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## **INFLUENCE OF EU ACCESSION PROCES ON ENFORCEMENT OF CRIMINAL SANCTIONS: ALTERNATIVE SANCTIONS IN SERBIA<sup>1</sup>**

*Non-custodial measures are recognized in international instruments as useful tool for promotion of social reintegration and solution for reduction of prison overcrowding. Author provided overview of policy instruments that Serbia adopted over last ten years in order to modernize criminal sanctions and its enforcement. In addition, Serbia took obligation to take measures and promote implementation of alternative sanctions and increase capacities of probation services. The aim of the article is to examine possibilities for strengthening role of Commissioner Service in Serbia based on comparative experience and practice. Effectiveness of engagement of volunteers in Probation Services is widely recognized in some EU countries, however introduction of such solution should be carefully assessed and prepared in Serbia to ensure quality of services, oversight and control. The article is based on desk analysis of comparative legislations on probation services, competences and obligation of probation officers. One of the key functions of probation services is advisory role in pre-trial or pre-sentence phase of criminal procedure. Although, Serbian probation officers (commissioners) do not have competence to provide pre-trial advices, the article presents advantages and relevance of involvement of probation officers from the beginning of criminal procedure.*

**Key words: alternative sanctions, non-custodial measures, pre-trial advice, commissioners**

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## **1. Enforcement of criminal sanctions - policy and normative framework in Serbia**

International standards state that imprisonment should be used as a last resort and that non-custodial measures should be used as much as possible.<sup>2</sup> The development of alternative sanctions is relevant for dealing with challenges of prison overcrowding and for promotion of social reintegration and reduction of recidivism. Rule 2.3 of the Tokyo Rules holds that criminal justice systems should provide “a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions”. The Tokyo Rules put focus on involvement of society in implementation and promotion of non-custodial alternative sanctions (Ćopić, 2015: 11). Although non-custodial sanctions are more effective than imprisonment at rehabilitation, social reintegration (Škulić, 2014: 250) and reduction of recidivism, the success of alternatives to imprisonment depends on a reform of the criminal justice system, as well as communication with the wider community and media to increase the awareness.

Even though the reform of the penal system in Serbia is long term process that has been initiated in 2001,<sup>3</sup> the bilateral screening for Chapter 23<sup>4</sup> identified in 2013 several deficiencies that should be addressed through the EU accession process: overcrowding of accommodation capacities and poor prison conditions;<sup>5</sup> insufficient application of alternative sanctions and measures;<sup>6</sup> insufficient staff capacities; healthcare protection; and insufficient number of professional training programmes and specialized treatment programmes for convicted persons.

As a follow-up, Screening report for Chapter 23 recommended that Serbia should “further improve prison conditions and take measures to reduce the prison population, in particular alternative sanctions could be further explored.”<sup>7</sup> In application of recommendations from the Screening report the Government of Serbia took

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2 United Nations Standard Minimum Rules for Non-custodial measures (the Tokyo Rules), 1990; Bangkok Rules, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010.

3 To ensure comprehensive approach in the reform process the first Serbian Penal Reform Strategy was adopted in 2005, followed by adoption of the entirely new Law on Enforcement of Penal Sanctions in 2006 with the aim of alignment with relevant international standards.

4 Chapter 23: Judiciary and Fundamental Rights, opened for negotiations in July 2016.

5 Prison population increased for almost 100 percent from 2001 to 2010 when it reached the number of 11,000, which resulted in overcrowded prisons and consumed significant portion of Prison Administration resources.

6 According to Bilateral screening data in 2012 only 919 persons were serving alternative sanctions and measures.

7 Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Rights, Negotiating accession to EU, MD 45/14, 15.05.2014.

into consideration relevant EU *acquis*: European Convention for the Protection of Human Rights and Fundamental Freedoms; Charter of Fundamental Rights of the European Union; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by Protocol 1, Protocol 2; Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules in the field of execution of criminal sentences and post-penal treatment<sup>8</sup>; and Recommendation Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules.<sup>9</sup>

To accelerate the reform of the penal system the Ministry of Justice and Government of Serbia adopted several strategic documents in recent period to address abovementioned challenges of the penal system: Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions for the period 2010-2015; the Strategy for Development of System for Enforcement of Penal sanctions for period 2013-2020; and a new Strategy for Reducing Overcrowding in Institutions for the enforcement of Penal Sanctions in the Republic of Serbia for the period until 2020. In addition, the Ministry of Justice prepared draft Strategy for social reintegration and acceptance of sentenced persons for the period between 2015 and 2020.

