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MAKING OUR COMMUNITY SAFER: EXPLORING NEW POSSIBILITIES FOR CRIMINAL JUSTICE AND PRISON SYSTEM

Conference Proceedings

Sarajevo, 21-23 September 2005

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INTRODUCTION TO THE CONFERENCE

In my capacity as Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina, it is my great pleasure to welcome you all here. This Conference on "Making our community safer: exploring new possibilities for criminal justice and the prison system" is an extremely important event. It marks the beginning of a new impetus for reform of the criminal justice and prison system in the country.

And this new impetus is badly and urgently needed. As recent events in certain penal institutions have shown, some of the prisons in this country are dangerous places to be. Dangerous for inmates, dangerous to work in, and dangerous for the wider political and social fabric of Bosnia and Herzegovina.

We're facing an urgent need to shift criminal justice and prison reform higher up the political agenda, and to implement these reforms. I must say that I am encouraged that - by being here today- you too are clearly demonstrating your commitment to this reform process.

There is currently a prison population of 2400 (approximately 1400 in the Federation, and 1000 in Republika Srpska), spread over 13 prison facilities. This prison population is relatively low on a European and worldwide comparative level, around 60/100 000 of population.

But these encouraging numbers conceal structural problems that need to be addressed.

There are currently three authorities - at the level of the State and the two Entities - with responsibility for running prisons. This fragmentation of the prison system has resulted in a loss of capability to plan and implement reforms. The resources available to each system are inadequate for the development of services to groups within the prison population that require specialist services and for investment in physical and human resource development.

What is required then is high level organizational reform and the implementation of a coherent strategy for penal reform to develop a prison system that can build on the strengths of its humane traditions, and foster a network

of prisons capable of meeting the profile of needs of the current and future prison population.

Prison reform cannot be realistically planned other than in the context of the total provision of sanctions and services available in the criminal justice system. There is an urgent need to make full use of existing provisions for community sanctions and conditional release, and to examine how these existing legal provisions can be extended to offenders and improved.

In my view, prisons here currently hold many petty offenders inappropriately, putting pressure on prison capacity, which in turn may lead to some offenders escaping justice.

In this context, today's conference which will examine these areas of strategic need and generate recommendations for reform, provides a vital platform to raise the profile of penal reform amongst this country's priorities.

We have called our conference "Making our community safer: new possibilities for criminal justice and prisons system" because we wish to stress that our objective is to produce a set of recommendations that are clearly focused on the needs of public safety. The resources available to BiH are, and will remain for many years, limited. The question we need to address here is, therefore, how do we develop the criminal justice system that provides optimum protection to the public but which is affordable? What can we actually do in the immediate and medium term?

The Council of Europe has been active in this field in Bosnia and Herzegovina since 1998, but its current level of activity would be impossible without the valuable financial and moral support of the Canadian International Development Agency, and I would like to conclude my opening remarks by thanking the Canadian authorities for this crucial support.

Finally I would like to wish you all the greatest of success in your debates and discussions, and I look forward to your conclusions and recommendations.

KEY CHALLENGES FOR CRIMINAL JUSTICE AND PRISON SYSTEM

An efficient, fair and transparent criminal justice and prison system are, as you all know, crucial for the whole society. This is why the Canadian Embassy here and the Canadian International Development Agency in Bosnia and Herzegovina is pleased to be able to partner the Council of Europe in the important project, and to be present as this major conference begins, and I welcome you all: guests coming from a variety of different educational and professional backgrounds.

Since you are all specialists in your particular fields, I am sure that you will agree with that the overall reform process needs the active participation of government, the professionals working in the field and the wider community.

We should aim to ensure that all concerned parties share a common approach to the prison reform process. Only when there is a common vision of what should be done can we consider which mechanisms we can develop to bring about changes and which will avoid systemic hurdles impeding the implementation of the agreed prison reform process.

I would like to stress that this reform is an integral part of the European integration process in which Bosnia and Herzegovina has committed itself to applying common European standards. It is primarily the responsibility of the Ministries of Justice at all three levels to move this process forward and to initiate the necessary reforms at subordinate levels. Your international partners stand ready to assist with this task.

As a donor, the Canadian authorities have however made clear that they will only provide resources in the future when and where they see evident political will and clear signs that local authorities and practitioners take the own responsibilities seriously. Given the size of the Rule of Law programme supported by the Canadian authorities in BiH, may I also point out that commitment to this programme must come from the very highest levels of governance in this country.

This is why the nature and timing of this Conference is crucial. In bringing you all together now, we hope to overcome the effects of the fragmen-

tation in the present prison system which reduces capacity to plan and implement reforms and in which the resources available to each system individually are inadequate for the development of coherent policies and systems.

The definition and implementation of a coherent strategy is the pre-condition for a prison system that can build on its existing strengths and humane traditions and create a network of prisons capable of meeting the needs of the current and future prisoner population.

As our implementing partner, the Council of Europe will undoubtedly offer support in implementation and capacity building. But we must keep in mind that the balance of responsibility between the international community and local authorities in this process of change in the legislative framework will inevitably shift.

The International community has in the past, and will continue in the future, to offer all the expert and technical support available, but activities must increasingly be driven further by local partners.

On behalf of the Canadian authorities and our partners in the Council of Europe, I would like to reiterate our joint commitment to encouraging all actors in this process to drive these changes further, and I wish you every success in your present work.

REASONS FOR CHANGE AND THE WAYS TO ACHIEVE IT SUCCESFULLY

Introduction

It is clear from the invitation to this seminar that one of the challenges that you have before you in Bosnia-Herzegovina is to develop the prison system. Such a development always implies a number of both great and small changes. Moreover, these changes concern not only prison staff but in varying degree other parts of the criminal justice system. For this reason it is important that the views of those working in other parts of the criminal justice system are heard in the present seminar and not just those of prison staff. The prison system's activities are heavily steered by routines and rules. Changing these rules and routines often produces negative reactions of the kind "Are we not good enough as we are?", "Are we failing to do good work?" The answer to such questions may well be affirmative but still a number of factors that impact on prison activities may have changed or be in the process of change. It is always necessary to keep abreast of these changes. Perhaps it is better to talk of assuring *development* instead of *making changes*. After all, changes can be of negative as well as positive character and in any case the word frequently arouses anxiety.

One can discuss which is the more difficult - to see the need for change or to carry it out. This problem manifests itself regardless of country or sector of the criminal justice system. But the fact remains that the pre-conditions for any activity are subject to constant alteration and modification, sometimes quite dramatically. So an obvious question for us in this seminar is to consider how your circumstances have changed or are changing and what sort of adjustments are necessary as a result. I shall try to provide some ideas about finding answers to this question based on my international experience as chairman of the Council of Europe's Council for Penological Co-operation and national experience as a former Director-General of the Swedish Prison & Probation Service. But you are the people with knowledge about the developments taking place concerning penal policy and practice in your Entities and you are the ones most directly involved in the adjustments that will need to be made. You will have an opportunity to discuss this question in small groups later on today.

External factors

An obvious and important factor is the current development that is taking place towards an evermore unified Europe. This is apparent not least in penal matters where common solutions to common problems acquire increasing importance.

The Council of Europe's European Prison Rules have been recently updated and are in process of being considered by the Committee of Ministers for adoption in their new form. They will without doubt mean that your own rules and regulations will need to be reviewed. It is extremely likely that the result will be a need to undertake organisational development. The lack of a strong leadership in a central administration is a factor that, in my experience, limits the possibilities to develop a prison system that is in harmony with the European Prison Rules. The reports of the Committee for the Prevention of Torture - the CPT - together with the European Prison Rules provide excellent guidance for the development of national prison systems.

Another factor that argues for a review of national prison rules is, to take my own country as an example, the question of dealing with difficult prisoners who often are also narcotic drug misusers, without losing sight of the important task of helping them lead law-abiding lives after release to the community. And this task is not made easier when the prison population increases and its prisoners have frequently committed grave offences, often with international connections.

The community's expectations that the prison system shall keep a proper balance between maintaining security and promoting adjustment in society demands not only development of rules and routines but also of prison staffs' attitudes and competence. Narcotic drug crime is considered both by politicians as well as prison staff in my country to be the factor that in recent decades has most influenced the nature of much crime and worsened the climate of the prisons. Preventing drug misuse in the prisons while also trying to motivate drug-misusing prisoners to lead drug-free lives on release has been a major reason for organisational and staff development. This has led to a political willingness to provide increased financial resources.

The question of what level of financial resources is necessary to secure development usually gives rise to controversy. But to make a lack of financial resources an excuse for not attempting development in a prison system is to take a too easy way out from dealing with our current difficulties. Much can

be done without great financial investment. This is especially true of altering prison staff attitudes and work tasks. Prison staff often have an interest in taking greater responsibility for more positive and satisfying prison activities and for some rotation of work tasks since these lead to better career opportunities. This interest for staff development can be utilised without a dramatic increases in costs.

National factors

Some of the problems faced by prison administrations are almost universal but even so there are always national factors that influence what should be developed and by what means. You are the ones who are best fitted to assess these aspects. An important purpose of this seminar is to link the universal and general with the national and specific. Your society has certain expectations about the development of the prison system. Your prison staff may also be a source of new ideas. When I was appointed Director-General of the Swedish Prison & Probation Service I spent much time during my first year in travelling round to gather prison staff views. And even the prisoners can be an interesting source although obviously not all that they assert can be believed or accepted.

Broadly speaking there are in every country two main lines of thought. On the one hand there are those who want the prison system to be tougher and harder whilst the other line of thought emphasises the need for a humane and treatment-oriented prison service. The reports of the Committee for the Prevention of Torture - the CPT - and the jurisprudence of the European Court of Human Rights provide good guidance on holding the balance between these opposing lines of thought. The CPT reports in particular have been given prominence in both my own country and in other countries. They have provided an important reason for governments to take steps to improve prison systems and, not least, provide necessary financial resources. Those of us who work in a prison system have therefore every reason to be grateful for the CPT inspections and reports.

Changes in governments can also lead to a changed view about the functions and methods of a prison service. Clearly, the collapse of communism has led to completely new opportunities to create a modern humanely oriented prison service in a number of central and eastern European countries. Here in Bosnia-Herzegovina the resolution of a tragic conflict has generated both special problems but also special opportunities. The special problems

include the need in the future to deal in all probability with increased numbers of prisoners guilty of especially serious crimes.

We all know how prison activities can be disrupted by serious and often unexpected and dramatic events - a serious escape or a prison riot for example. Such events are eagerly seized upon by the media and large scale, usually negative, publicity becomes a fact. As a result there is always a risk that the opinions whipped up by the media lead to panic measures adopted in haste without careful analysis. But the possibility also exists to use such events to demand careful analysis and thereafter to start a development in a positive direction. Clearly it is better if these events can be prevented from occurring and that the prison service itself takes the responsibility to initiate carefully planned developments that have a long-term character. However, what I want to emphasise is that with skilful leadership even serious negative events can be harnessed and made to serve the purpose of improving prison service work.

It is a major challenge for leadership at all levels to deal with all the factors that exert an influence on the development of a prison and probation system. We shall in the course of this seminar discuss the circumstances and factors that influence development possibilities in your country. You are the ones who can make a realistic assessment of these circumstances and factors.

What shall be developed and how?

In order to approach these questions I should like to refer to my experience when I took up my appointment as the new Director-General of the Swedish Prison & Probation Service. First, a little on formal aspects. It was for my political masters to determine my essential tasks in broad outline and to give me the necessary financial resources to carry out those tasks. As the Head of the Service I then had complete freedom to translate the broad tasks into operational realities without interference from central government. But, of course, I needed to keep the government informed about major measures that might be expected to have political repercussions. I mention that I had been chosen as a new Director-General because my military experience in a modern army was considered especially useful for carrying through major changes in the Prison & Probation Service. At the same time I was expected to achieve savings in the cost of prison activities through improved effectiveness.

The fact that my tasks and the expectations that the government had of me were stated publicly gave me a clear authority to act and a strong posi-

tion within the prison system to do so. Everyone knew that now there would be changes. Without such signals and a clear authority from the government I would think that there would have been only limited possibilities to successfully initiate organisational development. It would be equally unfortunate if the government lacking professional knowledge of prison administration attempted itself to carry out a detailed programme of change.

The areas that I considered to require development were:

- The competence, tasks and attitudes to prisoners of the basic grade prison staff so that they ceased to be guards and instead became involved in treatment activities;
- Local and central administration since 160 small local units in many cases lacked competence to plan activities, assume financial responsibility for their activities, recruit and develop staff, undertake sentence planning for prisoners and collaborate with other parts of the criminal justice system;

The development process was made possible by the Ministry of Justice taking responsibility for new legislation that reduced the pressure on the prisons. Thus, for example, a new law made it possible for a prison sentence of up to three months to be implemented in the community under intensive supervision with electronic monitoring. The regional administrations of the Prison & Probation Service were empowered to decide which of the eligible prisoners should serve their sentences under intensive supervision in the community without ever coming into prison. This new possibility worked so well that it became possible to close about 20 prisons. Over a three-year period this meant that there were financial savings of approximately 110 million euros. A major reason for the success of this development was that prison service personnel were able to make a professionally based choice of suitable prisoners. The development of intensive supervision with electronic monitoring is also a good example of the importance of the need for a collaborative division of responsibility between the criminal justice administration with political responsibility, that is, the Ministry of Justice, and the top management of the prison system with an operational responsibility. I suggest that this aspect is one that should be carefully discussed in our seminar.

Within the framework that I have just sketched a number of projects concerning new forms of central, regional and local organisation, improved recruitment criteria and better training of staff were carried through. Of great

importance was the attempt to increase the number of women prison staff at all levels but especially as basic grade staff in male prisons. Our experience with the use of a high proportion of women staff has proved wholly positive.

The start

In order to start and manage a development process it is necessary to be aware of the obstacles and resistances that almost certainly will arise in different parts of the organisation. In this connection it is important to work to ensure that the various heads of the different units and sections as well as the staff they lead become fully involved with the development process. Successful development can only be achieved with and through chiefs and their staffs. They have to be assisted to see the need for change and to see the resulting advantages that will benefit them as well as the organisation as a whole. In Sweden this has meant that a vision of the future was projected, specific goals were described, plans to achieve these goals were worked out, working groups set up and project leaders appointed. From the earliest stages it is necessary to provide information to staff so as to avoid the spreading of harmful rumours. Such information needs to be given in both written and oral form and repeated at frequent intervals.

Major efforts must be made to secure the engagement of chiefs and the staff trades unions. And it must be recognised that it may be necessary to get rid of chiefs who resist development and appoint instead chiefs who are able and willing to support the process. Chiefs at all levels must have an optimistic view, push for change, take the lead, not be afraid to make difficult decisions and when necessary exchange inadequate staff for competent staff. I shall say more on the role of chiefs in my next talk. Patience is absolutely necessary together with the ability to work flexibly with the difficulties that arise without losing sight of the ultimate goals that have to be achieved. The importance of open communication with the media and the public needs also to be emphasised.

Summarising remarks

Prison systems tend to be conservative organisations and not easy to change and develop. Top management has a key role to play when development is attempted. The various responsibilities must be clearly agreed and divided between the different responsible actors. This means that the gover-

nment must take its share of responsibility and formulate the purposes of proposed new developments but then hand over responsibility for carrying them out to the prison system. Constant exchanges of information between all those involved is necessary if disinformation is to be avoided. It may, and probably will, be necessary to get rid of those - chiefs or other staff - who are not wholeheartedly willing to carry out development. There can be no room for those who sabotage or actively work against the development process. This action makes great demands on those responsible for leadership.

I have in this talk presented my views on introducing and carrying out a process of development within a prison system. These views are naturally influenced by my Swedish perspective and my personal style of leadership but also by what I have learned from colleagues in many other countries. All development work, however, must inevitably take place in the context of the conditions and circumstances that make up a national culture. I hope that later today we may discuss the circumstances and conditions that make up your national context so that we may see more clearly what are the problems you face and the possibilities that exist to develop your own prison system.

KEY CHALLENGES OF THE PENAL POLICY AND POLITICAL INPUT

As a member of the Council of Europe, Bosnia and Herzegovina is facing a challenge of fulfilling post-accession requirements. Indeed, many of them have been fulfilled and major progress has been made in achieving civilization standards which go as far as those on which the European Community, which we too want to join, is based. The Council of Europe Office in Bosnia and Herzegovina has been assisting us a lot on that quite challenging and difficult road. This Conference on criminal justice and ongoing reforms is, in my view, a part of its assistance. Thus, let me thank the Council of Europe and Canadian International Development Agency.

Ten post-Dayton years have been quite sufficient for an analysis of results and democracy but also of limitations. The key reforms are underway and huge tasks and challenges are still ahead of all politicians. BiH has no alternative but to fully respect international conventions and commitments and accept the highest democratic standards. This is a precondition for a steady road to the European future.

This issue requires, just like any other national activity, a national strategy and a clear and legally-based system of responsibilities, from the state level down to the local community institutions and authorities, if the system is to function effectively.

This is the only way to ensure an effective criminal justice system which will guarantee the highest human rights standards and their protection, an effective rehabilitation of prisoners and the best protection of the social community possible. In comparison to European and world standards, the number of prisoners in Bosnia and Herzegovina is very low - around 60 prisoners per 100,000 citizens. As someone with a considerable political experience, I would say that this is an encouraging factor in planning and implementing reforms in our criminal justice and prison system.

In the light of Bosnia and Herzegovina's efforts to undertake broader police and judicial reforms, the prison system reform and alternative sanctions viewed as a supplement to this system, will inevitably increase the effectiveness of the entire criminal justice system.

The experiences of similar jurisdictions in the neighboring states which have carried out reforms under similar circumstances - which are far from being supportive in economic terms - confirm that prisons have to improve their capabilities to manage the categories of prisoners which are incomparably more problematic and dangerous than they were before, in parallel to increasing the efficiency of other segments of the criminal justice system.

As someone who has always been consistent in attempts to see individual and collective rights fully implemented, I am fully aware of the prisoners' human rights. Those who are serving long-term sentences have to serve their sentences under the appropriate conditions; the prison staff and experts involved in the implementation of treatment and rehabilitation programs must be qualified and skilled. Long term prisoners should be allowed to serve the last portion of their prison sentence in the community and it is necessary to ensure the community's assistance in every possible way. It is our duty and in our interest to see them reintegrated into society. This is also in the best interest of public safety, no matter how often this fact is ignored at first sight.

Regarding minor offenders, we have to consider carefully whether a prison sentence would be purposeful or community service and rehabilitation would prevent re-offending, and whether this would be a cheaper solution for the entire system.

Prison reform cannot be properly planned outside the context of all the provisions governing sanctions and measures that may be taken against offenders. There is an urgent need not only to use the full range of sanctions stipulated under the law, but also to expand the existing range in order to meet the BiH needs fully.

The purpose of this Conference is to launch a debate on those strategically important issues and to make recommendations in a series of workshops which we and the Council of Europe may use to attach a higher priority to the criminal justice reform among other national priorities.

The Co-chairman and international speakers will take us through this process and emphasize the best practices from abroad. Still, the responsibility for putting all required and recommended changes in place rests with us, the members of Bosnia and Herzegovina's society.

The main question that I would like all of us to consider in the course of these three days we are going to spend together is how we could develop a

criminal justice system which will be cost-effective and make our community as safe as possible. What can be done in the years to come to develop a cost-effective and efficient system?

I look forward to our conclusions which, I am sure, not only will the government find helpful but which the Council of Europe will use in its planning and implementing of the next phase of the project it shares with the Canadian International Development Agency. In the end, let me thank our partners for their commitment to implementing the goal we all share.

THE CURRENT SITUATION AND MAIN PROBLEMS FACING THE PRISON SYSTEM

It is a pleasure for me to be here today and to be able to welcome you. I wish to express gratitude to the colleagues from the Council of Europe with whom I have participated in the preparation and organisation of this conference from the very first day. I sincerely hope that over the next three days, we shall be able to contribute to some positive changes in the fields of penal policy and the execution of criminal sanctions.

My task today is to attempt to inform you of the current state of affairs and the problems the prison system has been facing.

The BiH prison system is based on the system which had for years been developed in the former Socialist Federal Republic of Yugoslavia. One can say that in many aspects it was a humane and progressive system. In the territory of Yugoslavia at that time, in addition to standard penal and correctional facilities, a number of specialised penal and correctional facilities were developed for specific categories like women, juveniles and the mentally disordered. These facilities could at that time compare with the most progressive institutions in Europe.

With the dissolution of the common state and the war events, this system was destroyed. The post-war efforts by the managements of the penal and correctional facilities and the Entity Ministries of Justice, as well as the efforts made by the international community have only now started to produce some results.

Current State of Affairs

The BiH prison system includes 11 penal and correctional facilities, which operate within the jurisdiction of the Entity Ministries of Justice: 6 of them in the jurisdiction of the RS Ministry of Justice, and 5 establishments with three departments in the jurisdiction of the FBiH Ministry of Justice.

Assistant Ministers for the execution of criminal sanctions in both Entities are in charge of the prison policy and prison system oversight. Each

Assistant Minister is supported by a number of inspectors and administrative officers.

The primary piece of legislation which regulates the prison system is the Law on Execution of Criminal and Minor Sanctions; the one in Republika Srpska entered into force in 2001 and was amended in 2004, while in the Federation of BiH the Law in force dates from 1998.

With the establishment of the Court of BiH and the Ministry of Justice of BiH in 2003, as well as the adoption of the Criminal Code and the Criminal Procedure Code at the state level in March 2003, and the Law on Execution of Criminal Sanctions and Other Measures of BiH in 2005, it was inevitable that the Entity laws should be harmonised with the state legislation; this process is still underway.

The prison facilities in the Entities require substantial improvement. This includes not only the major renovation of the buildings, but also the training of the prison staff. These problems were pointed out in the Report by the Council of Europe of 1998 which provided an evaluation of the prison system, as well as in the Special Report of June 2002 on the possibilities of converting prison dormitories into small units to accommodate one or two convicted persons.

Since, for some objective reasons, I have not been able to provide a survey of the situation in all penal and correctional facilities of Bosnia and Herzegovina, and knowing the execution issues which are very similar in both Entities, I have decided to present the state of affairs and the problems the prison system of Republika Srpska has been facing, with a note that I will also present some of the statistics pertaining to the FBiH prison system.

The Categorisation of Prison Facilities

Criminal and minor sanctions in Republika Srpska are executed in two closed-type penal and correctional facilities (Foča and Banja Luka), one semi-open-type penal and correctional facility (Istočno Sarajevo) and in three District prisons (Bijeljina, Doboj and Trebinje).

Article 14 of the Law on Execution of Criminal Sanctions stipulates that sentences of imprisonment for over one year, or those the remainder of which after crediting the time spent in custody exceeds one year, are to be

executed in the penal and correctional facilities; while the sentences of imprisonment for less than one year, or those, the remainder of which after crediting the time spent in custody is less than one year, are to be executed in district prisons.

The criteria for committing convicted persons to serve prison sentences are specified by a separate Book of Rules ("Official Gazette of RS" No. 65/02).

Pre-trial detention measures, ordered by a decision of the competent court, are executed in separate units of all penal and correctional facilities, except the one in Foča.

On the basis of the agreement signed between the Ministry of Justice of RS and the Ministry of Justice of BiH, and the Government of Brčko District, the prison sentences and pre-trial detention measures imposed by the Court of BiH and the Courts of Brčko District are executed in all penal and correctional facilities.

Long-term imprisonment and juvenile imprisonment are executed in the respective separate units of the Penal and Correctional Facility in Foča.

The prison sentences for women are executed in a separate unit of the Penal and Correctional Facility in Istočno Sarajevo.

The educational measure of committal to an educational and correctional home is foreseen to be executed in a separate unit within the Penal and Correctional Facility in Banja Luka.

The security measure of mandatory psychiatric treatment is executed in a separate unit of the Psychiatric Hospital in Sokolac.

The existing categorisation of the penal and correctional facilities is more the result of our wishes and the commitment to create the conditions in order to reach the standards of the European Prison Rules, than the objective conditions of executing the prison sentences allow for. All facilities, except the Penal and Correctional Facilities in Foča, Banja Luka and Istočno Sarajevo, are more cell-type facilities; they are more suitable for the execution of pre-trial detention measures. In addition to the fact that the facilities do not have adequate accommodation capacities available, they neither have the adequate, if any, supporting facilities for the convicted persons (living

rooms, educational and training facilities, workshops for training and employment of convicted persons, or spaces for the organised use of free time). The situation in the penal and correctional facilities is somewhat more favourable than the one in district prisons.

Criminal and other sanctions in the FBiH are executed in one closed type penal and correctional facility in Zenica, four semi-open type penal and correctional facilities in Tuzla, Mostar, Sarajevo and Bihać, as well as three separate departments of the mentioned facilities in Orašje, Busovača and Ustokolina.

Number of Persons Deprived of Liberty

The number of persons deprived of their liberty (convicted persons, persons punished for minor offences and pre-trial detainees) has constantly been on the rise in the recent period.

The total number of persons deprived of their liberty as of 31 December 2003 was 899 (716 convicted and 215 persons in pre-trial detention); at the end of 2004, there were 1,052 persons (874 convicted and 178 persons in pre-trial detention) deprived of their liberty; while on 30 April 2005, there were 1,075 persons (871 convicted and 204 persons in pre-trial detention) deprived of their liberty. Comparing the data from the end of 2004 with the data as of 30 April 2005, an increase is evident by 9.6%, or 2.4% a month. It should be noted that the number of persons deprived of their liberty, who are being admitted in the course of the year, is considerably higher than the one at the end of the year. For example, at the end of 2004, this number was 1,052, while in the course of 2004, 2,159 persons were deprived of their liberty; 180 persons a month on the average.

Based on the FBiH statistics dating from March-September 2005, the number of persons deprived of their liberty is slightly declining. In March, the total number of persons deprived of their liberty amounted to 1569, in August 1381 and in September 1412 persons.

Accommodation Capacities

The total accommodation capacities of all penal and correctional facilities amount to 1,085 beds (800 in units for convicted persons and 285 in pre-trial detention units).

The occupancy rate of the capacities as of 30 April 2005 was 99.8%, with the capacities for the convicted persons occupied at the rate of 107.6% and those for persons in pre-trial detention of 71.6%.

The problem of the convicted persons' accommodation is particularly present in the Penal and Correctional Facility in Foča. Persons serving prison sentences, long-term imprisonment and juvenile imprisonment are placed together in the premises within its perimeter, which is intolerable from the aspect of penological theory and practice. This problem is further complicated by the fact that the prison population here is heterogeneous in terms of age, type of criminal offences committed, and particularly in terms of some personality characteristics.

The problem to be stressed which the Penal and Correctional Facility in Foča has been facing is the accommodation of persons receiving juvenile prison sentences, and young adults. This problem could be solved by renovating the premises within the Penal and Correctional Facility, which are intended for that purpose. Another way to solve it would be to relocate the persons convicted to juvenile imprisonment from this facility in Foča elsewhere.

There is also the problem of the lack of adequate units which provide maximum-security and an intensive treatment programme, which is a must. This lack shows that the penal and correctional facilities do not have separate units to accommodate the convicted persons posing threat or risk to other persons and property from the aspect of applying re-educational measures and the security of the facility. There is space available in the Penal and Correctional Facility in Foča, but such premises require refurbishment. The solution to this problem has been postponed for several years now due to the lack of funds, but it is high time it was dealt with. Any further delay may cause serious consequences.

Internal Organisation and the Staff of the Penal and Correctional Facilities

New Books of Rules on internal organisation have been adopted for all the facilities thereby formally creating the optimum conditions for the functioning of the penal and correctional facilities and their adequate staffing.

It is important to note that the new Books of Rules on internal organisation have established separate organisational units for re-education and he-

alth care respectively, which had been within one organisational unit before the Books of Rules were issued.

The methods, forms and means to re-educate the convicted persons in the penal and correctional facilities are numerous and diverse. Our facilities mainly apply the well-known modern theory and practice in the process of re-education of convicted persons. However, it should be noted that all these means are not applied in all penal and correctional facilities or to all convicted persons.

The number and diversity of the methods, means and forms of the re-education of convicted persons in district prisons are by far fewer than the ones applied in the penal and correctional facilities, which is understandable given the fact that shorter sentences are served in prisons and that it is impossible to apply all methods or organise the implementation of all means and forms of re-education in them.

Although all normative assumptions have been in place, it can be concluded that there is a certain inconsistency between the normative regulation and the practical implementation. The full enforcement of the law requires certain financial and staffing presumptions. The financial requirements are primarily related to the provision of funds to supply clothing and footwear for convicted persons, as well as uniforms, equipment and material resources for the security staff. The modern system of execution of criminal sanctions also implies the introduction of computer equipment, a single software, training of staff, continued professional advancement, as well as the knowledge of new trends in penological theory and practice, etc. For the lack of financial resources, the oversight of the penal and correctional facilities has not been provided to the extent and in the scope as required.

The staffing requirements are related to the lack of re-education of staff or understaffing. None of the penal and correctional facilities has the sufficient number of educators, thus an educator is in charge of two or three times more convicted persons than he or she should be, according to the standard prescribed by the law.

The Work of Convicted Persons and Problems in Industrial Units

According to the Law of Execution of Criminal Sanctions, a convicted person has the right and obligation to work, therefore the type of work assigned is in accordance with the purposes of his or her re-education, psycho-

physical abilities, inclinations, personal characteristics and professional qualifications, as well as according to the existing possibilities in a facility and taking into account the maintenance of order and discipline. In assigning the type of work, the wish of a convicted person to be engaged in a specific work activity is taken into account to the maximum possible extent.

The work is, as a rule, carried out at industrial units, the organisation and working conditions of which should be in conformity with the standards of the same type of work outside the prison.

As of 31 December 2004, 65% of the total prison population in the penal and correctional facilities were engaged in work activities, out of which 19.5% were engaged in operating activities, 6.2% of the convicted persons did not work for security or health reasons, four convicts or 0.4% refused to work, while for 17.4% of them the facilities were not able to provide adequate work. Now the situation is even more difficult.

In the FBiH, out of the total number of convicted persons (on average 1200), about 420 prisoners work in the economic units, while some 220 prisoners are engaged in domestic work.

The compensation for the work of the convicted persons engaged in work activities during serving their prison sentences has been paid regularly. The average compensation in 2004 amounted to 41 KM a month.

Currently, all penal and correctional facilities have industrial units in accordance with the Law on Execution of Criminal Sanctions. However, the problems of the economy of Republika Srpska have equally affected the industrial units; therefore they operate at a very low capacity, use old-fashioned equipment and apply outdated technology.

In addition to the industrial units and workshops, a number of convicted persons have been engaged in work at prison farms, primarily at those in the Penal and Correctional Facility Foča and the one in Istočno Sarajevo. Both of these farms provide better conditions and sufficient capacity for adequate work engagement of the convictee work force. In other facilities, fewer convicted persons work at their own workshops and mini farms, while a number of them work with other legal and physical persons, which can be regarded as inadequate from the aspect of achieving the purpose of work during imprisonment. The industrial units operate on the principle of self-finance, however considerable funds have been allocated for the purpose of main functi-

on of the penal and correctional facilities and this has resulted in the financial exhaustion of the industrial units.

In order to bring the industrial units up to a satisfactory level, to make them serve the purpose for which they were created, considerable financial resources are required to modernise their equipment and technologies, and to renovate those that are operational or rebuild those devastated during the war. The funds required for the modernisation, renovation and construction should be provided partly from the Budget of Republika Srpska, and partly from their own sources.

Education and Free Time Activities of Convicted Persons

The education of the convicted persons, being one of the key segments in the process of re-education in the penal and correctional facilities of Republika Srpska, has been organised only in individual cases in cooperation with local educational institutions. There have not been many such cases, but even those have been limited by many factors.

Within the free time in the penal and correctional facilities, various optional activities are organised (reading books, watching TV programmes, engaging in various forms of cultural and educational activities, taking part in club activities, and pursuing sporting activities), as a supplemental form of general and vocational education aimed at acquiring positive habits in the rational use of free time upon release from prison. Objective conditions to organise the free time properly do not exist in all the facilities due to the lack of adequate premises. Judging from the current situation and conditions in which the penal and correctional facilities operate, this cannot be improved without considerable financial investment.

Health Care

During their stay at the penal and correctional facilities, the convicted persons enjoy free health care. The medical service is responsible for the provision of health care. New Books of Rules on Internal Organisation of the penal and correctional facilities provide for the health care organised at the level of a service, therefore it is envisaged that each facility should have at least one permanently employed physician and the necessary number of medical technicians. Presently, all facilities, except for the District Prison in Bijeljina and the Penal and Correctional Facility in Banja Luka, have permanen-

tly employed physicians, as well as contracts signed with specialist doctors from the local medical institutions. In the case when a facility is not able to provide adequate health care, medical aid including hospital treatment, is provided at an appropriate medical institution, most commonly the local hospital.

The problems of the high costs of medical services for specialist examinations, hospital treatment and the supply of medicines have been evident. The payment of health-care services for pre-trial detainees provided outside the penal and correctional facility is a separate problem. The costs of this kind are to be covered by the competent courts, which have ordered the pre-trial detention measure or which conduct the criminal proceedings (Article 96, paragraph 2 of the Criminal Procedure Code). It has become a rule for the courts not to pay for these costs, using the lack of funds as an excuse; therefore a more serious approach to dealing with this problem is required to prevent more serious consequences.

The Execution of Pre-Trail Detention Measures

The pre-trail detention measures, based on the decisions by competent courts, are carried out in separate divisions of the penal and correctional facilities. In the first four months of 2005, compared to last year, there was an increase by 11.4% in the number of persons receiving a pre-trial detention measure, and this is likely to continue in future.

In the Federation of BiH, in March 2005 there were 267 persons serving their pre-trial measure, in August 221 and in September 233 persons.

The issue that needs to be mentioned as a particular problem in all penal and correctional facilities is ensuring the funds required for adequate food and health care are available. The costs of pre-trial measure execution have been paid irregularly, while the vast majority of courts have not paid for such costs at all. Enormous efforts have been made to resolve this problem, but regrettably, no visible results have been achieved so far.

The Execution of Imprisonment Imposed in Minor Offence Court Proceedings

The problems the penal and correctional facilities are faced with in respect to the execution of prison sentences imposed in the minor offence court proceedings are the same as with the execution of the pre-trial detention

measures. The municipalities, which are required to cover these costs, have behaved in exactly the same way as the courts have in the case of paying the pre-trial detention measures costs.

The Execution of the Educational Measure of Committal to Correctional Homes

The educational measure of committal to correctional homes has not been executed in 2004 despite certain conditions which were created for that purpose. Namely, the premises intended for the execution of this educational measure have been renovated within the Penal and Correctional Facility in Banja Luka. One of the reasons why this division has not become operational is the understaffing of the Penal and Correctional Facility in Banja Luka, while the second, and the main reason is the fact the Government of Republika Srpska did not allocate the funds required for the operation of this division (employees' wages and material expenses). It should be noted that the problem of funding the correctional home has recently been solved and it is expected to start operating very soon.

Just as in Republika Srpska, the educational measure of committal to correctional homes is not executed in the Federation of BiH.

The Execution of the Security Measure of Mandatory Psychiatric Treatment and Custody in Health Institution

The security measure of mandatory psychiatric treatment and custody in health institution is executed in the Psychiatric Hospital Sokolac.

The security measure of mandatory psychiatric treatment and custody in health institution in the Federation of BiH is executed in the separate department of the penal and correctional facility in Zenica.

Situation regarding Buildings and Equipment at Penal and Correctional Facilities

The Penal and Correctional Facilities in Foča, Banja Luka and Istočno Sarajevo, as well as the District Prison in Doboj, all operate in the same buildings they used before the war, while the District Prisons in Bijeljina and

Trebinje operate in old buildings, renovated for the purpose of the execution of prison sentences and pre-trial detention measures.

All of these buildings were in a rather poor state of repair. Some were devastated during the war. Therefore it was necessary to construct new buildings and reconstruct existing ones, primarily those used by the convicted persons. The reconstruction included repairing roofs, water supply and drainage networks, electrical services, joinery elements, boiler houses and central heating, face walls, sanitary facilities, etc.

The equipment used by the penal and correctional facilities is for the most part fully depreciated and worn out. In the Penal and Correctional Facility in Foča there is no equipment for electronic surveillance or video control which, given its category, is required to be provided.

No penal and correctional facility disposes of the appropriate equipment for the inspection of parcels, detection of prohibited items, detection of narcotics and the like; this is a major deficiency in all penal and correctional facilities, notably in Foča and Banja Luka.

Human Resources Structure and Operating Funds

The human resources structure in all penal and correctional facilities is satisfactory on the whole, although additional training is required, particularly to re-education and security staff.

The financial status of the staff of the penal and correctional facilities is about the same as that of the staff of the Republika Srpska administration. Average salaries are lower than those paid by the Ministry of the Interior, courts and judicial police, despite the fact that they work under far more difficult conditions. Therefore, their financial situation is considerably poorer, which cannot be justified from the social point of view. The fact that more than 50% of the staff do not have the housing issue resolved should also be emphasised.

Funds for the operation of the penal and correctional facilities are provided from the Budget of Republika Srpska, and they include the following: employees' wages, funds for material expenses, and funds for special purposes.

Despite the fact that it is stipulated by the Law, the funds for special purposes are not planned in the budget at all. Capital needs are almost not funded at all; therefore the maintenance, renovation, repairs, equipment supply and the like have been covered from the funds for material expenses, at the expense of the convicted persons' standards.

The facts that the regular courts do not pay for the costs of pre-trial detention and that municipalities do not pay for the costs of the execution of prison sentences imposed in minor offence court proceedings should be particularly emphasised, since it is all the more reason why the issue of funding the operation of the penal and correctional facilities should be approached with special attention in the forthcoming period.

Finally, I believe I have succeeded, at least to some extent, in presenting you with the situation in the penal and correctional facilities in Republika Srpska and pointing to the issues the prison system is facing.

I believe that the information presented will generate more interest in the prison system and enable you to take an active part in the Conference.

AREAS IN WHICH FURTHER CRIMINAL JUSTICE DEVELOPMENT IS NEEDED IN BOSNIA AND HERZEGOVINA

Introduction

A new Criminal Procedure Code of Bosnia and Herzegovina was enacted in early 2003[1] and came into force on March 1, 2003, as a part of the entire criminal legislation at the national level. The law was initiated by the High Representative to Bosnia and Herzegovina, within the criminal law justice system in the country. The law introduced some substantial changes to the criminal procedure.

The Brcko District Interim Assembly enacted the Criminal Procedure Code on May, 23, 2003, which entered into force on July 1, 2003.[2] The Republika Srpska National Assembly enacted the Republika Srpska Criminal Procedure Code on June 27, 2003, which entered into force on July 1, 2003.[3] The Federation Parliament enacted the Criminal Procedure Code of the Federation of Bosnia and Herzegovina on July 28, 2003, which entered into force on August 1, 2003.[4] As a result of these legislative activities, all four Criminal Procedure Codes are almost identical, which means that all the courts in BiH apply a similar criminal procedure.

The criminal justice reform, which included the enactment of new Criminal Codes, was a part of a series of legislative activities and other reforms which brought about some significant changes to the judicial and other institutions in Bosnia and Herzegovina.

After three years of implementation of new Criminal Procedure Codes in Bosnia and Herzegovina, the question arises as to whether these Codes should be changed or the practitioners should be given some more time to define their positions. Some tend to believe that it is still too early to discuss any legal changes and that focus should be put on the direction of any future amendments. Others think that the existing Codes contain some gaps which require urgent actions through amendments and that it would be too dangerous to leave it to the practice to provide answers to obvious problems. It seems that the opinions requiring an intervention by the legislator should be supported since the implementation of legal provisions is creating problems

in terms of interpretation of the law, without entering into the basic systemic solutions provided by the new laws.[5] The same view was supported by the team in charge of monitoring and assessing the implementation of the Criminal Codes[6]. The team took into consideration, among other things, the report on the implementation of the Criminal Procedure Code by the courts in Bosnia and Herzegovina, from December 2004.[7] The same team has already prepared a working version of the draft Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina[8] and chose a rather small number of interventions. There is a general belief that the proposed amendments to the law are positive, that they contribute to the linguistic precision of the provisions, although it is clear that there is almost a unanimous view that some amendments proposed to the law are unnecessary, even inappropriate.

The right to defense

The right of a suspect, or the accused, to a defense counsel throughout a criminal procedure, from the very first interrogation to the final and binding verdict reached by the court of law, is the basic right, which is protected by the criminal legislation and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). With the introduction of the obvious features of an adversarial system by virtue of the new criminal procedure law, the presence of a defense counsel in criminal procedure becomes even more important, since the defense now has a primary responsibility for carrying out its own investigation and collecting evidence to challenge the facts presented by the prosecutor. A violation of the right to defense constitutes an absolutely important violation of the Criminal Procedure Code, which entails the right to appeal.

Among all the provisions regulating the right to defense, the provision contained in Article 47 of the Criminal Procedure Code of Bosnia and Herzegovina which regulates the right of defense to have access to the files and documentation, has attracted the most attention from the legal community. First of all, the practitioners have asked the following question: how will the prosecutor and the defense counsel exchange evidence during an investigation procedure? It has been proposed that the prosecutor should present evidence in favor of the defense to the preliminary proceeding judge (for the purpose of informing both the suspect and his or her defense counsel). However, since a direct exchange of evidence is more efficient, most of the courts have adopted the practice of direct communication between the de-

fense counsel and the Prosecutor's Office, for the purpose of the defense counsel's requesting access to the files and evidence. If the prosecutor fails to respond to the defense counsel's request for access to the files and documents on time, the defense counsel may communicate the same request to the preliminary proceeding judge.

For the purpose of paragraph 1 of Article 47 of the CPC of BiH, the question is who is responsible for assessing whether some pieces of evidence obtained in the course of investigation are in favor or against the suspect. If this is to be assessed by the prosecutor, would it be possible to appeal the prosecutor's denial to the court for the purpose of having his or her negative decision reviewed? Other questions concern the form of the decision by which the prosecutor denies access to the file and the relevant documents, and the manner in which the preliminary proceedings judge establishes whether the prosecutor has presented all the pieces of evidence to inform the defense counsel, and which procedural law penalty should apply if the prosecutor presents a piece of evidence which he or she failed to present to the defense counsel during investigation.

Plea bargaining

Plea bargaining allows the defendant to negotiate his or her guilty plea with the prosecutor in exchange for a strictly specified punishment, without a need to hold the main hearing.

