

THE POSSIBILITIES OF PROBATIVE APPROACH AS PART OF ALTERNATIVE SANCTIONS IN THE REPUBLIC OF CROATIA

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Summary

Contemporary scientific and professional knowledge without any doubt suggest that efficiency of crime reduction policy depends also on adequate solutions in the field of so-called alternative sanctions. Respecting the facts of current law and penal post democratic reform in RH, and global penal policy, the authors emphasize need for adequate solutions in the field of alternative sanctions, especially probation.

Therefore, this paper analyzes alternative sanctions, especially so-called parapenal measures, historical development of parole and probation in the world and in RH. It seems most important to discuss some dilemmas and possibilities in enforcing mentioned sanctions, on the basis of presented scientific results and practical experiences in this field. The characteristics of RH are especially considered. The authors discuss their doubts and suggest potential solutions for some aspects of our penal reform policy and specific probation and parole programs. The authors also insist on an optimal cooperation between law institutions, penologists, workers and all institutions concerned with prevention and crime reduction problems, which is not satisfactory at this moment.

Keywords: alternative sanctions, probation

1. INTRODUCTION

Institutional treatment, or imprisonment, has become more or less justified an object of unsparing criticism. One could really speak about crisis of prison sentence. Moreover, not only the imprisonment, but the entire penal system, has reached the turning point everywhere in the world, including our country, asserts Šeparović (1988). The author describes the system of repressive measures in former Yugoslavia as punitive in its basis, with emphasis on prison statement (a valid point is the rate of criminal offenses on penalty of capital punishment).

When considering processes and phenomena which take place in prison as a total institution, one cannot ignore Foucault's analyses of prison (see also Bogdanović, 1992). This author (1991:80) describes institutions as "any more or less obligatory, learned management" and analyses custody system within the context of the government or state, and he holds that custody can function only in conformity with interests, needs, and aims determined by society, i. e. government. The

author lays emphasis upon the lack of success of re-educational processes. Claiming that instead of educating or re-educating of convicts, prisons give rise to recurrence and inevitably create offenders. Similar ideas have been expounded by Javornik who suggests that lack of success of imprisonment should not be interpreted from the convicts' viewpoint and problems they have to face after release, since these problems originate from life circumstances in prison. Rather they should be considered from the society's point of view, which produces, besides its normal functioning and reproduction, deviant as well, justifying in that way the existence of government ("convincing the authorities of its own necessity of existence").

There is no doubt, no matter whether we agree or not with these radical attitudes, that institutional treatment has got numerous adverse sides and produces adverse effects on "treated offenders", equally minors, younger minors or majors. Mejovšek listed and evaluated the problems or adverseness of institutional treatment; treatment is inadequately

standardized proceeding; it is inadequately differentiated in relation to psycho-social characteristics of convicts; assortment of methods and proceedings used in dealing with convicts is inadequate; instruments used to register changes occurring during the treatment are insufficient and inadequate; considerable difficulties occur in evaluation of the treatment effectiveness, thus making resolving upon its development more difficult; convicts view treatment as imposed; convict's active participation in the treatment is extrinsically motivated; treatment takes place in unnatural conditions; convicts are being exposed to various deprivations; the conflict between statement and re-socialization is difficult for the treatment; social climate within institution is unfavorable; "prisonisation" and criminal infection takes place often; inaccurate selection of sanctions as well as defective classification of convicts also occur; institutional staff is usually insufficiently qualified or motivated; they lack some sorts of specialists; material and accommodation in the institution is often unfavorable and post-penal induction and treatment is inadequate or nonexistent. So-called neo-classical approach which criticizes re-socialization (rehabilitation) orientation of penal treatment should also be mentioned. Thus Kanduć (1990) holds that rehabilitation cannot be the reason, the aim or even the criterion for determining the extent of punishment as a legal phenomenon, neither can it legitimately support the practice of punishment. Furthermore, the crisis of rehabilitation is also a crisis of certain conception of criminalistic policy. As an indication, the analyses of evaluative research of rehabilitation treatments have been mentioned, that have, supposedly, almost unanimously proved that these treatments did not have any perceptible influence on recurrence; Cussonn (1983, as cited in Kanduć, 1990) calls it "l'effet zero". Somewhere, as in some member states of USA, re-socialization as the purpose of punishment (thus Jescheck, 1979; as cited in Šeparović, 1988). Let us emphasize that such criticism of institutional treatment, i. e. of imprisonment, is probably also provoked by "pragmatic" reasons, such as: increase of criminal behavior and detrimental change in its structure (for example, from non-violent forms of criminal behavior to more frequent violent offenses), and financial burden of prisons and other means of formal custody. The phenomenon of increase and change of structure of criminality has been noticed in developed Western countries, but now it is being recorded, i. e. manifested in the countries of former Eastern bloc, too. In the Republic of Croatia, until 1990 we see the relative stability of the structure of

