

PROBATION ADVICE IN SERBIA AND THE NETHERLANDS

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Abstract: The aim of this paper is to exchange knowledge and experience between a judge from Serbia and a public prosecutor from the Netherlands. The following questions will be addressed: In which cases in the Netherlands is a probation advice requested and in which cases not? What are the indications and/or guidelines? For what offences and for what offenders might probation advice be used? What alternative sanctions and measures can be proposed? Who can request for an advice of the Probation Service and what is the procedure? What are the content and form of the advisory report, what subjects are described? As for the function of the probation advice: in which way is it used and what are the advantages? The paper contains the analysis of cases in the Netherlands and Serbia and describes how the parties involved would deal with these cases in either Serbia and in the Netherlands, juxtaposing the similarities and differences. Finally, the paper contains the analysis of the possibilities and modalities of the application of the probation advice and alternative sanctions in the criminal procedure and the procedure for the execution of criminal sanctions in the Republic of Serbia and in the Netherlands.

Keywords: alternative sanctions, probation advice, Probation Service, personal circumstances of the defendant, sentence, justice chain

INTRODUCTION

The concept of alternative measures is based on the belief that by their implementation multiple goals can be achieved: an imposition of the sanction, rehabilitation of the offender as well as the reparation of the damage and an active policy of social help for the offender.

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Modern trends in the fight against crime are increasingly directed towards organised social activity of a preventive nature. This is reflected in the strengthening and development of the attitude towards perpetrators of the criminal offenses in the attempt to return them, more successfully and as soon as possible, as full members to the society by strengthening special criminal law prevention, and in weakening the classical retributive element in punishment. In general, there are changes in understanding and the meaning and content of the sentence. The notion of the punishment in the past as a pure retaliation, the punishment without a further aim, evolved into a penalty aiming to achieve socially useful goals – the protection of society from crime through reintegration of perpetrators and the compensation of the victim.

Probation service in the most countries acts and cooperates with the court and the prosecution in all phases of criminal procedure (Tigges, 2018). The assessment of sentences is very important for both the offender, on whom the sentence is imposed, and the public. Accordingly, the offender himself is a factor that significantly affects the process of sentencing as an individual. Taking the personality of an offender as a determinant in the process of sentencing, we come to the point of the individualization of a sentence.

Advice to the court on sentencing has traditionally been a key part of the probation officer's role. Reports of the Probation Service delivered to judges and prosecutors at their request, in the phase of imposing a sentence or deciding on an alternative sanction or pre-trial detention would be of great use. Probation advice would make it easier to decide on the criminal offense or on the merits of detention. The reports would give a much more complete picture of the personality and personal circumstances of the defendant. All this is of significant importance for the decision of the court and the public prosecutor on the application of the alternative sanction or a sentence of imprisonment.

The topic of this paper is the review of the relationship between the probation service and the judiciary in the Netherlands and the possibility of engaging the Probation Service in criminal proceedings in the Republic of Serbia before the imposition of a criminal sanction (in the form of providing advice and recommendations to judges or public prosecutors on the pronouncement of an alternative sanction). In this regard, the paper discusses the legal possibilities in Serbia: Does the court or public prosecutor under the Serbian Criminal Procedure Code have the authority to request a report on the personality of the defendant from the Probation Officer in the pre-trial criminal proceedings or in the phase of the main trial (before the decision on the criminal sanction)? What are the content and form of the report, what subjects are described? Concerning the function of the probation advice: in which way is it used and what are the advantages? These main characteristics of probation advice will be illuminated. The results on implementation of probation advice in the Netherlands, in the Serbian legal system and in the key international documents will be shared. The Dutch Probation Service is an independent service, and in cooperation with the prosecution has permanent place in the justice chain. It acts and cooperates with the court and prosecution in all phases of criminal procedure. In the Netherlands, the reports on the personal circumstances of the defendant are received from the Prosecution Service and the law allows the prosecutor or judge to use this information before deciding on the type and length of the criminal sanction. The data is provided in a specific format, which allows the stakeholders in the process to easily review the advisory report and notice the most important information.

PROBATION ADVICE IN THE REPUBLIC OF SERBIA

The communication between courts, prosecutors and probation officers is important. In Serbia the practice of providing judges and prosecutors with reports on the personality of the defendant during the course of the criminal proceedings does not exist.

