Olga TEŠOVIĆ, PhD*
President of the Basic Court in Požega
Criminal Department Judge

Lieneke DE KLERK**
Senior Judge in the Court Oost-Brabant
The Netherlands

Review paper
Received: 19 October 2021
Accepted: 11 November 2021
UDK: 343.244(497.11:492)
https://doi.org/10.47152/rkkp.59.3.4

THE ALTERNATIVE SANCTIONS SYSTEMS IN SERBIA AND THE NETHERLANDS: COMPARATIVE ANALYSIS WITH EXAMPLES FROM CASE LAW

Alternative sanctions are a deviation from the traditional system of imprisonment and their advantage certainly lies in a more humane and less repressive treatment of convicted persons. Alternative sanctions need to be present in the criminal sanctions system of every country in order to make this system more effective, primarily having in mind the goals of special prevention. This paper aims to present the alternative sanctions systems in Serbia and the Netherlands, respectively, with reference to case law examples, as well as to perform a comparative analysis of the two systems and indicate their advantages and disadvantages, as well as methods of their improvement.

Keywords: alternative sanctions, comparative law, criminal law, probation, rehabilitation

* E-mail: otolgates@gmail.com
** E-mail: e.de.klerk@rechtspraak.nl

1. Introductory remarks

When one looks at alternative sanctions and their application around the world, one cannot help but notice that over the past decades their application to lesser offences has been running parallel to increasingly stricter sanctioning of graver forms of crime and very harsh criminal justice policies. In fact, this is about what is called a *dual-track strategy*, which paradoxically leads to simultaneous strengthening of both leniency and strictness of punishment and brings a wider circle of people into the social control system (Soković, 2011: 217).[1] This hypertrophy of criminal law and a creation of an oversized and hardly implementable system (*see* Ignjatović, 2011:142), with ever so stricter criminal justice policies as a global trend, have led to a significant increase in the number of convicted persons and overcrowding of the majority of penitentiary systems, which, in turn, have significantly increased the costs of criminal justice. On the other hand, with a view to reducing overmultiplied prison population and the costs, there has been an increasingly widespread use of alternative sanctions and measures, which should be aimed at rehabilitation of offenders, but in the light of contemporary trends in criminal law, they are a necessity and constitute one of the elements of the crime control policy after the concept of crime suppression has evidently been abandoned (Soković, 2011: 221).[2]

Compared to imprisonment, alternative sanctions undoubtedly have multiple benefits:

- *Prison population reduction* in cases where short-term imprisonment is imposed. Namely, for quite a while, scientific literature has been pointing to the existence of negative effects of imprisonment, mainly the inefficiency of short-term imprisonment in terms of resocialization of offenders, high recidivism rate and its harmful effects on the convicted person's personality due to isolation and contact with other inmates. It is also pointed out in literature that short-term imprisonment

1 The author stresses that the above is the effect of the 'security orientation' in criminal law, so constant introduction of new criminal offences, particularly criminal offences with no consequences or those of endangering; prohibition of risky actions without concretization of risks; penalties envisaged for a finished criminal offence for those actions which, in fact, constituted remote preparatory actions; deviation from some basic principles; weakening of the *ultima ratio* principle; multiplication of incriminations in those areas where not even the existing incriminations are used (organized crime, terrorism, corruption, international crimes); advocating harsher measures and longer sentences; broadening of the scope of powers of law enforcement agencies at the expense of citizens' fundamental rights, all of this is a contemporary criminal law response to the so-called 'security challenge'.

2 It is stated in theory that the central point is no longer rehabilitation that used to be the main concept in the 1970s, but risk assessment and risk management, which, serving as signposts in the circumstances of growing crime, high recidivism rate and reduced investments, promise realistic performance and a measurable result.

is an expensive type of criminal sanction, coupled with stigmatization of convicted persons and very often poor conditions in which they are serving their sentences due to prison overcrowding in some countries. There are increasing efforts in legal theory, as well as through reform of legislation, towards finding an adequate substitute for short-term imprisonment, and the solution is most often sought in alternative sanctions;

- *Cost reduction,* because the use of alternative sanctions saves money as the enforcement of non-custodial sanctions is considerably cheaper than imprisonment. This is particularly true amidst a constant growth of the prison population on the global level, including in Serbia, which requires huge allocations of public funds. Therefore, a solution in the form of alternative sanctions, which entail considerably lower costs (*see* Mrvić-Petrović, 2010:158),[3] appears to be rational and necessary. Alternative sanctions are more often applied in the Netherlands than in Serbia. Therefore, a comparison will be made between both countries in this article;

- *More opportunities for individualization of* sanctions, with a view to better tailoring the sanction to the individual offender and the circumstances in which the criminal offence was committed, as compared to the traditional prison sentence. In terms of quality, the alternatives to imprisonment are considerably more flexible to apply as they are primarily aimed at the offender's rehabilitation and social integration. Thus, when selecting the type and measure of a criminal sanction in lieu of a prison sentence, as well as when the sanction is combined with another, most effective alternative in order to achieve the best effect in a particular case, the court needs to obtain more detailed information on the defendant, his/her family circumstances and social situation. In this respect, social welfare centre reports, as well as reports drafted by the probation service upon the request of the prosecutor's office or the court, would be particularly helpful and would facilitate assessment of the most effective sanction in a particular case costs (Mrvić-Petrović, 2010:155)[4];

- *More humane and less repressive treatment* of convicted persons. Nonetheless, this does not mean that alternative sanctions are essentially not repressive, but that the degree of suffering and retribution against the offender is significantly lower than that of imprisonment, which implies isolation and deprivation. When it comes to imprisonment as such, convicted persons are treated in such a way that a certain

3 According to the data collected in various European countries, the costs of execution of alternatives to imprisonment are considerably lower than those of imprisonment. For example, in Estonia, supervision of one convicted person costs 30 euros per month, while imprisonment costs about 300 euros per month. In Romania, probation services per one supervised offender cost about 143 euros per year, while imprisonment of one offender costs 1,685 euros per year.

