

ALEKSANDRA SPASOJEVIĆ

**PREPORUKE ZA UNAPREĐENJE IZVRŠENJA
VANZAVODSKIH SANKCIJA I MERA U SRBIJI**

**RECOMMENDATIONS FOR EXECUTION OF
NON-CUSTODIAL SANCTIONS
AND MEASURES IN SERBIA**



Valjevo, XI 2021.

Autor / Author

ALEKSANDRA SPASOJEVIĆ

Izdavač / Published by

ODBOR ZA LJUDSKA PRAVA VALJEVO /
HUMAN RIGHTS COMMITTEE VALJEVO

Karađorđeva 117, Valjevo

www.odbor.rs

Za izdavača / For the publisher

ALEKSANDAR PEROVIĆ

Recenzent / Reviewer

prof. dr SNEŽANA SOKOVIĆ

Prevod / Translation

ZORICA JOVANOVIĆ

Agencija za strane jezike Kontext, Valjevo

Kompjuterska priprema / DTP

MILAN SREČKOVIĆ

Štampa / Print

Štamparija „Topalović”, Valjevo

Tiraž / Print run

100

Ova publikacija je nastala u okviru projekta „Civilno društvo za unapređenje pristupanja Srbije Evropskoj uniji“ koji Odbor za ljudska prava Valjevo realizuje u partnerstvu sa Beogradskom otvorenom školom i uz podršku Švedske. Stavovi i mišljenja autora izneta u ovoj publikaciji ne predstavljaju nužno i mišljenje partnera i donatora.

This publication was created within the project 'Civil Society for Improving Serbia's Accession to the European Union', which the Human Rights Committee Valjevo is implementing in partnership with the Belgrade Open School and with the support of Sweden. The views and opinions of the authors presented in this publication do not necessarily present the opinions of the partners and donors.

SADRŽAJ

I	
UVOD.....	5
II	
PREPORUKE ZA UNAPREĐENJE IZVRŠENJA VANZAVODSKIH SANKCIJA I MERA U SRBIJI.....	13
1. Preporuke koje se odnose na sistem organizacije i funkcionisanje Odeljenja za izvršenje vanzavod- skih sankcija i mera Uprave za iz- vršenje krivičnih sankcija	13
2. Preporuke koje se odnose na normativni okvir.....	19
3. Preporuke koje se odnose na unapređenje u edukativnom smislu	38
4. Preporuke koje se odnose na unapređenje sistema evidencije i nacionalne evaluacije	42
III	
ZAKLJUČAK	45
IV	
LITERATURA.....	51

CONTENT

I	
INTRODUCTION.....	5
II	
RECOMMENDATIONS FOR EXE- CUTION OF NON-CUSTODIAL SANCTIONS AND MEASURES IN SERBIA	13
1. Recommendations related to the system of organization and functio- ning of Department for execution of non-custodial sanctions and measures of the Administration for the executi- on of criminal sanctions	13
2. Recommendations related to the normative framework	19
3. Recommendations related to improvement in terms of education.....	38
4. Recommendations related to im- provement of the system of records and national evaluation	42
III	
CONCLUSION	45
IV	
REFERENCES.....	51



I UVOD

Vanzavodske sankcije i mere možemo definisati kao “sankcije i mere na osnovu kojih osuđena lica ostaju u zajednici, a koje uključuju određena ograničenja njihove slobode nametanjem uslova ili obaveza koje se sprovode pod nadzorom i kontrolom poverenika. Pod uslovima i obavezama se podrazumevaju svi zahtevi koji su sastavni deo sankcije ili mere koju je izrekao nadležni organ.”¹ Dakle, svrha njihove primene je da se sankcionisanje učinioca krivičnog dela može postići i u uslovima koji su manje restriktivni od kazne zatvora, odnosno u zajednici, pri čemu bi se postigla zaštita društva od kriminaliteta, ali i resocijalizacija i reintegracija osuđenih lica.

¹ Spasojević, A., Arsenijević, S. Efekti alternativnih sankcija i mera iz ugla povereničke službe. Odbor za ljudska prava Valjevo, 2017, str. 6.

I INTRODUCTION

Non-custodial sanctions and measures can be defined as “sanctions and measures on the basis of which convicted persons remain in the community, and which include certain restrictions on their freedom by imposing conditions or obligations that are carried out under the supervision and control of the Probation officer. Conditions and obligations include all requests that are an integral part of the sanction or measure imposed by the competent authority.”¹ Therefore, the purpose of their application is that sanctioning the perpetrator of a criminal offense can be achieved in conditions that are less restrictive than imprisonment, i.e., in the community, whereby the protection of the society from crime would be achieved but also the resocialization and reintegration of convicted persons.

¹ Spasojević, A., Arsenijević, S. Effects of alternative sanctions and measure from the perspective of Probation Service. Human Rights Committee Valjevo, 2017, 6.

Nastanak ovog načina sankcionisanja je usko povezan sa neuspelom efektima zatvorskog sistema sankcionisanja, pa je tako njihova prvobitna uloga i viđena u zameni kratkotrajnih kazni zatvora.

Međutim, za domaći pravosudni sistem ne možemo reći da ih koristi isključivo kao zamenu za kratkotrajne kazne zatvora, naročito ako uzmemo u obzir statističke podatke na godišnjem nivou o broju lica kojima je izrečena kazna zatvora u trajanju do godinu dana.²

S obzirom da aktuelnost ove oblasti sankcionisanja perzistira već godinama u nazad, Odbor za ljudska prava Valjevo je ciljano u poslednjih godinu dana sprovodio istraživanje i analizu pojedinih vanzavodskih sankcija i mera u Srbiji, a u svrhu dobijanja podataka za unapređenje njihove primene.

2 Detaljnije u: Punoletni učinioci krivičnih dela u Republici Srbiji, 2019. Bilten, br.665, Beograd, 2020. Republički zavod za statistiku: <http://www.stat.gov.rs>

The emergence of this method of sanctioning is closely related to the failure of the effects of the penitentiary sanctioning system, so their original role was seen in the replacement of short-term prison sentence.

However, we cannot say that the domestic judicial system uses them exclusively as a substitute for short-term prison sentences, especially if we take into account the annual statistics on the number of persons sentenced to imprisonment for up to one year.²

Considering the fact that the urgency and relevance of this area of sanctioning has persisted for years, the Human Rights Committee Valjevo has purposefully conducted research and analysis of some non-custodial sanctions and measures in Serbia in the last year, in order to obtain data necessary to improve their implementation.

2 Further: Adult perpetrators of crime in the Republic of Serbia, 2019. Bulletin, No.665, Belgrade, 2020. Statistical Office of the Republic of Serbia: <http://www.stat.gov.rs>

Naime, u okviru ovog istraživanja poseban akcenat je stavljen na kaznu zatvora koju osuđeni izvršava u prostorijama u kojima stanuje / kućni zatvor, kaznu rada u javnom interesu, uslovnu osudu sa zaštitnim nadzorom i meru zabrane napuštanja prostorija u kojima okrivljeni stanuje / kućni pritvor.

Sprovedeno je istraživanje u kom su učestvovali osuđena i okrivljena lica, ali i advokati, zatim su organizovani okrugli stolovi/debate multisektorskog tipa i završna konferencija. Gradovi koji su izabrani kao područje za istraživanje su Kragujevac, Valjevo, Čačak i Šabac.

Kada govorimo o multisektorskom pristupu značajno je istaći da su učesnici i saradnici u okviru ovog projekta bili:

- predstavnici pravosudnih organa: viši javni tužioc, zamenici viših javnih tužilaca, osnovni javni tužioc, zamenici osnovnih javnih tužilaca, sudije osnovnih sudova, sudije prekršajnih sudova;

Namely, within this research, special emphasis was placed on the prison sentence that the convict is serving in the house where they live / house arrest, the sentence of work in the public interest, probation with protective supervision and the measure of banning leaving the house where the defendant lives / house detention.

Research was conducted in which convicted and accused persons participated, as well as lawyers, then round tables / debates of the multisectoral type and a final conference were organized. The cities selected as research areas were Kragujevac, Valjevo, Čačak and Šabac.

Speaking of multisector approach, it is important to point out that participants and associates within this project were:

- Representatives of judicial bodies: senior public prosecutors, deputy senior public prosecutors, basic public prosecutors, deputy basic public prosecutors, judges of basic courts, judges of misdemeanor courts;

- poverenici Uprave za izvršenje krivičnih sankcija;
- policijski službenici podružnih policijskih uprava;
- advokati;
- predstavnici lokalnih samouprava;
- zaposleni u javno-komunalnim preduzećima;
- zaposleni u oblasti socijalne zaštite;
- organizacije civilnog društva;
- predstavnici medija: internet portali, lokalne televizijske stanice.
- Probational officers of the Administration for the execution of criminal sanctions;
- police officials of the regional police directorates;
- lawyers;
- representatives of local self-government units;
- employees in public utility companies;
- employees in the field of social welfare;
- civil society organizations;
- media representatives: internet portals, local TV stations.

Ovom prilikom iskazujemo zahvalnost svim saradnicima i učesnicima koji su ispoljili dobru volju, zainteresovanost za saradnju sa Odborom za ljudska prava i podelili svoja stručna znanja i mišljenja sa javnošću, kako stručnom, tako i opštom.

Mišljenja i zaključci do kojih smo došli su od velikog značaja za sistem vanzavodskog sankcionisanja u Srbiji i za sve one koji učestvuju u njihovoj primeni.

On this occasion, we would like to express our gratitude to all associates and participants who have shown good will, interest in cooperating with the Human Rights Committee and who shared their professional knowledge and opinions with the public, both professional and general.

The opinions and conclusions we have reached are of great importance for the non-custodial sanctioning system in Serbia and for all those who participate in its implementation.

Na ovaj način je na nestatistički i nestandardizovan način vršena i jedna opšta kvalitativna evaluacija sistema koji učestvuje u primeni ovih sankcija i mera, a rezultati i preporuke svakako daju mogućnosti i ideje ali i nalažu obavezu da se izvrši nacionalna empirijska evaluacija u svim aspektima u kojima je potrebna.

Kako na kvalitet primene vanzavodskih sankcija i mera može da utiče mnogo faktora, ipak analiza nama dostupnih podataka u ovom istraživanju je dala samo mali deo objašnjenja tih uticaja i faktora.

Mnogo detaljniji pristup istraživanju vanzavodskih sankcija i mera i faktora međusobnog uticaja predstavila je Sonja Snacken (Sonja Snacken) i njen primer možemo koristiti kao dobru početnu osnovu za istraživanje faktora efikasnosti ovih sankcija i mera u Srbiji. Ona je te faktore i njihov međusobni uticaj prikazala šematski (slika br. 1), a ti faktori su: javno mnjenje, politika, mediji, socijalna politika, politika unapređenja zdravstva, zaštita ljudskih prava, demogra-

Thus, in a non-statistical and non-standardized way, a general qualitative evaluation of the system that participates in the implementation of these sanctions and measures was performed. The results and recommendations certainly provide possibilities and ideas, but also impose the obligation to perform national empirical evaluation in all aspects necessary.

