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Community Service as an Alternative Criminal Sanction

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Punishment, in the form of deprivation of liberty, has justified its existence and its place in the system of criminal sanctions and will remain the most convenient tool for combating the most serious forms of crime. However, contemporary legislation increasingly leaves room for alternative criminal sanctions that are useful in combating less serious crimes. Their role and importance are manifold. They are valuable as a substitute for prison sentences, particularly short-term ones, because the damaging consequences of the use of short prison sentences prevail over their expected benefits. They are not only beneficial to the offender and the state, but also ensure satisfaction for the victim, or at least for some victims. This paper focuses on alternative criminal sanctions in general, emphasizing their various advantages and disadvantages. One part of the paper is devoted to analysing the situation in the legislation and practice of the countries of the former Yugoslavia when it comes to community service. The central focus is on community service, in particular its status and use in Montenegrin criminal legislation. In addition to an analysis of the legislation and a critical analysis of the deficiencies in regulating this sanction, the author also focuses on problems with the use of community service in practice that have led to its underutilization.

Keywords: alternative criminal sanctions, community service, prison sentence

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1 Introduction

Deprivation of liberty was introduced as a punishment in criminal legislation in the late 18th century. It emerged in response to the cruelty of the repressive system that had existed before then and that was dominated by various types of corporal punishments and the death penalty, enforced in various ways. Deprivation of liberty still has a central position in the systems of criminal sanctions of modern states (Stojanović, 2008: 273). Despite the position of contemporary criminal policy that perpetrators of criminal offences should not be sent to jail if it can be expected that they could be influenced out of custody – through the implementation of certain sanctions – not to commit any further offences, the sanction of imprisonment remains the pillar of the criminal sanctions system. Its significance does not arise from its frequent application (for it is less applied in practice compared to some other sanctions), but rather from the fact that threatened imprisonment is above all expected to have a general preventive effect and that some other sanctions could not exist without it (Hassemer, 1990: 298). However, the history of the use of deprivation of liberty as a punishment can also be referred to as the history of disputing this type of punishment, since it has been disputed and challenged from the beginning. It was criticized from the outset as being a criminogenic factor per se, because those convicted of various crimes that were committed from different motives serve this type of sentence collectively, which can contribute to so-called "criminal infection". Certain research in sociology and criminology has shown that prison facilities have devastating effects on the personalities of convicts and that it is hard to re-socialize any convict in the "abnormal prison community" (Babić, 1997: 129).

It is emphasized that it is the element of retribution that dominates this type of sentence, that these sanctions do not guarantee prevention and that, in addition to this, prison cannot be an instrument for the re-adaptation and preparation of the offender for life in society, because prison itself is a negation of life in society. The solution to this issue is seen in the establishment of open detention and rehabilitation institutions which enable the most favourable application of modern scientific findings about the enforcement of sanctions for the purpose of rehabilitating and preparing convicts for social life, which is more suited to modern times than closed-type institutions (Milutinović, 1992: 67). Modern-day societies have grown very sensitive to the loss of freedom, and thus it is long-term prison sentences that have been recently criticized and it is not only short-term ones that have been controversial in criminal law and penology since the very beginning of their use. Scholars currently argue that the use of prison sentences, particularly long-term ones, should be reduced to

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a minimum (Lazarević, 1987: 33; Novoselec, 1989: 91). In other words, prison sentences should be taken as an *ultima ratio* (Stojanović, 2009a: 4).

As already mentioned, short-term prison sentences have always been strongly criticized. This criticism grew more intensive in the second half of the 20th century, which was the period of a kind of crisis in criminal law that resulted from a crisis in the policies for combating crime (Bishop, 1988: 44; Jescheck, 1983: 1037). In the literature, there are disputes as to which imprisonment sanctions are considered alternative. The differing opinions are most prominent when it comes to determining the minimum and maximum duration of this sanction. There was an attempt to give some credence to the definition of short-term imprisonment at the Second United Nations Congress held in London in 1960 and dedicated to the prevention of crime and the treatment of offenders. it reached the conclusion that the designation "short-term" should be attached to those imprisonment sentences, which due to the shortness of the interval in which they are to be served do not allow the implementation of any sort of treatment (Morris, 1961). Objections to this solution stated that it creates a certain ambiguity in the definition of the concept of this sanction because it does not lay down a time-period in the sense of precisely specifying the general maximum duration of short-term imprisonment (Bulatović, 1996: 15). Without ambitions to get involved in the discussion of what type of imprisonment is considered alternative, we point out that there is a prevailing opinion that those prison sentences whose term does not exceed six months are considered to be "short-term" (Srzentić, 1961: 4). It was in the second half of the last century, especially in the last quarter, that ways to overcome this crisis situation in the field of criminal law and policies for combating crime were explored, through exploring alternatives to prison sentences that could, on one hand, achieve the purpose of punishment and, on the other, provide society with effective protection from crime.

The issue of deprivation of liberty as a sanction has been discussed by many international organizations and associations for criminal law and even at the United Nations at its Congress on the Prevention of Crime and the Treatment of Offenders. In this respect, the Fifth Congress recommended that countries reduce the use of prison sentences and extend the use of sentences served outside of institutions (non-custodial sentences) wherever a prison sentence is not necessary. This discussion was continued at the Sixth, Seventh and Eighth Congresses held in 1980, 1985 and 1990, respectively. A special resolution was passed (Resolution No. 16) for the reducing the prison population, for alternatives to imprisonment and for the social integration of offenders was accepted by the Seventh United Nations Congress on the prevention of Crime and the treatment of Offenders, held at Milan in 1985 (United Nations, 1985). It was stated at that time that a large number of countries had built up penal systems with a significantly reduced legal framework regarding the use of prison sentences. However, this Resolution suggested that the general character of criminal legislation relating to prevention and repression should be preserved and that, in searching for a replacement for prison sentences, we should bear in mind public safety and public opinion (Babić, 1997: 130). Studies that were conducted over the past few decades in certain European countries show that the number of convicts who serve their prison sentence in penal institutions has not declined despite a higher application of alternative criminal sanctions and criminal law measures, which suggests that alternative sanctions should not in fact be substitutes for imprisonment but should instead together with imprisonment contribute to the spread of the European system of criminal justice and formal social control (Aebi, Delgrande, & Marguet, 2015).

The Council of Europe produced a number of documents aimed at strengthening mutual cooperation and humanizing national criminal legislation through stipulating legal standards for the use of alternative measures, i.e. sanctions. They include Resolution 1965 (No. 1) on suspended sentencing, probation and other alternatives to imprisonment, Resolution 1976 (No. 10) on certain alternative penal measures, the recommendation (No. 16) of 10 October 1992 that contains the European Rules on Community Sanctions and Measures (Mrvić-Petrović & Đorđević, 1998: 199).

Any discussion about alternative sanctions (measures) must include the important "United Nations Standard Minimum Rules for Non-Custodial Measures" (Tokyo Rules) adopted by the UN General Assembly Resolution on 14 November 1990. These rules encourage the development of new alternative measures, and they promote standards based on the attitude that prison sentences should be a last resort and that non-custodial criminal sanctions should be the rule (Bassiouni, 1994: 154). The Bucharest Declaration on Alternative Sanctions and Measures, dated 11 September 2001, which is of particular importance for the countries of Eastern and Central Europe, adopted certain recommendations for legislating and implementing alternatives to prison sentences in order to ensure a significant reduction in prison populations. At the Ministerial Conference in Helsinki in 2005, European justice ministers adopted the conclusion that the promotion of a penal policy aimed at the prevention of anti-social and criminal behaviour, the development of alternative sanctions and measures, consideration of the needs of the victims and their protection and the reintegration of the offender are of huge importance for social peace and security (Lažetić-Bužarovska, 2006a: 354). An increasing orientation

towards alternative sanctions and measures in European legislation has been prompted by the 2010 Council of Europe Probation Rules, which regulate measures and activities for monitoring, guiding and assisting the convicted person on the freedom provided by a special probation agency. The rules, inter alia, determine the wider competencies of the agency, and include cooperation with the court in determining the application of sanctions, with penal institutions in preparing convicts for post-release rehabilitation, post-penal assistance and assistance to victims of crime (Ignjatović, 2013: 147).

