



**Republic of Serbia
Ministry of Justice**

STRATEGY

**for Reducing Overcrowding in Institutions for Enforcement of Criminal
Sanctions in the Republic of Serbia**

in Belgrade, 2010

STRATEGY

for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia (2010-2015)

I Background

A. Rationale for adopting a Strategy

As of 1980 there is a world-wide constant rise in the so-called prison population (persons detained in pre-trial proceedings, remanded during criminal proceedings, convicted to prison sentence in criminal and misdemeanour proceedings and persons under security measure associated with depriving of liberty). Unlike states from other continents, European countries were distinguished by low rate of incarceration (expressed as ratio of confined persons against the overall population of a particular state). However, of late there is also in Europe a noted trend of increase of this rate and increase of prison population, with gradual harmonising of the rate of incarceration among different European countries.

Such unfavourable trends are also present in the Republic of Serbia since 1991. As of that time there is a constant rise in prison population and increase of rate of incarceration, mainly fostered by pronouncing of prison sentences up to six months. This has as consequence overcrowding of penal institutions and/or challenges functioning of the penal system and the possibility of optimal exercising of rights of persons deprived of freedom.¹ On the other hand, due to limited accommodation capacities, other persons are waiting for enforcement of pronounced prison sentences thus rendering pointless efforts of the police and judicial bodies in efficient uncovering and adjudication of perpetrators of criminal offences.

Increase in prison population and overcrowding of institutions for enforcement of criminal sanctions comprising of deprivation of freedom and the measure of detaining of defendant (hereinafter: institutions for enforcement of criminal sanctions), are a consequence of complex political and economic processes that are never contingent exclusively on trends of criminality but on completely different factors. Their effect is particularly evident in the Republic of Serbia, as over the last several years there is no noticeable increase in the number of adult citizens, or a more intensive rise and significant change in structure of adjudicated crime, which could be correlated with sudden increase in prison population.

Because of the social significance of this problem it is necessary to define, by a Strategy, objectives focusing on reduction of prison population and conceptualize activities for realising of these objectives. In doing so the relevant recommendations of the Committee of Ministers of the

¹ This has been underscored in the report of the European Commission on Serbia's progress for 2009, published on 14 October 2009. The report, inter alia, states that overcrowding of Serbian prisons is a consequence of inefficient application of alternative sanctions, lack of decriminalization of certain minor offences and non-existence of a reintegration program.

Council of Europe should be taken into account², as well as the Recommendation 1245 (1994) of the Parliamentary Assembly of the Council of Europe concerning custody pending trial.³

A viable Strategy must acknowledge the demands of a specific criminal policy, conform within the framework of current criminal legislation and take into account confined capacities of increase of human and material resources in institutions for enforcement of criminal sanctions. On the other hand, since overcrowding issues indirectly reflect upon the inefficiency of penal policy and the need for higher application of alternative measures and sanctions, the Strategy must recommend directions for future changes in criminal policy, criminal legislation and practices in enforcement of criminal sanctions, in order to effectively realise its primary goal.

B. Primary goal of the Strategy

The primary goal of the Strategy is designing and implementation of measures and activities for reducing overcrowding in institutions for enforcement of criminal sanctions in the Republic of Serbia.

Accomplishing of this primary goal should in no way prejudice protection of fundamental freedoms and human rights, other fundamental social values and the general purpose of stipulating, pronouncing and enforcement of criminal sanctions.

Accomplishing of the primary goal of the Strategy should enable:

- Enhancing the status of convicted persons, detainees and other persons deprived of freedom and improved exercising of their rights;
- Humanization of the system of enforcement of criminal sanctions and more comprehensive application of international standards in that field;
- Establishing of feedback to monitor achievement in application of criminal legislation in the segment of enforcement of criminal sanctions aimed at correcting penal policy of courts and fundamental criminal-political policy;
- Enhanced work effectiveness of the Prison Administration;
- Reduction and re-allocation of state budget appropriations for enforcement of criminal sanctions;
- Increased security of all members of society.

C. Strategy Tasks

In order to achieve the primary goal of the Strategy it is necessary to accomplish the following tasks:

² Namely: Recommendation Rec (99) 22 concerning overcrowding in prisons and increase of prison population, Recommendation Rec (2003) 22 on conditional release, Recommendation Rec (92) 16 on European rules on the European rules on community sanctions and measures (supplemented with Recommendation Rec (2000) 22).