Since the quality of the application of non-custodial sanctions and measures can be influenced by numerous factors, the analysis of the data available to us in this research gave only a small part of the explanation of these influences and factors.

Sonja Snacken presented a much more detailed approach to the research of non-custodial sanctions and measures and factors of their mutual influence, so we can use her example as a good initial basis for researching the factors of efficiency of these sanctions and measures in Serbia. She presented these factors and their mutual influence schematically (Figure 1), and these factors are: public opinion, politics, media, social policy, health promotion policy, human rights protection, demography and

fija i ekonomija države, nivo kriminaliteta, pravosudni sistem, zakonski propisi, policija, javno tužilaštvo, vrste osuda, kapaciteti zatvora i zatvorska populacija.³

state economy, crime level, judicial system, legislation, olice, public prosecutor's office, types of convictions, prison capacities and prison population.³

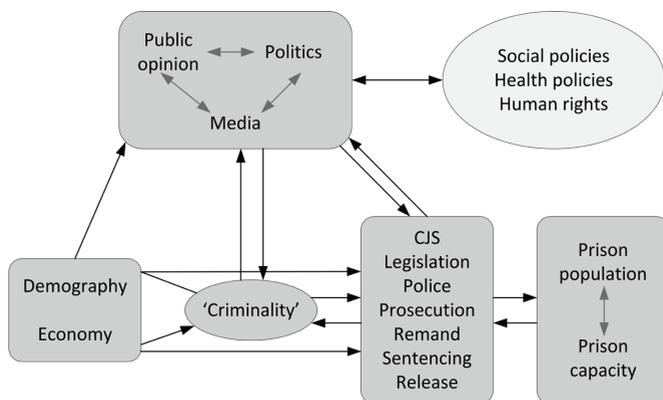


Figure 1. Mutual influence and connection of factors affecting the implementation of non-custodial sanctions.

Dakle, vidimo da je jasan multifaktorski uticaj na primenu ovih sankcija, što nam govori da mogu postojati i multifaktorski problemi, ali i da pristup njihovom rešavanju mora biti multidisciplinarnan i sistemski.

Therefore, we see that there is a clear multifactorial impact on the implementation of these sanctions, which tells us that there may be multifactorial problems, but also that the approach to solving them must be multidisciplinary and systematic.

³ Snacken, S. The impact of the criminal and social context on Probation systems in Europe, in Context The Council of Europe Probation Rules R (2010)1, 2010, p. 11.

³ Snacken, S. The impact of the criminal and social context on Probation systems in Europe, in Context The Council of Europe Probation Rules R (2010)1, 2010, p. 11.

Ipak, uzimajući u obzir nam dostupne podatke pomenutog istraživačkog rada, u ovom izveštaju smo se opredelili da predstavimo preporuke za unapređenje sistema vanzavodskog sankcionisanja u Srbiji i podelili smo ih u nekoliko segmenata:

1. preporuke koje se odnose na sistem organizacije i funkcionisanje Odeljenja za izvršenje vanzavodskih sankcija i mera Uprave za izvršenje krivičnih sankcija;
2. preporuke koje se odnose na normativni okvir;
3. preporuke koje se odnose na unapređenje u edukativnom smislu;
4. preporuke koje se odnose na unapređenje sistema evidencije i nacionalne evaluacije.

However, taking into account the data available to us in the mentioned research work, in this report we decided to present recommendations for the improvement of the non-custodial sanctioning system in Serbia and we divided them into several segments:

1. recommendations related to the system of organization and functioning of Department for execution of non-custodial sanctions and measures of the Administration for the execution of criminal sanctions;
2. recommendations related to the normative framework;
3. recommendations related to improvement in terms of education;
4. recommendations related to improvement to the system of records and national evaluation.

II PREPORUKE ZA UNAPREĐENJE IZVR- ŠENJA VANZAVOD- SKIH SANKCIJA I MERA U SRBIJI

1. Preporuke koje se odnose na sistem organizacije i funkcionisanje Odeljenja za izvršenje vanzavodskih sankcija i mera Uprave za izvršenje krivičnih sankcija

Ove preporuke su zasnovane na podacima o aktuelnom načinu funkcionisanja ovog sektora Ministarstva pravde, a u okviru kog su prepoznati problemi koji otežavaju rad Odeljenja za izvršenje vanzavodskih sankcija i mera⁴ Uprave za izvršenje krivičnih sankcija⁵ i njegovih područnih povereničkih kancelarija koje su oformljene prema sedištu viših sudova.

4 U daljem tekstu će se koristiti termin poverenička služba, koji je prepoznatljiv zbog službenog naziva lica koje izvršava poslove iz ove nadležnosti – poverenik.

5 U daljem tekstu Uprava.

II RECOMMENDATIONS FOR EXECUTION OF NON-CUSTODI- AL SANCTIONS AND MEASURES IN SERBIA

1. Recommendations related to the system of organization and functioning of the Department for execution of non-custodial sanctions and measures, of the Administration for the execution of criminal sanctions

These recommendations are based on data on the current functioning of this sector of the Ministry of Justice, within which problems have been identified that hinder the work of the Department for execution of non-custodial sanctions and measures⁴, of the Administration for the execution of criminal sanctions⁵ and its regional probation offices established according to the higher court seats.

4 Hereinafter referred to as Probation Service, which is recognizable due to the official name of the person performing the task from this competence – Probation officer.

5 Hereinafter: Administration.

1.1 Potrebno je odvajanje povereničke službe koja se bavi izvršenjem vanzavodskih sankcija i mera u potpunosti po svim aspektima od Uprave za izvršenje krivičnih sankcija.

Naime, te dve oblasti, zavodsko i vanzavodsko sankcionisanje su suprotne strane kaznene politike u smislu načina izvršenja sankcija i zato treba da budu dve odvojene uprave. Trenutna Uprava je više posvećena zatvorskom delokrugu rada koji i zah-teva urgentnije postupanje tako da je razvoj i unapređenje Ode-ljenja za izvršenje vanzavodskih sankcija i mera zapostavljeno. Stvaranjem Uprave za izvršenje vanzavodskih sankcija i mera kao dela Ministarstva pravde bi trebala biti oformljena nova uprava sa svim nadležnostima i organizacijskim strukturama u svrhu izvršenja vanzavodskog sankcionisanja (posebnim ode-ljenjima, sektorima, načelnicima, zaposlenima). Za ovakav način rada nužno je odvajanje i posebnih finansijskih resursa državnog budžeta kako bi se postiglo adekvatno funkcionisanje.

1.1 It is necessary to separate Probation Services which deal with the execution of non-custodial sanctions and measures in all aspects from the Administration for the execution of criminal sanctions.

Namely, those two areas, custodial and non-custodial sanctioning, are opposite sides of the penal policy in terms of the manner of execution of sanctions, and that is why there should be two separate administrations. The current Administration is more committed to work related to prisons, which requires more urgent action, so that the development and improvement of the Department for the execution of non-custodial sanctions and measures has been neglected. With the creation of the Administration for the execution of non-custodial sanctions and measures as part of the Ministry of Justice, a new administration with all jurisdictions and organizational structures should be formed for the purpose of executing non-custodial sanctions (special departments, sectors, heads, staff). This way of working requires special allocation of the state budget in order to achieve appropriate functioning.

1.2 U skladu sa prethodnim aktuelno postojanje regionalnih povereničkih kancelarija bi trebalo da ima drugačiju ulogu nego što je to sada.

Ta novina u prethodnom periodu nije donela ono što bi se očekivalo kao razlog za njeno uvođenje u organizaciju rada. Dakle, kako su povereničke kancelarije formirane i fizički postoje prema sedištu višeg suda tako bi one trebale da predstavljaju i regionalne kancelarije ukoliko “pokrivaju” teritorijalnu nadležnost više opština. Npr. poverenička kancelarija u Valjevu izvršava poslove iz nadležnosti na teritoriji Valjeva i još pet opština a to su teritorije opštine Ub, Ljig, Lajkovac, Osečina i Mionica. Regionalna kancelarija bi mogla biti kancelarija u Valjevu, dok bi bilo potrebno oformiti njene ispostave u nekim opštinama u kojima bi se zaposlili novi službenici (npr. mesna kancelarija u Ubu i u Mionici). Regionalna kancelarija bi tada pored svoje nadležnosti rada (npr. Valjevo i opština Osečina) bila zadužena i za obavljanje administrativnih

1.2 In accordance with the above the existence of regional Probation Offices should play a different role than it does at present.

In the previous period, that novelty did not bring what would have been expected as a reason for its introduction into the organization of work. Thus, since Probation Offices have been formed and physically exist according to the seat of the higher court, they should also represent regional offices if they “cover” the territorial jurisdiction of several municipalities. For instance, the Probation office in Valjevo performs tasks within its jurisdiction on the territory of Valjevo and five other municipalities, which are the territories of the municipalities of Ub, Ljig, Lajkovac, Osečina and Mionica. The office in Valjevo could be the regional office, while it would be necessary to establish its branches in some municipalities where new officials would be employed (e.g., the local offices in Ub and in Mionica). In addition to its jurisdiction (e.g., Valjevo and the municipality of Osečina), the regional office would then

poslova, multisektorsku komunikaciju, podršku i superviziju rada, raspodelu predmeta, ovlašćenja potpisivanja, elektronske komunikacije i sl. za ostale kancelarije koje joj regionalno pripadaju (dakle, u ovom slučaju Ub i Mionica). Pored toga, važno je istaći da bi morala postojati i adekvatna i dodatna kadrovska organizacija rada koja bi obezbedila ovakav način funkcionisanja.

1.3 Ovakav način organizacije uvodi u *decentralizaciju rada* koja sada ne postoji, a neophodna je.

Dakle, prenela bi se pojedina ovlašćenja sa Uprave i Odeljenja za izvršenje vanzavodskih sankcija i mera na regionalne kancelarije. Time bi se posao olakšao, zaposleni rasteretili, ubrzao sistem rada i funkcionisanja, povećao kvalitet multisektorske saradnje, eliminisalo gubljenje vremena na prenos pošte, dobila nova ovlašćenja za potpisivanja. Uloga Uprave bi onda mogla biti više orjentisana na kontrolu i nadzor rada, te bavljenje unapređenjem kvaliteta uslova rada,

be in charge of performing administrative tasks, multisectoral communication, support and supervision of work, case distribution, signing authorizations, electronic communication, etc. for other offices that belong to it regionally (hence, in this case Ub and Mionica). In addition, it is important to point out that there should be an appropriate and additional staff organization that would ensure this way of functioning.

1.3 This type of organization leads to *decentralization of operation* which does not exist now but is necessary.

Therefore, certain authorizations would be transferred from the Administration and the Department for execution of non-custodial sanctions and measures to the regional offices. This would make work easier, reduce staff workload, speed up the system of work and functioning, increase the quality of multisectoral cooperation, eliminate waste of time on mail transmission, and gain new authorizations for signing. The role of the Administration could then be more focused on the control and supervision of work, and dealing with improving the quality of

kvaliteta stručnog rada, ali i na edukacije i stručna usavršavanja zaposlenih.

