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MODERN APPROACHES TO SANCTIONING AS DETERMINANTS OF THE QUALITY OF LIFE IN THE FAMILY, THE NEIGHBOURHOOD AND THE COMMUNITY - NEW PERSPECTIVES ON REDUCING CRIME

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SUMMARY

The purpose of this article is to analyse different approaches to sanctioning and their potential effects on families, neighbourhoods and communities. After a brief review of the basic concepts of sanctioning, their development and critique, the article firstly studies the risks associated with approaches to sanctioning focused on the criminal offense and the imprisonment of the offender, and then it discusses the potential economic and social benefits of more modern approaches to sanctioning focused on the offender, the victim and the community. Based on a presentation of long-term effects of different approaches to sanctioning, the author draws attention to the current challenges present in Croatia and to certain understandings that should be taken into account, primarily because of the potential benefits for families, neighbourhoods and communities. In conclusion, the article provides certain suggestions and guidelines that could be useful for the Croatian penal system but also for society as a whole.

Key words: *approaches to sanctioning, imprisonment, sanctions and measures, probation, family, neighbourhood, community*

1. INTRODUCTION

In the last ten years, given the steady growth of the prison population, Croatia has made efforts to introduce community sanctions and measures and to establish professional probation services. While citizens, media, and political structures have at some points called for a more strict system of punishment and incarceration of persons who have committed felonies, they were at the same time invited to provide greater support to work that aimed at rehabilitating and reintegrating the felons into the community. The purpose of this article is to present different approaches to sanctioning and to analyse their potential consequences, particularly from the angle of their possible long-term effects on families, neighbourhoods and communities, which was not sufficiently discussed in the professional and general public throughout the past ten years. At the same time, the article offers some suggestions and guidelines that could be useful for the Croatian penal system, but also for society as a whole.

2. APPROACHES TO SANCTIONING

There are several approaches to sanctioning with different expectations about what is to be achieved with the penal system - to punish, to intimidate others from committing criminal offenses, to ensure compensation or reparation of damages to the victims, to change the persons who commit criminal offenses, to monitor and/or imprison the offenders, in order to prevent repetition of offenses, to repair the damage caused by criminal offense. Table 1 shows different approaches to sanctioning. The author is primarily guided by the criterion that the first group approaches are more focused on the offense, the second group approaches are focused on the offense and the offender, while the third group is focused on the offense and the offender and implies also direct involvement of victim and/or community.

The desired effects of all these approaches to sanctioning seem logical and potentially good methods of crime reduction. Real dilemmas arise only by examin-

Table 1 *Different Approaches to Sanctioning and their Desired Effects (according to Latessa and Allen, 2003; Dandurand and Griffiths, 2006; Farabee, 2005 and 2006 according to Cullen et al., 2009, Lanni, 2005, Clear, 2007)*

APPROACHES	PRINCIPLES	DESIRED EFFECTS
Retribution Deterrence Isolation Incapacitation (These approaches were present even in the ancient laws; in the 18 th century they included severe physical sanctions; today there are present within contemporary theories regardless of previous retributive approaches; in the 1970s they are increasing in new forms)	Offenders should get the punishment they deserve, and an appropriate punishment is one that fits the crime. By uncovering, arresting and punishing the offender, a clear message that crime does not pay is sent to everyone else. Once they have committed a criminal offense, it is important to disable the potential offenders to commit a criminal offense again through restriction of freedom.	General and individual deterrence will decrease the number of committed criminal offenses and prison population. Isolation and restriction of offenders through imprisonment, strict supervision or otherwise, shall contribute to security of society and the decline of the criminal offense rate.
Rehabilitation Reintegration (The idea of rehabilitation is more present since the 19 th century-since the 1970s it was less important; in the 1970s and 1980s a new idea of reintegration is emerging)	Offenders should be changed in order to overcome the causes of criminal behaviour and to prevent the recidivism (work skills, emotional control, etc.), and therefore sanctions that will best contribute to the rehabilitation of the offender should be imposed. Sanction should be focused on the involvement of the offender in the community, i.e. on the establishment and strengthening of positive social relationships.	Having overcome their emotional and other difficulties, acquired new attitudes, skills, interests and habits, learnt how to meet their needs in socially acceptable ways and after establishing valuable relationships, the offenders will no longer be motivated to commit criminal offenses. Activities aimed at social integration of the offender will reduce recidivism.
Reparation Restorative justice (Restitution and compensation were present in the ancient laws, since the second half of the 20 th century they are gaining importance again)	The offenders should provide reparation to the victim and/or the community in order to repair the damage caused by an offense. The focus should be on the victim and the offender, as well as on the return of the things to their original condition and on the reparation of the relationships that have been damaged by the criminal offense. Compensation may include financial restitution, apology and other forms of reparation.	By raising awareness of the consequences of the offender's behaviour, by rehabilitating him, as well as by providing compensation to the victim, the community will ensure social relationships that will contribute to more favourable conditions for the reduction of crime, a lesser need for imprisonment and the reduction of the prison population.

