundamental rights to life, liberty, and property as well as the ultimate goal of prevention in mind, the ideal sentence has to impose the least-intrusive risk-reducing intervention (see also Slobogin’s seven principles: Slobogin, 2011).

Thus, especially the use of intuitive methods (e.g., see Rettenberger, 2018 with reference to numerous, especially Anglo-American studies) is criticized by the research community but also the use of standardized, statistical methods is not uncontroversial. The core of the discussion about the use of statistics lies in the controversy whether an actuarial risk estimate derived at the group level can be applied to any individual (Bock, 2017: 206; Bock, 2019: 144 – 149; Scurich, Monahan, 2012). This raises concern on a moral, logical, mathematical, and legal level. Concerning the latter one could question if the application of assessments based on statistics fulfil the legal requirements e.g., under § 43 StGB, that directs the court to consider the individual, his/her character, previous life, and behavior to ultimately assess his/her risk and not the estimated risk of a group he/she might belong to. What’s more, algorithmic risk assessment tools are up and coming (see e.g., Cholahs-Wood, 2020). Especially in the United States such “risk assessment instruments (RAI)” (Cholahs-Wood, 2020), like COMPAS (Correctional Offender Management Profiling for Alternative Sanctions tool; see e.g., New York State Division of Justice Services, 2012) are on the rise. RAIs might promise consistency, accuracy, and transparency, but involve one common misunderstanding: contrary to widespread expectations data-based tools are not always neutral and objective just because they are based on data and not human, (more or less) subjective presumptions. A report on Algorithmic Risk Assessment Tools (Partnership on AI, 2019) in the US concluded three challenges that come along with the application of RAI in judicial decisions: “1. Concerns about the validity, accuracy, and bias in the tools themselves; 2. Issues with the interface between the tools and the humans who interact with them; and 3. Questions of governance, transparency, and accountability”. However, one of the fundamental issues of using statistical data (no matter if AI based or not) is the applicability of group-level data on individual determinations about an individuals’ life and liberty. Thus, there are significant voices in academia, that plead for an increased usage of idiographic methods (e.g., Bock, 2019: 151; Rettenberger 2018, 35).

Thus, this paper takes the opposite direction to this modern approach of statistic and AI based assessments and pleads for idiographic assessments. It will now present the key features (no in-depth methodological analysis) of a genuine

idiographic method, that leaves no doubt about its sufficiency in individualization: The MIVEA - Method of Ideal-Typical-Comparative-Case-By-Case Analysis.

The method is criminological and belongs to a field of criminology called “Forensic Criminology” or “Applied Criminology”. For some time now, the linchpin of Forensic Criminology is the Center for Interdisciplinary Forensics at the Johannes Gutenberg University in Mainz, Germany (see https://www.zif.uni-mainz.de/). This approach differentiates itself widely from other criminological streams that focus more on the “big picture” of the criminal justice system (e.g., on crime trends) (Bock, 2017: 31). According to Bock other criminological streams are mainly reflexive and constructive with regard to delegitimization of criminalization or mainly theoretical and statistical with regard to crime policy (Bock, 2007, according to Bock, 2019: 20; Bock, 2017: 186). Thus, Bock pleaded for a clear distinction between research that is mainly targeting the design and structures of the criminal justice system, and research on the individual offender in an individual proceeding (Bock, 2017: 31). Regarding the positioning of the method in relation to other criminological concepts, it can be said that the method on the one hand converges with other criminological concepts in some areas (regarding basic assumptions of developmental criminological theories, biosocial findings and models, structural pathologies), but on the other hand diverges strongly methodologically, since the MIVEA does not strive for a comprehensive general theory but focuses on the individual case (see in more detail Bock, 2019: 132- 135).

4. Method of Ideal-Typical-Comparative Case-By-Case Analysis (MIVEA) – An introduction

Forensic Criminology works from a case-related and communicative framework, and intends to support the criminal justice system by providing individualized risk assessments and individually “tailored” interventions for the prevention of recidivism of individual subjects in individual proceedings. Therefore, individual offenders must be acknowledged and examined not based on some statistics but as an individual within his/her “own “social relations”. According to Bock (Bock, 2017: 30) research designs that incorporate comparative studies are crucial. Thus, the method in question, the Method of Ideal-Typical-Comparative-Case-By-Case Analysis (MIVEA), was developed on the basis of an extensive comparative study (with follow-up examinations): the “Tübinger--Jungtäter-Vergleichsuntersuchung” (short TJVU). The TJVU study itself was developed by Hans Göppinger, a German criminologist, in the late 80s (see Göp-

pinger, 1983). Within the study 400 men between the ages of 20 and 30 were examined. 200 of the probands were individuals that were incarcerated at the time of the study and who faced at least 6 months of unconditional imprisonment sentences. The other half of the probands (n=200) were men in the same age from the same area that were picked randomly. This sample represented no “comparison group” but the “average population”. Thus, within the group there were also men who have been previously convicted (23, 5%). The study itself did not intend to test particular hypotheses but was designed as an explorative study open for all possible outcomes (Bock, 2017: 32; Bock, 2019: 122).

It was an interdisciplinary study that aimed to examine the social behavior and the social surroundings of the respondents as precisely as possible. Therefore, the researchers applied a variety of research methods and gained an immense data volume through interviews, on-site inspections within the probands’ social environments, file analysis, psychiatric, medical, and psychological evaluations (Bock, 2017: 32; Bock, 2019: 122). Although the study resulted in the development of an idiographic method some methods used within the study had a nomothetic character, such as HAWIE (a German IQ-test) or even EEGs (Electroencephalography - measurement of electrical activity in the brain) (Bock, 2017: 32). However, the study was characterized by intensive narrative interviews that took place over many days (Bock, 2017: 32). Within these interviews the researchers collected extensive biographies of the individuals and an extensive data collection, not only on socioeconomic/sociodemographic facts, but data on the individual’s conduct under certain life circumstances. At the same time and in addition to these narrative interviews, files on the individual probands were examined (Bock, 2017: 32). The interesting part of the study was therefore not the analysis of the nomothetic methods, but of this extensive data collection covering the life course of the probands. What they did was to retrospectively create data entry forms based on items that were found in a large number of probands. These forms were retrospectively coded and analyzed in a quantitative manner. By doing so they found a variety of correlations but lost the individual proband in the process. Thus, they decided to examine the data in a more qualitative way (Bock, 2017: 35, Bock, 2019: 123) and what they found was exceptional.

They basically took the data left from these extensive interviews that could not have been used for the quantitative assessments as the information simply was not measurably in that way. The data however was the information that described the individual’s life and actions detached from such quantitative measurable facts, like broken home or class affiliations. Briefly said, they looked at the information that made the individual an actual individual. In doing so they examined infor-

mation on the individuals that contradicted expectations. For example, they examined individuals with a difficult family background who experienced all relevant burdensome factors that would expectedly lead to the commission of crime but did not act as one would have expected (Bock, 2017: 36). For example: Inconsistent parenting certainly correlates with future delinquency, but also a significant share of probands of the comparison group experienced a lack of parental control but did not commit crimes. The researchers therefore looked for facts that “made the specific difference”, in this case: the exploitation of this lack of control in a more or less strategic behavior (see the example given below, and for more detail see Bock, 2019: 123).

4.1. Overview of MIVEA Case-Management

Before getting into detail here is an overview of the work packages necessary for a MIVEA assessment (Bock, 2019: 157):

1. Exploration (interviews, files - biography)
2. Analyses (longitudinal and cross-sectional, strivings/values, comparison to ideal-typical criteria)
3. Diagnoses (longitudinal, cross-sectional, strivings/values, chances, restrictions)
4. Interventions (basic and individual; concrete interventions)

As a practical, criminological tool for intervention planning to reduce or eliminate the risk of recidivism, it can be applied at various stages by various practitioners with different backgrounds. Forensic criminology is relevant whenever decisions are (or should be) influenced by special prevention considerations. Therefore, it provides an instrument that could be used in the large number of decisions that court, correctional facilities or after-incarceration institutions (social worker, probation officers etc) have to make on a daily basis (Bock, 2019: 155, Bock, 2017: 99, 142).

4.2. The longitudinal dimension

What makes this method so special and exceptionally useful and valuable is the development of a scale of diametrical “ideal types”, which represent two opposite extremes. These scales set the boundaries for a spectrum of possibilities that secure the relation to the individual subject: K and R type. K ideal-typical conduct as an “extreme” incarnation of a conduct that “typically” fosters criminal conduct

and R ideal-typical conduct that “typically” hinders criminal conduct. This scale was developed based on the biographies provided by the probands and gives the unique opportunity not to simply categorize individuals to certain “good” or “bad” facts but to “rank” them in the range of the ideal-typical-scale (Bock, 2017: 38). By doing so they do not get pigeonholed because of certain facts or actions but can keep their individuality that is necessary for individualized risk assessments and individualized sentencing and interventions. It always focuses on the individual’s behavior in relation to his/her own background, talent, handicaps, life events etc. and about his/her behavior in his/her circle of life within the limits or chances of his/her life. In short, it is about the perpetrator as an “actor in his/her own environment” or “the perpetrator in his/her social relations” (Bock, 2017: 38).

The method covers the following areas, that must be evaluated during the exploration of the individual offender:

1. General social behavior: Focus on Childhood and Education (parental): handling of parental control/relationship to educators / handling of family duties and responsibilities

2. Area (local) of residing/spending time: locations, importance of the parental home, choices of locations and social inclusions at the locations, design of the living space

3. Performance in education and occupation (general interest, absenteeism, conduct, work performance, significance of the job, choices, attitude, conduct in case of job changes

4. Finances (manner of spending money, financial provision)

5. Recreational/Leisure Area (availability, structure)

6. Area of (social) contacts: family (attitude towards family and detachment), friends and other acquaintances (connection, choices, nature of the friendships/contacts), sexual contacts (choices of partner, use of contraceptives), partnership and “own” family (choices of partner, change of conduct, marriage etc.)

7. Delinquency (juvenile; occurrence, planning, participation, course of action/techniques, conduct after the crime).

When applied to an individual, these criteria necessarily vary in their individual shape. Thus, the criteria are constructed in a relational way and cannot be strictly operationalized. They must be applied in relation to the individual biographic context (e.g., single vs married family man). Therefore, a synopsis was developed, which describes the conduct in question in an abstract way so that it can be applied to all persons, in all conditions of life (individualization). (Bock, 2019: 125). In turn, this approach guarantees comparability, which is why it is irrelevant who the individual is or where he comes from (e.g., manager vs artist).

Below is an example (Bock, 2019: 192):

K- ideal-typical („K“= “Kriminovalent” [german] – factors that encourage crime)	R-***idealtypical*** („R“= „Kriminoresistent“ [german] - factors that resist/prevent crime)
Actively evades parental control Or Exploits the lack of control in any possible way	Accepts parental control Or Seeks connection to an orderly family (e.g., family of a friend) in the absence of an own orderly family
Deceives and cheats the educators or reinforces an inconsistent upbringing through clever tactics and by playing the educators (the educators cannot cope with that)	Is open to educators and does not take advantage of inconsistent upbringing
Consistently refuses to accept certain (age-appropriate) tasks and duties and evades responsibility	Voluntarily takes on age-appropriate tasks and duties or looks for an appropriate area of responsibility for which he feels responsible

4.3. The cross-sectional dimension

What they also found were “crime-relevant constellations” as a cumulation of factors found in distinct “areas of life” that indicate either a future lawful or unlawful conduct.

First, the constellation of crime relevant factors, that when occurring cumulatively, lead to criminal conduct: 1. Disregard of work and performance as well as family and other social obligations, 2. Lack of a proper money and property management, 3. Unstructured leisure behavior, 4. Lack of life planning. Second, the constellation of crime relevant factors, that when occurring simultaneously, prevent criminal conduct: 1. Fulfillment of social obligations 2. Adequate level of demand for one’s own life possibilities, 3. Attachment to an orderly home (and to family life), 4. Appropriate money and property management. (Bock, 2019: 125-126). The factors provided in this paper just reflect a framework. The method certainly provides a detailed description of these factors which is needed to decide whether and to what extent a factor can be determined (please see Bock for further details). This assessment is made within the cross-sectional dimension of the method. Therefore, a specific cross-sectional range must be formed that covers the period of time preceding the last criminal conduct. This interval can

reach from a couple of days to weeks or even months. Essentially, it depends on how long the individual's life pattern, from which the last offense occurred, has already lasted till the criminal conduct in question (Bock, 2019: 207). In this interval there should be no more changes in the living pattern. Thus, the cross-sectional-part of the assessment represents more a condition than a development, like the longitudinal part inheres.

At this stage the examiner should also reflect about potential internal and external aspects that might impose risks or chances in the life of the person. Internal aspects might be strengths/talents, graduation qualifications/certificates, drug abuse, mental of physical disorders/handicaps. External aspects might be seen in certain living conditions, contacts, work, debts (see 4.4. Strivings and value orientation). Also, if the individual was already incarcerated, the behaviour of the sentenced person while in custody might have prognostic value but must be considered differently as the method bases on factors that occur when living in freedom. Living in detention goes along with restrictions in behavioural options and completely different living conditions. The method can still be applied, but in a modified way (see therefore Bock, 2019: 253).

This cross-sectional assessment completes the longitudinal exploration of the individual and is the guarantor for the currency of the assessment and its results.

4.4. Strivings and value orientation

In order to define realistic interventions for the prevention of recidivism, the method requires assessment of particular intentions, strivings, relevancies and values that affect the individual's life and decisions. Strivings stand for those (personal, factual, local) factors, which are particularly important for the individual in his or her everyday life, which he/she cultivates most, which he/she neglects last and which he/she tries to maintain or obtain under all circumstances (e.g., drug addiction, family). Value orientation is about abstract principles and values (e.g., religion) that have hitherto determined the actions of the individual in everyday life situations (Bock, 2019: 213- 220). It is also described as a "personal coordinate system" (Bock, Schallert, 2021)

These strivings and values provide important information about potential chances and risks. The analysis of these chances and risks ensures that special aspects of the individual's case are considered when suggesting and planning interventions.

4.5. Ideal-typical (progressive) forms – basic and individual prognosis

Importantly, the method provides a tool to allocate the crime in the longitudinal life-course in order to provide a basic prognosis. Therefore, not only the longitudinal elicitation but also the strivings, values and the cross-sectional findings must be taken into account. Six ideal-typical (progressive) forms were developed. These forms are described in detail in the method's manual and are: 1. "Continuous development towards crime a) early-onset; b) late-onset; 2. Crime with social inconspicuousness; 3. Crime in temporal and sectoral social conspicuousness: a) Crime in the context of personality maturation b) Crime in crisis or 4. Continuous development towards crime resistance (Bock, 2019: 128). These forms provide the basis for risk assessments, as they give a (basic) indication of a positive or negative prognosis. An (basic) indication of a negative prognosis can be seen in form 1, a and b, whilst a positive prognosis can be seen in form 3a and to a maximum in form 4. Regarding form 3b, the prognosis is neither fully negative nor actually positive and regarding 2 there is no clear indication of a positive or negative direction. (Bock, 2019: 227-241).

In accordance with the idiographic method and the purpose of the ideal-typical (progressive) forms, the individual cannot "simply" be subsumed into one form. In fact, the method provides a framework that situates individuals in the range of this framework with rapprochements and differences to/from the ideal-typical forms. The individual recidivism risk can then be determined according to how close or far the person's life course is to one of the ideal-typical forms and what behavioral patterns, attitudes, or basic intentions this is due to. This provides vital indications for interventions.

5. CONCLUSION

With respect to the right to personal freedom the ideal sentence should impose the least-intrusive risk-reducing intervention. As statistical, standardized methods for risk assessments raise a myriad of concerns, the author pleads for idiographic methods and presents an idiographic criminological method: MIVEA, the Method of Ideal-Typical-Case-by-Case-Analysis. This method represents empirically and legally viable assessments, that focus on the offender in his/her "social relations". Through thorough explorations and ideal-typical scales that provide a range of individualization as well as longitudinal and cross-sectional analysis, the method offers vital indications for intervention-scenarios. MIVEA is a guarantor for completeness, currency, individualization and empiricism.

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EFFECTS OF THE APPLICATION OF INFORMATION AND COMMUNICATION TECHNOLOGIES IN TRAFFIC IN THE WORK OF THE MISDEMEANOR COURT (VALJEVO CASE STUDY)

The judicial system in Serbia in the 21st century is increasingly following the achievements in the field of science and technology. In various areas of social life, a wide range of technologies is applied to support the judicial system and the work of the police, including integrated information systems for the management of court cases as well as video surveillance systems in traffic. The development of technologies, their adoption and application directly affects the work of the police, as well as the efficiency and quality of functioning of all parts of the judicial system. The subject of this paper is the analysis of the application of modern information and communication technologies in the field of road traffic safety with the aim of improving the functioning of that system or its individual parts. The aim of this paper is to point out the importance of the application of modern technologies in the field of supervision of traffic participants as well as their influence on proving

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traffic violations in the work of misdemeanor courts through the example of the Misdemeanor Court in Valjevo. The paper also deals with the positive financial effects of the collection of fines for convictions on the example of the city of Valjevo.

Keywords: information and communication technologies, traffic, violations, fines

1. Introduction

Traffic accidents are one of the leading causes of death – over 1.25 million people die each year, (WHO, 2016) and material losses in the world (in underdeveloped and middle developed countries about 5% of gross national income (hereinafter: GDP), and in developed countries up to 2% GDP. At the same time, between 20-50 million people suffer minor and severe injuries (Veselinović et al, 2013). Injuries in traffic accidents are the leading cause of death among young people aged 15-29[1]. According to the data (WHO, 2013), the number of deaths in traffic accidents in the world tends to increase further, so it is estimated that deaths in traffic in 2030 would become the fifth leading cause of death in the world.

Traffic accidents around the world have been recognized as a global problem by the United Nations as well. In order to extend the best practice of developed countries in terms of increasing road safety to the rest of the world, especially to underdeveloped and developing countries, the UN General Assembly in 2010 adopted the *Global Plan for the Safety of Road Safety 2011-2020 and the Decade of Action for Traffic Safety (A 68/368) (Pešić, Rosić, 2014).*

The Republic of Serbia, in accordance with the best experiences in improving traffic safety, took over this activity and in the mentioned period took active measures in order to increase traffic safety on the roads.

In August 2020, the UN General Assembly adopted Resolution 74/299 “Improving Global Road Safety”, declaring a new Decade of Action for Road Safety 2021-2030, with the ambitious goal of preventing at least 50% of road deaths and injuries in traffic until 2030. The action plan of the new Decade is in line with the Stockholm Declaration, adopted in February 2020 at the Third Global Ministerial Conference on Road Safety, which calls for continuous improvements in road and vehicle design; improving and enforcing laws on risky behaviors – such as

1 https://www.abs.gov.rs/%D1%81%D1%80/o-nama/medjunarodna-saradnja-i-eu-integracije/erasmus-trafsaf, Accessed 13.5.2022

speeding; and providing timely and adequate assistance to the injured[2]. The Republic of Serbia has accepted the stated goals and taken over this global activity, considering that the results in terms of improving traffic safety on the roads in the previous decade did not meet the set goals.

In addition, in order to prevent the suffering of traffic participants on roads around the world, even in Serbia, the police is constantly improving systems and work techniques by introducing newer information systems for video surveillance and information and communication technologies (hereinafter: ICT). The introduction of ICT, in addition to the effect on traffic safety and in general on increasing the general safety of all citizens, has another, positive effect on every country, including Serbia – on public finances. Violations of traffic regulations, which were noticed and registered by members of the police, according to their characteristics represent different offenses and are subject, depending on the severity of the offense, to different sanctions. These are, first of all, financial sanctions in various ways: by submitting a misdemeanor order on the spot for minor misdemeanors, by submitting a request to initiate misdemeanor proceedings for more serious misdemeanors and convictions passed before the competent court. Police officers have a unique role in enforcing the law on behalf of society and represent an institution that has the authority to use force against citizens. The police have significant power since no other government agency has the legal ability to detain citizens, search their personal belongings, physically assault them, or deny them other rights and freedoms (Paraušić, 2020). Given that traffic offenses are the most common of all offenses committed by individuals, it is clear how sanctioning them affects public finances – filling the budget, national and at the level of each local government[3].

In this regard, the main goal of introducing modern management systems in the public finance system is to improve the process of planning, monitoring, control and management of the budget system, through the creation of documents, information and procedures supporting operational and strategic plans and regular and meaningful reporting (Tešić, 2011). The information requirements of users of different levels of management in the budget process, which is an essential part of public finances (both central and local), differ in content, quality and form and thus the ability of identified functions and processes of the system to provide

2 https://www.zdravlje.org.rs › index.php › aktuelne-vesti: Početak nove Dekade akcije za bezbednost na putevima. Accessed 30.4.2022.

3 Article 18 of the Law on Road Traffic Safety prescribes that the funds from the collected fines for misdemeanors and economic offenses in the amount of 70% belong to the budget of the Republic of Serbia, and in the amount of 30% belong to the budget of the local government where the violation was committed.

information. Strategic planning is based on the interaction and mutual support of the strategy, mission, values and goals of financial management, but also the strategy of developing the information system as a source of information resources (Viscusi, 2010). The role of strategic management is to, with adequate information support, ensure the implementation of decisions and implementation of planning and control activities related to management, control and decision-making on financial resources of local governments – revenues, expenditures, assets and liabilities (Bouwman et al., 2002).

In a limited volume, the authors presented the latest official data related to road traffic safety in the Republic of Serbia, as well as the most important regulations related to the use of information systems for video surveillance in road traffic in Serbia. They also analyzed certain violations in the field of traffic safety on the territory of Valjevo through the practice of the Misdemeanor Court in Valjevo, effects from the aspect of justice and police, but also economic effects of collecting fines for traffic violations committed in Valjevo over a period of 10 years, which is a relevant period for assessing the importance of the use of ICT in everyday life and the impact on strengthening public finances at the level of local self-government.

2. Video surveillance information system

The most recognizable device for citizens, who participate in traffic as drivers of one of the vehicles, as a rule, is a radar. Vehicle speed control and measurement radars previously had to meet the appropriate requirements prescribed in certain bylaws. Having in mind the period 2010-2019, to which the research conducted in this paper refers to, there are two rulebooks: the *Rulebook on metrological requirements for measuring the speed of vehicles in traffic*,[4] or the *Rulebook on vehicle speed meters in traffic*.[5] It was only in the second decade of the 21st century that we began to get used to the use of other ICT tools such as automatic control cameras (hereinafter: cameras), which are increasingly in use and whose use by police is increasingly important. The first camera location of the video surveillance system for automatic recognition of license plates in Belgrade was set up at the end of 2009, and from that moment the testing of possibilities and adjustment of the system began (Nikolić, Đikanović, 2015: 146). Over time, the number of these cameras in Belgrade increased, as did the technical

4 Off. Gazette of the RS no. 40/09

5 Off. Gazette of the RS, nos.119/2014, 111/2015, 117/17 i 50/19

possibilities. The example of Belgrade was followed by almost all cities in Serbia. Apart from cities, cameras are also installed on new roads, where the traffic is most frequent – on the part of the E 10 highway through Serbia, on the section Belgrade – Nis (to Aleksinac). In addition, today the cameras measuring the average speed of movement also cover other most important roads in Serbia, namely highways: Belgrade – Zagreb (to Batrovac), Belgrade – Subotica and “Milos the Great” (Obrenovac – Preljina)[6]. Also, in recent years, mobile automatic cameras have been increasingly used in Serbia, mainly by official vehicles, so-called interceptors, which are used in traffic safety control and detection of violations not only outside cities but also in individual cities.

Cameras in cities and on the open road control traffic safety and record – register certain, most common traffic violations by drivers of individual vehicles: passing a red light, controlling the current speed and controlling the average speed on a certain section of road, bypassing vehicles on a full line, wrong rearrangement of vehicles, endangerment of pedestrian. In addition to detecting offenses, cameras are becoming increasingly important and are used as evidence to detect perpetrators of various crimes, not just those related to road safety. Some authors point out that for frauds that have emerged with the development of modern information and communication technologies and the progressive informatization of society, new, specific, fraudulent techniques have emerged aimed at deceiving users of these technologies (Milošević, Putnik, 2019: 69).

3. Traffic safety on roads in Serbia and criminal offenses

Traffic accidents on the roads with injured persons, i.e. material damage, which according to their characteristics are criminal acts, are a reality in Serbia, in the area of Kolubara district and the City of Valjevo, as the seat of the mentioned district, through which important roads pass. However, on the roads across Serbia, out of all criminal offenses in the field of road traffic safety (criminal offenses, economic offenses, misdemeanors), various traffic offenses are committed by drivers of all ages, all categories of vehicles with driver’s license and without driver’s license. The ultimate consequence of all traffic accidents, after various court proceedings, is the payment of damages by certain insurance companies, above all. The cost of accidents is measured in billions of US $.

According to the data of the Traffic Safety Agency (hereinafter: TSA), in the period from 2016 to 2020, 2.760 people were killed in traffic accidents (here-

6 „Sat Plus“, broj 517, godXXI od 30.12.2021., Kako da ne platite kaznu zbog proseka, Ž.Regoda, 18-23

inafter: TA) in the Republic of Serbia, 16.489 people were seriously injured, while 84.030 people sustained minor injuries. This is even better seen in Table 1.

Table 1. Data from the Traffic Safety Agency: Basic indicators of the state of traffic safety in the Republic of Serbia, period 2016-2020

Year	*TA*	*TA*	*TA*	*TA*	*In total*	*Died*	*SBI*	*MBI*	*Injured*	*In total*
	Died	*Injured*	*Suffered*	*MD*	*TA*					*suffered*
2016	*551*	*13864*	*14415*	*21557*	*35972*	*607*	*3362*	*17308*	*20670*	*21277*
2017	*525*	*14286*	*14811*	*21664*	*36475*	*579*	*3514*	*17849*	*21363*	*21942*
2018	*491*	*13744*	*14235*	*21583*	*35818*	*548*	*3338*	*17508*	*20846*	*21394*
2019	*494*	*13735*	*14229*	*21541*	*35770*	*534*	*3322*	*17068*	*20390*	*20924*
2020	*459*	*11849*	*12308*	*18410*	*30718*	*492*	*2953*	*14297*	*17250*	*17742*
In total	***2520***	***67478***	***69998***	***104755***	***174753***	***2760***	***16489***	***84030***	***100519***	***103279***

Source: Traffic Safety Agency
TA-*traffic accident*; SBI-*severe bodily injury;* MBI-*minor bodily injury*

Having in mind the subject of this paper, we focused on the current Law on Misdemeanors (hereinafter: ML)[7] and in this regard on certain violations of the Law on Road Traffic Safety (hereinafter: LRTS)[8], which in the previous ten years most often certain categories of drivers – participants in traffic on the territory of the city of Valjevo. These are serious misdemeanors for which, according to the provisions of the Law on Misdemeanors, a misdemeanor order cannot be issued (Jeličić, 2018). Our goal was to see the importance of the use of ICT in traffic, in the everyday life of the city of Valjevo. We analyzed various aspects of ICT implementation from the aspect of police, judiciary, but also economic – financial effects, from the aspect of planning budget funds at the City level, which are available to the City Traffic Safety Council.