In the field of alternative sanctions in the pre-investigative phase, the Public Prosecutor's Office in Serbia mostly applies the provision of Article 283 of the Criminal Procedure Code, hereafter CPC, (Official Gazette RS, 72/11, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/19) stipulating the conditions for the application of the institute deferring criminal prosecution. Deferring criminal prosecution is applied only in the pre-trial process in the pre-investigation stage.³ The prosecutor has a considerable discretion over crimes with penalties of less than five years and may defer prosecution upon the defendant's agreement to compensate for any harm that he/she has caused and satisfy other law-abiding life conditions that the prosecutor may propose (Article 283 paragraph 1 and 2 of the CPC). However, there are still many open questions regarding the most important issue: sentencing discount and the size of discount that can be offered in exchange for consenting with out-of-court proceedings.

In criminal acts such as violent behaviour and domestic violence, the obligation to undergo psycho-social treatment to eliminate the causes of violent behaviour proved to be the most effective. In this respect, the program that was implemented in the Centre for Social Work in Nis, Serbia, gave positive results. In this case the Probation Service could have a wide range of additional tasks and responsibilities. Some examples are:

- To provide information to judicial authorities in order to assist them in sentencing and other decisions (including risk assessment of re-offending);
- To develop, implement and monitor community sanctions and measures;
- To provide practical and social help, care and aftercare to the offender during his contact with the criminal law system;
- To implement interventions that aim to prevent recidivism (including individual or group training programmes ultimately aiming at changing criminal behaviour);
- To support (ex-)detainees and assist them during preparations for release;
- To control and supervise the conditions applied to offenders.

According to the current legislation and practice in Serbia, the Probation Service does not submit reports to the court nor to the prosecutor's office on the personality of the suspect before the imposition of criminal sanctions, i.e. in the phase of the pre-trial and pre-sentence when the court decides on the type and the level of punishment. Such reports are not submitted even during pre-trial proceedings when it is decided whether a pre-trial detention will be imposed or if an alternative sanction is more appropriate.

It is the opinion of the authors that it would be useful for the court and the public prosecutor to obtain the reports on the personality of the defendant (e.g. from the probation service), before deciding on the type and amount of the sentence (before the completion of the main trial) or before deciding on conditional release. Regarding the conditional release, the current practice in the Republic of Serbia is that the courts decide on conditional release based on:



1. The reports of a prison institution in which the offender is serving a prison sentence;
2. The extracts from the criminal records of the competent Police Directorate on the previous convictions of the offender;
3. Examining the case file concluded with a final judgment according to which the offender serves a sentence of imprisonment and according to which the decision on conditional release is to be made and;
4. The recommendation of the public prosecutor regarding the conditional release (whereby the practice of public prosecutors in Serbia is that they usually give a negative opinion in terms of conditional release, and suggest the rejection of the application of conditional release).

However, the aforementioned reports and the available information are, in some cases, not sufficient for the court to obtain a true picture of the current state of the convicted person and his/her personal circumstances and personality. In the absence of additional information, the court is more guided by the information related to his/her situation before the commission of the crime. Probation advice that contains information about the offender's circumstances and personality at the time when the judge decides on conditional release would be more relevant to the court. This is important to assess the effect of the conducted treatment on the offender during the enforcement of the prison sentence and to assess the risk of repetition of a criminal offense after release from prison.

Advice on appropriate sentencing is important and should consider the personality of the offender and the effect the sentence will have on him/her. This is particularly applicable to alternative sentences. It is also important to consider adequately which specific alternative sanctions will be appropriate for an offender, how they will be assessed, by what means and by whom and how their effectiveness will be assessed. This is consistent with R (2000) 22, paragraph 19, which recommends that "criteria of effectiveness should be laid down so as to make it possible to assess from various perspectives the costs and benefits associated with the programmes and interventions [...]".

The Serbian Criminal Code (CC) also refers to the necessity for the court to have sufficient information about "the personality of the perpetrator and his readiness to perform the community service" (Art. 52 CC). The same is applied to suspended sentence and the attached obligations where the court must consider the "personality of the offender" and other social information (Art. 72 and 74 CC).