To address problem of increased prison population the Ministry of Justice adopted Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia for the period 2010-2015. According to the Council of Europe SPACE I Report in 2010 Serbia was among states with the highest prison population rate.<sup>10</sup> The Strategy and accompanying Action Plan were on alternative sanctions and improvement of capacities in prisons. The Strategy took twofold approach. The first focuses on the development of alternative sanctions to reduce number of those who are serving sentences in custodial institutions. The second focus relates to increasing the capacity and living conditions of inmates through investments in new prison facilities, as well as through improved standards of the work of prison staff. The Strategy had also foreseen the establishment of preconditions for the efficient re-socialization of inmates as well as the creation of more secure and humane accommodation and an improved use of

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8 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules in the field of execution of criminal sentences and post-penal treatment, adopted by the Committee of Ministers on 11 January 2006 at 952nd meeting of the Ministers' Deputies.

9 Recommendation Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies.

10 Report available at [http://wp.unil.ch/space/files/2014/04/SPACE1\\_2010\\_English.pdf](http://wp.unil.ch/space/files/2014/04/SPACE1_2010_English.pdf) 12 March 2019

alternative sanctions. Implementation of the Strategy contributed to achievement of specific objectives and reduction of overcrowding in prisons:

- Reduction in number of detainees from 3,332 to 1,539,<sup>11</sup> since Criminal Procedure Code<sup>12</sup> introduced bail and house detention with and without electronic monitoring as an alternative to detention in specific circumstances;
- The Rulebook on Treatment and Classification on Convicted Persons<sup>13</sup> have been finalised with adjusted risk assessment instruments for convicted persons serving prison sentence of up to three years and convicted persons serving prison sentence of over three years;
- Law on Amnesty from 2012 significantly contributed to relieve of pressure from prisons. Pursuant to this Law in the period from 2012 to 2015, in total 2,780 inmates were released from prisons<sup>14</sup>.

To boost implementation of alternative sanctions and continue with reforms Government adopted the Strategy for Development of System for Enforcement of Penal sanctions for period 2013-2020.<sup>15</sup> Although this was the third strategy its focus is on the legislative framework rather than changes of processes and practices. The Strategy aims to continue to fulfil reform tasks set forth in the National Judicial Reform Strategy for period 2013-2018, including continuing priorities and commitments to improve standards and performances in accordance with modern and developed penal systems. Priority measures from the Action plan relate to further strengthening the alternative sanctions system in Serbia, post penal care and strengthening of the healthcare capacities in prisons. In line with priorities set in the Strategy the new Law on Enforcement of Criminal Sanctions<sup>16</sup> and the Law on enforcement of alternative sanctions and measures were adopted in 2014. Law on Enforcement of Criminal Sanctions from 2014 is significant because of introduction of Enforcement Judge into Serbian Legal System.<sup>17</sup>

In May 2017, the Administration for enforcement of penal sanctions (AEPS) adopted a new Strategy for Reducing Overcrowding in Institutions for the enforcement of Penal Sanctions in the Republic of Serbia for the period until 2020. The Strategy is developed around six priority areas: measures to ensure presence of

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11 Official statistics of the AEPS from Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia in the period 2017-2020

12 Criminal procedure Code, Official Gazette RS, No. 72/11, 101/11, 121/12, 32/13, 45/13 и 55/14.

13 Official Gazette RS, No. 66/2015.

14 Official statistics of the AEPS from Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia in the period 2017-2020.

15 Official Gazette of the Republic of Serbia, No 114/2013.

16 Official Gazette of the Republic of Serbia, No 55/2014

17 Under activity 3.3.1.10. of the Action Plan for Chapter 23.

accused person; increased efficiency of treatment; further development of alternative sanctions and measures and commissioners (probation) service; conditional release; and increase of accommodation capacities and conditions in prisons.

