

CREATING A PROBATION SERVICE IN THE REPUBLIC OF ARMENIA: ISSUES AND PECULIARITIES

A Baseline Study
(Summary version)



Organization for Security and
Co-operation in Europe
Office in Yerevan



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INTRODUCTION

Crime rate increase trends, the overcrowding of penitentiary institutions, and deteriorating safeguards of public safety in a number of European countries during the last decade has caused dissatisfaction about the justice system and a decline of interest in conventional practices of justice. Hence, the growing need for alternatives and new responses arises.

Presently, a number of European countries are considering a transition to restorative justice as an alternative that secures a more flexible response to crime. It is a response that creates equal conditions for respecting the dignity of both sides and building mutual understanding between them. Moreover, restorative justice enhances the role of society in fighting crime and social disorder. Finally, restorative justice is an accessible tool that can be easily adapted to a national legal system. The experience of countries that adopted the principles of restorative justice shows that probation services of such countries¹ have the mission of implementing rehabilitation programs, making sure that the goals of punishment are achieved without necessarily imprisoning a person. These services are based on an ideology of re-socializing the person in the community, which has partially helped to address the overcrowding problem in penitentiary institutions.

A number of legislative amendments were introduced in Armenia in the context of judicial and legal reforms launched as early as in the 1990s. They have influenced the criminal policy of the Republic of Armenia in general and penal policy in particular. Reforms implemented and those still underway in the justice sector are aimed at creating a state based on the rule of law, democratic values, and respect for human rights.

Having chosen European integration and the implementation of European and international ideals and values as a foreign policy priority, the Republic of Armenia has undertaken a number of obligations that need to be fulfilled effectively for the future development of the country. In 2002, the Republic of Armenia ratified the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, resulting in the need for the state to reform, in line with its international commitments, the relevant sectors in the country, including the criminal justice sector.

The penitentiary, too, was affected by the reform: in 2001, its subordination was transferred from the Ministry of Interior to the Ministry of Justice of the Republic of Armenia, and wide-scale continuous reforms of the penitentiary were launched at that time.

Nevertheless, among other problems still lingering in the penitentiary system, it still faces problems such as overcrowding of penitentiary institutions and the need to improve the effectiveness of rehabilitation and correctional activities related to detained and convicted persons and the effectiveness of units carrying out alternative sentences and more broadly address alternative sentence execution practices and procedures.

Justice sector reforms should thus imply a transition from the conventional ideology of imprisonment to one of re-socialization and restorative justice, which is

¹ Handbook on Restorative Justice Programmes, United Nations Office on Drugs and Crime, 2006.

essentially about achieving the goals of the punishment through alternatives to imprisonment as a result of the activities of probation services.

According to the 2012-2016 Strategic Program of Legal and Judicial Reforms of the Republic of Armenia and the Action Plan related to the Program endorsed by the President of the Republic of Armenia on 2 July 2012, the priority actions for improving the effectiveness of criminal justice and the penal system include reforms of the penitentiary system, prescribing also the need to create a national probation service to operate under the Ministry of Justice of the Republic of Armenia.²

Under these circumstances, it is worth mentioning that the penitentiary is a component of the legal system, and reforms of the penitentiary are interconnected with legislative and practical reforms taking place throughout the legal system.

Hence, it is necessary for the reform strategy to promote change at three levels:

1. Strategic: more support should be extended to the implementation of alternative sentences in view of excessive use of prison sentences in the justice system;

2. Operational: effective work methods, as described in the European rules on community sanctions and measures³ and the European Probation Rules⁴, should be promoted at the operational level; and

3. Organizational: the introduction of the probation service should be supported at the organizational level by promoting the effective performance by the service of its functions throughout the country.

Given the significance of the problem, studying the existing conditions and opportunities for the introduction of the probation service became a priority.

The purpose of this study carried out with the support of the OSCE Office in Yerevan is to present various models of the probation service in European countries (including the structure, subordination, principles of operation, staffing, and financing of the service) and to identify their differences and peculiarities. The study generally presents the experience of over two dozen European countries.

To make the findings of the study relevant for our country, the presentation of the European experience was augmented by a qualitative survey of the staff of the Erebouni Penitentiary Institution of the Ministry of Justice of the Republic of Armenia and the staff of the Division of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia in order to determine the current state of rehabilitation and correctional work implemented with convicts (including persons under supervision and parole) during the execution of the sentence.

The findings of the study can serve as a basis for the competent state body to develop the policy and strategy for introducing probation service in Armenia.

² 2012-2016 Strategic Program of Legal and Judicial Reforms of the Republic of Armenia.

³ Explanatory memorandum to Recommendation No. R (92) 16 of the Committee of Ministers to member states European rules on community sanctions and measures.

⁴ Recommendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules.

1. THE SITUATION IN THE REPUBLIC OF ARMENIA

1.1. Overview of the Present Situation

The Republic of Armenia presently does not have a separate probation service. However, some functions typical of a probation service are performed by the Division of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia, together with its territorial subdivisions, and the divisions carrying out social, psychological, and legal work in the penitentiary institutions.

For over 10 years now, the social, psychological, and legal work services (“SPLS”) have operated in the prisons of the Republic of Armenia. The formation of the SPLS in the penitentiary of Armenia was closely related to the fundamental change and transformation taking place in the system, preparations for which had begun in 1999.

As a result of these reforms, social-psychological rehabilitation divisions were created as structural units of the new services. Although these units were created on the basis of the staff of the former political education units and continued to perform some of their functions, they were ideologically new formations as they relied on a different scientific and theoretical platform and brought in new professions into the field. The newly-created units were first called Social-Psychological Rehabilitation Units, subsequently renamed to Divisions of Social, Psychological, and Legal Works, and included three separate services and professional disciplines (social work, the psychological service, and legal work). The Divisions of Social, Psychological, and Legal Work are called to implement the principle of humane and individualized execution of sentences, which was the ideological cornerstone of the whole reforms.

A number of functions were vested in the Division, the performance of which would essentially secure the correction and rehabilitation of convicts and the creation of lasting safeguards for their future reintegration in society. This fundamental need was also reflected in the procedure approved by Decree 44-N of the Minister of Justice of the Republic of Armenia regulating the sector, which prescribed the functions vested in these units, including social work, psychological work, legal work, and maintaining contacts with the external world, as well as specific functions such as organizing educational, sports, cultural, and spiritual-religious activities, promoting useful occupation (promoting creative occupation), engaging non-governmental and other organizations in joint rehabilitation programs, and the like.⁵

At a subsequent stage of reforms, in 2005, divisions responsible for the execution of alternative sentences (DEAS) were created in line with the administrative division of the territory of the Republic of Armenia, to execute the alternative sentences of convicts and to ensure their correction and rehabilitation.⁶

⁵ Republic of Armenia Minister of Justice Decree 44-N dated 30 May 2008 “On Approving the Operational Procedure of Structural Units Carrying out Social, Psychological, and Legal Works with Detainees and Convicts,” Paragraph 4, accessed in Armenian at <http://www.arlis.am>.

