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**PROBATION AS A LEGAL INSTITUTION IN THE LEGISLATION OF
POLAND AND UKRAINE: COMPARATIVE ASPECTS**
**ПРОБАЦІЯ ЯК ПРАВОВИЙ ІНСТИТУТ У ЗАКОНОДАВСТВІ ПОЛЬЩІ ТА
УКРАЇНИ: ПОРІВНЯЛЬНІ АСПЕКТИ**

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***Annotation.** The article claims that the institution of probation in Ukraine and Poland, with certain differences in approaches, is quite similar. However, a significant drawback of the Ukrainian probation system is the lack of probation measures for convicts released on parole, while Poland actively and effectively uses probation for this category of convicts. In turn, in the Polish probation system, there is no pre-trial probation in the form of a pre-trial report in order to provide the court with formalized information characterizing the accused and for the court to decide on the degree of his responsibility. Such a report could also be useful for the Polish court to individualize the sentence imposed on the accused.*

***Keywords:** criminal executive law, Poland, Ukraine, probation*

Introduction.

Recently, many studies and publications have appeared on the reform of the penitentiary system in Ukraine and Poland [1; 2; 3]. However, regardless of the difference in approaches, there is a common understanding that reforming the penitentiary system is necessary to overcome the crisis in this system. This reform process is reflected in scientific research, both in the form of an assessment of the quality of external factors and in the meaningful reconstruction of the bodies and institutions for the execution of sentences. This methodological setting requires consideration of the problems of reforming the penitentiary system, not only to identify its shortcomings but also to improve the reform process, the defining characteristics of which are at the same time the main determinants of the reform of the penitentiary system both in Poland and in Ukraine. One of the important elements of the reform in this system is the establishment and improvement of the functioning of probation.

According to the latest available data in Ukraine, 84 percent of people who have served their sentences in places of deprivation of liberty are re-incarcerated. Of these, 59 percent commit a crime for the third time [4, p. 1].

Results and discussion.

It is obvious that in different countries the process of developing probation took place in different ways, but there are common features:

- non-application of punishment to the criminal in the form of imprisonment or release from punishment (on the basis of a special social study of the personality of the criminal);
- the application of probation to the convict, depending on the circumstances (the nature of the crime committed, the personality of the convict, the social situation of the convict);



- implementation of supervision, which differs from police supervision and is combined with social assistance to the offender in the process of resocialization [5].

In Ukraine, the Law of Ukraine “On Probation” of February 05, 2015, developed taking into account international and European probation experience, became the legal basis for the implementation of international standards and the introduction of a new system of criminal law measures [6].

The Law of Ukraine "On Probation" defines probation as a system of supervisory and socio-educational measures applied by a court decision and in accordance with the law to convicts, the execution of certain types of criminal penalties that are not related to deprivation of liberty, and the provision of court with characterizing information of the accused [6].

Article 6 of the Law of Ukraine "On Probation" determines that the authorized body on probation, within its powers, ensures:

- supervising convicts released from serving sentences on probation, pregnant women released from serving sentences and women with children under three years of age;
- execution of punishment in the form of deprivation of the right to occupy certain positions or engage in certain activities, public and corrective works;
- implementation of probation programs for persons released from serving a sentence on probation;
- carrying out social and educational work with convicts who are subject to probation;
- implementation of measures to prepare persons serving a sentence in the form of restriction of liberty or imprisonment for a certain period, for dismissal;
- sending convicts to restriction of freedom to serve their sentences in correctional centres in the manner prescribed by Art.57 of this Code;
- the implementation of other measures determined by law aimed at correcting convicts and preventing them from committing repeated criminal offences [6].

Of the twelve functions of probation services defined by the Council of Europe Probation Rules, the probation authority of Ukraine is entrusted with eight (with the exception of restorative justice programs, work with victims of crimes, convicted foreigners and those released on parole from places of deprivation of liberty). The absence of these functions is primarily due to the uncertainty of such relations in the legal system of Ukraine [7, p. 9].

The probation system in Ukraine provides for three conditional areas of activity: pre-trial probation, supervisory probation and penitentiary probation.

Pre-trial probation in the Ukrainian penitentiary system provides the court with formalized information characterizing the accused in order to make a court decision on the degree of his responsibility. The procedure for compiling a pre-trial report is determined by the Order of the Ministry of Justice of Ukraine dated January 27, 2017, No. 200/5 [8].

Supervisory probation in the Ukrainian penitentiary system is understood as the implementation of supervisory and socio-educational measures in relation to those sentenced to punishment in the form of deprivation of the right to hold certain



positions or engage in certain activities, public works or correctional labor, persons who are sentenced to restriction of liberty or imprisonment for a term replaced by punishment in the form of public or correctional labor, persons released from serving a sentence with probation, released from serving a sentence of pregnant women and women with children under three years of age, as well as sending those sentenced to restriction of freedom to serve their sentences in correctional centers [6].

Penitentiary probation in the Ukrainian penitentiary system is the preparation of persons serving a sentence in the form of restriction of liberty or imprisonment for a certain period, for dismissal for the purpose of their employment and domestic arrangement after dismissal at their chosen place [6].

The well-known Polish scientist, Professor Andrzej Balandinowicz, when classifying the term “probation”, proposed to organize this concept on the basis of the criteria identified by the same author, namely: the formal legal criterion, the status of the prosecution, the executive subsystem of criminal justice and the trial. So, taking into account the formal legal criterion, probation means the suspension of the execution of the sentence by the court. In other words, the person who committed the criminal act remains in the community, and at the same time, the oversight of the warden is appointed over him, and the guilty person is convicted for the committed act [9, p. 38].

