



PROJECT BULLETIN

SUPPORT FOR PRISON REFORM IN UKRAINE

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SEMINAR ON DISCUSSION OF METHODS OF PROBATION AND INITIAL EXPERIENCE OF PRACTICAL APPLICATION OF ASSESSMENT OF OFFENDERS' RISKS AND NEEDS (POLTAVA)

A seminar on methods of probation and initial experience of practical application of assessment of offenders' risks and needs was held by the Project in Poltava on 18-19 June 2013



Welcome and opening remarks to participants were addressed by:

- Project Coordinator Vladimir Holovatenko;
- Head of the Department of Criminal-Executive Inspection and Socio-Psychological Work with Offenders of the State Penitentiary Service of Ukraine Oleg Yanchuk;
- Head of the State Penitentiary Service of Ukraine in Poltava region, Major General Mykola Isayev;
- Council of Europe expert Martin Seddon.

During the seminar presented the following report:

Martin Seddon - Council of Europe expert: "Preliminary findings from the implementation of three pilot projects - assessment of risks and needs, social learning programs and training of pre-trial statements";

Olexander Kovhanyuk – the Head the Bila Tserkva District Criminal-Executive Inspection in the Kiev region: "Sharing

experiences of using methods of probation in pilot regions: Bila Tserkva district of Kiev region";

Dmitro Yagunov - PhD in Public Administration, Associate Professor of Criminal and Administrative Law of the Odessa National Maritime Academy: "Some aspects of the implementation of the project "Support for Prison Reform in Ukraine" concerning the national model of probation in Ukraine";



Olga Kashpurovska and Larysa Talypova – the Heads of the district criminal-executive inspections in the Kharkiv region: "Sharing experiences of using methods probation in pilot regions in Kharkov region";

Olexander Dem'yanenko – the Head of the Criminal-Executive Inspection in Poltava region, "Sharing experiences using methods probation in pilot regions: Poltava region";

Vladimir Sanin – the Head of the Bila Tserkva district court of Kyiv region: "The experience of implementation of pilot initiatives to prepare pre-trial reports of workers in PEI Bila Tserkva city district court of Kyiv region."



CREATING PROBATION CENTER IN POLTAVA

The Day Probation Center will be created in Poltava, which will provide probation services for offenders sentences for drug trafficking, minors offenders and unemployed offenders registered in the criminal-executive inspection.

This was announced by Head of the Criminal-Executive Inspection of the Department of the State Penitentiary Service of Ukraine in Poltava region, Alexander Dem'yanenko at the press - conference "News of Poltava."

He said that the Day Probation Center had already received building with total area of 367 square meters. Also, the local



government has provided 70 thousand UAH on its maintenance and improvement.



PRINCIPLES OF PROBATION IN THE LIGHT OF THE EUROPEAN PROBATION RULES¹

The European Probation Rules serve as a basic European standard of organization of national probation services of the European states.

Given that the term "probation" is an extremely broad category of content, it is a difficult task to define this concept through a specific formulation

Therefore no coincidence that the European probation contain a wide range of principles that should guide the relevant services in the Member States of the Council of Europe how to organize their probation services.

Consequently, the European Probation Rules contain a list of principles of probation activities.

1. Probation agencies work as part of a system of criminal justice. They implement the decisions of the court and other authorities and work with other agencies to try to reduce crime. Probation agencies are distinguished by their emphasis on assistance, guidance and persuasion in working with offenders. Personal relationships are central to this. There is authoritative research evidence to show that strong professional relationships are effective in bringing about change in offenders' attitudes and behaviour. There is also evidence to suggest that relationships are more influential than any single specific method or technique. The term supervision includes control in appropriate cases. Probation agencies do all they can to reduce reoffending and, where interventions providing help and support are insufficient to protect the public or are rejected by the offender, measures of control may also be necessary and are applied. At

the same time, probation agencies never just deliver monitoring and control, even in circumstances where these may be a necessary part of supervision. In the belief that people can change, probation aims to achieve rehabilitation through working with offenders to help them and to encourage them to lead law-abiding lives. This includes creating opportunities for offenders, helping them acquire the skills they need to make good use of these opportunities and motivating them to do so. Social inclusion is a requirement of justice and is a key objective of probation practice. Probation's commitment to promoting social inclusion can contribute to reducing offending.

