

PRISON SENTENCES IN THE REPUBLIC OF SERBIA WITH AN ANALYSIS OF COURT PRACTICE

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Abstract

The paper gives an overview of the hindermost reform of criminal legislation from May 2019 in relation to imprisonment in the Republic of Serbia. From a theoretical point of view, the legal provisions of imprisonment and life imprisonment for the most serious crimes in the criminal legislation of the Republic of Serbia have been analyzed. Along with arduous debate in scientific and professional circles, the amendment to the Criminal Code of the Republic of Serbia from December 1, 2019, introduced a life sentence for perpetrators of serious crimes. In this way, the previous long-term prison sentences of 30 to 40 years in prison are included in the sentence of life imprisonment. In relation to imprisonment, the Criminal Code prescribes a special minimum sentence of imprisonment which may not be less than thirty days and a special maximum sentence of imprisonment which may not exceed twenty years. The paper also contains an analysis of court practice regarding the pronouncement of prison sentences (prison and life imprisonment) as well as unconditional and conditional prison sentences for the convicted in the last seven years (2014-2020). Based on the conducted research and theoretical analysis, possible proposals were pointed out *de lege ferenda*.

Keywords: imprisonment, life imprisonment, reform of criminal legislation, the Republic of Serbia

1. INTRODUCTORY NOTES

In the last few years, the Republic of Serbia has largely harmonized its national legislation with European Union international documents and law. At the end of 2019, the criminal legislation of the Republic of Serbia underwent significant reforms in relation to imprisonment. The amendment to the Criminal Code from December 2019 caused sharp debate and disapproval in scientific and professional circles regarding the introduction of life imprisonment, without the possibility of conditional release for the exhaustively listed criminal offenses (aggravated murder, rape, intercourse with a minor, a pregnant woman and an incapacitated person with a fatal outcome).

We find the same decision in the national legislations of Great Britain, Germany, Belgium, the Netherlands, Latvia, Malta, Turkey, Hungary and the Slovak Republic.

The proposal for the introduction of a life sentence was initiated by the “Tijana Jurić” foundation¹. Tijana Jurić was a fifteen-year-old girl who was brutally raped and killed therefore, the stated amendment to the criminal law was unofficially named – „Tijana’s law“. This legal solution sent a message to the public that the perpetrators of the most serious crimes will be imprisoned for life, in order for justice to be served.

As one of the criminal sanctions prescribed by the Criminal Code of the Republic of Serbia² (in addition to a fine, work in the public interest and revocation of a driver’s license), imprisonment (imprisonment and life imprisonment) may be imposed on a perpetrator of a criminal offense who has been found guilty of a criminal offense.³ Until then, the highest prison sentences were 30 to 40 years in prison, which are now covered by life imprisonment.

In order to achieve the purpose of a sentence, it should be emphasized that the court in criminal proceedings will take into account all mitigating and aggravating circumstances of a particular case. The court renders a conviction consisting of two decisions, decisions of guilt and decisions on sentence.⁴ When the court finds that a criminal offense has been committed and that the perpetrator is guilty, it imposes a sentence on the perpetrator in order to express social condemnation, in order to influence the specific perpetrator not to commit criminal offenses in the future, but also to prevent other citizens from committing criminal acts. Through social condemnation, the victim receives a certain satisfaction for the harm and injustice done, and the law thus enhances.

2. CRIMINAL LAW REFORM IN RELATION TO PRISON

Imprisonment and life imprisonment that can be imposed for the most serious crimes, are two prison sentences in the Criminal Code of the Republic of Serbia.⁵ The prison sentence system is shown in Table 1.

¹ On August 21, 2018, the Court of Appeals in Novi Sad confirmed the verdict of the High Court in Subotica, which sentenced Dragan Đurić to 40 years in prison on June 15 for the murder of Tijana Jurić. See more at: <https://tijana.rs/>, accessed on 01/05/2021.

² Article 43 of the RS Criminal Code, Official Gazette of the Republic of Serbia, no. 85/05, 88/05 - corrected, 107/05 - corrected, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

³ For more on comparative decisions on imprisonment, see: Božić V, Simović M, *Kritički osvrt na reformu kaznenog zakonodavstva u odnosu na kaznu zatvora u Republici Hrvatskoj i Republici Srbiji*, Srpska pravna misao, 53/2020; p. 129-142.

