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Helping or Hurting: Short-term imprisonment in Macedonian system of criminal sanctions

Abstract

The author of the paper deals with the issues of short-term imprisonment, a comparative overview of the regulations and practices in force, the types of offenders sentenced to short-term imprisonment, and the substitutes of punishment. The paper analyses the effectiveness of this kind of punishment in the Republic of Macedonia. Frequently, this kind of punishment is imposed on offenders who are a committing crime for the first time. The first-timers had different needs, reoffending risks and different experiences of imprisonment. They also often lost jobs or housing due to imprisonment, and they found imprisonment tougher, while also having a lower likelihood of reoffending. On the other hand, many prisoners preferred a short-term prison sentence over a substitute of this type of punishment, because it is easier to complete, while others considered that the alternatives to imprisonment like community sentences, to be a more severe form of punishment. The matter of short-term sentences such as short-term imprisonment, as part of the variety of penalties, is a matter of unquestionable importance and interest both for theory, which – it seems – has not dealt with all the aspects and elements of the issue, and for practice, which is issuing such sanctions on a daily basis to the offenders of minor, but yet socially harmful deeds.

Key words: short-term imprisonment, individualization, treatment, punishment, prison, rehabilitation.

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Introduction

"I can only hope that the time is not far away when gallows, pillory, scaffold, flogging and wheel will, in the history of punishment, be regarded as the marks of the barbarity of centuries and of countries and as proofs of the feeble influence of reason and religion over the human mind" - Benjamin Rush[2]

Scientific thought is beginning to seriously consider the possibility of discovering a way to eliminate criminality through the enforcement of the *aim of penalty* – an aim which is the foundation for every modern penitentiary and correctional system. The main goal of an imprisonment sentence is qualifying the convicted person to become involved in society with the best possible chances of independent life in accordance with the Law.[3] In order to achieve the goal of the imprisonment sentence a feeling of responsibility is developed among the convicted persons, and they are stimulated to accept treatment and to participate actively in it during the serving of their punishment, which is motivated and directed to re-educating and the development of positive character traits, attitudes and capabilities, that speed up the successful return to the society[4].

Therefore, to ensure efficient and quality protection of the most important social goods and values, criminal legislation recognizes several types of sanctions. Today, in our country, criminal sanctions have polyvalent function, and modern tendencies regarding their objectives shift the focus toward the offender. Following the trends which are dominant in contemporary societies, the system of criminal sanctions for adult offenders of criminal offences went through significant amendments. It consists of punishments, alternative measures and security measures.[5]

The dominant place is reserved for the penalty of imprisonment, which is aimed solely at the resocialization of the convicted person, and his/her rehabilitation through the use of humane means. The matter of short-term sentences such as short-term imprisonment, as a part of the variety of penalties, on the other hand, is a matter of unquestionable importance and interests both for theory, which – it seems – has not dealt with all the aspects and elements of the issue, and for practice, which is issuing such sanctions on a daily basis to the offenders of minor, but yet socially harmful deeds.

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[2] Benjamin Rush addressing the Society for Promoting Political Enquiries, quoted according to Foucault Michael, Discipline and Punish, The birth of prison, p. 10.

[3] Закон за извршување на санкции, Сл. весник на РМ, бр. 2/2006 и 57/2010. Article 37 (1).

[4] Ibid. Article 37 (2).

[5] See also: Deanovska-Trendafilova A., Mujoska E., Reforms of the Macedonian System of criminal sanctions and its practical implementations, Iustinianus Primus Law Review, Vol.3:1, p.4.

Serving a number of short prison sentences may reduce the ability of prisoners to take responsibility, and leads them to believe that reoffending and a return to prison are inevitable.[6]

Short-term imprisonment is maintained in all modern penal systems, and such penalties are issued in a number of cases. The question of justifying such penalties as short-term imprisonment has long been a part of penal theory, and yet, despite everyday dilemmas faced by the legislative and judicial practice, it is still an ongoing problem. It is obvious that theory and practice do not agree, so the question of whether the critique aimed at short-term imprisonment is justified is issued, or – on the contrary – whether the more and more frequent practice of such penalties by judges and legislators is not justified[7]. The critique aimed against the issuing of such penalties doesn't influence criminal justice, or the practice of criminal law.

