

Institute of Criminological and Sociological Research
Belgrade, Republic of Serbia

Impact Assessment of the Application of Alternative Sanctions and Measures in Serbia, 2015 to 2020

Milica Kolaković-Bojović, PhD • Ana Batričević, PhD • Marina Matić-Bošković, PhD



Institute of Criminological and Sociological Research
Belgrade, Republic of Serbia

Impact Assessment of the Application of Alternative Sanctions and Measures in Serbia, 2015 to 2020

Milica Kolaković-Bojović, PhD • Ana Batričević, PhD • Marina Matić-Bošković, PhD

Belgrade, 2022

Project title:

Impact Assessment of the Application of Non-Custodial Sanctions and Measures in Serbia, 2006-2020

Contracting parties:

OSCE Mission to Serbia (*hereinafter*: OMiS) and Institute of Criminological and Sociological Research (*hereinafter*: Institute).

Project number:

2400831 of 3 June 2021

Project duration:

from 14 June 2021 to 14 December 2021

Project Manager:

Ivana Stevanović, PhD, Senior Research Fellow and Institute Director

Project Coordinator:

Milica Kolaković-Bojović, PhD., Senior Research Fellow

Authors of the Report - research team:

Milica Kolaković-Bojović PhD. · Ana Batričević, PhD., Senior Research Fellow · Marina Matić Bošković, PhD., Research Fellow

NOTE: A document that has been derived from the results obtained using a scientific methodology and evidence of the reasonableness of findings that the authors have presented in this text is a constituent part of this report.

Publishers: OSCE Mission to Serbia, Institute of Criminological and Sociological Research

Design: Milica Dervišević

Printing: Jovšić Printing Centar

Print run: 300

ISBN 978-86-80756-47-9



This analysis has been performed with the support of the OSCE Mission to Serbia. The views expressed therein are those of their authors and do not necessarily reflect the views of the OSCE Mission to Serbia.



Translation of this analysis was produced with the financial support of the European Union and the Council of Europe.

The views expressed herein can in no way be taken to reflect the official opinion of either party.

TABLE OF CONTENTS

LEGEND	4
SUMMARY	5
INTRODUCTION	9
1. The normative and strategic framework that regulates the system of criminal sanctions in the Republic of Serbia	9
2. The term, types and development of enforcement of non-custodial sanctions and measures in RS	10
3. Subject, scope and purposes of analysis	13
4. Impact assessment methodology	14
RESULTS	17
5. General indicators of the condition of the system for the execution of criminal sanctions in the Republic of Serbia	17
6. General trends and challenges for the use of non-custodial sanctions and measures in the 2015-2020 period.	19
7. Institutional and administrative capacities for the enforcement of non-custodial sanctions and measures	25
8. The performance of obligations whose enforcement conditions the deferral of criminal prosecution	29
9. Prohibition of leaving a dwelling (House detention)	33
10. The enforcement of imprisonment sentences in the premises where the sentenced person dwells	37
11. Community service sanction	42
12. Suspended sentences with protective supervision	45
13. Release on parole	48
OVERALL ASSESSMENT OF THE IMPLEMENTATION OF THE IMPACT OF THE LAW	52
Relevance	52
Efficiency	53
Effectiveness	53
Sustainability	54
RECOMMENDATIONS	55
REFERENCES	57
ANNEX I	59
ANNEX II	61
ANNEX III	68

LEGEND

CSW	Centre for Social Work
EU	European Union
ICSR	Institute of Criminological and Sociological Research
CI	Correctional Institution
CC	Criminal Code
SORS	Republic Statistical Office
RISP	Republic Institute for Social Protection
RS	Republic of Serbia
RPPO	Republic Public Prosecutors Office
DECS	Department for the Execution of Criminal Sanctions
MoI	Ministry of Interior
CSO	Civil Society Organisation
SPH	Special Prison Hospital
BC	Basic Court
OSCE	Organization for Security and Co-operation in Europe
CE	Council of Europe
SCC	Supreme Court of Cassation
HC	Higher Court
NCSM	Non-custodial Sanctions and Measures
LECS	Law on the Execution of Criminal Sanctions
EESMA	Enforcement of Extra-Institutional Sanctions and Measures Act
CPC	Criminal Procedure Code
LJCO	Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles

SUMMARY

A multiyear increasing number of persons deprived of liberty, which led to a rate of incarceration of 159.9 compared to the European average of 103.2 at the end of 2019, together with data on a high share of inmates in the total number of persons deprived of liberty, as well as a high share of short-term imprisonment sentences that accounted for as much as 38.78% in the total number of imposed imprisonment sentences in 2020, speak of the existence of significant, **additional room for extended use of non-custodial sanctions and measures in the Republic of Serbia.**

General indicators of the application of non-custodial sanctions and measures (NCSMs) in 2015-2020 point to the existence (except for 2019) of a positive trend, whereby the share of alternative sanctions in 2020 was 16.5% compared to the total number of the executed criminal sanctions, a significant increase compared to 2016 when it was 9.7%. When it comes to the structure of the imposed NCSMs, not counting special obligations that condition the deferral of criminal prosecution, house arrest with the use of electronic monitoring is dominating, followed by house arrest without electronic monitoring, then community service and home detention with or without electronic monitoring. Suspended sentences with protective supervision occur only sporadically, whereby house arrest with or without electronic monitoring, with 35% and 32% respectively, accounts for almost 70% of all NCSMs; community service makes 14%, house detention with the use of electronic monitoring 11%, house detention without the use of electronic monitoring 8%, and suspended sentences with protective supervision do not even reach half a percentage point.

When it comes to the **greatest challenges concerning the wide use of NCSMs**, a need is apparent for the improved exchange of information and experience between judges, prosecutors and probation officers on the organisation and functioning of the Probation Service and problems in enforcement practice, especially at the level of higher courts. An inadequate normative framework and inadequate software solutions in the area of recording and processing statistical data on the imposed NCSMs, as well as the training of the administrative staff in court registries, are also noticeable. The absence of information on the capacities of the Probation Service or the lack of capacity itself, in interaction with the lack of clear criteria for the prioritisation of cases in the event of backlogs in enforcement, still demotivates courts to apply NCSMs more widely. A uniform, strategic approach to improving the cooperation of the Probation Service and the DECS on a local level is still missing.

During the first six-year period of operation, the **"Probation Service"** in Serbia was a part of the Department for the Treatment and Enforcement of Non-Custodial Sanctions. Actually, the Department for the Enforcement of Non-Custodial Sanctions and Measures was established under amendment to the Rulebook on Internal Organisation and Job Classification at DECS only in 2021. The change in the institutional and organisational status of managing the enforcement of non-custodial sanctions and measures was also accompanied by **significant improvement of the administrative capacities in 2019-2020**, after many years of stagnation caused primarily by the decision of the Government of RS to significantly restrict additional employment in the public sector through financial consolidation measures. Nevertheless, the existing and planned enhancement of the administrative capacities designed without previously conducting functional analysis, i.e. mapping jobs and business processes, has led to a situation where the probation officers still suffer a massive burden with the administrative and technical jobs. The less favourable business-and-legal status of the probation officers compared to the treatment officers has a demotivating effect on experienced experts in the treatment service, as well as on young

professionals choosing this profession. In the observed period, progress was achieved with regard to the **technical capacities of the Probation Service**, through the procurement of an additional number of electronic monitoring devices and vehicles, and through the establishment of software for recording persons deprived of liberty (SAPA), which created a precondition for the more efficient keeping, processing and exchanging of information within the Probation Service.

The normative framework regulating the actions of probation officers supervising the use of **obligations whose performance conditions the deferral of criminal prosecution referred to in Article 283 of the CPC** is inadequate and incomplete, which results in the ambiguous differentiation of competences with the prosecutor's office and the inadequate supervision of enforcement. In the observed period, the Probation Service did not keep records of the cases in this segment of competence, and probation officers were mainly of the opinion that the Probation Service should not perform the supervision of the obligations referred to in Article 283 of the CPC, or at least of the most prevalent one, the payment of funds for humanitarian purposes.

Although it was increasing, the wider use of the **measure of prohibiting leaving one's dwelling** was slowed again in the 2016-2019 period by the lack of adequate infrastructure and administrative capacities for its enforcement. After those issues had been overcome to a great extent during 2019 and 2020, an abrupt increase in determining this measure was perceived. However, in practice, there are still a series of problems related to the lack of adequate previous verification of the fulfilment of the technical requirements for determining such a measure, as well as its determination to persons who are multiple returnees even in the commission of serious criminal offences, because of which probation officers point to their own lack of safety when placing an electronic monitoring device or during control visits. Besides, the probation officers often point out the impossibility of establishing effective control of the enforcement of this measure in situations where it is adjudicated without electronic surveillance and/or with the additional prohibition of visits and communications.

Due to an inadequate and incomplete normative framework and years of problems with the infrastructure and administrative capacities of the Probation Service, the use of **house arrest in the premises where the defendant lives** has not been adequately realised and has resulted in numerous problems in practice, including lack of effective control, lack of treatment of convicts and the impossibility of changing the enforcement modality into a custodial one in situations where a person avoids the start of enforcement, does not comply with the enforcement programme, consumes illegal substances or becomes violent, including the commission of a new crime.

Despite numerous benefits for the perpetrator, the system for the enforcement of criminal sanctions and for society as a whole, a negative tendency in imposing the **community service sanction** has been noticeable starting from 2017. The prevalence of this sanction among appellates is extremely uneven, which is directly related to the preconditions for the enforcement of this sanction, since almost 70% of the agreements signed are in the area of AP Vojvodina. The absence of information on the capacities of the Probation Service or the lack of capacity itself, in interaction with the lack of clear criteria for the prioritisation of cases in the event of backlogs in enforcement, still demotivates courts to apply NCSMs more widely. The sanction is predominantly enforced in the area of utility activities and in welfare institutions. An inadequate level of awareness (of both potential employers and the general public) is still prevalent concerning the capacities and importance of this sanction, as well as the problems with the oversight of enforcement of the sanction, i.e. avoidance and sanctioning of possible abuse.

Suspended sentences with protective supervision were imposed only sporadically in the observed period, and since 2017, it has shown an increasing tendency caused by the growing imposition of this measure in the area of the Novi Sad appellate primarily, and partially also the Niš appellate. The absence of standardised and sustainable mechanisms of cooperation with institutions on the level of local self-governments makes the application of measures imposed within the protective supervision difficult.

The imposition of **measures accompanying release on parole** has not seen a rapid growth in the use of release on parole, so with the exception of reporting to the authority competent for the enforcement of protective supervision at times determined by that authority and timely reporting any change of the place of residence, address or job, other things occur only sporadically. Finding an adequate job is still difficult due to the inactivity of the National Employment Service and the prejudice of potential employers, along with the lack of retraining. Cooperation and the delimitation of the competencies of probation officers and police officers in the supervision of certain measures are still not adequate and/or clear, whereas the organisation and capacities of the healthcare and welfare systems make inclusion in counselling programmes and control of refraining from alcohol and drug use more difficult.

The newly established system for the imposition and enforcement of NCSMs is undoubtedly a **relevant but still insufficient response** to the need for disburdening the system of the enforcement of criminal sanctions and the replacement of short-term imprisonment sentences with alternative sanctions, as well as with regard to the diversification of criminal procedures and the improvement of reintegration and the reduction of relapses using measures accompanying release on parole.

The impact of the implementation of relevant legal provisions regulating the imposition and enforcement of NCSMs, in the area of **efficiency**, is significantly reduced due to the fact that no adequate assessment of the financial effects of the law was made when adopting new laws, which reflected directly on the pace of establishment and capacity of the Probation Service. All further legislative amendments would require the precise mapping of additional jobs and changes in the business processes, as well as an accurate assessment of the expected change in the projected period, concerning the required enhancement of administrative and technical capacities.

Based on the above results, it can be concluded that the **most obvious effects of the use of NCSMs** have been achieved through a decrease in the share of short-term sanctions in the total amount of imprisonment sentences, whereas the worst results have been in the area of the sensibilisation of the holders of judiciary functions for their pronouncing, as well as of the local community and general public concerning the benefits entailed by the use of NCSMs.

Drafting the necessary amendments to the normative framework, which would be preceded by thorough assessment and mapping the existing and planned jobs, business processes, and administrative and technical capacities necessary for the application of new legislative solutions, with an accurate assessment of the financial effects of such amendments, is **the fundamental precondition for ensuring the sustainability of the NCSM system.**

INTRODUCTION

1. The normative and strategic framework that regulates the system of criminal sanctions in the Republic of Serbia

- 1.1** Articles 16 and 194 of the Constitution of the Republic of Serbia¹ stipulate that the Constitution is the highest legal act of the Republic of Serbia. All laws and other general acts adopted in the Republic of Serbia (hereinafter referred to as RS) must be compliant with the Constitution. The same provision of the Constitution stipulates that ratified international treaties and generally accepted rules of international law are an integral part of the legal system in the Republic of Serbia. Ratified international treaties must not be in contravention of the Constitution, whereas laws and other general acts adopted in the Republic of Serbia must not be in contravention of the ratified international treaties and generally accepted rules of international law. In practice, this means that applicable provisions of the Constitution, ratified international treaties², laws and other general acts of the Republic of Serbia are directly applicable to the functioning of the system of criminal sanctions.
- 1.2** In addition, a series of planning documents are of great importance for the functioning and development of the system for the enforcement of criminal sanctions. The strategy of development of the system of criminal sanctions for 2021-2027,³ Revised Action Plan for Chapter 23⁴ and international instruments that are not subject to ratification but stipulate more closely the standards contained in international treaties.⁵
- 1.3** Starting from the principles contained in the RS Constitution, which treat deprivation of liberty as the last resort for achieving the purpose of sanctioning, the system of criminal sanctions in the Republic of Serbia is regulated in detail with the provisions of the Law on the Execution of Criminal Sanctions (hereinafter referred to as: LECS)⁶, the Enforcement of Extra-Institutional Sanctions and Measures Act (hereinafter referred to as: EESMA)⁷, the Law on Special Measures for Preventing the Commission of Crimes against the Sexual Freedom of Minors⁸, the Law on the Execution of Criminal Sanctions for Organised Crimes⁹, the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles

1 Constitution of the Republic of Serbia, Official Gazette of RS, number 98/2006.

2 For a full list of relevant sources of international standards, see Annex 1.

3 This strategy is a continuation of the strategic and developmental approach paved by the adoption of a series of documents of public policies in the previous decade, among which are: Strategy for reducing the overcrowding of accommodation capacities in institutions for the enforcement of sanctions in the Republic of Serbia in the period from 2010 to 2015, Official Gazette of RS, no. 53/2010, 65/2011; Strategy for the development of the system for the enforcement of criminal sanctions until 2020, Official Gazette of RS, number 114/2013, and the Strategy for reducing the overcrowding of accommodation capacities in institutions for the enforcement of sanctions in the Republic of Serbia in the period until 2020, Official Gazette of RS, no. 43/2017.

4 Revised Action Plan for Chapter 23, available at: <https://www.mpravde.gov.rs/files/Revidirani%20AP23%202207.pdf>, accessed on 15 October 2021

5 For a full list of relevant sources of international standards, see Annex 1.

6 Law on the Execution of Criminal Sanctions, Official Gazette of RS, no. 44/14 and 35/19.

7 Law on the Execution of Non-Custodial Sanctions, Official Gazette of RS, no. 44/14 and 87/18.

8 Law on Special Measures for Preventing the Commission of Crimes against the Sexual Freedom of Minors, Official Gazette of RS, no. 32/13.

9 Law on the Execution of Criminal Sanctions for Organised Crimes, Official Gazette of RS, no. 72/09 and 101/10.

(hereinafter referred to as: LYCO, Law on Juveniles)¹⁰, the Criminal Code (hereinafter referred to as: CC)¹¹, and the Criminal Procedure Code (hereinafter referred to as: CPC)¹².

- 1.4** At the same time, the current status and reform processes in the area of alternative sanctions are also shaped by the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹³, reports of the UN Committee against torture (CAT)¹⁴, UN Subcommittee on the Prevention of Torture (SPT), and the process of accession of the Republic of Serbia to the European Union (hereinafter referred to as: EU), because reform priorities are subordinated to a certain extent to the fulfilment of the transition measures set within the negotiation process.¹⁵

2. The term, types and development of enforcement of non-custodial sanctions and measures in RS

- 2.1** The 2005 Law on the Execution of Criminal Sanctions¹⁶ introduced provisions that regulate the execution of community service and execution of suspended sentences with protective supervision, and in 2011, the Law amending the Law on the Execution of Criminal Sanctions introduced provisions that regulate the execution of imprisonment without leaving premises where the convict is residing, and the application of electronic monitoring towards the convict. The Department for the Execution of Criminal Sanctions (hereinafter referred to as DECS) started establishing probation offices as far back as in 2009, and practice has shown a need for the adoption of more precise provisions that would better regulate the implementation of alternative sanctions so that their execution is more efficient, applicable to a wider extent, and that all the advantages of this type of sanctioning were shown in full, whereby an equal treatment of criminal offenders across the whole territory of the RS was enabled.¹⁷ A special Enforcement of Extra-Institutional Sanctions and Measures Act was adopted in 2014, which created the normative preconditions for establishing an institutional framework and the significantly wider use of non-custodial sanctions and measures. The 2019 Law Amending the Law on the Execution of Criminal Sanctions expanded the competencies of judges for the enforcement of criminal sanctions *inter alia* to adopting a decision under which finally imposed imprisonment sentences of up to one year may be enforced in the premises where the convict lives (house arrest) if the change of the manner of enforce-

10 Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, Official Gazette of RS⁶, number 85/2005.

11 Criminal Code, Official Gazette of RS, no. 85/05, 88/05 – corrig., 72/09, 111/09, 121/09, 104/13, 108/14, 94/16, and 35/19.

12 Criminal Procedure Code, Official Gazette of RS, no. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, and 35/19.

13 See: Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, available at: <https://rm.coe.int/16808b5ee7>, accessed on 4 June 2021

14 See: Committee against Torture, Concluding observations on the second periodic report of Serbia, Geneva, 15. May 2015. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSRB%2fCO%2f2&Lang=en, accessed on 16 October 2021

15 See: Revised Action Plan for Chapter 23 adopted at the session of the Government of the Republic of Serbia that took place on 10 July 2020, available at: <https://www.mpravde.gov.rs/files/Revidirani%20AP23%202207.pdf>, accessed on 7 January 2021, and COMMISSION STAFF WORKING DOCUMENT Serbia 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Communication on EU Enlargement Policy, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf, accessed on 4 June 2021

16 Law on the Execution of Criminal Sanctions, Official Gazette of RS, no. 85/05.

17 Analysis of the effects of the law (Annex to the 2014 Draft Law on Enforcement of Non-Custodial Sanctions and Measures), available at: <http://vs3836.cloudhosting.rs/misljenja/791/ana/Analiza%20efekata%20Nacrta%20zakona%20o%20izvršenju%20vanzavodskih%20sankcija%20i%20mera.pdf>, accessed on 25 November 2021.

ment of the imprisonment sentence can fulfil the purpose of the sanction,¹⁸ by which the non-custodial sanction and measure system has been given an even more significant role within the system of the execution of criminal sanctions.

2.2 Not unusually, the **inconsistent use of the terms “alternative sanctions,” “alternatives to imprisonment sentences,” “non-custodial sanctions and measures”**, etc. feature in the public discourse while ignoring the fact that these terms are not synonyms because only the term “non-custodial sanctions and measures”, as the broadest of all the mentioned ones, encompasses alternatives to imprisonment sentences, which, in addition to alternative sanctions, also include measures and procedures that in the end lead to a failure to apply the deprivation of liberty sanction, as well as measures that lead to a failure to apply the detention, preventive measures in relation to perpetrators of crimes against sexual liberty committed to the detriment of a child, as well as measures imposed along with release on parole or determined within post-penalty acceptance.¹⁹

2.3 Non-custodial sanctions and measures (hereinafter referred to as: NCSM), whose enforcement is governed by the EESMA,, are as follows: deferral of criminal prosecution according to a decision of the public prosecutor; prohibition to leave the dwelling; prohibition of approaching, meeting or communicating with a person; imprisonment sentence in the premises where the convicted person resides; community service; suspended sentences with protective supervision; release on parole with supervision; providing assistance to a person after the completed imprisonment sentence; preventing the commission of crimes against sexual liberty towards minors. **Their nature and purpose differ**, so the obligations conditioning the deferral of the criminal prosecution are in the service of the diversification of the criminal procedure; prohibition of leaving one’s dwelling and prohibition of approaching or communicating with a person are aimed at ensuring the presence of the defendant and smoothly carrying out the criminal procedure; the imprisonment sentence at the premises where the convict resides is a special modality/manner of enforcement of the imprisonment sentence, whereas the community service and suspended sentences with protective supervision are alternative sanctions. EESMA also regulates the special obligations that make up the substance of the protective supervision with release on parole, as well as the provision of assistance to a person after their imprisonment sentence has been completed in the context of the post-penalty acceptance. Finally, this law also regulates the use of measures provided for by the Law on Special Measures for Preventing the Commission of Crimes against the Sexual Freedom of Minors.

18 Besides the above, these amendments enable the adoption of a decision under which a convict that is assigned to a semi-open or an open department of the institute may be referred to work outside the institute with an employer for full working hours, and during the rest of the time, to be in the institute. A working engagement with an employer will contribute to the more efficient accomplishment of the treatment programme and easier inclusion in the community after serving the sentence, so that a convict will not commit crimes in the future; adopting a decision on the early release of a convict from the imprisonment sentence 12 months at most before the expiry of the sentence, if the convict served half of the sentence, due to the convict’s severe disease, severe disability or age, if the further enforcement of the imprisonment sentence would be inhuman treatment.

19 Tešović, O. (2020) *Priručnik za izvršenje alternativnih sankcija*, Forum sudija Srbije, str. 3.

CRIMINAL CODE

Official Gazette of RS, no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019

- Imprisonment sentences that are served in the premises where the convict resides - with or without electronic monitoring (Article 45 paragraphs 3 and 4)
- Community service (Article 52)
- Suspended sentences with protective supervision (Article 71-76.)
- Release on parole with supervision + special obligations making the substance of the protective supervision along with the release on parole (Article 46 and Article 73)

CRIMINAL PROCEDURE CODE

Official Gazette of RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, and 62/2021

- Prohibition to leave the dwelling - house detention with or without electronic monitoring (Article 188 paragraph 6, Articles 208-209)
- Prohibition of approaching, meeting or communicating with a person and visiting certain places (Article 197.)
- Conditional deferral of criminal prosecution - use of the principle of opportunity (Article 283)

LAW ON SPECIAL MEASURES FOR PREVENTING THE COMMISSION OF CRIMES AGAINST THE SEXUAL FREEDOM OF MINORS

Official Gazette of RS, no. 32/2013

- Compulsory reporting to the competent police authority and the Department for the Execution of Criminal Sanctions
- Prohibition to visit places where minors gather (kindergartens, schools, etc.)
- Mandatory visits to professional counselling centres and institutions
- Mandatory notification of change of residence, temporary residence or workplace
- Mandatory notification of travelling abroad

Scheme 1: Summary of non-custodial sanctions and measures per law

2.4 The 2018 Law Amending the EESMA²⁰, which was adopted in November 2018, equalises the rights of persons imposed a prohibition to leave the dwelling as an alternative to the imprisonment measure with those who are imprisoned persons. Changes in the area of professional supervision have created preconditions for improving the work of the Probation Service and the efficiency of the supervision of the operation thereof.