juvenile criminality, with a tendency to increase the number of criminal acts (Singer, Kuharić, Cajner, 1992; Singer, Mikšaj-Todorović, Stanić, 1992). But, the homeland war will probably affect the tendencies and structure of criminality, and, after all, this is already happening, especially with criminal behavior of adolescents, but also of adults (Singer and Cajner, 1992 and records of state defenders of Republic of Croatia from 1988. do 1993; Mikšaj-Todorović, Kovčo, Cajner, 1992; Butorac, Mikšaj-Todorović, 1993).

2. THE NOTION OF ALTERNATIVE SANCTIONS

Parallel with the tendency to increase frequency and duration of prison sentences, there is a process which tends to reduce the imprisonment (thus also Ajduković and Ajduković, 1991). One of the possible answers to the problems of prison sentences (and institutional treatment) are so-called alternative sanctions. The authors mention a wider definition of alternative sanctions, according to which they are all the sentences which *do not* contain prison sentences, i. e. sentences without and instead of imprisonment. Ajduković and Ajduković (1991) as the examples of these sanctions mention some "classic" ones, as fine, compensation to the victim, restitution, process of reconciliation, prison sentences on probation or relatively recent community based alternative sanctions, for example, protective custody, unpaid work for the community or restriction of freedom with an obligation to take part in appropriate programs. As Conklin specifies (1991: 421), southern American states, which have higher rates of imprisonment than other states, have chosen the programs as following: serving the sentence in its own home with the permission to leave it only when the convict goes to work or to participate in public, charity activities; electronic control of convicts who are on probation or parole; workshops in community where convicts work without pay on jobs distributed by the city or district administration; intensive control on probation, when convicts see their probation officer five times per week. Foundations, workers' unions and various private groups started to participate in these and similar programs of penalizing and treatment of offenders outside the prison. Furthermore, we would like to emphasize that the alternative penalty in a strict sense is an alternative to prison, and not to other forms of punishment as well, and that this is a criminal sanction by which imprisonment is avoided, but the perpetrators of crimes are being efficiently punished and the goals of coercion, rehabilitation, retribution and justice are being

fulfilled. To Conklin (1991: 421), these sanctions are efficient if they can provide public safety, satisfy the sense of justice and if they are not expensive. Of course, it is thoroughly clear that all alternative sanctions must be humanistically oriented (for example, there must be no physical punishment or forced labor). After all, regarding this there are many instructions, solutions and requirements, as stated in international rules, declarations and conventions (see - Human rights of convicted persons — international rules, declarations and conventions, 1990). There are rightful warnings as to the exigency to keep certain generally preventive and repressive character of penal justice, and that regarding the replacement of prison sentence it is necessary to respect both public safety and public opinion (as in the UN Seventh Congress; Šeparović, 1988). This author classifies the alternatives to prison sentences in European legislation into three different groups: measures that only modify the enforcement of prison measures, i. e. punishments, alternative measures that are sanctions other than imprisonment, and measures which are meant to avoid or even replace imprisonment, i. e. to abandon punishment generally.