Definition, objectives and effects of short-term imprisonment

The term short-term imprisonment has not been properly defined in positive legislation. In order to reach a definition of what a short-term penalty is, the answer ought to be searched for in theory, court practice, and the practice of short-term imprisonment.[8] There are a number of definitions for determining the term of short-term imprisonment. The definitions of such imprisonment in terms of length vary greatly from country to country.[9] Most practitioners agree that the period of a six month imprisonment is sufficient to reach the aim of the execution of sanctions. Therefore, the duration of a six-month penalty ought to be considered an average maximum, taking into consideration the previous experience of criminal justice in the state, and underlining that during this period the offender is effectively doing his sentence at a suitable correctional institution.[10] Similarly, three months sentences as well as six months sentences are commonly treated as short-term imprisonments – a view which is more acceptable, and signifies an established time limit which demands a suitable prison sentence.[11] Although, the legal definition of a

[6] See: No winners, the reality of short term prison sentences, Summary, p.1.
[7] See also: Lazarević, Desanka (1974) „Kratkotrajne kazne zatvora", 1974.
[8] Bulatović, Žarko (1996) „Krivičnopravne mere za zamenu kratkotrajne kazne lišenja slobode". Narodna knjiga, Beograd, str.15.
[9] Second United Nations Congress on the prevention of crime and the treatment of offenders, Report prepared by the Secretariat (A/CONF.17/20), 1960, p.29, (Accessed: October, 28 2013).
[10] See: Срзентић, Никола (2004) „Краткотрајне казне лишења слободе", p.369.
[11] See: Камбовски, Владо (2004) „Казнено право – општ дел", p.871.

short-term imprisonment, is not established by criminal law, judicial practice and the practice of short-term imprisonment have proven that six-month sentences are treated as such[12], while the issue may arise whether frequent short-term sentences, i.e. six-month sentences, meet the demands of the penal system to rehabilitate the convicted person.[13]

During the issuance of such sentences, several questions should be asked: which offenders are liable to receive a short-term imprisonment; for what type of offences; whether the goal of previous sentences has been reached; whether recidivism has been decreased, etc. Of course, the issue of short-term imprisonment is present in our legal system as well. Considering the fact that short-term sentences are issued more frequently with time, and not only in our legal system, another question arises: up to what point is short-term imprisonment reasonable, and has it reached the basic aim of the penal system – re-education of the offender, and preventing the commitment of another criminal act. To be exact, while reaching a decision for a suitable sentence, the judges must keep a humanitarian and humane stance towards the offender, and to establish a punishment to the criminal deed and the suffered damage. Without exception, they ought to decide on a milder sentence in the case of the alternative issuing of two penalties.[14] Finally, the trend of imprisonment substitutes ought to be followed, such as property penalties and alternative measures, like probation or any other treatment of freedom.

The rehabilitative, and not the punitive elements of imprisonment, are essential. As far as deterrence is considered, sometimes the best time to release the offender is the second morning, when he has realized what the loss of liberty means, and what it is like to be an outcast.[15]

Individualization of treatment and substitutes for short-term imprisonment

Short-term imprisonment might be the appropriate penalty in certain cases, in accordance with the principle of individualization of treatment. It would seem essential to define, in a clearer manner, the cases in which, given a modern method of prison treatment, short deprivation of liberty could be justified,

[12] Zlatarić,1960 quoted according to Vidović B., Vjekoslav (1981) „Kazna lišenja slobode“, str.16.
[13] See: Арнаудовски, Љупчо (1966) „Кратки казни лишување од слобода“, p.12.
[14] Ibid.
[15] Second United Nations Congress on the prevention of crime and the treatment of offenders, Report prepared by the Secretariat (A/CONF.17/20), 1960, p.30, (Accessed: October, 28 2013).