Regarding paragraph 5 of Article 231 of CPC of BiH, the dilemma is whether the preliminary proceedings judge, who accepts the plea bargain, may also be the judge who will reach a criminal sentence. It is maintained that the criminal sentence should be reached by a judge who has not considered the plea bargain. There are completely different views on this issue.

In regard to paragraph 7 of Article 231 of CPC of BiH - which stipulates that the damaged party is to be informed about the results of a plea bargaining - the damaged party will not always be able to be present at the hearing and present his or her property-related claim by reason of a short deadline for reaching a decision (no later than three days). The shortcoming of this provision may be resolved by a practical arrangement as follows: the prosecutor should obtain the opinion from the damaged party during the plea bargaining procedure and inform him or her about the consequences of the guilty plea and the right to have his or her claim upheld.

In case of an objection in connection with item (c) of paragraph 1 of Article 233 of CPC of BiH (legality of evidence or guilty plea is challenged), the question is how the preliminary hearing judge will resolve the matter, that is, whether the court is obliged to present the objection to the prosecutor and whether a hearing will be scheduled to give an opportunity to both parties to the proceedings to present evidence corroborating the objection and their responses to the objection. If the preliminary hearing judge sustains the objection, and deems a piece of evidence as unlawful, it may happen that the evidence obtained no longer corroborates the probable cause that the defendant committed a crime, which was a precondition for the court's confirmation of an indictment.

Procedure at the main hearing

The section of the Code which was changed most covers the main hearing. The amendments regarding a different role for the prosecutor and the defense counsel are interpreted as an attempt to introduce an adversarial system in the criminal procedure. This system allows the parties to the procedure including the defense counsel to establish better control over the course of a criminal proceedings while, on the other hand, the judge loses his or her dominant role in hearing witnesses, court experts and the defendant.

The discussion about the provisions regarding the main hearing mainly refers to the presentation of evidence, Article 261 (presentation of evidence). Both parties - the prosecutor and the defense - present evidence at the main hearing and the judge should implement his or her right to hear evidence in a very restrictive way.

Regarding exemptions from a direct presentation of evidence (Article 273 of the CPC of BiH), the question arose as to whether the statement which the suspect gave to the police under the law may also be heard at the main hearing if the defendant decides to defend himself or herself by silence. In that regard, there are two opposing views: judges tend to believe that such statements may not be used as evidence during the main hearing, expect if the defendant agrees to that, while prosecutors believe otherwise (provided that the statements were obtained in accordance with Article 219, paragraph 3 of the CPC of BiH). A similar question was asked in regard to the witnesses who substantially changed their previous testimonies, given to the prosecutor during the investigation, at the main hearing, suggesting that the first testimony be read at the main hearing.

There is also a dilemma regarding Article 253 of CPC BiH - manner of keeping the record. The question is whether the verbatim record should be kept when the main hearing is tape recorded.

Regarding Article 259 of CPC of BiH (legal remedies for the defendant), the question is whether the accused may be heard as a witness in his or her own case. Proposals have been made for this provision to be amended to that end.

Procedure for issuance of the warrant for the pronouncement of the sentence

The procedure for issuance of the warrant for the pronouncement of the sentence is a novelty introduced by new criminal procedure legislation. Just as the plea bargaining, it is based on a premise that both parties to the proceedings have agreed to a sentence which they both find acceptable.

In practice, the procedure for issuance of the warrant for the pronouncement of the sentence is used in more than one half of cases involving crimes punishable by imprisonment for a term of up to five years or a fine as the main sentence, with a high level of efficiency.

For the purpose of Article 336, paragraph 2, sub-paragraph (c) of the BiH CPC which refers to the judge's agreement with the request to issue the warrant for the pronouncement of the sentence, the judge should inform the defendant at the main hearing about the evidence obtained by the prosecutor. Still, most authors believe that the prosecutor should do that instead of the court, for the purpose of complying with the principle of independence and impartiality of the court.

Other important issues regarding the application of the Criminal Procedure Code

1) Chapter I - Basic Principles. In implementing the general provisions, two issues arose. The first concerns Article 10 of the BiH CPC which contains the principle of legality of evidence. The question arose regarding exemption of unlawful evidence obtained during investigation, in order not to present such evidence to the judge or the panel of judges during the main he-

aring. The Code does not stipulate that the evidence obtained unlawfully must be taken away from the file. However, the purpose of prohibition of the use of evidence obtained unlawfully is also reflected in the exemption of such evidence from the file. In that regard, the decision to exempt unlawfully obtained evidence is made by the preliminary hearing judge during the confirmation of an indictment (Article 228 of the BiH CPC) and during the deliberation on preliminary motions (Article 233, paragraph 1, sub-paragraph (c) of the BiH CPC).

The second issue regarding the general provisions refers to Article 18 of the BiH CPC which regulates the issue of the consequences of initiation of criminal proceedings: which phase is regarded as the beginning of criminal proceedings? Bearing in mind the fact that under the previous law the criminal proceedings started the moment the investigative judge made a decision to carry out an investigation, there is a dilemma over whether under the BiH CPC the criminal proceedings starts with the issuance of an order to carry out an investigation, or whether the criminal proceedings are officially launched the moment the court has confirmed an indictment, since at that moment the reasonable ground to believe that the suspect has committed a crime has been officially established?

The provision of Article 18 establishes a general rule regarding the moment from which the consequences of the criminal proceedings have occurred, reflected in the restriction of certain rights. The sense of determining the occurrence of the consequences of the initiation of a criminal procedure is explained in such a way that, unless otherwise defined by this law, and if they concern the crimes punishable by more than five years in prison, the consequences of the initiation of a criminal procedure and the restriction of certain rights begin with the confirmation of an indictment (Article 228). Regarding criminal offences punishable by imprisonment for a term of less than five years or a fine as the principle criminal sentence, the consequences of initiation of criminal proceedings occur on the day on which a verdict has been reached, regardless of whether the verdict is enforceable or not (Article 285 in connection with Article 178). The occurrence of consequences of the initiation of the criminal proceedings in terms of restricting certain rights of the defendant may be envisaged in a separate law and related to a certain moment in the proceedings. Starting from the protection of human rights and freedoms and especially from presumption of innocence (Article 3, paragraph 1), the restriction of certain rights as well as the consequences of initiation of a criminal procedure should be linked to the confirmation of an indictment, and a verdict.

2) Chapter II - Terminology. The Chapter which defines the terms used in the Code raises the question regarding the interpretation of Article 21, items (d) and (e), which defines functions of a preliminary proceedings and a preliminary hearing judge. The question is whether the preliminary proceedings judge may also act as a preliminary hearing judge in the same case. It should be noted however that a new organizational structure of the courts in BiH has resulted in a situation in which many courts on the basic (municipal) and (district) cantonal level are forced to interpret these provisions in such a way that one person may act as both the preliminary proceedings and the preliminary hearing judge in the same case.

*3) Chapter III - Court Jurisdiction (*Article 24 of BiH CPC). Regarding paragraph 2 of Article 24 which prescribes that an individual judge tries all criminal cases for which the principal punishment of a fine or an imprisonment sentence of up to five (5) years is prescribed by law, a recommendation has been made that this provision should be amended to read as the relevant provision contained in the CPC of the Brcko District - an individual judge tries all criminal cases for which the principle punishment of an imprisonment sentence of up to ten (10) years is prescribed by law. It is believed that this would increase efficiency and reduce the backlog.

4) Chapter IV - Exemptions (Article 32 of the BiH CPC). Paragraph 4 of Article 32 prescribes that the judge whose exemption is sought may not take part in rendering a decision on a disqualification petition. It is believed however that this provision should be changed to allow his or her participation. The reason is that a small number of judges in some courts prevent them from complying with this legal provision in an effective way.

5) Chapter V - Actions aimed at obtaining evidence. Regarding the procedure of enforcement of a search warrant, in accordance with Article 60, the question is whether it would be possible for the police to be present as witnesses during a search procedure. The reason is that citizens are quite often unwilling to testify.

Article 77, paragraph 1 of the BiH CPC stipulates that the prosecutor will question the suspect during the investigation procedure. Paragraph 3 of the same Article stipulates that the court decision may not be based on the suspect's statement if it is taken in contravention of those provisions. In practice, it is sometimes unclear whether it has to be a prosecutor in person or an authorized person. This provision is interpreted in the context of Article 225, paragraph 2 of the BiH CPC under which the pro-

secutor questions the suspect before completion of an investigation "unless he or she has been interrogated before". The prosecutors' practice varies.

Also, regarding the immunity of witnesses (Article 84 of the BiH CPC), some criteria governing the prosecutor's implementation of his or her right to grant immunity are missing. The goal is to interpret and apply this provision equally by all prosecutors.

6) Chapter VI - Special investigative actions. In applying and interpreting special investigative actions, there is a whole serious of issues raised by practitioners, the most important being the following:

Under Article 116, special investigative actions may be ordered in connection with the crimes punishable by imprisonment for a term of at least three years or more. It has been noticed that the courts act in different ways in interpreting this provision.

In regard to a special investigation under item (e) of Article 116 (undercover investigators and informants), the question is whether this measure may be carried out only by an authorized official (a police officer) or by some other persons as well.

The Code provides certain responsibilities for combating organized crime and terrorism, in Article 116 in connection with Articles 117 and 118, which is a major advantage of the law.

7) Chapter X - The measures to guarantee the presence of a suspect or accused and successful conduct of criminal proceedings There is a problem in relation to Article 146, paragraph 1, sub-paragraph (c) of the Criminal Procedure Code of the Federation of BiH, which prescribes that if there is a grounded suspicion that a person has committed a criminal offense, custody may be ordered against him or her if particular circumstances justify a fear that he or she will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses an imprisonment of a term of at least five (5) years or more may be pronounced. The words "at least" do not exist in the RS Criminal Procedure Code, the Federation Criminal Procedure Code or the Brcko District Criminal Procedure Code, and this poses the difficulty in ordering custody since this detention basis is used in practice most often.

Regarding the procedure of formal requirements and responsibilities for ordering custody, the question is whether the prosecutor should lodge an investigation order to the preliminary proceedings judge along with a motion to order custody.

Regarding Article 135 ("Length of pre-trial detention"), the question is to whom the motion to extend pre-trial detention should be filed with when the first decision ordering custody was made by a preliminary proceedings judge: to the preliminary hearing judge or the trial chamber? A similar question has been asked in regard to Article 137 (Detention after confirmation of an indictment).

In considering the provisions regulating deprivation of liberty (Article 139, paragraph 4 of the BiH Criminal Procedure Code), the person who has been taken into custody must be brought before the preliminary proceedings judge for the purpose of deciding on the prosecutor's motion to order custody.

The provisions regulating deprivation of custody are not precise about the premises in which the suspects are taken into custody. We believe that Article 139 of the BiH Criminal Procedure Code should be amended in such a way that the suspect in custody is transferred to the detention unit within the district (cantonal) court within a 24 hour-detention by the prosecutor.

8) Chapter XIX - Investigation. Article 216 stipulates that an order shall be issued to conduct an investigation and it prescribes its content. There is a dilemma as to whether an order is to be issued for every investigation even in cases in which the police are carrying out an investigation into the criminal offences punishable by the Criminal Code by imprisonment for a term of up to five years and whether the evidence obtained by authorized officials could be used at the main hearing. If every investigation does not require an order, when does a six-month deadline for the completion of an investigation start?

There are some considerations about the provision of Article 225 ("Completion of Investigation") regarding paragraph 2 which prescribes that the prosecutor will hear the suspect prior to the completion of an investigation - provided that the suspect has never been heard before. The question is whether the failure by the prosecutor to hear the suspect amounts to the breach of the suspect's right to defense and thereby to constitute a gross violation of the criminal proceedings.

9) Chapter XX - Indictment Procedure. In regard to the content of an indictment (Article 227) the question concerns the actions taken by the court

when an indictment is not drafted in compliance with the provisions of that Article. In that case, the indictment should be returned to the procedure for the necessary corrections or amendments to be made within a set deadline. If the prosecutor fails to comply with the court's instructions, charges will be dismissed (Article 148, paragraph 3).

According to Article 229, paragraph 1, a plea of guilty or not guilty is entered before the preliminary hearing judge in the presence of the prosecutor and the defense attorney. If the accused fails to enter a plea, the preliminary hearing judge shall, *ex officio*, record that the accused enters a plea of not guilty. The question is whether the suspect's failure to appear before the judge may be considered as a plea of not guilty and whether a physical presence of the suspect is necessary under this provision.

One of the most important questions in regard to the indictment procedure is related to paragraph 4 of Article 229. After entering a plea of not guilty into the record, the preliminary hearing judge shall "refer" the case to the judge or the Panel that has been assigned to try the case "so that they can schedule the trial". Does the "case" referred to in paragraph 4 of this Article refer to the complete file including the prosecutor's file compiled during the investigation or just an indictment?

Under paragraph 2 of Article 230 when the court accepts a statement on guilty plea, the court sets the date on which the criminal sentence will be reached, within three days at the latest. This provision is interpreted in two different ways: first, the hearing must take place within the next three days, which is a more acceptable interpretation, and secondly, the hearing must be scheduled within three days, and may be held later.

Regarding the plea bargaining which is a procedural law novelty, it is not clear when the plea bargaining may take place or when the plea bargain may be entered.

The next question concerns paragraph 1 of Article 231: is the plea bargain valid if the suspect's defense lawyer was not present and is it necessary for the suspect or the accused to have his or her defense attorney present during the plea bargaining process?

It has been noticed in practice that the penalty is determined in two different ways in the plea bargain: either in a fixed amount or as a framework agreement reached by and between the prosecutor and the defendant abo-

ut the type and length of a criminal sentence (which gives the court a more creative role).

10) CHAPTER XXVIII - Procedure for application of security measures, forfeiture of property gain obtained through crime and revocation of suspended sentence

Two major problems have been noticed in regard to Article 389 of the BiH Criminal Procedure Code which regulates the procedure conducted in the cases which involve mental irresponsibility: (1) the role of the court in deciding on the mental responsibility of the defendant, and (2) the lack of safe premises for mentally irresponsible perpetrators and other problems regarding the capacity of the authorities in charge of providing social assistance.

Once the mental irresponsibility of the defendant is established, the institutions which provide social protection begin "the appropriate procedure". However, the laws which regulate the responsibilities and procedures to be conducted by such institutions do not exist or if they do their responsibilities are not regulated properly.

The role of the judge

The judge must ensure in the criminal proceedings that all procedural guarantees contained in paragraph 3 of Article 5 of the ECHR are met. He or she is obliged, inter alia, to ensure that the suspect or the accused is represented in the appropriate way, that the suspect or the accused has the right to defense, and to ensure sufficient time and conditions for the defense. The judge is responsible for the due process of law and respect for the rights of all the parties to the procedure, particularly those of the suspect or the accused, and should adjourn the procedure if he or she deems it necessary to ensure that the right/rights enshrined in paragraph 3 of Article 6 of the ECHR are respected.

One of the most important elements of the right to fair trial, contained in Article 6 of the ECHR, is the equality of arms, which means that both the defendant and the prosecutor should have the same procedural rights. The judge is obliged to ensure the respect for the principle of equality of arms, which means that each party must have a reasonable possibility to present arguments in such a way that the opposite party will not be placed in a significantly less favorable position. Another very important principle, which is

closely related to the above-mentioned principle, is that the procedure must be conducted in accordance with the principle of adversariness, which means that the defendant must be in the possession of all the information regarding the allegations and evidence presented by the prosecutor and must be given the possibility to react to those arguments and present evidence in his or her defense. The principle of adversariness gives an opportunity to the parties to a criminal or a civil procedure to be informed about all presented pieces of evidence and opinions, even about those which have been presented by a member of the national legal aid service, in terms of affecting the adjudication.[9]

Problems may also occur in regard to the responsibility of a judge when there are indications that the suspect has been maltreated during the criminal procedure. In that regard, there is a general obligation on the part of the responsible authorities to carry out an investigation into the alleged torture and degrading treatment. However, this implies that such allegations have to be corroborated by the appropriate evidence. Whether the procedure has been inhumane has to be assessed under the circumstances of the case and the prevailing views. The procedure has to reach the maximum level of seriousness, in order to fall under the scope of Article 3 of the ECHR.[10] In this regard, we should also keep in mind Bosnia and Herzegovina's commitments to other international instruments such as the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

The judge is also obliged to determine accessibility of evidence. In doing so the judge has to apply criminal procedure law in a way which is in harmony with the case law arising from the ECHR.[11] The judge is obliged to prevent any influence on a final court decision and is responsible for its enforcement.[12]

Scope of Article 6 of the ECHR

The guarantees contained in Article 6 of the ECHR apply to both the court procedure and the phases which precede or come after the court procedure. Those guarantees in criminal cases include an investigation carried out by the police[13], and preliminary hearings[14].

In Imbroscia vs. Switzerland case[15] the European Court of Human Rights held that the reasonable time begins from the moment of issuing an indictment, and that other requirements from Article 6 (especially those from

paragraph 3) may be relevant before the case is submitted to the court to the extent at which the fair trial is called into question by a failure to comply with them since the very beginning.

Although Article 6 does not contain the right to appeal, this right is guaranteed in Article 2 of Protocol 7 to the ECHR.[16] However, the manner in which these guarantees are applied must be dependent on special characteristics of the given procedure. According to the case law of the Human Rights Court, attention should be paid to the entire procedure conducted under the domestic legal system, to the law and practice of the appealing institution and the powers and the manner in which the parties are represented and protected in the procedure.[17]

Article 6 of the ECHR also covers the post-trial procedures, such as the enforcement procedure. According to the European Court of Human Rights the right to appear before the court would be only theoretical and illusionary if the legal system of the Contracting Party had allowed that the final and binding court decision was not enforced to the detriment of one party to the procedure.[18]

It is clear that Article 6 of the ECHR covers the whole procedure. This is why the legislator's intervention to determine the outcome of the procedure through a separate law may constitute a breach of the principle of equality of arms.[19]

Article 6 of the ECHR is not included among the non-derogative rights specified in paragraph 2 of Article 15 (war and other public dangers threatening the nation). An important requirement and the message of this right is that the state may not restrict or eliminate judicial supervision in some areas. The state may not restrict the effects of certain decisions either.[20]

Establishment of a criminal charge

Because of the differences between legal systems, an autonomous meaning of a criminal charge provided by the ECHR, rather than its meaning provided in the domestic legislation, is the starting point in determining a criminal charge. The European Court of Human Rights holds that paragraph 1 of Article 6 of the ECHR envisages a substantial rather than formal notion of a criminal charge. Accordingly, the criminal charge may also be described as "an official notice to an individual by the responsible authority about the assertion that he or she has committed a criminal offence"[21]. But the Court has

gone further and concluded that an indictment may exist already in the phase in which the prosecution makes a motion to settle a dispute (a plea bargain) even if the motion is made within the verification which has not been conducted in the context of uncovering that criminal offense, even when there is no information about the criminal prosecution and when the plea bargain stops the process of issuing an indictment.

According to the Court's case law, in some situations the form of a criminal charge may also be characteristic of some other measures which contain implications of such an allegation or which affect substantially the situation of the suspect.[22] Examples of such measures include search of an apartment and confiscation of various objects[23], a motion to lift immunity[24] and the judge's order to seal the building.[25] The applicability of Article 6, paragraph 1 of the ECHR also concerns the procedures which order or extend a preventive detention on the basis of the existing reasonable ground to believe that the suspect has committed a crime, although those procedures in and by themselves are not directed to the establishment of a charge.[26] If the procedure has been completed and resulted in dismissal of a charge, Article 6 may be applied retroactively if the procedure has caused some consequences to the person accused of a crime.[27] The extradition procedure would not apply because the establishment implies the overall process of verification of someone's guilt or innocence, and not the process of establishment of whether the person may be handed over to another state.[28]

It is not important who launched the procedure which has resulted in criminal prosecution: an individual or the state.[29] If the rights of third persons have been violated by the measures which are the consequence of prosecution of others, since those third persons have not been indicted, they may call upon the guarantees from paragraph 1 of Article 6 of the ECHR.

In *Engel et al vs. The Netherlands*[31] the Court hold that the states were free to regulate criminal, disciplinary and administrative law in their domestic legislation to the extent at which it is not in contravention of the ECHR. The criterion of classification under the domestic legislation is only a preliminary starting point for the assessment of applicability of Article 6 of the ECHR, because even if it is classified as a minor offense, it may still be a criminal procedure in substance, as the states use their discretionary right to make that classification and avoid the applicability of Articles 6 and 7 of the ECHR. If a charge is classified in the domestic legislation as criminal, Article 6 automatically applies.

If the norm applied only to a limited group of people, such as a certain profession, this would indicate that it is a disciplinary rather than a criminal norm. However, if the norm has a general character, it is in all likelihood criminal (for the purpose of Article 6).[32] It is also important that Article 6 is applied equally in a petty offense procedure.[33]

Since imprisonment is clearly a criminal sentence, it always attaches a criminal character to a disciplinary or an administrative procedure, and, as a consequence, Article 6 always applies. It also refers to any physical punishment, if any.[34] Also, every restriction of movement is not necessarily a deprivation of liberty, although deprivation of liberty, as a form of punishment, usually makes a norm criminal rather than disciplinary.[35]

When the principle punishment is not a prison sentence or a threatened prison sentence but a fine, the court considers whether it is a compensation for the damage or it is a punishment the purpose of which is to discourage the perpetrator from committing another offense. The punishment is considered to fall within a criminal sphere only in the latter case.[36]

Prosecutor's offices in Bosnia and Herzegovina: their position and functions in a criminal procedure

For criminal and political reasons the prosecutor is allowed to assess the opportunity of a criminal prosecution in many cases and to relieve the overburdened and slow judiciary, allowing it to deal with more difficult and complex cases.

The principle of officiality is fully and consistently incorporated in the criminal procedure law in the Criminal Procedure Code of the Federation of BiH and the Criminal Procedure Code of the Brcko District of BiH. The same principle is incorporated in the RS Criminal Procedure Code in regard to the overwhelming majority of criminal offences. The restrictions of the principle of officiality appear in that law in the form of a procedural phenomenon of a motion by the damaged party to prosecute the offender (Article 205, paragraph 1 of the RS Criminal Procedure Code). The motion contains the damaged party's consent that the prosecutor will take over and implement criminal prosecution and is an exemption from the principle of officiality. In order to prosecute an offender at the motion by the damaged party, the damaged party needs to make such a motion to the responsible prosecutor within three months from the day on which the damaged party learnt about the criminal offence committed and the perpetrator.

The Law (Article 17) accepts the principle of legality, without excluding that in some cases (prosecution of some crimes, i.e. perpetrators) the principle of opportunism should be applied when this is clearly stipulated by law. Exemptions from the principle of legality of criminal prosecution are prescribed for (1) the criminal offences in which the prosecutor grants immunity to the witness (Article 84); (2) the criminal offences which are prosecuted under approval (Article 209); (3) criminal offences which are prosecuted under special requirements (Article 210); (4) offenses perpetrated by juveniles (Articles 352 and 353); (5) the crimes deliberated in the procedures conducted against legal entities (Article 376); (6) the crimes the prosecution of which may be handed over to another state (Article 412) and (7) the extradition procedure (Article 425).

The prosecutor may, at any moment, suspend the investigation by an order to suspend an investigation (Article 224), in which case he or she is obliged to inform the damaged party accordingly (Article 224, paragraph 2) who is entitled to the rights from Article 216, paragraph 4 of the law. In the case of item (b), paragraph 1, Article 224 of the law, the prosecutor may reopen an investigation into the same case (paragraph 3 of the same Article).

A special case of giving up a criminal prosecution concerns the granting of immunity to a witness in terms of Article 84, paragraph 3, in connection with Article 35, paragraph 2, item (c) of the Code. The immunity granted to a witness is not an absolute immunity from criminal prosecution since the witness who testifies under immunity may be prosecuted for perjury, under the circumstances which lead to his or her criminal prosecution, which are not covered by the immunity granted to him.

The provisions regarding dismissal of charges during the main hearing also apply to the appellate procedure (Article 317, paragraph 1 of the Code) only in cases in which the appellate body decides to hold a hearing.

In order to prevent the abuse of the rights of the prosecutor to give up criminal prosecution, Article 328 of the Code provides for the possibility to renew the procedure to the disadvantage of the accused if the decision has been made to reject the charges on the ground of the prosecutor's giving up the prosecution and if it is proved that he or she has given up criminal prosecution by reason of a crime of corruption or a crime against official and other duties of a prosecutor.

The BiH Prosecutor's Office is an independent and a special institution of BiH, formed with the aim to ensure an efficient implementation of the re-

sponsibilities of the state of BiH and full respect for human rights and legality throughout BiH (Articles 1 and 2 of the BiH Law on Prosecutor's Office[37]). Within their responsibilities, the Prosecutor's Offices protect the implementation of human rights and freedoms guaranteed in the Constitution, and the rights and interests of legal entities in accordance with the law, and ensure constitutionality and legality (Article 3 of the Federation Law on Prosecutor's Office[38] and Article 3 of the RS Law on Prosecutor's Office[39]).

The Prosecutor's Offices have the right and responsibility to inform, within the implementation of their prosecutorial service, at their own initiative or request, the highest authorities of the state about the implementation of the Criminal Code and their work (Article 10 of the BiH Law on Prosecutor's Office, Article 10 of the Federation Law on Prosecutor's Office, Article 10 of the RS Law on Prosecutor's Office, and Article 3 of the Law on Public Prosecutor's Office of the Brcko District of BiH[40]). Likewise, the Prosecutor's Offices inform the public via the media and in some other ways about the crime rate within their respective areas of jurisdiction. Within the bounds of their legally stipulated responsibilities and in accordance with the interests of the procedure, the Prosecutor's Offices may inform the public about individual cases, provided that such information is in the public interest. In informing the public, the Prosecutor's Offices shall take care of the interests of justice and standards prescribed in Article 6, paragraph 1 of the ECHR (Article 11, paragraph 2 of the Federation Law on Prosecutor's Office and Article 11, paragraph 2 of the RS Law on Prosecutor's Office). Also, the Prosecutor's Offices follow and study problems arising from their practice, which are relevant for the implementation of the criminal law.

The prosecutor is allowed to request that the enforcement of a final court decision or the decision reached in an administrative or another procedure be postponed or suspended when he or she concludes that the law or an international agreement has been violated and that the enforcement of the decision could cause irreparable consequences (Article 18, paragraph 1 of the Federation Law on Prosecutor's Office, and Article 18, paragraph 1 of the RS Law on Prosecutor's Office). The motion to postpone or suspend the enforcement is filed by the prosecutor who is authorized to file a legal remedy against the decision. The motion is filed to the court or another institution in charge of approving the enforcement. If the decision is in the process of being enforced, the motion is filed to the court or another institution in charge of enforcement. The postponement or suspension of enforcement lasts until such time as the decision on the legal remedy has been made. The decision to postpone or suspend the enforcement ceases if the prose-

cutor fails to use the legal remedy within 30 days (Article 18, paragraph 3 of the Federation Law on Prosecutor's Office, and Article 18, paragraph 3 of the RS Law on Prosecutor's Office).

As a party to the procedure (Article 20, paragraph (f) of the Law), the prosecutor has approximately the same powers as the opposite party (the suspect/the accused), which is in accordance with the legal arrangements governing the equality of arms. The prosecutor's role is directly linked to the application of the accusatorial principle under which a criminal procedure may be instituted and carried out only at the request of the prosecutor. In order to fulfill the preconditions for instituting and carrying out a criminal procedure, it is necessary to have the information and evidence in support of the crime and against the perpetrator, which the prosecutor obtains in accordance with his or her rights and responsibilities.

Serving as a state authority (when his or her activity should be characterized by objectivity and impartiality), the prosecutor acts toward reaching a just and legal decision and implementation of a legal procedure in general, ensuring that the legal requirements for the criminal procedure have been met. The prosecutor has to maintain the integrity and independence of the Prosecutor's Office and this responsibility implies special obligations toward ensuring a just procedure to the suspect or the accused, and establishing guilt on the basis of evidence (Article 11 of the Law on Public Prosecutor's Office of the Brcko District of BiH).

In that context, the prosecutor may resort to regular and extraordinary legal remedies (if he or she believes that the decision is unjust or not based on the law) and to use legal remedies in favor of the accused. The obligation of the prosecutor to prosecute in an objective and impartial way may result in his or her exemption from the case (Article 34, paragraph 1 of the law), or in a situation in which he or she is not obliged to cover the costs or compensation to the opposite side, in the case of a negative decision, etc.

The basic right and the basic duty of the prosecutor refer to detection and prosecution of perpetrators of the crimes falling within the jurisdiction of the court (Article 35, paragraph 1 of the Law). The obligation of the prosecutors to detect crimes, and not only to prosecute and process the crimes, implies their obligation to engage in an early stage of the criminal procedure. Further to Article 35, paragraph 2 of the Law, the obligations of prosecutors are as follows:

(1) As soon as he or she learns that there is basis for suspicion that a crime has been committed, he or she will take the necessary actions to detect the crime and carry out an investigation, locate the suspect, manage and supervise the investigation and to manage the activities performed by authorized officers toward locating the suspect and obtaining testimonies and evidence.

(2) He or she will carry out an investigation in accordance with the law. The investigation will be carried out in two cases: first, when there is basis for suspicion that the crime has been committed (Article 216, paragraph 1) and secondly, when there is a court decision ordering a renewed criminal procedure (Article 332, paragraph 3 of the Law).

(3) He or she will grant immunity in accordance with the law. Under the conditions prescribed by Article 84 of the Law, the witness may refuse to answer questions - if a true answer would lead to criminal prosecution. The witness may, however, answer such questions if the prosecutor decides to grant him or her immunity from criminal prosecution. In that case the witness may not be prosecuted, expect for perjury.

(*4)* He or she will request the information from the state authorities, companies, legal entities and individuals in BiH. This form of official cooperation is provided free of charge (Article 22, paragraphs 2 and 3 of the Law). If the prosecutor seeks the protected information (the information on bank deposits, and other financial transactions and affairs), Article 72 of the Law applies.

(5) He or she issues summons and orders and proposes the issuance of summons and orders in accordance with the law. The suspect will be summoned exclusively by the prosecutor pending the issuance of an indictment (Article 125, paragraph 4 of the Law). Regarding the orders, some orders are issued by the prosecutor or the prosecutor proposes their issuance.

(6) He or she orders an authorized official to carry out an order issued by the court in accordance with the law. This concerns the realization of the rights and responsibilities of the prosecutor regarding the management and supervision of the investigation and management of the activities of authorized officers toward locating the suspect and obtaining statements and evidence.

(7) He or she proposes that a warrant for the pronouncement of the sentence be issued. The prosecutor may, under Article 334 of the Law, request

in the indictment that the court issue a warrant for the pronouncement of the sentence by which the accused is given a criminal sentence or a measure without the main hearing.

(8) He or she issues and represents an indictment before the court of law. The prosecutor drafts an indictment and sends it to the preliminary hearing judge on the basis of sufficient evidence from which a reasonable suspicion that the suspect has committed a crime arises (Article 226 of the Law).

(9) He or she files legal remedies. The prosecutor is the only authorized official who may file an appeal to the advantage or disadvantage of the defendant (Article 293, paragraph 3), which arises from his or her dual role: as a party to the procedure, and the state authority.

(10) He or she carries out other duties as defined by law (e.g. requests that a juvenile justice judge initiate a preliminary procedure - Article 354, paragraph 1; requests international legal aid via the responsible ministry of BiH - Article 408 of the Law, etc.).

It is a general obligation of all the authorities which take part in an investigation to inform a prosecutor about any action they have taken and to comply with the prosecutor's request (Article 35, paragraph 2). This is in harmony with the basic rights and responsibilities of the prosecutor related to the detection and prosecution of the perpetrators of crimes. For instance, if an authorized official searches an apartment, premises or persons without a court order and witnesses, he or she has to report that to the prosecutor, including the reasons for the search conducted (Article 64, paragraph 3); the same obligation refers to a temporary confiscation of property without an order (Article 66) and a temporary confiscation of property by reason of safety (Article 73, paragraph 2 of the Law) etc.

Instead of a conclusion

When we look to the future of the reform of criminal procedure law in BiH, we can conclude that the task of the courts and institutions formed as a result of the reform is to give direction, within their legally defined powers, to the practice which results from the application of the new legislation. The future amendments to the criminal procedure codes should, inter alia, ensure clearer legal standards and criteria relevant for the application of the legal arrangements, which are, for the time being, different in practice. A standardized

curriculum for the training of judges and prosecutors requires training in postulates related to the main hearing, presentation of evidence, direct examination and cross examination and other methods of the adversarial system.

In the end, we should say that the prevailing opinion of the legal experts and practitioners in BiH is that it is necessary to launch an initiative to pass a single Criminal Procedure Code and the Criminal Code in Bosnia and Herzegovina. Numerous meetings held by the BiH Justice Ministry's team in charge of monitoring and evaluating the application of the Criminal Codes in the last two years, at which they discussed the problems arising from the application of the new criminal legislation, indicate that such an initiative would be legitimate. The need to have a single criminal legislation has also been recognized by many practitioners who have supported that idea at various conferences organized for judges and prosecutors, at expert and bilateral meetings. The main reasons for that initiative are the following: (1) the application of the present criminal legislation calls into question the right to equality before the law and equal treatment before all the institutions of authority[41]; (2) the creation of a quality and harmonized case law, which is the most important means for a proper application of the law, would otherwise be difficult; (3) the current criminal legislation makes it difficult to create single methods of training and to develop the literature needed for the training of judges and prosecutors.

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[1] Hereinafter: CPC of BiH ("Official Gazette of Bosnia and Herzegovina" Nos. 3/03, 32/03, 36/03, 26/04, 63/04 and 13/05).

[2] Hereinafter: CPC of BDBiH ("Official Gazette of the Brcko District of BiH" Nos. 10/03 and 6/05).

[3] Hereinafter: CPC of the RS ("Official Gazette of the Republika Srpska" Nos. 50/03 and 115/04).

[4] Hereinafter: CPC of FBiH ("Official Gazette of the Federation of BiH" Nos. 35/03, 37/03, 56/03 and 78/04).

[5] Theoreticians and some practitioners who took part in the drafting of the CPC of BiH, explain new procedural laws as a good synthesis of Anglo-Saxon and Continental Law.

[6] The team falls within the Ministry of Justice of Bosnia and Herzegovina and was formed by the Justice Minister of Bosnia and Herzegovina.

[7] OSCE, Human Rights Department. The basic purpose of this Report is to support the courts and other judicial institutions by providing a series of information about their practice throughout BiH on the basis of which further analyses may be carries out, and some measures taken. In order to assist those institutions in the reform process, recommendations were given in regard to amendments to the laws, professional training and other activities needed for an efficient and just implementation of judicial procedures. The Report contains, amongst other things, the recommendations to the BiH Justice Ministry and the Team in charge of monitoring and assessing the application of the Criminal Codes.

[8] The BiH Justice Ministry sent the document on December 22, 2004 to all judicial insti-

tutions, district and cantonal courts and prosecutor's offices, bar associations, centers for training of judges and prosecutors and other interested organizations for their comments.

[9] See, inter alia, *mutatis mutandis* the following judgments by the European Court of Human Rights: *Me Michael* vs. *United Kingdom* of 24 February, 1995, serial A No. 307-B, p. 53-54, p. 80 and Kera*järni vs. Finland* of 19 July, 1995, serial A No. 322, p. 16, p. 42.

[10] The decision by the Constitutional Court of Bosnia and Herzegovina, number AP 12/02 of 19 April, 2004.

[11] Especially sensitive issues are those which refer to witnesses – informants of the police and hiding of information for the purpose of national security.

[12] The decision by the Constitutional Court of Bosnia and Herzegovina, number U - 55/03 of 28 May, 2004.

[13] The decision by the Constitutional Court of Bosnia and Herzegovina, number *U 22/03*, published in the "Official Gazette of Bosnia and Herzegovina" number 24/04.

[14] The decision by the Constitutional Court of Bosnia and Herzegovina, number U- 50/03 of 21 July, 2004.

[15] The decision from 24 November, 1993, § 36.

[16] The decision by the Court of 17 January, 1979, *Delcourt vs. Belgium*, § 25.

[17] The decision by the Court of 2 March, 1987, *Monneel* and *Morris vs. United Kingdom*, § 56.

[18] The decision by the Court of 19 March, 1997, *Hornsbyvs. Greece*, § 40.

[19] The decision by the Court of 9 December, 1994, *Stran Greek Refinery vs. Greece*, §§ 46-49.

[20] The decision by the Court in *Stratis Andreadis vs. Greece,* of 9 December, 1994, §§ 46-49.

[21] The decision by the Court of 27 February, 1980, *Deweep vs. Belgium*, §§ 42, 44 and 46.

[22] The decision by the Court of 10 December, 1982, *Foti.*

[23] The decision by the Court of 15 July, 1982, *Eckle.*

[24] The decision by the Court of 19 February, 1991, *Fray.*

[25] The decision by the Court of 18 July, 1994, *Venditelli.*

[26] The decision by the Court of 28 November, 1978, *Lyedicke.*

[27] The decision by the Court of 26 March, 1982, *Adolf*.

[28] European Court of Human Rights, application 10227/82, *H Spain* D&R 37 (1984.).

[29] The decision by the Court of 25 March, 1983, *Minelli,* A. 62, p. 15.

[30] The decision by the Court, *Air Canada*, of 5 May 1995, A.316-A, p. 19-20.

[31] The decision by the Court of 8 June, 1976, *Engel et al vs. The Netherlands*, § 81.

[32] The decision by the Court of 22 May, 1990, *Weber vs. Switzerland*, § 33 and the decision from 21 February, 1984, *Öztürk* vs. FR Germany.

[33] The decision by the Court of 26 March, 1982, *Adolf*.

[34] The decision by the Court of 8 May, 1976, *Engel et al vs. The Netherlands*, § 82.

[35] European Court of Human Rights, application 6224/73, *Kiss v. the UK, Yearbook XX* (1977.), p. 156 and 157.

[36] European Court of Human Rights, the decision from 24 February, 1994, *Bendenoun vs. France*.

[37] The Law on Prosecutor's Office of BiH ("Official Gazette of BiH" numbers 24/02, 3/03, 37/03, 42/03, 9/04 and 35/04).

[38] The Law on the Federation Prosecutor's Office ("Official Gazette of the Federation of BiH" No. 19/03).

[39] The Law on the Prosecutor's Office of the Republika Srpska ("Official Gazette of the RS" No. 55/02).

[40] The Law on the Public Prosecutor's Office of the Brcko District of BiH ("Official Gazette of BDBiH" numbers 4/00, 1/01 and 5/01).

[41] Regardless of the process of harmonization in BiH in the course of 2003 and the enactment of harmonized Criminal Procedure Codes and Criminal Codes, there are still some differences which seriously call in question equality of all citizens before the law.

BRINGING ABOUT CHANGE IN A LARGE GOVERNMENT SERVICE - A TOOL KIT FOR SENIOR MANAGERS

Introduction

Carrying out development work is usually a long and difficult process. One meets resistance, scepticism, anxiety and fear mainly related to the possible consequences of change. Staff ask themselves if their competence is sufficient, if they will lose a position or power, whether they must transfer to some other section or unit, or, worse, to some other part of the country. Resistance can arise at any level of the organisation.

If a development project is to be successful and of long-term benefit, tenacity, patience, pedagogic ability, flexibility and loyal and enthusiastic colleagues are needed. The conditions for successfully carrying out development work are influenced by national circumstances such as, for example:

- The degree of separation between political responsibility and that of civil servants. For a prison system this means in practice the division of responsibilities between a ministry of justice and a prison service;
- The nature of the management culture and philosophy of leadership;
- Staff capability and level of professional training;
- Labour legislation;
- The attitude and role of the trades unions and their willingness to facilitate change;
- A general sense within and external to the organisation that the existing situation calls for change.

The ideas that I shall present are based on a Nordic and west European perspective so far as the staff culture and leadership questions are concerned and a Swedish perspective concerning the division between political and operational management, the latter including the degree of freedom accorded to a director-general of a prison administration.

Ideally what is needed for starting a prison development project is:

- An overarching political management that describes the broad goals of a development project, sets out essential objectives and allocates

adequate financial resources. This should be done in consultation with the director-general of the prison administration.

- A prison administration whose director-general has been granted considerable operational independence and given a clear mandate to carry out the required development project.
- Subordinate chiefs with a modern view of leadership. This means that they are aware of the need to secure collaboration with their staffs and their professional organisations;
- A staff that is hungry for information and one that expects to work in a spirit of co-operation on the basis of joint consultation.

Some leadership requirements

Leadership in a development project makes special demands. These demands vary to some extent with the level at which leadership has to be exercised. Other demands have a more universal character. I am aware that much of what I shall say on these matters may seem obvious to my present well-qualified audience.

To begin with I believe that few leadership situations demands so much close collaboration with staff as a major prison development project. The desired results can only be obtained by working together as a team. Ways of communicating and consulting have to be created so that staff can present their views freely and without fear or a sense of being forced to do so. Much can be won through the encouragement of staff initiatives, work satisfaction and willingness to accept responsibility. Through the frequent spreading of information and open discussions it can be hoped that staff understand and accept the aims and methods of the development work. At the same time their increased knowledge can result in a reduction of individual fears, anxieties and lack of personal involvement.

In my experience the likelihood of achieving successful change is increased if all chiefs have a common leadership style, one that I would call "dynamic leadership".

It is completely impossible to foresee all the difficulties that will emerge during the implementation of a development project. Flexibility is needed so that leadership action is adjusted to take account of unforeseen situations and especially to provide information and support to those involved.

This means that leaders at all levels are exposed to the views and feelings of many other persons. These views and feelings arise from a variety of personal and professional interests, not all of which are strictly relevant to essential task performance. When this is the case it is important that leaders react firmly on the basis of what is required to attain stated goals. It is always necessary to present a vision of what has to be done in an understandable way. In my experience the greatest challenge for leadership is the ability to balance listening and acting flexibly with manifesting a firm determination that consistently focuses on objectives arising from the broad vision.

Achieving the balance is made easier if a chief has the ability to behave in such a way that he or she becomes a respected model who thereby gains the confidence of co-workers. Unfortunately there are many chiefs who act as if desired results can be forced into existence solely by relying on their hierarchical position and the formal power attached to it. Experience shows that such a way of working leads only to a superficial adjustment by staff to developmental requirements. In consequence no firmly based long-term changes occur.

