



Centar za građansko obrazovanje  
Centre for Civic Education



# PROBATION IN THE SISTEM OF EXECUTION OF CRIMINAL SANCTIONS OF MONTENEGRO



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# PROBATION IN THE SISTEM OF EXECUTION OF CRIMINAL SANCTIONS OF MONTENEGRO

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PROBATION IN THE SYSTEM OF EXECUTION OF CRIMINAL  
SANCTIONS OF MONTENEGRO

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# **PROBATION IN THE SYSTEM OF EXECUTION OF CRIMINAL SANCTIONS IN MONTENEGRO**

## **1. FOREWORD**

### **1.2. SUBJECT AND GOAL OF THE STUDY**

Alternatives to short-term imprisonment lies in increased humanity and economics of the execution of criminal sanctions, with perspective of positive influence to rehabilitation and re-socialization of convicted persons.

They are, by their nature penalties, which should be distinguished from measures that may be imposed in the process of disposal of criminal prosecution by the State Prosecutor. They may be qualified as: Measures modifying execution of the deprivation of liberty sentence (house arrest and conditional release); Measures of warning as the alternative to sentence of the liberty deprivation (suspended sentence and judicial admonition); and other penalties as alternatives to liberty deprivation sentence (a fine, a community service, confiscation of driver's license).

The politics of criminal combating defines the manner on which the state wants to impact on the criminal reduce, in terms of the general prevention and greatly on the special prevention when the perpetrators of criminal acts are in question. The biggest role in rehabilitation and re-socialization of perpetrators of criminal acts has criminal sanction that has been imposed to him/her and sanctions rehabilitation programs during its enforcement and after that. Special focus should be put on the short-term sentence of liberty deprivation due to frequency of their

pronouncement, their nature as a basis for rehabilitation of the perpetrator of a criminal act as well as the state expenditures in the process of their execution. There is a constant dilemma in the theory and in the practice about the effectiveness of short-term penalties having in mind that they impose for a period of time which is no longer than six months as well as the negative effects that short-term penalties produce. This primarily refers to the characteristics of persons who are sentenced to short-term prison sentences, these are usually persons who are coming in conflict with the law for the first time and who committed minor criminal offenses. On the other hand, taking into account the previous fact, institutes for execution of criminal sanctions, in our country and in surroundings, with the conditions and internal organization, influence on persons who come to the execution of short-term prison sentences, and instead of being rehabilitated they get closer to the criminal groups. Therefore, in theory, prisons are often called the "crime schools". Aware of these shortcomings, as well as many others, with the beginning of this century, more and more attention is paid to alternatives of short-term penalties of liberty deprivation. Some of them are already present, they form a part of modern legislations and are often used in the past but did not give satisfactory results because they were not monitored by rehabilitation programs and they more had a form of forgiveness rather than criminal sanctions. This refers to the admonition and suspended sentence. On the other hand, a fine is unpopular because of its specificity and often has been imposed as a secondary criminal sanction. Finally, the financial aspect through which the state budget bears the high expenditures for execution of short-term imprisonment and providing spatial and other capacities additionally depend the question of "cost-effectiveness" and the effectiveness of short-term imprisonment.

All these facts have indicated that it is necessary to overcome the shortcomings of current penal policy and the system of criminal sanctions execution by finding new alternatives to short-term penalties of liberty deprivation. First of all it was necessary to create the conditions for the complete rehabilitation of the perpetrator of a criminal act, the

protection of his/her right, as well as reducing the enormous state expenditures to the execution of the short-term liberty deprivation penalties.

Our legislator has kept pace with time, successively in the last decade, introducing a number of alternative measures that our system of execution of criminal sanctions did not know. Above all this implies to community service and the latest alternative imprisonment that is executed in the residential premises (house arrest)<sup>1</sup>. There was not enough time for wider implementation for the other alternative sentence, such as house arrest, but it is obvious that bylaws which would impose and implement alternative sentence haven't been adopted. It passed less than a year since Law adoption, and the technical conditions for the implementation of this specific sentence were not created, therefore the imprisonment that shall be executed in the residential premises remained inapplicable. The new law has been brought into force in the part of execution of a suspended sentence and community service, which further regulates the area of execution, requiring continuous monitoring of the criminal sanctions implementation. Especially keeping in mind the implementation of the program for undertaking measures for the purposes of reintegration and readjustment in the community, defined by Action plan for Chapter 23 - Judiciary and Fundamental Rights.

Probation in Montenegro finds its place in the system of the criminal sanctions execution, and its role in time to come, shall take significant part in criminal prevention, protection of the rights of prisoners through humanization of their treatment as well as the protection of society.

Bearing in mind all the above, the implementation of the project seemed necessary in order to review the situation in the penal policy of pronouncement and execution of the short-term imprisonment, and alternative criminal sanctions, which are applicable, in order to estimate their fundamental effect.

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<sup>1</sup> Law on amending of the Criminal Code, (Gazette, 40/2013-59)



Also, not less significant was the analysis of the institutional framework for the execution of alternative criminal sanctions and the extent to which the new legislation can be implemented in the practice. The pre-prepared indicators for monitoring the Criminal Code application and additional laws were implied, as a prerequisite for the implementation of such research, which will serve as a basic methodology for continuous monitoring system for execution of alternative criminal sanctions. On the other hand, it was necessary to determine the shortcomings of these criminal sanctions and predict the way to improve their effect, as well as the creation of conditions for the application of alternative penalties, community service and house arrest.

Work on this project implies research activities in four topics:

- Analysis of the legislative and institutional framework from the aspect of international probation standards;
- Analysis the level of application of short term liberty deprivation sentences and alternative sentences through the courts and criminal offences for which they are imposed;
- Analysis of the efficiency of short term liberty deprivation sentence and alternative sentence through the rate of recidivism and rehabilitation program during and after served sentence;
- Creating indicators for monitoring the application of short-term imprisonment and alternative sentences;

## 2. ANALYSIS OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH ASPECTS OF INTERNATIONAL PROBATION STANDARDS

### 2.1. NACIONAL LEGISLATIVE

#### 2.1.1 The Criminal Code<sup>2</sup>

The article 4 of the Criminal Code determines general purpose of prescription and pronouncement of criminal sanctions as repression of the acts which violate and jeopardize the values protected by criminal legislation. The purpose of punishment within the framework of the general purpose of criminal sanctions is : 1) Preventing an offender from committing criminal offences and provision of rehabilitative influence so that s/he does not commit criminal offences thereafter; 2) Influence to the others not to commit criminal offences; 3) Expression of social condemnation for a criminal offence and an obligation of respect to law; 4) Providing moral strength and influence on the development of social responsibility.

Items 1 and 4 unambiguously determine the purpose of punishment as a process of re-socialization and reintegration of the personality of convicted person. For the implementation of alternative criminal sanctions, particular importance have precisely stated motives by which convicted person re-socialize and reintegrate into society. According to specific nature of certain intermediate /alternative criminal sanctions they may be classified as:

##### 2.1.1.1. The measures to modify the execution of liberty deprivation

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<sup>2</sup> The Criminal Code of Montenegro, "Gazette of the Republic of Montenegro", no. 70/2003, 13/2004, 47/2006 and "Gazette of Montenegro", no. 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013.

*a) Imprisonment which executes in the premises for living*<sup>3</sup> – introduced in criminal justice system in 2013<sup>4</sup>, and can be determined when the perpetrator of criminal offence was imposed to six months imprisonment, whereas due to the personality of the offender, his earlier life, his conduct after committed offense, the degree of guilt and other circumstances under which the offense was committed, can be excepted that the purpose of punishment will be achieved.

Convicted who has been a subject imprisonment execution in the manner referred to paragraph 1 of this Article shall not leave the premises where he lives, except in cases which are prescribed by law which determines the execution of criminal sanctions. If convicted arbitrarily leaves premises where he lives, ones for more than six hours or two times up to six hours, the court shall order that the rest of the imprisonment serves in the Institution For Execution Of Criminal Sanctions. From provision stated above, arises the obligation of the Probation service to provide supervision on the implementation of the sentence, through electronic monitoring of convicted person movement

*b) Release on parole* 5 - can be approved to a convicted person who has served two-third, and exceptionally half of the imprisonment or of the forty-year imprisonment sentence, if s/he during the maintenance of imprisonment sentence has improved so that it is reasonable to expect that s/he will behave well while at liberty and, particularly that s/he will refrain from committing criminal offences until the end of time the prison sentence had been imposed. At the assessment on whether to release a person on parole his/her conduct due to period of serving the sentence, performance of work tasks appropriated to his/her working abilities, as well as other circumstances indicating that the purpose of punishment has been achieved, shall be taken into consideration.

*It is necessary here to note that by Law the criteria for establishing if the purpose of punishment is achieved , insufficiently determined and*

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<sup>3</sup> Article 36a of the Criminal Code

<sup>4</sup> Law on amending of the Criminal Code, Official Gazette of Montenegro, 40/2013-59.

<sup>5</sup> Article 37 of the Criminal Code

*indicates to " risk assessment " as the basic mechanism for the monitoring of the process of re-socialization and reintegration of convicts conditions .*

In parole release decision can be established that the convicted person is obligate to fulfill the commitment which is set by law. The types of special commitments are prescribed by the Law on Execution of Criminal Sanctions which further regulates the implementation and supervision of conditionally released convicts. According to the present legislative solution the Probation service shall supervise all convicts who have been granted parole, as well as in part of parole by which the specific obligation is set.

