



Probation and system of alternative sanctions in Montenegro

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I Introduction

1.1. Probation organization

The Conditional Liberty Office is the organizational unit of the Directorate for Execution of Criminal Sanctions at the Ministry of Justice which, in addition to probationary powers, takes responsibility on the enforcement of alternative sanctions. The Conditional Liberty Office implements and monitors: the execution of the sentence in the public interest, suspended sentences, suspended sentences with supervision order, supervises conditionally released persons, enforces imprisonment in the premises where the prisoner resides as well as security measures of the ban on approaching to the victim and moving away from an apartment or other living space. In the exercise of those responsibilities officers of the Office undertake a series of tasks and activities, which are set out in the legal and by-law regulations.

The law establishes a unique organizational structure within the Ministry of Justice of the Government of Montenegro which is financed from the state budget. However, the legislator has established the possibility for state authorities to cooperate with the other state administration bodies, local self-government units, scientific and other organizations and institutions in the enforcement of alternative sanctions and in supervision of conditionally released or convicted persons. Although the Law did not explicitly specify the civil sector it is evident that from the "other organizations and institutions" it can be understood that the same applies to the participation of non-governmental organizations.

The organizational structure in so far has been centralized in a single site (Podgorica) but the system has already recognized the need to organize regional offices of which the first is foreseen to open in Bijelo Polje. This is the city informally recognized as the centre of the Northern Region of Montenegro.

1.2. Probation service activities

Taking into account all probation responsibilities of the Ministry and the Office for conditional liberty and execution of the sentence of imprisonment in the premises in which the convicted person lives within the Directorate General for Enforcement of Criminal Sanctions of the Ministry of Justice, they can be summarized to the following:

- ◆ Control of execution of suspended sentence, support and counselling of convicted persons
- ◆ Risk assessment based on available documentation and data provided by the convicted person and from various other sources

- ◆ Making a report on the execution of suspended sentence and submitting to the court that made the decision in the first instance;
- ◆ Make an assessment of criminogenic factors (risk assessment) of a convicted person on the basis of data obtained from a conditionally sentenced person and information from the documentation of the convicted person (court decision, findings and opinions of medical doctors and other professional persons, reports or notifications of social welfare centers work of other bodies, institutions and organizations);
- ◆ In the case of revocation of a suspended sentence, submit a report to the administrative authority competent for the enforcement of criminal sanctions on the undertaken activities in the execution of the suspended sentence and the behavior of the convicted person during the time of probation
- ◆ Keeping records of execution of suspended sentence;
- ◆ Informing the convicted person about the rights and obligations during execution of suspended sentence and warning of the consequences of non-compliance;
- ◆ Calling a convicted person to conduct a conversation about using the time of probation;
- ◆ When a suspended sentence with a protective supervision is determined the deadline shall be determined during the probation period in which the person is conditionally convicted;
- ◆ Informs the police about the non-execution of security measures and obligations of protective supervision if the police is in a charge to execute these measures or obligations;
- ◆ In the case of revocation of suspended sentences with protective supervision it shall submit a report on the undertaken activities in the execution of suspended sentence and behaviour of the convicted person during the time of the verification to the penal enforcement authority;
- ◆ Instructs the convicted person to perform work in the public interest;
- ◆ Performs the control of the execution of a sentence of work in the public interest and provides assistance to the convicted person;
- ◆ Supervise, if necessary, the performance of the work of the convicted person;
- ◆ Make reports on the execution of penalties in the public interest and submit them to the court that made the decision in the first instance;
- ◆ In the event that the court substitutes the penalty of work in the public interest by imprisonment, it shall submit a report to the authority for the execution of criminal sanctions on undertaken activities in the execution of a penal offense in the public interest and behaviour of the convicted person during the execution of that sentence;
- ◆ In the case of conditional release, it undertakes the prescribed actions aimed at fulfilling the established obligations;
- ◆ Informs the competent state prosecutor's office and the court that made the first instance decision on non-fulfilment of obligations of a conditionally released convicted person pronounced by a court decision;

- ◆ In the case of revocation of conditional release it shall submit a report on the undertaken activities in the execution of the obligations and behaviour of a conditionally released convicted person during his or her stay in prison for the duration of the conditional release.
- ◆ Prepares a risk assessment report for the person being tried in court on the request of the court.

In addition to the above mentioned scope of activities, Office is also responsible for the execution of the prison sentence to be executed at the premises where the convicted person resides, protective measures of removal from the apartment or other dwelling and security measure of the prohibition of approach.

1.3. Basic observations on the implementation of the European Probation Rules

When it comes to harmonizing Montenegrin legislation with respect to European probation rules there seems to be a very high level of compliance and that legislation in Montenegro has largely met this goal. Better to say, legislative solutions have created formal legal requirements for the organization and functioning of the probation service in accordance with the principles contained in the European Probation Rules. The recent amendments to the Law on the Execution of Conditional Sentence and Punishment in the Public Interest (March 2019) eliminated deficiencies in controlling the execution of suspended sentence, ie providing support and advice to a convicted person, as well as making the assessment of criminogenic factors (risk assessment) of the convicted person on the basis of data obtained from the conditionally convicted person and data from the documentation about the convicted person. The same applies in case of revocation of suspended sentence when the competent Unit submits a report to the court on undertaken activities in execution of suspended sentence and behaviour of the convicted person during the time of probation. Finally, these novelties have established a formal legal possibility that "the Ministry of Justice (competent directorate) at the request of the court make a risk assessment report for a person against whom a criminal proceeding is being brought to court".

II Historical development of the probation system in Montenegro

The development of the probation in Montenegro can be divided into several phases. The first period establishes the roots of Montenegrin criminal legislation in which there was no institution similar to that in today's laws nor was there a division of sanctions in the way that modern criminal codes do. The first of these laws, the General Country Code of Knjaz Danilo from 1855 in terms of punishment prescribed the death penalty, exile, imprisonment and beatings.

Only much later, in 1906, a complete and systematized Criminal Code of Montenegro was adopted which in the same way as some countries in the region (primarily Serbia) foresaw the system of penalties and their execution. In this system there was a division of the main and secondary sentences the last of which was related to deprivation of title, expulsion, prohibition of performing crafts or seizure of goods.

2.1. Period between two World wars

By the creation of a new state of the Kingdom of Serbs, Croats and Slovenes, and then of the Kingdom of Yugoslavia, the new criminal code was adopted in 1929. The new Criminal Code of the Kingdom knew other sanctions other than punishment. Provisions on security measures and suspended sentences have been introduced. Former sentences of expulsion, prohibition of execution of calls or crafts and confiscation in certain cases were classified into a series of new security measures. The fines were divided into major and minor. The main sentences were: death, money and fines for deprivation of liberty, while the secondary penalties were: loss of honor rights and loss of service.

2.2. Period up to 2010

After the end of the World War Two, the construction of a legal order in the newly formed state of the Federal People's Republic of Yugoslavia began which resulted in the adoption of the General Part of the Criminal Code in 1947. This act did not know security measures, but introduced new sanctions. In addition to Conditional Sentences, a juvenile person (educational correctional measure) and an incurable person (health-protective measure) could also be sanctioned¹. The Code introduces five new types of penalties: remedial work, loss of citizenship, property confiscation, loss of rank and damage. Four years later, the institute of security measures is being reintroduced by reducing the number of penalties and partially changing them: penalties for

¹ Jakšić, D, Davidović, D: *Development of Criminal System in Criminal Law of Serbia*, p. 531

deprivation of liberty remain constipation and strict imprisonment; limitation of civil rights replaces their loss; the expulsion order is included under the security measures under the new name "expulsion from the country"; penalties for remedial work, loss of citizenship, loss of rank and correction of damages are deleted from the Criminal Code. The Novelties of the Criminal Code from 1959 significantly reduced the number of penalties in the framework of the then penal system which kept the system until the collapse of the Yugoslav State.

The 1976 Criminal Code of the former SFRY (FRY)², with a large number of amendments, knew the system of criminal sanctions that consisted of sentences, suspended sentences and court warnings, security measures and educational measures. According to the provisions of Article 51 of this Law, the purpose of suspended sentence and judicial admonition was not to impose a penalty on the criminal responsible offender for less social dangerous acts when this is not necessary for the purpose of criminal protection and when it is expected that the warning, with the threat of a sentence (conditional sentence) or just a warning (court warrant), will sufficiently affect the perpetrator to no longer commit a criminal offense.

Furthermore, perpetrators of criminal offenses could be pronounced in addition to the following security measures: prohibition of performing profession, activities or duties, prohibition of public appearance (meanwhile deleted), seizure of goods and expulsion of foreigners from the country. The same law also provided for the possibility of conditional release under certain conditions until the end of the term for which the imprisonment was pronounced. Detailed provisions on the execution of criminal sanctions were contained in the special Federal States laws from 1986 and 1994³.

Pursuant to the provisions of the 1994 Montenegrin Code the jurisdiction for the enforcement of criminal sanctions (punishment, security measures, educational measures and warning measures) or economic offenses and violations, unless otherwise provided by a special law, was with the Institution for the Execution of Criminal Sanctions and other specialized institutions.

Before the changes in the system of execution of criminal sanctions will occur, the new and now valid Criminal Code of Montenegro (which is very often changed to this very moment) establishes in its basic text a sanction of penalty for work in the public interest (Article 33 of the Law) like the main punishment.

² *These are the laws of the member states of the former SFRY. In Montenegro, two laws were in force: the Law on the Execution of Criminal Sanctions - Basic Text (Official Gazette of the Republic of Montenegro, No. 15/1986) and the Law on the Execution of Criminal Sanctions - Basic Text ("Official Gazette of the Republic of Montenegro", No. 25/1994)*

³

According to the legal solution that was in force after the Law on Amendments to the Law on the Execution of Criminal Sanctions from March 2003, the procedure for the execution of a sentence to the work in the public interest was initiated by the competent court before the competent public employment service or the competent employment agency. The public employment service or employment agency mediated between a person convicted of a punishment in the public interest and an employer to enforce a court decision. When determining the type of work of a sentenced to a punishment of work in the public interest his professional background was taken into account as well as that the convicted person could not be engaged in activities that offend human dignity. The Public Employment Service or the Employment Agency were obliged to monitor the execution of the penalties in the public interest and to inform the court about this, as well as to keep the records while the supervision over the execution of the penalty was carried out by the Ministry of Labour and Social Welfare.

2.3. Period from 2011 to 2019

Amendments to the Law on the Execution of Criminal Sanctions from 2011 stipulate that criminal sanctions (penalties, security measures, educational measures and warning measures are carried out by Institution for the Execution of Criminal Sanctions and Specialized Institutions). Implementation of protective supervision during the stay of a convicted person during the conditional dismissals, suspended sentences, suspended sentences with protective supervision, penalties for work in the public interest and other measures determined by law shall be exercised by a special organizational unit of the Ministry of Justice of the Government of Montenegro - the Department for conditional liberty which was the basis of the establishment of the probation service within the said body. The Directorate for Conditional Liberty in formal sense started its work in 2012. The Rulebook on Organization and Systematization from 2013, this organizational unit was renamed the Directorate for Conditional Liberty⁴. By the Law on the Execution of Criminal Sanctions this organizational unit in a terms of definition was defines as a separate unit of the Ministry of Justice.