4 For the purpose of more tailored sanctions, pre-sentence reports by the probation service are particularly relevant as they provide expert guidance to the court, i.e. they offer an assessment of the defendant's personality and eligibility for application of a particular alternative sanction.

degree of suffering is inflicted upon them and, therefore, this retributive component of the sanction is significantly more prominent. On the other hand, the aim of alternative sanctions is less repressive, as they are primarily focused on helping facilitate the offender's social reintegration after serving the sentence. Therefore, their emphasis is on treatment and rehabilitation rather than retribution. The use of alternative sanctions is considerably more humane than imprisonment because it does not lead to the convicted person's isolation or loss of family and social contacts, or loss of job, but, quite the contrary, alternative sanctions ensure support from the offender's family and, in some cases, they may even lead to the offender's employment or vocational training;

- *Broader community engagement* during enforcement of alternative sanctions. Unlike imprisonment, which is executed in a closed, isolated establishment, enforcement of the majority of alternative sanctions calls for an active engagement of not only the offender and the department in charge of supervising the enforcement of his/her sanction, but also of various segments of society, such as non-governmental organizations, charity associations and volunteers, whose role is to assist with supervision of enforcement of alternative sanctions. What is important in alternative sanctions is active civic engagement in programs of assistance and support to the offender through various forms of activities of civic associations. That way, the offender will not feel rejected from society nor would he/she feel the stigma of the crime, as opposed to what he/she would be feeling while serving a prison sentence.

Given the above benefits that non-custodial sanctions and measures undoubtedly provide, alternative sanctions and the probation system in general enjoy a special place in the majority of contemporary criminal legislations. Thus, in the further course of this paper we shall present the respective alternative sanctions systems in Serbia and the Netherlands as the home countries of the two co-authors of this paper where they are professionally based. The paper will also provide some examples from the jurisprudence of the two countries and will finally offer a comparative analysis between the two systems, while singling out some *de lege ferenda* proposals, aimed at boosting the efficiency in this domain.

2. The system of alternative sanctions in the criminal law of the Republic of Serbia

It was only with the adoption of the Criminal Code of 2006[5] that alternative sanctions became more significantly regulated in the Republic of Serbia. At that

5 Criminal Code of the Republic of Serbia – CC ("Official Gazette of the RS", nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019), which came into force on 1 January 2006.

time, this trend, which had been present in European legislations for decades already, was embraced quite belatedly, in terms of the efforts towards finding a solution in non-custodial sanctions and measures to address lesser criminal offences or those of medium severity (*see* Albrecht, 2005: 6-7).[6] Thus, the sanctions such as community service and seizure of driver's licence, and the concept of settlement between the offender and the victim were regulated for the first time, whereas, in a certain sense, suspended sentence with protective supervision had already been stipulated in more detail in earlier provisions of the law, as referred to in Articles 3-5 of the Criminal Code (CC) of the Republic of Serbia[7] and Article 58 of the Basic Criminal Code of the Federal Republic of Yugoslavia[8], but they have seldom been applied in practice. House arrest was introduced to the Criminal Code under the amendments to the CC of 3 September 2009[9] as a method of enforcing a sentence of up to one year of imprisonment, rather than as a standalone sanction.

It should be noted that what differentiates alternative sanctions from all other criminal sanctions are in fact the following two elements: firstly, they are aimed at *substituting imprisonment*, and secondly, its enforcement is accompanied by *supervision by a competent authority*. Hence, the crux of this sanction is its purpose of substituting short-term imprisonment, in a bid to use a more flexible and tailored sanction to achieve a more efficient impact on the offender's resocialization. The very term ‚alternative' denotes something different, i.e. different from the standard practice, and when translated to the domain of criminal law and criminal sanctions, it denotes a different sanction than the basic one, i.e. imprisonment, according to modern criminal law (*see* Škulić, 2009: 32).

Having in mind these two key features, the aforementioned sanctions - house arrest, community service and seizure of driver's licence undoubtedly have the character of an alternative sanction in the criminal law of the Republic of Serbia, including the warning measures, such as the suspended sentence with

6 As early as in 1960s, Western European countries were faced with growing crime rates on the one hand and prison population growth on the other, which raised a question of expanding the system of existing criminal sanctions towards introducing alternative sanctions, i.e..community sanctions (*intermediate, community* and *alternative criminal penalties*, as they are most often called in literature). At that time, some serious discussions were launched on what conditions should be met in order to apply these sanctions and make them truly effective.

7 Criminal Code of the Republic of Serbia – CC of the RS ("Official Gazette of the Socialist Republic of Serbia", nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and 21/90; "Official Gazette of the RS", nos. 16/90, 49/92, 23/93, 67/93, 47/94, 17/95, 44/98, 11/2002, 39/2003 and 67/2003).

8 Basic Criminal Code - BCC ("Official Gazette of the SFRY", nos. 44/76, 46/76, 34/84, 37/84, 74/87, 57/89, 3/90, 45/90 and 54/90; "Official Journal of the FRY", nos. 35/92, 16/93, 31/93, 37/93, 24/94 and 61/01; "Official Gazette of the RS", no. 39/03)

9 Law on the Amendments to the Criminal Code ("Official Gazette of the RS", no. 72/2009)

protective supervision and a specific concept of criminal law, i.e. a quasi-sanction - the settlement between the offender and the victim.

However, the main characteristic of all the alternative sanctions mentioned above is the fact that these normative solutions have turned out to be quite inefficient in practice, while their application significantly lacks uniformity and is negligible in comparison to other criminal sanctions. In a huge number of cases in practice, only a classical type of suspended sentence is imposed for lesser crimes, while there is a low percentage of cases in which suspended sentence with protective supervision or other alternative sanctions which are provided for in the law are imposed.[10] The main reason for this is a decades-long practice of imposing prison sentences for more serious criminal offences on the one hand, and classical type of suspended sentences for lesser offences, on the other, while fines do not even have the same role in the criminal justice policy as the one in the Western European criminal practice, where they are imposed to a more significant extent. Furthermore, a stricter criminal justice policy or the existence of a prominently punitive attitude of the public is not conducive to creating a more favourable environment for a more comprehensive application of alternatives to imprisonment.

Likewise, normative solutions provided by each alternative sanction are very often too vague and too broad and they are not even aligned to the statutory provisions governing their enforcement. Namely, the provisions of Article 45, paragraphs 3-5 of the CC govern what is called *house arrest* or what is termed in the law as home incarceration, which may be imposed if the offender was sentenced to up to one year in prison. Given the above, a question is raised whether this is a good solution in the law as it limits the use of home incarceration only in terms of the length of the sentence, and particularly bearing in mind a potential danger that even in cases of very serious criminal offences, the court may use a sanction which, by its nature, is an alternative response to lesser forms of crime (Đorđević, 2015: 104).[11] A solution to this problem could probably be found in limiting the application of this alternative sanction not only in terms of the length of the prison sentence, but also in terms of the length of a prison sentence that an

10 According to the data of the Statistical Office of the Republic of Serbia on convicted adults by criminal sanction imposed in the period between 2015 and 2019, the total share of suspended sentences relative to other criminal sanctions was 58.1% in 2015, 53.9% in 2016, 56.5%, in 2017, 56.7% in 2018 and 57.2% in 2019, while the share of community service in the same period was declining from 1.1% to 0.7,%, and seizure of driver's licence was 0% throughout the same period. Available at: https://publikacije.stat.gov.rs/G2020/Pdf/G20201202.pdf (accessed on 25 July 2021)

11 It is stated in domestic theory that such a broad and vague option of imposing home incarceration leaves excessive room for the court and may lead to a strong lack of uniformity in the policy of imposing this sanction.

offence is punishable by, which would significantly narrow down the group of criminal offences to which this sanction could be applied[12].