1.4 **Zapošljavanje novog osoblja u većem broju.** Ovakav gore opisan novi sistem funkcionisanja bi zahtevao veći broj povećenika, tehničkog osoblja, administrativnih radnika, pravnika, supervizora za podršku i edukaciju, načelnika, šefova odeljenja i regionalnih kancelarija. Dakle, cilj je postizanje bržeg, efikasnijeg, kvalitetnijeg i rasterećenijeg rada zaposlenih kako bi se na adekvatan način odgovorilo na zahteve koje iziskuje rad sa licima u izvršenju, a sa druge strane kako bi se sprečila brza pojava sindroma sagorevanja kod zaposlenih.

1.5 **Poboljšanje uslova rada zaposlenih.** Ovde govorimo o tehničkim stvarima kao što su obezbeđenje adekvatnog prostora za rad, kvalitetno opremljene kancelarije, postojanje odvojenih prostorija za individualni rad sa licima koji su u izvršenju, tehnološka opremljenost računarskim sistemom i pratećom opremom, postojanje vozila za

working conditions, the quality of professional work, but also on education and professional development of the staff.

1.4 **Hiring new staff in larger numbers.** Such a new system of functioning described above would require a larger number of Probation officers, technical staff, administrative staff, lawyers, support and education supervisors, heads, department heads and regional offices. Therefore, the goal is to achieve faster, more efficient, better quality and more relaxed work in order to appropriately respond to the requirements of working with persons in the process of execution, and, on the other hand to prevent the rapid occurrence of burnout in staff.

1.5 **Improving working conditions.** Here we are talking about technical matters such as providing appropriate work space, well-equipped offices, separate rooms for individual work with persons in the process of execution, technological equipment with computer system and accompanying equipment, vehicles for each office with driver available daily. In addition to these condi-

svaku kancelariju sa vozačem na svakodnevnom raspolaganju. Uz ove uslove neophodno je i povećanje zarade zaposlenih, plaćanje pripravnosti rada nakon radnog vremena i obezbeđivanje statusa službenog lica sa beneficiranim radnim stažem zbog specifične kategorije lica sa kojom rade. Pripravnost rada nakon radnog vremena je neophodna jer se na takav način obezbeđuju zaposleni koji će odmah izvršiti sprovođenje kućnog pritvora ili kućnog zatvora ukoliko je lice po naredbi suda pronađeno od strane policije van radnog vremena povereničke službe. S obzirom da je tada potrebno primeniti kompletan rad to zahteva i da se obezbedi kompletan sistem koji će funkcionisati u pripravnosti i nakon radnog vremena i koji će za to biti plaćen, što sada nije slučaj. Pored toga, neophodno je povećati bezbednost zaposlenih tokom boravka u kancelarijama. To bi se moglo postići na dva načina. Prvi, da postoji ovlašćeno obezbeđenje što zahteva dodatne kadrovske izmene, a drugi da se kancelarije poverenika nalaze

tions, it is necessary to increase the salaries, pay for willingness to work after working hours and ensure the status of an official with a reduced service years for retirement due to working with the specific category of persons. Willingness to work after working hours is necessary because that way provides staff who will immediately carry out house arrest or detention if a person is found by the police on the order of the court, outside the working hours of the Probation Service. Since it is then necessary to implement complete work in such cases, it requires that a complete system be provided that will function in standby and after working hours, and that will be paid for that, which is not the case now. In addition, it is necessary to increase the safety of staff during their stay in the offices. This could be done in two ways. The first is that there is authorized security that requires additional personnel changes, and the second is that the Probation Offices are located in the court building. It is a space that has security, its own way of working that is prescribed in terms of en-

u zgradi suda. To je prostor koji ima obezbeđenje, svoj način rada koji je propisan u smislu ulaska i ponašanja u zgradi i ostavlja drugačiji utisak u smislu lične bezbednosti. Dodatno, poverenička služba je takođe kao i sud deo Ministarstva pravde, što bi trebalo da predstavlja olakšavajuću okolnost da se takav način povećanja bezbednosti zaposlenih sprovede.

2. Preporuke koje se odnose na normativni okvir

2.1 Usklađivanje Krivičnog zakonika⁶ i Zakona o izvršenju vanzavodskih sankcija i mera⁷. Usklađivanje prvo mora biti izvršeno u domenu *terminologije* jer se u Krivičnom zakoniku govori o kazni zatvora koju osuđeni izvršava u prostorijama u kojim stanuje a u Zakonu o izvršenju

try and behavior in the building and it makes a different impression in terms of personal safety. In addition, the commissioner's service, like the court, is part of the Ministry of Justice, which should be a mitigating circumstance for such a way to increase the safety of staff.

2. Recommendations related to normative framework

2.1 Harmonization of the Criminal Code⁶ and Law on execution of non-custodial sanctions and measures⁷. Harmonization has to be done in the domain of *terminology* because the Criminal Code has it that the sentence of imprisonment that the convict is serving is done on the premises where they live, while the Law on execution of non-custodial sanctions and

6 Krivični zakonik "Sl. glasnik RS" br. 85/2005, 88/2005-isp., 107/2005-isp., 72/2009, 111/2009, 112/2012, 104/2013, 108/2014, 94/2016 i 35/2019) - u daljem tekstu Krivični zakonik.

7 Zakon o izvršenju vanzavodskih sankcija i mera "Sl. glasnik RS" br.55/2014 i 87/2018. - u daljem tekstu Zakon o izvršenju vanzavodskih sankcija i mera.

6 Criminal Code "Official Gazette of RS" (No. 85/2005, 88/2005-corrected., 107/2005-corrected., 72/2009, 111/2009, 112/2012, 104/2013, 108/2014, 94/2016 i 35/2019) - hereinafter Criminal Code.

7 Law on execution of non-custodial sanctions and measures "Official Gazette of RS" (No.55/2014 and 87/2018. - hereinafter Law on execution of non-custodial sanctions and measures.

vanzavodskih sankcija i mera se umesto toga posebno naznačeno navodi da će se koristiti skraćeni termin - kućni zatvor.

2.2 Izmene u Krivičnom zakoniku u smislu propisivanja da se sve *vanzavodske sankcije primenjuju kao samostalne sankcije*.

2.2.1 Posebno je značajno opredeliti se da se kazna kućnog zatvora ne izriče kao modalitet izvršenja kazne zatvora već samo kao samostalna kazna isključivo uz elektronski nadzor, i to za određena krivična dela, čime bi se izbeglo da se kao sada izriče za pojedina krivična dela za koja je praksa pokazala da je nesvrshodno.

Ukoliko bi bila propisana kao samostalna sankcija mogla bi se propisati i za koja konkretna krivična dela a mogli bi se propisati i uslovi pod kojima ju je moguće izreći (npr. da je nije moguće izreći licu koje je osuđeno više od dva puta ili licu koji je korisnik psihoaktivnih supstanci ili je lice sa psihijatrijskom dijagnozom, ili da je nije moguće izreći

measures instead specifically states that a shortened term will be used - house arrest.

2.2 Amendments to the Criminal Code in terms of prescribing that all *non-custodial sanctions be implemented as independent sanctions*.

2.2.1 It is especially important to decide that the sentence of house arrest is not imposed as a modality of serving a prison sentence, but only as an independent sentence exclusively with electronic surveillance, and for certain crimes, which would avoid it being imposed, as it is the case now, for certain crimes for which practice has shown it to be pointless.

Should it be prescribed as an independent sanction, it could be prescribed for specific criminal offenses, and conditions could be prescribed under which it can be imposed (e.g., that it cannot be imposed on a person who has been convicted more than twice, or on a person who is a user of psychoactive substances, or on a person with a psychiatric di-

za krivična dela u vezi sa opojnim drogama).

2.2.2 Poslednje izmene Krivičnog zakonika u 2019. godini su dovele do promena u određivanju uslova za uslovnu osudu, ali jedan od predloga koji je strožijeg karaktera i koji se može razmatrati korišćenjem komparativnih rešenja je mogućnost još većeg ograničenja primene uslovne osude. Naime, u pojedinim državama uslovnu osudu je moguće primeniti samo jednom i to prilikom prvog sankcionisanja bilo da je bez ili sa zaštitnim nadzorom (samo primarnim prestupnicima).

2.3 Uvođenjem određenih izmena odredbi u Krivičnom zakoniku i Zakona o izvršenju vanzavodski sankcija i mera u smislu preciznijeg određenja uslova za izricanje vanzavodskih sankcija.

2.3.1 Potrebno je posebno ograničenje u broju sankcija vanzavodskog tipa izvršenja koja se mogu izreći jednom istom licu u određenom vremenskom period (recimo u uku-

agnosis, or that it is not possible to impose it for criminal offenses related to narcotics).

2.2.2 The latest amendments to Criminal Code in 2019 led to changes in the determination of conditions for probation, but one of the proposals that is more stringent and that can be considered using comparative solutions is the possibility of even greater restrictions on the implementation of probation. Namely, in some countries, a suspended sentence can be implemented only once, during the first sanctioning, without or with protective supervision (only for primary offenders).

2.3 Introducing certain amendments to the provisions in the Criminal Code and the Law on execution of non-custodial sanctions and measures in the sense of more precise determination of the conditions for imposing non-custodial sanctions.

2.3.1 A special restriction is necessary in the number of non-custodial sanctions that can be imposed on the same person in a certain period of time (say, in a total period of 3

pnom periodu od 3 godine). Za takav predlog postoji više razloga koji proizilaze iz praktičnih iskustava izvršenja a regulisanje pojedinih situacija bi trebalo da se postignu da kroz promene normativnih rešenja.

Naime, prvo govorimo o pitanju povrata koje se sada vidi kao otežavajuća okolnost uz osvrt na procenu ličnosti učinioca krivičnog dela, pa sa razlogom možemo reći da u situaciji višestruke osude, kod povratnika prethodno primenjeno vanzavodsko sankcionisanje očigledno nije ostvarilo svrhu specijalne prevencije. Dakle, pitanje je koliko je adekvatno tako višestruko osuđenom licu ponovo primeniti vanzavodsko sankcionisanje.

Drugi problem je prednost izvršenja određene vanzavodske sankcije u odnosu na drugu u isto vreme i sprečavanje zastarevanja. Postoje višestruko osuđena lica na više vrsta ovih sankcija koje pristignu u približno isto vreme ili u toku trajanja već neke vanzavodske sankcije. Recimo, jedno lice ima da izvrši kaznu rada u javnom interesu i

years). There are several reasons for such a proposal, which arise from practical experiences of execution process, and the regulation of certain situations should be achieved through changes in normative solutions.

Namely, we first talk about the issue of return, which is now seen as an aggravating circumstance with reference to the assessment of the perpetrator, so we can reasonably say that in the situation of multiple convictions, previously applied non-custodial sanction obviously did not achieve the purpose of special prevention. So, the question is how appropriate it is that such a multiple convicted person be re-imposed non-custodial sanctioning.