At any level in an organisation leadership implies the ability to secure good group morale, a serious regard for fundamental ethical values, openness and frankness in personal and group relations, availability for essential consultation and clarity in relation to decision-making.

The Director General

As the leader with final responsibility for a prison service the director-general and his[1] way of working constitutes the most important single instrument for effecting development. In this position he must unconditionally take the lead and responsibility for development, take the fundamental decisions and be prepared always and everywhere to exert influence and present the important arguments especially in the face of resistant opposition. As the system's top manager he should always work through other people and not accept any purely operational role.

Here are some examples of what I consider the director-general's role should include:

- Formulating an overarching set of goals and a time plan for their fulfilment;

- Designating capable project leaders and establishing their tasks;
- Providing information and "selling" the new ideas;
- Maintaining close contact with the media and political circles;
- Ensuring that the development process moves forward by taking supplementary decisions when necessary;
- Working to create a climate of psychological security among subordinate chiefs and staff in general;
- Keeping himself well-informed about whether sub-projects are making good progress;
- Removing subordinate chiefs who are not loyally involved in the development process.

The director-general is a key person. If he fails to show confidence and enthusiasm in any planned development, constructive work will cease and failure follow. I often say that it is relatively easy to administer a prison system that simply follows instructions and routines. But to lead a prison system charged with making radical changes or in the face of some catastrophe is when a director-general shows the stuff he is made of. Similarly, it is far easier for subordinate chiefs to be passive - and therewith act as brakes on progress - than to actively promote change. This is why uninvolved and "tired" chiefs must be removed from their jobs.

Organisational development

To successively adjust a prison system to the changed conditions and demands of a *minor* re-organisation is not especially difficult. Nor is it difficult to persuade staff to accept such changes since most will retain their functions. No great changes in the organisation as such are necessary But things are very different if organisational questions have been neglected over a long period or there is a sudden demand for *major* organisational change. Indeed, it can be useful to require *occasional* major change from time to time as a way of injecting new life into a stale organisation or work units.

Renewal of an organisation provides an opportunity to establish new posts and functions that replace former ones. In this way new and fresh impulses come into being and new staff replace those who cannot meet the new demands.

I mention as an example that in Sweden I abolished 160 separate prison and probation units that were too small to function with full effectiveness. I

welded them instead into 36 larger administrations comprising 3-5 joint prison and probation units with a chief responsible for both prison and probation activities. Among other improvements this re-organisation made possible a closer supervision of prisoners by the probation service after their release from prison since a single chief looked at both forms of activity.

This re-organisation was experienced by staff as singularly dramatic. The new chiefs of the new joint administrations were appointed eight months before these joint administrations were due to begin working. During this period the old administrative units continued to work as they always had. The new chiefs, however, spent that time building up the new organisation that was to come into being at the end of the eight months. Trial projects based on the form of administration were started, each with its own leader and staff, and the new chiefs met with me every month for discussion of problems and progress. This gave me the opportunity to closely follow their work and see if it was in line with my intentions.

Such a large-scale re-organisation inevitably meets with resistance and doubts as to whether it will really work well. A useful way to deal with this is to do what I have just described, that is to build "advance units" based on a new approach so that the new methods can be tried out and practical difficulties dealt with as they arise. At the same time, the "advance units" served as demonstration models for both prison and probation staff.

An important point with large-scale re-organisations is that if you alter one part of a system, you inevitably must adjust other parts of the organisation to take account of these changes. This is so because to talk of a system means in fact to talk of independent but interacting elements that together make a unified whole. In the example that I am describing I chose to make changes at the local level without immediately making changes at our central administration. But once the local developments were well under way changes had to be made centrally. Sometimes, however, large-scale re-organisation means that one must begin at a central administration and then work out to the local levels.

Now let me admit that I do not possess detailed knowledge of the organisational problems that you face in your country. However, if I am correctly informed you do not have a strong and unified central administration. If this is so, then it is not easy - perhaps even not possible - to make changes at the local level. Presumably it would be necessary to start development by creating a single central administration. This would mean designating a di-

rector-general, providing him or her with a politically agreed mandate and statement of essential tasks and then allowing him to create a suitable management structure.

I emphasise that making a large-scale change in a whole prison system is a major undertaking demanding strong political support and time for deciding on, planning and carrying out a whole series of practical changes. I hope that we may discuss this question as it concerns your country more closely in the course of the seminar.

Within the context of a national re-organisation it may still be necessary to make changes in a particular sector of the organisation. An example of this is taken from my own country and presented in Andrew Coyle's book "Managing prisons in a time of change". In Sweden the whole organisation comprises both the prison and the probation sectors. There were special problems with a particular prison relating to staff attitudes to prisoners, the general competence of the staff and their willingness to change their methods of work. Tackling these problems can be briefly described as follows:

- An external expert (a former deputy director-general of the England and Wales Prison Service) was appointed to study the prison over a number of weeks and then to report and make recommendations. His report was extremely critical and had the effect of creating awareness of a crisis occurring in that prison.
- I then met with the entire staff and informed them that radical changes were quite certainly going to be made and that it was apparent that there were staff who were resistant to my intention. My message was simple and plain: You either change your way of working or you must leave the prison service.
- A new chief was appointed together with new persons in key positions. This was important since a new chief cannot change a staff culture without having the help and support of his more important work colleagues.
- I took contact with the staff trades union to make them understand that the situation demanded change and action and that this would in the long run be of benefit both for the prison and the prison staff.
- Clear tasks were formulated for the new chief together with a time plan for their achievement and times for reporting progress and problems.
- I made frequent visits to the prison in my role as Director-General and made a special point of voicing my appreciation to staff for the progress that was being made and encouragement of further development.

An important part of the development process was the further training of prison staff. Here we made the mistake of sending individual members of staff to training courses. When they came back to the prison their colleagues strongly questioned the value of what they had learnt and under this group pressure they speedily fell back into their old ways. We learned that it is essential to train all the staff at the same time so that they all receive the new messages together. This way of training also stimulated those who were not interested in change to leave. Happily, many of the informal leaders with negative opinions changed attitudes and behaviour as a result of the training.

As an aid to building staff confidence, the prison was given new tasks, one of which was to act as an assessment centre for difficult prisoners with long sentences. The prison I have been describing was Kumla, one of Sweden's three prisons with an enhanced level of maximum security.

Prison staff

The basic grade prison staff who work in daily close contact with prisoners constitute the most important single instrument for prison work. It is their attitudes and conduct *vis-á-vis* the prisoners that determine the social climate of a prison and its pervading culture. No change programme can succeed unless significant emphasis is laid on developing the basic grade staff's attitudes and professional competence. This, in its turn, means developing better recruitment criteria for this grade of staff, better initial and further training as well as developing new and more satisfying work tasks**.** The sharing of information and discussions with prison staff contributes hugely to the success of a development process. *Not to do so is to invite failure*. Sharing information and discussions means also that many good ideas are brought up by all grades of staff. Accepting and using them makes a development process into a highly positive experience for the staff.

External actors

A number of actors who are external to the prison system play a part in any development process. I have already spoken about the role of politicians. The media clearly play a significant part and it is well worthwhile to inform national and local media about proposed changes and give them a practical insight into the development process from the earliest moment. This counteracts the negative opinions of those who are against change and

who certainly will use the media to express their views. If it is possible to secure the interest of a small number of journalists who receive ongoing information much can be done to avoid wild rumours and disinformation. This does not mean, however, that it is desirable to prevent informed criticism that can be stimulating and valuable. One of the tasks of a general-director and his press officer is to distinguish between misdirected criticism and useful criticism. The latter can be used for the benefit of a prison development scheme as well as for society in general.

The police, prosecutors and judges are among the other actors who need to receive information about prison developments. The various segments of the whole criminal justice system need to work together in understanding and confidence in the interest of the effective control of crime and criminals. If this is lacking the wider society will lose confidence in the criminal justice system. And when this happens democracy and the rule of law are threatened.

Final remarks

In this presentation I have taken up factors that I have found in my work as a director-general to be of importance for development of a prison system. I have discussed them with my meetings with colleagues mainly from northern Europe.

We have found that prison problems are much the same in our various countries. More important is that find that we have much in common concerning how to solve those problems. For this reason I dare to hope that much of what I have said has relevance for your own problems and possibilities.

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[1] For the sake of brevity I use masculine gender but it should always be understood to include the feminine gender as well.

ENFORCEMENT OF CRIMINAL SENTENCES IN THE REPUBLIC OF SERBIA

Introduction

The main source of law, which refers to the enforcement of criminal sentences in the Republic of Serbia, is the Law on Enforcement of Criminal Sanctions. [1] Intense activity has been carried out in Serbia over the past several years and a number of very important criminal bills are in the process of being passed into law, among others, a new Criminal Code[2], while a new Criminal Procedure Code is in the process of being drafted[3]. Both laws (and especially the Criminal Code) have some important repercussions on the enforcement of criminal sentences, although they are not the major sources of enforcement law. Besides, there is a new draft of the Law on Enforcement of Criminal Sentences, which has already become a bill, which will soon be passed into law by the National Assembly of the Republic of Serbia. This paper describes some basic provisions of the new main source of law regarding the enforcement of criminal sentences in the Republic of Serbia and some practical issues, experiences and problems encountered in the enforcement of criminal sentences.

Formally, it is clear that relatively progressive legal arrangements in the area of enforcement of criminal sentences existed in the former Socialist Federal Republic of Yugoslavia, which, in essence, were not different from the normative and legal climates which exist in the new states and their modern legal systems. Also, the newly created states in the region, including the Republic of Serbia, formally have a very good legislation regarding the enforcement of criminal sentences. Independently from that, it is also clear that first the former Yugoslavia and then the new states that emerged on its territory faced many problems in enforcing criminal sentences which were sometimes, and in some areas, so evident that one could refer to a certain "gap" between the norms and their implementation.

Besides, it has been noticed in Serbia that there is a need for having one, modern law on enforcement of criminal sentences, which would protect all the rights of the convicts on the one hand, and would ensure an effective achievement for the purpose of criminal sentencing, on the other. Naturally, the normative aspects represent one side of the coin, and no matter how important

they may be, they should not be considered in isolation. It is also necessary to analyze the practice of enforcing criminal sentences, which will be given due attention in this paper, along with the necessary analysis of the norms.

The purpose of criminal sentences in the criminal law system in the Republic of Serbia

Criminal sentences represent a means for achieving the protective function of criminal law, which is the main goal and purpose of all criminal laws. The general substantive and formal notion of criminal sentences could be determined in the following way: "criminal sentences are legal repressive measures the aim of which is to suppress crime and are applied to the perpetrator of an unlawful act defined by law as a criminal offence, on the basis of the decision reached by a court of law upon completion of a criminal procedure."[4]

The purpose of criminal sentencing, in the form of sentences, conditional sentencing, court reprimand, safety measures and reformatory measures (Article 5, paragraph 1 of the Main Criminal Code) [5] is defined generally in the Serbian criminal legislation solely from the basic preventive aspect as "suppression of socially dangerous actions which violate or threaten social values protected by the criminal legislation. The purpose of punishment, as the most important form of a criminal sanction, is defined within the general purpose of criminals sentencing (Article 5, paragraph 2 of the Main Criminal Code) as: (1) the achievement of the goals of special prevention - prevention of the perpetrator from committing other crimes and provision of therapy and training; (2) the achievement of the goals of general prevention in two forms: (a) an educational influence on other people preventing them from committing crimes, and (b) strengthening of morality and exerting influence on the development of the social responsibility and discipline of citizens.

The proposed Criminal Code of Serbia defines the general purpose of criminal sanctions, which exist in the form of sentences, measures of warning, safety and educational measures (Article 4, paragraph 1 of the Proposal of the Criminal Code),[6] as suppression of the crimes which violate or threaten the values protected by the criminal legislation (Article 4, paragraph 2 of the Basic Criminal Code). This definition is very similar to that contained in the Basic Criminal Code, the only difference being the deletion of the words "socially dangerous" preceding the word "actions", and the word "social" preceding the word "values" protected by the criminal legislation, which is an expression of an intention of the legislator to eliminate so-

me elements which may have a certain ideological connotation, although this issue has a predominant declarative significance. The purpose of sentencing is determined in the proposed Criminal Code within the general purpose of criminal sentencing, in such a way that the achievement of the following goals is intended: (1) the goals of special prevention - to prevent reoffending and to influence the perpetrator not to commit crimes in the future; (2) goals of general prevention - to influence others not to commit crimes; (3) general moral objectives mutually related by both special and general prevention - general condemnation of a crime, strengthening of morality and strengthening of the obligation to respect law (Article 42 of the proposed Criminal Code).

The purpose of enforcement of sanctions is defined in Article 2 of the Law on Enforcement of Criminal Sentences through the following aspects: (1) a formal and legal aspect - implementation of final and binding and enforceable court decisions, and (2) a preventive aspect with two major forms: (a) general - preventive - protection of the society from criminal offences, and (b) individual - preventive - separation of perpetrators of the crimes from the society for the purpose of their treatment, custody and preparing them for their independent lives after they have served their sentences.

Types of punishments in the criminal sanction system in the Republic of Serbia

The perpetrator of a criminal offence may be given the following punishments:

- a prison sentence,
- a fine,
- community service, and
- driving license suspension (Article 44 of the proposed Criminal Code).

The formal and legal penalties may be divided into primary and secondary penalties. Prison sentences and community service may be given as primary sentences only. Fines and driving license suspension are both primary and secondary penalties. If a criminal offence is punishable by more than one penalty, only one penalty may be given to the perpetrator.

The most important penalty in practice is the prison sentence which may not be less than thirty days *(general legal minimum)* and may not exceed

twenty years *(general legal maximum).* Imprisonment for a term of forty years exists as a special type of punishment, which is a replacement for capital punishment - a death sentence - and may be given only for the most serious forms of crimes and may not be pronounced as the only punishment for a certain crime committed. Imprisonment for a term may not be given to a person who has not turned twenty one at the moment of commission of the crime, which is the form of special protection for young persons, and in this specific case, younger adults.

Conditional release

Conditional release is possible *(optionally),* provided that the following requirements have been met cumulatively: (1) it is necessary that he or she has served one half of his or her prison sentence, and (2) it is necessary that the convict's behavior has improved so much during his or her serving of the prison sentence that it may be expected that he or she will behave properly after release from prison, and that he or she will not commit another crime before the end of his or her prison term.

In assessing whether the convict will be conditionally released the following is taken into consideration, in *exempli causa* sense of the above circumstance: (1) his or her behavior in prison; (2) execution of working obligations in relation to the convict's working ability, and (3) all other circumstances which show that the purpose of sentencing has been achieved (Article 46 of the proposed Criminal Code).

Conditional release may be revoked either mandatorily or optionally. Mandatory revocation exists in the case of enforcement of sentences for relatively serious crimes. The court will revoke conditional release if the convict on conditional release commits one or more criminal offences punishable by imprisonment for a term exceeding one year (Article 47, paragraph 1 of the proposed Criminal Code). The conditional release is revoked optionally if the convict has committed a relatively minor offence. The court may revoke conditional release if the convict on conditional release commits one or more criminal offences punishable by imprisonment for a term of up to one year. In assessing whether it will revoke conditional release, the court will take the following circumstances into consideration: (1) severity of the crimes committed; (2) motives for which the crimes were committed; and (3) other circumstances which indicate the justifiability of revocation of conditional release.

Position of the persons against whom a criminal sanction is enforced

The sanction is enforced in a manner in which the respect for dignity of the person against whom the sanction is enforced is guaranteed (Article 6, paragraph 1 of the proposed Law on Enforcement of Criminal Sanctions). [7] Protection from torture and any other inhumane treatment of the person to whom the sanction applies is prescribed. Punishments which expose convicts to any form of torture, maltreatment, degrading treatment or experiment are also forbidden (Article 6, paragraph 2 of the proposed Law on Enforcement of Criminal Sanctions). Coercion of the convict, if it is disproportionate to the needs of enforcement, is also punishable (Article 6, paragraph 3 of the proposed Law on Enforcement of Criminal Sanctions).

The person to whom the criminal sanction is applied should in no way be discriminated against. Such a person should not be put in an unequal position on any of the following grounds: race, skin color, sex, language, religion, political or other opinion, national or social origin, property, education, social status or any other personal characteristic (Article 7 of the proposed Law on Enforcement of Criminal Sanctions).

Legal custody of the convicts on whom a sentence of imprisonment is imposed is also prescribed by the law. They are entitled to the basic rights enshrined in the law and the Constitution, international instruments, the Law on Enforcement of Criminal Sentences and the generally accepted international law rules. Since the State Union of Serbia and Montenegro has signed up to all the relevant international instruments for human rights and freedoms, the convicts may request at any time that those instruments and laws be applied directly, since under the Constitution, the international law, or the ratified sources of international law are considered to be an integral part of our legal system. Judicial protection against individual documents dealing with the rights and duties of the convicts is allowed under the Law on Enforcement of Criminal Sentences.

The convicts are also entitled to some special rights. Their personality is generally protected. Everyone must respect dignity of the convict (Article 65, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences). No one is allowed to threaten the bodily or mental health of the convicts (Article 65, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences). The convicts are entitled to accommodation in accordance with modern hygienic requirements and local climate (article 66, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences).

Special rights which concern the status of the convicts refer to some enforcement aspects, as follows:

1) Accommodation - the space in which the convicts live and work has to be clean, dry, well aired, warm and sufficiently lit by both natural and artificial light allowing them to read and work without any visual impairment and the dormitory must be spacious enough to give every convict at least eight cubic meters of space. The cells must have the appropriate sanitary facilities and the basic personal hygiene items and every convict must have his own bed (Article 67 of the proposed Law on Enforcement of Criminal Sentences).

2) Free time - age and physical condition permitting, the convicts are entitled to spend at least two hours a day in the outdoor yard and the convicts are entitled to an organized exercise in their free time, in shared sports facilities with the necessary equipment (Article 68 of the proposed Law on Enforcement of Criminal Sentences).

3) Sanitary protection - Hygiene of the convicts and the entire space are regularly checked (Article 69 of the proposed Law on Enforcement of Criminal Sentences).

4) Food - the convicts are entitled to receive food required for maintaining their good health and strength, and they must receive three meals, providing 12,500 kilo-joules a day. The convicts must have free access to drinking water at any time. Food and water quality are checked regularly. Some categories of the convicts are entitled to special dietary regimes. They include: a) the convicts performing more difficult labor, b) sick convicts, c) pregnant convicts, and d) child-bearing convicts. Their food is prescribed by a medical doctor. The doctor or another professional officer checks the quality of food before the meals are distributed to prisoners and enters his or her findings in a register (Article 71 of the proposed Law on Enforcement of Criminal Sentences).

5) Prison clothing - the convicts are entitled to underwear, clothes and footwear that correspond to the local climate, free of charge. The convicts are also entitled to special work clothes, footwear and equipment, when this is required by the labor they are performing (Article 72 of the proposed Law on Enforcement of Criminal Sentences).

6) Communication and correspondence - the convicts are entitled to correspondence at their own cost. Correspondence is monitored in the maximum-security prisons with a special security regime, ordinary maximum-se-

curity prisons and a high security unit in a maximum-security prison (Article 75, paragraphs 1 and 2 of the proposed Law on Enforcement of Criminal Sentences). The convicts may use telephones at their own cost in accordance with the house rules, and telephone communication is supervised in maximum-security prisons and those with special security regime when so ordered by the prison warden (Article 76 of the proposed Law on Enforcement of Criminal Sentences).

7) Visits - the convicts are entitled to receive visits by some relatives: a spouse, children, adoptive children, parents, adoptive parents and other direct or lateral relatives down to the fourth level of kinship. The frequency of such visits is defined differently in different types of prisons or wards (Article 78 of the proposed Law on Enforcement of Criminal Sentences). The convicts are entitled to receive their defense counsels or proxies and foreign nationals may receive a representative of the diplomatic and consular mission of the country he or she comes from or the state which protects his or her interests, which is a reciprocal right (Articles 79 and 80 of the proposed Law on Enforcement of Criminal Sentences).

8) The rights of convicted mothers - a convicted mother of a child may keep her child with her until the baby's first year. After that the child's parents decide in an agreement whether the child's father, relatives or other persons will be given custody of the child. If the parents fail to reach an agreement or if their agreement is detrimental to the child, custody will be determined by the court with jurisdiction in the area of the mother's permanent or temporary residency at the time of conviction (Article 106 of the proposed Law on Enforcement of Criminal Sentences). The convicted mother of a child is entitled to receive professional assistance by the prison's professional staff (Article 107, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences).

9) Right to education - the convicts are entitled to primary and secondary education organized in prison under general regulations (Article 110, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences) and the prison warden may allow a prisoner to attend external training (Article 111, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences).

10) The right to religion - the convicts have a whole series of religious rights: a) the right to religious service, b) the right to possess and read religious literature, and c) the right to receive a minister of religion. If there is a suffi-

cient number of convicts of the same religion, the prison manager will allow, at their request, a minister of their religion to visit them regularly and to perform religious services or to give religious education regularly (Article 113 of the proposed Law on Enforcement of Criminal Sentences).

11) Other rights of the convicts - other rights include their right to use occasionally a special room in which they receive their spouses, children or other relatives, the right to receive parcels, the right to receive money and the right to work, which is also their obligation. Their work gives them a whole series of economic rights and the rights similar to those arising from employment. A type of work is determined according to their mental and physical skills, qualifications, desires and abilities of the prison. Degrading work is forbidden. The work performed by the prisoners must be purposeful. (Article 87, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences).

The basic rules for enforcement of prison sentences

The goal of enforcement of prison sentences is defined within the general definition of the purpose of criminal sentences. The general purpose of sentencing is special and general prevention. There is also reference to the future life of the convicts once they are released back into community. The purpose of enforcement of prison sentences is to help the convicts adopt socially acceptable values while they are serving their prison sentences through modern treatment programs with the aim to re-enter the community as easily as possible and to prevent re-offending (Article 31 of the proposed Law on Enforcement of Criminal Sentences).

As a rule, the convicts serve their prison sentences together. They may serve their prison sentences separately from other convicts when this is required by the convict's medical condition or in some special cases (Article 34, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences). There is also a gender-based separation of prisoners. Male and female convicts serve their prison sentences separately from each other (Article 34, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences).

Certain measures may be invoked for the purpose of maintaining order and discipline only when necessary and when the prisoner behaves disorderly in contravention of the law and other regulations made in accordan-

ce with the law, or when he or she refuses to carry out orders regularly issued by the prison staff. The measures taken to maintain law and discipline are divided into two major types: 1) coercive measures, and 2) special measures.

Coercive measures may be invoked for the purpose of preventing alternative forms of behavior: escape, physical attacks, causing injuries to other persons, self-injury, material damages, and active and passive resistance by the prisoners. The following coercive measures are applied: use of physical force, tying, separation of prisoners, use of rubber truncheons, use of high-pressure hose, use of chemicals and fire arms.

The coercive measures must be applied under the rule of *proportionality and cascade purposefulness,* which means that the measure which will be the least threat to the lives and health of the persons against whom it is applied, which will suppress resistance most successfully and is proportionate to the imminent danger, will be used (Article 129 of the Proposed Law on Enforcement of Criminal Sentences).

Where there is a serious risk of escape or violence, or the prisoner represents a threat to himself or herself, and order and safety cannot be prevented in other ways, special measures are required. They include: reinforced supervision, temporary confiscation of otherwise permitted items, confinement in safe cells free from dangerous items, isolation, testing for infectious disease or psychoactive substances.

If the prisoner commits a disciplinary offence, either a minor or a serious offence, he or she may be punished in an appropriate way. Serious disciplinary breaches include escape, an attempted escape from prison, incitement to riot or escape, unauthorized leaves, violence against other persons, production or bringing to prison of items which can be used for attacks, escape, commission of a crime, abuse of psychoactive substances, etc.

Disciplinary offences are punishable by disciplinary measures which are ranked by the severity of the offence committed: reprimand, restriction or prohibition of receiving parcels for the period of three months maximum, withdrawal of special rights (such as an expanded right to receive parcels, visits, etc.), restriction or prohibition of the possession of money for a maximum three-month period, solitary confinement during free time or 24 hours a day. Only serious disciplinary offences may be punished by solitary confinement or prohibition of possession of money in prison (Article 146 of the proposed Law on Enforcement of Criminal Sentences).

Postponement of enforcement of a prison sentence

The sentence becomes enforceable if each of the following requirements are met: 1) the sentence is enforceable, 2) it has been delivered, and 3) there are no legal or factual obstacles to its enforcement.

The enforcement of a prison sentence may be postponed for certain reasons. In legal and technical terms there are two reasons: 1) at the motion by the convicted person, and 2) by reason of extraordinary legal remedies used by either party.

The enforcement of a prison sentence may be postponed at the convict's motion under certain circumstances related primarily to humaneness, including the existance of a serious acute illness of the convicted person, while it exists, pregnancy of a convicted woman, death of a close relative etc. (Article 48 of the proposed Law on Enforcement of Criminal Sentences).

The court which adjudicates the motion to renew a criminal procedure, filed in favor of the convicted person[8], may, *ex officio*, postpone the enforcement of a prison sentence even before the finality of the decision allowing a renewed procedure (Article 58, paragraph 1 of the proposed Law on Enforcement of Criminal Sentences). The court which adjudicates the motion to revisit the final verdict (The Supreme Court of Serbia) as a result of an extraordinary legal remedy used by one party to the procedure, may postpone the enforcement of a prison sentence, depending on the content of the motion (Article 58, paragraph 2 of the proposed Law on Enforcement of Criminal Sentences).

The basic classification of prisons and a summary of empirical and statistical considerations

It is possible to make a number of classifications of the existing prisons in the Republic of Serbia and in general the institutions in which criminal sentences are enforced, based on the existing and future legal arrangements and the current practice. [9]

Types of prisons - types and locations

The following types of prisons exist in the Republic of Serbia, classified on the basis of their division as per *in rem* jurisdiction of the first instance courts and the type of criminal procedure conducted before the criminal sentence was reached:

- Prisons, including district prisons (in which criminal sentences are served);
- Prison for women (in which prison sentences and juvenile sentences are served)
- Juvenile prison (in which prison sentences given to juveniles are served);
- Forensic unit (in which measures for mandatory treatment and custody in a medical institution and mandatory alcohol and drug treatment are enforced);
- Juvenile prison (in which a reformatory measure of sending juvenile offenders to a juvenile prison is enforced);
- Institute for Convicts' Personality Analysis

The prisons in the Republic of Serbia may also be divided according to the level of security and the manner of enforcement of criminal sentences and to the sex of convicted persons.

According to the security level and the manner of treatment of prisoners, the prisons may be minimum-security prisons, medium-security prisons, maximum-security prisons and super maximum security prisons. Prisons for women and juvenile prisons are medium-security prisons. The prison hospital, a forensic unit and the institute for personality analysis are maximum-security institutions. Only penal institutions are super maximum-security prisons. The prisons are established by the decision of the Government of the Republic of Serbia to establish a prison in which criminal sentences will be enforced[10]. The following prisons exist in the Republic of Serbia:

security penal institutions:

- Penal institution in Belgrade -Padinska Skela;
- Penal institution in Kosovska Mitrovica;
- Penal institution in Sombor;
- Penal institution in Ćuprija;
- Penal institution in Šabac.

maximum-security penal institutions:

- Penal institution in Istok;
- Penal institution in Požarevac - Zabela

for women:

- Penal institution for women in Požarevac.

Prison units

There are prison wards in the correctional institutions in the Republic of Serbia which perform various functions, including those which are directly related to the fulfillment of the purpose of enforcement of criminal sentences and those which ensure the necessary legal and factual enforcement requirements, custody/security requirements etc.

The prison wards are: 1. Correctional Treatment Ward; 2. Security Ward, 3. Training and Labor Ward; 4. General Affairs Ward; and 5. Medical Ward.

Correctional Treatment Department

The Treatment Ward applies modern measures and methods aimed at providing a correctional treatment to convicted adults and juveniles and their resettlement. It organizes individual, group and other forms of treatment of convicted adults and juveniles. It directly contributes to the removal of criminal, asocial and other negative forms of behavior and habits of convicted adults and juveniles. It contributes to the formation of a proper attitude of convicts toward work and property. It organizes general and vocational training of convicted adults and juveniles. It gives opinion on pardoning and conditional release. It proposes a classification and re-classification of convicted adults and juveniles.

Depending on the size of a prison, there may be units and divisions such as the unit for personality analysis, the unit for correctional labor, the educational labor unit etc. The rights and responsibilities of convicted adults and juveniles are implemented through prison educators. The size of a group depends on the number of prison inmates and the type of a correctional institution.

Security Ward

The Security Ward is responsible for the security of persons and property in prison, prison staff and prison property. It maintains order in the prison and transports convicted prisoners, detainees and juveniles. The work and organization of this Ward are regulated by the Law on Enforcement of Criminal Sentences, the Book of Rules of the Security Ward providing security in prisons, the Book of Rules governing an official accreditation of the Security Ward officers, the Book of Rules governing the armament and equipment of security officers, the Book of Rules governing the manner and conditions for use of means of coercion, and the Book of Rules for uniforms and insignia of security officers.

Training and Labor Ward

The Training and Labor Ward provides training to prison inmates and organizes their work. The prison inmates are trained and they work either in prisons or outside prisons. There are economic units in some prisons and many prisoners have farmlands. The products most often include agricultural products, metal products (boilers, hubs), cement and wooden products. They are sold at market prices.

The following economic units exist in prisons:[11]

- Economic unit "Dubrava" in the prison in Sremska Mitrovica;
- Economic unit "Proleće" in the prison in Sremska Mitrovica;
- Economic unit "Novi putevi" in the district prison in Novi Sad;
- Economic unit "Nadel" in the district prison in Pančevo;
- Economic unit "Preporod" in the prison in Požarevac, Zabela;
- Economic unit "Deligrad" in the prison in Niš;
- Economic unit "Mladost" in the juvenile institution in Kruševac;
- Economic unit "Elan" in the prison in Sombor;
- Economic unit "Budućnost" in the juvenile prison in Valjevo

General Affairs Ward

The General Affairs Ward is in charge of legal and administrative affairs, registration and other affairs of general importance to prison and provides legal assistance to the convicted prisoners in relation to their serving prison sentence.

Medical Unit

The medical unit provides health protection and medical treatment for convicted prisoners and detainees. It also supervises hygiene and quality of food and water in prison.

In a number of prisons the health protection is provided by a separate medical unit. There is also a specialized institution called the prison hospital in Belgrade which provides mandatory psychiatric treatment in a prison and mandatory alcohol and drug treatment as well as other specialized forms of medical care.

Under the Law on Enforcement of Criminal Sentences convicted prisoners enjoy health protection free of charge. Convicted prisoners who may

not receive the required medical treatment in the prison's medical unit is sent to the prison hospital, forensic department or another medical institution. The duration of a medical treatment is included in the duration of a prison sentence.

A theoretical and conceptual foundation of the system of enforcement of criminal sentences in Serbia

The enforcement system in the Republic of Serbia is based on the appropriate empirical and theoretical principles of the *Irish progressive system* which, although changed several times, remains a dominating conceptual enforcement model in countries with a long democratic tradition and developed penitentiary systems. The enforcement system in the Republic of Serbia includes general and specialized institutions for various categories of offenders.

There are 7,594 persons in custody in prisons in the Republic of Serbia of whom 6,291 are convicted prisoners, 2,081 are detainees, 132 persons are convicted for petty offences and 90 are juveniles.

Detention is not a criminal sanction. Unlike convicted prisoners, the presumption of innocence applies to detainees; they have the right to defense etc. Prisons ensure the presence of the accused in the criminal procedure although not under all the rules for enforcement of criminal sentences, but rather in compliance with the Criminal Procedure Code[12] which regulates the treatment of detainees.[13]

In specialized institutions, in addition to juveniles, treatment is also provided to the persons who were given special criminal sentences - safety measures of a medical nature or measures of mandatory psychiatric treatment and guardianship. There are 510 persons in specialized institutions. A total of 137 female prisoners are serving prison sentence in minimum-security or medium-security prisons for women.

3.326 persons are working in the enforcement system in the Republic of Serbia, with different categories of convicted prisoners and detainees. The ratio between the persons deprived of liberty and prison staff is close to 2:1 and places the penitentiary system of the Republic of Serbia among more progressive systems in which special attention is paid to legal, professional and humane treatment of the persons deprived of liberty. In normative ter-

ms, special attention is paid to the legal position of convicted prisoners, and generally to the persons deprived of liberty and such persons may use different legal remedies to realize their rights.

The percentage of re-offending in the enforcement system in the Republic of Serbia is nearly 65%, which is a very high percentage from the aspect of resettlement and indicates rather inefficient attainment of the purpose of sentencing. Despite a very high percentage of re-offending, an emphasis is placed on enforcement of sentences in residential and minimum-security institutions.

In regard to the number of convicts within the overall size of population, Serbia falls under a usual statistical average of the European developed countries. Since the concept of resettlement is a dominant orientation in a penitentiary system of Serbia, special attention is given to the prison treatment of convicts which is in principle based on legal, professional, academic and humane principles. Special attention is also paid to the realization and protection of the rights of the persons deprived of liberty, which is why attempts are being made to adapt the legislation with the EU law.

Conclusion

The problems regarding enforcement of sentences, primarily prison sentences in Serbia are not normative in nature, for regardless of some legal and technical imperfections of the new Bill on Enforcement of Criminal Sentences and of the existing Law on Enforcement of Criminal Sentences, their normative content is modern and fully adapted to the requirements contained in the basic international instruments for human rights and freedoms.

There are some sporadic cases of abuse in prisons and other correctional institutions and they are not a matter of concern. More attention should be given to the protection of detainees who have some rights which are given to all other persons deprived of liberty including the right to presumption of innocence pending the completion of a criminal procedure.

Negative experiences acquired during the massive and extremely repressive "Sablja" police operation (after Prime Minister Zoran Djindjic was assassinated) which took place over a couple of months in 2003, when many people were deprived of their liberty for various reasons and some se-

rious abuses occured during police detention (coercive treatment, torture etc.), show that the protection of the rights of detainees requires caution.

Some major problems occurred in Serbia during the first few months after the changes implemented on October 5, 2000. Massive prison riots occurred resulting in some major damages and injuries caused to both prisoners and prison staff and to some police officers who were forced to intervene. The massive riots ended after long and painstaking negotiations, thanks to some major concessions made to the prisoners, which was justified in the given situation and was a kind of action taken in "extreme necessity". This was, on the one hand, a serious precedent, while on the other, some general criminal law and political tenets were denied, which inevitably caused some repercussions. The subsequent investigation clearly showed that the prison riots had been carefully coordinated by some convicted prisoners (as a rule, members of some influential prison sub-cultures), via mobile telephones, normally strictly forbidden in prisons by reason of abuse.

It has been noticed in the past few years, even months, that mobile phones are being abused in prisons even to tamper with witnesses and accomplices at large and in some cases to support corrupt behavior, which is particularly dangerous, or even to provide logistics to the execution of some crimes. This means that it is necessary to take vigorous measures to suppress this abuse which is also related to some forms of corruption in prisons since we know that some criminalized prison staff members are bribed into allowing prisoners to use mobile phones. In a technical and practical sense this problem could be solved in a relatively easy way by using interference devices which would prevent the use of mobile telephones in the whole or some parts of a prison.

An increased use of some technical instruments, notably video surveillance in shared areas and the yard, would have an extremely positive effect on prevention of various forms of abuse in prisons including violence among sentenced prisoners, or violence by some irresponsible prison staff members, the commission of other crimes and especially the abuse of psychoactive substances, etc. The usual "rule of silence" makes the collection of evidence through usual means very difficult in prisons. The appropriate technical means could be effective.

The lack of funds has proven to be one of the major problems in enforcing sentences. For example, the heating problem almost every winter in the past few years has become very serious and numerous applications are expected

to be filed to the European Court for Human Rights, which is an important reason why that issue should be solved efficiently, as soon as possible.

On the other hand, in view of a relatively difficult economic situation in Serbia, it would not be realistic to expect a speedy progress in improving the standards of prisoners and the persons deprived of liberty in general. From an economic point of view, the state should identify its own economic interest. Under the case law of the European Court for Human Rights and the European Convention for Human Rights the rights guaranteed to the persons deprived of liberty are established independently from an economic situation in the country and the general economic status of citizens in general. In light of this, the state should be aware that investments in the standard of the persons deprived of liberty are based not only on humane principles but in essence represent an investment in a generally better image of the country. Among other things, the state would protect itself from paying compensations to the persons deprived of liberty, which could be an additional economic burden.

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[1] Official Gazette of the Republic of Serbia, number 16/97.

[2] The Working Group which drafted a new Criminal Code of the Republic of Serbia was chaired by professor Zoran Stojanović

[3] Under the decision by the Judicial Reform Commission of the Government of the Republic of Serbia, a Working Group in charge of drafting of a new Criminal Procedure Code was formed. The WG included: professor Milan Škulić, Goran Čavlina, Justice of the Supreme Court of Serbia, Danilo Nikolić Ph.D., president of the District Court in Niš, Toma Fila, attorney, Miroslav Ličenoski, deputy public prosecutor, and Vesna Janjić, staff associate, Justice Ministry, and Branko Nikolić, legal adviser in OSCE.

[4] Z.Stojanović, Krivično pravo – opšti deo (Criminal Law – General) ninth edition, "Justinijan", Belgrade, 2004., page 295.

[5] The Basic Criminal Code, "Official Gazette of SFRY" Nos. 44/76, 36/77, 34/84, 74/87, 57/89, 3/90, 39/90, 45/90, 54/90, "Official Gazette of FRY", Nos. 35/93, 16/93, 37/93, 24/94, 61/2001, "Official Gazette of the Republic of Serbia" No. 39/2003.

[6] Hereinafter: PCC.

[7] Bill on Enforcement of Criminal Sentences, the Republic of Serbia.

[8] The drafters of a new Bill on Enforcement of Criminal Sanctions have lost from sight the fact that under the Criminal Procedure Code of Serbia (the provision exists since 2001 when the FRY Criminal Procedure Code was enacted), a renewed procedure may be only in favor of the defendant, which means that *ne bis in idem* principle applies in the case of a legally

binding court decision of a certain type (verdict or the decision to suspend a criminal procedure) and is of relative importance if the procedure is to be renewed in favor of the defendant.

[9] http://www.mpravde.sr.gov.yu/.

[10] "Official Gazette of the Republic of Serbia", Number 17/98.

[11] "Prison economy" in jargon.

[12] Articles 148 – 153 of the Criminal Procedure Code of the Republic of Serbia.

[13] For more information see Z. Jekić and M.Škulić, Criminal Procedure Code With Preface, Explanation and Glossary, "Dosije", Belgrade, 2002., page 66 – 69.

COMMUNITY DISPOSALS

What's in a name?

The purpose of this contribution is to give an overview of the most frequently occurring community disposals and to sketch the policy framework from which they emerged. Before engaging this discussion there are one or two things we must say about terminology. In this area we find different terms in use, each with its own particular emphasis. We will review a few of these.

Originally one referred to "alternatives", meaning alternatives to imprisonment. The problem with this term is that it implies that prison is the default sanction and a community disposal the alternative. Moreover, it implies that the community disposal should replace deprivation of liberty, which is not always the case (cf. critics of net-widening). Subsequently, the name changed into "non-custodial measures or sanctions". This expression puts the emphasis on the fact that they are a separate class of sanctions: not necessarily related to prison. The use of either of the words "measures" or "sanctions" also gives a different nuance. "Measures" sounds more treatment-orientated, while "sanctions" emphasises punishment. The disadvantage of measures might be that it sounds as "being soft on crime", which is not a popular view today. Specifically, for the second generation of community disposals the term used is intermediate sanctions: they were introduced in the eighties, as an intermediate reaction between prison and probation and have a more punitive character. We prefer to use the name community disposals, which, in our view, puts the emphasis on the essence of these interventions, namely that they are implemented in the community. To avoid the discussions about "penalties", "sanctions" or "measures", we opt for the most neutral term of "disposals".

The reason why

Community disposals are important for many reasons. The first - and an important - reason is as a way to combat the rising prison population. Prisons populations are growing all over Europe. During the last three decades, almost all Western, and more recently Eastern European countries ha-

ve experienced an increasing prison population. The exception is in some Scandinavian countries were prison rates stay rather low and stable. Most jurisdictions are trying to find a way to reduce the size of their prison population and community disposals can be an effective tool. Secondly, more prisoners require more prisons and building prisons is expensive. As resources are limited, certainly in the judicial field, the use of community disposals can be a way to reduce costs. Thirdly, offending and punishment are not equitably distributed across the community but are linked to other circumstances of deprivation. Community-based interventions are fairer, more socially-just and less damaging than imprisonment. Finally, although there is much discussion about the effectiveness of imprisonment, it is clear that imprisonment has damaging effects on the prisoner's life, his family and indirectly on society as a whole. Community disposals keep people in their natural environment, make resettlement easier and have fewer damaging effects. It is difficult to make definitive statements about the effectiveness of community disposals, but research shows that well-designed programs are more effective when carried out in the community. (See McGuire, 1995).

Classification of community disposals

The number of possible community disposals, and variations thereof, is endless. This overview is, therefore, not exhaustive. In an effort to bring some order here we will show a number of ways community disposals can be classified.

Front and back door: to manage the size of the prison population there a two major strategies: the front-door strategy, i.e. by reducing the number of people coming into prison, and back-door strategies, i.e. stimulating the discharge of detainees from prison. Community disposals contribute to a front-door strategy effectively when they replace a prison sentence.

Chronologically throughout the penal process:
Community disposals can be applied throughout different phases of the penal process. Some of these are:

- Before the court proceedings, at the level of the prosecutor. A number of choices are available to the prosecutor. He has the power to decide not to prosecute at all; he can deal with offences outside formal court procedures, e.g. reconciliation, mediation; or he sometimes has

the power to impose a minor type of formal sanction, e.g. a caution, a fine, a compensation order, …

- During court proceedings, at the sentencing level. Some community disposals can be ordered by the judge either as a punishment in its own right or combined with a prison sentence, with or without additional conditions such as probation or a community service order.
- After the court proceedings. Some community disposals are can come into force during a custodial sentence, in the framework of early release, e.g. conditional release.

This is not really an absolute classification, since certain measures can be imposed at different levels; for example community service orders or restitution can be imposed as an alternative to prosecution, as an order in themselves or as a component in a hybrid sentence composing both custodial and community elements.

