

PURPOSE OF CRIMINAL SANCTIONS IN THE LAW OF THE REPUBLIC OF SERBIA

ABSTRACT: The subject of the paper is the general and specific purpose of criminal sanctions in the law of the Republic of Serbia, with a brief overview of certain characteristics of criminal sanctions, and in order to better understanding them. Achieving the purpose of prescribing and imposing criminal sanctions contributes to the realization of the basic function of criminal law, which is aimed at combating crime. Reducing crime is necessary, but as it is a complex phenomenon, achieving this goal is not easy, and understanding the purpose of criminal sanctions can contribute to a more successful application of criminal law and, to that end, to more successfully counteract of this negative phenomenon.

Keywords: *criminal sanctions, purpose of criminal sanctions*

Introduction

Crime is a phenomenon that threatens the basic social values, goods and interests of society, but also of individuals, and criminal law seeks to provide protection against acts that threaten or violate them. In this sense, the basic function of criminal law is a protective one and is aimed at achieving the objective of criminal law, that is, at suppressing crime. Legal protection of the most important and valuable goods of an individual and of society is achieved by prescribing certain behaviours as criminal offenses, but also prescribing and imposing criminal sanctions for acts that endanger or violate these values

* Msr, Assistant Professor at the Faculty of Law, University of Business Academy, Novi Sad,
e-mail: nadasdjuric@gmail.com

** Msr, PhD student at the Faculty of Law, University of Business Academy, Novi Sad,
e-mail: mirela_tahirovic@hotmail.com

and conditions for their application.¹ The basic purpose and purpose of criminalization should be to protect certain, most important goods and values from the behaviour that threatens them and the protective function of criminal law should be subsidiary and apply only when the object of protection cannot be otherwise protected. It is important to note that not every attack on a particular good is sufficient to incriminate such behaviour, but it must be of certain intensity, and that the good to be protected is of such a quality that it is justified to criminalize the behaviour that threatens or violates it.²

The incrimination of certain conduct is not yet complete, it is legal or normative and acts preventively, as well as the possibility of its application, and however, the application of criminal law in the function of general prevention is necessary.³ To this end, the Code⁴ prescribes criminal sanctions, which are imposed on the perpetrator of a criminal act or an unlawful act that is designated by law as a criminal act.⁵ The law provides criminal, repressive measures, which are pronounced exclusively by the court in criminal proceedings.

These measures represent a certain evil or threat of evil for the perpetrator of a criminal or unlawful act, which confiscates or restricts certain rights, but to the extent appropriate to the nature and content of the sanction, respecting the personality and dignity of the perpetrator's personality and they must be provided in the criminal code.⁶ These are measures of social response to the perpetrators of criminal offenses, which are pronounced by the court in cases and conditions determined by law, in order to protect society from crime.⁷

In prescribing criminal sanctions, it determines both their general and specific purpose whose fulfilment should be the goal/the aim. By fulfilling

¹ Stojanovic, Z., Skulic, M., Delibasic, V., (2018). Osnovi krivičnog i krivičnog procesnog prava, [Fundamentals of Criminal and Criminal Procedure Law]. Beograd, Advokatska komora Srbije p. 29.

² Stojanovic, Z., (2011). Preventivna funkcija krivičnog prava, [Criminal Law Preventive Function]. *Crimen* (1), p. 17.

³ *Ibid.*, p. 6.

⁴ Krivični zakonik Republike Srbije, [Criminal Code of the Republic of Serbia]. *Službeni glasnik RS*, no. 85/05, 88/05 – ispr., 107/05 – ispr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

⁵ These are incomplete offenses committed in an objective sense, lacking a subjective element in the general notion of a crime – guilt. See: Stojanovic, Z., Skulic, M., Delibasic, V. op. cit.

⁶ Djordjević, M., Djordjević, Dj., (2004). Krivično pravo sa osnovama privrednoprestupnog i prekršajnog prava, [Criminal Law with the Basics of Commercial and Misdemeanor Law]. Beograd, Privredni savetnik, a.d. Beograd, Organizacijaza pravnu edukaciju i kulturu prava “Proiuris”, Multidisciplinarni centar za podsticanje internacionalnih procesa i harmonizaciju prava p. 72; Cejovic, B., Kulic, M., (2014). Krivično pravo, [Criminal Law]. Novi Sad, Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe, pp. 284-285.

⁷ Cejovic, B., Kulic, M., op. cit. p. 285.

their purpose, criminal sanctions can contribute to the achievement of the basic function of criminal law, with the achievement of other necessary conditions.

The paper will briefly address criminal sanctions in order to better understand their purpose and, in this sense, their contribution to combating crime. The method of content analysis of available literature and statistics was applied. The paper will also point to changes made by the Law on Amendments to the Criminal Code Amendments, which enters into force at the end of the year, and which are related to the subject matter.