Article 66, paragraph 4 CC states: "In determining whether to pronounce a suspended sentence the court shall, taking into account the purpose of suspended sentence, particularly take into consideration the personality of the offender, his previous conduct, his conduct after committing the criminal offence, degree of culpability and other circumstances relevant to the commission of crime."

Therefore, it is important that the prosecutor and the judge are provided with relevant information about the accused person (his personality, family and social circumstances). Advisory reports would make it easier to decide on the criminal offense or the merits of detention. The reports would give a more complete picture of the personality and personal circumstances of the defendant, which is important for the decision of the court or the public prosecutor to apply an alternative sanction or a sentence of imprisonment.



PROBATION ADVICE IN THE NETHERLANDS

In order to give an appropriate and balanced judgment on a criminal case, the gravity of the offences, their impact on society, the consequences for the victim and the personal circumstances of the accused are taken into account. As far as the latter is concerned, it is relevant that the court understands how the accused came to commit the offence and how they can be prevented from committing the offence again. A probation advisory report can inform the judge and the public prosecutor about this.

In the Netherlands, probation advice can be given at any stage of the criminal proceedings. It allows for the judge to be provided with advice at various stages of the proceedings on a suspect's personal circumstances and the likelihood of them reoffending. In the Netherlands, we distinguish the following types of probation advice:

- Probation advice shortly after the arrest;
- Probation advice in the event of a suspension of pre-trial detention;
- Probation advice for the judge or the public prosecutor;
- Probation advice in prison;
- Probation advice in the event of conditional release.

This article will predominantly focus on probation advisory reports that are issued to the judge and the public prosecutor, being the advice that is used in the disposal of the criminal case. In which cases is probation advice requested, what is its content and how is it used in the disposal of a criminal case?

Indications and procedure for requesting probation advice

By definition, the capacity of the probation service is limited. In order to be able to deploy this capacity efficiently, probation advice is – in principle – not requested in the cases involving organised crime, the cases where more than four years' imprisonment is expected and in the cases involving suspects who do not have residency status. In all other cases, the judge or the public prosecutor can request probation advice.

After a suspect is arrested, they are questioned by the police. The police usually conduct a so-called social interrogation during the first interview, before the offences are discussed. During this social interview, the suspect's social circumstances are discussed: with whom the suspect lives, what their living conditions are, if they have work and income, and if there are any addictions or other issues. The social interview enables the police to determine whether probation advice is necessary. In a simple case where personal circumstances have played only a limited role, no probation advice will be sought. Even in cases where the suspect exercises their right to remain silent, this course of action means that usually no probation advice is requested.

According to the Dutch law, a suspect must be brought before a judge within 3 days and 15 hours of arrest. At such time, the judge will assess whether the arrest was lawful and the pre-trial detention should be extended, and may request probation advice. The public prosecutor may also request probation advice at that time, or do so when reviewing the case at a later stage. In most cases, the public prosecutor will request the probation advice, partly because it has been agreed that a report will only be requested once the date of the court hearing has been set. This ensures that the probation advice is always up to date.



In order to ensure that the probation service also provides the required information, the Public Prosecution Service and the probation service have made arrangements on the form and content of the probation advice. The Public Prosecution Service and the probation service regularly consult in order to coordinate the working arrangements further. In addition, in individual cases, the probation service and the responsible public prosecutor can always consult as well, for example about special forms of supervision or treatment.

In the Netherlands, probation advice is requested digitally using a standard form.⁴ This application form contains the following information:

- The details of the criminal case;
- The suspect's details;
- The date of the court hearing and the type of court hearing (single or multiple);
- The purpose of the application.

The application form can also be used to draw attention to certain subjects, such as the possibility of electronic tagging, or application of the juvenile justice system. The arrangements have been made with the probation service about delivery times on a national level.⁵ For example, with regard to an advisory report for a court hearing, it has been agreed that the report needs to be applied for no later than ten weeks before the date of the hearing. The advisory report is subsequently issued two weeks before the court hearing. The probation service issues it by uploading it to a digital system. If this deadline is not feasible for the probation service, it will consult with the public prosecutor. The public prosecutor ensures the advisory report is distributed to the court and the lawyer. In principle, therefore, the advisory report is issued to all the parties to the proceedings two weeks before the court hearing.