The last reform of the system of enforcement of criminal sanctions resulted in the adoption of two laws of which the Law on the Execution of Conditional Sentences and Imprisonment in the Public Interest (Official Gazette of Montenegro No. 32/2014, 17/2019) was adopted at the time of the Law on Execution of Criminal Sanctions (it ceased to be at half of 2015 by the entry into force of the new Law on the Execution of Prison Sentences, Fines and Security Measures⁵).

⁴ M.Marković, *Podgorica, 2014, p.24*

⁵ *Official Gazette of Montenegro No.36 / 2015, 18/2019*

The Law on execution of suspended sentence and punishment of work in the public interest prescribes the method of execution of suspended sentence, suspended sentence with protective supervision and punishment of work in the public interest pronounced in the criminal and Misdemeanour procedure, as well as exercising supervision over a conditionally released convicted person. The reasons for the adoption of a special law in this area were not only of a formal nature but an essential reflection of system reform based on new probationary standards and solutions contained in international law and comparative legal systems.

In the case of penalties in the public interest, the law prescribes that it is carried out with a legal entity engaged in activities of public interest (humanitarian, social, communal, health, agricultural, ecological or other similar activities) or non-profit organizations whose activity is related to humanitarian and other similar activities (Article 18 of the Law). This law lists the competences of the unit for conditional liberty (directorate) in respect of execution of suspended sentence and conditional sentence with protective supervision, ie punishment of work in the public interest, rights and obligations of convicted persons, as well as the manner of achieving cooperation with other bodies and institutions in carrying out probationary decision. Briefly, this law establishes the functional competence of the probation service within the Directorate for the Execution of Criminal Sanctions.

The Law on execution of imprisonment, fines and security measures regulates execution of imprisonment, imprisonment forty years, fines and security measures, rights and obligations of prisoners, as well as other issues of importance for the execution of these criminal sanctions. The provisions of this law shall also apply to the execution of the sentence of imprisonment and fines imposed in the Misdemeanour procedure unless otherwise provided by a special law. The tasks of the Ministry of Justice in addition to the sentence of imprisonment carried out in the premises where the convicted person resides, the measures for the safety of removal from the apartment or other premises for housing and the measures for safeguarding the prohibition of approximation are performed by the Directorate for the Control of Enforcement of Prison Sentences and Security Measures. The responsibility of this unit is the collection and processing of data of importance for controlling the execution of prison sentences and security measures.

The aforementioned division of competencies occurred after the reorganization of the state administration system⁶ which prescribes the competencies of the Ministry of Justice in the Government of Montenegro as well as the latest amendments to the act on internal organization and systematization of the Ministry of Justice in 2018. Namely, the activities within the Directorate for the Execution of Criminal Sanctions were divided into three units.

⁷ Decree on the organization and manner of work of the State Administration ("Official Gazette of Montenegro", No. 87/2018, 2/2019)

The adoption of a special Law on the Treatment of Juveniles in Criminal Proceedings ("Official Gazette of Montenegro", No. 64/2011) regulates the issues of achieving criminal justice when it comes to juveniles. This law prescribes the possibility of pronouncing alternative measures against a juvenile, whose purpose is not to initiate proceedings against him or to stop the proceedings but that the application of these measures affects the proper development of the juvenile and the strengthening of his personal responsibility so in a future he/she would not commit a crime. Alternative measures are warning and educational order.

The same law prescribes sanctions for minors: educational orders, juvenile imprisonment and security measures. Only juvenile measures can be pronounced to a juvenile minor, while pre-trial measures may be imposed on the juvenile and exceptionally, under the conditions prescribed by this law, a juvenile imprisonment sentence may be imposed. Also, to the juvenile may, under the conditions prescribed by this Law, pronounce the security measures prescribed by the Criminal Code, except for the prohibition of conducting a call, activity or duty, and publicly publishing a judgment. A juvenile cannot be pronounced a suspended sentence and a judicial admonition.

Article 98 of this Law prescribes that a juvenile judge or a juvenile court chamber who has imposed a criminal sanction is obliged to exercise control and supervision over its execution. The Juvenile Judge, or the President of the juvenile court chamber directly through the guardianship or professional service monitors the execution of criminal sanctions by visiting minors placed in the prison or institution in which the criminal sanction is executed, as well as by direct insight and consideration of the report on the course of execution. The guardianship authority, the juvenile unit or the institution where the criminal sanction is executed or the expert service are obliged, on a court order, to submit to the court every six months a report on the course and the results of the execution of the criminal sanction. The Court may request this report for a shorter period of time. In order to monitor and control the execution of criminal sanctions, the court is obliged to keep records of the execution of criminal sanctions.

The current Law on the Execution of Conditional Sentence and Punishment in the Public Interest (the basic text of which was adopted in 2014 and its amendments which came into force in March 2019)⁷ establishes the competence of a special organizational unit of the state administration body in charge of judicial affairs with regard to the execution of alternative sanctions as well as supervision of a suspended convicted person.

⁷ *Official Gazette of Montenegro No.32 / 2014, 17/2019*

III Legislative basis of the probation system in Montenegro

3.1. Legislative basis

The legislative basis of the probation system in Montenegro consists of several laws. These are the following laws:

- ◆ Criminal Code of Montenegro (Official Gazette of SCG no.70 / 03 ... 47/06 and Official Gazette of Montenegro No.40 / 08 ... 44/17)
- ◆ Code of Criminal Procedure (Official Gazette of Montenegro No. 57/2009, 49/2010, 35/2015, 58/2015 - second law and 28/2018 - decision of the Constitutional Court of Montenegro)
- ◆ Law on Misdemeanours (Official Gazette of Montenegro No. 11/11, 6/11, 32/14, 51/17)
- ◆ Law on Execution of Prison Sentences, Fines and Security Measures (Official Gazette of Montenegro No.36 / 2015, 18/2019)
- ◆ Law on the Execution of Conditional Sentence and Punishment in the Public Interest (Official Gazette of Montenegro No.32/14, 17/19)

In addition to the aforementioned law, by-laws additionally regulate the system of execution of probation decisions and security measures, as well as enforcement of the decision of imprisonment in the premises where the convict lives. Most of these were adopted during the first half of 2019 in after the latest amendments of probation laws and those are:

- ◆ Rulebook on the closer way of execution of conditional sentence, conditional sentence with the supervision order, punishment in the public interests and conditional release (Official Gazette of Montenegro No.40/19)
- ◆ Rulebook on closer way to implement safety measures (Official Gazette of Montenegro No.40/19)
- ◆ Rulebook on closer way of implementing sentencing prison in premises where convict lives (Official Gazette of Montenegro No.40/19)
- ◆ Rulebook on a closer way to implement a safety removal from a flat or another residential space (Official Gazette of Montenegro No.40/19)

The execution of probation, suspended sentence with protective supervision and sentences in the public interest imposed in criminal and misdemeanour proceedings (defined in the law as alternative sanctions), as well as supervision of a conditionally released convicted person shall be carried out in accordance with the Law on the Execution of Conditional Sentence and Punishment in the Public Interest.

The enforcement of an alternative sanction is approached when the decision imposing that sanction becomes final and there are no legal impediments to enforcement. When the conditions for enforcement of alternative sanctions are fulfilled, the Ministry of Justice Probation Office takes the necessary steps to enforce it immediately (Art.4 of the Law).

3.2. Statement on vision and mission of probation services

The key trends for the development of criminal justice penalties in Montenegro are projected by the Strategy for the Execution of Criminal Sanctions 2017-2021 adopted by the Ministry of Justice of Montenegro. Among its key objectives are the plans for the development of a conditional liberty unit by providing more staff as well as better resources for providing assistance, protection, drafting guidelines and support for offenders and convicted persons in order to achieve their successful reintegration and resocialization with friends. Also, more use of alternative sanctions and measures in the country is foreseen, which will require increased capacity of the probation service throughout the country.

The Strategy further highlights the main objectives of the prison system reform which include among other things the enforcement of laws and by-laws, the reduction of prison population, reform of education and resocialization of prisoners, improvement of human resources management and training and improvement of working conditions of employees in the system. Therefore, these priorities in the execution of all sentences, both prison and indifferent, are strongly linked to the holistic reform of the criminal justice system and should not be limited to the reform of the prison administration and the conditional liberty unit. The emphasis is placed on alternatives to prison with the challenge of defining a clear enforcement mechanism and improving the attitude of law enforcement agencies. In this sense one of the key functions of law enforcement agencies is the implementation of a wide range of sanctions and alternative measures which also depends on the proper functioning of the penal policy being fully in the line with European rules on sanctions and community measures. Execution of alternative sanctions requires adequate management and control infrastructure. In addition, prosecutors and judges must foster a credible and realistic attitude towards alternatives to imprisonment.

The vision and mission of probation services in the form of special statements are not explicitly contained in laws. Instead, the Strategy as part of its broader vision envisages the reform of the system for the enforcement of criminal sanctions based on respect for human rights and freedoms and in accordance with international standards and improvement of the execution of criminal sanctions in Montenegro as a whole. This is not only at central and local level between prisons and the units for conditional liberty but also in the context of the work of judicial authorities.

In the framework of the mission promoted by this document it is stated that the Strategy aims generally to strengthen the efficient and effective management of the criminal sanctions mechanism in Montenegro. This implies capacity building and application of EU best practices in the field of correctional and probation services providing the necessary data management systems to enable effective planning and programming, improving related reintegration and resocialization plans and increasing the use of alternative sanctions and measures. Also, these trends are aimed at increasing the accountability, transparency, independence and credibility of the judiciary and public administration towards the continuous realization of the key goals defined in the strategic documents which are related to the improvement and strengthening of the overall rule of law in Montenegro.

The strategy for informing the public about the probation service of the Ministry of Justice in 2014 sent a concise message on work in the public interest that must meet three conditions: that it does not violate human dignity, that it is useful for society and that it is not done in profitable manner.

Additionally, bringing the work of the probation service closer to citizens and informing them about the rights and obligations of convicted persons is an important goal of the institutions. As an important factor NGOs were identified by stating that "it was necessary to ensure continuity in cooperation between the Ministry of Justice and civil society in relation to timely and efficient flow and exchange of information with the aim of aligning the plans".

3.3. Crime prevention

Criminal legislation has established the general purpose of criminal sanctions. Namely, Article 4 of the Criminal Code states that the general purpose of prescribing and pronouncing criminal sanctions is the suppression of offenses that damage or threaten values protected by criminal legislation. Furthermore, the Criminal Code in Art.32 confirms the stated principle from the basic provisions in the manner that prescribes the special purpose of punishment in the system of criminal sanctions which are: 1) preventing the perpetrator from committing criminal offenses and influencing him/her not to commit any criminal offenses in the future; 2) influencing others not to commit crimes; 3) the expression of a social conviction for the criminal offense and the obligations of respecting the law and the strengthening of morale and the influence on the development of social responsibility.

