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Pregledni članak
UDK: 343.24(497.11);
364-781.9:343.22(497.11)
Primljeno: 15. avgust 2015. god.

EXPERIENCING COMMUNITY SERVICE IN BELGRADE – NORMATIVE FRAMEWORK AND GENERAL IMPRESSIONS¹

As a special alternative sanction, community service was introduced to the legal system of the Republic of Serbia in 2006, when current Criminal Code came into force. Two years later, a more detailed Regulation on the Enforcement of Community Service was adopted. Since then, relevant judiciary bodies and probation officers have been struggling to overcome numerous obstacles for its adequate and efficient practical implementation such as:

1 This paper represents the result of authors' engagement within the project of the Institute of Criminological and Sociological Research No. 47011 "Crime in Serbia: Phenomenology, Risks and Possibilities of Social Intervention", financially supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia, as well as of their research activities on COST (European Cooperation in Science and Technology) Action No. 1106 "Offender Supervision in Europe".

initial suspicions and prejudice of the community, lack of detailed guidelines and supervision mechanism, limited financial resources and insufficient number of professional staff members. This paper represents an attempt to depict the evolution of community service in Serbia, to assess its positive and negative aspects, as well as to draw some conclusions and recommendations in order to improve its future application. In the introductory part, current normative framework dedicated to imposing and enforcement of community service in Serbia is presented. After that, statistical data showing the number of imposed community service sentences, types of criminal offences and actual modalities of community service enforcement are analyzed. Some parameters and factors showing actual practical aspects of community service application from the standpoint of probation officers as well as from the perspective of the offenders are also discussed, on the basis of two interviews with convicted persons serving community service in Belgrade as examples. Due to the fact that the majority of offenders who are serving community service are located in Belgrade, the analysis is primarily focused on this area. Finally, on the basis of these theoretical, statistical and practical quantitative and qualitative analyses, general conclusions on current state and tendencies regarding community service in Serbia are drawn and suggestions for the course of its future development are proposed.

Key words: community service, criminal sanction, alternative sanction, offenders, probation officers.

INTRODUCTION - NORMATIVE FRAMEWORK

Introduction of Community Service to Serbian Legislation

Community service represents a community sanction which involves unpaid labor for the benefit of the community as real or symbolic reparation for the harm caused by an offender. The punishment of community service was introduced to Serbian criminal legislation on January 1st 2006, when current Criminal Code of the Republic of Serbia² came into force. Prior to that moment, Serbian legal system had been familiar with other types of alternative sanctions that could

2 Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

be imposed on adult offenders, including: judicial admonition, confiscation of driving license, fine and conditional sentence, all of which are still being applied.

However, it seems that the introduction of community service represented a key step towards the establishment of a modern system of community or alternative sanctions in Serbia, which was later further upgraded by the possibility of the enforcement of prison sentence in the premises of the convicted person's permanent or temporary residence and conditional sentence with protective supervision, both either with or without electronic surveillance. These innovations contributed to the creation of a legislative and institutional i.e. administrative framework suitable to keep up with the goals of contemporary penal policies and initiated the establishment of a modern probation system that is harmonized with European standards.

In spite of being introduced in 2006, community service could not be enforced until 2008, when Regulation on the Enforcement of Community Service³ was adopted, which was a crucial step to enable the practical implementation of this alternative sanction. Namely, Criminal Code, Law on the Execution of Criminal Sanctions⁴ (replaced by new one in 2014⁵) and Law on the Enforcement of Noncustodial Sanctions and Measures⁶ only contain general provisions pertinent to imposing and enforcing community service, but its practical implementation was and could not be possible without a detailed document providing precise guidelines for probation officers, employers and other subjects involved with the execution of community service, including the recruitment of potential employers, rights and duties of the employer and the convicted person, the contents of the contract between the employer and Department For treatment and Alternative Sanctions etc.

