

**PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO  
IMPRISONMENT ACROSS EUROPE**

**NON-CUSTODIAL SANCTIONS AND MEASURES  
IN THE MEMBER STATES OF THE EUROPEAN UNION**

**Croatia**

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**Non-custodial sanctions and measures  
in the Member States of the European Union  
- Report for Croatia<sup>1</sup>-**

**I. LEGAL FRAMEWORK**

In Croatia, criminal sanctions prescribed by the Criminal Code<sup>2</sup> which can be imposed on perpetrators of criminal offenses are: punishments and safety measures. There are three types of punishment: a fine, imprisonment, and long-term imprisonment.<sup>3</sup> Pursuant to the Juvenile Courts Act,<sup>4</sup> correctional measures and juvenile imprisonment may be imposed on juvenile offenders.

The term of imprisonment cannot be shorter than 3 months nor longer than 20 years.<sup>5</sup> A punishment of long-term imprisonment may not be shorter than 21 years nor longer than 40 years. In exceptional cases, if individual sentences of long-term imprisonment have been determined for two or more criminal offenses, a single sentence of long-term imprisonment may be imposed for a term of 50 years.<sup>6</sup>

The concept of alternative, i.e., non-custodial sanctions is not specifically defined in the Criminal Code, but the term alternative sanctions implies all sanctions that can be imposed in place of imprisonment.<sup>7</sup> *Derenčinović, Dragičević Prtenjača and Gracin* state that, in this context, they can be divided into alternative sanctions in a narrower and broader sense. In a narrower sense, these include community service, suspended sentence, partially suspended sentence, and a fine; in a broader sense, in addition to the above, alternative sanctions include the two ways of carrying out a prison sentence – conditional release, house arrest and other alternatives such as monitoring the execution of obligations under the decision of the public prosecutor deciding on prosecution according to the principle of opportunity. For the purposes of this research, alternative, i.e., non-custodial sanctions imply the following types of punishment: a fine, community service, suspended sentence and partially suspended sentence.<sup>8</sup>

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<sup>2</sup> Criminal Code (OG 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021)

<sup>3</sup> Criminal Code, Article 40

<sup>4</sup> Juvenile Courts Act (OG 84/11, 143/12, 148/13, 56/15, 126/19)

<sup>5</sup> Criminal Code, Article 44 Paragraph 1

<sup>6</sup> Criminal Code, Article 46 Paragraphs 1 and 2

<sup>7</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 7, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>8</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 8, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

Non-custodial sanctions are imposed for lesser forms of criminal offenses; therefore, they cannot be applied when passing the sentence of long-term imprisonment.<sup>9</sup> The maximum term of imprisonment that can be substituted for a non-custodial sanction, namely a fine, is 3 years. Consequently, when a certain criminal offence is punishable by imprisonment for up to 3 years, the court may impose a fine as the principal punishment instead.<sup>10</sup> As a rule, non-custodial sanctions are applied when the perpetrator is sentenced to imprisonment for up to 1 year (community service at large and suspended sentence).

However, in some cases, the law allows for the punishment to be remitted even if the perpetrator is found guilty. The court may remit the perpetrator of punishment in several cases:<sup>11</sup> when such a possibility is provided by law (e.g. in cases of voluntary abandonment, attempt, and abetting); when the consequences of the criminal offense committed by negligence affect the perpetrator to such a degree that sanctions are unnecessary to achieve the purpose of punishment; when the perpetrator sought to eliminate or reduce the consequences of the criminal offense committed through negligence and compensated for the damage caused by it; when the perpetrator reconciled with the victim and compensated for the damage, in cases of criminal offenses punishable only by a fine or imprisonment for up to 1 year. In these cases, instead of remitting the punishment, the court may punish the perpetrator more leniently, without the obligation to adhere to the limits prescribed by the Criminal Code on mitigation of punishment. Milder punishment is also imposed in some other circumstances, for example when the perpetrator's mental capacity is significantly reduced.

At the same time, in the trial preparation stage, the public prosecutor may withdraw from criminal prosecution according to the principle of opportunity even if there is reasonable suspicion that the perpetrator committed a criminal offense that is prosecuted *ex officio*, if it is probable that the defendant will be acquitted, or if the execution of the defendant's sentence is in process, and the initiation of criminal proceedings for another criminal offense serves no purpose given the gravity, nature, and motives of the offense; if the defendant was extradited or handed over to a foreign state or the international criminal court for proceedings for another criminal offense; and if the defendant has been reported for several criminal acts that constitute two or more criminal offenses, but it is purposeful to convict the perpetrator for only one as initiating criminal proceedings for other criminal offenses would not have a significant impact on sentencing or other measures.<sup>12</sup> Rejection of a criminal report or withdrawal from criminal prosecution is limited to lesser criminal offenses, namely those for which a fine or imprisonment for up to five years is prescribed. The approval of the victim or injured party is also required, as well as consent from the defendant to fulfill a specified obligation. Obligations are exhaustively determined in terms of: the kind of act that needs to be performed for the purpose of repairing or compensating for damage caused by the criminal offense; payment of a certain amount in favor of a public institution for humanitarian or charitable purposes; fulfilment of the obligation to pay maintenance or of other due obligations; performing community service at large; and undergoing drug or other addiction treatment or rehabilitation programs in accordance with special regulations, as well as undergoing psychosocial therapy to eliminate

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<sup>9</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 9, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>10</sup> Criminal Code, Article 40 Paragraph 4

<sup>11</sup> Criminal Code, Article 50

<sup>12</sup> Criminal Code, Article 206c

violent behavior without leaving the family unit or, with the suspect's consent, while leaving the family during therapy.<sup>13</sup>

## **2 – Non-custodial sanctions**

As formerly stated, non-custodial sanctions imply all sanctions that can be given in place of imprisonment.<sup>14</sup> Therefore, non-custodial sanctions in a narrower sense imply: a fine, community service, suspended sentence and partially suspended sentence.<sup>15</sup>

When non-custodial sanctions are imposed, the perpetrator is always first sentenced to imprisonment or a fine, provided that the fine in this case is imposed as the principal punishment, accompanied with a statement that the imposed prison sentence or fine will be substituted for one of the non-custodial sanctions, i.e., community service or suspended sentence.

Non-custodial sanctions are imposed by a trial judge, while the probation body organizes and supervises the execution of community service at large, suspended sentences and partially suspended sentences with a special obligation and/or protective supervision and/or safety measure.

