

CRIMINALITY AND ADDICTION

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Purpose

One of the features of modern criminal law is undoubtedly the fact that the perpetrators of various crimes, mostly those against life, body, and property, are persons who are addicted to alcohol or psychoactive substances. The problem of criminality and addiction does not lose its topicality over years; on the contrary, it increasingly attracts the attention of various scientific disciplines aiming to find an adequate solution to eliminate the cause of illegal behavior - addiction. Therefore, the author points to this consistent problem in modern criminal law, with an analysis of criminal law provisions in this area in the law of the Republic of Serbia, as well as judicial practice. Special attention has been given to international standards in this area and the way in which this problem is solved in comparative law, and the practice of the so-called *therapeutic courts* in predominantly Anglo-Saxon criminal justice systems where the solution is found in less formal procedures with the application of non-custodial sanctions and measures and in a multidisciplinary approach. The aim of the paper is to point out the importance of this universal problem in modern criminal law, and that the existing domestic legal solutions and court practice in the case of criminal acts committed due to alcohol or drug addiction can undoubtedly be enriched and improved with a modern judicial concept, which does not prioritize punishment but the application of various alternative measures with the primary goal of rehabilitating the offender.

Design/Methods/Approach

Using the appropriate scientific methods for legal analysis (methods of formal logic, system analysis, the comparative method, as well as the normative method), in the following first chapter the author identifies and interprets the provisions in the domestic law related to the problem of addiction in criminal law and judicial practice in this area. The second chapter deals with international standards and successful comparative practice regarding the addicts who are perpetrators of criminal acts. The section on findings presents *de lege ferenda* solutions for criminal acts committed due to alcohol or drug abuse in accordance with international standards and modern comparative practice in this area. And, in the end, the last part about the originality/value of the paper consists of the review of the contribution to the elaboration of this problem from the criminal law and criminological aspects and of the improvement of the practice of courts, prosecutors, lawyers, and the police in this area.

Domestic Law and Judicial Practice

What does the domestic legislator say when it comes to criminal acts committed as a result of addiction? The first reaction in the Criminal Code of the Republic of Serbia is in the field of security measures, where articles 83 and 84 provide for *mandatory treatment of drug addicts and mandatory treatment of alcoholics* for such cases. Namely, these security measures are imposed on persons who

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have committed a criminal offense due to addiction to the use of narcotic drugs or alcohol, and who have a serious risk that they will continue to commit criminal offenses due to this addiction. Both measures can be imposed with a prison sentence (when they are carried out in an institution for the execution of a sentence or in an appropriate health or other specialized institution), and with other sanctions - a fine, a suspended sentence, a court warning or exemption from punishment, when they are carried out at liberty and cannot last longer than three or two years. If the perpetrator, without justifiable reasons, does not undergo treatment at liberty or voluntarily abandons the treatment, it is stipulated that the court will order the measure to be compulsorily carried out in an appropriate health or other specialized institution.

The very fact of addiction is established by the court on the basis of the findings and opinion of an expert psychiatrist, which is a mandatory element of the procedure for imposing this security measure provided for in Article 533 of the Code of Criminal Procedure, and failure to act according to this provision represents a significant violation of the provisions of the criminal procedure, which has already been stated in the highest judicial instance decisions for a long time (Ćorović, 2009:380). However, in practice, it has been shown that it is precisely the judicial expertise in these security measures that represents a significant problem.

Namely, in order for the court to pronounce the measure, it is necessary: (1) that the person was under the influence of psychoactive substances at the time of committing the illegal act, as well as (2) that there is an addiction disease. Evidence that there is an addiction disease is often missing, mainly because it is not easy to establish and because objective tests are required that are not frequently used in our country. In addition, there is no uniform procedure and methodology of expert testimony followed by all court experts, but there are great variations in the work of experts, and as one of the possible solutions, commission expert opinion is mentioned, but also the possibility of the expert opinion being overturned by another expert (Medjedović, Petrović & Vujičić, 2019: 41).²

In addition to the above, when it comes to security measures in question, it is observed in court practice that there are very few specialized institutions in Serbia where they can be implemented (the Special Prison Hospital in Belgrade is the institution where these perpetrators are most often referred³, and it is an institution that suffers from a chronic lack of accommodation capacity⁴). There is also a small number or even a complete lack, except in the larger city centers, of clinics where the aforementioned safety measures not involving deprivation of liberty could be carried out (the issue of the quality of services due to the lack of medical specialists in that area is a particularly devastating issue, which in rural areas especially gets on importance).