All the rules and recommendations in the above resolutions are, in principle, aimed at harmonizing penal systems and practices in terms of the use of alternative sanctions and measures with a view to avoiding the negative effects of prison sentences and striking a fair balance between the need to protect society from crime, on one hand, and the social reintegration of the offenders on the other (Kambovski, 2002: 204). Recent legislation has dealt with the intensive search for alternative criminal sanctions that would reduce the use of deprivation of liberty and eliminate all its negative effects, both in the field of resocialization and in the field of protection of society from crime. Regardless of extensive experience with these sanctions (measures), many issues remain unclear, starting with the notion of alternative sanctions, their number and the question of whether they are to replace only prison sentences or other sentences as well, etc.

2 The Notion and Types of Alternative Criminal Sanctions

When the term "alternative criminal sanction" is used, that means, plainly speaking, that the court, which adjudicates on the matter, has the option to choose which sanction it will pronounce. This original meaning was modified and completely changed and thus "alternative" became a complex concept with many messages. Today the "alternative" of anything alludes to the possibility of something new, better and more progressive. Despite the fact that alternative criminal sanctions have been thoroughly discussed recently, there are differences concerning which sanctions can be alternative criminal sanctions, and what the criteria are for treating certain sanctions as alternative.

Although the term "alternative" means a choice between two options, this does not refer alternatively to determined criminal sanctions in the special part of the Criminal Code, where for some criminal offences the wording reads "shall be punished by imprisonment or a fine". In such cases, the court is given the option of choosing between these two types of sanctions. Some authors think that a monetary fine can have the character of an alternative sanction only if the general part of the Criminal Code stipulates that the court can impose a fine instead of a prison sentence for criminal offences of a certain gravity, if it is justified in terms of criminal policy and if the special part of the Criminal Code does not stipulate such a sentence as an alternative to a prison sentence (Škulić, 2014: 252).

According to some authors, alternative criminal sanctions or measures are a substitute for imprisonment (Stojanović, 2008: 285), while others are more precise and emphasise that these measures are an alternative to short-term imprisonment (Bejatović, 2018: 14; Kambovski, 2018: 133; Meško, Hacin, Žiberna, & Mihelj Plesničar, 2016: 234). According to one author, these measures should be an alternative to short-term prison sentences, used in order to avoid their negative effects, provided that the court is of the opinion that such a measure is appropriate, given the nature and gravity of the crime, the personality of the offender and the level of danger that was entailed in the act (Ignjatović, 1996: 420). In another paper, the same author argued that, in the last couple of decades, the system of criminal sanctions had been "enriched" by so-called alternative measures aimed at reducing the use of prison sentences, where the court chooses between a prison sentence and other measures, and the defendant has to make a statement about whether he/she agrees to this other measure. If he/she does not give his/her consent or does not serve the alternative measure, the court renders the decision to replace such an alternative sentence with a prison sentence (Ignjatović, 2008: 4).

If we analyse all the elements of the alternative measures given in the above definition, then it is only community service that can fit into that definition, although the question then arises as to whether community service can be imposed as a replacement for a fine. There are opinions that, when defining an alternative criminal sanction, the legislator should not give too broad a definition and include any sanction that is not imprisonment. Alternative criminal sanctions are based on the principle of individualization of the force of the criminal law being used against offenders with a view to achieving as many positive effects as possible and reducing the negative effects. Therefore community service and house arrest can be considered alternative criminal sanctions (Jakulin & Korošec, 2009: 349).

The primary goal of alternative criminal sanctions is to ensure special prevention with restorative elements. Within this, the personality of the offender is an important factor, as well as the reasons that led to the crime being committed (Lažetić-Bužarovska, 2006b: 35).

Some authors argue that alternative criminal sanctions and measures, in the broadest sense, include all those sanctions and measures that are different from the traditional

prison sentence regime, regardless of whether these are measures that precede court proceedings imposed to prevent the offender going to court in the first place, or special measures imposed by court that are not served in an institution or measures undertaken during the prison sentence with a view to eliminating the negative consequences of prison isolation (Soković & Simonović, 2012: 380). A narrower understanding than this is one that considers all non-prison measures to be alternative sanctions (Bishop, 1988: 44; Ruggiero, Ryan, & Sim, 1995: 53).

There are theories according to which the concept of alternative criminal sanctions should be approached by first establishing which sanction in the criminal legislation is considered primary, and then determining which sanctions can be considered alternative in relation to that primary one. For these purposes, a simple criterion is used, which essentially comes down to the sanctions prescribed for each incriminating offence in a special part of the Criminal Code, where penalties exclusively appear as primary (Škulić, 2014: 246). So, the lawmaker himself treats imprisonment in such a manner though a fine is prescribed as the primary criminal sanction in some cases. Then in the general part of the Criminal Code, he prescribes specific alternatives to that primary sanction. According to this criterion, alternative criminal sanctions would include: community service, suspended sentences and court warnings. Along with these classifications of alternative criminal sanctions, we shall also address the one which separates these sanctions into several groups. The first group includes measures which modify the enforcement of a prison sentence, such as semi-liberty (partial enforcement of a prison sentence), house arrest, weekend jail, electronic supervision, and enforcement of the sentence in special conditions (Radulović, 2009: 101–111). The second group (so-called true alternatives) comprises sanctions which—as a rule—are imposed as primary sanctions and represent substitutes for imprisonment, including fines, community service, suspended sentences with or without supervision, and compensation for damages to the victim of the offence (Derenčinović, Dragičević, Prtenjača, & Gracin, 2018: 43). There is also the division into two basic groups, which cover "unpaid community service" and those measures "which represent a limitation of freedom with compulsory participation in programmes taking place in the local community" (Šelih, 2006: 38). In the literature, the placement of the suspended sentence among alternative criminal sanctions has been contested, with emphasis on the fact that this is an independent criminal sanction which isn›t a formal substitute for imprisonment (Kiurski, 2010: 80), and which long ago found its place in all criminal sanctions systems and a broad application in practice, so it is less and less considered as an alternative criminal sanction (Stojanović, 2009b: 25). Also, we would like to remind the reader that the term "suspended sentence" was first used in Europe in the Belgian Law on Postponement of Imposed Prison Sentence Enforcement of 1888, only to be followed in 1889 at the Congress of the International Criminal Law Association by the statement that the suspended sentence is not an innovation but a return to the tradition in a form which is adjusted to new circumstances (Vasiljević, 1935: 47). The Congress unanimously adopted recommendations from legislators of all countries to introduce suspended sentences as criminal sanctions.

Without resorting to an overview and an analysis of other theories when it comes to alternative criminal sanctions, for the purpose of this paper, alternative sanctions shall imply all sanctions, which are alternatives to imprisonment, and which are also backed by a prison sentence as an instrument for ensuring the enforcement of the alternative criminal sanction.

One of the more important questions connected to alternative criminal sanctions is the issue of their legal regulation. There are two possible approaches to resolving this issue. The first would be to define alternative criminal sanctions as independent sanctions so that the court can impose them directly. The other possibility would be to define them as a manner of enforcing imprisonment, where the court would first impose a prison sentence and then decide whether it would be served in an alternatively provided manner (Bejatović, 2018: 19). In the countries of the former Yugoslavia, we also find both of these solutions; for example, the criminal legislation of Slovenia first accepted the former manner of regulation, only to replace it afterwards with the latter (Jakulin & Korošec, 2009: 325).

3 Community Service

Since the 1970s, contemporary legislation has had new measures in the criminal law, in addition to warnings and fines that may be used as alternatives to imprisonment. These new sanctions are the so-called "real alternatives to imprisonment" and they include the most widely accepted, that of community service. It is the most progressive alternative measure introduced into European criminal legislation, and the most promising measure because the community is actively involved in the enforcement of the judgment and rehabilitation of the offender (Babić & Marković, 2009: 374). The concept of community service is based on the view that it can achieve three goals at the same time; punishment, the resocialization of the offender, and reparation of damage (McIvor, 1990: 101). In terms of reparation, scholarly articles emphasize that community service does have the character of ensuring compensation to society for the damage inflicted by

committing crimes (Soković, 2007: 122). In comparison to a prison sentence and other alternatives to a prison sentence, community service has multiple advantages. It does not break the link between the offender and his/her family, and the community he/she lives or works in; reintegration is achieved without isolation and it develops a sense of responsibility in the offender. The function of resocialization is particularly emphasized because the offender gives his/her consent to this type of sentence, while the type of work is chosen depending on his/her abilities and inclinations (Skinns, 1990). That is why we can say that this sanction is a kind of work-related treatment of a convicted person outside of prison. The convicted person must agree to this treatment and the work has to be done in his/her free time, free of charge and for the benefit of the entire society (Kambovski, 2004: 954). Even though it is pointed out that community service is not carried out for the purpose of gaining a profit, having in mind that it is usually performed for a legal entity engaged in an activity of public interest, this work indirectly benefits the country to a certain degree, since it would otherwise have to pay for such work if it was performed by persons employed in that institution. Used as a replacement for imprisonment, community service eliminates the negative effects of imprisonment, e.g., influence from the prison community, contact with other convicted persons, etc. The application of alternative criminal sanctions, community service included, is justified by the high costs of imprisonment (Dežman, 2011: 53), so this sanction is more cost-effective when compared to incarceration, bearing in mind the manifold costs in relation to food, maintenance, employee costs, 24/7 supervision, healthcare and so on (Bejatović, 2018: 14). In American literature among those proponents of a wider application of alternative sanctions, especially community service, we can find the assertion that the costs of putting convicts in maximum security prisons are equal to the costs of studying at such prestigious university as Harvard and Yale (Anderson & Newman, 1993: 43). In Croatia, it was estimated that one day of prison per person costs HRK 400, one day of probation HRK 10, and one day of electronic surveillance costs HRK 100 (Derenčinović et al., 2018: 127). In addition, the low level of economic development in some former Yugoslav countries is a limiting factor in relation to the construction of new corrective institutions, which is another reason to focus more on alternative criminal sanctions (Kambovski, 2018: 135).

