



## PROJECT BULLETIN

# SUPPORT FOR PRISON REFORM IN UKRAINE

Issue №3 (April 2013)

The "Support for Prison Reform in Ukraine" project is funded by the Government of Sweden through the Swedish International Development Cooperation Agency (Sida) and implemented by the Council of Europe

Conference together with correctional officers from regional penitentiary administrations.

The Conference marked the 15th anniversary of the establishment of the State Department of Ukraine for Execution of Sentences as a central body of executive power subordinated directly to the Cabinet of Ministers of Ukraine. During this period new approaches of offender rehabilitation were shaped and put into practice.



The Secretary of the Academic Council of the State Penitentiary Service of Ukraine **Alla Gryhorenko**, Head of the Department of Criminal-Executive Inspections **Oleg Yanchuk**, Project Manager **Volodymyr Holovatenko**, Head of the Probation Service of the Ministry of Justice of Romania **Iuliana Carburaru**

## CONFERENCE AT THE STATE PENITENTIARY SERVICE OF UKRAINE

The State Penitentiary Service of Ukraine, in cooperation and with the support of the Project organized an **international conference** in **Kyiv** on 28-29 March 2012.

The Conference focused on the achievements and analyzed the future perspectives of the State Penitentiary Service of Ukraine.



**Oleg Yanchuk** and **Volodymyr Holovatenko** are discussing the perspectives of cooperation within the Project



Head of the State Penitentiary Service of Ukraine **Oleksandr Lisitskov**



Representatives of the penitentiary institutions and universities from Poland, the Russian Federation, Belarus and Moldova and from the Ministry of Justice of Ukraine, the Prosecution Service of Ukraine, rectors and lecturers from leading Ukrainian universities attended the

The Head of the State Penitentiary Service of Ukraine and other speakers of the Conference emphasised the importance of the Project's contribution to the reform of the penitentiary system in Ukraine.

The Project Coordinator **Volodymyr Holovatenko** presented the joint work that has been done in the Project and explaining in details the achievements of two Project's components - *prison management* and *probation*.



**Volodymyr Holovatenko**

The Council of Europe requested **Iuliana Carburaru**, the Head of the Romanian Probation Service, and **John Teasdale**, an independent prison expert, as consultants to make presentations at the Conference.

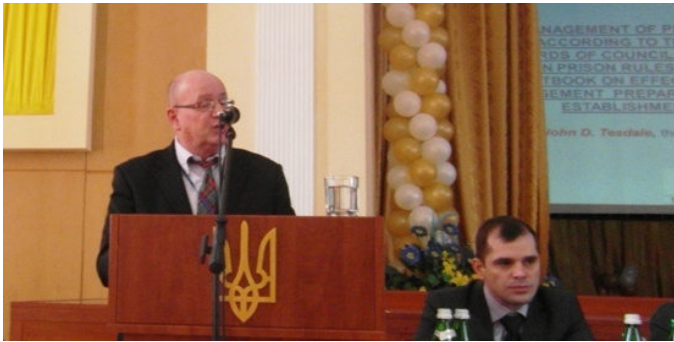




Consultant of the Council of Europe, Head of the Probation Service of the Ministry of Justice of Romania **Luliana Carbanaru**

**Luliana Carbanaru** presented the establishment process and reform of the Probation Service in Romania, offering her vision of what aspects of the Romanian experience can be applied to Ukraine in order to create a national model of probation in the country.

**John Teasdale** in his presentation focused on work that has been done in the framework of the project to develop over a manual on effective leadership and prison management and the training sessions which followed. This manual will have an important role in preparing of highly skilled prison managers in the future.



The Council of Europe consultant **John Teasdale**



## EUROPEAN PROBATION RULES PRINCIPLES AND MAIN PROVISIONS

The issue of creation of the national model of probation continues to be extremely important in Ukraine in the context of the reform of the national criminal justice system.

Since January 2010, the Member States of the Council of Europe have had a legal standard of organization of national probation services – **the European Probation Rules** (*hereinafter* - the Rules).

The Rules are very important for Ukrainian scholars and practitioners as they reflect the latest trends concerning the nature of punishment, its purpose and philosophy of the treatment of offenders. The rules accumulated experience gained in many European countries for several centuries. The Rules provide guidance for countries planning to establish or develop their probation services.

In the Rules, **probation** relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions,

which involve *supervision, guidance and assistance* aiming at the *social inclusion of an offender*, as well as at *contributing to community safety*.

**Probation agency** means any body designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also *include* providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

The definition of **“community sanctions and measures”** means “sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations”. This term designates any sanction imposed by a judicial or administrative authority, and any measure taken *before or instead* of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

**Aftercare** means the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In the Rules **“aftercare”** is distinguished from the term **“resettlement”** which refers to statutory involvement after release from custody.

The Rules contain important provisions concerning the *presumption of innocence*. It concerns the definition of offender, which is defined as “any person who is alleged to have or who has committed an infringement of the criminal law”. The Rules emphasize: “For the purpose of this recommendation and without prejudice to the presumption of innocence and the establishment of guilt by a judicial decision, the term **“offender”** shall be understood to include *anyone facing criminal proceedings*”.