The data become important when we take into account the effects of the recent traffic control on roads, which was conducted in March 2022 as part of the international action ROADPOL (European Traffic Police Network) in which members of the Republic od Serbia Ministry of Interior – traffic police participated. Namely, members of the Traffic Police Administration, in the action of intensified traffic control conducted from March 21 to 27, discovered 29.857 violations on the roads in Serbia, of which as many as 22.403 were speeding. Of that number, 16.471 drivers who exceeded the speed limit were stopped in the settlement,

7 Off. Gazette of the RS, nos.65/13, 13/16, 98/16, 91/19

8 Off. Gazette of the Republic of Serbia nos. 41/09, 53/10, 101/11, 32/13, 55/14, 96/15, 9/16, 24/18, 41/18, 87/18, 23/19, 128/20.

of which 2.382 drivers in the zone of pedestrian crossings, while 5.932 drivers exceeded the speed limit outside the settlement. During the action, the traffic police controlled a total of 34.149 vehicles and sanctioned 666 drivers who drove under the influence of alcohol, and 6.737 other traffic violations were discovered.[9] The existence of problems in the field of road safety is shown by the data that in the first two months of this year, 61 traffic accidents occurred on the roads in Serbia, and in almost half of these accidents as one of the influencing factors was unadjusted speed and traffic conditions. Also, during this period, the traffic police sanctioned about 65.000 drivers for speeding offenses, which is twice as many as in the first two months of 2021.[10]

4. Certain violations in the area of Valjevo and data from the research

TSA data show that in the area of the city of Valjevo from 2001 to 2013, 10.686 TA occurred, of which 117 TA with dead persons, and 2.973 TA with injured persons. In the TA team, 127 people died in Valjevo, while 4,087 people were seriously and lightly injured. The latest officially published TSA data for the city of Valjevo – "Report on basic indicators of traffic safety in the period from 2016 to 2020 – the City of Valjevo" states the most important facts about the state of traffic safety in the city of Valjevo. In that period, a total of 2101 TA occurred, of which 917 TA with casualties, 43 people were killed in the TA, 1225 people were seriously and lightly injured. A declining trend in the number of dead has been established, while the number of injured has been increasing over the years.

During the second decade of the 21st century, the use of automatic cameras began in Valjevo, which were placed in several places in the city. Also, members of the traffic police of the Valjevo Police Department received new, modern devices – speed measurement radars that can measure speed through day and night.

Based on the research conducted after obtaining data from the Misdemeanor Court in Valjevo on the basis of requests for access to information of public importance and the requested data for the period from 2010 to 2019, the author's goal was to show the impact of stationary and mobile cameras on the state of traffic safety on the roads in the area of the city of Valjevo, whether the number

9 https://rs.n1info.com/auto/mup-od-21-do-27-marta-otkriveno-29-857-saobracajnih-prekrsaja/, Autor:N1 Beograd 28. mar. 202214:33, Accessed 1.5.2022

10 https://www.telegraf.rs/vesti/srbija/3476201-porazavajuca-statistika-za-pet-dana-policija-kontrolisala-20000-vozaca-prekrsaj-napravilo-17700-njih. Accessed 1.5.2022

of registered violations has increased and how this is reflected in the court proceedings conducted in connection with the committed violations and the results of those proceedings. The ultimate goal was to see the economic effects in terms of the amount of fines collected on the basis of traffic violations in the city of Valjevo in the period before and after the installation of cameras in the city of Valjevo and how it affects the income of Valjevo. Historically, misdemeanor courts did not even exist until January 1, 2010, when they were introduced as part of the judicial system in Serbia. Until then, authorities for misdemeanors existed as “sui generis” authorities, which were essentially something between courts and administrative authorities (Marinović, 2018).

The request referred to the most common offenses committed by drivers as participants in traffic prescribed by the LRTS for two offenses committed in the settlement that are detected by stationary cameras: Speeding in the settlement from article 332, para. 1, point 8 of the LRTS[11] and Passing through the red light from article 331, para. 1, point 39 of the LRTS[12]. Also, the request referred to two offenses detected by members of the police with the use of mobile cameras – radar from vehicles in the area belonging to Valjevo, namely: Speeding outside the settlement from article 331, para. 1, point 8 of the LRTS[13] – and Crossing the full line from article 331, para. 1, point 10 of the LRTS[14]. The subject of analysis was the following data:

1. Number of submitted requests for initiating misdemeanor proceedings,
2. Types and number of decisions made (number of convictions, acquittals, suspensions…),
3. Types of sanctions and protective measures in convictions.

5. Research results

5.1. Analysis of speeding offenses in the settlement

The misdemeanor referred to in article 332, para. 1, point 8 of the LRTS[15] prescribes a penalty for exceeding the permitted speed within the settlement by more than 30 km / h to 50 km / h, for which the misdemeanor is punishable by a

11 Connection: article 43, para 1 of the LRTS (part: speed)

12 Connection: article 142, para 2 of the LRTS (part: traffic signalization – traffic lights)

13 Connection: article 45, para 1 point 4 of the LRTS (part: speed)

14 Connection: article 55, para 3 point 14 of the LRTS (part : overtaking)

15 Connection: article 43, para 1 of the LRTS (part: speed)

fine in the amount of 10,000- 20,000 dinars. For this misdemeanor, a cumulative imposition of 4 penalty points is executed (article 335, para. 1, point 9 of the LRTS), as well as the obligatory imposition of a protective measure prohibiting the driving of a motor vehicle of that category which the driver drove on that occasion for at least 30 days (article 338, para. 1, point 5 of the LRTS). The number of submitted requests for initiating misdemeanor proceedings can be seen in Table 2.

Table 2. Number of submitted requests for initiating misdemeanor proceedings by years for speeding in the settlement

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Number of submitted requests	1975	2001	2136	2746	1533	2267	3226	4406	3154	3374

In the period from 2010 to 2014 (period before the installation of cameras) the average number of submitted requests was **2078**, and in the period from 2015 to 2019 (period after the installation of cameras) the average number of submitted requests was **3285**. It can be concluded that in the period after the installation of cameras, a higher number of these violations was registered in Valjevo by an average of **1207** violations (**58%**) per year than in the period before the installation of cameras.

Every year, the Misdemeanor Court in Valjevo made a large number of different decisions on the submitted requests for initiating misdemeanor proceedings due to the mentioned misdemeanor.

Table 3. Types of decisions made by year for speeding offenses in the settlement

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Convictions	1760	1806	1862	2540	1291	2073	3000	4239	2908	3064
Acquittals	94	81	31	118	99	175	222	161	234	301
Suspensions	121	114	243	88	143	19	4	6	12	9

From 2010 to 2014, the average number of convictions was **1851**, acquittals **84** and suspensions **141**. In the period from 2015 to 2019, the average number of convictions was **3056 (+ 65%)**, acquittals were **218 (+155%)** and the number of suspended proceedings was **10 (-93%)** (Table 3). Also, certain specifics can be noticed in the period before and after the installation of cameras when it comes to imposing sanctions concerning convictions.

Table 4. *Types of imposed sanctions by years for speeding offenses in the settlement*

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine (money penalty)	1743	1778	1851	2495	1276	2050	2988	4221	2897	3045
Prison sentence	0	0	0	0	0	0	0	0	0	0
Warning	17	28	11	45	15	23	12	18	11	19
Protective measures	1743	1778	1851	2495	1276	2050	2988	4221	2897	3045

In the observed period, the Misdemeanor Court in Valjevo imposed only two penalties prescribed by the provisions of the ML, namely: fines and warnings, while in the same period, none of them was sentenced to imprisonment for the said misdemeanor. Considering that the cameras were installed at the end of 2014, an increase in the number of fines imposed can be seen in the period 2015-2019. Therefore, there is an increase in the number of protective measures imposed by the ban on driving motor vehicles of a certain category, as a consequence of the increased number of fines imposed. The second sanction imposed – a warning, has a stable number on average in both periods, but this is especially evident in the period before the installation of cameras (Table 4).

5.2. Analysis of violations of the red light

Passing through a red light from article 331, para. 1, point 39 of the LRTS[16] is one of the most serious traffic offenses for which a fine in the amount of 20,000-40,000 dinars or imprisonment for up to 30 days is envisaged. For this offense, a cumulative imposition of 6 penalty points (article 335, para. 1, point 62 of the LRTS) is implemented, as well as mandatory imposition of a protective measure prohibiting the use of a motor vehicle of the category driven by the driver on that occasion for at least 3 months (article 338, para. 1, point 37 of the LRTS). The number of submitted requests for initiating misdemeanor proceedings can be seen in Table 5.

Table 5. The number of submitted requests for initiating misdemeanor proceedings

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Number of submitted requests	202	197	146	136	101	124	871	598	876	911

16 Connection: article 142, para 2 of the LRTS (part: traffic signalization – traffic lights)

In the period from 2010 to 2014 (period before the installation of cameras) the average number of submitted requests was **156**, and in the period from 2015 to 2019 (period after the installation of cameras) the average number of submitted requests was **676**. It can be concluded that in the period after the installation of cameras, the registered number of these violations in Valjevo increased by an average of **520** violations **(435%)** per year than in the period before the installation of cameras.

Every year, the Misdemeanor Court in Valjevo made a large number of different decisions on the submitted requests for initiating misdemeanor proceedings due to the mentioned misdemeanor.

Table 6. Types of decisions made by year for red light violations

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Convictions	166	153	111	100	77	98	795	564	823	856
Acquittals	9	8	11	22	11	15	62	27	45	49
Suspensions	27	36	24	14	13	11	14	7	8	6

From 2010 to 2014, the average number of convictions was **121**, there were **12** acquittals and **22** were suspended. In the period from 2015 to 2019, the average number of convictions was **627 (+ 417%)**, and **39** were acquitted **(+225%)**, and the number of suspended proceedings was **9 (-59%)** (Table 6).

Also, certain specifics can be noticed in the period before and after the installation of cameras when it comes to imposing sanctions on convictions.

Table 7. Types of sanctions imposed by year for red light violations

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine (money penalty)	155	139	101	91	67	90	785	554	807	843
Prison sentence	0	0	1	2	4	4	5	7	9	9
Warning	11	14	9	7	6	4	5	3	7	4
Protective measures	155	139	102	93	71	94	790	561	816	852

In the observed period, the Misdemeanor Court in Valjevo occasionally imposed imprisonment for the mentioned misdemeanor in almost the entire observed period (Table 7), but in individual cases it was imposed continuously 2012-2019, with gradual increase in the number of these sentences noticeable in the period 2016-2019. In the period 2016-2019, there is a drastic increase in the number of fines imposed, as well as an increase in the number of protective measures imposed, banning the driving of motor vehicles of a certain category. The

warning is on average stable, with a decrease in the number of fines imposed in the period after the installation of the cameras compared to the period before the installation of the cameras.

5.3. Analysis of speeding offenses outside the settlement

In the Republic of Serbia, the speed of vehicles within the settlement is limited to 50 km / h. Very often, drivers grossly violate the regulations in the settlement, as well as outside the settlement, they drastically exceed the speed limit by a traffic sign by more than 50 km / h. The subject of analysis in this case were not all offenses related to speeding outside the settlement, but only those offenses related to speeding outside the settlement from article 335, para. 1, point 8 of the LRTS[17] when certain participant in traffic was moving at a speed higher than the allowed speed of movement by more than 50 km / h to 70 km / h. A fine in the amount of 20,000-40,000 dinars or imprisonment for up to 30 days is envisaged for the mentioned violation. It is also envisaged to cumulatively impose 7 penalty points (article 335, para. 1, point 13 of the LRTS), as well as to impose a mandatory protective measure prohibiting the use of a motor vehicle of the category driven by the driver for at least 4 months (article 338, para. 1, point 9 of the LRTS).

The number of submitted requests for initiating misdemeanor proceedings can be seen from the following table.

Table 8. Number of submitted requests by year for speeding offenses outside the settlement for the period from 2010 to 2019

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Number of submitted requests	202	237	199	274	272	375	509	611	489	437

In the period from 2010 to 2014 (period before the installation of cameras) the average number of submitted requests was **236**, and in the period from 2015 to 2019 (period after the installation of cameras) the average number of submitted requests was **484**. It can be concluded that In the period after the installation of cameras, the registered number of these violations in Valjevo is higher by an average of **247** violations **(104%)** per year than in the period before the installation of cameras (Table 8).

17 Connection: article 45, para 1 point 4 of the LRTS (part: speed)

Table 9. Types of decisions made by year for offenses of speeding outside the settlement for the period from 2010 to 2019

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Convictions	174	214	173	211	227	323	506	605	486	430
Acquittals	17	14	9	33	23	27	2	5	1	3
Suspensions	11	9	17	30	22	25	1	1	2	4

In the period from 2010 to 2014, the average number of convictions was **200**. In the period from 2015 to 2019, the average number of convictions was **470 (+ 135%)**. In the period from 2010 to 2014, the average number of acquittals was **19**. In the period from 2015 to 2019, the average number of acquittals was **7 (-63%)**. In the period from 2010 to 2014, the average number of suspended proceedings was **18**. In the period from 2015 to 2019, the average number of suspended proceedings was **6 (-67%)** (Table 9).

Table 10. *Types of imposed sanctions by years for offenses of speeding outside the settlement*

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine (money penalty)	156	192	156	173	199	279	476	555	428	376
Prison sentence	0	0	0	0	13	17	19	21	27	36
Warning	18	22	17	38	15	17	11	29	31	18
Protective measures	156	192	156	173	212	296	495	576	455	412

In the observed period, the Misdemeanor Court in Valjevo did not impose prison sentences for the mentioned misdemeanor in the first four years of the conducted investigation, and only in 2014 did it continuously start imposing a prison sentence for this misdemeanor. In the period from 2015 to 2019, the number of imprisonment sentences increased slightly every year in continuity (Table 10). In the period 2015-2019, there is a significant increase in the number of fines imposed, as well as a significant increase in the number of protective measures imposed by the ban on driving motor vehicles of a certain category. The number of warnings issued is on average stable, a small number in both observed periods, before and after the installation of cameras, with an occasional increase in some years of both periods

5.4. Analysis of offenses related to crossing the full line

Crossing the full line from article 331, para. 1, point. 10 of the LRTS[18] is one of the more serious offenses for which a fine in the amount of 20,000-40,000 dinars or imprisonment for up to 30 days is envisaged. Cumulatively, the imposition of 6 penalty points (article 335, para. 1, point 20 of the LRTS) and the mandatory imposition of a protective measure prohibiting driving a motor vehicle of the category that the driver drove for at least 3 months are envisaged (article 338, para. 1, point 13 of the LRTS). The number of submitted requests for initiating misdemeanor proceedings can be seen in Table 11.

Table 11. Number of submitted requests for initiating misdemeanor proceedings by years for crossing the full line

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Number of submitted requests	254	199	278	324	469	578	696	788	596	611

In the period from 2010 to 2014 (period before the installation of cameras) the average number of submitted requests for violation crossing the full line was **304**, and in the period from 2015 to 2019 (period after the installation of cameras) the average number of submitted requests was **653**. It can be concluded that in the period after the installation of cameras the registered number of these offenses in Valjevo is higher by an average of **349** offenses **(114%)** per year than in the period before the installation of cameras. Every year, the Misdemeanor Court in Valjevo made a large number of different decisions on the submitted requests for initiating misdemeanor proceedings due to the mentioned misdemeanor.

Table 12. Types of decisions made by year for offenses crossing the full line

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Convictions	189	143	205	242	415	518	636	718	529	550
Acquittals	22	19	26	23	18	41	45	52	48	39
Suspensions	43	37	47	59	36	19	15	18	19	22

From 2010 to 2014, the average number of convictions was **238**, acquittals **21** and suspensions **44**. In the period from 2015 to 2019, the average number of convictions was **590 (+ 147%)**, acquittals were **45 (+109%)** and the number of suspended proceedings was **18 (-144%)** (Table 12). Also, certain specifics can be

18 Connection: article 55, para 3 point 14 of the LRTS (part : overtaking)

noticed in the period before and after the installation of cameras when it comes to imposing sanctions concerning convictions.

Table 13. Types of imposed sanctions by years for offenses crossing the full line

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine (money penalty)	184	137	200	234	406	509	630	713	523	545
Prison sentence	1	0	0	1	4	2	3	2	1	4
Warning	4	6	5	7	5	7	3	3	5	1
Protective measures	185	1137	200	235	410	511	633	715	524	549

In the observed period, the Misdemeanor Court in Valjevo imposed only fines (money penalty) for the said violation, while warning and imprisonment occurred in absolutely small numbers, approximately identical before and after the installation of cameras. Considering that the cameras were installed at the end of 2014, a significant increase in the number of fines imposed can be seen in the period 2015-2019. Therefore, there is a significant increase in the number of protective measures imposed by the ban on driving motor vehicles of a certain category, as a consequence of the increased number of fines imposed (Table 13).

5.5. Summary results of the analysis

The data for all 4 analyzed violations in this paper show that primarily by introducing images from stationary cameras starting in 2015 as evidence in misdemeanor proceedings increases the number of detected serious traffic violations in the city – in absolute numbers and percentage, and that increased use of mobile cameras – radars in traffic control outside the city since 2015 also increases the number of detected individual serious violations that were discussed in this paper – in absolute numbers and in percentage.

In addition, the above data show that the introduction of stationary cameras and more frequent use of mobile cameras – radars in traffic control allows a fair trial and easier determination of the facts in the Misdemeanor Court in Valjevo, which increases the number of convictions for each of the analyzed offenses. The number of persons acquitted has also increased, because on the basis of the recording, among other evidence in the procedure, it can be clearly determined whether a certain person committed the said violation and whether he is responsible or not. This was not the case before the cameras were put into operation, because the responsibility of an individual person as the perpetrator of the violation was based on the statement of the witness, ie. police officers. In all analyzed offenses, the number of suspensions has decreased since 2015, because it was much easier to

unambiguously determine whether a certain person committed one of these offenses and pass a conviction, or if the camera footage showed that an individual participant did not commit a traffic offense in traffic due to the fact that a misdemeanor procedure was initiated against him in order to acquit him in such a case.

6. Economic effects of misdemeanor fines on public finances

Economic effects and efficiency in the implementation of the collection of misdemeanor fines have been analyzed through the implementation of integrated information systems in misdemeanor courts and in the field of public finance.

At the end of 2015. Software System for the Misdemeanor Courts (hereinafter: SIPRES) was introduced in misdemeanor courts in Serbia, and its full implementation began on January 1. 2016. SIPRES is the first system in the Serbian judiciary that is connected with other bodies within the network of judicial bodies and the network of the Administration for Joint Affairs of Republic Bodies (hereinafter: AFJARB) and they are, for now, the Treasury Administration, the Traffic Police Administration of the Ministry of Interior of Serbia (hereinafter: TPA MI) and the Central Register of Compulsory Social Insurance. By connecting with the MI, the electronic delivery of tens of thousands of misdemeanor warrants to the courts has been enabled. Since the beginning of the implementation of this system, only TPA MI has issued over one million misdemeanor orders, and voluntary payment of fines has reached a record level of 74% – more than double compared to 30% of the percentage of voluntary payment of mandatory fines under previous law. SIPRES is an active system that includes various functions, in which every procedural action in the court is implemented.

When it comes to public finances, over the last 15 years, there has been the introduction of the Integrated Financial Management Systems (hereinafter: IFMS) as part of comprehensive financial management reforms aimed at improving efficiency, effectiveness, accountability and transparency, data management security and comprehensive financial reporting. The scope and functionality of an IFMS varies from country to country and represents a complex, strategic reform process (Chêne, 2009).

In Serbia, as in many developed economies, the initial reforms of Public Financial Management (PFM)[19] were focused on establishing a functional Treasury – Financial Management Information System (hereinafter: FMIS) and a Treasury

19 Report on the implementation of the Public Financial Management Reform Program 2016–2020 for the period from December 2015 to December 2017, https://www.mfin.gov.rs/UserFiles/File/strategije/2018/Izvestaj%20o%20sprovodjenju%20Programa%20reform e%20upravljanja%20javnim%20finansijama%20dec%202015%20-%20dec%202017.pdf

Single Account (hereinafter: TSA) in order to solve operational / technical problems. FMIS, which was established in phases in Serbia, is a set of activities and procedures aimed at establishing financial unity in recording revenues, expenditures and execution of expenditures and expenditures of budget users. This ensures the integrity of the budget system and budget goals of the Republic of Serbia.

In terms of terminology, the FMIS, a platform specifically designed for the public sector, usually refers to the computerization of public expenditure management processes, including budget formulation and execution, cash flow management, control, reporting and accounting, with a fully integrated financial management system for ministries and other budget users. The application of these systems provides reliable information for decision makers, ensures integration and communication with all relevant information systems from the internal and external environment and enables effective state responsibility in terms of supporting efficient decision-making related to national and local budgets.

In order to achieve interoperability between national and local Treasuries, as well as integration with the FMIS platform, in 2020 the Treasury Administration implemented an information system for budget execution of autonomous provinces and local governments, whose implementation began on January 01 2021, which is a part of the public financial management system in which revenues and incomes are recorded and expenditures of autonomous provinces (hereinafter: AP) and local self-government units (hereinafter: LSGU) determined by the budget decision, i.e. the act on temporary funding. The system provides insight into the decisions on the budget of AP and LSGU, insight into the available funds according to the determined appropriations as well as control of execution up to the amount of available appropriations. In that way, the monitoring, control and reporting on the executed expenditures and expenses and the realized revenues and incomes according to all elements of the budget classification in accordance with the instructions for the preparation of the program budget for LSGU has been improved.

The main sources of public revenues are: taxes, customs duties, fees, charges, contributions and other public revenues. In addition to these public revenues, there are also local revenues, which belong to territorial autonomy (provinces), i.e. local self-government (cities and municipalities). Each of the forms of public revenues represents a whole, i.e. a system that is regulated by normative acts (laws and bylaws), the regulation of which is prescribed, starting from determination, collection, to control. Likewise, local revenues have their own norms and are controlled either at the state level or at the level of local government.

In accordance with the Rulebook on conditions and manner of keeping accounts for payment of public revenues and distribution of funds from those ac-

counts (hereinafter the Rulebook)[20], public revenues and receipts are allocated to the budget of the Republic, i.e. local government budget, organizations for compulsory social insurance and other users who are included in the consolidated treasury account system. Accounts for the payment of public revenues are kept according to the Chart of Accounts for the payment of public revenues, within the consolidated treasury account.

Payment of public revenues and incomes is made by levels, as follows: at the municipal level (code 1), at the city level (code 1 / g), at the city level (code 2, special code of the city treasury that differs from the codes of city municipalities), at the level of the AP (code 3) and at the level of the Republic (code 4). When it comes to the distribution of revenues, paid public revenues and incomes are distributed to users in accordance with the law, i.e. according to the affiliation and prescribed participation rates of individual users in the distribution of those revenues and incomes. It is important for this research to state the following affiliations: revenues and incomes belonging to the city (code 2) and revenues and incomes belonging to the Republic (code 4). The structure of the call for the approval number of the account for the payment of public revenues is defined by the Rulebook and is in accordance with the level of payment.

Payment account for Revenues from fines for misdemeanors and economic offenses envisaged by the regulations on road safety (account number 840-743324843-18) belongs to the group “Revenues from fines for misdemeanors”. The level of payment for this account is 1, 1 / g and 2, while the distribution, more precisely the level of affiliation, is 1, 2 and 4. Therefore, payments for misdemeanor fines can be paid at the municipal and city level, and the inflow is distributed to municipalities or cities and the Republic. The City of Valjevo has a payment status of 1 / g, so that the revenues from this payment account are distributed as a percentage between the city and the Republic in the ratio of 30% (city of Valjevo) to 70% (Republic).

Table 14. *Revenues from fines for violations of traffic safety regulations – the city of Valjevo*

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Revenues from fines the city of Valjevo	11.886.735,00	11.865.732,70	15.072.838,21	19.238.377,51	21.203.053,16	17.047.677,00	26.576.720,99	28.239.513,02	34.979.696,37	42.672.457,81

Source: Ministry of Finance-Treasury Administration Valjevo

20 Rulebook on conditions and manner of keeping accounts for payment of public revenues and distribution of funds from those accounts, Off. Gazette of the RS nos.16/16, 49/16, 107/16, 46/17, 114/17, 36/18, 44/18 – dr. zakon, 104/18, 14/19, 33/19, 68/19, 151/20, 19/21, 10/22

In accordance with the objectives of the work, in Table 14, for the analyzed period, and according to the above distribution, the inflow of funds to account 840-1070743324843-03 is shown, which according to the defined structure refers to revenues from fines for traffic violations at the level of Valjevo.

Based on the presented data, it can be concluded that after 2015. there has been a certain increase in the inflow of funds related to the collection of fines for traffic violations, which in recent years of both observed periods (before and after the introduction of cameras in the city) is particularly visible, given that in 2019 the revenue from fines was twice than in 2014. It is interesting to note that during 2015. revenue was significantly lower than the previous year, which can be interpreted in several ways. One is that that year was a test period of adaptation to the newly implemented information system and that the planned and later efficiently established synchronization with other institutions, primarily with the Ministry of the Interior, was missing. The role of the Ministry of the Interior is very important in the entire process of case processing, decision-making, sentencing and collection of fines. On the other hand, the introduction of video cameras that year, which was much talked about and written about in the media, may have affected the self-discipline and prudence of drivers, which was later lacking.

7. Conclusion

Traffic cameras are an important segment in raising general security in urban areas. As an integral part of the integrated protection system, traffic video surveillance cameras have the primary purpose of reducing the number of traffic violations.

The research included an analysis of the impact of information technology in the field of road safety, the efficiency of processing cases related to traffic violations and the effectiveness of the collection of fines for certain types of offenses. The authors examined the extent to which the use of information technology affects or may affect the change in the structure of misdemeanor liability of traffic participants and improve the efficiency of misdemeanor courts in terms of the ability to use evidence obtained with the help of information technology to make a lawful decision.

The results of the research show the positive effects of traffic control on the roads after the installation of video cameras, in terms of requests for misdemeanor proceedings by the Valjevo police, as well as in terms of decisions and sanctions imposed by the Valjevo Misdemeanor Court for analyzed types of traffic offens-

es on the territory of the city of Valjevo – in the city itself and on roads outside the city.

Also important is the role of the implemented integrated information system for case management in misdemeanor courts, which provided efficient business processes and rational use of resources available to the misdemeanor court, as well as the establishment of electronic data exchange between courts and other relevant institutions.

We believe that the results of this research can be important for improving traffic safety on the roads with the application of information and communication technologies in other local communities in Serbia.

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INTERNATIONALISATION OF THE CRIMINAL PROCEDURE WITHIN EXTRADITION: CASE BELARUS

The subject of the article is the extradition as an element of the international legal paradigm of the modern criminal procedure. In this context, the goal of this research is to identify the fundamental human rights affected by the criminal proceedings within the extradition procedure based on cases related to the Republic of Belarus as well as legal provisions of this state. In this regard, the article explores the concept of the international legal paradigm of the modern criminal procedure. The author analyses the principles, the implementation of which is required to ensure human rights in the framework of the Belarusian criminal procedure in the course of extradition. The article reveals certain fundamental human rights that are affected during the extradition procedure: the personal inviolability, the right to defence and ne bis in idem.

Key words: internationalisation of criminal procedural law; international legal paradigm; extradition; international legal assistance in criminal matters

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1. Introduction

The development of technologies, economic integration, cultural ties lead to an increase in mobility, both of the people themselves and of the activities they carry out, and that leads to the eventual involvement of persons in criminal procedural relations outside the state of their citizenship. The positive fruits of globalisation are used not only by the law-abiding part of a society, but also by individuals and organisations with socially dangerous goals. However, even when criminal proceedings go beyond the national state, the human rights enshrined in international instruments must be respected.

