

### III. ОРГАНІЗАЦІЙНО-ПРАВОВІ ПИТАННЯ ВИКОНАННЯ ПОКАРАНЬ, НЕ ПОВ'ЯЗАНИХ З ПОЗБАВЛЕННЯМ ВОЛІ

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#### THE CURRENT STATE OF PROBATION SERVICE IN UKRAINE AND PERSPECTIVES FOR ITS DEVELOPMENT

*The article analyzes the main directions of the probation service in Ukraine. Based on the recommendations of international standards, the importance of introducing probation as a type of criminal punishment alternative to deprivation of liberty is justified. Taking into account international experience, the need for the probation service to be fully implemented in the postpenitentiary function is proved.*

*The probation service should have access to prisoners in prison in order to help them prepare for their release and to plan their future control in order to carry out constant monitoring and continuing educational work maintained during imprisonment. Control after release from imprisonment should be aimed at solving the problems of convicts, such as employment, place of residence, education, and ensuring their release conditions, in order to reduce the risk of commission of a new crime and the task of significant damage.*

*Thus, recognizing the urgency and importance of adopting the Law on Probation, on the basis of the study of the content of international standards in the field of probation and world's experience in the implementation of criminal penalties, we should note that the list of probation types should be supplemented by probation as a type of criminal supervision and post-penitentiary probation.*

**Key words:** *Tokyo rules, probation, alternatives to imprisonment, probation service functions, international standards.*

**Target setting.** According to the content of Articles 8, 9, 10, 11 of the Law of Ukraine [1] "On Probation", the legislator determines equal types of Probation in Ukraine (*italics is mine – I.I.*). This is, firstly, Judicial Probation, that is, providing the court with formalized information characterizing the accused, in order the court to make decision on the extent of his responsibility.

Secondly, it is Supervisory Probation, that is, the implementation of supervisory and socially-oriented measures for convicts sentenced

in the form of deprivation of the right to occupy certain positions or engage in certain activities, public works, correctional works, persons punished in the form of restraint of liberty or imprisonment for a certain period of time replaced by punishment in the form of public works or corrective labor, persons released from serving sentences with probation, released from serving sentences pregnant women and women who have children under the age of three, and also convicts' to imprisonment sending to serve a sentence to correctional centers.

Thirdly, this is Penitentiary Probation, that is, the preparation of persons serving sentences in the form of restriction of freedom or imprisonment for a certain period, until their release for the purpose of such persons' labor and domestic placement after their dismissal according to chosen by them place of residence.

Thus, according to the Law, the content of probation in Ukraine is limited with Pre-Trial, Supervisory and Penitentiary Probation.

**The purpose of the article** is to explore the content of Probation and to determine how much it meets international standards in the field of Probation and world experience in enforcement of criminal penalties.

**Actual scientific researches and issues analysis.** Resolution 45/110 of the United Nations General Assembly of 14 December 1990 "On Standard Minimum Rules for Non-Custodial Measures" (Tokyo Rules) [2] defines the purpose of developing measures that do not related to imprisonment within national legal systems, reduction of imprisonment and rationalization of criminal justice policies, taking into account the need to ensure human rights, social justice requirements and the offenders' needs concerning returning to normal life in society.

The Tokyo Rules provide that judicial authority, which has the following list of measures not related to imprisonment, must, when making its decision, take into account: 1) offender's needs concerning his returning to normal life; 2) the interests of the protection of society; 3) victim's interests, which, if it is necessary, should be consulted.

Separately, the Tokyo Rules determine the need for a wide range of alternative measures to be applied after sentencing for the purpose of abandoning imprisonment and assisting offenders for their quick return to normal life in society.

Thus, although the Tokyo Rules do not use the term "Probation", they determine the need of creating the institution of special measures, alternative to imprisonment, as well as special measures of post-penitentiary influence.

More details about the need of using such measures are contained in the European Rules of Probation (Recommendation CM/Rec(2010) 1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules adopted by the Committee of Ministers on January 20, 2010 at the 105th meeting of the Ministers of Deputies) [ 3]. So, the European Rules of Probation are guiding for creation and effective functioning of the Probation Service.

**The statement of basic materials.** According to the European Rules, the Probation refers to the process of punishments and measures in the society imposed by the law and appointed to the offender and includes a wide range of actions and educational measures, such as supervision, control and assistance, the purpose of which is to involve the convict in public life, as well as ensuring public safety.