On the other hand, the provisions governing house arrest do not include any special circumstances or criteria that the court could use as a guidance when selecting this type of penalty (*see* Đorđević, 2012: 126-127).[13] The only special rule is that in cases of criminal offences against marriage and family, i.e. domestic violence, in a situation where the offender is living in the same household as the victim(s), house arrest may not be imposed, which makes sense given the type of criminal offence and the method of execution of the sanction concerned. The question is whether the above should have been specified in a separate paragraph of the relevant provision of the law, having in mind that the purpose of punishment could not be achieved if home incarceration was imposed in the above circumstances.[14]

Furthermore, in regard to home incarceration, the law does not even envisage a possibility of combining this non-custodial sanction with other forms of alternative sanctioning despite the fact that it is often stressed in international literature that this sanction is quite compatible with other non-custodial sanctions and measures, like restitution or education measures, as well as with various kinds of treatment and therapy measures and other community sanctions (Ball, Lilly, 1986: 23).

The above solution on home incarceration is just a modality of execution of a prison sentence, rather than a true alternative sanction, without any special criteria for application, and, as such, it is not in line with most of the comparative law solutions to this issue (*see* Ratković, 2008: 81).[15] Therefore, the legislation

12 Given the current solution in the law, we are in a situation where through application of the provision on commutation of sentence (Articles 56 and 57, paragraph 1, subparagraph 3 of the CC), it is possible to apply this form of alternative sanctioning, which is primarily intended for lesser offences, also to very serious criminal offences, such as rape committed under the circumstances stipulated in Article 178, paragraph 2 of the CC, or, for instance, to the gravest form of tax evasion, as stipulated in the provisions of Article 225, paragraph 3 of the CC, where the amount of the liability whose payment is avoided exceeds fifteen million dinars.

13 Such a solution in the law is not advisable because the theory related to home incarceration often raises a question of fairness of this sanction, stressing that this alternative sanction is far easier for wealthier offenders with better living conditions, etc. than for underprivileged offenders living in very poor conditions or those living alone, etc. Therefore, unless special circumstances are provided for with respect to the specific characteristics of this type of sanction, home incarceration might easily turn into a privilege for the wealthy.

14 Unlike the above solution in the Serbian law, which does not even remotely contain a list of special circumstances that would justify home incarceration, comparative law offers numerous examples of legal specification. In common law, especially in the United States, where this sanction originates from, the circumstances under which home incarceration is imposed are related to the personal characteristics of the offender and it is deemed particularly suitable for first-time offenders, the elderly, offenders suffering from chronic illnesses, the disabled, pregnant women and mothers with small children.

15 Thus, for example, in the Criminal Code of the Republic of Macedonia, house arrest is prescribed as a special criminal sanction that may be imposed if the perpetrator of a criminal offence punishable

should be amended towards a more detailed and careful regulation of house arrest as a separate criminal sanction where treatment and protective supervision could be applied[16] in order to impact the offender's rehabilitation, which is something that this sanction is obviously lacking right now.

Community service is an alternative sanction governed by Article 52 of the CC as a type of work for the benefit of the community, which shall not offend human dignity and shall not be performed for the purpose of generating profit. This sanction may only be pronounced upon the offender's express consent and for criminal offences punishable by a fine or up to three years of imprisonment. Thus, one may infer that this alternative sanction is designed only for perpetrators of lighter criminal offences, and that a large number of relatively minor criminal offences or those of medium gravity have remained outside its scope.

First of all, if this is viewed from the perspective of the United Nations Tokyo Rules[17] and the Council of Europe's European Rules[18], whereby respective member states of these organizations are recommended to enrich their existing systems with alternative measures and sanctions, including also community service that has a special place among them, the aforementioned legal solution offers no possibility of any major use of community service, particularly due to a generally negative trend of envisaging stricter punishment for an increasing number of criminal offences. Hence, the group of criminal offences for which this alternative to imprisonment could be imposed is getting increasingly narrow and it boils down to a small number of offences provided for in the CC, so the actual reach of this penalty in the Serbian law is relatively modest. Therefore, an option of expanding the application of this sanction to criminal offences punishable by up to five years of imprisonment should be considered.[19]

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by a fine or up to five years of imprisonment is old and infirm, seriously ill, or is a pregnant woman and the court sentenced the offender to up to three years in prison (Article 59a of the Criminal Code of the Republic of Macedonia, while, for instance, according to Italian regulations, this type of penalty may be imposed if the offender is sentenced to up to four years in prison or if this is the remaining length of his/her sentence, as well as for certain categories of convicted persons, such as pregnant women, mothers with children under ten years of age who are living with them, single fathers living with children under ten years of age , persons above 60 years of age, and persons under 21 years of age who are still in school, have their own family or suffer from health problems.

16 A possibility of applying house arrest with protective supervision would bring the Serbian system of alternative sanctions closer to modern probation systems and offer a possibility of combining alternative measures against a single offender.

17 UN Standard Minimum Rules for Non-custodial Measures, Tokyo Rules, 1990

18 Council of Europe Recommendation No. R(92)16 on the European Rules on Community Sanctions and Measures, 1992

19 Such a solution is provided for in the Montenegrin law (which regulates community service in the same manner as the Serbian Criminal Code), in Article 41 of the Criminal Code of the Republic of

A similar conclusion may also apply to *seizure of driver's licence*, as provided for in Article 53 of the CC, which may be imposed on the perpetrator of a criminal offence in relation to which a motor vehicle was used in its commission or preparation, but the requirement is that it must be a criminal offence punishable by up to two years of imprisonment. Hence, when considering the seizure of driver's license as a principal sanction, it is evident that this option is practically reserved for the lightest criminal offences, so the same remarks as the ones on community service may be offered here. Namely, if there is a true intention to apply this sanction in practice, and with the official statistics clearly showing that the use of this sanction is negligible, the threshold for its application as a principal sanction needs to be raised.

As for community service, under the Amendments to the CC of 2009, this sanction may be imposed not only as the principal sanction, but also as an ancillary sanction. One could easily imagine a situation where a fine or even a seizure of driver's license is imposed as a principal sanction, but may wonder whether community service can be imposed as an ancillary sanction to imprisonment? The answer to this question could hardly be 'yes'[20] because the very purpose of community service is to substitute imprisonment and allow the offender to do some work free of charge for the benefit of the community outside a closed penitentiary institution and upon his/her own consent.