⁶ Republic of Armenia Government Decree 1561-N dated 26 October 2006 “On Approving the Operational Procedure of the Territorial Subdivisions of the Division of Execution of Alternative Sentences of the

Alternative punishments were generally conceived by criminologist in order to protect offenders that have committed non-grave crimes from the negative consequences of imprisonment by keeping them in the family and in the community, thus enabling also the restitution of damage inflicted upon the community.

The newly-created subdivisions were tasked with the execution of the following non-custodial sentences prescribed by the Criminal Code of the Republic of Armenia: fines, deprivation of the right to hold certain positions or to engage in certain activities, public works, deprivation of special or military rank, title, degree, or qualification, and confiscation of property. Subsequently, the Republic of Armenia Government Decree 1561-N dated 10 October 2006 (“On Approving the Operational Procedure of the Territorial Subdivisions of the Division of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia”)⁷ prescribed the following functions for the Division, as well: supervision of convicts in parole due to conditional non-execution of the sentence, supervision of persons granted early conditional release from serving the sentence, and supervision of pregnant women or persons looking after a child under the age of three, which have had their sentence execution deferred.

1.2. Methodology and Findings of the Qualitative Survey

A qualitative survey was carried out under this project for the purpose of assessing the need and identify the existing possibilities for introducing a probation service in the Republic of Armenia. Taking into account the fact that some functions of the probation service are currently partially performed by the aforementioned subdivisions of the penitentiary service, in-depth interviews were conducted with the staff of the Erebouni Penitentiary Institution of the Ministry of Justice of the Republic of Armenia and the staff of the Division of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia. Among the respondents were also experts from the Ministry of Justice, the Divisions of Social, Psychological, and Legal Work in the Penitentiary Department, the Office of the Prosecutor General, the Chamber of Advocates, and the Civil Society Institute NGO. The survey covered a total of 37 imprisoned convicts and 17 sector officials. The Erebouni Penitentiary Institution was chosen because of its location (much time could be saved as the institution is located in Yerevan) and the fact that most of the convicts held there are first-timers, and the effectiveness of activities carried out with them can better illustrate the nature of social, psychological, and legal works in place.

In view of the legislative restriction on access to the personal files of convicts in Armenia, as well as the cautiousness of the Penitentiary Service for allowing to review personal cards of convicts, the information necessary for the study was collected

Penitentiary Department of the Ministry of Justice of the Republic of Armenia,” accessed in Armenian at <http://www.arlis.am>.

⁷ Republic of Armenia Government Decree 1561-N dated 26 October 2006 “On Approving the Operational Procedure of the Territorial Subdivisions of the Division of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia,” accessed in Armenian at <http://www.arlis.am>.

mostly from the legal regulations on convict's rehabilitation activities and in-depth interviews of convicts, with due respect for the principles of informed consent and anonymity.

The study of activities of Divisions responsible for the Execution of Alternative Sentences (DEAS) shows that their activities are still in need of improvement. As to the execution of the "public works" sentence, the DEAS normally look for employment and supervise the work of convicts. However, there is still not a sufficient focus on identifying and addressing the root causes of offending. Like prison sentences, alternative sentences are primarily aimed at correcting the convict, which means that the convict should be involved in correctional and rehabilitation programs matching his needs while serving the sentence. The "public works" sentence is imposed only with the consent of the convict, which would imply his willingness to change his person and behavior, making it easier for specialists to reach behavior change.

The experts selected from the DEAS frequently reported the limited ability to offer public works. They are normally given a list of places where convicts can be sent for work, but the list does not provide much choice. The experts noted that, in executing the "public works" sentence, the DEAS is mostly engaged in the job placement of the convict. They monitor, to the extent possible, timely appearance of the convict at work. The jobs are chosen from a list that, in their opinion, is inadequate. The staff chooses the most appropriate job for the person in view of his/her gender, physical condition, and age. Supervision of work is normally delegated to the employer, and an employee of the DEAS visits the employer once or twice a month to inquire about the convict's performance and work quality. According to the experts, the main problem is the absence of official transportation, because of which they cannot check the convict's employment more frequently.

The survey showed that, although job placement of convicts is an important issue, experts did not say anything about the needs assessment of beneficiaries and efforts to address their offending conduct. Assessment tools and mechanisms are necessary to assess the person's behavior and the change in the degree of danger posed by the person at the time of conviction and at the time of commencing employment, during the sentence, and at the time of release from the sentence. It should be noted here that the analysis of documents and the expert survey both confirmed that the relevant decree of the Republic of Armenia Government is silent on these activities and assessments.⁸ In other words, there is not even sub-legislative regulation of the process of achieving the goals of sentencing.

Conviction to public works and other alternatives to imprisonment are based on the humanistic idea of giving the individual another chance at returning to law-obedient conduct. Public works should be a direct means for specialists to stay in touch with the convict, leaving him in the family and the community whilst supervising

⁸ Republic of Armenia Government Decree 1561-N dated 26 October 2006 "On Approving the Operational Procedure of the Territorial Subdivisions of the Division of Execution of Alternative Sentences of the Penitentiary Department of the Ministry of Justice of the Republic of Armenia," accessed in Armenian at <http://www.arlis.am>.

his social ties, strengthening his capacity, and fostering his rehabilitation and reintegration in the community and society in general.

The responses of the experts did not address this aspect of the punishment at all.

Persons punished in the form of deprivation of the right to hold certain positions or to engage in certain activities, too, are beneficiaries of the DEASs. However, in the opinion of the respondents, there is no need to carry out correctional and rehabilitative work with such persons.

“... What work would be needed? If they deprived, for instance, of the driver’s license, they cannot engage, because their license is taken away, and we do not work with them,” said one of the experts.

Another expert said: *“The person is deprived of his position. No rehabilitative work should be needed. We just need to monitor to make sure he does not engage in the prohibited activity.”*

The situation is the same for the supervision of the conduct of persons on parole and those granted early conditional release. The respondents admitted that no work is done with these convicts. *“No work is done with them. We call them in three to four times a month, and they show up, sign a paper, and leave,”* said some of the experts.

It is generally premature to assess the effectiveness of the performance of these divisions. There are still legal uncertainties and flaws in this field, let alone some conflicts and omissions.

One of the experts referred to the ineffectiveness of the “sentence remainder substitution” sentence and the need to amend the legislation appropriately. *“... For instance, when the alternative sentence imposed on the convict is a fine, but the convict pays only one part of it and asks to substitute the unpaid portion with public works accordingly. The law does not prescribe partial substitution of the sentence for the unserved portion, so he still has to do as much work as he would do without paying any part of the fine. In these cases, the practice of substituting the unserved portion of the sentence becomes pointless.”*

When the DEASs were created, no positions of social workers and psychologists were contemplated. Such positions still do not exist in the DEASs, although the relevant Government decree, albeit inadequately, prescribes some activities that directly require appropriate professional knowledge and skills (personal data in case files, references, case work, and the like).

It should also be noted here that the procedure approved by Decree 44-N of the Minister of Justice stipulates the need for social workers and psychologists and their functions, as opposed to the relevant Government decree regulating the activities of the DEASs.⁹

The experts had very vague and unclear ideas about the social workers and their professional activities. Some even said that it is much better that the lawyers are

⁹ Republic of Armenia Minister of Justice Decree 44-N dated 30 May 2008, Chapter 5, accessed in Armenian at <http://www.arlis.am>.

the case managers, because they know the laws better than social workers would. The professional intervention of a psychologist and social worker is often important in the work with juveniles, by visiting educational institutions, homes, and communities and observing their daily lives.

