

## ACHIEVEMENTS AND CHALLENGES OF PROBATION AGENCIES IN SOUTHEAST EUROPE

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Reviews

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### Abstract

The central topic of the paper is the level of development of probation services in the countries of Southeast Europe. Namely, by presenting statistical data, the author creates a picture of the operation of probation services in each of the mentioned countries. In addition, a brief description of institutional and normative development is provided for each.

The need for next steps is emphasized because according to certain indicators, these countries have the extreme values (highest and lowest). This points to the fact that matter is still evolving and looking for its optimal place.

Basically, the creation and development of the probation service is a process that takes a long time. In no case should a hasty decision or copying of legal norms from another country be made.

The author emphasizes the fact that in macedonian penal system alternative sanctions and measures, as a type of sanctions, were introduced in 2004, the law on probation was adopted in 2015, while the first cases of the probation service were in 2018/2019. With these data, the author points out the importance of the factor - timeliness in the implementation of reforms, as an essential condition for the success of the efforts to implement alternative penal policy in the countries of Southeast Europe.

The author emphasizes that probation services should have a higher degree of independence, sustainable budget, and quality staff selected objectively.

The author notes that, compared to the countries of Western Europe, the process of creating and functioning of probation services in the countries of Southeast Europe is very slow, which has an impact on the fight against crime and the overall penal policy.

**Keywords:** *probation, probation service, alternative sanctions and measures, community treatment, resocialization*

## Introduction

Council of Europe's Recommendation CM/Rec(2014)4 defines a probation agency as "a body responsible for the execution in the community of sanctions and measures defined by law and imposed on an offender. Its tasks include a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of offenders, as well as at contributing to community safety. It may also, depending on the national legal system, implement one or more of the following functions: providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime. A probation agency may also be, depending on the national legal system, the 'agency responsible for supervising persons under electronic monitoring.

Significant recommendations of the Council of Europe regarding the alternative penal policy, execution of sanctions and measures in the community are: Rec(92)16 on the European rules on community sanctions and measures; Rec(97)12 on staff concerned with the implementation of sanctions or measures; Rec(99)19 concerning mediation in penal matters, Rec(99)22 concerning prison overcrowding and prison population inflation, Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures; Rec(2003)22 concerning conditional release (parole), CM/Rec(2010)1 on the Council of Europe Probation Rules, CM/Rec(2014)4 on electronic monitoring and CM/Rec(2017)3 on the European Rules on community sanctions and measures.

The above international acts are the basis for the creation of national legislation in the area of alternative penal policy in order to avoid institutional treatment (in whole or in part) and resocialization of the convict in the community, on conditions of liberty.

In the countries of Southeast Europe, the alternative penal policy, as well as the creation of probation services / agencies began around 2000. However, the achievements are different, in some countries there is a strong application of alternative sanctions and measures, and in other countries the application is weaker, while in some, such as Bosnia and Herzegovina, there is no probation service.

The paper will compare the achievements of most countries of Southeast Europe in the application of probation activities and the work of probation services.

### 1. Comparative review

#### 1.1. Bulgaria

The Bulgarian probation system is strictly centralized. Local probation offices are regional sub-divisions of the General Directorate for Execution of penalties of the Ministry of Justice. There are 27 such offices for each administrative-territorial division of Bulgaria with a total of 499 employed probation officers. All proceedings concerning budget allocation, personnel recruitment, development of future strategies, as well as adaptation and

accreditation of corrective programs are carried out by the staff in the General Directorate. The local offices themselves have limited powers and their main tasks are to enforce sentences which are imposed by the Court and to organize the implementation of the probation measures.<sup>1</sup>

The directorate exercises direct supervision and control over the places of deprivation of liberty and probation services. Its activity is regulated by the Execution of Punishments and Detention in Custody Act and is related to the enforcement of sentences of life imprisonment, deprivation of liberty and probation, and the remand measure of detention in places of deprivation of liberty.

Total number of persons under the supervision of the Bulgarian probation system at the end of 2018<sup>2</sup> was 5774, from which 159 fully suspended custodial sentence with probation (that means the judge can attach conditions to the suspension of a sentence during a given period. The person has been sentenced to imprisonment, but the enforcement of the sanction is suspended and the person remains under the obligation to conform to the conditions imposed), while 481 people were on conditional release or parole with probation supervision (conditional release of a prisoner before the end of his/her sentence (or parole) under individual/specific conditions). According to the Law for Execution of Sentences and Detention, Bulgaria has two obligatory probation measures. In that case all the orders are mixed, including Community service due to the fact that in Bulgaria it is not imposed as separate measure.