Table 2 *Criticism of Different Approaches to Sanctioning (according to Latessa and Allen, 2003; Dandurand and Griffiths, 2006; Farabee, 2005 and 2006 according to Cullen et al., 2009, Lanni, 2005, Clear, 2007)*

APPROACHES	CRITICISM
Retribution Deterrence Isolation Incapacitation	<ul style="list-style-type: none"> it is impossible to define objective criteria which would ensure that the sanction always corresponds to the committed offense a message "it is important not to be caught" is sent indirectly and reasons for avoiding the criminal offenses are not given rough and limited understanding of the motivation and incentives, whereas deterrence can only have an effect on certain people, with some kinds of criminal offenses, in certain types of conditions, etc. it is ethically questionable to sanction people based on risk assessment for something they have not done yet the question of justification of strict sanctioning in order to intimidate others
Rehabilitation Reintegration	<ul style="list-style-type: none"> causes and explanations of crime are required only within personal shortcomings and the social injustice is neglected the erosion of individual responsibility since the reasons are only required in terms of excuses for behaviour this is the "bleeding heart" approach which is not sufficiently serious to be effective the communities are exposed to a certain degree of risk only offenders who have committed a criminal offense are affected, while the reduction of crime in general is not affected
Reparation Restorative justice	<ul style="list-style-type: none"> damage to the victim is often hard to define, which makes it difficult to repair reparation is mainly limited to financial compensation, and when a person lacks the material resources, the judges will not impose it the impossibility of inclusion of offenders who enjoy the suffering of victims it is usually applied in cases of minor offenses and lower risk and therefore the effect on the recidivism is lower restorative programs will be better implemented in better organized communities with increased capacities the risk of the victim being used as a component of the treatment of the offender

ing the criticism that supporters of certain approaches point to each other, which is presented in table 2.

Regarding the inclusion criteria of the offender or the victim and/or the community, it should be noted that Tables 1 and 2 merged approaches among which there are some differences into same groups, and a more complex and extensive presentation would significantly exceeded the capabilities of this work¹. Furthermore, it seems important to note that the approaches to sanctioning, and especially their desired effects, are presented to the public, i.e. to a wider social community in even more meagre and simple ways. Public interest in approaches to sanctioning usually increases with the increase of crime or with sensationalist media portrayals of certain serious criminal offenses. This may also lead to greater interest of politicians, and ultimately to *penal populism* (Simon, 2001; Walmsley, 2003; Kovčo Vukadin, 2005; Kovčo Vukadin, 2009). In fact, it seems like the public understands the approach of severe sanctioning and imprisonment of offenders much easier than the complex concepts of non-imprisonment sanctions, which include elements of community service, restitution and treatment (Mauer, 2001). One of the possible reasons why the public is more likely to choose retributive and related approaches to sanctioning is perhaps the belief that the effects of imprisonment affect only the prisoner, given that the wider community is not sufficiently informed about other effects. The opinion of the author is that the professional community also insufficiently deals with the possible wider effects of sanctioning with the additional problem of scarce scientific studies in this area, possibly due to the complexity of their implementation and the needs of greater material resources for their realization.

3. APPROACHES OF SANCTIONING PRIMARILY FOCUSED ON THE CRIMINAL OFFENSE AND IMPRISONMENT OF THE OFFENDER

Approaches to sanctioning described in this chapter, as well as their consequences, are somewhat typical for some other countries in the world. However, due to the limited scope of this article, we will describe only the example of the United States, taking into account the highest imprisonment rate in the world, which amounts to 716 (International Centre for Prison Studies, 2013). The author will analyze this fact primarily from the angle of approach to sanctioning, where, of course, we should bear in mind the existence of significant influence of other factors.

3.1. Approaches to Sanctioning in the United States of America (USA)

Given the increasing crime rate in 1970s in the United States, the public was more openly seeking stricter sanctioning of the offenders and the experts expressed their increasing disappointment in the effectiveness of rehabilitation programs (Cullen, Fisher and Applegate, 2000). This created a situation of constantly growing competition of rehabilitation and retribution objectives, followed by an abruptly weakened influence of rehabilitation philosophy after the announcement of Martinson's work (Martinson, 1974), which attempts to prove that rehabilitation programs do not really work ("Nothing works."). This resulted in a revival of retribution, deterrence and incapacitation, as well as a series of new principles of sanctioning. During the 1980s, a tough on crime movement was developed, where special and general deterrence and incapacitation are becoming the main goals of sanctioning (Petersilia, 2000; Greene, 2002; Latessa and Allen, 2003; Vasiljević-Prodanović, 2011; Lenza and Jones, 2010) among the three known principles of sanctioning: (1) just deserts - offenders deserve to be sanctioned, and the sanction should exclusively match the committed criminal offense, i.e. what is deserved, (2) truth in sentencing - prisoners should serve the imposed imprisonment sentence, with no possibility of parole, for example, due to good behaviour, achievement in rehabilitation or faster social integration, (3) the three strikes principle - judges are ordered by legal norms to impose a minimum prison sentence of 25 years or life sentence to offenders who had already been sanctioned twice for serious offenses, and committed the third.

Due to the increasing number of prisoners, the construction of new prisons demanded increasing material resources. The United States had no choice, but to actualize again the sanctioning of offenders without imprisonment (Trotter, 1991) at the end of the 20th century. However, in sanctioning the offenders within the community a "punitive spill-over" happened, in a way that the implementation mainly implied strict control, focus on detecting violations and sending or return to prison. In fact, this method only increased the number of returnees into prison - half of those who enter the prison system each year are actually recidivists that have already been imprisoned (Frana and Schroeder, 2008). The penal system is therefore increasingly described as a "perpetual incarceration machine", since the prisoners are constantly "recycled" from prison to the com-

¹ For more information on the main directions of development of the philosophy of sanctioning and the purposes of sanctioning see Kanduč, 1996, Cvitanović, 1999, Kovčo 2001, Novoselec, 2004, Bojanić and Mrčela 2006.

munity and back (Frana and Schroeder, 2008; Travis and Stacey, 2010). At this time, this may also be affected by the neoliberal bend in the economy and society, which is providing a framework for privatization of the prison and probation systems, with an emphasis primarily on profits (Selby, 2005; Schloss and Alarid, 2007; UK Ministry of Justice, 2013).