In this paper, we look in general at the penetration of international law into modern criminal procedure (2) and reveal the principles that have been developed in the provision of international legal assistance in criminal cases, note their connection with human rights (3): the principles of personal inviolability (3.1), the right to defence (3.2) and *ne bis in idem* (3.3) during an extradition, bringing us to certain conclusions (4).

2. International legal paradigm of contemporary criminal procedure

The legal systems of modern states are experiencing the penetration of principles, standards, norms from the outside. These can be contributions from international (including regional) law, which is being developed by many states, or supranational law (in a narrow sense), created within the framework of integration. The corresponding processes are of the nature of *globalisation* (the spread of some common patterns of development to other states and peoples (Чиркин, 2017: 132)) or *integration* (an objective and, to a certain extent, a spontaneous process of unification of states and peoples due to the expansion of international relations and the internationalisation of public life (Кашкин, 2017: 30)).

The process of mutual influence of legal systems within the framework of cultural dialogue is sometimes called the internationalisation of law (Стойко, 2006: 230). The internationalisation of criminal procedural law with the growth of the transboundary value of criminal procedural activity requires deepening comparative knowledge of the criminal procedure. In the same context, Alexander Trefilov uses the term internationalisation of the criminal procedure (Трефилов, 2014: 3). These tendencies are typical for the legal systems of many states. In the field of criminal justice, such penetration affects the most tangible

foundations of the state sovereignty: the state, in whose jurisdiction, under whose authority a person is, has the right to decide how to restrict or punish him or her. And this “pressure” from the outside is often opposed. It is enough to remind the decision of the German Constitutional Court *Solange I*. Or more recent: the norm set forth in par. b) of part 5.1 of Art. 125 of the Constitution of the Russian Federation (as revised in 2020): the Constitutional Court of the Russian Federation may decide on the possibility of executing a decision of a foreign or international court... which imposes obligations on the Russian Federation in the event if this decision is contrary to the principles of public law of this state.

The chronology of changes in approaches to international legal norms in criminal proceedings can be traced in various editions of the Commentary to the German Code of Criminal Procedure. Initially (in the 1970s) German scientists with reference only to the ECHR pointed out that the peculiarity of the latest improvement of legislation is the appearance, along with the usual federal laws regulating the criminal procedure, provisions of interstate law, which in a generalised form define individual principles (Löwe et. al, 1976: 6). In the next edition, the International Covenant on Civil and Political Rights, the European conventions on extradition and on mutual legal assistance, the Vienna Convention on Diplomatic Relations are also named as sources of criminal procedural law (Rieß et. al, 1988: 4). In 1999, the commentary already contains the term “internationalisation of the criminal procedure”, which, according to the author, appears in the regulation of issues significant for the criminal proceedings (for example, extraterritoriality) by international law, as well as in the establishment of minimum standards in this area (Rieß et. al, 1999: 23–24). And in the latest edition one can read about “the penetration of criminal procedural law with international and European influence” (Becker et. al, 2016: 7).

It is impossible not to notice the active penetration of international legal regulations through criminal procedural law into the activity on initiating, investigating, considering and resolving criminal cases. The need to take into account international legal provisions by a law enforcement officer is also noted by German specialists, speaking about the internationalisation of criminal procedural law (Rieß et. al, 1999: 23, 27). As a result of the internationalisation, an international legal paradigm of modern criminal procedure has developed, that is, a paradigm based on the norms of international law. In our opinion, the international legal paradigm implies a system of ideas of the legislator, enforcer and society about law and activities based on it, as well as the corresponding values in the context of generally recognised principles and norms of international law.

In the light of the content of the provisions of Art. 8 of the Constitution of the Republic of Belarus[1], the agencies conducting the criminal procedure are obliged in their activities to take into account the priority of the generally recognised principles of international law. Accordingly, we can talk about the fact that these principles penetrate into the modern criminal procedure of Belarus, although some authors indicate that these principles should be normatively enshrined in international law (Сільчанка, 2012: 22). But if criminal procedural norms are constructed in the context of international legal norms and generally recognised principles of international acts, then the very activity of the agencies conducting the criminal procedure is subordinate to the international legal paradigm.

As Immanuel Kant pointed out, the political idea of state law implies that it should be “considered in relation to an international law that is universal and has power”. However, at that time he believed that “experience tells us ‘Don’t waste time hoping for that to happen’” (Kant). The international legal paradigm of criminal procedure leads to the need to constantly correlate the norms of national criminal procedural law with indefinite international standards that are not clearly enshrined in any one international legal act, which allows each researcher to refer to different formula. The norms of national criminal procedural law are analysed through the prism of the norms of international law (not always valid for the Republic of Belarus) not only by scientists, but also by the judges of the Belarusian Constitutional Court.

Under the influence of the emerging paradigm, the science of criminal procedure has to be rebuilt as well. And in this case, it will be required to expand and transcend the main topics it studies. As Maximo Langer points out, in the comparative legal aspect of the criminal procedure, one should take into account the achievements of science in the study of issues of globalisation of law, international relations and postcolonial research (Langer, 2014: 727). However, the change of paradigm at the legislative level, in the science of criminal procedure, is largely ahead of law enforcement. This is due to the need to change the mentality of enforcers.

Some authors highlight, first of all, the *international Human Rights paradigm* of the modern criminal procedure (Bassiouni, 2015: 67; Dearing, 2017: xi). In this case, it is meant that criminal justice should protect not only and not so much public interests as individual human rights enshrined in international legal acts. As Albin Dearing points out, criminal justice is in a state of transformation, moving towards the paradigm of human dignity in the context of the emerging

1 “The Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of legislation therewith”.

global humanistic society. And then he continues: “we are not talking about international law, not about legal relations developing between peoples, but about the universal rights of individuals to effective protection from impunity, the rights guaranteed by the world community of people and applied in practice by state institutions” (Dearing, 2017: 298). However, in our opinion, we cannot be limited only to a separate, albeit very important, element of international legal penetration into the criminal procedure. The immersion of the institute of international legal assistance in criminal matters from the international level to the level of national regulation is another important point in the transformation of the paradigm of the criminal procedure. But this institute is primarily aimed not at ensuring human rights, but at a joint fight against criminal acts based on the confidence of states. Although trust in a foreign criminal procedure also largely depends on the observance of generally recognised principles of international law, including those related to ensuring human rights.

3. Principles for the provision of international legal assistance in criminal matters

International legal standards predetermine common principles of international legal assistance in criminal matters. The latter are inherent for all types of such an assistance. Based on the essence of the activity under research, and also, taking into account the opinion prevailing in the doctrine (Волженкина, 2001: 69–72; Глумин, 2005: 23), the principles of international legal assistance in criminal matters can be roughly divided into three groups: *universal principles of international law* (the principle of sovereign equality of states, the principle of reciprocity, humanism, respect and observance of human rights and freedoms (Ursu, 2022: 134), the fulfilment in good faith of the obligations assumed by a state, protection of the rights of citizens abroad, the principle of interstate cooperation, non-interference in internal affairs, etc.), *general principles of national criminal law and procedure* (legality, ensuring the inevitability of responsibility for a committed illegal act, ensuring the suspect, accused and the convicted person of the right to qualified legal assistance, the administration of justice on the basis of adversariality and equality of parties, stimulation of law-abiding behaviour of citizens, etc.), *special principles* (counteraction only to common crimes, dual criminality, the principle of specialty). First of all, it is necessary to dwell on the principles directly related to a human.

Humanism implies the recognition of the value of a person as an individual, the recognition of his right to free development and the manifestation of his

abilities. In the course of providing international legal assistance in criminal matters, attention is needed to each person (a participant in a criminal procedure or a person involved in the process of providing such an assistance), respect and a good attitude towards a human being. At the core, this principle extends from national and international criminal law. International acts based on the principle of humanism and other generally recognised principles instruct the political elite to ensure and protect human rights and freedoms (Титова, 2017: 90).

The *principle of respect and observance of human rights and freedoms* implies the obligation of the state to respect and observe human rights and freedoms, as well as to promote their universal respect and observance, i.e. to act in the spirit of the Universal Declaration of Human Rights. First of all, in the sphere of criminal procedural legal relations, it is necessary to strictly observe the right of every person to personal inviolability. That is why a person can be wanted for detention in another state for the purpose of extradition only on the basis of the relevant act of the competent authority of the requesting state.

States commit themselves to respecting historically achieved human rights standards and strive to ensure that officials of agencies conducting criminal proceedings do not violate human rights and freedoms during their activities. On the other hand, the principle of respect and observance of human rights and freedoms is implemented by ensuring the extradition of persons accused of committing acts recognised as crimes in accordance with international conventions and violating fundamental human rights and freedoms.

It should be also understood that the special principles applied within the provision of international legal assistance do not turn into procedural rights of an accused. As noted by the Federal Supreme Court of the Federal Republic of Germany, “the principle of specialty serves only to protect the rights of the requested state for extradition, ... but not to protect the extradited person, which cannot receive any rights from it” (Esser, 1993: 135). At the same time, judicial practice shows that fundamental human rights (personal inviolability, the right to defence, *ne bis in idem*) may be violated during extradition. And the requested person should be able to protect such rights.

3.1. Personal inviolability

The content of the general (constitutional) principle of the criminal procedure, the inviolability of the person, is based on the norm of Art. 25 of the Belarusian Constitution. Within the framework of a social contract, the state guarantees and ensures the freedom and inviolability of the person. In this case, the grounds

of restriction and deprivation of personal freedom, as well as the corresponding procedure, can be provided exclusively in the law. Taking into account the constitutional norm, the provisions of the Belarusian Code of Criminal Procedure (hereafter referred as CCP) on the principle of personal inviolability (Art. 11), on the detention (Chapter 12), the application of a pre-trial restriction in the form of arrest (Art. 116-119, 126, 127), as well as on appeal the application of these measures of criminal procedural coercion (Art. 143-146) have been designed. These provisions are extended to cases of imprisonment of a person subject to extradition.

The procedure for the application of arrest has not undergone significant changes with the adoption of the new (post-Soviet) CCP. As before, in the Soviet period, in order to apply this pre-trial restriction, the person conducting the inquiry and the investigator need to authorise the decision by the prosecutor. The prosecutor and the court can make the respective decision independently.

In urgent cases, when a foreign state authority needs to detain and take into custody a person who will subsequently be requested for extradition, before sending a request for extradition, a special request is sent to the Republic of Belarus to apply a pre-trial restriction to the person with the aim of his (her) extradition. The request must be accompanied by the legal basis for the detention (arrest) of the person in a foreign state (certified copies of the relevant documents). In addition, a foreign state authority must submit a written undertaking on the subsequent submission of a request for the extradition of this person. In the framework of the international search for persons, as a request for the application of a pre-trial restriction to a person prior to the request for extradition, an Interpol (International Criminal Police Organisation) notice “Wanted International Criminal (Arrest with the Purpose of Extradition)” may be applied. This practice can cause problems with the protection of the rights of affected persons (Самарин, 2020: 19).

Detention and pre-trial restriction of a person prior to the receipt of a request for his extradition is possible in exceptional cases and cannot be the norm. Such exceptional cases aren’t named in CCP, but, to our mind, they should include: the existence of grounds to believe that the person will leave the territory of the Republic of Belarus, or the existence of grounds to believe that the person will continue criminal activity, or the continuation of the crime, etc.

Thus, the detention can be applied within extradition procedure in Belarus to a person:

- in respect of which a decision has been made to execute the request of a foreign state authority to apply a pre-trial restriction with the aim of extradition;
- in respect of which a resolution was issued on the execution of the request of a foreign state authority to extradite him (her) for criminal prosecution and (or) serving a sentence;

- in connection with being on the international wanted list for the purpose of extradition.

The maximum period of detention on these grounds corresponds to the period specified in Art. 108 (3) of the CCP and is 72 hours from the moment of actual detention. Upon the expiration of this period, the detained person is either released, or a pre-trial restriction should be applied to him (her).

Until the extradition is granted or refused, a pre-trial restriction may be applied to the requested person in the form of arrest or house arrest. Prior to the issuance of an order on the application of a pre-trial restriction to a person who is on the international wanted list with the aim of extradition, the prosecutor or his deputy are obliged in each case to take explanations from the person regarding the fact that he was put on the international wanted list. These explanations may contain an indication of the existence of grounds for refusing to execute the subsequent request of a foreign state authority for the extradition of the person. There is no such obligation in the CCP in relation to a person subject to arrest on the basis of a decision to execute a request from a foreign state authority. This provision does not fully comply with the principles of procedural economy and equality of persons before the law.

The prosecutor or his deputy, who issued the relevant decision, must notify relatives of the person, if they live on the territory of the Republic of Belarus, within 24 hours after the application of a pre-trial restriction to a person in accordance with Art. 512 of the CCP. In our opinion, this Article unreasonably narrowed the right of an arrested person to notify family members or close relatives about the place of detention.

Based on the provisions of Art. 60 of the Constitution of the Republic of Belarus (“*everyone is guaranteed the protection of his rights and freedoms by a competent, independent and impartial court...*”), we believe that the most correct thing is to arrest a person with the aim of subsequent extradition only on the basis of a court decision. The authorisation of an arrest by an independent court is recognised as the most correct and effective in the literature (Данилевич, Петрова, 2008; Василевич, 2021: 15–17) as well as by the Constitutional Court of the Republic of Belarus in decision No. R-423/2009 dated 28.12.2009. At the end of 2020, a draft law was prepared, which was supposed to introduce a judicial procedure for authorising an arrest in Belarus. The draftspersons proposed to implement the possibility of applying an arrest on the basis of a court order, adopted at the request of an agency of inquiry, a person conducting the inquiry, an investigator or a prosecutor. The draft is still under discussion.

We should understand that a prosecutor often makes his (her) decision *in absentia*, not only without questioning the person, but also without familiarising

himself (herself) with the case, therefore, the prosecutor cannot always assess the person's danger to society and is formally guided only by the norms of the CCP.

Thus, on the territory of Belarus, a citizen of Russia S., who was on the interstate wanted list by order of the Krasnosulinsk court, for committing theft, was detained and taken into custody. Subsequently, the Russian side reported that the request for S.'s extradition would not be sent, since the criminal case against her was terminated due to the change in the situation.

In 2005, a citizen of Armenia M. was detained and taken into custody on the territory of Belarus, but the Prosecutor's Office of Armenia reported that the criminal case against him "is subject to termination upon expiration of the statute of limitations"[2].

These persons were unjustifiably deprived of their liberty and did not have the opportunity to exercise their right to defence. In order not to create the preconditions for making a decision, based on "corporate" interest, changes should be made in the procedure for applying the pre-trial restrictions as part of the extradition procedure. Even Ivan Fojnickij, our fellow countryman and a leading theorist of criminal law in the late Russian Empire, pointed out that the detainees, "caught by criminal prosecution, often fall into such a depressed state of mind or so lose their composure and worry that they cannot give themselves a proper account" for the meaning the circumstances of the case (Фойницкий, 1996: 61). The detainee must be provided with conditions for the exercise of the right to defence.

3.2. Right to defence

The most important human right of a person subject to extradition is the right to defence. A number of provisions of Art. 507 of the CCP serve as a guarantee of the exercise of this right by a person detained or to whom an arrest, a house arrest has been applied within the extradition procedure:

- to know about the circumstances that served as the basis for his (her) detention or the application of pre-trial restrictions;
- to receive a written notification of his (her) rights;
- to express his opinion and give explanations;
- to have one or several defence lawyer(s), etc.

For the first time at the legislative level in Belarus, this person is given the opportunity to express his opinion and give explanations. This right can be exercised when taking explanations by the prosecutor, as well as in court. The subject

2 Archive of the General Prosecutor's Office of the Republic of Belarus [2002] Case Nr. 25/21-2002; [2005] Case Nr. 25/236-2005.

of the person's explanations is not a charge brought against him (her) in a foreign state, but the observance by a foreign state authority of the conditions for extradition of the person and the existence of grounds for refusing to execute such a request. It is also important to obtain legal advice from a lawyer at the expense of the local budget from the moment of detention or the application of an arrest (but not house arrest). Such a lawyer may subsequently be chosen as a defence lawyer of the person. In addition, despite the absence in the list of the right to participate in the consideration by the court of complaints against a decision to extradite the person to a foreign state, such a person should have this right, based on the provisions of Art. 516 (1) of the CCP (but only if the person himself (herself) has filed a complaint).

The person can implement his (her) rights specified in Art. 507 of the CCP in person or through one or more defence lawyers. Although a number of rights can be exercised only by the person personally (clauses 1, 3, 6, 10 of Art. 507 (1) and clause 2 of Art. 507 (2) of the CCP). With the introduction to the CCP of the Section XV with provision on international legal assistance the legislator expanded the functions of the defence lawyer. Now the defence lawyer carries out procedural activities in order to ensure the rights and interests of a person within the extradition procedure (clause 9 of Art. 6 of the CCP). At the same time, the legislator has expanded the criminal procedural function of defence by introducing a foreign element into the criminal procedure of the Republic of Belarus, which is not entirely correct. Despite the name "defence lawyer", this person does not oppose the prosecution, since the agencies of the Republic of Belarus conducting the criminal proceedings are not entitled to resolve the issues of the extradited person's accusation on the merits. The task of such a lawyer is to monitor compliance with the legislation of the Republic of Belarus and international treaties of the Republic of Belarus within the extradition procedure, the observance of the rights (including procedural) of persons.

When determining the scope of persons admitted as defence lawyers of persons subject to extradition, the legislator is guided by the general provisions of the criminal procedure of the Republic of Belarus (Art. 44 (2) of the CCP), which proceed from the fact that only professional lawyers – Belarusian advocates can defend in criminal proceedings. Considering that the CCP has equalised the rights of the parties, all conditions must be created to establish a trusting relationship between the client and the defender, including by allowing the involvement of a subject close to the client of the cultural and linguistic space for consulting on legal issues.

In order to exercise his (her) functions to protect the rights and interests of the persons within extradition procedure the defence lawyer is endowed with a

number of rights. Such a lawyer independently exercises his (her) rights, but he (she) chooses the means and methods of defence, often taking into account the will of the client. If we compare the rights of the defence lawyer and the mentioned represented persons, then we can come to the conclusion that they are derived from the rights of the latter. However, unlike the client, the defence lawyer has the right, regardless of the judge's discretion, to participate in the consideration by the court of complaints about the decision to extradite the person to a foreign state, as well as to demand that the records of the circumstances be entered into the minutes of the court session, which, in his (her) opinion, should be noted.

3.3 Ne bis in idem

The principle *ne bis in idem* is known to the national criminal procedure, but the CCP extends it, first of all, to domestic court decisions and similar decisions (par. 8, 9 of Art. 29 (1) of the CCP). It implies a ban on the implementation of criminal prosecution and the issuance of a sentence in relation to an act that has already been the subject of an effective sentence (a court ruling (resolution) to terminate criminal proceedings, a decision of an inquiry agency, investigator, prosecutor to terminate criminal proceedings or on refusal to initiate a criminal case). The meaning of this principle is not just to prevent repeated punishment for the same unlawful act, but also to put a barrier to repeated criminal proceedings (for example, in the case of an acquittal).

As a general rule, *ne bis in idem* has no international effect and the existence of a sentence for the same act in a foreign state does not interfere with criminal proceedings in Belarus. Exceptions may be provided for in international treaties. So, on the basis of Art. 7 (1) of the Treaty on the Specifics of Criminal and Administrative Liability for Violations of the Customs Legislation of the Customs Union and the Member States of the Customs Union, 2010, the principle is valid on the territory of the Eurasian Economic Union in relation to violations of the customs legislation of the Customs Union and the legislation of the Member States, control over compliance with which is entrusted to the customs authorities, for the commission of which criminal liability is provided. In addition, court decisions of foreign states in criminal cases may have prejudicial significance on the territory of Belarus (Art. 8 of the Criminal Code of the Republic of Belarus).

However, the rules on international legal assistance also contain restrictions based on the *ne bis in idem* principle. There is no general prohibition applicable to all types of assistance. But the existence in the Republic of Belarus of an un-

lifted decision on the refusal to initiate a criminal case or on the termination of criminal prosecution, proceedings in a criminal case, or a sentence or decision (ruling) of the court of the Republic of Belarus on the termination of criminal proceedings for the same act is an obstacle to providing assistance in the form of extradition of a person to a foreign state as well as transit of an extradited person (clauses 3, 8, 9 of Art. 484 (1), Art. 486, Art. 489 of the CCP). This is an imperative ground for refusal to execute the corresponding request of a foreign state authority.

The application of this principle can be seen in practice. Thus, the Deputy Prosecutor General of the Republic of Belarus by his decision dated November 20, 2014 satisfied the request of the General Prosecutor's Office of the Russian Federation to extradite a citizen of Ukraine S. for the execution of the judgment of the City Court of the Russian Federation dated March 17, 2008. S. claimed in the complaint that there are no legal grounds for his extradition to the Russian Federation. Among other things, for the acts committed in the Russian Federation, he was already convicted on the territory of Ukraine, served his sentence, and arrived in the Republic of Belarus with his family for permanent residence. Having considered the complaint, having examined the submitted materials, the judge of the Supreme Court of the Republic of Belarus found that S.'s complaint was not subject to satisfaction. The regional court correctly found S.'s arguments about his conviction in 2007 on the territory of Ukraine for a crime committed in the Russian Federation and serving the sentence imposed as unreasonable, since they are refuted by the materials presented, the reliability of which is beyond doubt. According to the materials, the criminal case against S. was pending at the City Court of the Russian Federation. In this case, S. was not prosecuted on the territory of a foreign state[3].

If we analyse the text of national legal provisions on inclusion of time spent according to the sentence imposed by the judgment of a foreign court, we can see that recognition is possible only in relation to the already served sentence. In our opinion, it is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension, which can be seen in individual international treaties aimed at combating certain types of crimes. As a basis, we can take the requirements developed by the Court of Justice of the European Union in its decisions:

– the "same person" requirement – it concerns the same defendant (case 467/04);

3 Постановление Верховного Суда Республики Беларусь [06.01.2015] КонсультантПлюс. Беларусь.

– the “*bis*” requirement – it concerns a final decision; can be also accepted an out-of-court settlement with the public prosecutor (joined cases C-187/01 and C-385/01), a court acquittal based on lack of evidence (case C-150/05), etc.;
– the “*idem*” requirement – it concerns the same acts: the identity of the material acts in the sense of “a set of concrete circumstances which are inextricably linked together in time, in space and by their subject-matter” (case C-436/04);
– the “enforcement” requirement – the penalty has been imposed, it has been enforced, it is in the process of being enforced or can no longer be enforced;
– the “criminal nature” requirement – the thin line existing between (punitive) administrative sanctions and criminal sanctions[4].

4. Conclusions

The international legal paradigm implies a system of ideas of the legislator, enforcer and society about law and activities based on it, as well as the corresponding values in the context of generally recognised principles and norms of international law. By now, we can talk about the existence of an international legal paradigm of the criminal procedure. This paradigm includes the influence of international human rights law. Penetration of international legal regulations into national criminal procedural legislation is caused by the need to bring the relevant rules to the attention of the law enforcers. The state’s failure to comply with the relevant standards may lead to the limitation of the provision of international legal assistance in criminal matters on the basis of reciprocity on the part of other members of the world community.

The necessity of correlating constitutional norms on the inviolability of the person with the traditions of national criminal procedural law, as well as international legal acts in this area has been established in Belarus. A to-be-extradited person should be deprived his (her) personal freedom solely on the basis of a reasoned court decision. A person should be guaranteed information about both his rights and the reasons for depriving him of his fundamental right.

4 The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of the Court of Justice of the European Union, available at: http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/case-lawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20(Sept.%202017)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf, accessed on 25 September 2022.

Considering that the CCP has equalised the rights of the parties, all conditions must be created for the establishment of a trusting relationship between the client and the defence lawyer, including by permission of involvement of a subject close to the client's cultural and linguistic space in order to consult the person to be extradited.

It is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension, which can be seen in individual international treaties aimed at combating certain types of crimes. As a basis, we advice to take the requirements developed by the Court of Justice of the European Union in its decisions.

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THE ROLE OF NON-LETHAL WEAPONS IN PUBLIC SECURITY

After World War II, “human rights” became a very vital issue all over the world, and with the publication of the Universal Declaration of Human Rights by the United Nations at the end of 1948, the subject gained an international status. In this context, the level of power to be applied by law enforcement officers in preventing the incidents and the equipment they use have started to be discussed. Equipment called “non-lethal weapons - NLW” began to be used in mass actions to end the incidents by causing less harm to both activists and third parties who were not involved in the action. The primary purpose of using NLWs is

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to minimize the severe human consequences during the intervention process to deter individuals from participating in the actions and to minimize the damage. Although it is called a non-lethal weapon, some negative consequences can be encountered due to the wrong or disproportionate use of this equipment, which can undermine the trust of citizens, who are not directly related to the events, in the state and naturally, the law enforcement forces, and the countries' prestige can lose. For this reason, it is necessary to know and teach the issues needed to effectively use non-lethal weapons that give new capabilities to law enforcement officers. This study aims to examine the non-lethal weapons used by law enforcement officers to investigate the legal regulations on these weapons and their ammunition at the international and national level and to provide basic information on the types of NLW and their use. The scarcity of academic studies on non-lethal weapons in the national literature increases the importance of this study. As a result of the research, it has been determined that the main way of harming people and the environment as little as possible in the process of intervention in social events is the conscious use of NLWs by law enforcement officials.

Keywords: non-lethal weapons, chemical weapons, less deadly weapons, social intervention, non-lethal weapon legislation.

1. Introduction

With regards to weapons, technologies that are often the first to come to mind are “lethal weapons”. However, there is also a technology that does not aim to kill and focuses only on weakening the target. This technology is defined as a non-lethal weapon. Nonlethal weapons (NLWs) are weapons that are less likely to kill a living target than conventional weapons and are intended to incapacitate or repel personnel without injuring them. NLWs are now considered for the full spectrum of conflicts from major theater wars to personal defense. Chemical agents that can be used as NLWs include riot control agents (RCAs), calmatives, and various types of disabling biochemical agents such as incapacitating agents (ICAs) (Balali et al., 2014). A significant number of weapons are used for military and policing purposes, which both academics and practitioners call “non-lethal” or “less deadly”. In recent years, non-lethal weapons have been increasingly used for widespread application as a way of promoting national security. Encouraged by technological developments that allow for forms of power that were not conceived in previous periods, this new tool reveals new ways of managing struggle and

conflict in today's world. Weapons such as tasers, water cannons and dazzling lasers are important and prominent examples of "non-lethal" technology. Countries have strongly encouraged the deployment of such technology as a more humane alternative to lethal power, however; history showed that non-lethal weapons do not contain an absolute zero probability of death. Non-lethal weapons can also cause death from misuse, often causing serious injuries and high levels of pain. Hence, there are human rights concerns regarding the use of such weapons.

2. The Development of Non-Lethal Weapons

The first historically known agent from agents in the category of non-lethal weapons, Chloroacetophenone was first synthesized in 1870 by the Germans. It is used as a riot control agent (Riot Control Agent-RCA) due to its potency as a lachrymatory agent. It got its fame after World War I when it was given the trade name Mace, the first American manufacturer of CN devices and sold for personal and commercial protection. Generically, it is known as tear gas (Salem et al., 2014a).

