

Alternative Measures in Macedonia

PhD Candidate Adrian Leka

Faculty of Law, University of Shkoder "Luigj Gurakuqi", Shkoder, Albania, 4001
Email: leka-ad@live.com

Doi:10.5901/ajis.2014.v3n3p60

Abstract

Alternative measures represent modern reforms to penal sanctions. With legislative changes of 2004 the Macedonian Penal Code has provided alternative measures as types of criminal sanctions. Based on the practice of other states and their effect in practice, this legislation has seen it appropriate to its provisions to foresee these types of alternative measures: the conditional sentence, conditional sentence with protective supervision order, conditional termination of criminal proceedings, community Service Work, judicial remark, jail house. Until recently, is mostly imposed prison sentence for almost all types of offenses. Convicted persons have problems and difficulties encountered during the punishment due to not deviating the type of crime, social risk, their repetition and many other features. As a result it has come to the prison overcrowding that has not only presented a serious problem for the inmates but also for the country itself, because these have led to great expense to its budget. These problems among others have also brought inefficiency of the purpose of punishment in general, and that is the rehabilitation and improvement of the criminal perpetrator in the future not be the perpetrator of the offenses again. The reason of the inclusion of alternative measures has been needed. Earlier in the Penal Code of Republic of Macedonia have been foreseen only a suspended sentence and judicial admonition but with the 2004 legislative changes are also envisaged other types of alternative sentencing. Their goal is to make it easier for the perpetrators offense so that it is not pronounced the punishment of imprisonment. Also a very important factor is that the offenses for which these measures or alternative sanctions are not high risk offenses, and therefore the purpose of punishment will be achieved through the warning, threat or other measures to provide assistance and supervision of the conduct of the perpetrators of criminal acts. The imposition and their application will benefit not only those convicted but also the whole society, because not only will result in the reduction of the level of criminality, but also will increase their awareness in future not repeat offenses of the same or different. When imposing alternative measures determined by the court appointed time during which the offender must respect and implement the obligations, so the main objection is that in the future so that it is not pronounced the perform other offenses. During this stage in which the offender will be supervised is called probation phase. This probation phase also provides protection for society because in most cases the perpetrators who have been in the stage of testing have deviated committing new criminal offenses.

Keywords: Alternative measures, conditional sentence, criminal, legislative, offense, execution, court

1. Conditional Sentence

According to the criminal legislation of the Republic of Macedonia first type of alternative measures is conditional sentence. This kind of sanction has been also envisaged much earlier, and that is in addition to the legal provisions, has already created much wider application practice for many types of offenses. Even the government of Macedonia as well as many other countries supported this mixed measure or mixed system, where criminal perpetrator to criminal procedure they have imposed but suspended execution of it. This applies to offenses punishable up to 2 years imprisonment or a fine.

The court may also impose a special measure and other obligations which the offender must fulfill. Conditional sentence means the suspension of execution of sentence imposed for a certain time and for certain conditions. This alternative measure is also envisaged in Section 49 of the Penal Code of Republic of Macedonia. According to this article in Paragraph 1 is stated that with suspended sentence the offender criminal court confirms his sentence, and at the same time is determined that this sentence will not be executed, if the perpetrator, during the time the court decides, which can not be shorter than one year or longer than five years, does not commit a new offense. This time, during which the convicted person is placed under the control and supervision time is called verification.

By analyzing the nature, content, conditions and obligations that may be assigned to certain criminal perpetrator, provided that the penalty in force now is quite similar to that envisioned a suspended sentence in the Penal Code of 1996.

The court may order that the suspended sentence will not be executed even if;

- The offender does not return property acquired from criminal acts
- Does not pay the damages caused

- Does not fulfill the other conditions which has determined the legal provisions.

Suspended sentence imposed for a felony or misdemeanor _ which are punishable with imprisonment up to 2 years or a fine. The main conditions that affect the decision over to a suspended sentence by the court are: the personality of the offender, his life and to bring to the offense, his conduct after the commission of the offense, the degree of social threat, and other circumstances in which the offenses were committed. If the court imposes this measure and oblige the perpetrator to act in accordance with legal provisions, then he should respect and you realize precisely because not respecting them ,then that person will be convicted and will go to prison will be revoked the sentence imposed. When imposing this sanction of surveillance the court determines the person is not convicted.

2. Revocation of Probation

Conditional sentence that is imposed will be revoked for the following reasons: - If the convicted person during the verification phase commits one or more criminal offenses for which the penalty is two years or more, or when they are punished less than 2 years but the court shall consider the circumstances in which they are performed and the relationship between such acts. Between offense previous and current offense.