³ The importance of these recommendations was underscored by the European Committee for Prevention of Torture in its report on the visit to Serbia in 2007 (report published on 14 January 2009).

1. review as is state (normative, penal policy and organizational aspect) and determine decisive factors affecting increase of prison population;
2. define framework and phases for implementing of the Strategy and drafting action plans.

II Current state

A. Normative framework

Over the recent years criminal legislation of the Republic of Serbia has moved in the direction of introducing alternative criminal sanctions and measures of non-institutional nature. In the area of substantive law these are community work, revocation of driver's license and "house" detention, as well as restraining order in respect to injured party and ban to attend certain sport events. Novelties in procedural law are "house" arrest and electronic tagging of defendant, and the "non-institutional" outcome of criminal proceedings is advanced also through powers of the prosecutor to defer criminal prosecution of the suspect and/or defendant for criminal offences punishable by under five years imprisonment. On the other hand, stipulated prison terms for numerous criminal offences have been generally made stricter, as have been the requirements for granting conditional release and mitigation of punishment, while the temporal limitation for duration of detention after rising of indictment has been revoked. The tendency of stricter penalties is also present in the area of misdemeanour law.

In the area of enforcement of criminal sanctions a closer cooperation has been established between the prison Administration and courts, where the Prison Administration is empowered to take certain decisions which, in comparative legal systems, are under the competencies of the courts. Of special significance is that there is a department within the Prison Administration for treatment and alternative sanctions, whose competencies include enforcement of the sentence of community work and suspended sentence with protective surveillance.

A need was manifested for a special regime of enforcement of penalty. The procedure for enforcement of prison sentence for organized crime offences was regulated as well as organization and competencies of administrative authorities in the procedure for enforcement of sentence, status of convicted persons and oversight over enforcement of prison sentence. This was also the case with enforcement of criminal sanctions against juvenile offenders.

B. Trends and causes of prison population increase

Since 1991 there is a trend in Serbia of constant rise in prison population, where this has been particularly manifested since 2003. Prior to 2003 the number of imprisoned persons in the Republic of Serbia was within a constant range of 5,000 to 6,000. As of 2003 the rate of increase in prison population exceeds 10%, thus today the overall increase in comparison to that year exceeds 60% (table 1).

Table 1: Number of inmates (2005-2009)

8,078	7,893	8,970	9,701	10,974
31.12.2005	31.12.2006	31.12.2007	31.12.2008	31.12.2009

If the increase in prison population is examined in terms of the structure of convicted persons it is noticed that, despite the increase, the number of persons imprisoned on basis of pronounced security measures, juvenile and misdemeanour sanctions does not to any significant extent affect the increase of prison population. Hence, the rise of prison population is a consequence of increase in the number of convicted and, particularly, detained persons. This is further attested by data on the number of prisoners in 2009 (table 2). Given this trend it is realistic to expect in 2010 that the number of imprisoned person will reach 12,000 and exceed 14,000 in 2012.

Table 2. Structure of inmates in 2009

Imprisoned persons	31.12.2008	30.11.2009	% increase
Detained	2,373	2,941	23.93%
Convicted	6.709	7.260	8.21%
Medical treatment measure	218	242	11.00%
Juvenile imprisonment	42	43	2.28%
Correctional measure	191	232	21.46%
Misdemeanour punishment	168	256	52.38%
Total	9,701	10,974	13.12%

Consequently, the Strategy provides measures for reducing these two categories of persons within the prison population.

Penal policy of courts and the practise of ordering detention represent the foremost factor affecting increase of prison population. This issue should be examined from the aspect of ordering detention, pronouncing prison sentence and ordering conditional and early release.

1. Detention

Frequent ordering of detention is one of the key reasons for overcrowding of institutions for enforcement of criminal sanctions. This is substantiated by the fact that of the overall number of convicted persons who commenced serving of prison sentence in 2008 34% were in detention during criminal proceedings.

The Strategy embodies measures that will contribute towards making detention a measure that is only exceptionally ordered.