CS, or o-chlorobenzylidene malononitrile, is the current major riot control agent (RCA) used by U.S. military forces. It was originally synthesized in 1928 by Corson and Stoughton, and the U.S. Army designated the compound 'CS' for the authors' initials. CS replaced CN, chloroacetophenone, in 1959 as the U.S. Army's premier RCA due to its higher safety ratio over CN (Salem et al., 2014b).

Increasing civil disobedience incidents, protests and demonstrations at that time started to force public security, and the concept of non-lethal weapons was introduced in law enforcement scenarios created to control riots. In these years, NLW technologies started to be supported by the United States of America (USA). In the report submitted by the President of the USA to the Law Enforcement and Justice Administration Commission in 1967, it was proposed to limit the use of lethal force by the police and it was aimed to increase the capabilities of the police for the use of NLW in the scope of the Street Law enacted in the USA in 1968. Riot control and elimination of the police were mentioned in most of the content of the book named "Materials and Techniques" published by Rex Applegate in 1969 (Davison, 2006). The USA, which is one of the largest producers of non-lethal technology, started using this term in the late 1990s. The primary purpose of non-lethal weapons, which are regularly used in weapon programs, is not to kill, but to neutralize the target (Hoffberger, 2017). Non-lethal technology should serve as an alternative to lethal power and contribute to the humanization of interven-

tions (Meron, 2000). In the same years, other countries such as Russia, China, Israel, France, and South Africa began investing large amounts in the development of non-lethal technology.

In this period, as a result of the developments in the military field, new spray systems were developed with the chemical irritant CS (Chlorobenzylidene Malononitrile), which led to the change of CN (Chloroacetophenone). Transition from the "rebellion" dimension to the "action" dimension in social events in terms of perception has also changed the dimension of the weapons used by the personnel during the intervention to social events. As a matter of fact, the armed forces, which maintain the social order, have started to use a wide variety of NLW's, such as batons (iron, plastic, wood) with a lower lethality index, plastic and wooden bullets, electroshock devices and chemical gases (Davison, 2006).

Despite the increased interest in non-lethal weapons, a generally accepted definition of this concept has not been put forward. According to the description made by the United States Department of Defense, non-lethal weapons are "designed to neutralize the target; These are weapons that minimize deaths, injuries and unwanted damages and are primarily desired to be used (Sheldon, 1999). In a similar definition made by the North Atlantic Treaty Organization (NATO), non-lethal weapons are referred to as "weapons designed and developed to neutralize the target with minimal unwanted damage or impact on the environment, with a low probability of death or permanent injury" (Casey-Maslen, 2010).

Fidler (2005) emphasizes that the concept should be changed to "less deadly" by some non-governmental organizations and researchers based on the deaths caused by the use of "non-lethal weapons".

There are also exaggerated views on non-lethal weapons (NLW). Sheldon (1999), as one of the biggest supporters of the NLWs, defines these weapons as weapons that aim to defeat an enemy's deadly power in a non-lethal way by destroying their aggressive capability and temporarily neutralizing the attackers.

Tumbarska (2017) states that although such a definition is wrong, it represents an important end of the conceptual spectrum. The description that was made shows the longstanding hope that non-lethal weapons can defeat an opponent without permanent damage to almost anything or anyone.

The non-lethal identity of a weapon comes not only from the way of use but also from its design. However, there are clearly no fundamental assumptions that these weapons have eliminated or minimized deaths. In order to maximize the flexibility in design, a lethal minimum quantitative threshold has not been determined (Mandel, 2004). Also, Mandel (2004) states that the definitional prob-

lem of non-lethal weapons poses some problems, and asks the following questions to discuss whether a weapon is lethal or not: “Is a small explosive material designed to control and demolish structures and detonated away from known human populations, a non-lethal weapon? Is it correct to classify a foam barrier as a weapon? How can one discuss the amount of damage a weapon would be appropriately classified as non-lethal? “

Because of all this it becomes almost impossible to develop a general definition that clearly shows how to distinguish between non-lethal and lethal weapons. However, despite this inherent uncertainty, it is possible to gain a general understanding of what is included and excluded from the concept of a non-lethal weapon.

3. Classification of Non-Lethal Weapons

While there are many ways to subdivide non-lethal security tools, several common typologies can be mentioned. It is possible to classify the effects of the non-lethal weapon according to the acoustic, biotechnical, chemical, electromagnetic, mechanical and optical forms of the technology. In another classification, a distinction is made between target types. In this classification, a distinction is made as counter personnel measures (including cleaning the facilities/structures of staff, neutralizing individuals, influencing crowd control, etc.) and counter material measures (including disabling equipment and facilities, blocking an area from access by vehicles, etc.) (Mandel, 2004). The classification made by Bedard (2002) is similar to the classification made by Mandel, but Bedard categorizes non-lethal weapons against personnel, against materials and equipment and against infrastructure. Fidler (1999) states that there is serious complexity in describing exactly what non-lethal weapons are, and therefore it is difficult to classify. Stating that some classifications are based on technological differences, Fidler suggests that a distinction can be made according to whether they use chemicals, biological materials, electricity, acoustics or electromagnetism as operational technology. According to Fidler, non-lethal weapons can be classified as acoustic, biological, chemical, digital, electrical, electromagnetic, environmental, kinetic, optical and psychological weapons (Table 1).

Table 1. *An Example of Classification for Non-lethal Weapons According to Their Technology*

Technology Type	Examples	Target
Acoustic	- High Frequency Sound	Staff
	- Low Frequency Sound	Staff
	- Multiple Complex Sound	Staff
	- Treble Sound	Staff
Biological	- Biodegradable Microbes	Materiel
	- Disease Microbes	Staff
	- Disease Carrying Arthropods	Staff
Chemical	- Riot / Chaos Control Agents	Staff
	- Sedatives	Staff
	- Nausea / Vomiting Indicators	Staff
	- Deodorizing Agents	Staff
	- Abrasives	Materiel
	- Super lubricants	Materiel/Staff
	- Adhesives	Materiel/Staff
	- Brittle Agents	Materiel
Digital	- Computer Viruses	Materiel
	- Computer Worms	Materiel
Electrical	- Electric Shock	Staff
	- Electrical System Disruptors	Materiel
	- Electronic Noise Makers	Materiel
Electromechanical	- Electromagnetic Pulses	Materiel/Staff
	- Microwaves	Materiel/Staff
Environmental	- Weather Changers	Materiel/Staff
	- Ionospheric Modification	Materiel
	- Herb Killers	Staff
Kinetic	- Water ball	Staff
	- Air Cannon	Staff
	- Blind Object Mines	Staff
	- Blind Object Ammo	Staff
Mechanic	- Iron Thorn	Materiel
	- Robots	Materiel
Optical	- Lasers	Material / Staff
	- Flash Bombs	Staff
	- Cloakers	Materiel
	- Holographic Projections	Staff

Source: Fidler, 1999: 61

4. Non-lethal Weapon Types

There are many types of NLWs. Batons, gas cartridges and water cannons (TOMA) can be given as examples of the NLWs, which are the most known among the people. Apart from these, there is a wide range of products from chemical irritants to electric weapons, from adhesive foams and gels to weapons using laser technology.

The batons, which are defined as “short, thick stick” and “sticks made of rubber used by the police” in the Turkish Language Association’s Contemporary Turkish Dictionary, are used by law enforcement officers to ward off protestors and neutralize them. The use of batons creates a physical pain as well as a psychological effect on target people (İBB, 2019). The use of batons is included in the expression of the use of material force in Article 16 of the Law on Police Duties and Authorities (PVSK) No 2559:

“Material power; It refers to handcuffs, batons, pressurized water, tear gas or dust, physical barriers, police dogs and horses and other service vehicles used by the police against people who resist or outside of body force.” (PVSK, Article 16).

Batons are made of wood and plastic materials and polycarbonate materials due to their flexibility and lightness. Generally, it is divided into three classes as long Cop (70-90 cm tall), medium Cop (50-60 cm tall), short Cop (30-45 cm tall).

The first use of chemical weapons in the modern sense was in the First World War. During the war, the Germans attacked with chlorine and mustard gas and the French with phosgene gas. Although the use of chemical weapons is prohibited with the Geneva Protocol signed after the war, it is known that Italy used chemical weapons in Ethiopia, Japan used them in Manchuria and the USA in Vietnam (Deniz, 2018).

Tear, aggressive and emetic chemical gases are used during the intervention to social events. These chemical compounds, known as gas bombs and used to neutralize the masses, are named according to their structure and abbreviations are placed on the gas bomb cartridge and capsule. There are four types of gas bombs commonly used (TMMOB, 2019):

CS - Chlorobenzylidene Malononitrile ($C_{10}H_5ClN_2$): In addition to its liquid form, CS can also be found in the form of a white, crystalline powder. After exposure to this gas, its effect occurs between 20-60 seconds and disappears within 10-30 minutes. These gases can be found in the form of grenades as well as in 37/38 mm gas cartridges (Evancoe, 1993).

CN- Chloroacetophenone (C_8H_7ClO): When I am exposed to CN, a chemical gas with apple blossom scent, tears occur and a burning sensation occurs in

other affected areas. This chemical compound, which causes redness on the surfaces it touches on the skin, causes tears in the eyes, blood, allergies, etc. While it shows effects, its effects begin to disappear when you go out to clean air (Deniz, 2018).

CR-Dibenz [b, f]1,4-oxazepine (C13H9NO) is more potent but less toxic than CS. The irritating effects on the eyes and skin irritation are more transitory than those of other RCAs such as CS. Vesication or contact sensitization is not associated with CR exposure. Part of its high safety profile is due to its low volatility, which mini- mizes its effects on the pulmonary system. It does not degrade in water and thus persists in the environment. The effects on the skin or eyes do not appear to be persistent. Reversible slight redness and mild chemosis were observed in rabbit eyes after a single application of a 1% solution of CR, and after the application of a 5% solution of CR, moderate conjunctivitis with normal corneal and eyelid tissues was reported. On contact with the skin, CR elicits transient erythema lasting for 1–2 h, with a burning sensation lasting 15–30 min on the exposure site but without any vesication, contact sensitization, or delay in the healing of skin injuries, even under adverse conditions. The burning sensation is more intense and lasts longer on exposure to CR than CS. Many areas of the skin are resistant to irritation, including the ears, nose, scalp, palms of the hands, knees, and the lower legs (Balali et al., 2014).

DM: Chlorodihydrophenarsazine ($C_{12}H_9AsClN$): Being a less used agent than other gases, DM can cause nausea-vomiting and diarrhea.

Oleoresin Capsicum: It is a water-insoluble oil that is soluble with organic solvents, obtained as a result of the extraction of chili pepper or cayenne pepper, known as chili pepper. At the end of the dissolution process, with the evaporation of the solvent, a wax-like substance remains and this substance is called “Oleoresincapsicum”. Since natural pepper gas production requires an expensive technology, it is also produced synthetically (TTB, 2011).

Various types of gas are used extensively by security forces all over the world under the name of tear gas or demonstration control agents to suppress social events. The most important effects of these NLWs are; They cause severe irritation on the eyes, nose, respiratory tract and skin.

These NLWs, which are used as shock guns, are called taser guns, and these devices can deliver electrical current to the target person for a period of 2-5 seconds. Taser guns are devices that are designed to neutralize a person through short and repetitive electrical impulses that are shaped like a barb and distributed through electrodes attached to insulated wires (Kleinig, 2007). While 2 seconds of current may be sufficient to neutralize a general aggressor or a person who

poses a danger, the duration of the current can be increased by 5 seconds for people who are out of control, insane or are in great danger.

One of the most used intervention tactics in social events is the dispersal of the activist group using water cannons. One of the tools used for this purpose is TOMA (Social Events Intervention Vehicle) and the other is water panzer. These tools can throw the water very far with pressure. The aim here is to disperse the more passive activists in the activist group. In addition, they undertake violent acts (Molotov, explosives, flammable materials, etc.). There is also the ability to throw gaseous water mixed with the gas substance according to the action style of the activist group (Keskin, 2012). The effectiveness of TOMAs can be increased by using chemicals that are not harmful to health.

These NLWs, which are used to capture criminals who attempt to escape, receive great support from the public because they enable them to capture the target without harming them. Nets with different features can be used in net shooting rifles. Nets with pepper powder placed on them have the ability to neutralize the target even if the net is not fully entangled in the target. Stun webs contain 60 KV of electricity, neutralizing it with the current on its target. Blocking webs that enable the detection of the target with a sensor placed at the tip of the web bullet and open when it approaches the target are also used with these weapons (Flint, 1995; Grudowski, 1995).

Kinetic impact bullets, which have almost no lethal effects compared to lethal ammunition fired with firearms, are a special ammunition with high deterrence due to the pain it inflicts and is one of the most accepted measures in the world in terms of use. These non-lethal weapons (NLW), whose bullet core or shots are completely made of rubber in place of metal, do not cause permanent damage to muscle tissue when fired from distances over 10 meters. However, it is not recommended to be used at ranges below that distance, as it causes permanent damage for shots from closer than 10 meters. Many different NLWs such as rubber bullet, plastic bullet, impact bullet, baton round, bean bag round and attenuating energy projectile are used under the title of kinetic impact bullets (Deniz, 2018).

Dazzling weapons, a kind of energy weapon, are used by law enforcement agencies, especially against people in a moving vehicle. This kind of NLW can be used to capture moving targets from short distances up to several kilometers depending on the model.

Dazzling weapons, including tools such as laser or light emitting diodes (LED), can be used in high-risk cases especially as an alternative to firearms use. There are various mechanisms such as a rangefinder in the device to prevent the

target person from being blind. Dazzling weapons are generally used to deactivate the person in these situations. These devices are used only in exceptional situations, such as counter-terrorism operations, due to the possibility of burning eyes and causing permanent blindness (Deniz, 2018).

Sticky foam is one of the weapons developed for intervention in social events. Such foams harden immediately after being sprayed anywhere and prevent the movements of individuals. When the sticky foam is sprayed on an aggressive or demonstrator, it neutralizes the person or persons by sticking them to each other or where they are, thanks to the adhesive in its content (Fischetti, 1995). Based on its general chemical structure, 95% water and 5% polymer, adhesive slippery gels are a new product that can be used in the future to prevent a vehicle escaping by law enforcement or individuals who cause problems by trying to enter a building (Barry and Morganthau, 1994).

Weapons produced with laser technology are products that are in the NLW category and cause serious anxiety. Laser guns, which are adjusted to cause temporary blindness, cannot show the desired effect if the target has night vision binoculars or a similar product in the eye of the target, or if there is a device used by special teams and army units (Fischetti, 1995).

5. Legal Regulations Regarding Non-Lethal Weapons in the World and in Turkey

The increasing spread of non-lethal technology in both military and policing contexts has become an issue for international lawyers from the perspective of humanitarian law and human rights law (Hoffberger, 2017). The dominant philosophy of international law is positivism. For a long time, in the field of international law, the development and use of weapons that cause unnecessary injuries or unnecessary suffering has been studied.

Prohibiting the use of explosive loads lighter than 400 grams and signed in 1868, St. Petersburg Declaration was the first international agreement to impose restrictions on the conduct of the war. It is a fundamental document in this field, as it makes a logic that the needs of war must comply with the laws of humanity. While efforts to regulate new military technologies have been developed in the international arena in the last 150 years, there are two main ways in terms of law. The first is the determination of common principles and rules regarding all means and methods of war, and the second is the signing of international agreements that prohibit or restrict the use of certain types of vehicles (chemical and biological weapons, anti-personnel mines, etc.) (Tumbarska and Petkov, 2017).

Obligations and treaties to the international community are regulated by a combination of customary law. This may have important consequences for the law of war. Because small states are not strong in blocking the use of some technologies owned by the big ones. Therefore, weaker states may refuse to ratify international agreements or consent to the development of relevant norms (Ticehurst, 1997). However, a 2005 study on the Red Cross revealed that the principles and rules contained in treaty law were widely accepted in practice and greatly influenced the formation of customary international law. Many of these principles and rules are now part of customary international law. Therefore, agreements are binding for all states regardless of their ratification (Henckaerts, 2005).

Conventional, biological, and chemical weapon control regimes severely limit the potential use of non-lethal weapons. This limitation further exacerbates the problems identified by the concept of non-lethal weapons. Calling weapons non-lethal does not subject them to a lower international legal scrutiny in connection with gun control regimes. However, some important potentially non-lethal weapon technologies such as acoustic and electromagnetic weapons are not affected by current weapon control disciplines because they do not fall under any of the existing agreements on conventional, biological and chemical weapons. While the relevant principles can be derived from the conventional weapon regime applicable to acoustic and electromagnetic weapons, such a practice is not required under any existing agreement. At present, international legal analysis of the use of these weapons would essentially fall under the principles of customary international law, such as the duty not to cause unnecessary injury or unnecessary suffering (Fidler, 1999).

According to experts, international law does not provide sufficient clarity on NLW and treaties and other legal instruments have not been adapted to modern weapon capabilities (Koplow, 2005). An important fact to be aware of is that contrary to the potential military applications of NLW, which are mainly determined by international agreements, the potential use of non-lethal weapons by the police is largely subject to domestic law (Tumbarska and Petkov, 2017). The most important legal legislation authorizing the use of NLW in terms of international agreements is the European Convention on Human Rights (ECHR). Examples of the articles of the ECHR on this subject are the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), the right to respect for private and family life (Article 8), thought, conscience. and freedom of religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), prohibition of discrimination (Article 14) and the right to property (Protocol No. 1, Article 1). It is also stated within the scope of

the Convention that if any national law conflicts with the ECHR, priority will be given to the ECHR.

The basic laws, regulations and guidelines for the use of NLW in Turkey can be given as examples:

European Convention on Human Rights (ECHR), Constitution of the Republic of Turkey, Law on Meetings and Demonstrations No 2911, Provincial Administration Law No 5442, Law No 3201 on Police Organization (1937), Law No 2803 on Gendarmerie, Duties and Powers, 2559 Police Duties and Authority Law (PDAL) No.2692, Coast Guard Command Law.

Regulation on Police Riot Police, Regulation on the Implementation of the Law on Meetings and Demonstrations, Regulation on Duties and Powers of the Gendarmerie, Regulation on Judicial and Prevention Searches, Regulation on Apprehension, Detention and Statement Taking

Riot Special Team Directive, Directive on Preparing and Implementing Safety and Public Order Plans JGY 117 (1992), Directive Regarding Operations Procedures and Principles of Personnel Assigned in Social Events, Directive on Recruitment of Negotiators in Social Events, Gendarmerie Directive, Directive on Principles of Intervention to Social Events- 2013, Directive on the Use, Storage of Tear Gas, Gas and Defense Rifles and their Equipment and Ammunition and Training of User Personnel

Article 16 of the PDAL titled “Using Force and Weapons” paves the way for the police to use NLW such as batons, handcuffs, pressurized water, tear gases, tear dusts (Aydın, 2016).

6. Uses of Non-Lethal Weapons

The end of the cold war and the increase in the number of peace operations for regional conflicts brought new problems with it. It is discussed in military circles how to combat the uprisings and uncontrolled crowds that may occur in the operation area. One of the remedies suggested for the solution is the use of non-killing weapons. Although it is not possible to say that using these weapons alone will bring a solution in all cases, they provide some options to decision-makers.

NLWs are weapons that can be used in all stages of peace, tension, post-operational stabilization due to their features. These operations involve close and constant contact between friendly forces and non-combatant civilians. Some non-combat military operation scenarios involve paramilitary forces or armed groups that pose a real but misidentified threat. In these situations, the military

forces' task is more directed towards prevention. In other words, military forces successfully pursue their duties by preventing individuals or groups from carrying out activities aimed at disorder and pillage or assault, harassment and other threats.

Changing values, expectations and most importantly, humanity, whose level of consciousness and education increases, will be both the target and the user of these weapons. Knowing in which areas these weapons can be used will be a decisive element in understanding them and developing strategies for them. In this context, the development of systems that can create an effect beyond rubber bullets or tear gas bombs with rapidly developed technologies and that will paralyze the whole country, even beyond the individuals, is increasingly on the agenda. The increase of local turmoil in today's world is not only directed towards peace operations, but also aimed at bringing stability and peace under permanent control. In this respect, although these weapons are used for now and predominantly in local events, it will also make it possible to use the varieties that are being developed for strategic purposes.

NLWs are used effectively in various task areas. Some of those; to neutralize the agitators in the crowd, to keep the angry crowds under control, to appease individuals in cases where law enforcement intervenes, to separate the conflicting groups or to create forbidden zones, to neutralize the infrastructure, to neutralize the command, control, communication, computer and intelligence systems Helping to intervene in hostage-taking terrorists, in the transfer of criminals, in preventing illegal settlements, in inter-tribal fights, in patrols, in guard places, in social events, in suppressing prison events, in the control of chaos (field and water fight, honour issues, etc.), the resistance of those who resist using force It is known as task areas such as crushing.

Although the areas of use of the NLW by law enforcement officers are limited to the aforementioned areas, it is possible to use these weapons in situations that authorize law enforcement officers to use force. However, while intervening in any event during this use, it should be used within the legal framework and in a measured way.

In Turkey, the principles of using NLW are applied in line with the ECHR. Convention on the protection of human rights and fundamental freedoms, the member states of the Council of Europe; It is the document that strongly expresses their commitment to the values of democracy, peace and justice and the respect for the fundamental rights and freedoms of the individuals living in these countries through these values.

7. Conclusions

In all countries of the world, there are some differences between the violence that law enforcement officers use in their operations against actions. However, the essence of the work is primarily to neutralize those who are in the focus of action, to affect those who are not in the primary level with the action from the operations as little as possible, and to keep the environmental damage to a minimum. Since the second half of the 20th century, the importance given to human rights has started to increase gradually in the world, which has led law enforcement officers to reconsider the methods of intervention in the protests and the level of violence they apply. Studies to investigate less lethal weapons led to the creation of a category called non-lethal weapons in 1990. These weapons, defined as NLW, have also changed the size of the weapons used by the personnel during the intervention in social events. Over time, various NLWs, such as batons with a lower lethality index, plastic and wooden bullets, electroshock devices, and chemical gases, have been used by law enforcement officers. Before any intervention in social events, an effective negotiation process must be experienced by law enforcement agencies. In case a consensus cannot be reached with the negotiations, the continuation of the action and the intensity of the action, despite the necessary warnings in accordance with the legislation, necessitates the intervention. During the intervention phase, the training of law enforcement officers, their anger control, their ability to control their behaviors and their correct guidance are important factors that determine the level of “proportionate” or “disproportionate” use of force in termination of actions. The George Floyd incident in the USA in May 2020 can be given as a recent example of the negativities that may arise in cases where anger control cannot be carried out. George Floyd, a Black American, died as a result of police pressure on his neck while being detained by the police. With the rapid spread of the incident on social media, protests started in many regions of the USA, and the demonstrations spread to European countries in the ongoing process. As seen in Floyd’s example, some events serve as a spark that ignites social movements. A similar situation was experienced during the Gezi Park events in Turkey in 2013, and social accumulation came to light with the cutting down of trees. When we look before the events that started with the fuel increase in 2018 in France, it is seen that the increase made caused the explosion of the accumulation arising from the economic problems in the country. The yellow vests movement in France should not be evaluated differently from the social movement that emerged after the Floyd incident. A spark that ignited accumulations has turned into a social movement. It is thought that the important point here is the reflection of a negativity experienced individually or individually to all law

enforcement officers. When the actions of a team of security personnel with a personality and psychology that cannot handle the phenomenon of power are evaluated together with the communication speed of social media, it can be evaluated as an act made by all law enforcement agencies. In this context, social media is a power that must be taken into consideration in security-related applications, as in all areas of life. It is necessary to work on a number of methods that will ensure the spread of positive security force movements, such as the spread of negative movements on social media. In general terms, the methods of intervention to collective events clearly stated in international conventions and the use of equipment in practice cannot give the desired result in the field due to some differences in the legal regulations of the states. For this reason, although legal regulations are made on a national scale according to international conventions; From time to time, unwanted results may be encountered in applications performed by law enforcement officials. At this point, it is seen that in order to solve the aforementioned problems, international organizations encourage states to use and develop NLWs in accordance with the legislation put into effect to minimize deaths and injuries. In addition, in order to prevent fatal and injury accidents, it is emphasized by the said organizations that the use of NLW ammunition in social interventions should be reduced by attaching importance to personal protection of law enforcement officers such as helmets and shields. Compared to firearms, the NLWs offer the opportunity to intervene and control incidents without causing any vital harm to law enforcement, suspects or people outside the incidents.

As a result, today no positive or negative events are kept secret, news is spreading very quickly. This situation necessitates law enforcement officers to act more consciously during the intervention process.

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CONDITIONAL SENTENCE WITH PROTECTIVE SUPERVISION

- concept, application, and relationship with other alternative sanctions and measures-

The paper gives an overview of the concept and content of a conditional sentence with protective supervision according to the solutions in the Criminal Code of the Republic of Serbia, pointing out certain substantive inconsistencies and legal gaps. The author explains what significance this sanction should have in the system of non-custodial sanctions and measures, starting from international standards and comparative practice in this area. In addition to substantive law, the paper also analyzes the regulations related to the execution of this alternative sanction, as well as the situation with its application in practice. Special attention was given to the relationship of this alternative sanction with other alternative sanctions and measures, both with those that already exist in our positive law - house arrest, work in the public interest and the institute of settlement of perpetrators and injured parties, and with some non-custodial measures which originate from the Anglo-Saxon legal field - „shaming punishments“, which exist in the USA law. The aim of this paper is to point out the importance of this alternative sanc-

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tion and its possibilities of improvement in terms of greater and more efficient application in practice.

Keywords: alternative sanctions, probation, conditional sentence with protective supervision, „shaming punishments“

1. Introduction

A conditional sentence with protective supervision is one of the foreseen warning measures and is prescribed as a conditional sentence modality in Article 71 - 76 of the Criminal Code of Republic of Serbia[1] (hereinafter CC). Otherwise, this sanction represents a combination of a classic conditional sentence from continental European law with elements of probation from the Anglo-Saxon legal area, considering that it contains a combination of warning and checking the behavior of convicts at liberty with measures of supervision and determining the fulfillment of obligations specified by law. This is how it is conceived in our Criminal Code, and this is how it is regulated in some European criminal legislation, such as Austria, Germany, and the Czech Republic. It, therefore, enables active actions to be taken towards the person sentenced to probation, through which assistance and protection are provided, in contrast to the classic conditional sentence, where the attitude towards the person sentenced is passive.[2]

Some special purpose of a conditional sentence with protective supervision is not provided for in the Criminal Code, so one should start from the purpose of the conditional sentence in general, which is prescribed in Article 64 paragraph 2 of the CC and it actually concerns the avoidance of the application of punishment, i.e. not applying the punishment to the perpetrator of a minor criminal offense when it can be expected that a warning with the threat of punishment will have a sufficient influence on the perpetrator to stop committing criminal acts. Therefore, the essence of a conditional sentence with protective supervision is the aspiration to avoid all the negative consequences of the sentence of deprivation of liberty, especially short-term ones, so that this warning measure acts on the plan of special prevention and exerts a positive influence on the convicted person so that he does not commit further criminal acts and primarily by actively acting on it - by establishing protective supervision (Stojanović, 2017:320).