2 In addition, defendants may be particularly motivated to simulate the existence of addiction, because they believe that it will be more favorable for them if the court opts for a security measure. The consequence is that a large number of people with this measure are not motivated for treatment and do not actively participate in the treatment process. In such cases, the expert team can state in its report to the court that the person does not participate in the treatment process and suggest alternatively serving a prison sentence. (Medjedović, Petrović & Vujičić, 2019: 30).

3 In addition to this institution, there are three other special hospitals for psychiatric diseases in Vršac, Kneževac and Gornja Toponica.

4 One of the key limitations of the Special Prison Hospital as an institution where security measures are implemented is the physical organization of the institution itself, because it is not adapted for the implementation of medical and psychiatric-psychological treatment and its organization is more similar to other penitentiary institutions in the Republic of Serbia. Therefore, persons with a security measure in this institution do not have the possibility to move and stay in the open space, go out of the institution, like persons who endure the measure in one of the other institutions in the country where security measures are implemented. These problems are increased even more by the number of people with a measure in the Special Hospital, which exceeds the capacity of the institution, and by the insufficient number of medical and professional staff who carry out the treatment. (Medjedović, Petrović & Vujičić, 2019: 30)



When it comes to other sanctions provided for in the Criminal Code that could be applied to persons who committed criminal acts due to alcohol or drug addiction, one non-custodial sanction should be highlighted in particular - a conditional sentence with protective supervision, which provides for two obligations in Article 73 of the CC, which are related to this problem. The first such obligation is *abstinence from the use of drugs or alcoholic beverages*. However, one should immediately object to the manner in which this obligation is regulated, because in order to achieve effective results, it is necessary that this type of obligation be determined as a ban on the convicted person to use drugs or alcoholic beverages for a certain period of time, and that periodic checks are carried out to ensure compliance with the ban. The way this obligation is currently formulated renders it fundamentally unenforceable, because it is not known how it will actually be determined that the convicted person violates this obligation. Art. 25 of the Rulebook on the method of execution of non-custodial sanctions and measures and the organization and work of the commissioner, stipulates that the commissioner will help the convict refrain from abusing psychoactive substances and understand their harmfulness through counseling and educational work with the convicted and his family or close persons. Apart from the fact that giving advice does not, in any case, create the obligation of the convicted person to follow the advice, the question arises here as to the competence of the commissioner for the aforementioned "advisory and educational work", especially since neither the Law on the Execution of Criminal Sanctions, nor the Law on the Execution of Non-Custodial Sanctions and Measures mention any conditions that are required for a person to work in the Probation Service.⁵ Therefore, there are no guarantees that the commissioner in charge is at all competent to carry out educational work with convicts whose use of drugs or alcohol led to the commission of a criminal offense.

All of the above leads to the conclusion that it is necessary to formulate the aforementioned obligation more precisely and reliably as a ban on the use of narcotic drugs and alcohol, with the competent commissioner carrying out periodic checks of compliance with that ban, which would actually be realized through the provision of a blood sample by the convicted person in certain time intervals, which the competent health institution would analyze and determine if there is the presence of narcotic drugs or alcohol in the body (Tešović, 2018: 264-265). As soon as the presence of narcotic drugs or alcohol in the body of the convicted person is determined in this way, it would be clear that the prohibition was violated, and the commissioner would immediately inform the court about the fact, for further decision-making.⁶ Therefore, in the aforementioned sense, it is necessary to clarify and supplement the legal provisions, as well as the provisions of the aforementioned rulebook on the manner of execution of this obligation, in order to finally revive the application of this obligation in practice. The advisory role now prescribed for the commissioner is insufficient and absolutely inadequate in terms of this duty of protective supervision.⁷