Another problem is the advantage of executing a certain non-custodial sanction compared to another at the same time, and preventing the statute of limitations. There are multiple convicts of several types of these sanctions who arrive at approximately the same time or during the duration of a non-custodial sanction. For instance, one person has to serve a sentence of work in the public interest and twice a sentence of house arrest

dva puta kaznu kućnog zatvora od po godinu dana. Ukoliko prioritet damo dvema kaznama kućnog zatvora nakon dve godine dovodimo u pitanje zatarevanje kazne rada u javnom interesu i o tome da je osuđeno lice izbeglo izvršenje jedne kazne (jedno krivično delo mu se “oprostilo”). Dakle, i u ovom smislu je potrebno ograničenje u primeni s obzirom da ne postoji mogućnost preračunavanja kazni a rizikujemo zastarevanje.

2.3.2 U skladu sa pomenutim problemom potrebno je posebnom odredbom ***odrediti prednost izvršenja sankcija.***

Jedno od mogućnosti je propisati da ona vanzavodska sankcija koja prva stigne u izvršenje ima prednost izvršenja bez prekidanja izvršenja trenutne vanzavodske sankcije, a da se onda redom po datumu pristizanja izvršavaju ostale sankcije. Dakle, dati normativni odgovor na pitanje da li je kazna kućnog zatvora prioritetnija u izvršenju od neke druge vanzavodske sankcije (recimo kazne rada u javnom interesu ili uslovne osude sa zaštit-

of one year each. If we give priority to two sentences of house arrest after two years, we question the statute of limitations of the sentence of work in the public interest, and that the convicted person escaped the execution of one sentence (one criminal offense was “forgiven”). Therefore, in this sense, a restriction in implementation is necessary, given that there is no possibility of recalculating penalties, and we also risk statute of limitations.

2.3.2 In accordance with the problem mentioned above, a special provision is required to ***determine the priority of the execution of the sanctions.***

One possibility is to prescribe that the non-custodial sanction that first arrives in the process of execution has the advantage over the execution without interrupting the execution of the current non-custodial sanction, and that then other sanctions are executed in order of the date of their arrival. So, to give a normative answer to the question of whether a house arrest sentence is preferential in execution instead of some other non-custodial sanction (for instance, community service sentences or suspended sentences with protective supervision in

nim nadzorom koje su u toku) i da li je kazna zatvora prioritetnija od kazne kućnog zatvora koja je u toku pa se mora prekinuti da bi lice otišlo na izvršenje u zatvor (ovo naročito jer je u ovom trenutku prema Krivičnom zakoniku u pitanju ista kazna samo različitog modaliteta izvršenja)?

2.4 Nove odredbe **ZKP⁸ i Zakona o izvršenju vanzavodskih sankcija i mera u smislu obezbeđivanja pisane saglasnosti okrivljenog za izrečenu sankciju (recimo kućni zatvor) i odredbe kojom se neodzivanje /nejavljanje na početak izvršenja vanzavodske sankcije smatra kršenjem te sankcije i omogućava zamenu u kaznu zatvora.**

Ukoliko bi se u krivičnom postupku **obezbedila pisana saglasnost** okrivljenog lica da je saglasan sa izvršenjem kazne kućnog zatvora sa ili bez elektronskog nadzora, time bi se omogućilo

8 Zakonik o krivičnom postupku „Sl. glasnik RS“ br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021-odluka US, i 62/2021-odluka US) – u daljem tekstu ZKP.

progress) and whether a prison sentence is a priority over a house arrest sentence which is ongoing and must be terminated in order for a person to go to prison (this is in particular so because at the moment, according to the Criminal Code, it is the same sentence only of a different modality of execution)?

2.4 New provisions of the **CPC⁸ and the Law on execution of non-custodial sanctions and measures in the sense of ensuring written consent of the defendant for the imposed sanction (for example, home arrest) and provision by which non-response / non-appearance at the beginning of the execution of a non-custodial sanction is considered a violation of that sanction and allows for replacement with imprisonment.**

If the **written consent** of the defendant to agree to the execution of a house arrest sentence with or without electronic supervision would be provided in the criminal proceedings, this

8 Criminal Procedure Code „Official Gazette of RS “No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021- Decision of CC, i 62/2021-Decision of CC) – hereinafter CPC.

unapređenje izvršenja. Naime, ako nakon pravnosnažne osude lice *izbegava započinjanje izvršenja* kazne kućnog zatvora kod poverenika, smatralo bi se da takvim onemogućavanjem odnosno izbegavanjem izvršenje ove kazne on krši izrečenu presudu. Dakle, po tom osnovu moglo bi doći do zamene kazne kućnog zatvora u kaznu zatvora. Sada se u pravosudnoj praksi smatra da osuđeno lice koji namerno izbegava započinjanje izvršenja vanzavodske sankcije/kućnog zatvora (recimo stalnom promenom prebivališta) ne krši izrečenu kaznu i ona mu se ne može zameniti u kaznu zatvora (prema stavu Apelacionog suda u Kragujevcu). Dakle, ovde se ne radi o onim odredbama čl. 6a Zakona o izvršenju vanzavodskih sankcija i mera – neodazivanje na prvi razgovor, nakon čega sud izdaje naredbu za dovođenje/poternicu, već se radi o neodazivanju na početak izvršenja sankcije koje se dešava nakon obavljanja tog prvog razgovora, a što bi se moglo smatrati kršenjem izrečene sankcije.

would enable the improvement of the execution process. Namely, if after the final conviction the person *avoids beginning the execution of the house arrest sentence* with the commissioner, it would be considered that by such disabling or avoiding the execution of this sentence they violate the pronounced verdict. Therefore, on that basis, the sentence of house arrest could be replaced by imprisonment. It is now considered in judicial practice that a convicted person who intentionally avoids the execution of a non-custodial sanction / house arrest (for example, a permanent change of residence) does not violate the sentence and the sentence cannot be replaced by imprisonment (according to the Court of Appeals in Kragujevac). So, this is not about those provisions of Art. 6a of the Law on execution of non-custodial sanctions and measures - failure to respond to the first interview, upon which the court issues an order for apprehension / arrest warrant, but it is already a matter of not responding to the beginning of the execution of the sanction that takes place after the first interview, which could be considered a violation of the imposed sanction.

2.5 Izmene u Zakonu o izvršenju vanzavodskih sankcija i mera u čl. 20 u smislu promene da za sud bude **obavezujuće potraživanje izveštaja** od povereničke službe pre donošenja odluke o kućnom zatvoru.

2.5.1 Uz to bilo bi potrebno dodati i obavezu potraživanja takvih izveštaja od strane suda u situaciji razmatranja izricanja bilo koje vanzavodske sankcije ili mere.

Dakle, pored provere tehničkih mogućnosti za izvršenje, izveštaj poverenika bi trebao da sadrži podatke o licu, njegovoj porodici, njegovoj ličnosti, njegovoj istoriji, procenu svrishodnosti predloga određene sankcije ili mere, ili mogućnosti za izvršenje određenih obaveza. Uzimajući u obzir čl. 45 st. 3 Krivičnog zakonika gde se govori o proceni u odnosu na ličnost učinioca, njegov raniji život gde svakako spada kriminalna karijera i ranija osuđivanost lica za izricanje kućnog zatvora, smatra se da sud na to mora posebno obratiti pažnju i razmotriti da li će se izvršenjem sankcije na takav način

2.5 Amendments to the Law on execution of non-custodial sanctions and measures in Art. 20 in the sense of changing it to be **obligatory** for the court **to request a report** from the Commissioner Service before making a decision on house arrest.

2.5.1 Besides, it would be necessary to add the obligation of the court to request such reports when the imposition of any non-custodial sanction or measure is considered.

Therefore, in addition to checking the technical possibilities for execution, the Probation officer's report should contain data on the person, their family, their personality, their history, assessment of the expediency of proposing a certain sanction or measure, or possibility for execution of certain obligations. Taking into account Art. 45 Par. 3 of the Criminal Code, which deals with the assessment of the perpetrator's personality, their previous life, which certainly includes a criminal career and the previous conviction of the person for house arrest, it is considered that the court must pay special attention to and consider whether such a way will achieve

postići svrha sankcionisanja. U skladu sa tim, bi mogao da bude i sadržaj izveštaja poverenika u toku postupka.

2.5.2. Uz ovakav izveštaj poverenika sudu može se dodati i obaveza pribavljanja i dostavljanja sudu saglasnosti vlasnika stana u kom bi se kućni pritvor ili kućni zatvor izvršavao. Pozitivan primer dostavljanja takvih izveštaja poverenika je Engleska u kojoj postoji poseban deo probacijske službe koji na zahtev suda dostavlja takozvane “*pre-sentencing reports*”. Ovakve izmene bi dovele do izmena i u Krivičnom zakoniku.

2.6 Kada je u pitanju *obezbeđenje saglasnosti vlasnika stana* za izvršenje kućnog pritvora ili kućnog zatvora neophodno ju je pribaviti pre izricanja ovakve mere odnosno sankcije i to sa preciziranim određenjem sa ili bez elektronskog nadzora i normativno rešiti neka pitanja.

Razlog je taj što se dalje izvršenje komplikuje ukoliko nije moguće obezbediti tu saglasnost. Potrebno je posebnom odred-

the purpose of sanctioning. The content of the Probation officer’s report during the proceedings may be in accordance with that.

2.5.2 In addition to such a report of the Probation officer to the court, the obligation to obtain and submit to the court the consent of the owner of the apartment in which house detention or house arrest would be carried out may be added. A positive example of submitting such reports by the Probation officer is England, where there is a special part of the probation service that submits so-called “*pre-sentencing reports*” at the request of the court. Such changes would lead to changes in the Criminal Code as well.

2.6 When it comes to *securing the consent of the owner of the flat* for house detention or house arrest, it is necessary to obtain it before imposing such a measure or sanction, with a precise determination with or without electronic supervision and it is necessary to normatively resolve certain issues.

The reason is that further enforcement is complicated if it is not possible to secure that consent. It is necessary to regulate

bom regulisati dve situacije koje u praksi prave problem u vezi sa saglasnošću. Prva je, situacija nerešenog vlasništva za lica koja su recimo sa seoskog područja i imanja na kojima žive nisu u njihovom vlasništvu niti je vlasništvo prevedeno u katastru nepokretnosti, niti su urađeni ostavinski postupci, a druga situacija je normativno rešenje za lica kod kojih tokom trajanja kućnog pritvora ili kazne kućnog zatvora vlasnik stana povuče svoju saglasnost za izvršenje.

2.7 Usklađivanje Krivičnog zakonika, ZKP, Zakon o izvršenju vanzavodskih sankcija i mera i ZOSNUP⁹.

U situacijama kada potencijalna žrtva i učinilac žive u istoj kući, a potencijalni učinilac nasilja kome se izreknu obe hitne mere na 48 sati po osnovu odredbi ZOSNUP, je lice koje istovremeno izvršava kaznu kućnog zatvora ili meru kućnog pritvora, dolazi do problema u praćenju izvršenja. Problem iz-

⁹ Zakon o sprečavanju nasilja u porodici "Sl. glasnik RS" br. 94/2016. - u daljem tekstu ZOSNUP.

a special provision of two situations which in practice create a problem related to consent. The first is the situation of unresolved ownership for persons who are, for example, from a rural area and the property on which they live are not owned by them, nor is the property transferred to the real estate cadastre, nor are probate proceedings performed, and the second situation is a normative solution for persons for whom during house detention or house arrest sentence the owner of the apartment withdraws his consent for execution.