2.5 Pursuant to Article 3 of the EESMA, **the enforcement jobs are performed by an organisational unit competent for alternative sanctions (hereinafter referred to as: Probation Service), within the DECS,**²¹ within which probation offices for the area of territorial jurisdiction of one or more higher courts are formed, whereby the local jurisdiction of a probation office is determined according to the place of residence or temporary residence of the person involved in the enforcement. "In performing jobs in their competence, probation offices cooperate and exchange information with state authorities, scientific institutions, local community authorities, associations and other institutions of relevance for the performance of their jobs. A probation office may hire experts and other persons for the performance of jobs within its competence, in line with the law" (Article 3, paragraphs 4-5 of the EESMA). In addition to the EESMA, the **competence and proceeding of probation officers** in 25 probation offices established in the RS according to the areas of the higher courts are also regulated in

²⁰ Law Amending Non-Custodial Sanctions and Measures, Official Gazette of RS no. 87/2018

²¹ It is obvious in the definition given in such a way that the legislator did not resist the above-mentioned terminological confusion either.

more detail with the Rulebook on the manner of performance of non-custodial sanctions and measures and the organisation and work of probation officers.

3. Subject, scope and purposes of analysis

3.1 In the recent period, the application of the EESMA was a subject of interest within several projects that implied monitoring in a short, mainly annual period or were focused on certain districts or individual sanctions.²² Although each of them resulted in the identification of certain challenges and priorities, the elapse of a six-year period that corresponds to the drafting of a new strategic document paving the way for the development of the area of enforcement of criminal sanctions requires comprehensive analysis and due diligence, which would offer decision-makers clear findings with respect to the necessary legislative interventions and those related to the organisational aspects and administrative capacities.

3.2 As mentioned earlier, the variety and quantity of NCSMs whose enforcement is regulated by EESMA, as well as the fact that during 2020, the ICSR conducted a comprehensive Analysis of the Impact of Implementation of the LJCO²³, significantly defined the subject and scope of this analysis, so that its focus is:

- › adjusted and directed to the application of the NCSMs for adult perpetrators;
- › directed to one NCSM whose wide use (number and prevalence among the total NCSMs) influences reshaping the system for the enforcement of criminal sanctions, which primarily relates to the following NCSMs: prohibition to leave one's dwelling (hereinafter referred to as: house detention with or without the application of electronic monitoring), the enforcement of imprisonment sentences in the premises where the convict resides (hereinafter: house arrest with or without electronic monitoring); community service; suspended sentences with protective supervision and measures with protective supervision with release on parole. The analysis also encompasses the use of the conditional opportunity, taking into account the competencies of probation officers concerning their performance, and the indirect influence these obligations have on the system for the enforcement of criminal sanctions through the diversification of the criminal procedure.

3.3 Bearing this in mind, the basic goal of the analysis is to assess the influence of the impact of non-custodial sanctions and measures in the Republic of Serbia from 2015 to 2020. The assessment is directed towards the following aspects of application:

- › The scope and structure of court decisions on alternative sanctions and measures and their implementation in the period from 2015 to 2020, i.e. trends in imposing NCSMs and their influence on the general trends in the system for the enforcement of criminal sanctions (statistic parameters);
- › Analysis of the institutional framework for the enforcement of NCSMs, including the administrative capacities and technical equipment of the Probation Service (quantitative and qualitative parameters);

22 See, e.g.: Ristić, D. & Brikić, M. (2017) Saradnja centara za socijalni rad u šumadijskom okrugu sa Povereničkom službom, *Socijalna politika*, 1/2017, Vol. 52, str. 47-62; Spasojević, A, Janković, D. Kovačević, N. (2018) Podrška primeni alternativnih sankcija i mera u Srbiji - Izveštaj i preporuke, *Mreža odbora za ljudska prava u Srbiji CHRIS*, Niš; Spasojević, A. (2021) Izvršenje vanzavodskih sankcija i mera, *Odbor za ljudska prava Valjevo*, Valjevo.

23 Analysis of the impacts of the application of the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles in the period from 2006 to 2020, available at: https://www.iksi.ac.rs/pdf/analiza_iksi_osce_2021.pdf, accessed at 18.10. 2021

- › The separate analysis of the application of individual non-custodial sanctions and measures, taking into account normative solutions of applicable provisions of the Criminal Code, Law on the Execution of Criminal Sanctions, and the Enforcement of Extra-Institutional Sanctions and Measures Act, problems with enforcement, and identification of the best practices;
- › Analyses of the impacts of the implementation of laws, in relation to the objectives and prediction of influences defined by the authorised proposer of the EESMA, in line with the Law on the Planning System of the Republic of Serbia²⁴ with accompanying regulations²⁵ (relevance, efficiency, effectiveness and sustainability);
- › Definition of a list of recommendations for improvement of the system of non-custodial sanctions and measures.

4. Impact assessment methodology

4.1 The findings presented in this analysis result from research implemented in the period from June to December 2021 and imply the application of quantitative and qualitative methods. Both the existing data and data collected for the purpose of this research were analysed. The work was divided into four phases:

- › **Phase 1:** Desk analysis, which encompassed the available secondary material and included the existing analyses, reports and scientific research relevant for the topic.
- › **Phase 2:** Quantitative analysis, which encompassed the processing of available statistical data on the imposition and enforcement of non-custodial sanctions and measures, including data on the share of alternative sanctions in the total number of imposed sanctions, their structure, territorial distribution and trends in the observed period. Statistical data relevant for the institutional framework and administrative capacities.
- › **Phase 3:** Qualitative analysis, for the implementation of which questionnaires were developed for probation offices, along with protocols for expert interviews with relevant professionals in the area of the judiciary and the system for the enforcement of criminal sanctions, and quantitative data had been collected.
- › **Phase 4:** Comprehensive analysis of the collected data and writing a final report, with a special emphasis on the relevance, efficiency, effectiveness and sustainability of the existing system, and on recommendations for improving the normative and institutional framework and practice.

4.2 Data within the quantitative analysis includes the following:

- › Data of the **Statistical Office of the Republic of Serbia (SORS)**, which includes data on the number and structure of imposed non-custodial sanctions and measures, their territorial distribution and prevalence in relation to crimes for which they were imposed.²⁶

²⁴ Law on the Planning System of the Republic of Serbia, Official Gazette of RS, number 30/2018;

²⁵ Regulation on the Methodology of Management of Public Policies, Analysis of the Effects of Public Policies and Rules, and on the Contents of Individual Documents of Public Policies, Official Gazette of the RS", number 8 of 8 February 2019.

²⁶ As the bulletins that include information for the previous year are only published at the end of the current year, SORS data was analysed for the period from 2015 to 2019. Besides, it is important to note that SORS does not process data on all NCSMs, but only on the community service sanction, while data on house arrests and suspended sentences are given in aggregate, without data on the application of the protective supervision.

- › Data of the **Supreme Court of Cassation (SCC)** available within the statistics of the operation of courts of general jurisdiction in the Republic of Serbia, which includes data on trends in the number of criminal cases on an annual level on the territory of the whole RS, and by the areas of all four appellate courts.
- › **Data on the basic and higher courts on the territory of RS** in relation to the number and structure of decisions that imposed the following non-custodial sanctions and measures in the observed period, on which records are kept at SORS: suspended sentences with protective supervision, house detention with or without electronic monitoring, house arrest with electronic monitoring, and obligations for release on parole.
- › Data of the **Republic Public Prosecutor's Office (RPPO)** available in the annual reports on the operation of the RPPO, which includes data on the total number, structure and territorial distribution of obligations by which the deferral of the criminal prosecution is conditioned, in line with Article 283 paragraphs 1-2 of CPC (conditioned opportunity).
- › Data from the **Department for the Execution of Criminal Sanctions (DECS)**, which includes general data on the system for the execution of criminal sanctions (trends in the number and structure of persons deprived of liberty in the observed period, rates of incarceration, the structure of persons deprived of liberty based on the deprivation of liberty) as well as data related immediately to the enforcement of non-custodial sanctions and measures, including the number and structure of non-custodial measures submitted for enforcement on an annual level, trends relating to non-custodial sanctions and measures individually, and data on the capacities of probation offices and data on the signed agreement between DECS and public enterprises.

4.3 When the **procedure for collecting quantitative data** is involved, the expert team initially addressed the SCC and DECS with an appellate for approving the implementation of the project activities and the provision of data from both competent authorities. **The Supreme Court of Cassation** notified the expert team of the ICSR that it was not able to provide statistics on imposed non-custodian sanctions and measures in the observed period because that would lead to an additional workload for employees in the SCC itself and individual courts. Bearing this in mind, the expert team of the ICSR addressed individual letters to all the presidents of the 66 basic and 25 higher courts in the RS, of whom 64 courts (70.3%) provided the requested data. **The Department for the Execution of Criminal Sanctions** approved the implementation of research and provided all the requested information.²⁷

4.4 Data collection for the qualitative part of the analysis included:

- › **The production and distribution of a questionnaire** for probation offices²⁸- The expert team fully complied with all the requirements of the authorised person in the DECS for the modification and adjustment of the questionnaires before their distribution to probation officers (through the Chief of the Enforcement Department at the DECS).²⁹ The above-mentioned adjustment process implied *inter alia* singling out a set of questions from the questionnaire for probation officers into a

²⁷ Taking into account the deficiency of the system for the collection and processing of statistics that used to exist in the DECS, some data could not be obtained in the entire observed period.

²⁸ The questionnaire is available in Annex II

²⁹ Since the implementation of the survey took place in a period of intense personal changes in individual probation offices and during an extremely severe wave of COVID 19 that caused the absence of some probation officers, replies were obtained from 22 probation offices.

separate questionnaire intended for the Chief of the Enforcement of Non-Custodial Sanctions and Measures Department.³⁰

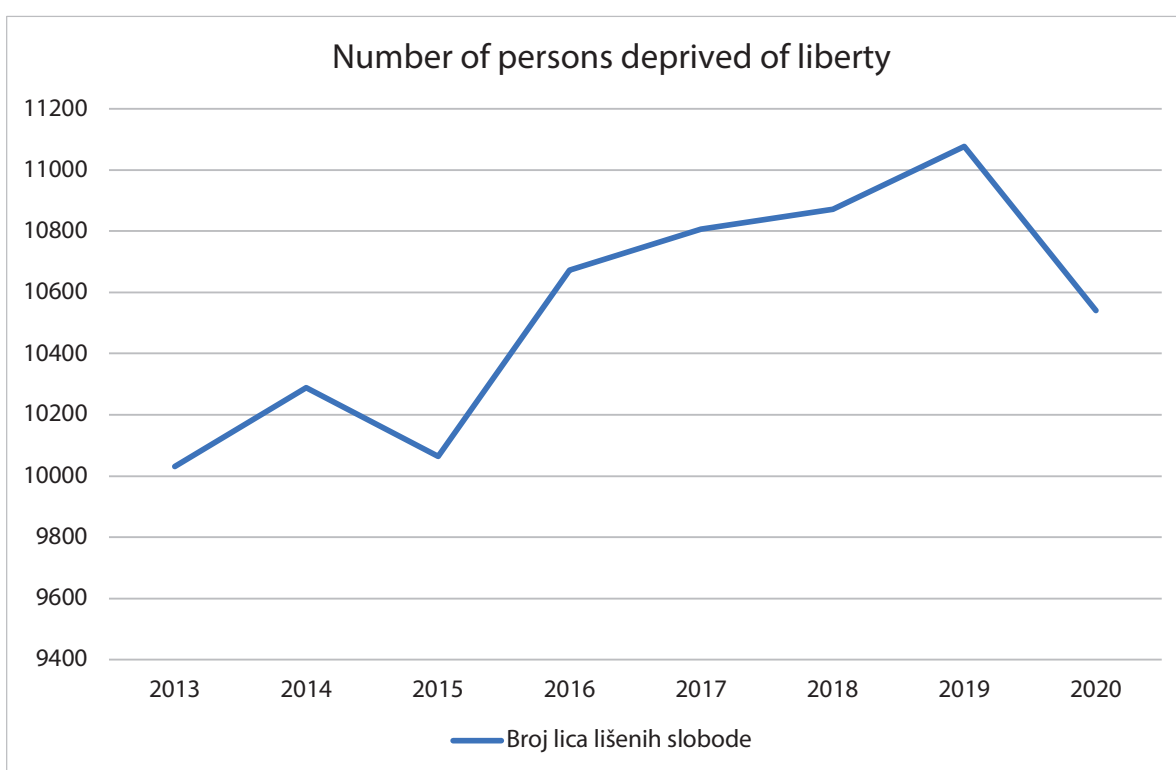
- › **Expert interviews** with judges, court presidents, deputies to the public prosecutor, employees in court registers, probation officers, and the current and former heads (chiefs) in the Department for the Execution of Criminal Sanctions.

30 The questionnaire is available in Annex III

RESULTS

5. General indicators of the condition of the system for the execution of criminal sanctions in the Republic of Serbia

5.1 When the **general parameters of the condition of the system for the execution of criminal sanctions in RS** are concerned, according to data from the Council of Europe SPACE I Report for 2020³¹, which monitors and compares the statistic indicators of the execution of custodial sanctions in member countries of the Council of Europe³², according to the condition as of 31 December 2019, Serbia is ranked in a group of European countries with extremely high rates of incarceration³³ with a high-density prison population. The number of persons deprived of liberty (hereinafter referred to as: prison population) was 10,540, the incarceration rate was 159.9 (thus, much higher than 103.2, the European average), whereas the density of incarceration was 107.3 (the European average is 90.3).³⁴ The stated indicators demonstrate that Serbia has a very large number of persons deprived of liberty per 100,000 inhabitants, and that the infrastructure (accommodation) capacity for the Execution of criminal sanctions is still insufficient, i.e. overcrowded. There is worrisome information that, with the exception of 2015 and in the 2019-2020 period, the number of persons deprived of liberty is in constant upswing, which can be seen in Graph 1. This information additionally speaks on behalf of the necessity for the wider use of NCSMs.



Graphic 1: Total number of persons deprived of liberty per year

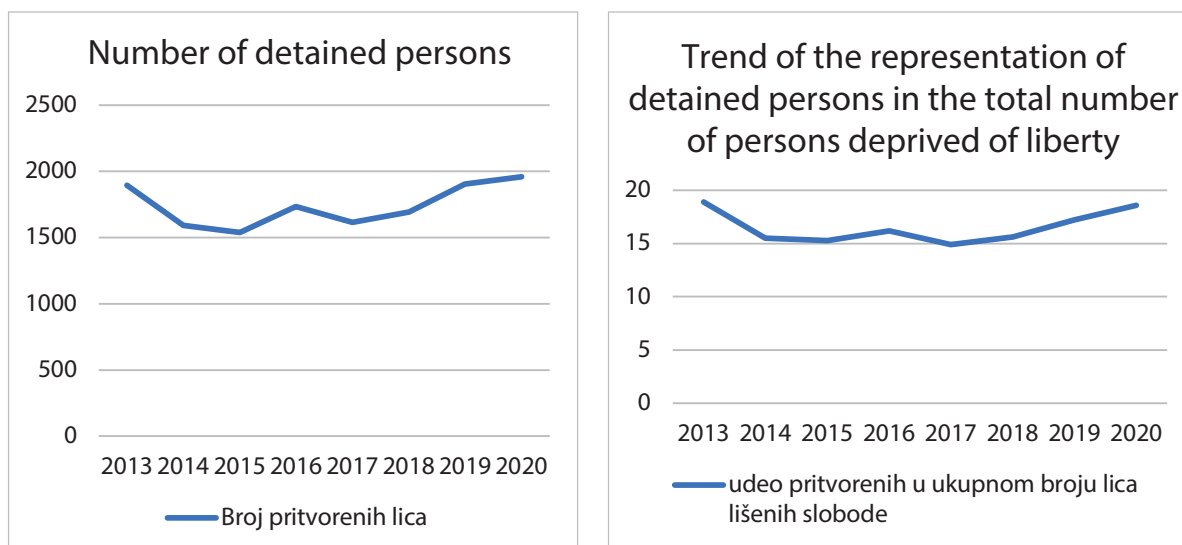
31 Aebi, M. & Tiago, M. (2021) Prison populations SPACE I - 2020, dostupno na: https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf, accessed on 20 November 2021

32 The parameters of the enforcement of non-custodial sanctions and measures are monitored through reports within SPACE II

33 The rate of incarceration means the number of persons deprived of liberty per 100,000 inhabitants

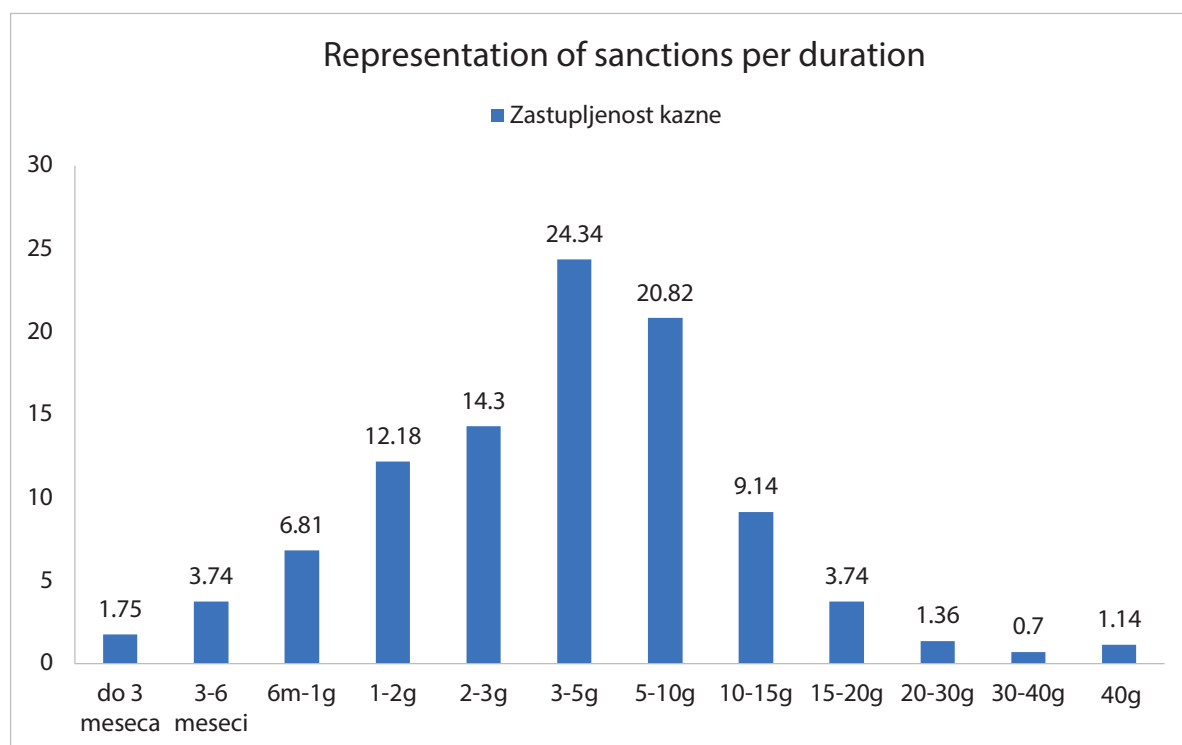
34 The density of incarceration is the number of persons deprived of liberty per 100 accommodation units in institutes for the execution of criminal sanctions

5.2 The significant number of persons deprived of liberty also includes the **share of detained persons in the total number of persons deprived of liberty**, which has again shown an increasing trend starting from 2017, although in 2020 it included 1,956 persons, or 18.6%, which was still significantly lower than in 2010, when it reached 30% of the total number of persons deprived of liberty.



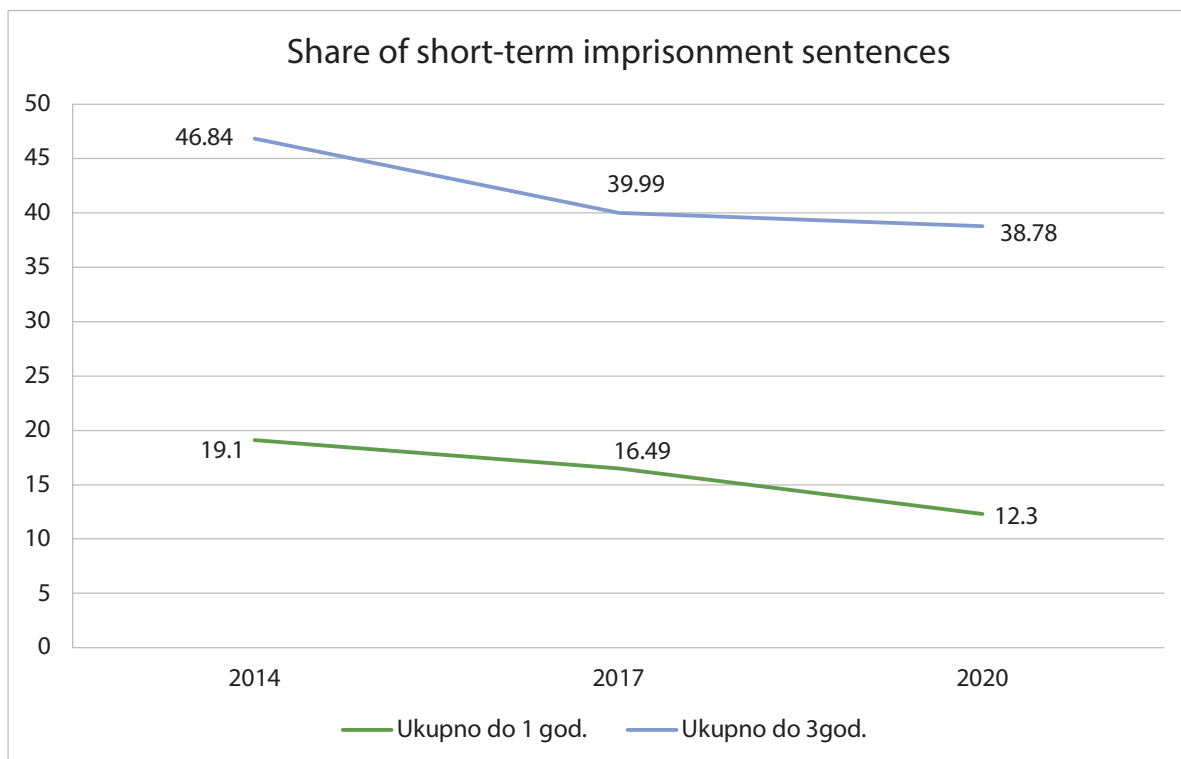
Graph 2: The total number of detained persons per year in the 2013-2020 period and the trend of the representation of detained persons in the total number of persons deprived of liberty in the 2013-2020 period

5.3 In addition to the share of detainees in the total number of persons deprived of liberty, it is important for the needs and capacities of the application of NCSMs to consider data on the structure, i.e. representation by sanction per duration, shown in Graph 3, whereby a high representation of short-term imprisonment sentences is still observed.