Content of the probation advice

In the request for a probation advice, the probation service will at least be provided with information on the charges and the interrogation of the suspect. For the purpose of the advice, the probation service has a conversation with the suspect about the suspicions against them. In order to get a complete and reliable picture of the suspect, it is important that the probation service talk to others about the suspect as well. With the suspect's consent, the probation service may contact the references from their environment, such as the family members, friends, or a professional who knows the suspect well. In addition, the probation service may request information on the suspect from the police, the judicial authorities or a health care institution without the suspect's consent.

In-depth investigation

If necessary, the probation service can have a so-called in-depth investigation carried out in order to gain more insight into the issues or to assess the likelihood of the suspect reoffending. The public prosecutor or examining magistrate can draw attention to this as well. Such an in-depth investigation may consist of:

⁴ See Appendix 1. Application for probation advice

⁵ Collaboration agreement of 12 May 2021 between the Public Prosecution Service and the three probation organisations (3RO)



- A personality assessment;
- An investigation into psychiatric problems;
- An intelligence test (IQ test);
- An investigation into the influence of addiction on criminal behaviour.

The in-depth investigation is carried out by a behavioural expert. The behavioural expert's report sets out the issues that exist. It also states whether a treatment is necessary and – if so – what kind of treatment. This may include clinical care, outpatient care or sheltered accommodation. The duration and intensity of the treatment is estimated. Indicators have been agreed for the carrying out of an in-depth investigation. An in-depth investigation can be carried out if – for example – it concerns a serious violent crime, a sex offence or offences against people, or if there is a suspicion of a mental disorder.

The advice

On the basis of all the information obtained, the probation service issues a recommendation. This advice is drawn up according to a fixed model. The probation advice consists of a fixed cover sheet, followed by the conclusion and a substantiation based on a number of themes. Often, the advice is accompanied by suggestions on possible special conditions. These conditions are standardised and agreed with the Public Prosecution Service and the judiciary.⁶ The probation advice contains the following topics:

- What the suspect has told the probation officer about the offence and how the suspect views the offence.
- A description of their personal situation.
- The probation worker's professional judgment of the criminal case. The probation worker does not provide an opinion on whether the accused is guilty or not, as that is for the judge to decide.
- An assessment of the likelihood of the suspect reoffending.
- Advice on what will be required to prevent the suspect from reoffending.

An important part of the Dutch probation advice is the risk assessment. The probation service assesses the risk of recidivism. The probation service makes this risk assessment by means of the RISC offender assessment system. The probation service uses this system to identify the risk factors and protective factors, and to assess the likelihood of recidivism and formulate advice on the special conditions in a structured manner. The questions in the RISC are based on – among other things – scientific theories on how criminal careers are built up and ended.⁷ The probation advice makes no mention of any evidence, as that is not up to the probation service. The advice is discussed with the suspect and their reaction is included in the probation advice, so that the judge can take note of that as well.

⁶ Perspectives for action OM – probation

⁷ <https://www.reclassering.nl/over-de-reclassering/wat-wij-doen/risc>



The use and function of probation advice

In the Netherlands, the probation advice forms part of the case file, along with the official police report and the criminal record. The probation advice shows how the suspect came to commit offences to begin with, and what measures should be taken to prevent him from reoffending in the future.

The public prosecutor uses the probation advice to determine the demand in the criminal case. Although sentencing guidelines have been laid down for most offences, probation advice can be used to better tailor sentencing. For example, if, in a criminal case involving benefit fraud the advisory report shows that the suspect has significant health issues and it is also clear that the likelihood of recidivism is limited, the public prosecutor is more likely to demand a sentence that is lower than the guidelines prescribe. In this way, the personal circumstances of the suspect can be taken into account to a greater extent. In such case, a fully suspended prison sentence can be demanded instead of an unconditional prison sentence, as the guidelines prescribe.

For the judges probation advice is of great importance in reaching a fair verdict in a criminal case. Below are some quotes from the Dutch criminal court judges about the value of probation advice:

“I would not know how to punish someone fairly without probation advice.”