The group of measures, i. e. sanctions other than imprisonment consists of: fine, limitation of certain rights, serving in some services, and probation measures. Here we talk about measures, i. e. punishments which the court of law passes as main sanctions instead of imprisonment, in the cases when imprisonment would be a regular punishment. Probation measures, or protective custody, can be said to hold predominant place among alternative sanctions. From the legal point of view, i. e., following legal terminology, let us mention various forms of probation: so-called admonitive sanctions, such as probation and court admonition, and finally, various forms of probation with protective custody (for example, intensive protective custody only for particular categories of delinquents). In this group of measures we could classify protective custody with probation, which is known in our positive legislation (art. 4. of KZ RH (Penal Code of Republic of Croatia)). Regarding this sanction, we fully support Šeparović's attitude that probation in our country, and especially protective custody with probation, does not function adequately; regarding the latter sanction, it does not function at all, because it is even not being enforced, and Šeparović rightfully emphasizes that the regulations about protective custody with probation must be realized.

Penal system is changing, and penal reform has many aspects (thus Johnson, Savitz and

Wolfgang, 1970). So, it would be too simple to maintain that the attention of the »reformers« is oriented only toward one viewpoint of that area (institutional treatment). Moreover, Salecl (1989:8) states that prison, as repressive and at the same time ideological apparatus of the state, by its definition cannot be humanistic, and that the ideas about humanistic treatment and the whole revisionism of penology are no more than the necessary, constitutive and ideological foundation of imprisonment. The problem is that the humanism of reforms is always considered as something self-understandable, and the reformers do not raise questions about social and ideological foundations of its own work, but, on the contrary, "with unquestioned hypothesis about the humanism of new methods they constantly plough the necessarily repressive field of imprisonment". Considering everything we cited, we think that the greatest achievement of all reformers from 1990 to present days is this very trying to hold the offenders outside the prison and similar institutions. An example of these tendencies is, among others, the development of probation system and the use of various laws which enable the offenders to pay fines. In some American states there are laws (Johnston, Savitz and Wolfgang, 1970) which forbid the courts of law to pass prison sentences for young offenders and the ones who committed an offence for the first time.

3. PROBATION — SOME DILEMMAS AND POSSIBILITIES

Probation (Latin) in literal translation means testing, putting to the trial. It originated as a replacement for imprisonment. Uzelac (1990: 29) holds that "this measure was really induced by a doubt, at first a vague one, but then empirically backed up and scientifically proven, in the effect of imprisonment, especially if juveniles were concerned." This sanction "started" as an intervention designed for adults, but soon it became a permanent part of system for juveniles. The same author in a nutshell analyzes historical development of probation, mentioning one of the first cases, when John Augustus, a shoemaker from Boston, decided to give surety for a man accused for drunkenness. When it was approved, the accused person had to attend to the court of law three weeks later to be sentenced. However, he submitted evidence that he "improved" and, instead of regular imprisonment, he was sentenced to a symbolic fine. Augustus himself continued to act in a similar way (Augustus, 1939; as cited in Uzelac, 1990: 30).

Before all, probation is present in Anglo-Saxon countries, and the first legal act which regulates it was passed in 1869 in USA. Many scientists hold that probation was conceived as early as in XII or XIII centuries. However, we accept the view that present day probation did not originate from "conditional conviction" of the Middle Ages, but it developed independently. However, we should cite Šilović on conditional conviction in old Croatian law: "the thought on which rests the institution of conditional conviction was known to our ancient law, i. e. the thought that we should inflict punishment to a criminal only when it is not possible to discourage him from doing evil, while, on the contrary, we should absolve him from the punishment if he improves without it." Šilović thinks that conditional punishment was legalized even in the positive Croatian penal code of that time. This view he founds on the legal regulation of conditional release, because this institution of penal law rests on the same idea as does conditional sentence (Šilović, 1920: 177). Besides, he cites more examples of "conditional sentence" from section VII of Tkalčić's "Monuments of Free and Royal Town of Zagreb" (Šilović, 1910: 48-66).