In the Croatian criminal justice system, there is no obligation to impose non-custodial sanctions, except in the case of community service when the court passes a prison sentence of up to 6 months, in which case it must be substituted for community service, unless this would obstruct the purpose of sanctioning. In other cases, the court must establish all the decisive facts that the perpetrator will not commit criminal offences in the future, even without the execution of the sentence. When pronouncing the type and level of punishment, the court is always obliged to elaborate its decision.

Non-custodial sanctions used in the Croatian legal system are described in more detail below:

### **Fine**

A fine may be imposed both as the principal and ancillary punishment. The court may impose a fine as the principal punishment when the law prescribes imprisonment for up to 3 years for a certain criminal offense. For criminal offenses committed out of greed, a fine may be imposed as an ancillary punishment even when this is not prescribed by

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<sup>13</sup> Vera Glasnović Gjoni, Vlado Sirotić, CONDITIONAL WITHDRAWAL FROM PROSECUTION AND PRACTICE OF THE MUNICIPAL COURT IN PULA - POLA, p. 166

<sup>14</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 7, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>15</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 8, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

law, but also when the law prescribes that the perpetrator will be fined or imprisoned, and the court imposes a prison sentence as the principal punishment.<sup>16</sup>

A fine is imposed in daily units. It may not amount to less than 30 daily units nor more than 360 daily units, except for crimes committed out of greed when the fine may amount to 500 daily units. The daily unit cannot amount to less than HRK 20 nor exceed HRK 10,000. The number of daily units, their amount, and their total sum are specified in the judgment and based on the perpetrator's income and assets, as well as the average expenses necessary to support the perpetrator and their family.

The perpetrator is obliged to pay the fine within a period determined by the court, which may not be shorter than 30 days nor longer than 6 months. In case of deterioration of the material circumstances of the perpetrator after the judgment, the court may, at the request of the perpetrator, extend the payment period for up to 24 months or assign repayment by instalments within that period.<sup>17</sup>

In cases when the fine is not paid in full or in part within the period defined in the judgment, the fine will be collected through an enforcement institution in accordance with the provisions of a special law. If the fine cannot be collected within 3 months, the court will replace the fine with community service by substituting 1 daily unit with two hours of work, whereby the duration of community service cannot exceed 720 hours. A fine can be substituted with community service only with the consent of the offender.<sup>18</sup>

If the offender does not agree to or fails to perform community service, the fine or community service will be replaced with imprisonment. In that case, 1 day of imprisonment serves as a substitute for 1 daily unit or 2 hours of work in the case of community service, whereby the term of imprisonment cannot exceed 1 year.

### **Community service**

Community service is imposed by the court as a substitute for a sentence of imprisonment for up to one year or as substitute for a fine of less than 360 daily units.<sup>19</sup> When the court imposes a prison sentence of up to 6 months, it will, as a rule, replace it with community service, unless this would defeat the purpose of the punishment. However, community service cannot be imposed on a perpetrator who had previously already been sentenced to imprisonment for more than six months. In other words, it can be imposed on recidivists as well, but not on those who had been sentenced to more than six months in prison.<sup>20</sup>

Community service can be imposed for a maximum duration of 730 hours of work, which the perpetrator is obliged to perform within a period ranging from a month to two years.<sup>21</sup> Community service can only be imposed with the consent of the offender.

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<sup>16</sup> Criminal Code, Article 40, Paragraphs 4 and 5

<sup>17</sup> Criminal Code, Article 42.

<sup>18</sup> Criminal Code, Article 43

<sup>19</sup> Criminal Code, Article 55, Paragraph 1

<sup>20</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 16, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>21</sup> Ministry of Justice and Public Administration, On Community Service, available at: <https://mpu.gov.hr/pristup-informacijama-6341/ostale-informacije/probacijska-sluzba/pravne-osobe-u-kojima-se-izvrsava-rad-za-opce-dobro/o-rad-za-opce-dobro/14681>.

In the Commentary on the Criminal Code, Turković, K. et al. (2013) it is stated that the duration of community service cannot exceed 720 hours, p. 81

Probation offices are responsible for organizing and supervising the execution of community service. Community service is performed in cooperation with other public authorities, institutions, and other legal entities in contract with the Ministry of Justice and working in the field of humanitarian, environmental and communal affairs, as well as other activities of general national interest and interest to the local community.<sup>22</sup>

The convicted person will, after giving their consent to the competent authority, perform community service within the time limit set by that authority, taking into account their abilities with regard to their personal circumstances, expertise, and employment. If the offender does not report to the competent probation authority within 8 days from the day they were summoned, or the summons could not be delivered to the address given by the court, or the offender does not give their consent, the competent probation office will inform the sentencing judge (if community service is a substitute for imprisonment) or the court of first instance (if community service is a substitute for a fine).<sup>23</sup> In addition to community service, the court may also order protective supervision for the perpetrator, the duration of which may not exceed the term of performing community service.<sup>24</sup> Community service work is unpaid.<sup>25</sup>

If the offender, through their own fault, does not perform community service in full or in part within the time limit set by the probation body, the court will issue a decision ordering the execution of the pronounced sentence in full or in proportion to the unserved community service.<sup>26</sup> Likewise, if the offender severely or persistently violates or persistently avoids protective supervision or violates the obligation imposed on them under the safety measure without a justified reason, the probation office will inform the court, which will in turn pass a decision ordering the execution of the initially pronounced sentence.<sup>27</sup>

### **Suspended sentence**

A suspended sentence is a non-custodial criminal sanction which suspends the punishment imposed upon the perpetrator if during the period of probation the perpetrator commits no new criminal offence and fulfils the obligations imposed upon them.<sup>28</sup> Conditions for imposing a suspended sentence are limited to situations in which the perpetrator received a prison sentence of up to one year or a fine (so-called formal conditions of application), provided that the court finds that the perpetrator will not commit criminal offenses in the future (so-called material condition), taking into account the perpetrator's personality, their earlier life, especially if they had previously been convicted, family circumstances, circumstances of the criminal offence and behavior after committing the offence, their attitude towards the victim and efforts to compensate for the damage.<sup>29</sup>

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<sup>22</sup> Ministry of Justice and Public Administration, On Community Service, available at: <https://mpu.gov.hr/pristup-informacijama-6341/ostale-informacije/probacijska-sluzba/pravne-osobe-ukojima-se-izvršava-rad-za-opce-dobro/o-rad-za-opce-dobro/14681>