The International Penal and Penitentiary Foundation addressed the issue of community service in 1986 in Coimbra (Portugal), and in 1987 in Bonn (West Germany). They underlined a number of advantages to this measure, including the following: it develops responsibility in the offenders, ensures reintegration without isolation and active participation of the community in the enforcement of the sanction and secures compensation to the community and victim, but not only that (Ignjatović, 1996: 422).

Community service as a contemporary sanction (measure) is very different from the model of forced labour or correctional labour, which was used in the criminal law of former socialist countries, including in Yugoslav criminal legislation, which had a sanction of forced labour without deprivation of liberty introduced in 1945 and of correctional labour from 1947. The punitive element of this sanction is not in the labour itself (because the persons serving the prison sentence also do some labour) but in the restriction of freedom that is imposed on the convicted person (Gerken & Henningsen, 1989: 225). The key advantage to community service in comparison to other non-custodial sanctions or measures, relies on the idea of including the community in the enforcement of the judgment and the rehabilitation of the convicted person. It is a significant step forward in comparison to probation and suspended sentences with protective supervision as well, because the convicted person is not only in contact with the probation officer, but with the entire community (Panjević, 1998: 500).

Criticism concerning this type of criminal sanction refers, first of all, to practical problems, such as: what type of work should be done and how should such work be organized, monitored and evaluated (Đorđević, 1993: 26, 1996: 13). Public opinion about this sanction is also very important (Stojanović, 2009b: 11). The fear that the introduction of this type of work will lead to a reduction in the number of jobs, which will weaken unemployment figures, is not realistic, since this work is done in the person's free time and is usually organized in those fields for which there is no huge interest and which do not require any particular professional qualifications (Roxin, 1998: 14).

Regardless of whether legislation prescribes community service as an individual sanction or as an alternative to imprisonment, scholarly resources say that this does not change the basic sense and reason for introducing this sanction, which is to have it as an alternative to a prison sentence (Lazarević, Vučković, & Vučković, 2010: 128; Stojanović, 2010: 173). According to some opinions, community service is a fine in disguise, paid in instalments. Understood in this way, it is not a replacement for a fine (Jescheck, 1983: 2127). The legal nature of this sanction has yet to comprehensively addressed and it will probably be hard to reach a consensus on this issue. But is that so important anyway? What is important is that this discussion should not distract attention from the much more important question of what should be done to make this sanction (measure) work in practice and to avoid it remaining merely declaratory in the legislation.

The criminal sanction of community service was first introduced in the State of California in the 1960s for some female convicts, for which the court had estimated that they would be adversely affected by imprisonment because of their need to take care of children, and they also did not have the money to pay the fine (Meško et al., 2016: 235; Mrvić-Petrović, 2018: 152). The measure of community service in Europe was introduced for the first time in England and Wales in 1972 under the name Community Service (Criminal Justice Act). It was seen as a replacement for short-term prison sentences (Huber, 1980: 638; Menzies & Vass, 1989: 205). Very soon it became rather popular and a decade after its introduction in the legislation, it became just as frequently used in practice as probation (Bottoms, 1987: 191).

Other European countries have introduced community service into their legislation. Thus, the French community service (*travail d'intérêt général*) was introduced as an independent sentence through the amendments to the Criminal Code of 10 June 1983. After prior experimental use, community service began as an independent sentence in Sweden on 1 January 1993, in Denmark on 3 January 1992 and in Norway on 1 January 1991 (Lažetić-Bužarovska, 2006b: 222). In Iceland, community service was introduced as a replacement for prison sentences in 1995, in Finland in 1991, while in the Netherlands its introduction in 1989 was preceded by a four-year experimental period (Kanevčev, 2006: 195). German criminal legislation stipulates community service as an additional precondition for imposing a suspended sentence (Tak & van Kalmthout, 1992), while in the United States of America, community service is mostly used as a precondition for probation (Lažetić-Bužarovska, 2003: 138), and according to those who do not show an unacceptable risk of future recidivism (Tonry, 1997: 56).

In the countries in the former Yugoslavia, community service was introduced into criminal legislation in different ways, as an independent criminal sanction (Serbia, Montenegro and Macedonia) and, in others, it is a replacement for an imposed prison sentence or a fine (Croatia, Slovenia, Bosnia and Herzegovina).

4 Community Service in the Former Yugoslav Republics

The question of alternative measures as a way to make the criminal sanctions system more humane has also been asked in the former Yugoslav countries, i.e. in the region. The search for a cost-effective, efficient and non-institutional model of controlling a certain type of crime has been necessitated on one hand by the rise of crime rates and an ever growing number of offenders with pronounced prison sentences, and on the other by the knowledge that traditional sanctions are not suitable for some offenders, and can even lead to negative effects in that regard. This is why the issue of finding the preferable instruments for the state's reaction to crime has been one of the burning questions over the last couple of decades. The first instrument is to introduce simplified procedural forms for minor offences, thereby giving the judicial authorities more time to deal with severe crimes. The second instrument is the introduction of alternative criminal sanctions, which had not existed earlier in the criminal legislation of these countries, such as community service, which is the main topic of this paper.

Through the introduction of this sanction (measure), along with other alternative criminal sanctions, the intention is, among other things, to reduce the prison population and get closer to the European average. Here, we should point out that the average number of convicts (incarcerated persons) in relation to people at liberty is around 100 per 100,000 of the general population in the European Union, whereas an idea of a 'European ideal' implies that the prison rate should be 60 to 65 incarcerated people per 100,000 of the general population, or even lower as is the case today in Norway, Sweden, Denmark, Finland and Slovenia (Škulić, 2018: 51).

4.1 Community Service in the Criminal Legislation of Bosnia and Herzegovina

Modern trends in terms of coming up with alternatives to imprisonment can be observed in the criminal legislation of Bosnia and Herzegovina as well, which comprises the criminal justice norms contained in the Criminal Code of Bosnia and Herzegovina (2003), Criminal Code of the Federation of Bosnia and Herzegovina (2003), Criminal Code of Brčko District (2013) and the Criminal Code of Republika Srpska (2017). Each of these laws provides for the measure of community service (in the Criminal Code of Republika Srpska, referred to as work in the public interest), but not as an independent sanction, but rather as a substitution for a prison sentence. Except for the Criminal Code of Republika Srpska (2017), all the other laws have identically regulated the conditions for imposing this measure, its duration, and the consequences for the convict in case he/she fails to enforce the decision (Article 43 of the Criminal Code of Bosnia and Herzegovina (2003), Article 44 of the Criminal Code of the Federation of Bosnia and Herzegovina (2003), and Article 44 of the Criminal Code of Brčko District (2013)). For these purposes, we shall only outline the solution prescribed by Article 44 of the Criminal Code of the Federation of Bosnia and Herzegovina. In order for a court to be able, in the sense of the above Article, to impose the measure of community

service, the following conditions need to be met: 1) the court must assess and impose imprisonment for a term not exceeding one year, and 2) the accused must give his/her consent for the substitution of the prison sentence with community service. Therefore, the court simultaneously imposes imprisonment and, with the accused person's consent, substitutes that sentence with community service. In practice, this means that the court shall, immediately after assessing and imposing imprisonment, inform the accused person that the law gives the possibility of substituting such a sentence with community service, and that the accused person's explicit consent is necessary for this substitution (Babić & Marković, 2018: 203). At the same time, Article 44 paragraph 2 of the Criminal Code of the Federation of Bosnia and Herzegovina (2003) stipulates that the decision to replace imprisonment with community service shall be based upon the assessment that the execution of imprisonment would not be necessary to realise the purpose of punishment, but at the same time a suspended sentence would not be sufficient to accomplish the general purpose of criminal sanctions (Simović, 2018: 168).

