

# 6TH INTERNATIONAL STUDENT CONFERENCE ON LOCAL SAFETY AND SECURITY



UNIVERZITET CRNE GORE  
PRAVNI FAKULTET



University of Maribor

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Faculty of  
Criminal Justice and Security



**ARRS**

SLOVENIAN RESEARCH AGENCY

## IMPLEMENTATION OF ALTERNATIVE SANCTIONS IN THE FUNCTION OF CRIME PREVENTION

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Mara Stanić

Teodora Ćorac

Elma Zaganjor

Ines Frljučkić

# INTRODUCTION

- Prison overcrowding is a problem faced by nearly every country in the world.
- This not only represents a major threat to the state, but can endanger the rehabilitation of convicted persons, which ultimately has a negative impact on society as a whole.
- Like prison sentences, alternative sanctions aim to express your conviction for the crime committed, prevent further recurrence of the crime and re-educate the offender.
- The difference is that alternative sanctions use different forms of punishment, namely those that are maximally adapted to each individual perpetrator of a criminal act.



# THE CONCEPT OF ALTERNATIVE SANCTIONS

- By the term alternative sanctions, we mean sanctions that are imposed instead of imprisonment.
- These sanctions individualize and humanize the punishment of convicted persons. Alternative sanctions maintain the convicted person in the social community, while setting certain conditions and obligations that the convicted person must fulfill. If the convicted person does not meet these conditions, the alternative sanction will be replaced by imprisonment.
- Therefore, alternative sanctions replace the prison sentence with a sanction that will have a more effective effect on preventing further criminal acts, expressing social condemnation for the committed crime and re-educating the convict while simultaneously saving the costs required for serving the prison sentence.



# ADVANTAGES OF ALTERNATIVE SANCTIONS

- **Alternative sanctions avoid the negative effects of imprisonment. They have a number of advantages for the social community:**
  1. **Reduction of the prison population**
  2. **Reducing budget expenditures for serving prison sentences and redirecting them to other socially beneficial purposes**
  3. **Cooperation of the convicted person in his own rehabilitation in the form of fulfillment of imposed obligations**
  4. **Adjusting the sanction to the convict**
  5. **Direct involvement of the social community in the process of rehabilitation and reintegration of the convicted person.**
  6. **The immediate benefit of the social community in the form of convict work in the public interest.**

# NEGATIVE ASPECTS OF PRISON SENTENCE

- The central place in the penal system of Montenegro is occupied by the prison sentence.
- Although the prison sentence is irreplaceable and must have its place in the penal system, it can cause multiple negative consequences, both for the convicted person and his family, and ultimately for society itself.

## **Negative aspects of prison sentence:**

1. Separation of convicts from their families, termination of education and employment
2. Finding a new job is difficult
3. The negative attitude of society towards persons who served a prison sentence
4. Large budget expenditures for serving a prison sentence
5. Overcrowding of prison institutions
6. A higher degree of probability that the convicted person will continue to commit criminal offenses after serving the prison sentence.



# TYPES OF ALTERNATIVE SANCTIONS

- **The Criminal Code regulates the issue of alternative sanctions and they are classified as:**
- **1. Measures modifying the execution of the sentence of deprivation of liberty**
- Imprisonment served in residential premises (Article 36a of the Criminal Code)
- Conditional discharge (article 37 of the Criminal Code)
- **2. Warning measures as an alternative to custodial sentences**
- Measures modifying the execution of the sentence of deprivation of liberty
- Warning measures as an alternative to prison sentences
- Other penalties as alternatives to custodial sentences
- Judicial notice (article 65. of the Criminal Code)
- Conditional sentence (article 53. of the Criminal Code)
- **3. Other penalties as alternatives to custodial sentences**
- Financial penalty (article 39. of the Criminal Code)
- Work in the public interest (article 41. of the Criminal Code)

# HOUSE PRISON

- House imprisonment is a modification of the execution of the prison sentence, because instead of in prison, this sentence is served at home of the condemned.
- **If the court sentences the perpetrator of a criminal offense to a prison sentence of up to six months (short-term imprisonment), it can simultaneously determine that this sentence will be carried out by the convicted person serving it in the premises where he lives.**
- The sentence of house arrest cannot be imposed for a criminal offense against marriage and the family, if the convicted person lives in the same family household or family union with the injured party.
- The sentence of house arrest is imposed with electronic monitoring, the convicted person is obliged to wear a monitoring device, the so-called footband, and may not leave the premises where he lives, except in special cases prescribed by law. If a person sentenced to house arrest arbitrarily leaves the premises where the remaining part of the sentence resides, it will be replaced by a prison sentence served in the Directorate for the Execution of Criminal Sanctions (UIKS).

