

## THE CONCEPT OF ALTERNATIVE SANCTIONS IN SLOVAK REPUBLIC<sup>1</sup>

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**Abstract:** As the title suggests this article deals with the description of primary and significant knowledge about alternative sanctions in Slovak Republic as noticeable attribute of restorative justice. It is also based on using theoretical and methodological approach from own exploration (criminological research).

First part of this article contains the introduction to types and systems of alternative sanctions and reasons for their establishment in our country. We also mention new important legislative reforms connected with application or enforcement of alternative sanctions.

The second part of this article describes phenomenology of alternative sanctions. It provides more knowledge about the current situation of using and efficiency of alternative sanctions in Slovak republic.

Finally, we summarize advantages and disadvantages of applying and enforcement of alternative sanctions in our country. We offer some ideas and characteristics based on the study of results of the application of alternative sanctions and judge's argumentations.

**Keywords:** alternative sanctions, home arrest, community service, financial penalty, sentence of prohibition to participate on public events, suspension of sentence and suspension of sentence with probation, imprisonment

### 1. INTRODUCTION TO ALTERNATIVE SANCTIONS IN SLOVAK REPUBLIC

In Slovakia we have many views and definitions of alternative sanctions. We consider the alternative sanctions as sanctions that are not connected with imprisonment, but they substitute it. These sanctions are meant to fulfil the same purpose as imprisonment. The purposes are individual resocialization and correction of the offenders, protection of society, deterrence of criminals and offenders's moral conviction by society.

Many experts focus on value and future of alternative sanctions in context of restorative concept of punishment, because in many cases traditional retributive justice failed. Also the criminal justice has started to gather positive experience with new forms of punishment in many European and democratic countries. Also Slovak Republic has started new period in the field of criminal justice and alternative sanctions were found in new Criminal Code No. 300/2005.

In our case we mean these alternative sanctions:

- home arrest (§ 53),
- punishment of compulsory labour – in many countries is known as community service (§ 54 – § 55),
- financial penalty (§ 56 – § 57),
- sentence of prohibition to participate on public events (§ 62a),
- suspension of sentence (§ 49 – § 50),
- suspension of sentence with probation (§ 51 – § 52).<sup>2</sup>

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<sup>1</sup> This article was written as part of solution of project of Slovak Research and Development Agency which called: Restorative Justice and the system of alternative sanctions in terms of Slovak Republic, project APVV-0179-12, main researcher of project is doc. JUDr. Tomáš Strémy, Ph.D.

<sup>2</sup> Read more Explanatory report of Criminal Code Act No. 300/2005.

There were several reasons for establishing alternative sanctions in Slovakia. Criminal justice in Slovakia is based on traditional continental criminal proceedings. Criminal law has very strict legal regulations. It offers limited space for judges, police or prosecutor reflections and investigation. There is no place for sufficient care of victims. But there are still more reasons for the establishment of alternative sanctions.<sup>3</sup>

Sanctions like home arrest, punishment of compulsory labour and suspension of sentence with probation were established in new Criminal code in 2005 (Act No. 300/2005). This Act No 300/2005 is effective from 1<sup>st</sup> January 2006.

Among the benefits that the experts hoped for were decrease in the number of prison population, decrease of financial amount connected with prisoners, higher effectiveness of imprisonment, better social integration of the convicted, effectiveness of reintegration of prisoners and less overcrowded prisons.<sup>4</sup>

Establishing of alternative sanctions is a one of the changes in the general tendency of using criminal punishment. Imprisonment is viewed as so called *ultima ratio*<sup>5</sup> solution and is meant to be avoided especially in the less serious crimes. Important part of criminal policy is individual approach in each case when a wide range of possibilities and solutions should lead to heighten the offender's motivation to correct his behaviour.

