

THE EFFECTS OF ALTERNATIVE MEASURES IN MACEDONIAN CRIMINAL LEGISLATION

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Abstract:

Alternative measures were introduced into the Macedonian penal system in 2004 with the aim of reducing prison overcrowding and strengthening the application of the principle of individualization. The aim is to apply community treatment for minor crimes, i.e. the perpetrator is not placed in a penitentiary institution.

This paper has as its subject of research the effects of the application of alternative measures in practice, starting from the fact that 20 years have passed since their normative regulation.

The results of the research showed that the essence of the alternative penal policy in North Macedonia has not been achieved. Namely, for a long time there was an institutional gap that imposed the need to create a Probation Service through the adoption of the Probation Law.

The first results of the Probation Service appeared in 2019. The research shows that in the following years the numbers have improved, but institutional inconsistency, different approaches and poor implementation of measures requiring supervision in the community have been shown.

The research showed that even after 20 years, the dominant alternative measure is the suspended sentence (without supervision), in fact, this measure has retained the monopoly it had before the introduction of alternative measures. In addition, there has been no significant reduction in the prison population in order to adequately treat convicts in prison and their rehabilitation.

The research applied the methods of content analysis and the statistical method, and also used data from several competent institutions.

Keywords: *treatment in the community, probation, resocialization, warning, assistance and supervision,*

Introduction

The system of criminal sanctions represents the criminal policy of a particular state, the social reaction to protect the highest values defined as the object of protection. In a democratic society, such values are human freedoms and rights (Landman, 2018) and the lawful functioning of state institutions.

Depending on the degree of achievement of the set goals, criminal policy is subject to change in order to align with the needs of society and create an effective system for the protection of social values (Hamerton, Hobbs, 2014).

Alternative sentencing policy is a product of such changes, which developed in the second half of the 20th century (Council of Europe, 1992) and the beginning of the 21st century (Council of Europe, 2010), closely linked to the concept of restorative justice (Rogers, Miller, 2019). The concept of restorative justice is aimed at overcoming the harmful consequences of committing a crime through the active involvement of the parties concerned, i.e. the perpetrator, the victim and the community (Menkel-Meadow, 2007).

Alternative measures are a product of the idea that imprisonment should be a last resort for social reaction (Витларова, 2017). They are an expression of the tendency for restrictive application of imprisonment and for treatment and reintegration of perpetrators outside of prison. Alternatives to

prison are understood as sentences, measures and regimes for serving it that enable complete or partial avoidance of prison, i.e. reduce the time spent in prison, whereby the convicted person is subject to treatment and supervision by professional and authorized persons in the community, while taking into account the position of the victim (Лажетик Бужаровска, 2003).

In the macedonian penal legislation, alternative measures were introduced in 2004 with the amendments to the Criminal Code (Службен весник на Република Македонија, 2004), whereby according to the law, the aim of alternative measures is to avoid imposing a sentence on the perpetrator for minor crimes when this is not necessary for legal protection and when it can be expected that the purpose of the punishment can be achieved by warning with the threat of a sentence (suspended sentence), only a warning (judicial admonition) or by measures of assistance and supervision of the perpetrator's behavior in the community.

The law prescribes the following alternative measures:

- 1) suspended sentence;
- 2) suspended sentence with protective supervision;
- 3) conditional suspension of criminal proceedings;
- 4) community service;
- 5) judicial admonition и
- 6) house arrest.

With the introduction of alternative measures, several directions were defined from which practical effects were expected.

Primarily, the creation of effective social control, that is, alternative measures are intended for perpetrators of minor crimes for which there is no need for placement in a penal institution. For these persons, it is also necessary to implement treatment, which is carried out entirely in the community, in order to strengthen feelings of solidarity and responsibility. In fact, alternative measures applied in the community leave perpetrators in contact with all the normal mechanisms of social control in the community.

Then, resocialization of the convict and protection of the community. Namely, alternative measures contain programs and through their implementation, an effort is made to remove the factors that led to criminalization, and through community control, the convict is helped to avoid the "criminal infection" of prisons, as well as to continue daily contact with family and relatives.

