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CONDITIONAL SENTENCE WITH PROTECTIVE SUPERVISION

- concept, application, and relationship with other alternative sanctions and measures-

The paper gives an overview of the concept and content of a conditional sentence with protective supervision according to the solutions in the Criminal Code of the Republic of Serbia, pointing out certain substantive inconsistencies and legal gaps. The author explains what significance this sanction should have in the system of non-custodial sanctions and measures, starting from international standards and comparative practice in this area. In addition to substantive law, the paper also analyzes the regulations related to the execution of this alternative sanction, as well as the situation with its application in practice. Special attention was given to the relationship of this alternative sanction with other alternative sanctions and measures, both with those that already exist in our positive law - house arrest, work in the public interest and the institute of settlement of perpetrators and injured parties, and with some non-custodial measures which originate from the Anglo-Saxon legal field - „shaming punishments“, which exist in the USA law. The aim of this paper is to point out the importance of this alternative sanc-

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tion and its possibilities of improvement in terms of greater and more efficient application in practice.

Keywords: alternative sanctions, probation, conditional sentence with protective supervision, „shaming punishments“

1. Introduction

A conditional sentence with protective supervision is one of the foreseen warning measures and is prescribed as a conditional sentence modality in Article 71 - 76 of the Criminal Code of Republic of Serbia¹ (hereinafter CC). Otherwise, this sanction represents a combination of a classic conditional sentence from continental European law with elements of probation from the Anglo-Saxon legal area, considering that it contains a combination of warning and checking the behavior of convicts at liberty with measures of supervision and determining the fulfillment of obligations specified by law. This is how it is conceived in our Criminal Code, and this is how it is regulated in some European criminal legislation, such as Austria, Germany, and the Czech Republic. It, therefore, enables active actions to be taken towards the person sentenced to probation, through which assistance and protection are provided, in contrast to the classic conditional sentence, where the attitude towards the person sentenced is passive.²

Some special purpose of a conditional sentence with protective supervision is not provided for in the Criminal Code, so one should start from the purpose of the conditional sentence in general, which is prescribed in Article 64 paragraph 2 of the CC and it actually concerns the avoidance of the application of punishment, i.e. not applying the punishment to the perpetrator of a minor criminal offense when it can be expected that a warning with the threat of punishment will have a sufficient influence on the perpetrator to stop committing criminal acts. Therefore, the essence of a conditional sentence with protective supervision is the aspiration to avoid all the negative consequences of the sentence of deprivation of liberty, especially short-term ones, so that this warning measure acts on the plan of special prevention and exerts a positive influence on the convicted person so that he does not commit further criminal acts and primarily by actively acting on it - by establishing protective supervision (Stojanović, 2017:320).

1 *Official Gazette of RS*, No. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016 and 35/2019

2 Protective supervision, like probation as a whole, represents a special type of professional action - treatment in the community of probationers, aimed at their successful social integration into society. (Ilić, 2010:218)

Otherwise, all relevant international documents in this field, such as the United Nations Tokyo Rules³ and European rules of the Council of Europe⁴, the application of non-custodial sanctions and measures is promoted, which are exhaustively described and among which probation takes an important place, as well as a conditional sentence under protective supervision, all with the aim of directing legislative activities and practice in the member states. It is recommended, for example, to the legislators consider the possibility of prescribing a certain alternative sanction or measure instead of imprisonment for certain criminal offenses, and also to exclude the possibility of their imposition for serious criminal offenses and in relation to previously convicted persons.⁵

A significant part of the European rules refers to the establishment of effective assistance and treatment programs that can influence the behavior change of the perpetrator of the criminal offense (which represents a significant part of the protective supervision in the case of a suspended sentence), so it is emphasized that programs and treatments for the social reintegration of the convicted should be characterized by the application various methods both during the execution of the imposed sanction and after that, as part of the post-penal program (*See more about post-penal treatment* Batrićević et al., 2013: 129-155). Especially when determining their content, it is emphasized that attention should be focused on the following circumstances: basic knowledge that includes, for example, literacy and mastering of basic arithmetic operations, the ability to constructively solve personal and family problems, then education or the possibility of employment, the influence that has on the perpetrator possible addiction to alcohol, drugs or medicines, as well as adaptation to the local community.

Regardless of the fact that our country is a signatory to the aforementioned international conventions and even though according to international standards and comparative practice, a conditional sentence with protective supervision should actually be the basic and key non-custodial sanction⁶, the situation in practice with its application is devastating. According to the data of the Admin-

3 United Nations Standard Minimum Rules for Non-custodial Measures - The Tokyo Rules, General Assembly resolution 45/110 (14 December 1990)

4 Recommendation No. R (92)16 of the Committee of Ministers to Member States on the European rules on community sanctions and measures (19 October 1992) and Recommendation No. R (2000) 22 of the Committee of Ministers to member States on improving the implementation of the European rules on community sanctions and measures (1 May 2000)

5 More details about the problem of prison capacity overload and the possible solution to this problem by applying alternative criminal sanctions see: (Đorđević, 2015: 81-84)

6 In the domestic legal theory, it is emphasized that conditional sentences with protective supervision should be the rule and that only in the presence of special circumstances, does the classic type of conditional sentence come into consideration (Đokić, 2022:216).

istration for the Execution of Criminal Sanctions of the Ministry of Justice of the Republic of Serbia, in the period from 2015 to 2020, this sanction was imposed in the range of only 14 to 33 on an annual level in the territory of the entire Republic of Serbia, and even since 2017 it has recorded a decrease in a symbolic application anyway (See Bojović - Kolaković et al., 2022:47). The reasons for the stated situation should be sought both in the technical and organizational impossibility of implementing protective supervision within the existing Commissioner's Service, as well as in insufficiently precise legal provisions, uneven and unrealistically set penal frameworks (Mrvić - Petrović, 2010:244), and also in insufficient education of holders of judicial positions in this area. Therefore, the goal of this paper is to perform a comprehensive normative analysis of this alternative sanction in order to clarify some doubts and point out the importance of this sanction, as well as the possibility of its improvement in order to apply it more effectively in practice.

2. Substantial legal concept and content of protective supervision

As conceived in the Criminal Code, the conditional sentence with protective supervision is actually only a modality of conditional sentence that is imposed in a situation where the court finds that the general purpose of imposing criminal sanctions, as well as the special purpose of imposing warning measures, would not be achieved if the perpetrator were only issued a simple suspended sentence, that is, only a warning with the threat of punishment. Therefore, according to the ruling from the Criminal Code, protective supervision is only a supplementary measure to a conditional sentence, which does not extend the field of application to those cases where prison should have been imposed before its introduction, as much as it reduces the risk of a certain category of those sentenced to conditional sentences, where it is risk increased that commit the crime again (Stojanović, 2014: 345).