After long period, lawmaker created new Act No. 1/2014 called "*Act about the organization of public sport events*". This act was a reaction to the important and increasing phenomenon of hooliganism. Within criminal proceeding, this Act No. 1/2014 brought new alternative sanction - sentence of prohibition to participate in public events. The purpose of this sanction is to punish the parts of perpetrator's life, in which perpetrator commits crime. For the perpetrator it will be forbidden to participate on some public events such as the matches of "his" sports team, events connected to particular sports league or public events in general.<sup>6</sup>

We also focus on new legal instrument known as an electronic monitoring. Although there was a legal option to apply an alternative sanction, the lack of technical instrument made this hard to work in real conditions. This concerns especially the punishment of home arrest. There was no effective way to gather information about abiding the conditions of home arrest. The only form of control was the work of few probation and mediation officers. As a result of this, the application of home arrest among the judges is very rare (see: part II of this article – The phenomenology of alternative sanctions). Because of this, the lawmaker created new government Act No. 78/2015 about using the technical devices which provides the legal frame for control of abiding the diversions and alternative

<sup>3</sup> Compare STRÉMY, T., KURILOVSKÁ, L., VRÁBLOVÁ, M. *Restoratívna justícia*. Praha 2015, pp. 88–97.

<sup>4</sup> Read more MAREŠOVÁ, A. Důsledky dlouhodobého uvěznění. *Trestní právo*. 2004, No. 5, p. 23; HERETIK, A. Forenzná psychológia pre psychológov, právnikov, lekárov a iné pomáhajúce profesie. Bratislava 2004, pp. 328–330.

<sup>5</sup> See KALVODOVÁ, V. Alternativní sankce a novely trestního zákoníku – nový trend v alternativním trestání? In: STRÉMY, T. (ed.). *Restoratívna justícia a alternatívne tresty v teoretických súvislostiach*. Praha 2014. p. 105.

<sup>6</sup> Read more Explanatory report of Act about the organization of public sport events No. 1/2014.

sanctions.<sup>7</sup> In Slovakia there was also the ESMO project running during 2015 that is focused on electronic monitoring of offenders. It was founded by Ministry of Justice using the financial help of European Union.<sup>8</sup>

This act redefines the institute of probation and home arrest and a possibility of changing the rest of imprisonment to home arrest is mentioned.<sup>9</sup> Act also deals with the implementation of some proceedings in the field of imprisonment as instructed by the European committee for the Prevention of Torture (CPT).

Technical solution of electronic monitoring offers new possibilities in execution of other judicial decisions as well. It is therefore suggested to use this system of monitoring as a part of suspension of sentence with probation, parole or sentence of prohibition to participate in public events. In order to strengthen the protection of victims of domestic violence it is also suggested to use these devices in cases of interlocutory judgment to prevent the aggressor to enter the household of victim during certain period of time. A possibility of application monitoring in prisons is discussed as well.<sup>10</sup>

## 2. PHENOMENOLOGY OF ALTERNATIVE SANCTIONS<sup>11</sup>

In order to monitor and evaluate the state of sanction policy it is necessary to observe the numbers of prisoners and arrested people. In fact, information about these numbers is important to understand many factors in society, justice, policy and economics. This part of article is based on an analysis of this statistic data. Therefore it is our goal to know the influence of each alternative sanctions on convicted people, so we can define more accurate prediction of the development of offender's criminal career.

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<sup>7</sup> Act No. 78/2015 about using the technical devices is full effective from 1<sup>st</sup> January 2016. The Act modifies and amends other Acts such as: Act No. 99/1963 Civil Procedure Code, Act No. 300/2005 Criminal Code, Act No. 301/2005 Criminal Procedure Code, Act No. 550/2003 about probation and mediation officers, Act No. 475/2005 about the enforcement of imprisonment, Act No. 221/2006 about the enforcement of custody, Act No. 330/2007 about criminal records.

<sup>8</sup> This project runs in 27 European countries. It is known for its great results in the field of reducing the financial costs. It has two phases – pilot phase (from 1<sup>st</sup> July 2015) and full phase (from 1<sup>st</sup> January 2016). In pilot phase the monitoring system was tested on students of Police Academy in Slovak Republic and on imprisoned convicts.