Focus on imprisonment, some authors call it the uncontrolled imprisonment (*incarceration binge, prison boom*), is perhaps the most thoroughly implemented social program of modern times (Frana and Schroeder, 2008; Wildeman and Western, 2010). For the first time we encounter the concept of mass imprisonment and since the imprisonment rate and the size of the prison population are significantly above the historical and comparative standards for this type of society, there is a disproportion in relation to particular groups (often based on ethnicity and race), with more visible social concentration of imprisonment effects (Garland, 2001). Regarding the increase of imprisonment, Rose and Clear (1998, according to Clear et al., 2003) introduced the specific concept of coercive mobility, emphasizing that imprisonment, as a means of social control, becomes a source of social disorganization after a certain tipping point and as such a powerful environmental criminogenic factor. Clear (2007) points out that imprisonment has grown to the point when it causes a series of social problems and is thus "feeding itself", and poor minority communities are actually the most affected ones, where spending some time in jail becomes routine.

The tough on crime movement promised citizens a relief from high criminal rates and unsafe neighbourhoods and communities, however, subsequent studies have not confirmed this effect (Frana and Schroeder, 2008). Regardless of the results of these studies, and despite the fact that subsequent studies, using different methodologies, demonstrated the effect of rehabilitation programs on recidivism (Latessa and Lovenkamp, 2006), in increasingly complex developments in modern society (market, social and political changes) and within the framework of the current focus on imprisonment, the confidence in these programs is returning slowly, the public tends to accept them harder and the politicians are not prone to them.

3.2. Effects of Approaches Focused on the Criminal Offense and Imprisonment of the Offender

In addition to the positive effects of prison sentences and their necessity, it is necessary to bear in mind that the effects of increased imprisonment

affect large numbers of persons who lose their jobs or some other form of support, personal property, housing for themselves and their family and important personal relationships (Travis, Solomon and Waul, 2001; Griffiths, Dandurand and Murdoch, 2007). Imprisonment also harms their social relationships; they can develop problems related to mental health or may acquire self-destructive habits and attitudes. The prison stay often causes the prisoners' resistance to a society that rejected them, internalization of antisocial norms and values, reliance on criminal networks and learning of new methods of committing criminal offenses. After being released from prison, former prisoners are labeled; they have reduced employment opportunities and often have reduced possibilities of obtaining various social benefits or programs, such as scholarships and other incentives (Daoust, 2008, according to Brown, 2010; Pritikin, 2009). The return of prisoners into the community requires economic investments for their reintegration into the community, with a particular problem of stigma, low education and scarce job skills (Frana and Schroeder, 2008; Pritikin, 2009). The more prisoners there are, the more persons return or will return back from prison into the community. The return of a large number of prisoners can destabilize neighbourhoods and communities, especially those who are already in an unfavourable economic and social position (Travis, Solomon and Waul, 2001; Clear, 2007; Travis and Stacey, 2010). Reintroducing the prisoners into the community bears potential for profound collateral consequences, including public-health risk, homelessness and new offenses (Travis, Solomon and Waul, 2001), with the possibility of increase of violence against children and domestic violence (Petersilia, 2000). This certainly does not mean that prisoners should be disabled from returning into the community, but on the contrary: it is necessary to provide them with assistance and support in this process, since the causes of their difficulties in the involvement in the community are very layered - in the sociological, economic and cultural sense (Griffiths, Dandurand and Murdoch, 2007, Griffiths, and Murdoch, 2009, Šimpraga and Vukota, 2010).

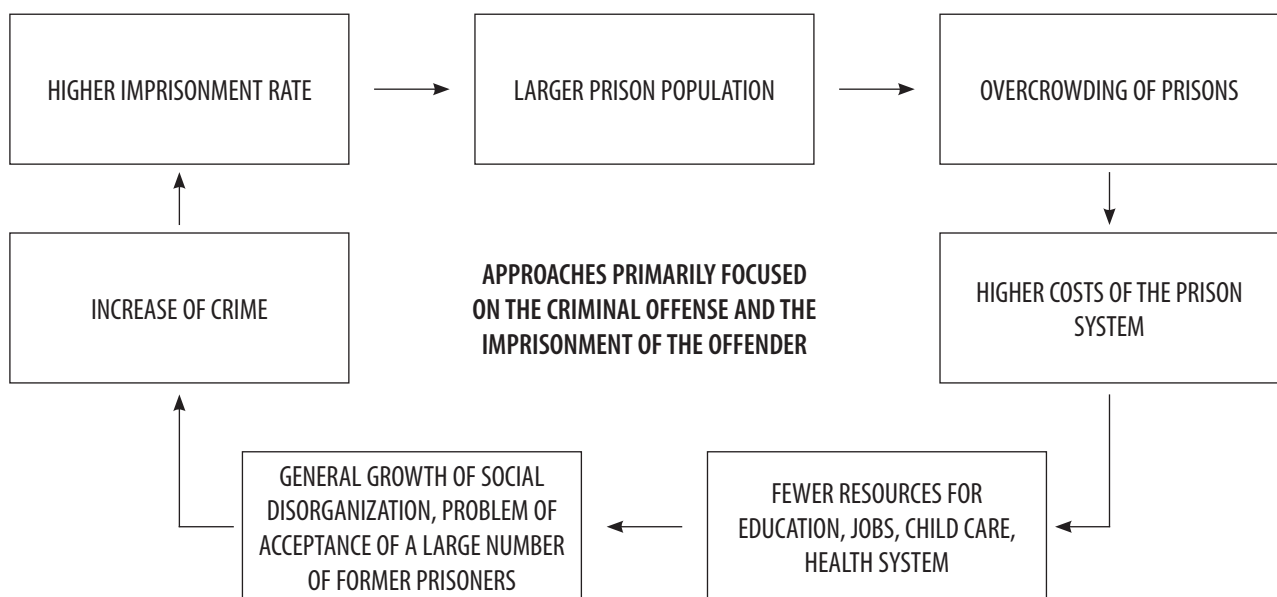
The high rate of imprisonment also has a number of effects on a large number of families. Consequences for the family can range from loss of financial and emotional support to social stigma, associated with the fact that a family member is in prison (Travis, Solomon and Waul, 2001; Clear, 2007; Pritikin, 2009; Wildeman and Western, 2010). Particularly significant are long-term consequences that affect children. These may include stigmatiza-

tion of the child in school, relocation and change of school, lower success in school, resistance to authority, repressed anger, reduced contacts with adults, unsupervised leisure time, which, at the same time, are proven predictors of juvenile delinquency. Since in increased imprisonment they are less disproportionately represented, sanctioning can cause and deteriorate the stigmatization of minorities, which can be related to crime (Brown, 2010; Harison and Beck, 2005, according to Pritikin, 2009).