Graph 3: Representation of sanctions per duration as at 31.12.2020

Still, Graph 4 shows that the **share of short-term imprisonment sentences, i.e. the share of convicts who serve these imprisonment sentences, has significantly decreased in the convict population** during past years. When convicts serving sentences lasting up to three years are concerned, the percentage reduces from 46.84% to 38.78%. A declining trend is even more observable when it comes to the total share of sentences lasting up to one year, which fell from 19.1% in 2014 to only 12.3% in 2020.



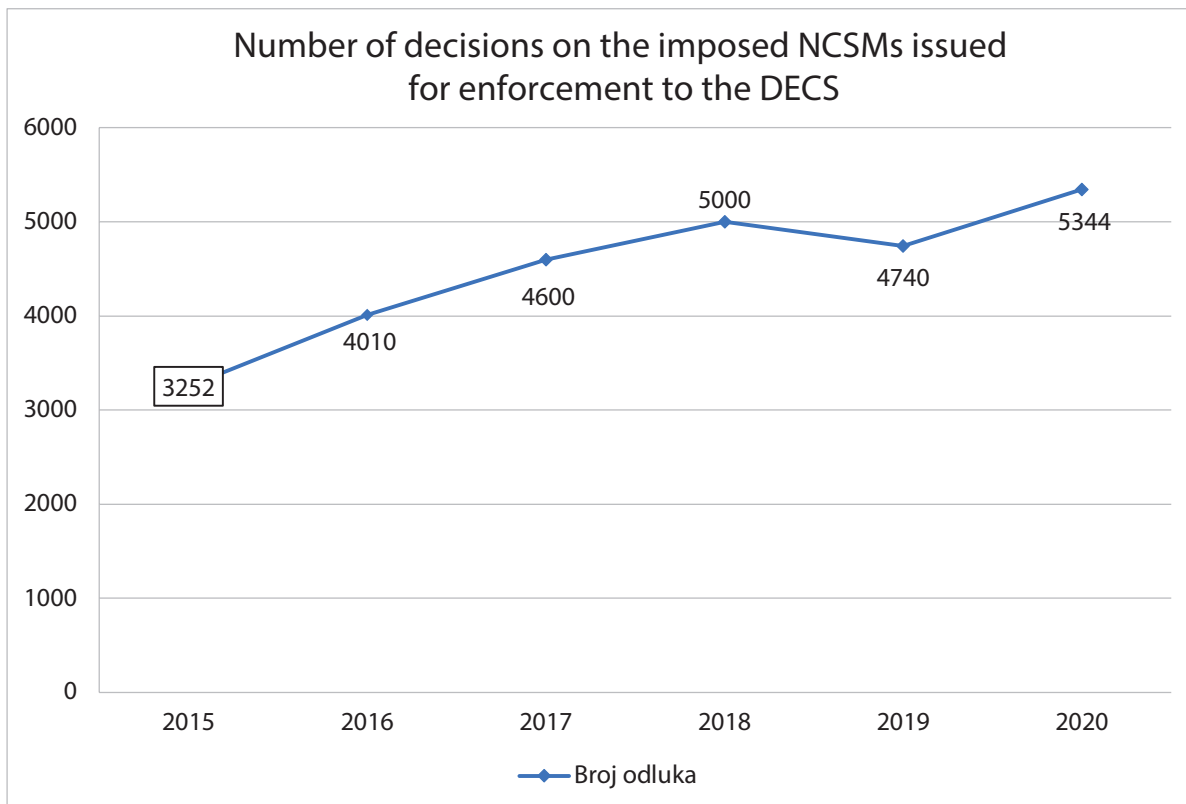
Graph 4: Trend of the share of short-term imprisonment sentences in the 2014-2020 period

A multiyear increasing number of persons deprived of liberty, which led to a rate of incarceration of 159.9 compared to the European average of 103.2 in 2019, together with data on the high share of detainees in the total number of persons deprived of liberty, as well as the high share of short-term imprisonment sentences that accounted for as much as 38.78% in the total number of imprisonment sentences in 2020, speak of the existence of significant, additional room for the extended use of non-custodial sanctions and measures in the Republic of Serbia.

6. General trends and challenges for the use of non-custodial sanctions and measures in the 2015-2020 period.

6.1 Information about the total number of decisions imposing NCSMs, the enforcement of which are under the competence of the DECS to which they are delivered for enforcement in the observed period³⁵, points to the existence (with the exception of 2019) **of a positive trend**, whereby this number increased from 3,252 in 2015 to 5,344 in 2020.

³⁵ This excludes data on special obligations that condition the deferral of criminal prosecution, which will be considered separately, due to the fact that their influence on the disburdening of the institutes' capacities is indirect



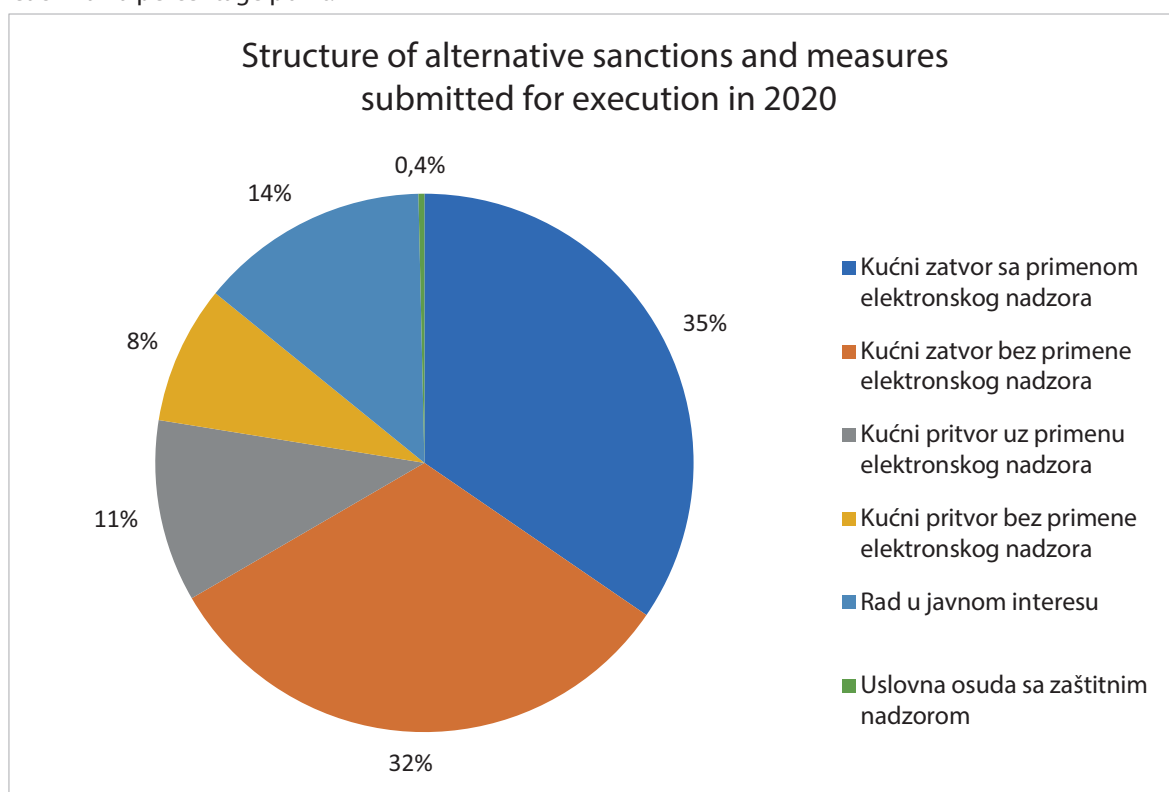
Graph 5: Trend of the use of alternative sanctions in the 2015-2020 period.

- 6.2** Since the increasing trend of the absolute numbers is not necessarily an indicator *per se* of the fulfilment of the purpose of the adoption of the EESMA, information on the **growing share of alternative sanctions in the total number of imposed criminal sanctions on an annual level** is of great importance, so that the enforcement of alternative sanctions at this point is **16.5%** compared to the total number of the enforcement of criminal sanctions, which points to a significant growth compared to 2016, when it was **9.7%**.
- 6.3** When it comes to the **structure of the imposed NCSMs**, house detention with electronic monitoring is dominating. It is followed by house arrest without the use of electronic monitoring, then community service and house detention with or without electronic monitoring. Suspended sentences with protective supervision occur only sporadically.

Table 1: The structure of NCSMs submitted for execution in the 2016-2020 period.³⁶

Types of measures/sanctions	2016	2017	2018	2019	2020
House arrest with the use of electronic monitoring	2,027	2,135	1,917	1,855	1,847
House arrest without electronic monitoring measures	1,109	1,229	1,433	1,373	1,713
House detention measures with electronic monitoring	212	324	308	315	584
House detention measures without electronic monitoring	48	85	119	108	444
Community service sanction	943	693	561	630	737
Suspended sentences with protective supervision	16	33	22	14	19
Total	4,355	4,499	4,360	4,295	5,344

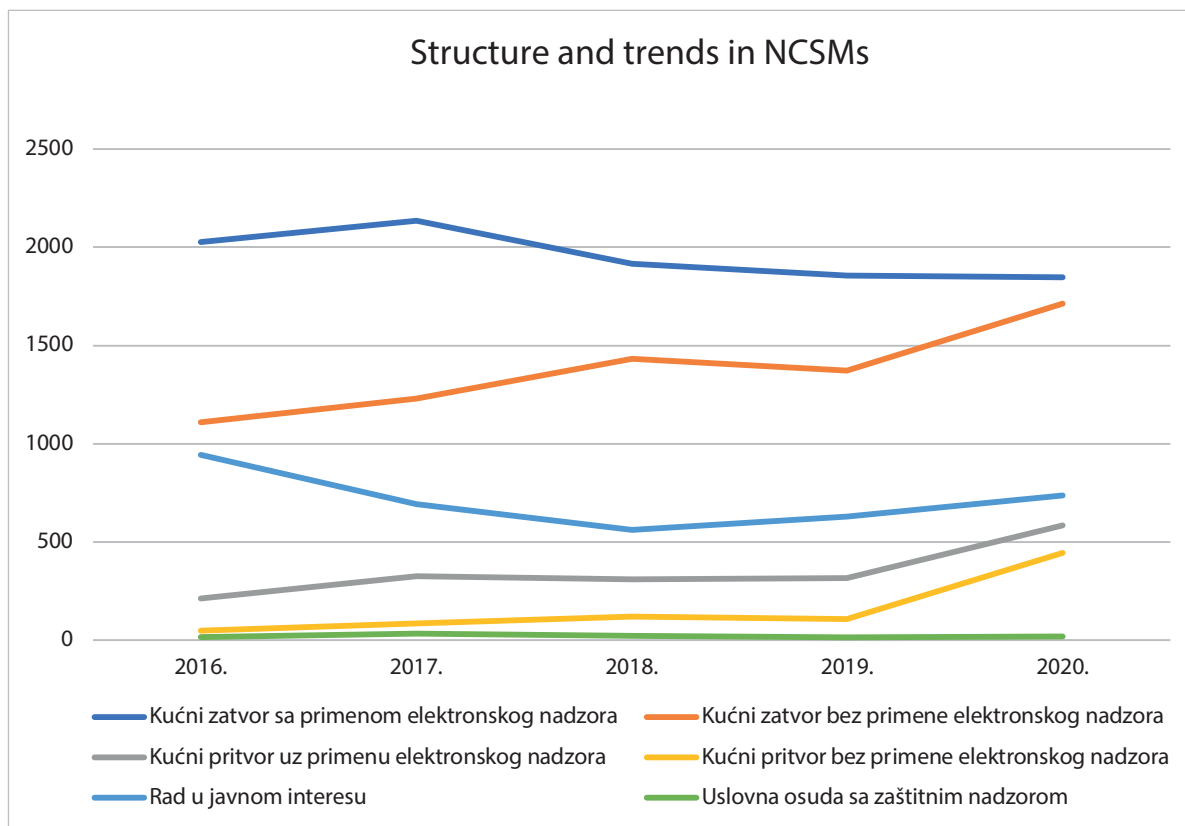
Graph 6, which shows the individual share of NCSMs in 2020, makes it obvious that house arrest with or without electronic monitoring, with 35% and 32% respectively, forms almost 70% of all NCSMs; community service accounts for 14%, house detention with the use of electronic monitoring 11%, house detention without the use of electronic monitoring 8%, and suspended sentences with protective supervision does not even reach half a percentage point.



Graph 6: Structure of imposed alternative sanctions in the 2015-2019 period

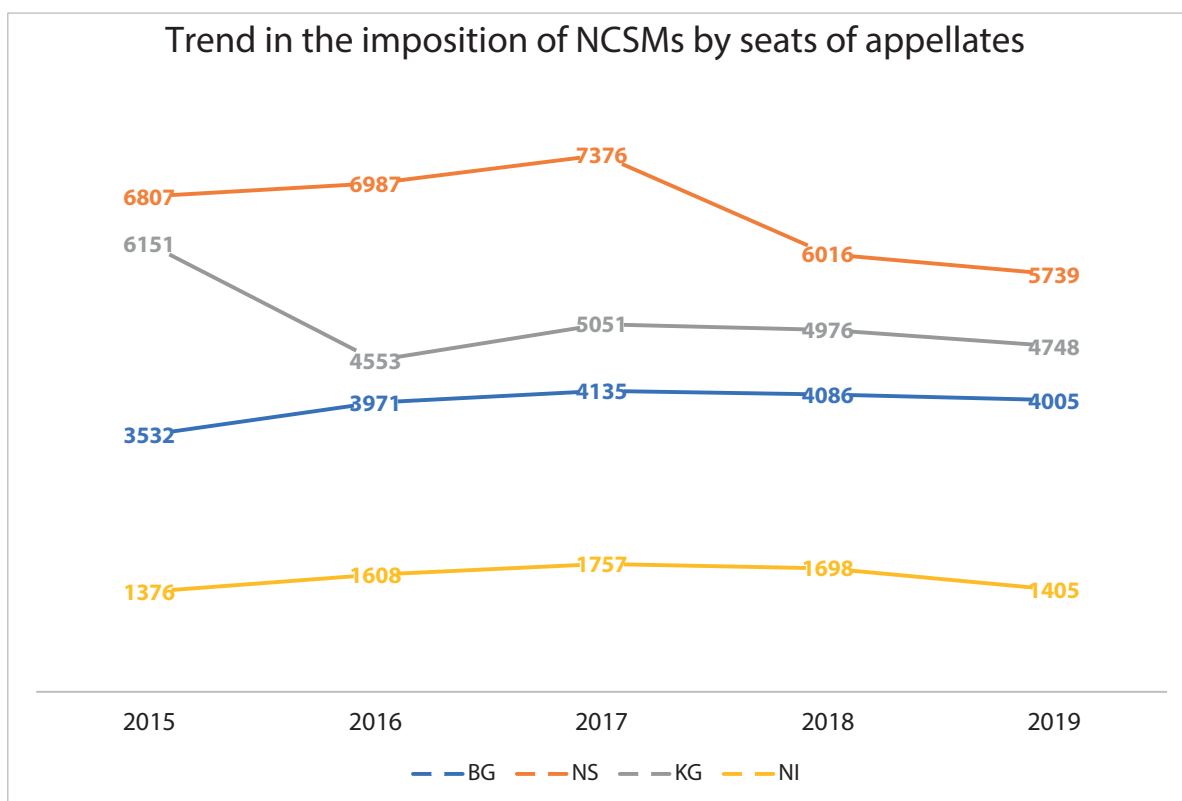
³⁶ After consultation with the DECS, it was decided that information for the 2016-2020 period are shown and analysed in this segment of analysis, since the statistics that the DECS has for 2015 are not complete/reliable.

6.4 In the observed period, a **positive trend in use** also existed for house arrest without electronic monitoring, and for house detention without and with electronic monitoring (for all the above, with the exception for 2019). The community service sanction had a negative trend until 2018, only to show a mild upward trend after that. House arrest with electronic monitoring has been in mild decline since 2017, as has suspended sentences with protective supervision.



Graph 7: Structure and trends of non-custodial sanctions and measures submitted for enforcement in 2016-2020

6.5 As the DECS only keeps aggregate statistics, not statistics on the **number of decisions on NCSMs applied for enforcement according to the areas of the appellate courts**, relying on data of the SORS, it is noticeable that the trend in the imposition of NCSMs in the area of the Beograd and Niš appellates has been stable since 2017. After a mild increase in the 2015-2017 period, the Novi Sad appellate recorded an abrupt fall in the number of imposed NCSMs. The Kragujevac appellate, after an abrupt decline in the 2015-2016 period, saw a relatively stable trend.



Graph 8: Trend in the imposition of non-custodial sanctions and measures per area of the appellate courts in the 2015-2019 period.

6.6 Through interviews with judges and employees in the Probation Service, **the following questions stood out as disputable concerning the wider use of NCSMs:**

- › Is there an adequate level of information among judges and public prosecutors concerning the organisation and functioning of the Probation Service, as well as the problems in practice related to enforcement, and how the judiciary information system should be arranged in order to enable the more adequate monitoring of the use of NCSMs?
- › Should the court be led by the capacities for enforcement when imposing these NCSMs?
- › Issues of the pile-up of cases pending enforcement due to the lack of capacity for enforcement.
- › The issue of the mechanism and competence for the improvement of cooperation of the DECS and local self-governments, as well as the role of probation officers in creating preconditions for signing additional agreements on the level of local self-governments, which creates preconditions for the enforcement of community service sanctions.

6.7 When it comes to the **level of information of judges and public prosecutors** about the organisation and functioning of the Probation Service, as well as the problems and practice of enforcement, both judges and probation officers are of the opinion that the periodical organisation of joint workshops and round-tables, especially according to the location in the areas of the higher courts, has helped them significantly to overcome the problems with regard to the improvement of communication and cooperation. As for **keeping records and processing statistics**, both judges and presidents of courts, as well as all the employees in court registries, agree that there is an omission in terms of adequately regulating NCSM record-keeping through Court Rules, that this change should be accompanied with software solutions, and organising training for employees in court registries.

- 6.8** Concerning the **second question**, opinions are divided. Actually, while judges emphasise that the availability of information on the signed agreements on the enforcement of community service and capacities with regard to the number of devices for electronic monitoring are a great problem to them, and clarify that they are informed about the capacities for enforcement via informal contacts with probation officers, the views of the employees in the Probation Service are divided. While some believe that the court should “only impose NCSMs” and all issues of enforcement are the exclusive competence of the DECS, others emphasise that during the imposition of community service, as well as other NCSMs, the court should obtain the prior opinion of the Probation Service. All the interviewees agree that the capacity of the Probation Service is currently inadequate for the enforcement of this additional function.
- 6.9** Concerning the **third question**, while the judges express concern because of the high number of cases waiting to be enforced, the ambiguous criteria for prioritisation and the uncertain fate of individual imposed NCSMs in terms of the opportunity for the enforcement of a sanction before it becomes obsolete, probation officers agree that they do not need a planning document that would contain criteria for the prioritisation of cases pending for enforcement, but they do not give or give contradictory explanations concerning the process of the prioritisation of cases.
- 6.10** As for the **fourth question**, the research team noted contradictory answers to a considerable extent. Actually, while some of the probation officers do not recognise their role with regard to contacts on the level of local self-government aimed to raise awareness about the NCSMs in the role of institutions of local self-government and their wider use, explaining such an attitude with the centralised arrangement of the Probation Service, fewer probation officers and judges believe that it is not realistic to expect these processes to be coordinated fully “from Belgrade”, but think that it is the probation officers who should influence, in the field, through direct contacts, the creation of preconditions for signing additional agreements and raising the awareness of the local community about NCSMs.

General indicators of the application of non-custodial sanctions and measures in 2015-2020

point to the existence (except for 2019) of a positive trend, whereby the share of alternative sanctions in 2020 was 16.5% compared to the total number of executed criminal sanctions, a significant increase compared to 2016 when it was 9.7%. When it comes to the structure of the imposed NCSMs, not counting special obligations that condition the deferral of criminal prosecution, house arrest with the use of electronic monitoring is dominating. It is followed by house arrest without the use of electronic monitoring, then community service and house detention with or without electronic monitoring. Suspended sentences with protective supervision only occur sporadically, whereby house arrest with or without electronic monitoring, with 35% and 32% respectively, accounts for almost 70% of all NCSMs; community service makes 14%, house detention with the use of electronic monitoring 11%, house detention without the use of electronic monitoring 8%, and suspended sentences with protective supervision do not even reach half a percentage point.

When it comes to the **greatest challenges concerning the wide use of NCSMs**, a need is apparent for the improved exchange of information and experience between judges, prosecutors and probation officers on the organisation and functioning of the Probation Service and problems in enforcement practice, especially at the level of higher courts. An inadequate normative framework and inadequate software solutions in the area of recording and processing statistical data on the imposed NCSMs, as well as the training of the administrative staff in court registries, are also noticeable. The absence of information on the capacities of the

Probation Service or the lack of capacity itself, in interaction with the lack of clear criteria for the prioritisation of cases in the event of backlogs in enforcement, still demotivates courts to apply NCSMs more widely. A uniform, strategic approach to improving the cooperation of the Probation Service and the DECS on a local level is still missing.

► **Recommendation 1:** Through amendments to the Court Rules, regulate in a single way the registers/ records on the imposed/determined non-custodial sanctions and measures; accompany these changes with adequate software solutions and training for employees in court registries.

► **Recommendation 2:** Regularly organise joint round-tables/workshops for courts, prosecutors, and probation officers, with a view to exchanging information and experience on the organisation and functioning of the Probation Service and problems in the practice of enforcement of non-custodial sanctions and measures.

► **Recommendation 3:** Establish sustainable mechanisms for improving the cooperation between the Probation Service and local self-governments in the area of the enforcement of non-custodial sanctions and measures.

