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*Review Scientific Article*

*UDC: 343.24(496.5)*

*364-781.9:343.22(496.5)*

*Received: 17.12.2018.*

## **ENFORCEMENT OF ALTERNATIVES TO IMPRISONMENT IN ALBANIA**

*In this article, the authors reviewing history of development of the alternative sanctions in Albania. They examine the normative framework which regulates alternatives to imprisonment in this country. Additionally, authors analyze statistical parameters that shows positive trends, but also gaps in implementation practices. The particular attention authors pay to following issues: the non-proper understanding of the circumstances of their application; judicial reluctance; lack of necessary infrastructure for the implementation of certain types of alternative sentences. In final conclusions, they propose possible policy solutions in order to overcome current shortcomings.*

**Key words: alternative sanctions, criminal sanctions, alternatives to imprisonment.**

### **1. Introduction**

Started by the rich theoretical and practical problematic which contains the definition and the execution of sanctions, this article aims to analyze the Albanian legislation on the field of criminal sanctions system's reception and

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implementation. On the article is provided the informative background concerning changes which have been made in Albanian internal legislation. It notices that while its theoretical aspects have been consolidated, juridical practice needs to improve the system of sanctions nomenclature, by expanding its spectrum in a definitive result which educates and integrates in society. Criminal sanction is known as universal justice knowledge, on the contexts of fighting against crime. Since and till now, it is considered as “par excellence” tool for criminal phenomenon repression. In its sense, criminal sanction is identified with punishment (Kerchove, 2005: 23). The individualization of penal sanction must be considered as an important juridical operation, which finalizes the condemnation of the crime author. Execution of sanctions, favors the prevention of the recidivism criminal act (Poncela, 2013: 21). In its sense, criminal sanction is identified with criminal punishment (Kerchove, 2005: 23). The individualization of penal sanction must be considered as an important justice operation, which finalizes the condemnation of the crime author. Execution of condemnations, favors the prevention of criminal act repetition (Poncela, 2013: 21).

In the second section of this article, are treated a short history of alternatives to imprisonment and its forms under Albanian criminal code. In the third one, are displayed a few examples of condemnation on Albanian Court practices. The next section shows statistic dates which describe the target groups on whom are practiced the alternatives to imprisonment. Furthermore, in the fifth section, have been evaluated problems related to the development of judicial practices regarding alternatives to imprisonment. The last section, makes an overview of the ACC’s alternatives to imprisonment aspects, during practices on 2009-2014, and also, suggests some solutions on its improvement. Nomenclature of criminal sanctions, in a democratic society, has to display clear, logical, rational trends. European dynamic on the field of criminal sanctions and the reverberate of its good experience should be considered inspiring for the criminal sanction standard equality enforcement and for its simplicity on execution.<sup>1</sup>

## **2. The development of alternatives to imprisonment in Albania**

Determination, individualization and enforcement of penal sanctions are an important legal process for it finalizes the operation of a legal order under the controlling mechanisms of the principle of legality in the criminal law realm. A model of criminal sentencing based in the values of law and justice guides’ hu-

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1 See: Ministère de la Justice, Direction de l’Administration Penitentiaire, “*L’aménagement des peines privatives de liberte: l’execution de la peine autrement*”, Collection Travaux & Documents n 79, Mai 2013, introduction.

man society towards a common approach to safety. The criminal sanction, as a concrete expression of decision-making in relation to the juridical truth, seeks to correct the offenders so as to contribute to a safer society.

The strategy of elaboration of this notion involves also the enforcement of alternatives to sentencing, different than imprisonment. The criminal sanction, as a repressive measure, is useful when it seeks for the enforcement of the substantial content of the law, and is primarily driven by the effects, and not the motives of punishment.

In modern criminal juridical theory and practice, criminal sentencing is seen in three components taken together, concretely:

*Firstly:* Seen in its punitive effect, which means that if a person commits an unlawful and socially dangerous act, he/she will definitely be punished criminally for such an action (Merle, Vitu, 1981: 743-744).