My personal preference in considering the different classes of community disposal is to see them in their historical context since each successive generation of community disposals carries its own stamp. In the overview that I now give, I will take time to examine the judicial thinking of the period, and the aims and expectations of the community disposals that were introduced.

The first generation

The first community disposals date from the 19th century. At that time, the leading penal theory was the classical school. Their starting point was the doctrine of free-will. Man was seen as having the freedom to choose. If he happened to choose to commit criminal acts then he deserved to be punished, in accordance with the principles of legality and proportionality. The punishment fitted the crime and there was little or no consideration of the circumstances of the perpetrator. This began to change with the rise of positivism. Lombroso took for granted a deterministic vision of human behaviour: some people are predestined to commit crime. They are subject to biological or social forces that more powerful than their own will, so there is no sense in punishing them. For the protection of the society it is better to impose security measures on them for an indefinite period of time. Positivism became interpreted in a more moderate way in the theory of social defence as it was developed in Belgium, the Netherlands and Germany. In the Anglo-Saxon countries this period was characterised by "Modern Penality".

The first community disposals originated during this period. A first measure is the conditional (or suspended) sentence. This means that the sentence is imposed, but not implemented if certain conditions are respected. Suspended sentences are intended to avoid short sentences. The idea is that the threat of imprisonment would act as a deterrent and keep the offender on a straight path in the future. It was introduced in Belgium in 1888; in the Netherlands in 1915. Another alternative to a prison sentence is the fine, which is still linked to a substitute of imprisonment in case the fine is not paid. Fixed financial penalties are a form of diversion in which offenders accept that they have committed an offence and pay a sum of money or fulfil some financial condition. In return they avoid prosecution, a public trial and a criminal record.

With the exception of these early measures; community disposals did not really begin to develop until the nineteen-fifties or -sixties. This is a moment of crisis about the belief in the effectiveness of treatment in prisons, the growing prison population and the injustice of discretion in sentencing and conditional release. On the basis of a review on the effectiveness of prison programs, Martinson showed that there was no evidence available that any programmes reported in the literature was effective. His seminal paper became known as "Nothing Works". This prompted a trend towards diversion from prison in order to avoid the cost and damaging effects of imprisonment.

Community disposals dating from this first generation are:

*1) Probation***.** Probation is one of the oldest community disposals (introduced in England & Wales in 1930 and in Belgium in 1964). It implies that the offender does not have to serve his sentence in the prison on the condition that he keeps in contact with a supervisor (probation officer). There is a wide variety of different models of probation, ranging between two extremes; from client-focused counselling to an intensively-controlled supervision. Originally, probation was mainly about helping people, assistance and advice; the relationship between the offender and the probation officer is viewed as crucial for the probation measure to succeed.

2) Conditional (or suspended) sentences ; a custodial sentence is imposed but not implemented under certain conditions. Most commonly this means that the option is conditional on the offender not committing a new offence during the period of the order. The suspension can be total or partial. The sanction of the original sentence will be implemented if the conditions are flouted.

Although ideas of retribution and deterrence underpin these community disposals they are more oriented towards treatment than punishment. They are more concerned with help and assistance than control.

The second generation

The second generation starts in the nineteen-eighties. By this time the penal scene has completely changed and is characterised by three main features. First of all there is what has been described by A. Bottoms as "bifurcation" (1977). He observed that non-custodial measures were never applied to all offenders, those offenders that were considered to be "dangerous" were still punished with a prison sentence. Bifurcation points to the trend that governments simultaneously increase penalties for the most serious cases and decrease penalties for the rest. Our research has shown that violence, drugs, sex offences and recidivism are considered as being serious crimes (Tubex & Snacken, 1995). A second characteristic of this period is "penal inflation". During the eighties there were many questions about what to do about capacity problems in the prison. But this description did not give a true picture of the problem. Evidently, there is a simple way to cope with the capacity problem: build more prisons. We would like to spotlight the increasing use of deprivation of freedom as a sanction as the real problem and, in parallel with this trend, the imposition of longer sentences. Thirdly, there is a set of changes which are described as an evolution towards actuarial justice or new penology: a more system oriented approach of penal interventions - justice as a business that has to be run by the rules of suitability (Feeley & Simon, 1992, 1994). Bottoms calls it "managerialism", a growing emphasis on the rationality, the effectiveness and efficiency of penal interventions. Resulting here from, it has become increasingly important to be able to estimate which perpetrators present what risk and how this risk can be diminished or avoided. Risk assessment, based on both static factors (e.g. age, number of previous convictions) and dynamic factors (e.g. mis-use of drugs and medicines, education level) are used in an attempt to predict future (criminal) behaviour. Finally, the introduction of technological solutions also had an impact on community disposals during this period.

The community disposals introduced in this generation are mostly referred to as intermediate punishments. Faced by rising crime rates and the increasing numbers of convicted people, effective, affordable, non-custodial sentences are sought, something between prison and probation: community

disposals that can also be implemented on more serious offenders. Examples of community disposals dating from this second generation are

1) Electronic Monitoring: attaching a device to people (a bracelet) that allows their movement to be monitored. It can be imposed as an alternative to imprisonment, or in the framework of early release. It can also be associated with forms of curfew (restrictions on movement).

2) Boot camps: short sharp shock programs in prison (only in the US; firstly introduced in 1983, by 1993 they existed already in 30 states). Boot camps are mainly used for juveniles. They vary in duration of the program, who controls the admission, their approach, etc.

3) Intensive probation: long and intensive periods of supervision with specific conditions that have to be met, e.g. attending courses...

In these community disposals, although more emphasis is put on supervision than on treatment, punishment is always just around the corner. The probation officer is no longer there to advise and assist, but to supervise and police the offender. Sometimes he carries out controls such as drug testing.

Third generation

During the nineteen-nineties, penal policy changed again. One of the major developments is the introduction of restorative justice. Restorative justice is a difficult concept to define, as it has more than just one interpretation. Marshall (1999) defines it as " … *a problem solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies. It is not a particular practice, but a set of principles which may orientate the general practice of any agency or group in relation to crime"*. Throughout the years there is growing attention to the interests of the victim and his family, and in a broader sense the representatives of the community. The idea behind restorative justice is to repair as far as possible the harm caused by the crime, in a way that all the parties concerned participate in an active way, and with concern for the need to reintegrate the offender in society. In addition we can see growing policy optimism as to the possible effects of supervision and treatment. After the pessimism of the 1960's and '70's, there is a regained belief in the possibility of penal treatment, but in a more modest way : "Some things work for some offenders some of the time". The type of treatment also changed. It is

mainly oriented towards specific classes of offender (sex offenders, violent offenders) and it is not about compulsory treatment anymore but a contract-based relationship. There is a growing recognition of the importance of consent and cooperation. Instead of the "nothing works" climate we see more and more studies describing what does work (cf. McGuire, 1995). Moreover, in the nineteen-nineties there is a growing concern for public safety, the fight against crime ranks high on the political agenda. Politicians consider their stance on crime control as central to their public standing. On the one hand, reductionism gains more attention (imprisonment as no more than an ultimate remedy) and, for several reasons, the development of community sanctions is promoted. On the other hand, those in political positions are anxious not to be labelled as "soft on crime" as this almost certainly results in fewer votes.

Community disposals of the third generation derive mainly from ideas of Restorative Justice. Traditional pioneers are the models of aboriginal problem solving that have been taken over in Canada, Australia and New Zeeland. More recently, these initiatives also inspired European countries.

1) *Community Service Orders* the performance, during leisure time, of a certain number of hours work for the good of the community. Community Service Orders are introduced in different countries throughout the three generations, and thus reflect the different philosophy of each period (e.g. England & Wales; as a pilot project in 1972 and in a general way in 1975, Germany 1975, the Netherlands 1981, Finland in 1994, Belgium 1994).

2) *Victim - offender mediation*: is defined in the recommendation R(99)19 by the Council of Europe as "… *any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).* Mediation can be applied throughout the different stages of the penal process : at the police level, by the prosecutor or during the sentencing.

3) *Family group conferences, re-integrative shaming*, …

Specific models of mediation were developed in Canada, Australia and New Zealand. We give some examples, but there is a rich variety of them. Broader than the individual victim-offender mediation is the idea of family group conferences, involving the family unit or a larger group of the offenders' close acquaintances in developing strategies of control and support for offenders, which are implemented within their close social networks. The

idea behind reintegrative shaming, as developed by Braithwaite (1989), is the clearly communicated disapproval of the offence, but within a continuum of respect for the offender and terminated by rituals of forgiveness. The discussion about the consequences of the act for the victim contains the shaming part, the support and respect of loved ones structures the reintegrative part.

Problems

Problems with implementing community disposals occur in different areas:

- Legal restrictions: Community sanctions are not appropriate for everyone and in all circumstances. Frequently the law lays down limits on the use of community disposals. For example, they are only applicable to a certain extent of penalty, there are often restrictions which take the person's penal history into account (e.g. not for recidivists), and they are dependant upon the crime (e.g. not for sex offenders), etc. Then, in principle, the agreement of those involved must be obtained. It is logical that these restrictions limit the application of community disposals
- Disbelief: In order for community disposals to be ordered a number of conditions have to be fulfilled. Firstly, provision has to exist for the disposal to be implemented as intended, secondly there must be a belief that the community disposal has a good chance of working and thirdly it must have sufficient credibility within the judicial system for it to be imposed in an effective way. Research has shown that judges are often simply not aware of the possible alternatives (REF).
- Resources: The effective use of a community disposal presupposes that there has been thorough preparation, i.e. that enough information is at hand about the involved and his social circumstances to allow the appropriate measure and the appropriate conditions to be imposed. To accomplish this, the judge must have the results of a high-quality social investigation at his disposal. In addition many community disposals require good quality supervision. One cannot expect a positive outcome by imposing community disposal (e.g. via electronic monitor) when there is no supervision available to support the person subject to the order during difficult moments and/or to exercise control.
- Social discrimination: There is always the risk that community disposals will be applied in a discriminatory way in the sense that it will only be available to those persons who are already in a better situation,

with a stable home and a social network. In other words, those community disposals are only for "decent offenders with a home". Another possible discriminatory factor is financial. The impact of fines, for example, is not the same for everyone. The introduction of day-fines is an attempt to counteract that problem. The severity of the offence determines the number of day on which the fine is calculated and the income of the offender stipulates the size of fine per day. Day fines were firstly introduced in Finland in 1921. In the first half of the 20th century they only existed in Scandinavian countries, but now they have been introduced in Germany & Austria, (1975), Hungary (1978), France & Portugal (1983) England & Wales (unit fines 1992).

- Net Widening: Since a community sanction is applied as an alternative to other sanctions but paradoxically is imposed on persons who probably would otherwise not receive a punishment, one can speak of "net widening": bringing more and less serious offenders in the penal system than otherwise would have been the case. Moreover, community sanctions carry the risk, should they go wrong, that the involved is sanctioned for not having taken the "chance" that was offered him by receiving a stronger punishment.

Effectiveness

As has been stated, it is difficult to make bold statements about the effectiveness or not of community sanctions. An important question which arises is what criterion should be used to measure its effectiveness. Logically the first criterion to be considered is its success or otherwise against recidivism, which is after all the ultimate aim of the sanction. Nevertheless, besides this there are other factors which can be used to balance the costs and benefits of community sanctions, such as social exclusion or integration of the offender, reduction of individual and social damage, public acceptability and the satisfaction of the victim.

Resolution (76)10

Finally we cite from the Council of Europe resolution (76)10 "On certain alternative penal measures to imprisonment", as adopted at the committee of ministers on 9 March 1976:

"Considering the tendency, which is observable in all member states, to avoid imposing prison sentences as far as possible …"

"Considering consequently that it is necessary not only to develop alternative measures which have existed for a long time … but also to encourage new measures …" "Considering that alternatives to prison sentences can serve the object of rehabilitating offenders and are less costly than imprisonment"

This resolution is clearly a child of its time : a community sanction seen merely as an alternative to a prison sentence and in that sense it is perhaps time for the resolution to be updated.

Conclusion

In conclusion we state that the application of community sanctions can only be promoted if attention is given to improving awareness at several levels; the political level, about practical aspects, and, increasingly, public opinion and the media. Investment must be made in information, education and training at all these levels. Politicians must be restrained from pursuing a popularist policy where being "tough on crime" seems the safest course of action. In matters such as these, where careful and specific attention is required, it would be best if they paid more attention to the evidence available in this field and sought advice from those who are in a position to give expert advice. Judges and prosecutors must be trained about criminology and the availability and effectiveness of the full range of possible disposals. Research into the effectiveness and benefits of community disposals has to be conducted. Public opinion is cited with increasing frequency in validation of current policy, even where there is no reliable understanding of general public opinion. Particularly in this area it is of critical importance that the public in general are informed that the use of community disposals is not synonymous with being "soft on crime". Community disposals per se have benefits as a means of damage-limitation, and from their basic humane approach. The role of the media in persuading people of this is the key factor.

REFERENCES

BOTTOMS, A., Reflections on the renaissance of dangerousness, *Howard Journal of Criminal Justice*, 1997, 2 : 70-96.

BOTTOMS, A., The philosophy and politics of punishment and sentencing, in CLARCKSON, C. & MORGAN, R. (eds.), *The politics of sentencing reform*, Oxford, Clarendon Press, 1995: 17-49.

BRAITHWAITE, J., *Crime, Shame and Reintegration*, Cambridge, Cambridge University Press, 1989.

FEELEY, M.M. & SIMON, J., Actuarial justice : The emerging new criminal law, in NELKEN, D. (ed.), *The futures of criminology*, London, Thousand Oaks, New Delhi, Sage publications, 1994 : 173-201.

FEELEY, M.M. & SIMON, J., The new penology : Notes on the emerging strategy of corrections and its implications, *Criminology*, 1992, 4 : 449-474.

MARSHALL, T.F., *Restorative Justice. An Overview*, London, Home Office, 1999 : 5.

MCGUIRE, J., *What works: reducing reoffending*, Wiley, 1995.

TUBEX, H. & SNACKEN S., L'évolution des longues peines, aperçu international et analyse des causes, *Déviance et Société*, 1995, 2 : 103-126.

ALTERNATIVE SANCTIONS IN THE CRIMINAL LEGISLATION AND PRACTICE OF BOSNIA AND HERZEGOVINA

Summary

Conditions regarding alternative sanctions are included in the primary legislation of many countries. In this sense Bosnia and Herzegovina is one of the countries where paths of reform directed at the improvement of existing and the introduction of new ways of alternative sanctions are forthcoming. Past comparative legal experiences showed that the role of new sanctions are important for society's struggle against criminality and that they render significant results in the process of resocialization in a non - repressive manner. We can't speak about special experience of B&H regarding this matter, but surely one should have in mind that alternative sanctions are a solution for the following problems: overcrowded prisons, high percentage of recidivism, in particular the recidivism of perpetrators of minor and medium criminal offences etc.

New aspects of sentencing with the tendency towards a reduced level of repression, a wider palette of choice of sanctions and more sophisticated methods of their execution are characteristics of forthcoming development of the criminal sanctions system. It still remains to be seen how far from this goal we are and the chance we have of realising it.

Keywords: Bosnia and Herzegovina, alternative sanctions, criminal legislation.

Introduction

Alternative sanctions, measures or alternatives to prison sentences are concepts increasingly found in modern criminal legislation and literature. The common feature of all of them is the impossibility to provide their accurate and precise definition.

Namely, in late 19th century, Franz von Liszte, the representative of the school of sociology (associated with him), and the International Criminal Law Association advocated an unconditional introduction of the so-called dual

system of criminal sanctions in national criminal legislation. This system, on the one hand, provided the prison sentence and the fine, which had hitherto acquired its first modern forms, and on the other, special measures for the mentally ill and socially dangerous criminal perpetrators for whom the laws envisaged various forms of security measures, conditional sentence with different forms of protective supervision, along with the separate legal treatment of juvenile criminal perpetrators.

The 20th century brought along an expansion of various modalities of the existing sanctions, as well as the introduction of new forms of sanctioning criminal perpetrators throughout the world. In this context, the teaching of the social defence school after World War Two should be mentioned. In the second half of the 20th century, the European Convention on Human Rights (1950) abolished the death penalty in Europe, which had until then been the severest sanction pronounced for the gravest criminal offences. Prison sentences assumed new modalities in the form of long-term sentences or life imprisonment, as a substitute for the death penalty, while shorter-term prison sentences were increasingly replaced by other forms of sanctioning, from the fine which had also considerably evolved, to advanced forms of protective supervision accompanying suspended sentences, to the introduction of less repressive sanctions, i.e. measures like community service, security measures to some extent, probation, various forms of supervision, financial liabilities, house arrest, "shock" probation and the like, which are, according to some authors referred to as alternative sanctions. Therefore, today we talk about the so-called tripartite system of criminal sanctions comprising the following: prison sentence, security measures (measures enforced upon delinquents who are ill) and alternative sanctions (measures imposed on the perpetrators of minor or moderately serious criminal offences). Such a system of criminal sanctions is applicable both for adult and juvenile criminal perpetrators[1].

One should believe and hope in a way, that the 21st century will create such a social environment in which the alternative sanctions will assume an ever more significant place among the options to fight crime, while the prison sentence will be an exception.

The Concept and Types of Alternative Sanctions

It is particularly interesting to stress at this point that despite the fact that alternative sanctions, measures or the so-called alternatives to prison sentence have, for a long time, been extensively applied in practice, notably in

Europe, we still do not have a precise definition to determine their concept in accurate terms.

The literature demonstrates a lot of attempts to provide such a definition. The opinion of professor Šeparović (2003) should be stressed, according to which the alternative measures, sanctions or punishments are all such measures to be taken against a delinquent without committing him or her to prison. This may be rather a wide definition and an imprecise understanding of this type of sanctions on the face of it, however, it is certainly all-embracing and very much applicable to these forms of sanctions. To narrow down the concept to alternative measures only without attaching to them the repressive severity degree and the purpose to be achieved by a sanction is unacceptable to many. On the other hand, the concept of alternatives to prison sentences is rather close to the term alternative sanction, but still denies it its independence and the efficiency sought to be achieved by its enforcement. This is confirmed by the views of two authors (Mirvić-Petrović, Đorđević 1998), claiming that the basic common element of all alternative sanctions, which otherwise have different content, is the component of the community involvement in their enforcement; this element being regarded as sufficient to guarantee an autonomous status for them, compared with other criminal sanctions.

However, with respect to the number and types of these alternatives, it is very difficult, in the criminal legislation in some jurisdictions throughout the world and notably in Europe, to draw a clear demarcation line between the alternative sanctions and the already existing forms of sanctioning which have so far not been recognised as such; primarily cautionary measures and fines. It is, however, indisputable that, on the one hand, these have until now been the most widespread forms of alternative sanctions, and on the other, that certain criminal legislation systems foresee a greater number of other types of alternative sanctions, while others are still restricted to the abovementioned sanctions, i.e. measures which have traditionally substituted prison sentences; this is the case in Bosnia and Herzegovina - fines, cautionary measures, community service.

Klein (1999, according to Žakman-Ban, Šućur) defines the alternative sanction as a punishment which avoids having the perpetrator imprisoned, while still being able to achieve the same purpose of punishment, deterrence, rehabilitation, retribution, and justice.

There are also opinions (Mrvić-Petrović, Đorđević 1998) that the conceptual distinction between "alternative punishment" and alternative sanctions is

not insignificant. Thus, the notion of alternative punishment implies various procedures and measures avoiding the conduct of criminal proceedings and/or punishment for minor offences or certain criminal offences committed, or requiring the perpetrator to do or not to do something in lieu of the punishment; to be subject to a social and pedagogical or outpatient treatment, or partial custody. On the other hand, the term "alternative sanctions" is synonymous with the term "community sanctions and measures", used in the Recommendation 16 (92) of the Council of Europe. This term means that these sanctions achieve two goals: avoid the perpetrator's isolation in prison - since they are enforced in the community, and restrict certain rights of the perpetrator, namely impose certain obligations. Based on such criteria, fines, damage compensation and its surrogates, cautionary measures accompanied by different forms of supervision are applied in comparative jurisdictions instead of the prison sentence, while in the common law jurisdictions, the so-called intermediate sanctions are applied; in terms of severity, they are somewhere between the prison sentence and probation, and they include various forms of supervision, financial liability, house arrest, "shock" probation, community service, and the like.

It is certainly important to mention another concept which covers alternative sanctions and which is very often used in the literature - the so-called proto-penal measures. This concept (Petrović-Jovašević, 2005: 294) implies the criminal sanctions which are alternatives to or substitutes for the prison sentence, particularly the short-term ones. The examples given by these authors include: damage compensation, outpatient treatment or referral to training, community service, weekend detention, house arrest, electronic surveillance, etc.

In any case, it is evident that the modern criminal legislation systems have increasingly favoured the alternative forms of sanctioning, and as a result, many countries have re-introduced these types of sanctions, while others have modified and improved the existing ones, thus giving them a very important place in the system of criminal sanctions.

In discussing the types of alternative sanctions, the above-mentioned dilemmas and disagreements in the literature and practice in some countries as to the definition of the concepts and, consequently, the criteria of their classification, have to be stressed.

According to some authors (Šeparović 2003), the alternatives can be divided into three groups, as follows: the first, the measures related to prison

sentences (semi-liberty, release to work, detention during week-ends, house arrest, serving the sentence at an external institution); the second, non-custodial sentences/sanctions (fine, sanction which only deprives of or restricts a right - disqualification from driving, liberty under supervision, probation or protective supervision, community service); and the third, measures whereby the pronouncement of a sentence is avoided (release from punishment, stay of execution - suspended sentence).

Others (Mrvić-Petrović, Đorđević 1998) hold the view that we have two types of alternative sanctions; the first are the so-called proper alternatives, which include compensation for the property damage and perpetrator-victim settlement, community service, outpatient social and pedagogical treatment whether applied independently or combined with the third type of the proper alternative sanctions, intensified supervision measures at liberty or within house arrest. The second type of sanctions are those used as substitutes for prison sentences - they are provided in most criminal codes: fines, cautionary measures and, to some extent, security measures. In any case, it is impossible to draw a clear line between these two types of sanctions, since their combination is nowadays frequently found in practice in many systems.

According to Anton M. van Kalmthout (1996), the alternative sanctions can be divided into two groups: those which partially restrict freedom (electronic surveillance - in Norway and the UK, controlled freedom - in France and Italy, financial sanctions - restrictions in disposing financial resources, fines imposed on daily income). The second group includes the sanctions which in a way restrict rights and freedoms, but also give the perpetrator an opportunity to do something good for the injured party and for the community - here we speak about the so-called restorative justice. It should be noted that the above-mentioned two types of alternative sanctions are often combined, providing for restricted freedom to a certain degree on the one hand, and encouraging the conduct for the benefit the community, on the other. An example is the community service sanction.

The fourth group of authors (Ignjatović, according to Marković 2004), regard the alternative measures as all measures substituting the prison sentence, whereby avoiding the adverse effects of this sentence, but provided that such a measure is appropriate to the type and severity of the offence, perpetrator's personality, and the degree of danger resulting from its enforcement.

International Legal Standards for Pronouncing (Meting out) Alternative Sanctions

The development of society and the related changes in the development of crime and its suppression, as well as dealing with the problems resulting from the application of the prison sentence, required, in many countries, interventions to be made in criminal legislation. The reason for introducing alternative sanctions is a direct consequence of such social developments and changes. It was the topic (Marković 2004.: 20-30) of several UN[2] Congresses at which discussions were held about the necessity of reforming the system of criminal sanctions, and several legal instruments were adopted on the basic legal standards for prescribing and enforcing the alternative sanctions in national criminal legislation systems. The Fifth UN Congress should be particularly noted since it was suggested to the states to reduce the application of the prison sentences to the minimum possible extent and to impose alternative sanctions in order to avoid all adverse effects of imprisonment and pronounce this sanction only for severe criminal offences.

The international instruments adopted include the following: European Convention on Supervising Convicted Persons with Suspended Sentences or on Parole of 1964, the Resolution of the Council of Europe No. 1 on suspended sentence, probation and other alternatives to imprisonment of 1965, the Resolution of the Council of Europe No. 10 on some penal measures as alternatives to imprisonment of 1976, the Recommendation of the Council of Europe No. 16 on social sanctions and measures of 1992, the Recommendation No. 22 for the improvement of the implementation of European Rules for Social Sanctions and Measures of 2000.

The main legal guidelines for prescribing and pronouncing (meting out) alternative sanctions are provided in the Recommendation No. 16 of 1992.

According to the Recommendation, the main task of the alternative sanctions is primarily to protect the society from crime, namely to protect an individual victim of an unlawful offence and to satisfy the victim, while avoiding the adverse effect of prison facilities and ensuring a better form of the re-settlement of the delinquent and his or her re-integration in the community. In addition to replacing the prison sentence, alternative sanctions can replace a detention measure imposed in any stage of the criminal proceedings (Mrvić-Petrović, Đorđević 1998: 99). In such cases, most commonly applied is house arrest, accompanied with special supervision and the requirement to report to the competent authority.[3]

The main requirements of the Recommendation are focussed on the following:

- The protection of fundamental human rights guaranteed by international instruments. Sanctions must not discriminate persons on the bases of gender, race or religious affiliation, they must not restrict civil or political rights, all rights should be respected in the course and imposition of proceedings, such as the right to privacy, the right to defence, the right of appeal, etc.
- All alternative sanctions must be already specified by the law and pronounced by the competent authorities under the procedure provided by the law.
- The sanction pronounced should be appropriate to the severity of the offence committed and the personal characteristics of the perpetrator, his or her family situation, social and financial status.
- The duration of the alternative sanction, as well as the manners of its termination, must be specified by the law.
- Failure to fulfil the obligation provided by the sanction does not constitute a criminal offence. If the convicted person does not serve the alternative sanction, then another sanction provided by the law is imposed on him or her, while the prescribed prison sentence is enforced only in case it is absolutely necessary for the sake of achieving the purpose of sanctioning.
- Since alternative sanctions cannot be pronounced for all criminal offences, but mainly for the criminal offences which pose a lower degree of social risk, this means that the criminal proceedings in such a case should be shorter and simpler. That is why the Recommendation recommends the so-called diversion (summary) procedure to pronounce these sanctions. In such cases, sanctions could be pronounced, applying the principle of opportunity, in the investigative stage or on its completion, provided that the perpetrator has undoubtedly been found guilty, that the perpetrator agreed that an alternative sanction be pronounced on him or her, and that the sanction pronounced is proportional to the severity of the criminal offence committed, i.e. the perpetrator's personality.

The Characteristics and Application of Alternative Sanctions in Comparative Law

"The crisis of criminal policy" in the world, as referred to by Mr. Šeparović, and particularly in Europe, characterised the period of the second half of

the 20th century. As a result of numerous reforms aimed at overcoming that crisis, alternative sanctions in specific forms have appeared. Their types, individual characteristics and pronouncing conditions are different in the laws of various countries. However, what they all have in common is the fact that a number of these sanctions can be imposed on juvenile criminal perpetrators, and secondly, something that gives them the quality of independent sanctions - the component of the community involvement in enforcing them; this is considered to be sufficient to guarantee an independent status to them compared to other sanctions.

The reforms of the criminal legislation implemented throughout the world classify the "alternative innovations" into three groups (Šeparović, 1998: 693-707) :

1) Measures which modify the enforcement of prison measures i.e. sentences

The character of proper alternative sanctions partly contests these type of measures since the purpose of applying them is to avoid the adverse effect of prison facilities on convicted persons, though they are in a way deprived of their liberty. This group includes the following:

- *Partial enforcement of prison sentences* (semi-detention, part-time detention), where the convicted person stays in prison only overnight or during various therapies, while going to work outside the prison facility.[4]
- *Release to work*, where the convicted person serves the sentence in prison, but is enabled, under certain conditions and with special approval, to work outside the prison.[5]
- *Week-end detention,* where a prison sentence is imposed on the convicted person, which is served only during week-ends, while being at large during the week-days.[6]
- *House arrest* which is pronounced in cases when a short-term prison sentence, up to 30 days, is pronounced on the convicted person, but he or she cannot serve it at a prison facility for some health, social or other reasons.[7]
- *Serving the sentence at an external institution.* This is primarily related to specific categories of convicted persons: addicts and persons who are in any way handicapped, so that they do not serve the sentence imposed on them in prison, but rather in another institution which provides special treatment for them.[8]

2) Measures which represent sanctions other than imprisonment

A common characteristic for all of these sanctions is that they are independent sanctions, which are pronounced on the perpetrators of lesser criminal offences for which, if these sanctions did not exist, the court would otherwise impose prison sentences.[9]

They include the following: fines, sanctions restricting some rights (disqualification from driving, confiscation, restitution, disqualification from practising a profession, educational measures, etc.), probation measures, measures of serving in public services.

- *The fine* is a measure of financial nature, which affects the convicted person's property, rather than his or her freedom. Its characteristics and different modalities will be discussed subsequently. This sanction is provided in almost all legislation systems, the only difference being a particular model applied by a country in its system of criminal sanctions.
- *The sanctions restricting or depriving some rights.* These are the sanctions whereby a particular right is restricted by imposing the following on the perpetrator: disqualification from practising a profession or an activity[10], disqualification from driving, the confiscation of property, restitution, educational measures and the like.[11]
- *Controlled freedom.* The convicted person is at large, but certain obligations are imposed on him or her, e.g. to report daily to police officers, not to leave the place of residence without approval, etc.[12]
- *Probation* is a measure which occupies the most significant place among alternative sanctions. These are the cautionary measures, as referred to in our legislation, including: suspended sentence, suspended sentence with protective supervision order, and court reprimand. The practice has shown that these alternatives can achieve very important results in the rehabilitation i.e. re-settlement of delinquents. The suspended sentence with protective supervision order has nowadays become increasingly prominent in the modern systems. These sanctions are provided in most countries.
- *Community service* is also one of the most important and progressive alternative sanctions at the present time. It was introduced in European legislation in the 80's, while some countries, like the ones emerged from the former Yugoslavia, introduced this measure in late 20th and early 21st centuries. The main characteristic of this measure is that it is imposed on the perpetrator of a minor criminal offence, most commonly of an offence punishable by imprisonment from 3 to 6 months,

and enforced by the convicted person doing some work for a specified number of hours[13] without remuneration, for the benefit of the community, as the principal or subsidiary sanction[14].

- *Restitution - the compensation of damage to the victim.* With an increased emphasis on the rights of the victims of criminal offences and the development of victimology as an independent scientific discipline, the damage compensation to the victims of criminal offences has become ever more present in the criminal law; it is no longer regarded as a private matter or exclusively the subject of civil proceedings. The restitution, with all its attributes, can meet the criteria of the new form of the community response to crime, as well as assume the attribute of an independent sanction. It is most commonly imposed in the common law countries.

3) Measures which avoid imposing sentences

This group includes all measures whereby imposing prison sentences, as well as fines, is avoided. These are primarily cautionary measures, but they also include release from punishment[15] and stay of execution measures[16]

Alternative Sanctions in BiH[17].

In order to pick out from the BiH criminal sanctions system those which have the character of alternative sanctions, we shall take a general criterion and consider those providing alternatives to only prison sentences, namely the measures replacing prison sentences. According to such a criterion, the following forms of alternative sanction can be found in the BiH criminal legislation:

1) Fines,
2) Community service,
3) Suspended sentence and suspended sentence with a protective supervision order,
4) Court reprimand.

Prison overcrowding, the high costs of enforcing prison sentences, doubts regarding the impact of short-term sentences in terms of re-education, prevailing principles of the humanisation of punishment, as well as other reasons represent the key problems in our system of penal sanctions.

This was one of the reasons for a major criminal law reform, which was implemented in Bosnia and Herzegovina in the course of 2003, and which also covered this segment of criminal legislation, albeit only partially; a larger and more complete reform of the system of criminal sanctions enforcement is yet to be implemented. One of the innovations was the introduction of an alternative sanction to the prison sentence, namely community service. The term innovation is used implying that this community service sanction is an independent sanction, i.e. an independent instrument. Namely, the Criminal Code of the Federation of Bosnia and Herzegovina of 1998 envisaged, in Article 37, paragraph 3 a possibility of replacing, at the convicted person's request, the imposed prison sentence of less than three months by a fine, or exceptionally, by community service. However, the legislator did not regulate other issues important for imposing and enforcing such an alternative It therefore existed only "on paper" and was not applied in practice.

As regards other alternative sanctions, they have long existed in the system of criminal sanctions, and only the fine has undergone certain modifications in the recent above-mentioned reform.

1) Fines

The fine is the oldest non-custodial sanction. It is a sanction of financial nature, which means that it does not affect the freedom of the perpetrator, but rather his or her property. It implies the payment of a certain amount of money within a specified period of time, as defined by the court's decision, for the benefit of the state. According to the CCBIH[17], the fine is imposed as a principal or a subsidiary sanction, namely there is a possibility of combining the fine with the prison sentence, or with the suspended sentence. This option is available, although not expressly prescribed for any criminal offence, only in the case of a criminal offence committed for gain[18]. The situation is different when it comes to the Entity or Brčko District Codes[17]. These Codes envisage a number of criminal offences for which a fine can be imposed in addition to the prison sentence.[19]

The fine is envisaged mainly for minor or moderately serious criminal offences, i.e. those for which the prison sentence has proven ineffective in practice. In addition to this advantage of the fine over the prison sentence, some other advantages are worth mentioning. The fine is more humane, it does not cause the convicted person's deprivation, the perpetrator is not exposed to the negative impact of prison facilities, he or she is not being stigmatised as a criminal or exposed to the risk of losing his or her job, or se-

parated from his or her family (Babić, Filipović, Marković, and Rajić 2005). The general trend of individualising criminal sanctions is reflected on the fine as well, by the fact that while imposing the fine, special attention is paid to the overall financial situation of the criminal perpetrator in order to best achieve its purpose.

Nowadays, the fine occupies a specific place in all criminal legislation systems. However, what makes a difference among individual countries when it comes to fines are the so-called systems for prescribing and imposing this alternative sanction. Generally speaking, there are several such systems, as follows: the system of fixed amounts - under which the fine is imposed within the legally defined minimum and maximum amounts (this the oldest and presently seldom represented form); the system of daily amounts (day-fines) or the Scandinavian system - where the fine is imposed in daily amounts, while the daily and total amounts depend on the perpetrator's means test. This system provides for the respect of the principles of equality, fairness and individualisation of sanctions, according to which the purpose of the sanction is achieved if the sanction equally affects the criminal perpetrators' property given their means test. The third system is the so-called pro-rata system, according to which the fine in a specific case is determined on a pro rata basis with respect to the property gain acquired by the criminal offence or the amount of damage incurred by the crime, within the legally defined minimum and maximum amounts. The system of average salaries is another possible system for prescribing and imposing the fine, whereby the amount of the fine is determined with respect to the perpetrator's average salary or the average salary at the national level.

However, aiming to contribute to eliminating the negative consequences resulting from the application of particular systems, the most common system at the present time is the so-called mixed system for prescribing and imposing fines. The common element of each "combination" within this system is the fact that one of the above-mentioned systems is the principle one, while the other is subsidiary, applied only exceptionally.

With respect to its Criminal Code, BiH belongs to the group of countries which apply the mixed system, namely, the system of daily amounts is applied as the principal one, while for minor criminal offences and in case the fine is a subsidiary sanction, along with some other exceptions, the system of fixed amounts is applied. The fact that the above-mentioned fine model also comprises some elements of the pro rata system and the system of average salaries, adds to the uniqueness of the arrangements provided by the BiH Criminal Code[17].

Namely, Article 46 of the CCBIH[17] provides that the amount of the fine imposed in a specific case is determined by the type of fine, ie., it can be in the form of daily amounts or expressed in a fixed amount, namely it is determined by the legal scope concerning its amount. Therefore, in case of a fine in the form of daily amounts, it ranges between the minimum of 5, and the maximum of 360 daily amounts, while in case of a criminal offence committed for gain, the upper limit is increased to 1,500 daily amounts, except in cases specified by the Criminal Code.

On the other hand, the fine in a fixed amount is imposed in cases when explicitly specified by the Code or in the case when the perpetrator has not collected all the data on his or her income within a specified time period, as set by the court; then the sanction provided in daily amounts is imposed in the fixed amount. The third case in which the fine is imposed in a fixed amount is when issuing the warrant for the pronouncement of sentence[20], since this procedure does not include any action whereby the perpetrator's means test could be established.

The legal scope for imposing the fixed amounts ranges from the minimum of 150 KM[21] to the maximum of 50,000 KM, while for criminal offences for gain, it is up to 1,000,000 KM. An exception in both above-mentioned cases is if the criminal offence has been committed for gain, and the amount of the property gain acquired is over 1,000,000 KM; then it is possible to impose, in both cases, a fine twice as much as the illegal property gain, which the perpetrator has acquired by committing the offence for which the sentence is imposed, is worth.[22] Here, there is obviously an element of the pro rata system for prescribing and imposing the fines.

Imposing the fines under the system of daily amounts runs in two stages; firstly, the number of days, i.e. the number of day-fines is determined applying general rules for prescribing sanctions[23], taking into account the purpose of punishment, all aggravating and mitigating circumstances, the degree of criminal liability, etc., and particularly the perpetrator's financial situation (the amount of his or her salary, the amount of other income if any, the value of his or her property and the family situation). The perpetrator's means test at the time when the sanction is determined is taken as the relevant financial status. In the second stage, the court determines the amount of fine for one day, i.e. the day-fine for that specific perpetrator. The daily "value" is determined in different amounts, depending on the perpetrator's financial situation. The amount is calculated taking into account the daily income of the perpetrator based on his or her three-month net salary and other inco-

me[24], as well as family obligations. The elements of the system of average salaries are reflected here. The data taken into account should not be of a date older than 6 months ago. This is the way to calculate the amount the perpetrator earns in one day, while the costs of family obligations are deducted. The daily amount is limited to the minimum of 1/60, and the maximum of 1/3 of the latest official average net salary in BiH, published by the BiH Bureau of Statistics.[25] The amount of fine in a specific case is obtained by multiplying the daily amount by the total number of days.

The perpetrator is required to submit the information on income and family obligations within the time period specified by the court, but not later than the completion of the main trial. The consequence of the perpetrator's failing to meet this obligation has already been mentioned, namely the court is required to impose the fine in a fixed amount instead of daily amounts.

The period within which the fine is to be paid cannot be shorter than 15 days or longer than 6 months. The Code allows for two methods of paying the fine, the first one being the deferred payment of the fine, which implies its payment within a certain period of time, but not longer than 6 months; and the second one being the payment of a certain amount in instalments within a certain period of time, provided that the total time period of the payment in instalments cannot be longer than 2 years.

The rules for the execution of fines are provided in Article 47 of the CCBIH[26,17]. The basic principle applied for the collection of fines is that of voluntariness, namely the fine is never collected forcibly. The convicted person is required to pay the fine within a certain period of time, however should he or she fail to do so, the court decides without delay that the fine be substituted by a prison sentence (the so-called subsidiary or suppletive imprisonment). The fine is substituted by applying the rule that any started daily amount of a fine, i.e. 50 KM, expressed in a fixed amount, is substituted by 1 day in prison, provided that the imprisonment in that case cannot be longer than 1 year.

The advantages and disadvantages of fines will not be dealt with on this occasion, save for one drawback which will only briefly be commented on and presented mathematically. Namely, the drawback concerns the amount of the fine, the substitution of which by a prison sentence of not longer than one year is limited. If we try to find out, by using a simple mathematic operation, what is the maximum amount of fine that can be substituted by the maximum prison sentence, we shall see that the amount is extremely low compared with the legally defined maximum amounts to which it can be im-

posed. Therefore, following the rule for the conversion of a fine, determined as a fixed amount, into the subsidiary imprisonment, the result obtained is that 1 year of imprisonment is worth 18,250 KM (365 days x 50 KM= 18,250 KM). Considering that the maximum amount of a fine that can be imposed on a perpetrator - excluding criminal offences for gain - is 50,000 KM, it is clear that any fine exceeding the amount of 18,250 KM substituted by imprisonment, is, to say the least, reduced by the amount representing the difference between the fine imposed and the amount the subsidiary imprisonment is worth.[27] The same applies for the fines imposed in daily amounts. This fine is also limited to the maximum of 50 KM per daily amount, i.e. the maximum of 365 days of the fine, since if one daily amount is a substitute for a day in prison, then in 365 days it is possible to serve the maximum fine amounting to 18,250 KM.[28]

2) Community Service

The community service is one of the most promising alternative sanctions, at least when it comes to BIH. It was not introduced in the criminal legislation until the recent reform in 2003.

The community service is provided by the Criminal Code[29], but it is not equally regulated in the entire territory of BIH. The arrangements which differ are those in the CCRS[17], and they will be covered separately.

The community service sanction can be imposed on an accused only if he or she agrees to it and in two cases, when certain conditions have been met, as follows:

- if a prison sentence of not longer than six months has been imposed on the accused,
- if the imposed fine is substituted by a prison sentence, which in turn is substituted by the community service.

The main goal of imposing penal sanctions is clearly defined by the Code. Likewise, each sanction has its own purpose. In this regard, one of the conditions for imposing this sanction is that the court should, taking into account all the circumstances which determine the type and measure of punishment, consider the following:

- that the accused has agreed to receive this sanction, i.e. substitution for the prison sentence;

- that the court should decide on the substitution of the sanction at the same time when imposing it;
- that the enforcement of the prison sentence is not absolutely necessary to achieve the purpose of punishment;
- that suspended sentence would not be sufficient to achieve the general purpose of penal sanctions.

The community service sanction can be imposed in the duration of 10 to 60 working days. The duration of this sanction has to be proportional to the prison sentence imposed. This arrangement gives the court the option to decide, at its own discretion, which time period is proportional to the prison sentence imposed. However, considering the fact that the person convicted to the community service can work for 60 days at most, it can be concluded that the ratio would be 1:10, i.e. 10 days of imprisonment would be substituted by one day of the community service. Then, the following question can be raised: if the penal framework for imposing the prison sentence ranges from 30 days to 20 years, by how many working days will the imposed prison sentence to 40 days be substituted, given the fact that the minimum number of working days that can be imposed on the convicted person amounts to 10?