The experts said that problems do not arise in the case management of convicts, either, even though social case management requires special knowledge and skills, and the extent of the relevant competences of the DEAS staff is unknown.

The other problem observed in this field is the virtual absence of cooperation with the social services, especially the employment services. None of the respondents attached any importance to the potential of referring convicts to training courses organized by these or other services in order to improve their future employability.

The qualitative survey of the units engaged in social, psychological, and legal services (SPLS) focused on analyzing the functions that may lie at the heart of the cooperation between the future probation service and the SPLS units of the penitentiary institutions (such as preparing individual correctional plans of convicts, behavior assessment and profiling, preparation of release plans for convicts, and support to convicts), unless other structural changes are made in this area.

According to the procedure approved by Decree 44-N of the Minister of Justice on this sector,¹⁰ the convict correction process plan is prepared in the first months of serving the sentence, which can be considered one of the most important documents during the term of serving the sentence. In this respect, the study found that the convicts had no information about their correctional plans. Although the aforementioned decree does not clearly require the convict to participate or, as a minimum, be aware of his correctional plan, one may conclude that the preparation of such plans has been something of a formality. In reality, the psychologist and social worker should identify the convict's problems and prepare a correctional plan through close cooperation with the beneficiary. It should also be noted here that there is a need to develop clear criteria for assessing the conduct of convicts and implementing a clear mechanism of assessments.

The experts admitted that the psychologists and social work professionals need training in this field.

There is also a need to improve the assessments made for planning of the preparation of convicts for release, especially in cases of recommending early conditional release or substitution of the remainder of the sentence with a more lenient type of sentence. The study found that convict at this stage still do not know anything about their rehabilitation plans. Meetings with the staff of the division were mostly not recalled, with few exceptions related to the need to obtain certain documents. The responses of the convicts did not indicate that their early conditional release from the sentence was in any way related to cooperation with the SPLS. To this end, it is also necessary to develop clear criteria for assessing the conduct of convicts and implementing a clear mechanism of assessments for recommending

¹⁰ Republic of Armenia Minister of Justice Decree "On Approving the Operational Procedure of the Structural Subdivisions Carrying out Social, Psychological, and Legal Works with Detainees and Convicts," accessed in Armenian at <http://www.arlis.am>.

early conditional release or substitution of the remainder of the sentence with a more lenient type of sentence. Each convict should be aware of how he should behave throughout the term of serving the sentence in order to be eligible for early conditional release. Moreover, in order to act accordingly, the convict should find out about such criteria very soon after admission to an institution. The convict should be well aware of his active contribution to the likelihood of early conditional release. As to the methods of behavior assessment, in the presence of clear-cut criteria, there should be tools, time periods, and methods for assessing the convicts' behavior against such criteria, which will make up a consistent mechanism of assessment. The surveyed experts, too, stated that social workers with appropriate degrees in this field are needed. Their duties are currently performed by other trained professionals. Clear plans should be elaborated to address various aspects of correction and rehabilitation.

The results of the qualitative survey generally indicate that much remains to be done, including professional capacity building and institutional development.

It can be concluded, based on the findings of the study, that new approaches and new changes are required in the penitentiary reform that began in the 1990s and the SPLS and DEAS created in that context in 2001 and 2005, respectively. Further improvements of the legal and regulatory framework, as well as human and technical resources are needed, as well.

2. JUSTIFICATIONS OF CREATING A PROBATION SERVICE IN THE REPUBLIC OF ARMENIA

Based on the findings of the aforementioned survey, it can be concluded that the SPLS units of the Penitentiary Department are currently not operating as effectively as they should. There are a number of legal, organizational, and professional resource improvement issues that now need to be addressed without further delay. It is generally believed that a new strategy should be elaborated and implemented for the development of these units.

As to the DEAS, it should be completely restructured and reformed. It would be justified to set up a specialized organization that would, in cooperation with the professional staff of the institution executing the prison sentence, execute the alternative sentences prescribed by the Criminal Code of the Republic of Armenia and safeguard the rehabilitation and reintegration of offenders.

Considering that the person's disposition and attitudes towards justice are formed earlier, during the pre-trial investigation, which is also when the groundwork is laid for his reintegration and re-socialization, it is necessary to ensure multidisciplinary engagement for not only convicts, but also suspects and accused persons, as well as victims, starting from the pre-trial investigation stage. The international experience in this field shows that these functions are best performed by probation services.

The overcrowding of the penitentiary institutions provides further justification for creating a probation service in the Republic of Armenia. Persons in pre-trial detention and those sentenced to imprisonment are presently held in overcrowded institutions.

The problem has been raised repeatedly in reports of the European Committee for the Prevention of Torture.¹¹

The jurisprudence of the courts of the Republic of Armenia also justifies the importance of penitentiary service reforms, including the creation of and cooperation with a probation service.

Research shows that pre-trial detention of the accused is applied as a preventive measure in the vast majority of cases. The decisions are mostly justified by referring to the likelihood of the accused escaping or obstructing the investigation, tampering with the evidence, or committing new crimes. It is noteworthy that, when pre-trial detention is ordered, the defendant normally ends up being sentenced to imprisonment, and, in the case of conviction, courts impose prison sentences in the vast majority of cases. In 2010, prison sentences imposed by courts were conditionally not applied in only 20 percent of the criminal cases tried by courts. The percentage of cases in which non-custodial sentences are imposed is low, as well. Of the 2,446 sentenced convicts reviewed, imprisonment was imposed in 1,792 cases (73.3%). The average duration of this sentence was 38.3 months. The longest sentence was 15 years, and was imposed on two defendants. Courts conditionally did not apply the sentences in respect of 506 defendants (20.7% of the total number of defendants).¹²

Under these circumstances, creating a probation service would help to reduce the number of cases in which prison sentences are unnecessarily imposed by courts, as well as the number of cases in which defendants are detained during pre-trial proceedings, thereby alleviating the problem of overcrowding in penitentiary institutions.

Moreover, all forms and models of the probation service have proven to be cost-efficient. Clearly, by depriving a person of liberty, the state spends money to hold him in prison. If public safety could be undermined, then the public would prefer imprisonment. However, if the person is not as dangerous as to affect overall safety, the general public interest requires him to serve an alternative sentence without being exposed to the consequences of imprisonment. A person who commits a crime normally inflicts some damage upon the state, and imprisonment causes society to continue bearing the cost of holding convicts by paying taxes, rather than obtaining some restitution of the damage inflicted by the crime.

Thus, from the standpoint of cost efficiency, Armenia, being a country with scarce resources and a small population, cannot afford a sentence as inefficient as imprisonment in respect of more than 90 percent of the crimes.

Furthermore, the adoption of a new criminal code and a new criminal procedure code (giving rise to amendments in the penitentiary code, as well) in the framework of the judicial and legal reforms pursued in the Republic of Armenia lead to the need to create a probation service. Effective implementation of a number of amendments as new alternative preventive measures and mediation, for instance) outlined in the

¹¹ <http://www.cpt.coe.int/en/states/arm.htm>.