⁴ See: Đurđević Z, *Odluka o kazni – kaznenoprocesna pitanja*, Hrvatski ljetopis za kazneno pravo i praksu, Zagreb, vol. 11, broj 2/2004, p.751-782.

⁵ See previous solutions in: Božić V, *Kazna zatvora u kaznenom zakonodavstvu Hrvatske i Srbije – osvrt na pojedina zakonska rješenja uz prijedloge de lege ferenda*, Collection of papers „The Role of Law in Social Development“, Faculty of Law Priština, Kosovska Mitrovica, Tom II, 2019, p. 91-106.

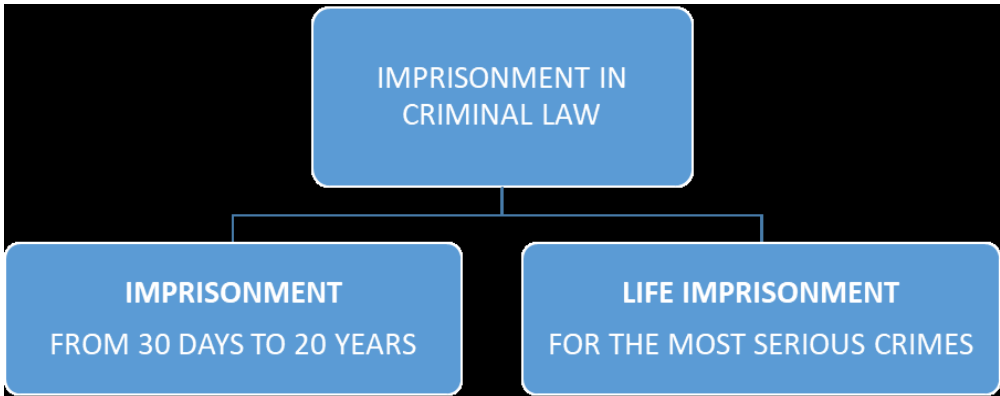


Table no 1. Imprisonment in the Criminal Code of Serbia

The court may impose a prison sentence of a minimum of 30 (thirty) days. The maximum term of imprisonment is 20 (twenty) years. Imprisonment is predicated in full years and months, while imprisonment for up to 6 (six) months may be predicated in days.⁶ If the court considers that the purpose of the sentence can be achieved by serving a prison sentence at home, and it is a prison sentence of up to one year, it may decide that the convict shall serve the sentence of imprisonment at home. It should be noted that a house arrest sentence cannot be imposed on a perpetrator of a criminal offense against marriage and family, who lives in the same apartment or under the same roof with the injured party.⁷ When making a decision, the court will take into account the personality of the perpetrator, his previous life, the degree of guilt and his behavior and conduct after committing the criminal offense.⁸ If a convict serving a prison sentence at home leaves his apartment or the house where he lives for more than six hours, or if he voluntarily and independently leaves the premises of his stay and residence twice for up to six hours, the court shall issue a decision orders for the person to spend the rest of the prison sentence in the prison.⁹

For the most serious criminal offenses and the most serious forms of serious criminal offenses, in addition to imprisonment, a life sentence may be exceptionally imposed, provided that such a severe sentence of deprivation of liberty cannot be imposed on a person who at the time of the commission of the criminal offense had

⁶ Article 45 paragraph.1. and 2. Criminal Code of the Republic of Serbia (CC RS), Official Gazette of the Republic of Serbia, no. 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

Art.45. paragraph 1. i 2. CC RS, Official Gazette of the Republic of Serbia, no. 85/05, 88/05 - corr., 107/05 - corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16.