That additional quality that is provided for the conditional sentence with protective supervision, which actually consists of measures of assistance, care, supervision, and protection, according to Article 71 paragraph 2 of the CC, is what separates this sanction from the conditional sentence and court warning as classical warning measures, because it requires active action by certain state bodies and institutions in order to realize the diverse content of protective supervision. That distinctive feature of a conditional sentence with protective supervision gives it the quality of an alternative criminal sanction in the narrower sense of the word,

i.e. as a criminal sanction that replaces the sentence of deprivation of liberty, and which requires the exercise of certain supervision over the behavior and actions of the convicted person for a certain period of time.

Otherwise, all the conditions stipulated by the Criminal Code for the imposition and revocation of a classic conditional sentence are also applied in the case of a conditional sentence with protective supervision. Its additional quality is being placed offender under protective supervision, which, according to Article 72 paragraph 1 of the CC, can be imposed on the perpetrator of a criminal offense if, in the court's opinion, taking into account his personality, past life, demeanor after the criminal offense was committed, and especially his relationship with the victim of the criminal offense and the circumstances commission of the crime, can expect that protective supervision will more fully achieve the purpose of a conditional sentence. The above means that the assessment of the court in each specific case is whether protective supervision and a certain obligation within it will positively influence the perpetrator so that he does not commit the crime again due to the same reasons that led to the commission of the crime.⁷

The content of protective supervision is regulated in Article 73 of the CC through ten obligations that can be assigned to a person sentenced to a conditional sentence. These are the following obligations:

- 1) reporting to competent authority for enforcement of protective supervision within periods set by such authority;
- 2) training of the offender for a particular profession;
- 3) accepting employment consistent with the offender's abilities;
- 4) fulfilment of the obligation to support family, care and raising of children and other family duties;
- 5) refraining from visiting particular places, establishments or events if that may present an opportunity or incentive to re-commit criminal offenses;
- 6) timely notification of the change of residence, address or place of work;
- 7) refraining from drug and alcohol abuse;
- 8) treatment in a competent medical institution;
- 9) visiting certain professional and other counseling centers or institutions and acting according to their instructions;
- 10) eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence.

7 According to Article 72 paragraph 2 of the CC, protective supervision is determined by the court in the judgment by which it imposes a conditional sentence and determines the measures of protective supervision, their duration, and the manner of their fulfillment.

When determining which of the listed obligations to impose on the perpetrator and how long they will last, Article 74 of the CC stipulates that the years of the life of the perpetrator, his state of health, inclinations and habits, motives from which he committed the criminal act, demeanor after the committed criminal act, previous life, personal and family circumstances, conditions for fulfilling the imposed obligations will be taken into account in particular, as well as other circumstances related to the personality of the perpetrator, which is important for the choice of measures of protective supervision and their duration.⁸ Otherwise, the court may decide to impose one or more stipulated obligations on the offender, with the obligation to determine the duration of each of them, considering that the protective supervision does not have to coincide with the probationary period, that is, it can last even shorter.

From Article 75 of the CC, it follows that the duration of protective supervision measures is determined within the probationary period established in the conditional sentence, and therefore it is possible for protective supervision to end even before the expiration of the probationary period if a shorter period is determined by the court. In addition to the mentioned way of terminating protective supervision, another way is provided, and that is if during the duration of protective supervision, the court determines that the purpose of this measure has been fulfilled, it can terminate protective supervision even before the expiration of a certain time. Otherwise, the protective supervision ends with the revocation of the conditional sentence, and during the duration of the protective supervision, the court can, considering the achieved results, abolish certain obligations or replace them with others.

Finally, the consequences of failure to fulfill the obligation of protective supervision are foreseen, so in Article 76 of the CC stipulates that if a convicted person who has been sentenced to protective supervision does not fulfill the obligations set by the court, the court can warn him, or can replace earlier obligations with others, or extend the duration of protective supervision within the period of probation, or revoke the conditional sentence (Lazarević, 2007: 149). Which of the four consequences the court will decide on depends on the circumstances of each specific case, but it is evident that the decision will certainly be

8 Apart from the circumstances specified by the law, when choosing certain obligations, the court would also have to take into account the willingness of the perpetrator to fulfill a certain obligation. Namely, although the consent of the convicted person is not required when being placed under protective supervision, his willingness to fulfill the set obligations due to the very nature of those obligations and the purpose of protective supervision is a very important circumstance that the court should take into account. In those cases where it can be concluded with certainty that this readiness is absent without justifiable reasons, the justification for imposing this alternative sanction is seriously questioned (Stojanović, 1979:25).

influenced by the specific reasons and circumstances due to which the obligations under protective supervision were not fulfilled.

On the other hand, the question arises here, if the court decides to revoke the conditional sentence in case of non-fulfillment of obligations from protective supervision, in what time frame it will be revoked, given that this provision is not explicitly stated? In that case, does the analogy with the revocation of a classic conditional sentence apply, which can be revoked even after the expiry of the probationary period in case of non-fulfillment of the obligations from Article 65 paragraph 2 of the CC, at the latest within one year from the day when the probationary period passed?

Justified in domestic theory, the prevailing understanding is that the analogy cannot be applied in this case (Stojanović, 2014:347), primarily for the reason that the Criminal Code explicitly stated cases in which a suspended sentence can be revoked even after the probation period in Article 70 of the CC, not including the case when one of the obligations from protective supervision is not fulfilled. Also, the analogy is not possible due to the fact that here we are dealing with a completely different nature of obligations than those listed in Article 65 paragraph 2 of the CC, that is, it is about more permanent measures that represent a certain type of assistance, care, supervision, and protection, in contrast to restitution of property benefit, compensation for damage caused by a criminal act, and other criminal law measures provided for by special criminal legislation, which are essentially one-time obligations (Tešović, 2020:52).⁹

As for the obligations that make up the content of protective supervision, and ten of them are listed in Article 73 of the CC, the first thing that could be noticed is that in fact the court, when deciding on one of them, must, in any case, determine at least two of them because without determining the first obligation, which consists in *reporting to competent authority for enforcement of protective supervision*, there could not be possible implement protective supervision with regard to other obligations. So, in practice, the court always has to determine the first obligation, and with it one of the other nine obligations, which essentially relate to acting on the perpetrator of the crime and preventing his illegal behavior in the future.¹⁰ In terms of other prescribed obligations, it can generally be stated

9 The opposite insight, in legal theory, points to the fact that, although the legislator did not specifically regulate the possibility of revoking a suspended sentence with protective supervision within one year from the expiration of the probationary period, here, too, we are dealing with the obligations provided in the criminal law provisions (Article 65 paragraph 2 of the CC), so the overwhelming reasons point in the direction of the existence of such a possibility (Vuković, 2022: 506).