So, various forms of conditional suspension of punishment has been promoted since 19. century, especially in United States and in England (probation system); in Europe, with Belgium leading, it was affirmed in the end of 19. century in the form of conditional sentence. Although there are two systems, the Anglo-Saxon probation system and Franco-Belgian system of conditional punishment, Bačić (1978: 457) states that the former nowadays "penetrates everywhere, and in Europe, as autonomous sanction besides the classic conditional sentence (for example, in Belgium and Sweden) or in the models of conditional sentence which are a combination of both systems". The essential elements of probation are: (1) suspension, under controlled conditions and in the duration ordered by the court for law, of sentencing or executing the sentence to an individual who is found guilty for criminal action and who stays at large, to be taken care of by the community instead of being imprisoned, (2) the judge's analysis of a comprehensive and positive report which also contains an analysis of offender's personality, and (3) supervision of sentenced person by an authorized and qualified "agent" (La probation et les mesures analogues; UN edition; as cited in Bačić, 1978: 457). In probation system the offender is in most cases found guilty, but he is not being sentenced. However, that is not the most important characteristics, because sentence can be passed, but its execution postponed. In our

opinion, the crucial meaning for probation system has the conditional suspension of punishment, with provided help to the offender, and supervision by qualified person and subjects of social community. In fact, this is a special, non-institutional, individualized treatment which does not have the character of punishment. The ability, expertise and qualifications of worker who carries out this "care" and supervision has a special importance; we will elaborate on this later. Before we specify in detail the law regulations of Republic of Croatia, let us emphasize the basic differences between Anglo-Saxon "probation" and Franco-Belgian system of conditional sentence. In Franco-Belgian system the offender is sentenced for his crime, but execution of sentence is postponed and sentence can finally be annulled if the offender is obeying all legal conditions and obligations and the conditional sentence is not withdrawn. Therefore, the essence of conditional sentence is in conditional suspension of punishment (Bačić, 1978: 457). Such regulations are known in our legislation, too. What is especially important from a penologists's point of view is the fact that the execution of punishment is being postponed, but the offender is not supervised by a qualified social worker and nobody helps him in any way. Then, the punishment is simply cancelled if the conditional sentence is not withdrawn for some reasons, i. e. if the sentenced person commits a new crime. There is no treatment during probation. A Belgian minister of justice once explained thus conceived conditional sentence in these words: "Those at whom conditional sentences are aimed do not feel the need for supervision, they will get up by themselves" (Bačić, 1978: 457).

Here we promote the viewpoint that among the most important regulations of our legislation is the regulation of conditional sentence and, especially, of protective supervision with conditional punishment because supervision, before all, alleviates the rigidity of penal system (cf. Šeparović, 1981: 318). The purpose of parapenal sanctions is not to punish the offender for socially less dangerous crimes, with positive expectations as to their effectiveness. Let us mention that conditional punishment was introduced in Croatia by the Law of Conditional Sentencing of Kingdom of Croatia, Slavonia and Dalmatia, on 26th of August, 1916. Considering the positive regulations now valid in Republic of Croatia, and we hold that they will not be derogated by a new penal code, we think that the most important are regulations which determine the introduction, i. e. the existence of conditional sentence with protective supervision (Protective supervision with conditional sentence, art. 4 KZ RH); (similar in other authors,

for example, Šeparović, 1981: 318). This sanction is similar to Anglo-Saxon probation system: for some period during the probation, the offender is subjected to protective supervision by an expert social worker. The contents of protective supervision are nominally cited in the Law (although not elaborated in detail, but we could not expect it in a law): "measures of help, care, supervision and protection". If the court of law during the protective supervision concludes that the purpose of this measure is fulfilled, it can be cancelled before the end of period proclaimed by the court of law. Of course, this measure has never been implemented in penal practice of former Yugoslavia (apparently, because of lack of money and expert workers), it is necessary to elaborate its contents and forms and to implement it as soon as possible. Here we can draw some parallels with contents and forms of probation for juvenile delinquents that has been relatively successfully carried out (see, for example, Uzelac et al., 1990). However, considering that probation with parole is passed for adult offenders, this sanction has to be adjusted to characteristics and needs of this population.