⁷ Art.44.a. paragraph 1. i 2. CC RS

⁸ Art.45. st.5. CC RS

⁹ Art.44.a paragraph 1. i 2. CC RS

not reached the age of 21.¹⁰

Introduced life imprisonment in the criminal legislation of the Republic of Serbia acknowledges the parole provided that the convicted person has served two thirds of his sentence in prison. In addition to the above stated basic condition, the Criminal Code imposes other additional conditions that must be met cumulatively: if the convict has improved while serving his sentence and can be reasonably expected that he will be well-behaved in freedom, and especially if does not commit a new crime until the expiration of the time for which the sentence was imposed.¹¹

In assessing whether the convict will be released on parole, the court will particularly appreciate his conduct while serving his sentence, the performance of work obligations with regard to his ability to work, as well as other circumstances that indicate that the convict will not commit a new crime while on parole.¹² It should be pointed out that a convict who has been punished twice for serious disciplinary offenses while serving his sentence and whose benefits have been taken away cannot be released on parole.¹³ It should also be noted that the court may determine in the decision on conditional release that the convict is obliged to fulfill some of the obligations provided by the criminal law provisions. According to paragraph 5 of Art. 46 of the Criminal Code, the court may not conditionally release a convicted person for criminal offenses: *aggravated murder* - who takes the life of a child or a pregnant woman (Article 114, paragraph 1, item 9), *rape* - if during the act the death of the person against whom the act was committed occurred or if the act was committed against a child (Article 178, paragraph 4), *intercourse over an incapacitated person* - if the act resulted in the death of the person against whom the act was committed or if the act was committed against a child (179 paragraph 3), *intercourse with a child* - if the child died as a result of the act (Article 180, paragraph 3) and *intercourse by abuse of position* - if the act was committed against a child, and the child died as a result of the act (Article 181, paragraph 5).

In table no.2. the conditions under which the court may conditionally release the convicted person are stated.

¹⁰ Art.44.a. paragraph 2. CC RS

¹¹ Art.46. paragraph 1.

¹² *Ibid.*

¹³ *Ibid.*

THE COURT MAY CONDITIONALLY DISMISS THE CONVICTED PERSON

- 1- who is sentenced to life imprisonment, if he has served twenty-seven (27) years
- 2- if he has improved while serving his sentence and it can be reasonably expected that he will behave well in freedom
- 3- if he has not committed a new criminal offense by the end of the time for which the sentence was imposed
- 4- who was convicted of:
 - crimes against humanity and other goods protected by international law (Articles 370 to 393a)
 - criminal offenses against sexual freedom (Articles 178 to 185b)
 - criminal offense of domestic violence (Article 194, paragraphs 2 to 4)
 - criminal offense of unauthorized production and distribution of narcotics (Article 246, paragraph 5)
 - criminal offenses against the constitutional order and security of the Republic of Serbia (Articles 305 to 321)
 - criminal offense of accepting bribes (Article 367)
 - criminal offense of bribery (Article 368)
- 5- who has been convicted by special departments of the competent courts, in proceedings conducted in accordance with the jurisdiction determined by the law governing the organization and competence of state bodies in the fight against organized crime, corruption and terrorism.
- 6- who has been sentenced to imprisonment more than three times, and there has been no erasure or there are no conditions for erasing any of the convictions.

Table no 2. Conditions for parole¹⁴

The European Court of Human Rights has confirmed in its decisions that the imposition of life imprisonment on convicts in the national legislation of the Member States must be in accordance with Art. 3. European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture, inhuman or degrading treatment or punishment.¹⁵ The decisions state that the national laws of the

¹⁴ Art. 46. CC RS

¹⁵ Article 3. The Convention for the Protection of Human Rights and Fundamental Freedoms, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf (01.05.2021.)
Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950, European

member states should adopt provisions according to which the competent courts will be able to review the need to serve a life sentence for a convict, after 25 years of serving a sentence. The European Court of Human Rights considers that it is incompatible with human dignity to deprive someone of their liberty without trying to rehabilitate them and give them a chance to regain their freedom one day.¹⁶ At the national level, courts should be obliged to examine whether the circumstances of progress have changed significantly for convicts, which no longer justify further prison sentence. To clarify, the provisions relating to the examination of the justification of further serving a life sentence by convicts should be based on penological reasons for and against, such as sentencing, deterrence from re-offending, public protection and rehabilitation of convicts.¹⁷

It should also be noted that the European Court of Human Rights has taken the view that stricter control is needed in granting pardons by the President of the Republic in the event that there are no conditions for the conditional release of a convict from serving a life sentence, because in cases of pardons that are given only in exceptional cases, there are no provisions that oblige to determine the existence of penological reasons for the justification of pardons.¹⁸

We point out to Resolution (76) 2 on the treatment of convicts serving long prison sentences, which was adopted 45 years ago, on 17 February 1976, by the Committee of Ministers of the Council of Europe at the 254th meeting of the Ministers' Deputies. With the mentioned Resolution, the Committee of Ministers of the Council of Europe recommended to the member states to provide in their national legislation the possibility for the convict, after eight to fourteen years from imprisonment, to reconsider the need and justification for the continuation of a prison sentence.¹⁹ According to the Recommendation (item 5), the convict must be provided with the right for the revision of the sentence of life imprisonment, and he should be informed about the possibilities of conditional release at the beginning of serving the sentence.