while always keeping in mind the need to reduce the great number of short sentences, and to find the best measures to replace short-term imprisonment when individualization did not require deprivation of liberty. In order to overcome the long standing discrepancy between theory and practice, in matters of short-term imprisonment, the question should be studied simultaneously in its legislative, judicial and penitentiary aspects. Short –term imprisonment is not harmful, and doesn't need to be abolished. A new constructive approach has to be made to the problem.[16]

Those convicted to short-term imprisonment are offenders who do not have deeply antisocial attitudes. Those are people with stable characters, and the momentary disrespecting of social conventions is just an episode in their lives, so their sentence in an assigned facility, as well as the contact with other convicts, will not affect them profoundly[17]. This is the exact reason as to why this category of offenders should not, and must not, be put under the same regimes as the offenders of more serious criminal acts, who have a longer criminal career.

The problem of short-term imprisonment arose from the fact that, at the end of nineteenth century, penal legislation required only that the punishment be related to the gravity of offence: in addition there were hardly any substitutes for imprisonment in case of minor offences[18].

The substitutes of short-term imprisonment are considered of foremost importance. The gradual reduction in the use of such penalties must be brought primarily by the increased use of suspended sentences and probation, fines, community service, and other measures not involving deprivation of liberty.

Special institutions, or at least special quarters in the local prisons are needed for short-term prisoners, an additionally, young prisoners should be separated from older prisoners. Also, every penal system should make an effort to mitigate the bad effects of short terms in prison, and to use this period constructively through the means of the so-called induction period, and by classification, aiming to separate the less criminal types from the others, and moving as many as possible into open institutions.[19]

Concerning this, practice has also shown a drastically different image of the possibility of separating offenders serving short-term imprisonment, than what is recommended by scientific and theoretical thought. The situation is no different in the Republic of Macedonia, so short-time sentences are carried out in local prisons of open or semi-open type[20]. Only countries with

[16] Ibid. p.31.
[17] See more: Lazarević, Desanka (1974) „Kratkotrajne kazne zatvora", 1974.
[18] Second United Nations Congress., op.cit. p.31.
[19] Ibid. p.34.
[20] http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=UIS. (Accessed: October, 22 2013).

more advanced criminal policies offer a fully functional reformation system (i.e. Sweden). The inability to separate those who serve short-term imprisonments in separate facilities has a direct effect on the problems in classification and observation of the convicts, which undoubtedly represents a challenge in the penitentiary plan itself[21].

Given the nature of short-term sentences and the necessity to provide efficiency in the penal system for short periods of time, there is a need for psychological examinations in the first stadiums of the sentence, i.e. the judge ought to have a certain amount of data at hand, referring to the perpetrator's character, before he/she reaches the final verdict.

Short-term imprisonment in Macedonian system of criminal sanctions

Each country is characterized with its own penal politics, which is based on the current situations in the country, the social and criminally-political relations in power, the different types of fights against criminality, etc.; which eventually provide legal solutions. It is not difficult to come to a conclusion that each country is specific in its own way, which only makes the task of comparing the solutions concerning short-term penalties more difficult. Therefore, the only criterion which shall be taken as relevant is the time period (up to six months, or one year).

The influence of international organizations in determining national penal politics is a considerable one, especially in underdeveloped countries and nations in transition. The recommendations, resolutions, and standards established by these organizations (the UN, the Council of Europe and the European Union) impose duties for implementing and accepting the directions, which signify unification of the penal systems and guarantee equal rights and freedoms for all citizens. All of this seems well justified, but a question arises of how much these countries are ready to enforce the given directions in relevant documents, and whether their direct implementation in the legal system will result in a solution for the issue of high criminality rate, and especially for short-term imprisonment. The Republic of Macedonia is no exception.

