



Research Paper

Alternatives to Custody in Albania and the Establishment of a National Probation Service

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Abstract

Until June 2009, the criminal justice system in Albania was based mainly on the application of prison sentences, with courts issuing few alternative sentences. The tendency was to use imprisonment, with long prison sentences, which led to overcrowding in prisons. Many judges were not sufficiently confident to use alternatives to custody. Execution of such measures was not possible because of lack of a specialized institution for the supervision of offenders on probation, i.e. there was no specialized Probation Service in Albania prior to the establishment of the Probation Service. Experience has shown that, when considering alternatives to custody, judges would impose a fine or suspend the execution of the prison sentence. The establishment of the Probation Service, upon the adoption of the respective legal framework on 27.11.2008, is an essential prerequisite for the execution of alternatives to custody. The paper focuses on the amendments to the Criminal Code and the Law on the Execution of Criminal Sanctions, as well as other secondary legislation on alternatives to custody. What was the purpose of the establishment of the Probation Service in Albania? What are the results of this service since its establishment? These are some of the issues that will be addressed by the paper.

Key words: alternatives to custody; execution of alternatives to custody; probation; Probation Service; supervision of offenders in community.

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I. Application of alternatives to custody in Albania

The Albanian criminal legislation, which regulates the application and execution of alternatives to custody is relatively new. Following the fall of communism, the Criminal Code¹ was approved in 1995. The chapter on alternatives to imprisonment originally envisaged the following alternatives:

- Imprisonment in segments²
- Suspension of execution of imprisonment
- Suspension of imprisonment and the obligation to perform work in public interest
- Early conditional release.

Prior to the changes of November 2008 in the Criminal Code as well as in the Law on the Execution of Criminal Decisions,³ although alternative sentencing was permitted by the legislation, many judges lacked confidence in the execution of community sentences and measures. Their implementation was not secured due to the fact that there was no specialized institution in charge of the supervision of offenders during the execution of a community sentence. A specialized probation service did not exist in Albania. Practice had shown that judges, when considering an alternative to imprisonment, applied a fine or suspended the execution of prison sentences ("Suspension of the execution of imprisonment" (Article 59 of the Criminal Code) and "Early conditional release" (Article 64 of the Criminal Code). According to the statistics of the Ministry of Justice, only one or two alternative sentences were used by the courts, whereas the other alternatives were used quite rarely, almost never.

¹ Law No. 7895, dated 27.01.1995 "The Criminal Code of the Republic of Albania", amended.

² Article 58 *et seq*, Criminal Code of the Republic of Albania, Chapter VII "Alternatives to imprisonment".

³ Law No. 8331, dated 21.04.1998 "On the execution of criminal decisions," amended.

Until the establishment of the Probation Service in Albania in May 2009, the Albanian criminal justice system was mainly prison based, with lengthy sentences and very few alternatives to imprisonment imposed by the courts. Overcrowding of prisons was a serious problem and the available alternatives for decreasing overcrowding were seen to be either building of new prisons or reducing the number of detainees who were placed in the prison system. It is evident that building new prisons and maintaining them is a very expensive endeavour. The solution adopted in most East European countries in line with recommendations outlined in the international instruments, was to change the sentencing practice by increasing the number of alternatives to imprisonment and by avoiding social exclusion whenever possible. An increased use of alternatives to imprisonment would reduce overcrowding in prisons, as well as the costs and negative effects of unnecessary imprisonment.

A newly established Probation Service was seen as the institution which could guarantee the execution of alternatives to imprisonment in Albania. In fact, some preparatory work to establish the Probation Service started in 2006. The Albanian Ministry of Justice established a working group, which produced a first draft law on alternatives to imprisonment and on the establishment of a national probation service. In 2008, the commitment to establish a National Probation Service was included in the framework of the Albanian National Action Plan for the Implementation of the Stabilization and Association Agreement (SSA) between Albania and the EU in the fields of judiciary and prison system. As short-term legal initiatives the National Action Plan referred to drafting a legislative package on alternatives to imprisonment and juvenile justice⁴ and a law "On the Probation Service" ("On the execution and supervision of alternatives to imprisonment").⁵

The underlying idea for the establishment of a Probation Service was to ensure an increased use of individualized sentences, which require more information about the offenders to be submitted to the court, in order for the judges to be able to apply alternatives to imprisonment wherever possible rather than imprisonment.

Following the 2008 amendments to the Criminal Code, the chapter on alternatives to imprisonment was amended and a Probation Service was introduced for the first in Albania. The amendments, which reformed the whole system of the execution of alternatives to custody, were in line with the relevant international recommendations.

