

Substance of Community Service

The article provides discussion of the community service substance. It describes the main purpose of community service as alternative punishment, its significance and rehabilitation effect. Article offers practical analysis of the issue and significant changes in the period after “zero tolerance”. Part of the article is based on analysis of the legal acts, clearly demonstrating significance of the issue and existing weaknesses.

Key Words: *Community service, non-custodial sentence, probation, rehabilitation, community sanctions, re-socialization, alternative punishment*

1. Introduction

Community service belongs to the category of non-custodial sentence and is distinguished with high rehabilitation effect – the sentenced stays with the society and he/she has opportunity to atone damage caused to the society by his offensive action with his/her labor, in addition, community service is cost-effective for the state and helps the sentenced to acquire and elaborate various additional skills. Social purpose of the punishment is restoration of the public order and compensation of caused losses using efforts of the convicted person.¹

State policies should not be strengthening of repressions and increasing sanctions against the offenders, rather, this requires from the state introduction and development of the punishments and measures other than deprivation of liberty.

Switch from the “zero tolerance” politics to liberalization put on agenda liberalization of the sphere of the criminal justice and within the scopes of this politics, attention was focused on launching of the alternative and preventive mechanisms of non-custodial sentence and responsibility, resulting, ultimately, in prevention of crime. Preventive programs can reduce the crimes, though, certainly, this phenomenon cannot be eliminated fully. In this respect, non-imprisonment punishments, alternative measures of criminal responsibility, isolation and community service programs play significant role and this is the prevention of the third level.² Such alternatives, in many cases, reduce the risk of recurrence much better than deprivation of liberty. This article deals with the substance of community service. Part of the article relies upon international practices and analysis of the legal acts, clearly evidencing significance of the issue and existing gaps. Article offers critical analysis of the issues, identifies the weaknesses and provided recommendations may be subject of interest of the group working on the criminal law reform. And all these may positively impact the future of the system.

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¹ *Arsoshvili G.*, Re-socialization of the Offender, Tbilisi, 2009, 4.

² *Criminal Law Reform Coordination Council*, Strategy for Prevention of Juvenile Crimes, Tbilisi, 2012, 3.

2. History

Community services were first applied in 1966, in the USA, against the people driving in drunken condition.³ In the Europe, these were first applied in 1970, in England and Wales, for the purpose of reduction of quantity of the convicts in penal institutions. Such punishment was regarded as alternative to deprivation of liberty characterized with high effect of reintegration and rehabilitation.⁴ “In 1976, Probation Service of Ministry of Justice of Quebec, introduced community services at number of courts, as experiment, Due to success of the experiment, in 1980, such punishment was adopted all over Quebec. Community service was unified with probation, as one of the types of punishment imposed by the judge.”⁵ After England and Wales, in 1981, community service was introduced in the Netherlands, in 1982 – in Denmark, France and Ireland and in 1984 – in Norway. Currently, legislation of almost all European states provides for community service and categorizes it as community sanctions and measures.⁶ This is the title of Recommendation No: R (92) 16 of the Committee of Ministers of the Council of Europe to the member states, on the European Rules of Community Sanctions and Measures dealing with off-prison punishment for the adult offenders only and such measures imply, primarily, the community service. Term “Community sanctions and measures” is applicable to the sanctions and measures providing maintenance of the offender within the community. This implies restriction of the convict’s freedom by imposing specific terms and conditions and obligations.⁷

The convicts that are not arrested, have opportunity to live with their families, maintain their jobs, participate in various rehabilitation programs and compensate damages caused to the society by their offensive actions,⁸ avoid violence and harmful influence of the prison subculture.⁹ It is regarded that the prison protects from committing of recurrent crimes only in the period of imprisonment while the community sanctions and measures are intended for the future.¹⁰ Community sanctions and measures reduce crime and proves that placement in the penal institution is not an only way for elimination of crime.¹¹

In Georgia, community service, as the punishment was adopted in 1999, with adoption of the Criminal Code of Georgia, though, for long period, this was so called “dead norm”. Its actual application commenced from 11 March 2011, after implementation of legislative changes. As of today, community service is applied not only as a punishment but it is one of conditions of diversion as well.

At the world level, community service is implemented in different ways. Its adoption and application depends on the state formation, public attitude towards the crime and criminals in general, as well as resources available in the country and priority directions.¹²

3. Concept of Community Service

According to the Dictionary of Civil Education, labor is an individual’s conscious, targeted physical or mental activity creating tangible or intangible product and serving to maintenance of mental or physical ex-

³ Klaus J., Handbook on Probation Services, Rome/London., 1998, 15.

