

**THE INSTITUTE OF PROBATION AND PRACTICALITY
OF ITS USE IN UKRAINE**

**Ovdienko G.V. (Kharkiv)
Language supervisor: Avdeenko I.M.**

Summary: This article has considered the features of the institute of probation and the possibility of its use in Ukraine. The main attention is paid to the use of probation in different countries. The research has identified the main characteristics of the institute and the best options available to its introduction into Ukrainian law.

Key words: institute of probation, Ukrainian law.

Анотація: У цій статті розглянуті особливості інституту пробації та можливості його використання в Україні. Основна увага приділяється використанню пробації у різних країнах. У ході дослідження були виявлені основні характеристики даного інституту та надано оптимальні варіанти його впровадження в українське право.

Ключові слова: інститут пробації, українське право.

Аннотация: В этой статье рассмотрены особенности института probation и возможности его использования в Украине. Основное внимание уделяется использованию probation в разных странах. В ходе исследования были выявлены основные характеристики данного института и предоставлены оптимальные варианты его внедрения в украинское право.

Ключевые слова: институт probation, украинское право.

Probation is an institute of infliction alternative punishment of offenders. According to its meaning, probation is a criminal supervision, which is realized by special government institution or non-government structures. Roots of probation origin should be searched in the Anglo-Saxon legal system. Thus the use of probation in Great Britain began in 1820. At first, this alternative punishment was used only to the minors, but later supervision began to be used in relation to adult persons because of expanding of the institute use.

Many scientists think that probation is a very progressive institute, which will almost completely replace deprivation of freedom in the future. There are a lot of reasons for such opinion. First, it is impossible to change a person and their views by imprisonment. Such means of punishment can only cause an unsound mind or injury that will likely lead to even more socially dangerous consequences. Moreover, a person sentenced to imprisonment lose all social relationships that are seldom updated after their release. So a prisoner feels lonely, unnecessary and unfortunate. What is more, even after the release he seldom manager to restore their own life.

Probation has also advantages for both the state and the society. Huge sums of money are spent on detention while probation would not only save them, but also multiply by the community work that is valuable to society. Imposition of probation as a more flexible system of penalties according to severity of the offence is useful for humanization of the penal system. So distribution of the institute of probation in the world is quite useful in the improvement of society. It is provided that in the countries where this institute operates successfully, crime

rate is much lower than in those where such institute does not exist. Introduction of the institute of probation into the criminal executive system of the countries of post-socialist space is an open issue. At present only few of them have made such step towards democratization of punishment. In Ukraine several draft laws about probation were created in time of independence but none of them found support in the Parliament. So this article will identify the best option for the reception for international practice in probation into the legislation of Ukraine [3].

There are several standard models of criminal supervision in the world. There is opinion that Ukraine doesn't have an opportunity to use fully one of them for creation of an appropriate law because of specific character of its social, cultural, legal and historical traditions. By composing appropriate elements of each model we should create our own model that will take into account feature of our statehood development.

The model of the Estonian institute of probation is the closest to the reception. In fact this country has built this system "from scratch", having only Soviet inheritance in the form of the incomplete and not democratic legal system. Here the punishment in the form of probation is used not only in relation to minors, as it is in Finland, but also to adult persons. Probation system was introduced here as an experiment which gradually became compulsory. Functions of Estonian probation are executed by Department of the ministry of justice. But probation in Ukraine has to be executed by the State department on execution of punishments. It will allow improving its work and connection with other bodies. As about local representative of supervisory body, there we should develop a system according to the administrative and territorial structure of Ukraine, as it happens in most European countries. Workers in the field of probation have to work at courts but you shouldn't unite the functions of inspectors of probation and court clerks or other office holders who exercise administrative functions. Indeed, the experience of Czech Republic showed that in such case office holders consider the post of inspector as a secondary thing and don't perform their duties in a proper manner. As about non-state formalization of probation service that takes place in some states of the USA and in Great Britain, this experience can't be used in Ukraine. This formalization will cause negative results, lack of effect and illegal work of this institution [1].

Requirements to the occupational structure of the probation service in European countries are quite the same. Thus, persons with sociological, pedagogical and psychological education work in the probation service. In some countries because of lack of staff special courses are introduced for people of other profession who want to have this work. Administrative jobs in the probation service are occupied by persons with economic and legal education. There are also special courses that provide basic knowledge in law for all the officers of the service.