The amended Criminal Code envisages the following alternatives to imprisonment:

- *Semi-liberty*, which replaced "*Imprisonment in segments*" (Article 58)
- *Suspension of imprisonment and placing on probation* (Article 59)
- *House arrest* (Article 59/a)
- *Suspension of imprisonment and the obligation to perform work in public interest*
- *Release on parole*.

The first alternative to custody foreseen in the Criminal Code is "**Semi-liberty**."⁶ This alternative foresees that a person, sentenced for up to one year, to pursue certain obligations outside the prison, such as work, education, qualification or professional training, essential family responsibilities or need for training or medical rehabilitation. The convict is obliged to return to prison when he/she has finished performing the obligations outside the prison during the time period laid down by the court. The Probation Service supervises the person sentenced with semi-liberty when he/she is outside the penitentiary institution.

The prison administration and the Probation Service determine in which penitentiary institution the offender is accommodated during his time in semi-liberty, based on the convicted person's obligations. The Probation Service drafts a daily programme to be respected by the convict person during the period he/she is outside the penitentiary institution.⁷ This programme determines:

- a) The times of entering and leaving the penitentiary institution;
- b) The persons with whom the convicted person is permitted to have contact or is prohibited from having contact with during the time he is outside the penitentiary institution;
- c) The premises he/she is permitted to frequent or prohibited from frequenting;
- d) Any other conditions.

⁴ National Plan for the Implementation of SSA, chapter 1.1.5, paragr. 3.1.1.

⁵ National Plan for the Implementation of SSA, chapter 1.2.1.1. paragr. 3.1.1.

⁶ Article 58 of the Criminal Code.

⁷ Articles 29-30 of Law No. 8331, 21 April 1998, "On the execution of criminal decisions", as amended by Law No. 10 024, dated 27.11.2008.

However, there seem to be some serious problems of putting this alternative into practice. Indeed, according to the statistics of the Probation Service, there have been a few cases applied since the Probation Service's establishment in May 2009.

The second alternative is “**Suspension of imprisonment and placing on probation**”⁸.

The court can suspend the term of imprisonment of a convicted person and place him/her on probation, if it considers that the convicted person does not pose a serious danger, and that, due to his/her age, medical or mental condition, or due to the particular family situation, or due to particular education or work circumstances, or circumstances of the commission of the crime and his/her behaviour after the crime. This is only possible if the original prison sentence does not exceed five years. The person on probation provided that during the probation period he/she does not commit any other criminal act. Moreover, the court orders the convicted person on probation to meet one or more of the following obligations, in consideration of the offender's circumstances:

1. To exercise a professional activity or to gain professional education or training.
2. To use his/her salary or other income or property for the fulfilling of financial obligations.
3. To compensate for torts.
4. To be banned from driving certain vehicles.
5. To be forbidden to exercise a professional activity if the criminal act relates to such activity.
6. To be banned from certain places.
7. To be banned from premises serving alcoholic beverages.
8. To stay in his residence during certain hours.
9. To avoid the company of specific persons, mainly convicted persons or co-perpetrators of the crime.
10. Not to possess, keep or use weapons.
11. To be subject to medical treatment or rehabilitation in a medical institution, or programme.
12. To refrain from using alcohol or drugs.

The probation period ranges from 18 months to 5 years. The Probation Service supervises the convicted person on probation and informs him/her of his/her obligation to keep contact with the Probation Service. The Probation Service draws up and conducts an individual treatment plan for each offender by determining his/her rights and obligations such as the type and frequency of his/her meetings with the Probation Service. If the convicted person does not fulfil his/her obligations set by the Probation Service or ordered by the court, the court can decide the replacement of the original sentence with another sentence, the prolongation of the probation period, or the revocation of probation.

In practice, this alternative is the most used by the Albanian courts. According to the statistics of the Probation Service, from 2009 to 2016, there were 17,854 cases of “Suspension of imprisonment and placing on probation” out of a total of 22,243 cases in which the courts granted an alternative sentence.

A difficulty in the application of this alternative has proven to be the question whether the court must always impose at least one obligation on the offender. In practice, there have been cases when judges did not impose any obligations at all.

“**House arrest**”⁹ is a relatively new alternative sentence introduced with the 2008 amendments to the Criminal Code. It is applied by the court in cases of imprisonment of up two years or when the remaining period of sentence to be served is less than two years. The court may rule the serving of sentence at the convicted person's home, another private home or a centre of care and public health, under one of the following circumstances:

- a) For pregnant women or mothers of children under 10 years old who live with them;
- b) For fathers who have parental responsibility over the child under 10 years who lives with him, when the mother passed away or is not capable to care for the child;
- c) For persons with serious health conditions who need on-going treatment by the health-care service outside prison;
- ç) For persons over 60 who are disabled;

⁸ Article 59 of the Criminal Code.