The duration of community service shall be determined proportionally to the imposed imprisonment, from a minimum of ten to a maximum of ninety working days, while the deadline for the execution of this measure shall be between one month and one year. The imposition of this measure during working days can lead to certain problems in the practical implementation, because the duration of a working day has not been precisely defined. In assessing the duration of community service, as well as the period for its performance, the court shall take into consideration the imposed imprisonment that is being substituted and the perpetrator's possibilities regarding personal circumstances and employment. If the accused person has not completed or has only partially completed community service, the court shall render a decision on the execution of imprisonment for a period proportional to the unfulfilled community service. The substitution of imprisonment with community service can also be applied in cases when a monetary fine is substituted with imprisonment (fine default imprisonment), which helps to prevent the return of short-term imprisonment, which was supposed to be avoided precisely through the fine (Criminal Code of the Federation of Bosnia and Herzegovina, 2003).

The Criminal Code of Republika Srpska of 2017 introduced certain amendments regarding community service, in comparison to other laws in Bosnia and Herzegovina, starting from the name of the measure (which is now called work in public interest) but its nature stayed the same – it does not represent an independent criminal sanction. By a special provision, the lawmaker pointed out that work in the public interest means any socially beneficial work which does not violate human dignity and which is not performed with the aim of generating profit. The duration of work in the public interest is more precisely defined and it is connected to a specific number of hours instead of working days. In this way, Article 70 paragraph 3 of the Criminal Code of the Republic of Srpska (2017) stipulates that work in the public interest may not be less than 60 hours nor longer than 360 hours, and that it is determined for a period, which may not be less than one month or more than six months. In addition, work in the public interest may not last longer than 60 hours during one month. If, during the specified period, the accused person fails to perform or only partially performs work in public interest, the court shall adopt a decision on the enforcement of imprisonment, by calculating every 60 hours of work in public interest as one month of imprisonment.

When it comes to the presence of this measure in case law, there are differences, not only at the level of the entities, but also among the cantons in the Federation of Bosnia and Herzegovina. On one hand, there are cantons in which this measure has been successful, such as the Sarajevo Canton, while, on the other, we have cantons where activities in relation to this measure have been reduced mainly to the adoption of accompanying acts for the implementation of this measure (Babić & Marković, 2018: 211). As far as Republika Srpska is concerned, this measure has not caught on at all in practice or, more precisely, up until the second half of 2018, there were not any cases of replacing imprisonment with community service. In general, due to the complexity of the government structure and the parallel competencies in Bosnia and Herzegovina, it is difficult to provide a single common assessment about the implementation of alternative measures.

4.2 Community Service in the Criminal Legislation of the Republic of Croatia

Alternative criminal sanctions have been introduced in modern criminal law as a substitute for short-term imprisonment, which is connected with many shortcomings. This is why some legislation have specific provisions under which short-term imprisonment is imposed only in cases when it is unavoidable. So, for example, Article 47 of the Criminal Code of the Federal Republic of Germany from 1998 stipulates that a term of imprisonment of less than six months shall only be imposed if it is necessary for the purpose of reforming the offender or for reasons of general deterrence. A similar provision is found in the Austrian Criminal Code from 1974. Croatian lawmakers seems to have taken this path (Novoselec, 2016: 376). In Article 45 of Criminal code, entitled 'Exceptionality of Short-Term Imprisonment', stipulates that imprisonment for a term of up to six months can be imposed by a court 'only if it may be expected that it will

not be possible to execute the fine or community service or if the fine, community service or suspended sentence could not achieve the purpose of punishment.'

One form of limiting the application of short-term imprisonment is its substitution with community service. Even before it was introduced through legislation, there were proposals in the literature calling for the introduction of this measure in the law (Šeparović, 1989: 5), but it was first introduced in Croatia by the Criminal Code of 1997, under the name 'work for common good at liberty'. This is not an independent criminal sanction, but rather a substitution for imprisonment and fines and, as it is pointed out in the literature, represents a modification of those types of sanctions (Bačić, 1998: 405). Work for common good (where the phrase *at liberty* was omitted, because it is obvious from the contents that it can only be performed while not in detention (Bubalović, 2012: 147) is regulated by Article 55 of the Criminal Code (2011), which was last amended in 2018, but the provisions of the Probation Act (2012) are also relevant for its implementation. The court may substitute community service for an imposed fine amounting to 360 daily units or for imprisonment for a term of up to one year (Criminal Code of 1997 provided for the substitution of imprisonment for a term of up to six months). Although the lawmakers, in the new Criminal Code (2018), extended the possibility of substituting imprisonment, they still favour the substitution of imprisonment of up to six months, when, as a rule, such a sentence should be substituted with community service, unless that could not realise the purpose of punishment.

When it comes to recidivists, there are certain limitations as well, in the sense that a recidivist who has been sentenced to imprisonment for a term of up to six months cannot have his/her sentence substituted with community service if he/she was previously sentenced to imprisonment for a term longer than six months. The duration of community service is determined by hours of work. Where a court substitutes community service for a fine, one daily unit shall correspond to two hours of community service, while one day of imprisonment shall correspond to two hours of community service in case of the substitution of imprisonment (Criminal Code, 2011). The time limit for the performance of community service, which cannot be less than one month or more than two years from the date when the judgment became enforceable, shall be determined by the body competent for probation. This body shall also determine the requirements of community service in consultation with the convicted person, taking into account his/her abilities. An essential condition for the imposition of community service is the convicted person's consent, which is also given to the body in charge of probation (Criminal Code, 2011).

This solution was met with criticism in the literature where it is pointed out that only a court should be authorised to determine the time limit and contents of community service, taking into consideration all circumstances of the case, and especially the circumstances connected to the perpetrator and his/her abilities. This is because community service is, by its nature, the modification of a sentence, and a sentence can be modified only by a court in its full extent, just like the court chose the type and measure of the sentence (Derenčinović et al., 2018: 121). However, with this legal solution, as stated in the explanation, the lawmaker wanted to avoid the objection that the judge's inquiry about the consent would violate the presumption of innocence, and also to enable the convicted person to familiarise himself/herself, before giving consent, with the work that is offered (Novoselec, 2016: 378). The probation body must, without delay, invite the convicted person to give his/her consent for the performance of community service (Probation Act, 2012), and if the convict does not give his/her consent, the court shall decide whether the sentence will be imprisonment or a fine, i.e. it will exclude the possibility of community service.

Along with community service, the court may impose upon the perpetrator protective supervision, whose duration must not exceed the time limit in which the perpetrator must perform such community service. If, through his or her own fault the convicted person does not perform community service, the court shall immediately decide on the applying punishment in full or in part, which has not been executed (Probation Act, 2012). In case the convicted person does not perform community service through no fault of his or her own, the body in charge of probation shall extend the initial time limit determined for the performance of community service. Community service shall be performed without remuneration, in various institutions and legal entities with which the Ministry of Justice has concluded service agreements.

According to the data of the National Statistics Office for the observed five-year period (taken from Derenčinović et al., 2018: 122), in relation to the total number of convicted persons, community service was imposed in 4.1% of cases out of 20,548 convicts in 2012, 6.2% out of 16,617 convicts in 2013, 10% out of 14,888 convicts in 2014, 7.7% out of 12,552 convicts in 2015 and 7.9% out of 13,412 convicts in 2016. The presented data show, on one hand, a decrease in the number of convicts, and on the other an upward trend in the imposition of community service. This still does not represent a sufficient share of this measure in practice, and this progressive trend could also have been primarily caused by the provision on the exceptional application of short-term imprisonment.