For the general purpose of criminal sanctions, the Criminal Code lists the purpose of Conditional Sentence and judicial admonition which presume not apply to the perpetrator of a criminal offense for minor offenses when this is not necessarily for the purpose of criminal protection and when it can be expected that the warning along with threat of sentence (suspended sentence) or just a warning (court warrant) suffi-

ciently affect the perpetrator to no longer commit a criminal offense (Article 50 of the Criminal Code).

With regard to security measures, the Criminal Code in Article 66 provides that their purpose is to eliminate conditions and circumstances that may affect perpetrator in committing criminal offenses in the future.

The Law on Enforcement of Imprisonment, Fines and Security Measures stipulates that the execution of criminal sanctions from this law aims to convince the convicted person during the execution of the criminal sanction through the system of treatment programs to adopt socially acceptable values for reintegration into the society. Finally, Article 121, paragraph 2 of the same law stipulates that when deciding upon a request for conditional release the competent court council will request a report from the administration of Institution for the Execution of Criminal Sanctions on the circumstances surrounding the prisoner's personality, his conduct during the serving of the sentence. The report also applies to all other circumstances that indicate that the purpose of the punishment has been achieved and that it can reasonably be expected that this person "will be well governed on the liberty, and in particular if until the expiry of the time for which the punishment has been imposed does not constitute a new criminal offense."

The general purpose of prescribing, pronouncing and applying Misdemeanour sanctions (Article 6 of the Law on Misdemeanours) is that citizens respect the legal system, express the social impediment to the perpetrator for the committed violation and affect him and all other persons in the future to not commit a misdemeanour. The purpose of the warning and Conditional Sentence is that the perpetrator is not punished for minor offenses when this is not necessary for the misdemeanour protection and when it can be expected that only a warning (warning) or warning with the threat of a sentence (conditional sentence) sufficiently affect the perpetrator of a misdemeanour in the future. Finally, the purpose of protective measures is to eliminate the situation or conditions that may affect offender's behaviour in the future.

Finally, the Law on Juveniles in Criminal Procedure prescribes the purpose of criminal sanctions to provide upbringing and proper development of person with the provision of protection and assistance to juvenile perpetrators of criminal offenses, exercising supervision, general and professional training and developing personal responsibility in order to continue in the future they do not commit crimes.

Since the probation service officers are bound by the Law on the Execution of Conditional Sentence and Punishment in Public and Interests it is clear from the listed tasks that the prevention is not emphasized as the basis of the work of the probation service but its function is reactive and it is reduced to interventions after completion of the procedure except in case of risk assessment for persons against whom criminal pro-

ceedings are conducted. Therefore, the preventive function of the probation service seems to be embedded in the method of work with convicted persons based on which it is directly influenced by support and counselling that they no longer commit criminal offenses or violations. In this process the intention and the need of the probation service are obvious and the need for a closer and more efficient cooperation with the judicial and prosecutorial bodies which, according to the assessors of judicial functions through the interviews made on the occasion of the development of this material, could have to be more frequent, more concrete and better⁸.

3.4. Victim Assistance

According to the existing legislation and methodology of work of the probation service in Montenegro no work is envisaged to support the victims of the crime except in the part of enforcement of the security measure of prohibition of approach when it is envisaged to obtain information from the victim of the offense to whom that person should not approach when receiving information about the convicted person. It is to be assumed that the interests of the victim must be taken into account when drawing up the measure execution program.

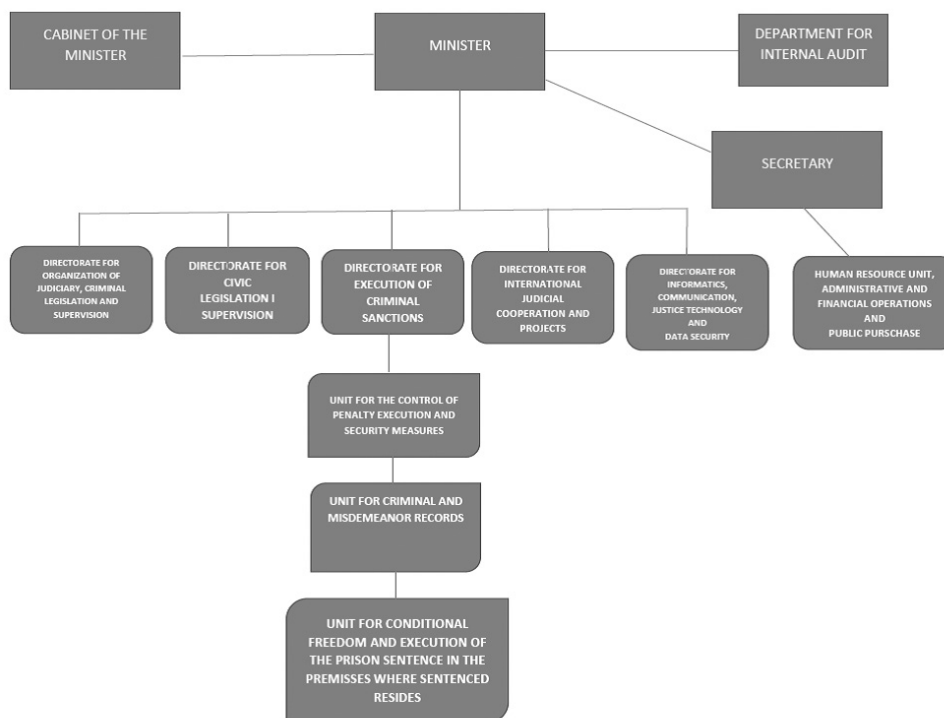
Also, the legislator has established a blanket standard on the cooperation of the probation service with "other organizations and institutions" according to which it can be concluded that it is a role of civil sector in probation activities. By properly interpreting this standard it can be certainly believed that this cooperation also covers the position of victims of crime and their interests advocated by the civil sector which must be taken into account when exercising the function of probation services.

IV Organization of the probation service

4.1. Main Characteristics

The Law on the Execution of Conditional Sentence and Punishment of Work in the Public Interest and the Rulebook on the Closer Method of Execution of Conditional Sentence, Conditional Sentence with Protective Supervision, Public Service Penalties and Conditional Release⁹ regulates competences in the organization of the probation service while the affairs of certain officers and servants in the departments are more closely regulated by the Rulebook on Internal Organization and Systematization of the Ministry of Justice with a body within its composition¹⁰. According to this Rulebook, the Directorate for conditional liberty and execution of the prison sentence in the premises where the prisoner lives within the Directorate for the Execution of Criminal Sanctions shall perform tasks related to the implementation of the probation.

4.2. Organizational structure of the probation service within the Ministry of Justice



⁹ Rulebook on the more detailed method of execution of suspended sentence, suspended sentences with protective supervision, penalties in the public interest and conditional release specifies the competence of the Directorate and defines the content and manner of keeping records of the execution of alternative sanctions and supervision over a suspended person sentenced ("Official Gazette of Montenegro", No. 40/2019)

¹⁰ <http://www.pravda.gov.me/biblioteka/pravilnici>

According to the current Rulebook on organization and systematization of business in the Ministry of Justice the probation service is organized within the Directorate for Enforcement of Criminal Sanctions as a special unit. The head of the Directorate is the Director General who must have at least three years of work experience in management matters or eight years of work experience in the same or similar work, as well as to pass bar examination. Within its powers the Director-General manages and organizes work in the Directorate; coordinates the work of all organizational units in the Directorate; ensures the realization of cooperation with other entities; independently decides on the most complex professional issues and performs the most complex tasks within the scope of the Directorate, For his/her work is responsible to the Minister and to the Government.

The Head of the Probation Office is the one who must have completed a law school, having at least two years of working experience in management affairs or five years of experience in other jobs and passed a bar examination. He/she performs the most complex tasks within the scope of the Unit; manages and coordinates the work of the Unit; provides regular reporting on the status of all affairs within the scope of work of the Unit; conduct administrative proceedings and issue decisions in accordance with the Law on the Execution of Conditional Sentence and Punishment in the Public Interest Act and the Law on Enforcement of the Penalty of Prison, Fines and Security Measures for provisions relating to imprisonment in the premises where the sentenced resides; prepares and drafts proposals of laws and bylaws within the competence of the Unit; provides cooperation with other entities in the area of execution of alternative sanctions and measures; performs tasks of controlling the implementation of conditional sentence and conditional sentence with protective control; conditional release, penalties of work in the public interest, prison sentences in the premises where the convicted person lives and the security measure that prohibits approach and removal from the apartment or other living space; constitutes the monthly plan of work of the Unit and the regional units and performs other tasks within the scope of the Unit on the order of the superior.

Table 1. The staff structure

Number of staff	9
Management staff	1 General Director, 1 Head of the Unit
Executive staff	5 Advisors (chancellors)
Auxiliary staff (eg secretary, bookkeeping, IT)	1 intern, 1 externally contracted associate

4.3. Probation workers

Probation work within the office is performed by civil servants for which the rules on systematization stipulate the conditions as follows: high professional qualifications of a legal or related profession (social or humanistic sciences, criminalistics, etc.), with appropriate

work experience and passed professional exam for work in state administration bodies. This Rulebook as well as other acts of higher legal hierarchy (law) do not foresee the specialization of servants within the Directorate itself nor does requires conditions of employment prescribing special conditions regarding specific knowledge and skills related to the performance of probation tasks. However, following the chronology and type of training carried out for the needs of the Ministry of Justice officials it was noted that they were undergoing additional education and training that are in the function of regular and quality performance of their duties. To what extent and if this is sufficient to achieve the desired result it is difficult to confirm without a deeper analysis of the probation service and the cases in its work. But the fact is that it is a very small number of persons and a fairly large amount of work.

Legislation on civil servants and state employees, respectively the Law on Civil Servants and State Employees¹¹, shall apply to their position in exercising rights and obligations. In performing their duties officials are bound by the obligations arising from the law and the Code of Ethics of Civil Servants. Among others the Law and the rules on professional ethics require an employee to not be able to subordinate his / her business to private interests nor to use the work to obtain material or non-material personal benefits. The law also prescribes the right and obligation of officials to be professionally trained and perfected.

4.4. Education, training requirements and opportunities

Apart from the formal conditions for employment that are common for all the civil servants, there is no any formal initial education program before entering the probation service and even after that. Officials are educated through different forms of training, some of which are intended only for them and some are implemented from other sectors (mainly the judiciary and the civil sector). These informal trainings are mostly supported by a foreign donor.

For employment in a probation service, in addition to the general and special conditions envisaged by law, it is not necessary to have an evidence of completed special training program for work with suspected and convicted persons. In the event that the applicants have received similar training this is to be taken into account when deciding on the selection of candidates. Upon the establishment of a working relationship the practice of referral to training, study visits and similar educational contents is in accordance with the plan and needs of the service. Therefore, attending training and education for work in the Directorate before entering into employment is not an obligation but only an opportunity.

For the needs of civil servants and the Directorate for the period 2016 to 2018 trainings were organized in the area of assessment of criminogenic factors in convicted persons which influence the repeat of criminal offenses (risk assessment); basic training of probation officers; education on "Detention and Alternative Sanctions"; study visits by the representatives of the Directorate to the probation services of the Kingdom of the Netherlands and the Republic

¹¹ "Official Gazette of Montenegro", No.2/2018

of Croatia in order to get acquainted with their work, history of development, legal frameworks, responsibilities and challenges in the work of probation officers; and in connection with exchange of experiences this was participation in the 11th European Conference on Electronic Monitoring entitled "Blurring boundaries; making and breaking connections".