⁹ Article 59/a of the Criminal Code.

d) For young persons under 21 who have documented needs concerning their health, education, employment or family-related responsibilities.

The court may authorize convicted persons who serve their sentence at home to leave their residence in order to meet family needs by engaging in employment activities, education or training, or rehabilitation programmes, which have to be agreed with the Probation Service. Once the court has agreed one of the above reasons, it also determines which measures have to be taken by the Probation Service.

The Probation Service contacts the local authorities, social services, the State police and any private or public entity that might assist in the implementation of house arrest. The Probation Service enters into co-operation agreements with these entities for the supervision of the convicted person.

From 2009 to December 2016, there were 357 cases of “House arrest” sentences issued by Albanian courts.

One problematic issue observed in practice with the issuance of this alternative sentence is the provision that limits the placing a person on house arrests who have parental responsibilities to children under 10 years of age. This age limit is too low, as children up to at least sixteen years old are not seen fit under the Albanian legislation to take care of themselves. Even to be allowed to work on a part-time basis, a juvenile has to be at least sixteen years old, according to the Albanian legal framework.

“**Suspension of imprisonment and the obligation to perform work in public interest¹⁰**” is another alternative foreseen by the Criminal Code. Work in the public interest consists in the performance of unremunerated work, performed with the convicted person’s consent in the public interest, for a period of 40 to 240 hours. The court may suspend the imprisonment if the crime would warrant up to one year of custody, and replace it with work in the public interest, if the person and the circumstances under which the criminal offence was committed do not pose a serious danger.

After receiving the court decision, the Probation Service assesses the type of the criminal offence committed, personal characteristics of the convicted person, such as education, age, health, professional skills, his/her previous work experience, and social or family situation of the convicted person.

The Probation Service drafts an individual programme, on the basis of which it then signs an agreement with the entities where the work shall be performed on the programme’s management. The agreement includes the details of the programme and the performance of work, the person responsible for supervising the work performance, as well as supervisor’s obligations to inform the Probation Service immediately if the convictor person fails to meet the imposed obligations and conditions.

Work in public interest has to be performed within a six-month period and upon its completion, the sentence is considered non-existent, this means a clean criminal record. This is the reason why this type of alternative sentence is mostly used for juveniles.

In the alternative “**Release on parole¹¹**” the convicted person may be released for special reasons, if through his work and behaviour he/she has shown that the sentence has served its purpose for his/her reformation, and he/she has served:

- not less than half of the sentence in cases of misdemeanours;
- not less than two thirds of the sentence for crimes punished with up to five years of imprisonment;
- not less than three fourths of the punishment for crimes punished with five to 25 years of imprisonment.

Release on parole for recidivists punished for intentional crimes is not allowed. It can also not be applied to persons convicted of “Murder for blood feud”, “Murder of public employees”, “Murder of Police officers”, “Murder in the family” and “Sexual intercourse with minors resulting in death or suicide of minors”. A convicted person serving life imprisonment is deprived of the right to release on parole, unless there are extraordinary circumstances, he/she has served no less than 25 years and, during the period serving his/her sentence, has exhibited excellent behaviour and the reformation of the convicted is deemed achieved.

The court requires a report by the Probation Service regarding the family situation and social background of the convicted person, as well as the concrete plans to enable full re-integration after release. In practice, this provision has been applied extensively. According to statistics of Probation Service, from 2009 to December 2016, there were 1007 convicts released on parole.

In practice, “special reasons” for applying this provision differ from judge to judge and depend on his/her discretion. Based on the case-law of the Albanian High Court, “special reasons” could be “*the difficult social and economic situation of the family members of the convicted person; the difficult health conditions of the family members of the convicted person and their need for medical assistance; death or escape of family members as a result of which the convicted person’s children or other family members are left without assistance, and others*”.

¹⁰ Article 63 of the Albanian Criminal Code.

¹¹ Article 64 of the Albanian Criminal Code.

If, during probation, the convicted person commits another criminal offence, the court may change the obligations it had ordered, replace the original sentence with another one, or completely or partially revoke the decision of release on parole. If the convicted person during probation violates the conditions or obligations imposed on him, the Probation Service informs immediately the prosecutor, who, depending on the seriousness of the violation, can either issue a warning or request the court to change the imposed obligations or revoke parole.

As outlined above, the implementation of all these alternatives to custody requires the pivotal involvement of the Probation Service.

II. Role of the Probation Service in Albania

The creation of the Probation Service in May 2009 saw a change in the application of alternatives to custody in Albania, and in particular of the trust of justice institutions in rehabilitation measures. The Probation Service was established as a central public organ, under the Minister of Justice. The Probation Service consists of the General Directorate of Probation Service located in Tirana and twenty-two local offices throughout the country.