4.3 Community Service in the Criminal Legislation of the Republic of North Macedonia

The measure of community service in the criminal legislation of Macedonia was introduced by the reform of the Criminal Code of 2004. With this reform, the criminal sanctions system acquired a significantly pluralistic character with a prominent tendency to reduce the scope of the application of imprisonment, while a greater role would be reserved for alternative measures, such as, probation, suspended sentence with protective supervision, conditional discontinuation of criminal proceedings, community service, house arrest and court sanctions (Article 48-a of the Criminal Code, 2004). Such a limited number of alternatives reflects a rational position of the lawmaker who assumed that all institutional and other preconditions for a broader catalogue of alternative sanctions had not been met (Kambovski, 2018: 135). This rational position is not based on the question as to whether these measures are acceptable and necessary, but rather the question of how to ensure their efficient implementation so they could be a true replacement for imprisonment, having in mind that some of them imply the consent of the perpetrator who, in that way, actively participates in the procedure of his/her own resocialisation. A special purpose of the alternative measures is to avoid sentencing perpetrators of minor offences when is not necessary for realising criminal justice protection and when it can be expected that the purpose of punishment can be realised with a warning and threat of imprisonment, only with a warning or with measures of help and supervision of the perpetrator's behaviour out of detention (Article 48 of the Criminal Code, 2004). Determined in such a manner, this set of measures clearly differentiates them imprisonment, and unlike imprisonment, which is a retributive and preventive sanction, alternative measures are preventive sanctions, where the retributive element has been subdued and given the role of threatened imprisonment (Kambovski, 2015: 519).

A court may impose the community service measure for criminal activities for which the law prescribes a fine or imprisonment of up to three years. For this to happen, the offender must give his/her consent, the crime must have been committed under extenuating circumstances and the offender must not have previous convictions. The measure shall be imposed for a period from 40 to 240 hours. Community service shall be performed without any compensation in a state body, public enterprise, public institution or a humanitarian organisation, during national holidays, on Saturdays and Sundays, but not less than five hours per week, over a period of 12 months. If health-related or justifiable personal or family reasons exist, the court may extend the execution of the measure for at most six months. This is the basic form of community service as an independent criminal sanction. However, in addition to the basic form, there is also community service as a substitution for an imposed fine or imprisonment. In the sense of the mentioned Article, if the court imposes a fine of up to 90 day units or €1,800 in (calculated from the Macedonian currency) or imprisonment of at most three months, it may simultaneously decide, at the request of the convicted, to substitute such a sentence with community service, where one day of imprisonment, one day unit or €20 may be substituted with three hours of community service, bearing in mind that the total hours must not exceed 240 hours. When deciding on the substitution of imposed sentences with community service, the court will take into account the gravity of the crime, the level of criminal liability, criminal history of the offender, any compensation of the damages or removal of other harmful consequences of the crime. The previously imposed sentence still remains as a threat in case the convict does not perform community service as a substitution for the sentence (Criminal Code, 2004).

The fulfilment of obligations arising from community service pursuant to Article 58-b paragraph 4 shall be supervised by the competent court. During the performance of supervision, the court can adopt two types of decisions: it can modify the measure or replace community service with a monetary fine or imprisonment. If the convicted person fails to fulfil or inappropriately fulfils his/her working duties, the court shall send him/her a written warning, and if he/she continues to behave so, but if there are justified reasons for that, the time period for the performance of working duties may be extended by at most three months. In any case, depending on the convict's behaviour, after the written warning, the court may decide to replace the remainder of the measure with a fine or imprisonment, so that every three hours of community service are calculated as one daily unit of the fine or one day of imprisonment (Criminal Code, 2004).

If the convicted person fails to perform community work imposed as a substitution for a fine or imprisonment, the court shall adopt a decision stipulating the enforcement of the previously pronounced sentence (Article 58-b paragraph 6). At the same time, the community service obligations shall be counted in the total sentence, and every three hours of community service shall be counted as one day of imprisonment or one daily unit of the fine or €20 (calculated from the Macedonian currency) (Criminal Code, 2004).

Even though community service, as a criminal sanction, has been present in the Criminal Code of Macedonia for fifteen years, it is not applied in practice. So, for example, according to the National Statistics Office, this sanction was not imposed in any case in 2017. It is also not applied in the field

of juvenile justice (persons aged 16–18) in cases of committed offences, so in the observed period from 2007 to 2016, community service was not imposed in a single case (data taken from Kambovski, 2018: 136). Answers to the question of why Macedonian courts do not apply alternative measures, including community service, usually come down to the notion that there are numerous problems with the organisation of their execution, and especially the activities of other bodies in the performance of supervision. The implementation of alternative measures was defined by the Law on Execution of Sanctions (2006), but this law did not provide for the existence of a separate authority for the implementation of alternative measures, but instead broadened the competencies of social welfare centres by establishing within them a special department for the implementation of alternative measures, which burdened these centres with tasks which were significantly more challenging than their other functions. This is why no significant results could have been expected in the wider implementation of alternative measures. All these obstacles to a wider implementation of these measures, at least at the legislative level, should have been eliminated with the adoption of the Probation Act in 2015. The main idea on which the concept of this law is based is the establishment of a separate service which would be competent for the implementation of measures comprising treatment within the community and increased supervision during probation on one hand, and for getting involved in criminal proceedings for the purpose of assisting the court in the selection of such measures on the other. The Probation Service is an organisational unit of the Sanctions Execution Administration within the Ministry of Justice, at the central national level, and it has offices located in the areas of major courts at the local level.

Even though the Probation Act (2015) created a normative basis for a wider implementation of alternative measures, including community service, the above mentioned reports show that this measure is not applied, which leads us to conclude that the problem with the implementation of these measures does not lie in the legal norms, but in something else instead, where that 'something else' is often called 'a lack of political will' (Kambovski, 2018: 138).

4.4 Community Service in the Criminal Legislation of Slovenia

Criminal sanctions are the most dynamic segment of criminal law, because there has always been attempts to establish measures which would realise the purpose of punishment. As far as the establishment of new measures is concerned, Slovenia has been leading the way among the former Yugoslav countries. It was the first to introduce legislation, or more precisely to its Criminal Code (1994), which entered into force in 1995, with the possibility of alternatives to imprisonment. Article 107 paragraph 4 of that Criminal Code (1994) prescribed that an imposed prison sentence for a term of up to three months could also be executed so that the convict, instead of imprisonment, performs service for the benefit of a humanitarian organisation or the local community for a period of up to six months and at least 80 and no more than 240 hours. Likewise, already in mid-1980s, the criminal law literature in Slovenia advocated for alternative criminal sanctions (Šelih, 1987: 69; Vodopivec, 1985: 201). However, up until 2001, courts showed almost no interest for the implementation of such measures, which the literature explains that there were no activities, which would inform and encourage judges to apply such measures, and on top of that, there were no focused efforts to ensure activities performed for humanitarian organisations which would be suitable as forms of service for the benefit of the local community (Šelih, 2006: 40).

The new Criminal Code (2008) provides for community service as an alternative for imprisonment. Article 86 of the Criminal Code (2008) stipulates that imprisonment of up to two years (except for crimes against sexual freedoms) can also be executed so that the convict, instead of serving the prison sentence, performs community service for a period of at most two years in for at least 80, and at most 480 hours. The scope of the service shall be determined so that one day of imprisonment is substituted with two hours of work. When deciding on the substitution of imprisonment with community service, the court pays special attention to the convict's behaviour during the deliberation, the danger of possible reoffending while out of detention, his/her abilities and possibilities for the performance of suitable services, as well as personal and family circumstances of the convict in the period determined for the implementation of the punishment. However, the case law, as stated in the literature, has taken a somewhat different position while deliberating on the substitution of such sentences, where it considers the severity of the crime, the circumstances under which it was committed, as well as the danger posed for the society by the offender, which can seem peculiar, to say the least, because these are facts which the court considered when choosing and measuring the sentence (Meško et al., 2016: 236). The body which is competent for the performance of community service determines the type of work in accordance with its professional opinion and the capabilities of the convicted person, while paying attention not to disturb his/her family duties during the allocation. The amended Criminal Code (2011) provides for an alternative for monetary fines as well. In that sense, a fine comprising up to 360 daily instalments can be implemented so that the convict, during a period of up to one year, instead of paying the fine, performs community service without remuneration. The scope of the work shall be decided so that one daily instal-

ment is substituted by one hour of community service. If the convict fails to fulfil the obligations arising from community service, the court shall decide to enforce the previously imposed sentence.

Similar to legislation in Bosnia and Herzegovina, and Croatia, community service is, by its nature, a manner of implementing imprisonment, and not an alternative criminal sanction, because a court first imposes imprisonment and then substitutes it with community service. However, there are proposals in the Slovenian literature to establish it as an alternative criminal sanction, instead of an alternative form of implementing imprisonment (Dežman, 2011: 13).

Apart from the Criminal Code, the matter of community service measures is also regulated by the Law on Execution of Penal Sanctions (2015), by the Rulebook on the performance of community service (2008) and by the Law on probation (2017).