2. Prison sentence

In the period from 2000 through 2004 the rate of prison sentence in the aggregate number of pronounced criminal sanctions gradually rises to reach 30.9% in 2004, while the percentage of suspended sentences decreases from 51.4% in 200 to 45.8% in 2004. According to statistical data on convicted adults in the period from 2004 through 2008, presented in the table below, there is a certain decrease in the rate of prison sentence and fines in the aggregate number of pronounced criminal sanctions, while the number of suspended sentences has risen.

Table 3: Convicted adults, according to pronounced prison sentences

Year	2004	2005	2006	2007	2008
Total crim. sanctions	34,239 (100%)	36,901 (100%)	41,422 (100%)	38,694 (100%)	42,138 (100%)
Total prison sentences	10,581 (30.9%)	10,361 (28.1%)	11,224 (27.1%)	8,576 (22.2%)	9,658 (22.9%)
Imprisonment under 6 months	6,011 (17.55%)	6,132 (16.61%)	6,775 (16.35%)	4,940 (12.76%)	5,279 (12.52%)
Imprisonment from 6 months to 2 yrs	3,326 (9.71%)	3,100 (8.40%)	3,081 (7.43%)	2,879 (7.44%)	3,422 (8.12%)
Imprisonment over 2 years	1,244 (3.63%)	1,129 (3.05%)	1,368 (3.30%)	757 (1.95%)	957 (2.27%)

The sentence of up to 6 months and from 6 months to two years continues to be prominently displayed in the structure of overall pronounced prison sentences. Such penal policy directly affects overcrowding of institutions for enforcement of criminal sanctions, as the high number of persons convicted to prison terms up to 6 months remanded to institutions is maintained year in and year out (in the period 2005 – 2009 these comprise 41.6% of the overall number of convicted persons remanded to serve sentence).⁴ Simply said, the prevalent characteristic of penal policy of courts for minor offences is lenient and overwhelming application of repression which does not realize the purpose of criminal sanction. This represents the most important factor contributing to overcrowding of institutions for enforcement of penal sanctions and measures in the Republic of Serbia.

The Strategy envisages solutions that will affect reduction of pronounced sentences up to 6 months in favour of pronouncing fines as main punishment and alternative criminal sanctions.

3. Conditional and early release

The third reason for overcrowding of penal institutions is insufficient use of release on probation. The number of convicted persons released on probation is decreasing over the past years, thus amounting to 38.59% of the overall released persons in 2005, only to fall to 19.83% in 2009. This may be explained through increase of recidivism and prevalence of relatively low prison sentences, and this will be further advanced by amendments to criminal legislation whereby requirements for release on parole will be made stricter. Furthermore, the institute of release on parole is rarely applied and, hence, does not to any significant extent affect reduction of prison population.

⁴ Within the European framework Serbia is among countries where prison population increases over 5% annually. In addition, in respect to pronounced prison sentences of up to one year in comparison to overall prison sentences Serbia, with 61.7%, holds second place, just after Monaco (69.2%). However, Monaco has only circa thirty prisoners sentenced to the mentioned prison term. M. Aebi, N. Delgrande, *Council of Europe Annual Penal Statistic, SPACE I, Survey 2007*, available at: http://www.coe.int/t/e/legal-affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/PC-CP_2009.

The Strategy contains measures that will enhance more frequent application of conditional and early release.

C. The state in institutions for enforcement of criminal sanctions

Criminal sanctions are enforced in the Republic of Serbia, without Kosovo and Metohija, in twenty eight facilities, as follows:

- three penal-correctional facilities of closed type in Pozarevac, Sremska Mitrovica and Nis;
- four penal-correctional facilities of open type in Cuprija, Sabac, Sombor and Padinska Skela;
- penal-correctional facility for juveniles in Valjevo;
- penal-correctional facility for women in Pozarevac;
- correctional facility for juveniles in Krusevac;
- special prison hospital in Belgrade;
- seventeen district prisons in Belgrade, Novi Sad, Leskovac, Cacak, Zrenjanin, Pancevo, Subotica, Vranje, Kragujevac, Kraljevo, Krusevac, Prokuplje, Uzice, Zajecar, Novi Pazar, Negotin and Smederevo.