<sup>9</sup> For example a changing the rest of sentence of imprisonment to home arrest is an essential part of this Act, that has transformed Act No. 300/2005 Criminal Code. The court can change the rest of the sentence of imprisonment to home arrest under these conditions:

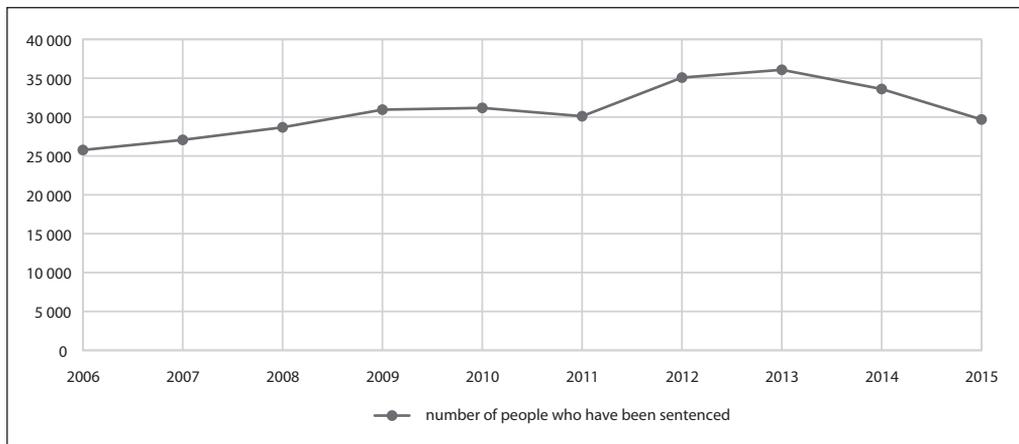
1. Offender is convicted for offenses.
2. Convicted offender has to carry out his/her duties and his/her behaviour is corrected.
3. Convicted offender has already served one third of the sentence of imprisonment or the president of Slovak Republic reduced him/her the sentence of imprisonment.
4. Rest of the sentence of imprisonment does not exceed two years.
5. Convicted offender was not committed to prison after violation of suspended sentence, suspended sentence with probation, or after violating parole.
6. The court has not changed home arrest to sentence of imprisonment.
7. Convicted offender was not committed to prison before.

<sup>10</sup> See also Explanatory report of Act about control using technical devices No. 78/2015.

<sup>11</sup> In this chapter we analyse Statistic data of Ministry of Justice Slovak Republic. This data was chosen according to following facts: Graph No. 1 and Graph No. 2 – for whole period after 1989. Graph No. 3 – from the effectiveness of alternative sanctions in 2006. Graph No. 3 – from publishing the Statistic data by Ministry of Justice Slovak Republic. Scheme No.1- an example from criminological research that took place in April 2014 (2013 year was analysed) See more <https://www.justice.gov.sk/Stranky/Informacie/Statistiky.aspx> (cited 10th January 2016).

Main resource of next graphs and schedule are data of Ministry of Justice that were analysed.<sup>12</sup> In this part of article we are describing the phenomenology of alternative sanctions. This part of article deals with the current state of their application and enforcement.<sup>13</sup>

The important points in the field of phenomenology of alternative sanctions are the number of convicted offenders and indicted people in Slovak prisons. I must say, that Slovak population was about 5,5 million in 2014. From the whole number of Slovak population was 33 610 people who have been sentenced in this year. The total percentage proportion of people who have been sentenced was only 0,61 %. In spite of that I must say, that the population of sentenced people has been increasing in period of last years. Also we can see the increasing number of recidivists (in 2014 it was about 30 %) and decreasing number of first time offenders. These facts are demonstration of changes in criminal scene in Slovakia. Many people view a crime as an opportunity to easily gain money and other advantages.



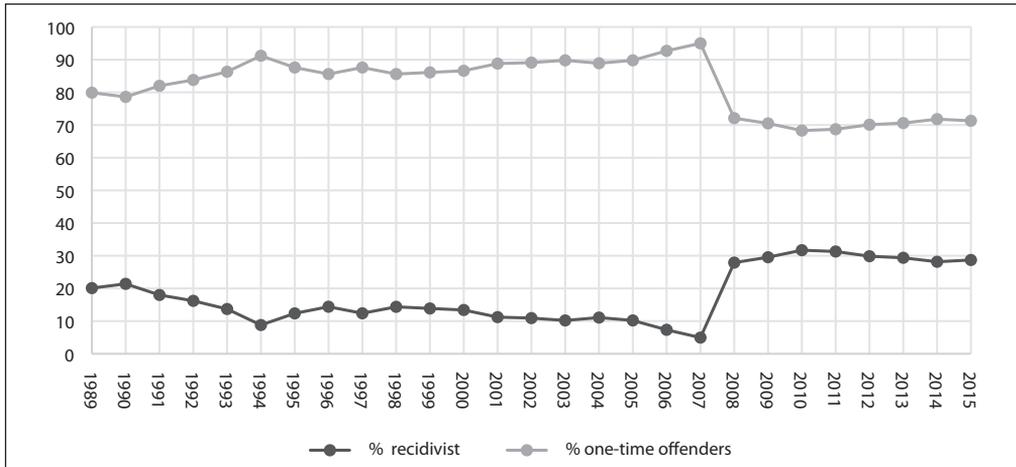
**Graph No. 1:** The graph indicates the number of people who have been sentenced during period of 1989–2015.