¹² Report on Penal Policy in the Republic of Armenia. Protection of Rights without Borders NGO. Yerevan, 2010.

Concept Paper for elaborating a new Criminal Procedure Code of the Republic of Armenia will depend largely on the creation of the probation service.

3. GENERAL OVERVIEW OF THE PROBATION SERVICE PROPOSED FOR THE REPUBLIC OF ARMENIA

3.1. General Overview

According to the approved 2012-2016 strategic program of legal and judicial of the Republic of Armenia and the related action plan, a Probation Service will be created under the Ministry of Justice of the Republic of Armenia, separate from the penitentiary service.

The Probation Service will be a non-military organization. At least the following two organizational-legal models are proposed for the Probation Service:

1) A probation service operating as a department or separated subdivision of the Ministry, staffed by civil servants. Considering that the future probation service will have a rather wide range of powers, which will be carried out by a large team of professionals, the latter need adequate remuneration. Hence, in spite of all the privileges granted to civil servants, the first issue that may arise is related to the remuneration system of these civil servants. The extreme scarcity of the wage fund could hinder the recruitment and retention of competent specialists for the probation service; or

2) A probation service operating as a state non-for-profit organization, which would enable it to have its own budget and extra-budgetary funds, so as to pay higher wages to its staff. Under this solution, the service would not be as dependent upon the state budget, as external funding could be raised from international and donor organizations, among other sources. External funding would also make it possible for the probation service to delegate certain functions of probation to non-governmental organizations and to finance them.

Regardless of the choice of the organizational-legal model, though, the Probation Service should consist of a central authority and territorial subdivisions, which should be deployed in accordance with the administrative division of the territory of the Republic of Armenia.

For the performance of its professional functions (such as preliminary assessment during supervision, planning, and professional intervention¹³), it would be preferable for the Probation Service staff to include professionals with academic or practical experience in social, pedagogical, psychological, and legal spheres, while other specialists would undergo appropriate training. Nevertheless, regardless of specialization, cases must be managed by persons with the appropriate competences

¹³ Recommendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, Part V.

and, whenever necessary, psychological and social support should be extended to offenders.¹⁴

A separate subdivision for juvenile cases should operate within the Probation Service, exercising powers of the probation service in relation to juveniles. The juvenile unit should retain specialized professionals in view of the need to take into consideration the social, legal, psychological, and intellectual peculiarities of juvenile offenders in probation programs.

To ensure the effective performance of the Probation Service, local government bodies, non-governmental organizations, and private companies, as well as volunteers should be engaged in its activities. Engagement of and cooperation with non-governmental organizations and volunteers will help to reduce the workload of the Probation Service in view of the scarcity of specialists and funding, thereby contributing to improving the performance of the Probation Service.

The Probation Service should cooperate closely with state bodies, which generally fall into two categories: beneficiaries of the Probation Service and potential providers of services to the Probation Service.

The first category of state bodies includes the courts, the prosecution office, and the Penitentiary Department of the Ministry of Justice, which the Probation Service will support at various stages of the criminal proceedings.

The second category includes state educational institutions, local government bodies, custody and guardianship bodies, and the social services.

In virtually all the European countries,¹⁵ legislative provisions on the probation service are presently prescribed by either the criminal legislation (Belgium, Estonia, the Czech Republic, France, Hungary, Latvia, Moldova, the Netherlands, Norway, Sweden, Switzerland, and Romania) or separate legal acts (Ireland and Great Britain). There are countries where the criminal procedure code prescribes the role of the probation service in the criminal justice system. To this end, appropriate amendments should be made in the criminal, criminal procedure, and penitentiary codes in light of the powers of the probation service. The functions, fundamental principles, powers, and structure of the Probation Service, as well as the state social and legal safeguards of probation officers, the provision of resources and funding to and the supervision of the activities of the Probation Service should be comprehensively regulated by a Law on the Probation Service.

The review of the legislation of other countries and the international good practices in the field of probation shows that, in different jurisdictions, probation services have different powers and authority. Under such circumstances, it is impossible to give preference to any particular model, as they are all based on local historical, traditional, cultural, social, and economic peculiarities. Therefore, the creation and development of the Probation Service of the Republic of Armenia should be consistent with the international best practices in the field of probation, as well as

¹⁴ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) 10,3, 10,4.

¹⁵ European Probation Service Systems: A Comparative Overview. Anton van Kalmthout and Ioan Durnescu.

the demands and peculiarities of the criminal justice sector and penitentiary system of the Republic of Armenia.

Furthermore, despite the wide range of functions of the Probation Service presented in this paper, the Service should be created and its functions introduced incrementally so as to protect the Service from potential problems and difficulties, as well as to safeguard the effective achievement of its goals and objectives.

The following key issues need to be addressed in the context of the organization and operation of the State Probation Service of the Republic of Armenia:

- 1) The mission of the Probation Service;
- 2) Clear definition of the goals and objectives of the Probation Service;
- 3) Subordination of the Probation Service to a state agency; and
- 4) Scope of activities and clearly defined functions of the Probation Service.

3.2. Mission of the Probation Service

According to the recommendation of the Committee of Ministers of the Council of Europe on the European Probation Rules (“European Probation Rules,” 2010), the mission of the Probation Service is to contribute to the fairness of criminal proceedings and public safety by preventing and reducing crime.

3.3. Goals and Objectives of the Probation Service

The goals of the Probation Service of the Republic of Armenia are to reduce crime by supervising, guiding, and supporting offenders and facilitating their effective re-socialization, and to contribute to public safety and the administration of justice.

The *main objectives* of the Probation Service are:

- To contribute to the reduction of offending and reoffending;
- To contribute to the offloading of penitentiary institutions;
- To contribute to more informed and impartial decision making in the choice of preventive measures and in sentencing;
- To contribute to more informed and impartial decision making in the early conditional release of convicts or substitution of the sentence remainder with a more lenient sentence;
- To contribute to the correction of the offender in the community;
- To re-socialize the offender;
- To restore social justice; and
- To ensure public safety by means of reducing the likelihood of offenders committing new offences.

3.4. Relationship of the Probation Service with the Penitentiary Service

Certain issues need to be addressed in order to determine whether the State Probation Service of the Republic of Armenia should operate inside the Penitentiary Service or act as an entity that is organizationally and functionally completely independent of and separate from the Penitentiary Service, and what their relationship should be in the latter case.

To determine whether or not the Probation Service will be able to execute alternative sentences, it is necessary to understand whether, not directly being an enforcement authority, the State Probation Service of Armenia will be capable of securing the execution of the following non-custodial sentences prescribed by the Criminal Code of the Republic of Armenia:

- 1) Fines;
- 2) Deprivation of the right to hold certain positions or to engage in certain activities;
- 3) Public works;
- 4) Deprivation of special or military rank, title, degree, or qualification; and
- 5) Confiscation of property.

The DEAS of the Penitentiary Department of the Republic of Armenia is currently responsible for the execution of the first three sentences (fines, deprivation of the right to hold certain positions or to engage in certain activities, and public works). The body that executes the main sentence also executes the sentence of deprivation of special or military rank, title, degree, or qualification and the sentence of confiscation of property (the latter is essentially the duty of the Service for Compulsory Execution of Judicial Acts). Considering that the fourth and fifth alternative sentences can only be imposed for grave or particularly grave crimes, they are executed by the penitentiary institutions in the vast majority of the cases.

