

В деяких справах Суд навіть відмовляв у захисті права на свободу вираження поглядів на підставі статті 17 Конвенції, яка передбачає, що положення Конвенції не можуть тлумачитись таким чином, що вони надають «будь-якій державі, групі чи особі право займатися будь-якою діяльністю або вчиняти будь-яку дію, спрямовану на скасування будь-яких прав і свобод, визнаних цією Конвенцією, або на їх обмеження в більшому обсязі, ніж це передбачено в Конвенції». На цій підставі Суд відмовляв у захисті данській телекомпанії, що була покарана за ретрансляцію програм, що прославляли терористичні акти.<sup>8</sup>

Так само у захисті було відмовлено британському націоналісту, який виставив плакат, з якого було зрозуміло, що він вважав усіх мусульман терористами.<sup>9</sup>

Наведені вище справи лише невелика частка практики напрацьованої Європейським судом з прав людини. Ця практика демонструє, що держави мають можливості та обов'язок забезпечувати безпеку дотримуючись при цьому прав людини.

#### *Література*

1. Ramirez Sanchez v. France [GC], no. 59450/00, ECHR 2006-IX.
2. El-Masri v. the former Yugoslav Republic of Macedonia [GC], no. 39630/09, ECHR 2012; Al Nashiri v. Poland, no. 28761/11, 24 July 2014; Husayn (Abu Zubaydah) v. Poland, no. 7511/13, 24 July 2014; Abu Zubaydah v. Lithuania, no. 46454/11, 31 May 2018; Al Nashiri v. Romania, no. 33234/12, 31 May 2018.
3. Daoudi v. France, no. 19576/08, 3 December 2009.
4. Finogenov and Others v. Russia, nos. 18299/03 and 27311/03, ECHR 2011 (extracts).
5. McCann and Others v. the United Kingdom, 27 September 1995, Series A no. 324.
6. Uzun v. Germany, no. 35623/05, ECHR 2010 (extracts).
7. Leroy v. France, no. 36109/03, 2 October 2008.
8. Roj TV A/S v. Denmark (dec.), no. 24683/14, 17 April 2018.
9. Norwood v. the United Kingdom (dec.), no. 23131/03, ECHR 2004-XI.

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## **ALTERNATIVE CRIMINAL SANCTIONS IN THE CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA**

Society is changing and the law should follow the changes in the society. The author is focused on the changes in the area of criminal sanctions in the time of transition.

The author deals with the alternative criminal sanctions in the Criminal Code of the Republic of Slovenia. The Criminal Code of the Republic of Slovenia contains three alternative criminal sanctions: imprisonment at the end of the week (weekend arrest), house arrest and community service.

A prison sentence of up to three years, except when imposed for a criminal offence against sexual integrity, may also be enforced so that a convict who meets the conditions provided by the act regulating the enforcement of criminal sanctions continues working or schooling and resides at home, except on work-free days, as a rule at weekends, when he is required to stay in prison. More detailed conditions regarding the implementation of the sentence shall be defined by the prison. (weekend arrest)<sup>1</sup>.

A prison sentence of up to nine months may also be served under house arrest if, considering the level of risk posed by the convicted person, the possibility of the offence being repeated, and the personal, family and professional situation of the convicted person while serving the prison sentence, there is no need for serving the sentence in a prison or, if the sentence must and can be served in an appropriate public institute due to the illness, disability or old age of the convicted person.

While serving a prison sentence, a convicted person may not leave the building or a particular part of the building where he is under house arrest, except where exceptionally allowed by the court for a definite period of time when this is absolutely necessary for the convicted person to ensure vital necessities of life, medical assistance, or to perform work. The court's adjudication that a sentence should be enforced by house arrest shall, pursuant to the provisions of this Code relating to a suspended sentence, also include custodial supervision and one or more instructions. The court may limit or prohibit a convicted person under house arrest from having any contacts with persons who do not live with him, do not give medical treatment to him or do not supply him, and define in more detail the conditions of house arrest.

If a convicted person leaves the building or a particular part of the building during house arrest without the prior consent of the court or outside the allowed time, or if he fails to comply with restrictions or the prohibition of contact or other house arrest rules imposed by the court, the court may issue a decision to send the convicted person back to prison to serve the remainder of the sentence there.<sup>2</sup>

A prison sentence of up to two years, except when imposed for a criminal offence against sexual integrity, may be enforced so that, instead of serving the prison sentence, the convicted person performs community service for a period of a maximum of two years from the enforcement of the judgment. The extent of work shall be defined so that one day in prison equals two hours of community service. The body responsible for enforcement when determining the work for the convicted person within the work available with implementing organisations shall take into account the convicted person's professional

knowledge and skills and interests with regard to urgent family, educational and vocational obligations with which failure to comply would cause serious damage in meeting these obligations that would be difficult to repair or would be irreparable. Community service shall be performed without compensation.

When deciding on the enforcement of a prison sentence in a manner referred to in the preceding paragraph, the court shall take into account, in particular, the behaviour of the convicted person at the time of making the decision, the risk of the offence being repeated at liberty, the possibility of performing appropriate service and the convicted person's ability to perform it, and the personal and family situation of the convicted person during the serving of the prison sentence.

The court's adjudication that a sentence should be carried out in part as community service shall, pursuant to the provisions of this Code relating to a suspended sentence, also include custodial supervision and one or more instructions.

If a convicted person fails, either fully or in part, to perform community service tasks or significantly fails to comply with instructions within protective supervision or avoids contact with the supervisory officer, or in any other way fails to comply with his community service obligations, the court shall decide, that the imposed prison sentence be enforced so that it corresponds to the work not performed.<sup>3</sup>

Alternative criminal sanctions were mentioned as substitute for short-term imprisonment but the number of imposed alternative sanctions shows that the aim was not reached.

The author believes that unhidden privileging of the perpetrators of criminal offences on damage of victims raises serious doubts whether the equality before the law guaranteed by the article 14 of the Constitution of the Republic of Slovenia is still in force.

The feeling of victims that they are betrayed and without appropriate legal protection because the perpetrators are not sentenced on just deserts, raises serious doubts in justice and the rule of law which are essential elements of every democratic society.

#### *Literature*

1. Paragraph 4 of Article 86 of the Criminal Code.
2. Paragraphs 5, 6 and 7 of Article 86 of the Criminal Code.
3. Paragraphs 8, 9, 10 and 11 of Article 86 of the Criminal Code.