During the procedure for the implementation of community service, in addition to the prosecutor's office and the court, an important role is reserved for social welfare centres, organisations for the implementation of work and coordinators who manage the work and represent the main link between social welfare centres and organisations and institutions in which the work is performed.

Social welfare centres are competent for the performance, preparation and supervision of community service. As soon as it receives the decision on the substitution of imprisonment or a monetary fine with community service, a centre shall call the convict and have a conversation with him/her, and on the basis of that conversation, personal characteristics, family circumstances, health status and qualifications of the convict, determine the scope of the tasks which each candidate must perform individually (Meško et al., 2016: 238). Together with the convict, the centre chooses an organisation or an institution in which the work can be performed, and then schedules a meeting which will be attended by a representative of the organisation for the implementation, alongside the centre's representative and the convict, and minutes are compiled in that regard. On the basis of these minutes, the Administration for the Execution of Criminal Sanctions concludes an agreement with the organisation in which the convict will perform the work. In 2018, the probation service established in Slovenia took over most of the work of social welfare centres regarding the implementation of alternative sanctions (especially community work).

Community service is most often performed in local self-administration communities, but the possibilities also include schools, sport and youth centres, retirement homes, etc. Despite the fact that community service has been present in the Criminal Code for twenty years, data analysis has shown that its application slightly increased only after 2004. Its application has been on a rise since 2011, so that there were 73 imposed community service sentences in 2011, 61 sentences in 2012, 82 sentences in 2013 and 52 sentences in 2014 (Meško et al., 2016: 245).

The presented data show that this punishment is not prevalent in case law, and since the last year of the observed period (2014) saw the smallest number of imposed sentences, we cannot really expect a trend towards a greater application in practice.

4.5 Community Service in the Criminal Legislation of Serbia

The positive experiences of other countries and the theoretical opinions about the need for introducing community service into criminal legislation played a crucial role in the introduction of community service in the Criminal Code of the Republic of Serbia in 2005, where it exists as a principal and secondary penalty. The fact that community service was given the status of punishment in the Criminal Code does not change the basic purpose and the reason for introducing this sanction, which is to have an alternative to imprisonment (Stojanović, 2015: 268). The criminal legislation of Serbia is one of those legal codes where community service is connected to a prescribed sanction. Article 52 of the Criminal Code of the Republic of Serbia (2015) stipulates that this sanction may be imposed for criminal offences punishable by imprisonment for up to three years or a fine. According to the same provision, community service should be socially beneficial, not offend human dignity and must not be performed for profit, and may not be less than sixty hours or longer than three hundred and sixty hours. It can last no longer than sixty hours during one month and shall be performed during a period that may not be less than one month nor more than six months. In pronouncing this penalty, the court shall give consideration to the purpose of punishment, to the type of the committed criminal offence, the personality of the perpetrator, and his/her readiness to perform community service. An important condition for the imposition of this sanction is the offender's consent, which is in accordance with international conventions on the prohibition of forced labour. If the offender fails to perform most or all hours of community service, the court shall replace this penalty by a term of imprisonment by calculating every eight hours of community service as one day of imprisonment (Criminal Code of the Republic of Serbia, 2005). However, there are also leniencies for offenders who duly fulfil their obligations, so the court may reduce their sentence by one quarter. This leniency (which is not applied in

practice) has faced criticism in theory, where it is pointed out that community service cannot achieve the purpose of resocialisation, because it cannot be imposed on persons who do not fit in the community and who do not accept social values, which is why the legislation cannot contain the concept of shortening the duration of community service if it is performed successfully (Mrvić-Petrović, 2018: 155).

Community service can also be imposed as a substitution for an unpaid fine, by converting each one thousand dinars into eight hours of community service, provided the total duration of community service does not exceed three hundred and sixty hours. Here as well, community service is a substitute for imprisonment, and not for a monetary fine.

As we have previously stated quoting Article 52 paragraph 1 of the Criminal Code of the Republic of Serbia (2005), community service is any socially beneficial work that does not offend human dignity and is not performed for profit. In connection with this provision of the Criminal Code is Article 39 paragraph 1 of the Law on Enforcement of Non-Custodial Sanctions and Measures (2014), which prescribes that community service must not threaten the health and safety of the convict, and must be performed for a legal entity which engages in tasks of public interest, especially in relation to humanitarian, healthcare, ecological and utility tasks.

This penalty is implemented under the supervision of the Commissioner Service of the Administration for the Execution of Criminal Sanctions, which concludes a cooperative agreement between legal entities dealing with tasks of public interest, which defines the mutual relations between the Administration, the employer and the convict in relation to the performance of community service. The head of the Commissioner Service or the person who he/she authorises, adopts the decision to send the convict to perform community service for the designated employer and delivers this decision to the convict and the employer (Article 39 of the Law on Enforcement of Non-Custodial Sanctions and Measures, 2014), while the selection of the employer, type of work and the work programme are selected by the commissioner. The commissioner is obliged to inform the court and the Commissioner Service about the start and completion of community service, and to submit to these bodies reports about circumstances which have a significant impact on the implementation of the programme. The convict is obliged to perform the work in the manner and within the deadlines defined by the programme. If, during the performance of the programme, the convict grossly neglects his/her work duties, the employer's representative shall inform the commissioner who is obliged to have a conversation with the convict, advise him/her about the consequences of such behaviour. If the convict continues grossly neglecting his/her work duties even after that, the commissioner shall inform the court and the Commissioner Service accordingly, while stating the facts and circumstances relevant for the court's decision to replace community service with a prison sentence. Rulebooks on protective supervision and community service regulate in detail the actions of the commissioner and the monitoring of the performance of obligations by the convict. Even though all conditions for a wider application of community service have been met through the establishment of the Commissioner Service, it is still insufficiently applied in practice, even though a greater presence of this sanction in practice would reduce the share of not only imprisonment, but also of suspended sentences, because its effect is supposed to be far better than the one achieved with suspended sentences (Tomić, 2018: 247).

According to a report of the Statistical Office of the Republic of Serbia (2019), 365 community service sentences were imposed in 2012, 348 sentences in 2013, 371 in 2014, 353 in 2015, 349 in 2016, and 348 community service sentences in 2017. The presented data reveal that the number of imposed community service sentences has been declining, even though it could have been expected that there would be an upward trend in this field.

4.6 Community Service in the Criminal Legislation of Montenegro

Working for the common good as an independent criminal sanction was introduced into Montenegrin criminal legislation in 2003 under the name of "*rad u javnom interesu*" (community service). Analysed from the point of view of legislation, this sentence fits into the concept of community service as an independent punishment (measure) that exists in other legislation, particularly when it comes to the conditions for its pronouncement. The Law on Amendments to the Criminal Code (2010) modified the provisions regulating community service, the catalogue of criminal offences for which community service can be imposed, and it changed the minimum and maximum limits for the hours of work. Article 41 of the Law on Amendments to the Criminal Code (2010) stipulates that community service can be imposed for criminal offences punishable by a fine or up to five years imprisonment. This provision clearly shows the limits in the use of this sanction (gravity of the criminal offence expressed through the type and amount of the stipulated sentence) and the punishment that the court can use a fine, prison sentence or community sentence with the consent of the offender. This means that the court will first need to assess whether to impose a prison sentence or a fine or, if, given the gravity of the offence and personality of the offender, the court is of the opinion

that neither of these two sanctions is required to achieve the purpose of the punishment, the court can impose community service (Lazarević, Vučković, & Vučković, 2010: 128).

According to this approach, community service can be an alternative to both a prison sentence and a fine, and is also a replacement for a fine in case of criminal offences punishable only by fines. There are three offences of this kind in the Criminal Code (Škulić, 2014: 250). However, some scholars think differently, and consider community service to be an alternative to a prison sentence but not to a fine, because if the offender does not give his/her consent for community service the court will most probably impose a prison sentence (Stojanović, 2010: 173). This opinion is most probably based on the provision of Article 41 of the Law on Amendments to the Criminal Code (2010), which requires the following: if the offender does not do the work envisaged in his/her community service, the community service is to be replaced by a prison sentence. The conversion is done on the basis of the following formula: every 60 hours of community service that has been started will be replaced by one month in prison. However, this is the situation where community service that had already been imposed was not served, and in such a situation, the only alternative is a prison sentence. But where a decision has to be made on whether a prison sentence, a fine or a community service is to be imposed, and community service is chosen, then it can be understood as an alternative not only to a prison sentence but also to a fine. An argument for this thesis can also be found in Article 39 of the Law on Amendments to the Criminal Code (2010). It stipulates that an unpaid fine that does not exceed the amount of €2,000 can be replaced not only by a prison sentence but also by community service, with the consent of the convicted person. There are opinions though that even in this case community service is actually an alternative to a prison sentence (Stojanović, 2010: 173).

