

**OUT OF SIGHT, OUT OF TROUBLE? :
IMPRISONMENT AS SANCTION IN THE REPUBLIC OF
MACEDONIA**

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Abstract

Imprisonment as a sanction is known to every class society. The essential meaning of its existence was justified with the action of keeping criminals safe until the day that they will be publicly executed. Years later, imprisonment got repressive and retributive elements keeping inmates far away from their communities, for a long period of time. Today this sanction kept its retributive side, but also got another, preventive one, changing its dimension into a contradictory one.

Macedonian Penal System has imprisonment as main punishment since 1991. It can only be used as a main punishment for severe crimes, taking into account the criminal's history, his motive, modus operandi and brutality. Statistics help us conclude that our country uses imprisonment very often, at the same time making re - socialization harder.

The paper gives a short overview of the use of different sanctions through the years, their changing dimensions, and the importance of imprisonment in the past and its place in modern times. It also, by using data from the State Statistical Office of the Republic of Macedonia analyses how often Macedonian

criminal and penal policy chooses the retributive over restorative elements of the sanctions.

Keywords: *alternative measures, imprisonment, Macedonia, penal system, re - socialization.*

Introduction

Punishment, like deviance or crime is an old phenomenon. From theological perspective, punishment is traceable as far back as to the origin of man as contained in religious parables, when Adam (AS) and Eve and the story of their children (Abel and Cain) in which Cain murdered Abel and then God began to mention proscriptions for wrong acts, such as murder as well as citing the appropriate punishment for each an offense. The topic of punishment is therefore an old one just like this religious digression indicates. The 3rd century's Christian writer and theologian Origen and his school taught that the purpose of such punishment is purgatorial, and that it was proportionate to the guilt of the individual (Redmond, 2009).

Every society has a reaction to actions undertaken by its members with whom they broke and did not respect the rules of behavior and at the same time moved beyond the level of tolerance of their community. It is a modus to obtain the normality in functioning process of developed communities, remain in the area where there will be no danger for majority (Aslimoski, Stanojoska, 2015). Social reaction of criminal behavior has developed and changed in four phases. The first one is the time when revenge was used; then the second when crime suppression was reality; the third one was the time of correction and rehabilitation; and today, the fourth period, is the one which is known as a period of re - socialization (Arnaudovski, Gruevska - Drakulevski, 2013). Re - socialization is a long, dynamic process of influences over a person who deviates from the normal, accepted behavior, with a goal to change that person, make him/her capable to live, work and treat in accordance with generally accepted norms, values and behaviors in his/her society. It is used as a term to determine the goals of sanctions used by states (Arnaudovski, Gruevska - Drakulevski, 2013).

Objectives

The main objective of the paper is to analyze Macedonian penal policy in the period between 1995 and 2015 and accent the often use of imprisonment as main punishment, although alternative measures are part of our penal system since 2007.

Hypothesis

The often use of imprisonment as main punishment is contradictory to the nature of our penal system and criminal and penal policy.

Methodology

The research is quantitative in nature and is based on data gathered by the State Statistical Office of the Republic of Macedonia. Its core is constructed by using content analysis of criminological literature and laws on execution of sanctions.

A good criminal is a dead one: Punishments as the “long hand” of the majority

Most people would agree that hurting someone or subjecting them to pain is wrong. However, punishment, by definition, involves the infliction of pain. Does this make punishment wrong? Philosophers are divided on this issue. One group believes that inflicting pain as punishment is fundamentally different from inflicting pain on innocents, and therefore is not inherently wrong and it's known as retributive one (Thomas Hobbes, John Locke, Jean-Jacques Rousseau). Another group believes that punishment is a wrong that can be justified only if it results in a “greater good” and that one is the utilitarian group (Cesare Beccaria, Jeremy Bentham, Immanuel Kant) (Murphy 1995).

During primal community's existence, sanctions were corporate and executed by community, but also were individual and had a goal to exclude the perpetrator from their community. In time of lack of independence, if an individual was banned from a community, such sanction had a severity of a death penalty.