<sup>23</sup> Criminal Code, Article 55 Paragraph 6

<sup>24</sup> Criminal Code, Article 55 Paragraph 4

<sup>25</sup> Criminal Code, Article 55 Paragraph 10

<sup>26</sup> Criminal Code, Article 55 Paragraph 8

<sup>27</sup> Criminal Code, Article 55 Paragraph 9

<sup>28</sup> Criminal Code, Article 56 Paragraph 1

<sup>29</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 12, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

The probation period under a suspended sentence may not be shorter than one nor longer than five years, is determined in full years, and runs from the day the judgment becomes final. In addition to a suspended sentence, the court may impose one or more special obligations on the perpetrator, with or without protective supervision, whereby the duration of special obligations and protective supervision may not exceed the probation period. In cases when the court imposes both a prison sentence and a fine, it may decide, under legal conditions, to suspend imprisonment only.<sup>30</sup> The consent of the defendant is not required to pass a suspended sentence.

### **Partially suspended sentence**

A partially suspended sentence may be imposed on a perpetrator who has been sentenced to a fine or imprisonment for more than 1 year and less than three years if it is found that there is a high degree of probability that they will not commit criminal offenses in the future even if they do not serve the entire sentence.<sup>31</sup> In this case, only a part of the sentence is suspended, while the other part of the sentence is conditioned in advance. The offender thus knows for how long they must serve the sentence, and when they will be released, that is, when the suspended sentence will start to apply.<sup>32</sup> The unsuspended part of the prison sentence must be at least 6 months long and must not exceed half of the term of imprisonment the offender was sentenced to, while the unsuspended part of a fine must not be less than  $\frac{1}{5}$  nor more than  $\frac{1}{2}$  of the pronounced sentence.<sup>33</sup>

Provisions on revocation apply equally to a suspended sentence and a partially suspended sentence, and revocation is mandatory if the offender is again convicted of one or more criminal offenses committed during the probation period and is sentenced to imprisonment for more than one year, as well as if, without justifiable reason, the offender does not return the pecuniary gain acquired through the criminal offence within a specified period. In case the offender has committed a criminal offense or several criminal offenses during the probation period for which they were sentenced to imprisonment for up to one year or a fine, or the offender does not fulfill their obligations, does not comply with safety measures, or fails to undergo protective supervision, but also if it is established that the offender had committed another criminal offense before the one they have been given a suspended sentence for, the court, at its discretion, will determine whether to revoke the suspended sentence or not.<sup>34</sup>

### ***Ancillary penalties***

The Criminal Code also provides for the possibility of imposing ancillary penalties in addition to the punishment in order to strengthen the preventive effects of the sentence. These are primarily **safety measures** whose purpose is to eliminate the

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<sup>30</sup> Criminal Code, Article 56 Paragraphs 3-6

<sup>31</sup> Criminal Code, Article 57 Paragraph 1

<sup>32</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 13, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>33</sup> Criminal Code, Article 57, Paragraphs 2 and 3

<sup>34</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 13, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>



circumstances that enable or encourage the perpetration of a new criminal offense, and which constitute a special group of sanctions. Safety measures are: compulsory psychiatric treatment, compulsory addiction treatment, compulsory psychosocial treatment, ban on performing a certain duty or activity, ban on operating a motor vehicle, ban on approaching, harassing or stalking, removal from a joint household, ban on internet access, and protective supervision after the sentence has been served. Safety measures apply from the day of the final decision.<sup>35</sup>

The court may also order the perpetrator to repair the damage caused by the criminal offense or make a payment to a public institution for humanitarian or charitable purposes or to the fund for compensation of victims of criminal offenses, if this is adequate considering the act committed and the personality of the perpetrator. These constitute special **obligations**. In addition to the two obligations mentioned above, the court may impose the following obligations on the perpetrator, if it deems that they are necessary to protect the health and safety of the person to whose detriment the offence was committed or when it is useful for eliminating circumstances enabling or inciting a new offence: continuing education or training for a specific occupation; employment appropriate to the perpetrator's professional qualifications or level of education; supervised disposition of income; treatment or continuation of treatment; treatment for alcohol, drug or other addiction within a therapeutic community; ban on visiting certain places, facilities, events, ban on socializing with a particular person or group, ban on leaving the home, ban on carrying, possessing or entrusting a weapon to another person; fulfilling the obligation to pay support; reporting regularly to the competent authority; and other obligations corresponding to the committed criminal offense.<sup>36</sup> Special obligations cannot be imposed in addition to community service, as the law explicitly provides for such a possibility only in case of a suspended sentence and a partially suspended sentence.<sup>37</sup>

However, in addition to community service, as well as probation and conditional release if the perpetrator has been sentenced to more than 6 months of imprisonment and they are under the age of 25, the court may order **protective supervision** if it finds that the assistance, management, and supervision of the probation office are needed for the perpetrator to not commit criminal offenses in the future and for easing their integration into society. Although protective supervision cannot be considered an alternative to imprisonment, i.e. a non-custodial sanction in a narrower sense, it is an additional factor of assistance and supervision for perpetrators of criminal offenses who received and were subjected to non-custodial sanctions.<sup>38</sup> In addition to protective supervision, the perpetrator may additionally be obliged to report regularly to the probation officer, as well as to receive visits from the probation officer and provide them with all necessary information and documents, inform the probation officer about changes in employment or address, and ask the sentencing judge for approval to travel abroad.<sup>39</sup>

### **3 – Rationale for sentencing: determining the type and term of a non-custodial sentence**

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<sup>35</sup> Criminal Code, Articles 65-67a

<sup>36</sup> Criminal Code, Article 62

<sup>37</sup> Criminal Code, Article 62, Paragraph 1

<sup>38</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 18, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>39</sup> Criminal Code, Article 64, Paragraph 5

In the procedure against an individual perpetrator, after guilt is determined, a specific sanction is imposed. Thus, the sentencing phase in the criminal procedure is autonomous from the guilt phase, although both take place within one procedure.