⁵ The above is a major omission by the legislator, especially since both the Tokyo rules and the rules of the Council of Europe devote entire sections to these issues: selection criteria, status, recognition... The Croatian Probation Act contains one such provision: *Probation work is performed by probation officers who are educated in the field of social pedagogy, social work, psychology, legal sciences, and exceptionally other social sciences and humanities*. There is no such or a similar provision in our legislation. (Ignjatović, 2014:60)

⁶ This practice is represented in a large number of countries: USA, Great Britain, France, Germany. In England, the application of electronic devices for monitoring the presence of alcohol in the body of a convicted person (*The Alcohol Abstinence Monitoring Requirement*) was recently started, in order to reduce the percentage of criminal offenses committed due to the use of alcohol (Hodges, 2022:1). The above-mentioned electronic device, which the convict carries, measures the level of alcohol in the convict's body every half an hour, and any violation of the ban on alcohol consumption is electronically detected, and thus provided to the probation officer for inspection. This measure is applied in cases where a person has committed a criminal offense under the influence of alcohol, and it is not suitable for alcohol addicts who need treatment and healing because of this addiction (Tešović, 2020:60).

⁷ Art. 53 of the Law on the Execution of Non-Custodial Sanctions and Measures provides for abstinence from the use of drugs and alcohol as one of the measures for parole, and if the commissioner reasonably suspects that the convicted person is not complying with this obligation, based on direct observation or information received from the family or other



Two other obligations from protective supervision that are related to this topic are *treatment in an appropriate health institution and visiting certain professional and other counseling centers or institutions and acting according to their instructions* - the eighth and ninth obligations that are prescribed as the content of protective supervision. Articles 26 and 27 of the above-mentioned Rulebook state that the commissioner in direct contact provides support to the convicted person during treatment and monitors the course of his treatment through regular cooperation with the appropriate health facility, and also provides support and encourages the convicted person to engage in treatment at the appropriate counseling center or institution and monitors the course of treatment through regular contact with professional workers. These obligations are directly related to the seventh obligation to abstain from the use of drugs or alcoholic beverages, so the question of their delineation with the safety measures of mandatory treatment of drug addicts and mandatory treatment of alcoholics arises here. Namely, what are the cases when a conditional sentence with protective supervision will be applied in the aforementioned sense, and when will the aforementioned security measures be imposed along with the conditional sentence? From the very conditions provided for in Art. 83 and 84 of the CC, it follows that security measures of compulsory treatment of drug addicts and alcoholics are imposed on the perpetrator who committed the crime due to addiction to the use of narcotic drugs or due to addiction to the use of alcohol. Such a condition is not foreseen for the mentioned obligations within protective supervision, so it is left to the court to assess whether these are also situations when the criminal offense was committed as a result of one of the mentioned addictions.

In theory, the opinion was expressed that a conditional sentence for protective supervision in the form of the obligations described above will be imposed when it comes to minor crimes, i.e. cases in which the conditions for the imposition of these security measures are not met (when the criminal offense was not committed due to addiction to the use of narcotic drugs or alcohol), as well as in cases where there is a need to order the perpetrator to perform some other obligations from protective supervision (Stojanović, 2017: 326). This opinion should be accepted as correct and logical, because in a situation where there is a criminal offense under the influence of alcohol or narcotic drugs, but without medically established addiction, it is appropriate to impose this type of sanction, where protective supervision would achieve its purpose, while in the case of established addiction, the security measures are the most adequate, especially in view of the fact that, if required, the court could order the execution of some other obligations from protective supervision. (Tešović, 2020: 61-62).