The gravity of the offence expressed in the form of the type and the amount of the stipulated punishment is a limiting factor for imposing community service. The decision of the court on whether to impose community service or not depends (*inter alia*) on the type of criminal offence. This leads to the conclusion whereby we cannot say that every criminal offence, regardless of its nature, punishable by up to five years imprisonment, is eligible for community service. It is true though that some scholars think that it would be wrong to make any generalization about the type of criminal offences for which it is justified to impose community service (Marković, 2009: 130).

According to Article 41 of the Law on Amendments to the Criminal Code (2010), the court will impose community service, taking into account the purpose of the punishment and the following circumstances: 1) the type of criminal offence, 2) the personality of the offender, and 3) the consent of the offender.

Regardless of the fact that, from the point of view of criminal law policy, it would not be reasonable to explicitly exclude any criminal offences from the possibility of being punishable by community service, and we think that in practice the courts certainly have to take into account the fact that some offences are of such a nature that they are not appropriate for community service. In this respect, the focus should be on the personality of the offender, because community service can achieve the purpose of punishment and it can be justified from the point of view of criminal law policy only if the court is of the opinion that this sentence, given the personality of the offender, will have such an effect as to prevent him from reoffending in the future. When assessing the personality of the offender, the court will particularly take into account whether the offender is a first-time offender, age, and what his/her attitudes are towards the offence and the victim.

Community service may not be less than 60 hours nor more than 360 hours and it has to be imposed for a period that may not be shorter than 30 days nor longer than six months. Within one month it may not take up more than 60 hours. This means that, when imposing this sentence, the court not only has to set its amount in terms of the hours of work required, but also the time within which the community service is to be served. Since this sentence is not stipulated for any particular criminal offence in the Special Part of the Law on Amendments to the Criminal Code (2010), which is why specific minimum and maximum durations are not set for any specific criminal offences, this sentence is always imposed within its general minimum and maximum. The gravity of the criminal offence is the determining factor in deciding whether community service will be imposed in the first place. However, the length of community service primarily depends on the personality of the offender, since this is a sanction with the basic purpose of specific (individualized) prevention. If the offender does not do the work envisaged in community service, it will be replaced by a prison sentence. Every 60 hours of the community service that was started will be replaced by one month of imprisonment.

In Montenegrin legislation, community service is also envisaged as a replacement for an unpaid fine, where an unpaid fine that does not exceed the amount of €2,000 may be replaced not only by a prison sentence, but also by community service with the consent of the convicted person. The conversion is done in such a way that every €25 of the fine equals eight hours of community service, provided that the community service is no longer than 360 hours. In this case,

community service is a replacement for the total unpaid fine. If the convicted person pays only a part of the fine, the court will replace the rest of the fine with a proportionate prison sentence, and not with community service. This sentence may be imposed on both employed and unemployed persons, provided that employed persons do the community service in their free time, while unemployed persons may do it at any time. An interesting question is whether the community service may be done in the environment where the offender is employed? If it is an institution or a company designated and appropriate as a setting for community service, then we think that there is no impediment to a person employed there doing the community service there, only not within regular working hours. When imposing this sentence the court does not order any specific type of work, because this depends on the available options, nor does the court determine the entity where the community service is to be carried out. The type and manner of doing the community service are determined by the authority in charge of implementing the sentence, taking into account the abilities of the offender, his/her knowledge and health condition.

All of this is outlined in the Law on the Enforcement of Suspended Sentences and Community Service (2019), which also stipulates that the community service is to be done in a legal entity that carries out activities of public interest (humanitarian, social, communal, health, agricultural, environmental or similar) or in a non-profit organization whose activity is linked to humanitarian, environmental and similar activities. The Ministry of Justice may conclude an agreement with state administration bodies and local self-government bodies about the activities that such authorities supervise. The Ministry of Justice concludes a separate agreement for every individual case with the legal entity or organization where the convicted person is referred to in order to perform community service. Such an agreement contains the time within which community service is to be implemented, as well as the work that the convicted person is to do, the manner in which the sentence is to be served, and the rights and duties of the legal entity or organization and the convicted person. The legal entity or organization in which this sentence will be served, as well as the type of work to be done, are selected on the basis of the abilities, knowledge and health condition of the convicted person.

The most important role in the implementation of this sentence is played by the probation unit, which is an organizational unit of the Ministry of Justice. Based on the agreement, the Ministry of Justice drafts an individual programme of work and informs the convicted person about that programme and about the commencement of the work. It also monitors the implementation of community service through its officer by checking directly with the legal entity or organization where the convicted person is to serve the sentence. During the implementation of community service the Ministry of Justice, at least twice a year files a report to the court, which rendered the first instance judgment. The rulebook on the execution of suspended sentence, suspended sentences with protective supervision, penalties in the public interest and conditional release (2015) regulates the execution in more detail the implementation of the community service.

Even though the sanction of community service was introduced in Montenegrin legislation back in 2003, the courts had not been imposing it for ten years since its adoption. Its application started only in 2013, when it was imposed in 24 cases. With the adoption of the Law on Enforcement of Suspended Sentence and Community Service in 2014, its application was intensified, so 36 community service sentences were passed in that year, 87 in 2015, 103 in 2016 and 179 in 2017. From the overview of these data, we can see that the share of this sanction is growing, but it is still insufficient when compared to other sanctions (Statistical Office of Montenegro, 2019). It is difficult to Account for this situation, but possible reason is the fact that institutions in which this sentence would be served had not been found for a long time. Another reason, we believe, is the fact that our judiciary is quite conservative and not ready to welcome the application of new institutes. Still, we expect that the trend of a wider application of this sanction will continue and that it will justify its position within the criminal sanctions system.

5 Similarities and Differences in the Regulation and Implementation of Community Service in the Criminal Legislation of Former Yugoslav Countries

In the previous statements, we took a closer look at the sanction and measure of community service in the criminal legislation of former Yugoslav countries. In this section, we shall point out the similarities and differences in the regulation and implementation of this sanction in these countries. When it comes to the conditions that have to be met in order to be able to impose this sanction, there are some, which are generally accepted, such as: severity of the offence as expressed by the type and level of the prescribed sanction, personality of the perpetrator, and his consent to the imposition of this sanction. The Criminal Code of North Macedonia further requires that the crime must have been committed under extenuating circumstances. Regarding the severity of the offence as expressed by the type and level of the prescribed sanction, there are differences between the laws which regulate community service as an independent sanction, those which sees

this service as a substitute for a pronounced prison sentence. In the first group of laws, the Criminal Code of Montenegro has the highest legal limit for the application of this sanction (criminal offences for which imprisonment of up to five years is prescribed), while the Criminal Code of Slovenia has the highest limit in the second group (imprisonment of up to two years). Only the Criminal Code of Slovenia ruled out the possibility of imposing community service sanction for crimes against sexual freedoms. However, we believe that other countries, whose laws do not rule out the possibility of imposing this sanction for certain crimes, will pay attention in practice to the fact that some crimes, due to their nature, are not suited for the imposition of this sanction.

The severity of the crime is a determining factor when establishing whether it is possible to impose this sanction, but attention must also be paid to the perpetrator's personality and his readiness to perform community service. When speaking of the personality of the perpetrator, it is worth noting that only the Criminal Code of North Macedonia ruled out the possible imposition of this sanction on recidivists, while the Criminal Code of Croatia prescribes the same for persons who had previously been sentenced to a prison term of over six months. However, this does not mean that the case law in these countries, which do not explicitly rule out the possibility of imposing this sanction on recidivists, will not pay attention to this fact within the scope of assessing the perpetrator's personality.

One of the essential conditions for the imposition of this sanction is the perpetrator's consent, which arises from the Abolition of Forced Labour Convention (No. 105) (International Labour Organisation, 1957). Since this sanction was introduced for pragmatic purposes, it is clear that the perpetrator's consent is in the interest of the authorities in the criminal procedure. This creates a set of procedural legal questions, such as when consent should be given during the procedure, whether the defendant is only informed about the possibility of the imposition of this sanction, or if he is also informed about the type and severity of the sanction, which awaits him if he does not give his consent for the imposition of this sanction. In those circumstances where community service is a substitute for a pronounced prison sentence, it is easier for the defendant to choose between going to jail and performing community service. However, those laws which prescribe community service as an independent sanction, if the defendant was told which type and level of sentencing awaits him if he does not give his consent that would essentially imply a model where this sanction is a substitute for a pronounced prison sentence or fine. This is why it is the court's obligation to inform the defendant about the possibility of the imposition of this sanction, about its advantages compared to imprisonment, that the service he undertakes to perform is supposed to help him develop a sense of responsibility and to contribute to his resocialisation. Consent must be obtained by the end of the main hearing, or at the latest during the closing arguments, and should be entered in the minutes of the main hearing (Peković, 2006: 134). Consent is given to the competent court, and only the Criminal Code of Croatia prescribes that consent should be given to the body competent for probation.