The choice of the type and level of punishment is determined by the court within the limits established by law for the committed criminal offense on the basis of the degree of guilt and the purpose of punishment. The purpose of punishment is based on retribution, prevention, and re-socialization of perpetrators; the punishment serves to express social condemnation for the committed criminal offence, strengthen citizens' trust in legal order based on the rule of law, influence the perpetrator and all others not to commit offences by raising awareness of the dangers involved and the fairness of punishment, as well as to enable the perpetrator to reintegrate into society.<sup>40</sup>

Therefore, when determining the type and level of punishment, the court will take into consideration all circumstances, starting from the degree of culpability and the purpose of punishment, that affect the severity of the punishment (mitigating and aggravating circumstances), especially the degree of peril or injury to the protected good, the motives for committing the criminal offence, the degree of violation of the perpetrator's obligations, the manner in which the offence was committed and its consequences, the perpetrator's earlier life, their personal and financial circumstances, their behavior after committing the criminal offence, their attitude towards the victim, and the efforts to compensate for damage, whereby the severity of the punishment must not exceed the degree of culpability.<sup>41</sup> Thus, Article 47 of the Criminal Code on sentencing lists, only *exempli gratia*, the circumstances that can be considered mitigating or aggravating when determining a criminal sanction.

Given that the emphasis of the law in question is on the individualization of sentences, the court is primarily obliged to establish all decisive facts that classify the act as a criminal offence, before taking into account the legal framework for sentencing and general rules on the type and level of punishment, as well as taking care to properly assess all of these circumstances in order to impose an appropriate criminal sanction on the perpetrator.<sup>42</sup> There are no guidelines on sentencing.

When deciding on non-custodial sanctions, the court decides on their application on its own discretion. Thus, when determining the amount of a **fine**, the daily income is determined on the basis of the perpetrator's income, assets, and the average costs necessary to support the perpetrator and their family, with the number of daily incomes determined on the basis of mitigating and aggravating circumstances as well (the degree of peril or injury to the protected good, motives for committing the criminal offence, the degree of violation of the perpetrator's obligation, the manner of committing the criminal offence, the perpetrator's earlier life, behavior after committing the criminal offence, attitude towards the victim and effort to compensate for the damage).<sup>43</sup>

**Community service** cannot be imposed on a perpetrator who has previously been sentenced to imprisonment for more than six months, i.e. it may be imposed on

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<sup>40</sup> Criminal Code, Article 41

<sup>41</sup> Criminal Code, Article 47

<sup>42</sup> Damir Kos, Supreme Court of the Republic of Croatia, A General Rule on the Selection of the Type and Range of Punishment, p. 2

<sup>43</sup> Criminal Code, Article 42, Paragraph 3 in conjunction with Article 47

recidivists, but not those who had been sentenced to more than six months in prison.<sup>44</sup> On the other hand, imposing a **suspended sentence** and a **partially suspended sentence** is not exclusively determined by previous convictions but by an assessment of whether the perpetrator will commit criminal offenses in the future, while taking into account the following factors: the perpetrator's personality, family circumstances, the circumstances of the criminal offense itself, and conduct after committing the criminal offense, especially the perpetrator's attitude towards the victim and efforts to repair the damage to the injured party.<sup>45</sup>

### **Legal remedies**

An appeal may be lodged against the decision on the type and length of the sentence. The defendant or another person who may lodge an appeal in their favor (next of kin – spouse and common-law partner, lineal relatives, legal representative, adoptive parent, adoptee, brother, sister, and foster parent), as well as defense counsel, may lodge an appeal without special authorization from the accused, but not against their will.<sup>46</sup> Grounds for appeal in the Croatian penal system include: substantial violation of the provisions of criminal procedure, violation of criminal law, erroneously or incompletely established facts and decisions on the punishment, judicial admonition, suspended sentence, partially suspended sentence, substituting the punishment with community service at large, special obligations, protective supervision, safety measures, confiscation of proceeds of the offence, confiscation of items, costs of criminal proceedings, associated action for damages, and public announcement of the judgment.<sup>47</sup>

A decision on a criminal sanction may be refuted when the decision exceeds the authority of the court under the law, and when legal authority is not exceeded, but the court has not correctly assessed the sentence given the circumstances that affect the severity of the sentence and because the court has or has not applied the provisions on sentence mitigation, remittal, partially suspended sentence, suspended sentence or judicial admonition, substitution with community service, and special obligations or protective supervision, even though there were legal conditions for it.

### **5 – Early release**

If there is a reasonable expectation that a convicted offender will not commit another criminal offence and the offender agrees to it, the court may release them from serving the prison sentence, provided they have served at least ½ of the term to which they were sentenced, but not less than 3 months. Conditional release may be ordered *ex officio* or at the prisoner's request. *Ex officio*, the warden of the prison or penitentiary files a motion for conditional release with the sentencing judge one month before ¾ of the sentence is served. Conditional release is decided on by the county court in whose jurisdiction the prison or penitentiary is located. When deciding on a motion for conditional release, the court will assess the convict's personality, their earlier life, previous convictions, whether another criminal procedure against them is under way,

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<sup>44</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 16, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>45</sup> Criminal Code, Article 56, Paragraph 2

<sup>46</sup> Criminal Procedure Code (Official Gazette No. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 126/2019 ), Article 464, Paragraphs 2 and 6

<sup>47</sup> Criminal Procedure Code, Article 467

their attitude towards the criminal offence and the victim, their behavior in the course of serving the prison sentence, the success of the implementation of an individual sentence plan, whether there has been a change in their conduct after the criminal offense or these changes are expected to occur through the application of supervision measures for the duration of conditional release, as well as their life circumstances and readiness for life at large.<sup>48</sup>

A convicted person released on conditional release may be assigned one or more special obligations and protective supervision. Special obligations or protective supervision may not last longer than the remaining unserved part of the prison sentence that the perpetrator received. The sentencing judge shall revoke the conditional release and order the execution of the sentence in full if, during conditional release, the offender does not fully or to a greater extent fulfill the special obligations assigned to them, violates them severely or persistently, or persistently avoids protective supervision. Conditional release will also always be revoked if during supervision the offender commits one or more criminal offenses for which they are sentenced to imprisonment of 1 year or more. In that case, the court will sentence them to a single sentence by applying the provisions on aggregate sentencing.<sup>49</sup>

## **6 – Sanctions or measures applicable to vulnerable persons and minority groups**

There are no special measures or sanctions intended exclusively for vulnerable categories of offenders, except for juveniles. Juvenile sanctions in the Republic of Croatia are regulated by the provisions of the Juvenile Courts Act and divided into two types: correctional measures and juvenile imprisonment. Correctional measures are: judicial admonition, special obligations, intensified care and supervision, intensified care and supervision with daily stays in a correctional institution, referral to a disciplinary center, referral to a correctional institution, referral to a reformatory, and referral to a special correctional institution.<sup>50</sup>