Settlement between the offender and the victim is governed by Article 59 of the CC, whereby the court may remit from punishing the perpetrator of a criminal offence, punishable by up to three years of imprisonment or a fine, if the offender has fulfilled all his obligations from an agreement reached with the victim (Platek, 2005: 169).[21] Content-wise, this concept is closely linked with alternative sanctions, but the above provision of substantive law is formulated in a general manner, without specifying what the agreement between the offender and the

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Montenegro, i.e. in the Amended Criminal Code of 2010 (under the Criminal Code of 2003, application of community service, just like in Serbia, was originally provided only for criminal offences punishable by a fine or up to three years of imprisonment).

20 From the comparative law perspective, as community service is a typical alternative sanction, i.e. the one that was designed as an alternative to incarceration, this would contradict its legal nature, because it is a substitute for imprisonment. Thus, the legislator should consider whether it is really necessary to regulate community service also as an ancillary sanction, i.e. it should at least be specified which principal sanctions it could be ancillary to and what its purpose as an ancillary sanction would be.

21 It is about a mediation procedure within the criminal proceedings and reaching an agreement between the offender and the victim who should see a criminal law consequence in terms of sanctioning of the offender. In fact, thereby the rights of victims of crime are taken more seriously, mediation instruments are available to victims of lesser offences and the conflict between the offender and the victim can thus be actually resolved.

victim shall consist of, what mandatory elements thereof shall be or what deadline within which the obligations from the agreement must be fulfilled shall be, all of which raises numerous questions and dilemmas (Ćorović, 2011: 39). Neither does the Criminal Procedure Code envisage any special provisions on the procedure of reaching the above settlement before the court or the deadline within which the defendant shall act upon it, or how the court shall proceed in relation to this agreement in order to render a decision on whether to remit the defendant from punishment or maybe apply a more lenient criminal sanction. For this reason, clear legal norms need to be in place in this area, including procedural safeguards for practical implementation of the settlement between the offender and the victim.

Finally, also included in the system of alternative sanctions is of course the *suspended sentence with protective supervision* stipulated in Articles 71-76 of the CC. According to this solution, protective supervision is just one of the additional measures accompanying a suspended sentence. It reduces the risk of re-offence in case of certain categories of offenders who received a suspended sentence (Stojanović, 2014: 345). The very content of protective supervision is governed by Article 73 of the CC through the following ten obligations that may be imposed on the convicted person:

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, establishment or events if that may present an opportunity or incentive to re-commit criminal offences;
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 particular professional and other counselling centres or institutions and adhering to their instructions;
10) eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence.

On a side note, suspended sentence with protective supervision should be a key non-custodial sanction, as a product of a merger between the European law and common law types of suspended sentence. However, it is far from being the main alternative sanction in the criminal law of the Republic of Serbia primarily since it is not stipulated in the CC in a careful and detailed manner. For instance,

some of the obligations listed above lack precision, like the obligation referred to in item 5) – "refraining from visiting particular places, establishment or events", or item 7) – "refraining from drug and alcohol abuse". These obligations should be formulated as prohibitions, with a possibility of periodic verification of compliance to facilitate monitoring by probation officers, i.e. commissioners.

Likewise, there is a need for a more complete formulation of the remaining provisions governing protective supervision, review the further need for their existence (like the obligation of accepting employment consistent with the offender's abilities, which, in the light of chronically high unemployment rate in Serbian society and constant economic uncertainty, seems like an unrealistic idea, i.e. the ability to find not just any employment but adequate employment for a person who was found guilty of a criminal offence (*see* Mrvić-Petrović, 2010: 246; Stojanović, 2014:346)) and possibly add some other obligations that already exist in comparative legislation, which have proven to be efficient in practice. 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, a 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).

As for the method of enforcement of alternative sanctions, an important novelty was the passing of a separate Law on Enforcement of Non-Custodial Sanctions and Measures in 2014[22], as a result of the legislator's attempt to establish a service that would be acceptable for this scope of activities according to international standards, particularly the ones established under the Tokyo Rules and the Council of Europe's European Rules on Community Sanctions and Measures. The new law also emphasizes and regulates in more detail the role of the Commissioner's Service within the Department for Treatment and Enforcement of Non-Custodial Sanctions and Measures, but it also retained an earlier solution according to which this service is just one of the organizational units of the Prison Administration within the Serbian Ministry of Justice, which is certainly not an efficient or a broadly accepted solution when comparing it with other countries,

22 The Law on Enforcement of Non-Custodial Sanctions and Measures ("Official Gazette of the RS", nos. 55/2014 and 87/2018)

at least not in the countries that boast a successful track record of using this type of sanctioning with offenders.

Quite the contrary, the probation service should have the autonomy required for quality application of alternative sanctions and measures, where professional probation officers could offer adequate and versatile assistance and cooperation to persons on whom non-custodial sanctions are imposed. Serbia has retained a solution that is certainly not efficient in practice because such a method of enforcement of alternative sanctions is plagued by numerous administrative burdens and obstacles which hinder the necessary speed of the proceedings especially because all the key decisions concerning all the convicted persons in the territory of Serbia are taken by a single person sitting at the top of the pyramid, and that is the director of the Prison Administration. One can assume how much waiting time and uncertainty is involved in practice simply because the Commisioner's Service is organized in this way (Ilić, Maljković, 2015:133)[23], as well as due to the fact that the Prison Administration and its director are in charge of all the essential decisions in the area of alternative sanctions (*see* Ignjatović, 2013:170).[24]

3. Examples from Serbian case law

Of all the alternative sanctions that are provided for in the Republic of Serbia, house arrest is the only sanction that has been somewhat on the rise year after year, and the most common examples from case law refer to its application to a large number of different criminal offences. Thus, house arrest is prevalent in traffic offences, followed by criminal offences against property, against human health, and professional misconduct, etc.[25] In the case law, however, a position has long since been voiced that this modality of a prison sentence should not be imposed for more serious criminal offences or if the defendant has prior convictions.

23 Autonomy of regional probation officers is necessary in decision-making and forwarding relevant reports because the practice so far has been such that there could be no direct decisions or administrative procedures, but all of them have to go only through the Prison Administration headquartered in Belgrade, which significantly affects commissioner's efficiency and their reputation in the eyes of the clients and the local community alike.

24 The Prison Administration whose predominant responsibility is execution of prison sentences cannot be an organization that will be enthusiastic about applying a novel approach to offenders. Without an autonomous organization within the Ministry of Justice and ahead of the organization who will be making both strategic and tactical decisions and taking ownership, it is impossible to imagine that a significant headway will ever be made in this domain.