- “For me as a judge, the reports are extremely useful as much more than the police’s social interrogation these offer insight into a suspect’s backgrounds and problem areas, particularly with regard to whether the suspects have debts or addictions, whether they are employed or have daytime activities or not, and their housing situation. That saves a lot of time at the court hearing because, as far as the personal circumstances are concerned, I don’t have to find out all that myself. In addition, this information may very well be more reliable than what a suspect says in court, because the probation service has the opportunity to check the facts. The probation service’s advice is also a good starting point at the court hearing, especially concerning special conditions such as debt assistance or aggression management training. However ‘punishing’ a well-founded advice is valuable as well.”
- “Recently I had a suspect who, in view of the thefts he had been charged with and his criminal record was once again up for a substantial number of months’ imprisonment. However, precisely because of the probation advice, I decided against sending him to prison. Since coming out of detention at the end of the previous year (having been sentenced for offences committed before this most recent detention), he had received intensive counselling from the probation service, had a roof over his head again, had been abstinent from alcohol and had a daytime activity that would probably result in paid work. In addition, no new offences had been added to his criminal record. The probation service indicated that while an unconditional prison sentence may have been appropriate, it would probably mean losing everything that had been built up over the preceding seven months. Long story short: my verdict was a hefty community punishment order, along with a suspended prison sentence. Without the probation advice, I probably would not have done that.”
- “In preparing for the court hearing, I use the probation advice to form a picture of the suspect. What is his background, and what are his problems? Has he had counselling before and how did that go? It ensures that you are not starting from scratch during the court hearing and can ask specific questions about the suspect’s personal circumstances and future plans, and any punishment to be imposed. It also means that a suspect cannot just say anything he likes and paint a better picture of him.”
- “In chambers, the probation officer’s advice carries a lot of weight, but is obviously not decisive in the punishment and the modality. It matters whether the probation service has recently seen a positive change in the suspect, and some problem areas have already been resolved. If a suspect now has a job



that he did not have before, is open to being counselled where this was previously not the case, and a solution to debts appears to be in the cards, this obviously leads to a different punishment than in the circumstances in which the probation service indicates that the situation is actually hopeless, and that, while the suspect is giving socially desirable answers, he is not open to being counselled and is not intrinsically motivated to change. With regard to any conditions to be imposed and the guidance from the probation service, the probation service's advice is of great importance and the proposed conditions are often adopted one to one."

Number of advisory reports in 2019 and 2020

In 2019, the probation service issued 19,404 advisory reports for the court hearing. In 2020 there were 16,822 advisory reports.⁸ Of course 2020 was a different year due to the Covid pandemic, with therefore fewer reports issued. By comparison: in 2019, the criminal courts settled 85,000⁹ criminal cases. In 2020 this number was 75,800 criminal cases.¹⁰ An advisory report was issued in almost a quarter of these cases. Probation supervision is recommended to prevent recidivism. In 2020, the probation service carried out 15,395 supervision orders.

Use of probation advice from the serbian and dutch perspective

in order to illustrate how the probation service can be involved in the disposal of a criminal case, we will provide a case study, in which the role of the probation service will be explained from both the Serbian and the Dutch perspective.

Markus, a 24-year old young man, is working in the electronics store of his parents. He means to take over the store when his parents retire. Unfortunately, his parents die in a car accident, and Markus is forced to take over the store at this young age. Markus is sad about the sudden loss of his parents; he starts to drink alcohol, and becomes depressed. After a while, he becomes desperate and does not know how to deal with everything on his own. To release him from all these problems and to get out of this situation, Markus sets the store on fire. Fortunately, there is a fire alarm, which prevents the fire from becoming a major disaster. The fire is extinguished, preventing any danger to people or goods. Markus is arrested for arson. Does the probation service become involved, at what moment and how?

The Netherlands

In a case as serious as this, the public prosecutor decides that Markus is to be placed in pre-trial detention. The police inform the probation service of the fact that Markus is being held in pre-trial detention. In this phase, the probation service will examine whether the pre-trial detention can be suspended and whether there are specific problems at home.