⁴ Van Kalmthout A., Durnescu I., European Probation Service Systems, CEP., 2011, 26-27.

⁵ Pradel Zh., Comparative Criminal Law, Tbilisi, 1999, 437.

⁶ Van Kalmthout A., Durnescu I., European Probation Service Systems, CEP., 2011, 26-27.

⁷ Collection of International Standards of Probation, Tbilisi, 2010, 183.

⁸ Vuong L., Hartney C., Krisberg B., Marchionna S., The Extravagance of Imprisonment Revisited, NY, 2010, 70.

⁹ Alarid L. f., Community-Based Corrections, TX., 2013, 1

¹⁰ See <http://rethinking.org.uk/informed/pdf/alternatives_to_prison.pdf>, 11.

¹¹ Lundman R., Prevention and Control Juvenile Delinquency, NY, 1993, 233.

¹² Klaus J., Handbook on Probation Services, Rome/London, 1998, 17.

istence of the individual.¹³ On the contrary – unemployment frequently causes existence crisis for individuals. Loss of economic status may cause fall of individual’s self-esteem and harm to his/her personality.”¹⁴

Community service fully corresponds to the labor definition, the only difference is that in this case labor is not a voluntary activity but rather it is one of the punishment types. Community service is sound alternative measure of punishment beneficial for the convict, as well as for the community and the state government. Such type of punishment is cost-effective and helps the state to save the resources. The convict is instructed to perform certain works for free, under the supervision of probation officer. The main purpose is that the offender understood that he/she has committed the crime and that he/she bears responsibility for this.¹⁵ In addition, community service shall be used only where there is no any specific victim.¹⁶

According to Section 47 of the Recommendation CM/Rec (2010)1 of Committee of Ministers to Member States on Council of Europe Probation Rules, Community service is a community sanction or measure which involves organizing and supervising by the probation agencies of unpaid labor for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatizing nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders. According to UN Standard Minimum Rules for Non-custodial Measures, community service requires that the offender performed unpaid work or special work.¹⁷ Community service shall not be associated with physical pain or with humiliation of personal dignity.¹⁸ Court shall apply such punishment only where serious offence is committed though not so serious that only imprisonment could be applied.¹⁹

With its substance, such punishment is a form of restitution.²⁰ Punishment function of the public service is that it restricts the offender’s liberty and takes his/her time for certain term.

4. Community Service and Plea Bargain

According to Paragraph 1, Article 44 of the Criminal Code of Georgia, Community service shall mean free labor of a convicted person where the type of labor is determined by the probation bureau. Community service shall be imposed from 40 to 800 hours in case of adults and if the fine is substituted with community service or if deprivation of liberty is substituted with community service, or if the parties conclude plea bargain, it may be imposed for longer term. As for the juveniles, according to Article 71 of the Juvenile Justice Code, they are imposed from 40 to 300 hours and if the fine is substituted with community service or if deprivation of liberty is substituted with community service, or if the parties conclude plea bargain, it may be imposed for longer term.

In case of plea bargain, imposing of community service for the term exceeding the term provided for by the law “is apparently against the constitutional principle of law determination and court independence. Law determination principle ensures legal stability. The legislator shall make critical decisions on the types and scopes of proposed legal outcomes and show to the judge the limits of his/her action, as clearly as possible.”²¹

¹³ See <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=6&t=7413>>.

¹⁴ *Schwabe I.*, Decisions of German Federal Constitution Court, Tbilisi, 2011, 316.

¹⁵ See <<http://pja.gov.pk/system/files/Probation.pdf>>, 6-7.

¹⁶ *Abadinsky H.*, Probation and Parole, Theory and Practice, NJ, 2009, 336.

¹⁷ *Ivanidze M.*, Alternative Punishments, Criminal Law, General, Tbilisi, 2016, 470.

¹⁸ *Ibid.*

¹⁹ See <http://rethinking.org.uk/informed/pdf/alternatives_to_prison.pdf>, 8.

²⁰ *Branham L., Krantz S.*, The Law of Sentencing, Corrections, and Prisoners, Rights, MINN, 1997, 151.

²¹ *Arsoshvili G., Mikanadze G., Shalikashvili M.*, Probation Law, Tbilisi, 2015, 135-136.