10 The aforementioned conclusion also follows from Article 19 of the Rulebook on the manner of execution of non-custodial sanctions and measures and the organization and work of the Commis-

that they are all of a preventive nature, that is, they aim to influence the perpetrator not to repeat criminal behavior (Lazarević, 2011: 316).

It can also be noted that all obligations are described in general, some even too imprecisely, so when determining them, the court should make an extra effort and determine their specific content more closely. Regarding each of them individually, the following can be stated:

- *training of the offender for a particular profession* is an obligation that actually involves the engagement of school institutions and various educational centers in order to educate the convicted. Therefore, this is a measure that orders a convicted person who is in regular or part-time education to regularly attend classes and pass appropriate exams in order to be qualified for a certain profession or to start a certain educational course in order to acquire certain applicable knowledge, which everything is done under the supervision of the commissioner.¹¹ There is a wide range of possibilities within this obligation, so it can be about cooperation with certain secondary vocational schools within the state education system, and it is also possible for the convicted person to enroll in a certain program for professional training or the acquisition of certain applicable skills. Bearing in mind that the legal wording of this obligation is quite general, it is up to the court to specify it, and it is up to the commissioner to enable its execution in a specific case, by cooperating with the appropriate educational institutions.

Right here is the key problem, which educational institutions are they? Are only those founded by the state or are private schools and educational institutions also considered? Given that the issue of financing and costs of such education of the convicted is not at all resolved in the Criminal Code and the Law on the Execution of Non - Custodial Sanctions and Measures, nor in the Rulebook, it would be difficult to, firstly, could accept that such education and professional development can be achieved through educational institutions that are privately owned, bearing in mind that for them it is necessary to pay a high amount of school fees, which is certainly neither determined nor planned to be financed from the budget of the Republic of Serbia. On the other hand, with regard to state high schools and colleges, special enrollment conditions are provided, and a person who has not passed the entrance exam and who does not meet certain prescribed conditions

sioner, *Official Gazette of the RS*, No. 30/2015 (hereinafter the Rulebook), where it is prescribed that in order to successfully implement the program of protective supervision, the convicted person is obliged to report to the commissioner at the time, in the manner and at the place determined by the commissioner, in accordance with the law.

11 According to Article 20 of the Rulebook, the competent commissioner monitors and checks the extent to which the convicted person fulfills the obligations of regular or part-time schooling or other established forms of professional training or acquiring skills.

cannot in any case, regardless of his wishes or possibly the wishes of the acting judge, to study in those educational institutions. The only applicable situation is that the perpetrator is already a pupil or student of a state educational institution so he/she practically continues his education during the period of protective supervision for the profession he had previously chosen.¹² All of this actually leads to the conclusion that this obligation within the framework of a conditional sentence with protective supervision is practically just a “dead letter on paper”, and that due to the aforementioned unregulated issues of the very manner of its execution and the source of financing (apart from financing by the convicted person, which would, on the other hand, turned into a form of a fine), it could not take root in practice (Tešović, 2020:54).

- *accepting employment consistent with the offender's abilities* is an obligation that requires the active cooperation of the commissioner and the National Employment Service. However, in light of the high unemployment rate in our society and constant unfavorable economic conditions, the question arises of the real scope of this obligation imposed on the offender. Is it a realistic idea that in a situation where there are very few chances for all citizens to find any job through the employment service, a person convicted of a criminal offense will be able to find employment that matches his abilities? Therefore, it is necessary for the legislator to consider whether the existence of this obligation is still expedient, at least in this form, considering the factual impossibility of its execution (See Stojanović, 2017: 324).

On the other hand, it is precisely at this point that the question of introducing community service as one of the obligations of protective supervision could be discussed. Why wouldn't that work and employment, which is imposed as an obligation on a probationer, be for general purposes? In comparative law, there are significant examples where, in the case of a conditional sentence with protective supervision, work in the public interest is stipulated as one of the obligations,¹³ so it would be significantly more effective than the current legal solution if these two alternative sanctions actually meet at this point, i.e. in this case, work in the public interest would actually represent an additional obligation of the person sentenced to probation, whereas in the case of non-compliance with this obligation, in the end, revokes suspended sentences and substitutes for imprisonment. Such an ob-

12 A similar obligation exists in juvenile criminal law within the educational measures of special obligations, and it concerns regular school attendance by minors (Article 14, paragraph 2, item 3) of the Law on juvenile offenders and criminal protection of minors, *Official Gazette RS*, no. 85/2005 (See Škulić, 2011: 291).

13 See Article 93 of the Criminal Code of Romania, as well as Article 56b, Paragraph 2 of the German Criminal Code (Strafgesetzbuch)

ligation would be incomparably more effective than finding a job for the convict, and he would be engaged in socially useful work for a certain period of time.

In connection with the aforementioned, the question arises whether the consent of the convicted person is required for the obligations imposed on him within the framework of protective supervision, and especially whether the consent of the perpetrator would be necessary if there was an obligation in the form of community service. Since our legislator in the Criminal Code did not explicitly provide for the consent of the convicted person as one of the conditions, it is not necessary for the obligations foreseen within the conditional sentence with protective supervision. However, as stated above, the willingness of the perpetrator to fulfill the set obligations due to the very nature of those obligations and the purpose of protective supervision is still a very important circumstance that the court should take into account (Stojanović, 1979: 25; also Stojanović, 2017:325).

On the other hand, it would be a completely different matter if, as one of the obligations, the possibility of serving in the public interest was foreseen, and here, as in the case where it is about work in the public interest as an independent sanction, the consent of the convicted person would be necessary, and all in order to respect the generally accepted universal rule on the prohibition of forced labor. Therefore, only in that situation would a mandatory condition in the form of the consent of the perpetrator of the criminal offense be provided for the application of that specific obligation within the framework of a conditional sentence with protective supervision.