And what is particularly important, through the alternative penal policy, it was expected to reduce the imposition of prison sentences, i.e. reduce prison overcrowding and create conditions in prisons for effective treatment and resocialization of convicts.

Hypothesis

Even after 20 years, the alternative penal policy has not received the necessary implementation, courts rarely impose measures that require treatment and supervision in the community, with the exception of a suspended sentence (which does not require supervision), thus alternative measures do not contribute to reducing prison overcrowding, and there are also difficulties in achieving the priority goals of the alternative penal policy.

Method

The research applied the methods of content analysis and statistical methods. In addition, public information obtained by submitting a request for free access to public information to the competent authority - the holder of the information - was collected.

1. Postponement of the solution

In 2006, the Law on the Execution of Sanctions was adopted (Службен весник на Република Македонија, 2006), and its Chapter 18 was entitled: "Execution of Alternative Measures", which regulated the execution of protective supervision imposed by a decision on suspended sentence or conditional release (parole), community service and house arrest.

Namely, the legislator did not decide to establish a new body, i.e., a probation service, but to retain the existing social body. According to the law, "the social work center, based on its essence and

method of work, is the most suitable body for carrying out alternative measures with supervision because it is non-repressive and has an organizational structure that allows it to successfully carry out the functions of assistance, care and protection."

This legal solution was adopted despite the fact that a number of Council of Europe acts recommended a completely different solution. Thus, articles 87-89 of the European Prison Rules, the Recommendation on Alternative sanctions and measures applied in the community R(92) 16, Recommendation R(97)12 on staff concerned with the implementation of sanctions and measures, the Recommendation on Mediation in criminal matters R(99) 19, the Recommendation on improving the application of the European Rules on alternative sanctions and measures R(2000) 22 and the Recommendation on Conditional Release R(2003) recommended that member states establish and put into operation national probation services.

However, this solution will remain in place until 2015, when the Law on Probation (Службен весник на Република Македонија, 2015) establishes the Probation Service as responsible for implementing alternative penal policy measures that require supervision, assistance, and protection in the community.

2. The process of adopting the Law on Probation

Significant steps to find adequate solutions for the practical application of alternative measures in the Republic of Macedonia were taken in the period September 2010 - February 2011, when a Comparative Analysis/Study of the existing legislation and functioning of probation in the countries of the region, as well as a Feasibility study for the functioning of probation in the Republic of Macedonia, were prepared.

Immediately afterwards, in September 2011, the implementation of a special Project for the preparation of the Strategy for the development of the probation service in the Republic of Macedonia began.

However, in the entire process, an activity of essential importance was the IPA project "Further support to independent, accountable, professional and efficient judiciary and promotion of probation service and alternative sanctioning" (European Commission, 2010) for the establishment of a probation service, which created real foundations for the establishment and functioning of the probation service in the Republic of Macedonia.

The Strategy for the development of the probation service in the Republic of Macedonia (2013 – 2016) was developed in March 2013 (adopted by the Government of the Republic of Macedonia at the 143rd session held on 29.06.2013) in order to set the framework for the probation system and contribute to the reform of the criminal justice system in the Republic of Macedonia (Министерство за правда, 2013).

The Strategy stipulates that the probation service should exist as a separate service for adult offenders located at a central level within the Directorate for the Execution of Sanctions, Ministry of Justice, while leaving the responsibility for dealing with juvenile offenders to the Social Work Centers. That is, the aim of the Strategy is to create a new separate and sustainable service that will deal with offenders in a structured manner at all stages of the criminal procedure in order to help or oblige or force offenders to live a life that is free from crime. Helping or obliging offenders to live in this way will lead to increased safety in the community.

Finally, after many years filled with analysis, research, suggestions, proposals, arguments and similar actions, in December 2015 the Parliament of the Republic of Macedonia adopted the Law on Probation, which began to be implemented on November 1, 2016.

The adoption of the Law on Probation created a legal basis for the creation of a new, separate and sustainable service (Probation service) that will deal with perpetrators of criminal offenses in a structured manner at all stages of the criminal procedure.