According to Article 82 of the Constitution of Georgia: “The judiciary shall be independent and exercised exclusively by courts.” The plea bargain shall be concluded between the offender and prosecutor while the judge only approves it.²² This deprives the judge opportunity of imposing punishment at his/her discretion. And the punishment is legal outcome of the offence and it is imposed on person who has committed crime or offence by the court only.²³ Though procedural legislation does not entitle the judge to reduce or change the punishment autonomously. This cannot justify approval of excessively light or severe punishment relying on the fact that the prosecution has filed such motion. The judge shall observe the process of determination of punishment attentively and in case of inadequacy offer the parties to change conditions or reject the plea bargain.²⁴ Analysis of court decisions clearly showed the weaknesses of application of such punishment in Georgia.

By the decision №1/154-13 of 27 March 2013 of Gori District Court plea bargain was approved between A.B. and prosecutor, where, the offender, together with the main punishment, was imposed additional punishment in a form of community service for 150 hours. At a time of the offender’s registration it turned out that she had two minor children, of 6 and 4 years age. As she stated, neither prosecutor, at a time of concluding the plea bargain and nor judge, at a time of approval thereof have asked him/her whether there were any preventing circumstances while Paragraph 4, Article 44 of Criminal Code of Georgia specifies the groups of persons that shall not be imposed community service by the court, these are: disabled persons of first and second categories, pregnant women, women with children aged under seven, persons of retirement age, as well as for recruited military service persons. The circumstances prohibiting community service imposing were missed by the defendant’s counsel as well, he/she has not found out, whether there were any preventing circumstance or not. In the descriptive-motivation section of the court decision there is specified only that the offender pleaded guilty, she is aware in plea bargain terms and conditions that no coercion or threatening etc. against her has taken place. It also states that based on assessment of the presented evidences, the court was convinced that the defendant was guilty and regards that the punishment specified in the prosecution’s application was lawful. Where the court states that the evidences confirming the offender’s guilt are provided, it should have also discuss whether there were existed any circumstances excluding imposition of community service, especially regarding that in the preamble of the sentence there is stated that the offender had the family and at a time of sentence she was 28 years old. The offender’s age and family status provides basis for reasonable doubt that she should have child under seven. This provided the basis for rejection of the plea bargain and returning of the case to prosecutor.

In addition to the above, there is the other case where the other preventing circumstances were neglected and a person was still imposed the community service. By the decision #1/431-13 of 13 September 2013 of Gori District Court the plea bargain was approved and N.G. was convicted in accordance with Paragraph 1, Article 177 of Georgian Criminal Code and together with 3-year suspended sentence, he was imposed 150-hour community service. At a time of registration with the Probation Bureau, when the probation officer was explaining the rules and conditions of the punishment, N.G. stated that he/she had eyesight problems and in few days provided the relevant health certificate stating that in 2009 the offender was awarded status of the disabled person of second category. Interview showed that he/she was informed about the substance of punishment at the Probation Bureau and neither at a time of concluding the plea bargain, as well as the hearings he/she received any explanations with respect of the substance of punishment

²² *Arsoshvili G., Mikanadze G., Shalikhvili M.*, Probation Law, Tbilisi, 2015, 135-136.

²³ *Turava M.*, Criminal Law General Part, Doctrine of Crime, Tbilisi, 2011, 46.

²⁴ Guidance Proposals on the Form of Criminal Judgment, its Reasoning an Stylistic Accuracy, Tbilisi, 2015, 63.

and no one has asked about his/her health status. The mentioned decision states also that the punishment provided by the plea bargain is lawful, though similar to the former case, here the basis exists for rejection of the plea bargain and returning of the case to prosecutor.

