

ENFORCEMENT OF ALTERNATIVES TO SENTENCING IN ALBANIA

Prof. Dr. Altin SHEGANI

Faculty of Law, University of Tirana



**BALKAN
CRIMINOLOGY**

Criminal sentencing

- A model of criminal sentencing based in the values of law and justice guides human society towards a common approach to safety.
- The criminal sanction, as a concrete expression of decision-making in relation to the juridical truth, seeks to correct the offenders so as to contribute to a more safer society.
- The profile of future penitentiary institutions has to be seen through the optics of the dynamic evolution of criminal sanctions' efficiency.

Criminal sentencing

- The criminal sanction, as a repressive measure, is useful when it seeks for the enforcement of the substantial content of the law, and is primarily driven by the effects, and not the motives of punishment.
- It is the juridical result that follows a certain illegal conduct, and refers to the enforcement of specific legal rules being in force in a given legal order.
- In modern criminal juridical theory and practice, criminal sentencing is seen in three components taken together:
 - the punitive effect or retaliatory punishment,
 - the preventive effect,
 - the rehabilitation or re-socialization effect.

Alternatives to imprisonment

- Determination, individualization and enforcement of penal sanctions is an important legal process, which finalizes the operation of a legal order under the controlling mechanisms of the principle of legality in criminal law.
- The strategy of elaboration of this notion involves also the enforcement of alternatives sentences to imprisonment.
- The naming itself shows that they are not specific types of sentences, but are alternative ways of execution of the imprisonment sentence. These alternatives are denominated depending on the specifics, circumstances and legal requirements related to their application.

Alternatives to imprisonment

- Nowadays, alternative sentences are considered as an efficient tool of dealing with delinquent conduct, not only from the social perspective, but also from a cost-oriented point of view.
- Alternatives to sentencing are provided in Chapter VII the Penal Code of the Republic of Albania. The existing legal framework recognizes the following alternatives to imprisonment:
Semi-release , Suspension of the prison sentence and putting on probation, Home confinement, Community service, Early release/Parole.
- The judicial practice in this realm is under consolidation, having an increasing trend in application of alternative sentences, but still there are problems which call for solution.

Enforcement of alternative sentences in Albania (Statistical data)

- In 5 years (2009-2014) the Probation Service has supervised more than 13, 000 convicted persons. Among the 5 alternatives to imprisonment, the most frequently applied is 'probation' with a total of 10,766 cases, followed 'Community service' with 1487 cases, 'Parole' with 894 cases each, and 'Home detention' with 236 cases. 'Semi-freedom' is relatively underrated (only one case in five years), with more attention needed to be paid to its application in the near future.

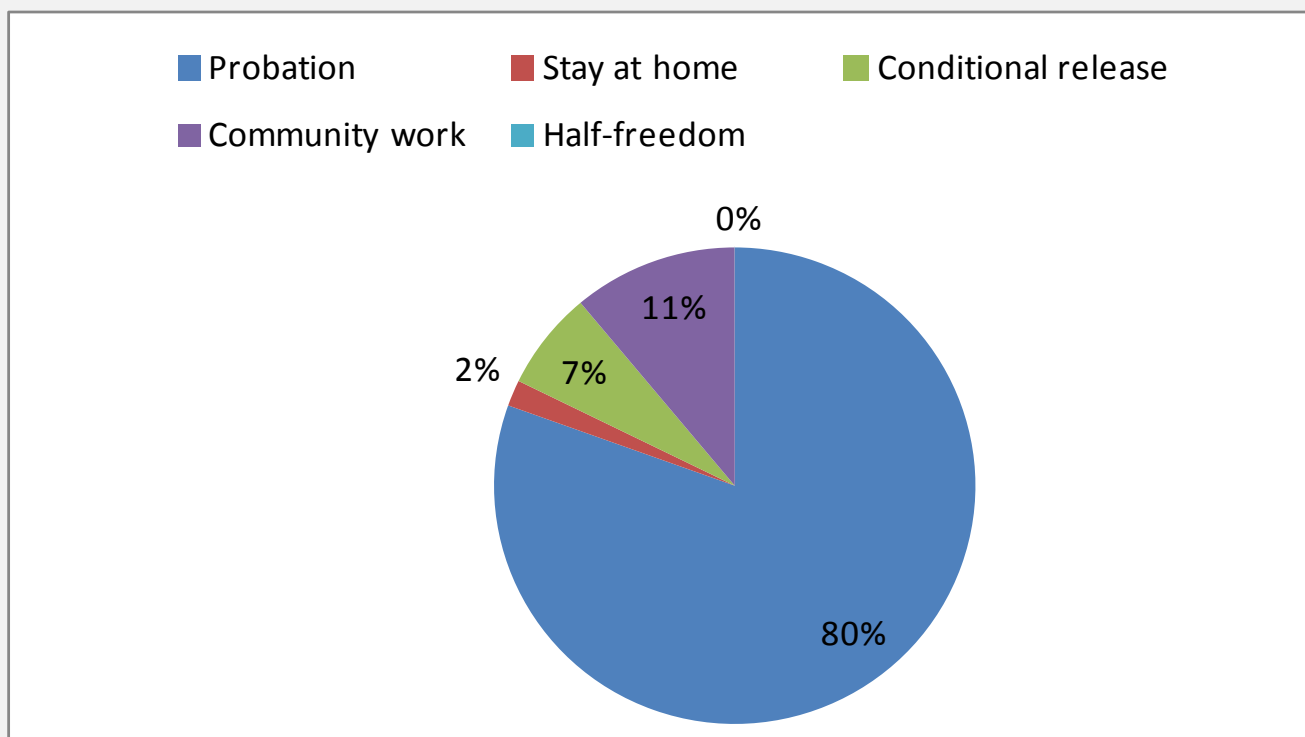
Enforcement of alternative sentences in Albania (Statistical data)