1 *Official Gazette of RS*, No. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016 and 35/2019

2 Protective supervision, like probation as a whole, represents a special type of professional action - treatment in the community of probationers, aimed at their successful social integration into society. (Ilić, 2010:218)

Otherwise, all relevant international documents in this field, such as the United Nations Tokyo Rules [3] and European rules of the Council of Europe[4], the application of non-custodial sanctions and measures is promoted, which are exhaustively described and among which probation takes an important place, as well as a conditional sentence under protective supervision, all with the aim of directing legislative activities and practice in the member states. It is recommended, for example, to the legislators consider the possibility of prescribing a certain alternative sanction or measure instead of imprisonment for certain criminal offenses, and also to exclude the possibility of their imposition for serious criminal offenses and in relation to previously convicted persons.[5]

A significant part of the European rules refers to the establishment of effective assistance and treatment programs that can influence the behavior change of the perpetrator of the criminal offense (which represents a significant part of the protective supervision in the case of a suspended sentence), so it is emphasized that programs and treatments for the social reintegration of the convicted should be characterized by the application various methods both during the execution of the imposed sanction and after that, as part of the post-penal program (*See more about post-penal treatment* Batrićević et al., 2013: 129-155). Especially when determining their content, it is emphasized that attention should be focused on the following circumstances: basic knowledge that includes, for example, literacy and mastering of basic arithmetic operations, the ability to constructively solve personal and family problems, then education or the possibility of employment, the influence that has on the perpetrator possible addiction to alcohol, drugs or medicines, as well as adaptation to the local community.

Regardless of the fact that our country is a signatory to the aforementioned international conventions and even though according to international standards and comparative practice, a conditional sentence with protective supervision should actually be the basic and key non-custodial sanction[6], the situation in practice with its application is devastating. According to the data of the Admin-

3 United Nations Standard Minimum Rules for Non-custodial Measures - The Tokyo Rules, General Assembly resolution 45/110 (14 December 1990)

4 Recommendation No. R (92)16 of the Committee of Ministers to Member States on the European rules on community sanctions and measures (19 October 1992) and Recommendation No. R (2000) 22 of the Committee of Ministers to member States on improving the implementation of the European rules on community sanctions and measures (1 May 2000)

5 More details about the problem of prison capacity overload and the possible solution to this problem by applying alternative criminal sanctions see: (Đorđević, 2015: 81-84)

6 In the domestic legal theory, it is emphasized that conditional sentences with protective supervision should be the rule and that only in the presence of special circumstances, does the classic type of conditional sentence come into consideration (Đokić, 2022:216).

istration for the Execution of Criminal Sanctions of the Ministry of Justice of the Republic of Serbia, in the period from 2015 to 2020, this sanction was imposed in the range of only 14 to 33 on an annual level in the territory of the entire Republic of Serbia, and even since 2017 it has recorded a decrease in a symbolic application anyway (*See* Bojović - Kolaković et al., 2022:47). The reasons for the stated situation should be sought both in the technical and organizational impossibility of implementing protective supervision within the existing Commissioner's Service, as well as in insufficiently precise legal provisions, uneven and unrealistically set penal frameworks (Mrvić - Petrović, 2010:244), and also in insufficient education of holders of judicial positions in this area. Therefore, the goal of this paper is to perform a comprehensive normative analysis of this alternative sanction in order to clarify some doubts and point out the importance of this sanction, as well as the possibility of its improvement in order to apply it more effectively in practice.

2. Substantial legal concept and content of protective supervision

As conceived in the Criminal Code, the conditional sentence with protective supervision is actually only a modality of conditional sentence that is imposed in a situation where the court finds that the general purpose of imposing criminal sanctions, as well as the special purpose of imposing warning measures, would not be achieved if the perpetrator were only issued a simple suspended sentence, that is, only a warning with the threat of punishment. Therefore, according to the ruling from the Criminal Code, protective supervision is only a supplementary measure to a conditional sentence, which does not extend the field of application to those cases where prison should have been imposed before its introduction, as much as it reduces the risk of a certain category of those sentenced to conditional sentences, where it is risk increased that commit the crime again (Stojanović, 2014: 345).

That additional quality that is provided for the conditional sentence with protective supervision, which actually consists of measures of assistance, care, supervision, and protection, according to Article 71 paragraph 2 of the CC, is what separates this sanction from the conditional sentence and court warning as classical warning measures, because it requires active action by certain state bodies and institutions in order to realize the diverse content of protective supervision. That distinctive feature of a conditional sentence with protective supervision gives it the quality of an alternative criminal sanction in the narrower sense of the word,

i.e. as a criminal sanction that replaces the sentence of deprivation of liberty, and which requires the exercise of certain supervision over the behavior and actions of the convicted person for a certain period of time.

Otherwise, all the conditions stipulated by the Criminal Code for the imposition and revocation of a classic conditional sentence are also applied in the case of a conditional sentence with protective supervision. Its additional quality is being placed offender under protective supervision, which, according to Article 72 paragraph 1 of the CC, can be imposed on the perpetrator of a criminal offense if, in the court's opinion, taking into account his personality, past life, demeanor after the criminal offense was committed, and especially his relationship with the victim of the criminal offense and the circumstances commission of the crime, can expect that protective supervision will more fully achieve the purpose of a conditional sentence. The above means that the assessment of the court in each specific case is whether protective supervision and a certain obligation within it will positively influence the perpetrator so that he does not commit the crime again due to the same reasons that led to the commission of the crime.[7]

The content of protective supervision is regulated in Article 73 of the CC through ten obligations that can be assigned to a person sentenced to a conditional sentence. These are the following obligations:

1) reporting to competent authority for enforcement of protective supervision within periods set by such authority;
2) training of the offender for a particular profession;
3) accepting employment consistent with the offender's abilities;
4) fulfilment of the obligation to support family, care and raising of children and other family duties;
5) refraining from visiting particular places, establishments or events if that may present an opportunity or incentive to re-commit criminal offenses;
6) timely notification of the change of residence, address or place of work;
7) refraining from drug and alcohol abuse;
8) treatment in a competent medical institution;
9) visiting certain professional and other counseling centers or institutions and acting according to their instructions;
10) eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence.

7 According to Article 72 paragraph 2 of the CC, protective supervision is determined by the court in the judgment by which it imposes a conditional sentence and determines the measures of protective supervision, their duration, and the manner of their fulfillment.

When determining which of the listed obligations to impose on the perpetrator and how long they will last, Article 74 of the CC stipulates that the years of the life of the perpetrator, his state of health, inclinations and habits, motives from which he committed the criminal act, demeanor after the committed criminal act, previous life, personal and family circumstances, conditions for fulfilling the imposed obligations will be taken into account in particular, as well as other circumstances related to the personality of the perpetrator, which is important for the choice of measures of protective supervision and their duration.[8] Otherwise, the court may decide to impose one or more stipulated obligations on the offender, with the obligation to determine the duration of each of them, considering that the protective supervision does not have to coincide with the probationary period, that is, it can last even shorter.

From Article 75 of the CC, it follows that the duration of protective supervision measures is determined within the probationary period established in the conditional sentence, and therefore it is possible for protective supervision to end even before the expiration of the probationary period if a shorter period is determined by the court. In addition to the mentioned way of terminating protective supervision, another way is provided, and that is if during the duration of protective supervision, the court determines that the purpose of this measure has been fulfilled, it can terminate protective supervision even before the expiration of a certain time. Otherwise, the protective supervision ends with the revocation of the conditional sentence, and during the duration of the protective supervision, the court can, considering the achieved results, abolish certain obligations or replace them with others.

Finally, the consequences of failure to fulfill the obligation of protective supervision are foreseen, so in Article 76 of the CC stipulates that if a convicted person who has been sentenced to protective supervision does not fulfill the obligations set by the court, the court can warn him, or can replace earlier obligations with others, or extend the duration of protective supervision within the period of probation, or revoke the conditional sentence (Lazarević, 2007: 149). Which of the four consequences the court will decide on depends on the circumstances of each specific case, but it is evident that the decision will certainly be

8 Apart from the circumstances specified by the law, when choosing certain obligations, the court would also have to take into account the willingness of the perpetrator to fulfill a certain obligation. Namely, although the consent of the convicted person is not required when being placed under protective supervision, his willingness to fulfill the set obligations due to the very nature of those obligations and the purpose of protective supervision is a very important circumstance that the court should take into account. In those cases where it can be concluded with certainty that this readiness is absent without justifiable reasons, the justification for imposing this alternative sanction is seriously questioned (Stojanović, 1979:25).

influenced by the specific reasons and circumstances due to which the obligations under protective supervision were not fulfilled.

On the other hand, the question arises here, if the court decides to revoke the conditional sentence in case of non-fulfillment of obligations from protective supervision, in what time frame it will be revoked, given that this provision is not explicitly stated? In that case, does the analogy with the revocation of a classic conditional sentence apply, which can be revoked even after the expiry of the probationary period in case of non-fulfillment of the obligations from Article 65 paragraph 2 of the CC, at the latest within one year from the day when the probationary period passed?

Justified in domestic theory, the prevailing understanding is that the analogy cannot be applied in this case (Stojanović, 2014:347), primarily for the reason that the Criminal Code explicitly stated cases in which a suspended sentence can be revoked even after the probation period in Article 70 of the CC, not including the case when one of the obligations from protective supervision is not fulfilled. Also, the analogy is not possible due to the fact that here we are dealing with a completely different nature of obligations than those listed in Article 65 paragraph 2 of the CC, that is, it is about more permanent measures that represent a certain type of assistance, care, supervision, and protection, in contrast to restitution of property benefit, compensation for damage caused by a criminal act, and other criminal law measures provided for by special criminal legislation, which are essentially one-time obligations (Tešović, 2020:52).[9]

As for the obligations that make up the content of protective supervision, and ten of them are listed in Article 73 of the CC, the first thing that could be noticed is that in fact the court, when deciding on one of them, must, in any case, determine at least two of them because without determining the first obligation, which consists in *reporting to competent authority for enforcement of protective supervision*, there could not be possible implement protective supervision with regard to other obligations. So, in practice, the court always has to determine the first obligation, and with it one of the other nine obligations, which essentially relate to acting on the perpetrator of the crime and preventing his illegal behavior in the future.[10] In terms of other prescribed obligations, it can generally be stated

9 The opposite insight, in legal theory, points to the fact that, although the legislator did not specifically regulate the possibility of revoking a suspended sentence with protective supervision within one year from the expiration of the probationary period, here, too, we are dealing with the obligations provided in the criminal law provisions (Article 65 paragraph 2 of the CC), so the overwhelming reasons point in the direction of the existence of such a possibility (Vuković, 2022: 506).

10 The aforementioned conclusion also follows from Article 19 of the Rulebook on the manner of execution of non-custodial sanctions and measures and the organization and work of the Commis-

that they are all of a preventive nature, that is, they aim to influence the perpetrator not to repeat criminal behavior (Lazarević, 2011: 316).

It can also be noted that all obligations are described in general, some even too imprecisely, so when determining them, the court should make an extra effort and determine their specific content more closely. Regarding each of them individually, the following can be stated:

- *training of the offender for a particular profession* is an obligation that actually involves the engagement of school institutions and various educational centers in order to educate the convicted. Therefore, this is a measure that orders a convicted person who is in regular or part-time education to regularly attend classes and pass appropriate exams in order to be qualified for a certain profession or to start a certain educational course in order to acquire certain applicable knowledge, which everything is done under the supervision of the commissioner.[11] There is a wide range of possibilities within this obligation, so it can be about cooperation with certain secondary vocational schools within the state education system, and it is also possible for the convicted person to enroll in a certain program for professional training or the acquisition of certain applicable skills. Bearing in mind that the legal wording of this obligation is quite general, it is up to the court to specify it, and it is up to the commissioner to enable its execution in a specific case, by cooperating with the appropriate educational institutions.

Right here is the key problem, which educational institutions are they? Are only those founded by the state or are private schools and educational institutions also considered? Given that the issue of financing and costs of such education of the convicted is not at all resolved in the Criminal Code and the Law on the Execution of Non - Custodial Sanctions and Measures, nor in the Rulebook, it would be difficult to, firstly, could accept that such education and professional development can be achieved through educational institutions that are privately owned, bearing in mind that for them it is necessary to pay a high amount of school fees, which is certainly neither determined nor planned to be financed from the budget of the Republic of Serbia. On the other hand, with regard to state high schools and colleges, special enrollment conditions are provided, and a person who has not passed the entrance exam and who does not meet certain prescribed conditions

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sioner, *Official Gazette of the RS*, No. 30/2015 (hereinafter the Rulebook), where it is prescribed that in order to successfully implement the program of protective supervision, the convicted person is obliged to report to the commissioner at the time, in the manner and at the place determined by the commissioner, in accordance with the law.

11 According to Article 20 of the Rulebook, the competent commissioner monitors and checks the extent to which the convicted person fulfills the obligations of regular or part-time schooling or other established forms of professional training or acquiring skills.

cannot in any case, regardless of his wishes or possibly the wishes of the acting judge, to study in those educational institutions. The only applicable situation is that the perpetrator is already a pupil or student of a state educational institution so he/she practically continues his education during the period of protective supervision for the profession he had previously chosen.[12] All of this actually leads to the conclusion that this obligation within the framework of a conditional sentence with protective supervision is practically just a "dead letter on paper", and that due to the aforementioned unregulated issues of the very manner of its execution and the source of financing (apart from financing by the convicted person, which would, on the other hand, turned into a form of a fine), it could not take root in practice (Tešović, 2020:54).

- *accepting employment consistent with the offender's abilities* is an obligation that requires the active cooperation of the commissioner and the National Employment Service. However, in light of the high unemployment rate in our society and constant unfavorable economic conditions, the question arises of the real scope of this obligation imposed on the offender. Is it a realistic idea that in a situation where there are very few chances for all citizens to find any job through the employment service, a person convicted of a criminal offense will be able to find employment that matches his abilities? Therefore, it is necessary for the legislator to consider whether the existence of this obligation is still expedient, at least in this form, considering the factual impossibility of its execution (*See* Stojanović, 2017: 324).

On the other hand, it is precisely at this point that the question of introducing community service as one of the obligations of protective supervision could be discussed. Why wouldn't that work and employment, which is imposed as an obligation on a probationer, be for general purposes? In comparative law, there are significant examples where, in the case of a conditional sentence with protective supervision, work in the public interest is stipulated as one of the obligations,[13] so it would be significantly more effective than the current legal solution if these two alternative sanctions actually meet at this point, i.e. in this case, work in the public interest would actually represent an additional obligation of the person sentenced to probation, whereas in the case of non-compliance with this obligation, in the end, revokes suspended sentences and substitutes for imprisonment. Such an ob-

12 A similar obligation exists in juvenile criminal law within the educational measures of special obligations, and it concerns regular school attendance by minors (Article 14, paragraph 2, item 3) of the Law on juvenile offenders and criminal protection of minors, *Official Gazette RS*, no. 85/2005 (*See* Škulić, 2011: 291).

13 *See* Article 93 of the Criminal Code of Romania, as well as Article 56b, Paragraph 2 of the German Criminal Code (Strafgesetzbuch)

ligation would be incomparably more effective than finding a job for the convict, and he would be engaged in socially useful work for a certain period of time.

In connection with the aforementioned, the question arises whether the consent of the convicted person is required for the obligations imposed on him within the framework of protective supervision, and especially whether the consent of the perpetrator would be necessary if there was an obligation in the form of community service. Since our legislator in the Criminal Code did not explicitly provide for the consent of the convicted person as one of the conditions, it is not necessary for the obligations foreseen within the conditional sentence with protective supervision. However, as stated above, the willingness of the perpetrator to fulfill the set obligations due to the very nature of those obligations and the purpose of protective supervision is still a very important circumstance that the court should take into account (Stojanović, 1979: 25; also Stojanović, 2017:325).

On the other hand, it would be a completely different matter if, as one of the obligations, the possibility of serving in the public interest was foreseen, and here, as in the case where it is about work in the public interest as an independent sanction, the consent of the convicted person would be necessary, and all in order to respect the generally accepted universal rule on the prohibition of forced labor. Therefore, only in that situation would a mandatory condition in the form of the consent of the perpetrator of the criminal offense be provided for the application of that specific obligation within the framework of a conditional sentence with protective supervision.

– fulfilment of the obligation to support family, care and raising of children and other family duties is actually a whole complex of obligations that are provided for in the provisions of the Family Law and in the realization of which both the commissioner and the competent center for social work participate. So, here we are dealing with a different set of family obligations, both those related to the spouse, married or cohabiting, as well as obligations between parents and children and also those arising from the relationship of adoptive parents and adopted children, foster parents, and foster children, as well as guardians and wards. The obligation to support family members is particularly emphasized here, which is otherwise in a case of the criminal offense of not providing support from Article 195 of the CC, in paragraph 4, also provided as a possibility when imposing a suspended sentence.[14] Here, therefore, there is a possible situation in which protective supervision can be

14 Article 195, paragraph 4 of the CC stipulates that, if it imposes a suspended sentence, the court may order the offender to settle the due obligations and to properly provide maintenance. This is actually about the court's ability to, based on the provisions of Article 65 paragraph 2 of the CC, considering that it is an obligation that is specifically provided for by the provisions of the criminal law, imposes a suspended sentence on the described only without protective supervision.

determined for the stated maintenance obligation, so the aforementioned depends on the court's assessment of whether the specific case will apply the provisions of Article 65 paragraph 2 of the CC and impose a simple suspended sentence to which he also tied the fulfillment of the previously mentioned maintenance obligation or, on the other hand, he will impose a suspended sentence with protective supervision whose basic obligation will be the fulfillment of the maintenance obligation, with monitoring of its execution by the competent commissioner.

– refraining from visiting particular places, establishments or events if that may present an opportunity or incentive to re-commit criminal offenses, is an obligation that is terminologically imprecisely determined, because the term *“ refraining”* itself does not lead to the conclusion that it is a prohibition, but rather that it is about a certain reluctance to visit certain places, with the possibility of tolerance to the opposite treatment. For this reason, it is necessary to specify the relevant obligation, and it would be desirable to formulate it in the form of a ban with the determination of the possibility of periodic verification of compliance with that ban, and in order to facilitate their control by the competent commissioner. Otherwise, according to Article 23 of the Rulebook, the commissioner should use advisory work to influence the convicted person not to visit certain places, bars, or events that may be an opportunity or incentive for committing criminal acts again. This very provision of the aforementioned Rulebook indicates the absence of any explicit prohibition, but it all boils down to an unspecified advisory role of the commissioner to ensure that in a specific case the convicted person fulfills the obligation in question, without the possibility of at least periodic checking of it in any sense (Tešović, 2020:57).

When this obligation from protective supervision is compared with the procedural provision from Article 197 of the CPC on the prohibition of approaching, meeting, or communicating with a certain person and visiting certain places, which has similar content,[15] and which is intended to ensure the smooth conduct of criminal proceedings, it follows that the mentioned procedural measure is much better formulated, especially from the aspect of the possibility of its execution and especially bearing in mind the provision of paragraph 2 of the aforementioned article, which stipulates that in addition to the aforementioned measure, and for

15 According to the provisions of Article 197 paragraph 1 of the Criminal Procedure Code, *Official Gazette of the RS*, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - Decision of the RS RS and 62/2021 - Decision of the RS RS (hereinafter the CPC), if there are circumstances that indicate that the defendant could interfere with the proceedings by influencing the injured party, witnesses, accomplices or concealers or could repeat a criminal offense, complete an attempted criminal offense or commit a criminal offense that he threatens, the court may prohibit the defendant from approaching, meeting or communicating with a certain person or prohibit visiting certain places.

the purpose of its verification, the defendant may be ordered to periodically report to the police, the commissioner from the state administration authority responsible for the execution of criminal sanctions, or another state authority determined by law (Ilić et al., 2013: 457-458).

In the case of protective supervision, there is no such legal determination and specification in the substantive law or in the executive provisions at all, so this is also a shortcoming of this obligation, which, due to its broad and vague wording, without the possibility of checking its application, is therefore not enforced in practice.

– *timely notification of the change of residence, address or place of work* is the obligation of the convicted person to immediately notify the competent commissioner of any change of address or workplace. This kind of obligation practically represents a secondary obligation of the convicted person that he must respect in any case, so the question arises whether its place, in general, is among the obligations that require protective supervision or are it simply the obligation of every convicted person who is at liberty and who has been sentenced conditional sentence? As the commissioner normally keeps a record of all notifications by the convicted about a change of residence, address, or workplace (Article 24 of the Rulebook), it would be justified to provide for the mandatory determination of this obligation along with each of the other obligations of protective supervision. If the court decided only on this obligation, it is not clear what *the measures of assistance, care, supervision, and protection* would actually consist of, as the concept of protective supervision is legally formulated (Article 71 paragraph 2 of the CC), given that this is only about timely reporting to the competent commissioner about a change of place of residence or workplace, and how the commissioner could actually have contact with the convict and supervise the execution of other obligations. Therefore, the nature of this obligation is in any case supplementary, and it seems that its imposition is also mandatory with each determination of protective supervision, in order to enable its successful implementation (Tešović, 2020:58). That’s why legislative corrections are necessary for the Criminal Code itself, where mandatory imposition would be introduced for this obligation and where this obligation would be separated from other obligations that, by their content, require the application of real protective supervision by the competent authority.

– *refraining from drug and alcohol abuse* is an obligation from protective supervision to which the same objections can be made as with the obligation to refrain from visiting certain places, given its terminological imprecision. Namely, in order to achieve effective results, it is necessary that this type of obligation is determined as a ban on the convicted person to use drugs or alcoholic beverages

for a certain period of time, and that therefore, at certain time intervals, compliance with that ban should be checked. The way this obligation is currently formulated, it is fundamentally unenforceable, because it is not known how it will actually be determined that the convicted person violates this obligation to support. Refers to that Article 25 of the Rulebook, which stipulates that the commissioner will help the convict refrain from abusing psychoactive substances and understand their harmfulness through counseling and educational work with the convict and his family or close friends. Apart from the fact that giving advice does not, in any case, create the obligation of the convicted person to follow that advice, the question of the expertise and competence of the competent commissioner for the mentioned “advisory and educational work” in this field.

All of the above leads to the conclusion that it is necessary to formulate this obligation more precisely and reliably as a ban on the use of drugs and alcohol, with periodic checks by the competent commissioner of compliance with that ban, which would actually be realized through giving a blood sample by convicted in certain time intervals, which the competent health institution would analyze and determine if there is the presence of drugs or alcohol in the body. As soon as the presence of drugs or alcohol in the body of the convicted person was determined in this way, it would be clear that the prohibition was violated, and the commissioner would immediately inform the court about the aforementioned, for further decision-making.[16] Therefore, in the aforementioned sense, it is necessary to clarify and supplement the legal provisions, as well as the provisions of the aforementioned Rulebook on the manner of execution of this obligation, in order to finally revive the application of this obligation in practice. The advisory role now prescribed for the commissioner is insufficient and inadequate in terms of this duty of protective supervision.[17]

16 This practice is represented in a large number of countries: the USA, Great Britain, France, and Germany. In Great Britain, in 2016, a program was started to apply an electronic wristband for alcohol detection that is worn on the wrist and determines the level of alcohol in the body (SCRAM Continuous Alcohol Monitoring). The above-mentioned electronic device, which the convict carries, measures the level of alcohol in the convict’s body every half an hour, and any violation of the ban on alcohol consumption is electronically detected, and thus provided to the probation officer for inspection. This measure is applied in cases where a person has committed a criminal offense under the influence of alcohol, and it is not suitable for alcohol addicts who need treatment and healing.

17 In Article 53 of the Law on the Execution of Non-Custodial Sanctions and Measures, *Official Gazette of the RS*, No. 55/2014 and 87/2018 (hereinafter referred to as the LENSM) one of the measures for conditional release is to abstain from the use of drugs and alcohol, and if the commissioner reasonably suspects that the convicted person is not complying with this obligation, based on direct inspection or information received from the family or other persons close to the convicted person, is authorized to perform appropriate testing for the presence of psychoactive substances, so if it is determined that the convicted person does not comply with the mentioned obligation or if the convicted person refuses the test, it will be considered that he has not fulfilled the obligation

- *treatment in a competent medical institution and visiting certain professional and other counseling centers or institutions and acting according to their instructions* are the eighth and ninth obligations prescribed as the content of protective supervision. In Article 26 and 27 of the mentioned Rulebook, it is stated that the commissioner in direct contact provides support to the convicted person during treatment and monitors the course of his treatment through regular cooperation with the appropriate health institution, and also provides support and encourages the convicted person to engage in treatment in the appropriate counseling center or institution and monitors the course of treatment through regular contact with professional workers. These obligations are directly related to the seventh obligation to abstain from the use of drugs or alcoholic beverages, so the question of their delineation with the safety measures of mandatory treatment of drug addicts and mandatory treatment of alcoholics arises here.

Namely, what are the cases when a conditional sentence with protective supervision will be applied in the aforementioned sense, and when will the aforementioned security measures be imposed along with the conditional sentence? From the very conditions provided for in Article 83 and 84 of the CC, it follows that security measures of compulsory treatment of drug addicts and alcoholics are imposed on the perpetrator who committed the crime due to addiction to the use of drugs, i.e. due to addiction to the use of alcohol. Such a condition is not foreseen for the mentioned obligations within protective supervision, so it is left to the court to assess whether these are also situations when the criminal offense was committed as a result of one of the mentioned addictions. In theory, the opinion was expressed that a conditional sentence for protective supervision in the form of the obligations previously described will be imposed when it comes to minor crimes, i.e. in cases where the conditions for imposing these security measures are not met (when the criminal offense was not committed due to addiction from the use of drugs or alcohol), as well as in cases where there is a need to order the perpetrator to perform some other obligations from protective supervision (Stojanović, 2017:326). This position should be accepted as correct and logical, because in a situation where it is a question of committing a criminal offense under the influence of alcohol or drugs, but without a medically established addiction,

from the decision on parole. The question arises as to why an identical provision is not provided for obligations in the case of the conditional sentence with protective supervision in the mentioned law (Article 34 - 37) but is only related to conditional release in the mentioned Article 53, and in Article 25 of the Rulebook, only the already mentioned “advisory and educational work” of the commissioner in the case of conditional sentence with protective supervision, without his authority to order testing of the convicted, is listed. There are major omissions and vagueness of the legislator in the enforcement matter, which caused a collision of the norms of the law prescribing the execution of criminal sanctions and the adopted Rulebook on their immediate execution.

it is appropriate to impose this type of sanction where protective supervision would achieve its purpose, while in the case established medical addiction, the security measures in question are the most adequate, with the fact that if it is necessary to order the perpetrator to perform some other obligations from protective supervision, the court could even then opt for this possibility (Tešović, 2020:62).

- *eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence* is the last obligation that is foreseen as the content of protective supervision from Article 73 of the CC, which was established to implement the principles of restorative justice. According to Article 28 of the Rulebook, with this obligation, the commissioner is given an intermediary role. Namely, according to the aforementioned provision, the commissioner mediates in the relationship between the convicted and the victim for the purpose of settlement or in order to reach an agreement on the elimination or mitigation of damage. It follows from the content of the cited provision that this is an informal process of reconciliation and settlement between the perpetrator and the victim, which takes place before the competent commissioner. The question is: whether the commissioner is an expert in mediating between the convicted and the injured party? Bearing in mind the provisions of the Law on Mediation in the Resolution of Disputes, it is necessary to fulfill certain legal conditions[18] in order for a specific person to perform mediation, and since no special conditions for selection are provided for the commissioner, nor any training in the aforementioned sense (which is certainly mandatory for the mediator), the conclusion follows that the competent commissioner is certainly not capable of such a delicate job perform in a way that a person who has specialized knowledge in this sense would do it. Therefore, it is necessary to correct the aforementioned criminal law provisions, and especially the provisions of the Rulebook, which determines the manner of execution of this obligation and refer the convicted person and the victim of a criminal offense to proceedings before a mediator who is entered in the Register of Mediators, with whom the commissioner will cooperate and monitor the course of the proceedings settlements.