According to available data of Prison Administration, as of 31 December 2009 there were 10,974 inmates in institutions for enforcement of criminal sanctions. There was no notable increase in capacities for accommodation of inmates, but existing capacities in the majority of institutions were adapted and only a small number of special-purpose facilities were constructed.

Current conditions display all negative consequences of overcrowding of prisons. Briefly, these can be summed up in several points.

1. Infrastructure

The existing institutions for enforcement of criminal sanctions have outdated, unsuitable and numerically insufficient facilities for accommodation of prison population. An unfavourable factor is that twelve district prisons are located in strict city centres. Overcrowding of penal institutions has a detrimental consequence of violation of rights of persons deprived of freedom since, out of necessity; exigencies of the situation reduce yard-time available to inmates and/or place constraints on their communication with the outside world.

2. Structure of staff

Insufficient number of treatment staff may result in inadequate classification and treatment of inmates, which in turn carries the risk of exposure to crime and recidivism. In institutions for enforcement of criminal sanctions the number of staff in training and employment services and general affairs service is circa 30% of the overall number of staff, which does not exist in any developed system (in countries in transition with a similar enforcement system as ours this number is 10 to 15% of the overall number of staff). The number of staff in guards service in comparison to the overall number of employees is also unfavourable this significantly compromising safety and security in institutions for enforcement of criminal sanctions (in

comparison to the Austrian system which is similar to ours according to statistical information, the guards service represents 80% of overall staff, while here it is only 55%).

3. Living conditions of the prison population

There is a worsening of living conditions of the prison population in institutions for enforcement of criminal sanctions, i.e. lack of space, beds, poor hygiene and poor quality and insufficient food. Due to lack of medical staff health of inmates is compromised. Excessive number of inmates in a given institution increases the risk of suicide and self-injury, and concurrently hinders timely observation and separation of those afflicted with change in behaviour or those inclined to react aggressively.

4. Trends in prison population

There is a rise in the prison population of those convicted for serious crimes with elements of violence and organised crime, the age of perpetrators is reducing and the number of addicts is increasing, primarily drug addicts (over 60% of inmates had previous experience with drugs or are active addicts). The prevalent categories among the inmate population are age groups from 21 to 27 and from 27 to 40 years, which together make as much as 69.16% of the overall number, and with the third category in line (persons between 40 and 50 years of age) make 84.48%. This is a population which should (by age) be the most active and productive.

5. Security

The risk of manifestation or strengthening of the so-called informal, organised groups among the prison population is increasing in institutions for enforcement of criminal sanctions. On the other hand, increasing frequency of attacks and worsening of trust between inmates and prison staff, increased overtime, work related injuries, constantly stepped-up alertness and lack of rest increases stress and dissatisfaction among prison staff and results in disinterest for work (*burn-out* syndrome). Detrimental consequences of overcrowding affect also the state and all members of society, since they bring into question the effect of pronounced measures or criminal sanctions. Due to lack of space in prisons persons convicted to prison terms cannot commence serving of sentences but remain at large, thus increasing the risk of repeating offences.

The Strategy envisages measures aimed at construction of new prisons and improving conditions in prison facilities, education of prison staff and increase of professional staff.

III Framework and phases of implementation of the Strategy

Implementation of the Strategy involves undertaking corresponding normative and organisational activities, to be achieved within the **short-term** (2010-2011), **mid-term** (2012-2013) and **long-term** (2014-2015) phase.

Activities that will be undertaken within the framework of implementation of the Strategy will relate to:

- a. alternative sanctions and measures;
- b. conditional and early release;
- c. judge for enforcement of criminal sanctions;
- d. commissioners and probation service;
- e. increase of accommodation capacity in prison facilities and improvement of conditions in prisons;
- f. upgrading of professional capacities in the Prison Administration;
- g. amnesty;
- h. single IT system.