*Secondly:* Seen in its preventive effect, which implies that the sentencing will not only prevent the commission of unlawful acts by the offender (special prevention), but it will prevent the perpetration of criminal acts from other people with deviant tendency - general prevention (Baratta, 1991: 18).

*Third:* Seen in the rehabilitation or re-socialization of the convicted person, which implies that the execution of the criminal sentence subjects the convict to a thorough rehabilitation process facilitating his re-entering into society.

Seen closely related to the three components of criminal sentencing, a very important element of the Albanian penitentiary system is that of alternative sentences. They are provided in Chapter VII of the Criminal Code named “*Alternatives to imprisonment*”. The naming itself shows that they are not specific types of sentences, but are alternative ways of execution of the imprisonment sentence.

The nature of these measures varies depending on the specifics, circumstances and legal requirements related to their application. Alternatives to criminal sentencing are laid down mainly in two legal acts: *firstly*, in the Criminal Code of the Republic of Albania (law no. 7895, dated 27.01.1995, with relevant amendments brought about by law no. 10023, dated 27.11.2008); *secondly*, in the law no. 8331, dated 21.04.1998 “*On the enforcement of criminal sentences*”. Alternative sentences were recognized by the criminal legislation initially with the approval of the Criminal Code, which entered into force in 1995. Then, the changes and amendments made by law no. 10024, dated 27.11.2008 “*On amendments and additions to Law no. 8331, dated 21.04.1998 “On the execution of criminal sentences*”, enriched the existing legal framework by providing specific rules of the execution of alternatives to imprisonment, as well as the establishment of the Probation Service, as an unique authority responsible for supervising the execution of alternatives to sentencing (Mandro, A., et al. 2010). The Probation

Service is under the dependency of the Ministry of Justice, acting at the central as well as at the local level, beginning from May 2009. Prediction of alternative sentencing and the consistent improvement of the relevant provisions are performed by Albanian legislator with a complete approach with European Union legislation, in which we aspire to integrate. Existing legal framework envisages the following alternatives to imprisonment:

The alternatives to imprisonment provided for under the Albanian Criminal Code are:

*a. Semi-release*, which may be given under specified personal or health conditions, conditions that will be explained in the next section, only for prison sentences of up to 1 year. Under these measures the convicted person is placed in a semi-freedom regime that allows him to follow his personal commitments during the day, and then, turn back to prison by night.

*b. Suspension of sentence and placement on probation*. For prison sentences of up to 5 years the court may suspend the execution of the imprisonment sentence and put the person on probation for a period ranging from 18 months to 5 years.

*c. Staying at home or in a care centre*, which may be given in the presence of certain conditions related to health or age of the convicted person, and where the court has decided for a prison sentence of less than 2 years. These conditions will be explained in the next section as well.

*d. Suspension of sentence and court-ordered community service*. In this regard, Prison sentences of up to 1 year may be suspended and instead the court might require the defendant to serve hours of unpaid community service. Application thereof should necessarily be contested by the convicted person. The total number of working hours ranges from 40 to 240, no more than 8 hours daily within a maximum period of 6 months.

*e. The conditional release (Parole)*. There are four criteria for parole to take place:

- Serving a minimum period of imprisonment ranging from one half (1/2) to three quarters (3/4) of the sentencing time. Life sentences may be paroled after serving 25 years of prison.
- Prisoner's conduct and/or working activity should demonstrate the reaching of the conviction's rehabilitation goals.
- Recidivist offenders, who have committed deliberate crimes, are not eligible for parole.
- Parole may be applied only if the so-called 'security period' has not been ordered by the sentencing court. When delivering the sentencing time, the court may order a security period ranging from three quarters (3/4) to the whole of the sentencing time, in which parole may not take place.