Every offender convicted to short-term sentence has his own rights. During the execution of the imprisonment sentence, the psycho-physical and moral integrity of the convicted person must be protected, and his personality and dignity must be respected. Any kind of torture, inhuman or degrading treatment and punishment is prohibited. The right to personal security of the

[21] See: Срзентић, Н., op.cit. p. 385.

convicted person and the respect of his personality must be insured[22]. The protection of the convict's position in the facilities, serving the realization of his/her re-educating and re-socialization, is elevated to the highest level of protection and realization of the legal position and status. Thus, a number of international acts, regulations, conventions, and declarations have been brought forward, by which the rights of the convicts are regulated (directly or indirectly).

Research made by the Howard League[23] distinguishes two clear groups within the short□sentence prisoner population, first□timers and revolving door prisoners. These groups had different needs, reoffending risks and different experiences of imprisonment. The former had often lost jobs or housing due to imprisonment; they found imprisonment tougher and had less likelihood of reoffending. Revolving door prisoners had multiple pre□existing problems and often found prison easier than life outside[24].

When it comes to short-term imprisonment, we can say that the efforts for unification and harmonization in the legal system and acceptance of documents have shown positive results through the possibility of choosing from a variety of alternative solutions and freedom treatments. The best examples for this are the contents of the European Rules for alternative measures and sanctions proclaimed in *Recommendation R (92) 16*, adopted by the Committee of Ministers in 1992[25], which is a result of long-term efforts to modernize and advance the legal system and practice in European countries, considering the importance of establishing principles regarding penal policy among the member states of the Council of Europe in order to strengthen international co-operation in this field. These Rules are supposed to be accepted and implemented in the legal system of the country as a guarantee that the national concept for alternative sanctions and measures is rightfully set and is in agreement to the requirements of enforceability. *The Law on Execution of Sanctions of the Republic of Macedonia*[26] completely accepts all the directions and rules, and is based on the postulates of these documents.

However, the realistic image of penitentiary facilities in our country is a bit different.

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[22] Закон за извршување на санкции, Article 38.

[23] Official web site: http://www.howardleague.org/.

[24] Howard League, Revolving door prisoners – what works? p.1. Available at: http://www.revolving-doors.org.uk/documents/revolving-door-prisoners-what-works/. (Accessed October, 2013).

[25] Recommendation *(92)* 16 of the Committee of Ministers to member States on the European rules on community sanctions and measures, Council of Europe, Committee of Ministers, (Adopted on 19 October 1992 at the 482nd meeting of the Ministers' Deputies).

[26] Закон за извршување на санкции, Службен весник на Република Македонија бр. 2/2006 и 57/2010.

From the visits conducted in penitentiary institution in the Republic of Macedonia during 2012, the *National Preventive Mechanism* (NPM)[27] has established that the material conditions in the facilities meet the national and international standards partially or insufficiently, while the laws and the protocols are not implemented in full and literally in practice. The rights of convicts are violated on a daily basis.

On the other hand, arrangements for post penal assistance, after-care, resettlement or social re-integration, as it is variously called, are a feature of the prison systems of all developed countries. Reintegration into the community is essential to force change in the behavior of prisoners in a long run. Helping those who are released from prison to find housing and nutrition, job, resolve depression, loneliness, family problems, and so on, these is all tasks of the after-care service or the post penal assistance of ex-prisoners.

What path the prisoner shall take after release form serving the prison sentence is a question of particular importance for the prevention of future recidivism of former convicts. The answer to this question would actually solve the problematic issue of the prognosis of future recidivism, on one hand, and provide an answer to the question of the success of treatment carried out in prison, on the other hand. Modern penal theory and practice pays special attention to the post penal assistance of ex-prisoners, in order to be successfully reintegrated into the society and run new law abiding life with respect for social norms and values. Otherwise, the institutional treatment and rehabilitation of convicted persons could be brought in a question. [28] This is another problem that should be taken into consideration when it comes to short-term imprisonment, especially in our country.