International Standards and Comparative Practice

When it comes to international standards in this area, the first thing to point out is that at the international level, there is a clear intention that with regard to addicts - perpetrators of criminal acts, the solution should first be found by acting on the very cause of their illegal behavior - addiction. Namely, the emphasis is on medical treatment and the application of various non-custodial sanctions and measures in order to return the said person to normal life courses and include them in a healthy social environment.

persons close to the convicted person, the commissioner is authorized to perform appropriate testing for the presence of psychoactive substances, so if it is determined that the convicted person does not comply with the mentioned obligation or if the convicted person refuses the test, it will be considered that he has not fulfilled the obligation from the decision on parole. The question arises as to why an identical provision is not provided for obligations in the case of conditional sentence with protective supervision in the mentioned law (Art. 34 - 37), but is only related to conditional release in the mentioned Art. 53, and in Art. 25 of the Rulebook on the manner of execution of non-custodial sanctions and measures, only the already mentioned "advisory and educational work" of the commissioner in the case of probation with protective supervision, without his authority to order testing of the convicted, is specified. There are major omissions and vagueness of the legislator in the enforcement matter, which caused a collision of the norms of the law prescribing the execution of criminal sanctions and the adopted rulebook on their immediate execution.



Therefore, the most important international act of the Council of Europe in the area of non-custodial sanctions and measures - *Recommendation No. R(92)16 on European rules on sanctions and measures implemented in the community* (the so-called *European Rules*) in its amendment in the form of *Recommendation No. R(2000) 22 on improving the application of European rules on sanctions and measures implemented in the community*, in rules 2.-5., suggests to the legislator to enrich the existing criminal law system of sanctions with various non-institutional sanctions and measures, among which a special place is given to the medical treatment of perpetrators who are addicted to alcohol or narcotic drugs, as well as perpetrators with mental disorders, as a result of which the crime was committed.

In a special segment of the aforementioned international document, the establishment of effective assistance and treatment programs that can influence the change in the behavior of the perpetrator of the criminal offense is discussed, so in rules 19 - 23, it is emphasized that programs and treatments for the social reintegration of the convicted should be characterized by the application of various methods, and when determining their content, particular attention should be focused on the following circumstances: basic knowledge that includes, for example, literacy and mastering of basic arithmetic operations, the ability to constructively solve personal and family problems, then education or the possibility of employment, the influence that possible dependence on alcohol, narcotic drugs or medicines may have on the perpetrator, as well as adaptation to the local community. It is recommended that special attention be focused on the development of programs and treatment for perpetrators who are at risk of committing more serious crimes.

When it comes to active international bodies in this area, it is important to highlight the activities of one body within the European Union regarding the application of sanctions and measures that are alternative to institutional treatment, dealing with this specific category of perpetrators of criminal acts. It is *the European Monitoring Center for Drugs and Drug Addiction (EMCDDA)*, within which alternatives to imprisonment are especially promoted with regard to this special category of offenders.

In the research published by this body in 2015 regarding the application of alternative sanctions and measures for this specific category of perpetrators,⁸ it was first pointed out that alternatives to prison sentences are available all over Europe in different forms and it has been undoubtedly assessed that they achieve positive results for drug addicts. The success of these measures depends partly on the degree to which these sanctions and measures are precisely directed at specific targets and specific beneficiaries. A distinction is also made between alternative measures available to the police, public prosecutors and courts (EMCDDA Papers, 2015: 6-7), and it is especially emphasized that specialized courts for drugs can be used in order to best adapt the measures of the aid program to the perpetrator - the addict. It is emphasized that in Europe, specialized courts for drug addicts, under American influence, were first formed in Ireland, Scotland and England, but they also exist in Oslo and Bergen - Norway, as well as in Ghent - Belgium, starting from 2008. Otherwise, these courts are quite different from regular courts in that they include multidisciplinary teams in their work, so the criminal judge closely cooperates with professionals of different profiles - probation, healthcare, social protection, and rather with the aim of rehabilitating the perpetrator, rather than achieving retribution.

When it comes to the mentioned specialized courts, it is stated that in terms of their efficiency there are in some forms contradictory results in various researches,⁹ but what is indisputable is that the re-

⁸ EMCDDA Papers, Publications Office of the European Union, Luxembourg (2015), Alternatives to punishment for drug-using offenders, Downloaded August 27, 2023, https://www.emcdda.europa.eu/publications/emcdda-papers/alternatives-to-punishment_en

⁹ Thus, according to an American study, conducted on 154 cases (146 of them from the USA), it was concluded that with regard to adult drug addicts, the measures of special drug courts had a significant effect on recidivism of 12%, while on the other hand, again in the American public point out that it is too expensive a measure in response to lighter forms of crime. (EMCDDA Papers, 2015:16)



cidivism of persons who have successfully completed treatment and assistance programs is reduced, so it is crucial that their actions must be focused on the specific person and their specific social and personal circumstances.