4.5. Other involved organizations

Public and private institutions as well as the civil sector might be engaged in probation work and in particular in execution of obligations arising from probation decisions. When participating in the enforcement process of a probation decision these organizations are required by the law to cooperate with the probation service in order to provide information and reports relevant to this procedure.

V Different stages of the criminal proceedings relevant to probation

Legislation on criminal proceedings in Montenegro is based on several basic principles that are set out in the general rules of the Code of Criminal Procedure. These principles have a direct impact on the status of persons prosecuted and convicted before criminal courts. Of those as first and foremost the principle of legality as part of the guarantees of legal certainty and the rule of law, which implies the principle that a criminal offense can only be sanctioned by a competent court in proceedings instituted and conducted in accordance with the law. Prior to a final court decision, a defendant may be restricted in his freedom and other rights only exceptionally and under the conditions laid down in the law.

On the other hand, the main purpose in establishing alternative sanctions is to reduce prison overcrowding, to humanize punishment, to re-socialize and reintegrate convicts, to reduce recidivism and to focus on the victim's status. To this should be added the costs that cause short prison sentences as well as the risk that the prison environment may have on psycho-social profile and personality of the perpetrators of so called petite crime.

The Criminal Code prescribes more criminal sanctions as an alternative to short-term imprisonment of which there are alternative sanctions, punishment in the public interest, conditional sentence and conditional sentence with protective supervision.

The importance of these procedures and the role of the probation service in them is defined by the Law on Execution of Conditional Sentence and Punishment in the Public Interest and the Law on Execution of Prison Sentences, Fines and Security Measures. The first of those laws prescribes procedures relating to the final probation decisions – conditional sentence, suspended sentence with protective supervision, parole and sentencing in the public interest; while the second law prescribes the execution of imprisonment in the premises where the convicted person lives and the procedure for executing two security measures: ban on approaching; and removal from the apartment or other premises where the convicted person resides.

5.1. Pre-trial proceedings

The role of the probation service in relation to the prosecution and pre-trial proceedings is limited to the principle of cooperation with state and other authorities in collecting documentation and data on the convicted person (from “other bodies, institutions and organizations”). The condition is that the same activity is carried out in accordance with the principles of respect for human rights and freedoms and stan-

dards of protection of personal data. When it comes to criminal records, the basis for giving such information is the provision of Article 123 of the Criminal Code which stipulates that data from criminal records can only be given to the court, the state prosecutor and the administrative authority competent for police affairs in connection with criminal proceedings against persons who has previously been convicted. Also, it can be given to the law enforcement authority and to the authority involved in the amnesty, pardon, rehabilitation or decision to terminate the legal consequences of the conviction as well as the guardianship bodies when required to perform tasks within their jurisdiction.

Table 2. Sanctioning system and probation involvement in the pre-trial stage

Sanctions/ Measures/ Penalties/Conditions attached to a conditional decision or sentence	Provision in legislation	Probation service involvement	Main characteristics of the probation activity
Unconditional waiver by the public prosecutor	✓		
Conditional waiver by the public prosecutor	✓		
Conditional suspension of the pre-trial/remand detention			
Pre-trial/remand detention	✓		
Police custody	✓		
Bail	✓		
Caution	✓		
Surety			
House arrest	✓		
Electronic monitoring	✓		
Community service	✓	✓	Reporting upon court request
Treatment order	✓		

Training/learning order	v		
Drug/alcohol treatment program	v		
Compensation to the victim	v		
Mediation	v		
Semi-detention			
Attending a day centre	v		
Liberty under judicial control			
Interdiction to leave the country	v		
Interdiction to enter different cities/places	v		
Interdiction to carry out different activities	v		
Interdiction to contact certain persons	v		
Psychiatric treatment	v		
Deferment of sentence			
Fine			
Other financial sanctions	v		

5.2. Procedure until a final judgment is issued

Assessment of criminogenic factors, i.e. risk assessment of a suspended person on the basis of data obtained from a conditionally sentenced person and data from the documentation of the sentenced person (court decision, findings and opinions of medical

doctors and other experts, reports or notifications of social work centers and other bodies, institutions and organizations) is the primary and explicitly prescribed competence of the probation service at this stage of the proceedings. The assessment is performed by the competent probation unit at the request of the court. The law does not provide for the possibility of self-involvement of the probation service at this stage of the procedure. The procedure for issuing a risk assessment is prescribed by the Rulebook on the Closer Method of Execution of Probation, Probation with Protective Supervision, Sentencing in the Public Interest and Conditional Release (Official Gazette of Montenegro No.40/19). The risk assessment procedure prescribed by this Rulebook applies to the stage upon completion of court proceedings and the issuance of a final and enforceable judgment. Risk assessment implies first conversation with the person being interviewed. When it comes to persons being prosecuted, these provisions are difficult to apply because of the specificity of the stage in which they are being conducted. Therefore, a normative intervention in the aforementioned Rulebook was necessary which must maintain the principle of participation in the assessment of the person being prosecuted in order to obtain the necessary knowledge of all circumstances relevant to the assessment. However, the rulebook did not cover this category of persons but instead kept the focus of interest on convicts and not defendants in criminal proceedings.

More detailed guidelines on the conduct of the probation service in the preparation of the risk assessment are contained in the internal rules published in the "Manual of the Work of Parole Service" (August, 2017). In applying this procedure, the Directorate for Conditional Liberty established a Set of risk assessment instruments. This set includes:

- ◆ Risk Assessment Form;
- ◆ Self-report questionnaire;
- ◆ Model of assumptions testing;
- ◆ Cycle of Change (Prochaska & DiClemente method);
- ◆ So called model of "Liri rose";
- ◆ Strategic self-presentation model;
- ◆ Detect the cause of the problem: 5x why model.

The circumstances that the court should assess prior imposing a sanction are provided for in the provisions of the Criminal Code. Thus, in the closing arguments the Prosecutor gives an assessment of the evidence presented at the main trial, conclusions on the facts relevant to the decision, a reasoned motion on the accused's guilt and provisions of the law to be applied as well as mitigating and aggravating circumstances to be taken into account in sentencing. At the same time, the prosecutor may propose the type and amount of the sentence, a judicial reprimand, a suspended sentence or the security measures provided for in the Criminal Code. The determination of the type of sanction is conditioned by the legal conditions for the imposition of particular sanction.

This stage of the criminal procedure is essential and the most significant from the point of view of the role of the probation service. Although the possibility for the probation service to take part in the procedure preceding the issuance of a final court decision already indicated in the law in Montenegro such a case has not been recorded. Bearing in mind that this option was explicitly foreseen only in the latest legislative changes made in March 2019 the previous experience seems to indicate the lack of understanding of the role of the probation service at this stage of the criminal proceedings.

Of particular importance for the final decision on the criminal sanction are the circumstances that are contained in the elements of the offense for which being tried (the degree of guilt, the severity of the threat or injury to the detriment of the victim, the circumstances under which the offense was committed) and other personal characteristics and circumstances of the accused (his personality, his posture after the commission of the crime and the like).

In the closing arguments at the main hearing in after evaluating the evidence and reaching conclusions on the facts underlying the defendant's liability and the legal nature of the tort the prosecutor elaborates on the sanction proposal. In practice, the prosecutor does not usually seek a specific sentence. Given the aggravating and extenuating circumstances the prosecutor may appeal for a greater or lesser sentence and/or a security measure that is limited in time. The explanation of the motion to impose certain criminal sanctions includes circumstances that indicate the danger of the crime and the defendant as the perpetrator, as well as many other circumstances that are important for the decision on sanctions. By providing a thorough and convincing explanation of the sanction proposal the public prosecutor contributes to a full understanding of the court and more accurately assesses the circumstances that are relevant to the choice of the type and amount of criminal sanction. In this context, the information available to the court and provided by the probation service at the request of the court can be of undoubted importance.

5.3. Procedure after passing a final and enforceable court decision

In the part of the procedures that follow the adoption of a final and enforceable court decision the probation service is engaged in tasks related to the execution of a punishment of work in the public interest, suspended sentences and suspended with protective supervision as well as in the procedure of execution of the sentence of imprisonment in the premises where the convicted person resides.

The procedure for the execution of a sentence in the public interest in relation to a convicted person is regulated by the Law on the execution of a suspended sentence and a sentence in the public interest. The court imposing a sentence of public interest

shall submit to the Ministry of Justice Probation Office a copy of a final decision imposing this sentence within eight days from the day this decision becomes final. About the court decision the Office will, if appropriate, inform the center for social work, the Employment Service, the police and the employer where the convicted person is employed. At the request of the court the Office also prepares a report on the risk assessment of the person being tried before the court.

In order to perform the penalty of work in the public interest the Ministry of Justice may conclude an agreement with the state administration bodies and local self-government bodies when it comes to activities over which they carry out supervision as well as with legal entities or organizations which contains general rules on the execution of the penalty in the public interest and mutual rights and obligations. The punishment of work in the public interest may also be exercised in the Ministry of Justice.

In execution of a punishment of work in the public interest the probation service:

- ◆ invites the convicted person to conduct the interview;
- ◆ sends the convicted person to the execution of the sentence;
- ◆ performs control over the execution of the penalty of work in the public interest and provides assistance to the convicted person;
- ◆ inspects the documentation on the convicted person (court decision, findings and opinions of the medical doctor and other professional persons, reports from the Center for Social Work, etc.) and collects other necessary information about the convicted person from other bodies, institutions and organizations;
- ◆ if necessary monitor the performance of the work of the convicted person;
- ◆ compiles reports on the execution of a penalty of work in the public interest and delivers them to the court that made the decision in the first instance;
- ◆ in the event that the court substitutes the penalty for work in the public interest by imprisonment, it shall submit a report to the Institution for the Execution of Criminal Sanctions on undertaken activities in the execution of a penal offense in the public interest and conduct of the convicted person during the execution of that sentence; keeps records of the execution of penalties in the public interest;
- ◆ and performs other duties, in accordance with the law.

In the case that the convicted person who has been pronounced a punishment of work in the public interest does not respond to the call for interview at the probation service, this unit shall inform the police without delay about this in order to secure the presence of the convicted person who has been pronounced a punishment of work in the public interest. In the event that the police do not find a person who has been pronounced a punishment of work in the public interest he/she is obliged to inform the probation service about this which immediately informs the court that made the decision in the first instance. Bodies, institutions and organizations that are in possession of information about the convicted person are obliged to cooperate with the probation service in order to carry out a punishment of work in the public interest and to submit the necessary data from the records that are within their competence.