2.7 Harmonization of Criminal Code, CPC, Law on execution of non-custodial sanctions and measures and LPDV⁹.

In situations when the potential victim and the perpetrator live in the same house, and the potential perpetrator of violence who is sentenced to both emergency measures for 48 hours based on the provisions of ZOSNUP, is a person who is at the same time serving a house detention or house arrest, there are

⁹ The Law on Prevention of Domestic Violence "Official Gazette of RS" No. 94/2016. - hereinafter LPDV.

vršenja se lakše rešava kada nije primenjivan elektronski nadzor jer tada lice može odmah da ode na neku drugu lokaciju i nastavi sa izvršenjem. Međutim, najveći problem je nastaviti nesmetano izvršenje kada postoji elektronski nadzor. Ukoliko se lice iseli zbog hitne mere iz kuće gde mu je određena distanca kretanja, sistem elektronskog praćenja će pokazati kršenje ograničenja kretanja. Iako se poverenik odmah obaveštava o izrečenim hitnim merama neretko se dešava da lice nema gde da ode ili da se mora promeniti adresa izvršenja u sistemu koji upravlja uređajem za elektronski nadzor.

Elektronski uređaji koji se koriste u Srbiji nemaju GPS način praćenja, a jedan od načina kako bi se rešio pomenuti problem jeste korišćenje upravo ovakvih elektronskih uređaja za praćenje što bi moralo da se izmeni podzakonskim aktima i uredbama. Drugi način je mnogo strožiji a to je da se takvim licima propiše izmenom odredbi zakona određenje pritvora na 48 sati, kao meru kojom se pokazuje stroži-

problems in monitoring the execution. The problem of execution is easier to solve when electronic surveillance has not been applied, because then the person can immediately go to another location and continue with the execution. However, the most serious problem is how to continue uninterrupted execution when there is electronic surveillance. If a person moves out of the house due to an emergency measure where their movement distance has been determined, the electronic tracking system will show a violation of the movement restriction. Although the Probation officer is immediately notified of the pronounced emergency measures, it often happens that the person has nowhere to go or that the address of execution in the system that manages the electronic surveillance device must be changed.

Electronic devices used in Serbia do not have a GPS tracking method, and one of the ways to solve the problem mentioned is the use of such electronic tracking devices, which would have to be changed by bylaws and regulations. Another way is much stricter, and that is to prescribe such persons to be detained for 48 hours by amending

ja kaznena politika za izvršenje krivičnog dela nasilja u porodici. Pritvor se može objasniti razlogom koji i sada postoji u čl. 211. st. 3 ZKP: dakle kako učinilac ne bi ponovio krivično delo (u tih 48 sati). Međutim, problem može ostati i dalje ako se hitne mere produže na 30 dana od strane suda a ne postoje uslovi za dalje zadržavanje lica u pritvoru i još teže ukoliko lice nema drugo mesto boravka gde bi nastavio sa izvršenjem kućnog zatvora ili kućnog pritvora. Taj problem se može rešiti i obezbeđivanjem kuća za privremeni smeštaj za takve učinioce a koji se finansiraju iz budžeta države. Dakle, država ili pokazuje brigu i povoljnije sankcionisanje u svakom smislu za učinioce krivičnih dela ili pokazuje strožiju kaznenu politiku kada su u pitanju krivična dela u vezi sa nasiljem.

2.8 *Bilo bi adekvatno izuzeti iz nadležnosti poverenika čl. 11-16 Zakona o izvršenju vanzavodskih sankcija i mera.* S obzirom da je realnost u praksi, da ovu vrstu poslova u smislu nadzora vrši javno tužilaštvo

the provisions of the law, as a measure which shows a stricter penal policy for committing the crime of domestic violence. Detention can be explained by a reason that still exists in Art. 211. Par. 3 CPC: thus, the perpetrator will not repeat the crime (within those 48 hours). However, the problem may remain if the emergency measures are extended to 30 days by the court and there are no conditions for further detention of the person and even more difficult if the person has no other place to stay where they would continue to carry out house detention or house arrest. This problem can also be solved by providing houses for temporary accommodation for such perpetrators, which is financed from the state budget. Thus, the state either shows care and more favorable sanctions in every sense for perpetrators of crimes or shows a stricter penal policy when it comes to crimes related to violence.

2.8 *It would be appropriate to exempt from the competence of the Probation officer Art. 11-16 of the Law on execution of non-custodial sanctions and measures.* Given that the reality is, in practice, that this type of work in terms of supervision

neophodno je da se i zakonski izuzme iz nadležnosti poverenika (nadzor nad izvršenjem obaveza prema odluci javnog tužioca kada je u pitanju primena obaveza za odlaganje krivičnog gonjenja). Kako se primenom ovog načela oportuniteta skreće sa krivične procedure, a ne izriče krivična sankcija, vrlo je bitan stav Uprave. Da li poverenici kao deo Uprave koja izvršava krivične sankcije izvršavaju poslove sada samo u vezi sa krivičnim sankcijama, te da li je u ovom trenutku, njihov posao da izvršavaju i ove odluke javnog tužioca s obzirom da one ne predstavljaju krivične sankcije? Pri čemu, ovde napominjemo da trenutno postoji vrlo obavezujuć razlog za izvršenje ovih poslova od strane poverenika, a to su postojeće zakonske odredbe. Pitanje je da li će se i dalje ostaviti kao slovo na papiru ili će se brisati iz zakona zbog neupotrebe?

2.9 Po ugledu na komparativna rešenja a uz prethodnu empirijsku proveru uvesti promene u Krivičnom zakoniku u

is performed by the public prosecutor's office, it is necessary to legally exclude these tasks from the jurisdiction of the Probation officer (supervision over the execution of obligations according to the public prosecutor's decision when it comes to the implementation of the obligation to delay criminal prosecution). As the application of this principle of opportunity deviates from the criminal procedure, and does not impose a criminal sanction, the position of the Administration is very important. Do the Probation officers, as a part of the Administration that executes criminal sanctions, now perform tasks only in connection with criminal sanctions, and is it their job at this moment to execute these decisions of the public prosecutor as well, since they do not constitute criminal sanctions? However, we note here that there is currently a very binding reason for the execution of these tasks by the Probation officer, and it is the existing legal provisions. The question is whether it will still be a dead letter or will it be deleted from the law due to non-use?

2.9 Following the example of comparative solutions and with previous empirical verification, introduce amendments to the

smislu mogućnosti kombinacije dve vanzavodske sankcije.

Predlog bi bila primena kazne kućnog zatvora sa kaznom rada u javnom interesu ili kaznu kućnog zatvora sa obavezama zaštitnog nadzora. Kombinaciju ovih sankcija preporučuje pozitivna praksa država Evrope, ali i domaća stručna javnost a razlog je taj što se lice aktivira tokom trajanja sankcije i ne ostaje samo pasivno da čeka da prođe vreme određeno za kaznu kućnog zatvora. Za pojedina lica bi ovakav način aktivnog izvršenja imao potpuniji efekat.

2.10 Osuđenim licima na ***kaznu rada u javnom interesu*** treba ***obezbediti besplatan prevoz za putovanje*** na izvršenje ove kazne u drugo mesto u odnosu na mesto prebivališta. U Srbiji se ova kazna najčešće izriče licima niskog ekonomskog statusa te se sa ovakvim dosadašnjim načinom izvršenja još više ugrožava egzistencija osuđenog lica i njegove porodice.

2.11 U Krivičnom zakonu propisati da se ***kazna rada u javnom interesu*** može izre-

Criminal Code in terms of the possibility of combining two non-custodial sanctions.

The proposal would be the application of a house arrest sentence with a sentence of work in the public interest or a house arrest sentence with protective supervision obligations. The combination of these sanctions is recommended by the positive practice of European countries, but also by the domestic professional public, and the reason is that the person is activated during sanction and does not just passively wait for the time set for house arrest to expire. For some people this way of active execution would have a more complete effect.

2.10 Persons ***sentenced to work in the public interest*** should be provided with ***free transportation to*** the execution of this sentence to a place different from their place of residence. In Serbia, this sentence is most often imposed on persons of low economic status, and with this method of execution the financial position of the convicted person and their family is even worsened.

2.11 The Criminal Code prescribes that the ***penalty of work***

ći za krivično delo nedavanje izdržavanja.

Naime, kako povrat predstavlja otežavajuću okolnost, u situaciji ako se lice osudi na kaznu zatvora (kako je sada predviđeno), rizikuje se da nema mogućnost za zaradu, da se urušava ekonomski nivo njegove porodice a ono i dalje neće imati novac za plaćanje alimentacije. Dakle, ponovo ulazi u izvršenje istog krivičnog dela i u povrat, pa bi se primenom kazne rada u javnom interesu izbeglo zatvaranje i otežavanje životnih okolnosti osuđenog lica.

2.12 *Potrebno je stvoriti uslove za širu primenu uslovne osude sa zaštitnim nadzorom i osposobljavanje sistema državnog aparata za izvršenje uslova koji su predviđeni čl. 73 Krivičnog zakonika.* Potrebno je detaljno ispitati koje obaveze zaštitnog nadzora je potrebno zadžati a koje ne i tako urediti u Krivičnom zakoniku, a u ZIVS preciznije propisati ko je nadležan za koju obavezu.. Razmotriti mogućnost za obavezivanje i osposobljavanje zdravstvenog

in the public interest may be imposed for the criminal offense of failure to provide support.

Namely, as restitution is an aggravating circumstance, in a situation when a person is sentenced to imprisonment (as it is now provided), there is a risk that they will not be able to earn money, that their family's finance will collapse and he will still not have enough funds to pay alimony. Therefore, they commit the same criminal offense, so the implementation of a sentence of work in the public interest would avoid imprisonment and aggravation the convicted person's life circumstances.

2.12 *It is necessary to create conditions for the wider implementation of probation with protective supervision and training of the system of the state apparatus for the execution of the conditions provided for in Art. 73 of the Criminal Code.* It is necessary to examine in detail which obligations of protective supervision are necessary to keep, and thus regulate the matter in the Criminal Code, and also to prescribe in the Law on execution of non-custodial

sistema da oformi posebna odeljenja za izvršenje obaveza lečenja ili pohađanja savetovališta za zavisnike od alkohola ili droga i za učinioce krivičnih dela sa elementima nasilja. Takva posebna odeljenja u svakoj opštoj ili psihijatrijskoj bolnici bi se bavila samo tim poslovima odnosno izvršenjem sudskih odluka. Takođe, s obzirom da se smatra da je savetovanje i psihosocijalni tretman za lica koja su učinio- ci krivičnih dela sa elementima nasilja efikasano, ono je i obavezujuće za Srbiju od momenta usvajanja Istanbulske konvencije¹⁰ donete 2011. godine. Ova obaveza se vrlo retko izriče jer su takva savetovališta za nasilnike retkost.