All these issues are now covered by the aforementioned Regulation (adopted in 2008 and amended in 2014), which means that community service had been a part of Serbian criminal legislation but only as a theoretical possibility for two years before all necessary preconditions for its practical implementations were officially prescribed and announced. In current Serbian legislation,

3 Regulation on the Enforcement of Community Service, Official Gazette of the Republic of Serbia, No. 20/2008 and 24/2014.

4 Law on the Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 85/2005, 72/2009 and 31/2011.

5 Law on the Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 55/2014.

6 Law on the Enforcement of Noncustodial Sanctions and Measures, Official Gazette of the Republic of Serbia, No. 55/2014.

the application of community service sentence is regulated by Paragraphs 38-43 of Law on the Enforcement of Noncustodial Sanctions and Measures⁷.

Imposing and enforcement of community service in Serbia are harmonized with the European Probation Rules⁸.

Imposing Community Service

According to Paragraph 52 of Criminal Code of the Republic of Serbia community service can be imposed on the offenders who committed criminal offences for which imprisonment up to three years or a fine are prescribed. This legal provision defines community service as any sort of socially acceptable and useful labor that does not offend human dignity and that is not performed with the intention to obtain material (financial) benefits.

The minimum and maximum duration of this punishment are determined by the law. It cannot last shorter than 60 hours and may not surpass the period of 360 hours. On a monthly basis, the duration of community service must not exceed 60 hours' period and it has to be conducted in the term between one and six months. When deciding whether to impose this punishment, the court is obliged to take into consideration several circumstances: the purpose of punishment (comprising general and special prevention), the type of committed criminal offence, the personality of the offender and his readiness and willingness to perform community service. Having in mind the fact that forced labor represents the violation of human rights and, as such, is prohibited by numerous international conventions, it is particularly important to emphasize that community service cannot be imposed without offender's clear and indisputable consent.

However, if the offender fails to fulfill all the obligations and tasks that fall within the scope of his community service sentence, the court is entitled to replace this punishment with the punishment of imprisonment of proportionate duration. According to Criminal Code, every initiated eight hours of community service are equivalent to and should be replaced with one day of imprisonment. On the other hand, if the offender fulfills all of his obligations in a correct manner and in due time, the court may reduce the duration of community service for one quarter.

7 Law on the Enforcement of Noncustodial Sanctions and Measures, Official Gazette of the Republic of Serbia, No. 55/2014.

8 Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules (Adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies), <https://wcd.coe.int/ViewDoc.jsp?id=1575813> , 15.04.2014.

Enforcement of Community Service

The practical aspects of enforcement of community service sentence are regulated by Paragraphs 38-43 of Law on the Enforcement of Noncustodial Sanctions and Measures⁹ and Regulation on the Enforcement of Community Service¹⁰ in a more detailed and precise manner.

When it comes to jurisdiction, it is prescribed that the court that had brought the judgment in the first degree is entitled to initiate the procedure for the execution of community service, by addressing the organizational unit within the Administration for Treatment and Alternative Sanctions (Department for Treatment and Alternative Sanctions). The court that had brought the judgment at the first degree also has to deliver the judgment as well as all the necessary information on offender's personality to this organizational unit. But, practical enforcement of community service falls under the jurisdiction of probation officer, nominated by a special decision signed by the Director of the Administration for the Enforcement of Criminal Sanctions.

The law is strict about the character and contents of community service and insists that this sanction must not be of a stigmatizing nature and should include humanitarian work or other similar socially acceptable and useful activities. Community Service is always performed at some of the institutions or organizations that are in charge of providing various public services, particularly those of humanitarian, medical, ecological or communal nature such as: cleaning of public surfaces, medical institutions, and daily care centers for homeless or elderly citizens, recycling centers etc. Probation Service is encouraged to seek to identify and implement working tasks which are appropriate to contribute to the development of offender's personal and professional skills and improve his social inclusion. It is also highlighted that community service must not be undertaken with the intention to bring profit to probation agencies, their staff or for commercial profit. Probation agencies are developing community service schemes that comprise a range of tasks suitable to the different skills and needs of offenders, including the work that is suitable for female offenders, offenders with disabilities, young adult offenders and elderly offenders. The offenders are consulted about the type of work they are willing and capable to undertake.