- If the convicted person has committed a crime before being conditional sentenced is imposed but for the same offense did not know earlier.
- If the convicted person has not complied with and paid certain obligations set forth by the court in imposing a conditional sentence of as liabilities are: the offender does not return property acquired from criminal acts does not pay the damages caused , does not fulfill the other conditions which has determined the legal provisions.

Even in the case of revocation to the court may make exceptions because there are cases like that collapsed. The court has an obligation to give the convicted person makes the realization of certain obligations that person so _ can not perform them for reasonable cause then there are times when it may even forgive or to replace it with an obligation which is much more likely to be realized. Even for them there is a legal definition of the term within which obligations can be carried from the court so it should be respected.

Time for revocation of conditional sentence and probation is the time which to according to paragraph 1 of Article 54 the Penal Code of Republic of Macedonia is set at intervals more than 1 year from the date when the time has passed probation. This deadline also is applied to cases where the convict does not carry any legal obligation in connection to the return of property acquired by criminal acts, damage compensation or other obligations. Based on statistics from the General Statistical Office of the Republic of Macedonia, conditional sentence is imposed almost for all chapters of offenses. A Conditional sentence is imposed for all offenses which are punishable by law up to two years in prison, and when the conditions provided

By analyzing the statistics from 2004-2006 clearly shows that over the years there has been growing in imposing a conditional sentence for several offenses or has been a decrease in their imposing.

3. Types of Offenses to which Most of Conditional Sentences were Imposed

1. Criminal Acts against life and body are offenses that have the greatest percentage of their commission and also imposing a suspended sentence, so in this chapter include some offenses, such as, murder, murder of a child during birth, the killing of negligence, bodily injury, serious bodily injury, participation in the beating of other offenses but mostly alternative measures, alternative sentence and judicial admonition imposed offenses are: bodily injury and serious bodily injury.
2. Another chapter of criminal offenses for which were imposed alternative measures are also offenses against marriage, family, and youth of the largest mass conditional sentence and judicial admonition is imposed for offenses such as non-payment of wellness. 3. To offenses against property conditional sentence is imposed mostly for offenses such as: burglary, grand larceny and fraud.
3. To offenses against public traffic safety is also very high level of offenses as well as alternative measures when imposing the suspended sentence especially, where most such sentences are given for the crime of endangering traffic safety.
4. The chapter of offenses against public order offense which has emphasis on alternative measures expressed in comparison with other offenses is illegal keeping of weapons and cluster tools. In general, by analyzing some statistics of years 2004, 2005 and 2006 obtained from the Statistical Office of the Republic of Macedonia since 2004 to 2006 shows conditional sentence because there was a gradual increase in 3612 sentences were imposed in 2004, in 2005 is 4307, while for 2006 are 4,684 sentences imposed. To the aforementioned

there is higher frequency of performing such acts but also the pronouncement of alternative measures. Comparing statistical data to some offenses that have immense expression of these measures and remain approximately constant values, there are also those who have decreased or increased through the years but there are also works for which there are never imposed such measures. Works to which there has been steadily declined are:

- offenses against the employment relationship
- criminal offenses against living environment against cultural monuments, archival material and natural rarities.

According to statistics obtained from the Statistical Office of Macedonia is noted that offenses against the state, against international law and actions against the armed forces are not alternative measures ever imposed and this is very understandable due to the level of criminal liability, social risk and because of the penalty that may be imposed on them.

Although conditional sentence is a good opportunity which refers to the criminal perpetrator is nevertheless the court which should have a special care during his imposition because there are cases when it may have a negative effect and great risk so as an important factor is his pronouncement of many offenses noted above that plays an important role in the accurate determination of which type of offenses can be given conditional sentence and for which not.