25 See the statistical reports of the Statistical Office of the Republic of Serbia for 2015–2019 concerning this type of sanction, showing a wide range of different criminal offences to which it was applied.

3.1 Case 1

To illustrate this position, there is a case in Kraljevo where defendant V. Đ. was found guilty of the criminal offence of extortion as referred to in Article 214, paragraph 1 of the CC by final judgment of the Municipal Court in Kraljevo no. K 451/06 of 24 July 2009 and sentenced to eight months in prison. The convicted person's application for the sanction to be executed in the form of prohibition of leaving his dwelling, i.e. home incarceration, was denied by the then-acting president of the Basic Court because the court found that the severity of the criminal offence, as well as his prior convictions, rendered his application groundless. The defence counsel for V. Đ. appealed to this decision, stating that the reasons for denying the application were unacceptable because they had already been assessed during the sentencing phase of the proceedings.

However, the acting president of the High Court in Kraljevo reviewed the case file and found the defence counsel's appeal to be ill-founded. Namely, under former Article 45, paragraph 5 of the CC (current Article 45, paragraph 3 of the CC), the court may decide that a prison sentence of up to one year to be executed in the form of a prohibition of leaving a dwelling, i.e. home incarceration, except in cases stipulated in the law. The court held that this was not some kind of a special prison sentence, i.e. deprivation of liberty (the CC recognizes only one kind of a prison sentence as stipulated in Article 45), but that this was only about the method of execution of the prison sentence. Namely, the provision on house arrest is thus a technical provision, meaning that it is a norm of criminal executive law, which in fact prescribes that in certain situations it may be executed in the premises where the convicted person lives. Which cases this provision shall apply to shall be decided by the court in each particular case, under Article 42 of the CC. This is a general provision which refers to all the penalties provided for by the CC and which stipulates that the primary purpose of punishment is to prevent the offender from re-offending, secondly to deter others from committing crimes and, finally, for society to condemn the offence that was committed, as well as to strengthen the moral and reinforce the obligation to respect the law.

Offender V. Đ. had three prior convictions and his current sentence of imprisonment, for which home incarceration is sought, is his fourth conviction. As for his prior convictions, one was for illegal possession of arms and two for violent behaviour, i.e. violent crimes. For the above criminal offences, he was twice sentenced to suspended sentences, while for his last conviction he received a four months' actual prison sentence. As stated in the rationale of the judgment, his prior convictions, in which he had either been warned that he would be sent to prison if he violated his suspended sentence or had actually been sentenced to

short-term imprisonment, obviously had no impact on him, i.e. the purpose of punishment had not been achieved.[26]

Hence, as stated in the ruling of the High Court in Kraljevo no. Su VIII 43/11-3 of 4 February 2011, when deciding whether a sentence of up to one year of imprisonment is to be executed in the form of house arrest, the court must pay heed to the purpose of punishment; will the purpose of punishment be achieved and prevent him from re-offending (special prevention), will this deter others from committing crimes (general prevention), and, finally, will it result in condemnation by society of the crime he was found guilty of, and will it strengthen the moral and reinforce the obligation to respect the law. Therefore, from the case law perspective, a defendant's multiple prior convictions would hamper this alternative sanction from being pronounced.

On the other hand, leaving house arrest aside, other alternative sanctions are imposed in a symbolically low number of cases in practice. As for community service as a typical non-custodial sanction, case law is virtually uniform. Almost as a rule, this sanction is pronounced when a defendant confesses to having committed the crime. An additional reason for this almost uniform practice is that consent of the defendant is required in order for the court to sentence him/her to community service. This mostly occurs in those situations where the defendant agrees with the charges either in full or in part. On the other hand, a statutory limitation that this sanction should only be imposed for criminal offences punishable by up to three years of imprisonment has significantly limited the group of criminal offences for which it can be pronounced, particularly in comparison to house arrest.[27]

3.2 Case 2

In some decisions whereby community service was imposed, the courts stated their positions as to when it was necessary and appropriate to apply this alternative to imprisonment. A relevant example from case law is a case from Belgrade when the District Court of Belgrade in its judgment no. K 2402/05 of 17 January 2006, held that "when the defendant is found guilty of a criminal offence

26 Available at: http://pn2.propisi.net/?di=sp35021&dt=sp&dl=35021 (accessed on 8 August 2021).

27 According to the statistical data of the Statistical Office of the Republic of Serbia for the period between 2015 and 2019, community service was most often imposed for criminal offences against property (mainly theft), criminal offences against traffic safety (solely for the criminal offence of endangering road traffic) and criminal offences against human health (solely for the criminal offences of illegal possession of narcotic drugs and unlawful production and circulation of narcotics).

punishable by up to three years of imprisonment, the conditions for imposing community service are met, given the fact that the defendant has no prior convictions, he is 23 years old and has confessed to having committed the crime." (Simić, Trešnjev, 2008: 72).

Namely, in that case, as stated in the rationale of the judgment: „the defendant was found guilty of the criminal offence of illegal possession of narcotic drugs as referred to in Article 246, paragraph 3 of the CC and was sentenced 120 hours of community service to be performed during the period of two months. When deciding on the type and length of the criminal sanction to be applied to the defendant, the court assessed all the circumstances referred to in Article 54 of the CC that may be of relevance. As for the mitigating circumstances, the court found that the defendant had no prior convictions, that he was a young man and that he had fully confessed to having committed the crime. There were no aggravating circumstances. Taking all the above circumstances into consideration, including the defendant's readiness to perform community service, the court imposed this sanction on him pursuant to Article 52, paragraph 1 of the CC, trusting that this sanction would best achieve the general purpose of enforcement of criminal sanctions as referred to in Article 4, paragraph 2 of the CC".

4. The alternative sanction system in the criminal law of the Netherlands

4.1 Introduction

Dutch criminal law knows three types of punishment: a fine, community service and imprisonment. A judge can impose these sanctions conditionally as well. This can be done either for the entire conviction or in part. Dutch law makes it possible to combine these punishments; for example, community service combined with conditional imprisonment and a probation period. When imposing a (partly) conditional sentence, judges may attach specific terms to the verdict. For example, they may add mandatory supervision of the probation services, counselling and/or require the convicted person to participate in a behavioural training programme. Without a (partly) conditional verdict, a judge is not able to impose such conditions. The penalty imposed by the judge depends on the weight of the criminal case. Dutch criminal law does not know a minimum penalty. This makes it possible for the judge to render a sentence that not only considers the circumstances of the case, but also the personal circumstances of the accused person and the possibilities of combatting recidivism. It is at this point in the Dutch judicial system that the probation service plays an important role.