In cases of juvenile trial, diversion is envisaged at all stages of the criminal procedure in the form of applying the principle of opportunity<sup>51</sup> Thus, the public prosecutor may decide that there are no grounds for undergoing criminal prosecution for an offence punishable by a fine or imprisonment for up to five years, even if there is a reasonable suspicion that the juvenile committed the offence. Such a decision is based on the public prosecutor's assessment that it would not be opportune to conduct the procedure against the juvenile given the nature of the offence and the circumstances in which it was committed, the juvenile's earlier life and their personal characteristics.<sup>52</sup> The public prosecutor may condition the decision on not initiating criminal proceedings against a juvenile perpetrator by the juvenile's willingness to apologize or to repair, to their ability, the damage caused by the offense. It also may be requested for the juvenile to be involved in the work of humanitarian organizations or in communal or environmental causes, or to undergo treatment for alcohol and drug addiction. The public prosecutor may also ask the juvenile offender to engage in group psychosocial treatment at a youth counseling center or assign other special obligations to them.<sup>53</sup>

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<sup>48</sup> Criminal Code, Article 59

<sup>49</sup> Criminal Code, Article 60

<sup>50</sup> Juvenile Courts Act, Article 7

<sup>51</sup> Irena Cajner Mraović, Anamarija Vuić, Jana Kujundžić, Diversion in the Croatian Juvenile Justice System, National Research Report, 1 January 2018, page 59, available at: <https://childhub.org/sites/default/files/diverzija-u-kaznenopravnom-sustavu-za-maloljetnike-u-hrvatskoj.pdf>

<sup>52</sup> Juvenile Courts Act (OG 84/11, 143/12, 148/13, 56/15, 126/19), Article 71, Paragraph 1

<sup>53</sup> Juvenile Courts Act, Article 72, Paragraph 1a-h

Although the Juvenile Courts Act does not provide for diversion in such a way that the juvenile receives the necessary education and re-education, which would completely replace criminal procedure, such a possibility is provided by the *Stop Program*<sup>54</sup> through the police, which decides on the further treatment of the juvenile offender. Therefore, in that case, the police make a decision on diversion in place of processing a criminal complaint with the public prosecutor for juveniles.<sup>55</sup>

If it is established that the perpetrator with severe mental disorders committed an illegal act in a state of incompetence, they may be placed in a psychiatric institution if there is a risk of them committing another serious offence. For perpetrators with a significantly diminished capacity, a safety measure of compulsory psychiatric treatment can also be imposed. The safety measure of compulsory psychosocial treatment is imposed on perpetrators of crimes with elements of violence.

For vulnerable categories of perpetrators, special obligations may be imposed on the basis of specific vulnerabilities. Thus, in addition to a suspended sentence and a partially suspended sentence, the court may order the perpetrator to determine, within a certain period of time, e.g., employment corresponding to their professional competences or level of education, training and actual abilities of performing work tasks, whereby they are advised and provided for by the probation authority; or, with the expert assistance of the competent probation authority, undergo treatment or continuation of treatment necessary for the elimination of health disorders that may provide an incentive to commit a new criminal offense. The court has the authority to impose other obligations adequate for the committed criminal offense,<sup>56</sup> whereby reasons for vulnerability can play an important role.

## **II. NON-CUSTODIAL SANCTIONS/MEASURES IN PRACTICE**

Statistical data does not include separate statistics for all vulnerable groups. Below is a summary of the statistics that are regularly used by the competent authorities and the bodies that manage the prison system. There are separate statistics for perpetrators who are foreign citizens, persons with disabilities, persons with mental disorders with an imposed measure of compulsory psychiatric treatment, juveniles, and elderly persons. Statistics are commonly divided by the prisoners' sex.

In the overall structure of imposed non-custodial sanctions in Croatia, the application of a suspended sentence is the most common, while a fine is the least common.

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<sup>54</sup> "The Stop Program is implemented by Association of Youth and Family Judges and Specialists (AYFJS) in partnership with association Pragma and in cooperation with the Croatian Association of Social Workers and the Association for Out-of-Court Settlement and Mediation in Criminal Proceedings. It is the only program of its kind in Croatia. The Stop Program has so far been implemented in the City of Zagreb, from 2012 to 2016 in the areas of the jurisdiction of the police stations Trnje, Centar, Medveščak, and Novi Zagreb, and in the area of the City of Velika Gorica as well."  
Irena Cajner Mraović, Anamarija Vuić, Jana Kujundžić, Diversion in the Croatian Juvenile Justice System, National Investigation Report, 1 January 2018, page 61, available at: <https://childhub.org/sites/default/files/diverzija-u-kaznenopravnom-sustavu-za-maloljetnike-u-hrvatskoj.pdf>

<sup>55</sup> Irena Cajner Mraović, Anamarija Vuić, Jana Kujundžić, Diversion in the Croatian Juvenile Justice System, National Research Report, 1 January 2018, page 60, available at: <https://childhub.org/sites/default/files/diverzija-u-kaznenopravnom-sustavu-za-maloljetnike-u-hrvatskoj.pdf>

<sup>56</sup> Art. 62 of the CC, Security measures are regulated in Chapter V of the CC (Art. 65-76).

Table 1. Application of **suspended sentence and partially suspended sentence** in Croatia from 2016 to 2020.<sup>57</sup>

	2016	2017	2018	2019	2020
Total number of convicted persons	13.412	12.091	11.866	13.002	11.634
Imprisonment – Total (%)	12.934 96.4%	11.692 96.7%	11.509 97%	12.608 97%	11.301 97.1%
Imprisonment – Unconditional (%)	2.375 18.4%	2.352 20.1%	2.008 17.4%	2.372 18.8%	1.935 17.1%
Imprisonment – Suspended sentence (%)	10.559 78.7%	9.340 77.2%	9.501 80.1%	10.236 78.7%	9.366 80.5%
Partially suspended sentence (%)	390 2.9%	320 2.6%	341 2.9%	516 3.9%	554 4.8%

Data from Table 1 shows that suspended sentence is the most common non-custodial sanction making up almost 80% of total criminal sanctions. On the other hand, it is evident that partially suspended sentences are rarely imposed in practice.<sup>58</sup>