The level of conditional sentence compared imprisonment and fine

Tab.1: Represents sentencing in general compared with alternative sentencing

Year	general sentences	alternative sentences
Year 2004	8097 sentences	3813 alternative sentences
Year 2005	8845 sentences	5256 alternative sentences
Year 2006	9280 sentences	4849 alternative sentences

4. Conditional Sentence with Protective Supervision

A Conditional sentence with protective supervision is second type of alternative measures which is provided in the 2004 legislative changes. This measure means putting protective supervision to the person who is thought that only conditional sentence without supervision will not be effective and not will affect the future not the person carries on offense. Under the circumstances related to the convicted person to make him better is thought that supervised and controlled could he win progress and accomplishment of the purpose of punishment. In this way defines of the Penal Code Republic of Macedonia for supervision, care and control are unique and effective opportunity to improve and rehabilitate it. The probation under the law there are special obligations associated with because that person must define these duties shall be such as are provided for in Article 56 of the Penal Code dealing with the determination of one or more obligations relating to: education and professional advancement for job preservation, acceptance of work that the responses to the level of his education and training, implementation of obligations associated with family and social circle, getting advice on how to money is spend, not attendance premises where alcoholic beverages are served and games gambling, prohibition of the use of alcohol, drugs and other psychotropic substances, use of leisure as it has recommended probation body etc.

The body that carries out the supervision, control and care of the body realizes or social probation. This should work efficiently and professionally because before them there are plenty of tasks that are defined by law. This body operates under the powers dealing with:

- Providing practical advice to a convicted person
- To assist in carrying out the obligations set out by the court
- To report to the court regarding the performance and completing obligations

Whether a person who has been convicted or fined is not provided with protective supervision and does not respect and does not perform obligations as foreseen, then the social body magistrate reports, it warns him that it should implement its orders, it replaces it with any other obligation or revokes it by turning punishment to imprisonment. This kind of measure provided although there legal provisions since 2004 in any case, the court still has not made its pronouncement.

5. Conditional Termination of Criminal Proceedings

The third alternative provided for in the Criminal Code of Republic of Macedonia, is the possibility of termination of criminal proceedings in cases when the convicted person is sentenced to a fine or imprisonment up to 1 year, so the court after hearing the parties and after agreement the injured party decides to stop (suspended) further criminal

proceedings provided that at the time when it terminated the probation time called the convicted person does not commit another criminal offense on. Termination of the procedure can be more than 1 year. So during that time can not walk statute of limitations.

The main conditions that the court considers this case are:

- Repentance of the convicted person
- Avoidance of negative consequences from the criminal
- Compensation for damage offenses

6. Community Service Work

The main conditions that must be met by the person to finish the job _ are must not special needs because the convicted person is not required school preparation _ or vocational training for their implementation. Particular attention is paid to the type of work we have to perform because that work at no point should must not despise humble and dignity his personality. For the type of work should be considered the will of the convicted person if he wants to do or not. This kind of sanctions or alternative measures take effect the very special role because the practice of other countries which have provided earlier have implemented it, speaks for many positive effects.

These effects reflect the person convicted of the society also because both parties benefit many opportunities. For this reason, almost all states have provided this kind of alternative, just as we have. The advantages of this measure are active inclusion of persons convicted in society because it enables the integration not separation from other persons.

To have sufficient effect these conditions must be met, such as:

- must have a sufficient number of jobs
- there should be a rule in the organization of work
- be able to perform it in reality
- accurately define the obligations and rights of the convicted person.

Macedonia has provided to community service work to be restricted from 40 to 240 hours. The convicted person is obliged by the state without compensation, the firm is public or humanitarian organizations.

This person convicted compelled during holidays or weekends to perform the obligations foreseen. Interval of time during which The convicted person is forced to perform the above tasks by law is defined in the first year and within it you should definitely have them on. Even in this case has exception because if the person for personal or family reasons that you could not carry all, then the law has provided the opportunity for the court to postpone the deadline for more other 6 months.

If a person even after the expiry of this deadline does not perform his obligations, then the court shall warn in written way, and if it continues again this election issues are as follows:

- The fund may increase hours within that period
- may postpone the deadline for the other 3 months
- if there are other reasons can even substitute it with fine obligation worth 20 euros for three hours at the counter is 1200 pence
- You can return to the prison sentence and that what is calculated that one day in prison is like 3 hours of work in the public interest .

Assigning to the last measure implies that the transformation of work in the interests of the general prison sentence, be considered first and foremost:

- The weight of the offense
- The level of criminal responsibility
- Report of a person sentenced to work in the public interest

7. House Arrest

The last measure which is provided in Article 59 of the Penal Code of Macedonia is house arrest. This measure is characteristic in itself because with it is isolated the person convicted within certain premises which in all cases is his home. This option applies only to certain categories of people because it can be given only to persons who are sentenced to a fine or imprisonment up to 1 year and also if they belong to the category of persons as follows:

- If the person is seriously ill and unable
- If she is a pregnant woman or woman after childbirth

- If she is single mother
- If she is mother who has children less than three years
- Is over age 65 years.