For each individual case of execution of a penalty of work in the public interest the Ministry of Justice Probation unit, on the basis of a previously concluded agreement, concludes a special agreement with the legal entity or organization in which the convicted person is sent for the purpose of executing sentence. On the time and place of signing of this contract the convicted person may be informed by telephone or other electronic communications means if he agrees with that manner of notification. If the convicted person does not agree to sign the contract or does not respond for a reason just for signing the contract, the probation department will inform the court that made the decision in the first instance without delay. The choice of a legal person or organization in which the punishment of work in the public interest is executed as well as the types of work shall be performed according to the capabilities, professional knowledge and health condition of the convicted person. The penalty for work in the public interest is carried out with the employer according to the place of residence of the convicted person.

The contract concluded in connection with the execution of a penalty of work in the public interest shall include: the time at which the punishment of work in the public interest will be executed, the affairs that the convicted person will perform during the execution of the sentence, the manner of execution of the sentence, as well as the rights and obligations of the legal entity, ie the organization and the convicted person. Based on such a contract, the probation service forms an individual program of work activities and informs the convicted person as well as about the commencement of work. During the execution of the penalty of work in the public interest the convicted person has the right to a proper working conditions, working hours, rest during work, daily and weekly rest, as well as work safety in accordance with the general regulations on work. During the execution of a penal offense in the public interest the convicted person is not entitled to compensation for work. Ministry of Justice shall secure convicted person from injury at work. In this regard, the sentenced person must not be subject to serious, risky or jobs requiring special professional qualifications that the convicted person does not have.

If there are circumstances that prevent the execution of an individual program of work activities the probation service shall amend the program and inform the convicted person and the legal entity, or the organization in which the convicted person executes the punishment of work in the public interest.

A convicted person or a member of family of a convicted person may file an application with appropriate evidence to temporarily suspend the execution of a punishment of work in the public interest in cases where there are serious causes: sickness or bodily injuries of a convicted person, sickness or death of a close family member, pregnancy or the need to conduct works to prevent or substantially damage material damage to a convicted person due to a natural disaster.

In this case, the probation service may request the finding and opinion of an expert in the field of medical profession, and the costs of expertise shall be borne by the convicted person. Upon request for postponement of the execution of a public service punishment, the procedure in the Ministry is urgent, and an administrative dispute may be initiated against its decision.

The probation service shall notify the court that made the decision at the first instance and the legal entity or the organization in which the convicted person performs a public service punishment on the decision granting an interruption in the execution of the penalty of work in the public interest. Similarly, proceedings are instituted on the request of the convicted person or a member of the immediate family of the convicted person in connection with the filing of a request for postponement of the execution of a punishment of work in the public interest.

The control of the enforcement of a punishment of work in the public interest is carried out by the Ministry of Justice Probation unit through the officer appointed by direct verification with a legal entity or organization in which the convicted person executes a punishment of work in the public interest. The convicted person has the right to file a complaint with the Prosecutor's Office on the actions of the Ministry of Justice which decides within 15 days.

If the convicted person does not fulfil his / her work obligations or grossly ignores them, the legal entity or organization in which the convicted person performs a public service penalty is obliged to notify the probation service within three days. If the Ministry of Justice, on the basis of control or notification of a legal entity or organization in which the convicted person performs a public service punishment determines that the convicted person does not fulfil or grossly neglects his / her work duties he / she will conduct an interview with the convicted person and warn him of the consequences of such behaviour. If, despite the warning a convicted person continues to grossly ignore his obligations or fails to meet them, the Ministry of Justice Probation service will notify the court that issued the decision in the first instance without delay. Gross disregard of work obligations is considered: disrespect for working discipline and working hours, entry to work under the influence of alcohol or narcotics, damage to the means of work or causing other damage to the employer, employees or users of the employer's services, violent, unlawful or offensive behaviour or the expression of any kind form of intolerance towards employees or users of services of a legal entity or organization.

The Ministry of Justice shall report at least twice to the court that made the decision in the first instance. The latest report is to be submitted within 15 days before the expiration of the time of execution of this punishment. A closer manner of execution of a penalty of work in the public interest, as well as the content and method of keeping records that are related to this matter is prescribed by the Ministry of Justice.

Another important institute in which the character of the probation service is reflected is suspended (conditional) sentence. This sentence can be pronounced when a perpetrator has been sentenced to imprisonment for up to two years. It cannot be imposed on crimes for which a sentence of imprisonment of ten years or more can be imposed. In deciding whether to impose a suspended sentence the court shall, taking into account the purpose of the suspended sentence, the court take into account in particular the personality of the perpetrator, his earlier life, his conduct after the commission of the criminal offense, the degree of guilt and other circumstances under which the offense was committed. If the perpetrator is punished with imprisonment and a fine a suspended sentence may be imposed only for imprisonment.

A special form of suspended sentence is sentencing with protective supervision. When pronouncing a suspended sentence, the court may order the offender to be placed under protective supervision, if, in view of his personality, his former life, post-committed offense, and in particular his relationship with the victim of the crime and the circumstances of the commission of the offense, can be expected if the supervision is more complete, the purpose of conditional sentence will be realized. Protective supervision is determined by the court in a judgment imposing a suspended sentence and determining the protective supervision measures, their duration and the manner of their fulfilment. Safeguards in applying this type of sentence may include one or more of ten measures enumerated in Criminal Code.

The procedure for the execution of suspended sentence and the suspended sentence with the protective supervision are prescribed by the Law on Execution of Conditional Sentence and Punishment in the Public Interest. The court that pronounced suspended sentence or conditional sentence with protective supervision shall submit a copy of the decision on the pronouncement of this measure within eight days from the date of validity of that decision the conditional liberty unit and the administrative authority in charge of police affairs in the area where the convicted person is resident or residence. Depending on the obligation of protective supervision the probation service will inform the center for social work according to the place of residence of the convicted person, the employer with whom the convicted person is employed, the appropriate health institution, the Employment Service of Montenegro and police.

In the execution of a suspended sentence and suspended sentence with protective supervision the probation service carries out the following tasks:

- ◆ invite, if necessary, a conditionally convicted person to conduct a conversation on the use of the time of probation;
- ◆ control the execution of suspended sentence and provides assistance to a conditionally convicted person;

- ◆ inspect the documentation on the convicted person (court decision, findings and opinions of the medical doctor and other professional persons, reports from the Center for Social Work, etc.) and collects other necessary information about the convicted person from other bodies, institutions and organizations;
- ◆ make reports on the execution of suspended sentence and submit them to the court that made the decision in the first instance;
- ◆ in the case of revocation of a suspended sentence, submit a report to the administrative authority competent to execute criminal sanctions (hereinafter: the Office for the Execution of Criminal Sanctions) on undertaken activities in the execution of suspended sentence and conduct of the convicted person during the time of the check;
- ◆ keeps records of execution of suspended sentence;
- ◆ inform the convicted person about the rights and obligations during the execution of suspended sentence and warns him about the consequences of non-compliance with obligations;
- ◆ inform the police about non-execution of security measures and obligations of protective supervision, if the police has powers in relation to the execution of these measures or obligations; and
- ◆ other affairs in accordance with the law.

A closer method of execution of suspended sentence and conditional sentence with protective supervision as well as the content and method of keeping records are prescribed by the Rulebook on the faster manner of execution of suspended sentence, suspended sentences with protective supervision, penalties for work in the public interest and conditional release (Official Gazette of Montenegro 67/06 / 2015).

The probation service is also engaged in the execution of the sentence of imprisonment in the premises where the prisoner lives. The Law on the execution of imprisonment, fines and security measures prescribes the manner of enforcing this sentence. According to this law, a final court decision determining that prison sentences are executed in the premises where the convicted person is living shall deliver the court that issued the decision to the Ministry of Justice or to the competent probation service within eight days from the date of validity of that decision. In executing the sentence, the probation service performs the following tasks:

- ◆ calls upon the convicted person to conduct interviews and make a program of execution of the sentence;
- ◆ inform the convicted person about the rights and obligations and warns him about the consequences of non-compliance;
- ◆ installs the monitoring device of the convicted person and gives detailed instructions on the operation of the device;
- ◆ performs the control of execution of the sentence and manages the device to monitor the movement of the convicted person and his position in the area;

- ◆ Inspect documentation of the convicted person (court decision, findings and opinions of medical doctors and other professional persons, reports from the Center for Social Work, etc.) and collects other necessary information about the convicted from other bodies, institutions and organizations;
- ◆ make reports on the execution of this sentence and submit them to the court;
- ◆ keeps records of the execution of this sentence; and
- ◆ performs other duties, in accordance with the law.

A closer method of executing prison sentences in the premises where the convicted person resides is prescribed by the Rulebook on the more detailed manner of execution of the prison sentence in the premises where the convicted person resides¹².

The competence of the probation service in the part of execution of the decision on conditional release is prescribed by the Law on Execution of Conditional Sentence and Punishment of Work in the Public Interest. According to this law the decision of the competent court on conditional release, by which the convicted person is suspended, shall be delivered to the unit for conditional liberty within eight days from the date of adoption.

In the execution of the obligations of a conditionally released convicted person determined by the decision on conditional release, the probation service performs the following tasks:

- ◆ invites the conditionally released convicted person to conduct the interview;
- ◆ inspect the documentation on the convicted person (court decision, findings and opinions of the medical doctor and other professional persons, reports from the Center for Social Work, etc.) and collects other necessary information about the convicted person from other bodies, institutions and organizations;
- ◆ warns a conditionally released convicted person of the consequences of non-execution of the established obligations, verbally and in writing;
- ◆ performs control over execution of obligations of a conditionally released convicted person and makes reports on the execution of those obligations;
- ◆ undertakes other prescribed activities aimed at fulfilling the established obligations;
- ◆ inform the competent state prosecutor's office and the court that issued the first instance decision on non-fulfilment of the obligations of the conditionally released convicted person pronounced by a court decision;
- ◆ in the case of revocation of conditional release, submit to the Office for the Execution of Criminal Sanctions a report on the undertaken activities in the execution of the obligations and behaviour of a conditionally released convicted person during his or her stay at liberty during the period of conditional release;
- ◆ keeps records on the implementation of conditional release; and

¹² "Official Gazette of Montenegro", no. 65/2015

- ◆ other affairs in accordance with the law.

If the conditionally released convicted person does not fulfil the obligations determined by the decision on conditional release the probation service may submit a proposal for revocation of conditional release in the first instance to the court that made the decision. Upon the request of a conditionally released the probation service will allow the insight into the case file relating to such a proposal to the extent that it does not affect the privacy of a third party.