§§ 19-20 of the Rules refer to the **involvement of private sector in providing probation services**. The Rules state that irrespective of whether probation services are delivered by public or private organisations, agencies shall work in accordance with formal policy instructions and rules provided by the competent authorities. Any private agency providing probation services to offenders shall be approved by the competent authorities in accordance with national law.

§§ 21-34 Rules are focused on **probation staff, eligibility criteria** of persons who wish to work in these structures, **training and retraining** of personnel, **work of certain categories of offenders** and **victims**, as well as the **involvement of volunteers** in the work of probation.

Part IV of the Rules is focused on such function of probation services as **preparing pre-sentence reports**. The standards of the Council of Europe on pre-sentence reports are as follows:

- 1) depending on the national legal system, probation agencies may prepare pre-sentence reports on individual alleged offenders in order to assist, where applicable, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures
- 2) where this is the case, probation agencies shall regularly communicate with the judicial authorities regarding the circumstances in which such a report may be useful.
- 3) pre-sentence reports shall be based on clearly identified information and as far as possible be verified and updated in the course of the proceedings.
- 4) alleged offenders shall be given the opportunity to be involved in the preparation of the report
- 5) offender’s opinion, where available, shall be reflected in the report and its contents shall be communicated to them and/or to their legal representative.

The same Part of the Rules is focused on **“other advisory reports”**.





They shall include advice on:

- a) the feasibility of the offender's release in the community;
- b) any special conditions that might be included in the decision regarding the offender's release;
- c) any intervention required to prepare the offender for release.

Offenders shall be given the opportunity, where appropriate, to be involved in the preparation of the report, and their opinion, if available, must be reflected in the report and its contents must be communicated to them and/or to their legal representative.

The same Part of the Rules is focused on **community service**.

**Community service** is defined as a community sanction or measure which involves organising and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders.

**Community service** shall *not* be undertaken for the profit of probation agencies, their staff or for commercial profit.

In identifying suitable tasks, the probation agencies shall take into account the safety of the community and of the direct beneficiaries of the work.

The next Part of the Rules is focused on specific features of the **supervision measures**. According to § 53 of the Rules, in accordance with national law, probation agencies may undertake supervision *before, during and after* trial, such as supervision during conditional release pending trial, bail, conditional non-prosecution, conditional or suspended sentence and early release.

It is important to emphasize that **supervision** shall *not* be seen as a purely controlling task, but also as a means of *advising, assisting and motivating offenders*. It shall be combined, where relevant, with other interventions which may be delivered by probation or other agencies, such as training, skills development, employment opportunities and treatment.

**Supervision** refers both to assistance activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in the community and to actions taken to ensure that the offender fulfils any conditions or obligations imposed, *including control where necessary*. Supervision may be mandatory or voluntary (upon the offender's request).

At the same time, **control** means activities limited to ascertaining whether or to ensuring that any conditions or obligations imposed by a sanction or measure are complied with by the offender. Such activities *usually include* using, or threatening to use stricter sanctions or measures in case of non-compliance. The notion of control is narrower than that of supervision.

§ 57 of the Rules is focused on the issue that becomes extremely popular and important in Ukraine. It is about **electronic monitoring**. Therefore, the Rules emphasize: "When electronic monitoring is used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance". *The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety.*

The Rules are also focused on **other spheres** of activities of probation services. Where probation agencies are responsible for supervising offenders after release they shall work in co-operation with the prison authorities, the offenders, their family and the community in order to prepare their release and reintegration into society. They shall establish contacts with the competent services in prison in order to support their social and occupational integration after release.

Part V of the Rules is focused on the **process of supervision**.

When required before and during supervision, an **assessment** of offenders shall be made involving a systematic and thorough consideration of the individual case, including risks, positive factors and needs, the interventions required to address these needs and the offenders' responsiveness to these interventions.

Wherever possible, offenders shall be enabled to make an active contribution to the formal assessment. This includes giving due weight to the offenders' views and personal aspirations, as well as their own personal strengths and responsibility for avoiding further offending.

The Rules especially point out that *assessment is recommended*:

- a) at the time of determining the appropriate sanction or measure or when diversion from formal criminal proceedings is being considered;
- b) at the beginning of a period of supervision;
- c) whenever there are significant changes in the offenders' life;
- d) when consideration is being given to a change in the nature or the level of supervision;
- e) at the end of the supervision measure.

§§ 76-80 of the Rules are focused on **interventions**.

Interventions shall aim at rehabilitation and desistance and shall therefore be constructive and proportionate to the sanction or measure imposed. Probation agencies should be able to use a variety of methods based on an interdisciplinary approach and sound knowledge derived from relevant research. Offenders shall be fully informed beforehand about any proposed intervention. Every attempt shall be made to ensure their active participation in such interventions.

In arranging interventions and making referral, the probation agencies shall, where appropriate, call upon support agencies.

Irrespective of the number of persons contributing to working with an offender, there shall in every case be an identified responsible member of staff whose task it is to assess, elaborate and co-ordinate the general work plan and to ensure contact with the offender and compliance. This is especially important where offenders are subject to more than one intervention or when more than one agency is involved.