For these convicted persons suffering the penalty is made possible the home of a convicted person previously designated by the obligations and activities that should be performed. The court must ultimately determine the time when this person can come out of his house. This option refers only to those who because of their situation that they can not bear to suffer punishment and together with other persons .

In general practice house arrest under certain criteria could be:

1. According the manner of implementation of restriction can be: simple or electronic
2. According restricting content can be: in prison with the possibility of release during weekends and night or indoor strict imprisonment.

Electronic supervision or electronic monitoring, is more modern and more efficient which is special in the way of its realization because the convicted person is put up a link (bracelet) special which will broadcast the signal in the central computer and to law enforcement authorities will make known that this person is removed from the right place, which is defined for. If the convicted person leaves the house or building where the movement is limited then the court will replace this measure with a prison sentence and the convicted person will be sent suffering with other people.

House arrest in almost all state the problem of implementation because since it is realized the opportunity to be supervised by an electronic device presented numerous problems because firstly it needs technical computing which is one thing that we don't have professionalized the staff who will know to exercise oversight through that device. It is worth mentioning that the main shortcomings which are discussed today are these:

- in the first place it is an extremely costly option
- that brings quite negative consequences for the house turns into house arrest to all members of the family because the convicted person breaks the privacy of other members

Yet despite the negative criticism in many countries is used as a good opportunity to short sentences. Even though the law is very clear and defined and has detailed the conditions and circumstances which may be imposed the house arrest in Macedonia are not the proper conditions yet to be implemented, so as a result of this so far in any case this measure is not pronounced as such. For realization of house arrest as such measure should not only will it be sentenced to be executed but also needs good conditions and financial opportunities that Macedonia has not yet, as other states have and therefore the body that imposes this measure sees much more reasonable not to impose at all than not be able to realize and execute in practice. What can be said about house arrest is that this measure needs to be realized for quite some dedication, is very strict, and if used electronic means it is also very costly.

8. Judicial Admonition

Judicial admonition is the last kind of sanctions or alternative measures. It is also foreseen long before 2004 because there have been legislative changes which have enabled them to determine the legal provisions. So far this sanction is not only imposed but also provided and has created quite abundant practice and it is largely spoken for many when offenses are intended conditions. According to Article 59 of the Macedonian Penal Code is determined that judicial admonition may be imposed for those offenses for which a fine is determined or bug sentence to 1 year. This can be imposed and for those offenses which are punishable by 3 years. In these cases, when pronouncing, the court considers many important factors such as:

- personality of the criminal offender
- his previous life
- his behavior after the offense
- the degree of criminal responsibility
- other circumstances connected with the offense.

Tab.3: Statistics of 2004, 2005 2006 on imposing judicial admonition.

Year	Generall Offenses	Judicial admonition
Year 2004	8097	201
Year 2005	8845	149
Year 2006	9280	165

During 2006, it is mostly imposed for these types of offenses:

- Bodily injury- Article 130-25 judicial admonition
- Insult - Article 171-16 judicial admonition
- Endangering traffic safety - Article 297 -39 judicial admonition..

References

The Penal Code of Republic of Macedonia

Metodija Kanavqev ,Krivicen zakonik, Sluzhben vesnik na R.Makedonija 2005 Shkup pp.70 ,71,72

Stojmenova Silagjana, Krivicen Zakonik, neni 50 alinea 1 , Shkup 2006 fq. 24

Explanation-time verification is also defined by the Criminal Code criminal law, I.Saliu Pristina in 2005 fq.468

see Macedonian Criminal Code, Official Gazette, Skopje 1996 and the Criminal Code of Macedonia, Official Gazette, Skopje 2004

Stojmenova Silagjana , Krivicen zakonik,Shkup 2005, fq,32,35

Analysis of data from the Statistical Office of the Republic of Macedonia for 2006, Skopje 2007 p.7779

Clarification: the social body and the body is defined by P.C.M Probation is defined by P.C.K

Krivicen Zakonik na R.Makedonija, official newspaper Shkup 2004 pg.48

Strategija za implementacija na alternativnite merki , L.Arnaudovski, G.Bugjarovska, D.Celevcki dhe L.Manev, Shkup 2006 p.51,58,75

Metodija Kanavqev ,, Kriviqen zakonik ,, Sluzhben vesnik na R.Makedonija 2005 Shkup

Krivicen zakonik na R.Makedonija , official newspaper , Shkup 2004 fq.52

Storiteli na krivicni dela , Drzhaven Zavod za Statistika , (in 2006) Shkup 2007 fq.75