2.13 Izvršenje ove obaveze zaštitnog nadzora iz čl. 73 tač. 1 st. 9 Krivičnog zakonika – po- sećivanje određenih profesio- nalnih i drugih savetovališta ili

10 Zakon o potvrđivanju Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici “Sl.glasnik RS – Međunarodni ugovori” br. 012/13. - u daljem tekstu “Istanbulska konvencija”.

sanctions more precisely who is responsible for which obligation.

Consider the option to oblige and enable the health system to establish special departments for the implementation of treatment obligations or the obligation to attend counseling for alcohol or drug addicts and for perpetrators of crimes with elements of violence. Such special wards in any general or psychiatric hospital would deal only with these tasks, i.e., the execution of court decisions. Also, since counseling and psychosocial treatment for perpetrators of crimes with elements of violence is considered effective, it is also binding for Serbia since the moment of the adoption of the Istanbul Convention¹⁰ adopted in 2011. This obligation is very rarely stated because such counseling for violent offenders is rare.

2.13 Execution of this obligation of protective supervision from Art. 73 It. 1 Par. 9 of the Criminal Code - attending certain professional and other

10 The Law on approval of COE Convention on Preventing and Combating Violence against Women and Domestic Violence “Official gazette of RS – International agreements” No. 012/13. - hereinafter “Istanbul Convention”.

ustanova i postupanje po njihovim uputstvima je moguće obezbediti i na još jedan način bez opterećenja zdravstvenog sistema. Recimo, ***propisati licenciranje ovakve usluge*** bilo u državnom ili u civilnom sektoru. Propisati obavezu Ministarstva rada i socijalne politike da licencira ovu uslugu. Pored licence trebalo bi u Zakonu o izvršenju vanzavodskih sankcija i mera izvršiti adekvatne izmene u skladu sa tim i propisati i sklapanje Ugovora između pružaoca usluge i Ministarstva pravde koje bi trebalo da snosi troškove izvršenja ove obaveze.

2.14 Uvođenje novog ovlašćenja povereniku prilikom kontrole obaveza zaštitnog nadzora propisanu čl. 73 tač.1 st.7 Krivičnog zakonika - testiranje aparatima za detekciju alkohola i testiranje na prisustvo droga. Pored toga, u Zakonu o izvršenju vanzavodskih sankcija i mera moralo bi se definisati ko ta testiranja radi i ko snosi troškove za njih (npr. ministarstvo zdravlja). Time bi se na kvalitetniji način moglo kontrolisati zaista

counseling centers or institutions and acting on their instructions can be provided in another way without burdening the health system. For example, ***prescribe the licensing of such a service*** in either the public or civil sector. Prescribe the obligation of the Ministry of Labor and Social Policy to license this service. In addition to the license, the Law on execution of non-custodial sanctions and measures should, accordingly, be properly amended, and prescribe the conclusion of an Agreement between the service provider and the Ministry of Justice, which should bear the costs of fulfilling this obligation.

2.14 Introduction of a new authorization to the Probation officer during the control of the obligations of protective supervision prescribed by Art. 73 It. 1, Par. 7 of the Criminal Code - testing with alcohol detection devices and testing for the presence of drugs. In addition, the Law on the execution of non-custodial sanctions and measures should define who does these tests and who bears the costs (e.g., the Ministry of Health). In this way, the actual abstinence from the

uzdržavanje od upotrebe droga ili alkoholnih pića. Jedna od dodatnih odredbi može biti i to, da se smatra automatskim kršenjem obaveza zaštitnog nadzora odnosno izrečene presude, ukoliko osuđeno lice odbije ovakva testiranja po nalogu poverenika.

2.15 Potrebna je *izmena u ZKP kojom bi se ograničilo trajanje kućnog pritvora.*

Pozitivan primer prakse su evropske države kod kojih je taj vremenski period ograničen na dve ili tri godine. Razlozi za pritvor su jasno utvrđeni i ne mogu imati u nedogled svoju funkciju, a možda bi se takvim novim ograničenjem podstakli i državni organi da se ubrzanije i ekspeditivnije posvete istražnom postupku. U nekim situacijama se kućni pritvor produžava i može da traje više godina. U takvim uslovima ukoliko lice bude osuđeno na kaznu zatvora i kućni pritvor mu se uračunava u kaznu zatvora, faktički gledano veći deo ili celokupnu kaznu zatvora izvršio je u kućnim uslovima, što je u suprotnosti sa određenjem kazne kućnog zatvora (koji traje

use of drugs or alcoholic beverages could be controlled in a better way. One of the additional provisions may be that it is considered an automatic violation of the obligations of protective supervision, i.e., the pronounced verdict, if the convicted person refuses such tests on the order of the Probation officer.

2.15 *An amendment to the CPC is necessary in order to limit the duration of house arrest.*

A positive example of practice is European countries where this time period is limited to two or three years. The reasons for the detention are clearly established and cannot have their purpose indefinitely. Perhaps such a new restriction would encourage the state authorities to dedicate themselves more quickly and expeditiously to the investigation procedure. In some situations, house arrest is extended and can last for several years. In such circumstances, if a person is sentenced to imprisonment and house arrest is included in the prison sentence, in fact, most or all of the prison sentence they served at home, which is contrary to the imposition of house arrest (lasting up to one year).

maksimalno do godinu dana). Dakle, kućni pritvor postaje parasankcija i postavlja se pitanje da li je opravdano da kućni pritvor traje toliko dugo?

2.16 Propisati primenu kućnog pritvora isključivo uz elektronski nadzor što bi se omogućilo jedino izmenama odredbi ZKP u vezi sa određenjem kućnog pritvora (recimo u čl. 210 ZKP), a kako bi postigao maksimalan efekat izvršenja razloga za njegovo izricanje.

2.17 Preciznije određenje policijskog postupanja usklađivanjem Zakona o policiji¹¹ i Zakona o izvršenju vanzavodskih sankcija i mera.

Postupanje policijskih službenika prema odredbama čl. 64 Zakona o policiji je određeno preciznim ovlašćenjima dok se u Zakonu o izvršenju vanzavodskih sankcija i mera ne propisuje precizno koja postupanja odnosno ovlašćenja se mogu tražiti od policijskih službenika za sarad-

¹¹ Zakon o policiji “Sl. glasnik RS “ br. 6/2016, 24/2018 i 87/2017. – u daljem tekstu Zakon o policiji.

So, house arrest becomes a para sanction and the question arises whether it is justified for house arrest to last so long?

2.16 Prescribe the implementation of house arrest exclusively with electronic surveillance, which would be possible only by amending the provisions of the CPC regarding the order of house arrest (For instance, in Art. 210 of CPC), in order to achieve the maximum effect of enforcing the reasons for its imposition.

2.17 More precise determination of the police action by harmonizing the Law on Police¹¹ and the Law on execution of non-custodial sanctions and measures.

Police officers’ proceedings according to the provisions of Art. 64 of the Law on Police is determined by precise authorizations, while the Law on execution of non-custodial sanctions and measures does not prescribe precisely which actions or authorizations can be requested from police officers for cooperation with the Probation officer. Therefore,

¹¹ The Law on Police “Official Gazette of RS “No. 6/2016, 24/2018 and 87/2017. – hereinafter The Law on Police.

nju sa poverenikom. Dakle, potrebno je precizno definisati koja su to ovlašćenja koja se smatraju kao - *pružanje pomoći povereničkoj službi*. Sada se postupanje može svesti na policijsko ovlašćenje u čl. 64 tač. 16 - druga ovlašćenja predviđena zakonom, što nije dovoljno dobro rešenje.

2.18 Usvajanje protokola o međusektorskoj saradnji o načinu izvršenja ovakvog sankcionisanja koji će se ticati Ministarstva pravde (sud, javno tužilaštvo, poverenička služba), Ministarstva zdravlja i Ministarstva unutrašnjih poslova. Detaljnije urediti obavezujuće postupanje svakog ministarstva odnosno njenih sektora u vezi sa izvršenjem svake pojedinačne vanzavodske sankcije i mere.

3. Preporuke koje se odnose na unapređenje u edukativnom smislu

3.1 Neophodna je *razmena iskustava u okviru povereničke službe* kroz organizovanje sastanaka zaposlenih između povereničkih kancelarija, kroz supervizijsku podršku sa ciljem unapređenja kvaliteta rada i pre-

it is necessary to precisely define the authorization that are considered as - *providing assistance to the Probation Service*. Now the proceedings can be reduced to police authorization in Art. 64 It. 16 - other authorizations provided by law, which is not a good enough solution.

2.18 Adoption of a protocol on multisectoral cooperation on the manner of execution of such sanctions, which will concern the Ministry of Justice (Court, Public Prosecutor's Office, Commissioner Service), the Ministry of Health and the Ministry of Interior. To regulate in more detail the binding actions for each ministry or their sectors with regards to the execution of each individual non-custodial sanction and measure.

3. Recommendations related to improvement in terms of education

3.1 It is necessary to *exchange experiences within the Probation Service* through the organization of staff meetings among Probation Offices, through supervisory support with the aim of improving the quality of work and overcoming the problems they encounter in their work.

vazilaženja problema sa kojima se susreću u radu. Takav sistem podrške kvalitetu rada bi trebao biti kontinuiran i planski utvrđen i sproveden od strane Uprave, a naglasak treba da bude i na postizanju ujednačene prakse.

3.2 **Obezbediti supervizijsku podršku** unutar svake regionalne povereničke kancelarije koja bi uvek bila dostupna po potrebi za konkretne situacije.

3.3 Pored toga neophodni su i **internacionalni seminari i edukacije** za upoznavanje sa praksom drugih država. Edukacija koja je kontinuirana i sprovodi se u svrhu održanja ali i povećanja nivoa kvaliteta rada.

3.4 **Poverenicima su potrebne i edukacije i treninzi za rad sa specifičnim kategorijama prestupnika** (učinioci seksualnih prestupa, porodičnog nasilja, zavisnici od opojnih droga, zavisnici od alkohola, veštine za rad sa "teškim" korisnicima).

3.5 Potrebni su **multisektorski sastanci i edukacije** naročito intenzivne i kontinuirane između pravosudnih organa i povere-

Such a system of support for the quality of work should be continuously and systematically determined and implemented by the Administration, and the emphasis should be on achieving uniform practice.

3.2 **Provide supervisory support** within each regional Commissioner Office that would always be available as required for specific situations.

3.3 In addition, **international seminars and trainings** are necessary to get acquainted with the practice of other countries - the education that is continuous and is conducted in order to maintain but also increase the level of quality of work.

3.4 **Probation officers also need education and training for work with particular categories of offenders** (perpetrators of sexual offenses, domestic violence, drug addicts, alcohol addicts, skills to work with "difficult" users).

3.5 It is also necessary to have **multisectoral meetings and trainings**, especially intensive and continuous, between the judicial bodies and the Probation Ser-

ničke službe s obzirom da pripadaju istom ministarstvu.

