

# UKRAINIAN SYSTEM OF SANCTIONS ALTERNATIVE TO IMPRISONMENT AND OUTLOOKS TO PROBATION INTRODUCTION

In the international practice of crime prevention it is a common knowledge that sanction like imprisonment should be applied as utmost measure to severe offenders. The isolation from the society has made the personality collapse and losing the socially positive contacts.

According to humanization of Ukrainian Criminal legislation and changes in court practice the dynamic of imposed criminal sanctions has been changing to give the preference to sanctions alternative to imprisonment.

Criminal Code of Ukraine adopted in 2001 stipulates the sanctions alternative to imprisonment, namely:

1. Fine.
2. Deprivation of military and special ranks, qualified categories or classes.
3. Deprivation of the person's right to take a certain post or to be engaged in the certain activity.
4. Community useful services, correctional works.
5. Service restriction for military personnel.
6. Forfeiture (property confiscation).
7. Arrest.
8. Conditional sentence.
9. Forwarding to the penal battalion (for the military personnel).

Besides, the Criminal Code of Ukraine envisages three measures of conditional release:

1. Conditional release with supervision.
2. Parole release from serving the sentence.
3. Conditional release of the pregnant women and mothers with children who are under three years old.

State Department of Ukraine on Enforcement of Sentences is entrusted with the task to enforce the majority of criminal sentences. In 1998 this official body was extracted from the Ministry of Internal Affairs of Ukraine subject to the commitments of Ukraine taken during the accession to the Council of Europe.

At present the Department is the central official body of executive power with special status. On evidence of September 1, 2007 the Department is responsible for 33 pre-trial institutions, 31 arrest facilities, 21 correctional facilities, 137 penal establishments of different security categories, 10 penal establishments for juveniles. The total number of persons deprived of liberty is **154 thousand** detainees, arrested persons, parolees, prisoners and long-life prisoners.

Being a part of the Department's structure **the criminal-executive inspection** is the agency, which enforces the sentences on deprivation of the person's right to take certain post or to be engaged in certain activities, community useful services and correctional works, supervision over parolees and conditional release of the pregnant women and mothers with children under three years old.

Besides, since January 1, 1999 the internal affairs bodies conferred to the criminal-executive inspection the authority to monitor the parolees (annually up to **35 thousand** persons).

In 1995 alternative measures and conditional release were imposed to **83 thousands** offenders, but on evidence of September 1, 2007 **142 thousand** offenders were registered in 703 units of the criminal-executive inspections.

As regards the average working load one inspector of a criminal-executive inspection supervises (monitors) **110** offenders from the total number of the registered persons since the beginning of 2007 (**236 thousand** persons).

The personnel of the criminal-executive inspections is composed of **2,237** inspectors. That is only **31%** of the needed personnel in accordance with the number, which was approved by the Law of Ukraine of March 2, 2000 "On Structure and Number of Criminal-Executive Inspection of Ukraine" (the norm is **5%** of total registered offenders). According to the established by the above mentioned Law of Ukraine norm it is necessary to introduce **5,063** posts more.

There is the central office of criminal-executive inspection (11 officers) at the State Department of Ukraine on Enforcement of Sentences.

Since September 3, 2006, the Decree of Cabinet of Ministers of Ukraine 1,090 asserted "the State Program on improving the detainees and prisoners treatment during 2006-2010". This Program envisages the development and introduction of changes into the legislation with a view on increasing the practice of applying the alternative measures of punishment.

The Human Rights Commissar of the Council of Europe Mr. Tomas Hammarberg stressed in his report on his official visit to Ukraine in December 10-17, 2006 that Ukraine needs more wider practice of alternative measures of punishment.

In November 2006 the experts of the Council of Europe recommended in the assessment report "Priorities Designation and Needs Assessment of Large-scale Project of the Reforming Process of the Criminal-Executive System of Ukraine" to establish the **Probation Service**.

Thus, the strategic goal of reforming the system of enforcement of sentences in Ukraine is the establishment the Probation Service in accordance with the European standards on the basis of the criminal-executive inspection. This goal is envisaged by the project of the Conception of Reforming the Criminal-Executive Service of Ukraine.

The creation of the Probation Service in Ukraine would contribute to reduce the state expenses on penal establishments and to counteract the negative effect of prisoner's isolation.