#### **2.1.1.2. The Warning measures as alternative to liberty deprivation sentence**

Within the general purpose of criminal sanctions, the purpose of warning measures is not imposing a sentence for lesser criminal offences on the offender once when it is not necessary for the purpose of criminal justice protection and when it is expected an admonition with the threat of punishment (suspended sentence) or an admonition alone (judicial admonition) will influence the offender enough to deter him/her from committing criminal offences.

- a) *Judicial admonition*<sup>6</sup> - can be imposed for criminal offences for which the prison sentence or a fine are prescribed and which have been committed under such extenuating circumstances that they render them particularly minor. For certain criminal offences and under conditions prescribed by law, a court admonition can be imposed even in cases for which a sentence of imprisonment is prescribed not exceeding three years.

When deciding whether to imposed a judicial admonition, the court shall, taking into account the purpose of the admonition,

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<sup>6</sup> Article 65 of the Criminal Code

particularly consider the personality of the offender, her/his past conduct, her/his conduct after the commission of the criminal offence, specifically her/his relationship towards the injured party, as well as the degree of criminal liability and other circumstances under which the offence thereof has been committed. When judicial admonition is in question, analysis of circumstances which are basis for decision making process of judicial admonition, we must emphasize the need of "risk assessment"

*As Judicial admonition can be imposed for the criminal offences for which is prescribed sentence of imprisonment which not exceeding three years, and it is apparently necessary introducing the Probation service, in this phase of decision making.*

- b) *Suspended sentence*<sup>7</sup> – is criminal sanction which has specific meaning in the system of criminal sanctions in Montenegro, first of all considering frequency of its pronouncing in the practice of courts, which will be more discussed in the second part.

Pronouncing a suspended sentence, the court determines a sentence to a criminal offender and at the same time orders that it shall not be carried out, if the convicted person does not commit another criminal offence for a period of time determined by the court, which can't be shorter than one year nor longer than five years (testing period).

A suspended sentence can be imposed when the maximum sentence of two years imprisonment has been determined to the offender.

Like with all criminal sanctions, with special focus on judicial admonition and release on parole, even when determining whether to impose a suspended sentence the court shall, take into account the purpose of the suspended sentence, pay a particular attention to the

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<sup>7</sup> Article 53 of the Criminal Code

personality of the offender, his/her earlier conduct, his/her conduct after the commission of the criminal offence, degree of criminal liability and other circumstances under which the offence has been committed. *So, even with a suspended sentence Criminal Code indirectly refers to the obligation of "risk assessment", and leaves that in the jurisdiction of the court without the possibility of technical assistance that Probation service should provide.*

The Suspended sentence can be imposed with protective supervision for the particular period, in the course of the testing period. The protective supervision implies measures of assistance, supervision, and protect. Conditions for pronouncing the protective supervision are the same circumstances for pronouncing the suspended sentence, this means that the same circumstances for which the suspended sentence has been imposed have the nature to impose to a convicted person some specific obligation arising from the protective supervision.

Accordingly, the protective supervision shall be imposed and it shall represent a limited value for purpose of a convicted person specific treatment as a basis for the court decision, between the suspended sentence and imprisonment. Based on the above mentioned it is essentially important that Probation services assist the court in decision making and "risk assessment"

This assessment is necessary in the part of opting specific obligations which are determined by the Law as the content of the protective supervision, that is the following special obligations which can be imposed and can comprise one or more of the following: 1) reporting to a competent authority in charge of execution of protective supervision within the time limits specified by that authority; 2) training of the offender for a particular profession; 3) accepting a job appropriate to the abilities and affinities of the offender; 4) fulfillment of the obligation to support family, care and bringing up of children and performing other family obligations; 5) refraining from visiting certain places, bars or events if that can be a chance or incentive for commission of a criminal offence again; 6) timely reporting the change of residence, address or job;

7) refraining from drug and alcohol consumption; 8) medical treatment in an appropriate medical institution; 9) visiting particular professional and other counseling wards or institutions and following their instructions; 10) eliminating or mitigating the damage caused by the criminal offence in question, particularly reconciliation with the injured party.

*When above mentioned special obligations are in question, the Probation service role is of a significant importance but in cooperation with state authorities, civil society organizations, and communities broadly.*

### **2.1.1.3. Other punishments as alternatives for the sentence of liberty deprivation**

- a) *A fine*<sup>8</sup> - can be imposed both, as a principal and as an accessory punishment (even when a fine is imposed as principal punishment) A fine cannot amount to less than two hundred €. A fine can't amount to more than € twenty thousand €, and for the criminal offences committed out of greed it can't exceed hundred thousand €.

A fine effectuate is not in Probation service jurisdiction, but in jurisdiction of the court who imposed decision in first instance, and if convicted person fails to pay a fine in the deadline set thereof, the court shall replace a fine for imprisonment sentence. Fine default imprisonment can't be imposed longer than six months. Also, instead of imprisonment sentence, unpaid fine may be replaced with the community service if with the consent of a convicted person.

- a) *Community service*<sup>9</sup> – represents relatively new criminal sanction, although it is implemented in the system of criminal sanctions in 2010 year.<sup>10</sup> Community service can be imposed for criminal offences punishable by a fine or imprisonment

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<sup>8</sup> Article 39 of the Criminal Code

<sup>9</sup> Article 41 of the Criminal Code

<sup>10</sup>Article 68 of the Criminal Code

sentence of up to five years. It cannot last shorter than sixty hours nor longer than three hundred and sixty hours and shall be imposed for the period of time that cannot be shorter than thirty days nor longer than six months. This punishment shall be imposed with the consent of a criminal offender and cannot be longer than sixty hours during one month. The form of performing the community service is prescribed by Law on execution of suspended sentence and community service sentence, and it is in the jurisdiction of the Direction for suspended sentence of Ministry of justice.

Community service is any socially beneficial work that does not offend human dignity and is not done for the purpose of gaining profit. Pronouncing this sentence court shall pay consideration to type of the committed offence, as well as personality of an offender.

If a criminal offender does not perform the community service, it will be replaced for imprisonment, thus that each sixty hours of community service shall be taken as one-month of imprisonment.

*b) Confiscation of a driving license (Prohibition of driving a motor vehicle )<sup>11</sup>– as a security measure for the criminal offence against public traffic security, represents alternative to imprisonment sentence but naturally does not belong to the criminal sanctions which are performed by Probation service.*

*Since the legislative and the institutional reform are in progress, the specific number of Probation service responsibilities in Montenegro has yet to be clearly defined and to create the conditions for the implementation of new legal regulation and the establishment of Probation service , in the proper meaning of the word .*

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<sup>11</sup>Article 68 of the Criminal Code



### **2.1.2. Law on execution of criminal sanctions<sup>12</sup>**

The Law on execution of criminal sanctions represents the fundamental Law that regulates issue of execution of criminal sanctions (penalties, security measures, educational measures and warning measures).

With the entry into force of Law on enforcement of suspended sentence and community service sentence, the provisions by which are release parole, suspended sentence, suspended sentence with protective supervision and community service regulated, shall cease to have effect.

The Law prescribes on which way the imprisonment sentence shall be executed, in order to execute this criminal sanction with the purpose of punishment, and that the convicted person can be re socialized and as much as possible to be ready and able for life at large. The new Law on execution of imprisonment, fines and security measures is in the drafting stage, and it shall prescribe ways for executing imprisonment sentence in the premises of living,

### **2.1.3. Law on execution of suspended sentence and community service sentence<sup>13</sup>.**

This Law shall prescribe the manner for executing the suspended sentence, suspended sentence with supervision and community service punishment imposed in criminal and offence proceeding (alternative measures), as well as supervision under parole released convicted person, for the first time with one legal decree. The obligation to respect human dignity, fundamental rights and freedoms as well as privacy of convicted persons to whom is ordered an alternative sanction or to

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<sup>12</sup> The Law on execution of criminal sanctions ("Official Gazette of the Republic of Montenegro", no. 25/94, 69/03 and 65/04 and Official "Gazette of Montenegro", number 32/11)

<sup>13</sup> Law on execution of suspended sentence and community service sentence, Official Gazette of Montenegro, number 32/2014

conditionally discharge convicted person, is determined by article 5 and 6.

The articles 5 and 6 determine the obligation to respect human dignity, fundamental rights and freedoms as well as privacy of a convicted person who is subject of imposed alternative sanction or h/she is conditionally discarded. All conducts that would put person to whom is alternative sanction imposed or conditionally released convicted person in to any form of torture, abuse or humiliation as well as medical and scientific experiments shall be prohibited or punished. The execution of alternative criminal sanction shall be complete with the respect of the principle for prohibition of discrimination on any personal capacity.

*In its work the Directorate for probation is obligated to respect this principle, and to supervise treatment of other subjects through monitoring of the execution of some intermediate/alternative sanctions. This is particularly important in the part of community service punishment and for the respect of convicted person rights by legal entities and state authorities where the alternative sanction is executing. In the sense of above from particularly importance is the enlargement of the jurisdiction of National Preventive Mechanism (NPM) which operates under the Protector of Human Rights and Freedoms, on execution of criminal sanctions.*

The court which imposed suspended sentence or suspended sentence with the protective supervision shall provide an example of that decision to the probation unit and administrative authority of the police on whose territory convicted person resides or temporary resides, within eight days of the final decision.