The Law of Ukraine "On Probation" unjustifiably restricts this notion by defining the Probation as "a system of supervisory and social-policy measures that are used by the court and in accordance with the law to the convicts, the execution of certain types of criminal punishment, not related to imprisonment, and the provision of a court information characterizing the accused ", which leads to the restriction of Probation components".

Ukrainian scientist - researcher of the problems of using Probation Dmytro Yahunov warns that in Ukraine, when introducing the National Service of Probation, one should not: "ignore the world experience of the conceptual substantiation of probation activities"; use only "formal aspects" to justify its activities; "to consider obsolete Soviet mechanisms of the implementation of non-prison sentences as an analogue of mechanisms for working with convicts in the process of non-prison sentences" [10, p. 224].

Consequently, the study of the current experience of the functioning of Probation Services or their analogues in European countries and the USA [4-9, 11] suggests the following.

Firstly, in most European countries and the United States, Probation is also used as a criminal offense - one of the most popular types of punishment, alternative to deprivation of liberty, which may be an independ-

ent form of punishment, or with additions. For example, in Sweden, Probation may be combined with community-based useful work, a special treatment program, electronic monitoring, etc. [4, p. 198].

Secondly, it should be understood that in Europe and the United States the concept of social adaptation (aftercare), which is understood as the process of providing constructive, planned assistance to a convicted person for integration into society after being released from detention under supervision and with his voluntary consent [3] is widely used. Consequently, social adaptation, that is, the exercise of supervision after the early release from punishment in the form of imprisonment, acts as a post-penitentiary function of Probation. However, according to Rule 62 of the European Rules of Probation, after making by the convict of post-penitentiary duties, the Probation Service, if it is provided by law, may continue, with former prisoners' consent, to extend their assistance to a law-abiding lifestyle.

It should be emphasized that the European Rules of Probation differentiate this term from the term "resettlement", which means the statutory control of the conduct of any person released from serving a sentence of imprisonment. Rules 59-61 state that "if the Probation Service carries out the function of controlling the convicted persons after being released from imprisonment, it must work in conjunction with prison administration, the convicts, their families and the public in order to prepare the convicted person to liberation and adaptation in society. They should establish contacts with the relevant prison services in order to assist in prisoners' domestic and labor adaptation after their release. The Probation Service should have access to prisoners in prison in order to help them to prepare for their release and to plan their subsequent control in order to carry out continuous monitoring and educational work maintained during imprisonment. Control after release from imprisonment should be aimed at solving the problems of convicts, such as employment, place of residence, education, and ensuring that they fulfill the conditions of their release, in order to reduce the risk to commit a new crime and to make significant damage. "

**Conclusions.** Thus, recognizing the urgency and importance of adopting the Law on Probation, on the basis of studying the content of international standards in the field of Probation and world experience in the implementation of criminal penalties, we should note that

the list of probation types should be supplemented by Probation as a type of criminal supervision and Post-Penitentiary Probation.

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## **СУЧАСНИЙ СТАН СЛУЖБИ ПРОБАЦІЇ В УКРАЇНІ ТА ПЕРСПЕКТИВИ ЇЇ РОЗВИТКУ**

*У статті проаналізовано основні напрямки діяльності служби пробациї в Україні. На підставі рекомендацій міжнародних стандартів обґрунтовано важливість запровадження пробациї як виду кримінального покарання, альтернативного позбавленню волі. З урахуванням міжнародного досвіду доведено необхідність виконання службою пробациї в повному обсязі поступітенціарної функції.*

**Ключові слова:** *Токійські правила, пробация, альтернативи позбавлення волі, функції служби пробациї.*

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## **СОВРЕМЕННОЕ СОСТОЯНИЕ СЛУЖБЫ ПРОБАЦИИ В УКРАИНЕ И ПЕРСПЕКТИВЫ ЕЕ РАЗВИТИЯ**

*В статье проанализированы основные направления деятельности службы пробации в Украине. На основании рекомендаций международных стандартов обоснована важность введения пробации как вида уголовного наказания, альтернативного лишения свободы. С учетом международного опыта доказана необходимость выполнения службой пробации в полном объеме поступітенціарной функции.*

**Ключевые слова:** *Токійские правила, пробация, альтернативы лишения свободы, функции службы пробации.*