Graph No. 1 shows the increase of the number of sentenced people from 1991. But in last years we see decrease of the number of people who have been sentenced. However, we can see the decrease of number of registered crimes and registered perpetrators in police statistics.<sup>14</sup> The number of the recidivist has grown since 2007 (see graph No. 2).

<sup>12</sup> See more Statistic data Ministry of Justice <http://www.justice.gov.sk/Stranky/Informacie/Statistiky.aspx> (cited 10th October 2016).

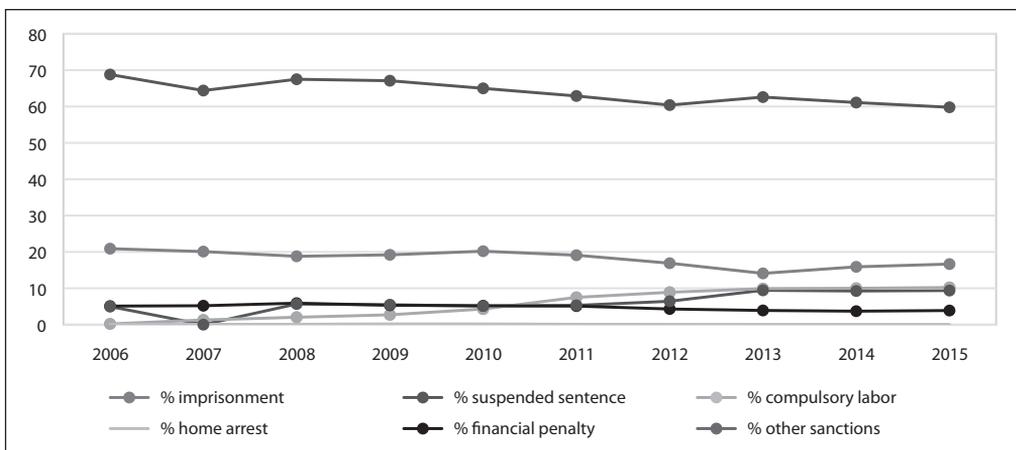
<sup>13</sup> See also: SČERBA, F. Procesní alternativy a jejich vliv na využívání alternativních trestů. [https://www.law.muni.cz/sborniky/dny\\_prava\\_2012/files/trestnepravnialternativy/ScerbaFilip.pdf](https://www.law.muni.cz/sborniky/dny_prava_2012/files/trestnepravnialternativy/ScerbaFilip.pdf) (cited 10th October 2016).

<sup>14</sup> Compare Police Statistic data in Slovakia <http://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-xml> (cited 10th October 2016).