In addition to the prohibiting circumstances directly stated by the law, analysis of judicial practices also showed that the judges, at a time of concluding of the plea bargains, fail to examine such characteristics of the offender as his/her health status and ability to perform the community service. Such is decision # 1/109 of 23 June 2014 by Gori District Court. By this decision M.Z. was found guilty in committing crime provided for by Article 111 and Section 1, Article 1261 of Criminal Code of Georgia and his punishment was community service for 90 hours. He had problems with attending the Probation Bureau as he had physical health problems. When the probation officers visited him at home, it turned out that he could walk only with the crutches only for last 3 years. According to the health certificate in Form #100, he had vertebral column trauma and his right leg was partially paralyzed. He had no formal document evidencing his disability as he was not able to visit medical facility and he had no any allowances. Though here the violation of legal norms does not take place in this case, the court should have taken into consideration M.Z.'s health status and should not have applied community service as punishment, The state should not gain benefits from application of the alternative punishments in such case but rather measure of evaluation should be whether the punishment corresponds to the physical abilities of the offender and whether the Probation Bureau is able to enforce the punishment. The type and measure of punishment shall be reasoned similarly to the offender's guilt.²⁵ The court decision shall not only prove the offender's guilt but also justify reasonability of the applied punishment. This would be quite high standard, excluding the above legal gaps. If the imposed punishment is unjust, irrespective of how well the sentence is justified, the applied punishment will be regarded as less effective.²⁶

The substance of punishment is that the judge should apply the principle of individualization of punishment and ensure its suitability to the offender's personal characteristics, his/her health status, physical abilities. For this purpose, the offender's personal characteristics do not include only positive or negative ones, his/her education, desires, activities but rather personal values.²⁷ Offenders are distinguished with their individuality and this makes the judge to impose the punishment with due regard of such individual nature.²⁸ "Punishment individualization has certain pedagogical aspect. The problem of upbringing cannot be properly solved by means of pedagogical cliché, without taking into consideration the student's individual characteristics, similarly, the principle of individualization of responsibility cannot be practically exercised without taking into consideration the offenders' personal nature."²⁹

The substance of actual operation of the punishment is that the judge should think, in determining of punishment, how effective the imposed measures will be for achievement of preventive goals.³⁰ And preventive goals should be set based on the assessment of committed offence and the offender's personal characteristics and the punishment should be set regarding such preventive goals. Positive prevention implies that the offender should be given opportunity of staying within the community and correction in such

²⁵ *Tskitishvili T.*, On the Issue of Punishment Application, Guram Nachkebia 75 Anniversary Collection of Works, Tbilisi, 2016, 150.

²⁶ Comment to Criminal Procedure Code of Georgia, Tbilisi, 2016, 724.

²⁷ *Ivanidze M.*, Alternative Punishments, Trends of Liberalization of Criminal Legislation in Georgia. Tbilisi, 2016, 342.

²⁸ *Dvalidze I.*, General Criminal Law, Punishment and Other Criminal-Law Outcomes of the Crime, Tbilisi, 2013, 72.

²⁹ *Ibid.*, 73.

³⁰ *Ibid.*, 72.

way.³¹ “Re-socialization or correction implies such transformation of the offender’s personality that he/she never violates the criminal law and respects the rules of human cohabitation.”³²

While the judges regard that the level of legal culture of the society is low, the society should undertake its own role in prevention of offences and promote law obedience among its members.³³ The above court decisions clearly show that where the court imposes unfair and unjust punishment, the society alone cannot play its role in crime prevention. Primarily, the court shall be the guarantor of just and lawful decisions and the imposed punishment shall be adequate for the committed offence, suitable to the personality of the offender and intended for re-socialization. “Imposing of punishment should not be based on the abstract idea of justice; it should be reasonable and, most importantly, the court should actually ensure implementation of the principle of punishment individualization.”³⁴

In imposing punishment, the court should not only ask the offender whether he/she agrees with the terms and conditions of plea bargain but explain to him/her the substance of imposed punishment. The judge should find out, whether the defendant understands the contents of punishment provided by the plea bargain and whether he/she is aware in legal outcomes expected in case of attempt of avoidance thereof. Only awareness is not sufficient. In accordance with Article 209 of Criminal Procedure Code of Georgia, the offender must agree with the punishment provided by the plea bargain, before giving his/her consent, it is necessary that he/she received information about punishment from his/her legal counsel and prosecutor and the judge, according to Article 212 of Georgian Criminal Procedure Code, shall examine, whether the offender understands, what is the punishment provided for by the plea bargain and only after this approve the latter. In such cases the judge should perform the controlling function. When the prosecutor negotiates with the defendant about the plea bargain, this is nothing but negotiations on punishment and in such cases the plea bargain is the means of enforcement.³⁵ And the defendant, to avoid imprisonment, accepts any punishment. “Prosecutor’s authority to offer the defendant any measures of punishment allows him/her to influence the defendant and receive the confessionary statement from him/her.”³⁶ The judges shall pay attention, whether the defendant’s will is true and this should not be limited to formal hearing of oral consent.³⁷ Most of the offenders who were imposed community service learn about this type of punishment at Probation Bureau only while explanations should be provided by the prosecutor and legal counsel, at a time of concluding plea bargain, as well as the judge, at a time of issuance of the court decision. Some offenders state that they agreed to accept this type of punishment as they did not want to be in prison, As one of the probationers stated, “it is better than be in the cell and do nothing, a person should work, if a person is able to work, it is better to leave him/her and employ. In case of imprisonment, re-socialization is more difficult; people leave prison embittered, especially regarding how they are treated there.”³⁸