Probation population rate (per 100 000 population) in Bulgaria in the examined period was 81.9<sup>3</sup>, while the ratio of probationers per 100 inmates was 83 and is defined as low. In the mentioned period, 5.4% of the total number of probationers were female, while 0.6% were foreigners.

## 1.2. Croatia

The probation Service in the Republic of Croatia was established in 2009, during Croatia's accession negotiations for EU membership, and benefited from the related judicial reforms. The first Probation Act in Croatia was enacted in 2009, though the first probation offices was opened in 2011.

Since the beginning of 2013 the professional probation service, the Sector for Probation, as an integral part of the Ministry of Justice, has been available to all citizens<sup>4</sup>. All the tasks within the scope of the Sector for Probation are conducted in the Central office and 12 probation offices. The Central office carries out the administrative and technical tasks related to probation duties, human resources, planning and scheduling of equipment and funds required for work, planning, investments, international co-operation, drafting of regulations, enforcement and administrative inspection.

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<sup>1</sup> Bozhidara Kriviradeva, Lidiya Laskova, Development of the probation service of the republic of Bulgaria, Third International Conference "Education across Borders" Education and Research across Time and Space, Bitola 2016, pg. 361-371

<sup>2</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg., 16

<sup>3</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, Probation and Prisons in Europe 2018, Council of Europe, Strasbourg, 2019, pg. 3-8

<sup>4</sup> Jana Špero, The Sector for Probation in the Republic of Croatia, Irish probation journal Volume 12, October 2015, pg. 133

According to research for 2018<sup>5</sup>, Croatia belongs to the countries with low representation of probation measures in the penal policy. Namely, Croatian probation population rates (probationers per 100,000 inhabitants) in January 2018 was 96, while median probation population rate was 169 probationers per 100,000 inhabitants. The ratio of probationers per 100 inmates was 123 and is defined as low because European median was 145. In the mentioned period, 9% of the total number of probationers were female, while 0.6% were foreigners.

At the beginning of 2018<sup>6</sup>, the total number of persons under the supervision of the Croatian Probation Service was 3937 persons, out of which 2401 persons or 61% were sentenced to community service (community service consists of unpaid work for the benefit of society), 849 persons were fully suspended custodial sentence with probation, while 398 persons were on conditional release.

### 1.3. Greece

The Greek probation service was instituted in 1991 mainly for carrying out the implementation of two community measures introduced in 1991 (Law no. 1941/1991): the community service order and the suspended sentence with probationary supervision.

The Greek probation system was set up in 2007 when 54 probation officers<sup>7</sup> were appointed nationally as public servants under the Ministry of Justice, Transparency and Human Rights<sup>8</sup>.

In January 2018, 19927 persons were under the supervision of the Greek Probation Agency<sup>9</sup>, of these, about 6,000 were covered by forms of supervision before the sentence (Alternatives to pre-trial detention with supervision by Probation Agency, Conditional suspension of criminal proceedings, Deferral (postponement of the pronouncement of a sentence) or Victim-offender mediation). For the rest, supervision was carried out after the imposition of a sanction, as follows: for 3061 persons fully suspended custodial sentence with probation, 4380 persons were given Conditional relief, Community service for 1781 persons, while the remaining sanctions were applied for an insignificant number of persons.

Probation population rate (per 100 000 population) in Greece in the examined period was 185.6, higher than the European average, which indicates a more frequent application of sanctions under the supervision of the Probation Agency. For comparison, in the same period total number of inmates in Greece was 10036 people, ie prison population rate was 93.5 while the ratio of probationers per 100 inmates was 199, That means, in the examined period, Greece was in the group of countries with a relatively high probation population rate and a low

<sup>5</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, Probation and Prisons in Europe 2018, Council of Europe, Strasbourg, 2019, pg. 3

<sup>6</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg., 16

<sup>7</sup> In January 2018, 83 people made up the staff of the Greek Probation Agency,

<sup>8</sup> Michael Mavris, Nicolaos Koulouris, Maria Anagnostaki, Probation in Europe – Greece, Confederation of European probation, 2015, pg. 6

<sup>9</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg., 16

prison population rate. Besides that, 3.4% of the total number of probationers were female, while 6.4% were foreigners<sup>10</sup>.

#### 1.4. Montenegro

The Conditional Liberty Office (The probation service) is the organizational unit of the Directorate for Execution of Criminal Sanctions at the Ministry of Justice<sup>11</sup> which takes responsibility on the enforcement of alternative sanctions. The Conditional Liberty Office implements and monitors: the execution of the sentence in the public interest, suspended sentences, suspended sentences with supervision order, supervises conditionally released persons, enforces imprisonment in the premises where the prisoner resides as well as security measures of the ban on approaching to the victim and moving away from an apartment or other living space.