Taking into account all relevant specifics of our country, it is useful to review some experiences of the states in which probation has longer tradition. O'Leary (1987) states that with the "wild" reforms in penal practice there are some demands pertaining to changes in "supervision" within the social milieu — probation and parole — and they are grouped around two main points: the aims of these sanctions and the "amount" and "location" of parole. The author elaborates the period of "treatment and wide trust" from 1920 to 1970, during which a good deal of theory and practice of probation and of supervision in social surroundings has been developing. Rehabilitation was clearly oriented to prevention of future offences. However, in early seventies there was an "attack" on rehabilitation with accusations that it "did not function" and that ineffectiveness of treatment was scientifically proven, although O'Leary (1987) himself warned that "treatment functions in some cases and for some people". Then followed a period of diminished trust from 1970 to 1980, when the problem of punishment is approached from so-called neo-classic positions: the exclusive orientation to a system in which the exact and fair punishment will be clearly articulated in advance and will be carried out with the consequence of reducing the value of supervision (for example, the critical attitude toward probation as a possibility to treat the offenders and/or destruction of grounds on which parole committees operate). The author promotes the

characteristics of period of "structured trust" after 1980 as appropriate ones. This period is characterized by an increase of philosophy of disabling the criminality, for example, with emphasis on intensive supervision and electronic control, but taking into consideration the principle of just deserts, used as a factor of limitation: the state cannot pass a heavier sentence than the just deserts. The elements of rehabilitation continue to exist, but in a moderate measure, and the treatment is maintained, but with a lower priority. The emphasis is on the necessity of parole and maintaining its structure (decisions specified for certain types of cases and the necessity to explain any significant variation from expected outcome by responsible social workers). By the way, the tendencies in determining the aims of punishment and parole control affect not only the system of criminal law but the probation programs (O'Leary, 1987). We think that some of these suggestions might represent a paradigm for regulations in our country, and numerous experts and scientists and even other subjects responsible for fighting crime in general agree with us. We do not have to inevitably suffer from every "disease" which affected reforms of penal system, before all, in the developed Western countries, if we approach the reform in an analytical, scientific way.

Some questions that are essential to probation can provoke numerous dilemmas. Namely, the situation is in most Western countries different from the situation in our country: there exists an exact organized approach which facilitates the realization of existing programs. For example, probation departments in the USA are organized as services to court, which has control over a series of various services. The court has a special authority to "intervene" in a social community. Government executive organs coordinate this work. Therefore, it is possible that the probation officer takes a particular case, studies it, makes a specific treatment plan and offers it to various services and agencies (for example, if it is necessary to send a proband to a counselor, perform drug tests, constantly monitor his jobs, housing, participation in necessary programs and so on). Additionally, according to Kratcoski (1985) the very creation of specific program for a particular probationer is not a task left to the probation officer who would do it by various methods (ranging from subjective assessments to various instruments for prediction). On the contrary, since 1977 (starting in the state of Wisconsin) a classification of probation models is going on. A treatment/rehabilitation model of this kind tries to define the needs of offenders, their attitudes, motivation, characteristics, and

then to start a treatment aimed at changing values, attitudes and skills, and that would prevent offenders to relapse. Admittedly, the ground of this is individualization, which means that every probationer has a specific treatment program aimed at his needs and problems, but the starting point is a relatively coherent set of instruments which consists of data on socio-economic state and delinquent history of the offender, but also of possibilities to assess the "client's" needs in the domain of: family support, employment, emotional problems, drugs, alcohol and medical care. The offender's assessment of his own danger to the society is also included. The instruments of risks and needs enable the experts and probation officers to make a categorization in the form of matrix: (1) high risk level, high level of needs, (2) low risk level, high level of needs, (3) high risk level, low level of needs, and (4) low risk level, low level of needs. Thus one can get a clear picture of the situation, in points, and distribute jobs to available expert personnel. The work models are not on the level of particular cases any more, but they include a "work unit", i.e. a concept of work units which are established according to level of supervision, geographical distribution of cases, types of tasks assigned to probation officers, and work with special types of cases. By this, the type of contacts between probation officers and probationers, and between probation officers and other subjects in social community, is generally determined.