Convention on Human Rights, available at: https://www.echr.coe.int/Documents/Convention_BOS.pdf (01.05.2021).

¹⁶ See: European Court of Human Rights, CASE OF HARAKCHIEV AND TOLUMOV v. BULGARIA, (Applications nos. 15018/11 and 61199/12), STRASBOURG, 8 July 2014, available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-145442&filename=001-145442.pdf> (01.05.2021.)

¹⁷ See: European Court of Human Rights, CASE OF MURRAY v. THE NETHERLANDS (Application no. 10511/10), JUDGMENT, STRASBOURG, 26 April 2016, available at: <https://www.conjur.com.br/dl/holanda-prisao-perpetua-tratamento.pdf> (01.05.2021.)

¹⁸ See: European Court of Human Rights, CASE OF PETUKHOV V. UKRAINE No. 2, JUDGMENT, STRASBOURG, 26 March 2019, available at: <https://strasbourgobservers.com/2019/03/26/petukhov-v-ukraine-no-2-life-sentences-incompatible-with-the-convention-but-only-in-eastern-europe/>, (01.05.2021.)

¹⁹ Item 12. COUNCIL OF EUROPE COMMITTEE OF MINISTERS RESOLUTION (76) 2 ON THE TREATMENT OF LONG-TERM PRISONERS¹ (Adopted by the Committee of Ministers on 17 February 1976 at the 254th meeting of the Ministers' Deputies), available at: <https://rm.coe.int/16804f2385> (01.05.2021.)

3. PRISON SENTENCE - ANALYSIS AND RESEARCH OF COURT PRACTICE

The paper analyzes the sentences imposed on adult convicts in the Republic of Serbia in the seven-year period from 2014 to 2020. The analysis includes all prison sentences, from life imprisonment (40 years), prison sentences from 30 to 40 years, prison sentences from 15 to 20 years, from 10 to 15 years, from 5 to 10 years, from 3 to 5 years, from 2 up to 3 years, from 1 to 2 years, and short-term imprisonment of less than one year (from 6 to 12 months, from 3 to 6 months, from 2 to 3 months and imprisonment for up to 2 months).

This analysis is visible in the figures under ordinal numbers 4 and 5 and in chart no.1.

P R I S O N S E N T E N C E S	2014	2015	2016	2017	2018	2019	2020
TOTAL	13026	8820	9419	8220	7408	6772	6150
40 years	2	4	5	2	3	4	-
30 - 40 years	11	13	9	11	7	4	8
15 – 20 years	23	3	22	18	12	13	14
10–15 years	59	34	49	38	29	36	50
5–10 years	191	171	191	156	125	150	138
3–5 years	677	550	707	628	616	589	480
2–3 years	947	875	930	770	753	798	631
1–2 years	1631	1438	1520	1448	1256	1293	1137
6 - 12months	3184	2422	2424	2199	1860	1664	1562
3–6months	3772	2116	2269	2000	1835	1498	1481
2–3months	1899	864	965	757	687	586	511
Up to 2 months	630	330	328	193	225	137	138

Table no 3. Adults sentenced to imprisonment in the period from 2014 to 2020 in the Republic of Serbia²⁰

²⁰ Adult perpetrators of criminal offenses in 2014, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offenses in 2015, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offenses in 2016, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offenses in 2017, Bulletin of Reporting, Indictments and Convictions,