Montenegro's probation service is in development, with only nine employees, two of whom are management staff, five are executive staff, and two are auxiliary staff<sup>12</sup>.

The initial results of the work of the Probation Service of Montenegro can be seen in the numbers. Namely, in January 2018, 28 persons were placed under supervision for whom community service was pronounced and 24 for whom electronic monitoring was applied<sup>13</sup>(electronic monitoring is used exclusively with home arrest (home prison). The official legal name of this criminal sanction is "imprisonment sentence in the residential premises of the convicted persons". This sanction was introduced in the criminal-legal system through an amendment of the Criminal Code in 2013, but enforcement of the first sentences started at the end of December 2017. In practice, this sanction is executed using ankle bracelets).

#### 1.5. Romania

The probation activity in Romania is coordinated at national level by a specialised department within the Ministry of Justice - Probation Department.

Probation Department is responsible for coordination and controlling of 42 probation services, one in every county and in the capital city. Probation services have been assigned to every county court. Every service has a bureau, most of them near a local court within the concordant county<sup>14</sup>.

Probation Department and probation services form together the probation system. Probation Department ensures the human resources management, coordination and control of probation services and it has a director appointed by the minister. The other staff is composed by legal advisers, probation inspectors and public servants

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<sup>10</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, Probation and Prisons in Europe 2018, Council of Europe, Strasbourg, 2019, pg. 12-13

<sup>11</sup> Zoran Vujčić, Probation and system of alternative sanctions in Montenegro, Civic Alliance, 2020, pg. 4

<sup>12</sup> Ibid, pg. 18

<sup>13</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg.17

<sup>14</sup> Ioan Durnescu, Probation in Romania, pg. 5,

[http://www.penalreform.ro/mfc/documente/experienta\\_romaneasca/Ioan%20Durnescu;%20Probation%20in%20Romania.pdf](http://www.penalreform.ro/mfc/documente/experienta_romaneasca/Ioan%20Durnescu;%20Probation%20in%20Romania.pdf)

(in January 2018, the Probation Service of Romania consisted of a staff of 588 people<sup>15</sup>). The personnel of probation services are composed by a chief and probation counsellors. Chiefs are recruited among probation counsellors and ensure the management of probation services. Probation counsellors work effectively with offenders and victims.

In January 2018, about 67,000 people were under the supervision of the Probation Service of Romania. From them, about 45,000 persons had the supervision due to fully suspended custodial sentence with probation, and for more than 21,000 persons the supervision was due to mixed sanctions or measures. In addition, more than 500 people were monitored for conditional release<sup>16</sup>.

Probation population rate (per 100 000 population) in Romania in the examined period was 342.6, while the ratio of probationers per 100 inmates was 290 (this means high probation population rate and a relatively high prison population rate). In the mentioned period, 9% of the total number of probationers were female, while 0.8% were foreigners<sup>17</sup>.

### 1.6. Serbia

In the Republic of Serbia, probation is under the jurisdiction of the Department for Treatment and Alternative Sanctions, which functions within the auspices of the Ministry of Justice and Public Administration. Direct implementation of probation and offender supervision is conducted by Probation officers, who operate in Probation Offices within the Department for Treatment and Alternative Sanctions. The main activity of the Department for treatment and alternative sanctions is carried out thorough a continuous contact with the directors of penitentiary facilities and prison staff<sup>18</sup>.

The implementation of alternative penal policy is still not sufficiently systematically developed, for example, in January 2018 Serbia had a low probation population rate (probationers per 100,000 inhabitants), ie 24.4 or the lowest in Europe (european average was 168.8). At the same time, with relatively high prison population rates, ie, 154.4 prisoners per 100,000 inhabitants<sup>19</sup>. In the mentioned period, in the total probation population 6.2% were women, while only 0.2% of the probation population were foreigners<sup>20</sup>. At the same time to carry out probation works worked staff of 52 people, starting from the highest positions, through the probation officers, to the support staff<sup>21</sup>.

<sup>15</sup> Ibid, pg. 71

<sup>16</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg.17

<sup>17</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, Probation and Prisons in Europe 2018, Council of Europe, Strasbourg, 2019, pg. 12-13

<sup>18</sup> Jelena Zeleskov Djoric, Ana Batricevic, Marija Kuzmanovic, Probation in Europe – Serbia, Confederation of European Probation 2014, p-g. 14

<sup>19</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, Probation and Prisons in Europe 2018, Council of Europe, Strasbourg, 2019, pg.6

<sup>20</sup> Ibid. p-g.13

<sup>21</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg.70

In January 2018, the total number of persons placed under the supervision of the Probation Service of Serbia was 1707, of which about 470 were under supervision before the imposition of a sanction, while the rest were under supervision after the imposition of a sanction. Thus, 653 persons were supervised for Home arrest (curfew orders), 429 persons were under Electronic monitoring, while 81 persons were supervised due to Community service<sup>22</sup>.