Imprisonment rates are also negatively related to income and education level, which means that those who are already economically disadvantaged will more likely suffer further economic difficulties arising with imprisonment (Pritikin, 2009). Prisoners are often concentrated in a relatively small number of communities that already have large social and economic disadvantages (Travis, Solomon and Waul, 2001). While a member of the community is in prison, the community receives no money from his work, and if many persons from a community are in prison, the economic growth of the community slows down. In the situation of increase of the number of criminal offenses in the community, and when that issue is primarily approached from the perspective of separation of offenders from the community and their imprisonment, a large number of imprisonments may affect the price of houses, quality of local schools, the perspective of the youth, the deterioration of buildings and public facilities. This may lead to emigration of a part of the population from these communities, due to the drop in standard of living, fear or escape from stigmatization. Thus

only the members of the community with no other choice remain. Of course, the occurrence of these situations that we encounter within the foreign experience (primarily in the United States) is not only affected by a large number of imprisonments. This is rather a very complex social problem, within which the imprisonment can be one of the factors (Petersilia, 2000; Travis, Solomon and Waul, 2001; Pritikin, 2009; Brown, 2010).

There is valid evidence that a high imprisonment rate destabilizes families, increases the rate of delinquency, increases the number of teenage pregnancies, leads to the alienation of the youth from the prosocial norms, harms the social relationships and weakens the labour market. Concentrated imprisonment in certain neighbourhoods and communities contributes to all these problems, each of which tends to weaken the informal social control (Clear, 2007). In these circumstances, imprisonment becomes one of the factors contributing to social dysfunction, weakening of communities and reduction of social capital and social solidarity, which are actually the basic strengths of crime prevention (Brown, 2010). We can conclude that individuals, families, neighbourhoods and communities are systematically becoming more vulnerable to the future and deeper involved in crime. In a way, we are talking here about the so called *boomerang effect* (vividly illustrated in Schematic View 1), since the way in which society responds to crime increases the social disorganization of the community, which then increases crime (Rose and Clear, 2001; Latessa and Allen, 2003; Pritikin, 2009; Bobo, 2009).



Schematic View 1. Effects of Approaches Focused on the Criminal Offense and Increased Imprisonment of the Offenders - the So-Called Boomerang Effect (according to Rose and Clear, 2001, Latessa and Allen, 2003, Pritikin, 2009, Bobo, 2009).

Possible adverse effects of approaches oriented to the criminal offense and the imprisonment of offenders do not simultaneously mean that these approaches should be neglected or ignored. On the contrary, the criminal offense as a basis for penal intervention stands out as very important, given the warnings and criticisms of some modern trends of determining penal sanctions in accordance with the actuarial assessment of risk and the potential danger of the offender to the community (and not based on the committed criminal offense) (Silver and Miller, 2002; Robert, 2005; Whitty, 2007). Furthermore, for certain number of offenders, with respect to the offense and/or recidivism, isolation from the community is necessary in order to make them incapable of repeating the criminal offense. The situation becomes problematic when emphasis is put only on the criminal offense and the increased imprisonment of the offenders, without considering the possible adverse effects of these approaches. This is then explained with possible adverse effects of other approaches, without considering their possible positive effects.

The fact is that, given the approaches to sanctioning and the current situation, there is a big difference between the Anglo-Saxon countries and Australia and the European countries, including Croatia. A good example of the existing difference is the problem of increased imprisonment of racial and ethnic minorities in the United States and Australia (Harrison and Beck, 2005, according to Pritikin, 2009; Brown, 2010), while in the Croatian context in this regard, we could only talk about the existence of possible risks for marginal social groups.

The remainder of this article will present the approaches to sanctioning, which, along with the imprisonment of offenders, also include a broader range of sanctions and measures and different effects of penal interventions.

4. APPROACHES TO SANCTIONING FOCUSED ON THE OFFENDER, THE VICTIM AND THE COMMUNITY

The imprisonment rate of the European countries is several times lower than the imprisonment rate in the United States: for example, Germany - 80, Austria - 103, Finland - 60, Sweden - 70, Czech Republic - 153, Belgium - 100, Italy - 108, United Kingdom - 150 (International Centre for Prison Studies, 2013). Within an international research, Mayhew and Van Kesteren (2002) came to the

conclusion that Western European countries tend to the lowest rank of the support to imprisonment, and they are among the first to support the community service. The question is how much this multiple difference in imprisonment rates and in the attitude of the public, along with other factors, is influenced by the selected approaches to sanctioning, and does this also imply the different effects on families, neighbourhoods and communities. However, as with any country comparisons, it is also necessary to keep here in mind the limitations that arise from cultural, social and economic differences, as well as differences in penal policies between the U.S. and European countries, but also between individual European countries. Furthermore, although the approaches to sanctioning described in this chapter and their effects are primarily cited as characteristic for the European region, this does not mean that they are not present in the United States and other countries, nor does it mean that all the effects of sanctioning in European countries are only desired and positive.