When it comes to comparative practice in this area, in addition to the mentioned members of the European Union, it is important to mention the actions of the Anglo-Saxon judiciary in this area. Thus, in *England and Wales*, in addition to community service, there are also therapies and programs for overcoming the problems that led a person to commit a crime. These programs and therapies can help the perpetrator with any addiction (e.g. to alcohol or drugs), then in the case of mental health problems, as well as to acquire new skills and qualifications. Depending on the treatment or program, these may include counseling (where support is provided by medical professionals), drug testing, then attending accredited programs, such as anger management courses that can help the inmate behave better in the future, mental health treatments led by doctors or psychologists, then courses to improve writing and reading, help in writing a job application, learning job interview skills, as well as meeting people who have been affected by the commission of a criminal offense in the program of mediation and achieving restorative justice. All of the above is carried out under the supervision and cooperation of the competent probation officer of the National Probation Service and with the support of non-profit organizations that provide such services, and if the convicted person does not complete a certain treatment or program or if a test detects the presence of drugs, he can be sent back to court where his sentence can be increased or where he may be sentenced to prison.

One of the specificities of Anglo-Saxon justice in the last decade is certainly the creation of specialized courts for perpetrators of criminal acts who are addicted to drugs, the so-called *drug courts*.¹⁰ In fact, we are talking about the so-called *problem solving courts* that arose on the soil of the United States of America and spread across all its federal states in different variants: first, there are the already mentioned courts for the perpetrators of criminal acts committed due to drug addiction, the so-called *drug courts*, then there are *courts for domestic violence* that are focused on ensuring that the victims of domestic violence are safe, and the perpetrators are convicted and supervised, as well as *community courts* that are specifically focused on crime within a smaller community and that are based on working with the police and the local community to reduce minor crime within an area, by providing such convicts with education and treatment for drug or alcohol withdrawal.

As far as England and Wales are concerned, the mentioned American model of specialized judiciary has had a great impact,¹¹ so it was announced by the Ministry of Justice of the United Kingdom that at the end of 2016, a pilot project would begin in England and Wales with the aforementioned problem solving courts, which would actually represent specialized criminal courts for perpetrators of criminal offenses who are addicted to drugs and alcohol, then for perpetrators of the crime of domestic violence, as well as courts specially designed for perpetrators with mental problems. The purpose is to use non-custodial, alternative criminal sanctions, along with rehabilitation programs, with regular monitoring of progress by the judge (The Global Legal Post, 2016:1).

10 The first court of this kind was established in Miami in 1989, and so far over 300,000 addicts have participated in the assistance programs established by such courts. The average recidivism rate for those who completed the full program is 4-29%, compared to 48% for those who did not participate in the programs, indicating the remarkable success of these courts. Therefore, in some countries, based on the model of these courts, courts for criminal acts committed due to alcohol addiction were established, following a similar model. Also, following this positive American example, these courts have come to life in other Anglo-American legal systems (in Australia, Canada, New Zealand, and also in the United Kingdom) (Tešović, 2018:111)

11 After the visit to England of American judges who judge in courts for drug addicts, and after the trip of British officials to the USA on that occasion, in Britain they were immediately interested in this type of specialized courts and their potential applicability in the United Kingdom (Nolan, 2002: 89).



On the other hand, it would be a mistake to say that there are no such courts in England and Wales, that is, it is true that they do not exist in the criminal law field, but in family matters the same principles exist and are applied as in criminal courts. This is *the London Family Drug and Alcohol Court (FDAC)*¹² where an alternative is offered to parents who are addicted to drugs or alcohol or have a problem related to domestic violence, in the form of undergoing a certain rehabilitation program under the supervision of a specialized team of experts, and in order to monitor their progress in terms of getting rid of addiction and returning to regular life courses, all so that their children remain with them and so that they are not deprived of parental rights, and the children are given under guardianship or adoption.