³¹ Turava M., Criminal Law General Part, Doctrine of Crime, Tbilisi, 2011, 44.

³² Arsoshvili G., Re-Socialization of the Offender, Tbilisi, 2009, 6.

³³ Shalikhvili M., Study of Alternative Punishment in Georgia, *Mzia Lekveishvili – 85 Anniversary Collection of Works*, Tbilisi, 2014, 96.

³⁴ Lekveishvili M., Individualization of Punishment as Significant Principle of Punishment Application, *Trends of Liberalization of Criminal Legislation in Georgia*, Tbilisi, 2016, 194.

³⁵ Shalikhvili M., Mikanadze G., *Juvenile Justice (Textbook)* Tbilisi, Pr., Str., 2016, 77.

³⁶ *Ibid*, 77.

³⁷ *Guidance Proposals on the Form of Criminal Judgment, its Reasoning an Stylistic Accuracy*, Tbilisi, 2015, 63.

³⁸ Shalikhvili M., Study of Alternative Punishment in Georgia, *Mzia Lekveishvili – 85 Anniversary Collection of Works*, Tbilisi, 2014, 98.

5. Community Service and Principle of Proportionality

To find out, whether the applied punishment is proportional to the committed action, the legitimate purpose of the imposed punishment should be established. Proportionality is determined based on the correlation between the purpose and means.³⁹

Principle of proportionality is well defined in Article 7 of Juvenile Justice Code stating that Measures applied against minors in conflict with the law shall be proportionate to the acts committed and appropriate for their personal needs, their age, and their educational, social and other needs.

Principle of proportionality requires that not only the type of the applied punishment but also its measure shall be proportional to the committed action. European Court recognized this principle as the universal one, for applying of punishment.⁴⁰

Principle of proportionality is frequently violated in the decisions made by the local councils of the Ministry of Corrections, where the convict's remained imprisonment term is replaced by the community service. By the decision of 10 December 2009 of Gori District Court, E.A. was found guilty in committing crime provided by Subsection "a", Part II, Article 260 of Criminal Code of Georgia and he/she was sentenced to deprivation of liberty for the term of 12 years, 11 months and 27 days. Punishment term commenced on 18 August 2009. According to the resolution of 12 February 2013, based on amnesty, term of his imprisonment was finally reduced to 6 years. Term of his imprisonment had to expire on 18 August 2015. By the decision #05/13/K/Z-005 of 23 November 2013 by the Permanent Commission of the Ministry of Corrections of Georgia, remained part of the imprisonment term was substituted by community service – 3155 hours. Permanent Commission multiplied 1 year, 8 months and 26 days, equaling to 361 days by 5 hours and obtained 3155. Though even 3155 hours of community service is indeed better than spending of the term in prison, it should not be of stigmatizing nature. 3155 hours of work can impact the offender severely and for him, it would be much better to be released on parole and attend Probation Bureau once per week while community service is regarded as proven punishment promoting rehabilitation and re-socialization, compared with any other types of punishment. Here, the main problem is calculation. Absence of the upper limit allows the local councils to set excessively long term of community service resulting not in re-socialization but rather in stigmatization and impacts severely the offender.

Such cases are frequent in the practice of local councils. By the decision No 02/14/SH-063-13 of 29 May 2014 of Local Council of Eastern Georgia convict K.N.'s remained term was substituted by community service for 1690 (one thousand six hundred ninety) hours. By the decision #05/13/K/Z-006 of 23 November 2013 by the Permanent Commission of the Ministry of Corrections of Georgia, Nn. Gh.'s remained part of the imprisonment term was substituted by community service for 2370 (two thousand three hundred seventy) hours.