2. Probation staff must always have regard to the human rights of offenders. A principle of minimum intervention should apply such that any curtailment of offenders' rights must be no more than is required by the seriousness of the offence and / or the risks posed. If an offender poses significant risks which are not directly related to the seriousness of the original offence or sentence, these should be addressed using other procedures relevant to their situation such as mental health procedures. Their human rights should not be jeopardised simply because of their offending behaviour. In the attempt to reduce the risks of reoffending and in particular any risk of serious harm, offenders' rights may sometimes have to be constrained. In particular, there are circumstances in which the right of freedom of movement may be limited and the right to privacy may also have to be curtailed. This rule accepts that offenders' rights may be limited in this way, but insists that respect for their rights is always a necessary consideration. Rights should be restricted no further than is required by a legitimate penal purpose. Respect for the rights of offenders is also a precondition for their social inclusion and supports their rehabilitation.

3. In some jurisdictions, probation agencies offer services directly to victims of crime. Elsewhere, they often work in co-operation with other organisations or individuals who offer support to the victim. This rule requires probation agencies to protect the human rights of actual and potential victims and to have regard to their interests in all their work. The responsibilities of probation agencies towards victims are set out in Part VI of these rules.

4. This well-established principle of non-discrimination recognises that the services of probation are often designed and delivered to meet the circumstances of the majority of service users. It may not be assumed, however, that the same services are appropriate to everyone. For example, supervision arrangements that are thought to be suitable for men may not always be suitable for women. Unfair discrimination may also be based on other considerations, including sex, race, colour, disability, language, religion, sexual orientation, political or other opinion, nationality, social origin, association with a national minority, property, birth or other status. Since discrimination can often be indirect or even unwitting, agencies should be active in undertaking periodic reviews of their own policies and practices to make sure they do not have discriminatory consequences. Any new policy or practice should routinely be subject to some such 'equality assessment'. It is also unacceptable and unjust to exaggerate difference and to suppose that (for example) all

¹ Source – the Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules



minority ethnic groups have the same needs and are necessarily different from the majority. Since everyone has her / his sex, race, colour, language, etc., dealing with people on the basis of their membership of a group can often lead to unfair discrimination. To ensure that everyone is dealt with appropriately and equitably, services must take full account of individual circumstances and needs.

5. This is a particular application of basic principle No. 2. The judicial decision should determine the restriction of rights appropriate in particular cases (the term judicial here includes the prosecuting authority who, in some jurisdictions, determines the nature and level of probation involvement, especially when such involvement takes the form of a measure rather than a sanction). Rights may be restricted as punishment for offences and / or to protect the public. Where rights are restricted in order to protect the public from future offending, this must be guided by a proper and rigorous assessment of the risks that offenders pose, by making use of the best available

Rights may be restricted as punishment for offences and / or to protect the public. Where rights are restricted in order to protect the public from future offending, this must be guided by a proper and rigorous assessment of the risks that offenders pose, by making use of the best available methods of assessment. In giving effect to a judicial decision, the probation agency shall not restrict the rights of offenders beyond the necessary consequences and implications of the lawfully imposed sanctions or measures.

In some countries decisions may be taken by other authorities as well, for example the prison authorities. There should be provision to appeal to a court such administrative decisions.

6. Wherever the offender's formal consent to probation involvement is required, probation staff must ensure that offenders understand their rights and the full implications of granting (or withholding) consent. This must be explained clearly to offenders and care must be taken to make sure that they understand. Even where consent is not formally required, probation staff shall do all they can to secure the offender's understanding of and, so far as possible, consent to any decisions that affect them. While the duty of probation staff to prevent offending will sometimes require them to take action against the offenders' wishes, this must be explained to offenders and the attempt made to gain their acceptance of the legitimacy of the decision. As well as being an ethical principle, this approach enhances the likelihood of co-operation.

7. Although probation's involvement before guilt has been established is limited in some jurisdictions, in other jurisdictions the judicial authorities may instruct the probation agency to become involved before or instead of prosecution and trial. This principle states that defendants must be presumed innocent and therefore any probation intervention in such circumstances must depend upon their informed consent. Giving consent in this way must not be taken to be an admission of guilt. In this Rule, 'intervention' does not include providing information to judicial authorities – for example, by the preparation of a report

Probation agencies have many duties and, in particular, are involved in implementing judicial decisions, in public protection

and in the supervision of offenders. Most, if not all, of their work therefore has significant implications for human rights. The agencies' responsibilities and tasks must accordingly be founded on a sound legal basis to establish their authority and their accountability.