A. Alternative sanctions and measures

1. Measures to ensure presence of defendant and unhindered conducting of criminal proceedings

In order to condense detention to a measure ordered only exceptionally it is necessary, at normative level, to undertake the following short-term activities:

- a. *expand the basis for granting bail;*
- b. *set precise conditions for ordering house arrest;*
- c. *regulate electronic surveillance of defendant under house arrest or other obligation (related thereto it is imperative to make a feasibility study on introduction of electronic surveillance).*

On organisational level the following activities are necessary:

- a. *Commissioners' service conducts electronic surveillance of defendant;*
- b. *probation service takes over mid-term electronic surveillance of defendant;*
- c. *professional training of judges and prosecutors.*

2. Alternative sanctions and measures

Short-term normative activities are:

- a. *Ordering house arrest as autonomous criminal sanction or as replacement for term of imprisonment of up to one year, with possibility of electronic surveillance;*
- b. *Increase in number of hours of community work to 450 hours, with the proviso that the commissioner decides the timeframe for performing community work;*

c. *specifying duties within the framework of suspended sentence with protective supervision;*

d. *expanding statutory grounds for application of the principle of opportunity in the work of public prosecutor;*

e. *stipulating simplified forms of criminal procedure wherein alternative sanctions are pronounced.*

Mid-term activities related to alternative sanctions are:

a. *Commissioner (i.e. probation) service submits to the court a report on the personality of the defendant, family and personal circumstances and other particulars that have bearing on pronouncing alternative sanctions;*

b. *the alternative sanction enforcement judge decided on meeting requirements for temporary release from “house arrest”, and the commissioner (i.e. probation) service monitors this procedure but does not decide on it;*

c. *specialised training of judges and prosecutors.*

B. Conditional and early release

1. Conditional release

Short-term normative activities to be implemented are:

a. *Providing the possibility for the defendant under pronounced prison sentence up to three years to be entitled to file application for release on parole after serving one-half of the sentence;*

b. *specifying duties within the framework of protective supervision pronounced together with release on parole;*

c. *providing the possibility to administer release on parole together with electronic surveillance.*

Mid-term organisational activities are:

a. *Judge for enforcement of criminal sanctions decides on the convicted person’s application for early release, taking under consideration the report of the treatment and commissioner (i.e. probation) service;*

b. *specialised training of judges and prosecutors.*

2. Early release

Short-term normative activities are:

- a. *Providing the possibility for early release of convicted persons who has served two-thirds of pronounced prison sentence of up to three years;*
- b. *stipulating a special for deciding on early release by the court.*

Mid-term organisational activities to be undertaken:

- a. *A judge for enforcement of criminal sanctions may ex-officio order early release of convicted person after serving of two-thirds of pronounced prison sentence of up to three years, taking into consideration the report of the treatment and commissioner (i.e. probation) service;*
- b. *specialised training of judges and prosecutors.*

C. Judge for enforcement of criminal sanctions

Short-term normative activities are:

- a. *Set forth competencies of the judge for enforcement of criminal sanctions of a first instance court for decision taking and oversight of enforcement of criminal sanctions.*

The following mid-term organisational activities should be undertaken:

- a. *Training of judges for enforcement of criminal sanctions;*
- b. *commencement of work of judges for enforcement of criminal sanctions.*

D. Commissioners' and Probation Service

Short-term normative activities are:

- a. *Enactment of the Probation Act which regulates enforcement of various alternative sanctions and measures under the competence of the relevant probation service;*
- b. *probation service conducts oversight and forwards to the public prosecutor a report on fulfilment of duties accepted by the suspect as a condition for deferment and/or discontinuing criminal prosecution;*
- c. *probation service submits at request of public prosecutor or court a risk,⁵ competencies⁶ and needs assessment⁷ of the defendant;*

⁵ Risk assessment determines the degree of risk behaviour of defendant/convicted person based on his psychological, social and health characteristics, type and seriousness of committed crime, duration of pronounced sentence, attitude in respect to committed offence, the fact that whether he/she is under new criminal proceedings, conduct during serving of previous sentence et al.

d. *probation service in collaboration with the treatment service submits to the judge for enforcement of criminal sanctions a risk, competencies and needs assessment of the convicted person in procedure for deciding on conditional or early release*

e. *probation service conducts oversight of conditionally or early released person and submits a report to the judge for enforcement of criminal sanctions;*

f. *probation service in collaboration with the treatment service draws up a plan of post-penal integration of person after serving of prison sentence.*