Turning to the organizational forms of probation we should emphasize on their variety. In most countries the inspector of probation starts working after finding true bill. But in Denmark, for example, the inspector also cooperates with the bodies of pre-trial investigation. Is this experience useful for Ukraine? After all,

such politics allows inspector to make deep conclusion concerning the suspected person, his social qualities and possibilities of rehabilitation. This data will be necessary at the next stage of the proceedings, when the inspector gives to the court full information about the accused in a special report. This report is prepared on a basis of the characteristics of the person made by of the colleagues, members of the family, friends and their own attitude to the crime. The inspector also gives recommendation to the court about possibility of providing the accused with surveillance. Carrying out such procedures in Ukraine can enable a deeper consideration of the case not only by law but also by psychologist and psychoanalyst [4].

Describing the functions of probation we should emphasize that in Ukraine, unlike in many other European countries, this institute should be used in relation to not only minors, but also adult persons. The existence of social and correctional works which are controlled by relevant sentence-implementation service can't completely substitute probation. Indeed, its main function is not a control over the execution of punishment not connected with deprivation of liberty, but avoiding committing another crime by the person. That's why inspectors of probation talks with prisoners, provide psychological aid, help to get used to new conditions of life, fulfill educational and resocial programs for prisoners. One of the probation goals is to support a convicted person. For example, in Lithuania probation authorities can restore lost documents, take part in the person's placement into some work or hostel. Such practices can be very useful for Ukraine because it will help to reduce the crime rate considerably. The majority of people who commit a crime for the second time do it because of hopelessness, absence of working skills, accommodation, friends, etc. Probation contributes not only to the improvement of the convicted but also to supporting them in difficult moments of life.

Also, one of the important functions of probation is to ensure implementation of restrictions and obligations set by court. In particular, the person under surveillance can be prohibited to consume alcohol and toxic substances, drive vehicle, be at some places and communicate with some people, etc. A person may also be obliged to do valuable to the community work, undo the damage, undergo treatment in specialized centers, get education employment, care for members of his family. The person can't change job, residence, can't refuse certain types of social care without permission of the probation authorities. All these things can't be associate with some institute of execution of a punishment that exist in Ukraine now. But, at the same time, these statements are very important to improve the offender [5].

The experience of Sweden is also interesting. There has been introduced a system of electronic monitoring which includes a special device that controls the movement of people and gives signals about the breach of prohibitions and order of the day which is set for the convicted. This experience shows the integration of the high technology into the sphere of punishment and, therefore, it's a step towards optimization of the system.

As about the use of probation in relation to minors it should have some features. The number of hours of valuable to the community work should be

reduced, minors have to participate in some youth organizations, there should be restrictions in displacing after particular time (here the above system of electronic monitoring is quite useful). In general, the system of supervision of minors will be more educational, but at the same time won't be so severe.

Use of supervision in relation to person released from prison by parole is quite rational. Indeed, the actions of social and psychological aid given above will keep such persons from committing new crimes.

The term of probation is quite debatable issue, it ranges from 3 month to 10 years in the world practice. So you should use your common sense in this issue. Ukraine should use the experience of Finland, where the term of probation is equal to the term of possible imprisonment and relevant quantity of valuable to the community work is set in proportional to the term. Such system will allow the criminal to understand the possible long duration of imprisonment and the value of alternative punishment.

Providing a standard porter of a person sentenced to probation, we can call statistic of Estonian social research. This is a person, aged 21 – 33, who has higher education and is convicted for the first time. Most persons who are supervised committing crimes against property or were drunk while driving some vehicle [2]. Thus, institute of probation is the practice of alternative punishment that should be used in Ukraine, which will lead to the improvement of the society and reducing the crime rate in general.

References

1. Обзор законодательства балтийских и скандинавских стран по службе пробации (уголовному надзору) – Санкт-Петербург: общественная правозащитная организация составитель. – 2005. – 220 с. 2. Служба пробации Латвии / Под ред. И. Звайзгне. – Рига. – 2007. – 38 с. 3. Ягунов Д.В. Пробация у ХХІ столітті / Д.В. Ягунов // Закон і обов'язок. – 2009. – № 2. 4. Никифоров Б.С., Решетников Ф.М. Современное американское уголовное право / Б.С. Никифоров, Ф.М. Решетников. – М. – 1990. – 650 с. 5. Верховний Суд України. Зауваження щодо внесення змін до деяких актів законодавства України. [Електронний ресурс]. – Режим доступу: <http://www.scourt.gov.ua/clients/vs.nsf/81b1cba59140111fc2256bf7004f9cd3/e00b5f924e86a35bc225755100386bdd?OpenDocument> (14.11.2011/15:43)