The purpose of the Probation Law is to establish a framework for an effective system of community sanctions and protective mechanisms that will be accepted by the community to provide short-term and long-term benefits to society that will be proportional to the crime rate and will respect the human rights of all stakeholders, thereby contributing to strengthening security in society. The Probation Law defines the responsibilities of the probation service and the manner of implementation

of the activities of this service, with precisely defined management rules, which will provide the authority of probation officers, which will ultimately increase the confidence of judges to impose alternative sanctions and measures more often.

The basic principle of the Probation Law is to build a new concept and a realistic approach to penal policy, which is the basis of the fight against crime, contributing to the development of verified criteria for measuring individualized sanctions on convicted persons, starting from the nature of the offense as the basis for applying sanctions, the type of criminal responsibility, the personality of the convicted person and the needs/interests of the community. These criteria, as general and global in their mutual relationship, should ensure the implementation of an effective penal policy.

The point is to contribute through probation to reducing repression against perpetrators of criminal offenses (through restrictive application of prison sentences), leaving convicted persons at liberty, transferring part of the responsibility to society and its institutions, and increasing the personal participation and responsibility of the convicted person for his behavior towards the community and other citizens.

The starting point and ultimate goal of the entire process is to support the establishment of a probation system at all stages of the criminal justice system, including activities prior to the start of the trial, during the trial, and for the early release of convicted persons who are eligible for parole. In other words, probation activities can be considered the range of activities that take place during the "offender's journey" through the criminal justice system.

The Probation Service, in addition to organizing, implementing and supervising the implementation of alternative measures, also has responsibilities during the court proceedings by carrying out risk assessment activities for persons for whom there is a reasonable suspicion that they have committed a crime. For this purpose, the Service prepares reports to the primary judges who are competent to impose a criminal sanction. Then, it works with convicts by implementing treatment and resocialization programs in freedom, i.e., in the community, as well as conducting supervision activities and other activities for those convicted persons who have been granted conditional release (parole).

The scope of competences and authorizations of the Probation Service applies exclusively to adult perpetrators of crimes, while the implementation of alternative measures for minors remains within the competence of the centers for social work.

The Probation Service is organized at two levels, sector and departments. The sector is within the Directorate for the Execution of Sanctions with two departments: the Department for supervision of the execution of probation activities and the Department for electronic supervision. Territorially, there is a department of the Probation Service at the level of the city of Skopje and departments located in the municipalities where basic courts with extended jurisdiction are located.

However, the success of the entire process depends on the implementation of the legal norms in practice. Thus, at the very beginning of the implementation of the Law on Probation, certain weaknesses were noted, which is why the Ministry of Justice in the Strategy for Reform of the Justice Sector 2017 – 2022 (Министерство за правда, 2017) concluded that in the probation section, it is necessary to fully equip the probation service with appropriate professional staff throughout the country, as well as to adopt the by-laws arising from the law.

The twinning project "Strengthening the penal system and the probation service" which began in the second half of 2018 also played a significant role in the entire process. One of its goals was to develop an effective and sustainable probation service, respecting the human rights and dignity of persons subject to probation measures with the aim of their successful resocialization in the community.

The intention of the project was to strengthen the probation system by improving the management and monitoring of the probation service, as well as developing the institutional and organizational structure of the probation service. The project sought to strengthen the work of the probation service and encourage courts to impose alternative measures against perpetrators of criminal offenses.

Substantial steps towards the functioning of the macedonian probation system were taken in 2019 and 2020 (data for the indicated years were obtained from the Directorate for the Execution of Sanctions in accordance with the Law on Free Access to Public Information).

By the end of 2020, a total of nine (9) probation offices have been established and functional in North Macedonia. Thus, the probation office for the area of the Basic Criminal Court Skopje has

been established in a room in this court and has been operating since November 2017. Since November 2018, local probation offices for the area of the Basic Courts in Kumanovo, Tetovo, Bitola, Shtip, Veles, Strumica, Ohrid and Prilep have also been functional, more precisely, working premises have been provided and probation staff have been employed.

Regarding the employees in the probation service, the first employments date back to the second half of 2018. Namely, in November 2018, 22 probation officers were hired in the probation service with a fixed-term contract.