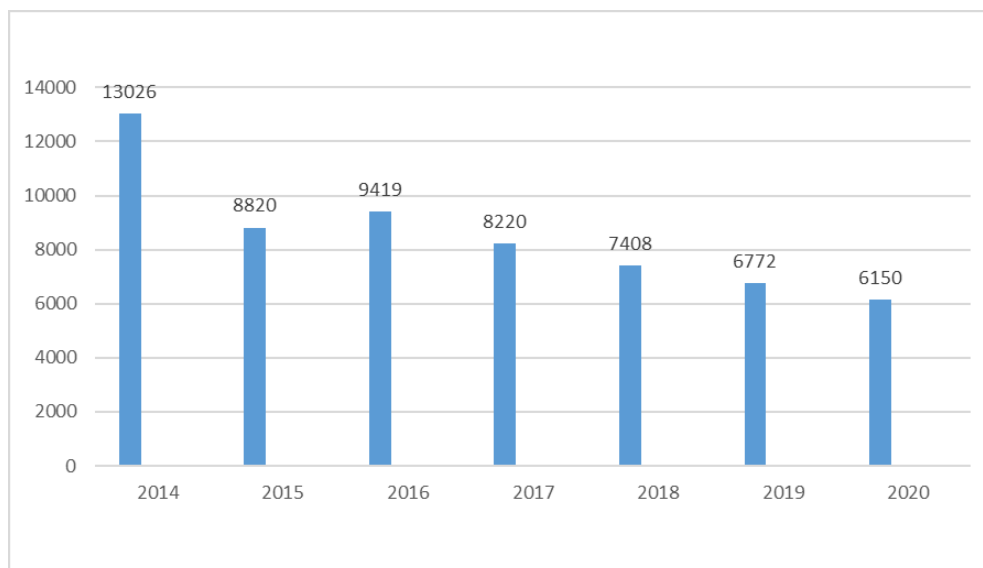


Chart no 1. Sentenced to prison 2014 – 2020.

The highest number of prison sentences was noted in 2014 (13026), and the lowest in 2020 (6150). What we notice first is the gradual decline from year to year in the number of prison sentences imposed. Thus, in 2020, 53% fewer prison sentences were imposed than seven years earlier.

If we consider each year of the observed period, we can point out that in 2014, the most prison sentences were for three to six months (3772), then imprisonment from six months to one year (3184) and imprisonment from two to three months (1899). In 2015, the situation changed somewhat, with the number of prison sentences being significantly lower than in the previous year. Thus, we have the most sentences of imprisonment from 6 to 12 months (2422), then imprisonment from 3 to 6 months (2116), and imprisonment from 1 to 2 years (1438). We can conclude that in terms of the frequency of imprisonment, prison sentences of three months to two years are in the first place, which persisted for the next three years.

Belgrade, Republic Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offenses in 2018, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offenses in 2019, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offenses in 2020, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

In 2016, the most sentences were imprisonment for more than six months to one year (2424), followed by imprisonment for three to six months (2269) and the third place for imprisonment for 1 to 2 years (1520). In 2017 and 2018, the situation is almost identical. In 2017, most prison sentences were imposed for more than six months to a year (2199), then imprisonment for three to six months (2000) and imprisonment for 1 to 2 years (1448).

In 2018, the most sentences were imprisonment for more than six months to a year (1860), followed by imprisonment for three to six months (1835) and third place for imprisonment for one to two years (1256).

However, in 2019 and 2020, there was a significant decline in the total number of prison sentences imposed compared to the previous period. Thus, in 2019, in the first place is still a prison sentence of 6 to 12 months (1664), in the second place is a prison sentence of three to six months (1498) and in the third place is a prison sentence of 1 to 2 years (1293). In the past 2020, there was a decline in the imposition of prison sentences, in the first place is still a prison sentence of 6 to 12 months (1562), in the second place a prison sentence of 3 to 6 months (1481), and in the third place a prison sentence from 1 to 2 years (1137).

From the above analysis, we can conclude that most short-term prison sentences were imposed, however, the question arises as to whether the purpose of punishment has been achieved. A greater effect in sentencing convicts, however, would be obtained in imposing alternative sanctions, such as work in the public interest, than through unconditional short-term imprisonment. It should be emphasized that suspended sentences are very questionable in terms of achieving the purpose of punishment because the convict, in the case of a suspended sentence, actually understands the conviction as acquittal,²¹ because *de facto* he did not receive any imprisonment that would prevent him from committing any more criminal offense.²² Consideration should be given to whether the imposition of a suspended sentence is justified in all cases and whether the purpose of punishment has been achieved in each individual case *in concreto*.