9 Law on the Enforcement of Noncustodial Sanctions and Measures, Official Gazette of the Republic of Serbia, No. 55/2014.

10 Regulation on the Enforcement of Community Service, Official Gazette of the Republic of Serbia, No. 20/2008 and 24/2014.

The probation officer is given the opportunity to choose the institution where community service is to be performed, the type of job the offender is supposed to do as well as to design offender's working program. After the choice has been made, an agreement is achieved and a contract is signed between the Director of the Administration and the chosen institution. A separate contract, which regulates both parties' rights and obligations related to community service, has to be signed for each individual offender. Throughout the course of enforcement of community service, the probation officer has to maintain cooperation and balance among several different subjects whose interests and needs are sometimes in collision: the offender, the court, employment service, social welfare service, local self-government bodies and the police.

Probation officer is also expected to inform the court and the Administration on the outcomes of community service application at least twice during its execution. Moreover, the officer is also entitled to suggest the alterations of the program, and inform the court and the Administrations if some unpredicted obstacles occur. If the probation officer notices that the offender fulfills all of his obligations related to community service, he may propose to the court to shorten the duration of community service for one quarter.

Judicial Statistics

Although community service was introduced to Serbian legal system at the beginning of 2006, the first judgments by which this punishment was imposed on the perpetrator of criminal offences had not been delivered until 2007. Since then, the number of imposed and enforced community service sentences has been increasing. Namely, in 2007, 48 community service sentences were imposed, in 2008, the total number these sentences was only 35, whereas in 2009 it reached 51 and in 2010 it arrived at 71. However, the genuine progress could be detected in 2011 and 2012, when the number of imposed community service sentences radically rose, reaching the total number of 357 in 2011 and 365 in 2012.¹¹ The reason for this positive leap lies in the fact that the opening of probation offices and recruitment of probation officers all around the country was initiated within that exact period, so the courts felt free to impose this type of sentence knowing that it would be enforced in an appropriate manner.

When it comes to the type of criminal offences for which community service is predominantly imposed, it should be noted that these usually include

11 Statistical Bulletin No 576, Adult Perpetrators of Criminal Offences in the Republic of Serbia, Statistical Office of the Republic of Serbia, Belgrade, 2012, p. 57.

less serious crimes against bodily integrity, criminal offences against property, illegal possession of drugs and damaging stamps and signs on official documents. In order to provide a more precise insight in the structure of criminal offences for which community service is imposed, an overview of number and types of these criminal offences is made, on the basis of available statistics for 2012, as the year with the largest number of delivered community service sentences – altogether 365. Out of that number, 94 community service sentences were imposed for theft, 32 for removing and damaging official stamps and signs, 28 for illegal possession of drugs, 26 for light bodily injury, 19 for illegal production and trading of drugs, 17 for endangering public traffic, 15 for family violence, 11 for forest theft, 10 for endangering others by dangerous weapons on the occasion of fight or argument, 9 for petty theft, embezzlement and fraud, 9 for vigilantism, 9 for other criminal offences that are not prescribed by the Criminal Code of the Republic of Serbia but within penal provisions of some special laws regulating particular issues, 8 for failing to pay alimentation, 7 for endangering the safety of others, 5 for participating in a fight, 5 for severe bodily injury, 5 for illegal use of other person's vehicle and 5 for reset, 4 for embezzlement, 4 for document forging and 4 for serious theft, 3 for illegal fishing. Community service was also imposed on the perpetrators of following criminal offences, but only in 2 cases for: robbery, abuse and maltreatment, child neglect and mistreatment, insult, fraud, destroying other person's property, illegal trade, false testimony, unauthorized production, possession, carrying and trade of weapons, and explosive substances and damaging of a grave and in one case for each of the following criminal offences: coercion, sexual intercourse with a child, partnership with a minor, damnation, illegal gain of credit or other benefits, illegal confiscation of land, tax evasion, illegal hunting, causing general danger, sabotage, preparation of crime against constitutional order and safety, preventing an official from performing his duty, attacking an official on duty, false crime reporting, violent behavior, and abuse of official authority.¹²