The Rules also pay attention to the issues of **evaluation**. The progress of the individual offender shall be evaluated at regular intervals and this process shall influence the work plan during the remainder of supervision. The evaluation shall form part of the case record and, when required, of the follow-up reporting to the deciding authority.

Evaluation shall also reflect the extent to which the agreed work plan has been defined, put into effect and produced its intended consequences. Probation agencies shall be able to apply to the deciding authority to alter or end the supervision, when appropriate.

The offenders' view regarding the relevance of supervision shall be included in the evaluation.

At the end of the period of supervision, a **final evaluation** shall be made. Offenders must be made aware that this evaluation will remain in their case records and that they may be referred to in the future.

Part VI is focused on such very important function as **work with victims and restorative justice**.

In the Rules, a **victim** means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of criminal law. The term "**victim**" *also includes*, where appropriate, the immediate family or dependants of the direct victim.

**Restorative justice** includes approaches and programmes based on several underlying assumptions:

- a) that the response to crime should repair as much as possible the harm suffered by the victim;
- b) that offenders should be brought to understand that their behaviour is not acceptable and that it has had some real consequences for the victim and the community;

c) that offenders can and should accept responsibility for their action;

d) that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and e. that the community has a responsibility to contribute to this process.

It is also interesting to add that in some cases the experience of probation should be used to develop **crime prevention strategies** (§98). Annex to the Rules contains a definition of "**crime prevention**", which is understood as "any policy and practice implemented by the agencies of the criminal justice system and other competent agencies and aimed at preventing (or, more plausibly, reducing) crime".

The Rules emphasize: where provided by national law, the expertise and experience of probation agencies shall be used in developing crime reduction strategies. This may include making use of joint interventions and partnerships.

## IMPLEMENTATION OF THE PILOT PROJECT (POLTAVA)

The **Poltava** criminal-executive inspection shows one of the first examples of implementing of probation into its practices.

Within the framework of the "Support for Prison Reform in Ukraine" project for the first time in Ukraine, the Poltava criminal-executive inspection began implementing elements of probation, namely *social learning (consultation)* of persons registered in the inspection.

These activities are implemented in Poltava jointly with the employees of the **Charitable Association "Light of Hope"**.

On January 24, 2013, there was a meeting of the Head of the Administration of the State Penitentiary Service of Ukraine in Poltava region **Mykola Isayev**, Head of the criminal-executive inspection **Oleksandr Demyanenko**, Head of Prison Department of the Charitable Association "Light of Hope" **Roman Drozd** with an consultant of the Council Europe **Martin Seddon** and Project Coordinator **Volodymyr Holovatenko**.

During the meeting, there was a discussion on the implementation of the Pilot project "*Creating a Model Center of Probation*" in Poltava region.



On January 25, 2013, a consultant of the Council Europe **Martin Seddon** and Project Coordinator **Volodymyr Holovatenko** attended classes in *social learning*, which involved several groups of offenders (juveniles, unemployed and offenders, who were sentenced for drug related crimes), who are supervised by the criminal-executive inspection of Poltava.

These classes are held by the specialists of the *Charitable Association "Light of Hope"* within the pilot implementation of elements of the supervisory probation.

Experts of the *Charitable Association "Light of Hope"* are sharing their experience with inspectors of the criminal-executive inspection,

who are able to work in the future independently with offenders in the direction of social learning (counseling).

## A TRAINING SESSION ON EFFECTIVE PRISON MANAGEMENT AND LEADERSHIP (IVANO-FRANKIVSK)

A training session on "**Effective Leadership and Prison Management**" was organized for senior prison officials within the Project in **Ivano-Frankivsk** on 19-22 March 2013.

The participants were:

- *Valery Kozub*, Deputy Head of the Faculty of the Institute of the Penitentiary Service;
- *Oleg Duka*, Senior Researcher, Research Center of the Institute of the Penitentiary Service;
- *Natalya Zakharchenko*, teacher-methodologist of the Bila Tserkva collage of the State Penitentiary Service of Ukraine;
- *Vladimir Atamaniuk*, Head of the Ivano-Frankivsk pre-trial prison;
- *Oleg Kazeha*, Head of the Kolomyia correctional prison 41;
- *Basil Fryschny*, Head of the Dolinska correctional center 118;
- *Igor Turkalevych*, Head of the Galician correctional prison 128;
- *Sergey Kireev*, Head of the Lutsk pre-trial prison;
- *Alexander Rybak*, Head of the Manevitsk correctional prison 42;
- *Vladimir Zaverukha*, Head of the Chortkiv pre-trial prison;
- *Dmitry Vozniak*, Head of the Kopychinska correctional prison 112;
- *Vadim Lembryk*, Head of the Berezhany correctional prison VC;
- *John Slopak*, Head of the Lychakiv correctional prison 30;
- *John Volchanskiy*, Head of the Mykolaiv correctional prison 50;
- *Taras Mytsyk*, Head of the Derzhivsk correctional prison 110.



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