Therefore, it is a family, civil court, but with certain criminal law components, bearing in mind the problems that parents have related to family violence, as well as alcohol or drug abuse. The mentioned persons are, therefore, included in a program of withdrawal from the use of alcohol or drugs for a period of time, and a special multidisciplinary team of experts at the said court runs that program, with regular reports on its success and consultations with both the representatives of the parties and the representatives of the local government. The expert team is made up of social workers, psychologists, psychiatrists, child psychiatrists, as well as experts in the field of domestic violence and drug and alcohol abuse, and depending on the specific case, a special team is formed to deal with a specific program. Otherwise, their task is to solve the case in 26 weeks, and every Monday hearings are held before a specialized judge where the participants in the program, as well as the expert team, talk about the success in implementing the program. There are even hearings where representatives - lawyers are not present and where the parties can talk with the judge in a more informal discussion about their problems, success in abstaining from drugs, and undergo drug or alcohol testing even before that. Therefore, the essence of this court is that children whose parents are addicted to alcohol or drugs and who are neglected or abused are not given to guardianship or adoption, but to try to achieve control of the addiction, and finally the complete weaning of the parents and their return to regular life courses (Tešović, 2018:113). This is why these courts are called therapeutic justice or problem-solving courts, and the latest independent research reports on the results of this court justify the mentioned names.¹³

When it comes to the already mentioned judicial practice in *the United States of America*, for the last two decades serious criticism has been directed at the execution of probation, i.e. the adequate provision of services by probation officers, especially in terms of efficiency and the increasing rate of recidivism and violation of the set conditions, so more and more voices are heard that it is necessary to reform the said probation system.¹⁴ One of the innovative ways is the greater participation of the judges themselves in monitoring the fulfillment of probation conditions, so one type of such additional engagement is the formation of specialized courts for perpetrators of criminal acts who are addicted to drugs or alcohol. These are the already mentioned, so-called *drug courts*, which are part of a wider concept of problem solving courts, where judges actually have a more active role in trying to rehabilitate the perpetrator of a crime committed as a result of drug addiction.¹⁵

12 Established in 2008; 12 such specialized family courts have been established in England and Wales since then.

13 The results are really impressive in terms of parents' weaning from addiction (40% of mothers stopped using drugs by the end of this program, compared to 20% of mothers who were in the regular court procedure, while the ratio for fathers is 25% versus 5% before regular courts), as well as on the plan of reducing neglect and abuse of children in such families (in the period after more than a year after the end of the process before this specialized court, in 25% of cases, further neglect and abuse of children was recorded, compared to 56% of cases after completion of the regular procedure before the family court) (FDAC The Problem Solving Court, 2023:1).

14 In the American theory, it is emphasized that probation, as well as all types of sanctions that are carried out in the community, can be successful in execution only if they are actively supported by the society itself, and that real long-term solutions are only possible with the support of all segments of the social community in which sanction is executed. (Petersilia, 1998:9)

15 Problem-solving courts are a relatively recent invention of the United States criminal justice system, and these courts



Namely, these are primarily specialized criminal courts for adult offenders who are found to be drug addicts and for whom the following measures are applied instead of imprisonment for at least one year: an intensive drug rehab program is provided in which the perpetrator is obliged to participate for a certain period of time, usually not less than a year, then it is necessary to be tested for drugs at certain time intervals, as well as randomly, in order to determine whether he complies with his obligations, and that he appears at certain time intervals in front of a specially trained judge for such cases so that the judge can directly see the progress of that person, so that, therefore, in the end, he is either rewarded with a waiver of the accusation or a waiver of the imposition of a prison sentence when some non-institutional sanction is imposed on him, or he is sanctioned with a prison sentence, if he did not meet his obligations (United States General Accounting Office Report, 1997: 23-24).¹⁶ Criminal acts that are the subject of these proceedings are related to the use of drugs or driving under the influence of drugs, and criminal acts with elements of violence are excluded. Also, when it comes to criminal acts where there are victims who have been harmed by those acts, the obligations which are imposed on the perpetrators also include the obligation to compensate for damages.