Depending on the obligation of protective supervision, the Unit for probation shall according to permanent place of residence or temporary place of residence of a convicted person notify the Center for social (hereinafter: The Center for social work), the employer where the convicted person is employed, the appropriate health institution, the Employment Office of Montenegro (hereinafter: the Employment Service ) and the police.

Direction for probation shall, depending on criminal sanction that she implemented, establish direct communication with continuous duration with a convicted person and create conditions for the execution of sanctions in a way determined by a court decision.

Directorate jurisdiction shall be discussed in part of the institutional conditions for the execution of alternative criminal sanctions.

#### **2.1.4 The rulebook on detailed procedure for implementing release parole, suspended sentence, suspended sentence with protective supervision and community service<sup>14</sup>**

Transitional and final provisions of the Law on execution of suspended sentence and community service punishment prescribes obligation for adopting regulations for the implementation of this Law within 6 months of its enforcement. The deadline for the adoption of the Regulation in accordance with the Law expires on February 8, 2015. The Regulation on detailed procedure for implementing parole release, suspended sentence, suspended sentence with protective supervision and community service from 2012 year shall applied until the adoption of the new regulation.

This Rulebook defines in detail the deadlines for execution of some alternative sanctions or parole release specifying manner and frequency of Directorate and convicted persons, testing period, providing social and other care, for the purpose of adapting, developing an individual program for treatment to conditionally convicted person or parole released person, and other actions by which is provided the most effective treatment of convicted person.

*Certainly it is of particular importance to adopt new Regulation in the shortest time possible, preferably within six months which is defined by*

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<sup>14</sup> The Rulebook on detailed manner of complying release on parole, suspended sentence, suspended sentence with the protective supervision, community service sentence ("Official Gazette of the Republic of Montenegro, number 51/12).

*law, that shall detail prescribe procedure and manner for implementation of alternative criminal sanctions. This primarily because of possible discrepancies that can bring into the question the legality of procedure in particular case.*

## **2.2. INTERNATIONAL LEGAL FRAMEWORK OF ALTERNATIVE (NON COSTUDIAL) CRIMINAL SANCTIONS - INTERNATIONAL STANDARDS**

### **2.2.1 Standard minimum rules for alternative criminal measures and sanctions (Tokyo Rules) <sup>15</sup>**

Standard minimum rules of the UN for the alternative measures and sanctions, even not binding for member states, are adopted in order to promote the punitive measures presenting the alternative to institutional treatment. In one part are prescribed the pre-trial diversion programs for children in conflict with law. Their adoption, in the part of alternative criminal measures, is build on the 8th Resolution of the Six United Nations Congress on Crime Prevention and the Treatment of Offenders and alternatives to imprisonment sentence, citing to Resolution 16 of the 7th United Nations Congress on Crime Prevention and the Treatment of Offenders on reduction of prison population, alternatives to imprisonment and social integration of offenders.

The Resolution was adopted in order to develop local, national, regional and international approaches and strategies on the grounds of non-institutional treatment to offenders and the need for design of standard minimum rules, concerning methods and measures which could be the most effective in crime prevention and better treatment of offenders.

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<sup>15</sup> UN Resolution 45/110, December 14, 1990 year

Decision by which the resolution was adopted is based on the belief that the alternative to imprisonment can be efficient and effective means for treatment of offenders in the community in the best interest of offenders and society, aware that limitation of liberty is justified from the aspect of security of society, crime prevention, fair compensation and deterrence, and that the ultimate aim of the criminal-justice system is reintegration of convicted person in to society, emphasizing that the fact of incensement of prison population and overcrowded prisons in many countries present the problem for a proper implementation of the Standard minimum rules for treatment of offenders.

The comprehensive review of everything which should be taken into account during the work on promotion, development and implementation of non -custodial measures and sanctions, including pre-trial diversion programs is set by Tokyo rules. Tokyo Rules are divided into 8 categories: a) Fundamental aim, b) Pre-trial stage, c) Trial and sentencing stage, d) Post-sentencing stage, e) Implementation of non-custodial measures, f) Staff, g) Research, planning, policy formulation and evaluation, h) Volunteers and other community resources.

From the structure of the Tokyo rules unambiguously is determined indivisibility of the alternative measures and alternative criminal sanctions imposed before and in the course of criminal proceedings as well as after the verdict is imposed. This is especially important from the aspect of including probation in the criminal proceedings from the first action by prosecution, in part of the measure of process coercion, diversion procedures and monitoring of convicted during the criminal proceedings, as well as after the guilty verdicts is reached .

In the sense of above is formulated one of the basic principles of the Tokyo Rules that the member states are obliged to " develop alternative measures to imprisonment as part of the legal system to provide other options and thus reduce the use of imprisonment and rationalize criminal justice police, taking into account human rights, demands for social justice and the rehabilitation needs of offender.

The rule number 5 of the Tokyo rules determine application of alternative measures before criminal procedure on manner that when is appropriate and compatible with the legal system, the police, the prosecution service or other services dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable alternative (non-custodial) measures, as appropriate.

The rule 6 promotes avoidances of liberty deprivation of convicted person when the proceeding is initiated. It is prescribed that Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

Alternatives to pre-trial detention shall be used at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5 and shall be administered humanely and with respect for the inherent dignity of human beings.

In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of alternative (noncustodial) measures, from pre-trial to post-sentencing dispositions. The number and types of noncustodial measures available should be determined in such a way so that consistent sentencing remains possible (Rule no.2.3).

The assessment and determination of non-custodial measures should be used in accordance with the principle of minimum intervention (Rule no. 2.6).

The rules provide types of the alternative (noncustodial) measures in the following ways: a) Verbal sanctions, such as admonition, reprimand and warning; b) Conditional discharge; c) Status penalties; d) Economic sanctions and monetary penalties, such as fines and day-fines; e) Confiscation or an expropriation order; f) Restitution to the victim or a compensation order; g) Suspended or deferred sentence; h) Probation and judicial supervision; i) A community service order; j) Referral to an attendance centre; k) House arrest; l) Any other mode of non-institutional treatment; m) Some combination of the measures listed above

The rules encourage the participation of the community and the use of society resources in the implementation of diversion schemes and alternative measures. Research, planning, policy formulation and evaluation are also considered an integral part of the development of alternative criminal sanctions and measures.

### ***2.2.2. The Council of Europe probation rules <sup>16</sup>***

Bearing in mind the aim of probation to contribute to the fairness of the criminal proceedings, as well as public safety by preventing and reducing the incidence of crime, as well as the importance of the probation services, which are between fundamental services of justice and that their work affects the reduction of the prison population, the Council of Europe adopted Probation rules

These rules guide the establishment and proper functioning of probation services. These rules apply also to other organizations in their performance of the tasks covered in these rules, including other state organizations, non-governmental and commercial organizations.

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<sup>16</sup>Recommendations CM/Recommendations(2010)1

Probation rules are elaborated through eight titles: Preamble, Subject and definitions, Basic principles, Organization and staff, Accountability and relations with other services, Probation work Process of supervision, Complaint procedures, inspection and monitoring, Other work of probation services, Research, evaluation, work with the media and the public, Glossary of the terms used.

These are some of the basic principles of Probation rules:

- Probation services shall aim to reduce reoffending by establishing positive relation with offenders in order to supervise, guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and the fair criminal proceedings.
- In all cases where probation services deal with issues related to victims of crime, they shall respect their rights and needs.
- Probation services shall take full account of the individual characteristics, circumstances and needs of offenders in order to ensure that each case is dealt with justly and fairly. The interventions of probation services shall be carried out without discrimination on any ground such as sex, race, color, language, religion, disability, sexual orientation, political or other opinion, national or social origin, association with a minority ethnic group, property, birth or other status.
- Every intervention before guilt has been finally established shall require the offenders consent and shall be without prejudice to the presumption of innocence.

In the content of probation tasks Rules prescribes the jurisdiction of probation services not only in the part of execution of alternative criminal sanctions and measures, but also the " risk assessment "



primarily as support to judicial authorities during criminal proceeding and before the initiation of the same.<sup>17</sup>

It is predicted: “Depending on the national legal system, probation services may prepare pre-sentence reports on individual alleged offenders in order to assist, where applicable, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures. Where this is the case, probation services shall regularly communicate with the judicial authorities regarding the circumstances in which such a report may be useful.” They shall include advice on: a) the feasibility of the offender’s release in the community; b) any special conditions that might be included in the decision regarding the offender’s release; c) any intervention required to prepare the offender for release.

Also probation works provides: organization and supervision under measure of community service, supervisor under behavior of offender before and during the proceeding, after pronouncing criminal sanction or measure, cooperation with the family of the offender, electronic supervision, reintegration of offender into community, assistance after the sentence is served.

The probation rules shall predict the obligation of implementing all mentioned probation works, wheatear the offender is foreigner or citizen convicted in foreign in the terms of transfer of probation measures.

In final, under the Probation service competence is work with victims of crime.

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<sup>17</sup> The risk assessment shall be performed by two methods: assessment and evaluation, which are continuous process, and refers to risk and progress of offenders. When it is necessary before and during supervision, offender assessment is performing including systematically and detailed consideration of any individual case, including risk, positive factors and needs, intervention which is necessary for satisfaction of these needs and reaction of offenders on these interventions. Evaluation implies evaluating the progress of offenders at regular intervals and this process shall affect on the plan of work for the remaining part of supervision. Evaluation is part of the case file and, where necessary, supplement of the report to the competent author.