Total number of enforced alternatives to sentencing for the years 2009-2014

| Year | 2009-2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------|-----------|------|------|------|------|
| Probation | 2012 | 1616 | 2166 | 1758 | 3214 |
| Stay at home | 43 | 68 | 34 | 36 | 55 |
| Conditional release | 283 | 206 | 188 | 147 | 70 |
| Community work | 214 | 226 | 214 | 145 | 688 |
| Semi – release | 0 | 1 | 0 | 0 | 0 |
| Total | 2552 | 2117 | 2602 | 2086 | 4027 |

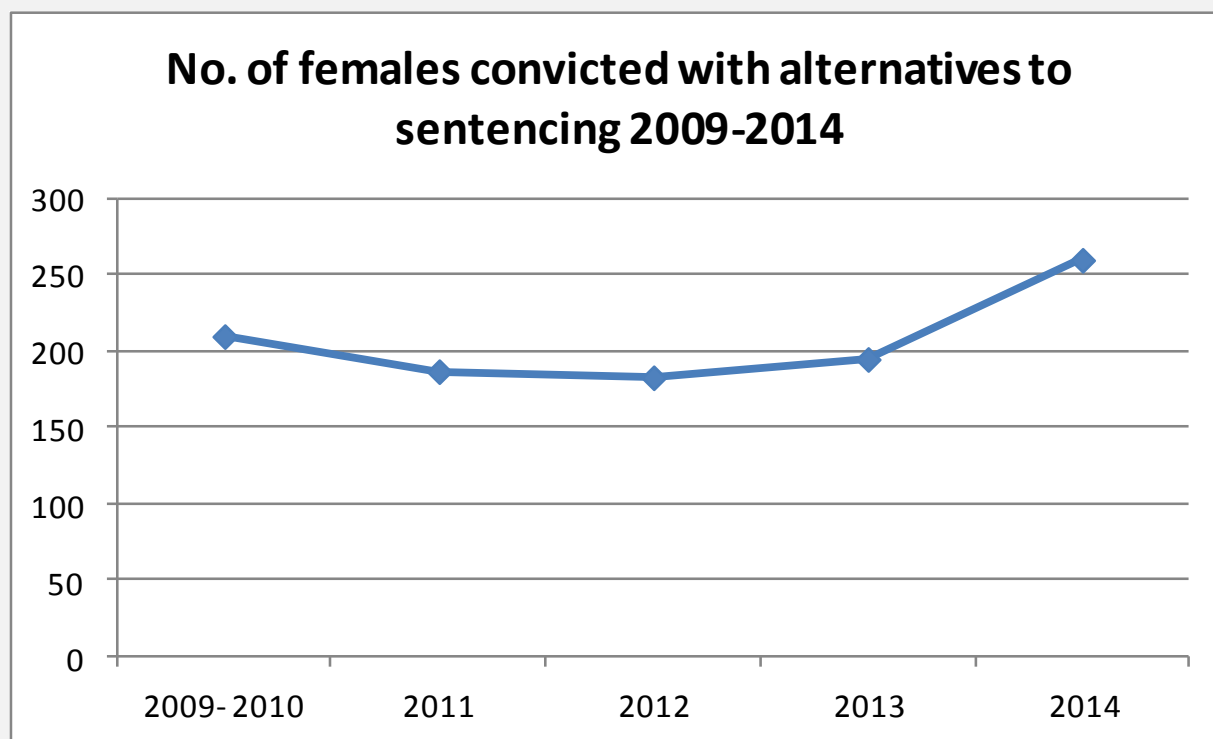
Enforcement of alternative sentences in Albania (Statistical data)