All above decisions state that the council, in making decision, has relied on the criteria (nature of the offence, the offender's behavior in the period of imprisonment, effects of the offender's past offences, criminal record, family conditions and offender's personality) established by Article 13 of Order No 138 of 19 October 2015 of the Minister of Corrections on Approval of the Number of Local Councils of the Ministry of Corrections, Territorial Jurisdiction and Typical Statutes of Local Councils". This is not grounding of the decision. The council must state the results of assessment of the specific criteria to judge, whether they were released from the custody justly. Similar to the court decision, the one of the local council shall be well grounded to establish, whether it was lawful and fair or not.

³⁹ *Tskitishvili T.*, Proportionality for Punishment, Trends of Liberalization of Criminal Legislation in Georgia. Tbilisi, 2016, 502.

⁴⁰ *Jishkariani B.*, European Criminal Law within European Union, Tbilisi, 2013, 85.

In these specific cases, excessively long term of the community service is much more problematic than grounding. All mentioned cases show that establishment of standards is needed at the legislative level to prevent excessively long terms of community service. In addition to the standard, the upper limit shall be established for local councils. For example, according to Article 59 of Criminal Code of Georgia In the case of recidivism, term of imprisonment imposed as a final sentence may not exceed 30 years even if the sum is 32 years. In the case of cumulative sentences, the term of imprisonment imposed as the final sentence may not exceed 35 years even if the sum is 40 years. Similarly, the maximal term should be stated for local councils irrespective of the remained term of punishment.

Where the plea bargain allows imposing of community service for the term exceeding the upper limit, there is a high probability that the principle of proportionality will be violated. Member of local council, judge, prosecutor, in making decision on imposing community service should ask themselves, whether they would be able to provide public service without any payment for 800 hours and whether such unpaid work would have any positive impact on them. Where the offender is juvenile, whether their minor children would be able to work for 300 hours without payment and whether effect of such work would be positive? For the minors, 300 hours of community service is regarded as task that cannot be fulfilled regarding their psychical nature.⁴¹ And 3000 hours of community service is a humiliating punishment for any individual. Work without any wages and vacations for 2 years is indeed very harmful. At the institutions of confinement people lose their skills and motivation, frequently they are irritated, are aggressive and excessively sensitive and this complicates their integration.⁴² After being at the institutions of confinement they require delicate treatment, to facilitate their adaptation to the new environment and integration in the society but instead, they have to work for 3000 hours without any payment. Deprivation of liberty is the most severe punishment but regarding that at the institutions of confinement the offenders' subculture and values change and after release they lose self-confidence and are unable to deal with their problems⁴³ and in addition, they have to be engaged in community service without any payment, the desire of the repeated offence and return to the institution of confinement may emerge.

Article 17 of the Constitution of Georgia ensures protection of personal dignity and limits the activities of the state and binds it. This implies that the punishment must be adequate regarding the severity of crime and guilt.⁴⁴ Community service shall not humiliate human dignity. The fact that a person has committed the crime does not mean that he/she has lost dignity. Humiliation of dignity is not only imposing of the humiliating work. Excessively long term of community service can be regarded as humiliating and degrading, similar to the content of the work and form of its fulfillment.⁴⁵ Regarding that such labor is not subject to payment in case of imposing of such punishment, applying excessively long term of community service means placing an individual into unbearable situation and this, as such, is degrading and humiliating human dignity. "Degree of an individual's humiliation should not exceed the extent that co-exists with any punishment imposed by the court. Public attitude towards humiliating nature of any punishment should be taken into consideration; though this is not decisive and the victim's perception, his/her personal attitude can be deemed sufficient for regarding the punishment as "humiliating".⁴⁶ Plea bargain limits the judge's

⁴¹ *Shalikashvili M., Mikanadze G., Juvenile Justice (Textbook) Tbilisi, Pr., Str., 2016, 144.*

⁴² *Shalikashvili M., Mikanadze G., Khasia M., Penitentiary Law (Textbook) Tbilisi, 2014, 472.*

⁴³ *Ibid, 472*

⁴⁴ *Kublashvili K., Fundamental Rights, Tbilisi, 2014, 88.*

⁴⁵ *Comment to the Constitution of Georgia, Chapter Two, Citizenship of Georgia, Human Rights and Freedoms, Tbilisi, 2015, 120.*

⁴⁶ *Ibid, 120.*

ability to prevent imposition of community service over 800 hours and the judge who must administer justice, signs the document humiliating human dignity. Order of calculation of the unpaid labor term by the decision of local council is absolutely inadequate, resulting in humiliating lasting for years, impacting severely the offender, with actual danger of harm to health, undermining psychological stability and finally, instead of prevention, stimulates further offences while the main substance of such punishment is that the community service was beneficial for both, the community and the offender, by his/her re-socialization and rehabilitation.