In primitive society, the criminal justice management was absent on the light of brutal and retributive system of savage justice, as justice used to be achieved by the various means of instinct of savage of self-redress and cruelties merely by retaliating to any sort of threat to life or property (Hoebel, 1967, p. 355).

Also, revenge was often used to punish individuals and protect members of the gens, brotherhood or tribe. It was used in cases where someone was murdered, raped, injured, or something was stolen. Revenge in those times was also corporate (it could have been executed by any member of the community), was based on instincts, was sacral, inadequate, couldn't lose its validity.

Retributive punishments were designed inside the tribal system of justice not only for external encroachments, but also against internal violations of tribal unit's disciplines and customs, as many actions were considered crimes against the whole community and punishable with sanctions of killing, expulsion, forfeiture or ruination, those crimes including poisoning and like offenses, sacrilege, witch-craft, breaches of the hunting rules, sexual taboos of incest or other sex offenses (Stearns, 1936, p. 221).

It was the primal *lex talionis* where the modus and the ratio of the sanctions were onto the community of the victim. With the partition of labor and changes in the way of trading, revenge was not used anymore, and communities started using composition as a new and more effective sanction than the first one.

The situation under Islamic law was not that much deferent, as the retaliation assumed to be the basic justification for most of penal sanctions. Retaliation under Islamic Shari'ah law (Islamic law) refers to as *Qisas*, and other known types of punishment recognized by this law, including prescribed punishment *Hudoud*, discretionary penalty *Taazir* and blood money penalty *Diyat* are based on the

principle of retaliation and vengeance (Alasti, 2007, p. 4; Faqir, 2015, p. 3). The principle of *lex talionis* or law of retaliation is equivalent to the Islamic concept of *Qisas*, which applies to crimes of murdering and bodily assaulting upon the final approval of the injured party or victim's family, they have the right to stop the death execution and replacing it with material compensation or demand the death penalty's execution or forgive the offender without demanding any compensation (Seyed, 2002, p. 115).

During Old and Medieval Ages, sanctions were either eliminatory, such as death penalty, exile and deportation, working on galleys; or bodily, such as mutilation and whipping. Also, confiscation and fines were used for crimes against property. At some territories, states used sanctions of social degradation, for example, stigmatization. With the first prisons, forced labor was everyday life for prisoners, because they should suffer for what they've done (Sulejmanov, 1999).

The death system was terrifying during Roman Empire, as it is executed by barbaric means of scourging or beating to death, torture, exposure, deception, crucifixion, exposing to wild animals, *vivicombustion* or burnt alive and penalty of the sack. However, decapitation was a common method of execution and standard for all members of lower classes of the society, while sack penalty was imposed on persons found guilty of *parricidium* and *Vivicombustion* was applied in arson, state enemy and slaves related cases, and later the rule of free decision of death was applied only for offenders from upper classes during the regime of *Claudius* emperor, such sentence was considered as ordering someone to commit suicide (Richard, 1996, p. 242).

Modern sanctions systems' purpose is punishment (to inflict a kind of loss for the perpetrator and to express unacceptability of his actions); incapacitation (the perpetrator is restrained and his opportunities for committing a new crime are limited); deterrence (the perpetrator will be deterred from new crimes and also, the other people will be deterred from imitating his behavior); rehabilitation (measure which function is to

contribute to person desisting from future offences and to help him reintegrate in society); reparation (direct or indirect compensation for the harm which was inflicted by crime).

From repression to rehabilitation: Short historical overview of imprisonment roots and sense

Imprisonment as punishment is the only sanction which is known to every class society. For it to be even more strikingly it is the only sanction with more or less repressive and retributive elements, used during all that time. It has always been in the center of interest, because it is an action with which society wants to fulfill different and opposite goals of sanctions. It is something like two different sides of the same coin. In times when criminal policy was all about revenge and intimidation and today, when it is based on the idea of re - socialization and rehabilitation, imprisonment still exists in penal systems around the world. Even in such constellation of relations it is the most used sanction for suppression and prevention of criminal activities.