It is clear from the procedure on the execution of alternative sentences (approved by decree of the Government of the Republic of Armenia) that they may be executed by an authority other than the penitentiary service, as well. Public works are the only type of alternative sentence the execution of which requires supervision of the convict in view of the regular nature of the measure. However, the international experience shows that all the countries that have a probation service have the latter, rather than the penitentiary, in charge of the execution of public works.

Therefore, it is proposed that the Probation Service be responsible for the execution of all alternative sentences, save for confiscation of property and deprivation of special or military rank, title, degree, or qualification, if they are imposed in conjunction with imprisonment as the main sentence. In these cases, the relevant penitentiary institution should ensure the execution of these two sentences.

Thus, the State Probation Service should be responsible for the execution of sentences in the form of fines, deprivation of the right to hold certain positions or to engage in certain activities, and public works.

The State Probation Service is the institution that will safeguard the effective and efficient execution of alternative sentences. The purpose is to make sure that the body executing alternative sentences and alternatives to pre-trial detention is not a force agency and is not in a subordination relationship with the body executing prison sentences.

The current SPLS units in the penitentiary department accomplish one of the main goals of the prison sentence—contributing to the correction of the convict by ensuring individualization of the sentence.

These units should closely cooperate with the Probation Service (action-level cooperation will be discussed in the sections below).

The new strategy should cover, in addition to activities of the Probation Service, the development of the SLPS units, including, at a minimum, separate and distinct functional duties of the professionals, training for the staff, clear criteria for personality and behavior assessment of convicts, introduction of a mechanism of assessment, building educational and staffing capacity, closer cooperation with state and non-state organizations, and prescription of all of the above and more in a legal act regulating the sector and related methodological guidelines.

3.5. Cooperation of the Probation Service

In view of the need to accomplish its objectives effectively and fully by delivering highly specialized professional services, and the scarcity of the financial resources available to it, the Probation Service should engage in its activities non-governmental and private organizations, state and local government bodies, and volunteers, and delegate some functions of the Probation Service to them. The possibility of such regulation is prescribed by the United Nations Standard Minimum Rules for Non-custodial Measures and Recommendation CM/Rec(2010)1 of the Committee of Ministers of the Council of Europe to member states. In practice, such regulation can also be found in some former Soviet republics (Latvia and Estonia, for instance).

Some functions of the Probation Service can be delegated to other organizations by a decree of the Minister of Justice of the Republic of Armenia enacted on the basis of an appropriate contract entered into by the Probation Service. In their work, such organizations shall comply with the same legislation as the staff of the Probation Service. Their representatives and volunteers shall have the same rights and obligations as the staff of the Probation Service.

The engagement of private sector representatives or volunteers in the performance of the functions of the Probation Service should be done under the auspices of the state. The state is responsible for the quality of the performance of the Probation Service.

By closely cooperating with non-governmental and private organizations, local government bodies, educational institutions, employment agencies, and social services, the Probation Service can delegate to them social, educational, cultural, and psychological programs for the re-socialization of offenders.

The active engagement of other organizations and volunteers and the active performance of the Probation Service in the Republic of Armenia will to some extent solve a number of problems faced by it during the first stage following its creation, such as the insufficiency of financial resources and staff, and will contribute to the proper distribution and use of resources.

Non-governmental organizations can be helpful in at least the following areas:

- Provision of social services (such as provision of temporary shelter, counselling, employment advice, and the like);

- Programs to address offending behavior;
- Search of appropriate jobs for community service;
- Research; and
- Organization of the work of volunteers or mentors, and so on.

For accomplishing its goals, the Probation Service needs to cooperate with other state bodies under clearly prescribed legislation, including the following bodies at a minimum:

- Republic of Armenia Ministry of Education and Science;
- Republic of Armenia Ministry of Health Care;
- Republic of Armenia Ministry of Sports and Youth Affairs;
- Republic of Armenia Ministry of Culture;
- Republic of Armenia Ministry of Labor and Social Affairs;
- Local government bodies;
- Social services;
- Rehabilitation centers;
- Care institutions;
- Employment agencies; and
- Educational institutions.

3.6. Primary Scope of the Probation Service

The primary scope of the Probation Service should cover the following activities at a minimum:

- Provision of comprehensive information (in the form of reports) to the bodies conducting proceedings and other bodies competent to make decisions related to the offender at different stages, including social inquiry reports or expert reports;
- Execution and securing execution of non-custodial sentences and preventive measures;
- Supervision of the execution of probation sentences/terms;
- Supervision of conditional non-application of the sentence, deferral of execution of the sentence, deferral of execution of the judgment, and conditional release, as well as supervision of persons exempted of the sentence on other grounds (if the possibility of serving the sentence is prescribed by law);
- Orientation, supervision, and support of offenders throughout the criminal proceedings;
- Mediation between the accused and the victim
- Implementing social, educational, cultural, and psychological programs for the purpose of ensuring re-socialization and social integration of the offender throughout the proceedings and while serving the non-custodial sentence
- Submission of a report on early conditional release from serving the prison sentence or substituting the remainder of the prison sentence with a more lenient type of sentence;
- Provision of professional advice and support to the penitentiary service for developing the individual correction plan of persons sentenced to imprisonment;

- Submission of advisory reports on matters of pardon of persons sentenced to imprisonment;
- Electronic monitoring (if possible); and
- Provision of support to persons temporarily or conditionally exempted of the sentence.

4. OVERVIEW OF THE FUNCTIONS OF THE PROBATION SERVICE

The powers and functions of the Probation Service of the Republic of Armenia should include:

- At the pre-trial stage: preparation of a pre-sentencing report and execution of alternative non-detention preventive measures such as home arrest¹⁶ and surveillance;
- At the trial stage: issuing a pre-sentencing report and mediation;
- At the penitentiary stage: execution of the alternative sentences, organization and implementation of parole in case of conditional non-execution of the sentence, rehabilitation activities, supervision of the conduct of persons exempted from the sentence, supervision of persons whose sentence has been deferred, and support to individual sentence planning while the person serves an imprisonment sentence; and
- At the post-penitentiary stage: presenting a report to the body that has the power to decide to eliminate the conviction.

4.1. Overview of Probation during the Pre-Trial Stage

4.1.1. Pre-Trial Report

Reports drafted by probation officers for the court or the body conducting the pre-trial proceedings are a central element of the functions of the probation services, as they are taken into consideration when such bodies render decisions. These reports are advisory and not binding for the aforementioned bodies, which are free in their decisions. In any event, the reports must be objective and impartial.

At the pre-trial stage, the prosecutor or judge may file a written request for the Probation Service to issue a pre-trial report on the suspect or the accused. The written request of the judge or prosecutor must be presented to the head of the Probation Service, who shall instruct the relevant unit (or officer) in accordance with the established procedure to prepare the pre-trial report. The report must be attached to the criminal case file.¹⁷

A pre-trial report must be issued in criminal cases in which the body conducting the proceedings intends to request pre-trial detention as a preventive measure ordered by court. It must be mandatory for any case involving juveniles (details are discussed in the appropriate section of this paper).