7. Institutional and administrative capacities for the enforcement of non-custodial sanctions and measures

7.1 One of the most important tasks after the adoption of the new normative framework was the creation of a network of offices for the enforcement of non-custodial sanctions and measures and the establishment of cooperation with local self-governments with the purpose of their enforcement in the community. The network of offices was established according to the seats of the higher courts in 2014, after memorandums of cooperation had been signed between the Ministry of Justice³⁷ and the Mayors of cities housing the seats of 25 probation offices. Based on the memorandums of cooperation of the local self-government, premises for the offices were provided and cooperation with local public enterprises and organisations dealing with affairs of general societal importance were established.

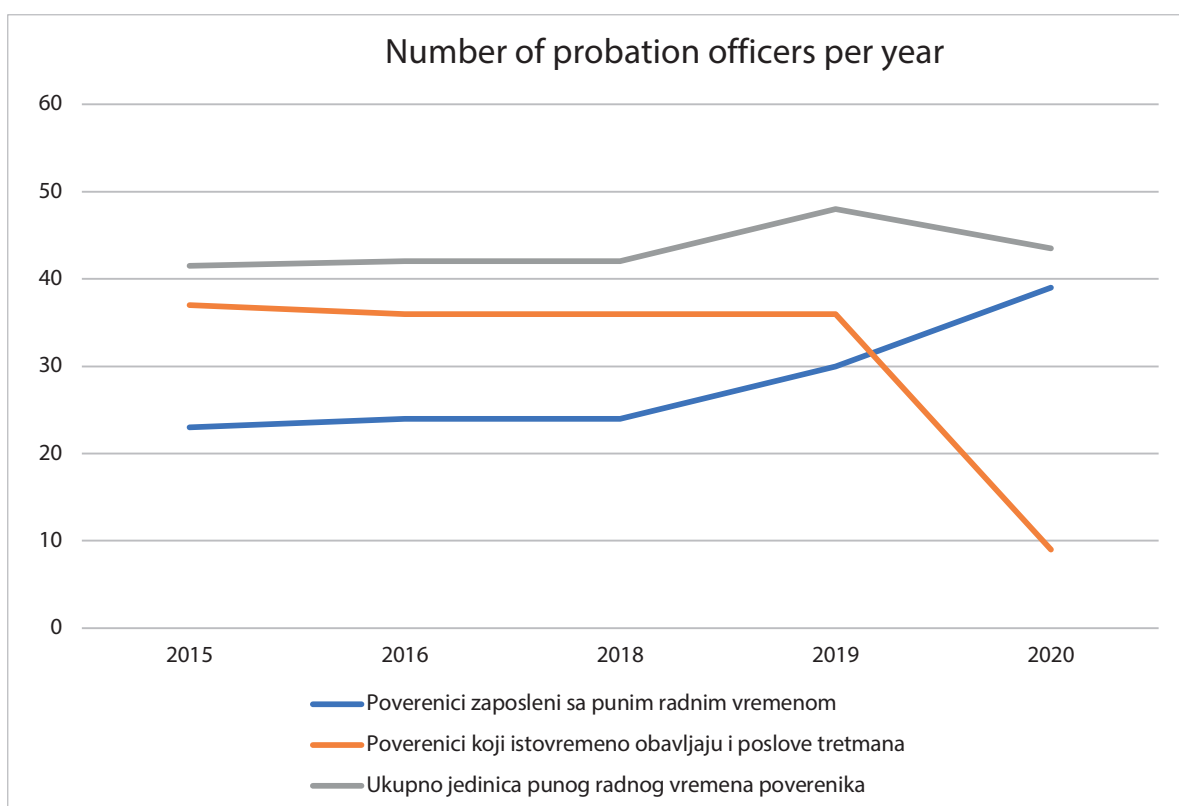
7.2 Even though the Probation Service in most countries of the Council of Europe has an independent status in relation to the administration for the enforcement of institutional sanctions, the situation in Serbia is somewhat different. In the first six-year period of operation, the "Probation Service" in Serbia was a part of the Department for the Treatment and Enforcement of Non-Custodial Sanctions. Actually, the Department for the Enforcement of Non-Custodial Sanctions and Measures was established under amendment to the Rulebook on Internal Organisation and Job Classification at DECS only in 2021.³⁸ Although in terms of the timing, this step does not belong *stricto sensu* to the period covered

³⁷ At that time, the Ministry of Justice and Public Administration

³⁸ The adoption of the Rulebook Amending the Rulebook on Internal Arrangement and Job Classification at the Department for the Execution of Criminal Sanctions, which entered into force on 21 May 2021, established a special service, the Department for the enforcement of Non-Custodial Sanctions and Measures. The new job classification within the Department for the enforcement of Alternative Sanctions and Measures formed new organisational units that imply the merger of some probation offices. Sixteen organisational units for the enforcement of non-custodial sanctions and measures covered by the probation offices in 25 cities in the Republic of Serbia were thus created. This enabled better geographic coverage with an optimum increase in the number of employees. A step forward was thus made in relation to the statement in the SPACE II (2019) Report (p.14), which said that Probation Service in Serbia does not exist, rather it functions as an organisation entity of the Department for Treatment and Non-Custodial Sanctions, within the DECS.

by the Analysis, the omission of this fact, bearing in mind the point of the announcement of this Analysis, led to the creation of a false image of the condition, processes and trends in the observed area.

7.3 The change in the institutional and organisational status of the management of the enforcement of non-custodial sanctions and measures was also accompanied by **significant improvement of the administrative capacities in 2019-2020**, after years of stagnation caused primarily by the decision of the Government of RS to significantly restrict additional employment in the public sector through financial consolidation measures.



Graph 9: Administrative capacities of the “Probation Service” (SPACE II 2015-2020)

According to data from the SPACE II Report for 2020, the total number of employees working on jobs related to non-custodial sanctions at the DECS in January 2020 (pages 86 and 93) was 57, of whom 48 were in direct contact with sentenced persons (probation officers), with 39 of them (compared to 30 in 2019) being employed full-time, and 9 probation officers (compared to 36 in 2019) being engaged on these jobs for half working hours, and working on treatment in institutes for the enforcement of criminal sanctions within the second half of their working hours. Information in the graph shows that after a four-year period that was marked with the substitution, initially of two thirds and then of about one half of the number of probation officers by engaging officers for treatment from the institute for the execution of criminal sanctions, in 2020, their share in the total number of probation officers was reduced to 15%. It is important to note that the new job classification provides for further increasing the number of probation officers.³⁹

³⁹ By amendments to the job classification act of 2021, the total number of jobs in the Department increased from 43 to 74 jobs.

- 7.4** Even though the process of the employment of a large number of new probation officers, with the concurrent withdrawal of officers for treatment from the jobs of probation officers, did not lead to an increase in the total number of units of full working hours allocated to the jobs of the probation officers, it is expected that starting from 2021, it still shows positive effects. Actually, even though it is mainly the replacement of experienced probation officers with less experienced ones, one should take into account that for the officers for treatment that were also engaged as probation officers, that extra job was a great burden bearing in mind that the institutional system already has an insufficient number of treatment officers, so engaging them for these additional jobs made it difficult for them to commit continuously to their primary jobs. Nevertheless, something that continues to cause serious concern is that the **existing and planned enhancement of the administrative capacities has been designed without previously conducting functional analysis, i.e. mapping jobs and business processes**. As a result, probation officers continue to point to the fact that the most important item in the performance of their jobs includes administrative and technical jobs (letters, reports, etc.), whose preparation could also be done by the administrative and technical personnel (office workers), which would enable the probation officers to dedicate themselves to their primary jobs. At the same time, such analysis would show the extent of the attitudes of a certain number of probation officers that there is a need for technicians who would install devices for electronic monitoring, drivers and security staff.
- 7.5** In addition to the prohibition of employment, **an additional obstacle in enhancing the capacity of the Probation Service** would be posed by the conditions concerning the **professional qualifications required for the position of probation officer**. Actually, probation officers may not be legal professionals, just professionals in the so-called assisting professions with experience in their profession, which has a demotivating effect for young professionals who choose such a professional path, especially in small towns and in conjunction with the fact that unlike treatment officers, probation officers are not guaranteed reduced years of service for retirement. At the same time, experienced professional employees in institutes are also demotivated to shift to probation officer jobs even if these jobs are closer to their professional preferences.
- 7.6** Progress concerning the **technical capacities of departments** was also achieved in the observed period, and an agreement on a new **system of electronic monitoring** was signed in 2019, so that 3,000 units for electronic monitoring were procured by the end of 2020 (compared to 1,060 in 2015)⁴⁰. This overcame the initial lack of devices, which was one of the primary generators of the increasing number of case files awaiting enforcement, which was put at about 1,000 in 2019. In July 2019, with the support of the EU, all probation offices received **26 vehicles that enable independent driving for probation officers out in the field**.⁴¹
- 7.7** One of the key problems in relation to the technical capacities of the Probation Service is reflected in the fact that the DECS did not possess a **single information (case management) system**. This had multiple negative effects on the operation of the Probation Service, since the collection and processing of statistics and thus the monitoring of the statistical parameters was significantly complicated.⁴²

40 Due to a lack of ankle bracelets, about 1,000 sentenced persons wait for the sanction, available at: <https://www.021.rs/story/Info/Srbija/220694/Nestasica-nanogvica-okolo-1000-osudjenih-na-kucni-zatvor-ceka-kaznu.html>, accessed on 27.12.2021

41 EU donates 26 vehicles to the Department for the Execution of Criminal Sanctions, available at: <https://europa.rs/eu-donirala-26-vozila-upravi-za-izvršenje-krivičnih-sankcija/>, accessed on 27.11. 2021

42 This significantly complicated the implementation of Analysis, i.e. influenced the availability and credibility of some categories of data.

Besides, the complete centralisation of business processes implied that the complete communication and exchange of documents in the process of the enforcement of non-custodial sanctions and measures took place through mail and electronic mail, due to which a real-time view of the status was impossible. Bearing in mind the organisation and internal arrangement of the DECS, all decisions were delivered for enforcement to the Chief of the Department, for the cases to be later assigned to competent offices, which then submitted any decision and/or report for insight and signature to the Chief of the Department.

- 7.8** The development of **software for records of persons deprived of liberty (SAPA)** as a central point for the collection of data on persons deprived of liberty, encompasses the processing of ID information on persons deprived of liberty and records of the health, treatment, safety and other data of significance for the enforcement of criminal sanctions and detention measures. Furthermore, the integration of software for records of persons deprived of liberty (SAPA) with the central software of the Ministry of Justice of Serbia has also been implemented. The procurement of IT equipment for the central server hall and equipment for the needs of the WAN network of the Department as the bases of the system, through which equipment communication with the software used for the needs of the institute is carried out. Furthermore, within a new single information system of the Department for the Execution of Criminal Sanctions in the part related to the enforcement of non-custodial sanctions and measures, significant progress in keeping records, files and changes in the enforcement has been made, which will greatly facilitate the work of the probation officers in the administrative part.
- 7.9** Lack of administrative capacities, with the earlier-mentioned problem concerning the timely supply of technical and information/communication equipment resulted, mainly in the 2016-2019 period, in the formation of significant work backlogs, which forced employees, according to the then Chief of the Department, to "make a timetable and prioritise according to the type of crime, the length of the sentence etc."⁴³

In the first six-year period of operation, the "Probation Service" in Serbia was a part of the Department for the Treatment and Enforcement of Non-Custodial Sanctions. Actually, the Department for the Enforcement of Non-Custodial Sanctions and Measures was established under amendment to the Rulebook on Internal Organisation and Job Classification at DECS only in 2021. The change in the institutional and organisational status of the management of the enforcement of non-custodial sanctions and measures was also accompanied by **significant improvement of the administrative capacities in 2019-2020**, after years of stagnation caused primarily by the decision of the Government of the RS to restrict significantly additional employment in the public sector through financial consolidation measures. Nevertheless, **the existing and planned enhancement of the administrative capacities was designed without previously conducting functional analysis, i.e. mapping jobs and business processes, due to which** the probation officers still suffer great burdens from administrative and technical jobs. **The less favourable business-and-legal status of the probation officers compared to the treatment officers** has a demotivating effect on experienced experts in the treatment service, as well as on young professionals to choose this profession. In the observed period, progress was achieved with regard to the **technical capacities of the Probation service**, through the procurement of an additional number of electronic monitoring devices and vehicles, and through the

43 Lack of probation officers for monitoring the enforcement of house arrest, available at: <https://www.pravniportal.com/nedostatak-poverenika-za-pracenje-izvršenja-kucnog-zatvora/>, accessed on 27.12. 2021

establishment of **software for records of persons deprived of liberty (SAPA)**, which created a pre-condition for the more efficient keeping, processing and exchange of information within the Probation Service.

► **Recommendation 4:** Implement functional analysis of the work of the Probation Service, which includes the mapping of jobs and results in recommendations for the improvement of administrative capacities and business processes.

► **Recommendation 5:** Continue to strengthen the administrative capacities of the Probation Service based on the results of the functional analysis of the operation of probation offices.

► **Recommendation 6:** Establish a sustainable training system for probation officers, based on the positive experience of pilot projects, with an established and functional network of trainers within the Probation Service itself, who cooperate with the expert community in the country and abroad.

8. The performance of obligations whose enforcement conditions the deferral of criminal prosecution

Article 283 paragraphs 1-2. of the CPC stipulates that the “public prosecutor may defer criminal procedure for criminal offences punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one of more of the following obligations:

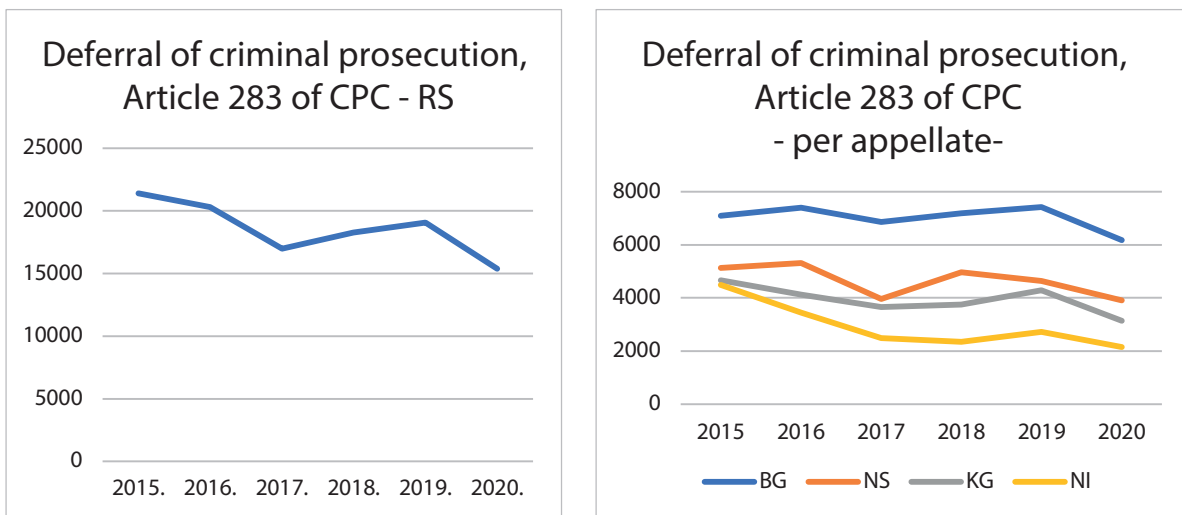
- 1) Rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;
- 2) Pay a certain amount of money to be used for humanitarian or other public purposes, to an account prescribed for the payment of public revenues;
- 3) Perform certain community service or humanitarian work;
- 4) Fulfil maintenance obligations that have fallen due;
- 5) Subject themselves to an alcohol or drug treatment programme;
- 6) Subject themselves to psycho-social treatment for the purpose of eliminating the causes of violent conduct;
- 7) Fulfil an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

In the order deferring criminal prosecution, the public prosecutor will determine a time limit during which the suspect must fulfil the obligations undertaken, with the proviso that the time limit may not exceed one year. Oversight of the fulfilment of obligations is performed by an officer of the authority in charge of the execution of criminal sanctions, in accordance with a regulation issued by the minister responsible for the judiciary.

8.1 Unlike alternative sanctions and measures, which directly enable the achievement of the purpose reflected in ensuring the presence of the defendant, i.e. preventing them repeating the crime or influencing the injured parties and witnesses, as the enforcement of the sanction without burdening the institutional capacities, **using the principle of opportunity, i.e. using special obligations that condition the deferral of the criminal prosecution, the suspect is influenced without having to**

undergo the criminal procedure. These mechanisms offer wide opportunities for disburdening the judiciary system, and indirectly, the institute for the Execution of criminal sanctions.

8.2 Besides these numerous advantages, analysis of the information shown in graphs 10 and 11 show that **the use of the deferral of criminal prosecution, in line with Article 283 of the CPC, was in decline during the entire observed period, with the exception of 2017-2019 when there was stagnation.** Still, when it comes to the noticeable fall in the use of this institute during 2020, it should be seen in light of the fall in the inflow of criminal cases during 2020, caused by the COVID-19 pandemic. When the trends of the use of the institute per appellate seats are in question, more than 30% of cases account for the Belgrade appellate, and less than 15% for the Niš appellate.



Graph 10: Trend for the use of the mechanism of conditioned opportunity in the observed period (RPPO data)

8.3 Of exceptional importance for the subject of this analysis is the share that any obligation has in the total number of obligations imposed on an annual level, whereby Graph 11 shows exceptional unevenness, since 83.2% of all the measures that conditioned the deferral of the criminal prosecution in the observed period were related to the obligation for the payment of funds for humanitarian purposes. They were followed by the removal of harmful consequences with 9.8%, community service with 4.1%, the fulfilment of maintenance obligations that have fallen due with 2.2%, subjecting to withdrawal from alcohol or narcotic drugs 0.3%, subjecting to psycho-social treatment in order to remove causes of violent behaviour with 0.2%, and the performance of an obligation established by a final decision of a court, i.e. compliance with limitation determined by a final court decision.



Graph 11: Structure of obligations that conditioned the deferral of criminal prosecution in the period 2015-2020

8.4 Bearing in mind the number and diversity of obligations referred to in Article 283 of the CPC, the role of the Probation Service in the supervision of their enforcement varies significantly, and it can hardly be perceived in full from the provision of Articles 11-16 of EESMA. Although it can be expected that the role and procedure of for the supervision of the performance of these obligations are seriously regulated even on the by-law level, bearing in mind the current text of the Rulebook on the Manner of Enforcement of Non-Custodial Sanctions and Measures and the Organisation of the Work of Probation Officers, which provides that the “Probation officer controls the performance of obligations determined with a measure for the deferral of the criminal prosecution according to a decision of the public prosecutor – by immediate contact with the suspect, his/her family, employer or obtaining the necessary documentation proving the performance of the obligations assigned to him/her. Concerning the performance of the obligations of the suspect, the probation officer notifies the public prosecutor and the Probation Service, in line with the law, but it is obvious that this is not the case and everything is left to a probation officer’s practice. **The deficiency of this normative framework results, as can be expected, in a number of problems in practice relating to the performance of the obligations referred to in Article 283 of the CPC,** mostly connected to the unclear differentiation of the competencies of the Probation Service and the public prosecutor.

8.5 In the probation officers’ words, decisions of the prosecutor’s office are not always delivered, and when delivered, they are not acted upon at all times. They say that in the observed period, no records were kept concerning the delivered decisions, and the Department for the enforcement of NCSMs confirms that they do not possess this type of statistics. They emphasise the **delivery of certificates of payment of a monetary amount for humanitarian or other public purposes** as one of the most frequent problems in practice. Actually, some suspects provide a certificate directly to the prosecutor’s

office, whereby others give it to probation officers, meaning that the prosecutor's office is not notified in a timely manner that the defendant has fulfilled their obligation.

- 8.6** Some serious difficulties also occur in relation to the execution of **community service**, since the status of the social insurance of suspects while performing community service has not been resolved yet, since they cannot be insured through the DECS. There used to be attempts in practice to overcome these problems through agreements signed directly between the prosecutor's office and a local public enterprise, but since 2014, the Republic Public Prosecutors Office has been expected to regulate the signing of agreements on the central level. As centralisation has not occurred and public prosecutors offices did not continue to sign agreements directly, the determination of an obligation for community service has declined over time.
- 8.7** The impossibility of effective control is also the case when the **obligation for the withdrawal from alcohol and narcotic drugs** is involved, because the probation officers do not have mechanisms to check whether a person is consuming alcohol or drugs. Actually, the Probation Service does not have fast tests and nor can it refer a person to be tested as can be done by a court, prosecutors office, police or the management of an institute for the Execution of criminal sanctions. As with the community service, public prosecutors offices have faced a similar situation concerning signing a protocol with institutes where persons can be subject to withdrawal from alcohol or narcotic drugs, or to psycho-social treatment. Furthermore, public prosecutors would have to decide on an expert opinion for the application of these obligations, which would question the efficacy of the opportunity and raise expenses.
- 8.8** Probation officers are mostly of the opinion that the Probation Service would not have to undertake the supervision of obligations referred to in Article 283 of the CPC, or at least of the most prevalent one, the payment of funds for humanitarian purposes.

The normative framework regulating the actions of probation officers within the supervision of the use of obligations whose performance conditions the deferral of criminal prosecution referred to in Article 283 of the CPC is inadequate and incomplete, which results in the ambiguous differentiation of competences with the prosecutor's office and the inadequate supervision of enforcement. In the observed period, the Probation Service did not keep records of the cases in this segment of competence, and probation officers were mainly of the opinion that the Probation Service should not perform the supervision of the obligations referred to in Article 283 of the CPC or at least of the most prevalent one, the payment of funds for humanitarian purposes.

► **Recommendation 7:** Through amendments to the Enforcement of Extra-Institutional Sanctions and Measures Act, the Rulebook on the Manner of Enforcement of Non-Custodial Sanctions and Measures, and the Organisation of the Work of Probation Officers, and by adopting comprehensive compulsory instructions on the application of Article 283 of the CPC, precisely differentiate the competencies of the Department for the Execution of Criminal Sanctions and those of public prosecutor's offices with regard to agreements on the performance of community service and the insurance of persons performing it, and regulate the actions of probation officers within the supervision of the fulfilment of obligations the performance of which conditions the deferral of criminal prosecution referred to in Article 283 of the CPC.

► **Recommendation 8:** Organise periodical meetings of officers and (deputy) public prosecutors with a view of exchanging experience, equalising practice and overcoming problems.

9. Prohibition of leaving a dwelling (House detention)

Article 208 of the CPC: If there are circumstances indicating that a defendant could abscond, or the circumstances specified in Article 211 paragraph 1 items 1), 3) and 4) of this Code, the court may prohibit the defendant from leaving their dwelling without permission and determine the conditions under which they will stay in the dwelling, such as a prohibition on using the telephone or the internet or receiving other persons in the dwelling.