– *fulfilment of the obligation to support family, care and raising of children and other family duties* is actually a whole complex of obligations that are provided for in the provisions of the Family Law and in the realization of which both the commissioner and the competent center for social work participate. So, here we are dealing with a different set of family obligations, both those related to the spouse, married or cohabiting, as well as obligations between parents and children and also those arising from the relationship of adoptive parents and adopted children, foster parents, and foster children, as well as guardians and wards. The obligation to support family members is particularly emphasized here, which is otherwise in a case of the criminal offense of not providing support from Article 195 of the CC, in paragraph 4, also provided as a possibility when imposing a suspended sentence.¹⁴ Here, therefore, there is a possible situation in which protective supervision can be

14 Article 195, paragraph 4 of the CC stipulates that, if it imposes a suspended sentence, the court may order the offender to settle the due obligations and to properly provide maintenance. This is actually about the court's ability to, based on the provisions of Article 65 paragraph 2 of the CC, considering that it is an obligation that is specifically provided for by the provisions of the criminal law, imposes a suspended sentence on the described only without protective supervision.

determined for the stated maintenance obligation, so the aforementioned depends on the court's assessment of whether the specific case will apply the provisions of Article 65 paragraph 2 of the CC and impose a simple suspended sentence to which he also tied the fulfillment of the previously mentioned maintenance obligation or, on the other hand, he will impose a suspended sentence with protective supervision whose basic obligation will be the fulfillment of the maintenance obligation, with monitoring of its execution by the competent commissioner.

– *refraining from visiting particular places, establishments or events if that may present an opportunity or incentive to re-commit criminal offenses*, is an obligation that is terminologically imprecisely determined, because the term “*refraining*” itself does not lead to the conclusion that it is a prohibition, but rather that it is about a certain reluctance to visit certain places, with the possibility of tolerance to the opposite treatment. For this reason, it is necessary to specify the relevant obligation, and it would be desirable to formulate it in the form of a ban with the determination of the possibility of periodic verification of compliance with that ban, and in order to facilitate their control by the competent commissioner. Otherwise, according to Article 23 of the Rulebook, the commissioner should use advisory work to influence the convicted person not to visit certain places, bars, or events that may be an opportunity or incentive for committing criminal acts again. This very provision of the aforementioned Rulebook indicates the absence of any explicit prohibition, but it all boils down to an unspecified advisory role of the commissioner to ensure that in a specific case the convicted person fulfills the obligation in question, without the possibility of at least periodic checking of it in any sense (Tešović, 2020:57).

When this obligation from protective supervision is compared with the procedural provision from Article 197 of the CPC on the prohibition of approaching, meeting, or communicating with a certain person and visiting certain places, which has similar content,¹⁵ and which is intended to ensure the smooth conduct of criminal proceedings, it follows that the mentioned procedural measure is much better formulated, especially from the aspect of the possibility of its execution and especially bearing in mind the provision of paragraph 2 of the aforementioned article, which stipulates that in addition to the aforementioned measure, and for

15 According to the provisions of Article 197 paragraph 1 of the Criminal Procedure Code, *Official Gazette of the RS*, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - Decision of the RS RS and 62/2021 - Decision of the RS RS (hereinafter the CPC), if there are circumstances that indicate that the defendant could interfere with the proceedings by influencing the injured party, witnesses, accomplices or concealers or could repeat a criminal offense, complete an attempted criminal offense or commit a criminal offense that he threatens, the court may prohibit the defendant from approaching, meeting or communicating with a certain person or prohibit visiting certain places.

the purpose of its verification, the defendant may be ordered to periodically report to the police, the commissioner from the state administration authority responsible for the execution of criminal sanctions, or another state authority determined by law (Ilić et al., 2013: 457-458).

In the case of protective supervision, there is no such legal determination and specification in the substantive law or in the executive provisions at all, so this is also a shortcoming of this obligation, which, due to its broad and vague wording, without the possibility of checking its application, is therefore not enforced in practice.

– *timely notification of the change of residence, address or place of work* is the obligation of the convicted person to immediately notify the competent commissioner of any change of address or workplace. This kind of obligation practically represents a secondary obligation of the convicted person that he must respect in any case, so the question arises whether its place, in general, is among the obligations that require protective supervision or are it simply the obligation of every convicted person who is at liberty and who has been sentenced conditional sentence? As the commissioner normally keeps a record of all notifications by the convicted about a change of residence, address, or workplace (Article 24 of the Rulebook), it would be justified to provide for the mandatory determination of this obligation along with each of the other obligations of protective supervision. If the court decided only on this obligation, it is not clear what *the measures of assistance, care, supervision, and protection* would actually consist of, as the concept of protective supervision is legally formulated (Article 71 paragraph 2 of the CC), given that this is only about timely reporting to the competent commissioner about a change of place of residence or workplace, and how the commissioner could actually have contact with the convict and supervise the execution of other obligations. Therefore, the nature of this obligation is in any case supplementary, and it seems that its imposition is also mandatory with each determination of protective supervision, in order to enable its successful implementation (Tešović, 2020:58). That's why legislative corrections are necessary for the Criminal Code itself, where mandatory imposition would be introduced for this obligation and where this obligation would be separated from other obligations that, by their content, require the application of real protective supervision by the competent authority.

– *refraining from drug and alcohol abuse* is an obligation from protective supervision to which the same objections can be made as with the obligation to refrain from visiting certain places, given its terminological imprecision. Namely, in order to achieve effective results, it is necessary that this type of obligation is determined as a ban on the convicted person to use drugs or alcoholic beverages

for a certain period of time, and that therefore, at certain time intervals, compliance with that ban should be checked. The way this obligation is currently formulated, it is fundamentally unenforceable, because it is not known how it will actually be determined that the convicted person violates this obligation to support. Refers to that Article 25 of the Rulebook, which stipulates that the commissioner will help the convict refrain from abusing psychoactive substances and understand their harmfulness through counseling and educational work with the convict and his family or close friends. Apart from the fact that giving advice does not, in any case, create the obligation of the convicted person to follow that advice, the question of the expertise and competence of the competent commissioner for the mentioned “advisory and educational work” in this field.

All of the above leads to the conclusion that it is necessary to formulate this obligation more precisely and reliably as a ban on the use of drugs and alcohol, with periodic checks by the competent commissioner of compliance with that ban, which would actually be realized through giving a blood sample by convicted in certain time intervals, which the competent health institution would analyze and determine if there is the presence of drugs or alcohol in the body. As soon as the presence of drugs or alcohol in the body of the convicted person was determined in this way, it would be clear that the prohibition was violated, and the commissioner would immediately inform the court about the aforementioned, for further decision-making.¹⁶ Therefore, in the aforementioned sense, it is necessary to clarify and supplement the legal provisions, as well as the provisions of the aforementioned Rulebook on the manner of execution of this obligation, in order to finally revive the application of this obligation in practice. The advisory role now prescribed for the commissioner is insufficient and inadequate in terms of this duty of protective supervision.¹⁷

16 This practice is represented in a large number of countries: the USA, Great Britain, France, and Germany. In Great Britain, in 2016, a program was started to apply an electronic wristband for alcohol detection that is worn on the wrist and determines the level of alcohol in the body (SCRAM Continuous Alcohol Monitoring). The above-mentioned electronic device, which the convict carries, measures the level of alcohol in the convict’s body every half an hour, and any violation of the ban on alcohol consumption is electronically detected, and thus provided to the probation officer for inspection. This measure is applied in cases where a person has committed a criminal offense under the influence of alcohol, and it is not suitable for alcohol addicts who need treatment and healing.