4.1. Approaches to Sanctioning in European Countries

The weakening of confidence in rehabilitation ideas, probation services and treatment and therapeutic programs did not circumvent the European countries; they have also had growing prison population, and new prisons were built (Junger-Tas, 1994, 2). This can be seen on the example of Germany, where, regardless of newly built prisons and increase of treatment staff and socio-therapeutic institutions, the 1980s brought "pessimism, stagnation and partial retardation", i.e. a reduction in the importance of the rehabilitation and social reintegration of offenders (Schwind, 1995, according to Kovčo Vukadin, 2001). In the seventies and eighties, prison sentences became a more significant financial burden even for the European countries and the question of alternative solutions was raised (Junger-Tas, 1994, 9; Albrecht, 2010; McIvor et al., 2010). This alarming situation has prompted the Council of Europe to establish a committee of selected experts – at first from 12, and then from another 14 countries - in 1989 (Junger-Tas, 1994, 8). In 1992, this committee issued a report along with a series of recommendations based on three basic principles: (1) equal cases should be treated equally, (2) the court's decision must always be based on individual circumstances of the case and personal situation of the offender, (3) consistency in sanctioning should not lead to stricter sanctioning. Particularly important is the recommendation that

prison sanctions should be used only if the seriousness of the criminal offense is such that every other form of sanction is absolutely inadequate. Rehabilitation and reintegration remain important approaches within the framework of legislation and execution of sanctions and measures; regulations that limit the possibility of imposing prison sentences are adopted, and the court is required to consider all aggravating and mitigating circumstances related to a committed criminal offense when making decisions.

We could, although with caution, say that in this way Europe essentially stands aloof from the direction in which the United States have largely continued.

In fact, the recommendations of the Council of Europe adopted in the period from 1992 to 2010² are largely focused on: (1) respect for the rights and the dignity of all offenders, (2) humanity in the execution of sanctions, (3) rehabilitation of the offender and his/her reintegration into the community, (4) increase of the range of measures and sanctions, (5) taking into account the rights and needs of criminal offense victims and the provision of adequate support, (6) support to the offender's family, (7) public information and transparency, (8) community involvement, (9) prevention of crime, (10) the development of strategies to combat crime based on specific knowledge and research results.

In European countries, more attention is dedicated to the possibility to enable the offender to stay in the community already during the investigation and the trial, under certain conditions and supervision. In parallel with the strengthening of the role of the victim during the past two decades, an increasing importance is given to mediation and compensation as well as conditional waiver of prosecution of offenders (diversion). The development of restorative justice practices becomes a task of a series of European probation services, for instance in Belgium, the Czech Republic, Ireland, Slovakia and some German federal states (Kalmthout and Durnescu, 2008). The role of the state attorney is strengthening gradually (initially in Germany, most recently in France and Austria, but in other countries as well), relating to dispute resolving outside the court (Albrecht, 2010; Peters et al., 2003).

Considering that safety of the community and crime prevention should be given a greater importance, many European countries (France, Finland, the Netherlands, Sweden, Estonia, Hungary, Poland,

the Czech Republic, etc.) have adopted comprehensive strategies of crime prevention (Idriss et al., 2010). It could be said that European trends involve a preventive effect on all factors in the community that may favour the incidence of crime or recidivism, the tendency towards alleviating penal repression and sanctions under the legislation, as well as the imposition of milder sanctions by type and extent and especially their replacement with non-punitive sanctions within the framework of the judicial practice (Grozđanić and Škorić, 2006). However, it is important to note that certain tendencies towards the increase of prison sentences and their length are noticed in Europe as well. Morgenstern (2009) points out that it may be concluded that punitive policies of European countries in recent years range somewhere between "return of the punitivity" and "resistance to punitivity". This implies to a certain extent a diversion and mild sanctions for minor criminal offenses, and the concentration of more severe sanctions for sexual offenses, for example. Especially problematic is the opening of the possibility of surveillance of offenders of serious criminal offenses at the end of a prison sentence for an indefinite period or that of a "preventive" imprisonment in some European countries (Whitty, 2007). To a certain extent, increase of punitivity is observed in connection with serious criminal offenses, however, it was also noted that in general (for minor and for serious offenses), marginalized offenders such as homeless persons, drug addicts and illegal immigrants (for example, in the Netherlands and Italy) are punished more strictly (Morgenstern, 2009). Also, in certain jurisdictions in Europe changes related to determining the purposes and methods of serving sanctions and measures in the community are observed. For example, community service is a measure that was rehabilitative in its beginning, while rehabilitation as a goal is eventually narrower and less clearly defined, and retributive aspects are emphasized, in order to gain the support of the public and the judges (McIvor et al., 2010).

4.2. Effects of Approaches to Sanctioning Aimed at the Offender, the Victim and the Community

As part of the rehabilitation and reintegration approach, while serving a prison sentence, the offender is trained for a constructive life in freedom (Coyle, 2009). With these approaches no "potential threat" is returned to the community, but a potentially useful member of the community, which cer-

² No. R (92)16, No. R (99)19, No. R (99)22, Rec (2000)22, Rec (2003)22, Rec (2006)2, Rec (2006)8, Rec (2006)13, CM/Rec (2010)1

tainly contributes to safety and quality of life in the community. The offender's family affected by the imprisonment of its member receives the necessary assistance and support, remains integrated or integrates into an existing social network, and its members remain or become accepted and useful members of the neighbourhood and the local community.