## **2. Alternative sanctions – rules and capacities**

Normative framework for introduction of modern system of alternative sanctions in Serbia was established in 2006 when 2005 Criminal Code<sup>18</sup> entered into force (Mrvić-Petrović, 2010: 56). The Criminal Code from 2005 envisaged alternative sanctions in article 43 and 52 (Ćirić, 2013: 4). Types of penalties according to the article 43 of Criminal Code are: imprisonment; fine; community service; and revocation of driver's license. Enforcement of alternative sanctions were detailly regulated by the Law on enforcement of criminal sanctions from 2005<sup>19</sup> and later by the Law on enforcement of alternative sanctions and measures from 2014.

Concept of alternative sanctions could be understood differently, depending on interpretation only in line with system of criminal sanctions or in line with function that are achieved in the judicial system through implementation of alternative sanctions (Mrvić-Petrović, Obradović, Novaković, 2005: 37). According to the narrow definition, alternative sanctions include only sanctions and measures that are replacement for prison sanctions (according to the criminal sanctions system). According to the broader definition of alternative sanctions, alternative sanctions include also different measures of educational, medical, treatment character, as well as procedures that lead to diversion of regular criminal procedure (Mrvić-Petrović, Obradović, Novaković, 2005: 38).

Alternative sanctions could be divided into group of old alternative sanctions that represent replacement for prison sanction, like fine, security measures of forced medical treatment, caution, conditional release, seizure of assets, etc.; and group of new alternative measures, such as community work, home imprisonment with or without electronic monitoring, diversion of criminal procedure, like principle of opportunity (Konstantinović-Vilić, Kostić, 2006: 241).

Community work is sanction that is based on “combination of purpose of punishment, rehabilitation and reparation of caused damage” (Mrvić-Petrović, Obradović, Novaković, 2005: 43). Community work is one of alternative sanctions defined by article 52 of the Criminal Code and that could be imposed for crimes for which sanction is up to three years of imprisonment or fine.

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18 Official Gazette, No. 85/2005.

19 Article 181-184, Official Gazette, No. 85/2005, 72/2009.

Like other alternative sanctions, if community work is not performed completely or partially, prison sanction is the last resort that court could use (Mrvić-Petrović, 2006: 56). In situation that condemned person do not enforce all hours of community work, court will replace the community work with prison, so each 8 hours will be substituted by one day of prison (art. 52 para 5 of the Criminal Code). Also, if perpetrator fulfill all obligations related to the community work, court may decrease duration of the community work for one fourth.

Probation with protective monitoring presents model of probation, that is regulated by article 64, para 2 of the Criminal Code. Probation is applied only to adults for simple criminal act and when it is assessed that caution will reach the purpose.

To decrease recidivism and pressure on prisons, Serbia introduce house detention with (Mrvić-Petrović, 2015: 98) and without electronic monitoring.<sup>20</sup> In line with United Nations Standard Minimum Rules for Non-custodial Measures<sup>21</sup> Article 8 the judiciary authority when deciding on non-custodial measures should take into consideration the rehabilitative needs of offender, while Article 10.3 highlights that the most suitable type of supervision and treatment should be determined in each individual case of noncustodial measures.

House detention in Serbia is used to substitute short term prison sentence. It is the most widely used alternative to imprisonment in Serbia, with approximately 1,500 enforced house detention and 3,500 received orders annually. In 2018, 61 percent of all enforced alternative sanctions and measures were house arrest and 70 percent of all received enforcement orders. Although the house detention aims to decrease recidivism and re-offending the lack of treatment programs will lead to limitation of positive effects and increase of recidivism and overcrowding of prisons.

To boost positive effects house detention should be followed by treatment programmes designed to improve social functioning of offenders. The Probation Offices should implement targeted prosocial treatment programmes that include individualized measures aiming to deal with specific needs and risks identified in the initial phase of enforcement. These programmes should address needs of continuation of education, vocational training, treatment for drug and alcohol addiction, etc.