A paradigm is a way of seeing the world or of organizing and making sense of knowledge. We can use the well-worn paradigms of conservatism and liberalism to illustrate the philosophy of imprisonment. The conservative ideology operates under the assumption that human beings have free will, can make rational choices, and deserve the logical outcomes of their choices. The liberal view of human behavior holds that behavior is influenced by upbringing, by affluence or poverty, by education, and by life experiences in general. The radical paradigm calls into question the very existence of the social order; radicals reject private ownership of property and are in favor of restructuring socioeconomic relations (Durham 1994, pp. 17–20; Pollock, 2014, p. 9).

In a situation in which there are a lot of fractions whose authors' opinions are the ones that imprisonment's structure should be changed so it can comply its objectives. Or if it is not possible then change it with new measures that will help in offenders' rehabilitation (Radovanovic, 1969). Prisons throughout history and today are still observed as "criminal

universities” where inmates study new techniques, meet other inmates, share their criminal experience, become better criminals (Hentig, 1959).

For the first time, imprisonment was used to detain offenders while they were waiting for their execution. It was not used as sanction and it only had a secondary role. In the period of the slaveholding society, prisons and imprisonment had only preventive roles and were not used for punishing criminals.

In the period of feudalism, especially the early years, imprisonment still had the role of a preventive measure, changing its dimensions in the late years of the existence of this social system. The end of XVIII and the beginning of the XIX Century is the period when social, political and economic conditions were convenient for affirmation of imprisonment as suitable instrument for crime suppression.

Imprisonment had an important place in European criminal procedure in the Middle Ages, but not as a sanction. The rule of the *ius commune*, constantly repeated by the jurists and codified in statutes like the Carolina, was that prisons were meant to detain and not to punish. In cases of serious crime the only function that the jurists conceded to imprisonment was pretrial detention, keeping custody of the accused while the court decided whether to acquit him or to convict and punish him with a blood sanction. This custodial or preventive” imprisonment is distinguished from the other common medieval usage that the jurists approved: coercive imprisonment designed to compel someone to take some other procedural step, characteristically the payment of a crown debt or a civil judgment debt (Langbein, 1976, p. 38).

In the process of developing and evolution of imprisonment there were few types of prison sentences that emerged. They are: imprisonment at hard labor (penal servitude), exile, prison, deportation and relegation.

Penal servitude included imprisonment with hard labor. It was the worst type of imprisonment, making lives of prisoners as bad as they can be. Inmates were wearing shackles on their hands and legs which made working even harder than it was.

Exile did not include hard and forced labor; inmates did not lose their civil rights and did not wear shackles. They were only accommodated in special prisons, far from their communities.

Prison is a temporary punishment which in the past included several levels, which depended from the execution regime, the type of the prison object, the sentence length, and of course, and the legal consequences for the offender.

Deportation was used until 1942, and mostly in cases of political delinquents. It included sending criminals from colonial forces to their colonies. This punishment was often used for dangerous criminals, and had positive acceptance by colonial societies. Why? Because it meant sending criminals away for a long time and maybe forever, and on the other hand securing work force for colonies.

Relegation in its sense is same as deportation, but was used for different categories of criminals. It was used for the first time in 1885, for professional delinquents and recidivists.

Punish or re - socialize? : Imprisonment as a sanction in Macedonian Penal System

As we already mentioned, imprisonment is a method used by states throughout all its history no matter which penal and criminal system are used, and no matter which structure of society is present. It has always been a theme of many discussions and a self-contradictory mean, because of its double nature thorn between repression and prevention. There is an inner collision between isolation, detention, re-socialization, preparation for a new life at liberty; all of those characteristics just with one important cause: to prevent the individual who was imprisoned to commit new crimes in future times.