According to the probation service's report for 2019, out of the total number of received cases, 464 were suspended sentences and 53 were partially suspended sentences with protective supervision and/or safety measure and/or special obligation. Suspended or partially suspended sentence with protective supervision and/or safety measure and/or special obligation is most often imposed for criminal offenses against marriage, family of children (in 48.6% of cases), for criminal offenses against personal freedom (24.8%), and for criminal offenses against property (8.7%). Of the total number of special obligations with a suspended sentence (314), the obligation to pay support (49.3%) and repair the damage caused by the criminal offense (29.9%) were most frequently used, while the special obligation to treat addiction (alcohol and drugs) was

<sup>57</sup> The table was prepared by the authors on the basis of the report of the Central Bureau of Statistics (hereinafter: CBS), Judiciary - Perpetrators of Criminal Offenses - Adults, available at: <https://www.dzs.hr>

<sup>58</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 15, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

imposed in 30 cases of suspended/partially suspended sentences with protective supervision and/or special obligation and/or safety measure.<sup>59</sup>

Table 2. Representation of the application of **fin**es in Croatia from 2016 to 2020.<sup>60</sup>

	2016	2017	2018	2019	2020
Total number of convicted persons	13.412	12.091	11.866	13.002	11.634
Fine – Total (%)	347 2.6%	281 2.3%	244 2.1%	301 2.3%	233 2%
Fine – Unconditional (%)	138 1%	106 0.9%	89 0.8%	124 1%	98 0.8%
Fine – Suspended (%)	209 1.6%	175 1.4%	155 1.3%	177 1.4%	135 1.2%

Data in Table 2 shows that a fine is imposed relatively infrequently, with a noticeable declining trend. It can be assumed that fines are rarely imposed due to perpetrators' relatively poor financial situation.<sup>61</sup>

Table 3. Application of **community service** at large in Croatia from 2016 to 2020.<sup>62</sup>

	2016	2017	2018	2019	2020
Total number of convicted persons	13.412	12.091	11.866	13.002	11.634
Community	1063	976	810	871	574

<sup>59</sup> Government of the Republic of Croatia, Ministry of Justice, Report on the Work of the Probation Service for 2019, p. 18-19, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE\\_PROBACIJSKA\\_SLUZBA\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE_PROBACIJSKA_SLUZBA_2019.pdf)

<sup>60</sup> The table was prepared by the authors on the basis of the report of the Central Bureau of Statistics (hereinafter: CBS), Judiciary - Perpetrators of Criminal Offenses - Adults, available at: <https://www.dzs.hr>

<sup>61</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, str. 11, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>62</sup> The table was prepared by the authors on the basis of the report of the Central Bureau of Statistics (hereinafter: CBS), Judiciary - Perpetrators of Criminal Offenses - Adults, available at: <https://www.dzs.hr>

service					
%	7.9%	8.1%	6.8%	6.7%	4.9%

There is also a declining trend in imposing the non-custodial sanction of community service. The impact of COVID-19 is a probable reason for low numbers in 2020, as it is objectively impossible for probation officers to send convicts to perform community service in hospitals, psychiatric institutions, nursing homes, educational centers, rehabilitation centers, city and municipal societies of the Croatian Red Cross, Caritas, schools, kindergartens, museums, libraries, societies and associations for animal protection, various humanitarian associations, volunteer fire departments, and other bodies and institutions.

According to the 2019 probation service report, 11,113 cases of community service were received, most of them final judgments. In most judgments (78%), community service was imposed as a substitute for imprisonment for more than 6 months, i.e., 401-730 hours. In 15.5% of the total number of judgments/decisions passed in 2019, community service was imposed in the duration of 401 to 480 hours of work, which is a substitute for 6 to 8 months in prison, and in 22.6% of sentences community service was pronounced as a substitute for 1 year in prison.<sup>63</sup>

Table 6. Representation of the number of approved **conditional releases** by court's decision from 2015 to 2019.<sup>64</sup>

	2015	2016	2017	2018	2019
Number of approved conditional releases	442	593	617	852	843

Table 6 shows an increase in approving conditional release to convicted persons, regardless of a 0.94% decline in 2019 compared to 2018.

According to the probation service's work report for 2019, most convicted persons (70.7%) were granted conditional release in the duration of under 6 months, 17.8% of convicts are on conditional release for 6 months to a year, 8.2% for 1 to 2 years, and 13% for 2 to 3 years. 47% of all convicted persons on conditional release are on short conditional release of up to 3 months. In conditional release cases received during 2019, 551 special obligations were imposed, of which the majority (91%) refers to

<sup>63</sup> Government of the Republic of Croatia, Ministry of Justice, Report on the Work of the Probation Service for 2019, p. 11-15, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE\\_PROBACIJSKA\\_SLUZBA\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE_PROBACIJSKA_SLUZBA_2019.pdf)

<sup>64</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019



regular reporting to the probation authority, social welfare center, court, or police administration.<sup>65</sup>

### **Review of criminal sanctions imposed on specific categories of convicts**

According to the report on the condition and operation of penitentiaries, prisons and correctional facilities for 2019, the largest groups of prisoners are between 30 and 40 years old (31%) and between 40 and 50 years old (21%).<sup>66</sup> On 31 December 2019, there were 201 prisoners over the age of 59 (188 men and 13 women) in the prison system, which represents 9.45% of the total prison population. There are a total of 160 prisoners between the ages of 60 and 70 (7.52% of the total number of prisoners), of which 148 are men and 12 are women. There are a total of 38 prisoners between the ages of 70 and 80 (1.78% of the total number of prisoners), of which 37 are men and 1 is a woman. Three prisoners are over 80 years old.<sup>67</sup>

In terms of **sex**, the prison system is dominated by male prisoners (95.58%) compared to female prisoners (4.42%). This trend with regard to sex has been relatively stable over the years.<sup>68</sup>

Statistics for **juveniles** show that there were 75 male juveniles and 13 female juveniles serving the correctional measure of referral to a correctional facility during 2019. At the end of 2019, 46 male juveniles and 9 female juveniles were sent to a correctional facility.<sup>69</sup>

Out of a total of 481 **foreign citizen** prisoners, there were 121 prisoners (of all statuses) who are EU citizens and 360 prisoners from other, non-EU countries in the prison system. There is a continuing trend of a growing number of foreign citizens (19.13%) compared to their number on 31 December 2018 when there was a total of 389 prisoners (of all statuses) in the prison system who were not Croatian citizens. This increase is largely due to the migrant crisis, which has significantly increased the