Evidentno je da prvosudni sistem nema povratnu informaciju o tome kako funkcioniše poverenička služba niti kako funkcioniše sistem vanzavodskog izvršenja sankcija ili mera. Sadašnji oblici multisektorske saradnje se najčešće odlikuju ličnim poznanstvima zaposlenih u državnih organima u okviru jedne lokalne zajednice, što potire i sada postojeće propisane obaveze međusobne korespondencije. Evidentno je da je potrebno insistirati na boljoj multisektorskoj saradnji kako ne bi dolazilo do zastarevanja postupaka, do prevelikog protoka vremena za reagovanje sudija na vanredne izveštaje poverenika, ili za odobravanje uslovnog otpusta kada je već sankcija nekoliko dana pred kraj izvršenja ili neke druge situacije koje se u praksi dešavaju. U saradnju je potrebno uključiti IK¹² referente i IK saradnike

12 Oznakom IK se označava izvršenje presude krivice, tako da se kolokvijalno službenici koji rade na izvršenju ovih poslova nazivaju IK referenti i IK saradnici.

vice, since they belong to the same ministry.

It is evident that judicial system has no feedback about how Probation service works nor how the execution of non-custodial sanctions and measures work. Current forms of multi-sectoral cooperation are usually characterized with personal acquaintances of employees in institutions within one local community, which cancels now existing statutory obligations mutual correspondents. Obviously, it is necessary to insist on better multisectoral cooperation in order to avoid statute of limitations of procedures, excessive time for judges to react to emergency report of Probation officer extraordinary reports, or approval of conditional release when the sanction is a few days before the end of execution or some other situation which happen in practice. It is necessary to include in the cooperation ECS¹² clerks and ECS associates in courts who

12 ECS marks execution of criminal sanctions, so court clerks working on these tasks call themselves ECS clerks or ECS associates.

koji u sudu učestvuju u praćenju presuda koje se izvršavaju.

3.6 Zaposlenima u oblasti socijalne zaštite potrebno je pružiti osnovni nivo edukacije o ovim sankcijama i načinu izvršenja koji se tiče oblasti njihove delatnosti. Naime, Centri za socijalni rad moraju znati kako funkcioniše pozivanje lica koje se nalazi u kućnom pritvoru za čije kretanje je potrebno odobrenje nadležnog suda ili u kućnom zatvoru kad je nužno da traži odobrenje povereničke službe, zatim informacije o tome da se o svemu mora obavestiti poverenička službe, da se moraju tražiti odobrenja za izlazak u terminima poštovanja modela viđenja sa maloletnom decom roditelja koji se nalazi u kućnom zatvoru i sl.

3.7 Potrebna je edukacija advokata o vanzavodskim sankcijama i merama, kako bi stekli osnovni nivo znanja i mogli da upute svoje klijente i na pravi način zaštite njihova prava, dakle da budu uključeni u postupak primene ovih sankcija i mera.

participate in monitoring judgments that are being executed.

3.6 Employees in the field of social protection need to be provided with a basic level of education about these sanctions and the manner of execution that concerns the area of their activity. Namely, the Social Welfare Centres must know how to call a person who is under house detention whose movement requires the approval of the competent court or in a house arrest when it is necessary to seek the approval of the Probation Service, then information that everything must be notified to the Probation Services, that approvals must be sought for going out in terms of respecting the model of meeting with minor children of parents who are in house arrest, etc.

3.7 Lawyers need to be educated on non-custodial sanctions and measures, in order to acquire a basic level of knowledge and to be able to instruct their clients and protect their rights in the right way, so that they can be more involved in the process of applying these sanctions and measures.

3.8 Sa zaposlenima koji učestvuju u primeni vanzavodskih sankcija i mera potrebno je sprovoditi i ***treninge iz drugih oblasti edukacije koji su primenljivi za njihove uslove rada*** (kursevi za sprečavanje profesionalnog sagorevanja, treninzi za eliminisanje stresa na poslu, team-building treninzi, treninzi kontrole besa, osnovni nivo treninga za medijaciju i sl.).

4. Preporuke koje se odnose na unapređenje sistema evidencije i nacionalne evaluacije

4.1 Postojeća elektronska baza Uprave bi trebala da služi što ***kvalitetnijoj evidenciji*** dostavljenih rešenja za izvršenje. Do polovine 2020. godine je baza bila centralizovana u smislu da se prvi unos podataka o licima koji ulaze u izvršenje vrši u Upravi, a povereničke kancelarije u kojima se obavlja izvršenje se bave unosom detaljnijih podataka tokom trajanja sankcije ili mere. Baza je centralizovana u smislu da poverenici mogu pristupiti podacima samo lica koja su u evidenciji te kancelarije, a mogućnost pristupa kompletnoj

3.8 It is necessary to conduct ***training in other areas of education that are applicable to their working conditions*** (courses to prevent burnout, training to eliminate stress at work, team-building training, anger control training, basic level of training for mediation, etc.). with employees who participate in implementation of non-custodial sanctions and measures.

4. Recommendations related to improvement of the system of records and national evaluation

4.1 The existing electronic database of the Administration should serve ***the highest quality records*** of submitted decisions for execution. By mid-2020, the database was centralized in the sense that the first entry of data on persons entering the execution is done in the Administration, and the Probation Offices where the execution is performed deal with entering more detailed data during the sanction or measure. The database is centralized in the sense that the commissioners can access the data only of persons who are in the records of that office, and the possibility of access to the

bazi svih podataka svih lica je omogućena samo u Upravi. To bi moglo biti unapređeno i davanjem *svakom povereniku ovlašćenja za pristup* podacima o izvršenju vanzavodskih sankcija i mera za konkretno lice a koje se tiču izvršenja na drugim teritorijama države jer bi se time dobio potpuniji podatak o osuđivanosti i izvršenju određene vanzavodske sankcije ili mere, ako je lice menjalo prebivališta.

4.2 S obzirom na centralizovanu bazu, potrebno je da se određena služba u Upravi bavi samo praćenjem i *istraživanjem* stope recidivizma lica i procenama uspešnosti izvršenja pojedinih sankcija i mera za pojedina krivična dela. Pored toga značajno bi bilo istražiti i faktore koji doprinose recidivizmu i one faktore koji utiču na lica da ne izvrše povrat, zatim karakteristike profila lica koja izvršavaju ove sankcije i mere u odnosu na pojedina krivična dela. Na taj način bi mogla biti izvršena nacionalna evaluacija primene vanzavodskih sankcija i mera nakon perioda od 5 ili 10 godina koja

complete database of all data of all persons is enabled only in the Administration. This could be improved by giving *each Probation officer the authority to access* data on the execution of non-custodial sanctions and measures for a particular person concerning execution in other territories of the state, as this would provide more complete data on convictions and execution of certain non-custodial sanctions or measures, if the person changed residence.

4.2 Given the centralized base, it is necessary that a certain service in the Administration deals only with monitoring and *researching* the rate of persons' recidivism and assessing the success of the execution of certain sanctions and measures for certain crimes. Besides, it would be important to investigate the factors that contribute to recidivism and those factors that affect persons not to return, and also the characteristics of the profile of persons who carry out these sanctions and measures in relation to certain crimes. In this way, a national evaluation of the application of non-custodial sanctions and measures after a period of 5 or 10 years could be performed, which would provide

bi dala odgovore na specifična pitanja koja se nameću u smislu uspešnosti izvršenja ovih sankcija u Srbiji.

4.3 Postojanje i javna dostupnost informacija o rezultatima takvih empirijskih evaluacija i istraživanja efekata primene ovih sankcija i mera predstavlja značajan podatak za kontrolu kriminaliteta, pokazatelj kivične reakcije i implementaciju novih ili drugačijih načina izvršenja. Pored toga, dobijeni rezultati su značajni i za upoznavanje kako stručne tako i opšte javnosti u cilju eliminisanja predrasuda i povećanja pozitivnog odnosa kao ovakvom načinu sankcionisanja prestupnika.

answers to specific questions that arise in terms of the success of the implementation of these sanctions in Serbia.

4.3 The existence and public availability of information on the results of such empirical evaluations and research into the effects of the application of these sanctions and measures is important data for crime control, indicators of criminal reaction and implementation of new or different ways of execution. In addition, the results obtained are important for getting to inform both the professional and the general public in order to eliminate prejudices and increase the positive attitude to such a way of sanctioning offenders.

III ZAKLJUČAK

Vanzavodske sankcije i mere su vrsta krivičnog sankcionisanja čija je osnovna prednost izvršenje u lokalnoj zajednici. Njihova korist je višestruka za državu, za zajednicu i društvo u celini i za učinioca krivičnog dela.

Potrebno je da se zakonodavac ali i donosioci odluka u Srbiji opredele za kakvu se kaznenu politiku zalažu. Ovo otvara mnoga pitanja. Da li je prioritet strožije sankcionisanje “lakših” krivičnih dela kratkotrajnim kaznama zatvora ili pružiti određenim učiniocima krivičnih dela mogućnost za vanzavodsko izvršenje? Da li je zalaganje za blažu kaznenu politiku konstantna potreba za povećanjem uslovnih osuda a bez ikakvih obaveza zaštitnog nadzora ili nekih drugih obaveza? Da li se teži smanjenju kriminaliteta i da li se kao jedan od načina dejstva vidi u ulaganju u specijalnu prevenciju?

Evaluacija i istraživanja nedostaju na nacionalnom nivou pa

III CONCLUSION

Non-custodial sanctions and measures are a type of criminal sanctioning whose main advantage is execution in the local community. Their benefit is multiple for the state, for the community and society as a whole, and for the perpetrator of the crime.

It is necessary for the legislator and decision-makers in Serbia to decide what kind of penal policy they stand for. This raises numerous questions. Is the priority a stricter sanctioning of “minor” offences with short-term imprisonment or to provide certain perpetrators with the possibility of non-custodial execution? Is commitment to a more lenient penal policy a constant need to increase suspended sentences without any protective supervision obligations or any other obligations? Is there a tendency to reduce crime rate and is it seen as one of the ways to act in investing in special prevention?

Evaluation and research are insufficient at the national level, so

se izmene i dopune zakona vrše bez prethodne analize što doводи do neusklađenosti u primeni, a veoma velik problem u ovoj oblasti je viđen u nedostatku preciznijih smernica za odmeravanje sankcije. Maksimalna svrha sankcionisanja se postiže adekvatnim odabirom sankcije prema konkretnom učiniocu i konkretnom krivičnom delu, odnosno njenom individualizacijom ali uz omogućene adekvatne instrumente na kojima se može zasnovati odluka.

Zakon o izvršenju vanzavodskih sankcija i mera je pokazao da postoji potreba za preciznije i značajnije izmene od onih koji su učinjene 2018. godine a u skladu sa tim neophodna su i usklađivanja sa drugim zakonskim i podzakonskim aktima koji uređuju primenu ovih sankcija i mera.

Shodno tome, neophodno je obezbediti da sistem odnosno zajednica što bolje funkcioniše i doprinosi kvalitetnom izvršenju, bilo da su u pitanju promene u ministarstvima, organima državne uprave, institucijama na lokalnom nivou. Mora postojati

amendments to the law are made without prior analysis, which leads to inconsistencies in implementation, and a very serious problem in this area is seen in the lack of more precise guidelines for measuring sanctions. The maximum purpose of sanctioning is achieved by appropriate choice of sanction according to the specific perpetrator and the specific criminal offense, i.e., its individualization, but with the provision of appropriate instruments on which the decision can be based.