After the police report has been submitted, the public prosecutor takes a decision on the prosecution. In view of the gravity of the offence, Markus will be summoned to appear before a panel of three criminal judges. For the court hearing, the officer digitally requests an advisory report of the Dutch Probation

8 Reclassering Nederland Annual Report

9 <https://www.rijksoverheid.nl/documenten/rapporten/2020/10/27/tk-bijlage-criminaliteit-en-rechtshandhaving-2019>

10 Annual Report Public Prosecution Service 2020



Service. In this application, the prosecutor may also include the specific questions or concerns. In this case, for example, there is a question of whether Markus could receive counselling in connection with his new life situation. In the advisory report, the probation service will discuss which interventions and/or conditions it considers necessary, and what the various options for imposing sanctions mean for behavioural change, reintegration and the likelihood of recidivism. In this case, the probation service will most likely recommend imposing community service and a partially suspended prison sentence, under the condition that he is supervised by the probation service. If necessary, the public prosecutor can summon the probation officer to explain the advice at the court hearing, but this is usually not necessary.

The Republic of Serbia

In the given example, the public prosecutor in Serbia would institute criminal proceedings against Marcus (in most cases, for the afore-mentioned actions) for the criminal offence of causing general danger from Article 278, paragraph 1 of the CC (Official Gazette RS, 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/19), envisaging a prison sentence of 1 to 5 years (Causing of General Danger, Article 278).

In the context of the given example, this would be considered a simple crime of causing general danger, and not some of the more serious forms of the same criminal offence. In addition, mindful of all the circumstances of the concrete case, namely: that a person in question is prone to depression and alcoholism, as well as the fact that there is a grounded suspicion that a person under the influence set fire to a building in a city area inhabited by a large number of people, the prosecutor would submit a motion to the court to order detention. On the motion by the public prosecutor the court would (in most cases) order detention for Marcus, pursuant to the provisions of Article 211, paragraph.1, item 3 of the CPC due to the existence of particular circumstances indicating that in a short period of time the defendant will repeat the criminal offence.

Bearing in mind that Marcus is a person who consumes alcohol and is prone to depressive moods, the public prosecutor would also order expert examination by an expert psychiatrist. After presenting his findings and opinion about Marcus's mental state, the expert psychiatrist could propose to impose some of the legally prescribed security measures. Taking into account that according to the given example Marcus is not insane but that he consumes excessive amounts of alcohol and is prone to depression, the expert psychiatrist could propose a security measure of compulsory alcohol addiction treatment stipulated by Article 84 of the CC. This security measure is imposed by the court together with a criminal sanction.

The court will impose the security measure of compulsory alcohol addiction treatment stipulated by Article 84 of the CC on a perpetrator who has committed a criminal offence due to addiction to alcohol abuse and if there is a serious risk that he may continue committing criminal offences due to this addiction. If the security measure of compulsory alcohol addiction treatment is imposed together with a prison sentence, it is carried out in a penitentiary institution or in an appropriate medical or other specialized institution and lasts as long as there is a need for treatment, without exceeding the term of imposed prison sentence. If the security measure of compulsory alcohol addiction treatment is imposed together with a fine, suspended sentence, court admonition or remittance of punishment, it is carried out at liberty and may not exceed two years.

Bearing in mind that for the criminal offence of causing general danger from Article 278, paragraph 1 of the CC a prison sentence of one to five years is prescribed, Marcus could be sentenced to im-



prisonment. However, there is a legal possibility of imposing house arrest, suspended sentence and suspended sentence with protective supervision together with the security measure of compulsory alcohol addiction treatment.

According to the CC of the Republic of Serbia, community service sentence may be imposed only for criminal offences punishable by imprisonment of up to three years or a fine. If the criminal proceedings against Marcus were conducted for the criminal offence of causing general danger under Article 278, paragraph 1 of the CC, it would be impossible to sentence him to community service because this criminal offence is punishable by one to five years of imprisonment.

The sentence and the security measure are imposed by the court after the trial. The court decides on the type of criminal sanction based on the personal data about Marcus, in accordance with the sentencing rules prescribed by law (Article 54 of the CC).

The court gets personal data about the defendant (family circumstances, personal situation, employment, social status, financial standing) from the defendant himself. The provision of Article 85 of the CPC stipulates that when the defendant is interrogated for the first time, the court will ask him to state his name and surname, names and surnames of his parents, his family circumstances, professional qualifications, employment, the property owned, etc. Based on the defendant's defence, as well as the findings and the opinion of the expert psychiatrist and all the evidence in the case file, the court will decide whether to sentence Marcus to prison or impose an alternative sanction.