¹⁶ http://www.cepprobation.org/uploaded_files/1_Chapter_1_Comparative_overview.pdf.

¹⁷ The overview of the international experience shows that, in spite of some common approaches, each country is somewhat different. Therefore, this function is described on the basis of specific elements of the experiences of a number of European countries (Hungary, Estonia, Latvia, and Denmark).

According to the analysis of the European experience,¹⁸ pre-trial reports, with all of their similarities and differences, are generally divided into two large categories—social enquiry reports and assessment (or expert) reports.¹⁹

Social inquiry reports are normally based on the social-psychological profile of the accused and are limited to characterizing the person for the court or the prosecutor, refraining from an assessment of the likelihood or possibility of the person re-offending in the future. Assessment reports have a greater focus on projection.

Considering that pre-trial reports are primarily relevant for the choice of a preventive measure for the accused (especially when choosing an alternative to pre-trial detention), a key question of concern for the court and/or prosecutor is the assessment of the risk of offending in case of applying an alternative to pre-trial detention. The aforementioned assessment reports or expert reports are frequently used in these cases.

It is proposed that the Probation Service of the Republic of Armenia have the power to present the aforementioned reports at different stages.

Reports should normally contain detailed information about the person, including, at a minimum, information about the social and family condition, inclinations, the health condition, potential dependencies, education, employment history, property status, and the like. Probation officers must follow prescribed criteria when drafting the reports.²⁰

For purposes of collecting the necessary information, probation officers may meet and speak with the suspect/accused, as well as his family, relatives, friends, and other persons related to the suspect/accused. If the suspect/accused wishes, his defense counsel may be present in the meeting with the suspect/accused, as well.

To develop an impartial understanding of the person, the probation officer may contact institutions in which the person studied or worked, local government bodies, and other bodies that can provide information describing the person.

To safeguard the credibility of the reports, the probation officer must substantiate information and facts presented in the report.

As was already mentioned, pre-trial reports are presented to the requesting body and included in the criminal case file. The prosecutor shall use the pre-trial report for developing an impartial understanding of the offender, choosing the pre-trial preventive measure, and preparing the indictment.

Courts may request the Probation Service to prepare a pre-trial report or to supplement an existing report for inclusion in the criminal case.

Courts use the pre-trial reports when imposing a preventive measure, for developing a comprehensive and impartial understanding of the person (as a social

¹⁸ European Probation Service Systems: A Comparative Overview. Anton van Kalmthout and Ioan Durnescu.

¹⁹ This practice is found in Hungary, where the court demands an expert report on the accused in order to assess the likelihood of the person committing a crime.

²⁰ At the future stages of introducing the probation service, the legislation should prescribe all the criteria based on which the person should be characterized, as well as the projections of the person offending in the future.

inquiry report), or as an assessment of the person's dangerousness and risk of offending (as an expert report).

Based on the person's characterization or assessment of the person's dangerousness in the report, the court may also impose additional measures to be carried out by the Probation Service, which will help to create safeguards of re-socialization and reintegration of the person.

4.1.2. Application of Alternative Preventive Measures

Presently, bail is the only alternative to pre-trial detention as a preventive measure prescribed by the Criminal Procedure Code of the Republic of Armenia. The Concept Paper of the future Criminal Procedure Code of the Republic of Armenia refers to the need to limit the use of pre-trial detention as an alternative measure. One of the main features of the draft is to broaden the scope of preventive measures. Clearly prescribing detention and alternative preventive measures, introducing new alternative preventive measures (recording in the police, home arrest, and the like), and prescribing bail as an autonomous preventive measure will help to reduce the number of unnecessary or groundless cases of pre-trial detention in the legal practice.²¹

The draft Criminal Procedure Code of the Republic of Armenia prescribes home arrest, placement under police supervision, and bail as preventive measures that are alternatives to pre-trial detention. However, according to the draft, alternative preventive measures such as home arrest and placement under police supervision will be executed by the police. This approach needs to be revised in light of the creation of the Probation Service of the Republic of Armenia, the criminal procedure reforms underway in the country, and the new concepts of restorative justice.

The international experience shows that, in a number of countries, the Probation Service actually executes alternative preventive measures such as home arrest and placement under supervision (for instance, Italy, France, and Poland).²²

If alternatives to pre-trial detention are used as preventive measures prescribed in the new Criminal Procedure Code, supervision of the conduct of the suspect in the community by the Probation Service will solve a number of problems by minimizing the person's interaction with law-enforcement agencies, strengthening the social focus, and providing psychological support and assistance to the person charged with a crime during the supervision process. On the other hand, it will solve the problem of overcrowding of pre-trial detention institutions and reduce contacts and the sharing of criminal experiences between different persons charged with crime.

Home arrest is a preventive measure in case of which the person must remain inside the house specified in the court's decision. The court decision may impose other restrictions, as well. The court decision on imposing home arrest shall prescribe the specific restrictions imposed on the accused.

²¹ Article 117 of the draft Criminal Procedure Code of the Republic of Armenia.

²² European Probation Service systems: A Comparative Overview. Anton M. van Kalmthout and Ioan Durnescu, p.22.

Placement under supervision is the limitation of the freedom of movement and conduct of the accused, under which the accused must report to the Probation Service specified in the court decision no more than three times a week. The court decision may also prohibit the accused from changing his permanent or temporary place of residence without the permission of the body conducting the criminal proceedings, or from visiting certain places specified in the decision, meeting with certain persons, or leaving his house certain hours of the day.

These prohibitions shall be imposed taking into consideration the employment or education or health status of the accused.

A copy of the decision to place the accused under supervision shall be sent to the Probation Service for execution. It shall immediately register the accused and notify the body conducting the criminal proceedings about accepting him for supervision.

Supervision of the conduct of the accused may, by court decision, also be carried out by special electronic means. The accused must permanently wear such electronic surveillance means, keep them in working condition, and respond to surveillance signals from the Probation Service. If the accused violates the terms of home arrest, the court may substitute it with detention based on a motion by the Probation Service.

4.2. Overview of Probation at the Trial Stage

4.2.1. Provision of a Pre-Sentencing Report

The Concept Paper of the future Criminal Procedure Code of the Republic of Armenia prescribes a two-phase system of adjudication. According to Paragraph 8.31 of the Concept Paper, the first step involves discussion by the parties and court of the guilt or innocence of the defendant, depending on which the second step will involve other matters contingent upon the verdict.

In the second phase, the court will convene an additional hearing to consider the sentencing of the defendant, circumstances aggravating or mitigating the liability, specific types of sentences or the severity of the sentence. Here, for purposes of obtaining clear guidance, the court may instruct the State Probation Service to prepare a special advisory report.

This report is quite similar to reports issued at the pre-trial stage. However, a specific feature is that, in the preparation of this report, the probation officer will have more time to communicate with the person, and there will be background information enabling a more in-depth analysis of the case. Besides, the report will contain a recommendation on conditional non-execution of the sentence, imposing a sentence that is more lenient than that prescribed by law, deferring sentence execution, or potentially granting exemption from the sentence, and the obligations of the person in this case. Such procedures can be found in Sweden, Latvia, Moldova, and elsewhere.²³

²³ http://www.cep-probation.org/default.asp?page_id=157&map_id=59.