As an exception from paragraph 1 of this Article, the defendant may leave their dwelling without permission if it is necessary for the purpose of an urgent medical intervention they or another person living with them in the dwelling need to undertake, or in order to avoid a substantial threat to the life and health of people or property. The defendant is required to notify without delay a probation officer of the authority in charge of the execution of criminal sanctions about leaving their dwelling, the reasons and the place where they are currently located.

Article 209 of the CPC: The court decides on ordering the measure referred to in Article 208 paragraph 1 of this Code on a motion by the public prosecutor, and *ex officio* after the indictment is confirmed.

During the investigation, a reasoned ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article is issued by the judge for preliminary proceedings, and by the panel after the indictment is filed. If the measure was not proposed by the public prosecutor, and the proceedings are being conducted in connection with a criminal offence that is prosecutable *ex officio*, the court will seek the opinion of the public prosecutor before rendering a decision.

In the ruling pronouncing the measure referred to in paragraph 1 of this Article, the defendant will be cautioned that they may be ordered to be placed in detention if they violate the pronounced prohibition.

The measure referred to in paragraph 1 of this Article may last as long as there is a need for that, but no longer than by the time the ruling becomes final, or the commitment of the defendant to serve a custodial criminal sanction. The court is required to examine once in every three months whether the measure is still justified.

The parties and defence counsel may appellate against a ruling ordering, extending or repealing the measure referred to in paragraph 1 of this Article. The public prosecutor may also appellate against a ruling denying a motion for ordering the measure. An appellate does not suspend the execution of the ruling.

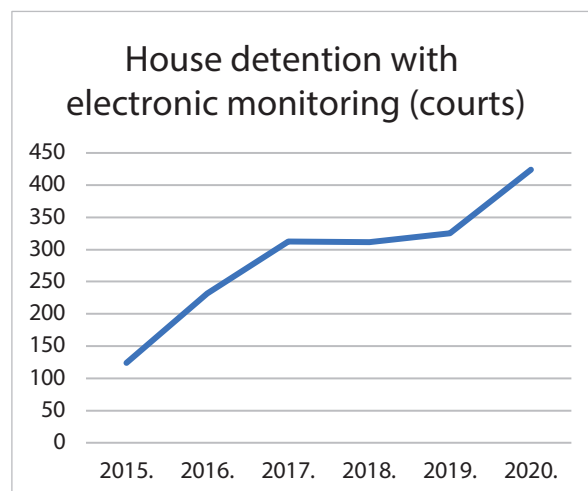
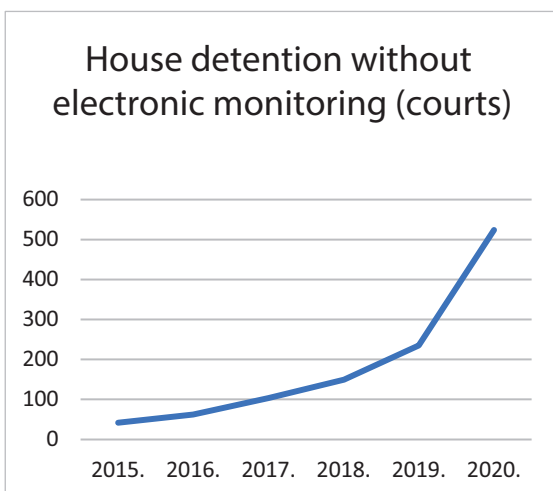
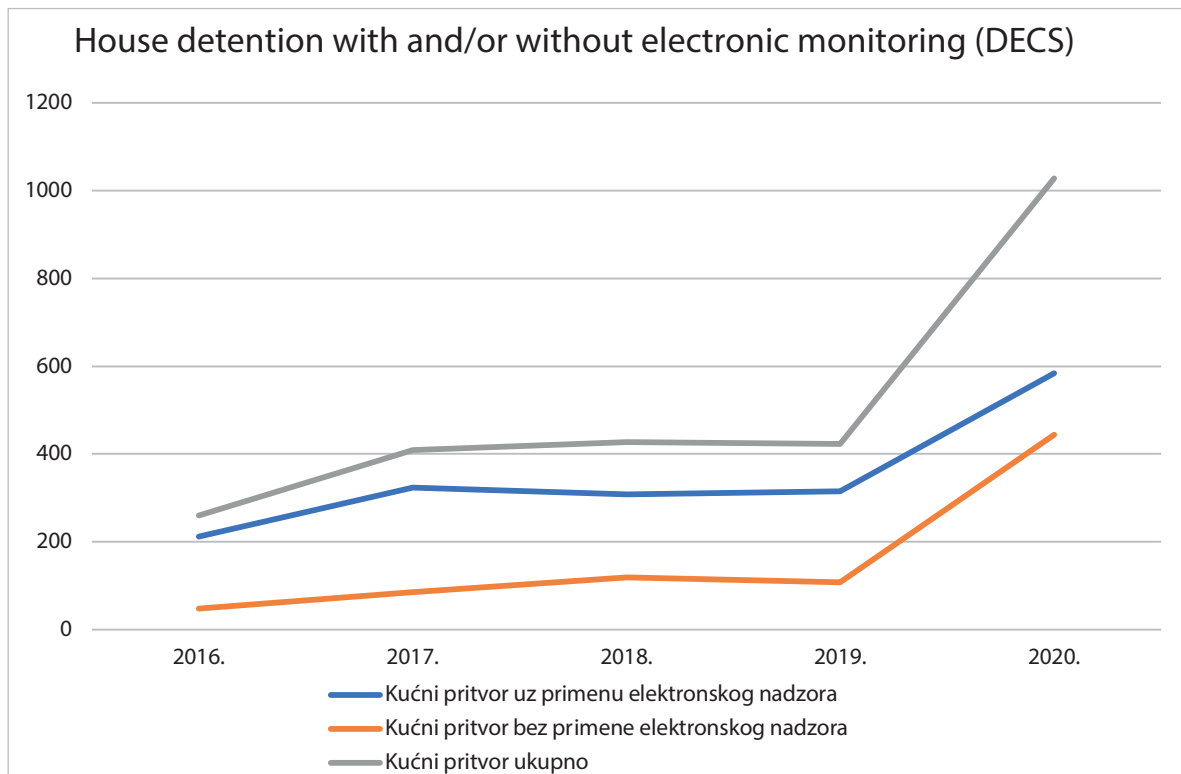
Article 190 of the CPC: The court may order the use of electronic monitoring for a defendant against whom the measure referred to in Article 188 item 6) of this Code has been ordered, for the purpose of controlling the observance of the restrictions ordered.

A location device – transmitter is attached to the wrist or ankle or another place on a defendant by a professional, who gives the defendant detailed instructions on the manner in which the device works. The professional remotely controls the device that tracks the movements of the defendant and their position in space – the receiver.

Electronic monitoring is performed by the state authority in charge of executing criminal sanctions or another state authority specified by law.

9.1 As explained in Chapter 5, the high number of the prison population in the total number of persons deprived of liberty has illustrated for years a **need for the wider use of alternatives to detention**, including a prohibition of leaving one's dwelling with or without the use of electronic monitoring. In order to comprehend the extent to which this need was really addressed in the observed period, the research team of the ICSR considered data from the DECS on the number of received decisions on house detention, and data collected by 64 BCs and HCs. Information **shows that after a period of growth in 2016-2017**, the use of house detention (in total, with or without electronic monitoring) **showed a certain trend of stagnation in the 2017-2019 period, after which an abrupt rise was noticeable.**

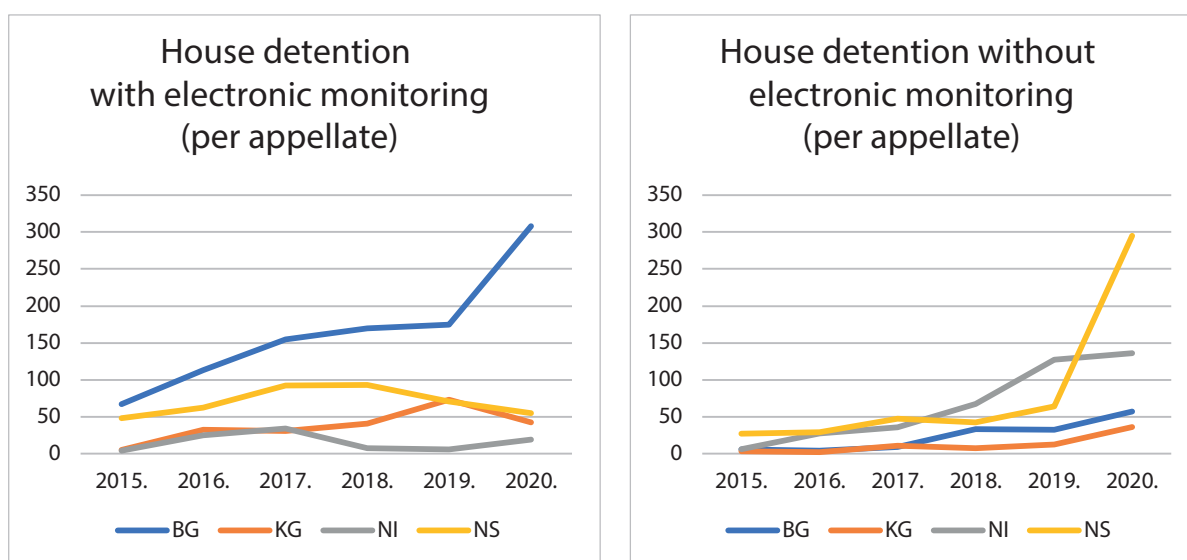
9.2 Based on the attitudes of the judges interviewed by the research team, it could be decided that a significant influence on such trends came from the lack of equipment (electronic monitoring devices), and the lack of administrative capacities of the Probation Service in the 2017-2019 period, due to which, in this period, courts decided on this alternative measure to detention more cautiously. Such an interpretation is also supported by data from Graph 2, which shows that the size of the custodial population increased in that period. At the same time, **a sudden jump in the use of house detention following 2019 corresponded to the procurement of additional monitoring devices and the employment of additional probation officers and the procurement of vehicles for the needs of offices.**



Graph 12: Comparative view of the trends in the use of house detention according to data from the DECS and courts

9.3 The influence of the infrastructure and administrative capacities on the use of this measure especially comes to the fore when it comes to the use of **house detention with electronic monitoring**, which is obvious from the comparative analysis of trends in the use of house detention without and with electronic monitoring, whereby the former increased even in the period when the latter stagnated due to the lack of electronic monitoring devices.

9.4 Analysis of **trends in the use of house detention with or without electronic monitoring by appellate seats** shows significant differences. Actually, while the trends of the appellate court in Belgrade correspond to the above-described trends on the level of the RS, no growth in the use of house detention with electronic monitoring was recorded following 2019 in the courts in the area of the Novi Sad and Kragujevac appellates, and a slight increase was recorded in the area of the Niš appellate. At the same time, all four appellates had recorded an increase in the use of house detention without electronic monitoring since 2019, and that trend was most accentuated in the Novi Sad appellate, which recorded a fivefold use of this measure in 2020 compared to 2019.



Graph 13: Trends in the use of house detention per appellate (court data)

9.5 Probation officers emphasised the fact that the house detention measure **is imposed without previous verification of whether there are technical conditions for its enforcement**, such as the existence of a power supply, phone connection and the consent of the owner of the house or apartment where the measure is to be enforced, **as the most important deficiency of the existing system for the enforcement of the house detention measure**, or the greatest problem they face in practice in that area. Moreover, probation officers point out that due to a failure in verifying the technical conditions for the enforcement of the house detention measure in practice, it happens that a person is escorted to the address from the decision on the determination of the measure, and the owner of the dwelling is not willing to receive the defendant, or the owner is a minor whose legal representative is the defendant themselves, who afterwards do not even agree to let themselves into the dwelling. They state that it could happen that the measure was imposed on a homeless person. They frequently say that the measure is determined in premises where its enforcement is impossible because of the lack of a power supply or phone connection, or even more absurdly, that the measure was determined at the same time with a prohibition of the use of a phone, and the person the measure was imposed

on lived alone. Individual probation officers stated that a solution for this problem could be obtaining a **prior opinion of probation officers** before determining the measure, which will be described in more detail in Chapter 10, but they emphasise the insufficient provision of courts imposing the house detention measure with information about the manner of enforcement of that measure and the authority of probation officers concerning this, and that often, during the enforcement, judges need to be informed about the procedure and rules of enforcement of the prohibition of leaving the premises where the sentenced person dwells.

- 9.6** Probation officers see the **difficult oversight of the use of additional measures determined along with house detention**, such as a prohibition of using a phone or internet, as an additional problem with the enforcement of the house detention measure. As many as one-third of probation officers **do not have available mechanisms of control of house detention without electronic monitoring**, which makes this measure absolutely meaningless. They also see the prohibition of visits as troubled because control of the observance of this measure is impossible to enforce if the person the measure is imposed on lives and serves the measure in a multimember family. Almost all probation officers point out that the location of the premises where the person dwells makes effective control difficult due to the distance from the probation office or inaccessible terrain.
- 9.7** **Fear for the safety of probation officers in situations where they go to the place of dwelling of the prisoner unaccompanied by police** is emphasised as one of the problems in the use of the house detention measure, as the measure is frequently imposed on persons who have committed severe criminal offences, being multiple returnees and being prone to “problematic” conduct. They say that it is not unusual for such persons to have already been sentenced to multi-year imprisonment and are waiting for their enforcement. Probation officers have also emphasised this problem several times in terms of the **special vulnerability of probation officers** in a situation where a monitoring device needs to be placed without police accompaniment, noting that, in addition to the security issue, this process is also connected to the need for the use of additional physical force due to the specifics of the mechanism for fixing a device. Probation officers explain that this problem has intensified after the procurement of vehicles since before that, probation officers were mainly accompanied by police.
- 9.8** An additional problem identified by probation officers relates to the **poor communication and slow response of courts**. Probation officers state that persons this measure is imposed on face a long period of waiting for a reply from the judge when they addressed them in order to leave the premises for doctor’s examinations, interventions and other similar needs, and that it sometimes happens that they get a reply after the requested deadline, do not get it at all or that the judges return the letter, i.e. the appellate of the sentenced person to the Department for approval. The untimely information provision by courts about the extension of measures or about approvals for the defendants to leave the premises where they dwell has been noticed. Quite often, when a house detention measure without electronic monitoring is imposed, courts are slow informing the Probation Service so it can happen that several days elapse until the start of control of the house detention. Conversely, a problem in practice is the fact that Article 17 of the EESMA requires the court to provide the Probation Service with the decision determining house detention. Actually, due to restricted administrative capacities, the Probation Service does not have the possibility to work in shifts, so the delivery of the court decision after the working hours is a serious problem for them.

Although it was increasing, the wider use of the measure of prohibiting one leaving their dwelling was slowed down in the 2016-2019 period by the lack of adequate infrastructure and administrative capacities for its enforcement. After those issues had been overcome to a great extent during 2019 and 2020, an abrupt increase in determining this measure was perceived. However, in practice, there are still a series of problems related to the lack of adequate previous verification of the fulfilment of the technical requirements for determining such a measure, as well as its determination to persons who are multiple returnees even in the commission of serious criminal offences, because of which probation officers point to their own lack of safety when placing an electronic monitoring device or during control visits. They also point to the impossibility of establishing effective control of the enforcement of the measure when they are imposed without electronic monitoring and/or with an additional prohibition of visits and communications.

► **Recommendation 9:** By amending Article 190 of the CPC, provide for an obligation of the court, before adopting a decision ordering the measure below, to obtain information about the fulfilment of the technical conditions for ordering the measure of the prohibition on leaving one's dwelling.

► **Recommendation 10:** Based on the results of the Functional analysis, enhance the administrative capacities of probation offices in a manner that enables the introduction of work in shifts, or on-call duty.

► **Recommendation 11:** Continuously monitor and address the needs for equipment and vehicles for the needs of the Probation Service, which would enable the ordering and use of this measure in all cases where it can be ordered as an alternative to detention.

10. The enforcement of imprisonment sentences in the premises where the sentenced person dwells

Article 45, paragraphs 3-5 of the Criminal Code: (3) In the case of convicted persons punished with imprisonment of up to one year, the court may impose serving the sentence in terms that they shall not leave the premises where they live, if, given the personality of the convicted person, their previous life, their conduct after the offence was committed, the degree of guilt and other circumstances under which the offence was committed, it can be expected that the purpose of the punishment can be effected in this manner.

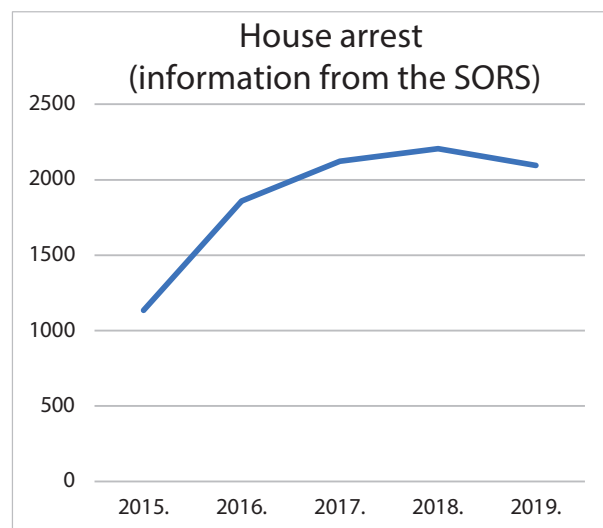
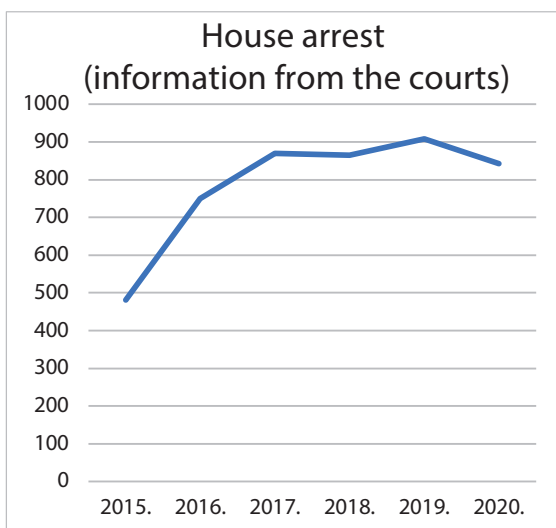
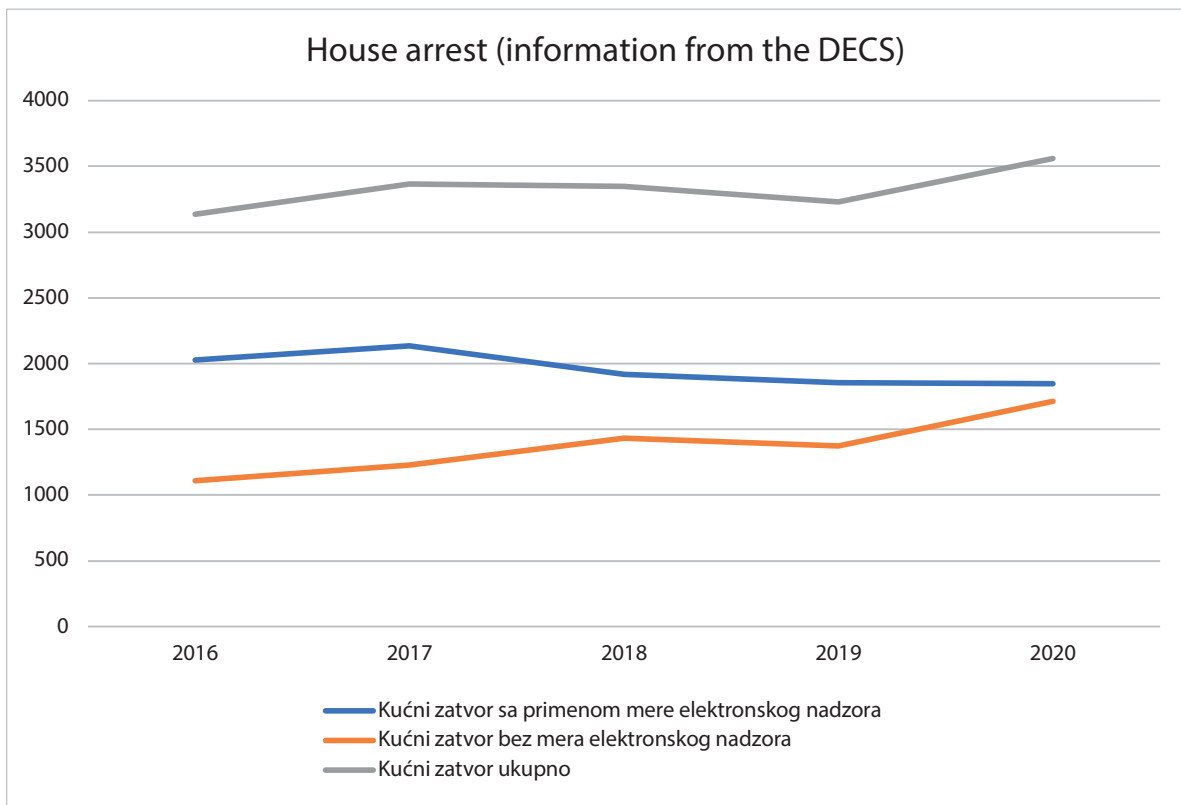
(4) A convicted person who serves their prison sentence in the manner provided for in paragraph 3 of this Article must not leave the premises where they live, except in cases prescribed in the law governing the execution of criminal sanctions. If the convicted person leaves the premises where they live once for a duration of over six hours or twice with a duration of up to six hours arbitrarily, the court shall determine that they shall serve the rest of the imprisonment sentence in prison.

(5) A person convicted for a criminal offence against marriage and family, who lives with the victim in the same family household, may not be imposed the enforcement of the prison sentence in a manner as specified in paragraph 3 of this Article.

10.1 As explained in Chapter 5, a high level of incarceration and overcrowding of institutes for the execution of criminal sanctions, and the high share of short-term imprisonment sentences in the total number of imposed sanctions of the deprivation of liberty, has shown for years **a need for the wider use of alternative sanctions**, as well as of special modalities of enforcement of what were originally custodial sanctions, which is the case with the enforcement of the prison sanction in the dwelling of the convict (house arrest). In order to comprehend the extent to which this need was actually addressed in the observed period, the

research team of the ICSR considered data from the DECS on the number of received decisions on house detention, and data collected by 64 BCs and HCs and data from the SORS, whereby it is important to note that only data from the DECS enables the separation of imprisonment sentences with or without electronic monitoring, whereas information collected from courts and from the SORS presents the total numbers. The mentioned statistics were analysed in the light of qualitative data obtained via a questionnaire for probation officers and interviews with probation officers, judges and managers at the DECS.