On criminal sanctions

Criminal sanctions can be repressive or preventive. The former apply when a criminal offense has already been committed, while preventive measures are applied to prevent the commission of a criminal or illegal act. However, prevention and repression are interrelated and do not exclude each other. Repression is not just retribution to a crime. It is punished because it was a criminal offense, but also in the function of prevention, so that the crimes would not be committed in the future, and it is not an end in itself. It is characterized by both, the application of criminal sanctions and the threat of punishment.⁸

The degree of repressiveness of criminal sanctions can be magnified, because some sanctions represent a threat that the perpetrator will be restricted or deprived of a certain right or good, while others will be enforced.⁹

Prevention can be general – targeted at everyone, or at potential perpetrators, with the aim of deterring them from harming or endangering certain social values, while special prevention is directed at one/person who has already committed a crime in order to correct and deter him/her from the future commission of the offenses.¹⁰

The idea of general prevention achieved through intimidation by the threat of punishment prescribed (so-called negative general prevention) has long been known, but today its positive effect is emphasized, even its educational moral effect, which is understood in the broadest sense, is mentioned.¹¹ It is emphasized that an individual is not only punished for intimidation of others, that is, for deterring others from committing criminal offenses, by causing fear by threatening the punishment of possible perpetrators of crimes, but the perpetrator is punished

⁸ Stojanovic, Z., op. cit. p. 4.

⁹ Stojanovic, Z., Skulic, M., Delibasic, V., op.cit. p. 88.

¹⁰ Ignjatovic, A., (2007). *Krivično pravo – opšti deo*, [Criminal Law – General Section]. Novi Sad, Privredna akademija, p. 20.

¹¹ Stojanovic, Z., op. cit. p. 16.

for his actions, and to apply the punishment that was threatened. Negative prevention is not targeted at all citizens, but only at potential perpetrators, and there is a complaint that this approach has no effect when it comes to negligent offenses, especially when it comes to unwittingly negligent offenses, although it can be expected that criminalization/incriminating of negligent behaviour affects those who undertake certain activities, to act with special care and caution.¹²

In his work, author Stojanovic points out that certainty of the use of a preventive punishment has more effects when it comes to prevention than the severity of the sentence itself, and that some empirical research confirms the existence of a link between the preventive effect of punishment and the certainty of its application.¹³

The Code defines the general purpose of prescribing and imposing criminal sanctions, which is to suppress acts that violate or threaten the values protected by criminal law.¹⁴

Achieving the general purpose of prescribing and imposing criminal sanctions contributes to the accomplishment of the task of criminal law, which consists in protecting basic social values from the crime.¹⁵ Criminal law realizes its basic, protective function by general and special prevention aimed at suppressing acts that violate or threaten the values protected by the criminal law.¹⁶

In order to achieve the general purpose of prescribing and pronouncing, each criminal sanction has its own specific purpose, which it seeks to achieve, and by whose enforcement it is accomplished. Successful achievement or realization of this goal also achieves successful reintegration of convicts into society, which is also essential in the realization of the protective function of the criminal law.¹⁷

The criminal legislation of the Republic of Serbia provides penalties, warnings, security measures and educational measures as types of criminal sanctions, each of which, and for the general purpose, has its own specific purpose of prescribing and pronouncing.

¹² See more in detail: Stojanovic, Z., op. cit. p. 9-11.

¹³ See more in detail: Ibid., p. 11

¹⁴ Krivični zakonik Republike Srbije, [Criminal Code of the Republic of Serbia]. *Službeni glasnik RS*, no. 85/05, 88/05 – ispr., 107/05 – ispr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16, Article 4, paragraph 2.

¹⁵ Cejovic, B., Kulic, M., op. cit. p. 27.

¹⁶ Stojanovic, Z., Skulic, M., Delibasic, V., op. cit. p. 89.

¹⁷ Zakon o izvršenju krivičnih sankcija, [Law on Execution of Criminal Sanctions]. *Službeni glasnik RS*, no. 55/14 and 35/19, Article 2.

Penalties

In the system of criminal sanctions, penalties are criminal sanctions in which the level of repression is the highest, and they are applied to the perpetrator of the crime, on the basis of a court decision, after conducting criminal proceedings, in order to suppress crime.¹⁸ In order to apply it, it is necessary that a criminal act has been committed, considering this concept in an objectively subjective term.

National legislation distinguishes between imprisonments, a fine; work in the public interest and revocation of a driver's license. Amendments to the Criminal Code provide a new type of sentence – life imprisonment.¹⁹ This sentence was introduced in response to the need to respond to and combat the most serious crimes, and it was prescribed that it could be imposed on the perpetrator of the most serious crimes and the most serious forms of crime.²⁰

In addition to the general purpose of punishment, punishment, like other criminal sanctions, has a specific purpose of punishment. There are three theories of punishment – absolute, relative and mixed theory.

The first theory takes the view that punishment is an end in itself, because its purpose is to restore evil for the evil done, and this understanding is abandoned today. Punishment is not, and should not be, an end in itself, but punishment should also be directed at achieving other goals.

Relative theory, as opposed to absolute theory, sees punishment as a means of achieving other goals that are aimed at protecting society from crime and are future-oriented, that is, punishment should be achieved by general and special prevention. General prevention influences potential perpetrators and can be positive and negative. Positive prevention supports positive social norms and strengthens those that can be an obstacle to committing crimes, while negative general prevention prevents potential perpetrators from committing crimes by intimidation. Special prevention is aimed at discouraging the perpetrator who has already committed a crime and can consist of intimidation, elimination and neutralization of the perpetrator or his/hers re-socialization.²¹

¹⁸ Stojanovic, Z., Skulic, M., Delibasic, V., op. cit. p. 89.

¹⁹ Zakon o izmenama i dopunama Krivičnog Zakonika, [Law on Amendments to the Criminal Code]. *Službeni glasnik RS*, no. 35/19; The law enters into force on December 1st 2019.

²⁰ Ibid. Article 3, which changes Article 44, paragraph 1 of the Criminal Code.