Sanctions and measures in the community comparing to prison sentences initially lead to lower economic and social stigmatization and less harm to the offender and his family. The application of these sanctions and measures prevents many proven negative consequences of imprisonment for the individual and for the community, such as alienation of the offender, family disintegration, job loss, stigmatization (Knežević, 1990; Ajduković and Ajduković, 1991; Tot, 2007; Milivojević and Tomašković, 2011), which are particularly visible at first time sanctions and short prison sentences (Ajduković and Ajduković, 1991; Petö Kujundžić and Vukota, 2009). If the offender stays in the community, the likelihood of change in attitudes and beliefs and the possibility of rehabilitation and re-socialization through constructive activities in the community and regular contact with persons of non-criminal behaviour is increased (Wermnik et al., 2010; McIvor et al., 2010). In fact, the inclination of friends and acquaintances to criminal activities is a proven significant risk factor in relation to the likelihood of recidivism (Hanson and Harris, 2000; Mills, Kroner and Hemmati, 2004). The possibility of involvement of offenders in a variety of activities and programs, as well as their connections with persons of non-criminal behaviour is higher in the community than in prison, where a real possibility of criminal infection is present (Tot, 2007). The offender is expected to demonstrate responsibility for his own behaviour and the damage he made, through own involvement in the community (for example, through community service or constructive participation in different treatment and other programs).

The execution of these sanctions and measures also implies effective dealing with complex social problems such as social and economic exclusion, addiction problems, various forms of deprivation (educational, employment), which often significantly contribute to the committing of criminal offenses.

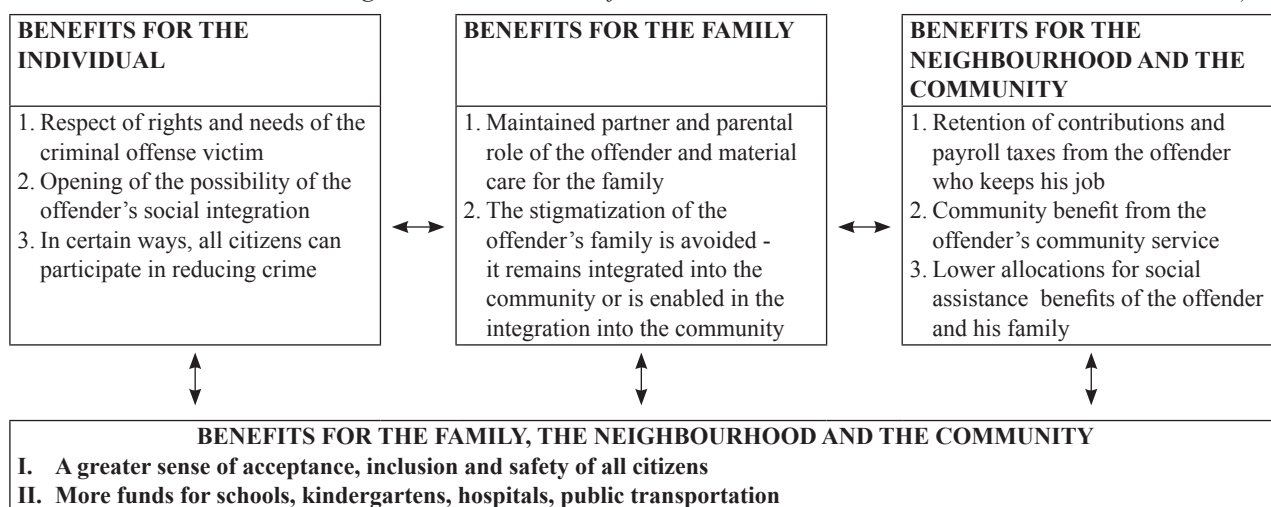
This implies a strengthening of community resources towards ensuring necessary assistance to the offender, but it also contributes to identification of the problems in the community (e.g., alcoholism, homelessness) and their resolution. By leaving the offender in the community and letting him keep his

job or employment, among other benefits, tax payments are retained, restitution (damage return) and/or community service for the benefit of the community is enabled (Junger-Tas, 1994,12,13; Lappi-Seppälä, 2003; Irish Penal Reform Trust, 2010), all of which is lost by the offender's imprisonment. Furthermore, this reduces the likelihood of a repeated offence, given that meta-analyses of numerous studies confirm an association of institutional and isolation programs with a higher rate of recidivism than those, which are executed in the community (Andrews et al., 1990, according to Pritikin, 2009; Wermnik et al., 2010).

Within the framework of restorative justice, the criminal offense is still seen as a violation of the law, however, the emphasis is on the damage inflicted by the offender to the victim, the community and even to himself, and reparation of the caused damage involves not only the penal system, but also the victim, the community and the offender. Using this sort of approach, with the consent and valuation of the victim and his/her needs, the secondary trauma of the victim by the system and society can be avoided (United Nations Office for Drug Control, 1999; Waller, 2003), and the costs of criminal proceedings are reduced through diversion.

By applying these approaches to sanctioning, citizens and communities have a greater ability to influence and act, particularly at the neighbourhood and local community level; families can receive timely assistance (parental competences, marital relations, etc.), neighbourhoods are safer, and there is no danger of stigmatization (e.g. no constant fear of offenders' returning from prison, some neighbourhoods are not declared problematic). Problems in the neighbourhood and the community are identified and solved in time, and life in the community gets better with more available resources and services (availability of kindergartens, education, employment, assistance to marginalized groups, etc.) (Sherman and Strang, 2007). Families and neighbourhoods, that might otherwise include a range of risk factors for the occurrence of criminal behaviour, can be strengthened so as to be more able to respond to the needs and problems of each of its citizens, including the offender. Such a community also develops a series of protective factors in relation to the occurrence of criminal behaviour, given the fact that resistance is developed through prevention activities and timely and adequate response to the problems. Table no. 3 provides some of the most important possible positive effects for individuals, families, neighbourhoods and communities, where it is important to emphasize the interweaving of all these potential benefits.

Table 3 *Benefits for Families, Neighbourhoods and Communities (according to Junger-Tas, 1994; Lappi-Seppälä, 2003; Waller, 2003; Sherman and Strang, 2007; Irish Penal Reform Trust, 2010; Wermnik et al., 2010; McIvor et al., 2010)*



With regard to these approaches, it is also necessary to point out that they have not led to an increase in the crime rate by keeping the offender in the community - in fact, it seems that studies are detecting a good potential towards the reduction of the crime rate, especially from the standpoint of effects on families, neighbourhoods and communities.