The staffing of the Probation Service is more pronounced in 2019, namely, during 2019, a procedure was carried out and a total of 29 probation officers were employed, of which 14 probation officers are employed for an indefinite period and 15 probation officers are employed for a fixed period until 31.12.2020. The majority of the employed probation officers were previously engaged under a fixed-term contract and were trained to perform probation work within the framework of the Twinning project "Strengthening the penal system and the probation service".

In 2023, the Probation Service has 15 departments or local offices, of which 11 are functional with 29 probation officers employed. (Управа за извршување на санкции, 2024).

3. Results of the Probation Service's work so far

After decades filled with research, analysis, theoretical explanations, implementation of international projects, and then the adoption of the Law on Probation, the first results from the Macedonian Probation Service appeared in 2019.

Thus, during 2019, a total of 165 cases were processed in the probation offices.

Local Probation Office	Probation cases in 2019
Skopje	86
Bitola	23
Tetovo	19
Shtip	9
Veles	9
Kumanovo	11
Prilep	7
Ohrid	1
Strumica	0
Total	165

Table 1. Number of probation cases by probation offices

The data in table one (1) shows that in 2019 the largest number of probation cases were in the Skopje Probation Office, i.e., almost 50% of all probation cases.

However, when looking at the content of the probation cases from the perspective of the imposed probation measure, things take on a different light.

Local Probation Office	Risk assessment during court proceedings	Number of cases under supervision over Alternative Measures		Supervision of persons on conditional release (parole)	Total
		Suspended sentence with protective supervision	Community service		
Skopje	9	25	1	51	86
Bitola	1	10	0	12	23
Tetovo	0	5	0	14	19
Shtip	0	0	0	9	9
Veles	0	3	0	6	9

Kumanovo	0	0	0	11	11
Prilep	0	0	0	7	7
Ohrid	0	0	0	1	1
Strumica	0	0	0	0	0
Total	10	43	1	111	165

Table 2. Number of probation cases by type of probation measure imposed for 2019

Thus, out of a total of 165 probation cases in 2019, the majority are for supervision of persons on parole (111 cases), 43 cases are for supervision of persons sentenced to suspended sentences with protective supervision, while there is only one (1) case for supervision over the performance of community service and ten (10) cases are at the request of the court for the application of the risk assessment instrument and preparation of a probation report with a proposal for the most appropriate sanction during the court proceedings.

The situation is similar in 2020, namely, out of a total of 276 cases, about 2/3 or 178 cases relate to the supervision of persons on parole, 48 cases are for supervision of persons sentenced to suspended sentences with protective supervision, 28 cases are for supervision of the performance of community service, and 22 cases are for the application of the risk assessment instrument during court proceedings.

Local Probation Office	Risk assessment during court proceedings	Number of cases under supervision over Alternative Measures		Supervision of persons on conditional release (parole)	Total
		Suspended sentence with protective supervision	Community service		
Skopje	20	43	27	64	154
Bitola	0	0	0	15	15
Tetovo	1	3	0	26	30
Shtip	0	0	0	4	4
Veles	0	0	1	12	13
Kumanovo	1	1	0	16	18
Prilep	0	0	0	9	9
Ohrid	0	0	0	17	17
Strumica	0	1	0	15	16
Total	22	48	28	178	276

Table 3. Number of probation cases by type of probation measure imposed for 2020

In 2019 and 2020, about 55% of probation cases are in the Basic Criminal Court Skopje, and in terms of content, about 2/3 of probation cases are supervision of parolees (data for 2019 and 2020 were provided in accordance with the Law on Free Access to Public Information).

In June 2021, the Government of the Republic of North Macedonia adopted the Probation Service Development Strategy (2021-2025) as a medium-term development document in order to set the framework for the further development of the probation system. Its strategic objectives provide guidance for the development of the probation service and the implementation of sustainable measures for the reintegration of offenders into the community, in order to reduce the prison population, but at the same time strengthen community safety. The strategic objectives focus on developing the normative framework for alternative sanctions and measures, strengthening the institutional framework (opening four new offices, bringing the total to 15 probation offices), functional electronic supervision, strengthening human resources, and improving the acceptance of the probation service by the courts and the public.