Imprisonment is often used because of its wide possibilities for application towards offenders with different biophysical and social characteristics (gender, age, social status, etc.), as well as towards offenders who committed different kinds of crimes. Also, it can be used in cases of socio - pathological conditions, especially when those are connected with criminal activities. It can be combined with psychological characteristics of the offender and the kind of crime he/she committed; and can be combined with other punishments or sanctions. In comparison with other sanctions of

the penal system, imprisonment is used to eliminate factors which influenced and stirred up criminal behavior (Arnaudovski, Gruevska - Drakulevski, 2013).

In the Republic of Macedonia, imprisonment can only be applied as a main punishment. It cannot be shorter than 30 days, not even longer than 15 years. For crimes for which life imprisonment can be applied, courts can give a sentence of 20 years of imprisonment. If there was an intention by the offender to commit the crime than imprisonment of 15 years can be applied, but for qualified forms of the same crime, the court can pass a sentence of life imprisonment. What is important to mention is the fact that imprisonment cannot be applied as a punishment or sanction towards a person that didn't have 21 years of age in the time when he/she committed the crime (Art. 35 of the Criminal Code of the Republic of Macedonia)

Table N. 1

Applied sanctions in the Republic of Macedonia, in the period 1995 – 2015

Year	Total		Type of sanction															
	Convicted	Women	Punishments						Alternative measures									
			Total number of punishments	Main punishments		Secondary punishments			Total number of alternative measures	Probation		Probation with a						
			Imprisonment	Fine	Fine	A ban for performing a	A ban for driving a motor vehicle	Eviction of a foreigner from the	Probation	Probation with a	Probationary suspension of the criminal	Work for general	Court reprimand	House arrest	Convicted, but there is no sanction			
2007	9639	622	4694	2654	1861	78	/	57	44	4936	4298	423	/	/	1	214	/	9
2006	9280	560	4424	2596	1651	57	3	64	53	4849	4369	315	/	/	/	165	/	7
2005	8845	574	8689	7168	1521	112					4221	86				149		7
2004	8097	463	7889	6200	1689	61					3456	156				201		7
2003	7661	394	7467	5796	1671	123					2831	335				183		11
2002	6383	374	6216	4868	1348	79					2380	258				160		7
2001	5952	298	5830	4555	1275	93					2199	222				112		10
2000	6496	357	6347	4935	1412	72					2440	174				146		3
1999	6783	372	6619	5025	1594	41					2647	201				152		12
1998	6128	373	5835	4280	1555	16					2347	147				137		9
1997	4732	312	4609	3190	1419	43					1954	147				116		5
1996	6341	406	6203	4322	1881	17										127		8
1995	7711	554	7535	5464	2071	27										168		27

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2015	10	312	865	5848	2089	88	3	40	4464	4358	43	/	/	/	63	/	/	/	
2014	1168	3	1126	6263	2532	83	9	35	5417	5029	314	/	/	/	74	/	/	/	
2013	9539		701	5624	2400	49	/	16	3914	3667	137	/	/	/	110	/	/	/	
2012	9042		624	5475	2423	111	5	27	3565	3319	114	/	/	2	130	/	/	/	
2011	9810		661	5412	2223	81	1	17	4394	4052	189	/	/	/	153	/	/	/	
2010	9169		669	4882	2109	44	/	44	4283	3753	385	/	/	/	145	/	/	/	
2009	9801		695	4912	1960	32	2	32	4878	4238	460	/	/	180	/	/	/	11	
2008	9503		635	4434	1849	55	7	31	5059	4266	611	/	/	182	/	/	/	10	

Source: State Statistical Office of the Republic of Macedonia

Table N.2
Applied main punishments in the Republic of Macedonia, in the period 1995 - 2015