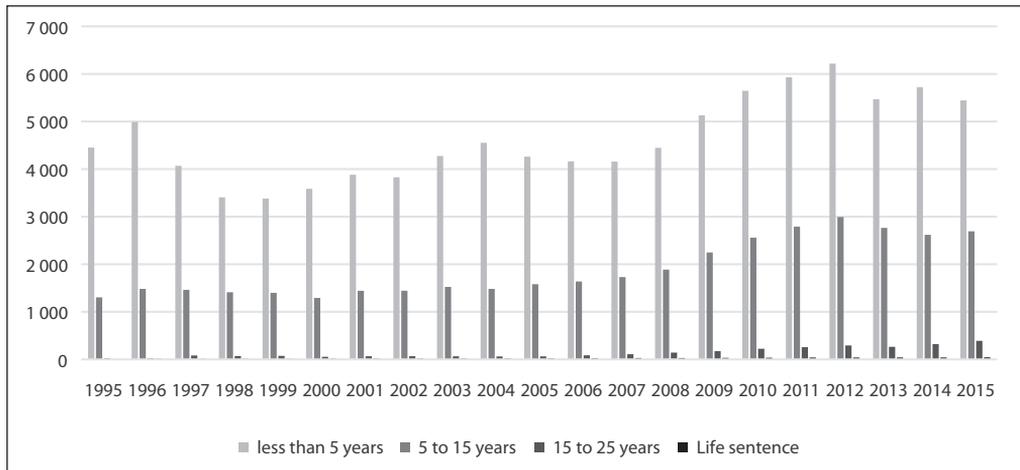
**Graph No. 2:** The graph indicates the number of recidivist and number of one-time offenders during period of 1989–2015.

In the graph No. 3, we can see a percentage proportion of sentencing of particular sanctions from 2006 to 2014. We can also say that the sanctions most applied by court are still suspended sentence and imprisonment. The Suspended sentence, as traditional alternative to imprisonment, is still dominating. The suspended sentence was sentenced to 59,8 % of perpetrators in 2015 (17 752 perpetrators). Punishment of compulsory labor is still rising very slowly but of all alternative sanctions it is the most frequently applied (only about 10 %). On the other hand, home arrest hasn't been applied by courts very often. The percentage is only about 0, 1 %.<sup>15</sup>



**Graph No. 3:** The graph indicates the application of particular sanctions during period 2006-2015.

In case of the sentence of imprisonment, it is very important to describe the classification of imprisonment according to its length. Even though short-term imprisonment is criticized by many experts in a lot of countries over the world, it is still very common. It is probably because of its expected resocialization impact. We can see the prevalence of short – term sentence of the imprisonment (less than 5 years). In 2014 there were 49 % of sentences less than 3 years.



**Graph No. 4:** This graph indicates the classification of the sentence of imprisonment according to its length from 1995 to 2015.

type of crime	Sentence of home arrest (%)	Sentence of compulsory labor (%)	Sentence of financial penalty (%)
theft § 212	24	48	29
threat under the influence of addictive substances § 289	9	2	38
credit fraud § 222	10	2	3
mayhem § 155 – § 158	5	67	27
endangering the moral education of youth § 211	19	18	2
obstruction of official decision § 348	0	5	4
hooliganism § 364	0	4	24
malpractice of nutrition § 207	0	6	
dangerous threats § 360	0	49	11

**Scheme No. 1:** Scheme indicates number of alternative sanctions, which were applied to perpetrators for their crimes the most in 2013.

<sup>15</sup> 1 Read more ŠIMUNOVÁ, L. Trestnoprávna a kriminologická analýza ukladania a výkonu trestu povinnej práce. *Kriminalistika*. 2015, No. 1.

In the structure of crimes we can see standard petty crimes such as theft, hooliganism, obstruction of official decision and dangerous threats. However, we see economic crime, mayhem, or drug crimes as well. It results from actual structure of crime scene in Slovakia. Economic crime and property crime are dominant crimes in Slovakia.

### 3. IDEAS ABOUT APPLICATION OF ALTERNATIVE SANCTIONS

Since the alternative sanctions have been established, we have a chance to see their advantages and disadvantages. Replacing expensive the sentence of imprisonment, decreasing prison population, better resocialization of convicted people and a more frequent participation of victims and the community in process of investigation of crime are the advantages.

Still, alternative sanctions are not applied frequently in Slovakia. There are many reasons for that:

- limited and general determinations of alternative sanctions in criminal code,
- a small number of people who would care about convicted persons (We mean probation and mediation officers. In Slovakia we have only 62 officers. In 2014 there were 93 cases for one officer),
- rigidity amongst the judges combined with the lack of interest to apply alternative sanctions (in many cases they do not know how to apply the alternative sanction effectively),
- no ambition of politicians to see and to solve the problems of criminal (sanction) policy,
- little knowledge or awareness of application and enforcement of these sanctions combined with traditional society understanding about punishment,
- there are no conditions for co-operation among legal practice and criminological science. We mean the fact, that there is not any institution that would provide interdisciplinary research that is needed for criminal policy,
- unfortunately, we have no data informing about the number of second offenders after an alternative sanction enforcement. We have data about how many second offenders have been sentenced alternatively. These data could provide the picture of situation in the field of criminal policy (effectiveness of alternative sanctions).<sup>16</sup>