5. APPROACHES TO SANCTIONING IN THE REPUBLIC OF CROATIA

In Croatia, the prison population increased from 2679 to 5168 persons in the prison system in the period from 31 December 2001 to 31 December 2010³. Discussions related to an almost continuous rise in the prison population in Croatia were usually focused on the growing problem of prison space shortage and the high costs of the prison system. Although we cannot say that the current imprisonment rate in Croatia, which amounts to 115, (International Centre for Prison Studies, 2013) is high, the author believes that with the strengthening of approaches focused on the offender, the victim, neighbourhoods and communities, the imprisonment rate might be significantly lower.

Namely, compared to the previously applicable legislation, under the adoption of the Criminal Code in 1997 (Official Gazette no. 110/97), the Croatian penal legislation was marked by limitation of penal repression, proclamation of the principles of individualization and alternative sanctions as a substitute for imprisonment, and in many cases, the highest and the lowest sanctions were reduced within the penal framework. However, subsequent

amendments to the Criminal Code (particularly in the period from 2004 to 2006) are criticized for their re-intensification of repression (e.g. for certain offenses, the special minimum prison sentences are increased, while the current maximum is maintained or the maximum is increased, while the current minimum is maintained or both measures are increased). One of the reasons for repression re-intensification in the Final Draft of the Act on Amendments to the Criminal Code from 2006 are the results of public opinion polls, which indicate that the public considers the imposed sanctions to be too mild (Grozđanić and Škorić, 2006). Situations where political structures respond to citizens' insecurity, primarily caused by highly publicized cases and sensational depictions of crime by media, by re-intensification of the law have been repeatedly recognized in Croatia (Kovčo Vukadin, 2005; 2011; Turković, 2004; Grozđanić and Škorić, 2006; Getoš and Giebel, 2012).

It would be wrong to conclude that the overcapacity of the prison system was the exclusive result of public demand for stricter sanctioning and political decisions. It would also be incorrect to conclude that the imposition of prison sentences had no positive effects in preventing offenders from committing criminal offense and their rehabilitation and reintegration, which is after all explicitly stated as the purpose in the Execution of Prison Sentence Act⁴. However, if in addition to the criminal offense, which represents the basis of sanctioning, the rehabilitation of offenders is defined as purpose of the imposition and execution of sanctions, the question

3 Reports on the status and work of penitentiaries, prisons and correctional facilities in 2010 and 2011, Prison System Administration, Croatian Ministry of Justice.

4 Official Gazette no. 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 190/03, 76/07, 27/08, 83/09, 18/11.

is to what extent we may speak of the implementation of rehabilitation programs within overcrowded Croatian prisons. Overcapacity of the prison system bears a number of risks, such as inadequate spatial conditions, limited access to rehabilitation programs (e.g. education, job training, addiction treatment, development of parental skills, psychosocial treatment of violent offenders, work with sex offenders), and limited ability of prisoners' contacts with their families and the outside world (e.g., fewer visits, fewer leaves). This reduces the likelihood of rehabilitation and reintegration of the offender and increases the subsequent risk for families, neighbourhoods and communities. Furthermore, the money spent in Croatia to increase the prison capacities (which are still insufficient), is the money of taxpayers, i.e. citizens, and these funds could be directly targeted at various facilities in neighbourhoods and communities. The society's need for protection from crime is understandable, but the key question is whether it is possible to achieve the same (or better) effect in a certain number of offenders by different sanctions and measures, other than imprisonment, but with more positive long-term effects on the families, neighbourhoods and communities.

Although the legal possibility existed already far earlier, Croatia only recently began to execute a larger number of community sanctions and measures. The execution of the first protective supervision with a suspended sentence began in 2001, and the year 2002 brought the execution of the first community service. The number of imposed sanctions in the community has grown slowly but steadily. In 2002, 52 suspended sentences with protective supervision and 16 community service sentences were imposed, while in 2010, 199 suspended sentences with protective supervision and 892 community service sentences were imposed (Kovčo Vukadin, Rajić and Maloić, 2011). After the establishment of the Directorate for Probation in September 2009 and the Probation Act came into force in December 2009 (Official Gazette no. 128/1999), the process of development of the probation service and the introduction of non-prison, i.e. probation measures and sanctions somewhat slowed down due to the current economic crisis (Kovčo Vukadin, Rajić and Maloić, 2011). However, on 2 April 2013, the probation service executed 432 suspended sentences with protective supervision, 1952 community service sentences at court's discretion, surveillance over 7 obligations (2 of them for community service) imposed by the state attorney under conditional suspension of criminal prosecution and 578 supervisions of offenders conditionally released from prison sentences.

Based on the Report on the Condition and Work of Penitentiaries, Prisons and Correctional Facilities in 2010 and 2011 issued by the Prison System Administration, Ministry of Justice, we can conclude that since 2010, a very slight decrease in prison population has been obviously present in Croatia.

On 31 December 2011, there were 5084 persons in the prison system, i.e. 81 persons less than on the same day in 2010, which actually represents a decline in the prison population of 1.6%. According to internal data of the Ministry of Justice on the number of persons in the prison system, recorded within the framework of cooperation between the probation and prison system (with respect to one of the objectives of the IPA 2008 - EU project Development of the Probation System in the Republic of Croatia, which was related to the reduction of the prison population), on 2 January 2013, 4,755 persons were in the prison system, which compared to 31 December 2010, when 5165 persons were in the prison system, represents a decline of 7.9 % or 410 persons. On 2 April 2013, there were 4849 persons in the prison system, which is actually showing us the variability of this number, however, keeping the number of persons in the prison system under 5000 is still considered an important issue. This reduction in the prison population still cannot be considered as a trend, but even a slight decline in the prison population and the increase in the execution of community sanctions and measures within the context of potential impacts on families, neighbourhoods and communities can certainly be considered a positive process. This reduces the number of persons exposed to possible negative consequences of imprisonment (job loss, impoverishment and/or family disintegration, traumatisation and discrimination of children of the imprisoned parent, criminal infection, etc.), and facilitates the realization of benefits of working with the offender in the community (compensation of victim, continued payment of taxes and other contributions such as pension and health insurance, lower costs in executing sanctions, addressing the needs related to the causes of the offense, meeting the needs of primary and secondary victims, repairing interpersonal relationships, strengthening of the sense of security, strengthening of the family, the neighbourhood and the community).