So, this is a special type of probation with regard to a special type of delinquents - drug addicts (as well as alcohol addicts), with the fact that the supervision of the fulfillment of the assumed obligations is partially taken over by a judge specially trained for this area in order to increase efficiency.¹⁷ The aim of the mentioned specialization of the courts is to reduce the use of drugs, and thus the criminal acts committed due to drug addiction, which according to research was achieved to a greater extent in this way than through the regular judiciary.

Under the influence of the United States of America and the practice of alternative sanctions from the courts there, even *Canada* was not bypassed by the specialization of the courts that began with its southern neighbor. Namely, in the Canadian criminal justice system, problem-solving courts began to be formed, so that the first so-called drug treatment court (DTC) was established in Toronto in 1998, and then the federal government supported their establishment in Edmonton (2005), Ottawa (2006) and other major cities. The essence of the operation of these specialized courts is to provide alternative treatments of offenders who are addicted to drugs or alcohol or have mental health problems, combined with their intensive supervision, both by the judge and by the specialized team involved in work with them. In fact, this is an approach that seeks to solve the cause of illegal behavior, and it tries to achieve this through the joint work of a specialized judge, prosecutor, professional defense, probation officers, police officers, social services and experts in addiction diseases, mental disorders, as well as for domestic violence. The focus is on helping and rehabilitating the perpetrator, and not on the retributive component of the sanction, and research into the results of the actions of these courts is more than promising.¹⁸

focus on the real problems that cause criminal behavior (for example, drug or alcohol addiction, mental health problems, or homelessness), or address a special category of offenders (such as veterans or members of tribes). By far the largest number of courts that belong to this category are courts for drug addicts (drug courts) and there are a total of 1330 of them in the entire territory of the USA (Strong & Rantala, 2016: 1-2)

16 Therefore, it is an unconventional criminal procedure in which all attention is concentrated on the established drug addiction of the perpetrator and where the perpetrator undergoes treatment led and controlled by an engaged team of experts, in cooperation with a specialized judge. (Strong & Rantala, 2016:2)

17 Judges in the aforementioned courts check the offender's progress in rehab at certain time intervals, and status conferences are even organized in some courts to which all offenders who are subject to rehab treatment are invited, and at these conferences success and positive behavior are publicly rewarded, whereas non-compliance with the established rules is sanctioned (Taxman, Soule & Gelb, 1999: 183).

18 In addition to Canada, the aforementioned courts were also formed in Australia under the influence of US practice, and in 2012 a pilot program was started in Auckland, New Zealand, where one such court (Alcohol and Other Drug Treatment Court) was formed.



Findings

Bearing in mind the international standards in this area and the very successful practice of the so-called *problem-solving courts* in Anglo-Saxon countries, especially drug courts, and comparing it with solutions from our law, where in the field of criminal offenses committed by persons addicted to drugs or alcohol nothing has been changed in accordance with comparative practice for several decades, it is an inevitable conclusion that changes in our law and practice are also necessary in the aforementioned sense. Namely, if we only stick to the conditional sentence with protective supervision, which should otherwise be the basic sanction of our system of non-custodial sanctions and measures as it is in all developed probation systems, especially with regard to the three obligations within the framework of protective supervision provided for in Art. 73, para. 1, points 7), 8) and 9) of the CC, the education and specialization of judges and public prosecutors should be carried out when it comes to the perpetrators of crimes committed under the influence of narcotic drugs or alcohol, of whom there are a significant number in our practice. Also, alternative sanctions and assistance programs for such perpetrators should also be increased.