Since no practical conditions had been met for the enforcement of community service prior to the adoption of Regulation dedicated to this issue and, having in mind the fact that probation offices had not been opened until 2009, statistical data on the number of enforced community service sentences in Serbia as well as in Belgrade are available only for the following years: 2010., 2011 and 2012. In 2010, in addition to the Alternative Sanctions Office in Belgrade, similar offices also commenced operating in Novi Sad and Subotica.

12 Statistical Bulletin No 576, Adult Perpetrators of Criminal Offences in the Republic of Serbia, Statistical Office of the Republic of Serbia, Belgrade, 2012, p. 67-70.

In the same year, Administration for the enforcement of criminal sanctions received 80 judgments by which the sentence of community service was imposed.¹³ Out of that, 10 sentences of community service were enforced in Belgrade in 2010.

During 2011 offices in Niš, Valjevo, Sombor and Kragujevac were also established. During 2011, Administration for the enforcement of criminal sanctions received 388 court decisions with pronounced sentence to community service. Out of this number, 99 sentences to community service were realized successfully. Disproportion in the number of court decisions that have been received and realized occurs because these sanctions are enforced only in towns with functioning offices for alternative sanctions (Belgrade, Novi Sad, Subotica, Valjevo, Niš, Sombor and Kragujevac). On 31 December 2011 realization of 30 sentences to community service were in progress.¹⁴

According to the Annual Report on the work of Administration for the enforcement of criminal sanctions, during 2012, a total amount of 205 community services were successfully served in Serbia.¹⁵ Disproportion in the number of served and enforced sentence is caused because these sentences are enforced, for now, only in the towns where the offices for alternative sanctions operate (Belgrade, Novi Sad, Subotica, Valjevo, Niš, Sombor and Kragujevac). On December 31, 2012, the total number of enforced community service sentences in Serbia was 32.¹⁶

Personal impressions of convicts and their employers – two remarkable examples

In order to receive some kind of feedback from persons serving community service on the territory of Belgrade, Administration for the Enforcement of Criminal Sanction i.e. its Department for treatment and alternative sanctions,

13 Obradović, M. (Ed.) (2011), Report on the work of Administration for the execution of criminal sanctions for 2010, Belgrade. Ministry of Justice of the Republic of Serbia – Administration for the Execution of Criminal Sanctions, str. 27.

14 Joka, D. (Ed.) (2012), Report on the work of Administration for the execution of criminal sanctions for 2011, Belgrade. Ministry of Justice of the Republic of Serbia – Administration for the Execution of Criminal Sanctions, p. 25.

15 Stevović, M. (Ed.) (2013), Report on the work of Administration for the execution of criminal sanctions for 2012, Belgrade. Ministry of Justice and Public Administration of the Republic of Serbia – Administration for the Execution of Criminal Sanctions, p. 39.

16 Stevović, M. (Ed.) (2013), Report on the work of Administration for the execution of criminal sanctions for 2012, Belgrade. Ministry of Justice and Public Administration of the Republic of Serbia – Administration for the Execution of Criminal Sanctions, p. 40.

conducted interviews with those willing to share their impressions and published two most positive examples in monthly Bulletin for 2012.

A twenty-year old male from a suburban part of Belgrade, who was sentenced to 240 hours of community service for having committed the criminal offence of light bodily injury. He served his punishment as a technical assistant in an ice-skating object in Belgrade every second day from 7:00 am until 19:00 pm. He was never late, he was always clean and tidy, and he fulfilled all his tasks in a responsible manner and addressed the visitors and employers with respect. He had no special requests and found no work too hard.