9. In some jurisdictions probation tasks are delivered by other agencies, including other public authorities, independent, charitable or non-governmental organisations. Commercial companies also sometimes participate in such work. This principle affirms that, independent of how services are delivered, the government or public authority retains the responsibility for ensuring that this is undertaken appropriately and in accordance with these Rules. Public authorities, therefore, may commission work to other organisations and individuals, but there must be robust and adequate systems of scrutiny and accountability to enable the public authorities to meet their responsibility to assure quality and standards.

10. This principle affirms that probation work should be recognised as a key element in a just and humane criminal justice system. Such work requires considerable knowledge and skills and must be accorded a status that recognises its value and the expertise of practitioners. It is also clear that agencies must be adequately resourced to meet their responsibilities. Just as prisons are overcrowded in many countries, putting the rights of prisoners at risk and limiting the possibility of constructive work, probation too can be "overcrowded" in this way and this constrains its potential to protect the public and to work to rehabilitate offenders successfully.

11. The deciding authorities should recognise and value the knowledge and skills of probation staff which can help them take just and effective decisions. Probation staff can offer information and opinion about the reasons for offending, the risks of re-offending, the risk of harm, the possible interventions that can reduce these risks and, in general, the specific consequences of different decisions in particular cases. In particular, probation staff can advise on an offender's suitability for and likely compliance with community supervision.

While Rule 11 requests the deciding authorities to respect the expertise and experience of probation agencies and to consider attentively the advice they offer, the Rule should in no way be interpreted as recommending interference with the independence of the judicial authorities which alone will decide whether and to what extent to use this advice.

In many jurisdictions probation staff can also report back to the competent authorities on the progress of their work and may, in some circumstances, seek further guidance or instruction from these authorities.

12. Rule 1 affirms social inclusion as a guiding principle of probation practice. This Rule recognises that if the social inclusion of offenders is to be achieved, probation must work in close co-operation with a wide range of other agencies. Organisations may need the advice of probation to help them make sure that their services are readily and fairly accessible to offenders.



The complex needs of many offenders also call for co-ordinated and complementary inter-disciplinary work.

The different skills and perspectives of a range of professions are an indispensable part of working with offenders in the community and promoting public safety.

13. Probation agencies should appraise their work against the principles and standards set out in their national law. This can also be seen as an aspect of social inclusion – a way of ensuring that offenders' rights are retained to the fullest extent consistent with the punishment and with community safety. The international community, through the Council of Europe, sets standards, grounded in human rights, which enables countries to compare their own practices with those of other countries and to use this as a check against disproportionate or otherwise unethical intervention. Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures in its Appendix II sets out many of these ethical standards.

14. This can be seen as another aspect of accountability. Probation agencies must be accountable not only to the public authorities, but also to those who use their services. It is essential for the legitimacy of the agency that it should be responsive in this way to people who have been affected by its decisions and practices. Service users should be informed about how to complain and straightforward and impartial procedures should be made available. This is considered more fully in Part VII of these rules.

15. This is a corollary of Rules 8 and 9. Since probation practice must be guided by law, there must be adequate systems of inspection and monitoring to ensure proper accountability. In this way, the authorities and the public can have confidence that probation work is being practised as it should be. This Rule also refers to independent monitoring, as, in addition to the routine inspection that managers should undertake as part of their duties, agencies must be open to question and scrutiny through independent inquiry. Transparent inspection by government agencies, as well as independent monitoring by an Ombudsman or human rights defendants are among the ways in which this may be achieved.

It is also important that probation agencies can, as appropriate, give account to the competent authorities about the way in which the agency is implementing decisions in particular cases. This may include, for example, 'progress reports' on individuals under supervision.

16. The best probation practice should be evidence-led. In particular, practices should be researched to determine their effectiveness in achieving their stated objectives. Research should also investigate other consequences of policies and practices, some of which may be unintended. Research should be rigorous and impartial and the participation of universities and other centres of research can ensure impartiality and give authority to such inquiries. The findings of research should be made public as it is essential that research findings are used to guide the development of policy and practice.

17. It is quite common to find that, in a number of countries, the public has little understanding of what probation agencies do. Probation rarely attracts public attention, for example, in the same way that prison does. This principle urges the responsible authorities and the probation agencies themselves to 'champion' probation – to work with the media to explain what probation tries to do, what it achieves and why it is important. Authorities should be imaginative and creative in the way in which they set about this task in order to enhance public understanding of and confidence in probation work



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