²¹ Stojanovic, Z., Skulic, M., Delibasic, V., op. cit., p. 90.

Mixed theories or eclectic theories accept the goals of both absolute and relative theories, holding that both prevention and retaliation are common goals of punishment.²²

In domestic law, relative theory is represented. Article 42 of the Criminal Code defines prevention as a general punitive purpose. The general purpose of punishment is both general and special prevention.

Special prevention is to prevent the perpetrator from committing acts and to influence him/her not committing crimes in the future. The goal is to educate the perpetrator in terms of correcting, but in addition, the penalties are still repressive.²³ Namely, the punished sentence is the criminal sanction on which the criminal law is based, because other criminal sanctions do not have the influence it has, they are secondary or supplementary, and some, like alternative criminal sanctions, are unimaginable without it.²⁴

Influencing others not to commit criminal offenses generates general prevention, while positive general prevention is reflected in the expression of social condemnation for the crime, strengthening morale and strengthening the obligation to obey the law.²⁵

With the latest amendments to the Criminal Code of 2019, the purpose of punishment has been supplemented, and the achievement of fairness and proportionality between the act committed and the severity of the criminal sanction is intended as punitive purpose.²⁶ The Explanation of the Draft Amendments to the Criminal Code of April the 22nd, 2019 states that determining the purpose in this way gives guidance to judges in sentencing, in order to achieve the purpose of punishment.²⁷ In theory, the principle of fairness and proportionality is one of the basic principles on which criminal law rests and implies that the criminal sanction must be fair and commensurate with the act done.²⁸

In the continuation of the paper, the author will look at some types of criminal sanctions. A more detailed analysis of each criminal sanction would require a special detailed paper/work.

²² Cejovic, B., Kulic, M., op. cit. p. 301.

²³ Djordjevic, M., Djordjevic, Dj., op. cit. p. 72.

²⁴ Stojanovic, Z., op. cit. p. 6.

²⁵ Stojanovic, Z., Skulic, M., Delibasic, V., op. cit. p. 90

²⁶ Zakon o izmenama i dopunama Krivičnog Zakonika, [Law on Amendments to the Criminal Code]. *Službeni glasnik RS*, no. 35/19, Article 1, which changes Article 42 of the Criminal Code

²⁷ Ministarstvo pravde, [Ministry of Justice]. (2019, August, 22). Justification. Retrieved from: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa>.

²⁸ Stojanovic, Z., (2006). *Krivično pravo – opšti deo*, [Criminal Law – General Section]. Beograd, Pravna knjiga, pp. 44-45.

Life imprisonment

Serbian legislation distinguishes between imprisonment, a fine, a sentence in the public interest and a sentence of revocation of a driver's license. Although arguments have been raised against imposing a life sentence in our criminal legislation, this sanction was introduced by the Criminal Code Amendment Act, which is scheduled to take effect from December, 2019.

Life imprisonment is the strictest sentence that can be imposed, and when deciding whether to introduce it into domestic legislation, there was much controversy and the professional public was divided.

This sanction was implemented as a separate type of sentence, in addition to the existing four that our legislation knows (imprisonment, fine, work in the public interest and revocation of a driver's license).

As an expression of the desire to tackle the most serious crimes, life imprisonment was introduced as a substitute for the most serious criminal sanction that our legislation knows, or as a substitute for a sentence of imprisonment of 30 to 40 years, and is intended for the most serious crimes and the most serious forms of criminal offenses. In support of the proposal to amend the Code, it is emphasized that there is no reason for these two sanctions to exist simultaneously and that life imprisonment is a substitute for imprisonment for the said duration. As the most severe sanction, it would be pronounced exceptionally, and its pronouncement would be excluded when it comes to the perpetrator who at the time of committing the crime did not reach the age of twenty-one, as well as in cases where the sentence can be mitigated or if there are any grounds for release from punishment.²⁹

Although it was introduced with the aim of combating the most serious crimes, on the grounds that it is known by other European countries (Macedonia, Italy, Germany, Finland, France and other countries), the question is whether and to what extent it will be pronounced, given that the sentence of imprisonment of between 30 and 40 years was less frequently pronounced, although this number should not be taken lightly, given that it was an aggravated criminal sanction.³⁰

²⁹ See more in Explanation: <https://www.mpravde.gov.rs/section/53/radne-verzije-propisa.php>

³⁰ According to the data provided by the Statistical Office of the Republic of Serbia in 2014, two persons were sentenced to 40 years in prison and eleven to 30 to 40 years in prison. In the next year 2015, four people were sentenced to 40 years in prison and thirteen to 30 to 40 years in prison. In 2016, five were sentenced to 40 years in prison and nine to 30 to 40 years imprisonment. In 2017, two were sentenced to 40 years in prison and eleven to imprisonment of 30 to 40 years. In 2018, three people were sentenced to 40 years in prison and seven to 30 to 40 years in prison. See: Republički zavod za statistiku (2019, Avgust 20). Saopštenje. SK12, [Communication SK12]. no. 192, volumen LXIX, od 16.07.2019., Preuzeto sa: <http://www.stat.gov.rs/publikacije/>

In addition to eliminating the lack of a sentence of 30 to 40 years in prison, proponents of this sanction believe that prescribing this sanction alone will affect potential perpetrators not to commit crimes; while opponents of imposing this sentence, among other things, point out that it is not humane.³¹