These are his words *“When the judge told me that I my punishment could be working instead of going to prison, I immediately accepted. I do not fear any kind of labor. I had studied to be a mechanic, but could not find a regular job. I tried to find a job at all sorts of places... I always accepted a part-time job if someone asked me, most frequently as a construction worker. Now, during the winter you can't find a job. It's so boring. I mostly spend time with my mates drinking beer in front of the local supermarket. The fact that we caused a fight because of a girl is stupid. I feel sorry for hitting my mate. I'll never do anything so stupid again. Don't worry about me and my punishment. I won't embarrass myself or you”*. The employer was very satisfied with this young man's work and asked him to work again for him, after the sentence was served, but this time, as a regular employee.

A worker from a rural suburban part of Belgrade, who was fired after 15 years of employment, a father of six minors, was sentenced to 300 hours of community service for having committed a specific type of criminal offence of theft, namely, illegal use of electric energy.

In his interview, he said: *“I was afraid that the judge would send me to prison, because I had heard that some people had been sentenced to a couple of months for stealing electric energy. I constantly kept thinking about my children. I am the only one earning money in our household. Since my former employer closed the company, I have not been able to find a regular job; I do all sorts of part time jobs, even for less than 5 euro per day. I really could not afford to pay the bills for electric energy and the winter was really cold. We used woods for heating but ran out of them quickly. I stole electric energy, and so did some of my neighbors. We all got caught. If I had had a regular job, this would never have happened to me. I do not even see this community service of mine as a punishment.”*

This convict served his community sentence in a public company that provides cleaning services, on a daily basis, just like the other employees. He used to come earlier and be the last to leave the working place, after cleaning and arranging his tools. He accepted all kinds of work and performed them

responsibly. He treated his colleagues in a correct and appropriate manner and made efforts to leave good impression through his work, secretly longing to get a chance to obtain a regular job in the company. On one occasion, when he needed a day off, he offered to provide a replacement – his neighbor who was willing to work instead of him for that one day. The employer greatly appreciated his behavior and efforts. When his sentence was served, the company director just said: *"I wish all my employees were that fine"*¹⁷

Conclusion

As an alternative, noncustodial, sanction, community service has got numerous advantages in comparison to both – imprisonment and fine. Not only does it facilitate the avoidance of negative consequences of prison environment, but it also enables the convicts to achieve professional and personal improvement by learning new skills, performing useful activities, contributing to the community and adopting a better behavioral pattern and system of values. By encouraging the convicts to go back to the labor market and find regular and legal source of income after having served the sentence, community service significantly diminishes the risk of reoffending.

Community service has been present in Serbian legal system since 2006, when current Criminal Code came into force. Since then, numerous legislative reforms have been undertaken in order to provide a solid, comprehensive, detailed and applicable normative framework for its imposing and effective practical enforcement in accordance with European standards. Also, numerous efforts have been made to develop and improve current institutional network for their implementation, including the establishment of probation offices, employment of probation officers and their education etc.

Available statistics indicate that the lack of legal provisions regulating the issue of community service represented the most important obstacle for its imposing by relevant judicial bodies. However, they also confirm that the adoption of necessary acts such as, for example the Regulation on the Enforcement of Community Service Sentence encouraged the courts to impose it more frequently. The establishment and the development of institutional network, including probation offices, probation officers and as well as the increase in the number of employers that are willing to accept convicted persons serving this sentence also contributed to a more frequent application of community service.

¹⁷ Alternative Sanctions Bulletin, No. 3/2012, Ministry of Justice and Public Administration of the Republic of Serbia, Department for Regulation on the Enforcement of Community Service.

Personal impressions of two convicts serving community service in Belgrade provide an insight in their perception of community service, its aims, effects, advantages and disadvantages. Their experiences should be observed as valuable sources of information for those in charge of organizing, supervising and evaluating the enforcement of this criminal sanction. It should also encourage the community to embrace positive sides of this noncustodial sanction and its potentials when it comes to the reduction of recidivism.