With the amendments to the Law on Courts, probation offices were also opened in the areas of other courts with extended jurisdiction, specifically in Gostivar, Kocani, Kavadarci, Struga and Gevgelija (Службен весник на Република Северна Македонија, 2019).

In 2021, there was a significant increase in the number of probation cases, namely, probation offices worked on a total of 451 cases (Управа за извршување на санкции, 2022).

Local Probation Office	Risk assessment during court proceedings	Number of cases under supervision over Alternative Measures		Supervision of persons on conditional release (parole)	Total
		Suspended sentence with protective supervision	Community service		
Skopje	52	47	87	68	254
Bitola	0	0	7	19	26
Tetovo	0	3	0	41	44
Shtip	0	0	0	14	14
Veles	0	0	0	16	16
Kumanovo	0	1	3	13	17
Prilep	0	0	6	11	17
Ohrid	0	1	0	18	19
Strumica	0	1	0	24	25
Gevgelija	0	0	0	8	8
Kavadarci	0	0	0	11	11
Total	52	53	103	243	451

Table 4. Number of probation cases by type of probation measure imposed for 2021

Of the total of 451 probation cases in 2021, the majority or more than 50% are for supervision of parolees (243 cases), 53 cases are for supervision of persons sentenced to suspended sentences with protective supervision. Compared to 2020, the number of cases for supervision of the performance of community service has significantly increased (103 cases), while 52 cases are at the request of the court for the application of the risk assessment instrument and the preparation of a probation report with a proposal for the most appropriate sanction during the court procedure.

Furthermore, about 55% of cases are through the probation office in Skopje, i.e., through the Criminal Court Skopje. Several courts have cases only for supervision of convicts who have been released on parole, without any cases for suspended sentences with protective supervision, community service, or risk assessment.

The data for 2022 are approximately close to the data for the previous year, 2021. Namely, in 2022, probation offices worked on 474 cases (Управа за извршување на санкции, 2023).

Local Probation Office	Risk assessment during court proceedings	Number of cases under supervision over Alternative Measures		Supervision of persons on conditional release (parole)	Total
		Suspended sentence with protective supervision	Community service		
Skopje	58	83	113	52	306
Bitola	0	0	0	17	17
Tetovo	1	7	0	39	47
Shtip	0	0	1	11	12
Veles	0	4	6	6	16
Kumanovo	0	1	4	13	18
Prilep	0	0	0	13	13
Ohrid	0	1	0	10	11
Strumica	0	2	0	13	15

Gevgelija	0	0	1	6	7
Kavadarci	0	0	0	12	12
Total	59	98	125	192	474

Table 5. Number of probation cases by type of probation measure imposed for 2022

And in 2022, the majority of cases, or about 2/3, were processed through the probation office in Skopje, especially for risk assessment, suspended sentences with protective supervision and community service. In the remaining probation offices, most of the cases are for supervision of persons on parole.

During 2023, 11 probation offices out of a total of 15 are functional in the Probation Service. According to data from the Annual Report of the Directorate for the Execution of Sanctions for 2023, 483 probation cases were worked on, which is almost the same as the previous year 2022, but is three times more compared to 2019. This data is to be welcomed because it goes towards the revival in practice of the implementation of the alternative penal policy.

Local Probation Office	Risk assessment during court proceedings	Number of cases under supervision over Alternative Measures		Supervision of persons on conditional release (parole)	Total
		Suspended sentence with protective supervision	Community service		
Skopje	87	139	12	72	310
Bitola	2	1	0	25	28
Tetovo	0	6	0	33	39
Shtip	1	0	1	17	19
Veles	0	5	1	11	17
Kumanovo	0	3	0	12	15
Prilep	0	0	0	9	9
Ohrid	0	1	0	4	5
Strumica	0	1	0	24	25
Gevgelija	0	0	0	5	5
Kavadarci	0	1	0	10	11
Total	90	157	14	222	483

Table 6. Number of probation cases by type of probation measure imposed for 2023

The majority of cases are for supervision of persons on parole, i.e., 222 cases or less than 50% of all cases. About 30% or 157 cases are for supervision of convicted persons on suspended sentences with protective supervision. But about 90% of these cases or 139 cases are through the probation office in Skopje, i.e. the measure is pronounced by the Basic Criminal Court Skopje. The question arises as to why the other courts do not pronounce or minimally pronounce suspended sentences with protective supervision.