House detention enables higher involvement of community in enforcement, which provides additional level of support to reintegration efforts and motivates offenders to change. Civil society organization are widely use in comparative ex-

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20 See M. Matić Bošković, J. Kostić, Kućni zatvor iskustva u primeni, in S. Bejatovic (ed.), *Izmene u krivičnom zakonodavstvu i statusu nosilaca pravosudnih funkcija i adekvatnost državne reakcije na kriminalitet (Međunarodni pravni standardi i stanje u Srbiji)*, LXI Redovno godišnje savetovanje Udruženja, Srpsko udruženje za krivičnopravnu teoriju i praksu, Zlatibor, 2019, 216-229.

21 Adopted by General Assembly resolution 45/110 of 14 December 1990.

perience to ensure reintegration of offenders since they are flexible and innovative in approach.<sup>22</sup> Serbia has range of CSOs that are well placed and have experience in working with offenders.<sup>23</sup> However, issue of sustainability of their support, financing of their services and control of quality are challenging areas that should be addressed before their comprehensive involvement.

Principle of opportunity (diversion from criminal procedure) was introduced in Serbian legislation in 2001 as an important novelty of criminal policy (Bejatić, et al. 2012: 13). There are two possibilities for application of this principle: one is conditional diversion of criminal proceeding, and second is rejection of criminal charge from reason of fairness (Đurđić, 2010: 5) or as an institution of remorse. The article 283 of the Criminal Procedure Code regulates that public prosecutor can divert from criminal prosecution for crimes for which imposed sanctions are fine or imprisonment for up to five years. However, diversion is conditional, and offender has to accept one of the measures listed in the law and fulfill within the defined timeframe, which is no longer than one year. Implementation of the measure is monitored by the Probation Service and if offender does not implement it the public prosecutor can continue with the criminal procedure.

In Serbia Probation Service, in a form of Commissioners Service is a relatively new institution. Pilot implementation of alternatives began only in 2009 through a first Commissioners Office established for Belgrade area. Workload increased only in 2011 with introduction of electronic monitoring and service was spread to the rest of the Country. Development of Commissioners Service faced significant obstacles. Initial phase coincided with global economic crisis and very limited budget. In addition, since 2014 there is a ban on employment in public sector as one of the measures for fiscal consolidation. As an illustration, according to data published in Council of Europe Annual Penal Statistics - SPACE II for 2016, Serbian Probation Service had by far the lowest reported budget.<sup>24</sup> Those circumstances to a large extent influenced on organisational setup and staffing of Commissioners Service preventing it to transform to a separate Probation Service or at least to a specialised organisational unit within Prison Administration dealing exclusively with enforcement of alternative sanctions and measures.

Probation service as an independent state body was considered as a development aim and it was one of recommendation of “Strengthening the Alternative

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22 UNODC, Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, Vienna, 2018.

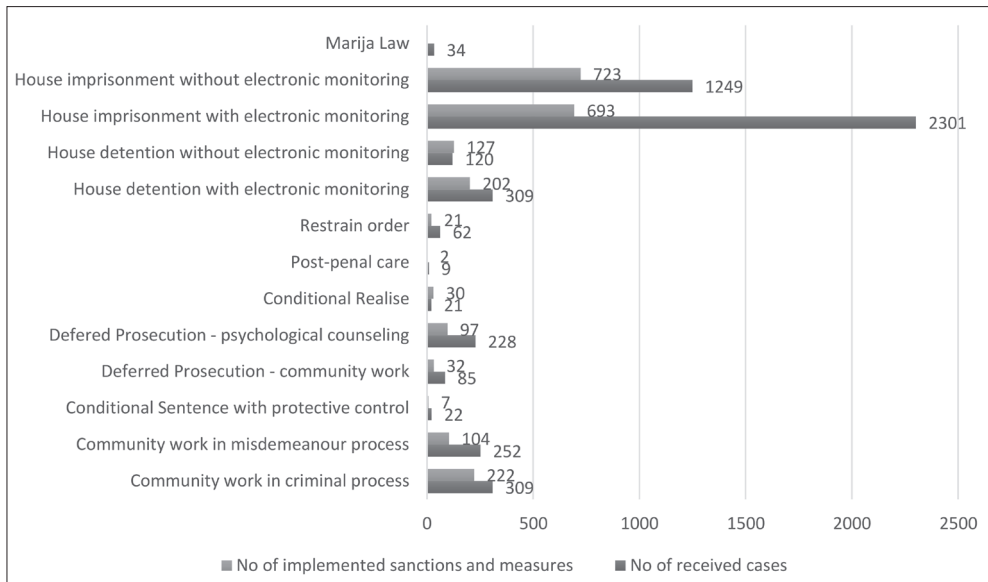
23 On March 21, 2019 the network Center for prevention of crime and post-penal support was established. 20 civil society organizations are members of the network.