17 In Article 53 of the Law on the Execution of Non-Custodial Sanctions and Measures, *Official Gazette of the RS*, No. 55/2014 and 87/2018 (hereinafter referred to as the LENSMS) one of the measures for conditional release is to abstain from the use of drugs and alcohol, and if the commissioner reasonably suspects that the convicted person is not complying with this obligation, based on direct inspection or information received from the family or other persons close to the convicted person, is authorized to perform appropriate testing for the presence of psychoactive substances, so if it is determined that the convicted person does not comply with the mentioned obligation or if the convicted person refuses the test, it will be considered that he has not fulfilled the obligation

- *treatment in a competent medical institution and visiting certain professional and other counseling centers or institutions and acting according to their instructions* are the eighth and ninth obligations prescribed as the content of protective supervision. In Article 26 and 27 of the mentioned Rulebook, it is stated that the commissioner in direct contact provides support to the convicted person during treatment and monitors the course of his treatment through regular cooperation with the appropriate health institution, and also provides support and encourages the convicted person to engage in treatment in the appropriate counseling center or institution and monitors the course of treatment through regular contact with professional workers. These obligations are directly related to the seventh obligation to abstain from the use of drugs or alcoholic beverages, so the question of their delineation with the safety measures of mandatory treatment of drug addicts and mandatory treatment of alcoholics arises here.

Namely, what are the cases when a conditional sentence with protective supervision will be applied in the aforementioned sense, and when will the aforementioned security measures be imposed along with the conditional sentence? From the very conditions provided for in Article 83 and 84 of the CC, it follows that security measures of compulsory treatment of drug addicts and alcoholics are imposed on the perpetrator who committed the crime due to addiction to the use of drugs, i.e. due to addiction to the use of alcohol. Such a condition is not foreseen for the mentioned obligations within protective supervision, so it is left to the court to assess whether these are also situations when the criminal offense was committed as a result of one of the mentioned addictions. In theory, the opinion was expressed that a conditional sentence for protective supervision in the form of the obligations previously described will be imposed when it comes to minor crimes, i.e. in cases where the conditions for imposing these security measures are not met (when the criminal offense was not committed due to addiction from the use of drugs or alcohol), as well as in cases where there is a need to order the perpetrator to perform some other obligations from protective supervision (Stojanović, 2017:326). This position should be accepted as correct and logical, because in a situation where it is a question of committing a criminal offense under the influence of alcohol or drugs, but without a medically established addiction,

from the decision on parole. The question arises as to why an identical provision is not provided for obligations in the case of the conditional sentence with protective supervision in the mentioned law (Article 34 - 37) but is only related to conditional release in the mentioned Article 53, and in Article 25 of the Rulebook, only the already mentioned “advisory and educational work” of the commissioner in the case of conditional sentence with protective supervision, without his authority to order testing of the convicted, is listed. There are major omissions and vagueness of the legislator in the enforcement matter, which caused a collision of the norms of the law prescribing the execution of criminal sanctions and the adopted Rulebook on their immediate execution.

it is appropriate to impose this type of sanction where protective supervision would achieve its purpose, while in the case established medical addiction, the security measures in question are the most adequate, with the fact that if it is necessary to order the perpetrator to perform some other obligations from protective supervision, the court could even then opt for this possibility (Tešović, 2020:62).

- *eliminating or mitigating the damage caused by the offence, particularly reconciliation with the victim of the offence* is the last obligation that is foreseen as the content of protective supervision from Article 73 of the CC, which was established to implement the principles of restorative justice. According to Article 28 of the Rulebook, with this obligation, the commissioner is given an intermediary role. Namely, according to the aforementioned provision, the commissioner mediates in the relationship between the convicted and the victim for the purpose of settlement or in order to reach an agreement on the elimination or mitigation of damage. It follows from the content of the cited provision that this is an informal process of reconciliation and settlement between the perpetrator and the victim, which takes place before the competent commissioner. The question is: whether the commissioner is an expert in mediating between the convicted and the injured party? Bearing in mind the provisions of the Law on Mediation in the Resolution of Disputes, it is necessary to fulfill certain legal conditions¹⁸ in order for a specific person to perform mediation, and since no special conditions for selection are provided for the commissioner, nor any training in the aforementioned sense (which is certainly mandatory for the mediator), the conclusion follows that the competent commissioner is certainly not capable of such a delicate job perform in a way that a person who has specialized knowledge in this sense would do it. Therefore, it is necessary to correct the aforementioned criminal law provisions, and especially the provisions of the Rulebook, which determines the manner of execution of this obligation and refer the convicted person and the victim of a criminal offense to proceedings before a mediator who is entered in the Register of Mediators, with whom the commissioner will cooperate and monitor the course of the proceedings settlements.

18 According to Article 33, paragraph 2 of the Law on Mediation in Dispute Resolution, *Official Gazette of the RS*, No. 55/2014, in order to perform the work of a mediator, a person must meet the following conditions: 1) that he has business capacity; 2) that he is a citizen of the Republic of Serbia; 3) that he has completed the basic training for a mediator; 4) that he has a university degree; 5) that he has not been sentenced to an unconditional prison sentence for a criminal offense that makes him unfit to perform mediation work; 6) that he has a license to mediate; 7) that he is registered in the Registry of Mediators.

All the aforementioned obligations that are foreseen as the content of protective supervision are therefore regulated by Article 73 of the CC and the court, when deciding on this alternative criminal sanction, must decide to impose one or more of these obligations on the convicted person. On the other hand, the court cannot include any other obligation, outside of those stipulated, in a conditional sentence with protective supervision, nor can the competent commissioner act according to such a decision of the court, regardless of the fact that the court may consider that in a given case it would be most expedient to impose a such obligation on the convicted person. (*See* Lazarević, 2011:317).¹⁹

3. Execution of the conditional sentence with protective supervision

Regarding the actual execution of a conditional sentence with protective supervision, the legislator assessed that it is an alternative criminal sanction, so he resolved the aforementioned issue with the Law on Execution of Non - Custodial Sanctions and Measures in Article 34 - 37. It is prescribed that the court that made the decision in the first instance is obliged to deliver the executive decision, with data on the identity of the convicted person obtained during the criminal proceedings, to the competent commissioner within three days from the day the decision became enforceable, and the execution itself is the responsibility of the commissioner, who is obliged to immediately, upon receiving the decision, take the necessary actions for its execution and, if necessary, establish cooperation with the family of the convicted, the police, health and social care institutions, the employer and other institutions, organizations and associations. The commissioner is also obliged to draw up a program for the execution of protective supervision within fifteen days from the date of receipt of the decision and to inform the convicted person of the program and the consequences of non-fulfillment of obligations. It is also prescribed that a convicted person has the right to object to that program to the competent court within three days from the day of familiarization with the program.