The report should contain detailed information about the person, including, at a minimum, information on the social and family situation, former convictions (if any) or relations with law-enforcement bodies, inclinations, health condition, possible dependencies, education, employment history, property status, and the like.

When preparing it, probation officers must follow certain defined criteria. In order to obtain the necessary information, he may regularly meet and speak with the defendant, as well as his family, relatives, friends, and other related persons. If the defendant wishes, his defense counsel may be present in such meetings, as well.

When preparing the report, probation officers may also request the case materials from the relevant prosecutor or judge. When collecting and processing personal data, probation officers must respect the privacy and confidentiality of personal information.

As a result of the collected information and the interview with the defendant, the probation officer must issue the objective social-psychological description of the person. To safeguard the credibility of the report, the probation officer must substantiate the information and facts presented in the report.

Presenting such an opinion to the court would contribute to more informed and impartial decision making, taking into account the proportionality of the sentence to the person and to the act committed by the person. This practice will also help to apply conditional non-execution of the sentence and alternative sentences more broadly.

4.2.2. Mediation

The Concept Paper of the new Criminal Procedure Code of the Republic of Armenia prescribes private prosecution proceedings. In these cases, the victim's complaint is directly addressed to the court, which shall examine and adjudicate upon the case fully, based on the materials presented by the parties and subsequently obtained by the court. Private prosecution is possible only for non-grave criminal offences, with the aim of shifting the onus of case examination to court.²⁴

Unlike the current Criminal Procedure Code of the Republic of Armenia, which provides that the examination of cases of private prosecution may end at the pre-trial stage in case of settlement between the victim and the accused (Article 36 of the Criminal Procedure Code), the proposed draft implies shifting the private prosecution proceedings directly to the trial phase.

In cases of private prosecution, mediation is an alternative to judicial means of solving the case, and is considered a type of diversion procedure. Hence, mediation, which is a function performed at the pre-trial stage in a number of countries, can be a trial-phase function in Armenia, similar to the practice in Malta, Norway, and Northern Ireland.

²⁴ Paragraph 5.7 of the Concept Paper of the new Criminal Procedure Code of the Republic of Armenia, approved by protocol decision 9-6 of the Republic of Armenia Government dated 10 March 2011.

One clear advantage of mediation is that it enables swift compensation of the victim's damage, and is more social than court-ordered measures, providing for more active involvement of the offender and the victim in the process.²⁵

In these proceedings, the court may decide, with the parties' consent, to transfer the examination of the case to the Probation Service. The court will then suspend the court examination of the case and send the decision to carry out mediation to head of the Probation Service, who shall instruct the relevant unit (or officer) of the Probation Service, in accordance with the established procedure, to perform mediation of the case during the prescribed time period.

The mediation process begins with the accused pleading guilty and expressing his willingness and ability to compensate fully the damage inflicted by him. To continue and complete the mediation process, the guilty party and the victim must voluntarily remain committed to the diversion of the case throughout this process.

The process ends with an agreement concluded between the parties. The concluded agreement is presented to the court, which checks that the agreement was voluntary and lawful and discontinues the criminal cases on the basis of such agreement.

The purpose of mediation is to reach agreement between the parties on the form and amount of compensation of damage inflicted by the crime.

The probation officer should act as a facilitator of this process. Throughout the process, he must remain impartial. The probation officer actively participates in the mediation process, organizing and implementing the negotiations between the parties and monitoring the honoring of their respective obligations. The mediator should also help the parties to find mutually beneficial and optimal solutions. The probation officers should monitor the fulfillment of damage compensation obligations by the accused as per the agreement (in the amount and form defined by the agreement). The functions of the probation officer will end when the obligations under the agreement have been properly fulfilled.

As a result, the victim will receive compensation of damage, and the accused will be exempted of criminal liability and all the negative consequences thereof.

Mediation can be later introduced for not only private prosecution cases, but also other criminal cases, contribution to the restoration of social justice. Mediation cannot be applied in case of repeat offence, organized crime, and other crimes committed during the mediation term.

4.3. Overview of Probation at the Penitentiary Stage

The Criminal Code of the Republic of Armenia prescribes the grounds for exempting from the sentence, such as early conditional release from serving the sentence, substitution of the remainder of the prison sentence with a more lenient type of sentence, deferral or exemption of the sentence of pregnant women sentenced to imprisonment or persons sentenced to imprisonment that are looking

²⁵ European Probation Service systems: A Comparative Overview. Anton M. van Kalmthout and Ioan Durnescu, p.30.

after children under the age of three, exemption of the sentence due to a grave illness or emergency or due to the expiry of the statutory term of limitation. At this stage, the Probation Service will monitor persons exempted of the sentence (including by means of electronic surveillance and visits).

In carrying out this type of supervision, the Probation Service will be provided information about the rights and obligations of the supervised person, the desired conduct of the supervised person, the supervision goals, implementation methods, and conditions, as well as the obligations prescribed for the supervised person.

Depending on the choice of method, the Probation Service can carry out different functions during the supervision. For instance, if the supervised person has been ordered not to change his place of residence, then the Probation Service may carry out regular supervision visits. In case of a prohibition to visit certain places, the Probation Service may get in touch with local authorities, organizations, and family members that will provide information about the person's compliance with or violation of the conditions imposed, compensation of damage, and if the supervised person has been ordered to compensate damage to the victim, then also regularly check the person's income and monitor the fulfillment of his obligation during the term prescribed by court.

During the supervision, a key function of the Probation Service will be the implementation of re-socialization programs, as well as the provision of social, psychological, and legal support to persons exempted of the sentence, and the implementation of educational, cultural, spiritual, sports, employment, and other occupational activities (directly or by means of outsourcing).

Through such programs, the Probation Service will contribute to the implementation of social rehabilitation programs, the creation of short- and long-term programs, the organization of training courses and academic initiatives, the implementation of special programs against drug addiction and alcohol use, and supervision of drug addicts.

At this stage, the Probation Service should support the social, psychological, and legal work units of the penitentiary institutions in efforts to assess convict behavior and develop individual correction plans.

An important function of the Probation Service will be the preparation and submission of reports and social-psychological profile assessments on the person in case of recommending early conditional release of the convict from serving the sentence or recommending substitution of the remainder of the sentence with a more lenient type of sentence. Such reports should include, at a minimum, the assessment of the profile of the convict, his individual and psychological features, the reasons and conditions for offending, the behavior during the term of serving the sentence, an assessment of the risk of reoffending, the effectiveness of the social, psychological, and legal work underway, the required surveillance means, addiction to alcohol or drugs, and the possibility of taking part in certain training programs.

At this stage, the Probation Service may also present reports on the need to adjust the supervision terms, or the need to serve the sentence in case of breaching the terms.

Taking into consideration that the President of the Republic of Armenia has the constitutional power to examine and make decisions on the pardon applications of convicts, and the relevant criteria are missing, the powers of the Probation Service in case of full or partial exemption of the convict of the sentence at this stage are confined to the provision of advisory reports.

4.4. Overview of Probation at the Post-Penitentiary Stage

At this stage, the Probation Service should supervise, support, and help persons conditionally exempted of the sentence, persons released early from the sentence, and persons that have served the sentence, for purposes of supporting their re-socialization, as well as prepare and present reports to the body empowered to take decisions on eliminating the conviction.