6. FINAL CONSIDERATIONS AND GUIDELINES

The existence of different approaches to sanctioning implies a choice, where it is important to bear in mind that the selected approaches to sanc-

tioning, other than the desired ones, may bring some unwanted consequences. It is also important to emphasize that the approaches to sanctioning affect not only the offender, but also the families, the neighbourhoods and the communities.

In drafting new Croatian legislation, which is in force since the beginning of 2013, German, Austrian and Swiss penal laws were used as models, i.e. the laws of countries whose legal tradition is otherwise guidance to the Croatian penal legislation (Milivojević Antoliš, 2012). The Criminal Code (Official Gazette no. 125/11, 144/12) and the Probation Act (Official Gazette no. 143/12) which came into force on 1 January 2013, made room for a wider range of sanctions and measures, with a clear orientation towards expansion of the possibilities of imposing alternative sanctions and the strengthening of the probation system. This could contribute to more efficient and for the families, neighbourhoods and communities more useful methods of sanctioning offenders, with an increased use of community sanctions and measures. For example, article 45 of the new Criminal Code clearly indicates the exceptional feature of the short-term prison sentence, while article 55 focuses (commits to) on the substitution of the prison sentence of up to six months by community service. The same article also provides for the substitution of fines and imprisonment of up to one year by community service, while this was previously only possible with prison sanctions of up to six months. It seems important to emphasize article 47 of the Criminal Code, under which the legislator introduced a series of legal rules and standards which are also narrowing down the arbitrariness in the field of adjudication in a way

that formerly broad and imprecise formulations of the circumstances relevant for sentencing are now precise and concrete. With regard to the possibility of imposing a higher number of sanctions and measures in the community, we could evaluate the new Criminal Code as “milder” than the previous one. However, at the same time it is also more rigorous, since the limitation of the long-term imprisonment is now fifty years (article 46 of the Criminal Code), as opposed to the previous maximum of forty years. Although such a penalty may be imposed only in exceptional cases, it is difficult to expect the application of the conditional release in these most serious offenses, so that this sanction may actually become life imprisonment. However, on the other hand, in article 41 under the new Criminal Code, the legislator has given special importance to rehabilitation and social reintegration of offenders in a way that “allowing reintegration of the offender into society” is stressed as important within the purpose of sanctioning.

In Croatia, the observed decline in the prison population coincides with an increase in the imposing and executing of community sanctions and measures and the establishment of Croatian professional probation service, but for now, it is early to connect these two processes, especially given the fact that in many countries, in parallel with the increased application of sanctions and measures in the community, the prison population also increased (for example, in England and Wales or Belgium). It is proven that the implementation of sanctions and measures in community itself can indirectly cause an increase in the prison population (Peters et al., 2003), because if sanctions and measures are not adequately select-

Table 4 *Overview of Some Possible General Guidelines*

CONCEPTS	GUIDELINES
Reinvesting	<ol style="list-style-type: none"> 1. The money should be invested in the community, not in the construction and extension of prisons and the execution of prison sentences. 2. Create capacities for imposing and effective execution of community sanctions and measures and prevention of crime.
Social capital	<ol style="list-style-type: none"> 3. Strengthen families and resources of neighbourhoods and communities. 4. Increase local and regional educational, employment and housing opportunities, as well as quality of child care and family life.
Social efficiency	<ol style="list-style-type: none"> 5. Encourage formal and especially informal social control - through families, volunteer and religious organizations, leisure activities. 6. Build social cohesion, mutual trust and a willingness to engage in joint problem solving for the benefit of the neighbourhood and the community
Community justice	<ol style="list-style-type: none"> 7. All participants and community members should be involved in reducing crime. 8. Encourage neighbourhoods and communities to detect their problems and participate in the problem solving. 9. Define welfare and safety of the community as sanction purpose, along with the evidence based practice. 10. Define crime prevention as a long-term goal of the community.

ed, or if they are implemented in a punishing and stigmatizing manner, the violation of conditions can cause the realization of prison sentences.

The American and European literature is increasingly representing tendencies that can be classified to four concepts: (1) justice reinvestment - reducing the costs of sanctioning within the strategies that will reduce crime and strengthen neighbourhoods and communities, (2) social capital - accumulation of new resources, lower unemployment, more accessible education, (3) social efficiency - mutual trust within the neighbourhood and community and readiness of individuals to be active for the common good, (4) community justice - safety of the community is the responsibility of all members, including community members, service agencies and the

penal system – the inclusion of all members in the process of long-term problem solving should be targeted (Brown, 2010; Brown, Schwartz and Bosely, 2012; Lanning, Loader and Muir, 2011; Clear, 2007; Stemen, 2007, according to Brown, 2010, Lanni, 2005; Roman et al., 2003; Akçomak and Weel, 2012). In Table 3, the author reflects on some possible general guidelines under the new approaches to reduce crime and contemporary concepts.

In conclusion, it is important to summarize and emphasize that families, neighbourhoods and communities have the greatest benefits from modern concepts and approaches to sanctioning and a wider range of sanctions and measures, and that it is necessary to inform the Croatian public, gain confidence and strengthen the support.

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