Proportion of alternatives to sentencing given by the court (2009-2014)



Enforcement of alternative sentences in Albania (Statistical data)

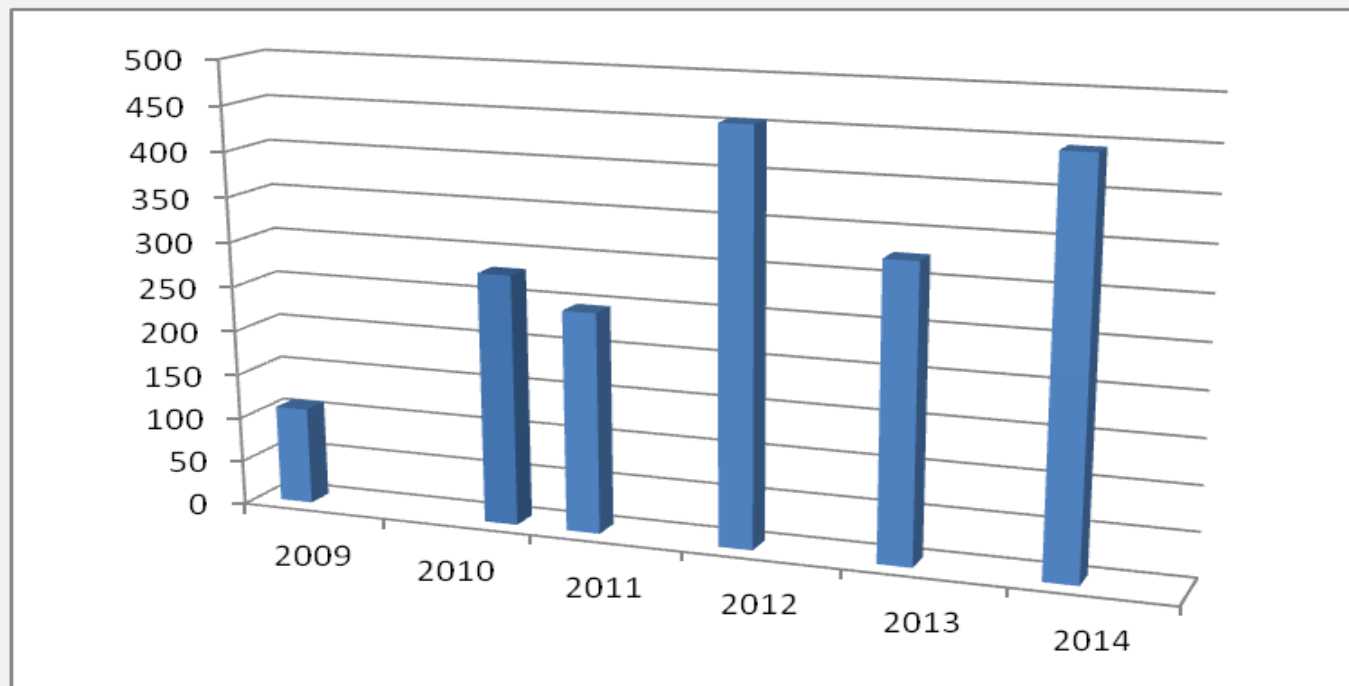
Females and the Probation System



Enforcement of alternative sentences in Albania (Statistical data)

Juveniles and the Probation System

No. of Juveniles that have received an alternative sentence 2009-2014



Concluding remarks

- Development of judicial practices regarding alternatives to imprisonment has been associated with some problems related to:
 1. the non-proper understanding of the circumstances of their applicaiton,
 2. judicial reluctance,
 3. notable lack of necessary infrastructure for the implementation of certain types of alternative sentences.

Enforcement of alternative sentences in Albania

- To the institution of The Probation Service should be given a more active role, especially concerning its procedural position, as an institution in charge of monitoring and supervising the execution of alternative sentences. This will also constitute an alignment with the legal framework of the European Union, in relation to the organization and functioning of the Probation Service.
- A lot needs to be done to involve the Probation Service earlier in the process, at the phase of decision-making on the relevant alternative to be adopted. Probation Service lacks an expressed role in the Criminal Procedure Code.
- In practice the probation officer as representative of the Probation Service isn't regularly called upon in courts, the courts and prosecutors not viewing this as a procedural obligation, thereby more space left for court decision-making being inconsistent and less judicious.

Concluding remarks

- Alternatives to penal sanctions are alternatives that serve to the function of a real and social justice.
- The level of application of alternatives and their methods of implementation are indicators of the human and democratic values of a society.
- They present a juridical technic that highly reflects the moral sense of the society.

Thank you !