18 According to Article 33, paragraph 2 of the Law on Mediation in Dispute Resolution, *Official Gazette of the RS*, No. 55/2014, in order to perform the work of a mediator, a person must meet the following conditions: 1) that he has business capacity; 2) that he is a citizen of the Republic of Serbia; 3) that he has completed the basic training for a mediator; 4) that he has a university degree; 5) that he has not been sentenced to an unconditional prison sentence for a criminal offense that makes him unfit to perform mediation work; 6) that he has a license to mediate; 7) that he is registered in the Registry of Mediators.

All the aforementioned obligations that are foreseen as the content of protective supervision are therefore regulated by Article 73 of the CC and the court, when deciding on this alternative criminal sanction, must decide to impose one or more of these obligations on the convicted person. On the other hand, the court cannot include any other obligation, outside of those stipulated, in a conditional sentence with protective supervision, nor can the competent commissioner act according to such a decision of the court, regardless of the fact that the court may consider that in a given case it would be most expedient to impose a such obligation on the convicted person. (*See* Lazarević, 2011:317).[19]

3. Execution of the conditional sentence with protective supervision

Regarding the actual execution of a conditional sentence with protective supervision, the legislator assessed that it is an alternative criminal sanction, so he resolved the aforementioned issue with the Law on Execution of Non - Custodial Sanctions and Measures in Article 34 - 37. It is prescribed that the court that made the decision in the first instance is obliged to deliver the executive decision, with data on the identity of the convicted person obtained during the criminal proceedings, to the competent commisioner within three days from the day the decision became enforceable, and the execution itself is the responsibility of the commissioner, who is obliged to immediately, upon receiving the decision, take the necessary actions for its execution and, if necessary, establish cooperation with the family of the convicted, the police, health and social care institutions, the employer and other institutions, organizations and associations. The commissioner is also obliged to draw up a program for the execution of protective supervision within fifteen days from the date of receipt of the decision and to inform the convicted person of the program and the consequences of non-fulfillment of obligations. It is also prescribed that a convicted person has the right to object to that program to the competent court within three days from the day of familiarization with the program.

Otherwise, in Article 36 LENSM regulates the monitoring of the execution of protective supervision, and in this regard, the commissioner will immediately inform the court and the Commissioner’s Service about the beginning and end of

19 An interesting solution is in the Criminal Code of Croatia, *Official Gazette*, No. 125/2011, 144/2012, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, where in Article 62 the last special obligation that can be determined with a suspended sentence is determined in the following manner: “other obligations that are appropriate, considering the committed criminal act.” In this way, the judge is given the freedom to determine some other obligation to the perpetrator of the criminal act, which he considers to be the most adequate in the given case, especially taking into account the committed criminal act.

protective supervision in connection with the execution of the conditional sentence. In the event that the execution of protective supervision does not begin within thirty days after receiving the executive decision or the convicted person does not accept the execution of protective supervision, the commissioner is obliged to immediately inform the court that ordered the protective supervision. If during the implementation of the program the convicted person does not fulfill the obligations assigned to him, the commissioner will also inform the court and the Commissioner's Service about this, stating the reasons, and is obliged to submit to the court and the Commissioner's Service a report on the circumstances that significantly affect the implementation of the program.

In Article 37 LENSM provides that, based on the achieved success in the execution of protective supervision, the commissioner will propose in the report to the court to replace or cancel certain obligations of the convicted person. If based on the achieved positive results, the commissioner considers that the purpose of protective supervision has been fully fulfilled, he will then propose in the report to the court that the convicted person's protective supervision be terminated before the expiry of the probation period, which is related to Article 71 paragraph 3 of the CC where it is prescribed that if the court determines during the duration of the protective supervision that the purpose of this measure has been fulfilled, it can terminate the protective supervision before the expiration of a certain time. Therefore, the commissioner who carries out the protective supervision reports to the court about the results that have been achieved, and then the court can, if it considers that the purpose of the protective supervision has been achieved, cancel the protective supervision even before the expiration of a certain time.

In practice, the commissioner's activity is predominantly based on supervision and control activities, and the execution of those sanctions and measures that require probation (treatment) work in the true sense of the word, is symbolic for now, which represents a big problem. Therefore, it is necessary to take steps in the following period to make these essential activities of commissioners primary in order to become real probation workers, and that control and supervision be carried out organizationally and technically in a different and more appropriate way, with the need to include other social entities and institutions in the work of the Commissioner's Service at the local level (Ilić et al., 2015:133).

4. Relationship with other alternative sanctions and measures

Starting from international standards and comparative legal practice in this area, certainly what we should pay attention to is the possibility of cumulative

imposition of several alternative criminal sanctions and measures in a specific case, all with the aim of individualizing the sanction and its better adaptation to the perpetrator of the criminal act and the circumstances under by whom the criminal act was committed.[20] Namely, alternatives to prison sentences are significantly more flexible in quality and are primarily aimed at the rehabilitation of the offender and his integration into society. Therefore, by right choosing the type and measure of the criminal sanction that replaces the prison sentence, as well as in combination with some other alternative, it achieved the best effect in the specific case.

The question therefore arises: is such a combination of a conditional sentence with protective supervision possible with alternative sanctions provided for by our criminal legislation: house arrest, work in the public interest, and one alternative measure - the institution of reconciliation between the perpetrator and the victim? Also, is it possible to apply some non-custodial measures originating from other legal systems, such as “shaming punishments” that exist in US law, as part of a conditional sentence with protective supervision?

4.1. Relationship with alternative sanctions provided by the Criminal Code

First, it would be difficult to imagine the cumulative application of house arrest and conditional sentences with protective supervision, bearing in mind their different legal nature, special purpose, and method of execution, especially for the reason that the sentence of house arrest is regulated in our country as a non-independent sanction, as a modality of prison sentence, and since the purpose of a

20 A significant example in comparative practice regarding the effectiveness of the cumulative application of alternative sanctions is their application in the United States of America under the so-called Todd’s program, which is named after Judge William F. Todd from Georgia who started this program in 1992 for people who committed traffic offenses while intoxicated, and by imposing several combinations of alternative sanctions, adapted to the circumstances of the specific case, tried to achieve the greatest possible effects in terms of reducing this specific type of crime. In addition to probation, detoxification treatment was applied with a ban on further alcohol use, then the obligation to pay damages, the obligation to visit patients in hospitals who are being treated for injuries sustained in traffic accidents, the revocation of the driver’s license, as well as the disabling of the vehicle’s engine start system. The aforementioned research lasted five years and included 1800 persons to whom the aforementioned combinations of alternative sanctions were applied. In the end, the result was more than encouraging, because compared to the perpetrators who, at the same time, for the same types of traffic offenses committed under the influence of alcohol, were punished with prescribed, traditional sanctions (usually fines and short-term prison sentences), twice as many a lower rate of recidivism existed among convicts who went through the Todd program, where an adequate combination of alternative sanctions and measures resulted in a better individualization of the sanction in the specific case. (*See* Jones et al. (ed.), 1998:18).

suspended sentence is to replace the sentence of deprivation of liberty, the conclusion follows that they cannot be imposed simultaneously. The only thing that is possible is that obligations from protective supervision can be applied to house arrest by determining a conditional release with the stated obligations, according to the provisions of Article 46 paragraph 3 of the CC. Therefore, in our country, the possibility of cumulative imposition of this non-custodial sanction with other forms of alternative sanctions is not foreseen at all, although in foreign literature it is often pointed out that the sentence of house arrest is quite compatible to be imposed with other non-custodial sanctions and measures, such as restitutive and educational measures, as well as with different treatments and treatment measures, and other sanctions that are carried out in the community.

Namely, the way it is regulated in our positive legislation, it is only a way of executing the prison sentence in home conditions, without the possibility of applying any rehabilitation measures along with it. In contrast to this solution, in most European countries, and especially in the countries of the Anglo-American legal system, house arrest is more often a supplementary measure when sentencing to probation, and therefore it is rarely imposed independently, and very often with other alternative sanctions and measures, such as a suspended sentence or conditional release, where in those combinations it can have a certain rehabilitative effect. Failure of our legislature to regulate house arrest as a separate alternative sanction[21] and determine in a precise and careful manner its essential elements and possibilities of different application and supervision[22], in fact, it deprived this sanction of the possibility of having any rehabilitative effect on the perpetrator and reduced it only to the execution of the most severe criminal sanction.

When it comes to the punishment of work in the public interest from Article 52 of the CC, the mentioned cumulative application of alternative criminal sanctions is possible. Namely, without any major difficulties, punishments of community service and revocation of driver’s license could be applied as secondary punishments (since both punishments can be determined as main and secondary punishments), with a conditional sentence with protective supervision. Also, there are no essential obstacles to applying a fine in addition to all these alternative sanctions, which is often the solution in comparative law legislation.

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21 Such a solution would also symbolically indicate the need to use prisons in penitentiary institutions as an *ultima ratio* solution. (Ignjatović, 2010:171).

22 The possibility of applying house arrest with a conditional sentence with protective supervision would bring our system of alternative sanctions closer to existing modern probation systems and provide the possibility of applying combined alternative measures to a single offender.

The situation is different with the institute settlement of the perpetrator and the injured party from Article 59 of the CC, which represents a *sui generis* criminal law measure where the court can acquit the perpetrator of a criminal offense for which a prison sentence of up to three years or a fine has been prescribed, if, on the basis of an agreement reached with the injured party, he has fulfilled all obligations from that agreement. Namely, the application of this institute, which essentially represents a type of alternative sanction, is incompatible with the other foreseen non-custodial sanctions, even with a suspended sentence with protective supervision, because the application of this institute does not result in the sanctioning of the perpetrator at all, that is, he is actually released from punishment in the end.

However, there is a specific connection between this criminal law measure and the tenth obligation from the content of protective supervision in the form of eliminating or mitigating the damage caused by the criminal act, and especially settling with the victim of the committed criminal act. Namely, the goal of both sanctions is the same, i.e. in both cases it is about realizing the principle of restorative justice and making amends for the victim of the crime committed, but the sanctions that are imposed on the perpetrator are different - exemption from punishment, that is, a warning under the threat of punishment. There is also a distinction in terms of criminal acts in which these non-custodial sanctions can be applied because the case of settlement from Article 59 of the CC is possible only in the case of criminal offenses for which a prison sentence of up to three years or a fine is prescribed (thus significantly narrowing the application of this institute), while in the case of a suspended sentence, the scope of the offense is wider because these are criminal offenses for which may impose a prison sentence of fewer than eight years.

4.2. Relationship with other alternative sanctions and measures

When it comes to the relationship of conditional sentences with protective supervision with other alternative sanctions and measures, here we can refer specifically to the so-called “*shaming punishments*” that exist in US law. It is about this so-called “*shaming punishments* “ which represent certain alternative sanctions, i.e. obligations that the judge imposes on the perpetrator of a minor criminal offense, which in a certain way exposes him to the public by having him in some visible way show the environment what he has done, which causes him

shame or serves his education.[23] Therefore, these sanctions represent a substitute for a prison sentence and by their nature are alternative sanctions that require the active action of the convicted person, which exposes him to the public view and in a certain sense shame in connection with the criminal offense he committed, which is of a lighter nature (in question are non-violent, minor crimes, such as drug possession, traffic violations, petty theft, etc.).

The question arises whether there is in some way the possibility of their introduction into our law through a conditional sentence with protective supervision and in that sense the freedom of the judge to impose such a measure on the perpetrator of a minor criminal offense that is directly related to the committed criminal offense. These measures in US law are imposed on the perpetrator of a minor, non-violent crime, usually in combination with other alternative sanctions and measures within the framework of probation. However, their very existence is not undisputed even in the United States of America, i.e. questions are raised as to where the limits of their application are, and whether they really have positive effects on the plan of resocialization of the perpetrator or simply only further stigmatize the convicted in society.[24] It is indisputable in American theory and practice that the specific measures in question have an educational character and that they indicate to the perpetrator of the illegality of his behavior, and also inform the environment of what the convicted person has done, and that exposure to the public additionally creates a barrier for the perpetrator to commit similar criminal acts in the future and warns others about the consequences of such an illegal act. On the other hand, the measures that are applied must not in their content be contrary to the Constitution, that is, that they violate basic human rights and freedoms, and in this regard, these sanctions are in no case measures that apply physical force, not they may represent some gratuitous cruel treatment and extremely humiliating behavior. The element of humiliation essentially exists, but it is of a lower level and its purpose is primarily preventive.

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23 An example of “shaming punishments” is the case of a woman who was convicted of drug possession and was required to stand on the street corner and carry a sign: “I was caught in possession of cocaine. Ordered by Judge Whitfield,” or the case of a convicted drunken driver who was sentenced to wear a sticker on his vehicle that read: “Convicted of drunken driving,” then the case of a burglar ordered to allow the victim, in the presence of court officers, to enter his home unannounced and take anything close to the value of the thing he stole, as well as the case of a minor who threw a brick at the victim who became blind in one eye as a result, and who was ordered by the court to wear a blindfold on the eye that he will be able to remove only when he sleeps (*See* Garvey, 1998:734 - 735).

24 According to a decision of the Supreme Court of the State of Pennsylvania, these measures must not be aimed at humiliating citizens but must be exclusively aimed at their rehabilitation, so that they do not turn into “unusual tricks” used by judges. (*See* Denniston, 2016:1).

The question arises whether in our criminal law the content of conditional sentence with protective supervision can be enriched with the measures contained in “*shaming punishments*” in US law? First, here we should refer to the essential differences between the legal basis and the way in which judges in our country impose criminal sanctions, compared to the way in which judges in the Anglo-American legal system do it. In our country, it is necessary that these sanctions be expressly prescribed by the provisions of the law, so that the court cannot impose a sanction that has not found its place in the provisions of the Criminal Code. Judges in the Anglo-American legal systems actually judge according to court precedents and have “*sentencing guidelines*” (instructions for the imposition of criminal sanctions) issued by an independent institution within the judicial branch of government itself,[25] therefore, judges have significantly greater freedom in choosing the type of criminal sanctions and measures regarding the specific perpetrator of the crime. It is unthinkable in the systems that were developed in the spirit of European-continental law for a judge to apply some sanction or measure that is not expressly regulated by the provisions of the law or to apply it in some way or with some other sanction, and that issue is not clearly prescribed by the criminal law.[26]

On the other hand, when considering the application of measures that are applied in US law as “*shaming punishments*”, only within the framework of the existing provisions that regulate conditional sentence with protective supervision is this possibility seen in terms of the last obligation, which is described as eliminating or mitigation damages caused by a criminal act, especially settlement with the victim of the committed criminal act. Therefore, within this obligation, and with the aim of settlement and reconciliation with the victim of a criminal offense, some of the measures are similar to the so-called “*shaming punishments* “ in US law, with the fact that it would be necessary to explicitly foresee such a possibility. The primary goal of that measure would actually be the satisfaction of the injured party whose right was violated by the commission of a criminal offense, and not simply putting a stamp of conviction on the perpetrator of the criminal offense. Which specific measure the judge would impose would depend on his assessment, but it would be good if the legislator, at least, for example, took some

25 In the United States of America, it is *The U.S. The Sentencing Commission*, which is an independent agency from the judicial branch of government, was established in 1984 with the passing of *the Sentencing Reform Act*.

26 Article 1 of the CC stipulates that no one can be sentenced to a penalty or other criminal sanction for an act that was not defined by law as a criminal offense before it was committed, nor can a person be sentenced to a penalty or other criminal sanction that was not prescribed by law before it was crime committed.

possible measures to avoid wandering in practice (for example, publicly apologizing to the victim through the media, carrying posters or handing out leaflets in a certain place which is related to the injured party or, for example, wearing a sticker about the committed act and its consequences on the car or other motor vehicle of a person convicted of criminal offenses of endangering public traffic, especially if they were committed under the influence of alcohol or psychoactive substances). Practically, if there was no agreement with the injured party in this regard and the consent of the sentenced person to the execution of the measure in question during the procedure itself, only measures that would be expressly prescribed by the legislator could be imposed on him, but it would be a good solution to leave the possibility to impose other measures that would represent some kind of moral satisfaction to the victim of the criminal act if the perpetrator himself agrees to it.

Of course, all of the above implies that the obligation that would be imposed on the convicted does not represent a violation of basic human rights and freedoms guaranteed by the Constitution of the Republic of Serbia and relevant international documents, both of universal and regional significance. Therefore, his physical and psychological integrity is inviolable, he cannot be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical or scientific experiments without his freely given consent, as guaranteed by Article 25 of the Constitution. Treatment of the convicted must be humane and with respect for the dignity of his person (Article 28 of the Constitution of the Republic of Serbia). The above represents, therefore, the limit of any criminal sanction that is imposed on the perpetrator of a criminal offense, and the aforementioned standards must not be exceeded in any case, so this is also the case with these measures, which find their model in the “*shaming punishments*” of US law. Certainly, they must not be an end in themselves and be aimed only at the unreasonable humiliation of the convicted in public but must have the purpose of both achieving the goals of restorative justice and the goals of special prevention, with an evident influence on others to prevent them from committing criminal acts.

Bearing in mind all of the above, there is no reason why our system of alternative criminal sanctions would not be enriched with this type of obligations within the measures of protective supervision in the manner described, with the fact that this measure would certainly be significantly more effective if it were imposed as a supplementary measure, combined with several alternative sanctions and measures, as is the usual practice in Anglo-American law. On the other hand, in support of the tendency to introduce these specific measures into our law is the fact that in our criminal legislation there is a measure of a similar legal nature,

and therefore these measures would not be unknown to the judges who would apply them. Namely, the security measure public publication of the verdict provided for in Article 89 of the CC is a specific measure that exposes the perpetrator of the criminal offense to social shame, but it is in the interest of the passive subject - the injured party, because the main goal is to at least partially eliminate the harmful social consequences achieved by the commission of the criminal offense through means of public information (Lazarević, 2011:360). So, here, too, we are talking about a certain public exposure of the convicted person and his committed criminal offense, with the aim of achieving at least the moral satisfaction of the injured party, so in that sense, there are great similarities with the measures proposed to be introduced within the framework of a conditional sentence with protective supervision, with the obligation which refers to reconciliation with the victim of a crime, all based on the practice of the courts in the United States of America.

5. Conclusions

From what has been presented so far, it is certainly possible to conclude that a conditional sentence with protective supervision is an alternative criminal sanction, which in many segments is not regulated in a detailed and careful manner in the Criminal Code, nor was such an approach when regulating its implementation in the Law on the Execution of Non - Custodial Sanctions and Measures and accompanying Rulebook. A large number of previously mentioned illogicalities and inaccuracies, as well as accompanying legal gaps, contribute to the fact that in practice it is imposed in a really negligible number of cases, although by the nature it should be the leading alternative to imprisonment, where judges would have a great opportunity combining different sanctions and measures, and thus the possibility of fully adapting to the perpetrator of the criminal act and the requirements of special prevention. In this way, we are left with an ineffective model of this conditional sentence, which even the existing Commissioner’s Service, given its broad, in some cases inadequate and imprecise competencies, cannot properly implement.[27]

27 The commissioners themselves indicate that there are numerous problems that make it difficult or completely impossible for them to effectively supervise the execution of a conditional sentence with protective supervision, among which the most common are: that it is often imposed on persons who have been convicted before, then that there is no control mechanism for abstaining from the use of drugs or alcoholic beverages, and that therefore there is a need to improve cooperation with the health care system, as well as to establish more effective local cooperation mechanisms with

In order to achieve greater efficiency in the application of conditional sentences with protective supervision, its more detailed legal regulation is certainly necessary for the manner indicated in the paper, with the filling of existing legal gaps and with more careful drafting of the regulations that regulate its execution. The content of this sanction should be regulated in more detail in the substantive legislation for each of the obligations separately covered by protective supervision, with a possibility of combining them with other alternative sanctions (it turns out that community service is particularly suitable to that effect), and embracing positive solutions in comparative law (for instance, mentioned “shaming punishments” in US law or successful practice in common law countries of what is called “therapeutic jurisprudence” i.e. the “drug courts”, with respect to offenders who committed criminal offences under the influence of drugs or alcohol where a less formal approach is used before the court with constant supervision and therapeutic assistance provided to the offenders by a multi-disciplinary team of experts) (Tešović et al., 2021:77).

It is also necessary to have greater involvement of the holders of judicial functions when pronouncing and executing this alternative sanction, as well as greater cooperation with the Commissioner’s Service, in order to, at least in terms of certain minor crimes and certain obligations, go beyond the framework of the classic conditional sentence and in practice use in a larger scope system of supervision and assistance to the perpetrator of the criminal act.

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the National Employment Service, employer’s associations and chambers of commerce, which would significantly help the realization of professional training and job finding (Bojović - Kolaković et al., 2022: 48).

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COMMUNITY SERVICE: EXPERIENCES AND CHALLENGES OF IMPLEMENTATION IN THE REPUBLIC OF SERBIA IN THE 2015-2020 PERIOD[1]

The dual nature of the community service makes this punishment, on the one hand, an effective mechanism for reducing the overcrowding of penitentiaries, while at the same time enabling effective rehabilitation and reintegration of convicts, through contribution to the local community. Despite the fact that Serbia has been facing the problem of overcrowding of prisons for a long time, and that the punishment of work in the public interest, although in different modalities, has been recognized

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for decades as one of the key mechanisms for addressing this problem, the pioneer attempts to address this problem have started fifteen years ago. The adequate preconditions to increase a share of the community service in the total number of the imposed criminal sanctions were created by the amendments to the legal framework in 2014. With this in mind, in this paper, the authors present the results of the application of the community service, collected as part of a comprehensive impact assessment research on the application of alternative sanctions and measures in the Republic of Serbia in the 2015-2020 period. The basis for the conclusions presented in this paper are founded on the basis of the data collected by triangulation of quantitative and qualitative research methods and analysed from the perspective of the efficiency, effectiveness and sustainability of the existing system. The paper also defines a set of recommendations for improving the normative framework and its application in practice and assesses their compatibility with the measures envisaged by the Strategy for the Development of the System of Execution of Criminal Sanctions for the 2021-2027 period.

Key words: criminal sanctions, execution of criminal sanctions, penology, alternative sanctions, non-institutional sanctions, community service.

1. Non-custodial, but not non-institutional sanctions

As the individual liberty is one of the most fundamental of human rights, recognized in international human rights instruments and national constitutions throughout the world. Therefore, governments have a duty to justify the use of imprisonment as necessary to achieve an important societal objective for which there are no less restrictive means with which the objective can be achieved. Imprisonment should not be taken for granted as the natural form of punishment, since it has been shown to be counterproductive in the rehabilitation and reintegration of those charged with minor crimes, as well as for certain vulnerable populations (United Nations Office on Drugs and Crime, 2007: 3-4). In addition to various deprivations of the prisoners' liberty, social and economic rights, being an expensive measure, this penalty requires significant efforts of the state administration to organize its enforcement in a manner which does not hamper human dignity of prisoners.

Being the most important sources of the international standards in the field, the Tokyo Rules (United Nations Standard Minimum Rules for Non-custodial

Measures, UN GA Res. 45/110 of 14 December 1990.) list a wide range of non-custodial sanctions and measures that involve some punitive elements even in cases when precede and/or substitute criminal proceedings: (a) Verbal sanctions, such as admonition, reprimand, and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; (m) Some combination of the measures listed above (Bishop, 1998: 42).

However, the organization and the application of alternatives to prison should be done in a manner that is not only efficient, but also guaranties the low level of deprivations compared with the prison. This requires solid normative framework, strong institutional organization as well as a vibrant and innovative interinstitutional cooperation on the national, but also on the local level. Preferably, alternative sanctions should bring additional benefits to victims and/or society. The choice of the sanction with the prevalence of the restorative character to a victim or a society is highly dependent on the very nature of the crime committed. For crimes committed against public order, there is a hardly better alternative to the prison sentence, than the community service.

Born in England and Wales, and widely implemented in Portugal, France, Norway, the Netherlands (to compare the alternative sanctions in the Netherlands and in Serbia see: Tešović, 2021: 67-94) and Finland, this sanction has proven a number of its positive effects in practice, both- as a stand-alone sanction, but also the sanction to accompany the main sanction (Grujić, 2016: 294). In the Western Balkans region, this sanction has been introduced during the 1990s.

2. Alternative sanctions in Serbia

2.1. The normative and the institutional framework

Serbia does not have a long tradition in terms of the application of alternative sanctions in the meaning of how they been applied in the western legal community for decades. However, the last 15-year period has brought some important developments. The 2005 Law on the Execution of Criminal Sanctions (LECS)[2] (Official Gazette of RS, no. 85/05) has introduced provisions that regulate the

2 Law on the Execution of Criminal Sanctions, *Official Gazette of RS*, no. 85/05.

execution of community service and execution of suspended sentences with protective supervision, and in 2011, the Law amending the Law on the Execution of Criminal Sanctions has introduced provisions that regulate the execution of imprisonment without leaving premises where the convict is residing, and the application of electronic monitoring towards the convict (Kolaković-Bojović, Batrićević, Matić, 2022: 10-11).

Guided by the need to ensure institutional setup for enforcement of alternative sanctions (and non-custodial sanctions and measures in general), the Department for the Execution of Criminal Sanctions (hereinafter referred to as DECS) started establishing probation offices as far back as in 2009, and practice has shown a need for the adoption of more precise provisions that would better regulate the implementation of alternative sanctions so that their execution is more efficient, applicable to a wider extent, and that all the advantages of this type of sanctioning were shown in full, whereby an equal treatment of criminal offenders across the whole territory of the RS was enabled.[3] A special Law on the Execution of Non-Custodial Sanctions (LENCS)[4] was adopted in 2014. By its adoption, it was created the normative preconditions for establishing an institutional framework and the significantly wider use of non-custodial sanctions and measures.[5]

In addition to the procedural aspects of the enforcement of every individual alternative sanction, LENCS rules the competences of the Probation Service. Therefore, pursuant to Article 3 of the LENCS, the enforcement jobs are performed by an organisational unit competent for alternative sanctions (hereinafter referred to as: Probation Service), within the DECS,[6] within which probation offices for the area of territorial jurisdiction of one or more higher courts are formed, whereby the local jurisdiction of a probation office is determined accord-

3 Analysis of the effects of the law (Annex to the 2014 Draft Law on Enforcement of Non-Custodial Sanctions and Measures),http://vs3836.cloudhosting.rs/misljenja/791/ana/Analiza%20efekata%20Nacrta%20zakona%20o%20izvrsenju%20vanzavodskih%20sankcija%20i%20mera.pdf, accessed on 25.11.2021.