Year	Total number of convicted perpetrators	Applied main punishments														
		Total number of perpetrators convicted to imprisonment	Imprisonment								Total number of perpetrators convicted to fine	Fine				
			Life imprisonment (1997-)	20 years of imprisonment (1995 -	from 10 to 15 years	from 5 to 10 years	from 3 to 5 years	from 2 to 3 years	from 1 to 2 years	from 6 months to 1 years		up to 6 months	to 5000 denars	from 5001 to 100000 denars	from 10001 to 30000 denars	over 30001
1995	7711	5464		5	12	23	59	55	272	852	4186	2071	684	498	640	249
1996	6341	4322		1	11	25	38	64	248	716	3219	1881	365	448	842	226
1997	4732	3190		/	9	11	44	35	162	500	2429	1419	266	1153		
1998	6128	4280		/	10	20	44	78	331	868	2929	1555	200	1355		
1999	6783	5025	1	/	12	31	70	144	627	1015	3125	1594	136	1458		
2000	6496	4935	/	/	13	37	77	148	615	1100	2945	1412	102	1310		
2001	5952	4555	/	/	8	31	77	136	587	991	2725	1275	111	1164		
2002	6383	4868	/	/	10	24	84	134	627	1090	2899	1348	136	1212		
2003	7661	5796	7	/	18	26	105	186	796	1346	3312	1671	140	1531		
2004	8097	6200	/	/	32	38	128	178	570	1435	3819	1689	136	1553		
2005	8845	7168	3	/	9	54	139	214	684	1805	4260	1521	63	1458		

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2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
10312	11683	9539	9042	9810	9169	9801	9503	9639	9280
3524	3507	3064	2807	3020	2596	2808	2430	2654	2596
4	/	/	1	5	2	1	6	/	2
3	1	/	2	5	/	1	1	/	1
24	24	22	27	18	21	19	15	23	13
120	97	114	74	74	46	72	79	50	39
294	325	161	114	125	121	124	108	117	101
312	285	198	157	177	210	227	181	198	167
696	653	613	480	592	506	595	496	484	425
795	750	808	746	794	693	704	701	717	718
1276	1372	1148	1206	1230	997	1065	843	1065	1130
2089	2532	2400	2423	2223	2109	1960	1849	1861	1651
1	2	13	8	12	15	11	23	31	32
56	110	138	215	291	305	323	318	448	633
827	1226	1064	1162	962	985	903	708	716	694
1205	1194	1185	1038	958	804	723	800	666	292

Source: State Statistical Office of the Republic of Macedonia

The data gathered from the State Statistical Office regarding the applied sanctions during the period 1995 - 2015 (Table N.1), demonstrates a tendency of increase of the number of convicted perpetrators, starting from 2001 until the last year of this analysis (2015). In contrary the number of applied imprisonment as a main punishment there is a tendency of decrease of the number of such cases starting from 2006, which can be explained with incorporating of alternative measures into Macedonian Penal System since that specific year.

During the analyzed period imprisonment is dominant as main punishment which expresses repression as predominant philosophy, although there are changes after 2006. The incorporation of alternative measures unburdens this area, with decreasing the usage of imprisonment in cases of less serious crimes, where probation is used. Another often used alternative measure is court reprimand, which is used, especially in cases of first time offenders, because of its nature as the easiest alternative measure. What is important to be mentioned is the fact that since 2006, the alternative measure work for general benefit is used only 3 times (once in 2007 and twice in 2012), that clearly shows a discrepancy in the process of using alternative measures. Namely, this measure's nature and essence is to re - educate and correct their behavior by using their working forces for a greater good, this time for the good of the community. Is this an institutions politics not to apply this sanction? Or is a problem connected to one's society's mentality?

In today's society, the punishment of criminal wrongdoers is an indispensable part of state power. Through the imposition and enforcement of sentences, a state can deprive individuals of their liberty, depending on a jurisdiction's specific penal-legal provisions and the discretion of criminal justice players involved. Still, punishment has been considered "a deeply problematic and barely understood aspect of social life, the rationale for which is by no means clear" (Garland, 1990, p. 3).

In the fundamental work *Discipline and Punish* (1975), Foucault examined the change in modes of punishment from pre-modern to modern (capitalist) society. By focusing on the nature of punishment, Foucault found that fundamental changes in the preferred modes of punishment have occurred from pre-modern to modern society. While punishment was not to target the body anymore (i.e., through corporal and capital punishment), its new objective became the soul (i.e., through penal confinement). What emerged

was a “new art of punishing,” not necessarily with the goal of punishing less but of punishing in a more targeted manner. Imprisonment is what should change the soul; destroy the “devil” inside the one who did not respect society’s will.