Although there have been fewer and fewer prison sentences in recent years, short-term prison sentences still take the lead. It is to be assumed that the court is willing to immediately issue a serious reprimand to the perpetrator as well as social condemnation for the committed crime. On the other hand, it should be emphasized

²¹ See more: Krstulović A, Šćepanović M, *Utjecaj izmjena Kaznenog zakona na mogućnost i učestalost primjene uvjetne osude (i njihov daljnji utjecaj na primjenu instituta kaznenog materijalnog i procesnog prava)*, Hrvatski ljetopis za kazneno pravo i praksu, 2006, 13 (2), p. 617-655.

²² Božić V, *Kaznenopravne sankcije u zakonodavstvu Republike Hrvatske – kritički osvrt i analiza stanja uz prijedloge de lege ferenda*, Zbornik radova Udruženja za međunarodno krivično pravo, Tara, 05/2019, p. 319-334.

More about the suspended sentence, see: Aljinović N, *Djelomična uvjetna osuda i njezina primjena u praksi s prikazom sustava uvjetne osude u novom kaznenom zakonu*, Zagrebačka pravna revija, 2017, 6 (3), p.337-367.

that a serious decline in the imposition of prison sentences is recorded by short-term imprisonment of up to 2 months, which the courts imposed 630 times in 2014, and in the last year of the observed period 2020, only 138 times.

We can note that a large number of prison sentences ranging from two to five years were noted down, which was maintained throughout the years of the observed period. Imprisonment sentences of 2 to 5 years in 2014 were noted (1624), in 2015 (1425), in 2016 (1637), in 2017 (1398), in 2018 (1369), in 2019 (1387) and 2020 (1111), which indicates a certain constant.

The sentence of five to ten years in prison, although numerically much less represented, is still relatively often imposed by courts. In the observed seven-year period, the sentences of 5 to 10 years in prison ranged from (191) imposed in 2014, (171) imposed in 2015, (191) imposed in 2016, (156) imposed in 2017. year, (125) pronounced in 2018, (150) in 2019 and (138) in the last year of the observed period, 2020.

The number of imprisonment sentences of 10 to 15 years ranged from 29 to 59, while the number of prison sentences of 15 to 20 years ranged from 3 sentences in 2015 to 23 prison sentences in 2014.

In court practice, in the observed period, the most severe sentences of thirty to forty years of imprisonment were imposed, as well as a sentence of imprisonment of forty years. Long-term imprisonment from 30 to 40 years was imposed in each year of the observed period, the most were imposed in 2014 and 2017, 11 prison sentences, and the least, only 4 such prison sentences in 2019. In 2015, (13) prison sentences of 30-40 years were imposed, in 2016 (9) sentences, in 2018 (7) sentences, and in 2020 (8) prison sentences of 30 - 40 years. The sentence of 40 years in prison was imposed in two cases, in 2014 and 2017, and in 5 cases in 2016. In 2020, no 40-year life sentence was imposed.

In 2020, the most numerous criminal offenses for which adults have been convicted are criminal offenses against: property (25.6%), marriage and family (14.3%) and human health (19.4%), while imprisonment makes up 24.1% of all sentences, and suspended sentence 55.6%.²³

At least prison sentences were imposed in 2020 (10%), which is also shown in Figure no. 1.

²³ Adult perpetrators of criminal offenses in 2020, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