Otherwise, in Article 36 LENSMS regulates the monitoring of the execution of protective supervision, and in this regard, the commissioner will immediately inform the court and the Commissioner's Service about the beginning and end of

19 An interesting solution is in the Criminal Code of Croatia, *Official Gazette*, No. 125/2011, 144/2012, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, where in Article 62 the last special obligation that can be determined with a suspended sentence is determined in the following manner: "other obligations that are appropriate, considering the committed criminal act." In this way, the judge is given the freedom to determine some other obligation to the perpetrator of the criminal act, which he considers to be the most adequate in the given case, especially taking into account the committed criminal act.

protective supervision in connection with the execution of the conditional sentence. In the event that the execution of protective supervision does not begin within thirty days after receiving the executive decision or the convicted person does not accept the execution of protective supervision, the commissioner is obliged to immediately inform the court that ordered the protective supervision. If during the implementation of the program the convicted person does not fulfill the obligations assigned to him, the commissioner will also inform the court and the Commissioner's Service about this, stating the reasons, and is obliged to submit to the court and the Commissioner's Service a report on the circumstances that significantly affect the implementation of the program.

In Article 37 LENS^M provides that, based on the achieved success in the execution of protective supervision, the commissioner will propose in the report to the court to replace or cancel certain obligations of the convicted person. If based on the achieved positive results, the commissioner considers that the purpose of protective supervision has been fully fulfilled, he will then propose in the report to the court that the convicted person's protective supervision be terminated before the expiry of the probation period, which is related to Article 71 paragraph 3 of the CC where it is prescribed that if the court determines during the duration of the protective supervision that the purpose of this measure has been fulfilled, it can terminate the protective supervision before the expiration of a certain time. Therefore, the commissioner who carries out the protective supervision reports to the court about the results that have been achieved, and then the court can, if it considers that the purpose of the protective supervision has been achieved, cancel the protective supervision even before the expiration of a certain time.

In practice, the commissioner's activity is predominantly based on supervision and control activities, and the execution of those sanctions and measures that require probation (treatment) work in the true sense of the word, is symbolic for now, which represents a big problem. Therefore, it is necessary to take steps in the following period to make these essential activities of commissioners primary in order to become real probation workers, and that control and supervision be carried out organizationally and technically in a different and more appropriate way, with the need to include other social entities and institutions in the work of the Commissioner's Service at the local level (Ilić et al., 2015:133).

4. Relationship with other alternative sanctions and measures

Starting from international standards and comparative legal practice in this area, certainly what we should pay attention to is the possibility of cumulative

imposition of several alternative criminal sanctions and measures in a specific case, all with the aim of individualizing the sanction and its better adaptation to the perpetrator of the criminal act and the circumstances under by whom the criminal act was committed.²⁰ Namely, alternatives to prison sentences are significantly more flexible in quality and are primarily aimed at the rehabilitation of the offender and his integration into society. Therefore, by right choosing the type and measure of the criminal sanction that replaces the prison sentence, as well as in combination with some other alternative, it achieved the best effect in the specific case.

The question therefore arises: is such a combination of a conditional sentence with protective supervision possible with alternative sanctions provided for by our criminal legislation: house arrest, work in the public interest, and one alternative measure - the institution of reconciliation between the perpetrator and the victim? Also, is it possible to apply some non-custodial measures originating from other legal systems, such as “shaming punishments” that exist in US law, as part of a conditional sentence with protective supervision?

4.1. Relationship with alternative sanctions provided by the Criminal Code

First, it would be difficult to imagine the cumulative application of house arrest and conditional sentences with protective supervision, bearing in mind their different legal nature, special purpose, and method of execution, especially for the reason that the sentence of house arrest is regulated in our country as a non-independent sanction, as a modality of prison sentence, and since the purpose of a

20 A significant example in comparative practice regarding the effectiveness of the cumulative application of alternative sanctions is their application in the United States of America under the so-called Todd's program, which is named after Judge William F. Todd from Georgia who started this program in 1992 for people who committed traffic offenses while intoxicated, and by imposing several combinations of alternative sanctions, adapted to the circumstances of the specific case, tried to achieve the greatest possible effects in terms of reducing this specific type of crime. In addition to probation, detoxification treatment was applied with a ban on further alcohol use, then the obligation to pay damages, the obligation to visit patients in hospitals who are being treated for injuries sustained in traffic accidents, the revocation of the driver's license, as well as the disabling of the vehicle's engine start system. The aforementioned research lasted five years and included 1800 persons to whom the aforementioned combinations of alternative sanctions were applied. In the end, the result was more than encouraging, because compared to the perpetrators who, at the same time, for the same types of traffic offenses committed under the influence of alcohol, were punished with prescribed, traditional sanctions (usually fines and short-term prison sentences), twice as many a lower rate of recidivism existed among convicts who went through the Todd program, where an adequate combination of alternative sanctions and measures resulted in a better individualization of the sanction in the specific case. (See Jones et al. (ed.), 1998:18).

suspended sentence is to replace the sentence of deprivation of liberty, the conclusion follows that they cannot be imposed simultaneously. The only thing that is possible is that obligations from protective supervision can be applied to house arrest by determining a conditional release with the stated obligations, according to the provisions of Article 46 paragraph 3 of the CC. Therefore, in our country, the possibility of cumulative imposition of this non-custodial sanction with other forms of alternative sanctions is not foreseen at all, although in foreign literature it is often pointed out that the sentence of house arrest is quite compatible to be imposed with other non-custodial sanctions and measures, such as restitutive and educational measures, as well as with different treatments and treatment measures, and other sanctions that are carried out in the community.