The Law on execution of non-custodial sanctions and measures has shown that there is a need for more precise and significant changes than those made in 2018. In accordance with that, harmonization with other laws and bylaws regulating the implementation of these sanctions and measures is necessary.

Consequently, it is necessary to ensure that the system, that is, community functions as well as possible and contributes to quality execution, whether it is a matter of changes in ministries, state administration bodies, in-

jednobraznost funkcionisanja i precizno uređene odredbe na koje se postupajuća službena lica u svojim sektorima mogu osloniti.

Evidentno je da sistem koji je uveden pre više od deset godina dosegao svoj maksimum i usporio napredak, da nije pretrpeo velike i krucijalne izmene u cilju postizanja nivoa evropske efikasnosti i zato je poželjna njegova reorganizacija počev od Uprave koja je nosilac izvršenja ovih sankcija i mera pa do preciznijeg i unapređenijeg uređenja ovlašćenja u drugim sektorima koji učestvuju u primeni ovih sankcija i mera. Dakle, postojeća međusektorska saradnja ostavlja prostor za unapređenja. Ona ne može biti zasnovana na ličnim poznanstvima naročito u okviru lokalnih zajednica već mora biti jasno definisana obavezama u postupanju svakog sektora.

Uvažavanje mišljenja stručnih lica koja učestvuju u primeni vanzavodskih sankcija i mera treba da ima primarno mesto. Njihova iskustva su dragocen izvor podataka za unapređenje a dosadašnji

stitutions at the local level. There must be uniformity of functioning and precisely regulated provisions on which acting officials in their sectors can rely.

It is evident that the system that was introduced more than ten years ago reached its maximum and slowed down progress, that it did not undergo major and crucial changes in order to achieve the level of European efficiency, and therefore its reorganization is desirable, starting with the Administration to a more precise and improved regulation of authorization in other sectors that participate in the implementation of these sanctions and measures. Thus, the existing inter-sectoral cooperation leaves room for improvement. It cannot be based on personal acquaintances, especially within local communities, but must be clearly defined by the obligations of each sector.

Respect for the opinions of experts who participate in the implementation of non-custodial sanctions and measures should have a priority. Their experiences are a valuable source of data for improvement and the data

podaci o primeni ovih sankcija i mera u poslednjih deset godina su odlična polazna osnova za nacionalnu evaluaciju koju je neophodno sprovesti što pre.

Jedan od osnovnih ciljeva je proceniti da li je vanzavodski način sankcionisanja adekvatan za učinioce krivičnih dela u Srbiji a ako jeste kako njegovu primenu povećati i unaprediti. Tek, nakon sprovedene evaluacije Srbija se može koristiti pozitivnim primerima prakse evropskih država naročito onih kod kojih vanzavodsko sankcionisanje prelazi 50% ukupnih sankcija na godišnjem nivou.

I na kraju, neophodno je da napomenemo da su navedene preporuke okvirnog karaktera da nisu precizno definisani u smislu de lege ferenda predloga, ali da imaju značajno uvažavanje jer su predlozi i mišljenja zasnovani na praktičnom iskustvu i na multi-sektorskoj osnovi.

Ovako definisane preporuke predstavljaju podsticaj za izmene koje bi bile konkretno uobličene i precizne a naročito kada

so far on the implementation of these sanctions and measures in the last ten years are an excellent starting point for a national evaluation that needs to be conducted as soon as possible.

One of the basic goals is to assess whether the non-custodial way of sanctioning is appropriate for perpetrators of criminal acts in Serbia, and if so, how to increase and improve its implementation. Only after the evaluation can Serbia use positive examples of the practice of European countries, especially those where non-custodial sanctioning exceeds 50% of the total sanctions on an annual level.

Finally, it is necessary to note that the stated recommendations are of a framework character, that they are not precisely defined in terms of De Lege Ferenda Proposals, but that they deserve significant respect because the proposals and opinions are based on practical experience and on a multi-sectoral basis.

The recommendations defined in this way provide an incentive for changes that would be con-

je u pitanju normativni okvir, što može biti deo rada nekih budućih radnih tela, odbora, grupa ili komisija.

cretely shaped and precise, especially when it comes to the normative framework, which may be part of the work of some future working bodies, committees, groups or commissions.

IV LITERATURA

- Zakon o izvršenju vanzavodskih sankcija i mera "Sl. glasnik RS" br.55/2014 i 87/2018.
- Zakonik o krivičnom postupku „Sl. glasnik RS“ br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021-odluka US, i 62/2021-odluka US).
- Zakon o sprečavanju nasilja u porodici "Sl. glasnik RS" br. 94/2016.
- Zakon o potvrđivanju Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici "Sl.glasnik RS – Međunarodni ugovori" br. 012/13.
- Zakon o policiji "Sl. glasnik RS " br. 6/2016, 24/2018 i 87/2017.
- Krivični zakonik "Sl. glasnik RS" br. 85/2005, 88/2005-ispr., 107/2005-ispr., 72/2009, 111/2009, 112/2012, 104/2013,108/2014, 94/2016 i 35/2019).
- Spasojević, A., Arsenijević, S. Efekti alternativnih sankcija i mera iz ugla povereničke službe. Odbor za ljudska prava Valjevo, 2017, str. 6.
- Snacken, S. The impact of the criminal and social context on Probation systems in Europe, in Context The Council of Europe Probation Rules R (2010)1, 2010.
- Punoletni učinioci krivičnih dela u Republici Srbiji, 2019. Bilten, br.665, Beograd, 2020. Republički zavod za statistiku: <http://www.stat.gov.rs>

IV REFERENCES

- Law on execution of non-custodial sanctions and measures "Official Gazette of RS" No.55/2014 and 87/2018.
- Criminal Procedure Code „Official Gazette of RS” No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021-Decision of CC, and 62/2021- Decision of CC).
- Law on Prevention of Domestic Violence "Official Gazette of RS" No. 94/2016.
- The Law on approval of COE Convention on Preventing and Combating Violence against Women and Domestic Violence "Official gazette of RS – International agreements" No. 012/13
- Law on Police "Official Gazette of RS" No. 6/2016, 24/2018 and 87/2017.
- Criminal Code "Official Gazette of RS" No. 85/2005, 88/2005-corrected., 107/2005-corrected., 72/2009, 111/2009, 112/2012, 104/2013, 108/2014, 94/2016 and 35/2019).
- Spasojević, A., Arsenijević, S. Effects of alternative sanctions and measures from the point of view of the commissioner service. human Rights Committee Valjevo, 2017, str. 6.
- Snacken, S. The impact of the criminal and social context on Probation systems in Europe, in Context, The Council of Europe Probation Rules R (2010)1, 2010.
- Adults, Perpetrators of Crime in the Republic of Serbia, 2019. Bulletin, No. 665, Belgrade, 2020. Statistical Office: <http://www.stat.gov.rs>

Preporučena literatura:

- Resolution (65)1 on the suspended sentence, probation and other alternatives to imprisonment. Council of Europe, Committee of Ministers, (22.01.1965).
- Resolution (70)1 on the practical organisation of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders. Council of Europe, Ministers Deputies, Committee of Ministers (26.01.1970).
- Recommendation R(92)16 on the European rules on community sanctions and measures. Council of Europe, Committee of Ministers, (19.10.1992). Council of Europe, Committee of Ministers. (www.rm.coe.int).
- Recommendation Rec(2000)22 of the Committee of Ministers to Member States on improving the implementation of the European rules on community sanctions and measures, 29.11.2000. Council of Europe, Committee of Ministers. (www.rm.coe.int).
- Recommendation R(2003)22 of the Committee of Ministers to Member States on Conditional Release (parole). Council of Europe, Committee of Ministers
- Recommendation Rec(2006)8 of the Committee of Ministers to Member States on assistance to crime victims (14.06.2006). Council of Europe, Committee of Ministers.
- Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison

Recommended reference list

- Resolution (65)1 on the suspended sentence, probation and other alternatives to imprisonment. Council of Europe, Committee of Ministers, (22.01.1965).
- Resolution (70)1 on the practical organisation of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders. Council of Europe, Ministers Deputies, Committee of Ministers (26.01.1970).
- Recommendation R (92)16 on the European rules on community sanctions and measures. Council of Europe, Committee of Ministers, (19.10.1992). Council of Europe, Committee of Ministers. (www.rm.coe.int).
- Recommendation Rec (2000)22 of the Committee of Ministers to Member States on improving the implementation of the European rules on community sanctions and measures, 29.11.2000. Council of Europe, Committee of Ministers. (www.rm.coe.int).
- Recommendation R (2003)22 of the Committee of Ministers to Member States on Conditional Release (parole). Council of Europe, Committee of Ministers
- Recommendation Rec (2006)8 of the Committee of Ministers to Member States on assistance to crime victims (14.06.2006). Council of Europe, Committee of Ministers.
- Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison

- Rules. Committee of Ministers Council of Europe, 11.01.2006. ([www.https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+\(2006\)+2+on+the+European+Prison+Rules.pdf/e0c900b9-92cd-4dbc-b23e-d662a94f3a96](http://www.https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2006)+2+on+the+European+Prison+Rules.pdf/e0c900b9-92cd-4dbc-b23e-d662a94f3a96)).
- Recomendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules. Council of Europe, Strasbourg, 20.01.2010. (www.rm.coe.int)
- Recommendation CM/Rec (2014)4 of the Committee of Ministers to Member States on electronic monitoring (19.02.2014), ([www.http://pjp-eu-coe.int/documents](http://pjp-eu-coe.int/documents)).
- Recommendation CM/Rec (2017)3 on the European rules on community sanctions and measures. (www.rm.coe.int).
- Standardna minimalna pravila Ujedinjenih nacija za mere alternativne institucionalnom tretmanu "Tokijska pravila", 1990, Knjiga br.6. Prava deteta i maloletničko pravosuđe, odabrani međunarodni instrumenti Unicef. (www.cdp.org.rs/centarzapravadeteta).
- on Rules. Committee of Ministers Council of Europe, 11.01.2006. ([www.https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+\(2006\)+2+on+the+European+Prison+Rules.pdf/e0c900b9-92cd-4dbc-b23e-d662a94f3a96](http://www.https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+(2006)+2+on+the+European+Prison+Rules.pdf/e0c900b9-92cd-4dbc-b23e-d662a94f3a96)).
- Recomendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules. Council of Europe, Strasbourg, 20.01.2010. (www.rm.coe.int)
- Recommendation CM/Rec (2014)4 of the Committee of Ministers to Member States on electronic monitoring (19.02.2014), ([www.http://pjp-eu-coe.int/documents](http://pjp-eu-coe.int/documents)).
- Recommendation CM/Rec (2017)3 on the European rules on community sanctions and measures. (www.rm.coe.int).
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990, Book No.6. Child Rights and Juvenile Justice, international instrument selected: Unicef. ([www.cdp.org.rs/centarzapravadeteta-child rights center](http://www.cdp.org.rs/centarzapravadeteta-child-rights-center)).

CIP