The Criminal Code of the RS, however, provides for a substantially different definition of the duration of the sanction, compared with other Criminal Codes in BiH. Namely, the CCRS[17], in Article 34, paragraph 4 reads: "The community service shall be determined in such duration as proportional to the imposed prison sentence. This duration cannot be shorter than one month or longer than the imposed prison sentence" The fact is that there is a great difference between the arrangements provided in the CCRS and other Criminal Codes in BiH. Thus, in the Republika Srpska, the convicted person, who received a prison sentence of 4 months, subsequently substituted by community service, will serve the community service for the same number of days/hours he or she would serve in a prison facility. On the other hand, a convicted person who had the same prison sentence substituted by an alternative sanction, imposed by the BiH Court, a court in the FBIH or BDBIH, will spend one tenth that time in community service. The obvious inconsistency in the legislation raises the question of which arrangement is the proper one, and in what direction should the above-mentioned provision be amended?

The community service sanction has to be executed within the period of not shorter than one month and not longer than one year. The Criminal Code of the RS fails to specify the execution periods for this sanction, therefore it is

assumed that general rules on the execution of sanctions / statute of limitations are applied, Articles 113, 114, 115, or that this issue is regulated by the Book of Rules on the method of executing the community service sanction.

While considering the number of days that this sanction will last, i.e. the time period in which it has to be executed, the court takes into account the duration of the prison sentence imposed, the perpetrator's circumstances, situation and employment.

When imposing this sanction by a final judicial decision, i.e. substituting the imposed prison sentence by the community service, the court defines its duration, i.e. the time period in which it has to be executed. Therefore, if it has not been executed within the specified time period, or if the convicted person has carried out only a part of the sanction imposed, the court will pass a decision on the enforcement of the prison sentence for such a time period as proportional to the remainder of the community service.

This alternative sanction has not been applied in practice so far. The reason for that is simple, but not justified. We still do not have the legislation regulating the execution of this sanction, namely, the respective provisions in the Law on Execution of Criminal Sanctions. Implementing regulations are also still lacking. However, the situation at the state level is somewhat different. The Law on Execution of Criminal Sanctions, detention and Other Measures of BIH[30] has partly regulated the execution of community service, when imposed by the BiH Court[31]. However, when it comes to Entity Laws on Execution of Criminal Sanctions, or the Law on Execution of Criminal Sanctions of BDBIH, these provisions are still not in place.

This Law regulates particular issues[32] which, *inter alia*, apply to potential employers or legal entities with which the convicted persons could serve the community service. The list of such potential employers is not short, on the contrary, it could be said that the selection of the employers is wide. Thus, a convicted person could serve at a public authority, an organisation, institution or any other legal or physical person. Each of the abovementioned employers is obliged to cooperate with the Ministry of Justice with respect to the execution of the community service at the Ministry's request.

The mutual rights and obligations between the employees and convicted persons are regulated by the contracts they conclude with the Ministry of Justice. On the other hand, the work-related issues like working hours, daily

and weekly breaks, and the use of occupational safety equipment are governed by general regulations, i.e. the rules provided by the Labour Act.

This kind of community service is unpaid and non-profit, and the costs of the execution are in no case borne by the convicted person.

The community service is in principle executed in the place of permanent or temporary residence of the convicted person. When a community service sanction is imposed on a convicted person, the placement to a work place with an employer is made by the Ministry of Justice of BiH by a decision on the place of work of the convicted person, issued within eight days upon receipt of the final and enforceable judgement. The convicted person will thus, depending on the possibilities available, be placed to work according to his or her health condition, professional skills and knowledge acquired. The Book of Rules on the types and conditions of community service, issued by the Minister of Justice, will precisely define the specific jobs which the convicted persons will do. The commencement of the service, as well as its schedule will also be determined by a separate decision by the Ministry of Justice.

3) Suspended Sentence

The suspended sentence and court reprimand are so-called cautionary measures, but at the same time they are independent sanctions imposed on perpetrators under certain conditions specified by the law. In the criminal sanctions system in Bosnia and Herzegovina, there are certain differences in this regard. Namely, the CCBIH and CCBDBIH[17] provide only the suspended sentence as the only cautionary measure, while the CCFBIH and CCRS[17] envisage the court reprimand, in addition to the suspended sentence.

According to the CCBIH[33,17], the suspended sentence is a separate sanction, the purpose of which is to caution the perpetrator of a criminal offence, by a threat of punishment, that if, during a specified probation period[34], determined by the court and ranging from 1 to 5 years, he or she commits another criminal offence or fails to fulfil a specific obligation, the suspended sentence will be revoked and the sentence imposed may be enforceable; in other words, that he or she will be punished for that criminal offence, but also for the offence for which he or she has received the suspended sentence. The idea is to achieve the purpose of sanctioning without actually enforcing the sentence. In this sense, the suspended sentence is a substitute for punishment. However, it does not represent conditional stay of execution of the sentence imposed, since it only determines the punishment, rather than

imposing it; thus its independence is undisputed. This is a sanction of non-repressive character; its purpose is achieved by removing the circumstances which brought about the commission of a criminal offence in order to prevent re-offending.

The suspended sentence is imposed by a verdict, while the above-mentioned sentence is only determined. Although the sentence is only determined rather than imposed, the person receiving the suspended sentence is considered a convicted person.[35] (Babić, Filipović, Marković, and Rajić 2005).

In deciding whether to impose a suspended sentence or not, the court takes into account the circumstances related to the perpetrator's personality, the fact whether the purpose of sanctioning - general and special prevention - can be achieved by that sanction, and whether this would be in the interest of the victim of the criminal offence.

Conditions under which the suspended sentence may be imposed

With respect to the fact that imposing this sanction substitutes the punishment, general rules on meting out are applied in determining the type and measure of punishment, taking into account the provisions regarding the commutation of sentence.

The general condition for imposing the suspended sentence is that a prison sentence of less than 2 years[36] or a fine has been established for that offence or offences. With respect to the duration of the prescribed prison sentence for the offence, there are certain derogations.[37] Primarily, this concerns the perpetrators of criminal offences for which a prison sentence of 10 years or more can be imposed. It is possible to impose a suspended sentence on the perpetrators of such offences, but only provided that, by applying the provisions on the commutation of the sentence the perpetrator is sentenced to imprisonment for less than 2 years. The next restriction is related to criminal offences for which a prison sentence of 3 years or more can be imposed if, by applying the provisions on the commutation of sentence, the prison sentence of less than 1 year cannot be imposed. However, in this case there is an exception whereby the sentence may be commuted without limitation if in a specific case there are circumstances under which a certain person could be released from punishment.

The suspended sentence can always be imposed in cases when a prison sentence or a fine has been imposed as a principal or a subsidiary sanction.

Along with the suspended sentence, any of the security measures can be imposed; they are enforced after the verdict has become final and binding, irrespective of what happens with the suspended sentence.

Obligations with respect to the Suspended Sentence

In addition to the suspended sentence, the court may impose on the perpetrator certain obligations which he or she must fulfil during the probation period. These obligations may include the following:

- to restitute the gain acquired by the commission of the criminal offence;
- to compensate for the damage incurred by the commission of the criminal offence;
- to fulfil other obligations provided by the BiH criminal legislation.

The last group of obligations, which the court may impose on the perpetrator of a criminal offence along with the suspended sentence, is broadly set. However, in terms of the BiH Criminal Code, this implies security measures.

The condition for any of the above-mentioned additional obligations to be imposed along with the suspended sentence is that the verdict pronouncing the convicted person guilty imposes the measure of forfeiture of the property gain acquired by the commission of the criminal offence, or the measure of the compensation for the damage incurred by the criminal offence, or a security measure.

Revocation of the suspended sentence

The court may revoke the suspended sentence in the following cases:

- If the convicted person under the suspended sentence commits another criminal offence during the probation period;
- If, during the probation period, it is found that he or she had committed a criminal offence before receiving the suspended sentence;
- If, during the probation period, he or she fails to fulfil the obligation imposed.

In all three cases above, the court has several options, however under certain conditions. The first is to impose a suspended sentence for the new offence, or to impose a sentence for the new offence without revoking the previously imposed suspended sentence, or to revoke the previously imposed suspended sentence and impose a compound sentence for both criminal offences.

When, during the probation period, the convicted person under a suspended sentence has committed another criminal offence or more, the court may act in two ways with respect to the severity of the offence. It shall revoke the suspended sentence and impose a compound prison sentence for the previously committed and for the new criminal offence, if for the new offence or offences a prison sentence of 2 years or more is imposed.

However, if a prison sentence of less than 2 years or a fine is imposed for the new offence or offences, the court may revoke the suspended sentence, considering all the circumstances related to the perpetrator's personality, the offence or offences committed, their significance and motives behind them, and impose a compound sentence by applying the rules on coincident crimes. The court must revoke the suspended sentence if a prison sentence of more than 2 years is established for both the previous and the new criminal offence or offences.

The other option available to the court is not to revoke the suspended sentence, to impose a suspended sentence for the new offence or offences and, applying the rules for meting out penalties for coincident crimes, to specify a new, compound probation period, or to impose a specified sentence for the new offence or offences. In this case, the convicted person is committed to imprisonment and the time spent in prison is not credited against the probation period.

In the case when, after imposing the suspended sentence, it is found that the convicted person under the suspended sentence had committed a criminal offence or offences before receiving the suspended sentence, the court may act in one of the three above-mentioned ways.

If, during the probation period[38], the convicted person fails to meet a specific obligation, the court will initiate, *ex officio* or at the request of the prosecutor, the procedure to revoke the suspended sentence[39]. Under this procedure and at a hearing attended by the convicted person, the injured and the prosecutor, the court primarily establishes whether the convicted person has objectively been able to meet the obligation imposed on him or her. The court's decision depends on the facts established within the procedure to revoke the suspended sentence. In any case, the court may act in several ways: revoke the suspended sentence and pass a verdict whereby the specified sentence is enforced, only if satisfied that the convicted person is able to meet that obligation. However, the court does not have to revoke the suspended sentence, it may alter the decision as to the manner

of meeting the obligation (Sijerčić-Čolić, Hadžiomerović, Jurčević, Kaurinović, Simović, 2005: 955), thereby granting the convicted person an extended time period to meet the obligation within the probation period, substituting the obligation by another one, or releasing him or her from meeting the obligation absolutely.

There is another possibility - that the convicted person commits another criminal offence during the probation period, or fails to meet the specific obligation in the specified period within the probation period, which is established by a verdict not until that time period has lapsed.[40] In such cases, the suspended sentence can be revoked not later than within one year from the commencement of the probation (Petrović, Jovašević, 2005:230).

The decision to revoke the suspended sentence, or to extend the time period, or to substitute the obligation by another, or to release the person from a specific obligation, is made by the court which has adjudicated the case in the first instance in the form of a verdict.

Suspended Sentence with Protective Supervision Order

A suspended sentence with a protective supervision order is a form of the suspended sentence. It is, therefore, not a sanction independent of the suspended sentence. Therefore, the same conditions required to impose the suspended sentence without protective supervision order have to be fulfilled for it to be imposed. However, a suspended sentence with protective supervision order has a specific *raison d'être*. It is intended for the persons whose personal circumstances and habits, as well as family and social situation may encourage them to re-offend, and for whom it is, therefore, unlikely to expect that only caution, along with a threat of punishment, will be sufficient to prevent re-offending and ensure their social re-integration; thus the persons who require special assistance and protection in order to achieve this purpose (Babić, Filipović, Marković, Rajić 2005:322). Therefore, the protective supervision includes all assistance, care, supervision and protection measures. The protective supervision may be ordered for a period from 6 months to 2 years, within the probation period.

Types of Protective Supervision

In accordance with the above mentioned aims and the purpose of the protective supervision measures, a range of their various types is available. Although the legislator entitled Article 66 "the content of the protective supervision", and the first paragraph calles these measures "obligations", it is quite clear, notwithstanding such wording, what these measures imply. The-

se measures provide for the convicted person to, or to put it better, require him or her to do as follows:

- to be treated in an appropriate institution;
- to refrain from the use of alcohol or narcotics;
- to attend specified psychiatric, psychological or other counselling centres and act upon their advice;
- to be trained for a profession;
- to accept employment which is appropriate to his or her qualifications and abilities;
- to dispose of his or her salary and other income or property in a proper way and in accordance with matrimonial and family obligations.

Taking into account all above-mentioned circumstances: that the criminal offence has resulted from some unfavourable circumstances related to his or her personality, or family or social situation, the court will order one or more measures i.e. obligations, if it considers that such treatment may make him or her not re-offend in future. The execution of these measures is constantly supervised by a specified authority, which is required to report to the court on the results of execution. The court is required to specify precisely in its verdict the content of such a measure and specific goals to be achieved by the measure or measures.

Since the convicted person is required to meet certain obligations, failure to do so makes him or her suffer the consequences. If the convicted person fails to meet his or her obligations, the court has several options: to caution him or her, to substitute the previous obligation by another, or to extend the duration of the protective supervision within the probation period, or to revoke the suspended sentence.

On the other hand, if during the execution of the protective supervision, the court establishes that the purpose for which it was imposed has been achieved, it may terminate the protective supervision before the specified time period has lapsed. Although the code does not explicitly provide the substitution, during the successful execution of the protective supervision, in case there are clear assumptions that the purpose of supervision would be better achieved, the court may substitute the imposed protective supervision measure by another one. There is an opinion that such action by the court would not be unlawful since such a possibility is foreseen in the case when the convicted person fails to meet his or her obligations under the protective supervision, and therefore the main purpose of such measures would be better achieved.

Execution of Protective Supervision Measures

The protective supervision measures imposed by the Court of BIH are executed under the provisions of the Law on Execution of Criminal Sanctions, Detention and Other Measures of BIH[41].

The purpose for the execution of the protective supervision measures is to provide assistance, care, supervision and protection during parole and thus help the criminal perpetrators to re-settle in the community.

The protective supervision measure is executed by the social welfare authority with jurisdiction at the place of temporary or permanent residence of the criminal perpetrator.

Unless otherwise provided by the law, the costs of the execution of the protective supervision are borne by the municipality at the territory of which the criminal perpetrator had temporary or permanent residence at the time when these measures were imposed. The municipality will be provided with adequate financial and other resources for the execution of measures.

In addition to the enforceable verdict, the Criminal Division of the Court is required to submit to the competent municipal authority all relevant information on the personality of the criminal perpetrator obtained during the proceedings, notably medical documents, and findings, and opinions of expert witnesses.

On receipt of the enforceable verdict, information and documents, the competent municipal authority will take the necessary action, depending on the type of the protective supervision measure, in order to establish cooperation with an appropriate health-care institution, psychological counselling centre or Employment Agency, or other institutions and organisations if necessary.

Within 15 days following receipt of the enforceable verdict and the information and documents referred to in paragraph 1 of this Article, the competent municipal social welfare authority is required to inform the criminal perpetrator receiving the protective supervision measure, of action taken and instruct him or her on his or her obligations during the effect of the protective supervision measure.

The competent municipal social welfare authority will, depending on the type of the protective supervision measure, refer the criminal perpetrator to an appropriate health-care institution, psychological counselling centre, another institution or organisation and inform him or her that he or she is required

to comply with the advice and instructions received, as well as to visit the municipal social welfare centre as instructed.

During the execution of the protective supervisions measures, the competent municipal social welfare authority will establish the necessary cooperation with the family of the criminal perpetrator aiming to sort out his or her family circumstances.

The competent municipal social welfare authority is required to provide information on the results of the execution of the protective supervision measure at least every six months or as requested by the Criminal Division of the Court. Should the criminal perpetrator fail to accept or refuse the execution of the protective supervision measure, the municipal social welfare authority is required to inform the Criminal Division of the Court accordingly. If the municipal social welfare authority considers, during the execution of the protective supervision, that its purpose has been achieved, it is required to inform the Criminal Division of the Court accordingly.

As regards the provisions on the execution of the protective supervision in the Entity laws, it can be said that they are very similar to those in the BiH Law on Execution of Criminal Sanctions, Detention and Other Measures[17]. Only the RS Law on Execution of Criminal Sanctions, Detention and Other Measures provides that the social welfare authority should, upon admission of the convicted person, establish the so-called work plan for the execution of the protective supervision. This provision is ambitious, but even the Law itself does not specify the content of the work plan or the limits or consequences of derogation.

4) Court Reprimand[42]

Court reprimand is an independent criminal sanction, which is issued to the perpetrators of mainly minor criminal offences, and which does not have a repressive, but rather a rebuke-warning nature, cautioning them not to commit criminal offences in future unless ready to be punished. The main purpose of this sanction is, therefore, to caution the criminal perpetrator if in that way the general purpose of sanctioning can be achieved without punishing these persons.

For the court reprimand to be issued, certain conditions have to be met. These are primarily the criteria used in considering whether the court reprimand can be issued to a perpetrator.

- *The severity of the criminal offence* committed is one of the primary criteria for issuing the court reprimand. Thus, a court reprimand may be issued to the perpetrator of the criminal offence for which the law prescribes a prison sentence of less than one year or a fine, but which has been committed under such mitigating circumstances which render it particularly minor. In case of a criminal offence punishable by less than 3 years of imprisonment which meets the above-mentioned conditions and the specific conditions provided for the particular criminal offences, a court reprimand may be issued only if the Law explicitly provides for the possibility of issuing the court reprimand for that specific criminal offence.
- The next group of conditions is related to the personality of the criminal perpetrator, his or her earlier life, his or her conduct after committing the criminal offence, the degree of criminal liability, etc**.** Here, the perpetrator's specific attitude to the injured party and to the compensation for the damage incurred by the criminal offence is required, if the purpose of the sanction can thus be achieved.
- The court reprimand may be issued for coincident crimes, but only if the court reprimand can be issued separately for each individual offence, i.e. if the above-mentioned conditions have been met for each offence. However, if the court reprimand cannot be issued for only one offence, irrespective of the fact that it can be done for the other offence or offences, this condition is deemed unfulfilled and, therefore, the court reprimand cannot be issued for such coincident crimes.

There are, of course, situations in which the court reprimand cannot be issued; it cannot be issued to juveniles or to military persons regarding criminal offences against the armed forces of the FBIH or the RS.

A court reprimand implies conviction, therefore the criminal perpetrator who receives the court reprimand is considered as being convicted.

Situation in BIH Practice

Fine

The fine is one of the most important alternative sanctions in BiH; its effects are by no means inconsiderate, but taking into account the fact that it is the only sanction which adds to the state revenues, its significance is undoubtedly even greater.

The review of the situation in BiH practice regarding the imposition and execution of fines will take into account the number of fines imposed according to their amounts. The exact number of the fines executed will not be mentioned because we have not been able to obtain this information. However, the information obtained by talking to competent persons who have, one way or another, got an insight into the situation regarding the execution of fines will help us form a comprehensive picture on the situation regarding fines in BiH.

Seldom in the FBIH[43] the percentage of the fines actually executed is very good; it happens seldom, maybe once or twice a year, that it is converted to a prison sentence.[44]

It is very important to note a peculiarity regarding the fines. The latest amendments to the Law on Pardons of the FBIH abolished the possibility of imposing a suspended sentence, instead of which a fine is imposed. The fine has mostly not been imposed, but rather converted into a prison sentence, which has ultimately resulted in the situation in which the person receives a longer prison sentence by the conversion and spends more time in prison than would be the case if the pardon was not granted at all.

At the Municipal Court in Sarajevo[45], fines are imposed very often, particularly in the procedure of issuing the warrant for the pronouncement of sentence; they range from 150.00 to 500.00 KM. It should also be noted that the fines are often imposed for the possession of narcotics, ranging from 1,000.00 to 1,500.00 KM.

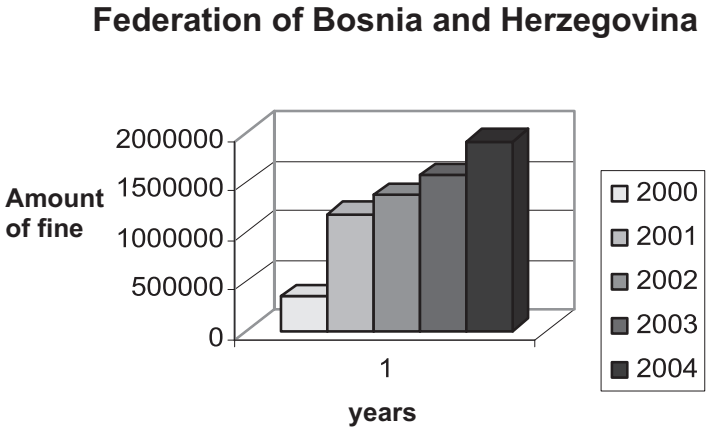
The fine collection rate, i.e. execution is almost 100%, and the cases of the substitution of the fine by a prison sentence are very rare.

The situation in other Cantons or Municipalities is similar, as confirmed by the interviews held with the Cantonal Ministers of Justice.

Table 1 below provides a survey of the fine collection in the Federation of BiH over the last five years (2000-2004).

Federation of Bosnia and Herzegovina					
Period	2000	2001	2002	2003	2004
SANCTION	Number	Number	Number	Number	Number
Fine					
Over 1000 KM (average 26.000 KM)	26.000 x 11 286.000 KM	936.000KM	1.144000KM	1.378000KM	1.690000KM
from 500,1-1000 KM	750KM x 23 17.250 KM	69.000 KM	66.750KM	56.250KM	83.250KM
from 250,1 to 500 KM	375KM x 104 = 39.000KM	123.375KM	114.750KM	100.875KM	93.750KM
from 100,1 to 250 KM	175KM x 95 = 16.625KM	48.825KM	36.050KM	25.900KM	36.225KM
from 50,1 to 100 KM	75,00KM x 3= 225,oo KM	225,00 KM	150,00 KM	225,00 KM	1.275 KM
up to 50 KM	50,00 x 11 550 KM	----------	----------	----------	----------
Total revenue for that period	344.125 KM	1.177425 KM	1.361700 KM	1.561250 KM	1.904500 KM
TOTAL REVENUE FROM FINES: 6,339,000.00 KM					

Or graphically presented:

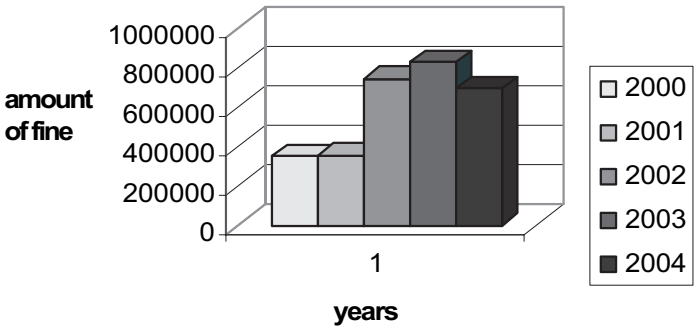


It is undoubtedly quite clear that the number of fines imposed over the last 5 years has proportionately risen, and taking into account the undisputed fact that the collection rate has been very good, almost 100%, then there is no doubt that the revenue from fines has increased proportionately.

The Table 2 below provides a survey of revenue from the fines collected in Brčko District of BiH over the last five years (2000-2004).

Table 2

Brčko District of Bosnia and Herzegovina					
period	2000	2001	2002	2003	2004
SANCTION	No.	No.	No.	No.	No.
Fine					
Over 1000 KM	26.000KMx13 338.000 KM	338.000KM	728.000KM	806.000KM	676.000KM
From 500,1-1000 KM	750KM x 14 10.500 KM	15.750KM	9.750KM	15.750KM	14.250KM
From 250,1 to 500 KM	375KM x 5 1.875KM	2.625 KM	4.500KM	3.750KM	1.875KM
From 100,1 to 250 KM	175,00KM x 0 = 0	----------	----------	175,00KM	350,00KM
from 50,1 to 100 KM	50,00KM x 0 =0	----------	100,00KM	50,00KM	----------
up to 50 KM	----------	----------	----------	----------	----------
Total revenue for that period	350.375KM	356.375KM	742.350KM	825.725KM	692.475KM
TOTAL REVENUE FROM FINES: 2.967300 KM					



If we look at the curve showing the number of fines imposed over the last five years, we can see that it suddenly rose in 2002, while in the previous two years (2000, 2001), it was about the same. However, in 2003, there was a slight increase in the number of fines imposed, but in 2004 it dropped down below the level recorded in 2002.

The causes of such disproportional variations should be sought primarily in the penal policy of courts and in the economic developments in the BDBIH, as well as in the entire BIH, though it would be very interesting to

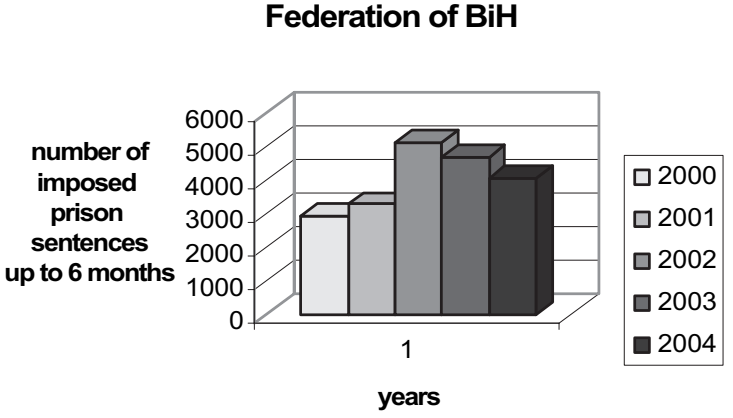
make a survey of the situation regarding the number of prison sentences imposed for more serious criminal offences over the same period. This might provide an answer as to of why the number of minor or moderately serious criminal offences is disproportional in a rather short period of time.

Community Service

As stated earlier, community service is one of the most promising criminal sanctions in BIH. However, the courts in BIH have not yet started the practice of imposing and executing it. For that reason, we shall try, applying a specific methodology, to make a survey of the costs of execution of prison sentences of less than 6 months, i.e. examine the possibility of reducing them, namely saving budgetary funds. The effects, in terms of special prevention, cannot be discussed since we still do not have the respective experience.

Given the fact that prison overcrowding is one of major problems in BiH, the information obtained will be very important with respect to reducing the number of convicted persons in prison facilities.

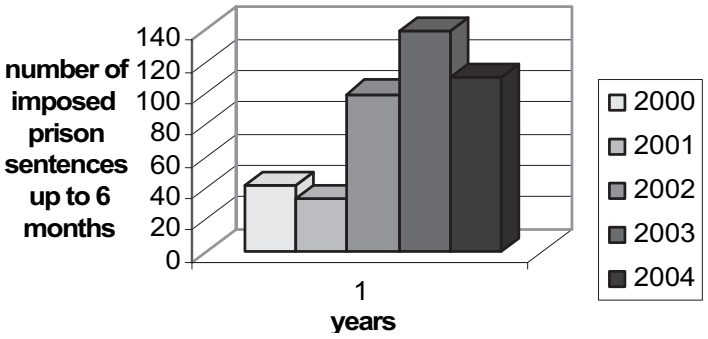
A Survey of the Number of Prison Sentences Imposed in Period 2000 - 2004 in FBIH



The graph above shows that the number of prison sentences of less than 6 months varied; in period 2000 - 2002 it had an upward trend, while in period 2002 - 2004, it had a downward one. One thing is certain, that the number of convicted persons in prisons has been constantly growing, thereby ever increasing the overcrowding of prison facilities.

A Survey of the Number of Prison Sentences of less than 6 Months Imposed in Period 2000 - 2004 in BDBIH

Brčko District of BIH



Unlike the FBIH, the situation in the BDBIH is different. A sudden increase in the number of prison sentences of less than 6 months in 2002 corresponds with the increase in the number of fines imposed in the same period. However, unlike the FBIH, the number of prison sentences imposed in 2003 was increased, but had a downward trend as early as in the following year, 2004. The causes of such ups and downs will not be discussed on this occasion, but it would be very interesting to tackle this phenomenon.

Before presenting in a tabular form the ratio of the existing and possible average biennial costs in BIH, we need to stress that, in Zenica prison, the current daily costs per prisoner amount to 17 KM. This includes the costs of accommodation, food, personal hygiene materials, heating, electricity, water, clothing, as well as the costs of health-care services (examinations, treatment, medicines, etc.), training costs, and the like. However, the costs already included in the above-mentioned amount should be noted; these are the costs for the compensation for work, paid from the Cantonal budget. Of the total of 650 prisoners - an average number of them kept in the Zenica prison, around 450 of them work. 350 of them work in the prison's economic units which bear the costs of the compensation for work (salaries), while the compensation for the remaining 100 prisoners is provided from the Cantonal budget. This clearly shows that the burden on the cantonal budget when it comes to compensating the prisoners' work is comparatively light. However, if the salaries of those employed at the Zenica prison are included, which by all means represent the regular budgetary expense, then the daily amount comes up to 35 KM!

Since this alternative sanction has been in place in BiH legislation since 2003, in calculating the possible costs of its execution, i.e. possible savings, we shall take the period of 2003 and 2004.

Table 1. A Survey of the Average Cost of Executing Prison Sentence of less than 6 Months (if the prisoners stay in prison for 90 days on average)

	Federation of BIH	Brčko District of BIH
Total number of prisoners serving less than 6 months in period 2000-2004	8750	250
Number of verdicts daily	8750 / 730 days = 12 verdicts	250 / 730 = 0,35 verdicts
Average total number of days spent in prison	12 x 90 days = 1080 days	0,35 x 90 days= 31,5 days
Average cost of executing prison sentences for less than 6 months	1080 days x 35 KM = 37.300 KM	31,5 days x 35KM = 2.835 KM

Table 2: A Survey of Anticipated Costs of Executing Community Service Sanction

	Federation of BIH	Brčko District of BIH
Average total number of days or months spent in prison	540 days equals 18 months	31.5 days equals 1.05 months
Average cost of executing the community service	18 months x 1,350KM = 24,300KM	1.05 months x 180 KM = 189 KM
Average/Anticipated Costs Ratio	37,300KM -24,300KM = 13,000KM	2,835 KM – 189 KM = 2,646 KM

If we were to accept the model according to which the activities of the execution of the community service alternative sanction would be carried out by a commissioner,[46] then, applying the calculation provided above, the costs for two years in the Federation would be lower by 13,000 KM for the FBIH, and by 2,464 Km for the BDBIH, compared with the current costs for executing prison sentences for less than 6 months. Each Entity and the BDBIH would, of course, have to make an estimate of the number of commissioners needed to execute this alternative sanction in the most effective way, taking into account the likely number of convicted persons to receive this alternative sanction.

We shall take this opportunity to present the data obtained through a survey conducted with DFID in 2004 in the territory of Sarajevo and Zenica-Doboj Cantons, showing the actual sentiment among potential employers with which the convicted persons could carry out the community service.

Legal persons pursuing utility, public, environmental and humanitarian activities, i.e. the activities for the benefit of the community, are potential employers, namely the legal persons with which the convicted persons could carry out their community service[47]. Under the BIH Law on Execution of Criminal Sanctions, Detention and Other Measures, the scope of such employers has been extended to physical persons and public authorities; this will not be commented on at this point. The survey covered interviews with five potential employers. Most of the employers were in principle ready to take the convicted persons for work, but expressed that they would want to sign a specific contract, covering the decription of job and type of work, with the Ministries of Justice or other authorities in charge of execution. The Table 1 below provides a survey of jobs with specific potential emoployers interviewed during the survey.

Table 1: A Survey of Jobs and Possible Specific Requirements of the Respective Employers

Employers	Types of Jobs	Specific Requirements
Public Utility "PARK"	Works on maintaining, building and developing public green areas	
Children's Home Bjelave	Ancillary works assisting the Home's superintendent. Works inside the building, and particularly outside.	Due to the specific inmate population, there are special requirements regarding: - the type of criminal offence committed, - the number of convicted persons to work at the same time.1
Home for Social and Health care of the Disabled and Other Persons	Ancillary works assisting the Home's superintendent, work in the boiler room, kitchen, laundry, outside the Home: maintaining and developing green areas, and the like.	Due to the specific inmate population, there are special requirements regarding: - the type of criminal offence committed, - the number of convicted persons to work at the same time.2
Public Utility "POKOP"	Seasonal work (May-October) on cleaning and maintaining cemeteries.	Due to the specific skills required for work and no need for workforce throughout the year, convicted persons can be engaged only in public works.
Public Utility "TOPLANE"	Ancillary works during the summer months on plant overhaul at the Repair and Maintenance Department	Due to the specific type of work and the need for additional workforce, convicted persons can be engaged only during the summer season.

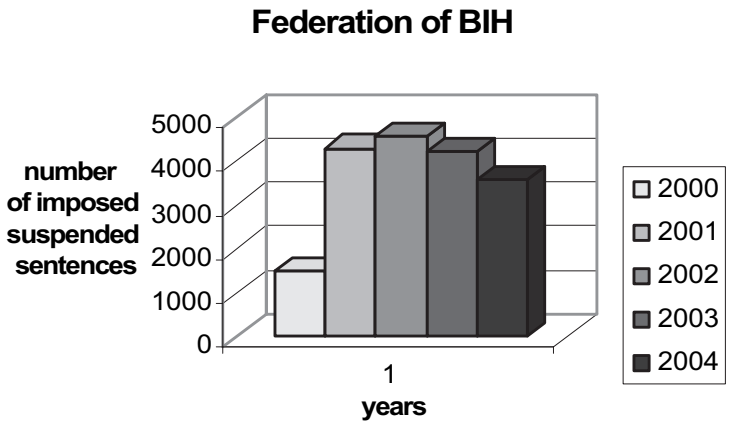
Suspended Sentence and Suspended Sentence with Protective Supervision

Judging according to its characteristics, this cautionary measure, as referred to in the Law, though treated as a criminal sanction, fully deserves to be called an independent alternative penal sanction. It is one of the alternative sanctions which have been most commonly used in practice.

It has to be admitted that the rate of imposition of suspended sentence[50] is high - almost 60% of all the sanctions imposed in municipal courts account for the suspended sentence. There are many reasons for this: the legal conditions are in place, and coupled with that come judicial discretion and the fact that perpetrators of such offences, i.e. the persons receiving suspended sentences are normally the persons who are not recidivists, but have a lot of mitigating circumstances accompanying their offences, and that this is one of the ways to unburden prisons, such a high rate at which they are imposed is fully justified.

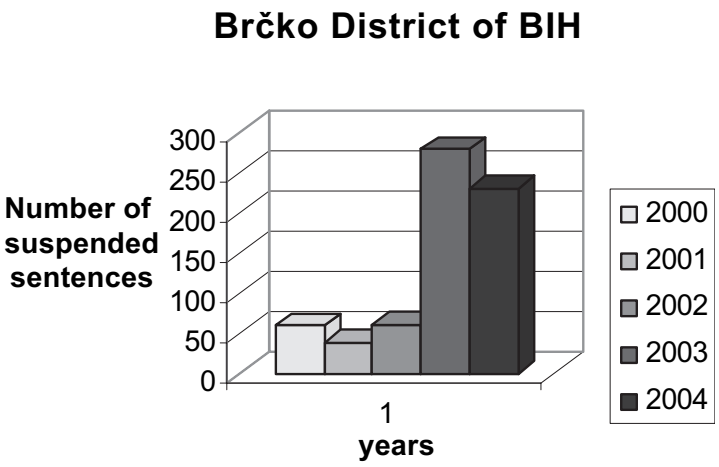
Although the Law provides for a possibility that after revoking the suspended sentence - in case the convicted person has committed another criminal offence during the probation period and the like - the court may have to impose the suspended sentence on a person again and repeatedly, one after another, still what happens in practice is that it occurs once or twice, which clearly demonstrates that the suspended sentence has failed to achieve its purpose.

The graphical presentation of the total number of suspended sentences imposed in period 2000-2004 in the FBiH confirms the accuracy of the above-stated information



The number of the suspended sentences imposed ranges from 1,500 to 4,600.

In Brčko District of BIH, the situation is rather interesting, as usual.



Namely, the number of suspended sentences imposed had not been very high until 2003. However, since 2003 the number of the suspended sentences imposed has increased by 70%, thus despite the fact that it has a slightly downward trend - given that the number of the prison sentences for less than 6 months was 50% less in the same period 2003 and 2004, it can still be said that the number of the suspended sentences imposed is high.

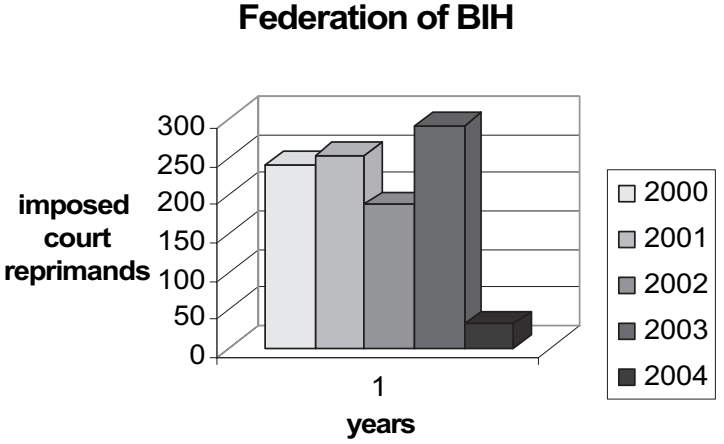
On the other hand, speaking about the suspended sentence with protective supervision, the situation differs considerably. According to Ms. Zahiragić, the suspended sentence with protective supervision order is imposed very seldom at the Municipal Court in Sarajevo, only two or three times a year. The situation in other Cantons in the FBiH is nothing different. One of the reasons is probably the government's inability to implement the adequate supervision of the convicted persons.

According to the statistics from the BDBiH, the suspended sentences with protective supervision orders account for as little as 10% of the total number of the suspended sentences imposed, which practically leads to the same conclusion.

Court Reprimand

With the latest BiH criminal legislation reform of 2003, the court reprimand was crossed out as a sanction from the CCBDBiH[17], and it was not incorporated in the CCBiH[17] at all. Considering the rate at which the court reprimand was imposed in practice by the courts in the BDBiH, the fact that it is no longer provided in the CCBDBiH[17] is not surprising. Namely, only 2 court reprimands were issued in the BDBiH over the past 5 years, both in 2003 and quite certainly before the new CCBDBiH[17] entered into force.

Speaking about the FBIH, the situation is not substantially different. The rate of the court reprimands issued is very low with a downward trend in 2004, as shown on the graph.



The number of court reprimands issued ranges from 31 to 291 - extremely few compared with the number of other sanctions imposed.

At the Municipal Court in Sarajevo, the court reprimand is very seldom issued in practice, some 20 - 30 times a year. The reason is the fact that the criminal offences for which the court reprimand may be issued are very rare in court practice, and on the other hand, it has failed to prove very effective.

Final Conclusions

If we present a total number of the sentences of over six months imprisonment, sentences of not longer than six months imprisonment, fine sen-

tences, suspended sentences and suspended sentences with protective supervision order, a total number of court reprimands and total number of other sanctions that have been pronounced within the period 2000-2004, and then we compare them, we will realize that sentences of over six months imprisonment constitute a small part of total sentences.

What does it mean, where all these existing problems come from, if only a small percentage of sanctions that have been pronounced accounts for sentence of imprisonment?

Although we have some problems, such as: overcrowded prisons, high costs of their maintenance, certain doubts regarding their security systems, bad conditions for execution of some security measures and several other problems regarding the execution of sentence of imprisonment, more often pronunciations of already existing alternative sanctions, better conditions for their enforcement, introduction of some other sanctions of this kind can be possible solutions of the above mentioned problems.

Alternative sanctions could be at least a temporary solution for the overcrowded conditions in penal institutions. The high expenses of imprisonment sentences would be decreased if sentences of not longer than six months of prison would be substituted by the civil service. Through measures of protective supervision order "cure from criminality" of special category of delinquents would be at least tried. A question of special significance is the effectiveness of the realization of the purpose of sanctions, which we can't claim in this case without additional analysis, but we can speak from the experience of other countries. Some other advantages of these sanctions would be revealed only by their realization.

In closing, what else can be said except that the choice of alternative criminal sanctions in the BiH criminal legislation is poor. The experiences of other countries have shown that a wider choice of alternative sanctions increases the possibility to influence the crime rate in a country in a non-repressive way, by applying quite novel principles which ensure a higher degree of humanisation and, hopefully, better results. [51]

[1] As regards the juvenile criminal perpetrators, the BiH criminal legislation provides for the following tripartite sanctions, i.e. measures: juvenile imprisonment sentence, educational measures, educational recommendations.

[2] The Fifth Congress was held in 1975, the Sixth in 1980, the Seventh in 1985, and the Eighth in 1990.

[3] This practice exists in the USA, Canada, Australia and the UK, and electronic surveillance (electronic bangle, etc.) is used as a means of special supervision. House arrest overnight, without electronic surveillance, is applied in criminal legislation of Brazil and Mexico. In European countries, it is considered that the use of electronic devices constitutes the violation of civil rights and freedoms.

[4] It is applied in Belgium, Italy, France, Ireland, Switzerland, and the Netherlands.

[5] France, Switzerland and the Netherlands

[6] Germany, Switzerland, the Netherlands, Portugal

[7] Turkey, Spain

[8] Switzerland, Germany, the United Kingdom

[9] Bosnia and Herzegovina is in the group of countries which have these type of alternative sanctions.

[10] This measure has the character of a security measure in the Criminal Codes across BiH, that it why we say that, at least when it comes to the Criminal Codes in BiH, some security measures belong to the alternative sanctions i.e. measures.

[11] France, Portugal, Germany, the United Kingdom, etc.

[12] This sanction is provided in the criminal legislation in Italy. It is pronounced if a prison sentence of less than 3 months is prescribed for that particular offence.

[13] The number of hours the convicted person is required to work ranges from the minimum of 8 hours, as provided by the Portugal's code, to the maximum of 240 hours, as provided in most European countries.

[14] In the Netherlands for example, it may be imposed in the course of the criminal proceedings, but also as a principal sanction or a subsidiary sanction along with probation.

[15] In the UK and Cyprus, there are two cases in which the release from punishment are provided: absolute release and the release along with an obligation or a promise. In France, the release from punishment can be granted under three conditions: perpetrator's rehabilitation, repairing the damage, and the cessation of existence of the consequences resulting from the offence.

[16] These are, one could say, some forms of the suspended sentence where the convicted person is found guilty, but for some reasons the sanction is not enforced. Rather there is a stay of execution with his or her consent. The UK and Sweden, for example, opt for this sanction for addicts; the court and the convicted person make an agreement on the stay of execution for a specific time period, e.g. one year, during which time the convicted person is required to undergo treatment.