Namely, the way it is regulated in our positive legislation, it is only a way of executing the prison sentence in home conditions, without the possibility of applying any rehabilitation measures along with it. In contrast to this solution, in most European countries, and especially in the countries of the Anglo-American legal system, house arrest is more often a supplementary measure when sentencing to probation, and therefore it is rarely imposed independently, and very often with other alternative sanctions and measures, such as a suspended sentence or conditional release, where in those combinations it can have a certain rehabilitative effect. Failure of our legislature to regulate house arrest as a separate alternative sanction²¹ and determine in a precise and careful manner its essential elements and possibilities of different application and supervision²², in fact, it deprived this sanction of the possibility of having any rehabilitative effect on the perpetrator and reduced it only to the execution of the most severe criminal sanction.

When it comes to the punishment of work in the public interest from Article 52 of the CC, the mentioned cumulative application of alternative criminal sanctions is possible. Namely, without any major difficulties, punishments of community service and revocation of driver's license could be applied as secondary punishments (since both punishments can be determined as main and secondary punishments), with a conditional sentence with protective supervision. Also, there are no essential obstacles to applying a fine in addition to all these alternative sanctions, which is often the solution in comparative law legislation.

21 Such a solution would also symbolically indicate the need to use prisons in penitentiary institutions as an *ultima ratio* solution. (Ignjatović, 2010:171).

22 The possibility of applying house arrest with a conditional sentence with protective supervision would bring our system of alternative sanctions closer to existing modern probation systems and provide the possibility of applying combined alternative measures to a single offender.

The situation is different with the institute settlement of the perpetrator and the injured party from Article 59 of the CC, which represents a *sui generis* criminal law measure where the court can acquit the perpetrator of a criminal offense for which a prison sentence of up to three years or a fine has been prescribed, if, on the basis of an agreement reached with the injured party, he has fulfilled all obligations from that agreement. Namely, the application of this institute, which essentially represents a type of alternative sanction, is incompatible with the other foreseen non-custodial sanctions, even with a suspended sentence with protective supervision, because the application of this institute does not result in the sanctioning of the perpetrator at all, that is, he is actually released from punishment in the end.

However, there is a specific connection between this criminal law measure and the tenth obligation from the content of protective supervision in the form of eliminating or mitigating the damage caused by the criminal act, and especially settling with the victim of the committed criminal act. Namely, the goal of both sanctions is the same, i.e. in both cases it is about realizing the principle of restorative justice and making amends for the victim of the crime committed, but the sanctions that are imposed on the perpetrator are different - exemption from punishment, that is, a warning under the threat of punishment. There is also a distinction in terms of criminal acts in which these non-custodial sanctions can be applied because the case of settlement from Article 59 of the CC is possible only in the case of criminal offenses for which a prison sentence of up to three years or a fine is prescribed (thus significantly narrowing the application of this institute), while in the case of a suspended sentence, the scope of the offense is wider because these are criminal offenses for which may impose a prison sentence of fewer than eight years.

4.2. Relationship with other alternative sanctions and measures

When it comes to the relationship of conditional sentences with protective supervision with other alternative sanctions and measures, here we can refer specifically to the so-called “*shaming punishments*” that exist in US law. It is about this so-called “*shaming punishments*” which represent certain alternative sanctions, i.e. obligations that the judge imposes on the perpetrator of a minor criminal offense, which in a certain way exposes him to the public by having him in some visible way show the environment what he has done, which causes him

shame or serves his education.²³ Therefore, these sanctions represent a substitute for a prison sentence and by their nature are alternative sanctions that require the active action of the convicted person, which exposes him to the public view and in a certain sense shame in connection with the criminal offense he committed, which is of a lighter nature (in question are non-violent, minor crimes, such as drug possession, traffic violations, petty theft, etc.).

The question arises whether there is in some way the possibility of their introduction into our law through a conditional sentence with protective supervision and in that sense the freedom of the judge to impose such a measure on the perpetrator of a minor criminal offense that is directly related to the committed criminal offense. These measures in US law are imposed on the perpetrator of a minor, non-violent crime, usually in combination with other alternative sanctions and measures within the framework of probation. However, their very existence is not undisputed even in the United States of America, i.e. questions are raised as to where the limits of their application are, and whether they really have positive effects on the plan of resocialization of the perpetrator or simply only further stigmatize the convicted in society.²⁴ It is indisputable in American theory and practice that the specific measures in question have an educational character and that they indicate to the perpetrator of the illegality of his behavior, and also inform the environment of what the convicted person has done, and that exposure to the public additionally creates a barrier for the perpetrator to commit similar criminal acts in the future and warns others about the consequences of such an illegal act. On the other hand, the measures that are applied must not in their content be contrary to the Constitution, that is, that they violate basic human rights and freedoms, and in this regard, these sanctions are in no case measures that apply physical force, not they may represent some gratuitous cruel treatment and extremely humiliating behavior. The element of humiliation essentially exists, but it is of a lower level and its purpose is primarily preventive.

23 An example of “shaming punishments” is the case of a woman who was convicted of drug possession and was required to stand on the street corner and carry a sign: “I was caught in possession of cocaine. Ordered by Judge Whitfield,” or the case of a convicted drunken driver who was sentenced to wear a sticker on his vehicle that read: “Convicted of drunken driving,” then the case of a burglar ordered to allow the victim, in the presence of court officers, to enter his home unannounced and take anything close to the value of the thing he stole, as well as the case of a minor who threw a brick at the victim who became blind in one eye as a result, and who was ordered by the court to wear a blindfold on the eye that he will be able to remove only when he sleeps (*See Garvey, 1998:734 - 735*).

24 According to a decision of the Supreme Court of the State of Pennsylvania, these measures must not be aimed at humiliating citizens but must be exclusively aimed at their rehabilitation, so that they do not turn into “unusual tricks” used by judges. (*See Denniston, 2016:1*).

The question arises whether in our criminal law the content of conditional sentence with protective supervision can be enriched with the measures contained in “*shaming punishments*” in US law? First, here we should refer to the essential differences between the legal basis and the way in which judges in our country impose criminal sanctions, compared to the way in which judges in the Anglo-American legal system do it. In our country, it is necessary that these sanctions be expressly prescribed by the provisions of the law, so that the court cannot impose a sanction that has not found its place in the provisions of the Criminal Code. Judges in the Anglo-American legal systems actually judge according to court precedents and have “*sentencing guidelines*” (instructions for the imposition of criminal sanctions) issued by an independent institution within the judicial branch of government itself,²⁵ therefore, judges have significantly greater freedom in choosing the type of criminal sanctions and measures regarding the specific perpetrator of the crime. It is unthinkable in the systems that were developed in the spirit of European-continental law for a judge to apply some sanction or measure that is not expressly regulated by the provisions of the law or to apply it in some way or with some other sanction, and that issue is not clearly prescribed by the criminal law.²⁶

On the other hand, when considering the application of measures that are applied in US law as “*shaming punishments*”, only within the framework of the existing provisions that regulate conditional sentence with protective supervision is this possibility seen in terms of the last obligation, which is described as eliminating or mitigation damages caused by a criminal act, especially settlement with the victim of the committed criminal act. Therefore, within this obligation, and with the aim of settlement and reconciliation with the victim of a criminal offense, some of the measures are similar to the so-called “*shaming punishments*” in US law, with the fact that it would be necessary to explicitly foresee such a possibility. The primary goal of that measure would actually be the satisfaction of the injured party whose right was violated by the commission of a criminal offense, and not simply putting a stamp of conviction on the perpetrator of the criminal offense. Which specific measure the judge would impose would depend on his assessment, but it would be good if the legislator, at least, for example, took some

25 In the United States of America, it is *The U.S. The Sentencing Commission*, which is an independent agency from the judicial branch of government, was established in 1984 with the passing of *the Sentencing Reform Act*.