24 In 2016 the budget of Probation service was 222,613 EUR.



Sanctions System in Serbia” an EU funded project.<sup>25</sup> European Probation Rules only state that the structure, status and resources of “implementing agencies” shall correspond to the volume and the complexity of the tasks and responsibilities they are entrusted with and shall reflect the importance of the services they provide. On the European level there is a variety of solutions but in the Serbian context, tasks and responsibilities entrusted to Commissioners Service do rise a concern that an administrative status of a Service should be strengthened.<sup>26</sup> This challenge is recognised in Action plan for Chapter 23 through Activity 3.3.1.13. - Reorganization of existing services for the treatment and alternative sanctions within the Administration for enforcement of criminal sanctions by establishing a separated special department for alternative sanctions in accordance with the new job classification.

**Chart 1** Statistical data on enforcement Alternative sanctions and measures for 2018



Source: Commissioner Service statistics for 2018

There is no common model and setup of Probation Agencies across Council of Europe member states. The most represented model is positioning of Probation Agencies within the Ministry of Justice and Prison Administration. Only in limited number of countries the Probation Agencies are independent state bodies, or

25 Information on project activities are available at: <https://europa.rs/eu-supports-strengthening-the-alternative-sanctions-in-serbia/?lang=en>

26 At the moment there are 25 Commissioners Offices in Serbia.



association, like in Ireland, Portugal, Romania, the Netherlands (van Kalmthout, Durnescu, 2008: 20).

Today there are 27 Commissioners, 7 administrative workers, 2 heads of departments, 36 educators working half time as educators in prisons and half time as Commissioners on enforcement of alternative sanctions. In addition, 25 members of security services in prisons are trained to install and de-install electronic monitoring equipment.<sup>27</sup> Having in mind the number of cases and the current workload, numbers of employees is below required. As an illustration, the estimate of the “Strengthening the System of Alternative Sanctions” Project made in 2013 in “Business Case for the Establishment of the Serbian Probation Service” for the period 2014-16 was that a total of 148 additional staff will be required to boost application of alternative sanctions.<sup>28</sup> Based on statistical data provided in SPAS II from 2016 it is possible to calculate an average number of probationers per probation officer, European average is 50 while Serbian is 37.

In the recent years there has been discussions on use of volunteers within Commissioners Service as one option, in the present circumstances, for increasing the capacity of Commissioners offices. It is an option that is fully in line with European standards. Recommendation of the Committee of Ministers to member States on the European Rules on community sanctions and measures CM/Rec(2017)3E recommends the use of volunteers for the purpose of stronger involvement of the Community in enforcement of alternative sanctions and recommends that criteria for their engagement should be clearly defined. Volunteers shall be guided and supported by professional staff and enabled to perform duties appropriate to their skills and interest within the boundaries of their role

Volunteers can contribute to the quality and efficiency of the enforcement of alternative sanctions and measures, but their deployment and scope of work must be carefully and thoroughly planned. Concrete tasks of volunteers should be identified through a targeted needs assessment exercise and in close collaboration with Commissioners. Commissioners Service should be responsible for recruiting, guiding and providing trainings for volunteers.