4 Law on the Execution of Non-Custodial Sanctions, *Official Gazette of RS*, no. 44/14 and 87/18.

5 Non-custodial sanctions and measures (hereinafter referred to as: NCSM), whose enforcement is governed by the LENCS, are as follows: deferral of criminal prosecution according to a decision of the public prosecutor; prohibition to leave the dwelling; prohibition of approaching, meeting or communicating with a person; imprisonment sentence in the premises where the convicted person resides; community service; suspended sentences with protective supervision; release on parole with supervision; providing assistance to a person after the completed imprisonment sentence; preventing the commission of crimes against sexual liberty towards minors.

6 It is obvious in the definition given in such a way that the legislator did not resist the above-mentioned terminological confusion either.

ing to the place of residence or temporary residence of the person involved in the enforcement. “In performing jobs in their competence, probation offices cooperate and exchange information with state authorities, scientific institutions, local community authorities, associations and other institutions of relevance for the performance of their jobs. A probation office may hire experts and other persons for the performance of jobs within its competence, in line with the law” (Article 3, paragraphs 4-5 of the LENCS). In addition to the LENCS, the competence and proceeding of probation officers in 25 probation offices established in the RS according to the areas of the higher courts are also regulated in more detail with the Rulebook on the Manner of Performance of Non-custodial Sanctions and Measures and the Organisation and Work of Probation Officers (RMPNSMOWPO) (Kolaković-Bojović, Batrićević, Matić, 2022: 11).

2.2. Community service

The main normative framework of the community service sentence is provided in the Article 52 of the Criminal Code which rules that the community service may be imposed for criminal offences punishable by imprisonment of up to three years or a fine. It defines community service as any socially beneficial work that does not offend human dignity and is not performed for profit.

When it comes to the sentence duration, the CC limits it to not be less than sixty hours or longer than three hundred and sixty hours. Community service lasts sixty hours during one month and will be performed during a period that may not be less than one month or more than six months.

The CC also provides that, in pronouncing this penalty, the court shall give consideration to the purpose of the punishment, take into account the type of committed criminal offence, the personality of the perpetrator and their readiness to perform community service. Community service may not be pronounced without the consent of the offender. If the offender fails to perform a number of or all the hours of community service, the court shall replace this penalty with a term of imprisonment by calculating every eight hours of community service as one day of imprisonment. If the offender fulfils their obligations in respect of community service, the court may reduce the pronounced duration of community service by one quarter.

Enforcement of the community service is ruled by arts. 38-42 of LENCS. While Art. 38 provides for the obligation of the court to submit the executive decision, with the data on the identity of the convicted person obtained during the

criminal proceedings, to the Commissioner's Office within three days from the day when the decision became enforceable, Art. 39 rules that such a community service must not endanger the health and safety of the convict. The same provision limits the circle of the legal entities entitled to include the convict person in their activities to legal entities engaged in activities of public interest, especially humanitarian, health, environmental or communal activities, that concluded agreement on cooperation with DECS. The choice of the company, but also type of work and work program is determined by the commissioner. All convicts serving the community service have insurance ensured by DECS.

The Commissioner will inform the court and the Commissioner's Office about the beginning and end of the execution of a sentence of work in the public interest. Also, the Commissioner will submit a report to the court and the Trustee Service on the circumstances that significantly affect the implementation of the program. (art. 40 of LENCS)

The convict is obliged to perform the work under the community service within the prescribed time and in the manner determined by the program. If the convict is justifiably prevented from fulfilling the obligations envisaged by the program[7], he is obliged to inform the Commissioner and the employer about it no later than within 24 hours from the occurrence of the reason for the impediment. If during the performance of the community service circumstances arise that require a change in the manner of performing work in the public interest, the Commissioner shall inform the court and the Commissioner's Office. (art. 41 of LENCS, art. 13 of RMPNSMOWPO)

According to the art. 12 of the RMPNSMOWPO, upon receipt of the court decision on the imposed sentence of work in the public interest, the Commissioner invites the convict in writing to assess the appropriate work engagement in relation to his personal characteristics, social and family circumstances, health, ability, education, expertise and employment. If the convict does not respond to the two letters of invitation, the Commissioner shall inform the competent court.

Art. 13 of RMPNSMOWPO rules the very procedure of introducing the convict to the enforcement of the community service. Namely, the Commissioner informs the convict in a simple and understandable way about the purpose of

7 The work program contains: personal data of the convict, data on the criminal offense and the sentence imposed in the public interest, data on the frequency of contact between the Commissioner and the convict, data on the convict's work engagement (beginning of work, place of work, type and scope of work), name and surname the employer who directly monitors the work of the convict and the deadline for completion of the sentence of work in the public interest. (Art. 13 of RMPNSMOWPO)

performing work in the public interest and his obligations, program and consequences of non-fulfilment of obligations, which the convict confirms by signing a statement that he is aware of his rights and obligations.

The commissioner personally acquaints the convict with the representative of the employer and acquaints the representative of the employer with the data on the convict that are important for the performance of work. The commissioner informs the employer about the obligation to keep records of hours worked, which he will submit to the competent commissioner upon completion of work.

The LENCS also authorizes the Commissioner to timely propose in writing to the court to reduce the duration of the sentence by one quarter if the convict fulfils all his obligations related to the community service. (art. 42 of LENCS)

Contrary, if the Commissioner, based on the notification of the employer's representative, finds that the convict grossly neglects his work obligations during the implementation of the program, he will interview the convict, give him the necessary advice and warn him of the consequences of such actions. If the convict continues to grossly neglect his work obligations even after the warning, the Commissioner will inform the court and the Commissioner's Service, stating the facts, circumstances and reasons. (art. 43 of LENCS)

For further information about the application of community service in Belgrade, Serbia as an example depicting key challenges and issues in this field see: Želeskov-Đorić, Batrićević, Petrović, 2015: 185-196.

3. The scope and the methodology of the research

As previously explained the results on the community service implementation are collected as a part of the broader research custodial sanctions and measures in the Republic of Serbia from 2015 to 2020, conducted by the expert team of the Institute of Criminological and Sociological Research[8] during the June-December 2021 period. In order to go further than previous analysis (Ristić, Brkić, 2017: 47-62; Spasojević, Janković, Kovačević, 2018; Spasojević, 2021; Tešović, 2020) in the field, but also to build upon them, the assessment is directed towards the following aspects of application of the non-custodial sanctions and measures:

– The scope and structure of court decisions on alternative sanctions and measures and their implementation in the period from 2015 to 2020, i.e., trends in im-

8 The Team comprised of Milica Kolaković-Bojović, PhD, Senior Research Fellow, Ana Batrićević, PhD, Senior Research Fellow and Marina Matić Bošković, PhD, Research Fellow.

posing NCSMs and their influence on the general trends in the system for the enforcement of criminal sanctions (statistic parameters);

– Analysis of the institutional framework for the enforcement of NCSMs, including the administrative capacities and technical equipment of the Probation Service (quantitative and qualitative parameters);
– The detailed analysis of the application of individual non-custodial sanctions and measures, taking into account normative solutions of applicable provisions of the Criminal Code, Law on the Execution of Criminal Sanctions, and the Enforcement of Extra-Institutional Sanctions and Measures Act, problems with enforcement, and identification of the best practices. This art of the analysis included the community service;
– Analyses of the impacts of the implementation of laws, in relation to the objectives and prediction of influences defined by the authorised proposer of the LENCS, in line with the Law on the Planning System of the Republic of Serbia[9] with accompanying bylaws.[10] The aim of this part of the analysis was to check relevance, efficiency, effectiveness and sustainability of the existing legislative and institutional framework, but also to provide a clear input for the policy makers and their future interventions in the system;

As a result of the conclusions based on the findings from the research, the expert team developed a list of recommendations for improvement of the system of non-custodial sanctions and measures (Kolaković-Bojović, Batrićević, Matić, 2022: 12-13).

The research methodology involved the application of both- quantitative and qualitative methods, including desk analysis of the secondary sources, which encompassed the available secondary material and included the existing analyses, reports and scientific research relevant for the topic; quantitative analysis[11], which

9 Law on the Planning System of the Republic of Serbia, *Official Gazette of RS*, no. 30/18.

10 Regulation on the Methodology of Management of Public Policies, Analysis of the Effects of Public Policies and Rules, and on the Contents of Individual Documents of Public Policies, *Official Gazette of RS*, no. 8/2019.

11 Data within the quantitative analysis includes the following sources: Statistical Office of the Republic of Serbia (SORS), which includes data on the number and structure of imposed non-custodial sanctions and measures, their territorial distribution and prevalence in relation to crimes for which they were imposed; Supreme Court of Cassation (SCC) available within the statistics of the operation of courts of general jurisdiction in the Republic of Serbia, which includes data on trends in the number of criminal cases on an annual level on the territory of the whole RS, and by the areas of all four appellate courts; Data on the basic and higher courts on the territory of RS in relation to the number and structure of decisions that imposed the following non-custodial sanctions

encompassed the processing of available statistical data on the imposition and enforcement of non-custodial sanctions and measures, including data on the share of alternative sanctions in the total number of imposed sanctions, their structure, territorial distribution and trends in the observed period. Statistical data relevant for the institutional framework and administrative capacities and the qualitative analysis, for the implementation of which questionnaires were developed for probation offices, along with protocols for expert interviews with relevant professionals in the area of the judiciary and the system for the enforcement of criminal sanctions, and quantitative data had been collected.

4. Findings

4.1. Enforcement of penal sanctions in Serbia: the current state of play

A multiannual very high incarceration rate of 159.9 compared to the European average of 103.2 at the end of 2019, places Serbia in the group of states that require continuous and comprehensive intervention in order to reduce the rate of persons deprived of liberty (Aebi, Chopin, 2016).

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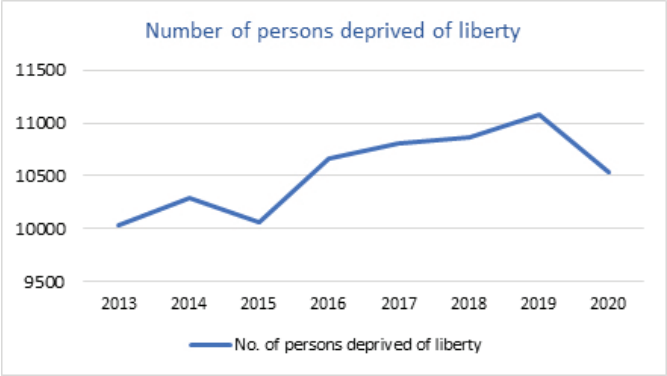
and measures in the observed period, on which records are kept at SORS: suspended sentences with protective supervision, house detention with or without electronic monitoring, house arrest with electronic monitoring, and obligations for release on parole; Data of the Republic Public Prosecutor's Office (RPPO) available in the annual reports on the operation of the RPPO, which includes data on the total number, structure and territorial distribution of obligations by which the deferral of the criminal prosecution is conditioned, in line with Article 283 paragraphs 1-2 of CPC (conditioned opportunity); Data from the Department for the Execution of Criminal Sanctions (DECS), which includes general data on the system for the execution of criminal sanctions (trends in the number and structure of persons deprived of liberty in the observed period, rates of incarceration, the structure of persons deprived of liberty based on the deprivation of liberty) as well as data related immediately to the enforcement of non-custodial sanctions and measures, including the number and structure of non-custodial measures submitted for enforcement on an annual level, trends relating to non-custodial sanctions and measures individually, and data on the capacities of probation offices and data on the signed agreement between DECS and public enterprises.
Data collection for the qualitative part of the analysis included: The production and distribution of a questionnaire for probation offices. The expert team fully complied with all the requirements of the authorised person in the DECS for the modification and adjustment of the questionnaires before their distribution to probation officers (through the Chief of the Enforcement Department at the DECS). The above-mentioned adjustment process implied *inter alia* singling out a set of questions from the questionnaire for probation officers into a separate questionnaire intended for the Head of the Probation Service; Expert interviews with judges, court presidents, deputies to the public prosecutor, employees in court registers, probation officers, and the current and former heads (chiefs) of the Probation Service in the Department for the Execution of Criminal Sanctions.

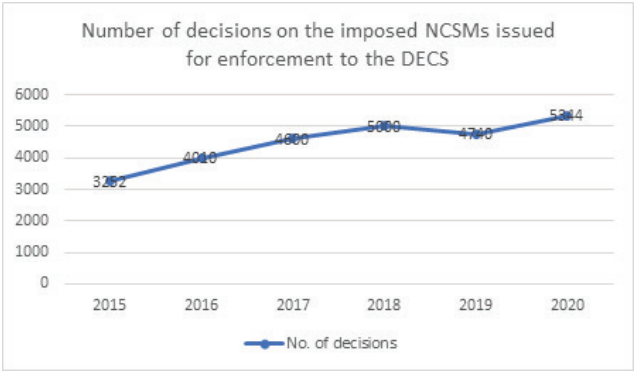
Graph 1. Total number of persons deprived of liberty per year



Wider use of the non-custodial sanctions and measures and further investments in the prison infrastructure have confirmed their positive influence in this field, as it has been well recognised in the Serbian policy framework adopted in the last decade[12], particularly having in mind the overcrowding of penitentiaries (see more: Đorđević, 2015: 75-91).

When it comes to the general indicators of the results achieved so far in the application of non-custodial sanctions and measures (NCSMs) in 2015-2020 point to the existence (except for 2019) of a positive trend, whereby the share of alternative sanctions in 2020 was 16.5% compared to the total number of the executed criminal sanctions, a significant increase compared to 2016 when it was 9.7%.

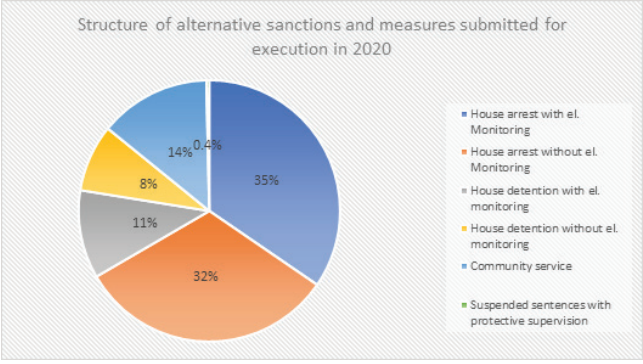
Graph 2. Trend of the use of alternative sanctions in the 2015-2020 period (Kolaković-Bojović, Batrićević, Matić, 2022: 18)



12 Strategy for the development of the system for the enforcement of criminal sanctions until 2020, *Official Gazette of RS*, no. 114/13, Strategy for reducing overcrowding in institutions for enforcement of criminal sanctions in the Republic of Serbia until 2020, *Official Gazette of RS*, no. 43/17.

When it comes to the structure of the imposed NCSMs, not counting special obligations that condition the deferral of criminal prosecution, house arrest with the use of electronic monitoring is dominating, followed by house arrest without electronic monitoring, then community service and home detention with or without electronic monitoring. Suspended sentences with protective supervision occur only sporadically, whereby house arrest with or without electronic monitoring, with 35% and 32% respectively, accounts for almost 70% of all NCSMs; community service makes 14%, house detention with the use of electronic monitoring 11%, house detention without the use of electronic monitoring 8%, and suspended sentences with protective supervision do not even reach half a percentage point (Kolaković-Bojović, Batrićević, Matić, 2022: 16-19).

Graph 3. Structure of imposed alternative sanctions in the 2015-2019 period



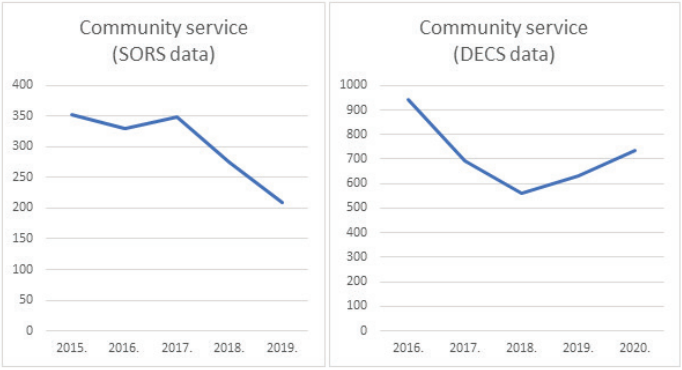
This data shows that the above-mentioned grow of the share of alternative sanctions from 9.7% to 16.5% is mostly associated to the application of the house arrest (with or without electronic monitoring, while the application of the community service is still underdeveloped.

4.2. Community service in practice – achievements and challenges

As previously explained, in attempt to comprehensively assess impact of the current legislative and institutional set up on the application of the community service in practice the ICSR research team combined quantitative and qualitative methods and analysed SORS statistics on pronouncing this sanction in the 2015-2019 period, statistics obtained from the DECS on decisions delivered for execution in the 2016-2020 period, statistics from the additional questionnaire

intended for the Chief of the Department for the enforcement of Non-Custodial Sanctions and Measures, as well as the attitudes of probation officers expressed in questionnaires and interviews.

Graph 4. Trends in the application of community service (SORS and DECS data)

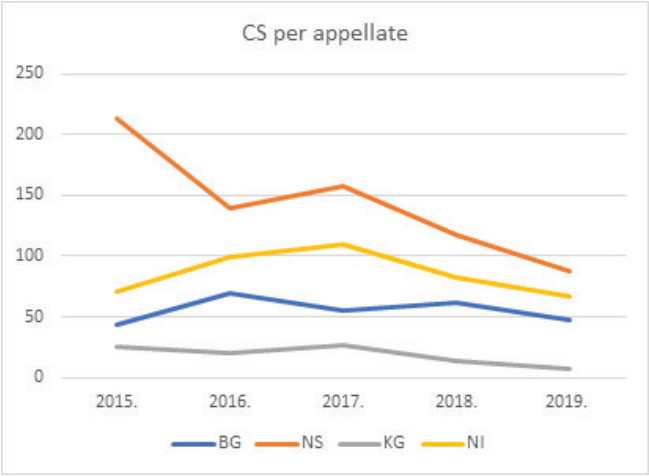


Even at the first glance on the general data on the community service, it is obvious that data from the DECS shows approximately triple values compared to that provided by the SORS based on court data. Explanation of this difference is seen in the aggregate expression of data on community service (hereinafter CS), pronounced in criminal and misdemeanour proceedings. Bearing this in mind, the SORS data is authoritative for the relation of criminal courts to CS, whereas the DECS data is relevant for perceiving the capacities for enforcement. Besides, one should also take into account that the information on enforcement, mainly with respect to trends in pronouncing, are shown with a year's delay. Bearing this in mind**,** a negative trend in pronouncing CS was noticeable starting from 2017, whereas based on the data by the DECS, it can be seen that the situation changed for the better in 2020 (Kolaković-Bojović, Batrićević, Matić, 2022: 39).

In addition to the general data, when it comes to the territorial dispersion of the decisions on the community service, based on the organisation (territorial jurisdiction) of appellate courts, in the 2015-2018 period, the Novi Sad appellate was obviously the leader concerning pronouncing community service sanctions as 3 to 5 times as many SC sanctions were pronounced in the area of this appellate, compared to the remaining three. This trend is not so strange, having in mind that the courts from the territorial jurisdiction of Novi Sad Appellate Court are usually the most open to test innovative practices and initiatives. Meanwhile,

courts in the jurisdiction of the Kragujevac Appellate Court, in the observed period, rarely opted for the community service, which has resulted, together with the declining trend prevalent in the territory of the RS, in only 7 CS sanctions pronounced by courts within this appellate court area, compared to 87 pronounced by courts within the Novi Sad appellate, in the same year.

Graph 5. Trends in pronouncing community service per appellate (SORS data)

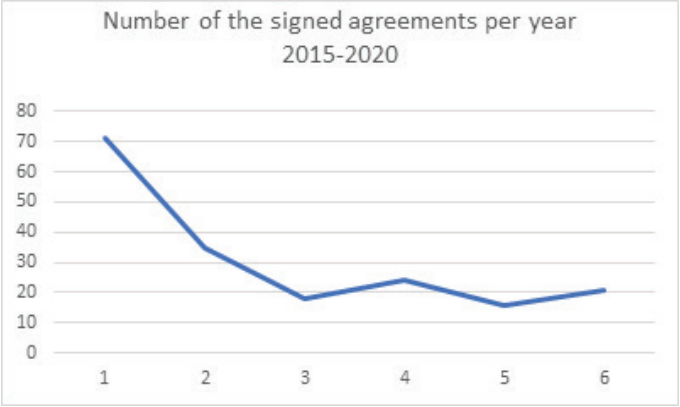


Beyond the normative, and the aspects relevant for the court decisions imposing the community service, even more important is the issue of the challenges in the enforcement of this sanction. This has been also confirmed through the qualitative analysis, where judges said that their decision (not) to impose community service is largely dependent on the capacities for and the practices in the enforcement of the community service. Some of them also said that judges should not make this choice on the basis of the situation in the enforcement sector, but confessed that they cannot ignore the risk that the sanction possibly may not been (at all or adequate enforced).

In attempt to explain the patterns, gaps and challenges associated to enforcement as referred by judges, the research team distributed questionnaires to commissioners, but also to the former and the current head of the Probation Service, as well as a ten follow up interviews with the commissioners.

The buzzword of the qualitative analysis was “cooperation”. Namely, the success of this exercise is largely dependent of the partnership with numerous public enterprises throughout the territory of the RS. According to data obtained from the DECS, 185 such agreements were signed in the observed period.

Graph 6. Agreements between Prison DECS and the public enterprises 2015-2020 period



Although this information seems encouraging on first sight, what is worrying is the fact that the number of newly signed agreement has been low in recent years. Of course, it is not out of logic to sign the most of the agreements in the initial period in order to ensure the start of the implementation. However, this numbers should be increased, not only to increase the number of the potential DECS partners, but also to ensure more variety in available enforcement programs.

Additional reason for concern is the uneven geographic allocation of the signed agreements, whereby most are in the area of AP Vojvodina, as many as 124, or 67% of the total number of the signed agreements. This puts a new light on the poor availability of the basic conditions for the community service enforcement at the territory south of Belgrade.

The ICSR research team explored also the structure/type of work done in the scope of the community service. The utility activities are dominating in the data provided by probation officers, followed by activities of health and welfare protection institutions, while environmental activities appear only sporadically. The reasons for this could be found in the legislative framework which allows only agreements between DECS and public enterprises, which *per se* restricts the possible choice of the work and therefore efficient application of the community service sanction (Kolaković-Bojović, Batrićević, Matić, 2022: 40).

Beyond the restrictions associated to the number of the agreements and the type of the work, an important source of challenges could be found in the quality of cooperation between the Probation Service and public enterprises with which

agreements have been signed. Here it is important to mention a sort of discrepancy between the quantitative and the qualitative assessment of such cooperation given by commissioners. Namely, 10 probation officers scored this cooperation as good, 8 as satisfactory, 3 probation officers said the quality of cooperation varies depending on which legal entity is involved, and 1 probation officer said they do not have any opinion about that. Differently from the overall positive quantitative assessment, as of the normative framework s of the cooperation, the quality analysis given in their interviews shed a bit different light and brought a plenty of problems at the table. They especially pointed out the issue of the frequent changes in the management structure of the enterprises, which humpers all attempts to ensure sustainable understanding of the very purpose and importance of the community service on their side. Thus, they point to the existence of a need to organise meetings with representatives of employers and management of the enterprise more frequently, to prevent prejudice within management structure in term of the working arrangements concerning convicted persons.

In addition to the already explained challenges, commissioners explained the existence of a series of practical, specific problems, mostly associated to the usual working hours of the public enterprises. Namely, if a convicted person needs to exercise his/her obligation within community service, but needs some flexibility in terms of the working hours, being already employed, this will be mostly impossible due to the limited working hours of the public enterprises (mostly does not work in the afternoon).

They also mentioned a lack of efficient mechanism in cases when convicted person avoids to start enforcement of the sanction, since the Criminal Code does not recognise properly this situation.

Another serious problem is identified mostly in the small towns where there are serious challenges to ensure proper implementation and the monitoring of the community service. Namely, people mostly know each other which frequently results in a misconduct, where there is a formal record on the community service done, but without real presence/work of the convicted person. The commissioners emphasized that there is a lack of accountability in such cases.

Also, the commissioners noticed that frequently there is no efficient communication between Probation service and the enterprises in cases when a convicted person breaches their obligations and therefore further actions are needed.

Finally, the commissioners claim a lack of administrative capacities of the Probation Service, where commissioners are overburden by administrative work and struggling to deal with the workload, but also with the huge backlog.

5. Conclusions

Despite the numerous benefits for the offender, for the system of the enforcement of criminal sanctions and for the society at large, the community service sanction remains underdeveloped at the legislative level, but even more in practice. The lack of interinstitutional cooperation, poor mechanisms of accountability and almost publicly invisible information on this mechanism and all the benefits it can bring, prevent from the wider application in practice.

Considering this it seems that one of the most effective measures to address possible challenges will be to establish teams at the local community level, with the participation of representatives of the judiciary, probation officers, representatives of local self-governments, employer associations, chambers of commerce, public enterprises and other relevant entities, with the purpose of improving cooperation concerning the enforcement of community service, as well as its wider application and promotion in the local community.

In addition to fostering this interinstitutional dialogue, there is a non-disputable need to work on raising the general public's awareness with regard to the benefits of community service for an individual and the community as a whole.

Finally, amendments to the existing legislative framework, but also continuous strengthening the administrative capacities of the Probation Service should be used to address above identified challenges.

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RAD U JAVNOM INTERESU: ISKUSTVA I IZAZOVI PRIMENE U REPUBLICI SRBIJI U PERIODU OD 2015. DO 2020. GODINE

Dvostruka priroda rada u javnom interesu čini ovu kaznu, s jedne strane, efikasnim mehanizmom smanjenja prenaseljenosti zavoda za izvršenje krivičnih sankcija, dok istovremeno omogućava efikasnu rehabilitaciju i reintegraciju osuđenih lica, kroz doprinos lokalnoj zajednici. Uprkos činjenici da se Srbija duži vremenski period suočava sa problemom prenaseljenosti ustanova za izvršenje krivičnih sankcija, kao i da je kazna rada u javnom interesu, iako u različitim modalitetima, već decenijama prepoznata kao jedan od ključnih mehanizama adresiranja ovog problema, a pionirski pokušaji primene započeli pre petnaestak godina, tek izmenama zakonskog okvira iz 2014. godine, stvoreni su adekvatni preduslovi za povećanje njene zastupljenosti. Polazeći od pomenutih pretpostavki, autorke u radu predstavljaju rezultate primene kazne rada u javnom interesu, prikupljene u sklopu sveobuhvatne procene uticaja primene alternativnih sankcija i mera u Republici Srbiji u periodu od 2015. do 2020. godine. Autorke zaključke zasnivaju na podacima prikupljenim triangulacijom kvantitativnih i kvalitativnih istraživačkih metoda, sagledavajući ih iz ugla relevantnosti važećih zakonskih rešenja, kao i efikasnosti, efektivnosti i održivosti postojećeg sistema. U radu je definisan i set preporuka za unapređenje normativnog okvira i njegove primene u praksi i procenjena njihova kompatibilnost sa merama predviđanim Strategijom razvoja sistema izvršenja krivičnih sankcija za period 2021-2027. godine.

Key words*:krivične sankcije, izvršenje krivičnih sankcija, penologija, alternativne sankcije, vanzavodske sankcije, rad u javnom interesu.*

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TERRORISM AS A CATEGORY OF NATIONAL AND INTERNATIONAL CRIMINAL LAW

Prof. Ivana Bodrožić, PhD (2022) *Terrorism as a category of national and international criminal law*. Belgrade: University of Criminal Investigation and Police Studies.