***2.2.3. The Council framework decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions<sup>18</sup>***

Ascending criminal sanctions to EU level and establish mechanisms for the smooth mutual recognition of the decisions in the field of probation is from particular importance in the process of integration to European Union. In that sense, for Montenegro is very important that improving appliance of alternative criminal sanctions system implements on a manner to create conditions for smooth mutual recognition of the court decisions, that refers on crating normative and real conditions for probation functioning with the strict respect to offenders procedural rights. In that direction the European Council adopted framework decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction.

This Framework Decision shall apply to following probation measures or alternative sanctions: a) The obligation for the convicted person to inform a specific authority of any change of residence or working place; b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State; c) an obligation containing limitations on leaving the territory of the executing State; d) instructions relating to behavior, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional

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<sup>18</sup> Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

activity; e) an obligation to report at specified times to a specific authority; f) an obligation to avoid contact with specific persons; g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence; h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation; i) an obligation to carry out community service; j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons; k) an obligation to undergo therapeutic treatment or treatment for addiction;

The Member State in which is imposed criminal sanction to convicted person, may forward judgment and where applicable the probation decision to Member state in which convicted person has lawfully and ordinarily residing, with the aim of her recognition and supervision of probation measures or alternative sanctions which she contains.

Regarding the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote direct contact between their competent authorities in the application of this Framework Decision.

## 2.3. THE INSTITUTIONAL FRAMEWORK

### 2.3.1. Directorate for probation

Directorate for suspended sentence of Montenegro formally began its work in 2012. At the time of its establishment the legal name was "Department for Suspended Sentence". New act on organization and systematization from 2013 renamed this organizational unit into Directorate for suspended sentence. Establishing the Directorate for suspended sentence, the system for execution of criminal sanctions begins to obtain, at least formally, the shape of modern systems for execution of criminal sanctions, and the conditions for individualization and humanization of punishment are established. Establishment of this

Service represents the significant step for improvement of probation and system for execution of non-custodial sanctions in Montenegro. By putting into service the Directorate and strengthening its capacities, the reduction of the recidivism rates and prison population can be expected, as well as better reintegration of convicted persons.

### **2.3.1.1 Jurisdiction of Directorate for probation**

The Law on execution of suspended sentence and community service regulates the jurisdiction of Directorate<sup>19</sup>. Mentioned Law specifies the activities carried out by Directorate in order to implement parole, suspended sentence with or without supervision and community sentences. When executing alternative (non-custodial) sanctions and performing supervision on parole released convicted person, the probation unit shall cooperate with the government authorities, local self-government, scientific and other institutions and other organizations and institutions.

#### **a) EXECUTION OF SUSPENDED SENTENCE AND SUSPENDED SENTENCE WITH PROTECTIVE SUPERVISION**

Considering the execution of suspended sentence the Unit for parole shall perform the following activities:

- 1) If is necessary calls and interview *parole convicted person* concerning the use of probation period;
- 2) Controls execution of suspended sentence and provides help to parole convicted person ;
- 3) Reweaves documentation of convicted person (court decision, findings and opinions of medical doctors and other professionals,

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<sup>19</sup> The Law on execution of suspended sentence and community service sentence ("Official Gazette MNE" 32/14).

work reports from the Center for social work, etc.), and from other institutions and organizations shall collect other data of convicted person;

- 4) Prepare reports on the execution of suspended sentence and submits it to the court which made a first instance decision
- 5) In the case of suspended sentence revocation, submits report on the undertaken activities in the execution of suspended sentence and behavior of convicted person during probation to the administrative authority for the execution of criminal sanctions (hereinafter: Institute for the execution of criminal sanctions);
- 6) Maintains records on the execution of suspended sentence
- 7) Informs convicted person on his rights and obligations during the execution of suspended sentence, and warn him on the consequences for non-compliance obligations;
- 8) Other activities in accordance with the law;

Besides these activities, Unit for suspended sentence shall, in the execution of suspended sentence with protective supervision, perform following activities:

Directorate officer is obligated to do an informative conversation, which is not situation with the suspended sentence without protective supervision. Considering that security measures, as well as the protective supervision obligations can be imposed along with a suspended sentence whose execution is in jurisdiction of the police, in case of their non compliance Directorate shall immediately notify the police.

#### b) THE EXECUTION OF COMMUNITY SERVICE SENTENCE

Community service sentence shall be performed at legal entity which is engaged in activity of public interest (humanitarian, social, communal, health, agricultural, ecological and other similar activities), or unprofitable organizations whose activity concern humanitarian, ecological and other similar activities. For the execution of the community service sentence the Ministry of Justice shall conclude an agreement with the state authorities and local authorities, concerning the activities performance supervised by those authorities, as well as legal

entities or organizations, which contains general rules on the execution of the community service sentence and mutual rights and obligations.

For each individual case of the community service execution, Ministry of Justice, on the basis of an agreement, shall conclude a special contract with the convicted person and legal entity, or organization in which the convicted person is sent to execute this sentence.

In the execution of community service sentence the Directorate for probation shall perform following activities: 1) Call and interview a convicted person; 2) Sends a convicted person to the execution of sentence; 3) controls the execution of community service sentence and provides assistance to the convicted person; 4) reweaving the records of the convicted person (judicial decisions , findings and opinions of medical doctors and other professionals , reports the center for social work , etc.) and collect other necessary information on the convicted person from other bodies, institutions and organizations; 5) if necessary, supervises performance of the work activities of a convicted person; 6) Prepare reports on the execution on the execution of community service sentence and submit them to the court that issued the decision in the first instance; 7) If court replace the community service sentence by imprisonment, Directorate shall submit a report to the Institution for the execution of criminal sanctions on the undertaken activities in the execution of community service and conduct of the convicted person during the execution of that sentence; 8) Maintain record on the execution of community service sentence; and 9) other tasks , in accordance with the law.

If the convicted person doesn't fulfils or fulfils the working obligations disorderly, the legal entity or organization shall within 3 days notify the Directorate.

The Directorate for probation will do an interview with a convicted person and warn him on consequences of his behavior if, after

notice of legal entity or organization, finds that convicted person doesn't fulfil or fulfils the working obligations disorderly.

Directorate for probation shall submit report on the execution of community service at least two times, of which last report within 15 days from the day the sentence execution, to the court who issued decision in first instance,

#### c) RELEASE ON PAROLE

Directorate for probation is authorized for the execution of parole approved by the Parole Commission which is established by the ministers of justice.

According to the provisions of the Article 35 of the Law on execution of the suspended sentence and community service sentence, in execution of the obligations of a convicted on parole person which are defined by parole release decision, the Directorate for probation shall perform the following activities: 1) calls a convicted person on parole for interview; 2) Reviews documents of the convicted person (judicial decisions, findings and opinions of medical doctors and other experts) and collects other necessary data on the convicted person, from other bodies, institutions and organizations; 3) Orally and in written warns the convicted person on parole on the consequences of his failure to fulfill determined obligations; 4) controls the performance of obligations of convicted person on parole and perform reports on the execution of such obligations; 5) undertakes other prescribed actions in order to fulfill determined obligations; 6) informs on the convicted on parole person failure to fulfill the obligations the competent State Prosecutor's Office and the Court that issue a decision in the first instance; 7) In a case of revoking the release on parole, the Directorate shall submit report to the Office for the execution of criminal sanctions, concerning undertaken activities in performing obligations and behavior

of the convicted person on parole 8) maintain records on performing the release on parole, and 9) other activities in accordance with the law.

Detailed manner for conducting the suspended sentence, suspended sentence under supervision and community sentence, as well as the content and manner of maintaining records shall be prescribed by the Ministry of Justice. The Regulation on detailed manner for conducting release on parole, suspended sentence with supervision and community sentence has not been adopted yet, therefore the Regulation from 2012 still applies (Official Gazette, No 51/12). According to the information from the Ministry of Justice in the final phase are the following Regulations: the Regulation on detailed manner for conducting the release on parole, suspended sentence with supervision and community sentence; Regulation on the execution of the community sentence; Regulation on maintaining the records and personal files and Regulation on official legitimization.

### **2.3.1.2 Functioning of the Directorate for probation**

According to Ministry of Justice data, in the Directorate for probation currently are employed two graduated lawyers and provided specific space for his functioning separate from Ministry of Justice head office which contains all the conditions for the smooth implementation of activities that are in the jurisdiction of the Directorate. However, the space in which Directorate operates goes in line with a small number of employees and is located in Podgorica, which significantly limits the functioning of the Directorate when it comes to other cities in Montenegro. .

*In this regard, it is necessary to provide decentralization of the Directorate, by opening departments which will cover different regions, particularly the south and north of Montenegro. This certainly implies to a significant increase of the officers number in the Directorate, as well as their education.*



When it comes to education of staff for release on parole, it should be emphasized that it is a specific profile of occupation, and if it is defined having different profiles of occupation (lawyers, psychologists, sociologists) by Act on the systematization of job positions, it is clear that every official shall pass long-term and specific training so they can properly carry out activities from their jurisdiction. In this sense, it is necessary to employ immediately a significant number of officers and provide them quality training. As a confirmation of the above stated it should be emphasized that on the level of all courts in Montenegro only in 2013 year has been imposed 2331 suspended sentences, as one of the alternative criminal sanctions within the jurisdiction of the Directorate. Directorate shall receive every of these cases and implement all above described activities. Without further analysis it is clear that two officers of the Directorate for probation are not capable that in one year just implement initial interweaves, nor to do risk assessment, monitoring of the implementation of obligations by the convicts, writing reports etc. This especially, if we take into account that concern to alternative sanctions that are imposed in all courts in Montenegro.