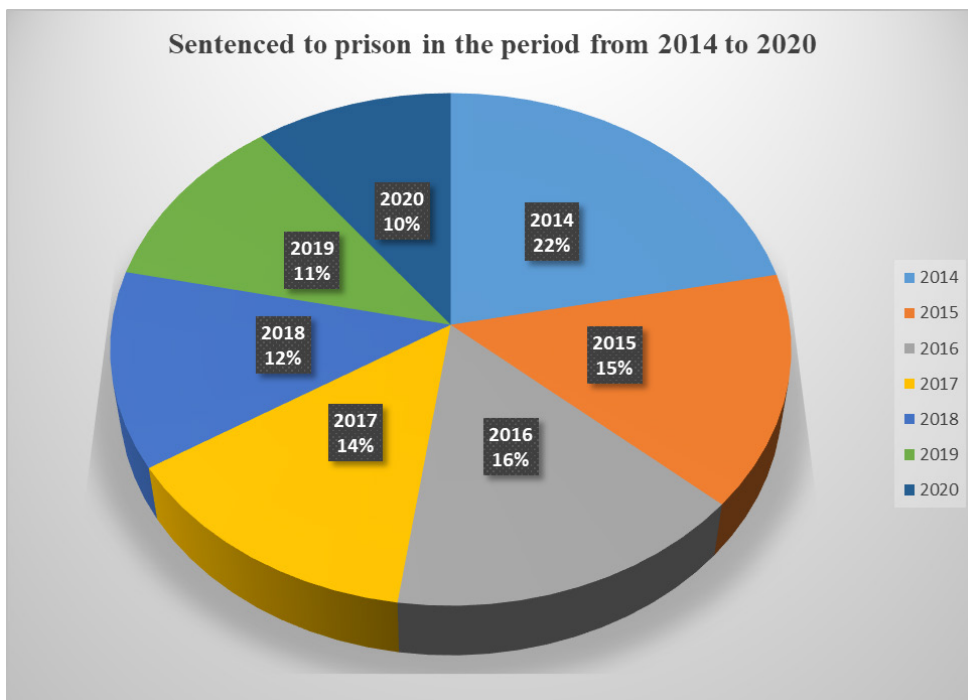


Figure no 1. Sentenced to prison in the period from 2014 to 2020.²⁴

In table no.5. and chart no.2. the total prison sentences imposed (unconditional prison sentences and suspended prison sentences) in the observed seven-year period, from 2014 to 2020, are presented.

The highest number of total prison sentences was recorded in 2015 (31333), and the lowest in 2020 (20329).

Of the total number of prison sentences, in 2014, 41.58% of unconditional prison sentences were imposed, while 58.42% were suspended prison sentences. In 2015, the situation changed a lot in favor of suspended prison sentences, so unconditional prison sentences were represented by only 31.38 %, while suspended prison sentences were 68.62%. In 2016, we had 34.94% of unconditional prison sentences and 65.06% of suspended sentences. In 2017, of the total prison sentences imposed, 31.41% were unconditional prison sentences, while 68.59% were suspended prison sentences. The same situation marked 2018, with 30.51% of unconditional prison sentences and 69.49% of suspended prison sentences. The trend is almost identical in the last two years of the observed period. Thus, in 2019, 29.62% of unconditional prison sentences and 70.38% of suspended prison sentences were recorded. In 2020, of the total prison sentences imposed, 30.25% were unconditional and 69.75% were

²⁴ Source: Republic Statistical Office of the Republic of Serbia.

suspended sentence. We can conclude that in recent years the ratio of imposing unconditional and conditional prison sentences has been 1: 2 in favor of suspended prison sentences.

ADULTS SENTENCED TO UNCONDITIONAL AND CONDITIONAL IMPRISONMENT FROM 2014 TO 2020							
	2014	2015	2016	2017	2018	2019	2020
TOTAL	31333	28110	26960	26168	24288	22865	20329
UNCONDITIONAL IMPRISONMENT	13026	8820	9419	8220	7408	6772	6150
CONDITIONAL IMPRISONMENT	18307	19290	17541	17948	16880	16093	14179

Table no.4. Adult convicts sentenced to unconditional and conditional imprisonment in the period from 2014 to 2020.²⁵

²⁵ Adult perpetrators of criminal offenses in 2014, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.
 Adult perpetrators of criminal offenses in 2015, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.
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 Adult perpetrators of criminal offenses in 2020, Bulletin of Reporting, Indictments and Convictions, Belgrade, Republic Statistical Office of the Republic of Serbia.