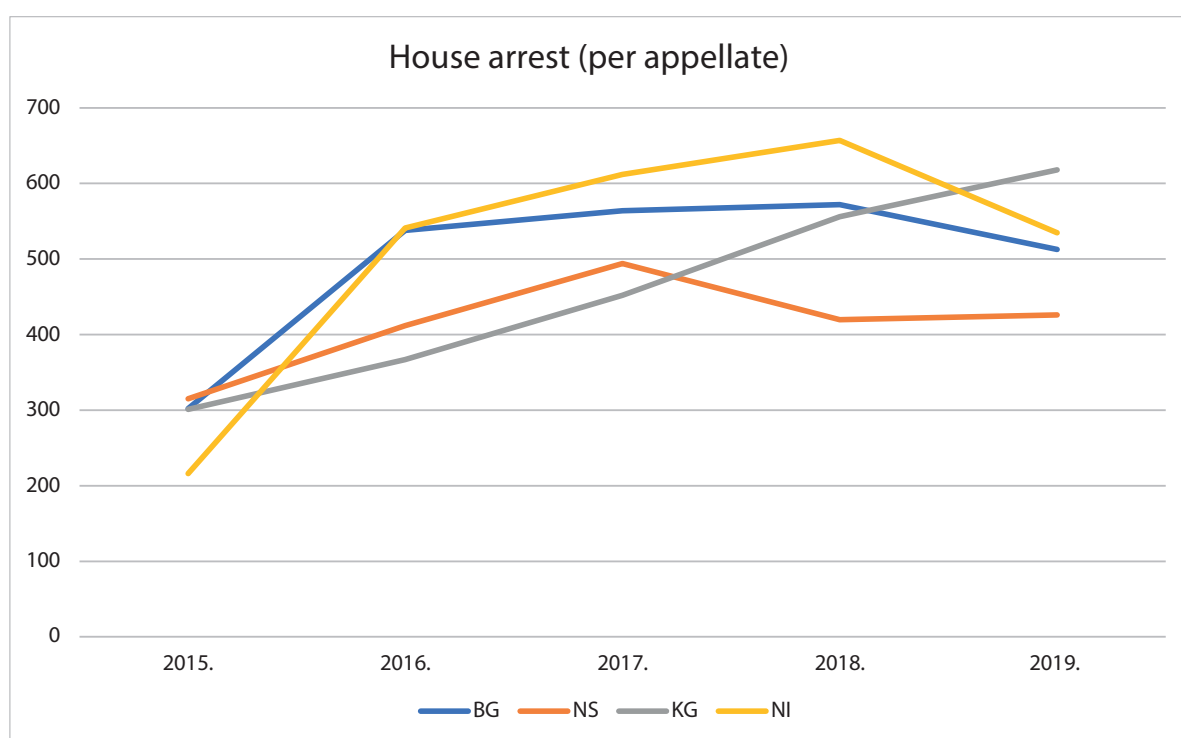
10.2 Information on the imposed sanctions (information from courts and the SORS) show that **after a period of sudden growth in 2015-2017**, the use of house arrest (in total, with or without electronic monitoring) **showed a certain trend of stagnation in the 2017-2019 period, after which it was in mild decline**. The trends described are shown in the DECS information with one year of delay, which is logical.



Graph 14: Comparative view of data on the imposition of the imprisonment sentence enforced in the premises where the convict lives - information of the DECS, courts and SORS

10.3 When it comes to **differences in trends in the use of house arrest with or without electronic monitoring**, they are comparable with the trends described in Chapter 9 for the use of house detention with or without electronic monitoring, i.e. both were positive in the 2015-2017 period after which a declining trend in the imposition of house arrests with the use of electronic monitoring started, whereas the trend of the imposition of house arrest without electronic monitoring continued to grow. We are of opinion that the arguments presented in the analysis of trends in the use of house detention can also apply here, and there is no need to repeat them. The only difference is reflected in the procedural aspect, since house detention mostly precedes the conviction, and the domino effect of the improved capacities of the Probation Service, when it comes to pronouncing house arrest with electronic monitoring, should become visible starting in 2021.

10.4 Analysis of the **trends in the use of house arrest, in total with or without electronic monitoring per the appellate seats**, showed that the “fall in enthusiasm” in relation to this sanction first occurred in the Novi Sad (2017) and then in the Belgrade (2018) appellates, whereas the Kragujevac appellate kept the trend of growth during the whole observed period.



Graph 15: Trends in the use of house arrest per appellate (SORS data)

10.5 When **problems in the enforcement of house arrest** are involved, all the problems presented in connection to the prior verification of the fulfilment of the technical conditions, the pronouncement of a sanction to multiple criminal offenders, and the safety of probation officers also apply here. In addition, the fact that **courts also impose this sanction on perpetrators of domestic violence, in contravention of Article 45 paragraph 5 of CC**, also arises as a serious problem.⁴⁴ Judging from the rulings the research team has inspected, it was obvious that there were also cases where a defendant

⁴⁴ Although this information initially surprised the research team members, interviews with probation officers showed that it was not about isolated cases but rather prevalent practice.

who was in detention during the court trial for the crime - domestic violence, was imposed house arrest, by which they were brought back to serve the sentence by continuously staying in the same premises as the victim. Practice had shown that there were even cases where a convict **who was serving the imprisonment sentence in the premises where they lived, became violent while serving the sentence**, mostly due to the frequent consumption of alcohol. However, as this situation has not been recognised under Article 45 paragraph 4 of CC as a basis for replacing house arrest with a custodial sentence, in practice, this means that the convicted person remains in the same premises as the victim until they are imposed detention or imprisonment sentences in proceedings for a new criminal offence.

10.6 Besides the stated problems, **effective control of the enforcement of sanctions in practice is also made difficult** by the circumstance that house arrest is sometimes imposed on persons, according to probation officers, with distinctive or serious mental disorders, who are thus unable to understand the essence of the programme of the enforcement of the sanction and observe it. It can happen that during the enforcement of house arrest, persons with mental disorders are hospitalised due to their mental disorder, i.e. placed in a psychiatric institution. The impossibility of verification by probation officers whether persons are under the influence of alcohol or drugs while serving the sentence is emphasised as another fault that jeopardises the success of the use of this sanction in practice, unlike a situation where the sentenced person serves the imprisonment sentence in a CI (which will be covered in more detail in Chapter 12). In this way, the sentence actually becomes meaningless because even though it obviously meets its purpose, **there are no mechanisms for responding to problems in the conduct demonstrated by a sentenced person** like those functioning in penitentiaries for decades.

10.7 Probation officers emphasise that **control problems are even more emphasised with house arrest without electronic monitoring** saying that control of fulfilment of obligations is especially made difficult in the evening, at night and on non-working days, since it is mostly reduced to occasional phone calls, if a person has a fixed-line telephone at all. They also add the fact that even if there is a fixed-line, calling a person on that phone is not exactly a reliable indicator of whether they are really in the premises where they live because there is the possibility of redirecting phone calls from a fixed to a mobile device. There is an additional problem concerning the requirements of the courts, which in case of a violation of obligations, expect that a probation officer will provide them with the exact time the sentenced person left their dwelling, which cannot be determined precisely, and they also expect the probation officer to determine with certainty how long the convicted person was outside the premises in which they serve their sentence so that the probation officer would know whether there is a basis to notify the court about it and propose the replacement of the sentence. Probation officers emphasise that to control this sentence, they need police assistance.

10.8 Probation officers also point out that **there is no way that a sentenced person can be "forced" to start serving the sentence**, or, as they describe, it is *"practically required that the sentenced person agrees to start serving the sentence," which they characterise as a "great deficiency."* They also add a circumstance where sentenced persons often do not respond to calls for the first interview with a probation officer, and that there is a need for the adjustment of treatment by police officers based on an order for the accompaniment of sentenced persons to the probation office, because an occurrence is even more frequent where the police do not escort a person but inform them by phone or through personal contact to report for an interview. Probation officers also say that there is a special problem in situations where the police finds a sentenced person that is to start serving the sentence at a time outside the working hours of the probation office. Concerning the start of enforcement of a sentence,

probation officers also point to the uneven practice of courts when it comes to the **competence for decision making about the deferral of the start of enforcement of a sentence**, since some courts decide on that on their own, whereas in other places, they “entrust” the competence for that to probation offices.

10.9 Probation officers emphasise that the enforcement of a house arrest sanction is still complicated by **inadequate administrative capacities**, stating that some probation officers still have more than 100 cases each and cannot commit to each person for whom a sanction is enforced. Besides, probation officers point out one **technical fault of the personal units** (electronic devices) - they are equipped with batteries that last up to one year so they often need to be replaced several times during the enforcement of one sanction.

10.10 Finally, probation officers call into question the purpose of such a sanction of house arrest since, amid the lack of organised and adjusted treatment, it is reduced to a sheer deprivation of liberty, truly with reduced deprivations compared to those with sanctions enforced in penitentiaries.

Due to the inadequate and incomplete normative framework and years of problems with the infrastructure and administrative capacities of the Probation Service, the use of the house arrest sanction in the premises where the sentenced person lives has not adequately come into being and has resulted in numerous problems in practice, including a lack of effective control, lack of treatment of convicts and the impossibility of changing the enforcement modality into a custodial one in situations where a person avoids the start enforcement, does not comply with the enforcement programme, consumes illegal substances or becomes violent, including the commission of a new crime.

► **Recommendation 12:** By amending Article 45 of the Criminal Code, define in more detail the conditions concerning the type and weight of the criminal offence and the category of criminal offenders for whom a court may determine the enforcement of an imprisonment sentence in the convicted person’s dwelling, as well as the conditions under which the enforcement of the sentence continues in an institution for the Execution of criminal sanctions, including cases where the convicted person does not respond to calls, avoids serving or does not want to start serving the sanction.

► **Recommendation 13:** Through amendments to the Enforcement of Extra-Institutional Sanctions and Measures Act, and the Rulebook on the Manner of Enforcement of Non-Custodial Sanctions and Measures, and the Organisation of the Work of Probation Officers, define precisely the procedure for the enforcement of an imprisonment sanction that is enforced in the convicted person’s dwelling.

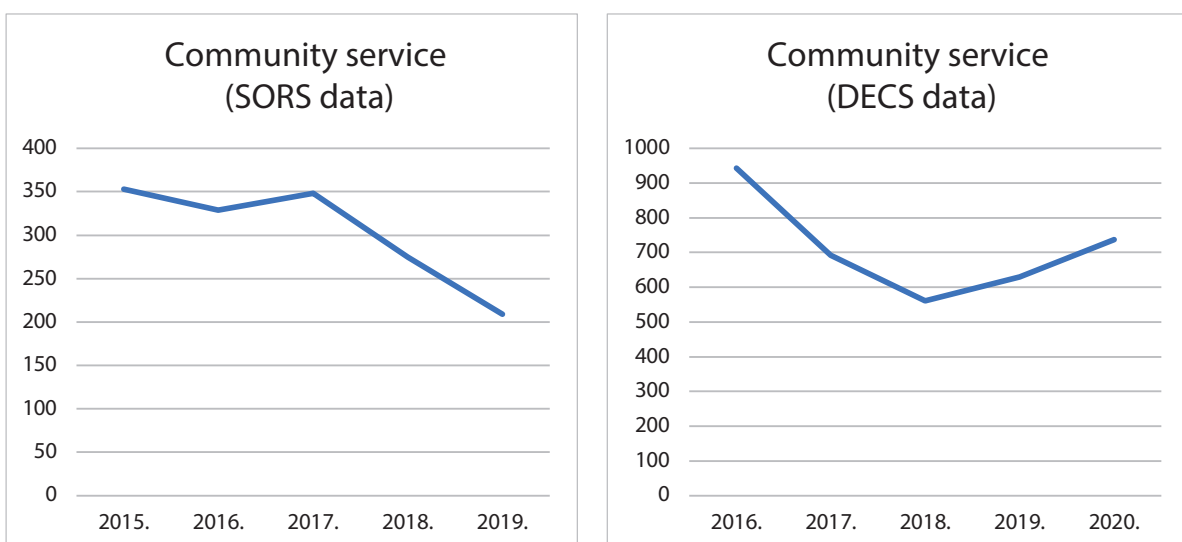
► **Recommendation 14:** Develop and apply adjusted treatment programmes intended for convicted persons that serve their imprisonment sentence in their dwelling.

11. Community service sanction

Article 52 of the Criminal Code

- (1) Community service may be imposed for criminal offences punishable by imprisonment of up to three years or a fine.
- (2) Community service is any socially beneficial work that does not offend human dignity and is not performed for profit.
- (3) Community service may not be less than sixty hours or longer than three hundred and sixty hours. Community service lasts sixty hours during one month and will be performed during a period that may not be less than one month or more than six months.
- (4) In pronouncing this penalty, the court shall give consideration to the purpose of the punishment, take into account the type of committed criminal offence, the personality of the perpetrator and their readiness to perform community service. Community service may not be pronounced without the consent of the offender.
- (5) If the offender fails to perform a number of or all the hours of community service, the court shall replace this penalty with a term of imprisonment by calculating every eight hours of community service as one day of imprisonment.
- (6) If the offender fulfils their obligations in respect of community service, the court may reduce the pronounced duration of community service by one quarter.

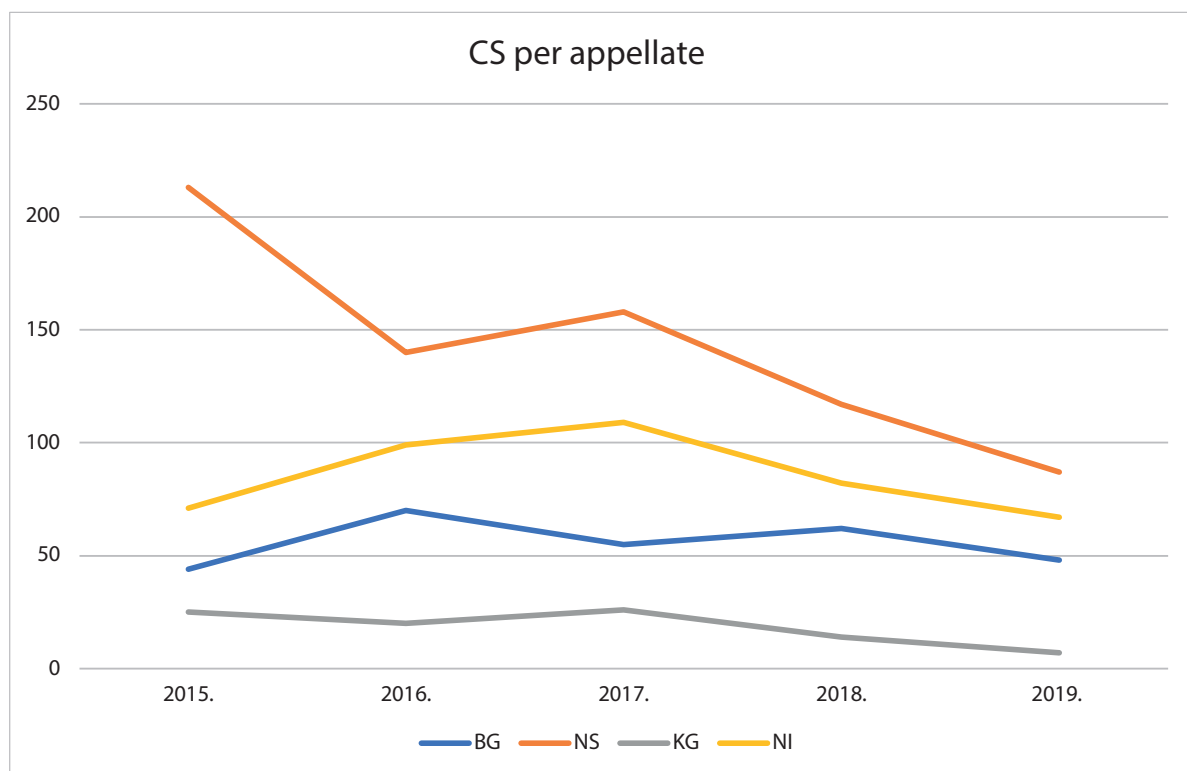
11.1 As for the community service, one could say without question that it could be a paradigm of alternative sanctions, bearing in mind the numerous and undoubted benefits for the criminal offender, the system for the execution of criminal sanctions, and the society at large. To assess the influence of the use of this sanction in the observed period, the ICS research team analysed SORS statistics on pronouncing this sanction in the 2015-2019 period, statistics obtained from the DECS on decisions delivered for execution in the 2016-2020 period, statistics from the additional questionnaire intended for the Chief of the Department for the enforcement of Non-Custodial Sanctions and Measures, as well as the attitudes of probation officers expressed in questionnaires and interviews.



Graph 16: Trends in the application of community service (SORS and DECS data)

11.2 Even a cursory analysis shows that data from the DECS shows approximately triple values compared to that provided by the SORS based on court data. Explanation of this difference is seen in the aggregate expression of data on community service (hereinafter CS), pronounced in criminal and misdemeanour proceedings. Bearing this in mind, the SORS data is authoritative for the relation of criminal courts to CS, whereas the DECS data is relevant for perceiving the capacities for enforcement. Besides, one should also take into account that the information on enforcement, mainly with respect to trends in pronouncing, are shown with a year's delay. Bearing this in mind, **a negative trend in pronouncing CS was noticeable starting from 2017**, whereas based on the data by the DECS, it can be seen that the situation changed for the better in 2020. Still, in the absence of information from SORS for 2020, it is hard to assess to what extent convictions in criminal proceedings are "credited" for that.

11.3 When **trends in pronouncing CS per appellate** are involved, in the 2015-2018 period, the Novi Sad appellate was obviously the leader concerning pronouncing community service sanctions as 3 to 5 times as many SC sanctions were pronounced in the area of this appellate, compared to the remaining three. Meanwhile, courts in the area of the Kragujevac appellate, in the observed period, rarely pronounce this sanction, which has resulted, together with the declining trend prevalent in the territory of the RS, in only 7 pronounced CS sanctions in the area of that appellate, compared to 87 in the area of the Novi Sad appellate, in the same year.



Graph 17: Trends in pronouncing community service per appellate (SORS data)

11.4 When it comes to challenges in the enforcement of the community service sanction, their specifics are reflected inter alia in the fact that the success of the enforcement depends on a larger number of factors than when it is about e.g. house arrest because the enforcement requires **partnership with numerous public enterprises** throughout the territory of the RS. According to data obtained from the DECS, 185 such agreements were signed in the observed period. Although this information seems

encouraging on first sight, what is worrying is the fact that the number of newly signed agreement has been low in recent years.

Year	Number of signed agreements
2015	71
2016	35
2017	18
2018	24
2019	16
2020	21
2015-2020	185

Additional reason for concern is the uneven geographic allocation of the signed agreements, whereby most are in the area of AP Vojvodina, as many as 124, or 67%. **With regard to the structure/area of activity**, utility activities are dominating in the data provided by probation officers, followed by activities of health and welfare protection institutions, while environmental activities appear only sporadically. Some probation officers point to the fact that an obligation to just sign an agreement with a public enterprise restricts the efficient application of the community service sanction, since to a certain extent it restricts the number of available activities where persons with imposed CS sanctions could be engaged.

11.5 When considering the **quality of cooperation** between the Probation Service and public enterprises with which agreements have been signed, 10 probation officers assessed it as good, 8 as satisfactory, 3 probation officers said the quality of cooperation varies depending on which legal entity is involved, and 1 probation officer said they do not have any opinion about that. Despite the fact that most probation officers gave a positive opinion on both the normative framework within the enforcement of the community service sanction, and the quality of the cooperation between the probation offices and legal entities where that sanction is enforced, they gave numerous suggestions for improving the situation in this area. Thus, they point to the existence of a need to organise meetings with representatives of employers and management of the enterprise more frequently, especially if personnel changes in their management have occurred since the new management may not know how the community service is enforced and therefore refuse to engage with convicts despite the existence of agreements on cooperation signed between those enterprises and the probation office. In addition, probation officers state that a large number of employers have prejudice concerning convicted persons and their engagement and recommend the implementation of campaigns for raising awareness on the capacity of the CS sanction.

11.6 Besides the above problems of a general character, probation officers point to the existence of a series of **practical, specific problems**, which most often occur in towns, like the convicted person having to perform community service in the afternoon due to their own job, and they are in a small place where most employers do not operate in that part of the day. It is emphasised that there is a need for legal

entities and their representatives to be held responsible for misdemeanours in case of non-professional participation in the enforcement of the sanction, above all in cases of rigging information in the log of operation and “covering up” for the convicted person. In the same context, it was pointed out that such situations are typical of small environments where kinship or close friendship relations exist between members of the management of a legal entity and the convicted person. Besides, probation officers emphasise that there is a need for legal entities in which the community service is enforced to provide in a timely manner evidence or notifications in cases when the sanction is enforced and when a convicted person breaches their obligations.

Despite numerous benefits for the offender, the system for the enforcement of criminal sanctions and for the society at large, a negative tendency in imposing the community service sanction has been noticeable starting from 2017. The prevalence of this sanction among appellates is extremely uneven, which is directly related to the preconditions for the enforcement of this sanction, since almost 70% of the agreements signed are in the area of AP Vojvodina. The absence of information on the capacities of the Probation Service or the lack of capacity itself, in interaction with the lack of clear criteria for the prioritisation of cases in the event of backlogs in enforcement, still demotivates courts to apply NCSMs more widely. The sanction is predominantly enforced in the area of utility activities and in welfare institutions. An inadequate level of awareness (on the part of both potential employers and the general public) is still prevalent concerning the capacities and importance of this sanction, as well as the problems with oversight of the enforcement of the sanction, i.e. avoidance and sanctioning abuse.

► **Recommendation 15:** Form teams at the local community level, with the participation of representatives of the judiciary, probation officers, representatives of local self-governments, employer associations, chambers of commerce, public enterprises and other relevant entities, with the purpose of improving cooperation concerning the enforcement of community service, as well as its wider application and promotion in the local community.

► **Recommendation 16:** Work on raising the general public’s awareness with regard to the benefits of community service for an individual and the community as a whole.

12. Suspended sentences with protective supervision

Articles 71-73 of the Criminal Code

Article 71

- (1) The court may order the protective supervision of an offender under a suspended sentence during probation.
- (2) Protective supervision includes assistance, care and protection measures provided by law.
- (3) If the court establishes during the course of protective supervision that the purpose of this measure has been achieved, it may terminate protective supervision before the expiry of the specified time period.
- (4) If a convicted person under protective supervision fails to fulfil the obligations ordered by the court, the court may caution them or may replace the previous obligation with another or extend the protective supervision within the probation period or revoke the suspended sentence.