*Since the foundation of the Directorate until today, she didn't produce any official report on the implemented activities on the execution of alternative sanctions, with the lack of a database through which it would be possible to monitor the implementation, scope and representation of alternative sanctions, it can't be discussed on the level of Directorate for probation establishment and level of implementation of new legal regulation.* Previously was stated that deadline for the adoption of bylaws has been exceeded.

### **2.3.2. Probation Commission of the Ministry of Justice**

According to Law on execution of the criminal sanctions the Commission of the release on parole which is established by Minister of justice, shall take decisions on the release on parole of the convicted persons. The Commission has president and six members composed by the representatives of: Supreme Court of Republic of Montenegro, State Prosecutor, Ministry Of Interior Affairs, Ministry of Health, Ministry of Justice, and director of the Institute for execution of criminal sanctions.

The Probation Commission can determine compliance of one or more obligations from the Article 66a paragraph 2 of the Law on execution criminal sanctions that is:

- 1) Refrain from contact with a specific person;
- 2) Refrain from contact with a specific category of persons;
- 3) Refrain from the drug use and alcohol;
- 4) Refrain from visiting specific places, locals, premises, and public gatherings;
- 5) Continuing with medical treatments;
- 6) Visiting specific professional and other counseling centers and institutions and following their instructions;
- 7) Training for a specific profession;
- 8) Seeking and accepting job which correspond to the abilities and preferences of the convicted person;
- 9) Family support, care and education of children and performing other family activities;

In determining the above mentioned obligations, the Commission shall consider the personal needs of the convicted person and evaluate his/her willingness to fulfill the obligations, with the purpose of determinating these obligations convicted person develop a sense of responsibility to community and especially to the indemnified person.

### 3. ANALYSIS OF THE LEVEL OF THE IMPLEMENTATION OF THE SHORT-TERM SENTENCE OF LIBERTY DEPRIVATION AND ALTERNATIVE CRIMINAL SANCTIONS

Practice research of basic courts in Bar, Podgorica and Bijelo Polje and partly imposing the short-term sentences of liberty deprivation and alternative criminal sanctions has been conducted within the project "The System of implementation of the short-term sentence of the liberty deprivation and alternative sanctions in Montenegro". Data obtained have been correlated in order to determine the relation of certain criminal sanctions and their representation in the practice of the courts listed. In the table, as the reference data are listed also the data related to release on parole and institute of deferred prosecution indicating the frequency of implementation of measures which are alternative to the imprisonment by their nature.

**a) Number of citizens convicted to the imprisonment over 6 months**

It is obvious from the data listed in the first table that for the analyzed period we have decrease of the number of imposed imprisonment over 6 months. As the courts were monitored from the basic jurisdiction, it is necessary to mention that in this case the imprisonment are from six months to ten years. Therefore, mentioned figures do not include the imprisonment imposed by the high courts in Podgorica and Bijelo Polje. According to this data, in the monitored courts, number of convicted citizens for the imprisonment over 6 months in 2014, comparing to 2012, decreased for 27,9%.

	2012	2013	2014
<b>Basic court Podgorica</b>	115	77	90
<b>Basic court Bijelo Polje</b>	23	6	6
<b>Basic court Bar</b>	27	43	23
<b>Total</b>	165	126	119

*Table 1. Number of citizens convicted for imprisonment over 6 months*

**b) Number of citizens convicted to the imprisonment up to 6 months**

There was also decrease in case of the imposed imprisonments up to six months, as well as for the imprisonments over six months. This decrease in the number of convicted persons for the imprisonment up to six months is significantly higher and comparing to 2012- 2014 is 43,7%.

If we make a correlation between number of citizens convicted to the imprisonment over 6 months and those who are convicted to the imprisonment up to 6 months it is obvious that the imprisonments up to 6 months are more represented. For the 2014, the number of such imprisonments is higher for 47,8 % than imposed imprisonments over six months. This data is significant from the aspect of space for replacement of the imprisonments up to six month with the alternative criminal sanctions. However, this can be relative considering that in some countries (Croatia) is possible to replace the imprisonment with the alternative criminal sanction and in case of imprisonment up to one year. In the analysis of reduction of number of imposed imprisonments up to six months, the special correlation should be made with tendency of imposing the alternative criminal sanctions and to which extent exist the opposite proportionally increase of the number of imposed alternative criminal sanctions.

	<b>2012</b>	<b>2013</b>	<b>2014<sup>20</sup></b>
<b>Basic court Podgorica</b>	224	204	164
<b>Basic court Bijelo Polje</b>	132	80	22
<b>Basic court Bar</b>	49	59	42
<b>Total</b>	405	343	228

Table 2. Number of citizens convicted to imprisonment up to six months

### **c) The number of citizens to whom a fine is imposed**

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<sup>20</sup> In 2014 year includes first eleven months

In the case of fines, the statistical data indicate decrease and in the last three years the number of imposed fines was significantly reduced, on the level of monitored courts. In the percentage, this trend is similar as the imprisonment up to six months and it is 46,3% less than the number of imposed fines in 2014 comparing to the number of imposed fines in 2012.

However, concerning fines as the alternative to short-term imprisonments this reduced number of imposed fines indicates that fine has not been used as the alternative to imprisonment, in the monitored courts. In order to achieve this, reducing the imprisonment up to six months (Table 2.) should have resulted by increase of number of imposed fines in certain percent.

	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Basic court Podgorica</b>	75	43	40
<b>Basic court Bijelo Polje</b>	56	36	18
<b>Basic court Bar</b>	3	9	13
<b>Total</b>	134	88	72

Table 3 Number of citizens to whom the fine is imposed

**d) The number of citizens to whom are imposed the alternative sanction community service**

As it is mentioned in the part of analyzed normative framework the community service is relatively new criminal sanction. At the same time establishing of the Directorate for probation in whose jurisdiction is execution of this criminal sanction was delayed. However above mentioned reasons can't be the excuse for insufficient imposing of community service. Omissions and delays in creating conditions for execution of this alternative criminal sanction necessarily influenced to courts to avoid their embossment. The reason for that is the absence of conditions in execution of this criminal sanction that would bring to obsolescence of its execution.

In the observed period the number of executed community service sentences has increased. Emphasizing the fact that in the basic courts in Bijelo Polje and Podgorica, significantly has been increased, comparing to previous two years of observed period. This can refer to establishment of Directorate for probation. On the other hand this increase absolutely is not enough bearing in mind situation in the Basic court in Bar, which indicates that community service sentence as the alternative to imprisonment still hasn't been recognized from the judges in Montenegro.

Finally, in correlation with the decrease number of the imposed imprisonment, we can conclude that there is a certain connection with the increased number of community service sentences.

The thing that can't be determined with precision is, in which manner is actually community service sentence substitute for a fine. In certain cases this substitution is justified but in case law the community service should be the alternative to an imprisonment up to six months. This is primarily due to the positive - negative effect of these two sentences to convicted person and the impact on the level of re-socialization and reintegration into society.

	2012	2013	2014
<b>Basic court Podgorica</b>	4	3	13
<b>Basic court Bijelo Polje</b>	-	-	14 (all sentences are imposed as independent)
<b>Basic court Bar</b>	-	-	-
<b>Total</b>	4	3	27

Table 4. Number of citizens to whom is executed the community service sentence

**e) The number of imposed alternative sanctions of house arrest  
(for 2013 and 2014 year)**

It is clear, from the following statistic, that this alternative criminal sanction represents „dead letter“ and that according to experience of earlier presented alternative criminal sanctions, will probably pass a lot of time till her implementation in practice.

The lack of technical resources and insufficient capacities of the Directorate for probation influenced that courts don't impose imprisonment which will be executed in premises for living. The same reasons influenced on courts that don't impose the measure of supervision prohibition to leave place of residence. Individualization of a convicted person treatment will not be possible until full application of all alternative criminal sanctions prescribed by law, and without continuous diversification of alternative criminal sanctions by introducing new types modalities.

	2012	2013	2014
<b>Basic court Podgorica</b>	-	-	-
<b>Basic court Bijelo Polje</b>	-	-	-
<b>Basic court Bar</b>	-	-	-
<b>Total:</b>	-	-	-

Table 5 Number of imposed criminal sanctions *house arrest* (for 2013 i 2014. year)

**f) The number of imposed warning measures *suspended sentence***

Historically, in the practice of the Montenegrin courts, a suspended sentence has been the most common criminal sanction, as it is confirmed by the number of imposed suspended sentences in observed period. Therefore, there is no inversely trends in imposing this alternative criminal sanction comparing to short-term imprisonment, which by nature should have happened.

	2012	2013	2014
<b>Basic court Podgorica</b>	767	602	505

<b>Basic court Bijelo Polje</b>	125	136	90
<b>Basic court Bar</b>	187	227	179
<b>Total</b>	1079	965	774

Table 6 Number of imposed warning measures suspended sentence

**g) The number of imposed warning measures the *suspended sentence with protective supervision***

From the aspect of individualization of criminal sanctions it would be expected to impose the warning measures suspended sentences with protective supervision to the higher extent. However, that is not the situation with the case law of the observed courts. It is obvious a discrepancy with number of imposed suspended sentences without protective supervision. The reason for this situation in case law can be in insufficient training of judges and the need for raising awareness about necessity of adapting criminal sanctions to the personality of a convicted person and circumstances of the case.