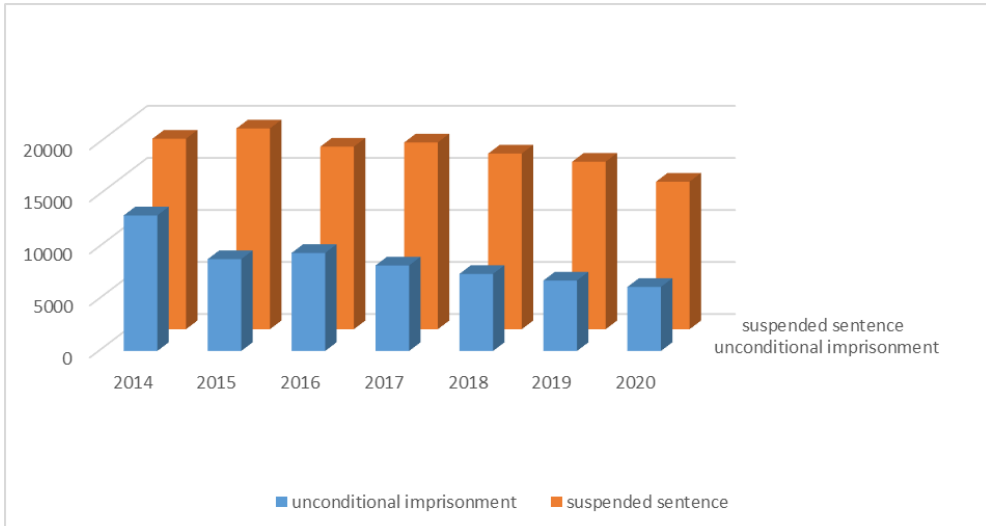


Chart no2. Suspended sentence and Unconditional imprisonment, 2014 – 2020.²⁶

4. CONCLUDING REMARKS

Imprisonment is a necessary repressive measure provided by the Criminal Code in the suppression of criminal offenses. Based on a theoretical review through the reform of criminal legislation regarding the imposition of imprisonment and research of the case law of imprisonment in the Republic of Serbia, we came to certain conclusions in the paper.

„Tijana’s law“ (Law on Amendments to the Criminal Code of December 1, 2019) introduced a life sentence, which included the highest prison sentences until then, lasting from 30 to 40 years in prison. The stated decision was adopted, although it was obstructed by certain groups of experts and scientists. It should be emphasized that the sentence of life imprisonment is the only possible sanction provided for the most serious forms of criminal offenses and as such certainly has its justification in the criminal legislation of the Republic of Serbia. It is important to note that on the one hand, the adopted decision regarding the conditional release of a convict serving a life sentence is justified, however, on the other hand, it should be pointed out that such a decision is contrary to Art. 3. European Conventions on Fundamental Human Rights and Freedoms.

Namely, according to the Criminal Code of the Republic of Serbia, conditional release of a convict serving a life sentence is not possible in the case of the following serious criminal offenses, namely: 1) aggravated murder - who kills a child or a pregnant woman, 2) rape -if during the act the death of the person against whom the

²⁶ *Ibid.*

act was committed occurred or if the act was committed against a child, 3) intercourse over an incapacitated person- if the act resulted in the death of the person against whom the act was committed or if the act was committed against a child, and 4) intercourse with a child and intercourse by abuse of position -if the child died as a result of the aforementioned criminal offenses.

If a life sentence without the right to parole becomes final, the provision of the Convention on Fundamental Rights, which prohibits torture, inhuman or degrading treatment or punishment, is violated, which is the position of the European Court of Human Rights. Therefore, in order for a life sentence to be humane and humiliating, the convict must be given the opportunity from the court to review the sentence after a certain amount of time spent serving the sentence and to determine in the proceedings whether it is necessary for the convict to continue serving the prison sentence. If the convict has largely recovered from the commission of the criminal offense and if it is not necessary to continue serving the sentence, the court may release the convict on parole.

In the conducted case law research, we were convinced that in the past seven years (from 2014 to 2020) there was a rapid decline in the imposition of short-term prison sentences.

However, we still believe that the problem is short-term prison sentences, which are still imposed by the courts in a large number of cases, because they do not achieve the purpose of punishment. Therefore, we suggest that when deciding on the type of criminal sanction, consideration should be given to replacing short-term prison sentences with other, alternative sanctions that will affect the convict more and which will adequately express social condemnation of the perpetrator for the crime.

Likewise, the exceptional prescribing of short-term prison sentences and the application of alternative criminal sanctions can solve the problem of prison overcrowding and reduce the number of prisoners serving sentences in penitentiaries. The problem of overcrowding in penitentiaries has recently been contributed to by the institute of plea agreements between defendants and the prosecution, which is in favor of the growing number of decisions on sentencing in the form of suspended sentences and work in the public interest.

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