Probation in the Netherlands has a long history of almost two hundred years. It started in 1823 with the focus on the circumstances in prisons and the well-being of prisoners. When unpaid work for the common good was introduced in the seventies of the 20th century, the probation service played an important role. In 1989.unpaid work for the common good was included in the general section of the Dutch Criminal Code (*Wetboek van Strafrecht).* In 2001 community service became a principal punishment.[28] The objective was to reduce the number of short unconditional prison sentences and also to contribute to the humanisation of the criminal justice system and reduce recidivism. The probation service was made responsible for the execution of community service.

The Dutch probation service comprises three private organisations, each having its own Supervisory Board. The core of the work of the probation service is the prevention of recidivism of known offenders. The Ministry of Justice and Security is politically responsible for probation and the three probation organisations are funded by the Ministry for almost 100%. The Dutch probation service is active in all stages of the criminal justice process, from the pre-trial stage up to and including the enforcement stage and often in the stage after the end of the sentence as well. It is therefore a continuous and stable factor in the whole criminal justice process, not only for the justice system (public prosecutors, courts, prisons etc.), but also for the offenders (De Kok, Tigges, Van Kalmthout, 2021: 4).

The key tasks of the Dutch probation service are: preparing pre-sentence and other advisory reports for the judicial authorities, providing supervision of penalties, measures or special conditions imposed by the court or the public prosecutor (including supporting the offenders in their desistance processes), executing behavioural training programmes and the executing or supervision of community service. Advisory reports and probation supervision are carried out in the pre-trial phase as well as in the enforcement phase (De Kok, Tigges, Van Kalmthout, 2021: 4).

4.2 Legal basis

Since the '80 there was growing belief that probation should be an integral part of the justice system. The current legislative basis for the probation service is laid down in the 1995 Probation and After-Care Regulation (further on in short: 'Probation Regulation'; 'Reclasseringsregeling'), as well as in a number of articles

28 Article 9, 1, a CC.https://www.navigator.nl/document/openCitation/id8cb2010d27e13509d364436256e972c0

in the Criminal Code and Code of Criminal Procedure. The Probation Regulation specifies that the probation organisations recognised by the Ministry of Justice and Security are responsible for the execution of some of the sentences. It also specifies who may perform probation activities, what the statutory probation tasks are, the arrangements for funding of the Probation Service, the complaints procedure and the supervision of probation (by the Inspectorate of Justice and Security) (De Kok, Tigges, Van Kalmthout, 2021: 7).

Since 2008, the Public Prosecution Service (*Openbaar Ministerie* (OM)) also has the option to impose community service on individuals via penalty orders. [29] A court may impose a maximum of 240 hours. The OM may impose a maximum number of 180 hours. Until April 1, 2012, community service involved the completion of a work order and/or a training order. Today, community service consists solely of the performance of unpaid work In 2012, the scope of application of the suspended sentence and conditional release was considerably extended, which strengthened the position of the probation system.[30] For instance, the general condition that the convicted person must cooperate with probation supervision is included in that Act. Also, the duration of the operational period was extended. The special conditions that can be attached to a conditional penalty or measure, as well as electronic tagging, have been embedded in law (De Kok, Tigges, Van Kalmthout, 2021: 8).

4.3 Figures

In 2019, the three probation organisations prepared 42,141 reports to support judicial decisions across the entire criminal justice system. In 2019, 31,562 separate offenders were implemented under supervision by the probation service and 25,313 community punishment orders were completed (De Kok, Tigges, Van Kalmthout, 2021: 4). The probation service forms part of the criminal justice system: it cooperates intensively with the police, Public Prosecution Service, prison system, Child Care and Protection Board, Victim Support and forensic psychiatry. There is cooperation over both strategy and individual cases. In the last 25 years, the probation service has gained prominence and respect in the justice system and society. The concept of probation is strong and has proven its value. The Dutch probation service is widely supported by both the public and the legal professionals. There is growing evidence about the effectiveness of

29 Wet OM afdoening (Law Penalty Orders Prosecution Office)

30 The Conditional Penalties Act (Wet voorwaardelijke sancties) entered into effect in that year.

probation. Research has shown that community service leads to a reduction in recidivism of 46.8% compared to recidivism after a short-term prison sentence (Wermink, Blokland, Nieuwbeerta, Nagin, Tollenaar, 2010: 325-349).

4.4 Supervision

If supervision is imposed on an offender, automatically the general condition applies in all cases that he/she should refrain from committing crimes.[31] On top of that, special conditions, like a location ban or order, a contact ban, a duty to report, admission to a care institution, participation in behavioural training programmes, etcetera, can be imposed in the Dutch legal system.[32] What occurs most frequently is that supervision is imposed by the court on the basis of a fully or partially suspended prison sentence (De Kok, Tigges, Van Kalmthout, 2021: 13-21). Another non-custodial sentence that can be imposed on an offender is community service. This is an independent principal sentence and can be imposed on individuals who have been found guilty of committing crimes, provided this is not precluded by law[33], which is discussed below. Community service may always be imposed on individuals found guilty of committing minor offences unless the minor offence in question is not punishable by a custodial sentence. Community service may also be imposed in economic offences.

Community service may be imposed conditionally and may be combined with other punishments. Community service may only be combined with a custodial sentence if the unconditional part of the sentence to be enforced does not exceed six months[34]. The time spent in pre-trial detention must be deducted from the length of community service. One day of detention means a deduction of two hours of community service.

4.5 Figures community service

The average duration of community service in 2019 was 65 hours. After the fine, community service is the most frequently applied principal sentence. In 2019 a total 29.642 people in the Netherlands had community service imposed.

31 Article 14c, 1, a CC.

32 Article 14c, 2 CC.

33 Article 22b CC. https://www.navigator.nl/document/openCitation/id8cb2010d27e13509d364436256e972c0

34 Article 9, 4 CC.

Of the persons sentenced to community service, 74% (27,034) completed their community service, 15% (5.593) of those sentenced to community service stopped while performing their community service and did not complete their service. 11% (3,913) of the community service sentences could not be started (De Kok, Tigges, Van Kalmthout, 2021: 19). If community service is not started or completed, the person is sent back to the justice authorities and in most cases, he will go to prison: one day imprisonment for every two hours that have not been carried out. The figures show that community service of offenders with no problems are completed successfully (De Kok, Tigges, Van Kalmthout, 2021: 32).