Recent changes to the criminal legislation give the impression that criminal law is turning to retribution, not prevention. The authors of this paper agree with Stojanovic's position, which emphasizes that excessive and widespread repression is not the best solution, but that it can have opposite effects than desired, while prevention is thus neglected. Preventive action in the broadest sense can have the effect of reducing criminality, and by punishing perpetrators with a commensurate sentence, or a moderate sentence crime can be reduced, as harsher penalties are applied exceptionally, or less often than moderate ones, and punishment should be in line with the principle fairness and proportionality.³² According to Pavlovic, a generally preventive distinction is made between the effect of a 40-year prison sentence and a life sentence, through the subjective perspective of who is being punished. One who spends 40 years in prison, with the accompanying socio-economic consequences, and due to the preconsolidation and multiple pressures of life on the loose are even more attractive to stay in prison for life.³³

The question is whether the foreseen ability of this criminal sanction and its implementation will satisfy the needs of its introduction and whether it will contribute to the achievement of the general purpose of criminal sanctions and criminal law in general.

Prison sentence

Imprisonment is a criminal sanction consisting of the deprivation of liberty of the perpetrator, and the sentence of imprisonment is expected to have a general preventive effect.³⁴ This sanction implies the deprivation of the right to move freely for a definite time, to the perpetrator of the crime.³⁵

The Serbian legislation stipulates that this sanction cannot be imposed for less than 30 days or for more than 20 years, and, as already mentioned,

³¹ See more in Explanation: <https://www.mpravde.gov.rs/section/53/radne-verzije-propisa.php>

³² Stojanovic, Z., Criminal Law Preventive Function, pp. 3-5.

³³ Pavlovic, Z., (2019). Kaznena politika u Republici Srbiji – Aktuelne izmene i kriminalno politička opravdanost, [Criminal Policy in the Republic of Serbia – Current Changes and Criminal Political Justification]. *Pravni život*, (9), pp. 181-198.

³⁴ Stojanovic, Z., Skulic, M., Delibasic, V., op. cit. p. 91.

³⁵ Cejovic, B., Kulic, M., op. cit. p. 304.

provides replacement for a sentence of imprisonment of 30 to 40 years – life imprisonment.

In addition to the ordinary, the Code also provides a special modality for the execution of the sentence of imprisonment, so there is a possibility that this sentence may be carried out in the premises where the perpetrator resides, whereby the court, when pronouncing this measure, must take into account the perpetrator's personality, his earlier life, his post-work detention, the degree of guilt and other circumstances under which the offense was committed, and must assess whether, having regard to these circumstances, it can be expected that the purpose of the punishment will be thus achieved.³⁶

In this way, the mentioned principle of fairness of proportionality is also realized.

Today, this type of criminal sanction is widely used,³⁷ although there are some objections to the justification of this sanction.³⁸ Criminal law today would be unthinkable without it, especially when alternative sanctions are at stake. The mere prescribing and the possibility of applying this punishment has a positive effect on the reduction of crime, and the certainty of its application is what can have the effect of reducing the crime. In sentencing,³⁹ the meaning and purpose of punishment should be kept in mind, and the legislator and the goals he wishes to achieve, because harsh penalties do not always lead to a reduction in crime, but on the contrary, they must be commensurate with the crime committed.

³⁶ Criminal code, article 45.

³⁷ According to the Statistical Office of the Republic of Serbia, in 2018, 7408 adult persons were sentenced to imprisonment, while a total of 29750 adult persons were sentenced, and the most common sanction was a suspended sentence (16880).

³⁸ Read more: Cejovic. B., Kulic, M., op. cit. pp. 305-306

³⁹ Sentencing is the determination of the amount of the sentence in each particular case and may be legal or judicial, depending on whether the amount of the sentence is specified by law or determined by the court. In order to make the sentence more effective, the court takes into account its individualization when imposing the sentence. The goal of individualizing punishment is to make it more effective. The court, when deciding on a criminal sanction, or when imposing a sentence (within the statutory limits for that offense), must bear in mind the purpose of punishment and take into account all the circumstances that are relevant to the decision on the criminal sanction, and in particular: the degree of guilt, the motives from which the offense was committed, the severity of the threatened or violated protected property, the circumstances under which the offense was committed, the perpetrator's earlier life, his personal circumstances, his holding after the crime was committed, and in particular his attitude towards the victim of the crime, as well as other circumstances that refer to the offender's personality, the offender's financial status when it comes to imposing a fine. See Criminal Code Article 54.

A fine

A fine is a pecuniary sanction consisting of an obligation for the offender to pay a certain amount of money and in our law can be assessed and imposed in daily amounts or in a fixed amount and can be imposed as a capital and ancillary penalty. Although this is one of the widely used criminal sanctions, there are objections to this punishment (that it affects not only the convicted person, but also other persons, especially the family members of the convicted person; payments; inefficiency; inefficiency in the field of general prevention).⁴⁰

Work in the public interest

Work in the public interest is any socially beneficial work that does not offend human dignity and which is not performed for the purpose of profit (Article 52, paragraph 1st, point 2nd), and which is imposed, with the consent of the offender, for acts that are prescribed prison term up to three years or a fine. In imposing this sentence, the court takes into account the type of crime committed, the perpetrator's personality and willingness to perform work in the public interest, but must also bear in mind the purpose of the punishment.⁴¹

Withdrawal of driving license

The Code recognizes two similar content institutes – a safety measure banning motor vehicle driving and a penalty for revoking a driver's license. Although similar in content, these two institutes differ significantly. One institute is a security measure, while the other is a punishment, so the conditions of imposing, the persons whom they are pronounced and the purpose are different so the two of this cannot be pronounced together. This criminal sanction is a punishment that differs from the safety prohibition of driving a motor vehicle, among other things, in its retributive nature, since the withdrawal of a driver's license restricts in a certain way the freedom of movement. However, prescribing this sentence also provides for special prevention, preventing the offender from using the vehicle in the future for new offenses.⁴²

⁴⁰ Read more: Cejovic, B., Kulic, M., op. cit. pp. 329-334.