Finland has strong tradition in volunteering and develop practice for recruiting volunteers in criminal justice system support services (support to probation service and victims of crime). The Finland good practice could be useful example for Serbian Commissioner Service to consider pro and cons. On the other side the use of volunteers in probation in Germany is limited. In Germany, approximately 17

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27 Official data from AEPS.

28 4 commissioners, 123 junior commissioners, 5 regional centre managers (senior commissioners), 2 administrative assistants, 6 central EM staff and the equivalent of 8 full-time EM installation staff.

percent of the population are involved in voluntary activities, but only one percent of the volunteers are involved in criminal justice related work (Kury, Sato, 2014: 97). There is no centrally organized volunteer system. What we see in Germany is a sporadic existence of local NGOs, often with unstable funding. For example, there is a nationwide umbrella organization called ‘Bundesarbeitsgemeinschaft für Straffälligenhilfe’ that deals generally with criminal justice matters from offender reintegration to services provided and victims of crime. Vast differences in between European countries indicate that Serbia has to find its own model.

There are two approaches that could be considered here. Conservative approach according to which duties related to core competences of Commissioners and exercise of their official authority could remain reserved for professional staff, while administrative and technical duties can be entrusted to volunteers. More liberal approach, on the other hand, would involve volunteers in some aspects of work of commissioners under professional guidance and support. This approach is more in line with CoE recommendations for the use of volunteers aiming to enhance the involvement of the community in the implementation of alternative sanctions and measures.

Having in mind the number of pending cases per year (in 2018 it was 5,001 out of which 2,260 were completed) and inadequate number of staff, assistance of volunteers would be welcomed. For the purpose of comparison, Serbia is among countries with lowest number of probation staff per 100,000 inhabitants in Europe. Those numbers indicate that there is a potential for growth because “demand” for alternative sanctions coming from judiciary is higher than the current “supply” provided by the Commissioner Service. This also confirms that at this stage of development of system for enforcement of alternative sanctions and measures attention should be focused on Commissioners Service.

In 2010 Serbia adopted the Law on Volunteering, according to which public administration bodies can use volunteers pursuant to the Law (Matić, 2014: 195). Volunteering is promoted as an activity of public interest, which contributes to the active involvement of citizens in social processes and the development of a more human and equitable democratic society of equal opportunities, as well as to improving the quality of life of citizens. Before their actual engagement of volunteers, a range of preconditions needs to be ensured, such as quality of services provided by volunteers, training of volunteers, control and supervision of their services, etc. Involvement of volunteers and NGOs should follow recommendations for their engagement in victims support services.<sup>29</sup>

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29 More on this topic: Ensuring Quality of Victim Support Services in Serbia, Multi Donor trust Fund for Justice Sector Support in Serbia, Victim Support Europe, 2018; The Role of Civil Society in

### **3. Advisory role of Commissioner Service**

On European level majority of Probation Agencies are entrusted with the task to produce different reports required for decisions to be taken by competent authorities. Those advisory reports are: pre-sentence reports; reports on feasibility of the offender's release in the community; report on any special conditions that might be included in the decision regarding the offender's release; and report on any intervention required to prepare the offender for release (van Kalmthout, Durnescu, 2008: 31).

According to Serbian legislation the Commissioner Service has an advisory role in respect of offender's release, however the rules do not envisage involvement of commissioner in the pre-trial process. European experience indicate that pre-sentence report is a very useful tool provided to holders of judicial functions in determining the most appropriate sanction. Probation Officers in the Netherlands (Kalmthout, Tigges, 2008: 42), England and Wales (Hall, Canton, 2014: 21), Finland (Linderborg, Tolvanen, 2014: 24) and other EU countries gave advisory role to probation offices in pre-trial process.

European Probation Rules dedicate several articles to pre-sentence reports. The Rules underline that depending on the national legal system, probation agencies may prepare pre-sentence reports on individual alleged offenders in order to assist, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures. Where this is the case, probation agencies shall regularly communicate with the judicial authorities regarding the circumstances in which such a report may be useful.