What is common among all of these laws is that the court does not determine the type and contents of the service nor the institution in which the service will be provided, but it is obliged to state the reasons because of which it substituted imprisonment with this sanction, along with reasons for its duration and the number of hours. Only according to the Criminal Code of Croatia can community service be imposed along with protective supervision.

Another difference between the above-stated laws s is that in some cases, community service is a substitute only for imprisonment (Slovenia, Bosnia and Herzegovina), while it can substitute imprisonment and fines in others (North Macedonia, Montenegro, Croatia, Serbia). When it comes to the minimum regarding this sanction, the threshold is the lowest in the Criminal Code of North Macedonia (40 hours) and the highest in the Criminal Code of Slovenia (480 hours). The term for the enforcement of this sanction ranges between one month and six months (Montenegro, Serbia), up to one year (Bosnia and Herzegovina, North Macedonia), or two years (Slovenia, Croatia). The manner in which the issue of enforcing this sanction was regulated is similar, for it is mainly performed in institutions engaged in humanitarian affairs, ecology, etc. In fact, since the service is not performed for the purpose of generating profit, the legal entity in which community service is provided should be a public institution which performs its activity to the benefit of the citizens or in the wider public interest (Mrvić-Petrović, 2018: 157). Regarding the supervision of the implementation of community service, the bodies which perform it are usually certain probation services.

The possibility to reduce a community service sentence by one quarter because of good conduct and due fulfilment of obligations is prescribed only in the Criminal Code of Serbia. On one hand, this solution has been criticised (Mrvić-Petrović, 2018: 157), while on the other it has been praised as justified in terms of criminal policy, because it encourages the perpetrator to duly and responsibly perform the work which he consented to (Marković, 2009: 131).

6 Concluding Remarks

Contemporary tendencies and trends in the field of crime prevention policies, which among other things, are related to seeking adequate alternatives to short-term imprisonment have had an influence on the criminal legislation of countries in the region as well. By a reform of their criminal legislation, these countries introduced to their criminal sanctions systems some new alternative sanctions or measures, including community service, or work for the general good, or work in public interest, as this sanction is called in some legislations. As we discussed previously, some of the observed countries introduced this sanction earlier (Slovenia, Bosnia and Herzegovina, Croatia), while some introduced it later on (Serbia, Montenegro, North Macedonia). The countries which introduced this sanction later had the opportunity to consider the earlier solutions adopted by other countries during the regulation of the sanction. On the other hand, the countries which introduced the sanction somewhat earlier, were also able to consider comparative laws which had been familiar with this type of sanctions for decades. Keeping all of this in mind, the laws of the countries of the former Yugoslavia have certain similarities and differences when it comes to the community service sanction, which we have shown in the previous section.

Regarding the normative regulation of community service, there are differences connected to the legal nature of this sanction. We have laws s which include the concept of community service is an independent sanction (Criminal Code of Serbia, Criminal Code of Montenegro and Criminal Code of North Macedonia) and laws which prescribe this sanction as a substitute for a pronounced prison sentence (Criminal Code of Slovenia, Criminal Code of Bosnia and Herzegovina including the Entities, Criminal Code of Croatia). It is debatable which solution is better, but here we shall only state that even in places where community service is prescribed as a substitute for a pronounced prison sentence, the literature has made proposals to transform it into an independent sanction (Dežman, 2011: 13) and vice versa; in places where community service is prescribed as an independent sanction, there are proposals in the literature to transform it into a substitute for a pronounced prison sentence (Mrvić-Petrović, 2018: 158).

The work is supposed to be done in the public interest and must not generate a profit, while some laws (Serbia and Montenegro) also prescribe that it must not violate human dignity. What type of work is beneficial to the public is an essential question, however, every form of real human work should be socially beneficial, and it would also have to be productive and represent a form of human activity which objectively creates a certain tangible or intangible good (Škulić, 2014: 256). Another crucial question is what sort of work does not violate human dignity. In principle, any community service would also have to be dignified, but this does not depend only on the type of work, but also on the attributes of the person performing such work. This is why it is important to find work, which, among other things, corresponds to the profession, preferences and abilities of the defendant, while the consent given by the defendant regarding such work neutralises the objections about possible violations of human dignity (Simović, 2005: 117).

When speaking about former Yugoslav countries, it can be concluded that quite a lot has been done in the field of alternative criminal sanctions, in terms of regulation. However, this does not mean that there is no room for the improvement of these possibilities, but the already present possibilities should be used, and as much as possible and whenever possible, alternative criminal sanctions – especially community service – should be applied. The Council of Europe analysed how alternative criminal sanctions are applied in practice with special emphasis on community service, which is the most suitable substitute for imprisonment, in addition to the suspended sentence. The research results indicate the following main problems related to the practical application of alternative criminal sanctions, community service included:

1) rejection of alternative criminal sanctions in the wider European community which demands more severe sanctions for perpetrators, because there is a widespread belief that longer prison sentences are the best means to prevent the perpetual growth of crime;

2) lack of political will to inform the public about the deeper purpose of such sanctions;

3) disinclination of judges and prosecutors towards such sanctions because of insufficient knowledge and a complicated procedure;

4) lack of understanding of the modern concept of punishment; and

5) difficulties in the adoption of appropriate legislation with unclear substantive legal premises and a wholly unadjusted procedural legislation (Jakulin, 2018: 105).

With all this said, public opinion shouldn't be disregarded either, since it is often believed that the prevention of crime can be most efficiently achieved through the strengthening of criminal policy, which is why it is completely understandable that citizens often see community service as an undeserved privilege for certain perpetrators. Rational consideration of the community service sanction is not reflected in whether this sanction is acceptable and necessary in general, but in how to ensure its efficient application so that it would truly be an alternative to imprisonment, bearing in mind that the

imposition of this sanction requires the perpetrator's consent, and that it requires him to actively participate in the resocialisation process. This necessitates the definition of criteria for its application, which would comprise risk assessment and a reliable estimate of the successfulness of the application, along with the establishment of mutual trust among the court, the probation service and the convict.

In order for the courts to more easily opt for the imposition of this sanction, it is very important to provide objective feedback to judicial authorities about the success of the implementation of this sanction. Lacking such information, they most often notice only the unsuccessful cases, i.e. those where the perpetrators reoffends, which can easily create a negative impression about the efficiency of alternative criminal sanctions, community service included.

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Delo v korist skupnosti kot alternativna kazenska sankcija

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Kaznovanje v obliki odvzema prostosti je utemeljilo svoj obstoj in mesto v sistemu kazenskih sankcij in bo ostalo najprimernejše orodje za boj proti najhujšim oblikam kriminalitete. Hkrati pa sodobna zakonodaja vedno bolj dopušča prostor alternativnim kazenskim sankcijam, ki so koristne v boju proti manj hudim kaznivim dejanjem. Te sankcije imajo raznovrstne pomene in vloge. So dragocen nadomestek zapornim kaznim, zlasti kratkoročnim, saj škodljive posledice kratkoročnih kazni prevladajo nad pričakovanimi koristmi. Alternativne sankcije niso koristne le za storilca in državo, temveč zagotavljajo zadoščenje žrtvam oziroma vsaj deležu žrtev. Prispevek se osredotoča na alternativne kazenske sankcije v splošnem, s poudarkom na njihovih prednostih in slabostih. Del prispevka je namenjen analizi dela v korist skupnosti v zakonodaji in praksi v državah nekdanje Jugoslavije. Osrednji del prispevka se osredotoča na delo v korist skupnosti, zlasti njegovemu statusu v kazenski zakonodaji Črne gore. Poleg analize zakonodaje in kritične analize pomanjkljivosti pri urejanju te sankcije se avtor osredotoča tudi na probleme uporabe dela v korist skupnosti v praksi, ki so privedli do njegove premajhne uporabe.

Ključne besede: alternativne kazenske sankcije, delo v korist skupnosti, zaporna kazen

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