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<sup>65</sup> Government of the Republic of Croatia, Ministry of Justice, Report on the Work of the Probation Service for 2019, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE\\_PROBACIJSKA\\_SLUZBA\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE_PROBACIJSKA_SLUZBA_2019.pdf)

<sup>66</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019, p. 13, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ\\_KAZNIONICE\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ_KAZNIONICE_2019.pdf)

<sup>67</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019, p. 18, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ\\_KAZNIONICE\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ_KAZNIONICE_2019.pdf)

<sup>68</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019, p. 10, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ\\_KAZNIONICE\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ_KAZNIONICE_2019.pdf)

<sup>69</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019, p. 17, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ\\_KAZNIONICE\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ_KAZNIONICE_2019.pdf)

number of criminal offenses of trafficking in human beings and/or illegal entry, movement and stay in the Republic of Croatia.<sup>70</sup>

Data for **persons with disabilities** in penitentiaries and prisons shows that, in 2019, there were 8 persons with severe physical disabilities (mobile with the help of a wheelchair), 19 persons with reduced mobility with the help of medical aids, 17 persons with hearing impairments, and 15 persons with multiple impairments, while 2 persons were partially deprived of legal capacity. As a rule, people with disabilities are not separated from the rest of the prison population but included in all daily activities in which they can and want to participate together with other prisoners as part of the process of their inclusion.<sup>71</sup>

## 2 – Supervision of the implementation of non-custodial sanctions/ measures

Supervision of the implementation of community service, suspended sentences and partially suspended sentences with special obligations and/or protective supervision and/or safety measures is performed by the probation body. Probation work is of special interest to the Republic of Croatia and is performed with the aim of protecting the community from the perpetrator, the perpetrator's resocialization and reintegration into the community by managing the risk factors associated with the commission of offences.<sup>72</sup>

Entry of the Probation Act into force in 2009 created preconditions for the establishment of a professional probation service in the Republic of Croatia. In the period from 2009 to 2011, the probation service equipped offices, hired and trained officers, and started performing probation work, whereby the first probation office started working at the end of 2010. By the end of 2011, 8 out of 12 planned probation offices had been opened. In mid-2018, two additional offices were opened to increase the range of cases and facilitate the availability of probation work.<sup>73</sup>

Execution of probation activities is the responsibility of the Sector for Probation, an internal organizational unit of the Directorate for the Prison System and Probation of the Ministry of Justice. The Sector for Probation consists of the Probation System Coordination and Development Service and 14 probation offices. In order to achieve its mission, the probation service cooperates with other institutions, organizations, and various entities in the community that can facilitate the process of social integration.<sup>74</sup> Thus, the Ministry of Justice or a probation office concludes a contract with public

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<sup>70</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019, p. 16, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ\\_KAZNIONICE\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ_KAZNIONICE_2019.pdf)

<sup>71</sup> Government of the Republic of Croatia, Report on the Condition and Operation of Penitentiaries, Prisons, and Juvenile Correction Facilities for 2019, p. 19, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ\\_KAZNIONICE\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102313/IZVJ_KAZNIONICE_2019.pdf)

<sup>72</sup> Probation Act (OG 99/18), Article 2, Paragraph 1

<sup>73</sup> Ministry of Justice, Probation Service, available at: <https://mpu.gov.hr/pristup-informacijama-6341/ostale-informacije/probacijska-služba/o-nama-14654/sto-je-probacija-14671/14671?big=1>

<sup>74</sup> Government of the Republic of Croatia, Ministry of Justice, Probation Service, Report on the Work of the Probation Service for 2019, available at: [https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE\\_PROBACIJSKA\\_SLUZBA\\_2019.pdf](https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/102608/IZVJESCE_PROBACIJSKA_SLUZBA_2019.pdf)

authorities, institutions, and other legal entities whose activities are of humanitarian, environmental and communal significance, as well as other activities of general national interest and interest to the local community, whereby the contract regulates mutual rights and obligations to perform community service.<sup>75</sup>

Since 2017, the Sector for Probation has been cooperating with civil society organizations on the empowerment of prison and probation officers, as well as associations where community service is carried out.<sup>76</sup> According to CSO, “cooperation with the Probation Service has contributed not only to the overall development of the association but also to the overall community service work carried out in the community.”<sup>77</sup>

#### Electronic monitoring:

In June 2016, the Probation Sector in cooperation with the Kingdom of Spain and the IRZ, German Foundation for International Legal Cooperation, began implementing a twinning project worth 1,000,000.00 EUR with the aim of introducing electronic monitoring, improving material and technical conditions for the work of probation officers, cooperation between the probation and prison systems, and the probation practice itself. The pilot project of electronic monitoring lasted 100 days (from 17 February to 28 May 2017), during which only five persons were monitored, four of whom were on conditional release and one in pre-trial house arrest.<sup>78</sup> The pilot project was considered a success,<sup>79</sup> and the application of electronic monitoring is set to begin in 2022 after all the necessary technical equipment is procured. For the time being, the Electronic Monitoring Service has been established and three target groups that will be subject to electronic monitoring have been determined: pre-trial detainees, convicts with short prison sentences of up to 1 year, and convicts on conditional release.<sup>80</sup>

### **III. IMPACT OF THE COVID-19 PANDEMIC ON THE IMPOSITION AND IMPLEMENTATION OF NON-CUSTODIAL SANCTIONS AND MEASURES**

The onset of the COVID-19 epidemic in 2020 and the earthquakes that hit Zagreb and Banija significantly slowed down the courts. The outbreak of the epidemic consequently

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<sup>75</sup> Ministry of Justice and Public Administration, On Community Service, available at:

<https://mpu.gov.hr/pristup-informacijama-6341/ostale-informacije/probacijska-sluzba/pravne-osobe-ukojima-se-izvrsava-rad-za-opce-dobro/o-rad-za-opce-dobro/14681>

<sup>76</sup> Cooperation between the Sector for Probation and Association Ambidekster, Probation Bulletin, December 2020, p. 9, available at:

[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)

<sup>77</sup> Probation Bulletin, December 2020, p. 10, available at:

[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)

<sup>78</sup> Dr. sc. Davor Derenčinović, Dr.sc. Marta Dragičević Prtenjača, Dr. sc. Dijana Gracin, Alternatives to the Sanction of Deprivation of Freedom, p. 24, available at: <http://transcrim.pravo.unizg.hr/wp-content/uploads/2019/01/14.-Alternative-kazni-oduzimanja-slobode.pdf>

<sup>79</sup> Ministry of Justice and Public Administration, A round table was held on the topic: “Electronic Monitoring on its Way from a Pilot Project to Long-Term Implementation”, July 14, 2017, available at: <https://mpu.gov.hr/print.aspx?id=16683&url=print>

<sup>80</sup> According to data obtained by interviewing the Head of the Sector for Probation, Mr. Goran Brkić

affected the prison population as well. On 11 March 2020, the Croatian Ministry of Health declared the COVID-19 disease epidemic caused by the SARS-CoV-2 virus<sup>81</sup>, after which the Civil Protection Headquarters started implementing measures limiting human rights and fundamental freedoms (banned gatherings, movement, introduced limitations to work hours and public transport as well as other measures), with the aim of preventing the spread of the infectious disease. This also had an effect on the prison system.