The main purpose of the pre-sentence report is to help the court determine an appropriate sentence, especially in the cases when decision has to be made on potential use of alternative sanctions and measures. In the case of conviction on prison sentence, report can be used for allocation of offender to a most suitable institution and even to assist in determination of the most appropriate treatment program. The Commissioner assigned for the offender's case during probation and supervised release can also use the report to increase efficiency and quality of its work and make an initial assessment of offender's needs and risks in less time using reliable data from the pre-sentence report. Pre-sentence report usually contains following information on the accused: background and ties to the community, substance abuse history, physical health, mental health, financial circumstances, employment history, education history, victim-impact statement, marital history

and risk assessment. In addition, pre-sentence reports provide baseline data on the offender that should be used throughout enforcement period and post-penal care as reference values to more accurately determine his progress in treatment and reevaluate risks.

Experience of the England and Wales Probation Service is a good practice of extensive use of pre-trial/pre-sentence reports (PSR). If a judge orders a PSR, a probation officer will interview the offender, the offender's family, friends, and employer. A case is usually adjourned to allow a probation officer time to prepare the PSR and usually it takes between two and six weeks to prepare. In relation to an adult offender, unless the court considers a report to be unnecessary, it is required to request a report before deciding: that the community or custody threshold is passed; what is the shortest term of a custodial sentence that is commensurate with the seriousness of the offence; whether the restrictions on liberty within a community order are commensurate with the seriousness of the offence; and whether the requirements are suitable for the offender.

A report may be oral or written. Oral reports are provided for less serious offenders when the court is seeking to sentence immediately. Fast Delivery Reports (FDRs) are made available to the court within 24 hours. They are completed without a full assessment through the Offender Assessment System and are appropriate for low or medium seriousness cases where community orders are being considered. Every report should contain basic facts about the offender and the sources used to prepare the report; an offence analysis; an assessment of the offender; an assessment of the risk of harm to the public and the likelihood of re-offending; a sentencing proposal.

Data from this report, including initial risk assessment is used during trial but also in all phases of enforcement of sentence until release. This instrument is crucial for follow up of progress of the offender and determination of the most adequate type of treatment program. Initial risk and needs assessment are periodically reviewed and updated.

Advisory role of different institutions is not a novelty for Serbian judiciary and legislative framework. Whenever court needs to evaluate the "best interest" of a child it must consult Social-Care Centre to provide an advice or an assessment.<sup>30</sup> This advice is not obligatory for the judge. It provides a specific expertise that judge doesn't have but it is essential for making a decision in a concrete case. Examples like this one and lessons learned, could be used in assessing possibilities for use of pre-sentence reports and involvement of Commissioners Service in pre-trial phase.

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30 Article 270 Family Law, Official Gazette RS, No. 18/2005, 72/2011, 6/2015.

#### 4. Conclusions and recommendations for improvement

Although alternative sanctions are introduced more than 15 years ago the implementation of alternative sanctions are still relatively modest in Serbian judicial system. The most often imposed alternative sanction is home imprisonment, while other alternative sanctions are applied in relatively small number of cases. Several reasons are preventing increase in implementation of alternative sanctions. One of the main challenges are limited capacities of Serbian Commissioners Services and the lowest number of probation officers per 100,000 inhabitants in comparison to other Council of Europe countries. This challenge is recognized in the policy instruments, but also EU documents such as Screening report for Chapter 23.

To overcome challenges of limited capacities some countries are relying on volunteers. In Serbia volunteering is not widely spread so this solution could have limited effects. In addition, sensitive area of probation requires fulfilling of some preconditions before introducing of volunteers in commissioner services. Some of the preconditions are introduction of mechanisms for ensuring quality and oversight of work of volunteers.

Experience from European countries to involve probation officers in all phases of criminal procedure is recognized as a good example, especially in preparation of pre-trial reports. Inclusion of probation officers in drafting pre-trial report enable courts to determine an appropriate sentence, but also monitoring of progress over time, since report can be used as a baseline. Serbian legislator should consider extension of the commissioners' role to preparation of pre-trial reports as non-obligatory assessment. This type of advisory role is already given to some institutions (Centre for Social Work in family cases), so it would not be completely novelty for Serbian legal system.

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