A useful mean in implementing alternatives to sentencing is supervision by electronic monitoring according to law no. 10494, dated 22.12.2011. This measure started to be operational on March 2013 on certain parts of the state territory, and in 2015 the system is operative throughout the country. Electronic supervision is applied only with the consent of the person being supervised. In case of his refusal, the adoption of the alternative to sentencing fails. The legal practice regarding the enforcement of alternatives to imprisonment in Albania is under consolidation, having an increasing trend in the application of these measures. They are not considered as tools that give the person *pleaded guilty* a chance to avoid prison, but more as efficient measures to society. Development of case law is associated with some problems in giving or implementing these alternative sentences, which will be subject to treatment in this paper. On the other hand, the provision of these alternative sentences is made by the Court at the conclusion of a trial, either in an ordinary judgment basis or abbreviated trial.

### 3. The court practice

Presenting the trend of the judicial practice, as well as the developments of this practice in the application of alternative sentences, it helps providing a more representative picture of the Albanian framework of alternatives to imprisonment. By analysing the characteristics of the judicial practice, we can achieve to the conclusion that there are some positive developments regarding the implementation of the alternative sentences, but we also notice certain issues, which call for solutions and special legal treatment.

Reference to case law clearly indicates that, the institute of semi-release has been implemented for criminal offence of low social dangerousness, mainly for the simple theft,<sup>2</sup> and for other offenses for which are provided relatively low penalties<sup>3</sup> up to 1 (one) year of imprisonment. In the decision no. 124, dated 18.03.2011 of the District Court of Korca, are analysed a number of elements for the determination of the type and length of the sentence, and for the application of the alternative sentencing of semi-release. The court states that: “*in determining the type and length of the sentence, is to be taken into account the social dangerousness of the author, the form of guilt, the mitigating and aggravating circumstances*” provided by articles 48-50 of the criminal code.

In the case in question, the court paid special attention to the defendant’s personal conditions such as his age, his level of education, social and family

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2 See: Article 134 of the Criminal Code of the Republic of Albania, Tirana 2014.

3 See: Decision no. 41-2011-1174 (124), dated 18.03.2011, of the Korca District Court.

problems, (parents divorced and mother died, living with his grandmother, who was in old age and in difficult economic and health conditions). From the reasoning of this decision, it appears that the alternative sentence was applied for reasons related to the fulfilment of essential family obligations (*living with his grandmother, the parenthood over a child of three years old and difficult economic conditions*). Generally, the court decisions which impose the alternative sentence of semi-release<sup>4</sup> should analyse correctly and professionally any legal and factual ground applied to the case.

In another case, it is presented how the court decides for the implementation of the alternative of suspension of the execution of the imprisonment sentence and placement of the convict on probation.<sup>5</sup> The Korca District Court,<sup>6</sup> found guilty two defendants for committing the crime of theft, in cooperation by sentencing each of them with 2 months of imprisonment. In application of Article 59 of the Criminal Code, the court accepted the prosecutor's request, for suspension of the execution of the sentence for each of the defendants and their placement on probation for a period of 18 months. The court reasoned the application of this alternative measure as follows:

*First:* The criminal offense and the defendants present a low social risk, this, due to the fact that they have not been convicted previously, they were minors and had attended school. The court took also into consideration the small value of the item that was stolen (330) ALL and concluded that it was not a serious consequence.

*Secondly,* the court evaluated the existence of a set of circumstances that allowed the suspension of the imprisonment sentence, such as the defendants' repentance during the stage of preliminary investigation, the replacement of the damage they caused, the fact that the defendants were children, and attended school, and the very small value of the stolen item (330 ALL). The Court stressed that the special goal of the alternative punishment, is that the offender understands its duties arising out of an alternative sentence and commits to respect them until its punishment is completed.

As regards, the application of the alternative sentence of community work,<sup>7</sup> in several judgments, the Albanian courts have argued that "*this sentence should correspond to the factual circumstances and to the social dangerousness of the criminal offence in order to serve the purposes of criminal punishment*".