References

- Alternative Sanctions Bulletin, No. 3/2012, Ministry of Justice and Public Administration of the Republic of Serbia, Department for Treatment and Alternative Sanctions
- Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009 121/2012, 104/2013 and 108/2014.
- Joka, D. (Ed.) (2012)., Report on the work of Administration for the execution of criminal sanctions for 2011, Belgrade. Ministry of Justice of the Republic of Serbia – Administration for the Execution of Criminal Sanctions.
- Law on the Enforcement of Noncustodial Sanctions and Measures, Official Gazette of the Republic of Serbia, No. 55/2014.
- Law on the Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 85/2005, 72/2009 and 31/2011.
- Law on the Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 55/2014.
- Obradović, M. (Ed.) (2011), Report on the work of Administration for the execution of criminal sanctions for 2010, Belgrade. Ministry of Justice of the Republic of Serbia – Administration for the Execution of Criminal Sanctions.
- Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules (Adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies), <https://wcd.coe.int/ViewDoc.jsp?id=1575813>, 15.04.2014.
- Regulation on the Enforcement of Community Service, Official Gazette of the Republic of Serbia, No. 20/2008 and 24/2014.
- Statistical Bulletin No 576, Adult Perpetrators of Criminal Offences in the Republic of Serbia, Statistical Office of the Republic of Serbia, Belgrade, 2012.
- Stevović, M. (Ed.) (2013), Report on the work of Administration for the execution of criminal sanctions for 2012, Belgrade. Ministry of Justice and Public Administration of the Republic of Serbia – Administration for the Execution of Criminal Sanctions.

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ISKUSTVA U VEZI SA RADOM U JAVNOM INTERESU U BEOGRADU – NORMATIVNI OKVIR I OPŠTI UTISCI

Kao posebna alternativna sankcija, rad u javnom interesu je uveden u pravni sistem Republike Srbije 2006. godine, kada je na snagu stupio važeći Krivični Zakonik. Dve godine kasnije usvojen je detaljniji Pravilnik o izvršenju kazne rada u javnom interesu. Od tada, nadležni pravosudni organi i poverenici za probaciju nastoje da prevaziđu brojne prepreke za adekvatnu i efikasnu praktičnu primenu ove sankcije, kao što su: inicijalna sumnja i predrasude zajednice, nedostatak detaljnih uputstava i manjkavosti mehanizma supervizije, ograničeni finansijski resursi i nedovoljan broj stručnog osoblja. Ovaj rad predstavlja pokušaj da se oslika razvoj rada u javnom interesu u Srbiji, da se procene njegovi pozitivni i negativni aspekti, kao i da se izvedu određeni zaključci i preporuke u cilju poboljšanja njegove primene u budućnosti. U uvodnom delu, predstavljeni su važeći normativni okviri za izricanje i izvršenje kazne rada u javnom interesu u Srbiji. Nakon toga, izneti su statistički podaci koji pokazuju broj izrečenih kazni rada u javnom interesu, vrste krivičnih dela za koje su one izrečene i konkretne oblike izvršenja ove kazne. Takođe, razmotreni su i pojedini parametri i faktori koji govore o praktičnim aspektima primene kazne rada u javnom interesu i to kako sa aspekta poverenika tako, i iz perspektive prestupnika i to na osnovu dva intervjua sa osuđenim licima koja se nalaze na izdržavanju kazne rada u javnom interesu u Beogradu, kao primerima. Budući da se većina osuđenih lica koja izdržavaju kaznu rada u javnom interesu nalaze u Beogradu, analiza je prvenstveno fokusirana na tu oblast. Konačno, na osnovu navedenih teorijskih, statističkih i praktičnih kvalitativnih i kvantitativnih analiza, izvedeni su generalni zaključci o trenutnom stanju i tendencijama kada je u pitanju rad u javnom interesu u Srbiji, i predložene određene sugestije za njegov budući razvoj.

Ključne reči: *rad u javnom interesu, krivična sankcija, alternativna sankcija, prestupnici, poverenici.*