[17] Due to the complex government structure of Bosnia and Herzegovina (two Entities and

Brčko District of BiH), all requests for reviewing and interpreting the applicable legal arrangements have been confronted with difficulties arising from the fact that there are different laws in force at different government levels. This is also the case with the laws in the field of criminal law. For the purpose of this paper, the arrangements from the *Criminal Code of BiH*, (hereinafter referred to as CCBIH) will be used, while the arrangements from the Entity Codes, the Criminal Code of the Federation of BiH (hereinafter referred to as CCFBIH); the Criminal Code of Republika Srpska (hereinafter referred to as CCRS), and the Criminal Code of Brčko District of BiH (hereinafter referred to as CCBDBIH), will be referred to only if differing from those in the Criminal Code of BiH.

[18] Article 41, paragraph 4 of the CCBIH

[19] There are 6 criminal offences in the CCFBIH for which the fine can be imposed in addition to the prison sentence. The situation is similar with the CCRS and CCBDBIH.

[20] Article 334 of CPCBIH.

[21] The CCRS sets the amount of 50 KM as the upper limit.

[22] The CCRS does not provide for such a possibility.

[23] Article 48 of the CCBIH

[24] Interest, fees, dividends, income from land, taxable and non-taxable income.

[25] In the Federation of BIH, this is the Federation Bureau of Statistics, in Republika Srpska it is the RS Bureau of Statistics, while in the Brčko District of BIH, it is the BDBIH Bureau of Statistics.

[26] Substitution of fines.

[27] For example, the fine amounting to 25,000 KM was imposed. The convicted person did not pay it within the specified time period, and it is substituted by a prison sentence, as follows: 25,000 KM/ 50 KM =500 days in prison. Knowing that the Code does not allow for the prison sentence substitute to be longer than one year, it clearly follows that 500 days – 365 days = 135 days, which means that the fine will be reduced by 135 days, amounting to 6,750 KM.

[28] As with any other sanction, the fine in its new form has certain advantages and disadvantages (How to determine the amount of fine for a perpetrator who does not have any income?; What about the respect of the principles of equality and the individualisation of sanctions in this case?; How can the purpose of the fine be achieved by substituting it?; Does the substitution change the nature and degree of repression on the convicted person?, and the like), which as mentioned earlier, will not be dealt with on this ocassion.

[29] Article 44 of the CCBIH, Article 43 of the CCFBIH, Article 34 of the CCRS, Article 44 of the CCBDBIH.

[30] "Official Gazette of BIH" No. 13/05

[31] There are 41 criminal offences in the CCBIH for which the community service can be imposed.

[32] Article 184, general provisions on the execution of the community service, and Article 185, placement in the community service.

[33] Chapter VIII – Suspended Sentence

[34] The probation period is the period of "effect" of the suspended sentence. It is determined by the court within the time period specified by the Code.

[35] Essentially, there are two systems under which the concept of the suspended sentence is regulated, namely, the so-called common law or the probation system, and European-continental (French-Belgian) system to which the system for imposing the sus-

pended sentence is closer. The key difference from the European-continental system is in that under this system, the perpetrator who has received the suspended sentence is not considered a convicted person, while as stated previously, under the provisions of the CCBIH such a person is considered as having had previous conviction.

[36] It should be particularly stressed that this concerns the duration of the established, rather than prescribed prison sentence.

[37] The CCRS does not provide for such derogations.

[38] There is an inconsistency here with respect to the time period in which the convicted person should meet the obligation. Namely, the question is whether this implies the entire probation period, which can be inferred from the provisions of Article 63, paragraph 1 of the CCBIH, or if is a specific time period, set by the court while imposing the obligation along with the suspended sentence, as derived from Article 60, paragraph 2 of the CC BIH, which is restricted by the fact that it must be within the probation period. Taking into account the opinion of Ljiljana Filipović, LL.M., presented in the Commentaries on the criminal legislation in BiH, as well as the opinion of Borislav Petrović, LL.D., senior lecturer, the relevant provision is that of Article 63, that the time period within which the obligation is to be met, if possible, is the specific period set by the court while imposing the suspended sentence and the specific obligation along with it, within the probation period.

[39] Article 400 of the CPC of BIH, Commentaries.

[40] Article 64 of the CCBIH

[41] VIII – EXECUTION OF PROTECTIVE SUPERVISION MEASURES IMPOSED ALONG WITH SUSPENDED SENTENCE, Articles 176- 183.

[42] Article 61 of the CCFBIH, Article 54 of the CCRS.

[43] An interview was held with Mr. Ahmo Elezović, the Federation Inspector for the execution of Criminal sanctions (July 2005). We wish to stress that another interview was held on the same topic with Mr. Nikola Kovačević, the RS Assistent Minister of Justice, who confirmed the above mentioned information for the RS.

[44] However, when it comes to minor offences, the situation is very different. Fines are seldom executed, therefore already overcrowded prisons are additionally burdened with this category of convicted persons. For example, the region of Bihać currently has 400 convicted persons who had their fines substituted by prison sentences. A number of them are still waiting to serve, actually some of them might never have their turn due to the statute of limitations.

[45] The interview was held with Ms Adisa Zahiragić (July 2005), the Presiding Judge of the Criminal Division, Municipal Court in Sarajevo.

[46] The commissioner is a person otherwise employed with the Ministry of Justice or an authority carrying out the activities within the jurisdiction of this Ministry, who receives a monthly salary supplement of 20% for that work, or if the average annual number of community service sanctions imposed is less than 50% of the average total number of sanctions imposed in the FBIH annualy, the salary supplement amounts to 10%, given that the net salary amounts to 900 KM, 20% of that is 180 KM, and 10% is 90KM). There are grounds for such an arrangement in the provisions of the BIH Law on Execution of Criminal Sanctions, Detention and Other Measures, however this Law fails to specify the person to carry out the activities on executing the community service sanction, but it explicitly stresses that this sanction shall be executed by the BiH Ministry of Justice.

[47] This definition has been taken from the Law on Execution of Protective Supervision and Community Service of the Republic of Croatia.

[48] Regarding the types of criminal offences, the employer expressed that it would not be desirable at all to have the perpetrators of the criminal offences of theft, drug-related crimes, or those related to violence. The number of convicted persons who could carry out the community service at the same time is 1 (one).

[49] Regarding the types of criminal offences, the employer expressed that it would not be desirable at all to have the perpetrators of the criminal offences of theft, drug-related crimes, or those related to violence. The number of convicted persons who could carry out the community service at the same time is 2 to 3.

[50] The interview was held with Ms Adisa Zahiragić (July 2005), the Presiding Judge of the Criminal Division, Municipal Court in Sarajevo.

[51] Answering the question of what the penal policy of the courts in the FBiH was like, Ms Zahiragić gave an interesting comment that "it is different, which is somewhat understandable given the fact that each case is unique by its own right, therefore it cannot be observed based only on the severity of the particular criminal offence".

References

KALMTHOUT, A., Dvostruko lice alternativnih kaznenih sankcija: iskustva zapadnoeuropskih zemalja, *Hrvatski ljetopis za kazneno pravo i praksu,* 1996, 1: 209-221.

BABIĆ, M., FILIPOVIĆ, Lj., MARKOVIĆ, I., Rajić, Z., *Komentari krivičnih/kaznenih zakona u BIH. knjiga I i II. Vijeće Evrope i Evropska komisija*, Sarajevo, 2005

BROWN, P.W., Probation Officer Burn Out - An Organisational Area, *Federal probation*, March, 1986, 4-7.

BUBIĆ, G., ĐUKIĆ, B., *Komentar zakona o izvršenju krivičnih sankcija s podzakonskim aktima i registrom pojmova Republike Srpske,* OSCE, Banja Luka, 1999

CERIĆ, H., (Ne)efikasnost kažnjavanja, *Penološka teorija i praksa*, Zenica, 2003, 2:30-32

HUSIĆ, Dž., NIKOLIĆ, R., Zakon o izvršenju krivičnih sankcija u Federaciji Bosne i Hercegovine sa komentarom i provedbenim propisima, Federalno ministarstvo pravde, Sarajevo, 2000

MIRVIĆ-PETROVIĆ, N., ĐORĐEVIĆ, Đ., *Moć i nemoć kazne*, Vojnoizdavački zavod, Beograd, 1998

MARKOVIĆ, I., Kritički osvrt na regulativu novih krivičnopravnih mjera (rad za opšte dobro na slobodi i novi model novčane kazne), *Pravni savjetnik*, Sarajevo, 2004, 7-8: 20-30

MLAĐENOVIĆ-KUPČEVIĆ, R., *Osnovi penologije*, Fakultet kriminalističkih nauka Sarajevo, Sarajevo, 2001

NOVOSELAC, P., *Opći dio kaznenog prava*, Zagreb, 2004

SIJERČIĆ-ČOLIĆ, H., HADŽIOMEROVIĆ, M., JURČEVIĆ, M., KAURINOVIĆ, D., SIMOVIĆ, M., *Komentari zakona o krivičnom/kaznenom postupku u BIH*, Vijeće Evrope i Evropska komisija, Sarajevo, 2005

SIJERČIĆ-ČOLIĆ, H., Alternativne mjere u krivičnom pravu FBIH: Novi tokovi u oblasti maloljetničkog prava, *Novi članovi u Krivičnom zakonu i Zakonu o krivičnom postupku FBIH,* Sarajevo, 1998, (neobjavljen)

CURRENT LEGAL SITUATION IN RESPECT TO ALTERNATIVE SANCTIONS AND MEASURES

Introduction

The intention to create conditions for the most effective execution of criminal sentences and for the development of methodology of work with sentenced offenders, for the purpose of as successful penological treatment and effective rehabilitation as possible, has resulted in attempts to implement treatment outside prisons which are traditionally the institutions in which criminal sentences are enforced.

Insufficient efficiency of institutional treatment (in view of a whole series of negative consequences - convicts' counterculture, prisonization, criminalization…) does not necessarily imply that the concept of rehabilitation - the fundamental principle of penology - is abandoned, but rather indicates the need to develop the treatment and conditions for its implementation (Mejovšek, 1988). Minimum-security prisons are indeed a major progress in penology; also, alternatives to the sentence of confinement should be developed since a considerable number of convicts who may serve their prison sentences in such prisons could also serve their sentences outside them (Brinc, 1987).

Alternative sentences, in broad terms, may be understood to mean all sentences which convicted offenders do not serve in prison. This covers a broad array - from fines, restitution to the victims and suspended sentences to relatively new community-based alternative sanctions. They include, for instance, a strengthened or protective guardianship, unpaid community service or restricted freedom, including an obligation to participate in the appropriate programs. It is important to stress here that physical punishment may also be an alternative to custodial sentences, which is not acceptable. The United States of America is carrying out an experiment with electronic supervision via wrist or ankle bracelets which emit signals. However, opinions about this alternative continue to be divided (Ajduković, Ajduković, 1991).

Probation was first developed in Massachusetts, the United States of America, when John Augustus, a Boston show cobbler, persuaded the Boston Police Court in 1841 to release an adult drunkard into his custody rather than sending him to prison. Three weeks later he brought him to the same court and

presented convincing evidence that the offender had rehabilitated, which was why the sentence was only symbolic (a 1 cent fine). Encouraged, Augustus continued the same practice (Uzelac, 2002). Unlike the United States and the United Kingdom, where the introduction of probation legislation was preceded by a rich probation experience, the process in continental Europe was the reverse of the US and UK practice (Stakić, 1980; Uzelac, 2002).

The reform of the Croatian criminal law system began in mid 1990s. It included changes to the criminal sanctions system. The reform resulted in a new Criminal Code of the Republic of Croatia which came into force on January 1, 1998, which, among other things, allows for new, alternative sanctions - suspended sentence with supervision and community service in lieu of a prison sentence of up to six months.

The imposition and enforcement of suspended sentence supervision orders was also stipulated in the previous laws - for instance, in the 1987 Criminal Code and the Act on Enforcement of Sentences imposed for criminal, economic and petty offences - but there was no enforcement because of, *inter alia*, the absence of implementing regulations necessary for enforcement, and the courts of law did not impose such orders.

The new Criminal Code of the Republic of Croatia, passed in 1998, introduced, in addition to the suspended sentence with supervision, which was defined by law but never implemented in practice, a community service in lieu of a prison sentence of up to six months. These sanctions are further elaborated in the Act on Enforcement of Supervision and Community Service (1999) and the relevant implementing regulations - the rulebooks. Before the Act was passed, practitioners from Social Work Centers were consulted about the enforcement of supervision from within the bounds of their responsibility, and the Act was harmonized with the European Rules on Community Sanctions and Measures, and Council of Europe's Recommendation R (92) 16.

Suspended Sentence

Suspended sentence is a criminal sanction which, as a measure of warning, consists of a sentence and a deadline by which the sentence will not be enforced under the conditions defined by law.

The court imposes it when it concludes that the purpose of sentencing may be achieved without enforcement of a sentence, and it pays attention to

the offender's attitude towards the damaged party and compensation for the damage caused by the offence.

A suspended sentence may be imposed on an offender who has committed an offence punishable by up to five years in prison and an offence punishable by up to ten years if the commutation of punishment provisions are applied.

The probationary term may not be shorter than one year nor longer than five years, and is imposed for a full year/years.

When a prison sentence and a fine are imposed under the Code, the sentencing court may decide to suspend the enforcement of the prison sentence only.

When imposing a suspended sentence, the court may define the following obligations for the offenders: compensation of the damage caused by the offence; return of gain which he/she obtained; or any other obligation stipulated by law. The deadline for these obligations is defined by the court within a probationary term also defined by the court.

The court will revoke a suspended sentence and order enforcement of a prison sentence if the convicted offender has committed, within a probationary term, one or more criminal offences punishable by up to two years in prison or a severer sentence.

The court may revoke a suspended sentence and order enforcement of a prison sentence if the convicted person has committed, within a probationary term, one or more criminal offences punishable by less than two years in prison, or a fine.

A suspended sentence may not be revoked after one year has passed from the expiration of the probationary term.

Suspended Sentence with Supervision

When conditions for a suspended sentence exist, but if the court concludes, on the basis of the circumstances in which an offender lives and his or her personality, that the offender needs help, protection and supervision for the purpose of preventing him or her from re-offending during a probationary term, the court may order a suspended sentence with supervision.

Supervision is carried out by officers of a national authority in charge of enforcement of criminal sentences.

Supervision may last throughout the probationary term and may be revoked by a court decision earlier if the need for assistance, protection and supervision no longer exists.

In enforcing a suspended sentence with supervision, the court may order the offender to carry out one or more obligations during the probation period, as follows:

1) Training for a certain profession he or she selects with professional assistance by the supervision authority;

2) Acceptance of community service which corresponds to his or her qualifications, level of training and real ability to perform the service advised to him or her and made possible by the supervision authority;

3) Management of his/her entire income in accordance with the needs of his or her dependents he or she is obliged to provide for under the law and under advice provided by the supervision authority;

4) Medical treatment which is necessary for the purpose of eliminating physical or mental handicaps which may encourage re-offending;

5) Alcohol and drug abuse treatment in a health institution or a treatment center;

6) Participation in psycho-social therapy in specialized institutions within the responsible national bodies for the purpose of removing violent forms of behavior;

7) Restraint from certain locations, bars and parties which may encourage and provide an opportunity for re-offending;

8) Regular reporting to the supervision authority for the purpose of informing the authority about the circumstances which may encourage re-offending.

The provisions of the Code which define circumstances under which a suspended sentence is revoked also apply fully to the revoking of a suspended

sentence with supervision; as for special obligations relating to supervision, they have to be carried out just as other suspended sentence obligations.

The court revokes a suspended sentence and orders enforcement of a prison sentence if the convicted offender fails to carry out obligations which he or she could have carried out. If it is established that obligations cannot be implemented, the court may replace them with some others or release the convict from all obligations.

Replacement of a prison sentence

Once the court metes out and imposes a sentence of up to six months in prison, the court may also decide to replace that sentence, with the consent of the convicted offender, with community service.

The decision to replace a prison sentence with community service is based on an assessment made by the court on the basis of all the circumstances relevant for the selection of a type and measure of punishment, that enforcement of a prison sentence is not necessary for the fulfillment of the purpose of sentencing,

Community service is ordered for a period, proportionate to the sentence, of at least ten to sixty working days. The deadline for the performance of community service may not be less than one month, and may not exceed one year.

In determining the length of community service and the deadline for its performance, the court has to take into consideration the prison sentence it imposed on the offender, which is being replaced by the community service and the abilities of the offender in terms of his or her personal circumstances and employment.

If the offender fails to perform community service fully or partly before the deadline expires, the court makes a decision to impose a prison sentence the length of which is proportionate to the remaining period of community service unperformed.

Community service in lieu of a prison sentence may also be applied in the case of replacing a fine by a prison sentence provided that the prison sentence does not exceed six months.

The type of community service and the place at which it will be performed are selected by the sentence enforcement service which, in doing so, takes care of offenders' abilities and skills.

Supervision and Community Service Enforcement Act

The Act regulates the enforcement of suspended sentences with supervision and the replacement of a prison sentence of up to six months by community service.

Supervision and community service are enforced on adult offenders on whom these sanctions have been imposed in a criminal procedure.

The Justice Ministry is in charge of enforcing supervision and community service.

Supervision and community service are enforced after the court decision becomes final and binding. In place of either permanent or temporary residence of the convicted offender; the convicted offender is released from an obligation to cover enforcement costs.

The purpose of community service orders is to provide unpaid work and the convicted offender performing community service does not make any money.

The national authorities, institutions and other legal entities are obliged to maintain cooperation with the Justice Ministry in enforcing supervision and community service if so requested by the Ministry.

The purpose of supervision and community service is to ensure that the convicted offender, who received a suspended sentence and a restricted freedom of movement, is not excluded from the community, taking into consideration the general purpose of sentencing, but rather to develop awareness about the damage of his or her behavior and responsibility for the consequences of his or her offence voluntarily, through his or her own actions, labor and attitude toward the consequences caused by the offence committed.

Principles of Enforcement of Supervision and Community Service

Supervision and community service are enforced in such a manner that the offender and his or her family are guaranteed respect for human dignity,

fundamental rights and freedoms and privacy. Discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, level of education, social status or other features is forbidden.

Supervision and community service are enforced under individualized enforcement programs. Individualized enforcement programs are based on the assessment of abilities, individual circumstances, health, employment status, capabilities and skills of each convicted offender.

Authorities, Persons and Manner of Enforcement of Supervision and Community Service

Community supervision is done by civil servants working in the Justice Ministry; they are community supervision officers. The community supervision officer must have a university degree, professional experience of at least five years and human characteristics which may serve as a model of behavior to the convicted offender.

The probation officer is obliged to provide assistance, protection and supervision of the convicted offender during the supervision period as determined by a court of law, and supervise, in cooperation with the sentencing court, the fulfillment of obligations defined by the court within a suspended sentence imposed by the court. The court may give to the probation officer detailed instructions and define conditions for enforcement of community supervision. The probation officer is obliged to develop individual supervision enforcement programs. The court gives to the probation officer access to the personal data needed for the implementation of the obligation or supervision.

The probation officer submits a report to the court every third month in which he or she describes the life style and behavior of the convicted offender and the implementation of the enforcement program.

Upon completion of supervision, the probation officer submits a final report to the court.

The convicted offender's register contains his or her personal data, the data on a court sentence and the data from the final report on supervision.

A convicted offender's file contains:

- Data about the convicted offender, the verdict and criminal sanction
- Data and court judgments and decisions of other authorities relating to suspended sentence supervision orders and their enforcement
- Enforcement program and any amendments
- Observations and opinions by a probation officer and his or her assistant
- Reports to the court
- A final report upon completion of supervision

Enforcement of community service

The Justice Ministry concludes community service contracts with the national authorities, institutions and other legal entities. The community service activity must correspond to the purpose of criminal sentencing and the special purpose of the community service ordered.

Depending on the possibilities, the place at which community service will be performed depends on the convicted offender's health, skills and knowledge.

The probation officer is obliged to advise the convicted offender about the community work, bring him or her to the location, provide him or her the necessary assistance and protection, and supervise the performance of the community service in cooperation with the sentencing court.

Negligence means coming late to work, illegitimate absence from work, underemployment and deliberate reduction of working ability, deliberate damaging of equipment, lack of respect for the organization and work methods, behavior toward and relationships with employees or beneficiaries of services, which do not contribute to the achievement of the purpose.

Implementing regulations - rulebooks: (may 2001/july 2004)

1) - The rulebook on the manner of work and responsibility, education and register of probation officers and their assistants, selection of assistants, the register and convicted offender's file.

This rulebook regulates the manner of work and responsibilities of the probation officer, his or her assistant, education and register, selection of assistant probation officers, the register and the convicted offender's file.

The Justice Ministry appoints a probation officer and delivers a court decision and the necessary documentation to him or her. A notice of the commencement of the sanction enforcement is sent to the convicted offender and a probation officer. The probation officer develops an enforcement program which defines the manner of enforcement and it is based on the assessment of abilities, circumstances, health, employment status, capabilities and skills of the convicted offender. The probation officer informs the convicted offender about the enforcement program in simple and clear terms in order for the convicted offender to understand the purpose of enforcement and the consequences of his or her failure to comply with the obligations defined in the enforcement program.

The probation officer contacts the convicted offender as often as necessary in order to assist, protect and supervise him or her, and at least once a week, when they meet and discuss.

The enforcement program contains the following:

- Activities which will be taken in the course of performance of community service
- The persons in charge of activities and other persons whose participation the probation officer deems necessary
- Working methods
- Deadlines by which activities are to be performed with the convicted offender and other persons who participate in the enforcement of supervision
- The manner of execution of special obligations, if they are passed by the court

The enforcement program and its amendments are submitted to the responsible court for information.

A report on progress of enforcement is submitted to the responsible court every third month or more frequently, if necessary. The report contains the following:

- The basic elements of the enforcement program

- The data on cooperation by the convicted offender in implementation of the enforcement program
- Implementation of the tasks defined in the enforcement program, with reference to progress and difficulties that arise during the enforcement
- Cooperation with other participants in implementing the enforcement program
- Any other activity or fact relevant for the achievement of the purpose of enforcement.

2) - The rulebook on measures used to determine compensation to probation officers and their assistants engaged in the enforcement of suspended sentences supervision orders

A monthly payment of the probation officer in charge of supervision of the enforcement of a suspended sentence order per one convicted offender is 15% of a fixed basis used for calculation of salaries paid to civil servants and employees.

The compensation to the probation officers engaged in enforcing a community service order per one convicted offender per one day is 1.5% of a fixed basis used for the calculation of salaries paid to civil servants and employees.

3) - Rulebook on type of and conditions for community service

The community service is performed in institutions and other legal entities performing activities within which it is possible to achieve a general purpose of sentencing and a special purpose of community service.

The activity of the employer must be of a humanitarian, ecological or utility nature, i.e. useful for the community.

Community service is unpaid and may not serve the purpose of earning money.

In selecting the type and place of work, an attempt will be made to assist the convicted offender in removing or mitigating damaging consequences of the offence he or she has committed.

The Justice Ministry concludes a contract with the employer about their common interest in community service and the contract contains the description of the employer's activities, types of activities in which the convicted offender may be engaged and the place of performance of community service.

The Justice Ministry and the employer conclude an individual community service contract for every convicted offender; it defines rights and obligations of both parties in greater detail.

The probation officer, in agreement with a representative of the employer, orders the convicted offender to commence performance; in doing so, he or she takes care of health, qualifications, skills and personal characteristics of the convicted offender.

Characteristics of the population subject to alternative sentencing - personal and social characteristics of convicted offenders - enforcement of supervision:

Below are given some characteristics of convicted offenders who have received suspended sentences with probation supervision. The data below refers to a total of 52 convicts (36 males and 16 females). The data is collected via special questionnaires in 2004. The questionnaires were sent to the probation officers, for the convicted offenders subject to probation supervision. The required data was obtained through court decisions, court files and other available documentation and on the basis of the information obtained from the convicts, their family members, professionals working in the social work centers etc.

The collected data was systematized and is presented here on a descriptive level. Although they were not processed statistically, the analysis of systematized data reveals some trends and implies certain conclusions.

Out of the total of 52 convicted offenders subject to probation supervision, 36 (69.23%) are males and 16 (30.77%) are females. (Table 1, Figure 1)

Table 1 - Gender of convicted offenders

GENDER OF CONVICTED OFFENDERS			
M		F	
F	%	f	%
36	69,23	16	30,77

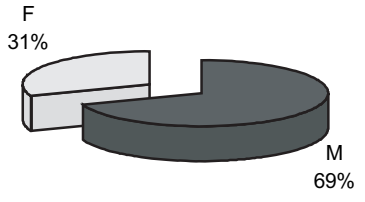


Figure 1 - Sex of convicted person

Their age ranges from 19 to 56 years (males) and from 22 to 58 (females).

Differences were noticed regarding gender of convicted offenders. The largest number of male convicts is aged 20-25 (27.77%) and 40-45 (24.93%), while the largest number of female convicts are aged 35-40 (31.25%). (Table 2, Figure 2).

Table 2 - Current chronological age

AGE	below 20		20-25		25-30		30-35		35-40		40-45		45-50		50-55		55-60	
SEX	f	%	f	%	f	%	f	%	f	%	f	%	f	%	f	%	f	%
M	2	5,55	10	27,77	1	2,77	2	5,55	4	11,11	9	24,93	5	13,85	2	5,55	1	2,77
F	0	0	2	12,50	0	0	3	18,75	5	31,25	2	12,25	2	2,25	0	0	0	0
Total	2	3,85	12	23,07	1	1,92	5	9,62	9	17,31	11	21,15	7	13,46	2	3,85	1	1,92

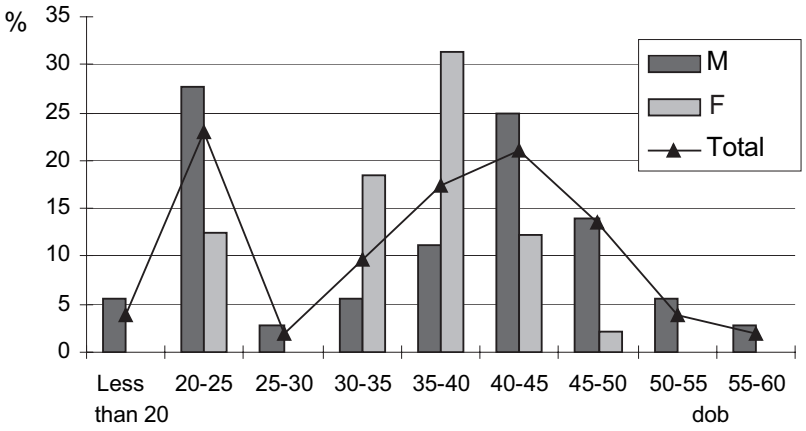


Figure 2. Age of convicts, chronological order

One half of convicted offenders has a secondary school level of education or acquired a certain qualification (qualified workers); no convict has a university or an associate degree. The total of 36.54% of all convicted offenders has a primary school education, while seven of them (13.46%) have incomplete primary school education.

The level of education of convicted women is lower than the level of education of male convicts. While 55.5% male convicts continued post-primary

education, a considerably smaller number of female convicts did so - only 37.5%. 11.11% of male convicts and 18.75% of female convicts did not complete primary school education. Three female convicts with reduced intellectual abilities were educated under special curriculum (Table 3, Figure 3).

Table 3 - Level of education

		Without primary school education	Primary school education	Qualified workers	Secondary school education	University /associate degree
M	f	4	12	3	17	0
	%	11.11	33.33	8.33	47.22	0
F	f	3	7*(1*)*	0	6 *(2*)*	0
	%	18.75	43.75	0	37.50	0
Total	f	7	19	3	23	0
	%	13.46	36.54	5.77	44.23	0

** Education under special curriculum*

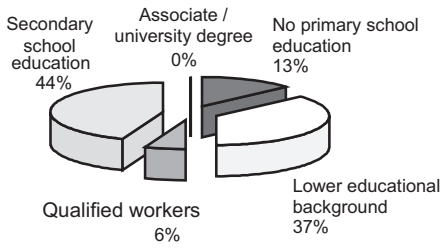


Figure 3. Level of education (total for both M &F)

Although the data available to the probation officers show that some convicts earn a living by doing seasonal jobs, the data below includes only the data which refers to full-time employment.

The total of 28.85% convicts are full-time employees. If we compare the data on employment with regard to age, 33.33% of male and 18.57% of female convicts are employed.

Table 4 - Employment status of convicts

	EMPLOYMENT			
	YES		NO	
	f	%	f	%
M	12	33,33	24	66,66
F	3	18,75	13	81,25
Total	15	28,85	37	71,15

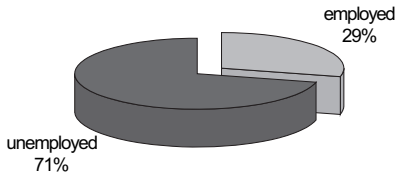


Figure 4 – Employment status of convicts (total for both sexes)

More than one half of convicted offenders are married (25%) or live in a common-law marriage (28.85%).

Some differences have been notices in regard to sex - while most of the female convicts (81.25%) live in official or unofficial marriage, the number of male convicts is smaller by nearly one half (41.66%). More male convicts are unmarried or divorced than female convicts (Table 5).

Table 5 - Marital status

	MARITAL STATUS								
	Single		Marriage		Common-law marriage		Divorced		Widow/ widower
	f	%	f	%	f	%	f	%	f (%)
M	12	33.33	8	22.22	7	19.44	9	25.00	0
F	1	6.25	5	31.25	8	50.00	2	11.15	0
Total	13	25.00	13	5.00	15	28.85	11	21.15	0

Most of the convicts (63.89% of male convicts, 93.75% of female convicts, total 73.08%) are parents of one or more children. It is obvious that around one third of convicted persons have one or two children, and around the same number have three or more (up to seven) children. (Table 6, Figure 6).

Table 6 - Number of children

	NUMBER OF CHILDREN															
	0		1		2		3		4		5		6		7	
	f	%	f	%	f	%	f	%	f	%	f	%	f	%	f	%
F	1	6.25	3	18.75	2	12.50	2	12.50	2	12.25	3	18.75	2	12.50	1	6.25
M	13	36.11	5	13.89	8	22.22	3	8.33	2	5.56	2	5.56	2	5.56	1	2.28
Total	14	26.92	8	15.38	10	19.23	5	9.62	4	7.69	5	9.62	4	7.69	2	3.85

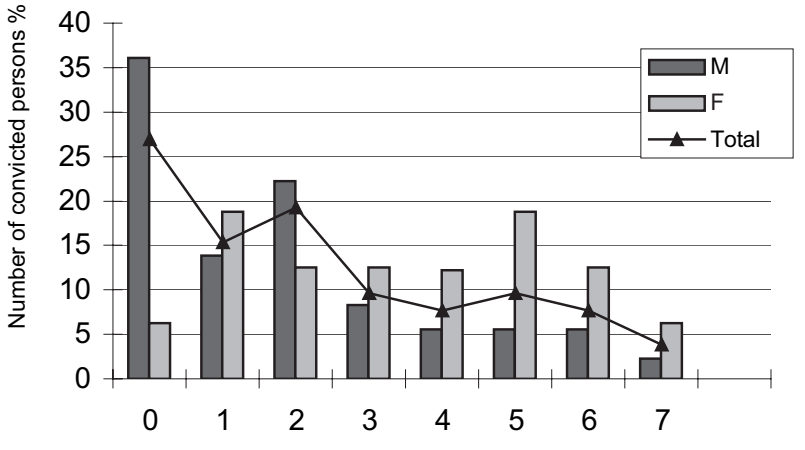


Chart 6 - Number of children

The data below refers to criminal offences for which the convicted offenders were given a suspended sentence with probation supervision. Seven offenders were given suspended sentence with probation supervision for two, and one offender for four criminal offences.

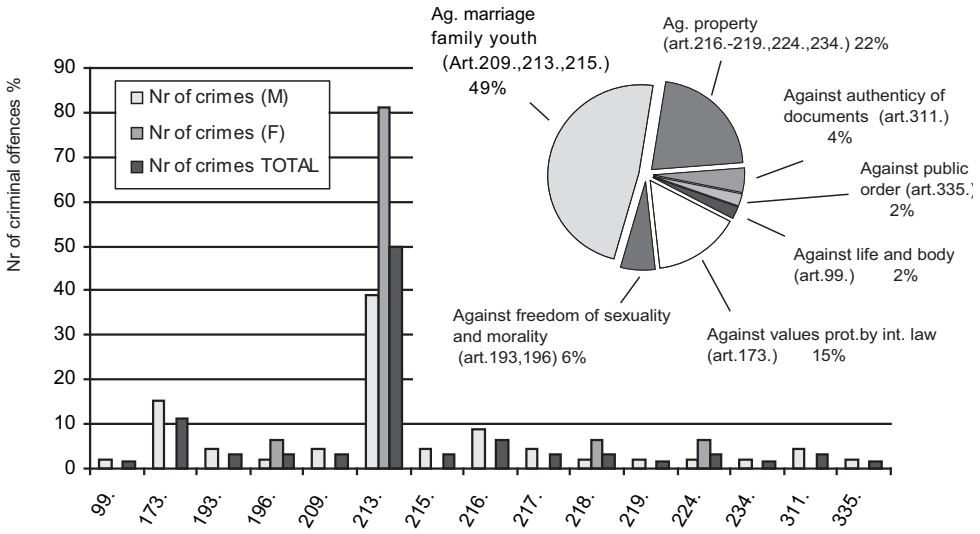


Figure 7 - Crimes for which offenders were sentenced (total for both sexes)

More than one half (56.23%) of criminal offences are those against marriage, family, and youth (Article 206-215 of the Criminal Code). Individually, criminal offences punishable under Article 213 of the Criminal Code were most frequent offences (negligence or maltreatment of a child or of a minor person). Such offences were committed by 81.25% of female convicts and by 39.13% of male convicts.

If we consider criminal offences against property (punishable under Article 216-287 of the Criminal Code), the share of neither of them exceeds 8.7%. However, property-related crimes, in total, are 19.38% of total cases (male convicts 21.73%, female convicts 12.5%).

Criminal offences against sexual freedom and morality were punished in 6.46% of all decisions; against authenticity of documents in two; and against public order and against life and body in one court decision (Figure 7).

The length of prison sentences ranges between 3 months and 2 years. The highest number of convicted offenders (40%) was sentenced to 1 year in prison (33.33% of male convicts and 56% of female convicts). (Table 8, Figure 8).

Table 8 - Length of prison sentences

	LENGTH OF PRISON SENTENCES									
	3 months	5 months	6 months	8 months	10 months	1 year	1 year and 1 month	1 year and 2 months	1 year and 6 months	2 years
M	1	1	2	5	5	12	2	1	1	6
F				2	2	9		1		2
Total	1	1	2	7	7	21	2	2	1	8

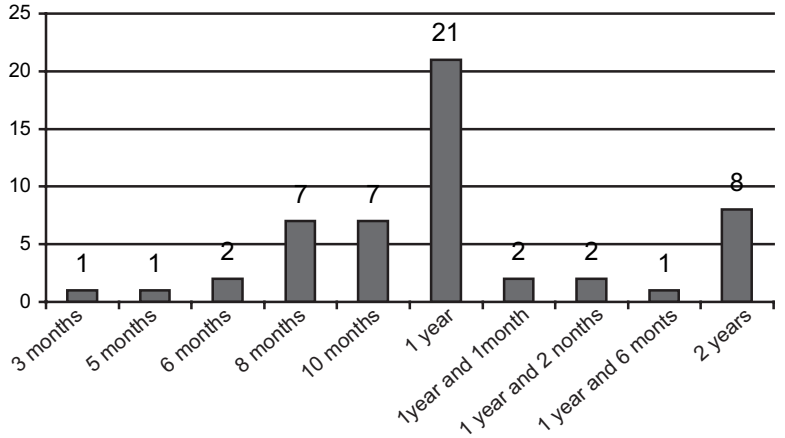


Figure 8 – Length of prison sentence (total for both men and women)

The length of probation ranges between 2 and 5 years. The majority of convicted offenders (71.15%) were given 3-year probation ((63.89% of male convicts, 87.5% of female convicts). The minimum probation of 1 year was not found in any decision, while a maximum probation of 5 years was given to one convict (Table 8a, Figure 8a).

Table 8a - Length of probation

	LENGTH OF PROBATION				
	1 yr	2 yrs	3 yrs	4 yrs	5 yrs
M	0	7 (19.44%)	23 (63.89%)	5 (13.89%)	1 (2.78%)
F	0	0	14 (87.5%)	2 (12.5%)	0
Total	0	7 (13.46%)	37 (71.15%)	7 (13.46%)	1 (1.92%)

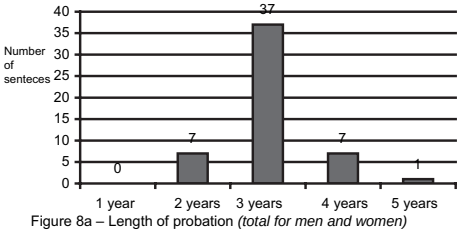


Figure 8a – Length of probation *(total for men and women)*

The court may order, within a criminal sentence it has reached and pursuant to Articles 75 of the Criminal Code, that the offender receive the necessary psychiatric treatment or that he or she receive addiction treatment (Article 76 of the Criminal Code). In reaching a supervised suspended sentence, the court may, pursuant to Article 71 of the Criminal Code, order one or more obligations to be performed during supervision.

Security measures and/or special obligations have been ordered in a total of 52% of sentences included in the research - safety measures have been ordered in 27%, special obligations in 21%, and security measures and some special obligations in 4% of sentences. While a security measure and/or a special obligation has been given to 61% of male offenders, that percentage is much smaller in the case of female offenders - 31.25% and in most cases they are security measures (a special obligation was given in one case only). Seven convicts were each given by the court a special obligation; two special obligations were given in one case, and three in two cases (Table 9, Figure 9).

Table 9 - Security measures and/or special obligations

	SECURITY MEASURES AND SPECIAL OBLIGATIONS					
	No security measure/ special obligation	Security measures	Security measures + special obligations	Special obligations		
				1	2	3
M	14	10	2	7	1	2
F	11	4	0	1	0	0
Total	25	14	2	8	1	2

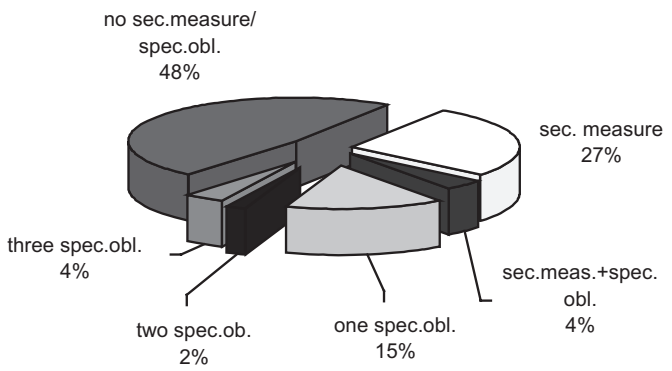


Figure 9 – Security measures and special obligations imposed (total for men and women)

Most of the security measures are those from Article 76 of the Criminal Code; they refer more often to alcohol addiction treatment than to drug addiction treatment. The security measure of a mandatory psychiatric treatment was given within two sentences only.

The largest number of special obligations refers to item (d) i.e. medical treatment for the purpose of removing bodily or mental disorders which may encourage the offender to commit another crime (Table 9a, Figure 9a).

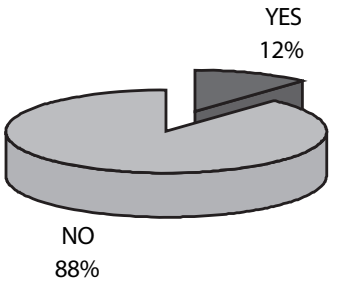
Table 9a - Types of security measures and special obligations

	SECURITY MEASURES			SPECIAL OBLIGATIONS ARTICLE 71 OF THE CC					
	ART. 75 OF CC	Art 76 of CC							
		drugs	alcohol	a	b	c	d	e	f
Number of security measures/ special obligations (M)	1	4	7	1	2	1	9	2	4
Number of security measures/ special obligations (F)	1	1	2				1		
Total	2	5	9	1	2	1	10	2	4

Recidivism, if defined as previous conviction, has been noticed in the total of 12% of convicted persons.
(Table 10, Figure 10).

Table 10 – Previous convictions

	PREVIOUS CONVICTION	
	YES	NO
M	5	31
F	1	15
Total	6	46



We find one or more socio-pathological effects in a total of 73% of convicts (80.56% of male convicts, 43.75% of female convicts). The simultaneous presence of several socio-pathological effects has been noticed in some convicts.(Table 12, Figure 12).

Table 12 - Presence of socio-pathological effects

	NOT NOTICED	NOTICED SOCIO-PATHOLOGICAL EFFECTS		
		one	two	three
M	7	22	5	2
F	7	5	3	1
Total	14	27	8	3

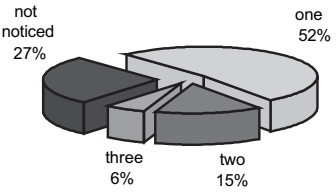


Figure 12 - Socio-pathological effects
(total for both sexes)

Out of all observed socio-pathological effects, an excessive use of alcohol is most present - in 50% of convicts - in 52% of male convicts and 43.75% of female convicts. Second comes abuse of drugs (33.33%), vagrancy (13.89%) and promiscuity (5.55%) among male convicts. Promiscuity is in the second place among women (18.75%), then comes vagrancy (12.5%), begging (6.25%) and abuse of drugs (6.25%). (Table 12a, Figure 12a).