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4 Provided in the article 58 of the Albanian Criminal Code.

5 See: Article 59 of the Albanian Criminal Code.

6 In its decision no. 52, dated 12.02.2008.

7 See: Article 63 of the Albanian Criminal Code

The release on parole<sup>8</sup> is initiated only by the convicted persons at their request, in the phase of execution of the court decision. In this specific case, the competent courts which review the requests are those courts which have penitentiary institutions on their jurisdiction, for this alternative sentence is given only in the phase of the execution of court decision. In decision no.34, dated 29 April 2014, the Korça District Court rejected the request of a convicted person for release on parole and argued as follows: “... *the court evaluates that release on parole is not an opportunity that could be benefited by every convicted person who has served the previous part of the sentence or every convict who has family or economic specific reasons, but it can be benefited by those convicted persons who, besides these specific conditions, demonstrate to the court that during the time served, they have not been a recidivist for crimes committed with intent, they have been rehabilitated, educated and that the punishment has fulfilled its purpose*”.

#### **4. Enforcement of alternatives to imprisonment: figures and current issues**

In 5 years (2009-2014) the total number of convicts show a general increasing trend in the application of alternatives to imprisonment, when compared to conviction rates their application still remains low (See Table 1).

**Table 1.** Total number of convicts and application of alternatives to sentencing (2009-2014)

Year	2009	2010	2011	2012	2013	2014
Total number of convicts <sup>9</sup>	6235	8133	9127	8704	8578	13618
Number of persons in alternative sentences <sup>10</sup>	2552		2117	2602	2086	4027

*Note: Dates gathered in the office of General Directorate of Prisons of Albania were not divided for each year, till 2010. That's why dates related 2009-2010 are cumulated.*

As regards the application of alternatives to sentencing to special categories of inmates, it can be noted that there has been a constant increase in the number of alternative sentences given to female convicts (See: Table 2). In 2013,

8 See: Article 64 of the Albanian Criminal Code.

9 Source: Annual Penal Statistics of the Ministry of Justice.

10 Source: Annual Penal Statistics of the Albanian Probation Service.

alternative sentences were given to 58% of the female convicts, and in 2014, 65% of convicted females have been performing an alternative sentence.

**Table 2.** Number of convicted females and application of alternative sentences (2009-2014)

Year	2009	2010	2011	2012	2013	2014
Number of convicted females <sup>11</sup>	515	549	501	336	335	401
No. of females placed under alternatives to imprisonment <sup>12</sup>	210		187	183	195	260

Note: Dates gathered in the office of General Directorate of Prisons of Albania were not divided for each year; till 2010. That's why dates related 2009-2010 are cumulated.

The same trend is noted in the application of alternative sentences to juvenile offenders. Over years, there has been a notable increase in the number of alternative sentences given to juvenile convicts (See: Table 3). In 2013, alternative sentences were given to 47% of the juvenile convicts, and in 2014, 59 % of convicted juveniles were performing an alternative sentence. However, it is necessary to further increase the application of alternatives sentences to juveniles so as to diminish as much as possible the incarceration rates for this category of inmates. Custodial measures might provide lower chances for contributing in the rehabilitation of juvenile offenders. As a result, they need to be applied only if absolutely necessary.

**Table 3.** Number of convicted juveniles and application of alternative sentences (2009-2014)

Year	2009	2010	2011	2012	2013	2014
Number of convicted juveniles <sup>13</sup>	411	656	683	883	690	748
No. of juveniles placed under alternatives to imprisonment <sup>14</sup>	109	280	246	455	326	445

In 5 years (2009-2014) the Probation Service has supervised more than 13,000 convicted persons. Among the 5 alternatives to imprisonment, the most frequently applied is “*probation*” with a total of 10,766 cases, followed by “*community work*” with 1487 cases, ‘*parole*’ with 894 cases each, and “*home detention*”

11 Source: Annual Penal Statistics of the Ministry of Justice.

12 Source: Annual Penal Statistics of the Albanian Probation Service.

13 Source : Annual Penal Statistics of the Ministry of Justice.

14 Source : Annual Penal Statistics of the Albanian Probation Service.



with 236 cases (See: Figure 1). ‘Semi-freedom’ is relatively underrated (only one case in five years), with more attention needed to be paid to its application in the near future.