Also, we have to know the experience with application and enforcement of various alternative sanctions. In 2015 there was ongoing criminological research in the field of alternative sanctions. As a part of research there was a questionnaire for judges. According to their statements the main problems in sentencing alternative sanctions are following:

*Community services*, there are a lot of circumstances that make community services worse:

- perpetrator must say “yes” if judge would like to choose this sanction,
- many perpetrators only try to avoid imprisonment, but later they also try to avoid the alternative sentence as well,

<sup>16</sup> 2 According to judge's inquiry that we realized in September 2015 we carried out main results. From 30 inquired judges, 60 % inquired judges claim that the system of alternative sanctions was sufficient. But only 16, 7 % of inquired judges apply mentioned sanction regularly. Read more ŠIMUNOVÁ, L. Ukladanie alternatívnych trestov v súdnej praxi I. (Postoje sudcov k ukladaniu alternatívnych trestov). In: STRÉMY, T. (ed.). *Restoratívna justícia a alternatívne tresty v aplikačnej praxi*. Trnava 2015, pp. 229–240.

- there are only a few job opportunities for the convicted and a mistrust on the part of providers of work because of bad experience (stolen tools, lack of work habits),
- lack of coordination among main institutions, which ensure of the application and the enforcement of this punishment,
- many judges think, that this kind of sanction is inefficient, too general and inapplicable and has no value for criminal law.

*Home arrest*, there are lot of circumstances that make home arrest worse:

- absence of system of control (electronic monitoring) till 1<sup>st</sup> January 2016. Home arrest was legally established nine years ago, but there was no electronic system of control. Until 2016 only the control of probation officers was used.
- many judges think, that this kind of sanction is inefficient, too general and inapplicable and has no value for criminal law, so they don't apply it.<sup>17</sup>

*Financial penalty*: there are a lot of circumstances that make financial penalty worse:

- possibility to sentence only several offenders (rich offenders) – who can *afford it*
- absence of system of day fines such as in Finland for example. Day fines system where a penalty is not defined in sum of money but in the number of daily wages that offender has to pay. The system of day fines simplify the court's procedure if financial penalty is applied. It is useful for application praxis.<sup>18</sup>

## CONCLUSION

Restorative justice (alternative sanctions) in Slovakia is not the mainstream criminal system and it is a supplement to usual retributive justice (concept). Restorative justice as well as alternative sanctions represent the state of thinking of the society and functioning of criminal policy and its individual institutions. They both express the measure of co-operation among offender, victim and community.

We think that it is necessary to monitor the situation in the field of criminal policy through gaining knowledge about the phenomenology of application of sanctions in our society and by realizing the criminological research too. Thanks to longitudinal study of this topic and acquired knowledge we can establish the laws, which have impact in the field of criminal policy. Inter alia it is necessary to analyse problems of sanction policy in international context. We see the future of criminal policy in cooperation of preventive and repressive forms of control of criminality, but also in cooperation among institution, which care about assurance of criminal justice.

We consider the choice of suitable sanction to be one of the hardest among the decisions of judges. Strict legislative support and consequentiality is needed in order to make a right decision. However, another aspect is the personality of every judge and his or her compliancy to approach new concept of criminal justice. Therefore we see alternative sanctions as the challenge to get over the stereotypes connected with judge's conveniences.

<sup>17</sup> 3 SCHEINOST, M. et al. *Sankční politika pohledem praxe Teoretické a trestněpolitické aspekty reform trestního práva v oblasti trestních sankcí II*. Praha 2014. pp. 13–23.

<sup>18</sup> 4 GREGUŠOVÁ, A. Ukladanie alternatívnych trestov v súdnej praxi II. (Prax sudcov pri ukladaní alternatívnych trestov). In: STRÉMY, T. (ed.). *Restoratívna justícia a alternatívne tresty v aplikačnej praxi*. Trnava 2015, pp. 242–256.