Table 12a -Socio-pathological effects

		SOCIO-PATHOLOGICAL EFFECTS				
		Excessive use of alcohol	Abuse of drugs	Vagrancy	Promiscuity	Begging
Number of	f	19	12	5	2	0
	%	52,78	33,33	13,89	5,55	0
Number of	f	7	1	3	3	1
	%	43,75	6,25	12,50	18,75	6,25
Total	f	26	13	7	5	1
	%	50,00	25,00	13,46	9,62	1,92

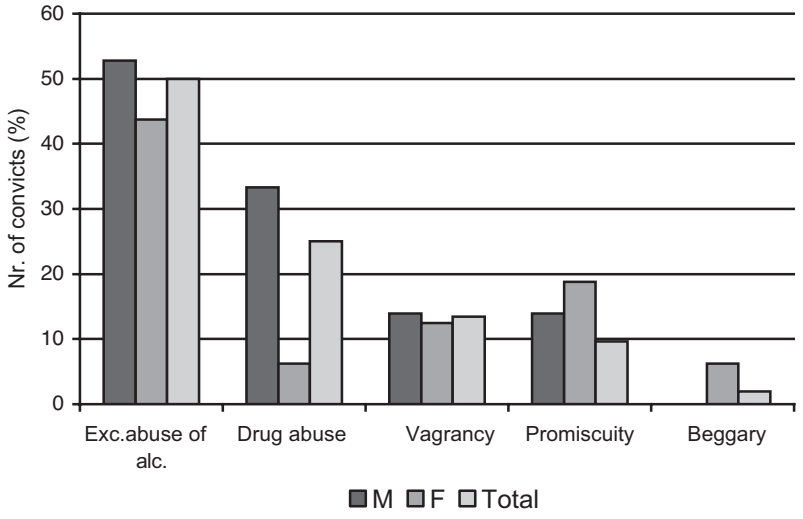


Figure 12a - Socio-pathological effects

Final observations

The collected data about the convicts imply a heterogeneous population subjected to alternative sanctions, which confirms the need for an individualized approach and individualized enforcement programs. The crime committed is the result of a combination of a number of subjective and social circumstances in each individual case. The probation officer often encounters accumulated or hidden problems which are noticed only in direct work with the convict. This is why the programming and creation of treatment activities are a permanent process during the enforcement of supervision, in which both the probation officer and the convict take part.

According to the professional literature, there is a need for immediate tasks in enforcing supervision along with a suspended sentence to be defined jointly by a professional officer and the convict; these tasks have to be adapted to the needs of the convict, while the supervising officer will respect those elements which the court took into consideration when determining the obligations and measures and also those which the court might have not taken into consideration (personal characteristics, living conditions, age and level of education, health and psycho-physical condition, profession, preferences and habits, view of life, internalized system of values, life at home, in school, at work and elsewhere, circumstances and type of sanction, personal and fam-

ily circumstances and other characteristics of his of her bio-psycho-social system in the broadest terms) (Zakman-Ban et al, 1994).

The results of the treatment of a convict depends on numerous factors, which is why the probation officer is also more or less active in his or her primary social space, works with the persons in his or her immediate environment and with professional persons and /or institutions which may contribute to a successful resettlement. The improvement of psychical and physical condition, financial care, employment, improvement of family relations and more appropriate functioning within a parental role, are only some of the needs felt by convicts, which are required within the enforcement of supervision. This sets a huge task before the supervision authority. The expertise and additional education of probation officers, cooperation with other services (e.g. social welfare) and inclusion of a broader social community is necessary to the enforcement of alternative sanctions.

Statistics

The first supervision within a suspended sentence in the Republic of Croatia was enforced by the end of 2001 and the first community service was performed in May 2002.

Suspended sentence under supervision

Year	2002.	2003.	2004.	7. months./2005
Number of sentences	46	68	100	78

Total: 291

Community service in lieu of prison sentence

Year	2002.	2003.	2004.	7. months./2005
Number of sentences	16	25	37	23

Total: 101

For the time being, a total of 135 suspended sentences with supervision and 23 community service orders are being enforced. The enforcement includes 44 probation officers - civil servants from the Justice Ministry.

It is obvious that after the legislation which created conditions for ordering and enforcing alternative sanctions was enacted, the number of such

orders is increasing every year. This is why the enforcement of alternative sanctions in the future is being discussed. In order to find the best solution a working group has been formed and its members are academics and Justice Ministry's officers. The proposal is to form a probation service with a broader scope of work - the activities of which would include - in addition to enforcement of an alternative sanction of a suspended sentence, the supervision order and community service order - the organization of a gradual admission of prisoners, treatment of prisoners on parole, probation treatment during the enforcement of a sentence imposed in terms of links with the community, and treatment of prisoners (collection of socio-anamnestic data needed for a decision to detain a person, psycho-social assistance).

References

AJDUKOVIĆ M., AJDUKOVIĆ D., Alternativne sankcije: putevi smanjenja zatvorske populacije, *Penološke teme*, 1991, 6.1-4: 47-56

BRINC, F., Otvorene kazneno-popravne ustanove od ideje do stvarnosti, *Penološke teme*, 1987, 2.1-2:3-22.

KAZNENI ZAKON REPUBLIKE HRVATSKE, Narodne novine, 110/97, 27/98.

MEJOVŠEK, M, Evaluacija institucionalnog penološkog tretmana, *Penološke teme*, 1988, 4. 1-2:1-7

PRAVILNIK O NA?INU RADA I ODGOVORNOSTI, IZOBRAZBI I EVIDENCIJI POVJERENIKA I POMOĆNIKA POVJERENIKA, IZBORU POMOĆNIKA POVJERENIKA, MATICI I OSOBNIKU OSUĐENIKA, Narodne novine, 43/01, 97/04

PRAVILNIK O VRSTI I UVJETIMA RADA ZA OPĆE DOBRO NA SLOBODI, Narodne novine, 43/01.

PRAVILNIK O MJERILIMA ZA UTVRĐIVANJE NAKNADE ODREĐENIM POVJERENICIMA I POMOĆNICIMA POVJERENIKA NA IZVRŠAVANJU KAZNENOPRAVNIH SANKCIJA UVJETNE OSUDE SA ZAŠTITNIM NADZOROM I RADA ZA OPĆE DOBRO, Narodne novine, 43/01, 97/04

UZELAC, S.,*Zaštitni nadzor: metodika socijalnopedagoškog rada*, Nakladni zavod Globus, Edukacijsko-rehabilitacijski fakultet, Zagreb, 2002.

ZAKON O IZVRŠAVANJU ZAŠTITNOG NADZORA I RADA ZA OPĆE DOBRO NA SLOBODI, Narodne novine, 128/99.

ŽAKMAN-BAN,V., MIKŠAJ-TODOROVIĆ, LJ., ROMIĆ, P., Mogućnosti probativnog pristupa u okvirima alternativnih sankcija u Republici Hrvatskoj, *Kriminologija i socijalna integracija. Vol. 2. Br. 1*, 1994, 77-86

SRZENTIĆ, N., STAJIĆ, L., LAZAREVIĆ, Lj., *Krivično pravo Jugoslavije*, Savremena administracija, Beograd, 1998

STATISTIČKI GODIŠNJAK/LJETOPIS FBIH, *Federalni zavod za statistiku*, Sarajevo, 2004

PETROVIĆ, B., JOVAŠEVIĆ, D., *Krivično/kazneno pravo Bosne i Hercegovine opći dio,* Pravni fakultet Univerziteta u Sarajevu, Sarajevo,2005

PETROVIĆ, B., *Kriminologija*, Pravni fakultet u Sarajevu, Sarajevo, 2004

ŠEPAROVIĆ, Z., *Kazneno izvršno pravo i uvod u penologiju*, Pravni fakultet u Zagrebu, Zagreb, 2003

ŠEPAROVIĆ, Z., Alternative kazni zatvora, *Naša zakonitost br.6*, 1998, : 693-707.

VRANJ,V., *Istraživanje oko izvodljivosti i zahtjeva vezanih za uspostavu sankcije rada za opće dobro na slobodi u Federaciji BIH*, DIFID, Sarajevo, 2005, (neobjavljen)

VRANJ,V., Alternativna sankcija rada za opće dobro na slobodi u Republici Hrvatskoj, *Penološka teorija i praksa 3*, 2004, 35-46.

ZAKON BOSNE I HERCEGOVINE o izvršenju krivičnih sankcija, pritvora i drugih mjera, "Službeni glasnik BIH" 13/05.

ŽAKMAN-BAN, V., ŠUĆUR, Z., *Zaštitni nadzor uz uvjetnu osudu i rad za opće dobro na slobodi - zakonske i provedbene implikacije*, Hrvatski ljetopis za kazneno pravo i praksu, 1999, 2:635-658.

NEW WAYS OF ASSESSING OFFENDERS

Resume

Criminal justice policy makers and practitioners everywhere have a keen interest in the risk management of offenders because of the enormous costs to potential victims. Whether offenders reside in custodial settings or have been released to the community, it is clearly evident that violent, sex, drug and organized crime offenders present significant challenges to public, staff and offender safety. Changes in criminal code offenses and penal policy coupled with reduced public tolerance for crime and focused media attention have led to significant advances in offender risk assessment and treatment technology.

Notwithstanding the many improvements in both offender assessment and treatment technology, there has also been more sanctioning - both custodial and non-custodial - of criminal offenses over the last decade. As a result, for many jurisdictions there has been a build-up of prison populations or at least change in the offender population profile. This has brought the task of safe and robust offender re-entry to the forefront as the correctional challenge of the new millennium. Certainly, correctional service providers are being called upon to deliver more sophisticated services to an offender population that is constantly changing. This paper attempts to address some of these correctional challenges by advancing from a case-based risk-need differentiated approach to a strategic correctional management framework that integrates offender needs, capacity and process assessments.

Introduction

Recent reviews of accumulated findings from hundreds of published studies on rehabilitation programs for offenders (Andrews, 1995; 1996; Gaes, Flannigan, Motiuk, & Stewart, 1999; Gendreau, & Goggin, 1996; McGuire, 1995; Lipsey, 1995; Losel, 1995; 1996) yield clear empirical evidence of the impotency of criminal sanctions when unaccompanied by appropriate rehabilitative programming. The results of these reviews also suggest that rehabilitation programming that takes place in custodial settings appears to be less effective than programming which occurs in the community. In view of the evidence that better outcomes are reported for those completing treatment and particularly for programs operating in the community,

the notion that violent, sex and repeat offenders can be sent to prison to be rehabilitated without treatment and aftercare is questionable.

The ineffectiveness of incarceration alone and the effectiveness of appropriate rehabilitation programming, particularly community-based, in reducing violent, sex and repeat offending continue to be advanced by a growing body of contemporary researchers. Indeed, Tarling (1993) has noted that a change in the order of 25 percent (of the prison population) would be needed to produce a 1 percent change in the level of crime. On the other hand, Gendreau and Goggin (1996) have found that prison programs with a great deal of therapeutic integrity can produce recidivism reductions in the range of 20% to 35%. Consequently, criminal justice and mental health systems are being challenged to offer more specialized programming and improved case management services to violent, sex and repeat offenders - a large, diverse and challenging segment of the criminal offender population (Williams, 1996). More importantly, it is considered essential that any rehabilitation programming being delivered to these types of offenders be theoretically sound, based on research, and provided in priority to those offenders who require them most (Gordon, Holden, & Leis, 1991). Nevertheless, a dilemma remains in terms of determining what risk management model works best and for whom it may be most effective.

Safe Re-entry

Of all the factors that influence public safety, criminal justice and mental health system service providers in collaboration with releasing authorities, can affect the safe release of offenders into the community. There is solid evidence supporting the premise that the gradual and supervised release of offenders is the safest strategy for the protection of society against new offences by released offenders. For example, Canadian recidivism studies (Waller, 1974; Harman & Hann, 1986) have found that the percentage of safe returns to the community is higher for supervised offenders than those released with no supervision. Therefore, reintegration is seen as working to better prepare offenders for release and providing them with greater support once they are in the community. Reintegration efforts should yield dividends in terms of higher rates of safe return to the community and lower rates of criminal recidivism.

Risk Management

The public is very concerned with the manner in which violent, sex and repeat offenders are managed because those providing custody and reinte-

gration services are seen as being responsible for their safety. In keeping with this important task, Motiuk (1995: 24) notes:

- Faced with the fact that most offenders eventually return to the community the best way to serve the public is to recognize the risk presented by an individual, and to then put to good use the tools, the training and our fundamental understanding of what it really means to manage offender risk.
- Effective risk management implies that decisions impacting on the organization are made using the best procedures available, are in keeping with the overall goals of the system.

For criminal justice and mental health service providers, the application of risk management principles to reducing the chance of criminal recidivism is all that is required to develop an effective risk management program (or to improve on an already existing one). These risk management principles include the assessment of risk; the sharing of information (communication); the monitoring of activities (evaluation); and if deemed appropriate, an intervention (incapacitation, programming). Public safety is improved whenever these risk management activities are integrated into every function and level of the organisation providing care and control.

Many jurisdictions have been implementing new and improved offender risk-need assessment and management technology. This section of the paper addresses three important and related questions: "What is offender risk?", "How do we assess it?", and "How do we manage it?". Then, we ask ourselves a final question, "What more needs to be done?"

Risk: Uncertainty of Outcome

In the criminological literature, there have been many attempts to demonstrate the relative efficacy of risk management procedures in meeting various correctional objectives. So far, attention has focused on both institutional adjustment and post-discharge/release outcome as the variables most relevant to criminal justice and mental health decision-making (Motiuk, 1991).

Most investigations exploring the issue of institutional adjustment have evaluated offenders in terms of disruptive or rule-breaking behaviour such as: riots, assaults, homicides, rule infractions, incident reports, misconducts, drug abuse, escapes, transfers, self-mutilations and suicides. Another large collection of investigations examining the topic of institutional adjustment

has assessed offenders with respect to illness behaviour. For these studies, adjustment criteria have included illness complaints, sick call attendance, medical diagnosis, medication line attendance and hospitalisations.

Traditionally, studies addressing the topic of post-discharge/release outcome have evaluated released patients/offenders in terms of recidivism measures. The most significant of these measures have been arrest, reconviction, parole violation and return to prison. From the public's perspective, violent or sexual recidivism is an important problem to address because of its detrimental impact on victims. Moreover, it provides an indication of the effectiveness of correctional interventions (Lipton, Martinson, & Wilkes, 1975; Sechrest, White, & Brown, 1979).

Risk Assessment

Resolving uncertainty about decisions, after all due consideration of relevant risk factors, is the cornerstone of any effective risk management program. In practice, the analysis of offender risk should serve to structure much of the decision-making with respect to custody/security designations, temporary/ conditional release, supervision requirements and program placement. Therefore, it is not surprising to find attempts to design, develop and implement objective procedures for classifying offenders. Despite the considerable research that had gone into their development, acceptance of these objective classification instruments into everyday correctional practice is still challenged by practitioners and policy-makers.

Although objective classification instruments can yield significant gains both in understanding and predicting criminal behaviour, the fact remains that the amount of variance left unexplained continues to outweigh that which can be explained for a variety of important correctional outcomes (e.g. temporary absence, parole). While this may be cause for disillusionment with classification tools per se, it suggests that offender risk assessment has to move beyond the limitations of any one tool and view offender classification as an integrated process incorporating a variety of methodologies (Motiuk, 1993).

To meet the correctional challenges of the new millennium, it is crucial to align offender intake assessment procedures with a plan of intervention and systematic re-evaluations (to make significant gains in risk management). To this end, the most important characteristics guiding the design, development and delivery of the next generation of assessment models are predictive validity, reflecting reality, flexibility, emphasising professional discretion, and being both qualitative and quantitative.

It is believed that comprehensive assessment at the intake/admission stage is critical to the ability to gauge accurately risk during the later phases of the sentence, when decisions as to possible release are taken. At the same time, it is noteworthy that there are successful models of risk assessment for conditionally released offenders in the community. Such work can and has laid the foundation for developing assessment processes for violent, sex and repeat offenders at the front-end. The amalgamation of front-end and back-end processes into one integrated system requires the ability to conduct systematic and objective assessments upon intake/admission and to link up in meaningful ways (i.e., use the same language and cues) with community-based re-assessments. First, an approach to assessing static risk (traditional criminal history) and identifying the dynamic risk factors (needs) of an offender at the time of admission is described, then a community re-assessment process.

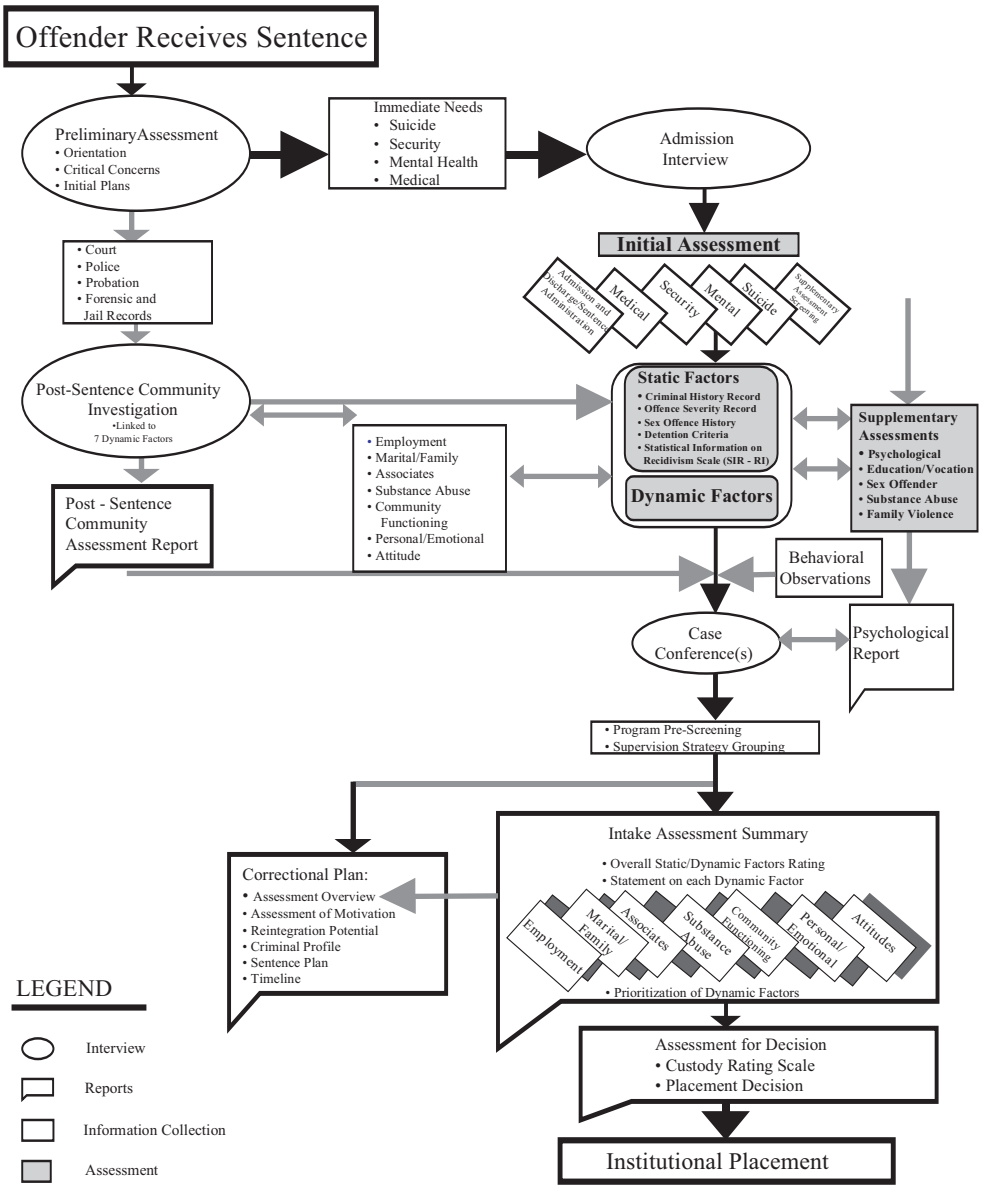
Intake Assessment

Previous research regarding the predictive value of offender risk assessments has led to three major conclusions: 1) criminal history factors are strongly related to outcome on release (Nuffield, 1982); 2) a consistent relationship exists between the type and number of criminogenic needs offenders present and the likelihood of their re-offending (Motiuk & Porporino, 1989a); and most importantly, 3) combined assessment of both the level of risk and level of needs can significantly improve the ability to differentiate cases according to likelihood of re-offending (Bonta & Motiuk, 1992).

Risk principle considerations address the assessment of risk, the prediction of recidivism, and the matching of levels of treatment service to the risk level of the offender (Andrews, Bonta, & Hoge, 1990). While there is considerable empirical evidence to support the "risk principle", it cannot be made fully operational until a framework is put into place for establishing program priorities, implementing programs and allocating resources to best meet the needs of offenders.

The Offender Intake Assessment (OIA) process represents for the Correctional Service of Canada, the latest generation of risk assessment technology (Motiuk, 1993; 1997a; Taylor, 1997). It integrates information gathered from a variety of sources (police, court, probation, family, employers) using many techniques (self-report, face-to-face-interviews, case-file reviews). While the mechanics of the whole intake assessment process are beyond the scope of this paper, its main components are outlined in the following diagram (see Figure 1).

Figure 1: Offender Intake Assessment Process



Beginning at the time of sentence, caseworkers co-ordinate the collection of all relevant information about offenders from sources within and outside the correctional system. This information forms the basis for all future decisions and recommendations that case workers must provide throughout the course of managing the offender's sentence. In addition to being the central figure in the intake assessment process, play a major role in treatment planning; institutional supervision; preparing cases for decision (parole board and release); and community supervision.

Upon receiving a custodial sentence, the offender is interviewed by a caseworker. Whether the recently sentenced offender is at a local jail, remand or detention facility, the caseworker begins the intake assessment process by orienting the offender to the system. First, and foremost, caseworkers start with identifying any critical concerns (e.g., suicide potential, personal security, and physical/mental health). Then, the caseworker collects the offender's court, police, probation, forensic and jail records. Shortly thereafter, this information is transferred along with the offender to an institution which has a specialised area designated as the intake assessment unit.

Even after the offender has been transferred, a post-sentence community investigation is initiated by a caseworker located in the community from which the offender came. The post-sentence community assessment report contains collateral sources of information. Knowledge of the case is gained about the nature of the relationship with significant others (e.g., family, employers), the impact of future contacts with the offender during incarceration or at time of release, and the degree of support that others are prepared to offer to the offender upon return to the community. Moreover, collateral perceptions of the offender's needs are obtained in relation to employment, marital/family relations, substance abuse, etc.

Upon arrival at an institution, the offender undergoes an admission interview and orientation session. During this period, the offender receives an initial assessment which screens for immediate physical health, security (personal and others safety), mental health and suicide concerns. At this stage of the assessment process, should any concerns arise, a psychological referral is made, followed by an appropriate intervention, if required.

After having passed through an initial assessment, the offender then proceeds to the two core components of the OIA process: 1) Static Factors Assessment (criminal history) and 2) Dynamic Factors Identification and

Analysis. A closer look at some of these areas will illustrate how progress can be achieved in improving overall offender risk assessment methods.

Assessing Static Risk Factors

At intake, a rating of static risk for every offender is based on the following: the criminal history record, the offence severity record, the sex offence history checklist, whether detention criteria are met, the result of the Statistical Information on Recidivism - Revised 1 scale, and any other risk factors as detailed in a criminal profile report. The criminal profile report provides details of the crime(s) for which the offender is currently sentenced.

The Criminal History Record. By systematically reviewing the offender's file, which includes police reports, court transcripts and criminal records, a criminal history record is completed on both the previous offence(s) and the current offence(s). Information is gathered on previous offence(s), the number and type of convictions, youth court dispositions, adult court sanctions and crime free periods. This information reflects the nature and extent to which an offender has been involved with the criminal justice system.

The Offence Severity Record. Similarly, a systematic review of the offender's file is used to complete an offence severity record covering both previous and current offence(s). This offence severity record consists of an historical index of offence severity and an index of the severity of the offence for which the offender is currently serving a sentence. As for current offence(s), the type of conviction(s), sentence length, the number and types of victim(s), the degree of force used on victim(s), and the degree of physical and psychological harm to victim(s) are considered. This information reflects the nature and degree to which an offender has inflicted harm on society in general, and victims in particular.

The Sex Offender History Checklist. Again, the offender's file is reviewed thoroughly to complete a sex offence history checklist. This checklist consists of the following: sex offender status, type of sex offence (current sentence), type of sex offence (past sentences), victims, serious harm, assessment and treatment history. Offenders are identified as sex offenders if they are currently serving a sentence for a sex offence, have been convicted in the past for one or more sex offences, are currently serving a sentence for a sex-related offence or have previously been convicted of an offence that is sex-related. For current and past sentences, the type of sex offence is identified as one or more of the following: incest, paedophilia, sexual assault

and other sex offences (e.g., voyeurism, exhibitionism, fetishism, bestiality). With respect to victims, information on their number, gender and age is recorded. The determination of serious harm is based on whether the current offence resulted in death or serious harm is recorded. Information is also gathered on prior psychological or psychiatric assessments, prior treatment or intervention and current treatment or intervention for sex offending. Finally, all this information reflects the nature and extent of sexual offending, the amount of harm inflicted on victims, and involvement in assessment, treatment or intervention in relation to sexual offending.

Static Risk Level. An overall rating of static risk is the compilation of professional judgements derived from the results of the criminal history record, offence severity record, and sex offence history checklist. In addition, a review of detention criteria for the current offence(s) reflects the nature of the offence(s) and the degree of harm to victim(s) is taken into account. Then, the Statistical Information on Recidivism-Revised 1 (SIR-R1) scale (Nuffield, 1982; Correctional Service Canada revised 1996), a statistically-derived tool for predicting recidivism, is completed. The SIR-R1 scale combines measures of demographic characteristics and criminal history in a scoring system that yields estimates of chances of recidivism for different groups of offenders. One should keep in mind that the establishment of static risk level might also incorporate a great deal of other assessment information as well. For example, additional information might be obtained from specialised assessments (e.g., phallometric measurement for sex offenders) and input from case conferences.

Dynamic Factors Identification and Analysis

The Dynamic Factors Identification and Analysis protocol covers seven need dimensions empirically linked to post-release outcome. These include employment, marital/family situation, associates/social interaction, substance abuse, community functioning, personal/emotional orientation and attitude. A list of indicators (about 200 in total) and rating guidelines are provided for each of the seven need dimensions. In rating each need area during assessment, the sex offender's entire background is considered. This includes personal characteristics, interpersonal influences, situational determinants and environmental conditions.

Dynamic Factors Level. An overall rating of dynamic factors consists of the compilation of professional judgements derived from the results of an initial assessment (medical, mental health, suicide risk) and the observations or impressions (i.e., degree or severity of need) on each of the seven need areas.

Other Inputs to the Intake Assessment Process

Added to the intake assessment process are psychological evaluations (personality, cognitive functioning, intellectual capacity), behavioural observations of staff, and supplementary assessments (e.g., education, and substance abuse). All of the aforementioned case-based information is then brought together at a case conference that is attended by a multidisciplinary team. It is recognised that any consensus reached by the assessment team about the offender's risk and needs should result in significant improvements in the predictive validity of our intake assessments.

The end product of this intake assessment process is a summary report about the offender. This OIA report contains for each offender a bottom-line or overall level of reintegration potential ranging from low, moderate to high; a statement on each of the seven dynamic factors ranging from factor seen as an asset to community adjustment' to "considerable need for improvement"; a prioritisation of needs; an estimate of motivation; a custody rating designation ranging from minimum-, medium- to maximum-security; a complete social history; and institutional placement. It is expected that this comprehensive and integrated assessment package will serve as the basis to formulate an individualised treatment plan for each offender.

Assessing Dangerousness

Definitions of dangerousness usually include intent and likely degree of harm (physical or psychological). The context of violence is also important to consider. For example, under what circumstances are violent, sex and repeat offenses most likely to occur for a particular offender and how common are they?

Risk factors associated with violent re-offending include: history of violence; anger or fear problems; active psychosis; substance abuse; psychopathy; weapon interest; criminal history; childhood problems; lifestyle instability; and, younger age and being male (Ogloff, 1995). Psychopathy, history of violence, and criminal history (length, onset, versatility) appear the strongest factors, but do *not* successfully predict *all* those who violently re-offend (Serin, 1991; Serin & Barbaree, 1993; Serin, Peters, & Barbaree, 1990). Multiple methods of assessment are preferred (e.g., file review, behavioral observation, interviews, etc.). Psychological tests are limited in their ability to *predict* violence. While they do not correlate highly with violent recidivism, they may be helpful in understanding an individual offender's violence and identifying treatment targets.

Assessing Offenders with Mental Disorders

Definitions of mental disorder and diagnostic criteria suggest relatively high rates of prevalence among offender populations, particularly in prisons (Motiuk & Porporino, 1992). Leis, Nicholaichuk and Menzies (1995) distinguish between personality disorders and other types of mental disorders which are considered to be intrapsychic disturbances such as schizophrenia and bipolar affective disorders. Among these mentally disordered patients, acute psychotic symptoms (e.g., hearing voices, and hallucinations) are most related to violence.

The category of personality disorders is a broad one, with behavior problems that differ greatly in form and severity. Of particular interest to criminal justice and mental health systems are the individuals whose unethical acting out against society often places them in prisons or maximum-security hospitals.

Ogloff (1995) describes a number of actuarial prediction scales that are available for Mentally Disordered Offenders (MDOs). These scales reflect many of the factors considered for all offenders (e.g., psychopathy, substance abuse, young age at time of arrest, prior failure on release, developmental problems). However, having a personality disorder diagnoses such as antisocial personality and substance abuse is more predictive of recidivism than a diagnosis of psychosis (Porporino & Motiuk, 1995). Moreover, having multiple or co-occurring diagnoses (substance abuse *and* antisocial personality) is also more predictive than a single diagnosis.

Access to mental health services and compliance with treatment, particularly medication, is a major risk management concern for offenders with major mental disorders. Careful attention to the case should help to illustrate factors related to noncompliance with medication (e.g., increased stress) and other signs of deterioration (e.g., poor personal hygiene). Risk management strategies for MDOs should incorporate methods to increase lifestyle stability, notably in the areas of employment (getting welfare), accommodation (having a place to stay), and abstinence (refraining from alcohol and non-prescribed drugs).

Mental disorder need not be independent of criminality. Therefore, it is important to determine the extent to which mental disorder is criminogenic (Bonta, Law, & Hanson, 1998). Further, identification of specific risk factors for MDOs, (such as active symptoms; multiple diagnoses) permits improved risk management, particularly if relevant cues for deterioration are available.

The Community Re-assessment Process

As part of the standards for community supervision (Correctional Service of Canada/National Parole Board, 1988), parole officers are required to use a systematic approach to assess the criminogenic needs of offenders, their risk of re-offending and any other factors which might affect successful reintegration to the community. In keeping with this standard, a "Community Intervention Scale" (formerly called the Community Risk/Needs Management Scale) is used to capture case-specific information on "criminal history" and a critical set of "needs" for classification while on conditional release (Motiuk & Porporino, 1989b).

Presently, the Community Intervention Scale is systematically administered and re-administered to all offenders under community supervision by case managers across Canada (Motiuk, 1997b). It provides an efficient system for recording criminal history risk and case needs, level of risk and need, required frequency of contact, and related background information on each offender (i.e., release status, warrant expiry). More importantly, the Community Intervention Scale assists community staff in managing sex offender risk. For example, the process of suspension of conditional release that may or may not lead to a revocation is one possible measure that can be used to assure that the level of risk is acceptable.

Dynamic Risk Assessment

A systematic assessment and re-assessment approach can assist in identifying appropriate treatment targets by cataloguing those changes during treatment that are associated with changes in the likelihood of institutional maladjustment or post-release recidivism (Bonta, Andrews, & Motiuk, 1993). This test-retest methodology can also play a critical role in measuring changes that can have significant impact on the design and development of effective correctional programs.

Case need areas are considered to be dynamic risk factors and a subset of an overall offender risk. More importantly, case need dimensions are designed to be able to reflect change. Whereas the Community Intervention Scale had emphasised the evaluation of offender risk and needs with respect to criminal recidivism, it gave relatively little consideration of the interaction between risk/needs and the level of intervention. However, this approach to offender risk assessment should lend itself well to the applica-

tion of the "risk principle" for varying levels of service and it should also improve the ability to identify appropriate targets of rehabilitative effort. Andrews, Bonta and Hoge (1990) described this aspect of case classification for effective rehabilitation as the "need principle". In practice, the "need principle" essentially puts the focus on offender characteristics (e.g., substance abuse) that, when changed are associated with changes in the chances of recidivism.

Re-engineering Assessment Procedures and New Technology

Development of any new risk assessment instrumentation should purposefully follow and expand on the assessment procedures currently in place. The intention is to capitalise on existing information-gathering practices, retain essential outputs and build on risk assessment training to date.

Some of the major reasons for a classification tool's decline in effectiveness include shifts in the clientele's profile (e.g., age distribution, cultural diversity, offence type composition) and changes in legislation or policy. Perhaps an even more compelling reason for periodically re-tooling risk assessment procedures is the drift towards over-classification that appears to be inherent in human service delivery systems (Bonta & Motiuk, 1992).

One way to maintain a robust offender risk-need assessment and reassessment process is to develop technology which can store and report historical time series data. To do this, Correctional Service Canada has developed a "Climate Indicators and Profiling System" (CIPS). Essentially, a statistical trend tracking tool, CIPS technology provides a means to monitor and report changes in both security climate (institutional incidents) and institutional/community supervision population (risk-needs) profiles. Further, CIPS technology can aggregate offender-related information for various administrative levels (national, regional, security, operational site, gender, etc.) which can be used for strategic planning, forecasting and population profiling exercises. CIPS technology represents a recent advance in correctional assessment technology and is yielding important information on the correctional challenges generated by a changing offender population. It has also led to an integrated strategic correctional management framework that addresses *offender needs assessment* (current and in five years); *capacity assessment* for institutional (maximum, medium, minimum-security) transition; and community (accommodation, supervision) settings and *process assessment* (sentence milestones involving various conditional release eligibility dates).

Sharing of Information

While the sharing and communication of information is crucial to the case management process as a whole, it is especially relevant to successful risk management. Recognising that collecting relevant and timely information on violent, sex and repeat offenders from the police, courts and probation is an important first step towards a successful risk management process, directing resources towards improvements in information sharing agreements with other criminal justice and mental health agencies is seen as beneficial. Whether it be simply identifying contact persons in other agencies or facilitating the reproduction of court transcripts or case work records, any gain in the speed of collecting criminal justice and mental health information must be seen as improving the overall risk management process.

Monitoring of Activities

In keeping with this risk management principle is the continuous evaluation of correctional activities related to public, staff, volunteer and offender safety. Among other supports to this type of evaluation, developing a computerised means to monitor offender progress throughout the sentence is extremely helpful. A fully automated capacity can equip criminal justice and mental health administrators and planners with valuable risk management information. Whether or not there have been any significant changes in the profile of the offender/patient population under community supervision over time is useful information in any risk management enterprise. As expected, the ability to routinely produce an offender population profile can prove to be extremely useful for raising awareness about community supervision, providing basic statistics with respect to risk/needs levels and estimating resource implications with respect to frequency of contact considerations. Furthermore, an ability to monitor the risk/needs levels of an entire caseload or population can move further a system considerably, towards the delivery of an effective and well-integrated risk management program.

Intervention

Whenever it becomes necessary to reject the risk that violent, sex or repeat offenders pose to society, staff, other offenders or even themselves, human service providers are often equipped by society with extraordinary powers to respond. Service providers in correctional and mental health facil-

ities may conduct searches of inmates/patients, cells/rooms, visitors and vehicles. Moreover, they have the power to seize contraband or evidence relating to a disciplinary or criminal offence. As well, they can invoke disciplinary sanctions which can be warnings or reprimands; the loss of privileges; an order to make restitution; a fine; extra duties; and in the case of a serious disciplinary offence, segregation from other offenders/patients.

For some jurisdictions, options for managing violent or sex offenders while under sentence include statutory release or the use of detention provisions during the period of statutory release. Detention provisions allow one to detain high-risk offenders beyond their statutory release date and up to their sentence expiration date. Should an offender pose any sort of threat while on conditional release, one can reject this risk by imposing special conditions (e.g., not associate with known criminals, abstain, abide by curfews, etc.) or issue suspension warrants for their arrest.

Conclusion

Is the accuracy of available instruments for predicting violent, sex and repeat offending high enough to support their use as single criterion for making decisions about incapacitating offenders for long or indefinite periods? It is frequently argued that those who are likely to commit violent, sex or repeat offences upon release can be identified in advance with high accuracy using risk prediction devices. It is sometimes proposed that scores on such measures could be used as criteria for granting release or detaining individuals beyond their normal release dates. However, reliance on single measures invites the risk of omitting data that might be crucial to predicting future offending behaviour in individual cases.

Barring major new developments in assessment technology, it is highly unlikely that any one tool or risk dimension could provide sufficient predictive accuracy on its own to guarantee safe decisions about which cases should be released and which cases should be detained for indefinite periods because they may be violent. Criminal justice and mental health systems should avoid the use of single tools or measures for making decisions about release outcomes because more comprehensive methods of collecting and integrating risk information are available. Reliance on single measures invites the risk of omitting data that might be crucial to predicting future offending behaviour in individual cases. Poor assessment procedures can lead to the release of violence-prone individuals into society, or conversely,

low risk individuals being incarcerated for longer periods than necessary at considerable public expense.

With a comprehensive and accessible base of information about the reintegration potential of a particular case at the time of admission and thereafter, it should be possible to employ the available range of correctional interventions more effectively. In other words, caseworkers should be able to measure the individual's performance in relation to objectively defined risk indicators, which in turn serves as a basis for evaluating the effects of programming and other interventions. For correctional agencies, any technological advances in risk-need assessment, communication, supervision or intervention should translate directly into operational efficiencies for an effective risk management program.

References

[1] The opinions expressed are those of the author and do not necessarily represent the official views of the Correctional Service of Canada or the Ministry of Emergency Preparedness Canada.

ANDREWS, D.A., *The Level of Supervision Inventory (LSI): The first follow-up: Toronto*, Ministry of Correctional Services (Ontario), 1982.

ANDREWS, D.A., The Psychology of Criminal Conduct and Effective Treatment, In J. McGuire (Ed.), *What Works? Reducing Reoffending*, (35-62), New York: Wiley,1995.

ANDREWS, D.A., Recidivism is predictable and can be influenced: An update, *Forum on Corrections Research, 8* (3), 1996, 42-44.

ANDREWS, D.A., & BONTA, J., *The Psychology of Criminal Conduct*, Cincinnati: Anderson, 1994.

ANDREWS, D.A., BONTA, J., & HOGE, R., Classification for effective rehabilitation: Rediscovering psychology, *Criminal Justice & Behaviour, 17*, 1990, 19-52.

BONTA, J., ANDREWS, D.A., & MOTIUK, L.L., *Dynamic risk assessment and effective treatment,* Presentation from the 45th assembly of the American Association of Criminology, Phoenix, Arizona, 1993.

BONTA, J., LAW, M., & HANSON, R.K., The prediction of criminal and violent recidivism among mentally disordered offenders: A meta-analysis, *Psychological Bulletin, 123*, 1998, 123-144.

BONTA, J., & MOTIUK, L.L., Inmate classification, *Journal of Criminal Justice, 20,* 1992, 343-353.

BONTA, J., & MOTIUK, L.L., *High-risk violent offenders in Canada,* Research Report R-50, Ottawa, Correctional Service Canada,1996.

CORRECTIONAL SERVICE OF CANADA, *Revised Statistical Information on Recidivism Scale (SIR-R1),* Ottawa,1996.

GAES, G., FLANIGAN, T., MOTIUK, L.L., & STEWART, L., *Adult correctional treatment*: In *Prisons*, (M. Tonry & J. Petersilia, Eds), Chicago, University of Chicago Press,1999.

GENDREAU, P., & GOGGIN, C., Principles of Effective Correctional Programming, *Forum on Corrections Research*, 1996, 8(3), 38-41.

GENDREAU, P., & GOGGIN, C., & CULLEN, F., *The effects of prison sentences on recidivism*, Report on the Public Attorney of Canada,1999.

GORDON, A., HOLDEN, R., & LEIS, T.,Managing and treating sex offenders: Matching risk and need in programming, *Forum on Corrections Research*,1991, 3 (1), 7-11.

GORDON, A., & NICHOLAICHUK, T., Applying the risk principle to sex offender treatment, *Forum on Corrections Research*, 1996, 8(2), 36-38.

GOVERNMENT OF CANADA, *Strategies for Managing High-Risk Offenders*, A Report of the Federal/Provinical/Territorial Task Force on High-Risk Violent Offenders, 1995.

HARMAN, W.G., & HANN, R.G., *Predicting General Release Risk for Penitentiary Inmates*, User Report, Ministry of the Solicitor General of Canada, No. 1986-32, 1986.

HOFFMAN, P.B., & BECK, J.L., Revalidating the salient factor score: A research note, *Journal of Criminal Justice, 8*, 1980, 185-188.

KNIGHT, R.A., & PRENTKY, R.A., Classifying sex offenders: The development and corroboration of taxonomic models, In W.L. Marshall & H.E. Barbaree (Eds.), *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offenders* (pp. 23-52), New York: Plenum,1990.

LEIS, T.A., NICHOLIACHUK, T., & MENZIES, R., The offender with major mental disorder: Risk assessment, Management and treatment, In Leis, T.A., Motiuk, L.L., & Ogloff, J.R. (Eds.), *Forensic Psychology: Policy and Practice in Corrections*, Ottawa: Correctional Service Canada,1995.

LIPSEY, M., What do We Learn from 400 Research Studies on the Effectiveness of Treatment with Juvenile Delinquents? In J. McGuire (Ed.), *What Works? Reducing Reoffending*. (pp. 35-62), New York, Wiley, 1995.

LIPTON, D., MARTINSON, R., & WILKES, J. , *The effectiveness of correctional treatment - A survey of treatment evaluation studies*, New York, Praeger, 1975.

LOZEL, F., The Efficacy of Correctional Treatment: A Review and Synthesis of Meta-evaluations, In McGuire, J. (Ed.), *What Works? Reducing Reoffending*, (pp. 79-114), New York, Wiley, 1995.

LOZEL, F., Effective correctional programming: What empirical research tells and what it doesn't, *Forum on Corrections Research*, 8(3), 1996, 33-37.

MARSHALL, W. L., & BARBAREE, H. E., Outcome of comprehensive cognitive-behavioral treatment programs, In: William L., Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offender* (pp. 363-385), New York, Plenum Press, 1990.

MCGUIRE, J., *What Works? Reducing Reoffending*, New York, Wiley, 1995.

MOTIUK, L.L., *The antecedents and consequences of prison adjustment: A systematic assessment and reassessment approach,* Doctoral Dissertation, Ottawa, Carleton University, 1991.

MOTIUK, L.L., Where are we in our ability to assess risk?, *Forum on Corrections Research*, *5*, 1993, 14-18.

MOTIUK, L.L., Refocusing the role of psychology in risk management: Assessment, communication, monitoring and intervention, In Leis, T.A., Motiuk, L.L., & Ogloff, J.R. (Eds.), *Forensic Psychology: Policy and Practice in Corrections*, Ottawa: Correctional Service Canada, 1995.