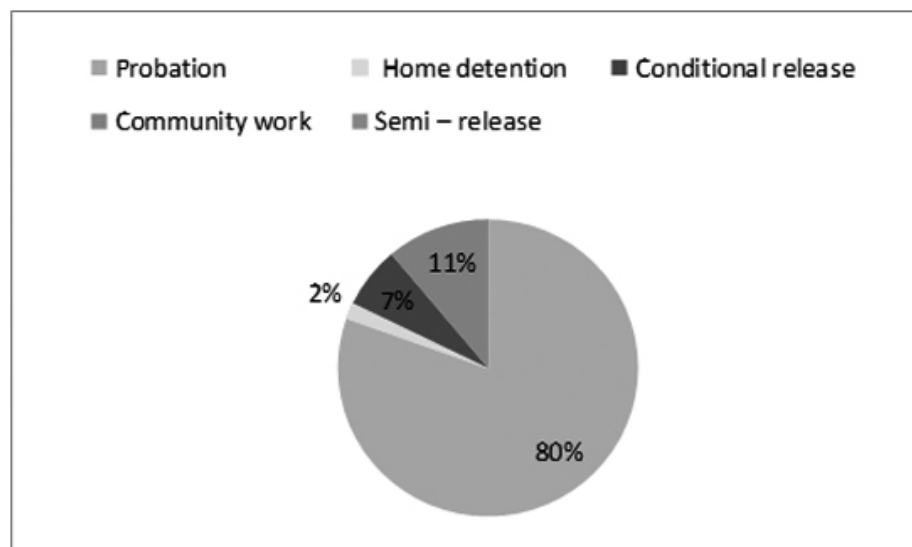
Even though official figures show a general increasing trend in the application of alternatives to imprisonment, when compared to conviction rates their application still remains low (See Table 4).

**Table 4.** Total number of enforced alternatives to sentencing (2009-2014)

Year	2009- 2010	2011	2012	2013	2014	Total <sup>15</sup>
Probation	2012	1616	2166	1758	3214	10766
Home detention	43	68	34	36	55	236
Conditional release	283	206	188	147	70	894
Community work	214	226	214	145	688	1487
Semi – release	0	1	0	0	0	1

Figure 1 clearly indicates that suspension of execution of the imprisonment sentence and putting a person in probation is frequently applied by the courts in up to 80% of the cases.

**Figure 1.** Proportion of alternative sentences given by the court (2009-2014)



15 Source : Annual Penal Statistics of the Albanian Probation Service.

## **5. Current discussions:**

Development of judicial practice regarding alternatives to imprisonment has been associated with some problems related to:

- the non-proper understanding of the circumstances of their application,
- judicial reluctance,
- Notable lack of necessary infrastructure for the implementation of certain types of alternative sentences.

Experts of the field point out that although the Probation Service's role in monitoring alternative sentencing programmes already adopted by the courts has been significant, a lot needs to be done to involve the Probation Service earlier in the process, at the phase of decision-making on the relevant alternative to be adopted. Probation Service lacks an expressed role in the Criminal Procedure Code, whereas good foreign practices envisage the probation officer as an expert with his own role in assisting court's decision-making on alternative sentencing to be adopted. In practice the probation officer as representative of the Probation Service isn't regularly called upon in courts, the courts and prosecutors do not view this as a procedural obligation, thereby more space left for court decision-making being inconsistent and less accountable. In this respect, it is necessary to give to the institution of Probation Service a more active role, especially concerning its procedural position, to involve this institution earlier in the process, at the phase of decision-making on the relevant alternative to be adopted. This will also constitute an alignment with the legal framework of the European Union, in relation to the organization and functioning of the Probation Service.