### 1.7. Turkey

Turkey initiated a major reform in its criminal justice system in 2005 and a probation system was officially created.

Turkey's probation system has three main functions within the criminal justice system although each function involves many different tasks and duties. The main function is to perform probation sanctions as judged by the court and to monitor the probationers. The second role of probation is to rehabilitate and reintegrate the ex-offenders into the society. The other task is to assist courts and prepare reports for the judiciary in its decision-making process<sup>23</sup>.

Turkey's probation service is incorporated within the Ministry of Justice, so, the Department of Probation, as headquarter and a central institution, has 138 local offices all around Turkey. Each local probation department is managed by a director and the entire staff consists of around 4083 persons including one thousand experts (e.g., social workers, psychologists) and nearly three thousand probation officers<sup>24</sup>.

In a short period of time, probation measures became widely used in Turkey, so in January 2018 more than 380,000 people were placed under probation and Turkey was a country with the highest probation rate per 100,000 inhabitants in Europe, ie 470.7<sup>25</sup>. In the same period, 10% of the total number of probationers were women, while 2.1% were foreigners<sup>26</sup>.

Of the above-mentioned, more than 380,000 probationers, about 224,000 were under supervision before the imposition of a sanction, while the rest were placed after its imposition. Of those sanctioned, about 88,000 probationers were placed under Conditional Pardon or conditional discharge (with probation), about 50,000 probationers were given an appropriate form of Treatment, and about 19,000 probationers were given a Community service measure<sup>27</sup>.

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<sup>22</sup> Ibid. p-g. 17

<sup>23</sup> Mandiraci, B., Penal policies and institutions in Turkey: Structural problems and potential solutions, Turkish Economic and Social Studies Foundation, 2015, p-g. 7

<sup>24</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg.71

<sup>25</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, Probation and Prisons in Europe 2018, Council of Europe, Strasbourg, 2019, pg. 3

<sup>26</sup> Ibid, p-g. 13

<sup>27</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, Persons under the supervision of Probation Agencies, SPACE II – 2018, Council of Europe, Strasbourg, May 2019, pg.17

### 1.8. Macedonia

Significant steps for finding adequate solutions for practical application of alternative measures in the Republic of Macedonia were taken in the period September 2010 - February 2011 when a Comparative analysis / study of the existing legislation and functioning of the probation in the countries of the region was prepared, as well as a Feasibility Study for the functioning of probation in the Republic of Macedonia.

The Strategy for Development of the Probation Service in the Republic of Macedonia (2013 - 2016)<sup>28</sup> was developed in March 2013, in order to set the framework of the probation system and to contribute to the reform of the criminal justice system in the Republic of Macedonia.

The Law on Probation<sup>29</sup> was adopted by the Assembly of the Republic of Macedonia in December 2015, and started to be applied on November 1, 2016. The adoption of the Law on Probation provided the basis for the creation of a new special and sustainable probation service that will deal with the perpetrators of crimes in a structured way in all phases of the criminal procedure.

In May 2020, the Macedonian Probation Service was composed of a central body - the Directorate for Execution of Sanctions (within the Ministry of Justice) and 9 (nine) local probation offices, with a total of 33 probation officers.

However, substantial steps towards the functioning of the Macedonian probation system were taken in 2019 and 2020.

During 2019, a total of 165 cases were processed in the probation offices, while by mid-2020, 91 probation cases were processed. More than 50% of the cases were processed in the probation office in Skopje, while the rest were in other local offices. This indicates an unequal workload and approach to the work of probation offices.

In most of the cases, the supervision of the probation service is for persons on parole, then a small number of cases of supervision of convicts on a suspended sentence with protective supervision, as well as almost no cases for community service.

From the above it can be concluded that further steps are needed to affirm the application of alternative measures, especially the conditional sentence with protective supervision and community service, in the basic courts in order to more often impose this type of criminal sanctions.

The Macedonian probation system is relatively new, although the process of its creation lasted for decades, it is necessary to strengthen public awareness of the meaning of alternative measures, then, better coordination of the probation service with the basic courts, public enterprises, the scientific community, as well as better staffing capacity of local probation offices.