The emphasis should be placed on more efficient cooperation between the courts, the probation service and health institutions, professional and other counseling centers that provide services with the aim of achieving abstinence for the offender, and in that direction the provisions of the law regulating the execution of non-custodial sanctions should be amended and supplemented by accompanying regulations. The key would be to introduce monitoring of the success of the offender's treatment by the judge, with the immediate and constant cooperation of the probation officer and medical experts from health services and other institutions, so that during the period of protective supervision, the convicted person would be obliged not only to contact the commissioner, as is the case now, but also, following the mentioned successful examples of comparative law, to appear at a hearing before a judge at certain time intervals where both the experts participating in his therapy and the probation officer would be present. This would be significantly more efficient and under more direct control of the court, because in an informal procedure during the execution of the mentioned alternative sanction, the course of drug addiction and treatment of the offender will be monitored.¹⁹ Also in such situations of monitoring the perpetrator's progress in rehab, the application of various types of technology, including certain elements of remote trials²⁰, would come into consideration.²¹

The mentioned way, which includes the judge in the very process of the offender's rehab or, in a milder form, the course of compliance with the pronounced ban on the use of drugs or alcohol within the framework of protective supervision, would be significantly more successful, because it would constitute not only the obligation of the convicted person to appear in certain time intervals before the judge. Undoubtedly the obligation of close and constant cooperation between the judge, commissioner (probation officer) and professional workers participating in the treatment and assistance program would be created, which now, according to the existing regulations, does not exist at all. What exists

19 Such specialization of the judiciary when it comes to crimes committed under the influence of drugs or alcohol is not only an invention of Anglo-Saxon law, but also represents a standard that is now being set in the countries of the European Union, where the activities of the already mentioned European Monitoring Center for Drugs and Drug Addiction - EMCDDA particularly promote the application of different types of alternative sanctions and assistance programs for this special category of offenders, and the specialization of judges and other procedural participants in this regard is encouraged.

20 The successful practice of Anglo-Saxon courts (England, USA) shows that electronic communication and certain types of remote trials have been common for decades, and this has become especially relevant with the Covid-19 pandemic. (Tešović, Krstić, Milovanović & Dakić, 2021:26-27).

21 This would imply an increase in the number of courts with technical means for image and sound transmission, equipping rooms, and modernizing technology, followed by the inevitable improvement of the legal framework and appropriate training of judges and court staff. (Tešović & Milovanović, 2022:182)



are only the prescribed safety measures for the mandatory treatment of drug addicts and alcoholics, which in themselves, whether they involve deprivation of liberty or not, have the already mentioned significant deficiencies in practice, and which raise the question as to what happens after their termination, because there is no institutional response in the form of post-penal acceptance or activities of the existing commissioner service, as in the developed probation systems, which would ensure that the persons in question should remain in normal life courses and resist addiction.

Therefore, the systematic strengthening of the existing commissioner service and its development towards a real probation service capable of acting in different ways and at different stages of the procedure with the aim of rehabilitating the offender, as well as closely cooperating with the judiciary and the police and experts who implement therapeutic programs, would certainly be a solution to this significant problem. In this way, we would harmonize our practice with international standards in this area, which would certainly be accompanied by success in terms of less recidivism and successful reintegration of addicts into society.

Originality/Value

What certainly emerges from the previous conclusions is that a certain social phenomenon cannot be observed in isolation, from the point of view of only one institution or only one scientific discipline. In order to start solving a complex problem such as that of addicts who are perpetrators of criminal acts, it is necessary to establish a multidisciplinary approach right from the beginning, both when finding legal solutions and in their implementation in practice. What is indisputable is that our criminal law was not developed in accordance with international standards in this area, as well as in the area of application of non-custodial sanctions and measures, which has resulted in an inert system that cannot respond to existing needs, so it also raises the question of achieving any significant success in terms of rehabilitation of the perpetrators.

Certainly, this paper will contribute to elaborating this problem from the criminal law and criminological aspects and hopefully improve the practice of courts, prosecutors, lawyers, and the police in this area.

On the other hand, the purpose of this paper was to add to the existing knowledge in this area, which would contribute to the theoretical generalization and clarification of the existing doubts, as well as to the perception of existing problems in practice when it comes to perpetrators of criminal acts who have a problem of addiction due to which they behave illegally. Specific solutions have been offered, but these solutions are certainly not necessarily the only possible and sufficient ones. Namely, the answers offered to the questions raised and the arguments presented in support of the given solutions in this paper are also intended to open a more serious professional discussion on this subject and ultimately lead to the necessary legislative changes in this area, in order for legislation and practice in criminal justice system in Serbia to become much closer to international standards and advanced comparative legal solutions pertaining to this issue.

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