In our circumstances there are no established, or recommended measures of means and frequency of contacts between probation officers and probationers, and especially not between probation officers and subjects of social community (Mikšaj-Todorović, Šučur, Vučinić-Knežević, 1993). Without clearly determined organizational frame of reference, the discussion of problem of choosing the expert worker who controls the probation, i.e. of his characteristics, and its success undoubtedly to the great extent depends on this. The probation officer is a state representative whose task is to work efficiently with the probationer, but with the community, too. According to McHardy (1973) his responsibility is to act as an intermediary in the treatment. The treatment has different forms, from direct counseling work on the case to securing various activities in the community. A probation officer is expected to be an expert in all these fields. Therefore one cannot underestimate or simplify his role. While for working with probationers one needs theoretical knowledge, training, preparing and competence, it is not certain that the work in social community will be successful even if these requirements are met. Since the probation

includes a reintegration model, and according to O'Leary and Daffey (Lawrence, 1991) "it tends to reduce the stigma that is ascribed to criminality and to lift the blockade which obviates entering into society", the treatment process itself has to include the offenders as well as the community. From this viewpoint, Joan Petersilia and Susan Turner (Conklin, 1991: 421) evaluated three Intensive supervision programs (ISP) in California and found that the ISP officers were capable to improve the supervision of probationers but were less successful in counseling work, and especially in finding jobs for them. It is possible to ascribe the reasons of this failure partly to the fact that "sanctioned persons" are stigmatized even in the frame of "community treatment", as warns Pečar (1988:117): "Like any control, the consequence of this one is stigmatization and everything that goes with it, from like various pressures, hardships, rejections, ridiculing and so on, to expelling from a group and losing a job as the most unpleasant reactions in the community..."

Until now, scientific and expert papers in Croatia which treated probation officers emphasized a dilemma: expertise and/or personality of probation officer (for example, Uzelac, 1984). In this case we could draw a parallel and "move" the problem, formulated in this way, to the domain of sanctions we are concerned with in this paper. Officer's education level and profile, and desirable and undesirable characteristics of his personality are also pointed out (for example, Dobrenić et al, 1972). Among other things, the researchers have been concerned with the influence of social-economic state of probation officer to the success of probation, on the basis of the correct hypothesis that the probation officer lives and works in certain social space whose characteristics affect him in a way which is sometimes very constraining (Uzelac, Žakman-Ban, 1988; Žakman, 1990; Žakman-Ban, 1994 etc.). There are some social-economic characteristics which enable more efficient use of probation officer's work and expert potential, and it is by all means more efficient to invest in the right choice of expert than to make changes later according to actual requirement of a particular probation phase. The lack of knowledge about this problem is evident in our country and we recommend further studies. Regarding this we could accept some findings and suggestions regarding characteristics and right choice of workers in penal institutions (Mejovšek et al., 1989; Budanovac, 1990).

The question of passing a conditional sentence with protective supervision to certain categories of offenders sometimes is almost a heretical one. For example, in the past probation

was passed only to perpetrators of lesser offences, but many later committed real crimes. These probationers represent a possible threat to public safety. Willing to investigate the possibilities of their treatment, Rand Corporation researchers studied 1672 probationers in Los Angeles and Alameda counties, California. They monitored them forty month after sentencing and concluded that "they represent a serious threat to public safety" (Petersilia et al.: as cited in Conklin, 1991: 422). During this monitoring period 65% of them was arrested again, 51% was sentenced for a new offence, 18% was sentenced for a serious crime, and 34% was imprisoned again. Three fourths of new accusations for serious crimes was for those crimes that the community is most afraid of: burglary, theft, robbery and other violent offences.