Requirements for ordering protective supervision

Article 72

(1) When pronouncing a suspended sentence, the court may order the protective supervision of the offender if, considering their personality, previous conduct, attitude after committing the offence and particularly their attitude towards the victim of the offence and the circumstances of its commission, it may be assumed that protective supervision would enhance achieving the purpose of the suspended sentence.

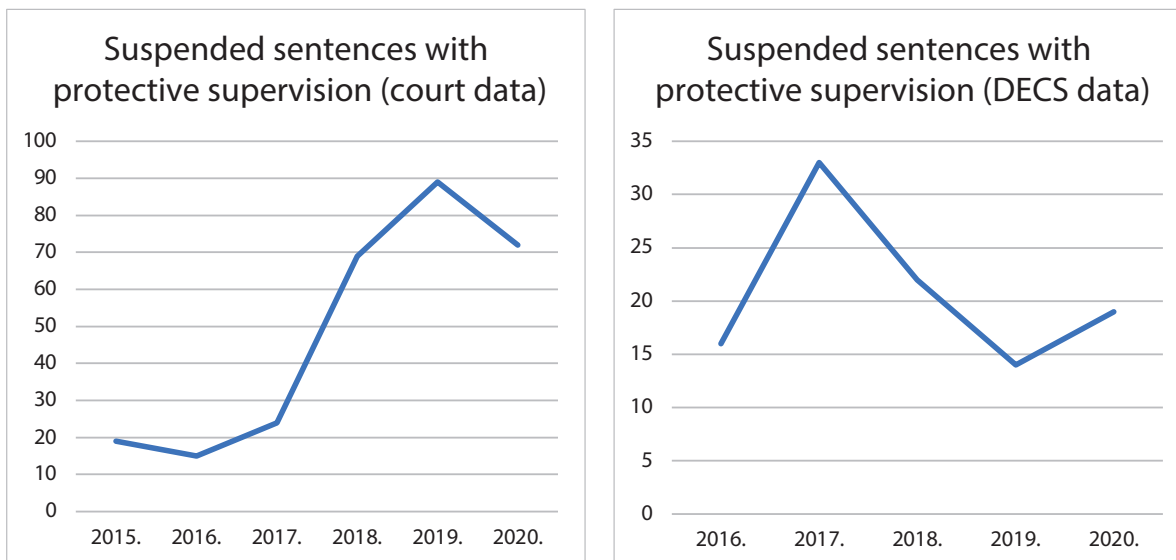
(2) The court orders protective supervision in the judgement pronouncing the suspended sentence and determines measures of protective supervision, as well as the duration and manner of implementation thereof.

Article 73

Protective supervision may include one or several of the following obligations:

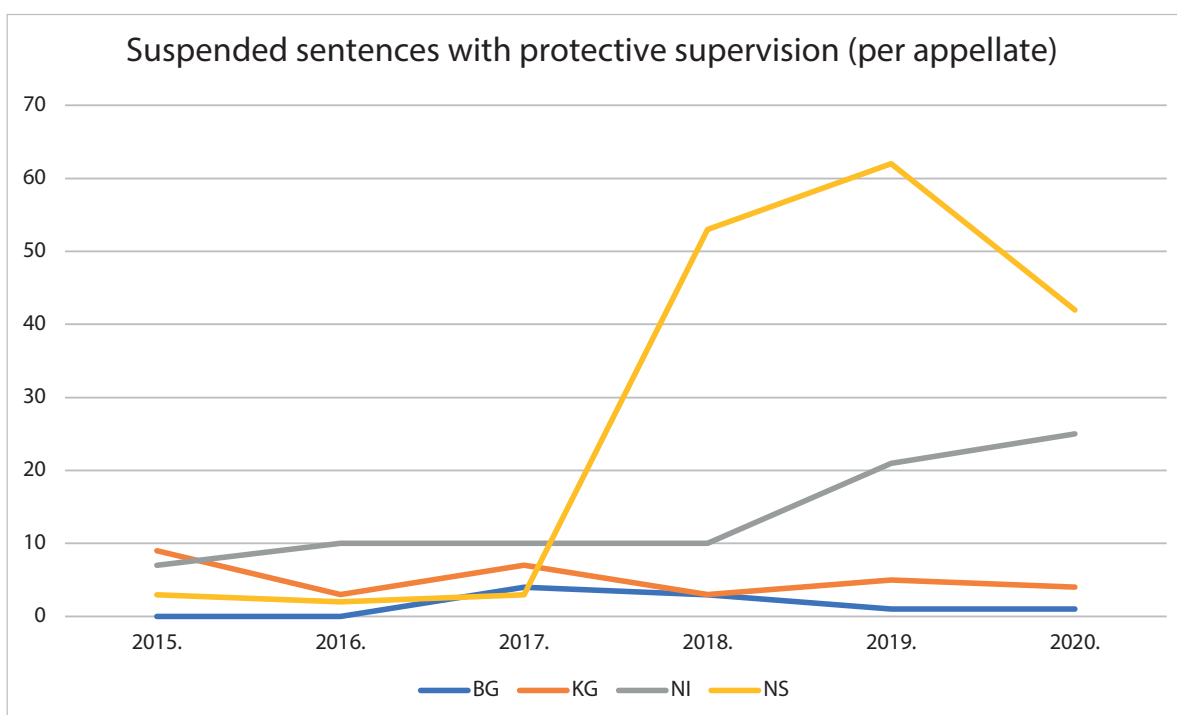
- 1) Reporting to the competent authority for the enforcement of protective supervision within periods set by that authority;
- 2) Training the offender for a particular profession;
- 3) Accepting employment consistent with the offender's abilities;
- 4) Fulfilment of the obligation to support family, care for and raising of children and other family duties;
- 5) Refraining from visiting particular places, establishments or events if that may present an opportunity or incentive to re-commit criminal offences;
- 6) Timely notification of the change of residence, address or place of work;
- 7) Refraining from drug and alcohol abuse;
- 8) Treatment in an adequate medical institution;
- 9) Visiting particular professional and other counselling centres or institutions and adhering to their instructions;
- 10) Eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence.

12.1 In ideal conditions, suspended sentences with protective supervision, together with the CS sanction, would have to form the pillar of the NCSM system. Still, information on their imposing and enforcement in the observed period is devastating. Namely, up to 30 sanctions with protective supervision were pronounced in the period from 2015 to 2017 only to show a positive trend in the 2017-2019 period. A decline during 2020 was in line with the fall in the number of cases and stagnation in the work of the judiciary caused by the COVID-19 pandemic. Still, reading the two graphs speaks of serious inconsistencies and problems in the records kept on NCSMs in both the judiciary and the DECS, especially if one takes into account that the analysis covered a sample of 64 BCs and HCs. The SORS still keep only aggregate data on suspended sentences with or without protective supervision.



Graph 18: Trend in imposing suspended sentences with protective supervision in the 2015-2020 period (court and DECS data)

12.2 The above increasing trend in the imposition of the suspended sentences with protective supervision in the 2017-2019 period occurs in completely new light when **data on the imposed suspended sentences with protective supervision by areas of the appellate courts is analysed**. Actually, it is easily seen in Graph 19 that only the Novi Sad appellate can be “credited” for the increasing trend. Even more interesting is the information that all the decisions in a sample that encompassed as many as 18 BCs and HCs in the area of the Novi Sad appellate were issued by the Special Department for Corruption, Higher Court in Novi Sad.



Graph 19: Trend in imposing suspended sentences with protective supervision in the 2015-2020 period (court and DECS data)

12.3 As the suspended sentences with protective supervision were imposed/enforced only sporadically, it is worth mentioning that probation officers in some offices stated explicitly that they had not had any experience with its enforcement thus far. Those probation officers who had carried out supervision of this measure expressed the opinion that **suspended sentences with protective supervision adequately influence positive changes in the convicted persons' conduct**, and that the corrective effect of this sanction is greater than with other non-custodial sanctions and measures. In favour of this opinion, they said that they considered the obligations the court ordered on that occasion as purposeful, and that the convicted person had worked for years on changing their conduct and removing causes that had led to the commission of criminal offences.

12.4 Nevertheless, practice has crystallised some **problems that make it difficult or even impossible for probation officers to carry out the effective supervision of enforcement. Thus, probation officers indicated** that with suspended sentences with protective supervision, the same problems are encountered as with previously analysed non-custodial sanctions and measures: this measure is also frequently imposed on returnees, data stated in the judgment relating to the address of the convicted person is often incomplete or false, and probation officers are not assigned based on the local jurisdiction of the probation offices, which makes supervision difficult. In addition, they reiterated the lack of mechanisms for restraining the use of drugs or alcohol, which was described earlier in Chapter 8, so we will not refer to it here. They pointed out the need for improvements in the health care system because of the supervision of both this obligation and the obligation of treatment in an adequate health care institution or visiting counselling. They stated that establishing more efficient mechanisms of cooperation with the National Employment Service, employer associations and chambers of commerce would significantly help the implementation of professional training and seeking jobs.

Suspended sentences with protective supervision were imposed only sporadically in the observed period, and since 2017 it has shown an increasing tendency caused by the growth of imposition of this measure in the area of the Novi Sad appellate primarily, and the Niš appellate only partially. The absence of standardised and sustainable mechanisms of cooperation with institutions on the level of local self-governments makes the application of measures imposed within the protective supervision difficult.

► **See recommendation 15:**

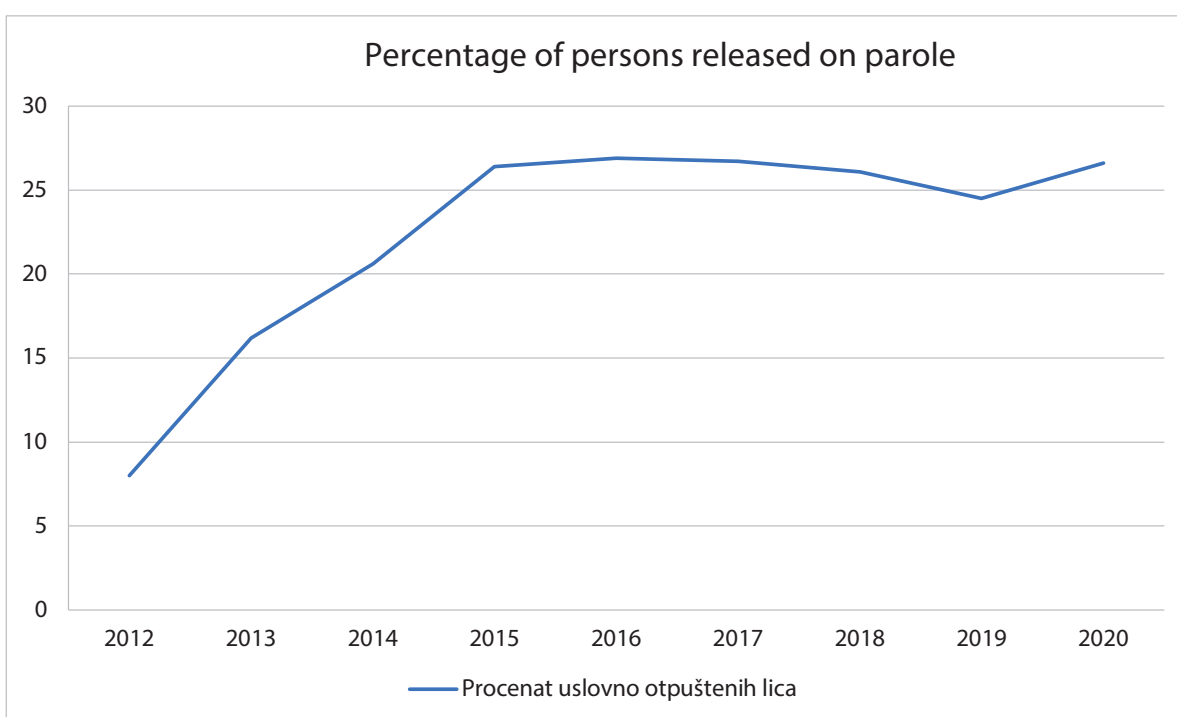
13. Release on parole

Article 46, paragraphs 1 and 3 of the Criminal Code

(1) The court shall release on parole a convicted person who has served two-thirds of their prison sentence if in the course of serving the prison sentence, they have improved so that it is reasonable to assume that they will behave well while at liberty, and particularly that they will refrain from committing a new criminal offence until the end of the imposed prison sentence. In deliberating whether to release the convicted person on parole, consideration shall be given to their conduct while serving the sentence, the performance of work tasks relative to their work abilities, and other circumstances indicating that the convicted person will not commit a new criminal offence during release on parole. A convicted person who has been given two sanctions for serious disciplinary offences or whose awarded benefits have been withdrawn shall not be released on parole.

(3) The Court may, in a decision on parole, determine that the convicted person must fulfil any of the obligations specified in Article 73 hereof, as well as any other obligation stipulated in the criminal provisions.

13.1 Information on the use of release on parole in Graph 20 is intentionally shown for a period somewhat longer than the one covered by the analysis, bearing in mind that a realistic picture of the significant expansion of the application of this institute can only be obtained in that way. Actually, in the 2012-2015 period, **the percentage of conditionally released persons on an annual level increased from 8% to 26.4% and remained at approximately the same value until the end of the observed period.** This information speaks in favour of a need for the efficient supervision of the enforcement of measures with the release on parole.



Graph 20: Percentage of persons released on parole in the 2012-2020 period (DECS data)

13.2 When it comes to the **representation of any measure in practice**, it is important to mention that the SORS does not keep records of this kind, and that the members of the research team, when collecting data from courts, were notified that the only way for courts to provide this data for the needs of the research would be for employees in the registries to manually search the case files where release on parole was ordered. Bearing this in mind, information obtained from courts should be taken with a certain reservation. Actually, according to data obtained from 64 BCs and HCs, a total of 142 measures attached to release on parole were ordered in the observed period, of which reporting to an authority competent for the enforcement of the protective supervision within terms determined by that authority took place in 62 cases, and the timely notification of a change of the place of residence, address or workplace in 48 cases.

13.3 As in case of measures within protective supervision, due to the scarce orders of measures in practice and the fact that numerous probation officers have been at their workplaces for a short time, some of them were still not in a position to carry out supervision of the enforcement of these measures. Asked

to assess **what measures ordered with release on parole create the most difficulties in practice**, probation officers set the measures in the following order:

- › Accepting employment consistent with the offender's abilities
- › Refraining from visiting particular places, establishments or events if that could present an opportunity or incentive to re-commit criminal offences
- › Refraining from drug and alcohol abuse

Difficulties were perceived, although to a somewhat lesser extent, during the use of the following measures:

- › Training the offender for a particular profession
- › Visiting particular professional and other counselling centres or institutions and adhering to their instructions.

13.4 Besides what has already been said in Chapter 12, there are also difficulties in **finding an adequate job**, bearing in mind lack of retraining, high levels of prejudice of employers, inactivity of the National Employment Service, and their lack of information concerning the possible engagement of this category of persons and the benefits the employment has for them. Deficiencies have been also observed during the application of the measure **timely notification of the change of residence, address or place of work**. Probation officers see a mechanism for the resolution of this problem in establishing better cooperation between the probation office and police, because the police could be the ones to notify the probation officers that a change has occurred even if it was not reported. Probation officers also point out that in practice, they face the problem that some municipalities do not have counselling centres or experts, or they have e.g. a psychiatrist who comes once a week, which makes **enforcement of the measure of visiting professional and other counselling centres or institutes** almost impossible. Besides the above, probation officers say that in practice, they have had situations where **refraining from visiting some places** was opposite to the performance of their parental right (duty) when the parent has a prohibition to approach a kindergarten or school, and at the same time, has to take the child to school.

The imposition of measures accompanying release on parole has not seen a rapid growth in the use of release on parole, so with the exception of reporting at the authority competent for the enforcement of protective supervision at times determined by that authority and the timely reporting of any change of the place of residence, address or job, others occur only sporadically. Finding an adequate job is still difficult due to the inactivity of the National Employment Service and the prejudice of potential employers, along with the lack of retraining. Cooperation and the delimitation of the competencies of probation officers and police officers in the supervision of certain measures are still not adequate and/or clear, whereas the organisation and capacities of the healthcare and welfare systems make inclusion in counselling programmes and control of refraining from alcohol and drug use more difficult.

► **Recommendation 17:** Increase the employability of convicted persons through the application of the following measures/activities:

- Organise professional training while serving a sentence, for requested occupations
- Enable convicted persons to be trained additionally at release on parole
- Raising the awareness of representatives of the National Employment Service of the needs for more intensive engagement for the employment of convicted persons

- Raising the awareness of employers about opportunities for work engagements during release on parole
- The introduction of social entrepreneurship programmes

► **Recommendation 18:** Define more precisely the mechanism for control and the competencies of the police and probation officers for carrying out control of the enforcement of measures ordered with release on parole.

► **Establish a mechanism from Recommendation 15.**

OVERALL ASSESSMENT OF THE IMPLEMENTATION OF THE IMPACT OF THE LAW

Relevance

- 14.1** Bearing in mind the provision in Article 40 of the Law on the Planning System of the Republic of Serbia, which stipulates that **the competence of an authorised proposer for monitoring and conducting ex-post analysis of public policies**, as well as the fact that **this analysis encompasses important elements of public policies that shall also be addressed by the new Strategy for the development of the system for the execution of criminal sanctions in the Republic of Serbia**, the conclusions and recommendations of the analysis may be significant input in planning improvements to the normative and institutional framework of pronouncing and enforcing NCSMs in the Republic of Serbia, but are also limited by the advisory role of the expert team that has conducted the analysis and by the above-stated limits of its subject and scope.
- 14.2** Analysis of the effects of the law, which was enclosed with the proposed LECS by the authorised proposer, stated that “the improvement of alternative sanctions and the more successful and wider use of non-custodial sanctions and measures significantly improve the efficacy of the penalty system of the country.” As stated, “the enclosed solutions in the draft of this law will influence the operation of courts in criminal and misdemeanour proceedings, the work of the public prosecutors’ offices, the work of the Department for the Execution of Criminal Sanctions, in terms of reducing the number of convicted persons serving imprisonment sentences or detention measures, and all citizens given that the enforcement of non-custodial sanctions and measures is far cheaper than custodial sanctions and requires less allocation of funds from the budget.”⁴⁵
- 14.3** Starting from such a widely and imprecisely targeted influence, it can be stated that the six-year period of application of the new Law on the Execution of Criminal Sanctions and Enforcement of Extra-Institutional Sanctions and Measures Act, has shown that major novelties, such as those brought about in a legislative endeavour in 2014, and further amendments to LECS and EESMA, require an initial period of adjustment whose course is not only shaped by legal solutions but by the organisational aspects and administrative capacities, the budget available and a change of awareness on the part of professionals and the general public in relation to the planned change. Motivated by reaching international standards and the best comparative practice, the newly established system undoubtedly is a **relevant but still insufficient response** to the need to disburden the system of the enforcement of criminal sanctions and the replacement of short-term imprisonment sentences with non-custodial sanctions, as well as with regard to the diversification of criminal procedures and the improvement of reintegration and the reduction of relapses using measures accompanying release on parole.

⁴⁵ Analysis of the effects of the law (Annex to the 2014 Draft Law on Enforcement of Non-Custodial Sanctions and Measures), available at: <http://vs3836.cloudhosting.rs/misljenja/791/ana/Analiza%20efekata%20Nacrta%20zakona%20o%20izvršenju%20vanzavodskih%20sankcija%20i%20mera.pdf>, accessed on 25 November 2021.

Efficiency

- 14.4** The impact of the implementation of relevant legal provisions regulating the imposition and enforcement of NCSMs, in the area of efficiency, is largely reduced due to the fact that **no adequate assessment of the financial effects of the law was made when adopting new laws**, which reflected directly on the pace of establishment and capacity of the Probation Service. Instead, the Analysis of the effects of the law (page 5) states, more on the basis of common sense than detailed assessment, that savings through the application of CSs and the reduction of recidivism will exceed the costs of the implementation of the law in a short time. This anticipates (a little bit naively) the fact that if the (efficient) implementation of the law is to start at all, prior budgetary burdening is required, which would be further compensated, not in a short time but gradually over years, with the reduction of the overloading on the institutions.
- 14.5** Since the above results of the Analysis show that the existing capacities of the Probation Service can hardly cope with the scope of the workload in line with the applicable legal solutions, all further legislative amendments would require the precise mapping of additional jobs and changes in the business processes, as well as an accurate assessment of the expected change in the projected period concerning the required enhancement of administrative and technical capacities.

Effectiveness

- 14.6** Based on the above results, it can be concluded that the most obvious effects of the use of NCSMs have been achieved through a decrease in the share of short-term sanctions in the total amount of imprisonment sentences, whereas the worst results have been in the area of the sensibilisation of the holders of judiciary functions for their pronouncing, as well as of the local community and the general public concerning the benefits entailed by the use of NCSMs, both with regard to non-custodial incarceration and through support for the reintegration of convicted persons after release on parole.
- 14.7** Despite an increase in the use of house detention, the expected effects in terms of reducing the share of the detention population in the total number of persons deprived of liberty were missing.
- 14.8** **The sensibilisation of professionals in different sectors, as well as of the general public** for the needs of former convicted persons in the context of postpenalty reception has further significantly complicated the application of special obligations together with release on parole. The impact of prejudice is even more emphasised with regard to improvements of the use of community service. The resolution of these problems is not contributed to by a wave of penalty populism that largely shapes the public discourse concerning the relation to convicted persons and the acceptance of retribution and reintegration as equal principles, by a model that is two sides of the same coin.
- 14.9** Establishing the system has not contributed (at least, by the end of the observed period) to the more precise recording or to statistical monitoring of the parameters of the pronouncing and enforcement of criminal sanctions. As in many other areas, the **trend of standardisation, digitalisation, methodological equalisation and centralisation of statistics is not at a satisfying level**, since the introduction of the SAPA system is still underway, and the migration of the existing data into the newly established database will require a long time, possibly years. Besides, the interconnection of the SAPA and the system of case management in the Ministry of the Interior, public prosecutor's offices and

courts is still missing. With the already mentioned deficiencies of the register, this leads to a situation where data is entered using different parameters and in several different databases, which prevents the continuing and efficient perception and removal of problems in practice. One of the serious challenges in keeping records and establishing interconnection is the non-harmonised and deficient normative framework that regulates the standards and protocols for the storage and keeping of personal data, which is necessary to be complemented by an internal act of the DECS.