A closer method of performing tasks within the jurisdiction of the probation service for conditional release is prescribed by the Rulebook on the more detailed method of execution of suspended sentence, suspended sentences with protective supervision, penalties in the public interest and conditional release. Among other things, this also involves the establishment of a risk assessment of a conditionally released convicted person based on data obtained from a conditionally released convicted person and data from the documentation on a conditionally released convicted person (court decisions, findings and opinions of doctors and other professionals, reports from the Center for Social work towards the place of residence and place of residence of the convicted person, reports of the Institute for the Execution of Criminal Sanctions, etc.), which procedure is conducted after the interview with the convicted person. On the basis of the risk assessment the probation department not later than within 30 days from the day of conducting the interview with the convicted person, makes an individual program of treatment towards a conditionally released convicted person which among other things contains data on the obligations established by the decision on conditional release, the established criminogenic factors, their elimination and

Sanctions/ Measures/ Penalties/Conditions attached to a conditional decision or sentence	Provision in legislation	Probation service involvement	Main characteristics of the probation activity
Imprisonment	✓		
Suspended sentence	✓	✓	Supervision, coordination, referral, reporting
Conditional sentence	✓	✓	Supervision, coordination, referral, reporting
Affidamento in prova			

House arrest	✓	✓	Supervision, referral, reporting
Electronic monitoring	✓	✓	Supervision, reporting
Community service as sanction	✓	✓	Supervision, coordination, referral, reporting
Semi-liberty			
Semi-detention			
Treatment order	✓		
Training/learning order	✓	✓	Supervision, reporting
Drug/alcohol treatment program	✓	✓	Supervision, reporting
Educational measures	Only for juveniles		
Compensation to the victim	✓		
Mediation	✓		
Attending a day centre	Juveniles only		
Interdiction to leave the country	✓		
Interdiction to enter different cities/places	✓	✓	Supervision, reporting
Interdiction to carry out different activities	✓		
Interdiction to contact certain persons	✓	✓	Supervision, reporting
Fine	✓		
Day fine	✓		
Other financial penalties			
In/out patient order (psychiatric treatment)	✓		

other necessary measures, a plan of cooperation with institutions, organizations and

Security measures	v	v	Supervision, reporting
Combined order	v	v	Supervision, coordination, referral, reporting
Community punishment	v	v	Supervision, coordination, referral, reporting
Conditional release / Parole	v	v	Supervision, reporting
Automatic release			
Open prison	v		
Penitentiary program outside the prison	v		

individuals involved in the implementation of the program; and the deadlines in which the convicted person is suspended shall be obliged to report to the probation service.

Providing support to the families of the offenders/detainees	Yes (Only in providing them the necessary data, getting acquainted with the manner of execution of the sentence, and introducing about the rights and obligations that the convicted person has in the procedure of execution of the sentence)
Coordinating volunteer prison visitors	No
Preparing offenders for (conditional) release	No
Preparing prisoners for home leave and/or providing support during home leave	No
Coordinating volunteer prison visitors	No
Preparing offenders for (conditional) release	No
Providing support to persons that have been pardoned or amnestied	No
Providing advisory report with respect to amnesty or pardon	Yes (only at the request of the competent authority)
Other tasks that are not included here. Please add to this list and explain.	No

Table 3. Sanctioning system and probation involvement in the enforcement stage

VI Probation methodology - relevant probation rules

Like internationally recognized standards, the Montenegrin probation system takes into account the individual characteristics, circumstances and needs of the perpetrators in order to ensure that each case is treated fairly and rightly. This means that the system refers to the need (whenever and as much as possible) to ensure the informed consent of the perpetrator and to cooperate with him in the proceedings relating to him. This implies the existence of an appropriate service and its resources that enable the achievement of probationary goals, including cooperation with other public or private organizations and the local community in promoting the social inclusion of offenders. The aforementioned directions of action are essentially the key principles of the European Probation Rules, which are the key document and the basis for the establishment of a probation system in Montenegro and its functioning.

The participation of persons to whom the probation system applies involves being informed of their rights and obligations at different stages of criminal proceedings. Such a conclusion is drawn from the obligation of the authorities conducting the criminal proceedings and conducting certain procedural actions to inform the person against whom they are directed about the nature and consequences of the procedural action. In addition, the principle of truth and fairness requires the court, the public prosecutor and other state authorities involved in the proceedings to truthfully and completely establish all the facts relevant to making a fair and lawful decision. In doing so, they are obliged to examine with equal care the facts that charge the defendant, as well as those that support him (Article 16 of the Code of Criminal Procedure). The use of the power of the court to request the risk assessment for the defendant during the proceedings presupposes the possibility that the defendant may be required to participate in its elaboration or make a statement as to its contents. Any other understanding calls into question fundamental principles of criminal proceedings on the rights of the defendant, because without his or her statement on these facts a commitment to sanction would have left out an essential element in the defense's right to challenge or confirm the facts underlying the decision on the sanction.

The nature of suspended sentences and penalties in the public interest are such to presuppose the consent of the convicted person. In addition, the behaviour of the accused who obstructs the execution of probation decisions is at his disposition while the obligation of the probation service is to inform the convicted person about the rights and obligations during the execution of suspended sentence and warns him/her about the consequences of non-compliance (Art. 10 of the Law on Execution of Conditional Sentence, suspended sentences with protective supervision and penalties in

the public interest). In addition, the probation service invites the conditionally convicted person to conduct a conversation about the use of the time of checking, performs the control of execution of suspended sentence, provides support and gives advice to the conditionally convicted person. In relation to the punishment of work in the public interest, the defendant's consent is the precondition for its pronouncement (Article 41, paragraph 3 of the Criminal Code).

When executing probation decisions the law focuses particular attention on the individual factors that condition the process. Such an approach is provided through insight into the documentation of the convicted person and the collection of other necessary information about the convicted person by other bodies, institutions and organizations. In addition, the same principle is maintained through the assessment of criminogenic factors (risk assessment) of a conditionally convicted person on the basis of data obtained from the conditionally convicted person and data from the documentation on the convicted person. Evaluation of readiness to change behaviour is determined by the Proshaska & DiClimente model¹³. The form for conducting the risk assessment was developed by experts from the Dutch probation service during 2013 during their stay in Montenegro in order to support the establishment of a trial service of the Ministry of Justice and the system of alternative sanctions in Montenegro.

The probation service in ensuring the effective execution of the probation decision is obliged to continuously control the execution of the suspended sentence and give advice to the convicted person with the already stated obligation to inform him about the rights and obligations during the execution of suspended sentence and warns him about the consequences of non-compliance with the obligations.

In such circumstances it is evident that the correct exercise of these powers leads to a clear position of the convicted person that is the existence of awareness of the punishment and the consequences of missing probation obligations at different stages of the execution of a suspended sentence and conditional sentence with protective supervision. Regarding the last one statistical data and interviews with the holders of judicial functions indicate that it is an extreme exception and that it is practically not pronounced by the Montenegrin courts.

The control function of the probation service and the obligation to draw up a report on the execution of a suspended sentence is to be submitted to the first-instance court which brought it presupposes that any change relating to the execution (concerning the conditions of execution and personal circumstances on the part of the convicted person) must be registered. On the basis of such information, and with the authorization of the court, appropriate measures on enforcement are to be undertaken.

¹³ This model describes the five phases through which people go through their path to change: precontemplation, contemplation, preparation, action and maintenance. It is based on the analysis and use of different theories of psychotherapy, hence the name "transient".

When performing public service penalties the procedure is different. For each individual case the Ministry of Justice, on the basis of previously concluded agreements, signs a separate contract with the convicted person and the legal entity or organization in which the convicted person is sent for the purpose of executing that sentence. The choice of a legal person or organization in which the punishment of work in the public interest is executed as well as the types of work shall be performed according to the capabilities, professional knowledge and health condition of the convicted person. Within the probation service there are standards rules (form) of behaviour of convicted persons who have been issued alternative sanction with which they are introduced and signed immediately before the execution.

The penalty for work in the public interest is carried out with the employer according to the place of residence of the convicted person. The contract shall include: the time at which the punishment of work in the public interest will be executed, the affairs that the convicted person will perform during the execution of the sentence, the manner of execution of the sentence, as well as the rights and obligations of the legal entity, that is, the organization and the convicted person. On the basis of this contract, the probation service constitutes an individual program of work activities and informs the convicted person about this as well as about the commencement of work. If there are circumstances that prevent the execution of an individual program of work activities the probation service shall amend the program and inform the convicted person and the legal entity or the organization in which the convicted person executes a punishment of work in the public interest. Having in mind the constraints established by the law when it comes to the nature of work in the execution of this sentence it is obvious that the manner or program of execution must comply with these requirements and this is objectively impossible without the participation of the convicted person.

The program shall include: 1) the time in which the convicted person is obliged to report to the legal entity or organization to which he is sent for the execution of the sentence; 2) scheduling hours of work in the public interest; 3) the type of work that the convicted person will perform during the execution of the penalty of work in the public interest; 4) the time during which the convicted person will have a break during work, daily and weekly rest; 5) the obligation to contact a contact telephone made by the convicted person during the interview with the probation officer; 6) rules of conduct during the execution of the sentence and the consequences of non-fulfilment, or gross neglect of work obligations. The conditional liberty unit, within 30 days from the day of the interview, invites the convicted person to sign the contract and get acquainted with the individual program of work activities.

Certain circumstances concerning the personal and family life of the convicted person may cause temporary suspension of the execution of the sentence. The interruption of the penalty of work in the public interest can be granted for a maximum of 30 days in a case of pregnancy, maternity or parental leave, until the first year of the of life of

the child for which the request was made. Upon the request for interruption the Ministry of Justice will immediately or at the latest within three days make a decision. An administrative dispute may be initiated against the decision referred. The Ministry of Justice Probation Service shall inform the court which rendered the decision in the first instance and the legal entity or organization where the convicted person is serving the sentence in the public interest on the decision approving interruption on executing the sentence.

The Ministry of Justice shall report at least twice to the court that made the decision in the first instance and the latest report being submitted within 15 days before the expiration of the time of execution of this punishment.

The Ministry of Justice has concluded cooperation agreements with the aim of executing a punishment of work in the public interest with all Montenegrin municipalities, which represent the main partners in the implementation of this alternative sanction. Agreements imply that the Ministry has the authority to send a convicted person to the execution of a sentence in any public company or public institution over which the municipality exercises the founding right. In addition, agreements have also been signed with individual organizations at the municipal and / or state level whose activities are related to humanitarian, ecological and other similar activities.

The procedure for execution of imprisonment in the premises where the convicted person resides is prescribed by the Law on Execution of the Law on Execution of Prison Sentences, Fines and Security Measures and the Rulebook on the Accused's Enforcement of Prison at the premises where the convicted person resides. Upon receipt of a final court ruling the sentence of imprisonment in the premises of the convicted person, the probation service calls the convicted person for an interview in which the convicted person is informed of the day and time when the conditions for installing a convict monitoring device will be checked. When the probation service determines that there are conditions for execution, it makes a program of execution which contains: information about the convicted person; the address of the premises in which he resides; date and time of device installation; the rights and obligations of the convicted person during the execution of the sentence; consequences in case of non-compliance; residence time outside the premises where the convict lives; and other information relevant to the imprisonment of the prisoner. After drafting the program, the probation service installs the device in the premises where the convict lives, informs the convict and the members of his household about the operation of the device and the program. The day of installation of the device is considered to have commenced the execution of the sentence of imprisonment in the premises where the convict lives.

The probation service executes the decision on conditional release in the manner that, within a period of eight days from the date of the receipt of a final decision of the court

adopting the application for conditional release, a person sentenced is to be called for an interview.