26 Article 1 of the CC stipulates that no one can be sentenced to a penalty or other criminal sanction for an act that was not defined by law as a criminal offense before it was committed, nor can a person be sentenced to a penalty or other criminal sanction that was not prescribed by law before it was crime committed.

possible measures to avoid wandering in practice (for example, publicly apologizing to the victim through the media, carrying posters or handing out leaflets in a certain place which is related to the injured party or, for example, wearing a sticker about the committed act and its consequences on the car or other motor vehicle of a person convicted of criminal offenses of endangering public traffic, especially if they were committed under the influence of alcohol or psychoactive substances). Practically, if there was no agreement with the injured party in this regard and the consent of the sentenced person to the execution of the measure in question during the procedure itself, only measures that would be expressly prescribed by the legislator could be imposed on him, but it would be a good solution to leave the possibility to impose other measures that would represent some kind of moral satisfaction to the victim of the criminal act if the perpetrator himself agrees to it.

Of course, all of the above implies that the obligation that would be imposed on the convicted does not represent a violation of basic human rights and freedoms guaranteed by the Constitution of the Republic of Serbia and relevant international documents, both of universal and regional significance. Therefore, his physical and psychological integrity is inviolable, he cannot be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical or scientific experiments without his freely given consent, as guaranteed by Article 25 of the Constitution. Treatment of the convicted must be humane and with respect for the dignity of his person (Article 28 of the Constitution of the Republic of Serbia). The above represents, therefore, the limit of any criminal sanction that is imposed on the perpetrator of a criminal offense, and the aforementioned standards must not be exceeded in any case, so this is also the case with these measures, which find their model in the “*shaming punishments*” of US law. Certainly, they must not be an end in themselves and be aimed only at the unreasonable humiliation of the convicted in public but must have the purpose of both achieving the goals of restorative justice and the goals of special prevention, with an evident influence on others to prevent them from committing criminal acts.

Bearing in mind all of the above, there is no reason why our system of alternative criminal sanctions would not be enriched with this type of obligations within the measures of protective supervision in the manner described, with the fact that this measure would certainly be significantly more effective if it were imposed as a supplementary measure, combined with several alternative sanctions and measures, as is the usual practice in Anglo-American law. On the other hand, in support of the tendency to introduce these specific measures into our law is the fact that in our criminal legislation there is a measure of a similar legal nature,

and therefore these measures would not be unknown to the judges who would apply them. Namely, the security measure public publication of the verdict provided for in Article 89 of the CC is a specific measure that exposes the perpetrator of the criminal offense to social shame, but it is in the interest of the passive subject - the injured party, because the main goal is to at least partially eliminate the harmful social consequences achieved by the commission of the criminal offense through means of public information (Lazarević, 2011:360). So, here, too, we are talking about a certain public exposure of the convicted person and his committed criminal offense, with the aim of achieving at least the moral satisfaction of the injured party, so in that sense, there are great similarities with the measures proposed to be introduced within the framework of a conditional sentence with protective supervision, with the obligation which refers to reconciliation with the victim of a crime, all based on the practice of the courts in the United States of America.

5. Conclusions

From what has been presented so far, it is certainly possible to conclude that a conditional sentence with protective supervision is an alternative criminal sanction, which in many segments is not regulated in a detailed and careful manner in the Criminal Code, nor was such an approach when regulating its implementation in the Law on the Execution of Non - Custodial Sanctions and Measures and accompanying Rulebook. A large number of previously mentioned illogicalities and inaccuracies, as well as accompanying legal gaps, contribute to the fact that in practice it is imposed in a really negligible number of cases, although by the nature it should be the leading alternative to imprisonment, where judges would have a great opportunity combining different sanctions and measures, and thus the possibility of fully adapting to the perpetrator of the criminal act and the requirements of special prevention. In this way, we are left with an ineffective model of this conditional sentence, which even the existing Commissioner's Service, given its broad, in some cases inadequate and imprecise competencies, cannot properly implement.²⁷

27 The commissioners themselves indicate that there are numerous problems that make it difficult or completely impossible for them to effectively supervise the execution of a conditional sentence with protective supervision, among which the most common are: that it is often imposed on persons who have been convicted before, then that there is no control mechanism for abstaining from the use of drugs or alcoholic beverages, and that therefore there is a need to improve cooperation with the health care system, as well as to establish more effective local cooperation mechanisms with

In order to achieve greater efficiency in the application of conditional sentences with protective supervision, its more detailed legal regulation is certainly necessary for the manner indicated in the paper, with the filling of existing legal gaps and with more careful drafting of the regulations that regulate its execution. The content of this sanction should be regulated in more detail in the substantive legislation for each of the obligations separately covered by protective supervision, with a possibility of combining them with other alternative sanctions (it turns out that community service is particularly suitable to that effect), and embracing positive solutions in comparative law (for instance, mentioned “shaming punishments” in US law or successful practice in common law countries of what is called “therapeutic jurisprudence” i.e. the “drug courts”, with respect to offenders who committed criminal offences under the influence of drugs or alcohol where a less formal approach is used before the court with constant supervision and therapeutic assistance provided to the offenders by a multi-disciplinary team of experts) (Tešović et al., 2021:77).

It is also necessary to have greater involvement of the holders of judicial functions when pronouncing and executing this alternative sanction, as well as greater cooperation with the Commissioner’s Service, in order to, at least in terms of certain minor crimes and certain obligations, go beyond the framework of the classic conditional sentence and in practice use in a larger scope system of supervision and assistance to the perpetrator of the criminal act.

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the National Employment Service, employer’s associations and chambers of commerce, which would significantly help the realization of professional training and job finding (Bojović - Kolaković et al., 2022: 48).

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