Also, considering passing parapenal measures to recidivists, and even multi-recidivists, one should warn against the danger of fervent promoting the philosophy of "just deserts" (Walker, 1983). This author argues against Martinson's attitude (1974; as cited in Walker, 1983); Martinson asks "what does work" (in the treatment) and answers "nothing works", although he later changes his opinion in some measure. Analysis of results of a post-penal monitoring in Great Britain (in minimal duration of six years) showed that, when probation or conditional sentence were used in cases of first-time offenders, the degree of recidivism was much higher than we would expect. On the other hand, in the cases of multi-recidivists, for new crimes it is not important what punishment was used first time. But the most important fact is this: when the court sentences offenders who relapsed only a few times, probation results in reducing the degree of recidivism. Having in mind the fact that avoiding delicts is a weak, even a misleading measure of offenders' rehabilitation, Walker (1983) dares to suggest that probation is not appropriate for first-time offenders and that it should be used for the recidivists. We hold that one should promote also for all other possibilities and forms of social reaction, besides punishment, as, for example, "half-freedom regime", conditional release, but also probation for recidivists (Žakman-Ban, 1992). Of course, a precondition for this is a high degree of judicial individualization. The author states numerous argumenst for this suggestion, and besides her "offering" the possibilities of various kinds of non-institutional sanctions for particular categories of recidivists, she emphasizes the necessity to have enough differentiated work programs for selective use, and she suggests to "use" all the capabilities of post-penal treatment. Petersilia et al. (as cited in Conklin, 1991: 422) conclude that generally "weak" enforcing of probation of

serious offenders and recidivists requires a new type of punishment which would be positioned between probation (which gives freedom to offenders) and imprisonment (which takes their freedom away). For example, it has been proposed to introduce sanctions in the direction of limiting freedom, i.e. of intensive supervision program (ISP) which includes: "intensive supervision and monitoring; the real obligation to move nad act; employment; other obligations required by the community; going to a counsel or to therapy; the mechanisms for quick punishing of those who commit offences." The proposers maintain that a program of this kind could "increase the confidence to probation and reduce imprisonment without increasing criminality."

In the course of discussion further dilemmas emerge, with special regard to future judicial practise in Croatia. Namely, the question of judicial criteria for passing probation sentences, i.e. protective supervision with conditional sentence is still unsolved. If one would, while passing these para-penal measures, follow only so-called objective criteria (type and graveness of the crime, recidivism and so forth), which could not be justified in the light of above-mentioned experiences and attitudes of practitioners, theorists and researchers, the question of type and extent of these criteria still exists. However, if one would include also the criterion of so-called bio-psycho-social characteristics of the offenders, which would be necessary while considering probation in this way, then emerges the problem of organizational pre-supposition necessary for the court to work properly. Last but not least, this re-actualizes the question of respecting the principles of legality and citizens' judicial security in general.

Let us illustrate what we just discussed above by Bačić's proposition of outline for Penal Code of Republic of Croatia, in which, among other things, he recommends introducing a sanction called "work in public interest", which would, as the author hold, be based on voluntary work; it would represent a free and autonomous taking responsibility for the crime committed. For this alternative sanction one could also pose a question of criteria used to pass it, and, on the other hand, there are reasons to suspect some disguised, sophisticated preasure by judicial bodies, i.e. the subject of formal social supervision of offenders.

4. THE PROPOSALS FOR INTRODUCING PROTECTIVE SUPERVISION WITH PROBATION

In spite of present, ambiguous attitudes which are expressed in the notion that punishment is a "necessary evil" (which we can limit to a certain extent, but we cannot abolish it), or that punishment "is not a necessary evil", because we can replace it with "something" more appropriate to modern, developed society, we will still be guided by the fact that retributively conceived punishment does not exclude aims as resocialization, i.e. rehabilitation. We leave possible disagreements about the aim of punishment, defined in this way, in the light of utilitarian and/or humanistic orientation, to other theoretical discussions. Let us once more state that the idea of conditional freeing the offenders (with or without providing help and/or with supervision) from persecution or execution of prison punishment is present in almost every state in the world, thus in Croatia, too. It is an expression of the notion that the offender can be left at large with providing help or with supervision (in probation) or in the case of reasonable belief that the offender will behave positively without the need to enforce the punishment.