⁴¹ Criminal Code, Article 52.

⁴² Stojanovic, Z., Skulic, M., Delibasic, V., op. cit. p. 96.

Warning measures

Judicial admonition and probation are cautionary measures. These measures apply to the offender when it can be expected to sufficiently influence the offender to no longer commit the offenses and that the general purpose of the criminal sanctions can only be achieved by warning or warning with the threat of punishment. In relation to punishment these measures are alternative and their application is related to it.

Their application depends on the nature, gravity and type of the crime and the personality of the perpetrator, if it can be expected that its application would serve the purpose of a criminal sanction, which is above all a preventive, special character. It rests on the belief that the perpetrator will not commit any criminal offenses in the future and will comply with the norms of the legal order. Considering the nature, character and effect of these measures, their humane character stands out.⁴³ The administrative sanctions are applied to the perpetrator of the minor offense, because a suspended sentence is imposed when the perpetrator has been sentenced to a term of less than two years and cannot be imposed for those offenses for sentenced to ten years or more,⁴⁴ and less than one year in the case of a court sentence. The purpose of these sanctions is not to apply punishment to the perpetrator of a minor offense when it can be expected that probation or admonition will sufficiently influence the perpetrator to no longer commit crimes. They are specifically preventive and targeted at the offender. In imposing this sanction, the court must take into account the circumstances of the crime committed and the offender already discussed, taking into account the purpose of this criminal sanction, assessing whether this measure may sufficiently affect the offender in the future committing of criminal offenses, without the need for severe sanctions or imprisonment.

Our legislation recognizes judicial admonition as a warning measure, which represents the mildest criminal penalty. The admonition of the court refers to the socio-ethical reprimand for the perpetrator for the crime committed, and he/she is warned that a more severe sanction would be applied to him/her if he/she committed the crime again. This measure is especially

⁴³ Jovasevic, D., (2016). Uslovna osuda u francuskom krivičnom pravu, [Conditional sentence in French criminal law]. *Zbornik radova Pravnog fakulteta u Nišu*, 55 (73), pp. 46-47.

⁴⁴ According to the latest amendments to the Code, which are scheduled to enter into force in December 2019, the possibility of imposing this sanction has been reduced, since the limit for offenses for which a suspended sentence cannot be imposed has been changed, and it is provided that this sanction cannot sentence to offenses up to eight years.

preventiv⁴⁵ and is applicative when the offense for which imprisonment of up to one year and a fine has been committed, with the exception of certain conditions, in the case of criminal offenses punishable by imprisonment of up to three years, and under extenuating circumstances that make it particularly mild in the present case. When imposing a criminal sentence, the court must also bear in mind its purpose, in addition to other relevant circumstances.

A suspended sentence is a warning measure that is imposed when the offender is given a sentence of imprisonment of less than two years, and cannot be imposed in the case of an offense for which a sentence of ten years' imprisonment or a heavier sentence may be imposed, nor can it be imposed unless more than five years have elapsed since the conviction of the perpetrator of the sentence of imprisonment for premeditated crime.

In addition to this basic form of probation, our legislation recognizes also another form. The Code prescribes the designation of protective supervision against the offender as a form of measures that provide the necessary assistance to the offender and supervise the offender, when it is necessary and proactive to act upon the offender by applying the necessary control and assistance measures to deter the offender from committing the future offenses. Therefore, when it is not possible to achieve the purpose of this type of criminal sanctions by the very threat of punishment, then the offender applies protective surveillance measures to sufficiently influence him/her not to re-offend. Protective surveillance measures can be of different content.⁴⁶

In deciding what form of probation is to be pronounced in a particular case, the court takes into account the nature of the crime and the circumstances under which it was committed, as well as the personality of the perpetrator, assessing whether this measure would positively influence the perpetrator not to commit any criminal offenses in the future.

Security measures

Security measures are stand-alone criminal sanctions that differ from other criminal sanctions in content and purpose, and are introduced in response to the need to respond to criminality in a different way, through the implementation of measures aimed at special prevention.⁴⁷

⁴⁵ Stojanovic, Z., Skulic, M., Delibasic, V., op .cit., p. 112.

⁴⁶ See in more detail Article 73 of the Criminal Code.

⁴⁷ Drakic, D., (2005). Svrha mera bezbednosti kao krivičnih sankcija – svrha mera bezbednosti prema Osnovnom krivičnom zakonu, [Purpose of Security Measures as Criminal Sanctions – Purpose of Security Measures under the Basic Criminal Law]. *Zbornik radova Pravnog fakulteta, Novi Sad*, 39 (3), p. 122.

Article 78 of the Criminal Code prescribes the purpose of security measures, thereby indicating the aims pursued by prescribing and imposing security measures, their place and importance within the general purpose of criminal sanctions aimed at combating crime.