6. Place of Community Service

In Georgia community service is understood directly, implying that it shall be necessarily performed at public institutions. Currently, in Georgia, most convicts are engaged in municipal services, cleaning and greening services or at the churches and monasteries, performing certain construction works. Comment to the Criminal Code of Georgia explains that “community service is performed normally at the public institutions (city hall; local councils; companies that are legal entities of public law). Work may include performing work of assistant at cleaning service, assistance to the cooks at the assisted care facilities etc.”⁴⁷ Though this is about isolation, in case of punishment, enforcement is provided similarly and the difference is only the legal outcomes.

It is impossible that the convict or isolated subjects were always employed at the municipal or public institutions as such services are very scarce in Georgia while application of community services expands every day. This is confirmed by the practical experience of the probation officer – “there are many problems, when I instructed to arrange community service there always is a problem, where to employ the offenders, in many cases they are rejected and we have to beg to employ them to deal with this problem. It would be good if there existed guaranteed jobs.”⁴⁸

I regard that community service does imply that the community received direct benefits from it. The outcomes should be useful for the society. In case of employment with the private company, the convicts and isolated subjects can acquire certain professions, crafts and their re-socialization will be provided. Is not this good for the society?! If the benefits are to be direct for the community, the private organization that have won the city cleaning tender is the convict and isolated subjects perform similar works at this organization and municipal cleaning service?! The main emphasis should be made on re-socialization, correction, crime prevention; it should be also taken into consideration that of the person employed in such organization works well, he/she will have the opportunity to receive the employer’s offer and in case of desire, be employed at paid job with the same organization, thus ensuring stable income for him/her and his/her family. Main purpose of community service is that the convict elaborated skills required for living independently. After completion of punishment he/she should be able to live in the community without committing any further offences. Re-socialization serves to the community as well, as it is interested that the recidivism did not take place.⁴⁹ This means that re-socialization is effective where labor is adequately recognized. Recognition does not mean financial aspect rather it implies demonstrating and providing understanding of the priorities of regular job to the convict, as the available and noticeable benefit, which can be gained after completion of punishment, in the period of honest life, free of offences⁵⁰ relying on

⁴⁷ Comment to the Criminal Procedure Code of Georgia, Tbilisi, 2015, 489-490.

⁴⁸ *Shalikhvili M.*, Study of Alternative Punishment in Georgia, *Mzia Lekveishvili – 85 Anniversary Collection of Works*, Tbilisi, 2014, 102

⁴⁹ *Schwabe I.*, Decisions of German Federal Constitution Court, Tbilisi, 2011, 215.

⁵⁰ *Ibid*, 216.

the skills and experience gained in the period of community service. Therefore, the place of community service should not be limited to the public institutions only; they should be employed with the private entities as well where specific activities are not based on certain professional skills as “sense that a person is not necessary, especially in such society where individual person’s value is mostly dependent on his/her professional activities, may result in moral trauma. All this is particularly heavy in case of long-term unemployment, when finding of job is particularly hard and hence, they have fewer opportunities to get employment.”⁵¹

One more significant issue related to the profile and status of the employer organization is religious associations and religious organizations.

On 12 March 2010, Main Prosecutor’s Office of Georgia, Ministry of Corrections and Patriarchy executed Memorandum on Cooperation. According to Section 1.1 of the Memorandum the parties agreed to employ the convicts at churches and monasteries in case of application of community service.

One of the NGOs criticized this cooperation, stating that: “1. This agreement is discriminative and preferences are given to the Orthodox Christian Church and 2. Whether work at the churches and monasteries and not participation in social activities arranged by the churches can be regarded as community service.”⁵²

Regarding that this Memorandum was made when the type of community service, its place and duration was set by the court, by virtue of the Memorandum, that does not create any legal outcomes, the court could not set any monastery as the place of punishment. After amendments of 11 March 2011, Probation Bureau may, without the said Memorandum, make agreement with any eparchy of the Patriarchy of Georgia and employ the convict at construction or area improvement works at church. In addition, according to the Memorandum, term “service” is not used in religious sense. Here community service is understood similar as elsewhere. Advantage of employment at the churches and monasteries is that in conversations with the ecclesiastic men the offender better understands the negative outcomes of the offence. He/she has the opportunity of mental development and this is certainly very important for re-socialization.