According to the Law on Execution of Sanctions, in the Republic of Macedonia post penal assistance after release from prison is a set of measures and procedures that are applied with a purpose of inclusion in the life of released prisoners[29]. Post penal assistance as a form of penal treatment provides achievement of the principle of humanity in the execution of criminal sanctions. The essence of this type of assistance is based on three reasons: first, the convict who has been in isolation for a long time, with occasional relationships and communication with the outside world, needs help to cope, adapt and participate in life outside the

[27] For more information visit: http://www.ombudsman.mk/ombudsman/mk/nacionalen_preventiven_mehanizam.aspx. (Accessed October, 28 2013).

[28] See: Gruevska – Drakulevski A., Post-penal assistance of ex-prisoners, the case of the Republic of Macedonia, p.2.

[29] Ex-prisoners should be provided with housing and nutrition, treatment, advice on the choice of residence, settlement of disorganized family relationships, finding employment, completing trailing, financial assistance to cover basic needs, as well as other forms of help and support. Gruevska – Drakulevski A., ibid.

penal institution; second, the psychosocial condition of the convict caused by his/her labeling as a criminal, complicates the process of acceptance, inclusion and solving the basic problems that he/she will confront in life after the prison experience, and third, the conflict between the goals of the treatment of a prisoner to convince the society not to reject him/her because he/she can live with honest work, on one hand, and the fact that after release from penal institution he/she comes to an environment that brings him/her to the temptation and he/she should check whether the effects of re-socialization has succeeded, on the other hand[30].

In the Republic of Macedonia, the imposition of short-term imprisonment is viewed as having harmful effects, only as long as prisoners were neglected and proper methods were not applied to make such sentences constructive in effect.

[30] Ibid.

Conclusion

If a society is based on the principles of a judicious state, where legality, legitimacy and equality, democracy, humanity, and respect for human dignity rule, it should be able to provide answers to the following challenges: first of all, to set up a penitentiary system in which humanity and personal respect for the convicts are the law, or to build a system of repression in the execution of legal sanctions; and secondly, to create good conditions for the penitentiary system to function in a way which will provide a completion of the goals of the penalty, as a crucial element of the policy for eliminating criminality.

The order of achieving the aim of punishing, as a separate criterion, i.e. re-socialization of the offenders, must not be the only and primary aim, taking into consideration the fact that some offenders do not acquire special treatment in order to reach rehabilitation, while – at the same time – there are certain categories of offenders who simply are not able to re-socialize, regardless of the types of treatments in the facilities.

Short-term penalties are just one way of depriving liberty, so other than certain specific features, they contain all the characteristics of imprisonment. The negative criticism mentioned in theory and literature is, primarily, aimed towards imprisonment in general, regardless of its duration. Therefore, in the case of imprisonment there is a one-sided goal of reforming the offender, re-socializing them, and preparing them for a life of freedom, without paying attention to the essential changes in the society where the prisoner is supposed to return.

On the other hand, there are the arguments presented by supporters of short-term penalties. For them, short-term penalties have an array of advantages, as opposed to long-term penalties, and their existence in the modern sanctions system is necessary and justifiable. The exclusion of short-term penalties from the sanctions system would result in a drastic increase in the number of middle and long-term prison sentences, even in those cases where a shorter penalty would result in the same results and effects of the sanction. They do not deny the negative aspects of short-term imprisonment but consider their existence in the modern sanctions system necessary and justifiable.

Short-term imprisonment should be used only when no adequate substitutes were available and every effort should be made to mitigate its bad effects and it should be used constructively. Every modern penal society should devise suitable substitute forms of punishment and ensure their use. Courts today have a wide range of such substitutes at their disposal. A rapid total abolition of short-term imprisonment, however desirable in principle, is not feasible in practice, and a realistic solution to this

problem can be achieved only through a gradual reduction of the frequency of the use of short sentences.

The impact of such penalties would only have a positive effect on offenders of minor offences, who have developed a certain amount of self-criticism for their own actions.

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