As the Ministry of Health is responsible for supervising the provision of health care within the prison system, but also in the course of the duration of non-custodial sanctions, the Directorate for the Prison System and Probation (Ministry of Justice) adopted measures together with the Croatian Institute of Public Health during the pandemic.<sup>82</sup>

The Ministry of Justice and Public Administration, in accordance with the recommendations of the Croatian Institute of Public Health and the National Civil Protection Headquarters, passed health protection measures on 16 March for all incarcerated persons and prison personnel, which limited prisoners' right to visitation. In exceptional circumstances, visits could be allowed solely upon special approval of the prison warden, when necessary in order to protect prisoner rights in court proceedings, or in other unforeseeable cases (e.g. death of a family member, extreme weather and the like). Prisoners were not allowed to temporarily leave criminal justice system bodies to visit the town/place where the penitentiary or prison is located or their place of residence, all activities otherwise undertaken by civil society organizations in such bodies were halted, and the use of video calls with the relevant courts was intensified.<sup>83</sup> Sending prisoners to work outside of criminal justice system bodies was also suspended, and protocols were established for prisoners to receive packages in criminal justice system bodies. In March, the Ministry of Justice recommended that the judicial authorities continue their work and conduct only urgent proceedings (criminal cases with elements of violence, juvenile cases, detention, domestic violence, etc.), while adhering to protective measures. It was emphasized that electronic communication between the parties and all participants in the proceedings was recommended, and that employees of judicial bodies should be enabled to work from home in jobs where this was possible.<sup>84</sup>

The manner of performing probation work was changed and carried out in accordance with epidemiologists' instructions. At the beginning of the pandemic, work was organized in teams, convicts were told not to come to the offices in person and that everything was done by phone. Cooperation with some legal entities which have probation contracts, e.g., nursing homes where community service is carried out, was terminated in order to prevent the spread of COVID-19. On the other hand, cooperation with some legal entities continued, with mandatory adherence to infection prevention measures: mandatory face masks, mandatory hand disinfection, maintaining a 2-meter distance, and similar measures. After the measures relaxed in May 2020, probation

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<sup>81</sup> Decision of the Minister of Health on declaring the COVID-19 disease epidemic caused by the SARS-CoV-2 virus from 11 March 2020, class: 011-02/20-01/143, registration number: 534-02-01-2/6-20-01

<sup>82</sup> <https://www.iusinfo.hr/zakonodavstvo/ZA2011B125A2498/clanak-63>

<sup>83</sup> The Ministry of Justice and Public Administration, Measures in the Prison System from 14 March to 1 April 2020, March 16, 2020, available at: <https://pravosudje.gov.hr/vijesti/mjere-u-zatvorskom-sustavu-od-14-ozujka-2020-godine-do-01-travnja-2020-godine/21710>

<sup>84</sup> Human Rights House Zagreb, Tea Dabić, 2021, The Current State of Human Rights of Perpetrators of Offenses with an Emphasis on the Resocialization of Prisoners, Zagreb: Parents in Action – Roda

officers began field work and maintained contact with convicts, but in compliance with all the aforementioned preventive measures.<sup>85</sup>

Given all the challenges faced by probation officers in enforcing and monitoring non-custodial sanctions during the COVID-19 epidemic, all efforts are focused on activities that can be prepared and implemented locally until the circumstances of the pandemic allow for the planned approach. Being forced to use online tools on a daily basis when performing day-to-day tasks opened up the possibility of considering their application for the implementation of other project activities.<sup>86</sup>

Given that the report on the operation of penitentiaries and probation for 2020 will only be available in late September or October 2021, we are not able to reliably address the question of the impact of the COVID-19 epidemic on the use and imposition of non-custodial sanctions.

#### **IV. PROSPECTS FOR THE FUTURE OF ALTERNATIVES TO IMPRISONMENT**

The Sector for Probation has been working on introducing electronic monitoring in the criminal justice system of the Republic of Croatia for a number of years. The pilot project was implemented for 100 days in the City of Zagreb and Zagreb County in the first half of 2017. The results obtained from the implementation of the pilot project were assessed as very successful and recommendations were made for its permanent and sustainable implementation. It was also concluded that, with the amendments to the Croatian legislation, electronic monitoring could be more widely used, for example as a substitute for short prison sentences, early release from prison, etc.<sup>87</sup>

Probation offices are planned to be additionally trained for scientific verification of the Perpetrator Assessment System (SPP), an important tool in performing probation work, and the existing tool for perpetrator assessments (sex offenders, gender-based violence) is planned to be further developed and adjusted.<sup>88</sup>

Additional activities will be focused on improving the cooperation between the probation and prison systems, especially in connection with quality preparation for conditional release and supervision of persons on conditional release. The introduction of periodic meetings of probation and prison officers at the national and other levels is planned in order to further develop cooperation between the two services, along with

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<sup>85</sup> Probation Bulletin, December 2020, p. 18-19, available at:

[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)

<sup>86</sup> Probation Bulletin, December 2020, p. 14, available at:

[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)

<sup>87</sup> Probation Bulletin, December 2020, p. 13, available at:

[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)

<sup>88</sup> Probation Bulletin, December 2020, p. 13, available at:

[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)

joint training and the implementation of a pilot project for the exchange of probation and prison staff.<sup>89</sup>

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<sup>89</sup> Probation Bulletin, December 2020, p. 14, available at:  
[https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi\\_prosinac%20n%202020.pdf](https://mpu.gov.hr/UserDocImages/dokumenti/Probacija/bilten%20probacija%20novi_prosinac%20n%202020.pdf)