The Probation Service should create and/or outsource various educational, social-psychological, and other programs of rehabilitation for persons released from serving the sentence at this stage. After the person has served the sentence and after commission of the crime has been prevented, the Probation Service should have ample opportunities for future care for purposes of his re-socialization.²⁶

5. PECULIARITIES OF PROBATION FUNCTIONS PERFORMED IN RELATION TO JUVENILES

As was already mentioned, there will be a unit for juvenile cases within the Probation Service of the Republic of Armenia, which will exercise the powers of the Probation Service in relation to juveniles. The Probation Service unit for juvenile cases should recruit specialized staff in order to take into account the social, psychological, and mental peculiarities of juvenile offenders in probation programs.

Considering the specificities of work with juveniles, the Probation Service should closely cooperate with the custody and guardianship bodies, other public and private organizations engaged in social work and work with juveniles, especially for implementing various restorative and social programs.

As to the probation functions performed in relation to juveniles, in addition to the general functions, there are some specific functions in line with the defined criteria, such as the mandatory provision of reports at all stages and the implementation of compulsory education measures prescribed by the Criminal Code of the Republic of Armenia.

The procedure of preparing reports in cases of juveniles has the following peculiarities:

1) The probation officer must conduct an interview with not only the juvenile, but also his legal representative, and the latter must be present in the interview with the juvenile;

²⁶ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 9.

2) The probation officer shall request information about the juvenile from the relevant custody and guardianship bodies, also for determining the relationship between such bodies and the juveniles;

3) In addition to presenting the profile, family status, health condition, and other details about the juvenile, the report should also present information on academic performance and behavior in educational institutions, inclinations, and hobbies, and

4) The pre-sentencing report also contains an opinion on the possibility of exempting the juvenile from criminal liability and imposing compulsory educational measures on him, and the obligations of the juvenile in such case.

According to Article 91 of the Criminal Code of the Republic of Armenia, a juvenile who has committed a non-grave or medium-gravity crime for the first time may be exempted of criminal liability by the court, if the court finds that he can be corrected through compulsory educational measures.

The court may impose the following compulsory educational measures on a juvenile:

1) Warning;

2) Placement under the supervision of parents, proxies, local government bodies, or competent authorities supervising the convict's conduct, for a maximum term of six months;

3) Honoring the obligation of compensating damage inflicted, during the time period set by court; and

4) Restricting the freedom of leisure and imposing special requirements on conduct for a maximum term of six months.

In view of its nature and significance, Probation Service should have the power to supervise the measures of supervision and to supervise the restriction of the freedom of leisure and special requirements on conduct.

Supervision of juveniles and supervision of the restriction of the freedom of leisure and special requirements on conduct shall be combined with the active engagement of the juvenile in various educational, social-psychological, and rehabilitation programs. The Probation Service should, through collaboration with other institutions, actively help juveniles in matters of occupation or continued education.

Based on a report filed by the Probation Service, the court may impose on the juvenile other compulsory educational measures, as well.

If the juvenile regularly avoids the compulsory educational measures, the Probation Service may motion to send the materials to court for eliminating the measure and holding the juvenile liable accordingly.

Diversion is increasingly becoming a part of probation services (including those for juveniles) in various countries, such as the Czech Republic, Hungary, Slovakia, and others. Diversion measures often include mediation processes, as well. Diversion is essentially an alternative to criminal procedure, which results in completing the process with the juvenile offender at the pre-trial investigation stage, during prosecution. A key goal of diversion is to keep juveniles away from criminal proceedings, especially the trial and mental stress. The application of this measure

ends when the prosecutor suspends or discontinues the case (Austria, the Czech Republic, Denmark Germany, Hungary, Latvia, Luxembourg, Malta, and others).²⁷

It is believed that the Armenian legislation, too, should prescribe safeguards and possibilities for wide application of diversion in cases of juveniles. The application of diversion will reduce frequent application of pre-trial detention of juveniles and sentencing of juveniles to prison, and reduce the likelihood of committing crimes (or re-offending).

#	General Areas of Probation Work	Funding from the State Budget of the Republic of Armenia (drams million)			Funding from the Donor Community (drams million)		
		2013	2014	2015	2013	2014	2015
1.	PRE-TRIAL PROBATION Issuing a pre-trial report on the person of the suspect/accused for choosing a preventive measure. Mediation between the victim and the accused.						
2.	TRIAL PROBATION Presenting to the court a professional report on the defendant for sentencing, deferral or conditional non-execution of the sentence, and determination of the type and scale of punishment prescribed by Paragraphs 2 and 3 of Article 61 of the Criminal Code of the Republic of Armenia.	204.0	510.0	306.0	48.0	120.0	72.0
3.	PENITENTIARY PROBATION Execution of alternative sentences. Organization and implementation of the parole period in case of conditional non-execution of the sentence. Implementation of social-psychological rehabilitation activities. Supervision of the conduct of persons exempted from the						

²⁷ European Probation Service Systems: A Comparative Overview. Anton M. van Kalmthout and Ioan Durnescu.

	<p>sentence. Supervision of persons whose sentence has been deferred. Provision of advice during individual sentence planning (horizontal cooperation). Provision of an expert report on early conditional release of the convict from the sentence or substitution of the remainder of the sentence with a more lenient type of sentence. Provision of an advisory report characterizing the personal profile of a convict recommended for pardon.</p>						
4.	<p>POST-PENITENTIARY PROBATION Parole period activities, plus conditions imposed by the court, specific psychological-/medical/social intervention, etc.</p>						

The funding required during the pre-trial proceedings has been estimated on the basis of the total number of persons detained and convicted before and after trial (4,680 persons in 2012).

The number of probation officers was calculated based on the estimated number of 5,000 convicted persons and those in pre-trial proceedings and trial stage considering that one probation officer can efficiently deal with no more than 50-60 cases.

The government cost per probation officer will be at least 3.6 million drams per annum (if the average monthly net salary is 230-240,000), i.e. 360 million drams for the required 100 specialists.

To handle 50 cases, each probation officer will need a computer and a car (to travel to the suspect's institution or the house and/or place of work or study of the victim and/or offender in order to become familiar with his living conditions, family situation, and employment conditions). Therefore, the cost of procuring computers for 100 officers will be 30 million drams (100 computers at the cost of 300,000 drams per computer).

The cost of computer accessories and office accessories will be up to 10 million drams per annum.

The car acquisition will cost at least 600 million drams (100 cars at 6 million drams per car). The annual maintenance cost of the cars will be at least 60 million drams.

In case of electronic surveillance, one surveillance device will cost about 250 euros. The total need for devices will cost 375,000 euros (250 at 1,500 euros a piece, for persons on parole or for those convicted to public works).

Thus, the total funding requirement for these policy measures and programs will be around 1,260 million drams: it is believed that funding for computers and devices can be expected from the donor community (240 million drams), while the remainder (1,020 million drams) will be provided by the state budget of the Republic of Armenia.

The total estimated funding need for 2013 to 2015 is broken down by years (20 percent for 2012, 50 percent for 2014, and 30 percent for 2015), taking into consideration the preparatory time period necessary for launching the programs and the medium-term financing needs.



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