Their purpose, in order to achieve the general purpose of suppressing acts which jeopardize or violate the values protected by the criminal legislation, is to eliminate conditions or conditions that may influence the offender from committing criminal offenses in the future, and they are of a preventive nature and their application does not depend on the perpetrator's guilt. The purpose of these measures is to combat crime through the application of measures aimed at eliminating causes related to the perpetrator's personality, environment, environmental and life circumstances.⁴⁸ These measures are aimed at eliminating conditions or conditions that may influence the perpetrator to do the deeds, and in that sense they are oriented towards the future and special prevention, which is the main goal/aim. The purpose is to improve and deter the perpetrator of the (new) criminal offenses by applying security measures, since in certain offenders the punishment cannot act appropriately. In this sense, it is necessary that the offender or the unlawful act specified in the law as a criminal offense have conditions or conditions that may affect him or her to re-offend and there is a high likelihood that they will occur, but to apply a precautionary measure can eliminate these conditions or conditions.⁴⁹

Criminal law theory refers to a special psychological state in which the perpetrator of the crime is, such as permanent or temporary mental illness, temporary mental disorder, retarded mental development, a state of addiction on alcohol and using drugs.⁵⁰ Conditions are circumstances that have a stimulating effect on the perpetrator and which, together with other personality traits, may act criminogenically and cause criminal behaviour, and relate to his or her environment, environmental and life circumstances. The measure should affect the perpetrator for a certain period of time and prevent him from finding himself again in conditions which adversely affect him/her and which encourage him/her to commit a crime.⁵¹

In addition to special prevention, these measures also work in general, but to a lesser extent than penalties. Since their introduction in our legislation (1929) to the present day, their number has changed and today our legislation

⁴⁸ Drakić, D., op. cit., p. 124.

⁴⁹ Drakic, D., Stojanovic, Z., Skulic, M., Delibasic, V., op. cit., pp. 113-114.

⁵⁰ See: Drakic, D., op. cit., p. 125.

⁵¹ Ibid., p. 126.

provides a greater number of security measures (eleven), all different in their content.⁵² The purpose of a particular security measure depends on the condition or condition that is the cause of the criminal behaviour, and in that sense it differs in each of them.

The purpose of medical measures⁵³ is to eliminate dangerous conditions through their treatment. Thus, the purpose of the safety measures of compulsory psychiatric treatment and care in a health care institution or compulsory psychiatric treatment at large, is to eliminate the danger posed by the perpetrator of the criminal act or unlawful act when it comes to unaccountable persons, which is reflected in treatment or treatment for removal of conditions that are and can be the cause of committing a criminal or unlawful act, and psychopathological processes are at stake. And when it comes to the security measure of compulsory treatment of drug users or the safety measure of compulsory treatment of alcoholics and their purpose is directed towards treatment, but mostly towards the elimination of substance abuse or alcohol, due to the serious risk that delinquent behaviour will result from the mentioned addiction.⁵⁴

In addition to medical security measures, there are measures to deprive the perpetrator of some right and to prohibit the pursuit of a particular activity for a limited period.⁵⁵ The purpose of a restraining order, activity and duty is to prevent the offender from performing a particular call, a particular activity or a duty for a certain period of time, which may have a stimulating effect on him/her, and the continued pursuit of such an activity may be justified. By prohibiting the operation of a motor vehicle, the offender is prevented from

⁵² The Code specifies the following security measures that can be imposed on the perpetrator of the criminal offense, as well as on the perpetrator of the illegal act, which is defined in the law as a criminal offense: compulsory psychiatric treatment and care in a health institution; compulsory psychiatric treatment at large; compulsory drug treatment; compulsory treatment of alcoholics; a ban on the performance of calls, activities and duties; ban on operating a motor vehicle; confiscation of objects; expulsion of a foreigner from the country; public disclosure of the judgment; ban on approaching and communication with the injured party; ban on attending certain sports events. In order to impose these measures it is necessary to fulfill the necessary conditions for it to be legitimate, since these measures also in a certain way affect the rights and freedoms of the individual. See: Drakic, D., op. cit., p. 123-124.

⁵³ These are the following measures: required psychiatric treatment and care in a healthcare facility; compulsory psychiatric treatment at large; compulsory treatment of drug users and compulsory treatment of alcoholics.

⁵⁴ Drakic, D., op. cit. p. 127.

⁵⁵ These include the prohibition of making calls, activities and duties and the prohibition of operating a motor vehicle.

operating the motor vehicle for a certain period of time, because of the danger that the offender operates a motor vehicle of a particular type or category.⁵⁶

The seizure security measure means that certain items intended for the commission of a crime, which have been used or have been committed by a criminal offense, which may influence the perpetrator to repeat the crime or are necessary to protect the general security or are necessary for moral reasons, as conditions which may cause the offender to repeat the crime, are seized from the offender.⁵⁷

The expulsion of a foreigner from the country is a security measure that is closer in content to punishment,⁵⁸ the purpose of which is to apply the person to whom he/she was sentenced to be expelled from the territory of Serbia for a certain period of time and thus prevent him/her from committing criminal offenses in his territory in the future.⁵⁹

Public disclosure of a judgment is a security measure imposed on offenses that have been committed through the media or have caused a threat to human life or health. The purpose of the publication of the judgment is to eliminate or reduce this danger.

The prohibition on approaching and communication with the injured party is aimed at protecting the injured party from harassment and the actions of the perpetrator who may be considered dangerous to the injured party. The application of this measure protects the injured and indirectly affects the offender.