MOTIUK, L.L., *Assessing sex offenders for responsivity*, A published paper presented at the 15th Meeting of the Association for the Treatment of Sex Abusers, Chicago, Illinois, 1996.

MOTIUK, L.L., Classification for correctional programming: The Offender Intake Assessment (OIA) process, *Forum on Corrections Research*, *9* (1), 1997a, 18-22.

MOTIUK, L.L., The Community Risk/Needs Management Scale: An effective supervision tool, *Forum on Corrections Research*, *9* (1), 1997b, 8-12.

MOTIUK, L.L., & PORPORINO, F.J., *Offender risk/needs assessment: A study of conditional releases*, R-01. Ottawa: Correctional Service Canada, 1989a.

MOTIUK, L.L., & PORPORINO, F.J., *Field test of the Community Risk/Needs Management Scale: A study of offenders on caseload*, R-01, Ottawa: Correctional Service Canada, 1989b.

MOTIUK, L.L., & PORPORINO, F.J., *The prevalence, nature and severity of mental health problems among federal male inmates in Canadian penitentiaries,* Research Report R-24, Ottawa: Correctional Service Canada, 1992.

NUFFIELD, J., *Parole decision-making in Canada: Research towards decision guidelines*, Ottawa: Communications Division, 1982.

OGLOFF, J.R., Risk assessment of dangerousness, In Leis, T.A., Motiuk, L.L., & Ogloff, J.R. (Eds.), *Forensic Psychology: Policy and Practice in Corrections*, Ottawa: Correctional Service Canada, 1995.

PORPORINO, F.J., & MOTIUK, L.L., The prison careers of mentally disordered offenders, *International Journal of Law and Psychiatry*, 18, 1995, 29-44.

SERIN, R., Psychopathy and violence in criminals, *Journal of Interpersonal Violence*, *6*, 1991, 423-431.

SERIN, R., & BARBAREE, H.E., Decision issues in risk assessment, *FORUM on Corrections Research*, *5*(2), 1993, 22-25.

SERIN, R., PETERS, R.D. & BARBAREE, H.E., Predictors of psychopathy and release outcome in a criminal population, *Journal of Consulting and Clinical Psychology*, *2*, 1993, 419-422,

SECHREST, L., WHITE, S., & BROWN, E., *The rehabilitation of criminal offenders*, Washington, D.C., National Academy of Sciences, 1979.

TAYLOR, . Implementing risk and needs classification in the Correctional Service of Canada, *Forum on Corrections Research*, *9* (1), 1997, 32-35.

TARLING, R., Analysing offending: Data, models and interpretations, London: HMSO, 1993.

WALLER, I., *Men Released from Prison*, Centre of Criminology, University of Toronto Press, 1974.

WILLIAMS, S. M., A National Strategy for Managing Sex Offenders, *Forum on Corrections Research*, 8 (2), 1996, 33-35.

THE BASIS OF AN EFFECTIVE PRISON SYSTEM: DEVELOPING THE PROFESSIONALISM OF STAFF

Preamble

I am very pleased to be in Sarajevo for the second time and to be able to take part in this conference on its final day. It is particularly good to see one or two familiar faces. It is also a particular pleasure to be sharing the platform with your chairman. We collaborated on a project on managing change in prison systems in 1999 when he was still Director General of the Swedish Prison and Probation Service (and also with Roger Houchin, at that time Director of Barlinnie Prison in Glasgow, Scotland). I shall be drawing on some of the material from that project in this presentation. For those of you who might be interested in reading the report of the project, it can be downloaded from the web site of the International Centre for Prison Studies, King's College, University of London at www.prisonstudies.org. Much of what I will say is also reflected in the draft revised European Prison Rules and the accompanying commentary.

We are now reaching the point in the conference for action and decision.

I am only sorry that I have not been able to attend the whole conference, as I would have been better able to reflect in this talk on some of the issues that have already emerged. So if I cover ground that has already been addressed or fail to deal with issues that you regard as key, I apologise in advance. These can perhaps be raised in the working groups that follow.

The particular areas that I plan to explore with you are:

- The context of strategic planning
- The professional task of running prisons
- The role of staff
- Leadership roles and competencies
- Front line staff
- Community involvement

The context

I am placing my remarks in the context of strategic planning as the process for identifying and delivery a change programme. The conference provides an excellent opportunity to do some serious strategic thinking which can form the basis of a fully developed strategic plan, and which can in due course be published, both internally to staff working in the criminal justice system and externally to partner agencies and to the wider public. This, of course, highlights an important first principle of running prisons in terms of developing of a system, which is open and accountable to its stakeholders. For, as the mission statement of the prison services of England and Wales begins: "HM Prison Service serves the public…"

Public accountability for prisons has historically usually been seen as relevant and exercised only when things go wrong (escapes, disturbances). A more rounded concept of public accountability should include reporting on the wider role of prisons and its performance overall, including success in reducing crime and reoffending, the acquisition and employment, education and skills by offenders and information on costs and other resources - that is a comprehensive account on inputs, outputs and outcomes. This will be one way of informing, educating and, crucially, involving the public in the formulation and execution of penal policy.

As you know, strategic planning has four key elements or stages: first, a strategic analysis of where the system is now, identifying strengths, challenges, opportunities and threats. Second, a vision for the future - a tension between blue skies thinking and practical realism (head in the sky, feet on the ground). Thirdly, a plan for implementation; and, fourthly, a process of monitoring and review. These four stages can be simply described as:

- Where are we now?
- Where do we want to be in say three or five years time?
- How are we going to get from where we are now to where we want to be?
- How will we know whether we are on track?

I am assuming that in the last two days you have covered the first two stages of the strategic planning process and that you now have a clearer idea of the key issues that you face now and are likely to face over the next few years; that you have begun to shape a vision for the future of the criminal justice services and that you have identified the overall strategic direction that you wish to take and the key values that you wish the agencies to

embrace. That, you will be pleased to hear, is the easy part. Now comes the question of implementation. That is where the hard work really starts. It turns fundamentally on high quality leadership and management. We can have the clearest vision, the best ideas, the most clearly expressed policies and procedures, but if they are not or cannot be implemented on the ground, nothing will change.

I have recently completed chairing an inquiry into an incident in the intensive care unit of a large psychiatric hospital in London. This followed a tragic incident in which a patient killed a nurse. What emerged, as all too often happens in inquiries of this kind, was a picture in which there was a failure of leadership and management resulting in a situation in which staff were not recruited, selected, trained, supported and supervised to implement national and local policies. The result was the death of one person, the failure of the organisation to carry out its duty of care to a person committed to its charge, and two families whose lives had been devastated.

An article I saw only a few days ago by the personnel director of the London police reminded readers that good transformational change is 20% strategy and 80% implementation.

If the vision that this conference has been developing is to be turned into reality, it will depend crucially on the competence and skill of the managers and staff, both at headquarters and on the ground. It will require a high level of teamwork within and between them, based on a mutual understanding of and professional respect for the distinctive contributions of different groups and individuals. For you can be sure of one thing: that if the staff are not united, the prisoners will be quick to see this and exploit it for their own ends, putting safety and security at risk.

The professional task of running prisons

So let us begin by trying to understand and clarify the professional task of all staff working in prisons, whether they are full or part time staff employed by the prison service or staff or volunteers coming in from the community. This task has to derive of course from clarity about the purpose of prisons and imprisonment in Bosnia and Herzegovina in the 21st century.

At the highest level, it follows that the task of leaders and staff is to implement the vision and its supporting policies and procedures, and to ensure

that these are grounded in a framework of ethics and the rule of law - again points made cogently in the revised European Rules.

But more fundamentally it is to live out that vision and those policies and to integrate them in a way that makes sense and is clear to prisoners, to visitors, and to anyone who comes into contact with them. So what is that vision?

If we accept that the overall aim of the prison system is the protection of the public, this will be achieved in the short term by running a safe and secure system, that is one in which security is safeguarded but is also proportionate to risk (that is, that prisoners are not subject to a greater level of security than is necessary). It also means that prisons should be safe and ordered places in which staff, not prisoners, are in charge and in which everyone is treated with dignity and respect as an individual human being. In short, prisons should be civilised, decent places where people are not afraid to live, work, visit and be involved and where the rule of law is upheld and promoted.

That, then, is the immediate way in which prisons protect the public. But it is of course only a first step, important and immediate as that is. In the longer term, prisons will only protect the public if prisoners can recognise their detention as a positive rather than a negative experience: if they can put their time in custody to positive use to maintain or re-establish contact with families and friends, to gain or retain their home, their job, their friends, to acquire new skills and gain new opportunities, so that when they are released they stand a better chance of leading constructive and law abiding lives.

The role of staff

The role of the staff is to create an environment in which this approach can flourish and to facilitate and help prisoners in this process and that means knowledge and engagement. The key to good security, to good order and safety and to constructive work with prisoners is based essentially on the quality of relationships between staff and prisoners and on a detailed and intimate knowledge of each prisoner as an individual person. The skilled and effective staff member is one who knows what is going on in his area of the prison, who knows the prisoners individually, who has their trust and respect. This will assist him or her to prevent or foil escapes, to anticipate and deal with trouble, individually or collectively, and to promote a culture of care and support.

What then are the skills, attitudes and behaviours that we should be looking for in recruiting, selecting and developing staff at every level of the system?

Leadership roles and competencies

The two key roles in any prison system are that of the Director General and the Prison Director. They are the people who will convey the vision and direction of the service, who will set standards of behaviour and performance, and inspire staff to measure up to those professional standards, and who will be a role model in the way in which they act themselves.

I hesitate to describe in much further detail the skills and attributes required of the Director General in the presence of your chairman. But his example shows that skills and experience of leadership gained in related professions can be relevant and important, providing there is a commitment to understand and internalise the particular challenges, dynamics and opportunities of prison life. The role of Director General is also complex and demanding in that it requires him or her not only to display leadership skills of a high order cascading through the organisation, but also to have high level administrative and influencing skills within government and in advising Ministers. It is also essential the Director General is able to have a tenure of office that is sufficiently long and secure to enable trust and confidence to be established internally and externally, and for the vision and strategy to be created, with Ministerial approval and support, and then delivered. He or she, like any good leader, needs to have excellent communication skills and to be visible around the prisons and in the community.

Your chairman may want to add his own perception and contribution. But I would suggest that the working groups should consider the role of the Director General, its scope and definition, and the person specification that such a role requires.

So to turn now to the role of Prison Director. Research shows, unsurprisingly, that it is the Director who determines the culture, ethos and effectiveness of a prison. This is the second key leadership role in the prison. It is the Prison Director who will translate and interpret (or not) the service's vision and strategy to the staff and ensure its delivery on the ground. This will again require leadership and management skills of a high order. And that will need to include standards of personal competence and integrity. Additionally, the Director, like his or her boss, will need to be able to engage with the local community, with

local organisations and agencies, and to build effective teams made up of staff and representatives of outside organisations, both statutory and voluntary. In the modern world, that has to include skills in dealing with the media.

Questions arise as to the qualifications and skills needed in recruiting directors. Some systems require a legal or other professional qualification; others require experience of having served as prison officers. There may be scope for movement from other branches of the criminal justice system or other public or indeed private organisations. My own view is that one should not be unduly restrictive or prescriptive and that there are benefits in having a rich mix of backgrounds. However, it is important for Directors to have a keen understanding of the dynamics of institutions, of prison cultures and of the key interface between staff and prisoners. Some knowledge of criminology, psychology and sociology seems therefore essential. But management competence will be central and this will require not only prior knowledge and experience but also development and further training. The working groups should consider what are the management competencies they will look for in selecting prison directors and how they can be further enhanced in subsequent professional development.

Length of tenure also deserves consideration. Directors need to be in post in a prison long enough to see through a process of change and development, but not so long as to become stale, over familiar and over identified with local concerns and preoccupations. A period of around five years is probably about the optimum. This therefore requires a system of support and development for what can be a lonely and isolated role.

So issues for the workshops to consider are:

- Clarity about role and purpose
- Qualifications and experience on appointment
- Initial and development training needs
- Support and supervision structures
- Tenure of office

Front line staff

Thirdly we come to the front line staff. They will be a mix of security and other staff (teachers, instructors, and others) often referred to as specialists, although I believe that a professional prison officer is also a specialist in his

field. A multi-disciplinary approach will be key and so the development of team working will be an essential management task. Multi-disciplinary working is likely to require a significant change of culture and of working practices, breaking away from traditional hierarchies and rigid professional boundaries. My current work in mental health in the National Health Service in England has shown that it requires sustained commitment and effort over a long period.

It is important that all staff of whatever background, role and skill understand that they share a responsibility for the three core tasks of security, order and care. A common induction programme is one powerful way of making this clear and of providing essential security training to outside staff and community members. Here will be an opportunity not only to convey necessary security procedures in relation to for example searching, or responses to alarms or immediate response and behaviour to hostage taking, but also the fundamental importance of security information and intelligence and the responsibility of all to engage with that process. That will in turn raise important issues about confidentiality, record keeping, information sharing and exchange, professional boundaries, and mutual trust.

For the front line prison officers, some system for taking responsibility for a group of prisoners is a powerful way of harnessing the integration of security, order and care and of developing the role beyond that of guard. That requires the giving of discretion to these junior staff to take decisions and initiate communications about individual prisoners rather than simply carrying our orders passed down from above. Again this will require major organisational and cultural change in which junior staff have the knowledge and skills to act as key workers with prisoners, and specialist staff develop their role towards that of supervising and supporting these staff rather than engaging in direct work with prisoners which by-passes them. If such an approach is accepted, it will raise questions about qualifications and training for both groups and also about supervision and support for each of them. There are major implications for the role and competence of first line and middle managers.

In relation to training of front line prison officers the range of international experience is enormous: from a few days to several years. From my perspective what is important is that training and development is a continuous process where skills are progressively developed. That is one reason why personal qualities are more important than educational qualifications on recruitment. Organisationally, that requires structures to link a central training school with line managers and training staff in the prisons.

It follows from what I have said earlier that a key component of selection and initial training should be interpersonal, communication and negotiating skills. For in a modern prison system that respects human rights, prisoners are subjects to be actively engaged in their care and treatment and not merely objects to be contained and controlled. These skills are therefore more important than educational qualification, though the ability to write simple but clear reports on prisoners is necessary. Research in England shows that mature and balanced people who have experience of life and other occupations, in their 40s, form generally speaking the best officers. Finally, if there is to be a serious commitment to pre-release preparation and post release support, together with a greater use of community penalties, it is important that prison staff should have the opportunity to spend time with community agencies and, ideally, the opportunity for shorter or longer secondments.

So for this area, I suggest that the working groups might like to consider:

- The role of the basic prison officer and the extent to which it should extend beyond that of guard
- The skills and qualifications necessary for recruitment
- The scope, length and format of initial training
- How development and refresher training can be organised and built in to the regime of the prison
- What supervision and support structures are necessary
- How effective multi-disciplinary working can be established and developed
- What opportunities should there be for cross fertilisation and secondment of staff between the prison service and community agencies?

The issue of multi-disciplinary and multi-professional working leads me to the final part of this talk. And that is to consider the question of community and public involvement and the role of professional specialists.

Community involvement

Historically, prisons stood aside and remained cut off from the community. Indeed that was their purpose and their rationale. Prisons were essentially places of internal exile. Minimal communication was allowed with the outside world and that applied to staff as well as to prisoners. Nowadays we recognise more clearly that most prisoners will return to the community after

a relatively short period, and that effective resettlement depends on reducing the amount of dislocation and discontinuity between prison and the outside world. Research shows that maintaining and developing links with family and friends, with employer and with home is as important as engaging in treatment programmes.

The consequence is that prison staff cannot and should not work in isolation nor should they work alone. Institutions in general, and prisons in particular, tend to be inward looking and to regard themselves as self-sufficient. Services and staff were therefore traditionally provided in house to meet all the needs of the prisoners. Thus the prison service had its own teachers, its own instructors, its own medical staff, and its own priests. And there was little or no contact between them and their counterparts in the community. The effect was that not only was there no continuity of care after release but also that the staff became isolated and detached from professional contact and development with their peers. Nowadays therefore we see more clearly the need for services to prisoners to be provided by the agencies providing those services in the community. In this way prisoners receive the same level of service as other citizens, to the same professional standard, and that service can be maintained and continued after release. Thus education should be provided by the community schools and colleges; health care should be provided by the civilian health service. However, that will only work effectively if those agencies are properly welcomed and integrated into the management arrangements and structures of the prisons, yet in a way that respects and does not compromise their professional integrity and professional links. Tensions are inevitable but the leadership task is to make such tensions purposeful and constructive and not destructive and counterproductive. The same applies to the involvement of the public more generally through the use of volunteers in befriending and other roles. In the words of one expert, the prison walls should become permeable - though not at the risk of jeopardising security and order.

Conclusion

It is this careful balancing act that, in my view, comprises the professional task of running prisons. Security, order, care and justice have to be balanced and maintained in a delicate equilibrium, and rebalanced day-by-day, indeed hour-by-hour. That is the leadership task of the directors and the management task of the staff. To do it effectively they need to work in partnership with all stakeholders outside in the community and inside in the prison - and that includes the prisoners themselves.

So how can the prison service engage with the community both at national and local level? What are the constraints but also the opportunities and how does the service equip the staff to have the competence, the confidence and the commitment to work in partnership with others for the benefit of the prisoners they are charged to look after and care for?

I hope I have given you enough to discuss in the workshops that follow and I look forward to hearing the results of your deliberations.

CONFERENCE REVIEW AND EMERGING THEMES

We started with introductory speeches from our sponsors, the Special Representative of the Council of Europe and The Canadian Ambassador. They each emphasised the seriousness with which they view the situation in our prisons and urged government, at all levels, to take steps to tackle the deteriorating situation as a matter of urgency. They explained the importance of the work of the conference for them in helping them shape their discussions with government.

The two conference chairmen, Mr Raguž and Mr Österdahl, emphasised both the inevitability of change and the possibility of shaping that change for the general good. They looked forward to the conference injecting momentum into the country's programme of prison reform and the development of criminal measures.

Contributions from Mr Šain and Mr Simović then described, respectively, the current concrete and legal situations and gave summaries of the challenges we now have to face. One part of Mr Simović's presentation I found particularly important. He stressed that legal harmonisation, even if it were achieved, is no assurance of equality of treatment before the law that is constitutionally guaranteed by Bosnia and Herzegovina (BiH) to all her citizen's. Law sets a framework but between law and practice there is a large gap, determined by policy, legal interpretation and tradition. Even within a framework of harmonised laws, BiH would not be able to guarantee its constitutional duty to its citizens.

The issue of the gap between current legal provision and concrete practice is the first of the main themes emerging from the conference that I would wish to highlight.

Those introductory contributions set the scene for our first working group sessions. These were in groups broadly representative of occupational and professional roles. For me, there were two striking outcomes from the session. Firstly the seriousness, energy and discipline that each group brought to their work. This set the conference off in a most positive way. Secondly, it was striking how similar were the conclusions from a very diverse range of participants.

I think there was an overwhelming consensus in the groups about the main driver of the need for development and the issue most in need of reform.

My second theme is this issue of the disabling effect of the fragmentation of law, institutions and organisations consequent on the persistence of the constitutional settlement reached at Dayton. I shall return to this in my concluding summary.

There was also another underlying theme from these first working groups, however.

Behind the discussions of each of the groups was expressed a deep concern that the present situation leads to injustice and an inability to respect individual rights. This deep concern for justice, this professional frustration felt throughout the room of people who take pride in their responsibilities and the values embedded in the culture but are unable in the present circumstances to work to their own standards. That pervasive ethical concern was widely commented on by international participants and permeated the conference.

On Wednesday afternoon we heard Bertel Österdahl and Professor Škulić. Our Chairman fully demonstrated why his contribution is now so widely sought wherever in Europe people are serious about reform and justice. Reform will not happen here, was his key note, without vision, leadership and courage. The system of government in Sweden is such that, if the right person is at the head of, in his example, a prison system that person can, with the right style of strategic leadership, bring about massive change.

Bertel Österdahl's contribution, in my mind raised a fourth theme: the need for the creation of a structure that separates the political function of policy formulation from the managerial task of implementation. In Sweden, the Minister of Justice can say to the head of the prison system "bring about massive change" and "save money". When he has said that he can stand back and, ensuring that the head of the prison service has the necessary authority and resources, can leave him to take whatever steps he considers necessary to achieve the policy. Our Assistant Ministers here - and especially Mr Bisić, with his responsibilities for setting the standards and the framework towards which the systems in BiH must converge - are in positions that resemble that of Mr Österdahl; but how different their circumstances are.

Without a clear political agenda to work within and disabled by lack of resources or support, they will need to show greater bravery and leadership skill than even Mr Österdahl was able to describe.

Professor Skulić gave us a very frank description of the situation in Serbia. They have made progress with a number of reforms but are still falling below the standards to which they are committed.

That introduced for me the next theme: the need for absolute honesty (and openness to the analysis and criticisms of others) in our examination of our own performance. That is not something that is easily done in public. But in private that process of critical self-examination needs to be taken forward. Everyone in this conference has their own responsibilities. For each there is an opportunity for leadership.

Effective leadership, to be positive, demands a willingness to be totally honest in recognising where change, for the general good, is necessary.

The situation in the penal field is rapidly becoming more challenging. That immediately places two obligations on each of us: firstly to improve our communications with all those with whom we have to work - our bosses, our employees, our public, those working in related occupations and professions; and secondly to be as frank with ourselves in our examination of the performance of that part of the process for which we are accountable as Professor Škulić was in his description of Serbia. Take those two actions and we will have a reasonable prospect of meeting the challenges we face. Fail to take them and the circumstances will certainly flood over us and overwhelm us.

The discussion that followed shifted from the grand themes of the morning to the identification of particular issues and consideration of how they might be tackled. Groups identified a number of specific issues where reform is necessary:

- Classification of prisoners and prisons;
- Decent and effective treatment of groups of prisoners with special needs or presenting special problems: women, juveniles, the mentally disordered, those serving long sentences, those who present difficult control problems;
- Making the parole system work as the law intends;
- Implementing a full range of community sanctions;
- Reliable and well-conceived staff training;
- Independent inspection;
- The development of research and statistical reporting; policy and strategy development.

Each group recognised that it had a contribution to make to this.

But each group strongly asserted the next theme that I would wish to identify: the need for government, in the form of the Ministry of Justice, to take heed of the need for reform and to take a clear lead in steering and empowering those charged with implementing the required changes.

Day 2 started with presentations by Professor Tubex, Vildana Vranj and Saša Rajić. Hilde Tubex gave us a very clear framework within which to consider the implementation of non-custodial sentences. Vildana Vranj and Saša Rajić then described the situations in BiH and in Croatia. From the latter two presentations we saw in bold relief the gap that exists between legal and concrete provision - but from Saša Rajić we learned how in a colleague's jurisdiction significant progress has been possible. Importantly, we learned that there already exists a substantial framework of community measures.

The task now is to bring about progressive concrete progress towards what the law foresees, particularly as regards Community Service and Suspended Sentences with Supervision.

Hilde Tubex put down a different challenge. Community measures should not be seen, she argued, simply as a humane option for lower end offences, a soft alternative to a sentence of imprisonment. Community measures should be at the forefront of the minds of legislators, policy makers, prosecutors, judges and parole commissioners; for their relevance, their effectiveness, their economy and their justice. Too often they are seen simply as a means to ameliorate the offenders punishment: rather they should be seen as constructive and positive disposals in their own right.

Before considering the responses of the working groups I shall comment briefly on yesterday afternoon's presentations. Hilde Tubex this time was talking about parole. Her message, subsequently eloquently re-asserted by Mr Marić, was similar to the morning: parole should not primarily be seen as a reward, looking backwards to the prisoner's past, but as an opportunity to work positively with the prisoner to achieve successful, contributing and benefiting reentry to the community. Like community measures, parole, is an opportunity to promote public safety. She also asserted the need for parole to be conducted within the requirements of the law; on time and against stated criteria.

Larry Motiuk gave us a vision of the future. Canada leads the world in its commitment to the development of an evidence-based criminal justice system. No-one can have failed to be impressed both by the scope of their evidence gathering and the evidence he was able to give of its effectiveness.

This was a "Star Wars" performance, not something we might hope to be able to implement in BiH in the immediate future but a glimpse into the range of work and experience that is available elsewhere.

What is most encouraging is that we hope to continue working with Larry for some months in BiH. There have been repeated references during the conference to the need for effective assessment methods. The Council of Europe hopes to contract with Larry Motiuk to work with a group of interested members of staff here to develop, introduce and train an assessment system tailored to the circumstances of BiH.

The first thing I should report from the conclusions of the working groups was their strong assertion of the need to fully implement a programme of community measures (and I think I can include parole within that assertion).

There was another part of the discussion, however, that also particularly interested me; and the intervention of Mr Adamović.

Professor Hilde Tubex had mentioned mediation in her presentation. In Western Europe we see that as a modern innovation. The reference, however, clearly aligned with the thinking of many participants. Three of the working groups referred to it in their feedback as an approach that aligns with Bosnian culture. Mediation - and other non-judicial processes - point to two further themes that I think emerge from the conference.

Firstly, there are responses to unwanted behaviours that can exist outside the criminal justice system. How much more constructive it is, if there is violence between members of the public or if a member of the public has been stealing, that a means is found to repair the damage and to confront the participants with the consequences of their actions than that we go through the sterile and damaging process of prosecution, trial and custody. And how much more affordable.

Which brings me to the intervention of Mr Adamović. Mediation may be a modern innovation in the western world but it is a well established process of social control and reconciliation in many societies, with greatly more effectiveness in resolving social discord.

The two themes that I would identify from this phase of the discussions are, firstly, that there is scope to develop institutionalised responses to unwanted behaviours that are outside the criminal justice system and that

these may well be more socially valuable and are certainly more affordable than criminal prosecutions and, secondly, that in considering developments in BiH the government should not look only to the western world but should consider developments from elsewhere that might well align better with the country's cultural and economic circumstances.

Finally, this morning, we heard from Mr Arthur de Frisching. I was struck by how elegantly his presentation brought us back to issues that had been raised on the first morning by Mr Bertel Österdahl and explored a theme that had recurred throughout the conference: leadership, strategy, staff competence and development. He returned also to an issue first raised by Ms Hilde Tubex and subsequently explored in a number of discussion groups. This is the issue of the need for public accountability, the duty on the prison system to educate the public and the opportunities that exist in running a prison system to do so in a way that involves members of the public and non-governmental organisations more fully.

I shall use a word employed by Mr de Frisching in drawing attention to this theme. He argued that prisons need to be "permeable" to the communities in which they are situated. This general observation covers 3 distinct issues that were debated. The first is a conceptual issue: that prison should be seen as just one disposal amongst many, the others of which are executed in the community. The normal way of responding to crime should be in the community with imprisonment reserved for only the most offensive and threatening of crimes, and then only for that portion of the sentence necessary to mark society's offence or to give public protection. The second is the duty on the authorities responsible for the execution of sentences to educate the public about their work. The third is the opportunities that exist for prisons to invite other departments, voluntary organisations and the public to contribute to their work.

The thrust of Mr de Frisching's presentation, however, concerned the absolute necessity, if the institutions that execute criminal sanctions are to develop, to have clear leadership at the top and a skilled and flexible workforce charged and empowered to deliver the vision of that leadership. That theme was pursued in the working groups where there was a strong recognition of the need for comprehensive and continuing training. The workshops also reported some experience of working with other organisations and communities. They recognised opportunities to expand them.

Attention was drawn earlier to the theme of the need for the government to take a clear lead. This was developed by this part of the conference by

discussion of the need for the senior staff of the prison system to demonstrate leadership and for all staff to be selected and developed to be able to demonstrate the skills they need to move the service forward.

In concluding the substantive part of the conference Mr Fejzagić accepted the invitation to add his comments. He referred to the situation in The Federation of Bosnia and Herzegovina (FBiH), explained the problems of leadership inherent in the very small central authority that he - by himself - represents and advocated moving towards a single prison system. He illustrated the need for this by reference to the unacceptable circumstances in which juveniles, women and the mentally disordered are presently imprisoned. He paid tribute to the quality of work, in difficult circumstances, of the prison directors.

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The main themes that for me have emerged from the conference, then can be summarised as follows:

1) The wider political and executive situation that exists in Bosnia and Herzegovina is at the root of a chronic and deepening problem in the area of criminal justice:

- There is fragmentation of legislation resulting in inconsistency
- There is fragmentation of organisation leading to inadequate capacity
- There is a wide gap between the requirements of the law and what happens in practice
- There is inadequate political interest in the just execution of criminal sanctions and measures
- These problems can only be solved by government
- Ministries of Justice, and particularly the BiH Ministry of Justice, must take a lead if the situation is to be improved

2) The outcome of the political situation is a denial of justice in the treatment of crime. This denial of justice is profoundly unsatisfactory for those employed in the agencies of criminal justice.

3) If improvements can be made to the political and administrative situation, improvements will also be necessary in the agencies that execute criminal sanctions and measures:

- Honest and evidence-based assessments of current and developing performance will have to be undertaken

- Senior staff will have to be selected and continuously developed both in their professional skills and in the skills of leadership
- The work requirements of all staff will have to be clearly communicated and systems for continuous training and development of staff introduced.

4) The existing reliance on criminal justice and custody as responses to unwanted behaviours is both ineffective and expensive. It will not be possible to develop an effective, affordable system that meets ethical and humane standards without substantial re-assessment of how the country responds to unwanted behaviours. The opportunities that exist to develop more affordable, relevant and effective responses need to be pursued.

- Responses can be developed outside the criminal justice system:

  - Non-judicial mediation might be developed as an option available to prosecutors. For a range of offences, criminal prosecution might only be available where mediation has failed.
  - Where behaviours that otherwise would be criminal are committed by the mentally disordered, the response could be outside criminal prosecution. Where detention is necessary for public protection this may be by a civil order and contingent on the health of the person concerned.
  - There exists a critical need for the development of community educational and disciplinary measures, as foreseen by the law, as a response to offending behaviour by children.
  - There is scope for developing the contribution made by agencies, organisations and individuals outside the criminal justice system in the execution of criminal sanctions.

- Within the criminal justice system measures in the community should be seen as a normal response to crimes. Imprisonment should be reserved for when the extreme seriousness of the offence requires it or as public protection against someone objectively assessed to present a continuing threat.

  - The range of community measures foreseen in existing laws should be implemented. Of particular importance are Community Service and Suspended Sentences with Supervision. This requires:

    - Implementing regulations need to be introduced
    - Social Welfare Centres need to be adequately resourced to execute the supervision required

- The parole system should be made to work as the law intends. It would be working as intended if a significant number of prisoners were being released for periods of time up to 2/3 or 1/2 of their sentence and were subject to effective supervision when released. This requires:

  - Bringing entity law into compliance with BiH law - and further development of BiH law.
  - Introduction of practice - both in prisons and by the Parole Commissions that is in compliance with the new law
  - Adequate resourcing of Social Welfare Centres

- There is a range of specific matters in the execution of criminal sanctions and measures that causes particular concern:

  - The unacceptable conditions of custody of women, juveniles and children
  - The unacceptable conditions of custody of mentally disordered offenders
  - Inadequate provision for the assessment of prisoners
  - The absence of independent inspection of prisons or independent grievance resolution
  - Inadequate investigation of allegations and incidents
  - The absence of accommodation of a standard of security adequate to house long term or disruptive prisoners
  - The unavailability of community supervision of offenders
  - The very limited use of release on parole and the absence of provision for community support of those released
  - The absence of a systematic staff training system
  - The absence of effective systems for recording statistical or other data on the operation of the criminal justice system
  - The absence of research into the execution of penal sanctions
  - The absence of coherent development of penal policy

PROGRAMME

21 September

9.30 - 9.45 : Opening of the Conference, Tim Cartwright, Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina (BiH)

9.45 - 10.10 : Mr Bertel Österdahl, co-chair, former Director General of the Swedish national prison and probation administration: "Reasons for change and ways to achieve it successfully"

10.10 - 10.20 : Mr Martin Raguž, co-chair, Deputy Chair of the House of Representatives of BiH Parliamentary Assembly and Member of the BiH delegation of the Parliamentary Assembly of the Council of Europe: "Key challenges of the penal policy and political input"

10.20 - 10.40 : Mr Duško Šain, Assistant Director for Treatment, Banja Luka Prison: "The current situation and main problems facing the prison system"

10.40 - 11.00 : Mr Miodrag Simović, Vice-president of the BiH Constitutional Court and Professor at Law Faculty of Banja Luka University: "Areas in which further criminal justice development is needed in BiH"

11.00 - 11.10 : Ambassador Shelly Whiting, Canadian Ambassador in Bosnia and Herzegovina: "Key challenges for criminal justice and prison system"

11.10 - 11.25 : Pause

11.25 - 12.30 : Specialists working groups answering 3 questions:

- what are the main reasons for change?
- what should be changed?
- what are the obstacles and enablers to change?

12.30 - 14.15 : Lunch

14.15 - 15.00 : Presentation of the working groups' outcomes

15.00 - 15.30 : Mr Bertel Österdahl: "Bringing about change in a large government service - a tool kit for senior managers"

15.30 - 15.50 : Mr Milan Škulić, Professor, Law Faculty of Belgrade University: "Legislative experiences in Serbia and Montenegro referring to execution of prison sentence"

15.50 - 16.05 : Pause
16.05 - 17.00 : Specialists working groups answering 3 questions :

- who needs to be responsible for what?
- what does our group need to take responsibility for?
- how do we ensure that the changes will be sustained?

17.00 - 17.45 : Presentation of the working groups' outcomes

22 September

9.30 - 10.00 : Ms Hilde Tubex, Professor, Vrije Universiteit Brussel: "The development of non-custodial sanctions and services to offenders"

10.00 - 10.40 : Ms Vildana Vranj, Teaching Assistant at Law Faculty of Sarajevo University and Mr Saša Rajić, Governor of Turopolje Prison: "Legal current situation in respect of alternative sanctions and measures"

10.40 - 11.40 : Mixed working groups answering 3 questions:

- what are the priority alternatives that need to be developed?
- who needs to take responsibility for taking those priorities forward?
- what existing institutions might be developed to offer a wider range of sanctions and services?

11.40 - 11.55 : Pause

11.55 - 12.35 : Presentation of the working groups' outcomes

12.35 - 14.00 : Lunch

14.00 - 14.20 : Ms Hilde Tubex: "Conditional release"

14.20 - 15.00 : Mr Larry Motiuk, Head of Research, Correctional Service of Canada: "New ways of assessing prisoners"

15.00 - 15.40 : Mixed working groups answering one question:

Are there benefits for public safety in working with offenders and releasing prisoners, subject to supervision, into the community?

15.40 - 15.55 : Pause

15.55 - 16.45 : Presentation of the working groups' outcomes

23 September

9.30 - 10.15 : Mr Arthur de Frisching, associate, International Centre for Prison Studies: "The basis of an effective prison system - developing the professionalism of staff"

10.15 - 11.15 : Mixed working groups answering 2 questions:

- how professional are our staff at present and what changes would be most effective in increasing their professionalism?
- what opportunities are there for involving members of the public and civil society in developing services in prisons?

11.15 - 11.30 : Pause

11.30 - 12.15 : Presentation of the working groups' outcomes

12.15 - 14.00 : Lunch

14.00 - 14.30 : Mr Roger Houchin, prison management expert and Director, Glasgow Centre for the Study of Violence,

	Glasgow Caledonian University: Review of the Conference - emerging themes
14.30 - 15.00 :	Specialists working groups answering one question : - As a consequence of this Conference, what 3 recommendations would your group wish to make to the relevant authorities?
15.00 - 15.45 :	Presentation of the working groups' outcomes
15.45 - 16.00 :	Pause
16.00 - 17.00 :	Panel discussion, moderated by Mr Roger Houchin: "Key outcomes of the conference and concluding remarks"

LIST OF PARTICIPANTS

1) Government officials

Ministries of Justice

State level

-Mr Mustafa Bisić, Assistant Minister of Justice for execution of crimninal sanctions, Ministry of Justice of BiH

Federation BiH

-Mr Rešad Fejzagić, Assistant Minister of Justice for execution of criminal sanctions, Ministry of Justice of FBiH

Republika Srpska

- Mr dr Mlađen Mandić, Assistant Minister of Justice for execution of criminal sanctions, Ministry of Justice of RS

-Gosp Milutin Tijanić, Prison Inspector, Association of penologists RS, Ministry of Justice RS

Ministries of Health

Republika Srpska

-Mr Stevan Jović, Assistant Minister of Justice, RS Ministry of Health

Ministry for Human Rights and Refugees of BiH

Ms Minka Smajević, Expert Advisor, Ministry for Human Rights and Refugees of BiH

Ministries for social welfare

Federation of BIH

-Mr Asim Zečević, Assistant Minister for social welfare, Ministry of Labour and Social Welfare of FBiH

Ministary of Civil Affairs

State level

-Mr Savo Kojić, Ministry of Civil Affairs of BiH

2) Prison directors and staff

State level

-Mr Husein Hajdarević, Director, Pre-trial detention unit of the BiH Court

Federation BiH

-Mr Muhamed Agić, Director, KPZ Sarajevo

-Mr dr Hidajet Jabandžić; Director, KPZ Zenica
-Mr Hasan Hodžić, Director, KPZ Tuzla
-Mr Miroslav Bem Director, KPZ Mostar
Republika Srpska
-Mr Pero Dunjić, Director, KPZ Banja Luka
-Mr Nikola Perišić, Director, KPZ Foča
-Mr Miroslav Marić, Director, Okružni zatvor Bijeljina
-Mr Ljubo Badnjar, Director, KPZ Istočno Sarajevo
-Mr Krsto Parijez, Deputy Director, Okružni zatvor Trebinje
-Mr Predrag Petrović, Director, Okružni zatvor Doboj
-Mr Miro Prodanović, prison staff trainer in the CoE prison reform project, Security Service of KPZ Foča
-Mr Faik Fejzić, prison staff trainer in the CoE prison reform project, Security Service of KPZ Zenica
-Mr Vesko Demonjić, prison staff trainer in the CoE prison reform project, Security Service of OZ Doboj

3) Judges

State level
-Mr Vlado Adamović, judge, BIH Court

Federation BIH
Supreme Court
-Ms Ljiljana Filipović, judge, Supreme Court FBiH

Canton Sarajevo
-Ms Adisa Zahiragić, judge, Municipal Court Sarajevo

4) Prosecutors

Federation BiH
-Mr Ivo Bradvica, Deputy Federation Prosecutor, FBiH Prosecutor's Office
District Brčko
-Mr Zekerijah Mujkanović, Public Prosecutor of Brčko District
Cantonal level
-Mr Dragan Radovanović, Second Deputy Chief Prosecutor, Canton Tuzla Prosecutor's Office

5) Academics

Philosophy Faculty
Mr Vukašin Gutović, Phd, Philosophy Faculty of the University in Banja Luka

Law Faculty
Sarajevo
-Mr docent Borislav Petrović, Phd, Law Faculty of the University in Sarajevo
-Mr Zvonimir Tomić, Phd, Law Faculty of the University in Sarajevo

6) Media and public enterprises
Journalists
Ms Mirela Huković, journalist-editor, BiH Radio 1
Mr Ibrahim Prohić, Assistant Director in KPZ Tuzla and jounalist with Oslobođenje daily
Public utility enterprises
Mr Osman Delić, Director, KJKP "Park", Sarajevo
Mr Jasminko Bogdanović, Deputy Director, JP "Čistoća", Banja Luka

7) International experts
Croatia
-Mr Ivan Damjanović, Head of the Croatian Prison Administration;

8) Other missions in BiH
Office of the Registry of the BiH Court
-Mr Mark Smith, Head of Detention Section, Registry Office, BiH Court
-Mr Terry Sawatsky, Advisor, Registry Office, BiH Court
- Mr Semir Horozović, Detention Section Officer, Registry Office, BiH Court
-Ms Elma Karović, lawyer, Registry Office, BiH Court
-Ms Lejla Kablar, lawyer, Registry Office, BiH Court
DfiD
-Ms Samra Šuškić Bašić, Consultant, DfiD
-Ms Jane Worner, Consultant, DfiD
OSCE
-Mr Ilia Utmelidze, legal advisor, HR Department, OSCE
CIDA
-Mr Peter Paproski, Head of Technical Cooperation, CIDA
-Ms Nina Karađinović, Consultant for Technical Assistance, CIDA,
Ombudsman Office
Mr Safet Pašić, Ombudsman BiH

Non governmental organisations
-Ms dr Hana Korać, Coordinator, Ministry of Interior of Canton Sarajevo
-Mr Slavko Marić, Assistant Director KPZ Zenica, Association of penologists FBiH, KPZ Zenica

-Mr Refko Kadrić, Assistant Director KPZ Zenica, Association of penologists FBiH, KPZ Zenica

Law Faculty Students
Ms Samra Avdić, Law Faculty Sarajevo

Cochairs

Mr Bertel Österdahl, CoE expert
Mr Martin Raguž, Deputy Chairman of the House of Representatives of the BiH Parliamentary Assemby

Foreign speakers

-Ambassador Shelley Whiting, Canadian Ambassador in Bosnia and Herzegovina
-Ms Hilde Tubex, CoE expert, Belgium
-Mr Arthur de Frisching, CoE expert, United Kingdom
-Mr Larry Motiuk, CoE expert, Canada
-Mr Saša Rajić, Governor of Turopolje prison, Croatia
-Mr dr Milan Škulić, Phd, Law Faculty of the University in Belgrade,Serbia and Monte Negro

Local speakers

-Mr dr Miodrag Simović, Phd, Vicepresident of the BiH Constitutional Court, Law Faculty of the University in Banja Luka
- Mr Duško Šain, Assistant Director KPZ Banja Luka
-Ms Vildana Vranj, Teaching Assistant, Law Faculty of the University in Sarajevo

Interpreters

-Ms Amela Kurtović
-Ms Svjetlana Pavičić

Council of Europe Secretariat

-Mr Tim Cartwright, Special Representative of the Secretary General of the Council of Europe in Bosnia and Herzegovina,
-Mr Roger Houchin, Prison Refrom Expert**,** CoE Sarajevo office,
-Ms Sophie Kwasny, Programme Advisor, CoE Strasbourg office,
-Ms Alma Kovačević; Project Development Manager, CoE Sarajevo office
-Ms Marica Bender, Prison Reform Project Manager, CoE Sarajevo office