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<sup>28</sup> The Strategy for Development of the Probation Service in the Republic of Macedonia (2013 - 2016), <http://www.merc.org.mk/Files/Write/Documents/01087/mk/Стратегија-за-развој-на-пробациска-служба.pdf>

<sup>29</sup> The Law on Probation, <https://www.pravdiko.mk/wp-content/uploads/2016/02/Zakon-za-probatsija-25-12-2015.pdf>



## 2. Common features

The above data show that probation services, as well as the entire alternative penal policy, in these countries, have been created in the last two decades.

Starting from their differences (economic, demographic, social, degree of democracy and rule of law), there are specific results in the implementation of the new solutions.

One of the common features is the fact that in most countries probation services are an integral part of the Ministry of Justice. Of course, in some cases the operational network will be larger and in others smaller, and it depends on the number of population and the size of the territory.

In these countries, mainly supervision by the probation service is carried out after the imposition of the sanction (with the exception of Turkey). Namely, the supervision of the probation service is most often applied after imposing a sanction, for: Fully suspended custodial sentence with probation, Community service and Conditional release.

In terms of staff, these are probation services that are in the beginning or development phase of their operation, therefore most have a small number of employees (compared to the number of inhabitants), with the exception of Turkey where the probation staff has thousands of probation officers.

But if an analysis is made in terms of the number of probationers per staff member, large differences will be noticed. Thus, in Bulgaria there are 12 probationers per probation officer, in Serbia - 33, ie 42 in Croatia, 92 probationers in Turkey, up to the European maximum in Greece of 240 probationers per probation officer, given that the European average is 33 probationers per one staff member<sup>30</sup>.

In all these countries, the sanctions and measures that are carried out under the supervision of the probation service were most often imposed for offenses against persons, offences against property, drug offences and road traffic offences.

It is interesting that the extreme values of the number of probationers per 100,000 inhabitants are found in these countries. Thus, the lower limit of 24 probationers is in Serbia, while the upper limit of 471 probationers per 100,000 inhabitants is in Turkey<sup>31</sup>. This is associated with different criteria and approach, which is characteristic of processes that are still under development.

The presence of a foreign element in probationers is small, the highest prevalence is in Greece of 6.4%. Also, the number of female probationers is small, ie up to 10%.



Regardless of the specifics, it is a fact that these countries in a short period of time have established their probation services, relying on international legal acts as a basis for domestic norms.

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<sup>30</sup> Marcelo F. Aebi, Yuji Z. Hashimoto, *Persons under the supervision of Probation Agencies, SPACE II – 2018*, Council of Europe, Strasbourg, May 2019, pg.73

<sup>31</sup> Marcelo F. Aebi, Yuji Z. Hashimoto and Mélanie M. Tiago, *Probation and Prisons in Europe 2018*, Council of Europe, Strasbourg, 2019, pg. 3

The different results in the work of the probation services (according to some criteria the differences are extreme), show that the period of institutional and normative set-up is not over yet.

My opinion is that in order to have better results in the work, it is necessary for the probation services to have a higher degree of independence, ie to be outside the Ministry of Justice or the connection with the Ministry to be weak. Of course, quality work requires solid financial support.

An essential factor is the staff and its professionalism. Namely, the alternative measures require working with a specific population, but at liberty - in the community. This is exactly what requires special engagement from the staff, so that the convicted person does not feel rejected by the community, to accept the treatment in order to re-socialize and social adaptation.

The above statistics give a better picture of the next necessary steps for the development of probation services, in order to have a more adequate and quality application of the alternative penal policy.

## **Conclusion**

The fact is that the countries of Southeast Europe are late in implementing the alternative penal policy, compared to Western European countries. Most of them went through a period of transition, which required time and resources, ie other priorities.

However, the above data show that, to varying degrees, they have managed to build capacity for alternative sanctions and measures, ie probation services.

The recommendations of the Council of Europe are the initial documents for alternative penal policy, as in other countries.

However, there are significant differences between these countries in their actions. Their probation services are still new, with little practice and experience. It is necessary to invest in these institutions, with quality staff and financially, and the normative framework should be adapted to the challenges of practice, because the goal is not to copy solutions of other countries, but to build a model that will be functional according to its own characteristics and thus the purpose of the existence of the institution will be fulfilled.

Thus, in Macedonia, concrete results from the work of the probation service were obtained in 2019, despite the fact that the Law on Probation was adopted in 2015 and began to be applied in 2016. Although the results are to be welcomed, by many criteria they are one-sided and do not express the point of alternative measures.

As in Macedonia, as well as in the other mentioned countries, there is still a lot of work to be done on the development of probation services in order to be efficient in fulfilling their goal set by law.

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