Probation officers have backgrounds in social justice, psychology, social work, sociology and law. The Probation Service has its own training team, which ensures continued, sustainable training for probation officers. The growing number of officers had a positive effect on the caseload borne by each officer.

According to the Law on Organization and Functioning of the Probation Service,¹² the Probation Service is the State body which oversees the enforcement of alternative sentences, submits information and reports to the prosecutor or court according to this law. The Probation Service assists the enforcement of alternative sentences and supports the convicted person to overcome difficulties of social reintegration. Central State and local government units' bodies provide the Probation Service with the necessary assistance for the fulfilment of legal obligations.

One of the key functions of the Probation Service is to draft pre-sentence reports. At the request of the prosecutor or the court, the Probation Service submits a report for the evaluation of the offender's social circumstances in order to help in the decision-making during the investigation stage or trial. The report should contain information and data regarding the personality of the offender, his/her employment record, his/her behaviour and educational background, as well as all factors which influence or might influence his/her behaviour. This will allow the court to make a proper evaluation of the case in view of ordering an alternative sentence. The report should also contain a recommendation of the Probation Service of the most appropriate alternative sentence, aiming at his/her reintegration into society and preventing him/her from committing other criminal offences.

The role of the Probation Service during the phases of criminal proceedings:¹³

	Pre-trial phase	Trial phase and implementation of the decision	Phase after the end of the alternative sentence
Drafting evaluation reports for the prosecutor's office during the investigative phase	√		
Drafting evaluation reports for the prosecutor's office when the prosecutor has made his final charge in court	√		
Drafting evaluation reports for the court		√	
Supervision, assistance for a convicted person whose imprisonment is suspended and who is put on probation		√	
Supervision/organisation of community service		√	
Mediation to resolve conflicts between the defendant/convicted person and the victim		√	
Supervision of treatment programmes for users of drugs or alcohol		√	
Supervision/assistance for conditionally released persons		√	
Supervision/assistance for those given house arrest		√	

¹² Law No. 78/2020.

¹³ Probation Bulletin 2011, OSCE Presence in Albania, pg. 19.

Supervision of other obligations imposed by the court		√	
Organisation/supervision for those sentenced to semi-liberty		√	
Preparation of reports for the prosecutor about non-fulfilment of the obligations		√	

In addition, given that the execution of alternatives to imprisonment requires the involvement of all justice actors, the Probation Service has entered into agreements with several local government structures and civil society organizations. Since its establishment, the Probation Service signed about 250 Memoranda of Understanding with other institutions. The purpose of these agreements is to determine places of work in the public interest. Moreover, these agreements also cover cases of other alternative sentences with direct local government involvement. Local governments have a special interest in these agreements, as they have the purpose of guaranteeing public security in the community and assisting the convicted person to reintegrate successfully into their community.

The Probation Service has been successful in reducing both the cost and the negative effects of imprisonment. The number of offenders on probation has progressively increased, from 705 offenders in 2009 to 5647 offenders in 2020. According to the statistics of the Probation Service, the recidivism rate of offenders on probation is 2%, which is low, compared to the overall figures on recidivism in Albania.

The tables below provide figures on the number of offenders on probation from the establishment of the Probation Service in 2009 until December 2020. In addition, the other table provides figures on the juvenile offenders from 2009 until December 2020. The total number of women offenders on probation, from 2009 until December 2020 was 4543.

Total No. of offenders on probation

Years	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
No. of probationers	705	1847	2117	2602	2085	4003	5952	5577	6046	7528	6767	5647

Total No. of juvenile offenders

Years	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	TOTAL
No. of juvenile probationers	109	280	246	445	297	456	415	390	312	290	218	107	3565

III. Conclusions

A fully functioning probation service is a tangible contribution to strengthening the rule of law, an essential objective for Albania's progress.

Since the establishment of the Probation Service in Albania in May 2009, which was a major step forward in reforming the criminal justice system, the sentencing practice has changed by increasing the number of alternatives to custody and by avoiding social exclusion wherever possible. In addition, the Probation Service has been fairly successful in reducing both the cost and the negative effects of imprisonment. The number of offenders on probation has progressively increased, from 705 in 2009 in 5647 in 2020. The same applies for minors, from 109 minors in 2009 to 218 in 2019.

Increasing the number of local probation offices can be considered as a step forward in the development of the Probation Service in Albania. The positive results of the Probation Service so far are due to the willingness, commitment, and professionalism of the probation staff.

Lastly, the Probation Service has contributed to public safety by guiding and supporting offenders and facilitating their effective reintegration into community, as well as to the offloading of prisons and reducing reoffending.

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