Also, according to reasons for not imposing other alternative criminal sanctions one of the reasons for sideline imposing of a suspended sentence with protective supervision can be in insufficient capacity of Directorate for probation, and lack of normative conditions for inclusion of Probation services in criminal proceedings through "risk assessment" and professional assistance to the courts.

	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Basic court Podgorica</b>	-	-	-
<b>Basic court Bijelo Polje</b>	1	6	-
<b>Basic court Bar</b>	-	-	-
<b>Total</b>	1	6	-

Table 7 Number of imposed warning measures *the suspended sentence with protective supervision*

**h) The number of imposed warning measures *judicial admonition***



In the observing period, the judicial admonition as the alternative to short term imprisonment had increasing trend. Relatively significant increase of imposing judicial admonition for 78.6% was in 2014 year in compared to 2012 year. By observing all three court, it is obvious inequality of the case law where is in 2013 and 2014 year in Basic court in Bar imposed maximum number of judicial admonition comparing with other two courts that were observed.

In the correlation with other alternative criminal sanction it is noticeably that, for 2013 and 2014 year, in the Basic court in Bar has not been imposed neither one community service sentence while 31, i.e. 34 judicial admonition was imposed. These facts shows that there is no clear penal policy nor equality of the case law in Montenegro

	2012	2013	2014
<b>Basic Court Podgorica</b>	4	1	8
<b>Basic Court Bijelo Polje</b>	4	1	-
<b>Basic Court Bar</b>	1	31	34
<b>Total</b>	9	33	42

Table 8 Number of imposed warning measures *judicial admonition*

**i) The number of citizens to which a security measure are imposed security along with imprisonment up to six months, suspended sentence, judicial admonition**

The data presented in this table also confirms previously mentioned thesis concerning inequality of the case law. In the Basic court in Bijelo Polje, in a significantly higher number of cases has been imposed a security measure with imprisonment up to six months, suspended sentence and a judicial admonition, than in the other two observed the courts. However, this case law refers on classical approach of the judges to the individualization of appropriate criminal sanctions so they often impose security measures and almost never a suspended sentence with supervision.

	2012	2013	2014
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<b>Basic court Podgorica</b>	86	52	63
<b>Basic court Bijelo Polje</b>	332	265	151
<b>Basic court Bar</b>	10	23	11
<b>Total</b>	428	340	225

Tabela br. 9 Number of citizens to which are imposed security measure along with the imprisonment, suspended sentence, judicial admonition

**j) The overview of the imposed criminal sanctions on the level of all three courts for the period 2012-2014**

The summary overview of imposed criminal sanctions on the level of observed courts clearly points out the inequality in the imposition of alternative criminal sanctions. As antipodes it may be noted that a suspended sentence was imposed in the percentage 60/61 % in the total number of imposed criminal sanctions, as well as imprisonment which executes in the residential premises (house arrest), which on the level of the observed court, has never been imposed.

It is evident that in the observing period, the number of total imposed criminal sanction is reduced for 30 %, but percentage of all represented criminal sanctions including alternative remained unchangeable, this refers on percentage of the participation in all of criminal sanctions at the level of each of the observed year.

From this fact it can be concluded that tendency of reduction of imposing certain criminal sanction is consequence of the totally small number of imposed criminal sanctions, or the number of cases brought to the phase of decision making, and not as it should be desired by replacement with the alternative criminal sanction.

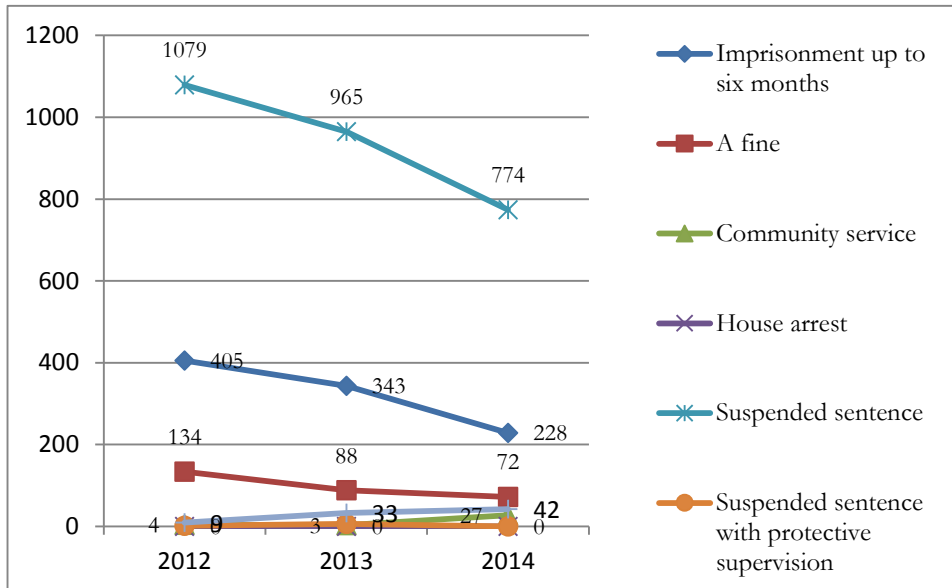
Therefore, it is noticeable the inequality of the application of all criminal sanctions which are prescribed by Criminal Code of Montenegro. This also confirms consideration in the relation of imposing certain alternative criminal sanctions. According to this, for the period of 2012 and on the level of the three observed courts, a suspended sentence was

imposed in only 87.94% cases, while all other alternative criminal sanctions were imposed in only 12.6 % of cases. For the 2014, the correlation is 84.59 % of imposed suspended sentences and 15.41 % of all other alternative criminal sanctions. Therefore the representation of the "new" alternative criminal sanctions, community service sentences and imprisonment executed in the residential premises, in 2012 and 2013 to a level below 0.5 %, and in 2014 at the level of 2.95 % compared to all other alternative criminal sanctions.

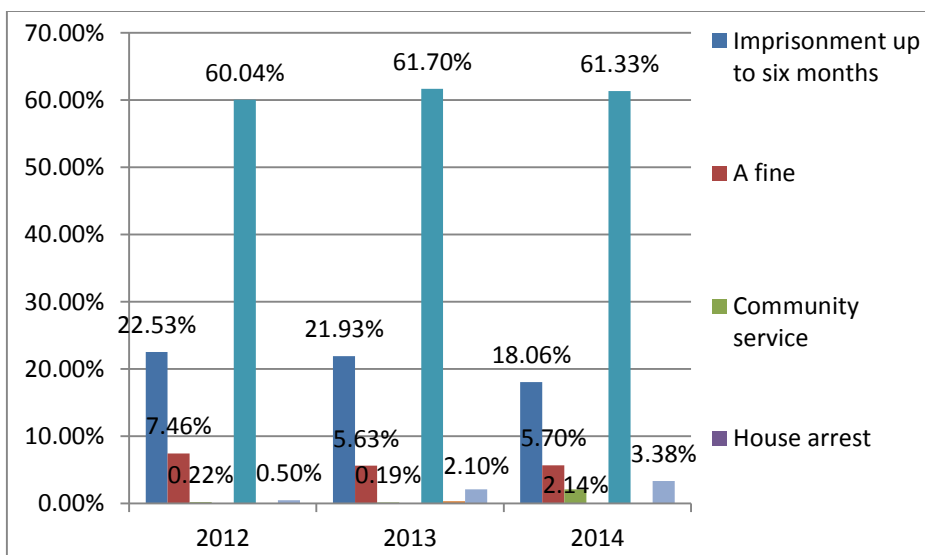
The courts must start with the individualization of criminal sanctions and their adjustment to the best interests of re-socialization and reintegration of convicted persons. Also, it is necessary to involve "risk assessment" from the beginning of criminal proceedings and in that way direct proceeding in the direction of accomplishing the purpose of its conducting as well as punishing the convicted after determined responsibility.