The numbers from Table N.2 regarding the applied main punishments illustrates the structure of prison length punishments during the period 1995 - 2015. Our conclusion using the above mentioned data is that in our country courts uses short imprisonment sentences, in which the dominant one is up to 6 months. Also, frequently used is the one from 6 months to 1 year of imprisonment. These sentences are very often changed with probation that is the case for less serious crimes or first time offenders. Their role is to leave the perpetrator in his community, make him aware that his actions are not accepted and also make him aware of what will happen if he commits another crime during the probation period, but also afterwards. However, there are a significant number of sentences of imprisonment between 1 and 5 years, those classified as middle length sentences. They are used in cases of more serious crimes, when offenders are recidivists and when an alternative measure cannot be used. Long length sentences are those between 5 - 20 years, not considering life imprisonment which is most rarely used, but between 2008 and 2012 is present in every year’s court statistics. These sentences are not recommended to be used often, because of the fact that humans after 15 years passed in an institution are not capable of living normally back into their community. But, punitively analyzed they are inevitable for dangerous criminals and serious criminal activities.

In the Scandinavian countries Denmark, Finland, and Sweden, criminal offenders convicted of murder and a select few other serious crimes can be sentenced to life in prison. Yet, life sentences are rarely imposed, even in the case of murder, and typically do not mean that the offenders sentenced to life will really remain imprisoned for the rest of their lives. Instead, life imprisonment rarely exceeds fifteen years behind bars in all three countries (Schartmueller, 2015).

In such constellation of numbers and used sanctions we may conclude that Macedonian courts have a bit repressive criminal policy towards offenders, using imprisonment very often. Is it because of the two sided nature of imprisonment, even in times when Council of Europe’s Commission every year gives negative reports to our penitentiary institutions?

Pratt (2008), for example, argued that going to prison alone could be seen as punishment, but it would also depend on how “degrading” and “debasing” the life behind bars is allowed to be to determine either penal

leniency or punitiveness. Tonry (2001; 2004) chose yet another perspective. He noted that levels of punitiveness could also be determined by looking more closely at country-specific sentencing policies. In relatively lenient penal environments, sentencing policies tended to be more limited, and they typically reflected prevailing public attitudes about punishment (Tonry, 2001). On the other hand, Green (2009) found that harsh public attitudes towards criminal offenders might drive tough-on-crime solutions, such as had been the case in the United States and Great Britain in the past few decades. Finally, Lappi-Seppälä (2007) suggested that the degree of penal severity was related to public sentiments (such as fears and levels of trust within society), as well as to the extent of welfare provisions, differences in income equality, political structures, and legal cultures. (Schartmueller, 2015, p. 10)

Conclusion

Sanctioning is an inevitable part of the circle between criminal behavior and community. It is the reaction towards unacceptable actions which are directed after destruction of something a community has built. Imprisonment is the only universal sanction known to every class society. Moving from a position of subsidiary measure to main punishment, imprisonment kept its core meaning, but changed its directions. Even in democratic societies it could not lose its repressive nature, although it is the preventive one which is primary.

The Macedonian Penal System is focused towards general and special prevention, by using special measures during their execution (appliance). Imprisonment should mostly work on special prevention, because during the execution the goal is to influence on the inmate's criminal behavior and detect the criminal etiology of his/her criminal activity. After being detected, specialized programs are used so the offender is re - educated and his behavior corrected. But is it possible to re - socialize dangerous criminals? Or rehabilitate easier crimes' offenders if they are institutionalized with other categories of perpetrators?

If rehabilitation is on the one side of the river, deprivation is on the other. Inmates feel it into every area of their life in prison. How can prisons

evade such situations? Can Scandinavian models of prisons and their level of imprisonment change and influence the number of convicted recidivists and crime's structure? Should we learn from them? Actually we should.

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