Short- and mid-term activities are:

a. *Opening of regional commissioner offices in Valjevo, Leskovac, Nis, Kragujevac, Novi Sad and Subotica;*

b. *selection and training of commissioners to be employed in regional offices;*

c. *specialised training of judges and public prosecutors on territories where regional commissioner offices will be opened;*

d. *commissioner service develops (mid-term) into probation service, i.e. the probation service becomes a separate department in the Prison Administration*

E. Increase of accommodation capacities and improvement of conditions in prison institutions

Short-term organisational activities:

a. *Completion of closed type prison in Padinska Skela with capacity for 450 inmates.*

Mid-term organisational activities

a. *Reconstruction i.e. adaptation of existing penal facilities.*

Long-term organisational activities:

a. *Construction of new prisons.*

F. Upgrading of professional capacities in the Prison Administration

⁶ Assessment of competencies of defendant/convicted person on intellectual, emotional and social plan determines his/her ability to grasp new knowledge and skills and the potential to accept positive values and new formats of conduct.

⁷ Needs assessment of the defendant/convicted person determines his/her social skills, communication ability, potential for socially acceptable conduct in everyday situations, need for vocational training, education, psychological, psychiatric, medical and social assistance.

Short-term organisational activities:

a. *Employment of new staff in Guards' Service.*

Mid-term organisational activities:

a. *Modification of the structure of staff in Prison Administration.*

Long-term organisational activities:

a. *Establishing human resources capacities of the Prison Administration for optimum enforcement of criminal sanctions.*

G. Amnesty

Short-term normative activities:

a. *Enactment of the Amnesty Act that would embrace:*

- *persons convicted to prison sentence of maximum six months;*
- *persons whose delinquency in payment of fine would be replaced with community work instead of prison term;*
- *convicted persons over 70 years of age with the proviso that they have served two thirds of prison sentence.*

b. *amnesty would not include:*

- *persons convicted for criminal offences with elements of violence, sexual crimes, fraud and endangerment;*
- *convicted person who have absconded or have not reported to court summons for serving of prison sentence.*

H. Single IT system

Mid-term organisational activities are:

a. *Introducing of a single IT system linking police, public prosecution, courts and Prison Administration, which would contain data on the defendant, active proceedings, measures in place to ensure his/her, previous convictions, sentences he/she should report to serve, criminal sanctions whose enforcement is underway.*

IV Material expenditures and bodies for implementing of the Strategy

A. Material expenditures for implementing of the Strategy

Reducing overcrowding in institutions for enforcement of criminal sanctions requires, in addition to normative changes, appropriation of considerable funds for modifications in structural and organisational area.

Consequently, it is necessary for the Republic of Serbia to provide, within available financial resources, necessary funds for successful attainment of objectives and activities provided under this Strategy. This implies reallocation of available funds according to priorities that have to be realised.

Support of the international community, and particularly OSCE, European Commission, Council of Europe, World Bank and other international and regional organisations and governmental agencies, with whose assistance Serbia has embarked upon significant reforms are of high importance for successful implementation of the Strategy.

B. Bodies for implementing of the Strategy

The Ministry of Justice of the Republic of Serbia and particularly the Prison Administration as its autonomous unit with competence for enforcement of criminal sanctions have the foremost role in implementing the Strategy. The Supreme Court of Cassation and the Republic Prosecution will greatly contribute to successful implementation of the Strategy.

Effective accomplishment of tasks set under the Strategy implies that judicial officers are informed of consequences of overcrowding in institutions for enforcement of criminal sanctions. This should be the first step in amending the penal policy that would lead to more frequent application of other sanctions and measures in place of short-term prison sentences or detention. Hence it is important that the Judicial Academy and the Prison Administration's Center for Training of Prison Staff are particularly engaged in implementation of the Strategy. Activities of this type should be implemented according to a harmonised programme in order to facilitate future collaboration of judges, prosecutors and commissioners tasked with enforcement of alternative sanctions.

V Adoption of an Action Plan

An Action Plan for implementation of this Strategy will be adopted by the Government within 60 days from its publication.

The Action Plan will specify concrete activities that need to be implemented in order to achieve the goals of the Strategy, define the responsibilities of state bodies in the implementation of the Strategy and set deadlines for execution of activities.

VI Final Part

This Strategy will be published in the "Official Gazette of the Republic of Serbia".