Probation officers in the Polish administration of justice perform a variety of tasks on behalf of the criminal and family courts. Thus, the Law on the System of Courts of General Jurisdiction (Art. 147 § 2) [10] and the Act on probation officers (Art. 1) [11] defined the nature of such tasks as educational and rehabilitation, diagnostic, preventive and control. This, on the one hand, provides the court with knowledge about a person, his environment and violations of his social functioning, necessary to make an adequate decision, on the other hand, it helps the prosecution of the court, that is, the people whom it concerns [12, s. 95].

In accordance with Art. 2, paragraph 6, of the Criminal Executive Code of Poland [13], assigns the tasks of probation officers only to the enforcement stage of the trial. That is, the probation officers perform the tasks of an educational, preventive and control nature determined by law in connection with the execution of court decisions, as well as others specified in separate provisions. The type of tasks performed is a criterion that determines the specialization of the probation officer. The Probation Officers Executing Criminal Sentences are Adult Probation Officers and the Probation Officers Executing Family and Juvenile Sentences are Family Probation Officers. The tasks of each of these specialities are based on different foundations: adult probation services based on criminal law, and family probation services based on civil, family and juvenile law [12, s. 98].

The legislator also specified the place of performance of curatorial tasks. This place is the environment of the wards, their place of residence. It may also be an institution or institution of a closed type, for example, a penitentiary institution, an educational institution, or a medical and rehabilitation institution.

Currently, the list of tasks for adult probation officers is as follows:

1) supervision in the following cases:

- conditional suspension of the execution of a sentence of imprisonment (Art.



73 Criminal Code of Poland, Art. 41a Criminal Fiscal Code of Poland) [14; 15],

- parole from serving the remaining part of the sentence in the form of imprisonment (Art. 159 Criminal Code of Poland in conjunction with Art. 77 Criminal Code of Poland; Art. 42 Criminal Fiscal Code of Poland) [14; 15],
- conditional termination of a criminal case (Art. 67 § 2 Criminal Code of Poland, Art. 41 Criminal Fiscal Code of Poland) [14; 15],
- release from a psychiatric institution, applied as a measure of restraint in a case under Art. 93c paragraph 2 of the Criminal Code of Poland (Art. 202a Criminal Executive Code of Poland) [13],
- release from a psychiatric institution or correctional institution in respect of a convicted person specified in Art. 93c paragraph 5, in respect of which a preventive measure was applied (Art. 202b Criminal Executive Code of Poland) [13];

2) organization and control over the execution of punishment in the form of restriction of freedom and duties imposed on the convicted person serving this punishment (Art. 55 § 2 Criminal Executive Code of Poland), as well as organization and control over the performance of community service in exchange for a fine (Art. 45 Criminal Executive Code of Poland) [13];

3) control over the duties assigned to the convicted or guilty during the period of probation (Art. 173 § 2 Criminal Executive Code of Poland) [13];

4) preparation of the convict for life after release from places of deprivation of liberty (Art. 165 § 3 Criminal Code of Poland in connection with Art. 164 Criminal Executive Code of Poland) [13; 14];

5) supervising the prohibition of staying in certain environments or places, contact with certain people, approaching certain persons or leaving a certain place of stay without the consent of the court, as well as the order to periodically leave the premises occupied with the victim (Art. 181a § 2 Criminal Executive Code of Poland) [13];

6) activities for the organization and control over the execution of punishments, penalties and security measures in the electronic surveillance system (Art. 173b Criminal Executive Code of Poland) [13] and so on.

The vast majority of the tasks listed above fall within the purview of professional probation officers. Employees of the social probation service can only be entrusted with the exercise of supervision both in the framework of preparatory and enforcement proceedings [12, s. 100].

In addition, probation officers must perform certain organizational and preventive tasks at the local level. They are mainly related to the inclusion of representatives of the local community, appointed as employees of the social probation service, in the process of social readjustment of the defendants, their training, organization and control of their work under supervision or supervision entrusted to them (Art. 11 § 4 of the Act on probation officers) [11]. The second form of organizational activity of probation officers is cooperation with local governments and public organizations that, by the established procedure, are engaged in



guardianship, education, rehabilitation, treatment and provision of social assistance in an open environment (Art. 11 § 3 of the Act on probation officers) [11].

Conclusions.

The above makes it possible to assert that the institution of probation in Ukraine and Poland, with certain differences in approaches, is quite similar. However, a significant drawback of the Ukrainian probation system is the lack of probation measures for convicts released on parole, while Poland actively and effectively uses probation for this category of convicts. In turn, in the Polish probation system, there is no pre-trial probation in the form of a pre-trial report to provide the court with formalized information characterizing the accused and for the court to decide on the degree of his responsibility. Such a report could also be useful for the Polish court to individualize the sentence imposed on the accused.

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Анотація. В статті стверджується, що інститут пробації в Україні та Польщі, за певних відмінностей у підходах, досить схожий. Однак суттєвим недоліком української системи пробації є відсутність пробаційних заходів щодо умовно-достроково звільнених засуджених, тоді як Польща активно та ефективно використовує пробацію для цієї категорії засуджених. У свою чергу, в польській системі пробації відсутня досудова пробація у формі досудової доповіді, щоб надати суду формалізовану інформацію, що характеризує обвинуваченого, і щоб суд ухвалив рішення про ступінь його відповідальності. Такий звіт також міг би бути корисним для польського суду для індивідуалізації призначеного обвинуваченому покарання.

Ключові слова: кримінально-виконавче право, Польща, Україна, пробація

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