In May 2022, the University of Criminal Investigation and Police Studies published a monograph titled “Terrorism as a category of national and international criminal law” authored by Professor Ivana Bodrožić, PhD, an Associate Professor at this University. The monograph has been a result of the author’s long-term research conducted for the purposes of her doctoral dissertation, which the author defended at the Faculty of Law of the University in Belgrade in 2016. However, the content of the monograph is significantly different from the content of the mentioned doctoral dissertation, because in the period since its defence the author has largely supplemented and enriched it with novelties that have appeared in legislation and in theory related to the issues she dealt with in this work in the meantime.

The problem of terrorism and the fight against this social evil has been very present for many years in numerous professional and scientific works in the fields of sociology, psychology, criminology, criminal investigation, political science, philosophy, etc. and especially in the field of security sciences. All over the world, our country included, hundreds of articles, analyses, studies, monographs and

other professional and scientific works have been written with the aim to analyse and explain better this phenomenon and its causes, as well as to propose the most effective measures for its suppression. This is why it is somewhat surprising that despite this there are very few works in the field of criminal law, although it is an indisputable fact that the criminal law response to terrorism is a very important tool in combating this phenomenon.

In our country, as far as we know, the only monographic study that dealt with this issue is the book “Terrorism from the point of view of criminal law” by Prof. Dušan Jakovljević, PhD, a Professor at the Faculty of Law in Belgrade, published back in 1997. Since then, a large number of articles on this topic have been published, but the monograph by Prof. Bodrožić is certainly the first one which after 25 years deals in a comprehensive way with the criminal-law aspect of the fight against this extremely dangerous social phenomenon. The explanation for this illogicality may lie in the fact that the incrimination of terrorism, although present in our criminal legislation for almost fifty years, has changed several times, along with the entire approach to the criminal-law response to terrorism, which required the researcher to be extremely engaged in researching the genesis of these changes and explaining their causes and desired goals. In this sense, the author certainly made a great effort, which resulted in this very important book from a criminal law point of view.

The monograph “Terrorism as a category of national and international criminal law” is 229 pages long and includes, in addition to an abstract, an introduction, concluding remarks, a list of the literature used and a register of terms, two key chapters, the first one being 2/3, and the second one being 1/3. The author classified and presented the issue of terrorism as a category of criminal law through chapters titled “Terrorism as a category of national criminal law” and “Terrorism as a category of international criminal law”.

Within the first chapter, “Terrorism as a category of national criminal law”, the issue in question is presented through five sections as follows: The origin and chronological development of the crime of terrorism in the national criminal legislation until the adoption of the Criminal Code of Serbia, Terrorism and related crimes in the Criminal Code of Serbia, Law on amendments to the Criminal Code of Serbia from 2012 and the peculiarities of the new approach to defining criminal acts of terrorism, Criminal acts of terrorism in the revisions of the Criminal Code of Serbia after 2012 and Peculiarities and the expanded scope of application of selected general criminal law institutes in the field of criminal acts of terrorism.

In the second chapter, “Terrorism as a category of international criminal law”, the material is divided into four sections, which cover the following: in the first section, the impact of national criminal law solutions on terrorism on international criminal law, then in the second section, the crime of terrorism as a core crime and the possibilities of expansion jurisdiction of the International Criminal Court, then in the third section the problems of determining the features of terrorism as a separate international criminal offense and in the fourth one theoretical proposal that terrorism be prosecuted before the International Criminal Court as a war crime and a crime against humanity.

The first chapter deals with terrorism as a criminal offense in the national criminal legislation of the Republic of Serbia, in all stages of its legislative regulation, and the second chapter analyses the character of terrorism within the norms of international criminal law, as well as the mechanisms available to international criminal justice for potential prosecution of this category of offense. This chapter analyses the potential and desirable options on the standardization of terrorism as a universal criminal law category on the international level, which as such, precisely determined and defined, would be included in the category of international criminal acts in the narrower sense that fall under the actual jurisdiction of the International Criminal Court. In an effort to link the future effective application of norms to a good knowledge of legal, primarily criminal, mechanisms of protection against terrorism, the author provides a detailed chronological account of terrorism in the national criminal legislation before the adoption of the Criminal Code, then in the Criminal Code itself, then after the adoption of the new approaches in determining the criminal offenses of terrorism from 2012, as well as in the redactions that followed.

The presented national criminal law solutions were set as the basis of the second part of the monograph, in which the author tried to prove in a consistent and argumentative manner the hypothesis about the significance and potential of the crime of terrorism within the framework of international criminal law, to indicate the possibilities of the influence of national criminal-law solutions on the international criminal-law definition of terrorism, as well as to point out the importance of the consistent application of criminal law principles, first of all, the principle of legality, but also the principle of cooperation and mutual trust between states, which would ensure a reduced level of national particularism and improve the internationalization of the criminal law regulation of terrorism.

The paper did not analyse individual terrorist events, organizations or statistics of a general type, which the author considered unnecessary in an emphasis

on criminal law research on terrorism. The topic is treated from the aspect of criminal law dogmatics, but also from the aspect of the author's general interest in the importance and scope of law in suppressing and preventing terrorism, as a deviant socio-pathological phenomenon. In a number of places in the monograph, some fundamental issues of shaping the criminal law norm were also pointed out, the influence that politics and criminal-political motives have on determining the characteristics of the analysed criminal act and setting the criminal zone wider than the desirable standards of rational, criminal law norming in a democratic society.

The special importance of this work is reflected in the pointing out of a large number of problematic issues, which in the process of nomotechnical adjustment of the criminal-law response to terrorism, both at the national but also at the lacking and incomplete international criminal-law level, can appear and open up, emphasizing first of all the importance of the predominance of legal in relation to the illegal mechanisms of the fight against terrorism. Among other things, within the framework of the legal mechanisms of the reaction to terrorism, the following negative criminal policy trends were highlighted and marked: excessive criminalization, the expansion of the criminal zone to the area of remote endangerment of the protective object, as well as the tightening of the punitive policy.

This text deals with the current social topic of terrorism in an original and comprehensive way, both from the aspect of the criminal-law provisions of the national legislation of the Republic of Serbia, and from the aspect of international criminal law, which envisages terrorism as a form of contractual crime, which has not yet been defined as a universal, unique international criminal-law category. The originality is manifested in the research idea, structure and content of the text, which start from the place, role and importance of the criminal-law regulation of terrorism from 1973, when it was first envisaged as a criminal offense in the national legislation to the state of the current legislation as of December 1, 2019. Comprehensiveness is ensured through a normative analysis of all legal features of criminal acts of terrorism and accessory incriminations, in each of the redactions of the national criminal-law framework, which included changes in the area of this category of offences, as well as through an analysis of the applications of selected criminal law institutes in this area and some principled issues related to the inconsistencies between legal dogmatic and criminal policy requirements.

The paper is written in a clear and understandable language, and the writing style is good and suitable for postgraduate students, for whom the monograph is primarily intended, as well as for lawyers who deal with this matter theoretically

or in practice. The terminology used is legal and professional, but at the same time adapted to the standards of an average students, who has a basic academic level of knowledge of substantive criminal law as a previous educational background. Comprehensive domestic and foreign literature in this field has been used in the monograph, mostly of recent date, which includes 161 bibliographic units, of which 65 are foreign, among which the works of A. Casses, A. Timmerman, K. Ambos, Ch. Bassiouni, E. M. Wise, C. Roxin, G. Jacobs, M. Mavany, D. Husak, H. Radtke, M. Melia, F. Schmaleger, A. Ashwort and Ch. Safferling. The bibliographic basis of the manuscript includes also a list of 24 legal sources and the same number of Internet sources. All used sources are correctly listed and cited.

At the end of the monograph, a glossary was compiled, from the formal side as the standard expected for the publication of a monograph, but from the material side, viewed as a landmark and incentive for some further research into terrorism by practitioners of substantive criminal law, since each of the selected terms can be viewed and used as the basis of some further detailed research of the mentioned term.

Although it saw the light of day only a few months ago, it can already be said with certainty that the mentioned monograph is very popular among the scientific and professional public. The annual “Law life portal for law and economy” award for a book that made a contribution in the field of law, economics and literature, which the author received for this monograph, supports this claim. Therefore, we can conclude that with the publication of the monograph “Terrorism as a category of national and international criminal law” authored by Prof. Ivana Bodrožić, PhD, our criminal law literature has been significantly enriched in a field where there have long been no comprehensive and thorough scientific works. This book will certainly be essential reading for all those who deal with criminal law theoretically or practically or have a special interest in it.

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TERORIZAM KAO KATEGORIJA NACIONALNOG I MEĐUNARODNOG KRIVIČNOG PRAVA

Prof. dr Ivana Bodrožić (2022) *Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava*. Beograd: Kriminalističko-policijski univerzitet.

Kriminalističko-policijski univerzitet objavio je maja meseca 2022. godine monografiju pod nazivom *“Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava”* autorke prof. dr Ivane Bodrožić, vanredne profesorke ovog univerziteta. Monografija je nastala na bazi dugogodišnjeg istraživanja autorke rađenog za potrebe doktorske disertacije koju je autorka odbranila na Pravnom fakultetu Univerziteta u Beogradu 2016. godine. Međutim, sama sadržina monografije značajno se razlikuje od sadržine pomenute doktorske disertacije jer ju je autorka u međuvremenu od njene odbrane u velikoj meri dopunila i obogatila novinama koje su se u međuvremenu javile u zakonodavstvu i u teoriji vezanim za problematiku kojom se u ovom radu bavila.

Problematika terorizma i borbe protiv ovog društvenog zla veoma je prisutna već duži niz godina u brojnim stručnim i naučnim radovima iz oblasti sociologije, psihologija, kriminolgije, kriminalistike, politikologije, filozofije i dr, a naročito iz oblasti bezbednosnih nauka. U celom svetu, pa i u našoj zemlji, napisano je stotine članaka, analiza, studija, monografija i drugih stučnih i naučnih radova koji imaju za cilj da analiziraju i bolje objasne ovu pojavu i njene uzroke, kao i da predlože što efikasnije mere za njeno suzbijanje. Zbog toga pomalo čudi

da je uprkos tome radova iz oblasti krivičnog prava veoma malo iako je nesporna činjenica da je krivičnopravno reagovanje na terorizam veoma važno sredstvo u suprotstavljanju ovoj pojavi.

U našoj zemlji, koliko je nama poznato, jedina monografska studija koja se bavila ovom problematikom jeste knjiga „Terorizam sa gledišta krivičnog prava“ prof. dr Dušana Jakovljevića, profesora Pravnog fakulteta u Beogradu, objavljena sada već davne 1997. godine. Od tada je objavljen veći broj članaka na ovu temu, ali je monografija prof. Bodrožić svakako prva koja se posle čitavih 25 godina na jedan celovit način bavi krivičnopravnim aspektom borbe protiv ove izuzetno opasne društvene pojave. Objašnjenje za ovu nelogičnost možda leži u činjenici da se inkriminacija terorizma, iako prisutna u našem krivičnom zakonodavstvu već gotovo pedeset godina, više puta menjala zajedno sa celokupnim pristupom krivičnopravnoj reakciji na terorizam, što je od istraživača tražilo izuzetan angažman u istraživanju geneze ovih promena i objašnjavanju njihovih uzroka i željenih ciljeva. U tom smislu autorka je svakako uložila veliki napor koji je rezultarao ovom, sa krivičnopravnog gledišta, veoma značajnom knjigom.

Monografija *“Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava”* obima je 229 stranica i obuhvata, pored apstrakta, uvoda, zaključnih razmatranja, spiska korišćene literature i registra pojmova, dva ključna poglavlja koja se po obimu nalaze u međusobnom odnosu 2/3 prema 1/3, u korist prvog poglavlja. Autorka je pitanje terorizma kao krivičnopravne kategorije podelila i izložila kroz poglavlja koja nose naslov „Terorizam kao kategorija nacionalnog krivičnog prava“ i „Terorizam kao kategorija međunarodnog krivičnog prava“.

U okviru prvog poglavlja, Terorizam kao kategorija nacionalnog krivičnog prava, predmetna problematika je izložena kroz pet odeljaka i to: Nastanak i hronološki razvoj krivičnog dela terorizma u nacionalnom krivičnom zakonodavstvu do usvajanja Krivičnog zakonika Srbije, Terorizam i srodna krivična dela u Krivičnom zakoniku Srbije, Zakon o izmenama i dopunama Krivičnog zakonika Srbije iz 2012. godine i osobenosti novog pristupa definisanju krivičnih dela terorizma, Krivična dela terorizma u redakcijama Krivičnog zakonika Srbije nakon 2012. godine i Osobenosti i prošireni opseg primene odabranih opštih krivičnopravnih instituta u oblasti krivičnih dela terorizma.

U okviru drugog poglavlja, Terorizam kao kategorija međunarodnog krivičnog prava, materija je podeljena u četiri odeljka u okviru kojih se razmatra: u prvom odeljku uticaj nacionalnih krivičnopravnih rešenja terorizma na međunarodno krivično pravo, zatim u drugom odeljku krivično delo terorizma kao *core crime* i mogućnosti proširenja nadležnosti Međunarodnog krivičnog suda, potom u trećem odeljku problemi određenja obeležja terorizma kao zasebnog međunar-

odnog krivičnog dela i u četvrtom teorijski predlozi da se terorizam procesuira pred Međunarodnim krivičnim sudom kao ratni zločin i zločin protiv čovečnosti.

Prvo poglavlje obrađuje terorizam kao krivično delo u nacionalnom krivičnom zakonodavstvu Republike Srbije, u svim fazama njegovog zakonodavnog regulisanja, a u drugom je analiziran karakter koji terorizam ima u okviru normi međunarodnog krivičnog prava, kao i mehanizmi koji stoje na raspolaganju međunarodnom krivičnom pravosuđu za potencijalno procesuiranje ove kategorije delikata. U ovom poglavlju analiziran je i potencijal i poželjne opcije o normiranju terorizma, kao univerzalne krivičnopravne kategorije na međunarodnom planu, koji bi kao takav, precizno određen i definisan, bio uvršten u kategoriju međunarodnih krivičnih dela u užem smislu, koja ulaze u stvarnu nadležnost Međunarodnog krivičnog suda. U nastojanju da se buduća efikasna primena normi veže za dobro poznavanje pravnih, u prvom redu krivičnopravnih, mehanizama zaštite od terorizma, autorka daje detaljan hronološkli prikaz terorizma kako u nacionalnom krivičnom zakonodavstvu pre usvajanja Krivičnog zakonika, potom u samom Krivičnom zakoniku, zatim nakon usvajanja novog pristupa u određivanju krivičnih dela teorizma iz 2012. godine, kao i u redakcijama koje su sledile.

Izložena nacionalna krivičnopravna rešenja postavljena su kao osnov drugog dela monografije, u kojem je autorka pokušala da dosledno i argumentovano dokaže hipotezu o značaju i potencijalu koji krivično delo terorizma ima u okviru međunarodnog krivičnog prava, da ukaže na mogućnosti uticaja nacionalnih krivičnopravnih rešenja na međunarodno krivičnopravno definisanje terorizma, kao i da se i na nivou najmlađe krivičnopravne discipline ukaže na značaj dosledne primene krivičnopravnih principa, najpre principa zakonitosti, ali i principa saradnje i uzajamnog poverenja među državama, koji bi obezbedio smanjeni nivo nacionalnih partikularizama i unapredio internacionalizaciju krivičnopravnog normiranja terorizma.

U radu nisu analizirani pojedini teroristički događaji, organizacije ili statistike opšteg tipa, što je autorka smatrala nepotrebnim u jednom naglašeno krivičnopravnom istraživanju terorizma. Tema je obrađivana sa aspekta krivičnopravne dogmatike, ali je i sa aspekta opšte zainteresovanosti autorke za značaj i domete prava u suzbijanju i sprečavanju terorizma, kao devijantne sociopatološke pojave. Na većem broju mesta u monografiji ukazivano je i na neka načelna pitanja oblikovanja krivičnopravne norme, uticaje koje politika i kriminalnopolitički motivi imaju na određenje obeležja bića analiziranih krivičnih dela i postavljanje kriminalne zone šire od poželjnih standarda racionalnog, krivičnopravnog normiranja u demokratskom društvu.

Poseban značaj ovog rada ogleda se u ukazivanju na veliki broj problemskih pitanja, koja u procesu nomotehničkog prilagođavanja krivičnopravnog odgovora na terorizam, i na nacionalnom ali i na nedostajućem i nezaokruženom međunarodnom krivičnopravnom nivou, mogu da se pojave i otvore, uz naglašavanje najpre značaja prevage pravnih u odnosu na vanpravne mehanizme borbe protiv terorizma. Između ostalog, u okviru pravnih mehanizama reakcije na terorizam, istaknuti su i označeni kao negativni kriminalnopolitički trendovi: prekomerna kriminalizacija, proširivanje kriminalne zone i na oblast udaljenog ugrožavanja zaštitnog objekta, kao i pooštravanje punitivne politike.

Ovaj tekst na originalan i sveobuhvatan način obrađuje aktuelnu društvenu temu terorizma, kako sa aspekta krivičnopravnih odredaba nacionalnog zakonodavstva Republike Srbije, tako i sa aspekta međunarodnog krivičnog prava, koji terorizam predviđa kao ugovornonastali oblik krivičnog dela, koji još uvek nije definisan kao univerzalna, jedinstvena međunarodna krivičnopravna kategorija. Originalnost se manifestuje u istraživačkoj ideji, strukturi i sadržaju teksta, koji polaze od mesta, uloge i značaja krivičnopravnog normiranja terorizma od 1973. godine, kada je prvi put predviđen kao krivično delo u nacionalnom zakonodavstvu do stanja aktuelnog zakonodavstva zaključno sa 1.12. 2019. godine. Sveobuhvatnost je obezbeđena kroz normativnu analizu svih zakonskih obeležja krivičnih dela terorizma i njemu akcesornih inkriminacija, u svakoj od redakcija nacionalnog krivičnopravnog okvira, koje su uključivale izmene u oblasti ove kategorije delikata, kao i kroz analizu primene odabranih krivičnopravnih instituta u ovoj oblasti i nekih načelnih pitanja nesaglasnosti između pravnodogmatskih i kriminalnopolitičkih zahteva.

Rad je pisan jasnim i razumljivim jezikom, a stil pisanja je dobar i primeren studentima poslediplomskih studija, čijem je korišćenju monografija najpre namenjena, kao i pravnicima koji se ovom materijom bave teorijski ili u praksi. Korišćena terminologija je pravnička i stručna, ali ujedno prilagođena standarima prosečnog studenta, koji kao prethodno obrazovanje ima osnovni akademski nivo poznavanja materijalnog krivičnog prava. U radu je korišćena bogata domaća i strana literatura iz ove oblasti, uglavnom novijeg datuma, koja obuhvata 161 bibliografsku jedinicu, od kojih je 65 stranih, među kojima se ističu radovi A. Kasezea (*A. Cassese*), A. Timermana *(A. Timmerman),* K. Ambosa *(K. Ambos),* Š. Basiounija (*Ch. Bassiouni),* E. M. Vizea (*E. M. Wise),* K. Roksina (*C. Roxin),* G. Jakobsa (*G. Jacobs),* M. Mavanija (*M. Mavany),* D. Huzaka (*D. Husak),* H. Radtkea *(H. Radtke),* M. Meliu *(M. Melia),* F. Šmalegera *(F. Schmaleger),* A. Ešvorta *(A. Ashwort)* i K. Saferlinga *(Ch. Safferling).* Kao bibliografska podloga rukopisa nalazi se i spisak od 24 pravna izvora i isti broj Internet izvora. Svi korišćeni izvori su korektno navedeni i citirani.

Na kraju monografije sastavljen je pojmovnik, sa formalne strane kao standard očekivan za publikovanje monografije, ali sa materijalne strane posmatrano kao orijentir i podsticaj za neka dalja istraživanja terorizma od strane poslenika materijalnog krivičnog prava, budući da se svaki od izdvojenih pojmova može posmatrati i koristiti kao osnova nekog daljeg detaljnijeg istraživanja navedenog pojma.

Iako je ugledala svetlost dana pre samo nekoliko meseci već se sa sigurnošću može reći da je pomenuta monografija veoma zapažena u krugovima naučne i stručne javnosti. O tome govori i godišnja nagrada „Law life portala za pravo i privredu“ za knjigu koja je dala doprinos u oblasti pravne, ekonomske i književne oblasti, a koju je autorka dobila za ovu monografiju. Stoga možemo da zaključimo da je objavljivanjem monografije *“Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava”* autorke prof. dr Ivane Bodrožić, naša krivičnopravna literatura značajno obogaćena i to u oblasti u kojoj odavno nije bilo sveobuhvatnih i celovitih naučnih radova. Ova knjiga svakako će biti nezaobilazna literatura za sve one koji se teorijski ili u praksi bave krivičnim pravom ili se za njega posebno interesuju.

CONCLUSIONS

LXI REGULAR ANNUAL CONFERENCE OF THE SERBIAN ASSOCIATION FOR CRIMINAL LAW THEORY AND PRACTICE

-Zlatibor, September 22 – 24, 2022-

The Serbian Association for Criminal Law Theory and Practice, in cooperation with the Institute of Criminological and Sociological Research, the Ministry of Justice of the Republic of Serbia and the Judicial Academy, and with the support of the OSCE Mission in Serbia, organized the LXI Regular Annual Conference of the Association on the following topic: "Non-institutional Measures, Simplified Forms of Treatment and Other Criminal Law Instruments of Reaction to Criminality and Positive Criminal Legislation". The Conference was held from September 22 to 24 in Zlatibor. More than 300 representatives of the judiciary and other practitioners in the field of criminal law and the academic community participated in the consultation.

As a result of the presented papers and the expert discussion, the following conclusions have been adopted:

1. The criminal legislation of the Republic of Serbia, in terms of penalties, belongs to the stricter criminal legislation, and in that direction, it is enough to work on harmonizing the penal policy of the legislator and the courts, without further interventions in the Criminal Code in this matter.
2. Expand the normative basis for the possibility of imposing alternative criminal sanctions and create factual opportunities for their wider application in practice.

3. Pay more attention to the fine, as a criminal sanction, with the aim of its wider application in practice.
4. In the application of simplified forms of procedure in criminal matters, there is a discrepancy between the norm and practice, which must be resolved having in mind that the simplified forms of procedure should be the main instrument for the efficiency of solving criminal cases as one of the main goals of the entire process of reforming the criminal procedural legislation of the Republic of Serbia.
5. In imposing the measure of detention, it is necessary to pay more attention to the specification of the conditions for the application of the measure and the international legal standards on the exceptionality of the application of the measure of detention as well as to give more importance to the alternative measure of detention
6. To change the prosecutorial jurisprudence which assumes that imposing the obligation to pay a certain amount of money in cases of application of the postponement of criminal prosecution (diversion of the procedure) is the main modality of the principle of the opportunity of criminal prosecution, having in mind that such a practice is not in accordance with the goals that should be achieved by applying the principle.
7. It is necessary to pay more attention to the position of the injured person in cases of conditional postponement of criminal prosecution and deciding on his property claim.
8. It is necessary to enact a new law on juvenile offenders instead of amending the existing law. A special attwention needs to be given to the issue of the misdemenaur procedure.
9. In the upcoming legislative amendments in te filed of judicial legislation, it is necessary to take into account the proposals and suggestions presented at the round table held on the topic “Amendments to the Constitution - the next steps to ensure the desired way of functioning of holders of judicial functions”.

ZAKLJUČCI

LXI REDOVNOG GODIŠNJEG SAVETOVANJA SRPSKOG UDRUŽENJA ZA KRIVIČNOPRAVNU TEORIJU I PRAKSU

-Zlatibor, 22 - 24. septembra 2022. godine-

Srpsko udruženje za krivičnopravnu teoriju i praksu u saradnji sa Institutom za kriminološka i sociološka istraživanja, Ministarstvom pravde RS i Pravosudnom akademijom, a uz podršku misije OEBS u Srbiji, organizovali su LXI redovno godišnje savetovanje Udruženja na temu „*Vaninstitucionalne mere, pojednostavljene forme postupanja i drugi krivičnopravni instrumenti reakcije na kriminalitet i pozitivno kazneno zakonodavstvo*“. Konferencija je održana od 22. do 24. septembra na Zlatiboru. Na savetovanju je učestvovalo preko 300 predstavnika pravosuđa i drugih praktičara u oblasti krivičnog prava i akademske zajednice.

Kao rezultat prezentovanih radova, diskusija i okruglih stolova, usvojeni su sledeći zaključci:

1. Krivično zakonodavstvo Republike Srbije, po zaprećenim kaznama, spada u red strožijih krivičnih zakonodavstava, te je u tom pravcu dovoljno raditi na usklađivanju zakonodavne politike zakonodavca i sudske kaznene politike, bez intervencija u krivičnom zakoniku po tom pitanju.
2. Proširiti normativnu osnovu za mogućnost izricanja alternativnih krivičnih sankcija i stvoriti faktičke mogućnosti za njihovu širu primenu u praksi.
3. Novčanoj kazni, kao krivičnoj sankciji, posvetiti veću pažnju u cilju njene šire primene u praksi.

4. U primeni pojednostavljenih formi postupanja u krivičnim stvarima prisutan je nesklad između norme i prakse koji je neophodno otkolniti jer su pojednostavljene forme postupanja ključni instrumenat efikasnosti rešavanja krivičnih stvari kao jednog od osnovnih ciljeva celokupnog procesa reforme krivičnog procesnog zakodavstva Republike Srbije.
5. U određivanju mere pritvora neophodno je posvetiti veću pažnju konkretizaciji uslova za primenu mere i međunarodnom pravnom standardu o izuzetnosti primene mere pritvora i dati veći značaj alterntivi meri pritvora.
6. Nalaganje obaveze uplate određenog novčanog iznosa u slučajevima primene odlaganja krivičnog gonjenja kao ključnog vida načela oportuniteta krivičnog gonjenja kao pravila nije u saglasnosti sa ciljevima koji treba da budu postignuti primenom načela.
7. Neophodno je posveti veću pažnju položaju oštećenog lica u slučajevima uslovnog odlaganja krivičnog gonjenja i odlučivanja o njegovom imovinskopravnom zahtevu.
8. Neophodno je doneti novi zakon o maloletnim učinioicima krivičnih dela umesto izmena i dopuna postojećeg zakona, čijim bi se odredbama između ostalog detaljno uredio i prekršajni postupak.
9. U predstojećim normativnim aktivnostima u radu na setu pravosudnih zakona neophodno je uzeti u obzir i predloge i sugestije iznesene na okruglom stolu održanom na temu “*Izmene Ustava - sledeći koraci obezbeđenja željenog načina funkcionisanja nosilaca pravosudnih funkcija*”.

ABOUT THE JOURNAL

The Journal of Criminology and Criminal Law is triannual, peer reviewed scientific journal with a 59-year long tradition, co-published by the Institute of Criminological and Sociological Research- Belgrade and the Serbian Association for Criminal Law Theory and Practice. According to the categorization of the Ministry of education, science and technological development the Journal is categorized as M51 (Prominent/outstanding journal of the national importance). The Journal includes articles in the field of criminal law, criminology, penology, victimology, juvenile delinquency and other sciences that study etiology, phenomenology, prevention and repression of crime. Moreover, the Journal is indexed in the prestigious global database HeinOnline.

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