The Probation Service, through its probation officers, supervises the execution of the measure of home detention, as well as the supervision over the execution of the ban on approaching, meeting and communicating with a certain person, execution of the sentence of house arrest, execution of the suspended sentence with protective supervision and the execution of the community service sanction.

Should the court sentence Marcus to house arrest or impose a suspended sentence with protective supervision (Article 71 of the CC), the execution of these criminal sanctions would be under the supervision of the probation officer and the Probation Service, in accordance with Articles 20–37 of the Law on Enforcement of Non-custodial Sanctions (Official Gazette RS, 55/2014, 87/2018). The probation officer would supervise Marcus's behaviour and submit reports to the court on whether Marcus complies with the measures imposed by the court ruling.

Should the court impose a suspended sentence (without protective supervision)¹¹, the Probation Service will not monitor the behaviour of Marcus during the suspended sentence. The Serbian law does not prescribe the supervision of the offender's behaviour during the suspended sentence imposed on the basis of Article 63 of the CC. Moreover, the compliance with the security measure of compulsory treatment for alcoholism at liberty and the behaviour of Markus during the implementation (respect of treatment rules, progress achieved, behaviour, etc.) are not within the competence of the Probation Service. Regarding these criminal sanctions, the Probation Service has no competences at any stage of the criminal proceedings, nor does the court or the public prosecutor's office request their opinion or report on the defendant's personality and behaviour.

As for detention, the decision to order and subsequently extend the detention is made by the court upon the motion by the public prosecutor. The offender and his defence counsel have the right to ap-

¹¹ The data of the Statistical Office of the Republic of Serbia show through its records that more than 50% of adult perpetrators of criminal offences are sentenced to suspended sentence (without protective supervision) every year. The data of the Directorate for the Enforcement of Criminal Sanctions of the Ministry of Justice show that in 2020 only 19 suspended sentences with protective supervision were submitted for execution in the whole country.



peal against the decision ordering or extending the detention. On the basis of the overall situation in the case file, namely the offenders defence, witness testimonies, expert witness statements and all the evidence offered in the case file, the court assesses whether in that particular case there is one or there are more legal reasons for ordering detention under Article 211 of the CPC. In addition, the court also assesses whether legal conditions for imposing a milder measure for ensuring the presence of the offender have been met.

Should the court deem it justified to impose house arrest on Marcus (the legal term being “prohibition of leaving a dwelling” from Article 208 of the CPC), on the basis of Article 17 of the Law on Enforcement of Non-custodial Sanctions, the Probation Service in that case supervises the execution of the measure of house arrest through the probation officer.

The analysis of the given example and a brief overview of the possible actions of the court and the public prosecutor lead to a conclusion that the legislation and jurisprudence of Serbia do not recognize advisory reports of the Probation Service during the criminal proceedings and prior to imposing criminal sanctions. The Probation Service has rights and obligations prescribed by law only in the stage of enforcing non-custodial sanctions prescribed by the Law on Enforcement of Non-custodial Sanctions. The probation officer does not submit an opinion or report on the personality of the offender to the court and the public prosecutor before the detention measure or the type and severity of the criminal sanction have been decided.

CONCLUSION

In the Netherlands, the probation advice has been a standard part of a case file for many decades, and it has proven its usefulness in practice. The probation advice enables the public prosecutor to demand a punishment that is appropriate in view of both the gravity of the case and the suspect's personal circumstances. The probation officer's advice enables the judge to tailor the punishment to the individual's needs and punish the offence committed, as well as to offer the accused a form of support to prevent recidivism. This is much more conducive to the safety of society.

In Serbia providing the judicial authorities with high-quality information and assessments would be an important element of correct and fair judicial proceedings. It would be beneficial for Serbia if advisory reports on the personality of the defendant are received from the Probation Service and that the law allows the prosecutor or judge to use the data thus obtained before deciding on the type and amount of the criminal sanction. The functions of an advisory reports should be to provide courts with objective information about the offender, and about the suitability of various sentencing options, contribute to the fairness of the decision by the court as perceived by the offender.

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