During the interview a convicted person is acquainted with the rights and obligations determined by the decision. After the interview the probation unit makes risk assessment of a conditionally released convict. This interview is based on data obtained from a convict and data from the documentation on a conditionally released person. Not later than 30 days from the date of the interview an individual program of treatment shall be created for the conditionally released person. The program contains: data on conditionally released convicted person; data on previous convictions; information on the obligations determined by the decision; detected criminogenic factors, measures for their removal and other necessary measures; a plan of cooperation with institutions, organizations and individuals involved in the implementation of the program; and the deadlines in which the convicted person is suspended shall be obliged to report to the probation service. The probationary unit establishes a conditionally released convicted person with the program and delivers an excerpt from the program that relates to his rights and obligations. If the conditionally released convicted person does not accept the program, the probation service shall immediately inform the court, the Police Directorate according to the place of residence or residence of a conditionally released convicted person and the Bureau for the Execution of Criminal Sanctions.

In performing probation work probation officer: controls the implementation of penalties in the public interest; performs tasks related to conditional release, suspended sentences with protective supervision, prison sentences in the premises where the convicted person resides; supervises security measures prohibiting the approximation and removal from the apartment and other living space; makes regular reports to the court on the execution of the sentence of imprisonment in the public interest, conditional release, conditional sentence with protective control; prison sentences in the premises where the convicted person lives and performs other duties from the scope of the Directorate competencies at the order of the superior.

The control over execution, or execution of probation decisions, including the verification of the execution of security measures or obligations with protective measures is carried out by the officer designated to do it. Control is carried out by direct contact of an officer appointed by the Probation Office with a conditionally convicted person at least once a month and, if necessary, more frequently.

VII Financing, responsibility, registration and evaluation procedures

7.1. Financing

Since the system of execution of criminal sanctions as a whole is a part of the public sector, its financing is mostly done from the state budget funds. One part of the resources that is used for the development of the system is based on donations and projects that are implemented with the support of international organizations and support funds from foreign countries.

The probation service is financed from the budget funds of the Ministry of Justice. There are no separate funds, nor problems with financing activities. In the employment of officials, the Ministry of Finance gives its consent, and in that sense, according to the data obtained from the Ministry, no obstacles are encountered in exercising the probationary authority. The total budget of the Ministry of Justice for the year 2018 amounted to 13.611.785,96 EUR, out of which 10.086.836,33 EUR or 74.10% of the total budget was allocated for the needs of financing the Institute for Execution of Criminal Sanctions. EUR 1,299,619.79 has been committed for the unique budgetary position that covers the Judiciary and Enforcement of Criminal Sanctions program.

7.2. Responsibility

The probation service functions within the Ministry of Justice in the Government of Montenegro within a special unit - the Directorate for Execution of Criminal Sanctions. The Directorate for conditional liberty and execution of the prison sentence in the premises where the convicted person lives, as its official name, is controlled by the internal control system, while the individual protection of the rights of the persons to whom its powers are exercised is carried out according to the rules of the administrative procedure. Judicial control of the legality of acts and actions carried out by the probation service is exercised in an administrative dispute.

Independent and impartial control of the work of the probation service is carried out through the institution of the Protector of Human Rights and Freedoms of Montenegro (Ombudsman). Apart from the protection of individual rights of convicted persons within this institution, a special form of control is unannounced visits to institutions and places where sentences are served. The law does not exclude the possibility, that is, the right of the Protector to exercise control in relation to all types of penalties and the manner of their execution. On this occasion, the Ombudsman submits special reports to the Parliament of Montenegro, and simultaneously with their contents, informs the public through the media and by posting the report on their website.

7.3. Registration and Records System

The obligation to keep records in execution of probation decisions, penalties of work in the public interest and the implementation of conditional release is prescribed by the Law on Execution of Conditional Sentence and Punishment of Work in the Public Interest. A closer form of execution of suspended sentence, suspended sentences with protective supervision, penalties for work in the public interest and conditional release, as well as the contents and manner of keeping records of their execution are prescribed by a special Rulebook¹⁴.

Regarding the content of the records, the Rule stipulates that when executing a suspended sentence and conditional sentence with a protective control, the data on: the convicted person; judgment; criminal offense and punishment; the time of checking and the obligations imposed on Conditional Sentence, or conditional sentence with protective control. In addition to these data, records on the execution of suspended sentences with protective supervision also contain information on the obligations of protective supervision.

Records on the execution of penalties of labour in the public interest contain information on: the convicted person; judgment; criminal offense; penalties; interruption of execution of sentence; the number of hours worked; substituting the punishment of work in the public interest with imprisonment; and a contract on execution of a sentence.

Records on execution of conditional release contain data on: convicted person; judgment; criminal offense and punishment; and conditional release (duration of conditional release, data on obligations imposed on conditional release and data on revocation of conditional release).

The indicated records are kept in the form of a special electronic database established by the Ministry of Justice, ie the probation service.

¹⁴ Rulebook on the closer method of execution of suspended sentence, suspended sentences with protective supervision, penalties for work in the public interest and conditional release

VIII Social support and client attitudes

8.1. Social support and public opinion

In one of the few sociological research carried out in Montenegro in 2015, the survey was conducted in five Montenegrin municipalities where it was possible to implement a punishment of work in the public interest. In this study, 54.3% of men and 45.7% of women between the ages of 20 and 63 participated in the general public. When asked if they even heard of alternative sanctions, 71.4% answered that it was not, while 25.7% answered that it was, and 2.9% did not answer that question. When asked if they know what types of alternative sanctions exist, 63% of citizens answered that they did not know, 25.7% were not sure, and only 11.3% answered affirmatively. Finally, when it comes to the general attitude towards this institute, the citizens did not have the opinion on this issue to a large extent by 62.9%, 25.7% mostly had positive attitude, while 5.7% of the citizens had a very negative attitude.

The largest number of respondents, 90% of them, did not know or were not sure what the probation service was, and only 10% of the respondents knew. When asked about the work in the public interest, a large number of citizens (82%) did not know the answer.

When the respondents were asked whether they would agree to punishment of work in the public interest instead of the prison sentence, 74.3% had a positive answer, only 8.6% of the respondents were negative, and 17.1% had no opinion on this issue.

At the same time, there were media that had a fair number of announcements about institutes of probation legislation and alternative sanctions. However, from the citizens' survey, it can be concluded that neither the media had any influence on the understanding of probation and the clarification of the nature of alternative sanctions. This should be added to the fact that at the same time, the Strategy for informing the public about the probation service of the Ministry of Justice, which apparently (at least in that period) did not produce the desired results, was made and placed.

The existing level of implementation of probation standards requires new public opinion surveys and an aggressive campaign that will explain the essence of probation and community benefits. In doing so, special attention and focus is expected in relation to victims of crimes and violations that certainly have the largest reserve for the effect of probation.

On the other hand, when it comes to professional publicity, the situation is essentially different. Organized by the Ministry of Justice and the Center for Education in the Judiciary and the State Prosecutor's Office, a series of expert meetings were held where probation was presented as an alternative to institutional measures and sanctions. However, the existing level of cooperation and co-ordination between the probation service and judicial institutions requires a much more ambitious and aggressive approach in which cooperation will be strengthened and result in considerably greater use of alternative options in relation to traditional institutional treatment.

8.2. Client attitudes

During the development of this material, research and analyzes that included the views of the slaves in the case of probation and the system of alternative sanctions were not available.

IX Rights of probation clients

A complaint may be lodged against the work of probation officers to the Minister of Justice. A complaint can only be filed when it comes to the execution of a penalty of work in the public interest. According to information from the Ministry, there have been no written complaints so far but only a couple of oral addresses have been recorded because of communication problems that have been successfully overcome.

The work of the probation service is not subject to external control but only internal control and evaluations are carried out as well as sort of administrative control through the submission of annual work reports to the Government of Montenegro. The managing staff follows the work of the service in accordance with the law, integrity plans and corruption prevention. The decisions of the probation service are subject to control in the administrative procedure or in the administrative dispute. For example, the convicted person or a member of the immediate family of the convicted person can file an application to the Ministry of Justice to temporarily suspend or postpone the execution of a punishment of work in the public interest against which the decision can be initiated by an administrative dispute. So far, only two (2) administrative disputes have been raised against the decisions of the Ministry of Justice which are underway.

The key principles of the criminal procedure and the way they are implemented are based on the application of human rights and freedoms standards and in particular in the jurisprudence of the European Court of Human Rights which creates a practice based on the European Convention on Human Rights standards.

The law prescribes to a convicted person who has been pronounced an alternative sanction or a conditionally released convicted person respect for human dignity, fundamental rights and freedoms and privacy rights. Punishments are also to be in the line with the ban on any form of torture, ill-treatment or humiliation as well as prohibited health and scientific experiments. Also, discrimination against a person who has been pronounced an alternative sanction and a conditionally released convict has been prohibited. The procedure for the execution of alternative sanctions as well as the supervision of a suspended convicted person is conducted in the Montenegrin language and in a language that is in official use. A person who has been convicted of an alternative sanction or a conditionally released convict has the right to use his / her language or language that he / she understands. If the conversation is conducted in the language of the convicted person translation of statements and written materials will be ensured. Translation is entrusted to an court interpreter. In the case of sanctions for work in the public interest in criminal and misdemeanour law it cannot be such as to offend the dignity of the convicted person.

X Further development of probation in Montenegro

In the coming period the probation system is expected to be strengthened through the support of various decision-making factors. This is not a narrow administrative issue that depends only on the material and financial conditions of the work of a particular state body. It is to be expected to establish regular and constructive cooperation between judicial institutions, probation authorities and authorities and institutions involved in the execution of probation decisions and alternative sanctions. This implies a significantly higher participation of probation decisions in the penal policy of the courts in Montenegro. Before that a deeper analysis of the execution of probation decisions and alternative sanctions, which will include the attitudes of the expert and lay public, as well as the views of clients, must be done.

The total number of probation decisions and their sustainable trend which indicates that this is about half the total number of criminal convictions before the basic courts (significantly smaller numbers before misdemeanour courts) bring to the conclusion that a sustainable monitoring system needs to be built during the whole probation period. A small number of probation decisions as an alternative to imprisonment in misdemeanour proceedings is a consequence of a small number of prison sentences. The construction of the system implies the ability of the probation service, the specific requirements of its work which include the specialization of officers and their significantly higher participation in the phases of the criminal proceedings before making a final court decision.

In the coming period, special attention should be paid to a significant increase in the protective measures imposed in criminal proceedings in cases of domestic violence. Given the two measures monitored by the Probation Service it is possible that this will significantly influence the additional influx of cases in its work.

The probation service reform should be seen in the context of the main objectives of the reform in the area of enforcement of criminal sanctions which include a permanent review of the legal framework, further strengthening of the implementation of laws and by-laws, additional reduction of prisoners, creation of better conditions for detainees, education reform and resocialization of prisoners with work opportunities and employment, improvement of human resource management and training, and improvement of working conditions for employees in the system of execution of criminal sanctions¹⁶.

¹⁶ Montenegro: Strategy for Execution of Criminal Sanctions 2017-2021

The Law on Amendments to the Law on the Execution of Probation and Sentencing in the Public Interest from 2019, at the request of the court, provides for the possibility of the Ministry of Justice to produce a risk assessment report for a person being tried in court. However, despite the significant shift in the role of the probation service in the pre-criminal procedure until the final judgment rendered by this legislative amendment, the Law does not provide for the possibility of independent involvement of the probation service at this stage of the proceedings.