The significant decrease in the number of cases with community service is notable, so in 2021 - 103 cases, in 2022 - 125 cases, while in 2023 only 14 cases. The weak imposition of the alternative measure of community service is negative data because community service is considered one of the pillars of the alternative penal policy.

The remaining 90 cases are at the request of the court for the application of the risk assessment instrument and the preparation of a probation report with a proposal for the most appropriate sanction during the court proceedings.

It has already been emphasized that, in terms of workload, the majority of activities are conducted through the probation office in Skopje, or around 60% of all probation cases in 2023.

Based on the population size according to the local jurisdiction of the basic courts, and thus of the probation offices, it is understandable that the majority of cases are under the jurisdiction of the Basic Criminal Court Skopje and the relevant probation office, but having data of 0 (zero) cases for suspended sentences with protective supervision or community service or risk assessment is difficult to argue.

As a result of the above data, and starting from the hypothesis set in this research, it can be emphasized that even after 20 years, the alternative penal policy has not received the necessary implementation. This policy was supposed to reduce prison overcrowding, in order to increase the chances of successful resocialization and reduce recidivism. In addition, the focus of this policy was on perpetrators of minor crimes, especially if they are committing a crime for the first time, i.e. their treatment in the community.

These were all well-set goals, but statistics show that much more needs to be done, especially substantively. It is necessary to work with the courts, as they impose sanctions, to strengthen the capacities of probation offices, to increase the use of modern technologies (taking into account guaranteed human rights).

Alternative measures were supposed to lead to a reduction in the prison population, but the reality is different. Namely, according to data from the Directorate for the Execution of Sanctions, the total number of convicted persons serving prison sentences in correctional facilities at the end of the year is as follows:

2018 – 1954 convicts,
2021 - 2004 convicts,
2022 – 2227 convicts,
2023 – 2265 convicts.

Such data create the conclusion that despite the introduction of alternative measures, there has been no reduction in the prison population and no creation of conditions for more efficient resocialization of convicts in penitentiary institutions. This situation is the result of the weak implementation of alternative measures.

It should also be noted that the former parapenal sanction, and now an alternative measure, suspended sentence (without supervision) is the most frequently imposed alternative measure. Namely, according to data from the State Statistical Office in 2023, out of a total of 3152 imposed alternative measures, the majority or 2923 relate to suspended sentence (Државен завод за статистика, 2023).

In this way, the suspended sentence retained the primacy it had had since the previous system, namely, the intention was for the suspended sentence to be replaced to a significant extent with an alternative measure that requires supervision, such as a suspended sentence with protective supervision or community service, but the numbers show that we are far from achieving such a goal.

Conclusion

The introduction of alternative measures in the Macedonian penal legislation aimed to increase the number of penal instruments in order to more adequately apply the principle of individualization and reduce prison overcrowding. Through alternative measures that allow for treatment in the community, the aim was for perpetrators of minor crimes, who committed a crime for the first time, to be punished through treatment and supervision in the community, while avoiding the deprivations of a prison sentence.

More than 20 years have passed since their introduction into the penal legislation, but the results are far from what was expected. The results were expected primarily from the measures that have treatment and supervision in the community, primarily suspended sentence with protective supervision and community service. At first, efforts were made to implement them through the Centers for Social Work, which proved to be an inadequate solution, and then the creation of a probation service was approached.

The adoption of the Law on Probation in 2015 (it began to be implemented in 2016) did not mean the creation of results. Namely, as stated in the paper, initial actions were taken to create the operational structure and appropriate staff through an international project.

After 2019, initial results are emerging, which increase over time, but an inadequate approach is observed, mainly one court imposes the measures, while the remaining courts with extended jurisdiction have a negligible participation. In addition, when viewed by year, significant oscillations are observed in the imposition of measures.

However, it is a fact that there has been progress in the area. Namely, the law was passed 10 years ago, so there were modest results, but starting in 2021 we have data that requires directing the processes so that all probation offices have an adequate contribution to the implementation of the alternative penal policy.

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