	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Imprisonment over six months</b>	165 / <b>9,18%</b>	126 / <b>8,06%</b>	119 / <b>9,43%</b>
<b>Imprisonment up to six months</b>	405 / <b>22,53%</b>	343 / <b>21,93%</b>	228 / <b>18,06%</b>
<b>A fine</b>	134 / <b>7,46%</b>	88 / <b>5,63%</b>	72 / <b>5,7%</b>
<b>Community service</b>	4 / <b>0,22%</b>	3 / <b>0,19%</b>	27 / <b>2,14%</b>
<b>House arrest</b>	-	-	-
<b>Suspended sentence</b>	1079 / <b>60,04%</b>	965 / <b>61,7%</b>	774 / <b>61,33%</b>
<b>Suspended sentence with protective supervision</b>	1 / <b>0,06%</b>	6 / <b>0,38%</b>	-
<b>Judicial admonition</b>	9 / <b>0,5%</b>	33 / <b>2,1%</b>	42 / <b>3,38%</b>
<b>Totally imposed criminal sanctions</b>	<b>1797</b>	<b>1564</b>	<b>1262</b>

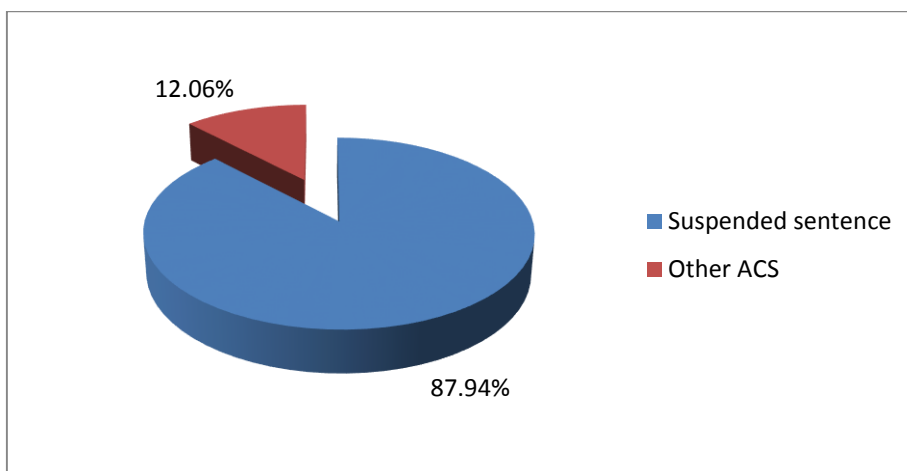
Table 10 Overview of imposed criminal sanctions on the level of all three courts for the period 2012 – 2014



Graphic overview of criminal sanctions imposed at the level of all three courts for the period 2012 – 2014



Percentage of participation in the total number of imposed criminal sanctions



Alternative criminal sanctions – correlation between suspended sentence and other alternative criminal sanctions- 2012

#### **k) The number of citizens to who have been granted parole**

Release on parole also represents the significant alternative to imprisonment, and from particularly importance in its implementation is participation of Probation services. The Parole Commission granted a significant number of paroles, which according to the Law on execution of criminal sanctions, and now the Law on execution of suspended sentence, community service sentence has not been supervised by Probation services.

This situation completely misses the point of parole release as specific type of supervision and control, which refers to forgiveness of imprisonment, as it is situation with a suspended sentence.

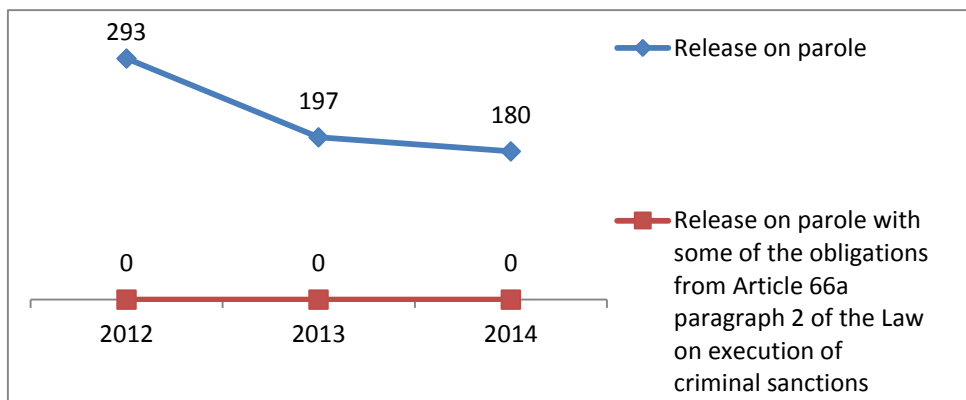
Therefore, the fact presented in the following diagram is not surprising, or that in the analyzed three years, the Parole Commission did not determined in any case any special obligations from the Article 66a paragraph 2 of the Law on execution of criminal sanctions.

Release on parole should be used as corrective mechanism of individualization of imprisonment and for creating conditions for reintegration of convicted persons, but its sense should not be lost in a

manner that it will be imposed without clear aim and treatment after imprisonment release.

2012	2013	2014
293	197	180

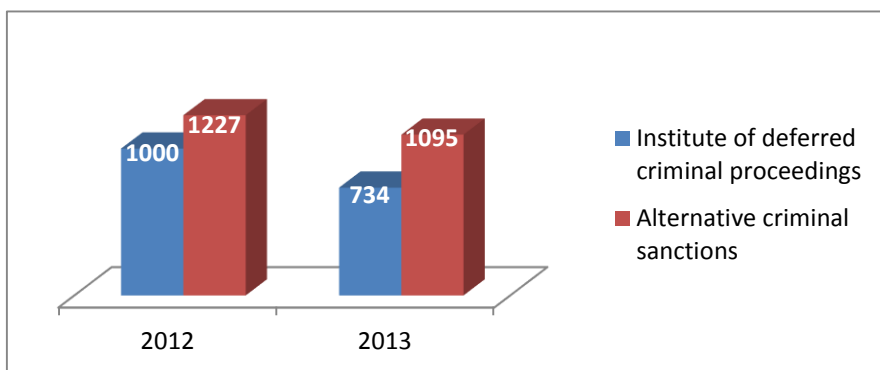
Table 11 Number of citizens who have been granted parole



Release on parole – with and without determined obligations from Article 66 paragraph 2 of the Law on execution of criminal sanctions

#### **I) Correlation of the number of criminal cases with applied institute of deferred prosecution and imposed alternative criminal sanctions**

Finally, it was necessary to compare the institute of deferred criminal prosecution which by its nature has closer appliance than alternative sanctions but the same purpose, individualization and humanization of punishing. Considering above mentioned it is obvious that state prosecutor offices use alternative decisions, which is not case with court. Information in this diagram should be observed trough prism of predominant suspended sentence application by courts.



**Correlation of number of criminal cases with applied institute of deferred prosecution and imposed alternative criminal sanctions**

4. ANALYSIS OF EFFICIENCY OF SHORT-TERM LIBERTY DEPRIVATION SENTENCES AND ALTERNATIVE SENTENCES THROUGH THE LEVEL OF RECIDIVISM AND PROGRAMS OF REHABILITATION DURING AND AFTER THE EXECUTED SENTENCE

In the absence of monitoring system for effectiveness and efficiency of criminal sanctions there was not possibility to determine the extent to which is present the rate of recidivism among persons convicted to short term deprivation liberty sentence and alternative criminal sanction with the focus on suspended sentence as criminal sanction with the higher percentage of participation in total number of imposed criminal sanctions.

The Criminal record which is from 2014 under the jurisdiction of the Ministry of Justice, the Directorate for Execution of Criminal Sanctions shall be conducted on an individual basis and not incorporated in operative database system to provide information in relation to the level of recidivism, and the effectiveness of certain criminal sanctions.

Previous mentioned conditions provide determination of recidivism only on individual basis and only in cases until courts or other state authority ask for extract from the criminal record.

Therefore, it is necessary to provide conditions for special electronic data-base keeping that shall provide determining indicators of effectiveness of some criminal sanctions, at the annual level. In this way, the analysis would be continuously performed and comparatively influenced on creating and improving better conditions for the effectiveness of execution of criminal sanctions with the focus on alternative sanctions.



## 5. CONCLUSIONS AND RECOMMENDATIONS:

- **Create normative preconditions for probation service participation in the criminal proceedings**

The system of probation- rehabilitation (substantially they are synonyms) should not be limited on penal or post penal period. From a particularly importance for rehabilitation quality is risk assessment that should be implemented before the state prosecutor make a decision on initiating a proceeding, and whether will be ended through principles of opportunism, diversion method, or by initiating criminal proceedings.

A particular importance for risk assessment is to be performed by probation service at the beginning of proceeding and on that basis should be focused further direction of proceeding, as well as type of applied measure or sanction. Certainly, strengthening of probation should be in cases of release on parole and post penal period.

- **Further strenghtening of the capacity of the Directorate for probation of the Ministry of Justice of Montenegro**

Bearing in mind the Directorate expanded jurisdiction especially concerning to the Law on execution of suspended sentence and community service sentence, it is necessary to improve human and technical capacities of the Directorate. It means, not only to increase the number of employees (which is certainly primarily), but also a change in the organizational structure of the Directorate in terms of decentralization. It is necessary for Probation Directorate to have regional units in the entire territory of Montenegro. Since currently the Directorate works with premises only in Podgorica, with insufficient number of staff, it is unreal to expect quality and efficiency work, especially concerning extended jurisdiction. This implies creation of new

spatial, technical and office preconditions on high level standards so that Directorate can fulfill its function.

It is necessary to create normative and technical conditions for the application of some alternative sanctions and measures, which application is disabled due to insufficient conditions. This primarily refers to electronic monitoring in order to be possible to execute imprisonment in the residential premises and all other prescribed alternative criminal sanctions, which execution is also extremely difficult because of a current situation.

- **The establishment of a comprehensive jurisdictions of the Directorate for probation**

The jurisdiction for execution of specific forms of alternative measures, depending on type of proceeding, authority which imposes them and their nature, is shared between the State Prosecutor Office (at the disposal of criminal proceedings), the police (with the measures of supervision in the course of criminal proceedings), and Directorate (with alternative criminal sanctions imposed by court). This shared jurisdiction represents wrong solution from the aspect of quality of implementation determined alternative measures/sanctions as well as from the aspect of re-socialization of recourses (personnel/staff, material, technical...). As comparative practice(Netherlands...) and international documents indicate, it is necessary to establish full jurisdiction of the Directorate for probation, for all forms of alternative criminal measures no matter who determinates them, proceedings in which shall be determined their nature or purpose. In this way will significantly increase the scope and forms of the Directorate activities, which further indicates on necessity of establishing the quality institutional framework from all aspects.