The main differences between the present Ukrainian criminal-executive inspection and the Probation Service are:

- Within the activity of criminal-executive inspection there is no component of preparing the pre-trial report (social inquiry report). Such report consists of the offender's social-psychological and criminal features and is forwarded to the court while the person is awaiting the trial. It is considered by the court in order to choose the proper sanction.
- The absence of social-psychological support and correction of social behavior of the parolees and persons sentenced to sanctions alternative to imprisonment.
- In Article 76 of the Criminal Code of Ukraine courts can impose only 5 charges on the parolees (it is less than in European countries' criminal legislations).
- Under the current Ukrainian legislation the internal affairs bodies are entrusted to make the offence focused work with offenders who are registered at the criminal-executive inspection. But this activity is not a priority task for them.
- There is the shortage of personnel and lack of material resources for proper activity of the criminal-executive inspection.

The lack of the corresponding legal regulations and the above mentioned reasons complicate the process of reorganization of criminal-executive inspection into the Probation Service.

Despite the current problems we learn the European probation practice and take necessary organizational measures, namely:

1. The personnel number of the criminal-executive inspection has been increased for 1,060 posts during the last three years (about half of the current posts number).
2. The regular system of improving the working skills of the criminal-executive inspection's officers has been established at the Bila Tzerkva Training School of the State Department of Ukraine on Enforcement of Sentences.
3. In the framework of the Agreement on Cooperation between the Swedish Prison and Probation Administration and the State Department of Ukraine on Enforcement of Sentences the representatives of the criminal-executive inspection from 11 regions of Ukraine visited Sweden for learning its Probation Service's activity.
4. In the framework of the pilot projects the units of the criminal-execution inspection of the Autonomous Republic of Crimea, Kyiv and Kharkiv regions together with the courts and NGOs work out the system of preparing the pretrial reports and participation in the mediation process.
5. Social workers and psychologists from the state and civil organizations are involved in the work with the persons sentenced to the alternative measures. Social support of young people is performed by the experts of the State Service on Family, Youth and Children Affairs.
6. We plan to introduce the new posts of social inspector, psychologist and inspector on juvenile issues in the framework of the pilot projects in 13 units of the criminal-executive inspection of 10 regions of Ukraine (Autonomous Republic of Crimea, Kyiv, Volyn, Lviv, Ivano-Frankovsk, Sumy, Chernihiv, Chernivtsi, Kharkiv and Zakarpatska regions) in order to elaborate the system of social and psychological work with the persons sentenced to the alternative measures.
7. The activities of the criminal-executive inspection and the idea of creation of the Probation Service are published in mass media, institutional newspaper "Law and Service" and placed on the web-site of the State Department of Ukraine on Enforcement of Sentences ([www.kvs.gov.ua](http://www.kvs.gov.ua)).

**Measures, which are necessary to reorganize the criminal-executive inspection into the Probation Service:**

- elaboration of the draft legal acts concerning the establishment of the Probation Service;
- learning the experience of activities of the advanced models of the Probation Service and introducing it into the practical activities of the criminal-executive inspection;
- organization of the corresponding training of the criminal-executive inspection's personnel, as well as students and cadets of the higher educational institutions, which are involved in training the experts for the State Department of Ukraine on Enforcement of Sentences, in order they learn forms and methods of the probation activities;

- introducing the new posts of inspector on social issues and psychologist at the criminal-executive inspection;
- elaboration and implementation of the programs of the social behavior correction for those persons who are under the supervision of the criminal-executive inspection;
- improving the material and technical basis of the criminal-executive inspection, supply to their units with their own office premises, equipment, means of protection and communication, signaling systems and transport means;
- increasing the number of the criminal-execution inspection's personnel to the norms envisaged by the Law of Ukraine of March 2, 2000 "On the Structure and Number of the Criminal-Executive Service of Ukraine" that means 5 % of the number of the persons who are under the supervision of the criminal-executive inspection;
- development of the system of cooperation between the criminal-executive inspection and courts, prosecutor's offices, internal affairs bodies, bodies on social policy and employment issues, family, youth and sports issues bodies, bodies of health protection issues, bodies on educational and scientific issues;
- creation of the single computer informational network between the criminal-executive inspection and corresponding ministries and institutions;
- broad involvement of NGOs and volunteers to the work with the persons sentenced to the alternative measures;
- creation of the center (unit) for providing scientific support to the criminal-executive inspection (Probation Service).

Introduction of the probation mechanisms is an integral part of further development of the Criminal-Executive Service of Ukraine. Probation mechanisms should be chosen from the developed countries' advanced experience and should correspond to the international standards in the sphere of alternative measures of punishment.