The subject of critic was also that as though the Memorandum was discriminative for the representatives of the other religious confessions. The Memorandum does not create any legal obligations and in addition, if any of the offenders expresses his desire to work at construction of the mosque, Probation Bureau is entitled to make relevant agreement and the offender will be employed without any memorandum.

As mentioned above, the main thing is offender’s re-socialization and if this takes place by his/her employment at any religious organization, this absolutely acceptable for both the state and society.

At international level, there are no any restrictions, with respect of employment place and employer’s profile. In New Jersey a person adjudged to community service may be employed at the public institution, as well as private non-entrepreneurial, non-profit organization.⁵³

Community service includes performing of various tasks, in USA the list of such works is quite long and includes: cleaning of the parks and gardens, attending of education programs and preparing presentations dealing with negative aspects of crimes, explaining to the school students why drunk driving is dangerous, employment at the enterprises, performing repair works, clear the walls from drawings, work for charity, learn law, be children’s tutor, work at construction works in poor urban districts, assist the elderly, take care of animals, at shelters, participate in operations of the emergency medical service and rescue

⁵¹ *Schvabe I.*, Decisions of German Federal Constitution Court, Tbilisi, 2011, 316.

⁵² See <https://emc.org.ge/2014/02/25/sazogadoebisatvis_sasargeblo_shroma/>.

⁵³ *Abadinsky H.*, Probation and Parole, Theory and Practice, NY, 2009, 336.

services, take care about city improvement, clear the leaves and mow the lawns, clean the windows, clear entrances, install and dismantle the Christmas decorations, work at organizations informing about breast cancer cases, work for water conservation.⁵⁴

Type of work shall not be related to the main business of the convict, otherwise this would not be effective, in psychological respect. It is possible that the offender worked in his/her profession as community service but it is necessary that this was unpaid.⁵⁵

7. Conclusion

Finally, it should be noted that due to the reforms implemented in the recent years Georgia makes significant steps with respect of development of the sanctions and alternative measures. More efforts are required to ensure implementation of the norms with due regard to the country's mentality and legal structure. At the same time, innovations should be introduced with long discussions. "Non-custodial measures should be used in accordance with the principle of minimum intervention."⁵⁶

Community service should obtain greater load. Private sector should be actively involved in exercising of this process. The state, on its side, should stimulate the employers participating in this process and offer them certain tax exemptions.

State should make statistical reports about benefits of community service to calculate the savings via such measures so that their effectiveness was clearly seen by the society, municipal services. As a result of survey in Essex, England, in year 2013, the individuals on whom community services were imposed, have performed work for £2.000.000 and for 5-year period, up to 2013, inclusive, Essex has saved £12.000.000.⁵⁷ And saving of the state expenses positively impacted socioeconomic status of the population.

The state should orient its efforts to improvement of the legal norms and limit hours of community services – set strict upper limit and do not allow the prosecutor's office to impose community service for excessively long term in case of plea bargains. State should revise the authorities of local boards of the Ministry of Corrections and set the upper limit of community service time for the boards. Absence of upper limit allows the state authorities to act deliberately in the sphere of human rights and "deliberation automatically implies humiliation of human dignity as the highest principle of constitutional order, rule-of-law state and other constitutional principles; violation of human rights and fundamental freedoms against constitution."

In all cases of application of such measures the court shall evaluate the health status of a person and examine whether preventing circumstances exist.

National Probation Agency should develop cooperation with the private enterprises to expand employment scopes, provide actual opportunity of employment to the offenders that, undoubtedly, would contribute greatly to re-socialization.

State should ensure wider application of such measures to both, adults and juveniles, regard offences committed by the latter as actions resulting from their immaturity and provide to them opportunity of reparation of damages caused to the society, with their work.

⁵⁴ See <<http://pja.gov.pk/system/files/Probation.pdf>>, 7.

⁵⁵ *Dvalidze I.*, *General Criminal Law, Punishment and Other Criminal Law Outcomes of the Offence*. Tbilisi, 2013, 49.

⁵⁶ *Handbook on Basic Principles and Promising Practices on Alternatives to Imprisonment*, UNODC, NY., 2007, 26.

⁵⁷ *Journal, Essex Probation, Cutting Crime, Protecting the Public, Working in Partnership*, Witham, 2013, 12 -13.