4.6 Content of community service

Community service solely imposes the performance of unpaid work. As such, it is actually a work order. The Dutch Criminal Code does not elaborate on the content of community service. A judge may determine the content of community service but is not required to do so. It will be sufficient to state that community service will involve a work order for a certain period of time. Although it is not compulsory for a judge to specify the nature of the work involved, Dutch legislation expressly provides the option to do so. It is conceivable that a judge will stipulate that the community service chosen must reflect the offence in question. A training order may only be imposed as a special condition to be met as part of a suspended sentence; in practice, these orders are only imposed on juveniles. The judge or public prosecutor is required to explicitly state the number of hours of community service to be imposed in their judgment or penalty order.

Community service may vary from heavy physical work to administrative work. It will often involve cleaning and maintenance work. It is not unusual for an offender to carry out a community service in groups with other convicted offenders. If the work is carried out as part of a project ('for the common good'), it must meet the following conditions, among others:

- the work must be supplementary;
- the work must not be work that would otherwise be available to individuals in the regular labour market;
- the work must serve a public purpose;
- the work must be meaningful, and there must be enough of it.

The probation service is responsible for ensuring that places are available on projects. All proposals for places in new projects must be submitted to and approved by the Minister of Justice and Security.

4.7 Imposing community service

To a great extent, judges are free to impose community service as a punishment for any offence. The only exclusions are for individuals who have committed serious offences that involve a serious violation of the physical integrity of a victim or certain offences specified in legislation. Community service may also not be exclusively imposed (without the imposition of another punishment) in the event of recidivism or if the defendant has already had community service imposed for a similar, previous offence[35].

In practice however, there are several circumstances that can be deemed to constitute complications for imposing community service: previous community service, recidivism, addiction, a violent crime, a convicted offender for whom it is difficult to find a suitable place, convicted offenders who deny their guilt or a convicted offender with no fixed abode in the Netherlands. Instructions from the Public Prosecution Service specify under what circumstances it will not be appropriate to order community service in situations other than those mentioned above:

- in the case of defendants who refuse to pay for the damage or loss caused by them or refuse to cooperate in loss or damage mediation;
- in the case of defendants who would not be able to complete community service properly due to psychological or psychiatric problems;
- in the case of defendants who would not be able to complete community service sufficiently due to serious addiction problems;
- in the case of defendants who do not agree to the imposition of community service;
- in the case of illegal foreign nationals;
- in the case of suspects who do not have a fixed abode in the Netherlands.

However, the Dutch Supreme Court has ruled that the consideration ‚that a foreign national who is residing in the Netherlands illegally would not be eligible for an order of this nature' is incorrect.

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35 Article 22b CC:
Community service will not be imposed if an individual is convicted of:
a. a serious offence that carries a statutory term of improvement of six years or more and resulted in a serious violation of the physical integrity of the victim;
b. any of the offences described in Sections 181, 240b, 248a, 248b, 248c and 250.
Community service will also not be imposed if an individual is convicted of a serious offence and:
1° the convicted offender has had community service imposed on them for a similar serious offence in the last five years; and
2° the convicted offender completed the community service, or the enforcement of default detention was ordered under Section 6:3 of Book 6 of the Code of Criminal Procedure (*Wetboek van Strafvordering*).
The provisions of the first and second paragraphs may be derogated from if an unconditional custodial sentence or a measure involving the deprivation of liberty is imposed alongside community service.

4.8 Offer and agreement

Legislation does not stipulate that the imposition of community service will only be possible if a defendant makes an offer or agrees to it. Therefore, community service may also be imposed in default of appearance of the defendant at the court hearing. The failure of a defendant to agree to community service, however, is a contraindication for the prosecution to demand the imposition of this sanction.[36] Personal appearance is preferred because the successful completion of community service requires a certain amount of self-discipline on the part of a convicted offender. Judges will often want to see the defendant for themselves to make sure that he is willing enough to fulfil the community service so as to not saddle up the probation service with a resisting offender.

It is not actually possible to enforce the performance of community service physically or otherwise. The convicted offender is given the possibility to decide whether or not to actually start the work in question. This means an order of this nature does not conflict with the prohibition on forced labour within international legislation.

Even if a defendant wants to do community service (and agrees to do so), the judge is not obliged to impose an order of this nature on him. However, legislation does stipulate that a judge must give detailed reasons if he imposes a prison sentence instead of asked for community service[37].

4.9 Duration of community service

Community service may be imposed for a period of up to 240 hours, based on the assumption that the number of failures increases disproportionately if a

36 In instructions (see the Instructions for community services (*Aanwijzing taakstraffen*; 2011A027) of 29 November 2011, Government Gazette 2011, 22857, which came into effect on 3 January 2012), the Board of Procurators General (*College van Procureurs-Generaal*) indicates under what circumstances it will not be possible to demand the imposition of community service, in addition to the situations formulated in Section 22b:
- in the case of defendants who refuse to pay for the damage or loss caused by them or refuse to cooperate in damage or loss mediation;
- in the case of defendants who would not be able to complete community service properly due to psychological or psychiatric problems;
- in the case of defendants who would not be able to complete community service properly due to serious addiction problems;
- in the case of defendants who do not agree to the imposition of community service;
- in the case of illegal aliens;
- in the case of suspects who do not have a fixed abode in the Netherlands.

37 Article 359, 2 Code of Criminal Procedure

work order is for more than 240 hours. According to the Dutch Supreme Court[38] the concurrence provisions set out in legislation[39] do not stipulate any other upper limits for community service. The upper limits referred to above apply per offence declared proved, irrespective of whether related offences fall under difference charges or different offences have resulted in one charge[40]. Therefore, it is possible for a convicted person to have to work for more than 240 hours.

The community service can be performed "externally" as an individual placement, and "internally" as a group placement with the probation service. The individual placements are handled by organisations other than the probation service, for example in hospitals and care homes where the offender works in the kitchen or does jobs in the garden. Daily management is the responsibility of the staff of those organisations. The probation service has resorted increasingly to creating and managing projects itself where offenders can be placed who would not be able to work for individual work providers. A fulltime probation officer (with no other tasks than community service) has 100-110 offenders in caseload (De Kok, Tigges, Van Kalmthout, 2021: 32).

5. Examples from the Dutch case law

Two cases will be presented of suspects on which the probation service advised to impose community service in their reports. In both cases, the judge followed the advice of the probation service, but this is of course not a guarantee. Two completely different suspects and offences have been chosen to indicate that, subject to legal restrictions, the possibility of imposing community service is not limited to a certain type of offence and a certain type of suspect.

5.1 Case 1

This case is about a 20-year-old first offender who is suspected of sedition. He is said to have called for a demonstration against the curfew (note: instituted

38 Supreme Court 28 November 2006, ECLI:NL:HR:2006:AY8324.

39 Article 57 CC: A single sentence will be imposed in the event of a series of offences regarded as isolated acts involving more than one offence that is punishable by the same principal punishment. The maximum punishment will be the total of the highest punishments that can be imposed in respect of an offence but never any more than one-third higher than the highest punishment where imprisonment or detention is concerned.