The ban on attending certain sporting events is a measure aimed at protecting general safety, and in a certain way can act positively on the offender and act positively on him/her in the sense that he/she does not commit any crimes in the future.

Educational measures

Educational measures are criminal sanctions imposed on juvenile offenders. Special rules apply to this category of perpetrators and it has a special criminal legal status in our criminal law.

The criminal law matter pertaining to this category of perpetrators is regulated by a separate law. The provisions that are primarily applicable are

⁵⁶ Ibid.

⁵⁷ Criminal Code, Article 87.

⁵⁸ Drakic, D., op. cit., p. 123.

⁵⁹ Ibid., p. 127; Article 88 of the Criminal Code.

contained in the Law on Juvenile Offenders and the Criminal Justice Protection of Minors,⁶⁰ while the criminal law provisions contained in other regulations apply unless they are contrary to the mentioned law.

A minor is one who, at the time of the offense, was fourteen years of age and had not attained the age of eighteen. A person who is under the age of fourteen at the time of committing an unlawful act, in a law designated as a criminal offense, is considered a child and is not criminally responsible, and no criminal sanctions can be imposed against him/her.

The law distinguishes between younger and older minors. A younger minor is considered to be a person who, at the time of the commission of the crime,⁶¹ has reached the age of fourteen and has not attained the age of sixteen; while an elderly minor is considered to be a person who, at the time of the offense, had reached the age of sixteen and had not attained the age of eighteen.

The provisions of this law also apply to adults when they are on trial for acts they committed as minors. Under certain conditions, the provisions of this law may also apply to certain categories of adult perpetrators of criminal offenses – to the person who committed the crime as a young adult. A young adult is one who, at the time of the offense, has reached the age of eighteen and has not attained the age of twenty-one at the time of trial.

The reason why special rules apply to this category of perpetrators is that the minor's personality in biological, psychological and social terms is significantly different from that of an adult. An imbalance can occur during the maturing process because personality does not mature equally in biological, psychological or social sense and does not occur in parallel in all segments. In addition to the uneven and unequal development of these aspects of personality, which are interrelated, conditioned and dependent, the personality of a minor is also influenced by external factors.⁶²

Considering the aforementioned specifics, the criminal law applicable to this category of perpetrators is different from that applicable to adult perpetrators of criminal offenses.

Criminal sanctions applicable to minors are: educational measures, punishment of juvenile imprisonment, security measures, and in addition to

⁶⁰ Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, [Law on Juvenile Offenders and Criminal Justice Protection of Minors]. *Službeni glasnik RS*, no. 85/05.

⁶¹ According to Article 16 of the Criminal Code, the time when the perpetrator committed the act or was obliged to work, regardless of when the consequence of the act occurred.

⁶² Drakic, D., (2010). O krivičnoj odgovornosti maloletnika, [On the Criminal Liability of a Juvenile]. Novi Sad, Sremski Karlovci, Izdavačka knjižarnica Zorana Stojanovića, pp. 11-13.

sanctions, educational orders may be applied to this category of perpetrators, the purpose of which is not to institute criminal proceedings against a juvenile and to apply sanctions; but rather that they are being influenced not to commit crimes in the future.

Educational measures are criminal sanctions that are applied to juvenile offenders whose purpose is to influence the proper development and strengthening of personal responsibility, and to enable the reintegration of minors into society, with supervision, protection and necessary assistance. In addition to educational measures, juvenile perpetrators can be sentenced to imprisonment under certain conditions, but the goal here is not retaliation, but increased influence on him/her, but also on other persons not to commit criminal acts in the future.⁶³

Conclusion

Crime is a complex phenomenon that threatens the rights and interests of both society and the individual, and the fight against crime is necessary but complex and time-consuming. Criminal legislation plays an important role in this aim.

The criminal law realizes a protective function by prescribing certain behaviours as criminal acts, as well as prescribing and imposing criminal sanctions for acts that endanger or violate these values, and the conditions for their application.

In defining criminal sanctions, the Code defines, in addition to the general purpose (suppression of acts that violate or threaten the values protected by the criminal legislation) also the individual purpose of criminal sanctions.

The purpose of punishment is both general and special prevention, which consists in preventing the perpetrator from committing acts and influencing him/her, as well as others, from committing crimes in the future, and expressing social conviction for the crime, enhancing morale and strengthening the obligation to obey the law. The latest amendments to the Criminal Code, which came into force at the end of 2019, have been supplemented by the purpose of punishment – to achieve fairness and proportionality between the act committed and the gravity of the criminal sanction, which is one of the basic principles of criminal law.

The precautionary measures are the mildest criminal sanctions, which are directed at the perpetrator and act especially preventively. Their purpose

⁶³ More: Stojanovic, Z., Skulic, M., Delibasic, V., op. cit. p. 132.

is not to apply punishment to the perpetrator of a minor offense when it can be expected that a suspended sentence or judicial admonition will sufficiently affect him or her to no longer commit crimes.

Security measures are especially preventive and differ from other criminal sanctions in content and purpose. Their purpose is to eliminate conditions or conditions that may cause the perpetrator not to commit criminal acts in the future and are preventive in nature, aimed at eliminating causes related to the perpetrator's personality, environment, environmental and life circumstances.

Considering the specifics of the minor's personality, which are significantly different from that of adults, special rules apply in criminal law to juvenile offenders. The meaning of the criminal sanctions applied to them is not retribution, but a (heightened) influence on the proper development and strengthening of personal responsibility and enabling the reintegration of minors into society, with supervision, protection and necessary assistance.