Substantial efforts must be made to establish appropriate monitoring structures for the alternative sentence of semi-liberty, so that this alternative to imprisonment can be used more extensively for the category of offenders who present low threat to society. In this regard, it is necessary to take legislative and institutional reforms in order to make possible the establishment and operation of open-regime prisons. Open regime prisons would also constitute an efficient solution for the rehabilitation of juvenile offenders, who are orphans or who have a history of domestic violence. The alternative of house confinement cannot be applied for this category and, if efficient mechanisms for placing them in the semi-liberty regime are absent, the court would see their imprisonment as the only available alternative.

In order to guarantee a sustainable infrastructure for the employment of convicts in works of interest to the public it is necessary to broaden the cooperation framework between the Probation Service and public agencies and private organizations and, when possible, this cooperation must be grounded on written

agreements, where each of the parties takes on long-term commitments and responsibility.

The expansion of institutional capacities in the implementation of alternative sentences to imprisonment, would give judges and prosecutors more confidence in the effectiveness of the application of alternative sentences in the community, and would, thereby, increase availability for their application to short prison sentences.

## **6. Conclusions**

Nowadays, a main concern for policymakers is how to ensure that criminal sanctions serve to the establishment of a secure environment of rehabilitation and social reintegration. Fostered application of alternative sentences would shift the focus of criminal justice from the offender's behaviour, to creating the opportunities that allow offenders to demonstrate their skills (competent behaviour) and build links with the community. Prof. Albrecht, says that alternatives to sentencing 'have a unique potential' in terms of their efficiency<sup>16</sup>. Alternatives to penal sanctions are alternatives that serve to the function of a real and social justice. The level of application of alternatives and their methods of implementation are indicators of the human and democratic values in a society. They present a juridical technique that highly reflects the moral sense of the society and its efforts towards strengthening the immuniser role of communities. Alternative sentences are considered as an efficient tool of dealing with delinquent conduct, not only from the social perspective, but also from a cost-oriented point of view. Their implementation serves to the accomplishment of an economic logic that shifts the traditional economic burden resulting from imprisonment sentences.

Application of alternatives to imprisonment has seen a rising trend on a year-by-year basis, but their number remains low compared to the total number of persons convicted each year. Courts continue to apply the prison sentence predominantly, contributing to further increase of the prison population. Low rates of application of alternative sentences are due to the lack of adequate support infrastructure, court scepticism about the effectiveness of these sanctions in the rehabilitation of the offender, and the high discretion that courts enjoy in delivering such sentences based on the actual legal provisions. The present formulation of provisions on the alternatives to prison sentences leaves space to more

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16 See: Speech of Professor Dr. Hans-Jörg Albrecht. In the Second Annual Conference of the Max Planck Partner Group for Balkan Criminology: 'Imprisonment in the Balkans', Sarajevo, 17-19 September 2015.

judicial discretion as regards the evaluation of the possibility of their implementation. Thus, the general expression used in these provisions is that the court, in the presence of several circumstances related to the personal qualities or conditions of the offender or the act committed by him/her, may rule for the suspension of the execution of the imprisonment ruling and have the convict serve an alternative sentence.

In these conditions, it is left to the judge's personal evaluation whether he/she will take into consideration the possibility of implementing an alternative sentence to imprisonment. Furthermore, the judge, in the final ruling for the issuance of the sentence, is not obliged to reason on the fact of the refusal of the demand for the issuance of an alternative sentence.

This makes impossible the possibility of appealing a court ruling, in cases when the object of the demand of appeal is only the review of the court's position on the refusal of issuing an alternative sentence. The lack of effective appeal possibilities for cases of the court's rejection of demands for the implementation of alternative sentences has a considerable impact on the reduction of practical possibilities for the implementation of alternative sentences.

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