- **Establishing a higher level of cooperation and networking of institutions in the process of probation**

Diversity of the manner of probation activities implementation, and the purpose of rehabilitation, often demand involvement of great number of entities and entire community. Therefore, establishing cooperation of Directorate with the other state authorities, local self-government and organizations of civil society have a special importance. This cooperation specially becomes prominent in relation to release on parole and execution of community service sentence.

From a particularly importance is establishing cooperation of Institution For Execution Of Criminal Sanctions and Directorate from the aspect of quality preparation of convicted person for their release, whether it concerns to served sentence or release on parole. *It is necessary that trough direct cooperation of these two institutions, a few months before prison release, undergo convicted persons, to special treatment which will provide them successfully release. This implies different activates, from risk assessment, establishing contact with society in which s/he shall be returned, providing conditions for employment, habitation, medical treatments, support, meet with people from Directorate with whom shall be in constant communication after his release , etc.*

*It is necessary that convicted persons several months before being released from prison, through direct cooperation between these two institutions, undergo to special treatments that will enable them to more successful release.*

- **The higher level of imposition of the alternative sanctions and measures imposition**

Bearing in mind criminal offences for which is prescribed short-term imprisonment and for which can be imposed alternative sanctions and measures, in case law is clearly insufficient use of alternative sanctions and measures, with the exception of suspended sentence which is usually imposed for this type of criminal offences.

With the creation of adequate normative and other condition for the application of the alternative sanctions and measures it is necessary imposing it highly, of course by applying the principle of the adequate criminal sanction or measure in every concrete case, and all of this on the basis of conducted risk assessment.

In this regard, the campaign to business entities and local self-government should be continued and established the system for functioning with entities in which the community service sentence is served in terms of active monitoring and reporting.

*Of particular significance is the continuously education of all entities involved in the process of probation, in the broadest sense, and therefore contribute to the adequate application of alternative sanctions and measures.*

- **Establishing a system of monitoring the execution of alternative sanctions by the Ombudsman**

The application of alternative sanctions and measures shall not jeopardize the fundamental human rights and freedoms and in accordance to their nature and purpose it is necessary that these rights and freedoms rise to a higher level than was the case with classic criminal sanctions.

According to this, of a particular importance is the establishment of a system of execution of alternative sanctions and measures in the way of full respect and recognition of the dignity personality of the person who executes the alternative sanction or measure and their non-discrimination, in accordance with Articles 5 and 6 of the Law on the execution of suspended sentences and community service sentence.

In order to execution of alternative sanctions and measures meets the required standards of human rights and freedoms, it is recommended to Ombudsman to intensively monitor the execution of alternative criminal sanctions with special focus on community service

sentence, which implies the consent of the person who executes it, both in principle and in the type of work that should be performed.

## 6. INDICATORS FOR MONITORING SYSTEM OF APPLICATION OF SHORT-TERM LIBERTY DEPRIVATION SENTENCE AND ALTERNATIVE CRIMINAL SANCTIONS IN MONTENEGRO

The indicators represented in this part of Study were created as the result of working on a project and in preparation of methodology for analyzing the sistem for application of short-term liberty deprivation sentence and alternatives for sentences in Montenegro. A special motive for detailed elaboration of the indicators for monitoring the application of short-term liberty deprivation sentence and alternative criminal sanctions is a fact and also one of the conclusions of the Study, that in Montenegro there is no system for continuous monitoring of the situation in this area, and there is a need for establishing centralized database, through which the presented indicators would be processed on annually basis.

The indicators are followed by methodology for data collection. This title of the Study is organized as follows: the criteria which are used in the selection of indicators are explained in Chapter 1, while in Chapter 2 is presented a list of suggested indicators, and for each indicator the problems are explained (Chapter 4) related to their collection, i.e. proposed methodology for collecting data on a given indicator (such as definitions, calculation methods, data source, the institution responsible for providing data and proposed information systems as the basis of these indicators).

### 6.1. CRITERIA USED IN THE SELECTION OF INDICATORS

The indicators presented as part of this study are made on the basis of the criteria: a) the legislative framework; b ) the methodology used during research project. According to this, the following criteria were used as a guide for the selection of indicators :

- First, standards, norms, regulations and procedures prescribed by the Law On Execution Of Criminal Sanctions, The Criminal Code And The Law On Execution Of Suspended Sentence And Community Service (national dimension );
- Secondly, where it was available and reasonable, indicators were detrimental from the focus of international comparability or selected from existing lists that are used in the EU Member States (international dimension);
- Third, the indicators should be established on the basis of the concept of independent and comprehensive database, but at the same time, they should:
  - take into account national priorities (e.g. recidivism, reducing the prison population), alternative measures (diversion), etc;
  - be focused on the entire criminal justice system in Montenegro, as the place of probation, by its nature, is not only after the imposition of criminal sanctions but from the very first activity that was made to the potential perpetrator;
  - to be made so that they can be calculated in the context of Montenegro, (i.e. that are calculated in the relative categories, in order to compare with the practices of other countries);
  - to be made in a way to be updated in the future by the competent bodies for execution of criminal sanctions in Montenegro;

## 6.2. LIST OF SELECTED INDICATORS AND METADATA

In this Chapter are presented the proposed indicators of a system application of short-term liberty deprivation sentences and alternatives to sentence in Montenegro, with metadata and methodology of their application. There are 15 quantitative indicators. They are listed, along with their definitions in Table 1:

**Table 1. Proposed 20 indicators of a system application of short-term liberty deprivation and alternatives to deprivation of liberty**

Indicators		Definition	Source	Data-base
1.	Persons with imposed criminal sanction	Number of citizens to to whom the criminal sanction is imposed during the period of 12 months.	Courts	PRIS/ Special data base
2.	Persons sentenced to imprisonment up to six mounts	Number/percentage of citizens sentenced to imprisonment up to six months during the period of 12 months .	Courts	PRIS/ Special data base
3.	Persons sentenced to imprisonment over six mounts	Number/Percentage of citizens sentenced to imprisonment over six months during the period of 12 months.	Courts	PRIS/ Special data base
4.	Alternative sanction – a <b>fine</b>	Number/ Percentage of citizens to which is imposed the alternative sanction a fine during the period of 12 months.	Courts	PRIS/ Special data base
5.	Alternative sanction – <b>Community service</b>	Percentage of citizens to which is imposed alternative sanction community service, durring period of 12 months.	Courts Directorate for probation	PRIS/Special data base



6.	Imprisonment executed in the residential premises <b>(House arrest)</b>	Percentage of imposed alternative sanctions of house arrest during the period of 12 months.	Courts Directorate for Probation	PRIS/Special data base
7.	Warning measures - <b>Suspended sentence</b>	Percentage of imposed warning measures suspended sentence, within the period of 12 months.	Courts Directorate for Probation	PRIS/ Special data base
8.	Warning measures - <b>Suspended sentence with protective supervision</b>	Percentage of imposed warning measures suspended sentence with protective supervision within 12 months.	Courts Directorate for Probation	PRIS/ Special data base
9.	Warning measures - <b>Judicial admonition</b>	Percentage of imposed warning measures judicial admonition within 12 months	Courts Directorate for Probation	PRIS/ Special data base
10.	<b>Security measures</b>	Number of citizens with imposed security measure within 12 months	Courts	PRIS/ Special data base
11.	Application measure – <b>Release on parole</b>	Number / percentage of sentenced persons to imprisonment up to six months released on parole, during a period of 12 months.	Courts Directorate for Probation	PRIS/ Special data base
12.	The rate of	Percentage of citizens who	Courts State	PRIS/ Special

	recidivism among citizens which have fulfilled the alternative sanction	fulfilled alternative sanction against whom the criminal charges were filed in the next 1 year period.	Prosecutor's Office	data base
13.	The rate of recidivism among citizens with an imposed imprisonment up to six months	The percentage of citizens who have served imprisonment up to six months against whom the criminal charges were filed in the next 1 year period.	Courts Police Administration State Prosecutor's Office	PRIS/ Special data base
14.	The rate of imposing fine default imprisonment regarding breach of rules on abandoning residential premises	The percentage of citizens to whom the imprisonment executed in the residential premises is substituted by fine default imprisonment.	Courts Directorate for Probation	PRIS/ Special data base
15	The rate of imposing fine default imprisonment regarding a fine	The percentage of citizens to whom a fine is substituted by fine default imprisonment.	Courts Directorate for Probation	PRIS/ Special data base
16	The rate of replacement of a fines with a community service	The percentage of citizens to whom the fine is substituted by the community service sentence.	Courts Directorate for Probation	PRIS/ Special data base
17.	The rate of	The percentage of	Courts	PRIS/ Special

	imposing fine default imprisonment regarding the community service sentence	citizens to whom a community service sentence is substituted by fine default imprisonment.	Directorate for Probation	data base
18.	Rate of revoke release on parole	Number of citizens who have been revoked on parole	Courts Directorate for Probation	PRIS/ Special data base
19.	Rate of suspended sentence revocation due to newly execution of criminal offence or failure to fulfill obligations	The percentage of citizens with revoked suspended sentence due to newly executed criminal offence failure to fulfill obligations.	Courts Directorate for Probation	PRIS/ Special data base
20.	Criminal proceedings diversity	The number of conducted diverse proceedings and imposed alternative measures within 12 months.	State Prosecutor Office	PRIS/ Special data base