The achievement of the specific and general purpose of criminal sanctions is essential for the protection of the role played by criminal law, which is aimed at curbing crime. Crime is a phenomenon that is widespread and which is necessary to fight against it. As this is a complex phenomenon, that is influenced by many factors, working on reducing it, is long and complex and requires the successful application of criminal law. It is, however, just one of the many factors that seek to contribute to the achievement of this goal/aim. The initial premise, however, should be, that prevention is an essential tool in crime prevention, not only in the context of tertiary but also primary prevention. Criminal law should be applied secondarily, when other measures do not produce results. Harsh punishment may not always produce the desired results, while moderate and proportionate punishment may be effective. Prevention work is necessary because it can eliminate or at least reduce the causes and conditions that lead to crime.

Đuričić Nada

Docent, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Univerzitet Privredna akademija u Novom Sadu

Tahirović Mirela

Doktorand, Pravni fakultet za privredu i pravosuđe, Univerzitet Privredna akademija u Novom Sadu

SVRHA KRIVIČNIH SANKCIJA U PRAVU REPUBLIKE SRBIJE

REZIME: Predmet rada je opšta i posebna svrha krivičnih sankcija u pravu Republike Srbije, uz kratak prikaz određenih karakteristika krivičnih sankcija, a u cilju njihovog boljeg razumevanja. Ostvarenje svrhe propisivanja i izricanja krivičnih sankcija doprinosi ostvarenju osnovne funkcije krivičnog prava, koja je usmerena na suzbijanje kriminaliteta. Smanjenje kriminaliteta je neophodno, ali kako je u pitanju kompleksna pojava, ostvarenje ovog cilja nije lako, a razumevanje svrhe krivičnih sankcija može da doprinese uspešnijoj primeni krivičnog prava i u tom smislu uspešnijem suzbijanju ove negativne pojave.

Ključne reči: *krivične sankcije, svrha krivičnih sankcija*

Literature

1. Cejovic, B., Kulic, M., (2014). Krivično pravo, [Criminal Law]. Novi Sad, Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe
2. Drakic, D., (2005). Svrha mera bezbednosti kao krivičnih sankcija – svrha mera bezbednosti prema Osnovnom krivičnom zakonu, [Purpose of Security Measures as Criminal Sanctions – Purpose of Security Measures under the Basic Criminal Law]. *Zbornik radova Pravnog fakulteta, Novi Sad*, 39 (3), pp. 121-128
3. Drakic, D., (2010). O krivičnoj odgovornosti maloletnika, [On the Criminal Liability of a Juvenile]. Novi Sad, Sremski Karlovci, Izdavačka knjižarnica Zorana Stojanovića

4. Djordjević, M., Djordjević, Dj., (2004). Krivično pravo sa osnovama privrednoprestupnog i prekršajnog prava, [Criminal Law with the Basics of Commercial and Misdemeanor Law]. Beograd, Privredni savetnik, a.d. Beograd, Organizacijaza pravnu edukaciju i kulturu prava “Proiuris”, Multidisciplinarni centar za podsticanje internacionalnih procesa i harmonizaciju prava
5. Ignjatovic, A., (2007). Krivično pravo – opšti deo, [Criminal Law – General Section]. Novi Sad, Privredna akademija
6. Jovasevic, D., (2016). Uslovna osuda u francuskom krivičnom pravu, [Conditional sentence in French criminal law]. *Zbornik radova Pravnog fakulteta u Nišu*, 55 (73), pp. 45-65
7. Pavlovic, Z., (2019). Kaznena politika u Republici Srbiji – Aktuelne izmene i kriminalno politička opravdanost, [Criminal Policy in the Republic of Serbia – Current Changes and Criminal Political Justification]. *Pravni život*, (9), pp. 181-198
8. Ministarstvo pravde, [Ministry of Justice]. (2019, Avgust 22). Obrazloženje. Preuzeto sa: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa>
9. Republički zavod za statistiku (2019, Avgust 20). Saopštenje. SK12, [Communication SK12]. no. 192, volumen. LXIX, od 16.07.2019., Preuzeto sa: <http://www.stat.gov.rs/publikacije/>
10. Stojanovic, Z., (2006). Krivično pravo – opšti deo, [Criminal Law – General Section]. Beograd, Pravna knjiga
11. Stojanovic, Z., (2011). Preventivna funkcija krivičnog prava, [Criminal Law Preventive Function]. *Crimen* (1), pp. 3-25
12. Stojanovic, Z., Skulic, M., Delibasic, V., (2018). Osnovi krivičnog i krivičnog procesnog prava, [Fundamentals of Criminal and Criminal Procedure Law]. Beograd, Advokatska komora Srbije
13. Krivični zakonik Republike Srbije, [Criminal Code of the Republic of Serbia]. *Službeni glasnik RS*, no. 85/05, 88/05 – ispr., 107/05 – ispr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16
14. Zakon o izvršenju krivičnih sankcija, [Law on Execution of Criminal Sanctions]. *Službeni glasnik RS*, no. 55/14 and 35/19
15. Zakon o izmenama i dopunama Krivičnog zakonika, [Law on Amendments to the Criminal Code]. *Službeni glasnik RS*, no. 35/19
16. Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, [Law on Juvenile Offenders and Criminal Justice Protection of Minors]. *Službeni glasnik RS*, no. 85/05