40 This text is based on the statutory provisions applicable in the Netherlands, Section 22b et seq. of the Criminal Code, its explanatory notes and the text of and commentary on the Criminal Code (Schuyt, Tekst & Commentaar art 22 e.v. Wetboek van Strafrecht Kluwer 2021)

due to the Corona pandemic), which he partly confesses. The person concerned seems to have his life in order. Housing, finances, work and family are seen as protective factors and therefore his social network seems to be in place. The probation service does not see sufficient starting points here to focus on supervision, but advice that if the person concerned is found guilty, to impose a community service.

How did the Dutch probation service come to this conclusion? First of all, based on the risk assessment tool that is used by the Dutch prosecution service, it estimates that the risk of recidivism with this particular offender is low. The risk of recidivism is based on statical data. This shows that the suspect belongs to the norm group of which 27% reoffends within two years. According to the instrument, this percentage indicates a low risk of general recidivism. The risk of violent recidivism is estimated to be low as well. These assessments relate to the situation in which the person concerned is actually convicted of the charge and therefore applies subject to a guilty verdict. Secondly, an analysis of the offence is then presented. The suspect says he came into contact with „people" through his work who added him to a WhatsApp group. In this group app there was talk of a demonstration against the curfew. Someone from the group app is said to have shown the messages to the police. The suspect is said to have made most of the statements and he was arrested before the date that the demonstration was supposed to take place. He states that it was not yet certain that they would start demonstrating, so there would have been no question of violating the curfew. Thirdly, the probation service pays attention to the personal and living conditions. The suspect is a first offender and there are the following protective factors:

– housing: the suspect is living with his parents;
– work: the suspect has been working for an installation company for two years;
– finance: there seems to be sufficient income to cover the fixed costs, there would be no question of debts;
– relationship with partner and family: the suspect grew up with his parents and brother. He says he's looking back on a great childhood in which he did not lack anything. His parents seem involved with him;
– social network: the suspect indicates that his circle of friends consists of serious boys, a large part of whom are employed. According to the suspect, there are no negative influences from his circle of friends. He ended up in the WhatsApp group by chance and he does not know any of them personally or call them his friends;
– substance use and addiction: the suspect claims never to consume drugs or alcohol, not even on occasions.

Looking at the case, it can be concluded that this is a regular case where imposing a community service sentence applies. In the case of first offenders with a similar social setting, the advice of the probation service is followed in almost all cases and community service is imposed by the judge.

5.2. Case 2

This case is about two high school friends, who were suspected of committing a series of car burglaries when they were only 18 years old. They were in pre-trial detention for two weeks and then released. When the probation service spoke with each of them 18 months had passed. The case was on trial three months after the completion of the reports. Defendant 1 denied all charges and had not been willing to talk with the probation officer. While waiting for the trial of this case, he had been convicted for several thefts. Because of his recidivism and no apparent will to change his situation, the advice of probation service was to impose a prison sentence. Since he had been detained, defendant 2 had changed the course of his life, the probation service reported. He had not committed any more crimes; he had gone back to school and he had broken with his 'criminal' friends. Although there was still a risk of recidivism, the probation service noted that this was not high. The defendant confessed to committing the car burglaries together with his former friend. It had been exciting and had been an easy way to make some quick cash. Because of the two weeks of detention, he had come to realize that he did not want to lead a criminal life. The report of the probation officer summed up several protective factors:

– the defendant had confessed his crimes to his parents who were willing to support him;
– his school results were very promising. His mentor described him as studious;
– he was admitted for an internship;
– the defendant had a temporary job and there were no financial troubles.

Weighing all factors, the advice of the probation service was to sentence the suspect to community service combined with a suspended prison sentence. There was no need for supervision by the probation service. During the court hearing it became clear that if defendant 2 were to be sentenced to imprisonment, he would lose his internship and would not be able to graduate. Although the circumstances of both defendants were the same when they committed the crimes, the outcome of the trial was quite different for each of them. The judge sentenced

defendant 1 to six months imprisonment, while defendant 2 was sentenced to 120 hours of community service and a suspended prison sentence of three months with a probation period of two year.

It can be concluded that for defendant 2 the report of the probation service was of tremendous importance. Without it, the judge would probably have sentenced him to a prison sentence as well. Because the probation officer had talked with the parents and the mentor at school, he was able to verify the information given by the suspect and sketch a reliable image of the defendant for the judge.

6. Conclusion

Based on the presented analyses of the system of alternative sanctions in Serbia and the Netherlands, with all shortcomings and advantages in the legal solutions concerning certain alternative sanction, it can undoubtedly be concluded that the system in the Netherlands is more efficient for one simple reason - the existence of developed probation service. Namely, in the Netherlands, there is a longstanding and completely independent probation service that is part of the criminal justice system and closely cooperates with all key actors in the judiciary. One of its main tasks is to compile a pre-sentence report on the perpetrator of the crime, which is submitted to the public prosecutor or court, depending on the stage of the criminal procedure. These reports have detailed assessment of the defendant, based on conversations with him and data which the probation service has already about him in its database, which is regularly updated and contains a number of analytical tools that help to get a more complete picture of the defendant, his psychological profile, previous life and the crime he/she committed, as well as the assessment of criminogenic risk. Also, the report that is eventually submitted to the court contains proposals for possible alternative sanctions and measures which, in the opinion of the probation service and its experts, can first lead to the rehabilitation of the perpetrator and have a special-preventive effect. As these are detailed and professional reports by the probation officer on the perpetrator, his previous life, and the crime he committed, judges in the Netherlands often rely entirely on them when deciding on the type and extent of a criminal sanction. In addition to the reasons related to the expertise of the probation service and the comprehensive analysis of perpetrators, judges (as well as public prosecutors) in the Netherlands are aware of the positive aspects of applying alternative sanctions proposed in these reports.

Considering the benefits of alternative criminal sanctions stated in the introduction of this work and having in mind the fact that their application in Serbia

is constantly symbolic and insufficient, it is an indisputable conclusion that the introduction of the said report of probation service and the development of the Commissioner's Service in general into an independent probation service certainly encouraged the greater application of non-custodial sanctions in practice. In that way, more direct and wider communication would be established between the court, the public prosecutor's office, and the competent Commissioner's Service and a judicial chain especially at the local level would be established, which would lead to a more detailed analysis of the defendant and criminal risk assessment, and the current problems in the execution of alternative sanctions would be solved almost every day, thus encouraging their more significant and high-quality application.

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