Our previous discussion is related to the question which service in Croatia could be in charge of the inevitable need to determine the contents and enforce particular duties and measures of help and care for subjects in treatment. Furthermore, the goal of working with probationers would be behavior modification treatment. "Considering the possibilities, it is necessary to influence some probationer's social environment subjects, and system of social values" (Mikšaj-Todorović, Žakman-Ban 1991; Žakman-Ban 1994).

It is important that immediate tasks in probation are determined by probation officer and probationer. We should emphasize that these tasks must be adjusted to probationer's needs and the probation officer must respect the same elements court was considered with, but also those which the court possibly did not consider (for example, offender's personality traits, circumstances of living, age and education, medical and psycho-physic health, occupation, interests and habits, world view, internalized value system, way of life in home, school, workplace, circumstances and types of offenses, family circumstances and other characteristics of bio-psycho-social status). What is extremely important is the rule that determined tasks must be appropriate to probationer's characteristics, i.e. clearly defined, with exact deadlines, and punctually planned

regarding the modalities and particular phases of their enforcing. The probation officer would act on his own, but also in co-operation with other social environment subjects, in the field of education and/or professional training, attitudes toward work, dwelling, managing with wages and property, health care in general, organizing leisure activities, family relationships and so forth.

Mikšaj-Todorović and Žakman-Ban (1991) hold that probation officers perhaps could have various basic education in the field of humanistic sciences, but predominantly penologically educated (some of them might have additional education and training), which would make them especially appropriate for realization of probation goals and tasks. This could enable successful carrying out individual and group forms of treatment in probational work with the offenders. Probation officer's time schedule is related to duration of probation, which is determined by the court within fixed time limits. According to the law regulations, probation can be canceled before expiration of the time limits "if the court decides that the purpose of the measure is fulfilled." We maintain that Šeparović's (1981: 319) suggestion that regarding this it would be more correct to emphasize obligations rather than voluntarism, if the stated conditions are fulfilled. Of course, as the court can cancel the probation if it holds that it is not necessary any more, (Art. 6, ad. 3. Penal Code of Republic of Croatia), it can as well prolong it or incarcerate the offender (Art 7. ad. 2. Penal Code of Republic of Croatia). Probation officer would be obliged to regularly and comprehensively maintain all the necessary documentation which consists mostly of: probation officer's nomination decree, treatment program basics, probation reports (on a regular basis, special ones and final ones), work diary, notes, correspondence and so forth.

It is necessary to systematically monitor the proces of enforcing this sanction, evaluating and improve regarding the results.

It is especially important to scientifically evaluate the efficiency of probation as to constantly improve its successfulness and to change it if necessary. Scientific results would be compared with relevant results of recent research all over the world, and this would affect theory and practice and the necessary forming of better models of work on enforcing this alternative sanction.

Finally, in our circumstances it seems appropriate to say that supervision systems are bound to see interesting times. O'Leary maintains: "Inevitably, interesting times often are a course, because they involve violent changes. But I think that this time is most exciting for probation.

5. INSTEAD OF CONCLUSION

In Republic of Croatia a legislative reform is being carried out, as well as the reform of penal system, which must be viewed from various angles. The reformators' attention should not be oriented mostly on institutional treatment, i.e. prison sentence, but one must find appropriate possibilities of conducting the alternative sanctions with special emphasis on probation.

The problems of passing and enforcing of alternative sanctions are very complex, especially in Republic of Croatia, because only now it is attempted to form comprehensive solutions (from legislative-regulative to organizational to rehabilitational). The authors

of this paper maintain that every activity leading to sooner introduction of alternative sanctions (especially probation) should be intensified to the greatest possible extent. Of course, one should consider positive experiences and scientific results in this domain, Croatian as well as foreign. The latter must be analyzed respecting the specificities of our country. However, one of the basic preconditions for successful solutions of penal politics in general, thus also conducting of alternative sanctions, is an optimal cooperation between law institutions, penologists, workers and all institutions concerned with prevention and crime reduction problems. This cooperation until now can be viewed as unsatisfactory.

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