# CONDITIONAL DISCHARGE

- Conditional discharge is another modification of a prison sentence. It implies the early release of a convict who has served part of his prison sentence, on the condition that he does not commit a new criminal offense by the end of the prison sentence.
- The goal of parole is the rehabilitation and reintegration of convicted persons, when it can be reasonably expected that such an effect can be achieved without further serving a prison sentence.
- A convicted person who has served two-thirds, and in exceptional cases half, of the prison sentence, may submit an application to the court for conditional release from serving the prison sentence.
- The court may revoke parole if the convicted person, while on parole, commits one or more criminal offenses for which a prison sentence of more than one year has been imposed or if the convicted person fails to fulfill an obligation ordered to him.



# JUDICIAL NOTICE

- Judicial reprimand - can be issued for criminal offenses for which a prison term of up to one year or a fine is prescribed, and which were committed under such mitigating circumstances that make them particularly easy. For certain criminal offenses and under the conditions stipulated by law, a court warning may be issued even when imprisonment of up to three years is prescribed.
- When deciding whether to issue a judicial warning, the court, taking into account the purpose of the judicial warning, will take into account the personality of the perpetrator, his earlier life, his behavior after the commission of the criminal offense, and especially his relationship with the victim of the criminal offense, the degree of guilt and other circumstances under which the act was committed. The analysis of the circumstances as a basis for deciding on the issuing of a judicial warning emphasizes the need for a "risk assessment".
- As a court warning can also be issued for criminal offenses for which a prison sentence of up to three years is prescribed, the necessity of introducing the probation service is obvious even at this stage of decision-making. A court warning is issued by decision.



# CONDITIONAL SENTENCE

- A suspended sentence consists of two elements: the sentence and the probationary period. Its essence is that the prison sentence of up to two years will not be carried out if the convicted person does not commit a new criminal offense during the probationary period.
- A conditional sentence cannot be imposed for criminal offenses for which a prison sentence of at least 10 years or a heavier sentence is prescribed. It cannot be pronounced even for premeditated criminal offenses if no more than five years have passed since the conviction for that offense became final.
- The court can order that the offender who has been given a suspended sentence be placed under protective supervision for a certain period of time during the probationary period.



# WORK IN THE PUBLIC INTEREST

- One of the most significant alternative sanctions is work in the public interest.
- It is socially beneficial work that does not offend human dignity and is not done for the purpose of making a profit.
- The sentence of community service is carried out by working in one of the legal entities, institutions and organizations that have concluded an agreement with the Ministry of Justice on the execution of the sentence of community service.
- Montenegro has made moderate progress in the application of the penalty of community service in the last 10 years, but there are still large discrepancies in the application of this alternative sanction in certain courts.
- A necessary condition for imposing a sentence of community service is the consent of the convicted person. Without this consent, work in the public interest would constitute forced labor, which is in contradiction with the Constitution of Montenegro and international human rights conventions and standards that prohibit forced labor. It cannot be performed for less than 60 or more than 360 hours.



# FINANCIAL PENALTY

- The fine consists in paying a certain sum of money for the benefit of the State. The fine is mainly viewed as a fine which has its own autonomous place in the criminal system. The fine therefore is not a typical alternative sanction.
- Nevertheless, the Criminal Code of Montenegro provides for the possibility of imposing either a fine or a prison sentence for certain criminal acts.
- As an alternative to prison sentences, fines are most often imposed for minor crimes for which a prison sentence of up to one year is threatened.
- There are two ways of determining the fine: the system of fixed amounts and the system of daily amounts.
- The deadline for paying the fine cannot be shorter than 15 days or longer than three months, but in justified cases the court can allow the convicted person to pay the fine in installments, but the payment deadline cannot be longer than one year.



# CONCLUSION

Montenegro has undoubtedly achieved progress in the application of alternative criminal sanctions and measures in the previous decade, but significant shortcomings still exist. Our penal system is still dominantly oriented towards institutional punishment, as evidenced by the number of short-term prison sentences, which sometimes exceeds the average in Council of Europe countries several times over. And the number of people in detention is at an extremely high level. Although detention in itself is not a punishment, it often produces the consequences of punishment. And the attitude of the public is directed towards institutional punishment. As many as two-thirds of citizens believe that imprisonment is more effective than alternative sanctions, and a large number of citizens have not even heard of the term alternative sanctions. The number of prison sentences of up to six months deserves special attention. The effectiveness of short-term prison sentences is highly questionable, i.e. the possibility that in such a short time interval a positive effect on the convicted person can really be achieved from the aspect of special prevention.



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# THANKS FOR YOUR ATTENTION!!!