According to the available data there have not been or have been only a few requests to prepare individual reports and risk assessments in so far and it is reasonable to expect that such practice will be established in the future as a kind of prior support to the judicial authorities before initiating and during the criminal proceedings. This novelty offers the possibility of qualitative improvement of the assessment of the probation decision as well as the subsequent successful enforcement of such alternative sanction by the probation service.

Given the fact that a suspended sentence may also be imposed with temporary protective supervision during the probation period, which includes the measures of assistance, care, supervision and protection prescribed by law, it is particularly important that the court has to be assisted by the Ministry of Justice in deciding and assessing risk. This assessment is also necessary in terms of determining the content of the protective supervision or specific obligations which can be imposed individually or in several in together. Therefore, in imposing a suspended sentence and in particular a suspended sentence with protective supervision it appears that the role of the Ministry of Justice must be essential what consequently leads to the effective enforcement and optimal effect of alternative sanction.

As there is no measure of probation or probation work in a suspended sentence without protective supervision this is a somewhat justified suggestion to impose more penalties of work in the public interest. The role of the community, including the civil sector and public institutions involved, is the most important in the enforcement of the sentence in the public interest. This is evidenced by the significant number of signed contracts with legal entities to which sentenced persons refer to the execution of a sentence in the public interest. However, this is a matter of case law and not of the role of the Ministry of Justice (probation service), which in this sense does not have the competence to propose and/or influence the type of sentence imposed except when the court requests a risk assessment report for the person being tried in court .

In that sense, the prosecutor should propose the type and amount of the sentence which most often does not make the general formulations suggest that the defendant be punished by law. Therefore, there is a need for the prosecution to individualize the request in imposing the sentence. All this indicates that an analysis of crime trends

and court decisions needs to be made into identifying opportunities in optimizing criminal policy and in improving effects of alternative sanctions.

Conditions for the imposition of protective supervision indicate the circumstances that it is necessary to apply to the convicted person in imposing some of the special obligations arising from the protective supervision. Accordingly, protective supervision presents the need for specific treatment of a convicted person between probation and imprisonment.

As the request for individualization is particularly expected in the court's decision in pronouncing a suspended sentence with protective supervision (taking into account possible previous responsibility, conduct, personal characteristics, family circumstances and other characteristics of the suspect) this is an undoubted need to involve a probation service at this stage of procedure. This would create the preconditions for improving the effects of the suspended sentence with protective supervision and for the better functioning of the probation service during the time of checking and monitoring the execution of the protective supervision measures.

As no conditional sentence with protective supervision has been pronounced in so far, the co-operation of the probation service with the social protection services, employers of convicted persons, appropriate health institutions, employment services as well as with the police was lacking. It is recalled that with a suspended sentence security measures may also be imposed as well as obligations of protective supervision which is responsibility of the police. In that case the probation service would be obliged to notify police without delay. As the obligation from the protective supervision was not present this prevented any form of cooperation between the probation service and other relevant actors.

According to the applicable legislation in this field the role of the probation service is not recognized in the preparation of parole but it acts only at the discretion of the court by which the convicted person is conditionally released and determines the obligation during the probation. The Directorate for Execution of Criminal Sanctions submits a report on the assessment of the person and the behaviour of a conditionally released person, which is used by the probation service when interviewing a person to be conditionally released. However, the decisions of the court that have decided on parole have so far not set any specific obligation in relation to which the probation service would monitor the execution and would cooperate with relevant health and social care institutions, employment services and other stake holders.

The latest changes to the Conditional Sentencing and Public Sentencing Act from 2019 regarding parole contribute to speeding up the enforcement process by shortening the deadline for submitting a final decision to the Ministry of Justice.

It was noted that parole for short sentences (three or six months) does not leave enough room for probation. In many cases, while deciding on a parole application, the prison sentence is executed, or almost entirely, executed. Due to such circumstances, the work of the probation service is completely limited, which raises the question of the expediency of imposing this alternative sanction on short prison sentences and makes it difficult to strengthen the approach of individualization of criminal policy. Therefore, it seems important to analyse the application of the parole institute in terms of the reasonableness of the decision deadlines for parole applications, as well as to legally identify the work of the probation service in the decision-making process on parole applications and to prepare them for parole. However, the time limits for deciding on parole remain unspecified, which may have a direct impact on the convicted person's right to parole. In this sense, the existing legal solutions did not affirm the involvement of the Ministry of Justice, ie the probation service in the decision-making process on parole, as well as in the period before the execution of the conditional release decision, while the convicted person is still in prison.

The need to involve the probation service in deciding on parole and preparing for release is a sequence of the need to individualize each case separately. Thus, it is justified to suggest that in the case of conditional release of a convicted person on Buprenorfin therapy a specific obligation should be practiced by monitoring the use of therapy, i.e. reporting to the appropriate health care institution. Isolated cases of insufficient individualization have been observed and the fact that a foreign citizen is banned from leaving the place of residence for Buprenorfin therapy is prevented from procuring the medicine through the public health system and because of the imposed measure he/she cannot obtain the drug from outside the country.

It was observed that parole for short sentences (three or six months) does not leave enough room for probation. In many cases, while deciding on a parole application, the prison sentence is almost always entirely executed. Due to such circumstances the work of the probation service is completely limited, which raises the question of the expediency in imposing this alternative sanction on short prison sentences and makes it difficult to strengthen the approach of individualization of penal policy. Therefore, it is to analyze the application of the parole institute in terms of the reasonableness of the decision deadlines for parole applications. It is equally important to recognize through the law the role of the probation service in the decision-making process on a parole application and in preparing for the release of a parolee.

In this regard it is necessary to provide normative preconditions for establishing cooperation between the Directorate for Execution of Criminal Sanctions and the Probation Service and the police in terms of qualitative preparation of convicted persons for their exit and social reintegration. Such cooperation would have to be practiced not only in the case of parole but also in the event that the convicted person had served a prison sentence. The pre-release period should be accompanied by intensive treat-

ment, support and counseling of convicted persons through the cooperation of the Penal Enforcement Administration and the Probation Service. Such cooperation with a view to prepare sentenced persons to be released and returned to the community should include risk assessment activities; establishing contacts with the community to which the convicted person returns, as well as providing support for employment, housing, treatment, etc. The period before the conditional release of the convicted person, especially where a specific obligation is laid down, should be characterized by communication with the probation officers with whom the person will have potential communication after his/her release or the sentence served.

Establishing a greater degree of cooperation and networking of institutions is in the interest for straightening the effects of alternative penal policies. Particularly important is the establishment of cooperation between the probation service with other state bodies, local self-governments and civil society organizations. This cooperation is notable for parole but also for the execution of a sentence in the public interest. In addition to the co-operation that follows the imposed alternative sanction normative conditions must be created to strengthen the role of the probation service before sentencing in order to assist the judicial authorities in individualizing criminal policies and alternatives to imprisonment through individual reports and risk assessments.

However, it should be emphasized that the probation service practices periodic meetings with organizations to which the sentenced person is sent for the purpose of serving a sentence in the public interest, with which he/she previously concludes agreements and special contracts. The meetings discuss the achieved results of cooperation, identify problems and possible solutions to overcome them. The space for strengthening cooperation with organizations engaged in the public interest, employment services, health and social care institutions is recognized especially in the preparation of parole, i.e. the person under sentence of imprisonment, which would create initial preconditions for reintegration and their basic needs.

In order to prepare parole, i.e. to prepare a person serving a prison sentence, it seems important to strengthen the cooperation of the Directorate for Enforcement of Criminal Sanctions and the Probation Service with the Employment Service of Montenegro and the Centre for Vocational Education. Such cooperation should be established or strengthened especially in the area of providing information on occupational deficits in the labour market on the one hand and practical training for lacking professions. In this way convicted persons would be able to qualify themselves for certain occupations just before leaving prison in order to be recruited and to obtain a source of income upon serving a prison sentence. The low level of professional competence and lack of skills necessary for inclusion in the world of work further additionally complicate the employment of convicted persons upon their release from prison. Therefore, their involvement in the vocational training process has multiple positive effects both

in raising educational attainment, reducing recidivism and increasing employment opportunities after release and in improving the behaviour of prisoners in prison.

In order to achieve the main goals of the Strategy this is to establish regional offices throughout the country in northern, southern and central part of Montenegro in at least 4-6 locations and at the same time increase the number of staff up to 20-25 positions. At this moment it is certain to be open a special office in Bijelo Polje which town is an informal administrative centre of the Northern region of Montenegro. The Strategy also foresees:

- ◆ Organizing joint training and workshops on alternative sanctions and the implementation of alternative sanctions and measures to improve cooperation between judicial authorities, executive bodies and NGOs;
- ◆ Setting up an assessment tool for social workers and probationers, harmonizing the criteria and objectives of case management and supporting a common database.
- ◆ Establishment of joint training and certification of social workers and probation officers of the Penitentiary Institution and the Directorate in order to acquire certain skills in managing regular jobs and implementation of the projects on community programs for offenders.
- ◆ Improving training solutions consisting of basic and advanced courses for staff in the probation service in the field of social therapy and for the treatment of prisoners of addicts, sex offenders and dangerous and violent prisoners, self-defense courses, sports training, and more.
- ◆ Improving resocialization work in prison institutions and in the Directorate, cooperation with the NGO sector and focusing on social work with the support of the NGO sector.
- ◆ Organizing annual round tables with the NGO sector in order to establish clear, measurable and feasible criteria for entry into programs targeting key profiles in order to ensure the sustainability of the rehabilitation program,
- ◆ Development of management training in transition as a multisectoral approach to the reintegration of prisoners into society based on partnership between social services in prisons, the Directorate for conditional liberty, non-governmental organizations and other competent bodies (Centre for Social Work, Employment Service, etc.) with the aim of to bridge the reintegration from prison to freedom.
- ◆ Strengthening the capacity of the Directorate for Project Management with a focus on quality management, conceptual work, public awareness campaigns, etc.
- ◆ Development of a judicial database on alternative procedures and decisions on alternative sanctions and measures,
- ◆ Developing guidelines for the application of alternative sanctions and measures in appropriate cases of bagatelle crime (small offences) and strengthening the prosecutor's role in the selection of such cases, with the support of the Directorate's report.

- ◆ Increased deterrence from detention through the strengthening of the system of alternative sanctions for prosecutors in cooperation with the Directorate, especially in the case of short sentences for imprisonment and minor offenses in cases of minor delinquencies.
- ◆ Improving the system of mediation between the victim and the perpetrator of the criminal offense.
- ◆ Improvement of mandatory control by the Directorate.
- ◆ Organizing joint training / round tables and workshops on alternative sanctions and the implementation of alternative sanctions and measures to improve cooperation between judicial authorities, the Directorate and NGOs.
- ◆ Establishment of procedures by the Directorate for supervision in the field of alternative sanctions and measures in the following matters: public interest penalty order, electronic monitoring, work and employment programs, transition management in cases of parole, drug addicts, special programs for changing the conduct of the offender.

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- ◆ Basic Court in Niksic
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- ◆ Basic Court in Bijelo Polje
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- ◆ Misdemeanour Court in Podgorica
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