Sustainability

14.10 If our assessment of the sustainability of the existing system of NCSMs fully neglects strengthening the capacities of the Probation Service that occurred at the very end or immediately after the end of the observed period, a conclusion can be drawn that the endurance of that system is not sustainable. Still, even when considering the mentioned breakthrough, we cannot ignore the fact that numerous segments of the system still do not function (almost) in full, partly due to numerous faults in the normative framework, and partly because of the lack of planning and an analytical approach to the organisation and improvement of the work processes and administrative capacities. Bearing this in mind, it seems that drafting the necessary amendments to the normative framework, which would be preceded by a thorough assessment and mapping of the existing and planned jobs, business processes, and administrative and technical capacities necessary for the application of new legislative solutions, with an accurate assessment of the financial effects of such amendments, is the **first precondition for ensuring the sustainability of the NCSM system.**

The newly established system for the imposition and enforcement of NCSMs is undoubtedly a **relevant but still insufficient response** to the need for disburdening the system of the enforcement of criminal sanctions and the replacement of short-term imprisonment sentences with alternative sanctions, as well as with regard to the diversification of criminal procedures and the improvement of reintegration and the reduction of relapses using measures accompanying release on parole.

The impact of the implementation of relevant legal provisions regulating the imposition and enforcement of NCSMs, in the area of **efficiency**, is significantly reduced due to the fact that no adequate assessment of the financial effects of the law was made when adopting new laws, which reflected directly on the pace of establishment and capacity of the Probation Service. All further legislative amendments would require the precise mapping of additional jobs and changes in the business processes, as well as an accurate assessment of the expected change in the projected period, concerning the required enhancement of administrative and technical capacities.

Based on the above results, it can be concluded that the **most obvious effects of the use of NCSMs** have been achieved through a decrease in the share of short-term sanctions in the total amount of imprisonment sentences, whereas the worst results have been in the area of the sensibilisation of the holders of judiciary functions for their pronouncing, as well as of the local community and general public concerning the benefits entailed by the use of NCSMs.

Drafting the necessary amendments of the normative framework, which would be preceded by a thorough assessment and mapping the existing and planned jobs, business processes, and administrative and technical capacities necessary for the application of new legislative solutions, with an accurate assessment of the financial effects of such amendments is **the fundamental precondition for ensuring the sustainability of the NCSM system.**

RECOMMENDATIONS

List of recommendations for improving the normative framework and practice

1	Through amendments to the Court Rules, regulate in a single way the registers/records on the imposed/determined non-custodial sanctions and measures; accompany these changes with adequate software solutions and training for employees in court registries.
2	Regularly organise joint round-tables/workshops for courts, prosecutors, and probation officers, with a view to exchanging information and experience on the organisation and functioning of the Probation Service and problems in the practice of enforcement of non-custodial sanctions and measures.
3	Establish sustainable mechanisms for improving the cooperation between the Probation Service and local self-governments in the area of the enforcement of non-custodial sanctions and measures.
4	Implement functional analysis of the work of the Probation Service, which includes the mapping of jobs and results in recommendations for the improvement of administrative capacities and business processes.
5	Continue to strengthen the administrative capacities of the Probation Service based on the results of the functional analysis of the operation of probation offices.
6	Establish a sustainable training system for probation officers, based on the positive experience of pilot projects, with an established and functional network of trainers within the Probation Service itself, who cooperate with the expert community in the country and abroad.
7	Through amendments to the Enforcement of Extra-Institutional Sanctions and Measures Act, the Rulebook on the Manner of Enforcement of Non-Custodial Sanctions and Measures, and the Organisation of the Work of Probation Officers, and by adopting comprehensive compulsory instructions on the application of Article 283 of the CPC, precisely differentiate the competencies of the Department for the Execution of Criminal Sanctions and those of public prosecutor's offices with regard to agreements on the performance of community service and the insurance of persons performing it, and regulate the actions of probation officers within the supervision of the fulfilment of obligations the performance of which conditions the deferral of criminal prosecution referred to in Article 283 of the CPC.
8	Organise periodical meetings of officers and (deputy) public prosecutors with a view of exchanging experience, equalising practice and overcoming problems.
9	By amending Article 190 of the CPC, provide for an obligation of the court, before adopting a decision ordering the measure below, to obtain information about the fulfilment of the technical conditions for ordering the measure of the prohibition on leaving one's dwelling.
10	Based on the results of the Functional analysis, enhance the administrative capacities of probation offices in a manner that enables the introduction of work in shifts, or on-call duty.

11	Continuously monitor and address the needs for equipment and vehicles for the needs of the Probation Service, which would enable the ordering and use of this measure in all cases where it can be ordered as an alternative to detention.
12	By amending Article 45 of the Criminal Code, define in more detail the conditions concerning the type and weight of the criminal offence and the category of criminal offenders for whom a court may determine the enforcement of an imprisonment sentence in the convicted person's dwelling, as well as the conditions under which the enforcement of the sentence continues in an institution for the Execution of criminal sanctions, including cases where the convicted person does not respond to calls, avoids serving or does not want to start serving the sanction.
13	Through amendments to the Enforcement of Extra-Institutional Sanctions and Measures Act, and the Rulebook on the Manner of Enforcement of Non-Custodial Sanctions and Measures, and the Organisation of the Work of Probation Officers, precisely define the procedure for the enforcement of an imprisonment sanction that is enforced in the convicted person's dwelling.
14	Develop and apply adjusted treatment programmes intended for convicted persons that serve their imprisonment sentence in their dwelling.
15	Form teams at the local community level, with the participation of representatives of the judiciary, probation officers, representatives of local self-governments, employer associations, chambers of commerce, public enterprises and other relevant entities, with the purpose of improving cooperation concerning the enforcement of the community service and other NCSMs, as well as their wider use and promotion in the local community.
16	Work on raising the general public's awareness with regard to the benefits of community service for an individual and the community as a whole.
17	<p>Increase the employability of convicted persons through the application of the following measures/activities:</p> <ul style="list-style-type: none"> • Organise professional training while serving a sentence, for requested occupations • Enable convicted persons to be trained additionally at release on parole • Raising the awareness of representatives of the National Employment Service of the needs for more intensive engagement for the employment of convicted persons • Raising the awareness of employers about opportunities for work engagements during release on parole • The introduction of social entrepreneurship programmes
18	Define more precisely the mechanism for control and the competencies of the police and probation officers for carrying out control of the enforcement of measures ordered with release on parole.

REFERENCES

- Aebi, M. & Chopin J. (2016) Annual Penal Statistics SPACE II Survey 2015, Persons Serving Non-Custodial Sanctions and Measures in 2015, Council of Europe & Unit of Criminology, School of Criminal Justice, University of Lausanne, Switzerland, available at: <https://wp.unil.ch/space/space-ii/annual-reports/>
- Aebi, M. & Chopin J. (2017) Annual Penal Statistics SPACE II Survey 2016, Persons Serving Non-Custodial Sanctions and Measures in 2016, Council of Europe & Unit of Criminology, School of Criminal Justice, University of Lausanne, Switzerland, available at: <https://wp.unil.ch/space/space-ii/annual-reports/>, accessed on 21.11.2021
- Aebi, M. & Hashimoto Y. (2018) Persons under the supervision of Probation Agencies, SPACE II-2018, Council of Europe, Strasbourg, available at: <https://wp.unil.ch/space/space-ii/annual-reports/>, accessed on 21.11.2021
- Aebi, M. & Hashimoto Y. (2019) Persons under the supervision of Probation Agencies, SPACE II-2019, Council of Europe, Strasbourg, available at: <https://wp.unil.ch/space/space-ii/annual-reports/>, accessed on 21.11.2021
- Aebi, M. & Hashimoto Y. (2020) Persons under the supervision of Probation Agencies, SPACE II-2020, Council of Europe, Strasbourg, available at: <https://wp.unil.ch/space/space-ii/annual-reports/>, accessed on 21.11.2021
- Aebi, M. & Tiago, M. (2021) Prison populations SPACE I- 2020, available at: https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf, accessed on 20.11.2021
- Analiza efekata zakona (Prilog uz predlog zakona o izvršenju vanzavodskih sankcija i mera iz 2014. godine), available at: <http://vs3836.cloudhosting.rs/misljenja/791/ana/Analiza%20efekata%20Nacrta%20zakona%20o%20izvršenju%20vanzavodskih%20sankcija%20i%20mera.pdf>, accessed on 25.9.2021
- Analiza uticaja primene zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u periodu od 2006. do 2020. godine, available at: https://www.iksi.ac.rs/pdf/analiza_iksi_osce_2021.pdf, accessed on 18.10. 2021
- Committee against Torture, Concluding observations on the second periodic report of Serbia, Geneva, 15. May 2015. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSRB%2fCO%2f2&Lang=en, accessed on 16.10.2021
- EU donirala 26 vozila Upravi za izvršenje krivičnih sankcija, available at: <https://europa.rs/eu-donirala-26-vozila-upravi-za-izvršenje-krivicnih-sankcija/>, accessed on 27.11. 2021
- Nedostatak poverenika za praćenje izvršenje kućnog zatvora, available at: <https://www.pravniportal.com/nedostatak-poverenika-za-pracenje-izvršenja-kucnog-zatvora/>, accessed on 27.12. 2021
- Nestašica nanogvica, oko 1.000 osuđenih na kućni zatvor čeka kaznu, available at: <https://www.021.rs/story/Info/Srbija/220694/Nestasicsa-nanogvica-oko-1000-osudjenih-na-kucni-zatvor-ceka-kaznu.html>, accessed on 27.12.2021
- Revidirani Akcioni plan za Poglavlje 23, available at: <https://www.mpravde.gov.rs/files/Revidirani%20AP23%202207.pdf>, accessed on 15.10.2021
- Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, available at: <https://rm.coe.int/16808b5ee7>, accessed on 4. June 2021

- Ristić, D. & Brikić, M. (2017) Saradnja centara za socijalni rad u šumadijskom okrugu sa Povereničkom službom, *Socijalna politika*, 1/2017, Vol. 52, str. 47-62.
- Spasojević, A, Janković, D. Kovačević, N. (2018) Podrška primeni alternativnih sankcija i mera u Srbiji- Izveštaj i preporuke, Mreža odbora za ljudska prava u Srbiji CHRIS, Niš.
- Spasojević, A. (2021) Izvršenje vanzavodskih sankcija i mera, Odbor za ljudska prava Valjevo, Valjevo.
- Stevanović, I. (2020). *Izazovi u postpenalnom prihvatu maloletnih učinilaca krivičnih dela u Srbiji*. Beograd: Institut za kriminološka i sociološka istraživanja.
- Stevanović, I., Vujić, N. (2018). Maloletni učinioци krivičnih dela i alternativne krivične sankcije. U: S. Bejatović, I. Jovanović (Ur.), *Alternativne krivične sankcije*. Misija OEBS u Srbiji
- Strategija za smanjenje preopterećenosti smeštajnih kapaciteta u zavodima za izvršenje krivičnih sankcija u Republici Srbiji u periodu od 2010. do 2015. godine, "Službeni glasnik RS", br. 53/ 2010, 65/2011.
- Strategija razvoja sistema izvršenja krivičnih sankcija do 2020. godine, "Službeni glasnik RS", broj 114/2013.
- Strategija za smanjenje preopterećenosti smeštajnih kapaciteta u zavodima za izvršenje krivičnih sankcija u Republici Srbiji do 2020. godine, "Službeni glasnik RS", broj 43/2017.
- Tešović, O. (2020) *Priručnik za izvršenje alternativnih sankcija*, Forum sudija Srbije.

ANNEX I

International instruments subject to ratification

- › Universal Declaration of Human Rights, General Assembly resolution 217 A, Paris, 10 December 1948;
- › Law Ratifying the International Covenant on Civil and Political Rights (Official Gazette SFRY no. 7/71);
- › Law Ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette SFRY - International Treaties, no. 9/1991;
- › Law Ratifying the Optional Protocol with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette SCG - International Treaties, no. 16/2005, 2/2006 and Official Gazette RS - International Treaties, no. 7/2011;
- › Law Ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms, amended in line with Protocol no. 11, Protocol with the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol number 4 with the Convention for the Protection of Human Rights and Fundamental Freedoms that ensure certain rights and freedoms not included in the Convention, and First Protocol therewith, Protocol number 6 with the Convention for the Protection of Human Rights and Fundamental Freedom on the abolition of the death penalty, Protocol number 7 with the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol number 12 with the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol number 13 with the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty in all circumstances: Official Gazette of Serbia and Montenegro - International Treaties, number 9/2003-16;
- › Law Ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, amended with the Protocol 1 and Protocol 2 to the Convention, Official Gazette of Serbia and Montenegro - International Treaties, number 9/2003;
- › Law Ratifying the UN Convention on the Rights of the Child, Official Gazette SFRY - International Treaties, no. 15/90 and Official Gazette SRY - International Treaties, no. 4/96 and 2/97.

International instruments not subject to ratification

- › Istanbul Protocol;
- › Standard Minimum Rules for the Treatment of Prisoners;
- › United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules);
- › Revised European Prison Rules;
- › Committee on the Rights of the Child, General Comment no. 24(2019) on the Convention on the Rights of the Child of Children's Rights in Juvenile Justice amending General Comment no. 10 (2007) adopted on 18 September 2019.
- › United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Adopted by General Assembly resolution 45/113 of 14 December 1990.

- › Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum
- › Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, Adopted by the Committee of Ministers on 11 January 2006, at the 952nd meeting of the Ministers' Deputies and revised and amended by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies

ANNEX II

QUESTIONNAIRE ON THE APPLICATION OF NON-CUSTODIAL SANCTIONS AND MEASURES IN SERBIA, 2015 TO 2020

Seat of the probation office _____

PART 1 – SUPERVISION OF THE FULFILMENT OF OBLIGATIONS ACCORDING TO A DECISION OF THE PUBLIC PROSECUTOR DEFERRING CRIMINAL PROSECUTION

1. In your opinion, the applicable normative framework for the fulfilment of obligations whose enforcement conditions the deferral of criminal prosecution referred to in Article 283 paragraphs 1-2 of CPC⁴⁶ is:
 - a) good
 - b) satisfactory
 - c) unsatisfactory
 - d) I have no opinion

3. In your opinion, the cooperation with institutions/organisations with which agreements have been signed to enable the fulfilment of obligations whose enforcement conditions the deferral of criminal prosecution referred to in Article 283 of CPC is:
 - a) good
 - b) satisfactory
 - c) unsatisfactory
 - d) I have no opinion

46 Article 283, paragraphs 1-2 of CPC

The public prosecutor may defer criminal prosecution for criminal offences punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one or more of the following obligations:

- 1) Rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;
- 2) Pay a certain amount of money to be used for humanitarian or other public purposes, to an account prescribed for the payment of public revenues;
- 3) Perform certain community service or humanitarian work;
- 4) Fulfil maintenance obligations that have fallen due;
- 5) Subject themselves to an alcohol or drug treatment programme;
- 6) Subject themselves to psycho-social treatment for the purpose of eliminating the causes of violent conduct;
- 7) Fulfil an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

In the order deferring criminal prosecution, the public prosecutor will determine a time limit during which the suspect must fulfil the obligations undertaken, with the proviso that the time limit may not exceed one year. Oversight of the fulfilment of obligations is performed by an officer of the authority in charge of the execution of criminal sanctions, in accordance with a regulation issued by the minister responsible for the judiciary.

4. In your opinion, what are the most significant deficiencies in the existing system for the fulfilment of obligations whose enforcement conditions the deferral of criminal prosecution referred to in Article 283 of the CPC and what measures do you think could improve it?

5. In your opinion, the existing normative framework for the enforcement of the house detention measure is:

a) good

b) satisfactory

c) unsatisfactory

d) I have no opinion

6. In your opinion, what are the most significant deficiencies in the existing system for the enforcement of the house detention measure? What are the most frequent problems that you face in practice and what measures do you think could improve the system?

PART 3 – SUPERVISION OF THE ENFORCEMENT OF A PROHIBITION OF APPROACHING, MEETING OR COMMUNICATING WITH A CERTAIN PERSON, OR ANOTHER MEASURE ORDERED BY A COURT DECISION

7. In your opinion, the existing normative framework for the enforcement of a prohibition of approaching, meeting or communicating with a certain person, or another measure ordered by a court decision is:

a) good

b) satisfactory

c) unsatisfactory

d) I have no opinion

8. In your opinion, what are the most significant deficiencies in the system for the enforcement of the prohibition of approaching, meeting or communicating with a certain person, or another measure ordered by a court decision: What are the most frequent problems that you face in practice and what measures do you think could improve the system?

PART 4 – ENFORCEMENT OF HOUSE ARREST WITH ELECTRONIC MONITORING

- 9.** In your opinion, the existing normative framework for the enforcement of house arrest with electronic monitoring is:
- a) good
 - b) satisfactory
 - c) unsatisfactory
 - d) I have no opinion
- 10.** What are the most frequent problems that you face in practice and what measures do you think could improve the system?

PART 5 – ENFORCEMENT OF HOUSE ARREST WITHOUT ELECTRONIC MONITORING

- 11.** In your opinion, the existing normative framework for the enforcement of house arrest without electronic monitoring is:
- a) good
 - b) satisfactory
 - c) unsatisfactory
 - d) I have no opinion
- 12.** In your opinion, what are the most significant deficiencies in the existing system for the enforcement of house arrest without electronic monitoring and what measures do you think could improve the system?

PART 6 – SUSPENDED SENTENCES WITH PROTECTIVE SUPERVISION

13. In your opinion, the existing normative framework for the enforcement of suspended sentences with protective supervision is:

a) good

b) satisfactory

c) unsatisfactory

d) I have no opinion

14. In your opinion, what are the most significant deficiencies in the existing system for the enforcement of suspended sentences and how could they be overcome?

PART 7 – COMMUNITY SERVICE

15. In your opinion, the existing normative framework for the enforcement of community service is:

a) good

b) satisfactory

c) unsatisfactory

d) I have no opinion

16. Which of the offered areas have been covered by the activity of legal entities that you have cooperated so far in the enforcement of community service?

1) Humanitarian activities

a) Red Cross of Serbia⁴⁷

c) Gerontology institutes

d) Other legal entities dealing with humanitarian activities

_____ (please, specify)

2) Healthcare activities

⁴⁷ Including National Kitchens established within the Red Cross

- a) Hospitals
- b) Local health centres
- c) Other legal entities dealing with healthcare activities

_____ (please, specify)

3) Environmental activities

- a) Public Enterprise Srbijašume
- d) Other legal entities dealing with environmental activities

_____ (please, specify)

4) Utility activities

- a) Gradska čistoća
- b) Gradsko zelenilo
- c) Zoohygiene
- d) Other legal entities dealing with utility activities

5) Other activities in the public interest

- a) Public Enterprise Putevi Srbije
- b) Other legal entities dealing with activities in the public interest

_____ (please, specify)

17. In your opinion, the existing cooperation with the above legal entities within the enforcement of community service is:

- a) good
- b) satisfactory
- c) unsatisfactory
- d) the quality of cooperation varies depending on what legal entity is involved
- e) I have no opinion

18. In your opinion, what measures should be taken in order to improve quantity and quality of cooperation with legal entities in the context of the enforcement of community service?

PART 8 – MEASURES ORDERED WITH RELEASE ON PAROLE

19. How do you evaluate the existing normative framework for the enforcement of measures that the court has ordered for release on parole?

- a) good
- b) satisfactory
- c) unsatisfactory
- d) I have no opinion

20. What measure among the ones referred to in Article 44 of the Enforcement of Extra-Institutional Sanctions and Measures Act poses the most difficulties in practice, in the process of enforcement (circle up to three measures) and why (explain below):

- 1) Reporting to the competent authority for the enforcement of protective supervision;
- 2) Training the offender for a particular profession;
- 3) Accepting employment consistent with the offender's abilities;
- 4) Refraining from visiting particular places, establishments or events if that could present an opportunity or incentive to re-commit criminal offences;
- 5) Timely notification of the change of residence, address or place of work;
- 6) Refraining from drug and alcohol abuse;
- 7) Visiting particular professional and other counselling centres or institutions and adhering to their instructions;
- 8) Fulfilling other obligations provided for in the criminal and legal provisions.

21. In your opinion, what should be undertaken in order to remove the deficiencies you have noted?

ANNEX III

QUESTIONNAIRE ON THE APPLICATION OF NON-CUSTODIAL SANCTIONS AND MEASURES IN SERBIA, 2015 TO 2020

-additional questions for the Chief of the Department for Non-Custodial Sanctions-

PART 1 – SUPERVISION OF THE FULFILMENT OF OBLIGATIONS ACCORDING TO A DECISION OF THE PUBLIC PROSECUTOR DEFERRING CRIMINAL PROSECUTION

1. How many decisions on the deferral of criminal prosecution were submitted for execution to the Department for the Execution of Criminal Sanctions in 2015-2020?

year	2015	2016	2017	2018	2019	2020
Number						

2. Does the Directorate for the Execution of Criminal Sanctions have information on the distribution of the decisions deferring criminal prosecution per probation office, per year in the observed period?

a) yes

b) no

If the answer to this question is YES, please provide us with information enclosed with the questionnaire

PART 7 – COMMUNITY SERVICE

3. How many agreements on cooperation with legal entities has the Department for the Execution of Criminal Sanctions signed for the enforcement of the community service sanction?

year	2015	2016	2017	2018	2019	2020
Number						

4. Does the Directorate for the Execution of Criminal Sanctions have information on the distribution of the agreements on cooperation signed with legal entities per probation office, per year in the observed period?

a) yes

b) no

If the answer to this question is YES, please provide us with information enclosed with the questionnaire

5. Which of the offered areas have been covered by the activity of the legal entities with which the Department for the Execution of Sanctions has signed cooperation agreements so far?

1) Humanitarian activities

a) Red Cross of Serbia⁴⁸ _____ (state the number of signed agreements)

c) Gerontology institutes _____ (state the number of signed agreements)

d) Other legal entities dealing with humanitarian activities _____

(state the number of signed agreements) _____

_____ (please list the legal entities)

2) Healthcare activities

a) Hospitals _____ (state the number of signed agreements)

a) Local health centres _____ (state the number of signed agreements)

c) Other legal entities dealing with healthcare activities _____

(state the number of signed agreements) _____

_____ (please list the legal entities)

3) Environmental activities

a) Public Enterprise Srbijašume _____ (state the number of signed agreements)

b) Other legal entities dealing environmental activities _____

(state the number of signed agreements) _____

_____ (please list the legal entities)

4) Utility activities

a) Gradska čistoća _____ (state the number of signed agreements)

b) Gradsko zelenilo _____ (state the number of signed agreements)

48 Including National Kitchens established within the Red Cross

c) Zoohygiene _____ (state the number of signed agreements)

d) Other legal entities dealing with utility activities _____

(state the number of signed agreements) _____

_____ (please list the legal entities)

5) Other activities in the public interest

a) Public Enterprise Putevi Srbije _____

(state the number of signed agreements)

b) Other legal entities dealing with activities in the public interest _____

(state the number of signed agreements) _____

_____ (please list the legal entities)

